



An Coiste um Achomhairc
Foraolseachta
Forestry Appeals Committee

3 April 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: FAC 058/2019

Subject: Appeal in relation to felling licence TFL00042317

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) on licence TFL00042317.

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 TFL00042317 was granted by the DAFM on 22 March 2019.

Hearing

A hearing of appeal 058/2019 was conducted by the FAC on 25 March 2020.

In Attendance at Hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton

Decision

Having regard to the evidence before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence TFL00042317.

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. It was also outlined that the report states none of the spatial scenarios set out in Q 1A to Q 1C apply and that this physical separation does not eliminate the possibility of a significant effect and that therefore as required under *Kelly v An Bord Pleanála & Others* (High Court decision dated 25 July 2014) that the carrying out of Appropriate Assessment is mandatory. It was also contended that it is not possible to judge the quality of the screening carried out when the name of the 'site' is excluded.

In its statement to the FAC, dated 22 January 2020, DAFM stated:

"I carried out a desk audit of this application as per the above Assessment and I am satisfied that all criteria are adhered to."

The decision related to a tree felling licence for an area of 1.3 hectares at Ardchicken, Co. Donegal. The licence granted is for a thinning operation, with the tree species being Sitka Spruce. The site in question is located on the southern side of Donegal town.

The closest European sites to the subject lands are Donegal Bay (Murvagh) SAC, located, at the nearest point, about 0.5km from the plantation, Donegal Bay SPA, at a relatively similar distance, and the Lough Eske and Ardnamona Wood SAC, located, inland, at a nearest distance of about 1.2km from the plantation. The lands in the vicinity of the project drain into Donegal Bay, however, there is no evidence of any direct hydro connection from the project lands to Donegal Bay, while there are two EPA watercourses, one to the north of the site and one to the south and east of the site that each are at closest about 0.2km from the site that flow westwards into Donegal Bay. The forest to be thinned is flanked by scrub woodland to the north and south. The FAC considered the qualifying interests of the Donegal Bay (Murvagh) SAC and concluded that the tree felling proposed would have no impact on these features given the very small-scale and nature of the project, the distance and lack of any direct conduit to this European site. The FAC considered other European sites in its zone of influence including the Lough Eske and Ardnamona Wood SAC and their qualifying interests, and determined having regard to the scale of the development proposed, the distances involved, the lack of any hydrological connection, and the drainage of the proposed lands away from these sites and into Donegal Bay that the tree felling proposed would have no possibility of a significant effect on the Lough Eske and Ardnamona Wood SAC or any other SAC sites.

The FAC considered the qualifying interests for which Donegal Bay SPA has been designated and found that the designated species of water-birds do not depend on coniferous plantations in the vicinity and that the Sitka Spruce plantation in question is not a suitable habitat for the qualifying interest species for which Donegal Bay SPA has been designated. The qualifying interests of other SPAs in the plantation's zone of influence were also considered and the FAC determined that the plantation where tree felling is proposed is not a suitable habitat for these species and concluded like for Donegal Bay SPA that there would be no possibility of a significant effect on these SPAs having regard to the reasons for their designations and any other SPAs.

It was found that planning permissions granted in the general area indicates a variety of permissions for various urban uses including houses, a school, industrial and recreational uses, also in the development plan the higher part of the hill including the project lands is indicated as an amenity area. The FAC considered though that the surrounding natural vegetation would separate the project from other activities in the vicinity and having regard to the lack of a possible significant effect of the small-scale project in question on any European site the FAC concluded there is no possibility of any other plans and projects resulting in the proposed activity having any possible in-combination effects on any European site.

The FAC is also satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to this licence do not require any measures to avoid or reduce effects on a European site. The FAC concluded that the proposal covered by this licence, either alone or in-combination with other plans or projects, would not result in the possibility of a significant effect on any European site.

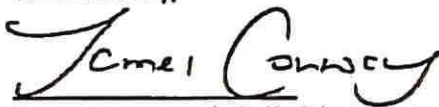
The proposal does not fall within a class of development listed in the EIA Directive for the purposes of environmental impact assessment. Notwithstanding, the FAC considered the likelihood of any significant impacts on the environment and concluded that the proposal would not result in the likelihood of a significant effect on the environment, taking account of possible cumulative effects.

Details of the FAC's screening for Appropriate Assessment of the possibility of significant effects on European sites and consideration of the likelihood of significant effects on the environment are available on the public file.

The FAC considered that the proposal is consistent with Government policy and good forestry practice.

Before making its decision, the FAC considered all of the Information submitted with the application, the processing of the application by the DAFM, an independent consultant's report commissioned by the FAC which is available on the public file, the grounds of appeal and submissions and observations received.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'James Conway'. The signature is fluid and cursive, with the first name 'James' and last name 'Conway' clearly distinguishable.

James Conway, on behalf of the Forestry Appeals Committee

TFL00042317 (FAC 058/2019)

Proposed Development

The proposal is for a tree felling licence for an area of 1.3 hectares at Ardchicken, Co. Donegal. The licence granted is for a thinning operation, with the tree species being Sitka Spruce. The site in question is located on the southern side of Donegal town. The town has been bypassed and the road onto which the land holding, as indicated on the large-scale ordnance map submitted, is no longer a national primary road (now regional road 267). The site is on the eastern side of this old national primary road. There is a craft centre located off the main road a short distance south of the road frontage and an industrial premises further out to the south. Several houses and other developments have also been constructed between the land frontage and the more built up part of the town to the north. There is a relatively large housing scheme on the Donegal Bay side of the road a short distance to the north west of the land frontage but is separated by this public road.

The plantation where felling is proposed is set back a considerable distance from the regional road (about 400-500 metres) and is not clearly visible from that road. The land rises upwards from the road to a hill called Rarooley Hill and there is intervening screening due to trees at field boundaries and other plantations to the side. The road at the land frontage is at about 30 feet AOD whilst the highest point of the plot where felling is proposed is a little over 200 feet AOD. The lands between the plantation and the road, which slope downwards towards the road are in agricultural use and appear to be well drained. There is a mixture of land uses in the area. There are urban developments as referred to above and agricultural and forestry uses. There are other plantations to the north and southwest of the project lands but the lands directly adjacent to the forest are scrub broadleaf woodland and pasture.

Appropriate Assessment Screening

European Sites

The following is a list of the European sites that are within a 15 km zone of the project area:

Site Code	Site Name
000133	Donegal Bay (Murvagh) SAC
000163	Lough Eske and Ardnamona Wood SAC
001125	Dunragh Loughs/Pettigo Plateau SAC
000138	Durnesh Lough SAC
000172	Meenaguse/Ardbane Bog SAC
000115	Ballintra SAC
001992	Tamur Bog SAC
002164	Lough Golagh and Breesy Hill SAC
002301	River Finn SAC
001880	Meenaguse Scragh SAC
000165	Lough Nillan Bog (Carrickatlieve) SAC
004151	Donegal Bay SPA
004145	Durnesh Lough SPA
004099	Pettigo Plateau Nature Reserve SPA
004057	Lough Derg (Donegal) SPA

Site Code	Site Name
004110	Lough Nillan Bog SPA

In undertaking an appropriate assessment screening the FAC took into account an independent consultant's report commissioned by the FAC, available on the public file, information provided by the DAFM and information in the public domain.

The closest European sites to the subject lands are located in Donegal Bay. These are Donegal Bay (Murvagh) SAC, located, at the nearest point, about 0.5km from the plantation, the Lough Eske and Ardnamona Wood SAC, located, inland, at a nearest distance of about 1.2km from the plantation and Donegal Bay SPA located slightly further from the plantation than the Donegal Bay SAC. The next nearest European site is the Dunragh Loughs and Pettigo Plateau SAC which is further inland at a minimum distance of about 7.3km. The Meenaguse/Ardbane Bog SAC then is at about 7.9km, Ballintra SAC is at about 8km and the Tamur Bog SAC is at about 9.6km, all from the proposal land. The Durnesh Lough SPA is at about 8.1km and the Pettigo Plateau Nature Reserve SPA is located inland, to the east, at a distance of about 9.5km. All other SACs and SPAs listed above are greater than 10km from the proposal land.

The Donegal Bay SAC and Donegal Bay SPA then are in closest proximity and into which the lands in the vicinity of the project drain. There is, however, no evidence of any direct hydro connection from the project lands to Donegal Bay. There are though two EPA watercourses, one to the north of the site and one to the south and east of the site that each are at closest about 0.2km from the site that flow into Donegal Bay. The forest to be thinned is flanked by scrub woodland to the north and south. The qualifying interests of the Donegal Bay (Murvagh) SAC are Mudflats and sandflats not covered by seawater at low tide [1140], Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130], Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170], Humid dune slacks [2190] and *Phoca vitulina* (Harbour Seal) [1365]. The qualifying interests for Donegal Bay, apart from the Harbour Seal are generally features of geomorphological interest and their vegetation. The tree felling proposed would have no impact on these features. Even if some silt was to reach the bay, which seems unlikely due to the very small-scale and nature of the project, the distance and lack of any direct conduit, this would not have any possibility of a significant effect on the qualifying interests of the SAC including the Harbour Seals.

There is no hydrological connection between the project land and the Lough Eske and Ardnamona Wood SAC or any other European sites. The qualifying interests of the Lough Eske and Ardnamona Wood SAC are; Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110], Petrifying springs with tufa formation (*Cratoneurion*) [7220], Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0], *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029], *Salmo salar* (Salmon) [1106] and *Trichomanes speciosum* (Killarney Fern) [1421]. However having regard to the scale of the development proposed, the distances involved, the lack of any hydrological connection, and the drainage of the proposed lands away from these sites and into Donegal Bay the tree felling proposed would have no possibility of a significant effect on the Lough Eske and Ardnamona Wood SAC or any other SAC sites.

The qualifying interests for which Donegal Bay SPA has been designated are; Great Northern Diver (*Gavia immer*) [A003], Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Common Scoter (*Melanitta nigra*) [A065], Sanderling (*Calidris alba*) [A144] and Wetland and Waterbirds [A999]. These species of water-birds do not depend on coniferous plantations in the vicinity. The Sitka Spruce plantation in question is not a suitable habitat for the qualifying interest species for which Donegal Bay SPA has been designated. The proposed project then would have no possibility of a significant effect on the European site in question.

The qualifying interest of the Durnesh Lough SPA is the Whooper Swan (*Cygnus cygnus*) [A395] and the Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395], the qualifying interest of the Pettigo Plateau SPA is also the Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]. The plantation where tree felling is proposed is not a suitable habitat for these species and the FAC conclude that there would be no possibility of a significant effect on these SPAs having regard to the reasons for their designations and any other SPAs.

There was a lack of detail provided by DAFM on other forestry and non forestry projects in the area however this is not considered significant given this forestry site is only 1.3 hectares. The surrounding natural vegetation would also separate the project from other activities in the vicinity. It was found that planning permissions granted in the general area indicates a variety of permissions for various urban uses including houses, a school, industrial and recreational uses, also in the development plan the higher part of the hill including the project lands is indicated as an amenity area. However having regard to the lack of a possible significant effect of the small-scale project in question on any European site the FAC concluded there is no possibility of any other plans and projects resulting in the proposed activity having any possible in-combination effects on any European site.

The FAC is also satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to the DAFM licence do not require any measures to avoid or reduce effects on a European site. The FAC concluded that the proposal covered by licence TFL00042317, either alone or in-combination with other plans or projects, would not result in the possibility of a significant effect on any European site.

Environmental Impact Assessment (EIA)

The proposed development is for felling and, in particular, thinning, and no change in land use would occur. The proposal does not fall within a class of development listed in the EIA Directive for the purposes of environmental impact assessment. Notwithstanding, the FAC considered the likelihood of any significant impacts on the environment taking into account an independent consultant's report commissioned by the FAC, available on the public file, information provided by the DAFM and information in the public domain.

The proposal area does not adjoin a public road, however the trees in question may be visible from some locations along the surrounding road network, but not visible or at least not prominent in views from the regional road to the west. The trees though are not of such exceptional amenity value as to stop thinning of same. The area is a rural/urban fringe area which is not particularly sensitive to the type of development proposed in the application. The FAC consider then that the thinning/felling proposed would not have a significant impact on the landscape.

The felling will give rise to the transport of timber on the local roads. The road network in the area caters for existing surrounding urban developments and the proposed tree felling will not add significantly to traffic flows. The environmental effects of the proposal would be small-scale and locally confined and would not be likely give rise to significant effects on the environment.

The nearest national monument to the plantation is the ruins of Magherabeg Abbey located to the south west and on the opposite side of the regional road. The proposed tree felling would have no impact on this monument. There are a limited number of other forestry projects in the area. As noted, there will be no possibility of a significant impact on a European site. There are no EPA hydrological features on or leading from the site.

Overall the FAC concluded that the proposal would not result in the likelihood of a significant effect on the environment, taking account of possible cumulative effects, and that formal EIA screening was not required.

A handwritten signature in black ink, appearing to read 'James Conway'. The signature is fluid and cursive, with a horizontal line drawn underneath the name.

James Conway for the Forestry Appeals Committee

1 April 2020