



05 February 2021

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FAC ref: 607/2020

Subject: Appeal in relation to felling licence CK10-FL0075

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CK10-FL0075.

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

Felling licence CK10-FL0075 was granted by the Department of Agriculture, Food and Marine (DAFM) on 04 August 2020.

Hearing

An oral hearing of appeal 607/20 was conducted by the FAC on 02 February 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman
Secretary to the FAC: Mr Michael Ryan
Applicant representatives: [REDACTED]
DAFM representatives: Mr Frank Barrett & 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 DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CK10-FL0075).

The proposed development is for clear-felling and replanting on a stated site area of 7.81ha at Curraghrowr East, Gortmore, Co. Cork. Felling and replanting would be of 100% Sitka Spruce. Soils are stated to be 100% shallow Acid Brown Earths/ Brown Podzolics, Lithosols, Regosols. Some outcropping

rock is noted. The Slope is stated to be moderate 15-30%. No fertilizer is required. Weed control may require spot spraying.

The DAFM carried out a Stage 1 screening for Appropriate Assessment dated 31.07.20. This noted that the project lands are within the Blackwater catchment (100%), Blackwater (Munster)_Sc_070 (100%) Sub catchment & Blackwater (Munster)_090 (100%) waterbody.

Sites within 15km radius were assessed. Two sites were identified namely the Blackwater River (Cork/Waterford) SAC and the Mullaghanish to Musheramore Mountains SPA. The assessment screened out both sites. In the case of the former site, it was screened out due to absence of direct hydrological connection, lack of pathway hydrological or otherwise. The latter site was screened out due to separation distance. In-combination effects were considered. Numerous planning permissions for non-forestry projects were listed and forestry related projects identified were afforestation (10), forest roads (5), private felling (15), Coillte felling (4). The overall conclusion reached was on no likelihood of significant effects arising from the proposed development individually, or in combination with other plans or projects on any Natura 2000 site.

The DAFM referred the application to Cork County Council who responded referring to possible planning requirements.

The licence issued on 04.08.20 and is exercisable until 31.12.2022. It is subject to standard conditions.

There is one appeal against the decision to grant the licence. The grounds of appeal contend that the Minister should have established the legitimacy of the existing forest before granting the licence. The FAC should establish this now. By requesting Further Information, the FAC have upheld the appeal. The FAC overruled the judgment of Finlay J. No reliance should be made of the fact that the NPWS did not respond. As the iFORIS data base is not available to the appellant, he cannot make an informed appeal. There is non-compliance with the Habitats and EIA Directives. The catchment of the proposed development should be stated. There is an obligation on the FAC to carry out a full EIA screening and AA screening.

In response the DAFM stated that the proposed development was subject to the AA screening procedures (Nov 2019). Sites within 15km radius were screened out for Stage 2 AA. DAFM procedures for referrals were followed. The proposed development is not of a class of development to which the EIA Directives applies.

An Oral Hearing was held on 02 February 2020, and all parties were invited to participate. The FAC sat in person and remotely and the DAFM and applicants attended and participated remotely. The appellant did not attend or participate. At the Oral hearing the DAFM detailed the procedures followed leading up to the making of the decision to grant the licence. The application had been desk based. The in-combination assessment had been completed on 31 July 2020. The planning permission listed related to applications made in the River Sub Basin over the past 5 years. The applicants stated that a field assessment carried out established that there is no hydrological connection from the project lands to any Natura 2000 site. The site is very dry and the nearest aquatic zone is the Roskeen Stream approximately 800m to the north-east and down slope from the project lands. (The EPA distance is c. 1.3km). In response to FAC questions, the applicants stated that about one third of the site was windblown but that the licence application related to the whole site. The site is surrounded



by forestry of various ages. The nearest Freshwater Pearl Mussel population is approximately 12kms downstream of nearest stream point to the site and there is no pathway for effect.

The matter before the FAC is the appeal against the decision of the DAFM to grant a licence for clear-felling and replanting on a stated site area of 7.81ha at Curraghrowr East, Gortmore, Co. Cork. This is mature forestry and there is no convincing evidence presented by the appellant, and before the FAC, to indicate that there are issues relating to its 'legitimacy'. Accordingly, the FAC consideration of the appeal is focused on the licence granted under reference CK10-FL0075 and issued on 04.08.20. The FAC considered the process followed by the DAFM in carrying out its screening for Appropriate Assessment. Sites within a 15km radius were considered by the DAFM and, having regard to the nature and scale of the proposed development, the FAC considered that this was reasonable. The FAC notes that two Natura 2000 sites were identified, their qualifying interests listed and conservation objectives identified. Aspects of the project design and the potential for pathways for the transport of significant effects considered. An in-combination assessment examined non-forestry and forestry related projects, and the overall conclusion reached was on no likelihood of significant effects arising from the proposed development individually, or in combination with other plans or projects on any Natura 2000 site. The FAC concluded that mitigation measures had not been considered in the DAFM screening. The FAC concluded that the procedures adopted by the DAFM were consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusion reached was sound.

In respect of the contention that the proposal does not comply with the requirements of the EIA Directive, the FAC concluded that the proposal for clear-felling and restocking does not constitute a class of development to which the EIA Directive applies. Notwithstanding this conclusion, the FAC concluded that, having regard to the nature and scale of the proposed development, the characteristics of the receiving environment which is predominantly rural and agricultural and with a dispersed settlement pattern, may give rise to localised, short term and intermittent noise and disturbance, there is no likelihood of significant effects on the environment arising.

The evidence on the file indicates that the project lands are within the Blackwater catchment (100%), Blackwater (Munster)_Sc_070 (100%) Sub catchment & Blackwater (Munster)_090 (100%) waterbody. The grounds of appeal, while not noting this information, do not dispute its veracity.

The FAC considered that there is no convincing evidence before it to indicate that the DAFM decision was the subject of significant or serious error or series of errors, or that the decision was made without complying with fair procedure. In deciding to affirm the decision to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry Practice.

Yours Sincerely

Pat Coman, on behalf of the FAC

