



[REDACTED]

3rd December 2020

Subject: Appeal FAC 073/20200 regarding licence LM08-FL0145

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence LM08-FL014 for felling and replanting of 4.88 ha at Dergvone, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 6th February 2020.

Hearing

An oral hearing of appeal FAC073/2020 was held by the FAC on 27th November 2020. In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Anthony Dunbar,

Decision

The Forestry Appeals Committee (FAC) having considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, has decided to set aside and remit the decision of the Minister regarding licence LM08-FL0145.

The licence pertains to the felling and replanting of 4.88 ha at Dergvone, Co. Leitrim. The site would be replanted with what is indicated as standard conifer reforestation for roundwood production. The site is on the lower slopes of an upland area with a moderate slope 0-15% with underlying soil types comprising approximately 80.59%, blanket peat; 19.50%, surface water gleys, ground water gleys and 0.05%, peaty gleys. The application included a harvest plan, including maps, and general environmental

and site safety rules related to the operations. An appropriate assessment pre-screening report was also provided with the application.

The DAFM undertook and documented an appropriate assessment screening that found six European sites within 15km, 428 Lough Melvin SAC; 584 Cuilcagh - Anierin Uplands SAC; 979 Corratirrim SAC; 1403 Arroo Mountain SAC; 1976 Lough Gill SAC and 2032 Boleybrack Mountain SAC and found that there was no reason to extend this radius in this case. All sites were screened out due to the absence of lack of any pathway, hydrological or otherwise between the site and the Natura sites.

The development it is noted was referred to Leitrim County Council on the 5th of March 2019 and a response was received on the 29th April 2019 indicating no objections and recommended conditions.

The licence was approved with a number of conditions attached which included the recommendations outlined in the Leitrim County Council submission.

There is one appeal against the decision. The grounds contend that the appropriate assessment screening does not comply with the law. Reference is made to court judgements in this regard. The grounds proceed to submit suggested shortcomings in the information and evidence provided in text attribute to an Inspector and suggests that no in combination screening was available to comment on. The grounds further submit text regarding obligations on public authorities; to legal obligations of the Forestry Appeals Committee; refers to court judgements in support of the grounds of appeal and the identified and provision of information and the consideration of measures designed to avoid or reduce the harmful effects of the plan or project on European sites. A text attributed to the Department of Culture, Heritage and the Gaeltacht was also submitted as part of the grounds of appeal.

DAFM in a statement to the FAC, that in regard to the granted Felling licence application LM08-FL0145, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Prescreening Report and associated Pre-screening Report methodology document were considered during the licencing process. The DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km.

Having reviewed the details of relevant European sites their qualifying interests and conservation objectives the Department deemed that the project, when considered in combination with other plans and projects as identified in the pre-screening report, will not give rise to the possibility of a significant effect on the relevant screened European sites. As such, the clearfell and reforestation project was screened out and an Appropriate Assessment deemed not required in relation to the European sites considered during the screening exercise. For the purposes of 42(16) of S.I.477 / 2011, DAFM has determined that the project will not adversely affect the integrity of any European sites.

DAFM subsequently carried out a separate in-combination assessment and included an associated in-combination statement based on this information which is consistent with the licensee's in-combination statement. A felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM in respect of the licence application.

It is noted that the licence was issued on 06/02/2020 and that a report referring to in-combination effects makes reference to consultations dated the 11/02/2020

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM presented an overview of their processing of the licence and the screening and appropriate assessment undertaken. They referred to reliance from the Applicant in relation to in-combination and that a subsequent statement of DAFM confirmed the initial findings.

The DAFM also at the hearing outlined non standard conditions specific to the licence and conditions (i) and (j) reflected the matters raised in the Leitrim County Council response. It was acknowledged at the hearing that no haulage route a matter referred to in the Council submission was submitted.

The Applicant's Representatives described the documents and information provided with the application. They submitted that the site was established in 1968 and ground conditions were good. The nearest SACs were screened out owing an absence of a hydrogeological pathway and distance from the felling site and details relating to nearest pathway were outlined. They further submitted that the proposal does not involve any deforestation for the purposes of land use change and does comprise a class of project covered by the EU EIA Directive.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same six sites as the DAFM within 15km from the proposal. These are, 428 Lough Melvin SAC; 584 Cuilcagh - Anierin Uplands SAC; 979 Corratirrim SAC; 1403 Arroo Mountain SAC; 1976 Lough Gill SAC and 2032 Boleybrack Mountain SAC. The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

The DAFM considered each site in turn and provided the reasons for screening all of the sites out for appropriate assessment. The grounds of appeal do not identify any specific effects or pathways of concern. Based on the information before it, the FAC is satisfied that the proposal itself would not be likely to have a significant effect on any European site itself. While the DAFM submitted that plans and projects were considered at the screening stage, the only record of such considerations appears post the issuing of licence. The FAC considers and is satisfied that this issue constitutes a serious error in the making of the decision regarding licence LM08-FLO145.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that serious errors

were made in making the decision and is setting aside and remitting the decision of the Minister regarding licence LM08-FLO145 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake a screening of the likely significant effects on European sites of the proposal itself and in-combination with other plans and projects before a new decision is made.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee