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17<sup>th</sup> July 2020

**Subject:** Appeal FAC330/2019 regarding licence CN06-FL0038 Bellamont Forest, Co. Cavan

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

#### **Background**

Licence CN06-FL0038 for felling of 2.74 ha at Bellamont Forest, Co. Cavan was issued by the Department of Agriculture, Food and the Marine on 31<sup>st</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC330/2019 was held by the FAC on 16<sup>th</sup> July 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. Jim Gallagher, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence CN06-FL0038.

The felling licence was granted for a 2.74ha clearfell and replanting at Bellamont Forest, Co. Cavan. The forest is currently composed of Sitka spruce planted in 1979 and 1984 and replanting with 90% Norway spruce and 10% broadleaf is proposed. The site is described as mainly comprising a mineral, surface water gley soil and with a moderate slope. There are other existing forests in the area and a number of lakes, the forest sits between Town and Coragh Lakes and is bordered by mature forest, and the proposal is in the Dromore sub-catchment of the Erne catchment. The network of lakes makes up Dromore Lakes pNHA. The application was referred to the Department of Culture, Heritage and the Gaeltacht which did not object to the proposal but requested that scrub and ditches are retained, and that felling is suspended during periods of high rainfall, as well as making general observations about the

obligations of the DAFM. The Applicant provided details of other projects in the area and noted that 22.86 ha had been licensed for felling within 1.5km.

There is one appeal against the decision and the following grounds were submitted,

*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; The test for Appropriate Assessment Screening in Irish law is set out by "Finlay Geoghegan J. In Kelly -v- An Bord Pleanala [2014] IEHA 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."*

*This current development is project split into 4 applications. These sites adjoin Dromore Lakes pNHA 000001 Which are protected under the Cavan county Development Plan. If mud was to enter the lakes it could have an effect on the SAC/SPA The fact that the distance is just over 15 km has no relevance to the fact that there still may be an effect. There is continuous hydrological connectivity between Dromore Lakes and The Lough Oughter Natura 2000 sites.*

The grounds go on to cite Finlay Geoghegan Judgement in Kelly -v- An Bord Pleanala [2014] IEHC 400.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They suggest that all Natura sites within 15km have been screened out due to a lack of connectivity to any of the Natura sites. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area. They go to state,

*In regard to the adjacent pNHA, a condition of the licence requires the licensee to 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 Department. These conditions provide adequate protection for the pNHA, associated lakes and adjacent stream and river network.*

*The size and makeup of the Coillte forest land holding is such that sustainable forest management practices will necessitate management (including clearfelling) of forest sub-compartments in which are located in some instances in relatively close proximity to each other. Approximately 267 ha (28%) of the area comprising 951 ha of the Dromore lakes pNHA is made up of Coillte owned forest lands. The 4 clearfells submitted for licencing and referred to by the appellant in the comprise a total of 16 ha and are spread over a distance of 2.6 km. The maximum separation distance between the four clearfells is 1.8 km and minimum distance is 260 m.*

The DAFM made an additional submission of a revised appropriate assessment screening and in-combination assessment, which were provided to all parties.



In considering the grounds of appeal and before making a decision the FAC undertook a screening of the application in relation to appropriate assessment under the Habitats Directive and also examined it from the perspective of the Environmental Impact Assessment (EIA) Directive. These considerations are available on the public file.

There is one European site within 15km from the felling site. The eastern boundary of the Upper Lough Erne SPA is situated 14.8km northwest of the site in direct distance. This SPA covers a total area of 5,787 ha. The proposal is for felling and replanting of a coniferous forest which would not be considered suitable nesting or foraging habitat for the qualifying interest of this SPA and is at a very, considerable distance from the SPA, which would preclude noise or physical disturbance. The next closest European site is Kilroosky Lough Cluster SAC which lies over 16km to the north in direct distance. The SAC is in the same broad catchment as the proposal but in a different sub-catchment, upstream and is at a considerable hydrological remove. Town Lough is the closest lake to the forest, although not directly connected, and is joined to the network of Dromore lakes by a stream. Dromore River flows from the western end of Dromore lakes and flows westerly. This river joins the Annalee River, which flows into the Lough Oughter and Associated Loughs SAC. The hydrological distance from Town Lough to the boundary of this SAC is some 30km, while the direct distance is 16.3 km. Furthermore, the felling site has no water features and is setback from the lakes. Were any surface runoff to reach the lake it could not move downstream in any significant amount due to the settling, diluting and restricting effects of the system of streams and lakes. There are other felling and forestry licences granted in the vicinity and a number of planning permissions related to small scale developments, but these would not impact on the nature and degree of separation between the site and Lough Oughter and Associated Loughs SAC or any other European site. There are no conditions attached to the licence that relate to the mitigation of effects on a European site and no such measures were taken into account in the screening. Having regard to the small scale, nature and location of the proposal, the qualifying interests of the sites, and the separation distances the FAC concludes that there is no likelihood of significant effects on any Natura 2000 site from the proposal alone or in combination with other plans or projects.

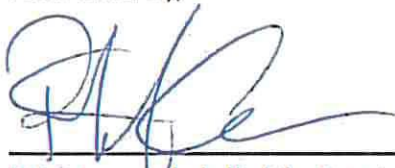
As described above, the licence pertains to the felling and replanting of trees which the FAC does not consider to fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. The felling is of a small scale and the area will be replanted afterwards and it is within the wider landscape of a commercial forest managed for timber production. The area does not contain water features and is at a remove from the pNHA. There are conditions attached to the licence that regulate operations associated with the felling to provide some protections for water and biodiversity and any possible impacts are unlikely to be significant and will likely be of a temporary nature. The FAC concluded that the proposal would not represent a significant threat to the pNHA or any designated site. There is likely to be an impact on traffic during operations but this will be of a temporary nature. There are no recorded monuments on site. Bellamont Forest House lies to the north but at a remove and is screened by existing forests. There are conditions attached to the licence regarding the management of machinery on site and the use of chemicals and the likelihood of emissions to water or the air is low. The application was considered by the NPWS which did not object to the development aside from requiring

the protection of water in line with guidelines. The FAC concluded that, in addition to not being a class of development included in the EIA Directive, that the felling and replanting would not result in any real likelihood of a significant effects on the environment, itself or cumulatively with other projects.

The FAC concluded that there is no evidence of project splitting and that the licence pertains to a specific forest stand that is due for harvesting within a larger commercial forest that is managed for timber production in which other stands will be harvested on an ongoing basis.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee





Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the EIA Directive. These considerations were based on information provided by parties to the appeal and available in the public domain.

The felling licence was granted for a 2.74ha clearfell and replanting at Bellamont Forest, Co. Cavan. The forest is currently composed of Sitka spruce planted in 1979 and 1984 and replanting with 90% Norway spruce and 10% broadleaf is proposed. The site is described as mainly comprising a mineral, surface water gley soil and with a moderate slope. There are other existing forests in the area and a number of lakes, the forest sits between Town and Coragh Lakes and is bordered by mature forest, and the proposal is in the Dromore subcatchment of the Erne catchment. The network of lakes makes up Dromore Lakes pNHA. The application was referred to the Department of Culture, Heritage and the Gaeltacht which did not object to the proposal but requested that scrub and ditches are retained and that felling is suspended during periods of high rainfall, as well as making general observations about the obligations of the DAFM. The Applicant provided details of other projects in the area and noted that 22.86 ha had been licensed for felling within 1.5km.

#### Appropriate Assessment Screening

There is one European site within 15km from the felling site. The eastern boundary of the Upper Lough Erne SPA is situated 14.8km northwest of the site in direct distance. This SPA covers a total area of 5,787 ha. The proposal is for felling and replanting of a coniferous forest which would not be considered suitable nesting or foraging habitat for the qualifying interest of this SPA and is at a very, considerable distance from the SPA, which would preclude noise or physical disturbance. The next closest European site is Kilroosky Lough Cluster SAC which lies over 16km to the north in direct distance. The SAC is in the same broad catchment as the proposal but in a different subcatchment, upstream and is at a considerable hydrological remove. Town Lough is the closest lake to the forest, although not directly connected, and is joined to the network of Dromore lakes by a stream. Dromore River flows from the western end of Dromore lakes and flows westerly. This river joins the Annalee River, which flows into the Lough Oughter and Associated Loughs SAC. The hydrological distance from Town Lough to the boundary of this SAC is some 30km, while the direct distance is 16.3 km. Furthermore, the felling site has no water features and is setback from the lakes. Were any surface runoff to reach the lake it could not move downstream in any significant amount due to the settling, diluting and restricting effects of the system of streams and lakes. As provided, there are other felling and forestry licences granted in the vicinity and a number of planning permissions related to small scale developments but these would not impact on the nature and degree of separation between the site and Lough Oughter and Associated Loughs SAC or any other European site. There are no conditions attached to the licence that relate to the mitigation of effects on a European site and no such measures were taken into account in the screening. Having regard to the small scale, nature and location of the proposal, the qualifying interests and separation distances to European sites the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Conclusion
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SPA	UK90 2007 1	Upper Lough Erne SPA	14768	<b>Species</b> Whooper Swan <i>Cygnus cygnus</i>	<a href="https://www.daera-ni.gov.uk/publications/upper-lough-erne-special-protection-area">https://www.daera-ni.gov.uk/publications/upper-lough-erne-special-protection-area</a>	No Likelihood of Significant Effects
SAC	1786	Kilroosky Lough Cluster SAC	16090	<b>Habitats</b>  3140 Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. 7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae* 7230 Alkaline fens  <b>Species</b> 1092 White-clawed Crayfish ( <i>Austropotamobius pallipes</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO001786.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO001786.pdf</a>	No Likelihood of Significant Effects
SAC	7	Lough Oughter and Associate d Loughs SAC	16312	<b>Habitats</b>  3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland*  <b>Species</b> 1355 Otter ( <i>Lutra lutra</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO000007.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO000007.pdf</a>	No Likelihood of Significant Effects

### Examination of Environmental Impacts

As described above, the licence pertains to the felling and replanting of trees which does not fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. The felling is of a small scale and the area will be replanted afterwards and is within the wider landscape of a commercial forest managed for timber production. The area does not contain water features and is at a remove from the pNHA. There are conditions attached to the licence that regulate operations associated with the felling to provide some protections for water and biodiversity and any possible impacts are not likely to be significant and would likely be of a temporary nature. There is likely to be an impact on traffic during operations but this will be of a temporary nature and would not be significant. There are no recorded monuments on site. Bellamont Forest House lies to the north but at a remove and is screened by existing forests. There are conditions attached to the licence regarding the management of machinery on site and the use of chemicals and the likelihood of emissions to water or the air is low. The application was considered by the NPWS which did not object to the development aside from requiring the protection of water in line with guidelines. The FAC concluded that, in addition to not being a class of development included in the EIA Directive, that the felling and replanting would not result in any real likelihood of a significant effect on the environment, itself or cumulatively with other projects.

Vincent Upton On Behalf of the FAC