



23 April 2021

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FAC ref: 609/20

Subject: Appeal in relation to felling licence TFL00402819

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence TFL00402819.

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 the parties to the appeal.

Background

Licence TFL00402819 was granted by the DAFM on 31 July 2020.

Hearing

An oral hearing of appeal 609/20 was conducted by the FAC on 15 April 2021.

Attendees:

FAC Members:	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
DAFM representatives:	Mr Seppi Hona & Ms Eilish Kehoe

Decision

The Forestry Appeals Committee (FAC) 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 submissions/observations, before deciding to affirm the decision to grant the Licence (TFL00402819).

The proposal is for felling and restocking on a stated site area of 2.23ha at Bellanascarrow East, Co. Sligo. A significant number of small plots are involved, many of a linear nature, and these are scattered throughout the overall site. Trees to be felled include Sitka spruce, Scot's pine, Ash, Lodgepole pine, European larch, Cypress, Broadleaves, and Poplar. Proposed restocking is stated to be with Whitebeam. The site appears to be a former golf course with linear rows of trees lining fairways. Bellanascarrow Lough is adjacent to the north and there is a public road adjoining to the south.

An Coiste um Achomhairc
Foraoiseachta
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The Inspector's certification states that the site is sensitive to fisheries but is not acid sensitive or within a Freshwater Pearl Mussel catchment. There are no High Amenity considerations. Soils are predominantly podzols and the slope is flat to moderate. The site does not contain or adjoin an aquatic zone.

The DAFM undertook screening for Appropriate Assessment (AA) considering Natura 2000 sites (11 SACs and 3 SPAs) within a 15km radius of the project lands. The following sites are all screened out for Stage 2 assessment - Ballysadare Bay SAC, Ballysadare Bay SPA, Bricklieve Mountains and Keishcorran SAC, Cloonakillina Lough SAC, Doocastle Turlough SAC, Flughany Bog SAC, Lough Arrow SAC, Lough Arrow SPA, Lough Gara SPA, River Moy SAC, Templehouse and Cloonacleigha Lough SAC, Turloughmore (Sligo) SAC, Union Wood SAC and Unshin River SAC. Reasons given for the screening conclusions relate to separation distance and the absence of hydrological connection to any Natura 2000 site. In-combination projects considered include non-forestry – dwellings, domestic extensions, shop, banded molasses tank and storage shed. There are eight afforestation projects (since 2016) listed. It is stated that this is a rural landscape in the River Sub Basin Ballymote Stream_010, and that this has approximately 3% forest cover.

The DAFM referred the application to Sligo County Council and Inland Fisheries Ireland (IFI). In response, Sligo County Council state that it is important that there would be no negative effect on water quality in any surface waters. All site works should comply with Guidelines and, in particular, Buffer Zone Guidelines, Ground Preparation and Drainage Guidelines, Fertilizer application and Storage Guidelines, Chemicals, Fuel and Machine Oil Guidelines. It is requested that an increased buffer zone of 25m be applied to any watercourses, and that there should be consultation with the Area Engineer regarding road issues, haulage route etc. The IFI response states that the lands lie adjacent to Ballanascarrow Lough and this provides habitat for Bream and Rudd. The catchment has good ecological status in the River Basin Management Plan, and this must be protected. The submission includes a series of recommendations in respect of protection of water quality and adherence to Guidelines in the event of licence being granted.

A DAFM Archaeologist's report recommends a 20m exclusion zone around the adjacent Recorded Monument pending an agreed plan, and no replanting within 20m, and no deep drains within 30m.

The licence issued on 31 July 2020 and is subject to standard conditions plus additional archaeological conditions as recommended in the Archaeologist's report. The additional conditions require an exclusion zone in respect of a ringfort, no felling in the exclusion zone pending a field assessment by a qualified archaeologist and preparation of a plan outlining the most appropriate means of the felling and removal of trees, and agreement in advance with the Forestry Service and National Monuments Service, no saplings to be replanted within 20m of the Recorded Monument, and no deep drains dug or old drains reopened within 30m, and restocking with additional broadleaves.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that, before granting the licence, the Minister must establish the legitimacy of the existing forest. It is now necessary for the FAC to do this. By requesting further information from the DAFM, the FAC has upheld the appeal. Incomplete applications should be returned to the Forestry Service. No reliance should be placed on the fact that NPWS did not make a specific response. There is no need to establish a significant effect to trigger Appropriate Assessment as it is merely necessary to determine that there may be a significant effect (Kelly v An Bord Pleanála). The AA screening shows that there may be such



an effect. If the development is within 15km of a Natura 2000 site, it has to be screened in for AA. It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site. The assessment carried out in accordance with the provisions of the Habitats Directive must not have lacunae and must be capable of dispensing with all reasonable scientific doubt as to the effects on a Natura 2000 site. The catchment the proposed development is in should be stated. There should be a map showing all SACs and SPAs relevant. Details of all forestry operations in the area should be stated. It is the duty of the FAC, as a public authority, to carry out full screening assessments in accordance with the provisions of the Habitats and EIA Directives.

In response to the appeal, the DAFM state that the relevant AA procedure was adopted, and this was used in conjunction with the Habitats and Foraging Guidance Tables. All Natura 2000 sites were screened out with reasons given.

An Oral Hearing was convened on 15 April 2021 and all parties were invited to attend. The FAC sat remotely. The DAFM participated remotely. The applicant and the appellant were not in attendance. The DAFM outlined the procedures followed leading to the granting of the licence. AA screening had been carried out on sites within 15km of the project lands and all sites had been screened out for Stage 2 AA for reasons of separation distance and the absence of hydrological connection. An in-combination report had been considered prior to the making of the decision. The trees to be felled formed part of an old golf course complex. There is no hydrological connection to Ballanascarrow Lough in close proximity to the north of the project lands. The inclusion of conditions attached to the licence would ensure that there would be no risk to water quality. The wording of condition (i) may have been attached in error as it does not appear to have particular relevance to the proposal under consideration. The digitised area of the site is 1.82ha.

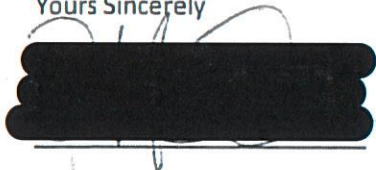
In addressing the written grounds of appeal, the FAC considered, in the first instance, the issue of the Environmental Impact Assessment (EIA) Directive. The proposed development is for the felling and restocking with Whitebeam of a stated site area of 2.23ha. Felling and restocking, not involving a change in land use, is not a class of development covered by the provisions of the EIA Directive. The appellant questions the legitimacy of the existing trees and whether they were subject to EIA screening at the time of planting but provides no details to support the contention that EIA screening should have been required. In relation to this issue, and in the circumstances outlined, the FAC finds no reason to conclude that the DAFM made a significant or serious error in making the decision. The FAC considered the procedures followed by the DAFM in screening for AA. Natura 2000 sites within a 15km radius were considered and the FAC found no reason why designated sites outside of this range should be assessed. Qualifying interests and conservation objectives were identified and the potential for significant effects assessed. In-combination projects were considered. All sites were screened out for AA and reasons given for this conclusion. The FAC could find no basis for the contention that mitigation measures had been considered in the screening. Based on the information before it, the FAC is satisfied that the screening exercise completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound.

The FAC considered the proximity of the project lands to Bellanascarrow Lough. There is no hydrological connection between the site and the Lough. Having regard to the nature and scale of the proposal, to the size, configuration and layout of the plots to be felled and restocked, and to the conditions of the licence aimed at the protection of water quality, including conditions recommended by the IFI, the FAC is satisfied that the proposed development would not be likely to have any significant impact on water quality, including Bellanascarrow Lough.

The FAC considered the following content from condition (i) of the licence; *'where the authority granted under this licence to fell trees has been exercised, the licensee is required within xx years from the date of this licence to plant an alternative site to that site where the trees have been felled. The alternative site to be planted must be of equal size to the area felled under the authority granted under this licence and must be of a quality that is acceptable to the Minister. Such land must be owned or leased (for a period that is acceptable to the Minister) at the time of planting and must be planted to the satisfaction of the Minister. This condition applies to Land Parcel number 123 and 456 and 789 listed in Table 1 of this Schedule'*. The FAC notes there are no such parcel numbers in respect of this licence and Table 1. The FAC also notes condition 5 of the licence requires the replanting of each Land Parcel at Schedule 3. The FAC concluded that the aforementioned content from condition (i) does not appear to have any relevance to the proposal under consideration. The FAC concluded that its inclusion constitutes an error, but not a serious or significant error as it would not inhibit the carrying out of the proposed development. The FAC further noted that the recommendations of the Archaeologists report were included in condition (h) of the licence

In deciding to affirm the decision to grant the licence, the DAFM concluded that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely

A redacted signature consisting of several thick black horizontal bars covering the name and any handwritten notes.

Pat Coman, on behalf of the FAC