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26th February 2021

Subject: Appeal FAC 207/2020 regarding licence DL27-FL0011

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

Background

Licence DL27-FL0011 for felling and replanting of forest on 6.74 ha at Fintragh, Co Donegal, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 3rd April 2020.

Hearing

An oral hearing of appeal FAC 207/2020, of which all parties were notified, and representatives of the DAFM and the Applicant attended, was held by the FAC on 17th February 2021.

In Attendance at Oral Hearing:

Department Representative(s):	Mr. Luke Middleton, Ms. Eilish Kehoe,
Appellant:	Not in attendance,
Applicant / Representative(s):	[REDACTED]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely, Mr James Conway and Mr. Iain Douglas.
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, submissions at the oral hearing, and the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence DL27-FL0011.

The licence pertains to the felling and replanting of an area of forest on 6.74 ha at Fintragh, Co Donegal. The forest is currently composed mainly of Sitka Spruce and replanting would be of Sitka Spruce with 5% open space. The slope of the site is described as predominantly very steep >30% and the underlying soil

type is Blanket Peats (36%) & Podzols (Peaty), Lithosols, Peats (64%). The proposal is located in the Donegal Bay North catchment and the Glen (Carrick)_SC_010 sub catchment. The nearest river shown on the EPA maps is the Glenaddragh which forms part of the Glenaddragh_010 (100%) waterbody for which the WFD status was recorded as good during the 2013-2018 assessment. The application was referred to both Donegal County Council and Inland Fisheries Ireland. Inland Fisheries Ireland responded on 30th December 2019. The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. The DAFM undertook and documented an Appropriate Assessment screening dated 2nd April 2020 that found nine European sites within 15km and the Likely Zone of impact was not extended to include further Natura sites in this case. All nine sites considered (4150 West Donegal Coast SPA, 190 Slieve Tooley/Tormore Island/Loughros Beg Bay SAC, 4115 Inishduff SPA, 189 Slieve League SAC, 191 St. John's Point SAC, 197 West Of Ardara/Maas Road SAC, 4110 Lough Nillan Bog SPA, 165 Lough Nillan Bog (Carrickatlieve) SAC, and 4090 Sheskinmore Lough SPA) were screened out for the purposes of Appropriate Assessment. The licence was approved on 3rd April 2020 with a number of conditions attached, which included those related to environmental protection and sustainable forest management, water quality, and the road network.

The decision to grant the Licence is subject to one appeal the grounds of which include; Breach of Article 4 (3) of the EIA Directive 2014/52/EU submitting a failure to correctly carry out screening for EIA, Breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting a failure to submit details of the whole project, Breach of Article 4 (5) of the EIA Directive 2014/52/EU submitting a failure of the competent authority to make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 and submitting that this licence does not represent the whole project, submission that there has been inadequate consideration of the objectives of the WFD River Basin Management Plan, 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 Article 5 of the Birds Directive, Breach of Article 10 (3) of Forestry Regulations through failure to make available for inspection a copy of the application, and submission that the Forest Service failed to supply, on request, a copy of the EIA screening report for this licence.

In a statement to the FAC, the DAFM provided responses to the grounds included in the appeal. In the statement it submitted that it is satisfied that all criteria as outlined in the relevant standards and procedures were adhered to in making a decision on the application and that Standard Operating Procedures were applied. The DAFM statement sets out that the standard operational activities of clear-felling and replanting already established forest 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), 4(4) and 4(5) of the EIA Directive had not occurred. At the oral hearing a DAFM representative reasserted the contention that the proposal does not include a class of project covered by the EIA Directive or by National legislation. The statement also sets out that DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the

protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021 (2018)* and describes the Appropriate Assessment screening procedure carried out by the DAFM in processing the licence. It is also submitted in the statement that for consideration of in-combination effects of the proposed project, DAFM carried out an in-combination report (which is referenced as being on file) in relation to forestry and other projects within the sub river basin where the licenced project DL27-FL0011 is located. In response to a query at oral hearing in relation to the truncation of some entries in the Appropriate Assessment screening form for the project the DAFM representative reiterated the response provided to the FAC in relation to this matter wherein it stated that;

'The felling and reforestation project licenced as DL27-FL0011 has 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 (v.05Nov19) (DAFM, 2019). The AA Screening report completed by the Inspector and containing his recommendation regarding which European Sites are screened. A number of the SCIs/QIs were truncated on the AA Screening form for project DL27-FL0011 when outputting the form related to the screening exercise. However, all SCIs/QIs were considered during the screening exercise itself and the screening determination is considered sound. A revised AA screening form is provided in this instance which includes all SCIs/QIs of the screened European Sites'.

The representative provided further assurance at oral hearing that the information necessary to inform the screening process was all fully considered at the appropriate time in the exercise and that the screening determination is considered sound. In response to questions at oral hearing regarding other project applications belonging to the same Applicant in the vicinity of the subject site the Applicants representative confirmed that two applications referenced DL27-FL0009 and DL27-FL0010 had been withdrawn. The representative also provided an overview of the watercourses in the area and confirmed his view that there is no hydrological connection between the project area and any European site as assessed following a site visit. An examination of the EPA maps and aerial imagery for the location supports this view. The representative also advised that the extraction route for the site would be via an existing service road to the north of the site.

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 EIA 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 is 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 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 decision under appeal relates to a licence for the felling and replanting of an area of 6.74 ha. 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 as requiring EIA in Irish Regulations. The FAC therefore agrees that screening for EIA was not required in this case and that breaches of Article 4(3), 4(4) and 4(5) of the EIA Directive had not occurred.

In relation to the contention that there has been inadequate consideration of the objectives of the WFD River Basin Management Plan, the FAC notes the content of the DAFM statement dated 13th October 2020 in this connection, wherein it outlines the checks and balances that DAFM applies during the evaluation of felling licence applications in relation to the protection of water, and the confirmation therein that any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. The statement also sets out that in relation to reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. The FAC noted the response from the Inland Fisheries Ireland in relation to the project which raised no objection to the proposal while requesting that the applicant adhere to appropriate sections of named guidelines and codes of practice. The FAC noted that the project is located within the Glen[Carrick]_SC_010 sub catchment and the closest waterbody is the Glenaddragh_010 (100%) waterbody for which the WFD status was recorded as good during the 2013-2018 assessment and the risk status is under review while forestry was identified as a risk during the second WFD cycle. The grounds of appeal did not submit any specific information regarding effects on water quality or pathways related to the proposal. The forest lies some 230 metres from the Glenaddragh River at its closest point. The applicant's representative referenced the existence of two water features at the NE and NW of the project site and that these drain to the Glenaddragh River. He reiterated that there is no direct hydrological connection to any European site. The forest is separated from the Glenaddragh River by a forest road which provides an existing haulage route. The licence requires the implementation of measures designed to close off hydrological pathways for silt and sediment that are present on site. Based on the information available to it and having regard to the nature, scale and location of the proposal and the licence under which the operation would be required to be undertaken, the FAC is satisfied that the proposal would not pose a significant threat to water quality and is not satisfied that an error was made in the making of the decision in this regard.

In relation to the appellants 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 Article 5 of the Birds Directive, the FAC had regard to the statement provided by DAFM. The FAC considered the existing legislative safeguards in place with regard to these species and that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC agrees that the granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute.

The FAC is satisfied, based on the information available to it, that the inclusion of the condition as raised in this ground of appeal in this case, was not required.

In relation to the contention in the appeal grounds that there has been a breach of Article 10 (3) of Forestry Regulations through a failure to make available for inspection a copy of the application, the FAC considered the provisions in the regulations wherein at Regulation 10(3) of the Forestry Regulations 2017 (SI 191 of 2017) it states that,


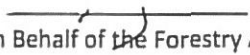
(3) The Minister may make available for inspection to the public free of charge, or for purchase at a fee not exceeding the reasonable cost of doing so, the application, a map of the proposed development and any other information or documentation relevant to the application that the Minister has in his or her possession other than personal data within the meaning of the Data Protection Acts 1988 and 2003 where the data subject does not consent to the release of his or her personal data.

The FAC considers that this provision does not provide a right to the appellant to receive information, but instead provides powers to the Minister to make such information available. The DAFM set out that the Appellant had requested files for 451 licence applications in a specified form and in documentation available on the file it sets out that this information was provided to the requester on 19th February 2020. Having considered the information available to it, the FAC is satisfied that the Appellant was provided with an opportunity to appeal the licence and provided with further opportunity to make submissions on the licence decision, including through appeal and at an oral hearing. The FAC noted the response in the statement made by the DAFM to it in relation to the appellants stated ground of appeal regarding the submission that the Forest Service failed to supply, on request, a copy of the EIA screening report for this licence. The statement referenced the responses it made to the appeal grounds which submitted breaches of Article 4(3), 4(4) and 4(5) of the EIA Directive. The FAC, as set out earlier in this letter 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 as requiring EIA in Irish Regulations. The FAC therefore accepts that DAFM has not erred in its processing of the application as it relates to this ground as screening for EIA was not required and has not been carried out in this case.

Regarding the conditions that the Appellant suggested should be attached to the licence relating to commencement and conclusion of operations, inspections and notification in the case of the spraying of any chemicals, the FAC noted the response provided to it by DAFM and considered that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC is satisfied, based on the information available to it, that the inclusion of the conditions relating to these grounds in the appeal in this case, was not required.

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. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made

without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence DL27-FL0011 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

 
Seamus Neely On Behalf of the Forestry Appeals Committee