



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

28 October 2020

[REDACTED]
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[REDACTED]
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[REDACTED]

Our ref: 364/19

Subject: Appeal in relation to felling licence MN02 FL0035

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 licence MN02 FL0035.

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 MN02 FL0035 was granted by the Department on 31 October 2019.

Hearing

A hearing of appeal 364/19 was conducted by the FAC on 08 September 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy 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 all other submissions, including the response to a request for further information by the FAC, before deciding to set aside and remit the decision to grant this licence (Reference MN02 FL0035).

Licence issued 31 October 2019 for clear felling 8.1 ha of Sitka spruce and reforestation with 100% Sitka Spruce at Fairfield Demesne, Co Monaghan. This is a moderately sloped site with elevations between 372ft and 310ft, the surrounds descend to Drumlona Lough shore at 266ft while the proposal is separated from the Lough by other forestry and shore area. Underling soil type is given as surface water gleys and ground water gleys. There are no aquatic zones on the proposal site, the southern boundary of the site is c. 100m from edge of Drumlona Lough. The proposal is in the Erne Catchment, the Drumore Sub-Catchment, and in the Drumore River Waterbody. A stream

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c. 180m east of the proposal, the Glencorrick, flows to Drumlona Lough and is divided from the proposal by mature/semi-mature forestry.

Drumlona Lough flows into Drumore Lough as does Inner Lough, Cora Lough Town Lough and Wood Lough. A small lake, Green Lough which is northwest of the proposal, flows into Drumlona Lough. The Drumore Lakes pNHA embraces each of these lakes.

There are no referrals by the DAFM evidenced in this instance. The licence was granted subject to standard conditions and none of those conditions are considered to be in mitigation of any effects on European sites.

There is one appeal against the licence and the grounds are 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, that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J.in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) "There is no need to *establish* such an effect; it is, as Ireland observes, merely necessary to determine that there *may be* such an effect." The appellant also contends that if mud was to enter the lakes it could have an effect on the SAC/SPA, and the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect.

The DAFM replied to the grounds of appeal that a screening for Appropriate Assessment was carried out focusing on Natura sites within a 15 km zone around the proposed clear-felling, that various information submitted by the applicant as part of the licence application was considered including maps, harvesting and establishment environmental operational procedures, an Appropriate Assessment pre-screening report and associated methodology. Also considered were the comments and observations of referral bodies who submitted information to the Department in respect of the licence. The DAFM deemed that the project, when considered in combination with other plans and projects, as identified in the pre-screening report, will not give rise to the possibility of a significant effect on any of those Natura sites, and the project was screened out. The DAFM stated that there is no direct hydrological connectivity between this felling licence application area and Drumlona Lough which is c. 115 m to the south of the application area.

The applicant submitted that the project site is on a gentle south west facing slope mainly, there is an existing forest road bounding the southern edge of the site and a forest track across the upper part of the site, and there is a lough south of the project area. The applicant's environment manager visited the site on 20 July 2020 and their observations indicate that this is a dry site, and there is c. 100m between the southern boundary road and Drumlona Lough with a covering of 70m conifer and 30m of mixed habitat (open and scrub woodland) in between. The applicant submitted that there is no hydrological connection between the project and the lake, and the Black stream is c. 235m south west of the project site but there is no connection between this stream and the project site. The applicant continued that Drumlona Lough flows directly into Drumore Lough from which the Drumore stream flows 7.1km to the Annalee River. The Annalee River flows 16.1km to the Lough Oughter and Associated Loughs SAC and the hydrological distance from the project site to the nearest aquatic SAC is greater than 23km. The applicant submitted that due to the relatively small size of the proposed forest operation (<9ha) and the absence of a hydrological connection and the significant distance to



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the nearest SAC, whereby the water passes through two lakes, the potential impact on European Sites is considered non-existent.

A DAFM appropriate assessment screening dated 08 May 2020 (post the licence date) has N/A for any EU sites at <15km, accompanied by an in-combination screening setting out planning permissions and forestry projects with the conclusion '*when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura site(s).*' The DAFM indicated other forestry projects comprise 21.77 ha of planting, 180m of forest road and 557.21 ha of felling for the period from 2015 to 2020.

In the absence of information regards the locations of the other forestry projects the FAC sought additional information and on receipt this information was provided to each party to the appeal. The FAC received mapping of the licences. Evidence shows there are 113.20 ha currently licensed in the sub-basin for both thinning (64 ha) and clear-fell (48 ha). The FAC notes a number of licences arise proximate to Drumore Lough, which lies between the proposal and Lough Oughter and Associated Loughs SAC. In addition the proposal is immediately surrounded by lands subject to a thinning licence application (MN02-FL0034) comprising an area of 234 ha, some of which is at a remove but all is within the vicinity of the cluster of Loughs and a part effectively surrounds the project site at appeal. Licence MN02-FL0034 is applied on but not yet approved per the DAFM but is considered by the FAC to be a project for the purposes of screening for appropriate assessment at this time. Also felling licence MN02-FL0013 is just east of the proposal. Other forestry projects in the vicinity are further away and located on the southern side of Drumore Lough. All of the projects drain toward Drumlona Lough, Drumore Lough or the other loughs in the immediate area that connect to Drumore Lough. The extent of other forestry projects initially advised includes for some projects, other than those now referred to, that while in the same river sub-basin are at a significant distance of remove.

In respect of its appropriate assessment screening prior to the issuing of the licence MN02 FL0035, there is no evidence regards an assessment of in-combination effects regards plans and projects other than those set out on the applicant's pre-screening report which comprised 4.51 ha of clear-felling. The subsequent information shows there were extensive amounts of other forestry related projects that were not taken into consideration at that time, and there are now additional projects to be considered. Having regard to the number and nature of forestry projects listed, the FAC is satisfied that the failure of the DAFM to carry out a satisfactory in combination assessment prior to the granting of the licence constituted a serious error in the making of the decision the subject of the appeal.

In the above circumstances, the FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment of the proposed development specifically in combination with other plans and projects, before making a new decision in respect of the licence.

Yours Sincerely

Pat Coman, on behalf of the FAC

