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22nd April 2021

Subject: Appeal FAC531/2020 regarding licence GY10-FL0159

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 GY10-FL0159 is for the felling of 2.43 ha at Loughatorick North and Loughatorick South, Co. Galway which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 2nd July 2020.

Hearing

An oral hearing of appeal FAC531/2020 was held by the FAC on 5th February 2021.

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, Ms. Eilish Kehoe.

Observer: Mr. Iain Douglas (FAC) [REDACTED]

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence GY10-FL0159.

The licence pertains to the felling of 2.43 hectares of woodland at Loughatorick North and Loughatorick South, Co. Galway. The site is described as having a slope which is predominantly moderate 0-15%. The underlying soil type is Blanket Peats (100%) and the habitat is predominantly coniferous forest WD4. 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 provided with the application and recorded on the file. The forest is currently composed mainly of Sitka spruce planted in 1975.

The DAFM undertook screening considered thirteen sites within 15km; that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were 4168 Slieve Aughty Mountains SPA; 2126 Pollagoona Bog SAC; 308 Loughatorick South Bog SAC; 0261 Derrycrag Wood Nature Reserve SAC; 0319 Pollnaknockaun Wood Nature Reserve SAC; 1913 Sonnagh Bog SAC; 1313 Rosturra Wood SAC; 248 Cloonmoyle Bog SAC; 4058 Lough Derg (Shannon) SPA; 2181 Drummin Wood SAC; 2180 Gortacarnaun Wood SAC; 0231 Barrroughter Bog SAC and 2241 Lough Derg, North-east Shore SAC. Ten of the sites were screened out, based on a hydrological review of the site characteristics including a hydrological distance, the absence of hydrological connection and separation distance. An in-combination assessment of possible In-Combination Effects was also carried out.

The 4168 Slieve Aughty Mountains SPA within which the site is located was screened in and Appropriate Assessment Report and Appropriate Assessment Determination was carried out by DAFM with an Ecological review which concluded that the activity proposed under GY10-FL0159 , individually or in combination with other plans or projects, will not adversely affect the integrity of any European site, having regard to their conservation objectives, and will not affect the preservation of these sites at favourable conservation status, if carried out in accordance with specific mitigation to be attached as conditions to the licence.

The proposal was referred to NPWS who in a response did not raise any objections and outlined conditions to be included.

The licence was issued on the 2nd July 2020 with conditions.

There is one appeal against the decision.

The grounds contend that the licence was issued in breach of Articles 4(3) and 4(4) of the EU EIA Directive. In particular, it is submitted that the DAFM did not have regard to the criteria in Annex II of the Directive; that the DAFM, as the competent authority, has failed to carry out screening to determine the requirement for EIA and the application has not described all aspects of the environment which are likely to be significantly affected including other felling operations in the area. It is also stated that this Licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018- 21 as clear felling has the capacity to impact on water quality and there is a significant potential In-Combination effect for the catchment which is deemed by the EPA to be At Risk with forestry indicated as a Significant Pressure. The Stage 2 AA determination is not a legally valid assessment carried out under Article 6 (3) of the Habitats Directive

The grounds also consider that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation; there is inadequate conditions for the protection of animal species and also listed birds consistent within the requirements of the Birds Directive; inadequate conditions in relation to notification of commencement operations and in relation to the spraying of chemicals.

In a statement to the FAC, that in regard to the granted licence for the proposed felling under GY10-FL0159 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. They submitted that the standard operation of felling and replanting an established woodland was not covered by Annex II of the EU EIA Directive. It was submitted that any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. in this regard, the qualifying interests of the Natura 2000 sites in question by using the latest information available and subsequently all Natura 2000 sites were assessed and screened out.

It was also indicated that the site was the subject of a desk assessment and having considered the information gathered and assessed including in-combination it was recommended that this licence proceed.

An oral hearing was held of which all parties were notified and representatives of the DAFM, the appellant and the Applicant attended. The DAFM presented an overview of their processing of the licence; the screening assessment as undertaken and read the conditions attached to the licence which in particular addressed hydrogeological matters and the protection of bird species.

The appellant at the oral hearing referred to the nature of the underlying soil, to the current status of the waterbody in the area; issues relating to compliance with the WFD and a recent High Court judgement; the protection of bird species and the scientific basis on which the conditions were based for the purpose of satisfactory mitigation measures and the SPA was in decline based on most recent information.

The Applicant's representatives described the documents and information provided with the application. The Applicant at the hearing submitted that the site and proposed route was the subject of a desk assessment and that the nearest hydrogeological connectivity arising in relation to the site to a Natura site was over 25 kilometres. Practice in relation to chemical spraying employed by the applicant was also indicated.

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 eleven sites as the DAFM within 15km from the proposal. These are 4168 Slieve Aughty Mountains SPA; 2126 Pollagoona Bog SAC; 308 Loughatorick South Bog SAC; 0261 Derrycrag Wood Nature Reserve SAC; 0319 Pollnaknockaun Wood Nature Reserve SAC; 1913 Sonnagh Bog SAC; 1313 Rosturra Wood SAC; 248 Cloonmoylan Bog SAC; 4058 Lough Derg (Shannon) SPA; 2181 Drummin Wood SAC; 2180 Gortacarnaun Wood SAC; 0231 Barroughter Bog SAC and 2241 Lough Derg, North-east Shore 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 out ten of the sites for appropriate assessment.

An Appropriate Assessment Report and Appropriate Assessment Determination was carried out by DAFM in relation to the site screened in, 4168 Slieve Aughty Mountains SPA within which the site is located. An assessment of possible in combination was also carried out in relation to details of other plans and projects. The Determination concluded that the site of this project overlaps with a High Likelihood of Nesting Area relating to Hen Harrier, the Special Conservation Interest of the Name SPA. Therefore, no potential disturbance operation(s) associated with this project shall take place during the Hen Harrier breeding season (1st April to 15th August, inclusive).

This exclusion reflects the submission from the NPWS and is included as a condition on the issued licence. The FAC is satisfied that the DAFM did not make any serious or significant error in their appropriate assessment screening and concurs with the conclusions reached.

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At the hearing the FAC raised issues relating to the details and clarification in relation to the underlying soil and this was clarified to be blanket bog. FAC also raised the terms of condition (q) relating to harvesting and the period of harvesting outlined within 100 metres of the forest edge, where such forest edge is immediately adjacent to moors, heathland, peat bogs or natural grassland; or within 100 metres of a clearing in the forest of larger than one hectare which were addressed by DAFM and the applicant to the satisfaction of the FAC, having regard to the additional absolute exclusion of activities during the Hen Harrier season and the characteristics of the site.

The inspector's determination and recommendation was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details.

In relation to the EU EIA Directive, the Directive sets out in Annex II a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was required to undergo the EIA process. The proposal as described is being for clearfell of 2.43 hectares of woodland in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIAR.

In relation to hydrological connections and water quality the FAC is satisfied based on the information available to it, that there is no possibility of a negative impact on any receiving waters. Regarding indirect effects through impacts on water quality, the area forms part of the Bleach 010 WFD waterbody and has been assigned a good status for 2013-2018 and forestry has not been identified as a pressure on this waterbody. The site forms part of an area forested since the mid-1970s.

Based on the information before it, the FAC does not consider that there is any real potential for significant sediment release from the site. The conditions of the licence provide for the installation of aquatic zone setbacks which should be installed and maintained; avoidance of machinery crossing drains; historic mound drains with direct connectivity to relevant watercourse or aquatic zones must be identified prior to commencement of operations with appropriate mitigation measures provided; identification of water hotspots prior to harvesting and be clearly marked with a machinery exclusion zone of 10 metres must be established around them, an adherence to all water protection measures relating to water exclusion zones, silt and sediment control, temporary water crossings, extraction, timing of operations, and onsite storage and disposal of waste, as set out in Standards for Felling & Reforestation (DAFM, 2019). While some measures outlined in the conditions might be considered to be of an advisory nature, the FAC is satisfied that the main requirements, notably those related to setbacks, are of a clear and interpretable manner and would represent good forest practice in relation to the protection of water quality.

It is noted that no evidence of a possible risk to groundwater from the proposal was provided or could be identified by the FAC. The FAC concluded based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, that there is no evidence that the proposal would pose a significant threat to water quality or that it would result in any direct or indirect hydrogeological effects on the conservation objectives on a Natura site. Therefore, the FAC does not consider that the proposal poses any significant threat to water quality and, correspondingly, to meeting the objectives of the Water Framework Directive (WFD).

Regarding the protection of birds and animal species as the issue of the scientific basis of the conditions applied was raised in the grounds of appeal and at the oral hearing. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. The response of the NPWS in relation to this particular development is noted in relation to the potential

disturbance of breeding Hen Harrier pairs depending of timing of operations. As the proposed area is inside a known breeding zone (HLNA's) for Hen Harrier) and that work should not be carried out between 1st of April and 15th August in order to limit potential disturbance to breeding Hen Harriers. The conditions of the licence provide for limitation in the timing of operations.

The FAC had regard to the DAFM statement and note that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute.

In relation to the use of chemicals, the Applicant submitted that they inform the local authority of their intentions to employ spraying, that signs are erected to notify the public and that spraying is undertaken in a controlled and targeted way. The FAC concluded that, as with the use of plant protection products in other forms of land management, there is no requirement to engage in the consultation methods suggested in the grounds and that any spraying would be required to follow best practice as outlined by the DAFM. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant should not be attached to the licence.

The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence GY10-FL0159.

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 not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence GY10-FL0159 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government Policy and Good Forestry Practice

Yours sincerely,



Derek Daly On Behalf of the Forestry Appeals Committee