



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

24th June 2021

Subject: Appeal FAC 681/2020 relating to Licence TFL00478920.

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 14A(1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

Licence

Licence application TFL00478920 is for a tree felling licence for the thinning of 7.56 Ha. in the townland of Halls, Co. Leitrim. The licence application was received by the Department of Agriculture, Food and the Marine (DAFM) on 11/03/2020. The licence was approved by the DAFM on the 17/08/2020 subject to standard conditions.

There is one appeal against the decision to grant the licence.

Hearing

An oral hearing of the above appeal, of which all parties were notified, was held by the FAC on the 18th of June 2021.

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.

Appellant: [REDACTED]

Applicant: [REDACTED]
[REDACTED]

DAFM Ms. Eilish Kehoe and Mr. Seppi Hona.

Secretary to the FAC Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the DAFM, the record of the decision by the DAFM (in particular the Inspector's certification), the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister regarding licence TFL00478920.

Background

An Inspector's Certification Report (last spatial run 16/07/2020) indicates that a desk assessment only was carried out for this site. The predominant soil type underlying the project area are predominantly podzolic in nature. The slope is predominantly flat to moderate (<15%) and that the site does not adjoin or contain an aquatic zone(s). The vegetation type within the project area comprises of conifer plantation.

The report also notes that there are two Natura 2000 sites within 15Km of the proposed thinning, both SACs and records an Appropriate Assessment (AA) screening decision to screen out the application for each site as follows:

Natura 2000 Site	Reason for Screening out for Appropriate Assessment
Cuilcagh-Anierin Uplands SAC (Site Code 000584)	<ul style="list-style-type: none">• The absence of any aquatic zone within or adjoining the project area.• The absence of any significant relevant watercourse(s) within or adjoining the project area
Lough Oughter and Associated Loughs SAC (Site Code 000007)	<ul style="list-style-type: none">• The absence of any aquatic zone within or adjoining the project area.• The absence of any significant relevant watercourse(s) within or adjoining the project area

The report contains an in-combination assessment carried out by the DAFM that refers to the week of 13th July 2020 which concludes that the project, when considered in-combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed forest thinning in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed forest thinning to EIA.

The licence application was not referred to any external bodies.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- The Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned.
- The amount of thinning and clear-felling activity in this locality is known by the Inspector to be a significant issue contrary to the response to Q8 in the Inspector's Certification.
- The afforestation of these lands was carried out without adequate screening for the requirement for an EIA.
- This licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21.
- There is insufficient detail and clarity in the In-Combination information to reach a definitive position on the cumulative effect of this project with other plans and projects.
- The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation.

- The Proposed Measures to Protect Social and Environmental Features and Considerations contained in the Harvest Plan include “Consult with local residents”. No evidence has been presented as to the methodology that will be used for consultation.
- Condition for notification of the Minister at Commencement and Conclusion of Operations.
- Licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of Habitats Directive.
- Licence conditions do not provide a general system of protection for all species of birds as required by Article 5 of the Birds Directive.
- The licence should contain a condition that plans and works must be inspected by FS prior to, during and post works to ensure compliance with all environmental conditions and mitigations.

Oral Hearing

At the oral hearing, the DAFM spoke to its written Statement of Fact (SoF) dated 10/11/2020 confirming the administrative details of licence TFL00478920 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

A SoF was provided by the DAFM Inspectorate dated 10/11/2020 stating that the relevant Appropriate Assessment (AA) procedure of 5th Nov 2019 was applied and that the project was screened out after following Standard Operating Procedures.

The Appellant contextualised their written grounds and submitted that the DAFM file shows significant amounts of felling operations in the area and that there are particular local concerns regarding impacts on the public road. They submitted that the Harvest Plan does not show all required features, including hedgerows, and that some operational features, such as fuel storage areas, are outside of the felling area.

The Applicant’s representative submitted that discussions are ongoing with the County Council in relation to the maintenance of public roads. They submitted that the land between the outlined felling area and the road is owned by the same owner and will be used as part of the operations. They submitted that the closest watercourse was 200 metres from the felling area and that the extraction route is marked and was chosen to minimise impacts on hedgerows.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

The aerial photographs submitted with the application show the site bounded by existing conifer plantation to the north, east and part of the southern boundaries. The lands to the west and part of the southern boundaries are agricultural in character.

The soil types identified on the EPA maps are Surface water and Groundwater Gleys, which are generally an acid, deep, poorly drained, mineral soil.

There are two WFD River Waterbodies in the locality of the proposed thinning. To the west and north, some 300m distant is the River Waterbody Relagh_010. In the WFD River Waterbody Status report 2013-2018 this river waterbody is assigned good water quality status. The WFD 3rd Cycle categorises this river waterbody as not at risk. There is no direct hydrological connection between the site and this river waterbody. To the east some 235m distant is the River Waterbody Cloone_20. In the WFD River

Waterbody Status report 2013-2018 this river waterbody also has good water quality status. The WFD 3rd Cycle categorises this river waterbody as not at risk. There is no direct hydrological connection between the site and this river waterbody.

Both the Relagh_010 and Cloone_20 River Waterbodies are part of the Upper Shannon Catchment 26C and the Cloone [Lough Rinn]_SC_010 sub-catchment.

The underlying groundwater body is Mohill (IE_SH_G_171) has good overall status. This groundwater body is identified as not being at risk in the WFD 3rd Cycle programme.

The proposed thinning is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the two Natura sites identified as being within 15km of the site are the two sites examined in the AA Screening. The location of the project area is downstream of both Natura 2000 site, the Cuilcagh-Anierin Uplands SAC (Site Code 000584) and Lough Oughter and Associated Loughs SAC (Site Code 000007) which lie within a different catchment, Erne 36 consequently there is no hydrological connection to those sites.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) which determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion and is not satisfied that the DAFM erred in its screening.

The FAC noted that the site is not located in a Highly Visual Amenity Area in the Leitrim County Development Plan 2015-2021. The FAC is of the view that the proposed forest thinning will not have a significant impact on the landscape.

EIA Directive.

With regard to the appellant's view that the Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned and that the initial afforestation of these lands was carried out without adequate screening for the requirement for an EIA. The FAC in considering these two grounds have had regard to the fact that 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). Regarding the planting of the lands, the current forest was planted in 2001 and there is no evidence submitted to the FAC regarding deficiencies in the consent process.

The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was not required to undergo the EIA process. The proposal is for the thinning of 7.56 Ha. of forest to facilitate the management of commercial forest for timber production and is considerably sub-threshold for the mandatory submission of an EIAR.

The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

With regard to question 8 of the Assessment to Determine EIA Requirement. The question is *"Is the amount and type of thinning and or clearfelling activity in this locality known to be a significant issue? If so tick yes and describe in the Inspectors comments box below."* The FAC notes that there were no submissions from either the general public or residents in this locality concerning this application for thinning. The Applicant is required to erect a site notice during operations as a condition of the licence. The management of the public road network falls to the local authority.

EU Water Framework Directive

With regard to the appellant's view that the proposed forest thinning threatens the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The FAC notes that there is no hydrological connection from this site to a WFD surface waterbody and forestry is not regarded as a threat to ground or surface waterbodies nor is forestry identified as a pressure in the WFD 3rd Cycle assessment. Having regard to the nature, scale and location of the proposal and the requirements under which operations are required to be undertaken; the FAC considers that the proposed forest thinning does not pose a risk to a river waterbody or to water quality generally.

In-Combination Assessment

The FAC notes that the in-combination assessment examined a wide range of sources of possible plans and projects in the general vicinity of the thinning, including Leitrim County Council, An Bord Pleanála, the Environmental Protection Agency and forestry-related activity (afforestation, forest roads and forest thinning). The FAC notes that the conclusion of the in-combination assessment is that the project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites listed in AA screening there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects. The FAC concurs with this conclusion.

Harvest Plan

With regard to the appellant's view that the Harvest Plan is not consistent with the requirements of the Standards for Felling & Reforestation 2015. The FAC notes the appellant has not furnished any substantiation on this ground of appeal. The harvest plan submitted follows the sample given in the document and that the map submitted shows the relevant environmental information and features. The Plan includes the retention of hedgerows and mature trees that are present on the site based on aerial imagery. The FAC considers that the marked extraction route runs in parallel to most existing hedgerows and that the crossing of hedgerows is limited. The FAC notes that condition (i) of the licence requires strict adherence to the Standards for Felling & Reforestation 2015 and considers that the information provided was adequate for the purposes of assessing the application and that the document does not specify the method of consultation with the public.

Additional Licence Conditions

Regarding the conditions that the appellant suggested should attach to the licence regarding the commencement and conclusion of operations, inspections and notification in the case of spraying of chemicals. The FAC noted the response provided to it by the 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 is not required in this instance.

In relation to the grounds of appeal that the licence conditions do not provide a system of protection for wild animals and birds during the period of breeding and rearing consistent with the requirements of the Habitats and Birds Directives. The FAC note that the granting of a licence for forest thinning does not exempt the holder from complying with any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any details in relation to animals or bird nesting or rearing on the proposed site. The FAC considered that the DAFM had completed a screening for Appropriate Assessment and had undertaken a site inspection prior to making the decision. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant are not necessary.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that no serious or significant error or 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 TFL00478920 in accordance with Section 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.

Yours sincerely,

A large black rectangular redaction box covering the signature of the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee