



07 October 2020

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Our ref: FAC 229/19

Subject: Appeal in relation to felling licence TFL00294519

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00294519.

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 TFL00294519 was granted by the Department on 06 September 2019.

#### Hearing

A hearing of appeal 229/19 was conducted by the FAC on 22 September 2020.

#### FAC Members:

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

#### Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and all submissions/observations before deciding to vary the decision in respect of licence TFL00294519 as follows for the reasons set out:

To remove the condition;

- *The area is 100m above sea level, and in West Clare; it is too exposed for broadleaves.*

The proposal is at Lack, Co Clare and involves the clear-felling of 0.99ha Sitka Spruce in 2 plots and the replanting of plot 1 (0.69 ha) with Sitka Spruce, and plot 2 (0.30 ha) with additional broadleaves. Plot 2 is described by the DAFM as a 'long narrow line of trees along a hedgerow'.

The proposal is in a rural area, there is a cluster of settlements at the North and a quarry to the Northeast both at a remove of over 100m and divided from the proposal by a public road (L2070 / L2072), there is a residence and small farm yard c.150m to the West, the lands in vicinity are undulating and are grass/grass-rush. There is very little forestry in immediate area but forestry is common in the wider area. GSI give rock type in the area as mudstone, siltstone and sandstone. Soils are mineral poorly drained and peaty poorly drained mineral per soil maps. The proposal is a relatively small site situated on the edge of a large area of Fresh Water Pearl Mussel (FWPM) catchment, a narrow section of plot 2 is within the FWPM catchment. The proposal is in the Shannon Estuary North Catchment and the main part (plot 1 and part of plot 2) is in the Owenslieve Sub-Catchment, with the remainder in the Cloon Sub-Catchment. The Ballynacally stream flows from plot 1 to the east and directly to the Shannon estuary.

In processing DAFM had referred the application to the National Parks and Wildlife Services, who responded on 24 June 2019 that part of the site is in the Shannon-Cloon FWPM Catchment and the DAFM must ensure that all guidelines for forestry operations in a FWPM catchment apply. NPWS also referred to the ensuring the 'code of best forestry practice' and 'environmental guidelines' are complied with.

The Conditions of the licence are standard with the following added;

- Replant the main block with Sitka Spruce, and the long narrow sections of 0.25ha to the north and the west with any species the applicant desires.
- The area is 100m above sea level, and in West Clare; it is too exposed for broadleaves.
- Total percentages of area to be replanted: 29% broadleaves in the long narrow sections to the north and south of the main block, and 71% Sitka Spruce in the main block.

The condition that "the area is 100m above sea level, and in West Clare; it is too exposed for broadleaves" is in conflict with the other licence conditions and the schedule for replanting which requires planting of additional broadleaves on 29% of the clear-felling area.

There is one appeal against the licence and the grounds of appeal include that based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CIEU; 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.

The DAFM responded to the grounds of appeal stating that at the time this licence was submitted, inspected and assessed, the Forest Service rules governing the appropriate assessment screening were followed. DAFM stated that plot 2 consists of a long narrow line of trees along a hedgerow, this does not qualify as a forest under the Forestry Act, 2014 and as such does not require a licence for the purposes of felling, this part of the site is within the FWPM catchment but no pathways exist from this part of the proposed felling site to into the wider catchment. Notwithstanding this fact, following consultation with colleagues this plot was licensed for felling and replanting in the interest of expediency. Plot 1 is outside of the FWPM Catchment area and therefore had no bearing on the species or its habitat. The site was not within any 3km buffer emanating from a Natura 2000 site, and the closest Natura 2000 designation measured directly is 4340m to the south east. On the basis of the above, the site was recommended for approval with conditions by the inspector.



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Prior to deciding this appeal, the FAC undertook a stage 1 screening for Appropriate Assessment in compliance with 6(3) of the Habitats Directive 92/43/EEC and with SI 477 of 2011, and this is available on the public file. Based on location and the wider evidence to hand the FAC considers the proposal is not connected with or necessary to the management of any Natura 2000 site. Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, on Natura 2000 sites within a radius of 15km. The FAC considered in this instance that there is no likelihood of significant effects on any Natura site outside of that radius. There are five Natura sites within 15km; Lower River Shannon SAC, Knockanira House SAC, River Shannon and River Fergus SPA, Newhall and Edendale SAC, and The Barrigone SAC. None of the licence conditions are considered mitigation measures in respect of any European site in this instance.

The conservation objectives for FWPM in the Lower River Shannon SAC relate to the FWPM population in the Cloon River as identified in map 15 of the published conservation objectives by the NPWS. While part of plot 2 (c. 0.2 ha) is within the Shannon-Cloon FWPM catchment, 190m length of the total 265m of the plot length, there is no surface outflow drain or stream towards the catchment along this section of plot and no evidence before the FAC of a direct link from this section of the proposal to an aquatic zone, there is a moderate slope from the section within the catchment toward the Glenconauun Beg stream at c. 250m distance and although there is a small rise before the stream edge there is a wet area just prior. The section of plot 2 that is within the FWPM catchment is over the brow of a hill (watershed effect) from the remainder (plot 1 and part of plot 2) and comprises a section of the narrow plot. The Shannon-Cloon FWPM catchment is c. 62 km<sup>2</sup> in area. In addition this section is a 'narrow line of trees' and operations involved in felling and replanting would not be significant or give rise to any likely significant debris or sediments and no significant effects on the qualifying interest or Natura 2000 site are likely.

There is an outflow stream from plot 1, the Ballynacally stream, toward the Lower River Shannon SAC for which the FWPM is a qualifying interest. Further downstream the stream forms part of the European site prior to entering the Shannon Estuary close to Deer Island. The edge of the SAC is at a distance of 6.1 km downstream from the proposal per EPA mapping. Also, the River Shannon and River Fergus Estuaries SPA is at a downstream distance of 7.8 km from the proposal. FWPM require clear water and stable cobble and gravel substrate, whereas this part of the SAC is the main tidal estuary and in these circumstances FAC conclude that FWPM are not likely to be present. The bird species and wetlands of the SPA would have no likelihood of significant effects from the proposal for reason of unsuitable habitats and absence of connectivity and a pathway for any effects to the wetlands. Having regard to the downstream distance to the Lower River Shannon SAC and the River Shannon and River Fergus SPA, the scale of the proposal (0.8 ha of which is in the Owenslieve sub-catchment), and the nature of the proposal as clear-felling and replanting, the likelihood of significant effects on the conservation objectives of the SAC and SPA does not arise.

The Knockanira House SAC is located close but not adjacent to the Clareen River, a tributary of the Fergus, and comprises a 2 storey building with a single storey to rear, while sharing the same sub-

catchment as the proposal the SAC is divided from the proposal by landscape features and rivers and the proposal is well outside of the 2.5km foraging range (NPWS data) of the qualifying interest bat and there is no likelihood of significant effects from the proposal. The Barrigone SAC is located across the Shannon Estuary from the proposal as well as divided by the lands to the shoreline at each side of the estuary. No pathway exists for any likelihood of significant effects to arise from the proposal on this European site, especially with regard to the qualifying interests and the conservation objectives. The Newhall and Edendale SAC is located to the Northwest of the proposal in the Fergus sub-catchment upstream from the Shannon estuary and no pathway exists over which any significant effect on the bat species or caves could be likely.

There are two other forestry related projects in the area, both are West of the proposal in Clenconnaun More TD; CN85437 (10.32 ha afforestation) and CN85717 (26.47 ha of afforestation), both of these are within the Cloon Sub-Catchment, are separated from the proposal by agricultural land and by public road. Clare County Council planning permissions include for a current application for a dormer bungalow development at Lack TD (00274), a dwelling (17529) was granted in 2017, and in Tonlagee a dwelling and associated works in 2016 (16638). The dwelling 17529 is alongside part of plot 2 within the FWPM catchment section. Each of the others is separated from the proposal by agricultural land and by public road. No other plans or projects arise and due to the small scale of the proposal in this catchment there is no likelihood the proposal will in-combination with these plans and projects give rise to any likelihood of significant effects on a Natura 2000 site.

Having regard to the nature, small scale and location of the proposal, its degree of separation from European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

The EU EIA 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. Neither afforestation nor deforestation are 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 felling of trees with replanting and 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 proposal, which is very small in scale, is expected to give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. Given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term and would not give rise to any likely significant effect in terms of water quality. There would be no significant effects on any designated sites or archaeological sites. The site is not sensitive to fisheries. Having regard to the scale and nature of the proposal and the existing pattern of development in the



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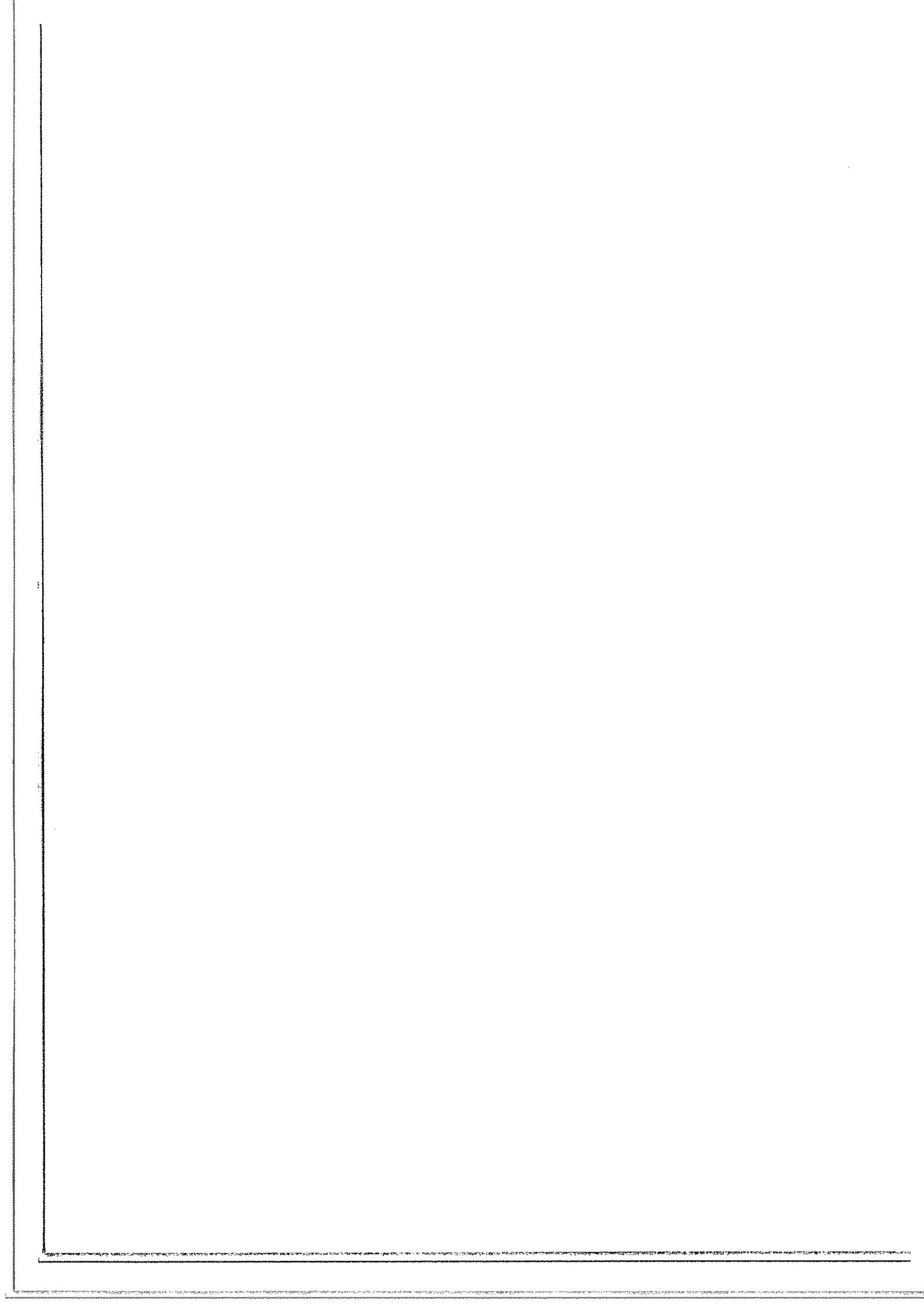
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area, there is no possibility that the proposed development alone, or cumulatively with other projects, plans or land uses, would give rise to significant effects on the environment.

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

Yours sincerely,

**Pat Coman on behalf of the Forestry Appeals Committee**



## TFL00294519 – appeal 229/20 – Screening and environment examination

### Background

The proposal is at Lack, Co Clare and involves the clear-felling of 0.99ha ha Sitka Spruce. The proposal comprises two plots, replanting of plot 1 (71% of the overall) is with Sitka Spruce, and plot 2 (29% of the overall area) is with additional broadleaves. Plot 2 is described by the Department of Agriculture Food and the Marine (DAFM) as a 'long narrow line of trees along a hedgerow'. Felling licence issued 06 September 2019.

The proposal is in a rural area, there is a cluster of settlements at the North and a quarry to the North East both at a remove of over 100m and divided from the proposal by a public road (L2070 / L2072), there is a residence and small farm yard c.150m to the West, the lands in vicinity are undulating and are grass/grass-rush. There is very little forestry in immediate area but forestry is common in the wider area. The proposal is a relatively small site situated on the edge of a large area of Fresh Water Pearl Mussel (FWPM) catchment. Proposal is in the Shannon Estuary North Catchment and the main part (plot 1 and part of plot 2) is in the Owenslieve Sub-Catchment, with the remainder (comprising a part in FWPM catchment) in the Cloon Sub-Catchment. Ballynacally stream flows from the area of the site (plot 1) that is outside of the FWPM catchment and to the east, directly to the Lower River Shannon SAC. The site is hydrologically connected to the Natura site via this watercourse and then also connected to the River Shannon and River Fergus Estuaries SPA. In processing DAFM had referred the application to the National Parks and Wildlife Services, who responded on 24 June 2019 that part of the site is in the Shannon-Cloon FWPM Catchment and the DAFM must ensure that all guidelines for forestry operations in a FWPM catchment apply. NPWS also referred to the ensuring the 'code of best forestry practice' and 'environmental guidelines' are complied with. GSI give rock type in the area as mudstone, siltstone and sandstone. Soils are mineral poorly drained and peaty poorly drained mineral per soil maps.

The Conditions of the licence are standard with the following added; - Replant the main block with Sitka Spruce, and the long narrow sections of 0.25ha to the north and the west with any species the applicant desires. - The area is 100m above sea level, and in West Clare; it is too exposed for broadleaves. - Total percentages of area to be replanted: 29% broadleaves in the long narrow sections to the north and south of the main block, and 71% Sitka Spruce in the main block.

### Appropriate Assessment

#### European Sites

The proposed development as a clear-felling and replanting is not connected with or necessary to the management of any Natura 2000 site. Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, on Natura 2000 sites within a radius of 15km. The FAC considered in this instance that there is no possibility of significant effects on any Natura site outside of that radius. There are five Natura sites within 15km and these are as follows;

Site Code	Site Name	Distance To (m)	Qualifying Interests
002165	Lower River Shannon SAC	4238.29	<b>Habitats;</b> 1110 Sandbanks which are slightly covered by sea water all the time / 1130 Estuaries / 1140 Mudflats and sandflats not covered by seawater at low tide / 1150 Coastal lagoons / 1160 Large shallow inlets and bays / 1170 Reefs /

Site Code	Site Name	Distance To (m)	Qualifying Interests
			1220 Perennial vegetation of stony banks / 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts / 1310 Salicornia and other annuals colonising mud and sand / 1330 Atlantic salt meadows / 1410 Mediterranean salt meadows / 3260 Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation / 6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils / 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior <b>Species;</b> 1029 Freshwater Pearl Mussel / 1099 River Lamprey / 1349 Common Bottlenose Dolphin / 1355 Otter / 1096 Brook Lamprey / 1095 Sea Lamprey / 1106 Salmon
002318	Knockanira House SAC	10448.54	<b>Species;</b> 1303 Lesser Horseshoe Bat
000432	Barrigone SAC	12591.85	<b>Habitats;</b> 5130 Juniperus communis formations on heaths or calcareous grasslands / 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates / 8240 Limestone pavements <b>Species;</b> 1065 Marsh Fritillary
002091	Newhall and Edenvale Complex SAC	13695.75	<b>Habitats;</b> 8310 Caves not open to the public <b>Species;</b> 1303 Lesser Horseshoe Bat
004077	River Shannon and River Fergus Estuaries SPA	4241.34	<b>Birds ;</b> A179 Black-headed Gull / A141 Grey Plover / A038 Whooper Swan / A140 Golden Plover / A048 Shelduck / A157 Bar-tailed Godwit / A046 Light-bellied Brent Goose / A137 Ringed Plover / A156 Black-tailed Godwit / A160 Curlew / A164 Greenshank / A050 Wigeon / A162 Redshank / A142 Lapwing / A017 Cormorant / A056 Shoveler / A052 Teal / A143 Knot A062 Scaup / A054 Pintail / A149 Dunlin <b>Habitats;</b> Wetlands

The conservation objectives for FWPM in the Lower River Shannon SAC relate to the FWPM population in the Cloon River as identified in map 15 of the published conservation objectives by the NPWS. While part of the plot 2 (c. 0.2 ha) is within the Shannon-Cloon FWPM catchment, 190m length of the total 265m of the plot length, there is no surface outflow drain or stream towards the catchment along this section of plot and no evidence before the FAC of a direct link from this section of the proposal to an aquatic zone, there is a moderate slope from the section within the catchment toward the Glenconnaun Beg stream at c. 250m distance and although there is a small rise before the stream edge there is a wet area just prior. The section of plot 2 that is within the FWPM catchment is over the brow of a hill (watershed effect) from the remainder (plot 1 and part of plot 2) and comprises a section of the narrow plot. The Shannon-Cloon FWPM catchment is c. 62 km<sup>2</sup> in area. In addition this section is a 'narrow line trees' and operations involved in felling and replanting would not be significant or give rise to any likely significant debris or sediments and no significant effects are likely.

There is an outflow stream from plot 1, the Ballynacally stream, toward the Lower River Shannon SAC for which the FWPM is a qualifying interest. Further downstream the stream forms part of the European site prior to entering the Shannon Estuary close to Deer Island. The edge of the SAC is at a distance of 6.1 km downstream from the proposal per EPA mapping. Also, the River Shannon and River Fergus Estuaries SPA is at a downstream distance of 7.8 km from the proposal. Having regard to the downstream distance to the Lower River Shannon SAC and the River Shannon and River Fergus SPA, the scale of the proposal - 0.8 ha of which is in the Owenslieve sub-Catchment, and the nature of the proposal as clear-felling and replanting, while having the potential for some run off over limited periods of activities the likelihood of significant effects on the conservation objectives of the SAC and SPA at this location, close to the tidal estuary, does not arise. FWPM require clear water and stable cobble and gravel substrate. This part of the SAC is the main tidal estuary. In these circumstances FAC conclude that FWPM are not likely to be present. The bird species and wetlands of the SPA would have no likelihood of significant effects from the proposal for reason of unsuitable habitats and absence of connectivity and a pathway for any effects to the wetlands.

The Knockanira House SAC is located close but not adjacent to the Clareen River, a tributary of the Fergus, and comprises a 2 storey building with a single storey to rear, while sharing the same sub-catchment as the proposal the SAC is divided from the proposal landscape features and rivers and the proposal is well outside of the 2.5km foraging range (NPWS data) of the qualifying interest bat and there is no likelihood of significant effects from the proposal. The Barrigone SAC is located across the Shannon Estuary from the proposal as well as divided by the lands to the shoreline at each side of the estuary. No pathway exists for any likelihood of significant effects to arise from the proposal on this European site, especially with regard to the qualifying interests and the conservation objectives. The Newhall and Edendale SAC is located to the Northwest of the proposal in the Fergus sub-catchment upstream from the Shannon estuary and no pathway exists over which any significant effect on the bat species or caves could be likely.

#### ***In combination***

There are two other forestry related projects in the area, both are West of the proposal in Clenconaun More TD; CN85437 regards 10.32 ha afforestation and CN85717 regards 26.47 ha of afforestation, both of these are within the Cloon Sub-Catchment, are separated from the proposal by agricultural land and by public road. Clare County Council planning permissions include for a current application for a dormer bungalow development at Lack TD (00274), a dwelling (17529) was granted in 2017, and in Tonlagee a dwelling and associated works in 2016 (16638). The dwelling 17529 is alongside part of plot 2 within the FWPM catchment section. Each of the others is separated from the proposal by agricultural land and by public road. No other plans or projects arise.

Having regard to the nature, small scale and location of the proposal, its degree of separation from European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

#### ***Examination of environmental effects***

Felling and replanting with no change of land-use does not fall within a class of development to which the EIA Directive or the Forestry Regulations 2017 applies and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA

Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive.

In terms of environmental effects, the proposed development, which is very small in scale, is expected to give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. Given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term and would not give rise to any likely significant effect in terms of water quality. There would be no significant effects on any designated sites or archaeological sites. The site is not sensitive to fisheries. Part of plot 2 is within the peripheries of the Shannon Cloon FWPM catchment. Having regard to the scale and nature of the proposal and the existing pattern of development in the area, there is no possibility that the proposed development alone, or cumulatively with other projects, plans or land uses, would give rise to significant effects on the environment.

Pat Coman on behalf of the Forestry Appeals Committee

05 October 2020