



[REDACTED]

2 February 2021

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Tree Felling Licence approval TFL00374119.

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

Tree Felling Licence TFL00374119 was granted by the Department on 10 December, 2019.

Hearing

A hearing of appeal 005/2020 was conducted by the FAC on 9 November, 2020.

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Ms. Bernadette Murphy.

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to set aside & remit the decision to grant this Tree Felling Licence (Reference TFL00374119).

The proposal is for thinning of one block of forestry with a total area of 14.03ha and a species composition of Sitka spruce, Japanese larch and additional broadleaves to be carried out in 2019. The project is located in Carrownrod, Co. Sligo and is adjacent to a public road.

The project area borders mature forestry plantation to the North, and greenfield agricultural lands to the West, South and East. The predominant soil types underlying the project area are highly modified peat and peaty podzols. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone and the habitat type is exclusively conifer plantation. The project is located within the WFD catchment of Sligo Bay & Drowse (ID 35) and sub-catchment of Easky (SC_35_12).

The project area does not fall within any designated Natura 2000 site but is within 15km of a number of marine, terrestrial and transitional sites as follows: Killala Bay/Moy Estuary SPA (code: 04036), Killala Bay/Moy Estuary SAC (Code: 000458) which are located 10km from the project; Ox Mountains Bog SAC (code: 002006) located 9km from the project and the Aughris Head SPA (code: 004133) located 12km from the project.

DAFM referred the licence to Inland Fisheries Ireland (IFI) but there was no response from on file. DAFM Archaeology department were also consulted and in reply outlined a number of guidelines regarding the protection of recorded monuments in an adjacent field outside of the project area.

On 26/07/2019 the Forest Service District Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. The inspector reviewed the details of all of the Natura 2000 sites within 15km of the project, including their qualifying interests and conservation objectives, and supporting habitats and species. The inspector concluded that the project could be screened out on the basis that the project would not have a significant effect on any designated areas of relevance due to the unsuitability of the project area for use

by any species listed as a qualifying interest of the Natura sites, and the absence of any aquatic zone within or adjoining the project area.

DAFM issued a licence on 10/12/2019. The standard felling licence conditions are imposed as well as adhering to the archaeological restrictions, which includes setbacks from recorded monuments and exclusion zones.

There is one appeal against the decision. The grounds relate to the appropriate assessment screening undertaken by the DAFM and suggest that an appropriate assessment should have been undertaken. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that in this case an appropriate assessment was legally required. It is further submitted that safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on a site. It is suggested that a decision must comply with Commission notice C(2018) 7621. The grounds contend that the Irish Courts have interpreted the requirements for appropriate assessment screening in *Kelly v An Bord Pleanála and others* 2013 802 JR 25/07/2014 and goes on to quote from that judgement.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the licence application had been processed according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time. The Appropriate Assessment Guidelines had later been updated (version dated 05/11/2019) and according to this version the site would remain screened out. The file does not contain any revised Appropriate Assessment Screening submitted as part of the inspector commentary on the appeal.

The FAC had regard to the record of the decision under appeal and the submitted grounds. There is no evidence before the FAC regarding other plans and projects that might have been considered in the appropriate assessment screening, or may be present in the area. The FAC notes that while DAFM asserts that the outcome is likely to be unchanged when applying the up to date Screening process, the evidence for this conclusion is not furnished.

The FAC cannot therefore determine whether the appropriate assessment screening, undertaken by the DAFM and referred to in the grounds of appeal, was sufficient to conclude that there is no likelihood of the proposal resulting in a significant effect on a European site itself or in combination with other plans and projects. The FAC is satisfied that this constitutes a significant error and is therefore setting aside the decision and remitting it to the Minister for the appropriate assessment screening to be undertaken and documented, to include a consideration of all plans and projects in combination with the proposal.

Yours sincerely



Mr. Myles Mac Donncadha (on behalf of the FAC)

**An Coiste um Achomhairc
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