



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

11 September 2020

[REDACTED]
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Our ref: FAC 317/2019

Subject: Appeal in relation to felling licence TFL00318219

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence TFL00318219.

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 TFL00318219 was granted by the Department on 17 October 2019.

Hearing

A hearing of appeal 317/19 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, all submissions/observations, and carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive and an examination in respect of environmental effects, before deciding to confirm the decision of the Minister regarding licence TFL00318219.

The proposal is for 1.2 ha of clear felling and reforestation with 90% Sitka Spruce, 5% alder and 5% open space, and is part of a c. 2.7 ha stand, which is across a public road from a further c. 2.7 ha of forestry. The proposal site is relatively flat and located in a primarily agricultural area with some small forest pockets, there are dispersed rural dwellings in the vicinity and none adjoin the proposal site. The site is fronted by public road all along its west and north boundaries. The Licence was granted on 17 October 2019 subject to standard conditions requiring compliance with various standards and

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Kilminchy Court,
Portlaoise,
Co Laois
R32 DWTS

Eon/Telephone 076 106 4418
057 863 1900

guidelines. The FAC considered that none of the conditions attached to the licence in this instance require measures which are designed to mitigate effects on a European site.

There is a single appeal against the decision to grant the Licence. The grounds of appeal contend 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 CJEU; Case C-258/11, Peter Sweetman and Others v An Bord Pleanála, Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanála, 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 Pleanála. The grounds contend that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan 3. in; Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014); and provides the following extract; "there is no need to *establish* such an effect; it is, as Ireland observes, merely necessary to determine that there *maybe* such an effect."

In response to the appeal grounds the DAFM set out that the application was assessed in accordance with procedures and guidelines relevant at the time of the application, and that the proposed operations for the felling and replanting (ground preparation, fencing, drainage, vegetation control, fertiliser application and access) were considered, that species choice, land/soil type and impact on landscape were also considered. In addition that the amount of afforestation within the townland and water catchment areas (current and within the last 5 years) were also considered, and the proposed felling and replanting was assessed for potential impact on water quality, archaeology and protected species and habitats, and there is a no watercourse, river or lake within or adjacent to the Felling and Replanting area. DAFM also set out that the in combination effect was assessed for as part of the application processing and documented in IFORIS (DAFM's forestry database) and Cavan county development plan and An Bord Pleanála were reviewed for other projects in the vicinity of the proposed Afforestation, that the felling and replanting application proposed under TFL00318219 will not have any significant effect on any Natura 2000 site either directly or in combination with any other project and DAFM could see no reason for with-holding the licence for the Felling and Replanting under TFL00331419. In this matter the FAC notes TFL00331419 is not the licence subject to this appeal, and that the DAFM statement had otherwise referred to TFL00318219.

The FAC undertook an appropriate assessment screening of this proposal to examine for any likelihood of significant effects on a European site in accordance with the requirements of 6(3) of the Habitats Directive 92/43/EC and the Habitats Regulations SI 477/2011. The FAC's considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. The screening report is available on the public file. The proposal is not connected with or necessary to the management of any Natura 2000 site. No special conditions are attached to the licence and the conditions thereon are standard and not in mitigation in respect of any European Sites. Having regard to the nature and scale of the development and its location, the FAC considered it reasonable to screen for possible effects, if any, with regards to Natura 2000 sites within a radius of c. 15km of the proposal. The following sites were included in the screening; Lough Oughter & Associated Loughs SAC and Lough Oughter Complex SPA at just over 15km from the proposal, and Lough Sheelin SPA at c. 13.7 km.



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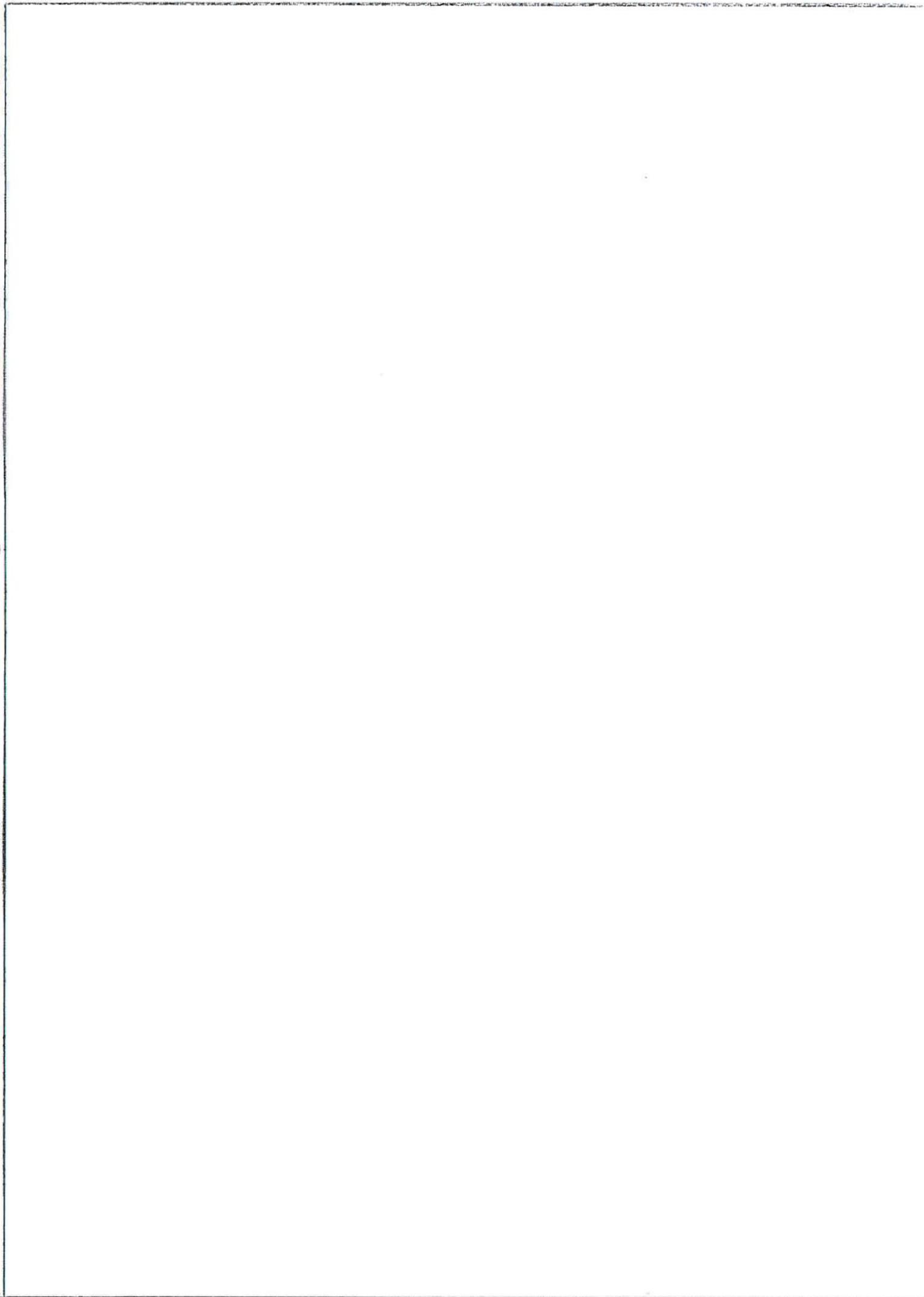
The FAC gave consideration to the fact that the proposal does not have a direct hydrological connection to the nearest watercourse point (which is c. 550m) within the same Erne catchment, also separated by public roads, and from that point there is in excess of 35 km hydrological distance to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. Also, that the proposal has no hydrological connection or relevant pathway to Lough Sheelin SPA. The FAC also took into consideration other plans and projects in the screening. The FAC concludes that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any European site. In these circumstances the FAC found the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

The FAC considers that the proposed felling and replanting does not come within the classes of project covered by the EU EIA Directive. The FAC also considers that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects.

In deciding to confirm the licence, the FAC considered that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee



TFL00318219 (appeal 317-19)

Proposal details and location

1.2 ha of clear-felling and reforestation with 90% Sitka Spruce, 5% alder and 5% open space at Mullymagowan, Co Cavan. Licence issued 17 Oct 2019. Proposal is part of a c. 2.7 ha stand of trees, which is across a public road from a further c. 2.7 ha.

Closest river is the Stravinabo to the south. But site is within Laragh (SC 10) sub catchment and Erne catchment and has no hydro connect to the Stravinabo – which is within the Boyne catchment. Otherwise the Stradone river rises c. 550m from the proposal and flows north, it is also separated from the proposal by 2 public roads, one minor, and has no obvious hydrological connection. (*The Stradone flows through a minor lake Beaghy Lough at 2.7km from point of rising. The Stradone is a tributary of the Laragh R. a tributary to the Annalee R in NI – Lough Oughter and Associated Loughs SAC at more than 35km hydro from where the river rises*).

There are two quarries operating within c.600m to N and c. 1400m to W. The area is primarily agricultural with some small forest pockets, rural dwellings in the vicinity and none adjoin the proposal site, site is fronted by public road all along west and north.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any Natura 2000 site. No special conditions are attached to the licence and the conditions thereon are standard and not in mitigation in respect of any European Sites.

Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, and Natura 2000 sites within a radius of c. 15km.

EU Sites

Site Code	Site Name	Distance To (m)	Qualifying Interests
000007	Lough Oughter and Associated Loughs SAC	15369.09	Habitats; 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation / 91D0 Bog woodland Species; 1355 Otter
004065	Lough Sheelin SPA	13746.88	Birds; A067 Goldeneye / A061 Tufted Duck / A059 Pochard / A005 Great Crested Grebe Habitats; Wetlands
004049	Lough Oughter Complex SPA	15926.27	Birds; A050 Wigeon / A038 Whooper Swan / A005 Great Crested Grebe Habitats; Wetlands

Nearest European site is Lough Sheelin SPA at c. 13.7 km where qualifying interests are wetlands and waterfowl. Lough Oughter & Associated Loughs SAC and Lough Oughter Complex SPA are at just over 15km from the proposal in straight line distance but are in excess of 35 km by hydrological connectivity from the nearest EPA marked watercourse point to the proposal and these European sites are within same Erne catchment as proposal. The proposal does not have a direct hydrological connection to the nearest watercourse point within the catchment which is c. 550m, also separated by public roads. At

in excess of 15 km distance the proposal is outside of the normal feeding range of the birds and species listed and is not a suitable breeding or feeding habitat, and without a hydrological connection there can be no likelihood of a significant effect on the species or birds or on the habitat qualifying interests. In respect of Lough Sheelin SPA, a nationally important site for the wintering of the four listed species of duck, this site arises within the separate Upper Shannon catchment, and having regard to distance and the absence of hydrological connectivity there is no likelihood of significant effects.

In-combination

There are two quarries operating within c.600m to N and c. 1400m to W. Cavan County Council planning system shows the quarry to the N was granted an extension of area in 2008 (081200) and in 2012 (12101). Also, a slatted shed (1952) is granted permission in 2019 to the east of the proposal separated by the other forestry and by an area of land as also is a two-storey dwelling with ancillaries granted in 2018 (1889). Further out from the proposal there are a number of one-off housing permissions that are granted in excess of 10 years. Owing to the distances of separation and the absence of connection there is no likelihood any of these other projects will combine with the proposal to give rise to any likely significant effects on a European site. Other forestry related projects include the existing 2.7 ha and 1.5 ha of the immediate forest which is divided by the public road, also CN84368 (130m of forest road) and CN84371 (40m), felling licences granted are TFL00318219 for 4.77 ha 2019 and TFL00315819 for 1.77 ha in 2019. While these in addition to the proposal at appeal indicate a larger level of such project activity within the general area, again the combined areas and works at the distances involved to European sites and with the absence of a hydrological connection do not combine with the proposal to give rise to the likelihood of significant effects on a European site.

The FAC is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of significant effects on a European site.

Examination for any Environmental Effects

Felling (and reforestation) does not fall within a class of development to which the EIA Directive applies, and the proposal 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 relatively small proposed development will give rise to short-term and intermittent noise and disturbance during felling operations, but this would not be significant. There would be a visual impact which will change over time resulting from clear-felling and reforestation. The site does not have hydrological connection to any significant watercourse and any impact on water quality while unlikely would be short-term and locally confined. There would be no significant effect on any designated site and no significant impact on any archaeological site. Having regard to the small scale of the proposal and the existing pattern of development in the area, including forestry projects, 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 - 08/09/2020