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22nd September 2021

Subject: Appeal 717/2020 regarding licence TFL00323819

Dear [Redacted]

I refer to appeals made to the Forestry Appeals Committee (FAC) in relation to this decision 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 the parties to the appeal.

Background and Hearing

Licence TFL00323819 was approved by the Department of Agriculture, Food and the Marine (DAFM) for thinning of 52.29 ha in twenty one plots of conifers and broadleaves at Knockfadda, Newcastle Upper, Co. Wicklow on 2nd September 2020. An oral hearing of appeal FAC 717/2020, of which all parties were notified was held by the FAC on 21st June 2021. In attendance at Oral Hearing:

FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr. Derek Daly
Department Representative(s):	Ms. Eilish Kehoe, Mr. Robert Windle (District Inspector)
Appellant:	[Redacted]
Applicant / Representative(s):	[Redacted]
Secretary to the FAC:	Ms. Ruth Kinehan

Decision

Having regard to the evidence before it, including the licence application, processing by the Department of Agriculture, Food and the Marine (DAFM), the grounds of appeal, submissions made at the oral hearing, all other submissions received, all materials on file, 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 TFL00323819.

Background

The licence pertains to the thinning of 52.29 ha of conifers and broadleaves at Knockfadda, Newcastle Upper, Co. Wicklow. The area comprises twenty one plots located in two spatially distinct blocks of 43.51 ha and 8.35 ha. The site is described in the DAFM Inspectors Certification report as having a soil type which is predominantly brown earth. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise WD4 (conifers and broadleaves).

The project is located in Catchment 10 Ovoca - Vartry and Sub-Catchments Vartry_SC_010. The relevant River Sub-basin is Vartry_020. The WFD River Waterbody Status 2013 - 2018 for the nearest river waterbody Vartry_020 (IE_EA_10V010100) is classified as 'good'. No River Forestry Pressures are evident in this locality.

Approval

The licence was applied for on 26th March 2019 and the project was referred to Inland Fisheries Ireland, for which there is no response recorded on file. One third party submission was received on 23rd April 2019.

The project was desk assessed and a field inspection took place on 9th June 2020. Screening of the proposal for Appropriate Assessment was undertaken which found the project area does not fall within any designated Natura 2000 site but there are thirteen such sites (Ballyman Glen SAC 000713, Bray Head SAC 000714, Carriggower Bog SAC 000716, Deputy's Pass Nature Reserve SAC 000717, Glen of the Downs SAC 000719, Knocksink Wood SAC 000725, The Murrough SPA 004186, The Murrough Wetlands SAC 002249, Vale of Clara (Rathdrum Wood) SAC 000733, Wicklow Head SPA 004127, Wicklow Mountains SAC 002122, Wicklow Mountains SPA 004040, and Wicklow Reef SAC 002274) within 15km of the proposal site and that there was no reason to extend this radius in this case. Each site is considered in turn along with their qualifying / special conservation interests as listed and a conclusion of 'Screen Out' is made in the case of all sites.

An in-combination assessment is also completed for the site, indicating that DAFM considers that this project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site.

Approval issued on 2nd September 2020 with standard conditions and a detailed condition (h) describing specific safeguards to protect archaeological heritage.

Appeal

There is one third party appeal against the decision. The appeal submits that proposed activity exceeds the threshold for EIA; it is necessary to establish if the planting of this forest complied with the law; no Environmental Impact Assessment has ever been carried out with respect to it; no Appropriate Assessment screening has been carried out according to the requirements of the EU Directive and Irish implementing law.

DAFM Statement to the FAC

The DAFM in a statement to the FAC confirmed that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. It also sets out the various processing dates relating to the application and that a submission was received in June 2020. It concludes with a statement from the District Inspector that the relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact the qualifying interests of the Natura 2000 sites screened as part of the AA.

Hearing

At oral hearing the District Inspector (DI) explained that the site was desk and field assessed and that he closely examined the site for aquatic zones and relevant watercourses and found none. In the same general area of Wicklow, he has referred licences to Dublin City Council, amongst others, to ensure all relevant consultation takes place, particularly with regard to freshwater reservoirs such as at Vartry. In this case he was completely satisfied that there is no hydrological connectivity between the site and any such area of concern or with any Natura 2000 site.

It was discussed with the DI that for twelve of the thirteen Natura 2000 sites the basis for the conclusion to screen out is given as an 'absence within and adjacent to the project area, of any habitat(s) listed as qualifying interest of the Natura site'. In the case of the Wicklow Mountains SAC 002122 no written basis for screening out is documented in the Inspectors Certification. At the oral hearing the DI presented that it would have been on the basis of an absence of any hydrological connection.

The DAFM Statement of Fact to the FAC was discussed, including the absence of any direct reference to the grounds of appeal stating that there was no evidence of the forest having been established in accordance with the law. The DI stated that the regulations governing the establishment of such forests may not have been in place at the time of the establishment of this forest in and around 1999. Regarding the need for EIA in the case of the approval to thin 52.29 hectares the DI said he followed all relevant procedures and that he did not feel EIA was needed in this case.

Consideration by the FAC

Addressing the written grounds of appeal, the Committee considered, in the first instance the Appropriate Assessment screening undertaken by the DAFM. The FAC finds that the screening of the proposal for Appropriate Assessment established that there were thirteen European sites within 15km of the proposal and that there was no reason to extend this radius in this case. Each site was found to have been considered in turn and all sites were screened out for the purposes of Appropriate Assessment. The FAC finds that the reasons for the screening conclusions reached in respect of twelve of the sites are provided in the screening documentation on file and that the DAFM also recorded other plans and projects that were considered in combination with the proposal. The findings in support of the conclusion to screen out Wicklow Mountains SAC 002122 are absent. The FAC considers this a serious error in the application of the AA procedure.

Addressing the grounds on the consistency of the decision to grant the licence with the requirements of the EU EIA Directive, the 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. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA 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 proposal is for thinning and therefore does not attract mandatory submission of an EIA report.

The DAFM representative in response to query at oral hearing, confirmed that questions were answered in the Inspectors Certification relating to the assessment to determine the requirement for EIA although EIA was not required in this case, given that the proposal was a thinning. The DI was not aware of any area threshold, or indeed if such a threshold existed, above which EIA was required for thinning.

Addressing the grounds that the establishment of the forest did not comply with the law, it was not clarified by DAFM that the afforestation of the lands in question underwent a regulatory consent process before receiving approval. Neither is any comment made on the size of the individual non-contiguous blocks comprising the application.

While the FAC is satisfied that the DAFM did not err in the decision regarding EIA, that the proposal was not required to undergo the EIA process, some uncertainty was exhibited at oral hearing and in the documentation with respect to the need for EIA. The validity of the original forest establishment was also not addressed sufficiently in the DAFM Statement of Facts as submitted to the FAC.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received, including at the oral hearing. The FAC is satisfied that a serious or significant error was made and therefore the decision is remitted back to the Minister to undertake an Appropriate Assessment screening of the proposal itself and in-combination assessment with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made. In the interests of clarity, in revisiting the Inspectors Certification, the opportunity should also be taken

to make an entry in the 'Inspectors comments' area of the section headed 'Assessment to Determine EIA Requirement' to clarify whether the DAFM considers that there is a requirement for EIA in the case of this application for thinnings; the treatment of block sizes of the nature encountered here, as well as addressing the approval of the original afforestation works.

Yours sincerely,

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

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee

