



[Redacted]

2nd December 2020

Subject: Appeal FAC 068/2020 regarding licence LS01-FL0078

Dear [Redacted]

I refer to your 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 LS01-FL0078 for felling and replanting of forest on 8.09 ha at Ballykenneen Lower, Sreahduff, Glebe, Co. Laois, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 4th February 2020.

Hearing

An oral hearing of appeal FAC 068/2020 was held by the FAC on 18th November 2020 at the Killeshin Hotel, Dublin Rd, Portlaoise, Co. Laois.

In Attendance at Oral Hearing:

Forestry Service Representative(s):	Mr. Luke Middleton, Ms. Eilish Keogh,
Appellant:	[Redacted]
Applicant / Representative(s):	[Redacted]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr Seamus Neely,
Secretary to the FAC:	Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence LS01-FL0078.

The licence pertains to the felling and replanting of an area of forest on 8.09 ha at Ballykenneen Lower, Sreahduff, Glebe, Co. Laois.

The forest is currently composed of Sitka Spruce and replanting would be of Sitka spruce. The slope is predominantly moderate 0-15% and the underlying soil type is predominantly Peaty Gleys [Shallow] (98.19%), together with Grey Brown Podzolics (.53%), Brown Earths [Medium-high base status] (.16%), and Acid Brown Earths, Brown Podzolics (1.13%). The site is within the catchment of the Ballynacarrig (O10) waterbody in the 25A_12 Silver [Kilcormac] SC O10 Subcatchment, itself within the 25A Lower Shannon Catchment.

The application was dated the 28th of February 2019. It included a harvest plan, including maps, general environmental and site safety rules related to the operations, and an Appropriate Assessment pre-screening Report

The application was submitted to the Forestry Service of DAFM on the 4th of March 2019 and advertised on the 13th of March 2019. It was referred Laois County Council on the 5th of March 2019 and to the National Parks and Wildlife (NPWS) service of DCHG on the 6th of March 2019.

The NPWS responded on the 17th of June 2019 highlighting that the area concerned is within a Hen Harrier Red Zone and any works should take place during the period from August 15th to March 31st, or an Appropriate Assessment should take place as per Forest Service Guidelines. An appendix on "*General observations from the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht in relation to forestry applications referrals*" was also provided. No response from the local authority is on the Departmental file supplied to the FAC or referred to in the statement provided by the Forestry Service to the FAC.

The DAFM undertook and documented an appropriate assessment screening, which is undated, that found five European sites within 15km and found that there was no reason to extend this radius in this case. The screening determined that an appropriate assessment was required regarding (4160) Slieve Bloom Mountains SPA. The screening further determined that an appropriate assessment was not required regarding four SACs by reason of there being no possibility of cumulative impacts on the Natura sites, and the location of the project area being within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway hydrological or otherwise. The statement provided by the Forest Service notes that the screening report completed by the Inspector, when outputted, had a number of SCIs/QIs which were truncated, but that all SCIs/QIs were considered during the screening exercise. A revised screening form was provided with the statement and the FAC is satisfied that this does not have a material impact on its consideration of the appeal.

A combined appropriate assessment report and determination statement was undertaken by the forestry service dated the 6th of February 2020. A licence was approved and dated the 4th of February 2020, with a number of conditions attached. The FAC notes that the date of the licence is before the Appropriate Assessment was completed. In the statement from the Forest Service this discrepancy is

noted and it is stated that the licence was issued on foot of a draft version of the appropriate assessment. The FAC is satisfied that the issuing of a licence on a draft appropriate assessment constitutes a serious error in the making of the decision.

The licence contains a number of what the FAC considers to be standard conditions. Not all conditions include a reason for their inclusion. In addition, there are two other conditions including one which relates to the mitigation of effects as outlined in the appropriate assessment report in respect of the Hen Harrier. The other relates to set back distances from dwelling houses.

The decision to grant the Licence is subject to one appeal.

The grounds of appeal are summarised by the Appellant by the statement that the "Appropriate Assessment Screening does not comply with the requirements of the law". The appeal further asserts: that as there is no Natura Impact Statement attached, the decision by the Forestry service is illegal; that in order to comply with the Habitats Direct (and associated regulations and case law) it is necessary at the minimum where a waterbody is concerned to examine the catchment map and state which catchment the development is in; where a Turlough is concerned, to show evidence that there is no groundwater connectivity with the development lands; and that the FAC must fully comply with the *General Observations* document provided by the NPWS in its observations. The appellant also highlights obligations that fall upon the FAC if it carries out a *de novo* determination on the licence application.

In a statement to the FAC, the Forest Service of DAFM provided outlined the process it followed in carrying out its screening assessment, appropriate assessment and arriving at its AA determination statement. This included consideration of in-combination impacts on European sites, as well as the use of mitigations as set out in the appropriate assessment and determination statement.

In considering the appeal, the FAC considered both the specific grounds of appeal and the process followed by the DAFM in arriving at its decision. With respect to the grounds of appeal, the FAC considered, in the first instance, the contention that a NIS was not contained in the application. The DAFM undertook an Appropriate Assessment Report and Determination of the proposal and outlined impacts of the proposal and related mitigation measures. The grounds do not identify any concerns with the content of the appropriate assessment undertaken.

In relation to the contention that it is necessary to examine the catchment map and state which catchment the development is in; the FAC notes that the AA Screening contains a reference to the relevant waterbody (Ballynacarrig_010) and that from this is can be readily determined which catchment this falls into. However, from this it can be determined that there is potential connectivity to the Clonaslee Eskers and Derry Bog SAC (000859), the waterbody being on its boundary. In this respect, the statement in the appropriate assessment screening that this SAC can be screened out on the basis

that the project area is within a separate waterbody catchment to that containing the Natura site, would seem to be inaccurate, or have warranted further consideration.

In relation to the contention that where a Turlough is concerned there is a requirement to show evidence that there is no groundwater connectivity with the development lands; there is no evidence of there being a Turlough proximate to the felling area.

In the above circumstances, the FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment of the proposed development and an appropriate assessment as required, to include Slieve Bloom SPA. In doing so, it has had regard to the fact that there was a serious error in making the decision based on a draft Appropriate Assessment. It has also had regard for the possibility that inadequate consideration may have been taken in relation to the screening out of certain European sites by reason of the development site not being within a river catchment with connectivity to the European site.



John Evans, On Behalf of the Forestry Appeals Committee