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12th February 2021

Subject: Appeal FAC335/2020 in relation to licence CK14-FL0140

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). 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 CK14-FL0140 for felling of 1.39 hectares at Ballyleary (ED Carrigtohill), Curragh, Co. Cork granted by the DAFM on 19th June 2020.

Hearing

An oral hearing of appeal FAC335/2020, of which all parties were notified, was held by the FAC on 22nd January 2021. In attendance:

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton, Ms. Mary Lawlor
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Anthony Dunbar & Ms. Eilish Keogh
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, and submissions received including those at the oral hearing, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister to grant the licence CK14-FL0140 to include the following additional condition,

At restocking stage, at least 50% of the stand canopy to be comprised of beech, oak, Scots pine or acceptable native tree species in the Forestry Standards Manual through the retention of existing trees or through replanting with these species. The total stand canopy to be comprised of a minimum of four tree species each representing at least 5% of the canopy. Provide tree guards or other suitable protection from browsing for planted broadleaves. Reason: In the interest of Good Forest Practice and Visual Amenity.

The licence decision pertains to the felling of 1.39 hectares at Ballyleary (ED Carrigtohill), Curragh, Co. Cork. The forest is comprised of western hemlock, beech, oak and Scots pine. The application included inventory, restocking, environmental information, an appropriate assessment pre-screening report, and a harvest plan including operational and environmental rules and maps. A second and third pre-screening report was submitted on 7th May 2020 and 10th June 2020. The application proposes replanting with Douglas fir with 0.07 ha retained as open space. The application was referred to Cork County Council and no response was provided. The soil type is described as lithosols and regosols and the slope as predominately steep. The DAFM undertook a screening for Appropriate Assessment and identified three European sites within 15km of the proposal. Each site is considered in turn and its qualifying interests and special conservation interests are listed and reasons for screening each out are provided. The DAFM also recorded a consideration of other plans and projects in combination with the proposed felling. A decision to approve the licence was made on 19th June 2020.

There is one appeal against the decision. The grounds submit that there has been a breach of Article 4(3) and 4(4) of the EIA Directive 2014/52/EU in that a screening for EIA has not been carried out and that the developer has not submitted a description of the aspects of the environment likely to be significantly affected by the project. That the licence threatens the achievement of the objectives of the River Basin Management Plan. That the Stage 1 Appropriate Assessment conclusion is not legally valid as it relies on an inadequate pre-screening report. That there is no evidence of a consideration of a nationally designated site. A number of grounds relate to licence conditions, stating that, that they do not provide a system of protection for wild birds and that they should include commencement and conclusion notices and requirements regarding notification in relation to the spraying of chemicals..

In a written response to the FAC, the DAFM submitted that it is satisfied that the decision was made following their procedures. It is submitted that the standard operational activities of clear-felling and replanting already established forests areas are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred. It is submitted that the felling area is located adjacent to the Leamlara Wood pNHA and that standard procedures were followed in respect of issuing referrals to statutory authorities. In relation to water quality, the statement submits that the DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water and that any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation, which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation.

In relation to Appropriate Assessment, the DAFM submit that the application had been subject to the DAFM's AA Screening procedure, as set out in the document entitled Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors and that the rationale for the screening decision was recorded. It is submitted that having reviewed the details of relevant European sites their qualifying interests and conservation objectives the Department deemed that the project,

when considered in combination with other plans and projects as identified in the pre-screening report, will not give rise to the possibility of a significant effect on the relevant screened European sites.

Regarding licence conditions the DAFM submitted that it is “a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply.” It is submitted that the Minister may attach or vary licence conditions and that in this instance a commencement/conclusion notice in respect of the proposed project was considered not warranted by DAFM. The DAFM submitted that the use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs - respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market) and that users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. It is submitted that there is no legal requirement for forest owners to inform adjacent land owners and that the PPE is used in a targeted way.

An oral hearing of the appeal was held and attended by representatives of the DAFM and the Applicant. The DAFM outlined the application that was made and their processing of the application including referencing the spatial layers and other data employed for this purpose. They submitted that the proposal would not involve deforestation and would not fall within a class of development covered by the EU EIA Directive. They outlined their Appropriate Assessment screening, which identified three sites within 15km in this case, and submitted that it was carried out in line with their procedures and that they were satisfied with their decision. The Applicant outlined the details of the application they made. They submitted that an environmental manager had visited the site and found it to be very dry and firm with no relevant watercourses leaving the site. They submitted that the mature broadleaf trees contained in the site would be retained and that the felling would involve western hemlock. They submitted that they notify the local authority and erect signs if they are spraying plant protection products and that spraying is undertaken on a needs basis.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered that the Annex II of the EU EIA Directive contains 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. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II). 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 felling of trees, as part

of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and replanting of an area of 1.39 hectares. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore the FAC concluded that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred.

An Appropriate Assessment Screening was undertaken by the DAFM and identified three sites within 15km and that there was no reason to extend the radius in this case. Each site is considered in turn and is screened out for Appropriate Assessment and reasons are provided. The DAFM undertook and documented a consideration of the potential for in-combination effects and concluded that DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites. The FAC considered publicly available information and identified the same three sites within 15km and considered the reasons provided for screening by the DAFM. During the oral hearing, the DAFM submitted that the Applicant had provided a third Appropriate Assessment pre-screening report (dated 10th June 2020) and that this had not been provided to the Appellant. This document was subsequently provided to the Appellant by the FAC and they were invited to make a reply. A reply was received by the FAC on 10th February 2021 which commented on the content of the pre-screening report and the connection with Blackwater River (Cork/Waterford) SAC. It was confirmed at oral hearing that the pre-screening report dated 7th May 2020 was the one referred to in the making of the decision.

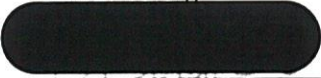
The boundary of Great Island Channel SAC (001058) and Cork Harbour SPA (004030) lie c.5.2km to the southeast. A river, Leamlara, to the north of the proposed felling flows south-easterly to join the Owennacurra River that flows south into the boundary of the Great Island Channel SAC (001058) and Cork Harbour SPA (004030). The hydrological distance from the forest to the boundary of these sites is c.7.8km and their qualifying interests and special conservation interests are associated with coastal and wetland habitat. The proposed felling is of a small scale with very limited adjacency to a watercourse and situated on mineral soil. The proposed felling lies in the Lee, Cork Harbour and Youghal Bay Catchment while the Blackwater River (Cork/Waterford) SAC lies in the Blackwater (Munster) Catchment and the felling and SAC are separated by some 9km at the closest point. While the Applicant's pre-screening report dated 10th June 2020 suggests a hydrological connection with this SAC this is evidently not the case and the SAC lies at a considerable distance from the felling at its closest point. The DAFM documented their consideration of other plans and projects, both forest and non-forest, in combination with the proposed felling. Having regard to the nature, scale and location of the proposal and the record of the decision and submission received, the FAC concluded that there is no likelihood of the proposal having a significant effect on any European site, itself or in-combination with other plans or projects, and that it is not satisfied that the DAFM erred in relation to this issue.

The Leamlara forms part of the Owennacurra 30 waterbody which has been assigned a good status 2013-2018 and not at risk. The felling is related to a very small area on mineral soil and is required to be undertaken in line with specified standards and good practice. The FAC does not consider that there is any evidence before it that the proposed activity would threaten the achievement of the objectives of the River Basin Management Plan.

In relation to the appellant's stated ground of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. 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. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. 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.

During the oral hearing the Applicant submitted that the mature beech, oak and Scots pine would be retained in line with its policies. The FAC noted that the application included reference to the retention of veteran trees. The DAFM submitted that a proposal to retain broadleaf trees and replant with Douglas fir would be in keeping with its policies. In this specific case, the trees are mature, having been established in the 19th Century, and comprise a significant proportion of the mixed species forest stand. Oak (assumed to be *Quercus petraea* or *Quercus robur*) and Scots pine are native species while beech is well-established in the landscape. The stand is situated close to a pNHA and recreational paths are present in the area, which is situated c.4km from Midleton. While noting the Applicant's description of the proposed activities, the FAC does not consider that the licence as granted provides sufficient clarity regarding the management of these trees, having regard to the specific characteristics of the stand and location. The FAC is satisfied that this constitutes a significant error in the making of the decision and that in keeping with Good Forest Practice the decision should be varied to include the stated condition. The FAC is satisfied that this condition could be met through the harvesting of the western hemlock component of the stand and replanting with Douglas fir as described at the oral hearing but that where the existing mature trees of other species were felled for operational or commercial purposes that the same or other suitable species would be replanted. In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing.

Yours sincerely,



Vincent Upton, On Behalf of the Forestry Appeals Committee

