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22nd September 2021

Subject: Appeal 745/2020 regarding licence TFL00497820

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

A licence for clearfell and replanting of 9.64 ha under TFL00497820 at Cloonfad and Lissergool, Loughlinn, Co. Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on 3rd September 2020. An oral hearing of appeal FAC 745/2020, of which all parties were notified was held by the FAC on 19th April 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. Momme Reibisch
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Secretary to the FAC:	Ms. Heather Goodwin

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 affirm the decision of the Minister regarding licence TFL00497820.

Background

The licence pertains to the thinning, clearfelling and reforestation of 9.64 ha in two separate blocks at Cloonfad and Lissergool, Loughlinn, Co. Roscommon. The site is in the DAFM Inspectors Certification report as having a soil type which is predominantly podzolic in nature. The slope is predominantly flat to moderate (<15%) and the project area does not adjoin or contain an aquatic zone(s). The project is located in Catchment 26B Upper Shannon and Sub-Catchment Lung_SC_010 and sub-basin 'LUNG_040' where the river waterbody is classified as having status 'good'. Forestry is not identified as a pressure in this area.

Approval

The licence application was submitted on 12th May 2020 and the project was referred to Roscommon County Council, for which there is no response recorded on file. One third party submission was received on 10th June 2020 of a general nature referencing Appropriate Assessment and EIA procedures.

The project was desk assessed and a screening of the proposal for Appropriate Assessment was undertaken for the DAFM (and dated 10th August 2020) which found the project area does not fall within any designated Natura 2000 site but there are fourteen such sites (Bellanagare Bog SAC 000592, Bellanagare Bog SPA 004105, Callow Bog SAC 000595, Carrowbehy/Caher Bog SAC 000597, Cloonchambers Bog SAC 000600, Cloonshanville Bog SAC 000614, Corliskea/Trien/Cloonfelliv Bog SAC 002110, Derrinea Bog SAC 000604, Drumalough Bog SAC 002338, Errit Lough SAC 000607, Lough Gara SPA 004048, River Moy SAC 002298, Tullaghanrock Bog SAC 002354, and Urlaur Lakes SAC 001571) 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 the reasons for the screening out the sites are documented.

For Bellanagare Bog SAC 000592, Callow Bog SAC 000595, Carrowbehy/Caher Bog SAC 000597 and Cloonchambers Bog SAC 000600 the reasoning for screening out was the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site; and the absence of any significant relevant watercourse(s) within or adjoining the project area. For Lough Gara SPA 004048 the reasoning for screening out was given as the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site; and distance from Natura site. For Bellanagare Bog SPA 004105 the reasoning for screening out was given as the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site and a summary is provided of the site objectives, qualifying interests and their current status.

A review of literature pertaining to the Bellanagare Bog SPA 004105 was also conducted. The Natura 2000 Standard Data Form, as updated in 2017, states 'In the past, the bog was used by wintering *Anser albifrons flavirostris* from the population that is centered on Lough Gara. However, the geese now feed mainly on intensively managed grassland and seldom use the bogs in the area.' The International Single Species Action Plan for the Conservation of Greenland White-fronted Goose (AWEA, 2012, Technical Series No.45) identifies that the Bellanagare Bog population have abandoned the SPA.

For the remaining SAC's the reasoning for screening out was given as 'The absence of any significant relevant watercourse(s) within or adjoining the project area.'

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 3rd September 2020 with standard conditions and stipulations that additional broadleaves are to consist of Birch and Rowan and that public road setbacks be 20m for conifers and 10m for broadleaves.

Appeal

There is one third party appeal against the decision. The appeal submits that it is necessary to establish if the planting of this forest complied with the law and therefore no decision to replant can be made without an Environmental Impact Assessment Report screening; 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 lands did undergo a regulatory consent process before receiving approval. This would have also involved an assessment for the requirement for an EIA. The AA screening procedure relevant at the time was applied. The proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20 and an in-combination assessment was carried out.

Hearing

An oral hearing of the appeal was held and was attended by representatives of the DAFM. At oral hearing the District Inspector (DI) explained that most of the additional conditions were in the guidelines in any case but were added in an effort to maximise clarity. Specifically Rowan and Birch were mentioned as the additional broadleaves to avoid use of Alder which he felt would be inappropriate. The site was desk assessed and in relation to the presence or location of waterbodies the DI was confident that all the information sources available to him, together with his experience of sites typical to this area and the assessment by the applicant's forester was enough to satisfy him that the waterbodies were correctly assessed. With regard to the detailed treatment of the qualifying interest of Bellanagare Bog SPA 004105 the DI explained that he was aware of the changed appraisal of the status of the Greenland White-fronted Goose in the area and sought additional advice from an ecologist to verify the assessment given in the Inspectors Certification.

During the oral hearing a gap in the in-combination report was highlighted to DAFM. The missing content was described by DAFM and read into the record. The FAC noted the following afforestation applications; CN76018, CN77208, CN77438, CN78569, CN79550, CN84229, CN84804, CN84988 and a road application CN84976. Private felling licence applications were listed as TFL00166118 and TFL00288319. No data was found for Coillte felling projects. The concluding in-combination statement reads as 'This project lies in a rural landscape in Cloonfad and Lissergool, Loughlinn, Co. Roscommon, in the River Sub Basin Lung_040. The River Sub Basin Lung_040 has approximately 14% forest cover

which is higher than the national average of 11%. At 9.64 hectares, the project is considered small in scale. Forestry activity including afforestation, forest roading and felling, have been either submitted and still under evaluation, licenced / approval in place or completed and approved in the River Sub Basin in the last 5 years and are listed above. These are subject to environmental protection measures. A number of developments in the River Sub Basin Lung_040 have been granted planning permission over the last 5 years and these are listed above and are also subject to appropriate environmental protection measures. As can be seen from the orthophoto this forest adjoins another forest.

Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.

Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.

Therefore, DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura site(s) listed above.'

DAFM confirmed that the in-combination document was available in full to the DI prior to any decision being made and it was only in preparing this documentation for the FAC that the content above was omitted.

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 fourteen European sites within 15km of the proposed road 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 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.

The DAFM representative in response to query at oral hearing, confirmed it was the contention of the DAFM that the Appropriate Assessment screening carried out and conclusions reached in relation to these European Sites was in compliance with the requirements of the law and relevant procedures. The FAC examined publicly available information from the NPWS and EPA and identified the same fourteen European sites. 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. 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.

Addressing the grounds that the establishment of the forest did not comply with the law, the FAC is satisfied that the afforestation of the lands in question underwent a regulatory consent process before receiving approval. This would have included an assessment for the requirement for an EIA.

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 the thinning, clearfell and replanting of 9.64 ha and therefore does not attract mandatory submission of an EIA report. 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. Addressing the grounds of appeal that questions the appraisal of the original planting decision in terms of EIA, the FAC is satisfied with the response furnished by the DAFM in their Statement of Fact that the planting underwent a regulatory consent process, including an assessment for the requirement for an EIA, before receiving approval.

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 no serious or significant error was made and is therefore affirming the decision of the Minister regarding licence TFL00497820.

Yours sincerely,

A black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee