



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

28 May 2020

[REDACTED]
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[REDACTED]

Our ref: FAC 231/2019

Subject: Appeal in relation to felling licence TFL00316719

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence TFL00316719.

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

Felling licence TFL00316719 was granted by the Department on 29 August 2019.

Hearing

A hearing of appeal 231/2019 was conducted by the FAC on 27 May 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton and Mr Pat Coman

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision in respect of this licence (Reference TFL 00316719).

The proposal is for clearfelling on a stated site area of 4.4ha in 2 plots (3 parcels) at Mullymagowan, Co. Cavan. The harvest year is stated to be 2019. Replanting would consist of 90% Sitka Spruce, 5% alder and 5% open space on both plots.

The DAFM referred the application to Cavan County Council and Inland Fisheries but there is no response from either body on file. The DAFM approved the licence, which issued on 29th August 2019 subject to standard conditions.

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The decision to approve the licence is subject to a single appeal. The grounds contend that, based on the information supplied it is not possible to approve the licence in accordance with the provisions of the Habitats and EIA Directives. Reference is made to several Court Judgments. There was no proper assessment and no assessment of cumulative effects.

In response to the grounds of appeal, the DAFM stated that the licence was assessed according to all Forestry Service Guidelines and Standard Operating Procedures at the time and was screened out for appropriate assessment due to the lack of hydrological connectivity to any Natura 2000 site. Other projects in the area include new dwellings, poultry house, slatted shed and quarry extension. There would be no direct or in-combination effects on any Natura 2000 site.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report, dated 20th May 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

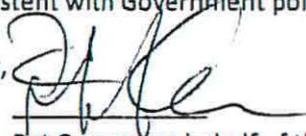
The report identifies a single Natura 2000 site located within 15 kilometres of the project lands. This is Lough Sheelin SPA at a separation distance of 13km. The qualifying interests for the site are Great Crested Grebe, Pochard, Tufted duck, Goldeneye, Wetland and Waterbirds. The report concluded that mature forest plantation is not a desired or suitable habitat for the listed species. There is no hydrological connectivity from project lands to the SPA. It concludes that there would be no effect on Lough Sheelin arising from the proposed clearfelling. Other sites considered in the report are Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at distances of approximately 17.5km and 17.0km respectively. There is hydrological connectivity to these sites but at a distance of approximately 33.5km. The report concludes that there is no likelihood of significant effects on these sites arising from the proposed clearfelling alone or in-combination with other projects.

The FAC is satisfied that the screening procedure detailed in the consultant's report is in accordance with the requirements of the Habitats Directive. The FAC agrees with and adopts the findings of the report in respect of the Natura 2000 sites identified, (Lough Sheelin SPA, Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA), having regard to the qualifying interests for those sites. The FAC concludes that the proposed clearfelling alone, or in-combination with other projects would not be likely to have significant effects on any Natura 2000 site.

Furthermore, the FAC agrees with the conclusion of the consultant's report that the proposed clearfelling and replanting does not come within a class of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU). The FAC also concludes that the proposed development by itself, or cumulatively with other permitted projects would not be likely to give rise to significant effects on the environment.

In deciding to confirm the licence the FAC concluded that the proposed clearfelling and replanting would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee

FAC Ref. No. 231/2019

DAFM Ref. No. TFL0316719

Details of application:

The application is for the clear-felling of mainly coniferous trees in 2 plots which contain 3 parcels of land in the townland of Mullymagowan in Co. Cavan.

Plot number one comprises an area of 2.9 hectares of land. This is indicated land parcel 070 on the plans. The trees to be clear felled are Sitka Spruce. Plot 2 is in 2 parcels with a total area of 1.5 hectares. The parcels are indicated as parcels 158 and 200 on the plans. The trees to be felled are Sitka Spruce and some Lawsen Cypress, Japanese Larch and Beech. The lands would be replanted.

Location and details of lands:

The project lands are located a short distance to the east of the N3 national primary road about 7 kilometres north of the village of Billis Bridge between Stradone and Virginia. The lands are about 7 kilometres north of Ballyjamesduff.

The lands are located in an upland rural area above the 600-foot contour. They are at the southern end of the River Erne catchment. The River Blackwater/Boyne catchment is a short distance to the south and the Shannon catchment is to the west.

Land uses in the area are a mixture of agriculture and forestry with agriculture being the dominant use. There are also 2 quarries located in close proximity. There is a quarry a short distance to the north of plot 1 and another to the west of the N3. Aerial photography indicates what appears to be a relatively large scrub land area to the east of plot 2 i.e. land parcels 158 and 200. This scrubland area extends east wards, across the public road, and includes an area to the east of the road. The road in question appears to be relatively new and is not shown on the older OS maps.

The old OS maps indicate a stream or drain located abutting part of the western boundary of land parcel 158 in plot number 2. This drain appears to flow northwards. The OS maps also indicate a well located at the northern edge of plot 1.

Decision of DAFM:

The Department decided to approve the clear-felling and grant a licence. The licence is subject to a number of conditions of a standard variety. The conditions require compliance with standard Forest Service requirements and standards. The licence also sets out a replanting schedule. This specifies, that both plots are to be replanted with, are 90% Sitka Spruce 5% Alder trees and the remaining 5% is to be open space.

Grounds of appeal:

It is submitted that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the EU Habitats and EIA Directives, and having regard to the following judgements of the CJEU; Case C-258/11 Peter Sweetman and Others v An Bord Pleanala, Case C-164/17 Edel Grace and Peter Sweetman v An Bord Pleanala, Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta, and Case C-461/17 Brian Holohan and Others v An Bord Pleanala.

In a submission which he had made prior to the appeal the appellant stated that there is no proper assessment and there is no assessment of cumulative effects. He had requested that this be attached to all his appeals unless otherwise *stated*.

DAFM response to appeal:

It is submitted that the Felling Licence Application was assessed according to all Forest Service Guidelines and Standard Operating Procedures at the time of application. The Application was screened for Appropriate Assessment and was 'Screened out' due to the lack of hydrological connection and distance, to any Natura 2000 sites.

The inspector states that in response to the Appeal she had checked the EPA mapping website, National Planning Website, NPWS protected sites website and IFORIS for any potential 'in combination' effect arising from other projects in the vicinity of the proposed felling/replanting area. Projects within the vicinity of the application area include new dwelling projects, new poultry house, new slatted shed and extension of existing quarry. She submits that there will be no direct or 'in combination' effect to any Natura 2000 site as a consequence of the proposed felling/replanting operations. No change is recommended to the recommendation.

Screening for Appropriate Assessment:

There is only one Natura 2000 site located within 15 kilometres of the project lands. The site in question is the Lough Sheelin SPA. The SPA is located about 13 kilometres from the lands where clear-felling is proposed.

The special interests of the Lough Sheelin SPA and for which the site has been designated are

Great Crested Grebe (*Podiceps cristatus*) [A005]

Pochard (*Aythya ferina*) [A059]

Tufted Duck (*Aythya fuligula*) [A061]

Goldeneye (*Bucephala clangula*) [A067]

Wetland and Waterbirds [A999]

These special interests are water-birds for which a mature coniferous plantation is not a desired or suitable habitat. The Lough Sheelin SPA is also located in the River Shannon catchment being connected to the Shannon through the River Inny. There is no hydrological connection from the project lands to the SPA.

In the circumstances as set out in the previous paragraph the proposed tree felling would have no effect on the Lough Sheelin SPA. There is, accordingly, not likely to be any significant effect on the Natura 2000 site in question.

The lands where the trees are to be felled are in the Erne catchment and drain towards the north and the River Erne. The closest Natura sites in this direction are the Lough Oughter and Associated Lakes SAC and the Lough Oughter Complex SPA. The direct distance to the SAC is about 17.5 kilometres and the nearest point of the SPA is at a distance of about 17 kilometres. The distance along the hydrological connection however is considerably longer due to the circuitous route of the river network. The distance to the SAC along the river network from the southern end of the nearest stream, marked on the EPA stream network (which is some distance to the north of the project lands), is over 30 kilometres. (I estimate about 33.5 kilometres).

The qualifying interests of the Lough Oughter and Associated Lakes SAC are
Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]

Bog woodland [91D0]

Lutra lutra (Otter) [1355]

The special interests of the Lough Oughter Complex SPA are

Great Crested Grebe (*Podiceps cristatus*) [A005]

Whooper Swan (*Cygnus cygnus*) [A038]

Wigeon (*Anas penelope*) [A050]

Wetland and Waterbirds [A999]

The mature coniferous plantation in the project lands is not a habitat required or frequented by the water-birds for which the SPA has been designated. Due to the distance from the lands to the SAC the tree felling proposed will have no impact on water quality or flow in the SAC. The proposed tree felling, accordingly is not likely to have any significant effect on the Lough Oughter Complex SPA or on the Lough Oughter and Associated Lakes SAC.

The Department in its submission refers to having checked the Departmental inventory of forestry projects but does not provide any details of any such projects. The Department also references some developments for which planning permission has been granted. The projects listed include new dwelling projects, new poultry house, new slatted shed and extension of existing quarry. In checking recent planning permissions in the area, I noted the developments referred to by the Department. The nearest permitted development to the 2 land parcels in plot 2 is for a single storey domestic double garage. The nearest permitted developments to plot 1 are a 2-storey house and a slatted house and other farm developments on sites to the northeast of plot 1. There are other permissions for houses and farmyard developments in the general area. There is also permission for an extension of the quarry located to the north of plot 1. As I consider that the proposed tree felling

would have no effect on any Natura 2000 site, I also consider that it would not have any in-combination effect with any other project or plan.

In the above assessment I have not considered the normal good tree felling practices, referred to in the documentation, in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all afforestation, and are not designed to prevent any significant effect on any Natura sites.

The tree felling proposed is clearly not related to or necessary for the management of any Natura site. I conclude that the proposed tree felling of itself or in combination with any other plans or projects is not likely to have any significant effect on any Natura 2000 site.

Screening for Environmental Impact Assessment (EIA):

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 11 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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 (nor clear-felling) are referred to in Annex 1. Annex 11 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 11). 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. It appears to me that felling of trees and subsequent replanting, 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). I will, however, consider the likely effects of the proposal on the environment.

The site is located in an area where the predominant land uses are agriculture and forestry. Forestry by its nature involves afforestation, thinning, clear-felling and replanting. Such activities are normal and not out of character visually or otherwise in an area such as that in question. The area is not designated as being of exceptional or special visual amenity significance in the current Co. Cavan development plan. Some of the trees in question, particularly those in plot 1, are visible from some

locations along the surrounding road network. They are not however particularly prominent and are not of such exceptional amenity value as to warrant retention. I consider that the tree felling proposed would not have any significant impact on the landscape.

The clear-felling will give rise to the transport of timber on the local roads. This will cause some inconvenience in the short term but is an inevitable consequence of the afforestation and would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. I also consider that the clear felling proposed and subsequent replanting of the lands would not be likely to give rise to significant effects on the environment due to water or air pollution.

There are no national monuments located in the lands where tree felling is proposed. The nearest such monuments are two, located together, about 250 metres to the northwest of plot number 1. These are a rath and possible souterrain. The next closest sites of interest are the site of a former church and a disused graveyard located about 500 metres to the south of land parcel 200 of plot 2. The tree felling and re-planting would have no impact on any of these sites.

I consider that the tree-felling proposed does not come within the classes of project covered by the EU EIA Directive. I also consider that it would not be likely to give rise to significant effects on the environment. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening

Overall conclusion:

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

20/5/2020

