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21st September 2021

Subject: Appeal FAC 729/2020 regarding licence TFL00487620

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, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence TFL00487620 for thinning of 26.81 ha of forest at Castlegarden, Kilfane, Co Kilkenny was approved by the Department of Agriculture, Food and the Marine (DAFM) on 31st August 2020.

Hearing

An oral hearing of appeal FAC 729/2020, of which all parties were notified, and the applicant and representatives of the DAFM attended, was held by the FAC on 23rd June 2021.

In attendance at Oral Hearing:

Department Representative(s): Ms. Eilish Kehoe, Mr. Robert Hamilton,
Appellant: [REDACTED]
Applicant / Representative(s): [REDACTED]
FAC Members: Mr. Seamus Neely (Deputy Chairperson), Mr. Iain Douglas, Mr Vincent Upton and Mr. John Evans.
Secretary to the FAC: Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence TFL00487620.

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The licence pertains to the thinning of 26.81 ha of forest at Castlegarden, Kilfane, Co Kilkenny. The soil type underlying the project area is described in the Appropriate Assessment Screening documents as being predominantly podzols in nature and the slope is described as being flat to moderate (0% to 15%). It is also stated that the project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise semi-mature coniferous plantation with hedgerows. The thinning schedule set out for Plot 1 (21.1 ha) was in 2020, 2025 and 2030, for Plot 2 (2.86 ha) in 2020, 2025 and 2029 and for plot 3 (3.03 ha) in 2020, 2025 and 2030.

The application is accompanied by a harvest plan, thinning is to be by Harvester, chainsaw and forwarder and site access is said to be in place via an existing forest road. It is proposed that safety signage would be erected, that measures to protect habitats and biodiversity features would be implemented and that operations would be limited to dry weather with the use of onsite briefings, and daily visual monitoring of ground conditions and water. It is also proposed to use brash mats along extraction routes. The application was not referred to any referral body and there were no third-party submissions received.

The DAFM undertook a screening for Appropriate Assessment which identified four Natura 2000 sites (Blackstairs Mountains SAC 000770, River Barrow And River Nore SAC 002162, River Nore SPA 004233 and Thomastown Quarry SAC 002252) within 15km. Each of the four sites were examined in turn and all were screened out for the purposes of Appropriate Assessment. The reasons for the screening conclusions reached are recorded on file. The licence was approved with conditions on 31st August 2020.

Appeal

There is one appeal against the decision. The grounds submitted broadly include;

- That this is an application for Thinning 26.81,
- That no Environmental Impact Assessment screening has ever been carried out,
- That it is necessary to establish if the planting of this forest complied (sic) with the law,
- That 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

In the statement to the FAC in relation to appeal FAC 729/2020, 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 have been adhered to in making a decision on the application.

The statement sets out that prior to approving the licence the DAFM evaluated the application (TFL00487620) using various appropriate GIS datasets on the DAFM's *iforis* system and carried out a full site inspection on 30/07/20. It set out that the application was not referred to any referral Body as the project area does not intersect with any environmental designations. It describes the proposed 26.81 ha thinning site as being located on flat-gently sloped ground with no water adjoining and being approximately 5200m away from the River Barrow and River Nore SAC 2162 and approximately 5600m away from River Nore SPA 4233. It describes the Appropriate Assessment Screening for each of the four

individual Natura sites within the 15km zone of consideration as carried out on 07/08/20 as fully recorded in AA Screening Conclusions for individual Natura sites. It also set out that a comprehensive In-Combination Assessment was carried out by the DAFM drawing from all licensed and proposed forestry activity on *iforis* and all Planning Permission information available from the online listings and An Bord Pleanála planning information systems as well as the EPA Licence Information System, as recorded.

The Oral Hearing

At the oral hearing of the appeal the DAFM representative went through the main contents of the statement and confirmed that the proposal was desk and field assessed. The DAFM representative in response to a query from the FAC confirmed that the nearest watercourse to the site was at some 200 metre distance, that there were no agricultural drains connecting the site while describing it (the site) as being very straight forward. The DAFM representative in response to a query from the FAC set out that the In-Combination report was requested on the 5th August 2020 and was certified on the 7th August 2020. In response to query in relation to the likely planting date for the forestry the DAFM representative asserted that same seemed to be in 1991 and noted that ortho imagery from 1985 showed the presence of forestry on the lands the subject of the application which supported the assertion that the planting of the site was likely in 1991. The FAC also noted the correspondence on file from the applicant / applicant's representative setting out the 'felling age' of the trees at thinning and that this supported the assertion that the forest was planted in 1991.

Consideration of the appeal by the FAC

The FAC, in the first instance, considered the Appropriate Assessment Screening undertaken by the DAFM. The grounds of appeal do not refer to any specific European site, pathways or effects of concern. The FAC found that the DAFM undertook a screening for Appropriate Assessment in this case which identified four Natura 2000 sites (Blackstairs Mountains SAC 000770, River Barrow And River Nore SAC 002162, River Nore SPA 004233 and Thomastown Quarry SAC 002252) within 15km. Each of the four sites were found to be examined in turn and all were screened out for the purposes of Appropriate Assessment. The FAC found that the reasons for the screening conclusions reached are recorded on file. The FAC examined publicly available information from the NPWS and EPA and identified the same four Natura 2000 sites. The DAFM also recorded other plans and projects that were considered in combination with the proposal. 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, to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC considered that the procedures adopted by the DAFM in their assessment are considered acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

The FAC in considering the grounds regarding Environmental Impact Assessment and related matters noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory, that 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 thinning of a forest by 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 decision under appeal relates to a licence for the thinning of an area of 26.81 ha of forest. 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 is not satisfied that the DAFM has erred in its processing of the licence decision in this case as it relates to these grounds of appeal.

In relation to the assessment of the original planting, these grounds are not elaborated on and no evidence was submitted regarding the planting or the lands concerned. The current forest appears to have been planted in 1991 and the FAC has not been provided with any evidence that this did not adhere to any requirements of the time. Based on the information before it, the FAC found no reason to conclude that the existing forestry is unauthorised or that the DAFM had erred in its processing of the decision to grant the licence in this case as it relates to this ground of appeal.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not 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. The FAC is thus affirming the decision of the Minister regarding licence TFL00487620 in line with Article 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,


On Behalf of the Forestry Appeals Committee