



[REDACTED]

19th May 2021

Subject: Appeal FAC 482/2019 regarding licence TFL00402119

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 TFL00402119 for the clearfell of 23.95 ha at Muckros, Castlefore, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 12th of December 2019.

Hearing

A hearing of appeal FAC 482/2019, attended by FAC Members Mr. John Evans (Chairperson), Mr. Derek Daly, and Mr Seamus Neely, was held on 22nd March 2021.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence TFL00402119.

The licence relates to 23.95 ha of clearfell in 5 plots to be harvested variously in 2021, 2025 and 2028 at a site at Muckros, Castlefore, Co. Leitrim. The species to be felled is Sitka spruce. Replanting is to be 80% Sitka spruce, 10% Broadleaves and 10% open space in all plots. The licence application was received on the 9th of September 2019. A harvest plan and maps were provided.

The Inspector's certification report describes the soil type underlying the project area as predominantly podzolic in nature and the slope on the site is said to be predominantly flat to moderate (<15%). The report also states that the project area is crossed by / adjoins an aquatic zone(s) and that the vegetation type(s) within the project area comprise conifer plantation.

Having consulted with publicly available mapping from the Environmental Protection Agency (EPA), the Ordnance Survey of Ireland (OSI) and DAFM, the FAC observed that on its eastern side, the site adjoins to the lower part of Saint John's Lough which has an unassigned WFD status. To the west of the site, separated by a short distance is a small lake called Lough Moreoge which is not named in EPA mapping. These are connected by the Muckros_36 which is part of the Yellow (Ballinamore)_020 waterbody which also has an unassigned status. The nearest water body with an assigned Ecological Status is Lake Garadice which the Yellow River ultimately flows into at a hydrological distance of ca. 15km, the status of which is Moderate under the 2013-2018 WFD monitoring cycle.

A screening for Appropriate Assessment (AAS) is recorded in the Inspector's Certification Report. This used a search radius of 15km from the project site, and one European site, the Cuilcagh – Anierin Uplands SAC is recorded. This is screened out for the following reasons: the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection; mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements, and procedures, in particular Felling and reforestation standards; other factors – Distance.

The Inspector's Certification Report notes that the application was the subject of a desk only assessment, and the AAS section makes reference to an in-combination assessment, however at the FAC hearing this was observed to be not on file. Following the hearing the FAC queried the absence of an in-combination assessment with the Forest Service, and was advised that the following statement by the Inspector, dated the 22nd of October 2019, was visible in the notes section of the IFORIS system (which was not provided to the FAC):

In combination assessment - The potential for the proposed project to contribute to an in-combination impact on European sites was considered. The online planning systems for Leitrim County Council and An Bord Pleanála were consulted on the 22nd October 2019. Non-forestry projects identified in the vicinity of the project, i.e. in the Townland of Muckros include: None found. The Leitrim County Development Plan was also reviewed, in particular, objectives therein relating to Natura 2000 sites. I consulted the DAFM's iFORIS Map Viewer on the 22nd October 2019 and other forestry-related projects identified in the vicinity of the project include: No other forestry activity noted. The project is in line with the Forestry Programme 2014-2020. Individually, the project does not represent a source, or if so, no pathway for significant effect on any European site exists. Consequently, there is no potential for the project to contribute to any such effects, when considered in-combination with other plans and projects.

A referral was made to the Local Authority on the 2nd of October 2019. A response is on file marked as received on the 15th of October 2019. This notes the site as being in an area of High Visual Amenity, with a medium capacity to accommodate forestry according to the County Development Plan. A number of recommendations are made with respect to conditions relating to roads, and the requirements for planning for road related developments are highlighted, and these are reflected in conditions included in the issued licence.

There is one appeal against the decision. The grounds submitted broadly include: that the Environmental Impact Assessment screening process and determination for this project are not consistent with Article 4 (paragraphs 3, 4 & 5) of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment; that the Appropriate Assessment screening process including the screening decision justification is flawed; that the Licence has not included conditions indicated by a consultation body; that the Licence conditions are not written with sufficient precision or clarity regarding their requirements and permitting procedures to ensure that they will result in compliance of this development with the overall environmental regulatory framework; that the Harvest Plan provided is inadequate and does not provide sufficient assurances that this project will not impact negatively on the environment; that the IFORIS record for this application is incomplete; that the Inspector's Certificate states, in response to the query 'The proposed felling outlined in this proposal has taken into consideration environmental considerations identified on the ground?', that the Inspector has responded with a 'Yes', but that as the application was approved on the basis of a Desk-Based assessment only the Inspector was not in a position to have adequately taken in to consideration environmental considerations identified on the ground.

A corrected Statement of Fact was provided to the FAC in relation to appeal FAC 482/2019 on the 2nd of March 2021, an earlier Statement having been observed by the appellant in correspondence dated the 19th of February 2021 to contain information relating to a different appeal. In this corrected statement the DAFM submitted that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act, and that the Department is satisfied that all criteria as outlined in DAFM standards and procedures have been adhered to in making a decision on the application.

The Statement of Fact further submitted that:

An EIA screening is not required for felling operations of existing forests and is not categorised in Annex 2 of the EIA Directive. The AA screening has been carried out as per the required procedure and the rationale for the screening determination is on file. The mapping supplied and the GIS environmental information available on Iforis is deemed sufficient to carry out an appropriate assessment of the application. The DAFM content that the conditions are sufficient to ensure compliance with the felling licence

requirements. Leitrim County Council responded and there is a condition in the licence that the applicant must liaise with the local authority prior to commencing operations.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the Environmental Impact Assessment screening process and determination for this project are not consistent with Article 4 (paragraphs 3, 4 & 5) of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. The FAC considered 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). The Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and replanting of an area of 23.95 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 concluded that screening for EIA was not required in this case and that a breach of Article 4(4) had not occurred.

In relation to the ground of appeal that the Appropriate Assessment screening process including the screening decision justification is flawed, the FAC considered the AAS contained in the Inspector’s Certification report. This considered European Natura 2000 sites within 15km of the project site and identified one such site the Cuilcagh – Anierin Uplands SAC [0584]. Reference by the FAC to public mapping of European sites provided by the EPA confirmed the presence of this site only in the area concerned. The AAS screened out the site in question on the basis of a number of reasons. These included: the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection; mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures, in particular felling and reforestation standard; distance; and also that as an in-combination assessment determined that there is no likelihood of the project itself having a significant effect on the European site, there is no potential for it

to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects.

Examination of EPA mapping by the FAC confirms the absence of any hydrological connection to the Cuilcagh – Anierin Uplands SAC [0584]. In this context the use of mandatory adherence to standard safeguards integral to the project would appear to be superfluous in the context of the screening, and in any event standard conditions and guidelines may be considered at screening where such measures are a standard component of a particular project type, not site specific and in no way directed to the protection of European sites. AAS is required to consider the possibility of in-combination effects on European sites. The Inspector has referred to an in-combination report, which is in effect a declaration contained in the notes section of the DAFM IFORIS system based on a search of planning applications in the vicinity of the project, i.e. in the Townland of Muckros, on the 22nd of October 2019. The FAC consulted a number of these same planning systems and identified projects, which while not in the townland of Muckros, are in the vicinity of the project (i.e. within 1km). These included Forestry related projects which had recently been consented (e.g. TFL00224518, approved 27th March 2019) or were under consideration at the time the in-combination assessment was conducted (e.g. CN83931, received by the Forest Service on the 20th of April 2019).

Based on the information above, the FAC cannot conclude an error did not take place with respect to the screening for Appropriate Assessment. In the opinion of the FAC the absence of a complete in-combination report represents a serious error in the processing of the licence, and on that basis has determined that the licence should be set aside and remitted 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. When considering the ground that the licence has not included conditions indicated by a consultation body, the FAC understands this to relate to the submission from Leitrim Co Council and had regard to the correspondence on file from the Council, the issued licence, and the Statement provided by DAFM. The FAC is satisfied that the conditions in the licence requiring liaison with regard to traffic management and road usage are reflective of the requirements of the local authority and provide the local authority the opportunity to put in place such requirements as it deems necessary.

In relation to the grounds relating the precision of licence conditions and the adequacy of the Harvest Plan, the appellant has not provided any details of the shortcomings that may exist in the documents concerned or how they impact on the decision process. The FAC has examined both the Harvest Plan submitted and the Licence issued and is satisfied that they are adequate given the nature of the proposed development. Similarly, in relation to the completeness of the IFORIS record, it is unclear what deficiencies the appellant is referring to. The FAC is satisfied that the record provided in the form of the Inspector's Certification Report and other documents provided are sufficient to inform the decision making process in this case.

The final ground of appeal relates to whether the Inspector has taken into consideration environmental considerations identified on the ground (i.e. at the site location). In considering this ground of appeal, the FAC had regard to the Statement of Fact which does not address this ground of appeal, and which also notes that a submission was received on 14th of October 2019 in relation to the licence application. This submission amongst other issues raises concerns in relation to pollution of watercourses, streams and rivers. The FAC also had regard for the nature of the site which adjoins on its eastern side Saint John's Lough, with the length of this interface between the lake and the site being approximately 600m. Aerial imagery shows planting of trees to be close to or at the water's edge. EPA mapping shows Saint John's Lough to have an unassigned status for the purposes of the Water Framework Directive and OSI mapping shows drains on the site potentially leading into Saint John's Lough. Given the particular circumstances as set out above, the FAC considered that sufficient evidence has not been provided in the assessments carried out by the DAFM in the processing of the licence application regarding the possible or potential impact on the water quality of Saint John's Lough.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received. In the above circumstances, the FAC is satisfied that a serious or significant error or a series of errors was made in making the decision. The FAC is thus setting aside and remitting the decision to the Minister regarding licence TFL00402119 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 and to re-evaluate and provide further evidence through further analysis, through site inspection or both as is required regarding the possible or potential impact on the water quality of Saint John's Lough, before a new decision is made.

Yours sincerely,

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John Evans On Behalf of the Forestry Appeals Committee