

[REDACTED]



An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

15 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 (DAFM) in respect of Reforestation Licence TFL00465220.

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

Thinning licence TFL00465220 was granted by the Department on 13/07/2020.

Hearing

A hearing of appeal 521/2020 was conducted by the FAC on 16/11/2020.

FAC Members: Mr Myles Mac Donnadh (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 affirm the decision from DAFM on this licence (Reference TFL00465220).

The proposal is for thinning of 2 Ash Plots (Plot 1 - 1.93 ha & Plot 2- 2.37 ha) in 2020 and 2027 at Gallen (Galeen), Ferbane, Co. Offaly. Plot 1 and 2 are directly opposite one another at either side of an existing laneway. Plot 1 adjoins the laneway to the South while Plot 2 does so to the North. Both plots are adjoined by another small forestry plot to the West and a field to the East, beyond which further forestry lies. Plot 1 adjoins the River Brosna to the North. Plot 2 adjoins the Grand Canal to the South.

Soils are reported as mainly podzolic in nature. The slope is predominantly flat to moderate (<15%). The project does not lie within any designated area. The proposal is located in the Lower Shannon Catchment _ 25A and the Brosna Sub-Catchment_70 (25A_11). The forest lies in the River Brosna Sub-Basin_120. It is within 15km of the following Natura sites; All Saints Bog And Esker SAC 000566 c14.7km, All Saints Bog SPA 004103 c14.6km, Clara Bog SAC 000572 c12.2km, Ferbane Bog SAC 000575 c2.3km, Fin Lough (Offaly) SAC 000576 c10.2km, Middle Shannon Callows SPA 004096 c9.4km, Mongan Bog SAC 000580 c10.9km, Mongan Bog SPA 004017 c11km, Moyclare Bog SAC 000581 c3.7km, Pilgrims Road Esker SAC 001776 c10.5km and River Shannon Callows SAC 000216 c9.4km.

DAFM referred the proposal to NPWS who specified that given the proposals proximity to the River Brosna and the Grand Canal that best practice regarding water quality should be adhered to at all stages of the felling process. NPWS also provided some general information in relation to nature conservation legislative requirements. The DAFM Archaeologist confirmed that the monument mapped in Plot 1 was a spatial error and imposed conditions for any previously unrecorded monuments found on site. Such monuments if found are to be left undisturbed and immediately reported to the relevant authorities and the protection of such monuments is provided for through exclusion zones.

DAFM completed a Stage 1 Appropriate Assessment screening with reference to the provisions of Article 6(3) of the Habitats Directive and identified 11 Natura sites (8 SAC & 3 SPA) within 15km along with their Qualifying Interests. DAFM found no reason to extend this radius in this case. The sites identified were those detailed above. The sites were assessed to determine if the proposed development would give rise to the likelihood of significant effects. The SAC sites were screened out for Appropriate Assessment due to the proposal being located downstream and therefore lacking hydrological connection while the SPA sites were screened out by reason of being unsuitable habitats for the Qualifying Interests listed. An in-combination assessment for forest and non-forest projects in the vicinity was also carried out.

DAFM issued a licence on 13/07/2020 together with the standard conditions and an additional condition specifying that all operations must adhere to the archaeological guidelines and the archaeological conditions imposed in the archaeological report. The licence also required strict adherence to the Standards for Felling and Reforestation (October 2019).

There is one appeal against the decision of the licence. The Appellant argues that if a decision was correct it should not be necessary for FAC to seek information that should have been on file prior to the decision and that incomplete decisions should be returned to DAFM. It is contended that it does not comply with the Environmental Impact Assessment, Birds Directives and Habitats Directives. The submission asserts regarding the test for Appropriate Assessment Screening that there is no need to establish such an effect merely that there may be such an effect. The Appellant argues that if the development is within 15km of a Natura 2000 site it should be screened in. The submission quotes judgements stating that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the Appropriate Assessment. Further quotes say that the Assessment may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned. The Appellant indicates that if the application is in a different catchment then the screening must state the catchment and that it is necessary to realise that birds can fly and do not all rely on watercourses to move. It is argued that a map showing the SACs and SPAs and the site of the proposed development should be attached. The Appellant outlined details regarding Environmental Impact Assessment. It is claimed that it is the duty of the FAC to carry out both a full Appropriate Assessment screening and a full Environmental Impact Assessment screening in accordance with the law. Case law is quoted in support of the Appellants contention that the obligation is binding on all the authorities of Member States. A judgement is quoted as stating that the obligation of a national court to interpret national law as far as possible in accordance with EU law does not require that the parties to the proceedings before it expressly assert that specific interpretation, if those parties allege at least an infringement of the relevant provisions of EU law.

In a statement to the FAC, the DAFM described the site. DAFM describe a 30m undisturbed natural buffer of old native broadleaf habitat with plenty of grasses at ground level, between the Ash thinning project and the River Brosna along the northern boundary, with no hydrological connection of any kind in existence. DAFM indicated that the canal at the southern boundary is several feet higher than the project area and a natural buffer of native species 15m or thereabouts in width separates them, also with no hydrological connection. DAFM consider that this project should have no effect on any Natura designations. No further information was sought by FAC.

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 EIA Directive. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. 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 FAC concludes that thinning, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (5.1. No. 191 of 2017).

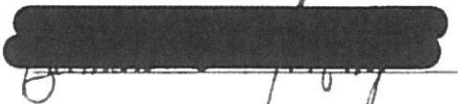
The granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the Appellant did not submit any specific details in relation to the endangerment of birds on this site. Based on the evidence before it, the FAC cannot conclude that the Birds Directive has been breached in relation to this proposal.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening including in-combination effects in relation to the listed Natura 2000 site and concluded that the proposed project would not have a significant effect on this site and its Qualifying Interests. The Stage 1 screening listed all of the qualifying interests and conservation objectives for each of the listed sites and assessed the likelihood of significant effects arising from the proposed development individually by assessing the project design, location of the project and possible pathways to the listed designated sites. DAFM also carried out an assessment of the likelihood of significant effects arising from the proposal in-combination with other plans and projects (both forestry and non forestry).

The FAC had regard to the evidence regarding the decision under appeal and the submitted grounds. The FAC noted that the proposal adjoins the River Brosna which subsequently flows to the River Shannon Callows SAC and Middle Shannon Callows SPA at a hydrological distance of c13km. The proposal also adjoins the Grand Canal NHA. There is however no evidence of a direct hydrological connection. The FAC noted the nature of the site and the nature and scale of the proposal. The FAC is satisfied that the procedures adopted by the DAFM in reaching the conclusion that the proposed development would not be likely to give rise to significant effects were correct based on the AA screening process. The FAC have considered the licence conditions and are satisfied that none are in mitigation of significant effects on a Natura site.

In deciding to affirm the licence decision, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely

A large black rectangular redaction box covers the signature of Bernadette Murphy. A handwritten signature is visible through the redaction, appearing to be 'Bernadette Murphy'.

Bernadette Murphy, on behalf of the Forestry Appeals Committee