



[REDACTED]

31 December 2020

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of Tree Felling Licence approval TFL00351619.

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**

Tree Felling Licence TFL00351619 was granted by the Department Agriculture, Food and the Marine (DAFM) on 18 October 2019.

#### **Hearing**

A hearing of appeal 322/2019 was conducted by the FAC on 23 November 2020.

**FAC Members:** Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Mr. James Conway.

#### **Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to affirm the decision to grant this Tree Felling Licence (Reference TFL00351619).

The proposal is for thinning activity for an area of 30.96 hectares containing three blocks of forestry adjacent to one another with a species composition of Sitka spruce/Japanese Larch mixture (27.70ha), Pedunculate Oak (1.48ha) and Ash (1.78ha) in Moneyroe, Co. Leitrim. The proposal indicated that thinning is to be carried out in 2020, 2024 and 2029 in the Sitka spruce/Japanese Larch block and in 2020 and 2029 in the Pedunculate Oak and Ash blocks.

The ash block lies to the north east of the overall plantation and the oak block is in the centre of the overall plantation, surrounded by the Sitka spruce/Japanese larch block. The area is rural and agricultural in nature. The project area borders a recently clearfelled plantation to the north west, separated by a stream, and agricultural land elsewhere, except where a non through road to a holding intersects part of the plantation to the north and to the extreme north east of the plantation where it is adjacent to a public road. As per the DAFM certification and reports, the predominant soil type underlining the project area is predominantly podzols in nature, the slope is predominantly flat to moderate (<15%), and the area covered by the proposal is crossed by/adjoins an aquatic zone(s). It is found that part of the proposal area is crossed by the Eslin river, and is adjacent in part and also crossed in part by the Rowan river; both these rivers meet and join in an area covered by the proposal and that the area is in the Upper Shannon catchment. The proposal area is not within a European site.

There were no referrals by DAFM during the processing of the application. On 11/10/2019 the DAFM District Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. One Natura 2000 site (Cuilcagh Anierin Uplands SAC) was identified along with its qualifying interests and was assessed to determine if the proposed development alone, or in-combination would give rise to the likelihood of significant effects.

The DAFM determined that the project is not directly connected with or necessary to the management of any European Site and determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on this European site nor was there likelihood of significant effect on any European Site, so they concluded an appropriate assessment was not required. The DAFM Inspector in his Assessment to Determine EIA Requirement concluded from his examination that the application should not be subject to the EIA process. The DAFM issued a licence on 18/10/2019.

There is one appeal against the decision to grant the licence. The grounds of appeal contended 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 a listed number of EU Court of Appeal decisions, that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) and "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 DAFM responded to the grounds of appeal stating that the licence application had been processed according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time and S.I. 191/2017 and the 2014 Forestry Act. Elaborating that the only Natura 2000 site located within 15 km is Cuilcagh/Anieran Uplands SAC, that this Natura 2000 site is located in an upland area with no hydrological connection to the site and the screening information and site specific details are found on file.

In addressing the grounds of appeal, the FAC considered, in the first instance, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening, prior to the licence issue date, and found one Natura 2000 site within 15 km of the proposal area, the Cuilcagh Anierin Uplands SAC. In the screening DAFM concluded that there is no possibility that this project will have a significant effect on this Natura site, due to the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection, the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site, the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site and distance to the Natura site. DAFM concluded there is no possibility that this project - either alone or in-combination with other plans and projects - will have a significant effect on the Natura sites and that appropriate assessment was not required. In addition, the DAFM completed an in-combination in its screening of the proposal that examined other plans and projects in the area, including planning applications, and other forestry projects. DAFM concluded that individually the project does not represent a source, or if so, no pathway for an adverse effect on any European Site exists. Consequently, the DAFM deem that there is no potential for this project to contribute to any such effects, when considered in-combination with other plans and projects. The FAC notes the proposal area is not within a European site, that the closest European site is the Cuilcagh Anierin Uplands SAC at c.12 km, and that there are no other European sites within 15km of the site. The FAC notes that the aquatic features in the proposal area, the Eslin and Rowan Rivers meet the Lough Forbes Complex SAC at a downstream distance of c. 27 km and having considered this and its qualifying interests, find no likelihood of significant effects arise due to the distance involved, and the size and nature of the proposal. The FAC is satisfied on the basis of the location and works that consideration of sites within a 15 km radius of the proposal by DAFM was in order in this instance. The FAC notes that no likelihood of any impact on any European site was identified in the screening and the procedures adopted by the DAFM in their assessment are considered acceptable in this particular instance. The FAC concurs with the conclusion that there is no likelihood of significant effects on any Natura 2000 site arising from the proposed thinning. Having regard to the nature and scale of the proposal, the characteristics of the surrounding area and other forestry projects listed by DAFM, the FAC concludes that there is no likelihood of significant effects on any Natura 2000 site arising from the proposed development in-combination with other projects or land uses in the area.



In addressing the grounds of appeal, the FAC also considered, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU 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 (nor clear-felling) 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 FAC concludes that the thinning as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017).

The proposal is in a rural area, with other forestry, and farmland in the surrounds. The FAC acknowledges there will be some disturbance when works are in progress but these by their nature will be temporary and are normal activities in a managed forest carried out under licence and with conditions to adhere to a series of requirements and guidelines. The conditions include that the licensee shall ensure that all felling and planting operations are carried out in accordance with Forestry and Water Quality, Forest Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry and Aerial Fertilisation guidelines and the Code of Best Forest Practice - Ireland and the Irish National Forest Standard published by the DAFM. In conclusion the FAC does not consider that the licensed thinning would result in any likelihood of a significant effect on the environment.

In deciding to affirm the licence decision, on the balance of the evidence, the FAC is satisfied that there was no serious or significant error or a series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC considered that the proposal is consistent with Government policy and good forestry practice.

Yours sincerely



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Mr. James Conway (on behalf of the FAC)