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22nd September 2021

Subject: Appeal FAC 456/2019 regarding licence TFL00384119

Dear [REDACTED]

I refer to the 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 the parties to the appeal.

Background

Licence TFL00384119 for thinning of 2.28 ha at Curraghbreedin and Drumroragh, Co. Cavan was approved by the Department of Agriculture, Food and the Marine (DAFM) on 10th December 2019.

Hearing

A hearing of appeal FAC 456/2019 was held by the FAC on 8th March 2021.

In attendance at the hearing:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence TFL00384119.

The licence pertains to the thinning of 2.28 ha at Curraghbreedin and Drumroragh, Co. Cavan. The predominant soil type underlying the project area is described as podzolic in nature and the slope is predominantly flat to moderate (<15%). The project area is said in the Inspectors report on file to be crossed by / adjoins an aquatic zone. The vegetation type within the project area comprises Conifer plantation (Sitka spruce and Japanese Larch). The DAFM undertook a screening for Appropriate Assessment which identified four European sites within 15km and the Likely Zone of impact was not extended to include further Natura sites in this case. All four sites (Derragh Bog SAC 002201, Lough Kinale

and Derragh Lough SPA 004061, Lough Sheelin SPA 004065 and Moneybeg And Clareisland Bogs SAC 002340) were screened out for the purposes of Appropriate Assessment and reasons are provided in the screening documentation in respect of the conclusion reached for each Natura Site. The application was not referred to any consultation body and a submission (which related to a number of applications) was received on 15th September 2019.

Appeal

There is one appeal against the decision. The grounds submitted broadly include, that the Forest Service in its screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact, that this is a trigger for the requirement for an Appropriate Assessment as it (the development) may have an effect, the grounds further submit that the District Inspector answered in the affirmative to Questions 3 & 4 in the Forestry Inspection Report but did not provide any evidence as to what this answer is based on, submits that in most cases the District Inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in, submits that in these circumstances the only legal answer in this case should be that the application has been (sic) screened in for Appropriate Assessment.

DAFM Statement to FAC

In the statement to the FAC in relation to appeal FAC 456/2019, the DAFM provide a response to the appeal wherein it submitted that the decision was issued in accordance with the procedures S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures as listed on the statement have been adhered to in making the decision on the application. The statement from the inspectorate which is dated 5th June 2020 went on to set out that the Grounds of Appeal had been read and considered, that the application for Felling Licence TFL00384119 was processed according to Forest Service Guidelines and Standard Operating Procedures relevant at the time. It also referenced that the assessment included an 'in combination' effect of other Forestry and Non-Forestry projects in the vicinity of TFL00384119 and that this is highlighted in the screening notes where the detail is provided. It set out that the proposed harvesting operations have been considered according to (then) current Appropriate Assessment procedures and that there are 4 Natura 2000 sites within 15km of the project area. It gave details of the four Natura 2000 sites screened and the reasons for the conclusion reached in each case.

Consideration by the FAC

Regarding Appropriate Assessment and related matters, the FAC finds that the DAFM carried out an Appropriate Assessment Screening and identified four Natura 2000 sites within 15km of the project area. Each site is found to be examined in turn and all four sites were screened out and reasons for the screening conclusions reached for each site are recorded in the screening documentation on file. The FAC examined publicly available information from the NPWS and EPA and identified the same four Natura 2000 sites as the DAFM. The grounds of appeal do not refer to any specific European site, pathways or effects of concern. Based on the information available to it, including in the grounds of appeal, the FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location,

and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site.

In considering the contention in the grounds of appeal that a Natura 2000 site was in a different catchment the FAC finds that there does not appear to be such a reference in this case and therefore no basis can be found for this appeal ground. Regarding the grounds of appeal that the Inspector answered in the affirmative to Questions 3 & 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds question 3 refers to the review of all referrals and submissions in this case, and the FAC finds based on the evidence before it that no referrals were made to consultation bodies and that one submission was received. In relation to question 4 the FAC finds it refers to having sufficient information to make a sound judgement regarding the likelihood of the project having a significant effect on a European site. In this case the Inspector answered these questions on the certification / report in the affirmative. The FAC is not satisfied that an error was made by the DAFM in relation to this ground of appeal in its processing of the licence in this case.

In considering the appeal against the approval of a licence in this case the FAC noted that the project area lies within the sub-basin MOUNTNUGENT_030 and the Waterbody which has an unassigned status for the 2013-18 Water framework Directive Period runs adjacent to the northernmost plot to be thinned. The FAC, in considering this matter had regard to the record of the decision and the submitted grounds of appeal, submissions received, clarifications obtained from the DAFM which were circulated to the applicant and the appellant for comment, ground conditions, the relatively flat nature of the site, and the information available from having viewed publicly available information on the EPA and NPWS websites together with online aerial and other visual imagery. The FAC also considered the nature of the soils in the project area, the presence of an extant crossing point on the watercourse, the typography of the area, the lack of need to break ground or provide drainage as part of the operations and the relatively small scale of this thinning project. In the above circumstances, the FAC concluded that it is satisfied that the proposal in this case (thinning) would have no effect on the MOUNTNUGENT_030 waterbody. Neither is that FAC satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. In deciding to affirm the decision of the Minister regarding licence TFL00384119 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,


On Behalf of the Forestry Appeals Committee

