



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

23 February 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: 184/2020

Subject: Appeal in relation to felling licence TY06-FL0085

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 felling licence TY06-FL0085.

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

Felling licence TY06-FL0085 was granted by the Department on 25 March 2020.

Hearing

An oral hearing of appeal 184/2020 was conducted by the FAC on 09 February 2021.

Attendees:

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy and Mr Pat Coman

Secretary to the FAC: Mr Michael Ryan

DAFM representatives: Mr Frank Barrett and Ms Eilish Kehoe

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the oral hearing and all other submissions, including the response to a request for further information by the FAC, before deciding to affirm the decision to grant this licence (Reference TY06-FL0085).

The proposal comprises 4.50 ha of clear-felling in two plots at Bredagh, Glenmore Upper, Co Tipperary, a plot of 3.06 ha comprising 95% Sitka Spruce and 5% Willow, and a plot of 1.44 ha comprising 95% Sitka Spruce and 5% Hazel, and replanting of both plots with 100% Sitka Spruce. Application also seeks 0.23 ha of open space. The underlying soil type is approximately Acid Brown Earths, Brown Podzolics

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

(44%), Lithosols, Regosols (34%) & Peaty Gleys (22%). The slope is predominantly steep (15-30%). Northern plot is in the Lower Shannon catchment and Ollatrim_SC_010 sub-catchment and in the Ollatrim_10 river Waterbody. Southern plot is in the Lower Shannon catchment and Nenagh_SC_010 sub-catchment and the Nenagh_030 river waterbody. The DAFM issued a referral to Tipperary County Council and no response was received.

In processing the application, the DAFM completed a Stage 1 Appropriate Assessment (AA) screening with reference to the provisions of Article 6(3) of the Habitats Directive, of the following EU sites within a 15 km radius and all were screened out with reasons given.

- The Slievefelim to Silvermines Mountains SPA due to the separation distance between the Natura site and the project.
- The Kilduff, Devilsbit Mountain SAC and the Bolingbrook Hill SAC for reasons of an absence of a direct upstream hydrological connection and a subsequent lack of any pathway, hydrological or otherwise.
- The Lower River Shannon SAC, the Lower River Suir SAC and the Silvermine Mountains SAC for reason of the location of the project area within a separate water body catchment to that containing the Natura sites, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.

The DAFM also conducted an in-combination assessment and concluded that the proposed development alone or in-combination with other plans and projects would not be likely to have a significant effect on any Natura 2000 site.

The licence was issued subject to standard conditions (a) to (h) along with an additional condition (i), as set out on the licence, and the licence is valid until 31 December 2022.

There is a single appeal against the decision to grant the licence, the grounds include that there is a breach of Article 4(3) of the EIA Directive as there was no screening for EIA, that there is also a breach of Article 4(4) of the EIA Directive. That on the same date as this application was made a further 9 applications were made for the same FMU totalling 68.38ha. The application does not cover the whole project and project splitting is not permitted, and the proposal is part of a much larger scheduled programme of works. The grounds also contended that there is a breach of Article 4(5) of the EIA Directive when the whole project is not addressed. The Appellant states the Forest Service failed to supply, on request a copy of the EIA screening report for this licence. The appeal contends that part of this site is in the catchment of the Ollatrim 010 and the current status of this waterbody is 'poor' and it is listed as being 'at risk'. In addition, there is potential impact on Annex I habitat as the commonage adjacent to, and downstream, contains Blanket Bog, Wet Heath and Dry Heath. The grounds include 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. That there is a breach of Article 10(3) of the Forestry Regulations, and the Appellant made a submission in respect of this application under Regulation 10 but was not notified of the decision by the Minister as required under Regulation (21), and none of the exemptions contained in paragraph (2) of Regulation 21 apply, and that the Appellant has been compromised in their capacity to make an appeal in respect of a decision on an application on which they made a submission.



In response, the DAFM addressed each of the written grounds of appeal, and stated with regard to Article 4(3) of the EIA Directive, that because the standard operational activities of clear-felling and replanting of an already established forest area are not within the specified categories of forestry activities or projects 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, and are not so categorised in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Article 4(3) of the Directive is not applicable. The DAFM also ruled out any breach of Article 4(4). The 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. The felling and reforestation project TY06-FL0085 was referred to the Local Authority. As set out in Forests & Water Guidelines, the DAFM has developed considerable experience in relation to the protection of water during the forestry licensing process, and is actively engaged in the WFD process, contributing proactively to both the 2nd cycle and the 3rd cycle, the latter currently under development. Therefore, while referrals are an important part of the evaluation process, the DAFM is fully informed of its responsibilities regarding the achievement of objectives under the WFD. The DAFM set out regards correspondence related to requests from the Appellant for copies of licence applications and related documents and notes that the appellant has successfully exercised their right to appeal the granted felling licence application TY06-FL0085. The DAFM set out that the AA Screening report was completed by the Inspector and contains the recommendations regarding screened out European Sites. A number of the QIs/SCIs were truncated on the AA Screening form for project TY06-FL0085 when outputting the form related to the screening exercise. However, all Qualifying Interests (QIs)/Special Conservation Interests (SCIs) were considered during the screening exercise itself and the screening determination is considered sound. A revised AA screening form, including a full QI/SCIs listing for all screened European sites, was provided.

On 12 May 2020 the FAC sought additional information from the Appellant, and while a response was received on 14 May 2020 the requested information was not provided.

The FAC held an Oral Hearing on 09 February 2021. The parties were invited to attend in person or to join remotely. Both the Appellant and the Applicant were invited to participate in person or remotely and neither participated, the DAFM participated remotely. The FAC sat in person and remotely at this hearing. At the oral hearing the DAFM set out the processing undergone in issuing the licence, that there was a referral to the Local Authority with no response, an AA Screening and an in-combination assessment were finalised by the DAFM on 25 March 2020 before the decision to issue the licence. The DAFM confirmed the Applicant's pre-screening report was part of the information used in making the screening decision. The DAFM described the checks regards stream and rivers and confirmed a stream exists at the northern edge of the northerly plot between the proposal and a nearby farm building and is the reason for condition (i) on the licence in respect of a buffer zone requirement. The DAFM stated that condition (h) was inserted as a standard condition at the time and there was no specific reason from the proposal for its inclusion in this instance. In respect of the grounds related to

commonage containing Annex I habitat, the DAFM stated such a habitat was not readily identifiable in the immediate vicinity, which instead comprises mineral soils with woodland and productive agricultural land mostly in grass, and while there is an area of commonage c. 3.5km away this was not considered. The DAFM stated the Appellant was issued notice of the licence decision on 15 April 2020 along with copies of application documents, and while provided late this would have been within the time period for appeal of the licence decision.

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 the felling and subsequent replanting, 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 (S.I. No. 191 of 2017). The FAC considers the licence issued is for the felling and reforestation of 4.50 ha and does not consent to any change of land use. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

In regard to any requirement for the curtailment of felling activities during the bird breeding and rearing season, the FAC noted that the Appellant did not submit any specific details in relation to bird nesting or rearing on this site. The FAC considers the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute and, the FAC concluded that a condition of the nature detailed by the appellant should not be attached to the licence. In addition, the Appellant has not identified the Annex I habitat referred to and no such habitat is readily identifiable in the vicinity of the proposal from the evidence available.

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 or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM carried out a Stage 1 AA screening in relation to six Natura 2000 sites and concluded that the proposed project alone and in-combination with other plans or projects would not be likely to have significant effects on any Natura 2000 site. The FAC, noting the proposal is c. 6 km from the nearest SAC and in a different catchment and is c. 8 km from the nearest SPA and does not comprise suitable foraging or nesting habitat for the SCI thereon, is satisfied the screening conclusion is sound in this instance.

There is no relevant watercourse evidenced on the southern plot, the plot is located within the Nenagh_030 waterbody, a water body that is 'not at risk' per the EPA data on waterbodies. The



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

Appellant raised grounds that a part of the proposal is within the Ollatrim_010 waterbody. The proposal has a stream at its northern edge flowing east c.1.1 km prior to joining the School Ballinlough stream which in turn flows to the Bredagh River and on to the Ollatrim River, all of which comprise parts of the waterbody. The FAC notes the current status of the waterbody is 'poor' and 'at risk'. The FAC, having regard to the nature and scale of the proposal and to the licence conditions, including conditions (a) and (i), is satisfied there can be no real effect on the water-body from the northern plot of the proposal and no likelihood of significant impact, and that no serious or significant error arises in this regard in the decision to award the licence.

The DAFM have confirmed there was delay in the provision of information and notification of the decision to the Appellant. However, the FAC is cognisant the Appellant was provided with the information and decision notice prior to the expiry of the 28 days period afforded for an appeal to the FAC.

In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely

Pat Goman, on behalf of the FAC

