



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

22nd September 2021

Subject: Appeal 070/2021 regarding licence TFL00447519

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.

Original decision and hearing

A licence for clearfell and replanting of 15.5 ha under TFL00447519 at Cornamucklagh, Killadoon, Co. Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 5th March 2021. A hearing regarding TFL00447519 was held by a division of the FAC on 12th April 2021. In attendance were Mr. Myles Mac Donncadha (Chairperson), Mr. Derek Daly and Mr. Iain Douglas.

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, all other submissions received, all materials on file, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence TFL00447519. The adjustment to the conditions required by FAC is that an additional condition (n) be added to the approval:

- n. Adhere to Felling and Reforestation standards – begin the setbacks from Lough na Súil from the contour marking the level of surface outflow of the lake. Strictly adhere to the Standards for Felling & Reforestation (October 2019) including avoidance of harvesting of any trees where the root system is submerged and avoidance of replanting any areas prone to flooding.

Background

The proposal at Cornamucklagh, Killadoon, Co. Sligo is to clearfell and replant one block of 15.5 Ha of conifers in 2024 at the age of 36. According to the Inspectors Certification report the predominant underlying soil type is podzolic in nature. The slope is said to be predominantly flat to moderate while the submitted NIS describes a steep area in the eastern portion of the proposal site. The site is located in the Feorish[Ballyfarnon]_SC_010 sub-catchment of the Upper Shannon (26A) WFD Catchment and adjoins watercourses to the south east and north east. The plot is adjacent to a small lake, Lough na Súil (approximately 8 Ha in size) which is said to exhibit turlough-like behaviour, having drained completely in 1933, 1964, 1989, 2006 and possibly again in 2011/12. According to information received by this FAC committee at an oral hearing in the case of appeal 152/2020, the lake drain point has now been blocked by the land owner and will no longer drain. A 2015 report of a survey¹ commissioned by NPWS indicates that it is unsure whether it is a turlough or not and that it may be fed by a number of sources, including a surface stream said to have been diverted during the construction of a house. Approximately one third of the area of the proposal would drain to the lake and the current tree cover extends up to the lake edge with evidence that the roots of some trees are almost constantly under water. Based on the topography of the area it would appear that (at times other than when it is being drained exclusively through an underground network of channels) it would drain to the south east to the river water body FEORISH (BALLYFARNON)_(code IE_SH_26F020080) which has status of 'good' per WFD 2013-2018 assessment. A first-order river waterbody drains the remaining two thirds of the site, lying along its north eastern boundary. Forestry is not identified as being a significant pressure for any of the waterbodies in the vicinity.

The project area does not fall within any designated Natura 2000 site but five Natura Sites were identified within 15km of the project site: Bricklieve Mountains and Keishcorran SAC 001656, Lough Arrow SAC 001673, Lough arrow SPA 004050, Lough Gill SAC 001976, Uinshin River SAC 001898.

Approval

The licence application was submitted on 9th December 2019 and the project was referred to NPWS, IFI and Sligo County Council, all of whom responded. The response of NPWS is general in nature. IFI requested that the aquatic buffer zone along the lake be increased to 25m with two rows of native broadleaf trees planted outside this buffer zone in addition to an aquatic zone of minimum 10m width along the watercourse running through the site and along its western and southern boundaries. Sligo County Council response is general in nature although it too requests a 25m buffer around any watercourses during replanting and to be informed prior to the commencement of works.

Three third party submissions were received in January and February 2020. The first cited the importance of adherence to EIA and Habitats Directives and referenced numerous clarifying legal cases. The second and third submissions requested stock proof fencing be used; replanting be kept back 20m from the fencing and from the river; no replanting within 30m of the lake; drains to be cleaned as they are blocked and water is lodging on certain lands; care be taken that silt and excess water not enter the lake during felling and replanting.

DAFM received an Appropriate Assessment (AA) Pre-Screening Report and NIS dated Feb 16th 2021. An Appropriate Assessment Screening Determination (AASD) and Appropriate Assessment

¹ https://www.npws.ie/sites/default/files/files/NTSV14_Turlough_report_Volume_I_and_Volume_II_01a.pdf

Determination (AAD) was completed by DAFM appointed consultant ecologists on February 25th. Section 3 of the AAD mentions receiving an NIS in November 2020 which is a typographical error (it was received in February 2021).

The application was desk assessed by the DAFM District Inspector and an AA Screening conclusion was made that Bricklieve Mountains and Keishcorran SAC 001656 could be screened out on the basis of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection. Lough Arrow SAC 001673 was screened out on the basis of distance; Lough Arrow SPA 004050 was screened out on the basis of distance and the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. Lough Gill SAC 001976 and Unshin River SAC 001898 were screened in by DAFM District Inspector, in alignment with the recommendations from the NIS and AA Pre-Screening Report. The AASD of the DAFM consultant ecologist screened out Lough Gill SAC 001976 due to lack of hydrological connection but continued to screen in Unshin River SAC 001898 for the purposes of protection of the otter *lutra lutra*.

Using the initial application, NIS and other information sources, the AA Determination, dated March 11, 2021 concludes with the statement that, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

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 5th March 2021 with standard conditions and extensive additional conditions, including adherence to the mitigations contained in the archaeological report and in the AAD dated 25/02/2021; to the planting of Birch and Rowan as the Additional Broadleaves; contact with IFI and local authority prior to activity commencing harvesting, as well as adhering to the Standards for Felling & Reforestation (October 2019).

Appeal

There is one third party appeal against the decision. The submitted grounds include that a field inspection should have taken place due to flood risk; that AA should have been requested by DAFM District Inspector; that proposed mitigations are not feasible; in-combination effects are not sufficiently considered and that the NIS did not seek to establish the EPA water status of Lough na Súil; that the AAD was flawed in that there was an error of dates regarding the timing of the NIS and that in-combination effects with TFL00447619 are not considered and that the EPA status of the lake was not considered; that no replanting should take place until the highest level of the lake be established.

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 submissions were received from members of the public in January and February 2020. It concludes with a statement from the District Inspector that a field

inspection was deemed as not being necessary; that the AA procedure was applied correctly at all stages, including the voluntary submission by the applicant of an AA pre-screening report and NIS and the change in screening recommendation for the Lough Gill SAC; the incorrect date for the NIS cited in Section 3 of the AAD is acknowledged as a typographical error; that works will only be carried out during dry weather and the forestry standard that areas prone to flooding should not be planted will apply; the mitigations specified in the AAD remove any risk of their being an impact on any Natura 2000 site; that approval followed consideration of the AAD and the EPA water status is said to be an environmental issue rather than an ecological one; the prescribed setbacks are described as being generous and are bordered by 5 rows of additional broadleaves.

Consideration by the FAC

The FAC held a hearing of the appeal on 6th September 2021. Addressing the written grounds of appeal, the Committee considered the Pre-Approval Screening and NIS undertaken by an ecologist appointed by the applicant, the subsequent AA Screening undertaken by the DAFM District Inspector and the AA Screening Determination and AA Determination undertaken by an consultant ecologist retained by DAFM. The FAC finds that the Appropriate Assessment screening and determination procedures followed were in order for each of the five European sites within 15km of the proposal. Contrary to one of the grounds of appeal that states that it is inside the 15km radius, the Natura site Union Wood SAC 000638 lies, at its closest, approximately 15.06 kms from the site. Each site was found to have been considered in turn and treated appropriately for the purposes of Appropriate Assessment. The FAC finds that the reasons for the screening conclusions reached in respect of each site 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. Included in these other plans and projects was the proposal TFL00447619 referred to by the appellant.

In considering the written materials the FAC became aware of a discrepancy in area of approximately 3 hectares between the application (15.5 hectares) and the area cited in the DAFM consultant ecologists AASD (12.43 hectares). However, the NIS, upon which the AA process heavily relied, cites the full 15.5 hectares and it is clear from the detailed treatment and consideration of all the relevant boundaries and associated drains that the footprint of the proposal has been correctly interpreted in this document. The in-combination report also cites the area as 15.5 hectares. The approval is for 15.5 hectares and the Felling Licence Viewer displays the area of the site, based on an area calculation algorithm, as 15.5 hectares. The mapping contained within the AASD and AAD (e.g. as displayed on the cover page of the AAD and AASD) shows the same proposal site as in the other documents and so the 15.5 hectares stands as the correct area and is regarded by FAC as a typographical error in the AAD and not of a serious nature.

Regarding the potential impact on Natura sites and the environment generally, the FAC is satisfied that the AA and EIA procedures applied in this case, together with the proposed conditions are sufficient to eliminate any such potential risk. With regard to compliance with the Water Framework Directive, the FAC considers that given the scale and nature of the proposal and the conditions attached, there will be no effect on Lough na Súil and consequently there is no risk to the achievement of 'good' WFD status by Lough na Súil if it is ever defined as a Water Framework Directive waterbody for the purposes of the Directive. Similarly, the FAC considers that given the scale and nature of the proposal and the conditions attached there will be no effect from this proposal on the status of river waterbody FEORISH (BALLYFARNON)_(code IE_SH_26F020080).

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. Referring to the grounds of appeal and the lack of precision on the location of replanting setbacks in the context of the proposals proximity to a lake that appears to have a rising water level, the FAC is satisfied that a significant error was made and that the condition should clearly state to exclude areas where the root system is submerged and also provide for the avoidance of replanting of any areas prone to flooding. The FAC is therefore varying the decision of the Minister regarding licence TFL00447519 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, such that a new additional condition (n) be added as follows:

- n. Adhere to Felling and Reforestation standards – begin the setbacks from Lough na Súil from the contour marking the level of surface outflow of the lake. Strictly adhere to the Standards for Felling & Reforestation (October 2019) including avoidance of harvesting of any trees where the root system is submerged and avoidance of replanting any areas prone to flooding.

Yours sincerely,



Myles Mac Donncadha On Behalf of the Forestry Appeals Committee

