



[REDACTED]

26 February 2021

Subject: Appeal FAC 121/2019 in relation to licence TFL00272419

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 TFL00272419.

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 TFL00272419 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 24th April 2019.

Hearing

An oral hearing of appeal FAC 121/2019, of which all parties were notified, was held by a division of the FAC on 15 February 2021. In attendance:

FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly.
Appellant:	Not present
Applicant / Representative(s):	[REDACTED]
Department Representative(s): Secretary to the FAC:	Mr. Seppi Hona & Ms. Eilish Kehoe Ms. Emma Guerin

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, before deciding to set aside and remit the decision of the Minister to grant this tree felling licence (Reference TFL00272419).

The licence pertains to the thinning, felling and replanting of forest on 15.61 hectares at Deffier, Co. Leitrim. The forest is currently composed of 80% Sitka Spruce and 20% Japanese Larch, and replanting would be of 90% Sitka spruce and 10% Additional Broadleaf. The proposal was for thinning in 2019 and 2023 with clearfelling in 2027. The project area is largely rectangular in shape and borders agricultural land to the north, south and east, adjoins a public road to the north east and a watercourse adjoins the western boundary of the site. The site is located within the Upper Shannon WFD Catchment and the Shannon (Upper) SC_020 with the watercourse that adjoins it is part of the River Shannon (Upper)_040, for which the WFD status was recorded as 'moderate' during the 2013-2018 assessment.

The DAFM referred the proposal to Leitrim County Council and the NPWS. The County Council provided a response which advised in relation to the categorisation of the area in the County Development Plan

2015-2021, namely that it is within both an area of High Visual Amenity and of medium capacity to accommodate forestry in terms of landscape. It also advised of the absence of tree preservation orders and recorded monuments on the site, that a watercourse forms the western boundary and advised of some conditions to be attached as part of the approval, in respect of transporting timber off site and adherence with best practice guidelines. No response was on file from the NPWS. The DAFM desk assessed the proposal and undertook a screening for Appropriate Assessment that identified no European sites within 3km and determined that Appropriate Assessment was not required. The DAFM issued a licence on 24th April 2019 with standard conditions and a specific condition that states; "felling section to be given one month notice prior to clearfelling activities commencing – this is a strict condition of the licence".

There is one appeal against the decision. The grounds of the appeal are in the nature of a broad statement that, based on the information available to the public, any approval would not be in compliance with the Environmental Impact Assessment and Habitats Directives, while referring to court judgements, that there is a lacking of proper assessment, and that there is no assessment of the cumulative effects for example.

The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures; SI 191 of 2017 and the Forestry Act 2014, and that all criteria were adhered to. The DAFM inspector added in the statement that "The AA procedure relevant at the time was applied. In light of recent changes to the DAFM AA procedure, the site was re-assessed using current guidance and AA procedures based on 15 km assessment. The below identifies three Natura 2000 sites that are found within the 15 km 'zone of influence'. All three sites would be screened out based on the Habitat and Foraging Tables used by DAFM in assessing the qualifying interests of Natura 2000 sites. In light of this the application would be screened out for AA utilising current AA procedures." A table was provided with the three Natura 2000 sites identified, namely Cuilcagh Anierin Uplands SAC, Lough Arrow SAC and Lough Arrow SPA, listing their qualifying interests, distances to the site and reasons for screen out.

At the oral hearing the DAFM provided an overview of the processing of the application, clarified that the Appropriate Assessment screening done prior to the decision used a radius of 3km and that the proposal was screened out for Appropriate Assessment. The DAFM added that a new Appropriate Assessment screening was conducted when providing a statement to the FAC on the appeal that focused on a radius of 15km from the site and also undertook an in-combination assessment and that the proposal was still screened out for Appropriate Assessment. Mr. Price (on behalf of the applicant) contended that it would be against natural justice and due process to deny the applicant the licence given that he considered it met all requirements at the time of application and added that the appellant or representative should have been informed of any subsequent procedural change. The applicant's other representatives advised that this was a second rotation plantation and explained how timber from the site was handled previously and that the same procedure will be followed in this case and contended that their track record should be informative. The DAFM in responses to questions also submitted that felling does not require EIA and gave reasons for some of the licence conditions including that the additional condition on the licence related to a desire for the DAFM to be notified in advance of the commencement of the clearfelling activities to allow them the opportunity to visit the site to review the implementation of the standard harvesting and other guidelines.

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 decision under appeal relates to a licence for the thinning, felling and replanting of an area of 15.61 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 agrees that screening for EIA was not required in this case.

In addressing the Habitat Directive grounds of appeal, the FAC considered, 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 Appropriate Assessment screening, and found no European sites within 3km of the proposal area. The record does not contain a consideration of other plans and projects in combination with the proposal. Based on the information before it, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for appropriate assessment were not satisfactorily met prior to the granting of the licence. The FAC is satisfied that this constitutes a serious error in the making of the decision and while noting the submissions made by DAFM to the FAC in response to the appeal and at the oral hearing, the FAC concluded that a new screening of the application for Appropriate Assessment is required and of the proposed development under the requirements of Article 6 of the Habitats Directive before making a new decision in respect of the licence.

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 satisfied that a serious or significant error was made in making the decision regarding TFL00272419 and is setting aside and remitting the decision back to the Minister to undertake an appropriate assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of Mr. James Conway.

Mr. James Conway (on behalf of the Forestry Appeals Committee)