



24th July 2020

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Subject: Appeal FAC359/2019 regarding licence LM10-FL0034

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 LM10-FL0034 for felling of 4.37 ha at Sranadarragh, Co. Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 31st October 2019.

Hearing

A hearing of appeal FAC359/2019 was held by the FAC on 22nd 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 LM10-FL0034.

The licence pertains to 4.37 ha of felling of a forest planted in 1989 and replanting with Sitka spruce. The underlying soil type is given as approx. 5%, Basin Peats, Blanket Peats and 95%, Surface water Gleys, Ground water Gleys. The slope is predominantly Moderate 0-15% and the site is in the Cloone (Lough Rinne) 010 subcatchment in the Upper Shannon Catchment. The forest is not crossed or adjoined by any aquatic feature. A minor road adjoins the eastern boundary and a forest road is situated to the north. A stream runs west-east approximately 100m to the north of the forest and is separated by existing forest and there is no evidence of a pathway from the proposal to any water course. There are conditions attached to the licence that are of a general nature and require adherence to environmental guidelines and requirements, and communication with the County Council.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. The grounds also suggest that if mud was to enter the lakes it could have an effect on the SAC/SPA and that the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. The specific lakes are not identified.

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. Finally, they suggest that there are no lakes near or adjacent to this felling licence application area, that the nearest lake (not hydrologically connected) is 800 m to the south east and that there are no streams or rivers directly connected to the felling area

In considering the appeal and before making a decision, the FAC undertook an examination in relation to the requirements of the Habitats and EIA Directives respectively and copies of these considerations are contained in the public file.

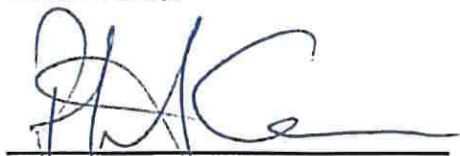
There are two European sites within 15km of the site and based on the scale, nature and location of the proposal significant effects on sites outside of this radius would not occur. The boundary of Cuilcagh - Anierin Uplands SAC lies over 13km to the north outside of the catchment of the proposal with no hydrological connection. The proposal is to fell a mature coniferous forest which is not a qualifying interest of the SAC and the degree of separation and lack of hydrological connection results in no pathway of effects being present. The proposal is not likely to result in significant effects on this SAC. The boundary of Lough Oughter and Associated Loughs SAC lies over 13km to the northeast of the proposal and is also situated in a separate catchment with no hydrological connection. The proposal is to fell a mature coniferous forest which is also not a qualifying interest of this SAC and the degree of separation and lack of hydrological connection results in no pathway of effects being present. There are no conditions attached to the licence that relate to the mitigation of effects on a European site. There are a number of planning permissions granted in the area, but these are of a primarily residential and agricultural nature and are not adjacent to the forest. The County Development Plan was also examined, and no related issues were identified. A number of forest licences have been granted for afforestation and felling in the vicinity, but these would not combine with the proposal to result in the likelihood of a significant effect given the absence of a pathway of effects. Having regard to the nature, scale and location of the proposal, its proximity and connectivity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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 1. Annex 11 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 11). 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 felling of trees and subsequent replanting, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is for felling and replanting which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. The replanting of the forest will ensure that the resource is maintained over the long term. The area is rural and agricultural, and these activities would not be out of keeping with the general landscape. There is no evidence of a watercourse on or adjacent to the proposal or that the proposal is likely to impact on water quality. The FAC concluded that the proposal did not pose a significant threat to any lakes or water quality generally. Traffic will likely increase as a result of the operations and there may be some noise disturbance, but this will be of a temporary nature. There are conditions on the licence regarding the management of operations that mean that the occurrence of waste and pollution of a significant degree are not likely. There are no recorded monuments that could be impacted by the proposal. There is no evidence of protected species or habitats in the area and the proposal is not considered likely to result in significant effects on a European site. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive and does not consider that it would result in any real likelihood of a significant effect on the environment. Significant effects on water or biodiversity are not considered likely.

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 read 'PAC', is written over a horizontal line.

Pat Coman on Behalf of the Forestry Appeals Committee



FAC359/2019 LM10-FL0034 Sranadarragh, Co. Leitrim

22nd July 2020

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 licence pertains to 4.37ha of felling of a forest planted in 1989 and replanting with Sitka spruce. The underlying soil type is given as approx. 5%, Basin Peats, Blanket Peats and 95%, Surface water Gleys, Ground water Gleys. The slope is predominantly Moderate 0-15% and the site is in the Cloone (Lough Rinne) 010 subcatchment in the Upper Shannon Catchment. The forest is not crossed or adjoined by any aquatic feature. A minor road adjoins the eastern boundary and a forest road is situated to the north. A stream runs west-east approximately 100m to the north of the forest and is separated by existing forest and there is no evidence of a pathway from the proposal to any water course. There are conditions attached to the licence that are of a general nature and require adherence to environmental guidelines and requirements and communication with the County Council.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are two European sites within 15km of the site and based on the scale, nature and location of the proposal significant effects on sites outside of this radius would not occur. The boundary of Cuilcagh - Anierin Uplands SAC lies over 13km to the north outside of the catchment of the proposal with no hydrological connection. The proposal is to fell a mature coniferous forest which is not a qualifying interest of the SAC and the degree of separation and lack of hydrological connection results in no pathway of effects being present. The proposal is not likely to result in significant effects on this SAC. The boundary of Lough Oughter and Associated Loughs SAC lies over 13km to the northeast of the proposal and is also situated in a separate catchment with no hydrological connection. The proposal is to fell a mature coniferous forest which is also not a qualifying interest of this SAC and the degree of separation and lack of hydrological connection results in no pathway of effects being present. There are no conditions attached to the licence that relate to the mitigation on effects on a European site and none were considered in this screening.

There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest. The County Development Plan was also examined and no related issues were identified. A number of forest licences have been granted for afforestation and felling in the vicinity but these would not combine with the proposal to result in the likelihood of a significant effect given the absence of a pathway of effects.

Having regard to the nature, scale and location of the proposal, its proximity and connectivity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself 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
SAC	00058	Cuilcagh -	13006.14	Habitats	http://www.	No likelihood of

	4	Anierin Uplands SAC		3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) 3160 Natural dystrophic lakes and ponds 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 4030 European dry heaths 4060 Alpine and Boreal heaths 6230 Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)* 7130 Blanket bogs (* if active bog) 7140 Transition mires and quaking bogs 7220 Petrifying springs with tufa formation (<i>Cratoneurion</i>)* 8110 Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) 8220 Siliceous rocky slopes with chasmophytic vegetation Species 1393 Slender Green Feather-moss (<i>Drepanocladus vernicosus</i>)	npws.ie/sites/default/files/protected-sites/conservation-objects/CO000584.pdf	significant effects
SAC	000007	Lough Oughter and Associated Loughs SAC	13266.77	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO000007.pdf	No likelihood of significant effects

Examination of Environmental Impacts

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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 1. Annex 11 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 11). 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 felling of trees and subsequent replanting, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is for felling and replanting which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. The replanting of the forest will ensure that the resource is maintained over the long term. The area is rural and agricultural and these activities would not be out of keeping with the general landscape. There is no evidence of a watercourse on or adjacent to the proposal or that the proposal is likely to impact on water quality. Traffic will likely increase as a result of the operations and there may be some noise disturbance but this will be of a temporary nature. There are conditions on the licence regarding the management of operations that mean that the occurrence of waste and pollution of a significant degree are not likely. There are no recorded monuments that could be impacted by the proposal. There is no evidence of protected species or habitats in the area and the proposal is not considered likely to result in significant effects on a European site. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive and does not consider that it would result in any real likelihood of a significant effect on the environment. Significant effects on water or biodiversity are not considered likely. In this case, formal screening or the submission of an EIAR is not required.

Vincent Upton
On Behalf of the Forestry Appeals Committee

