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27<sup>th</sup> July 2020

**Subject: Appeal FAC385/2019 regarding licence LM10-FL0033**

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-FL0033 for felling of 4.63 ha at Mountcampbell, Co. Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15<sup>th</sup> November 2019.

#### **Hearing**

A hearing of appeal FAC385/2019 was held by the FAC on 23<sup>rd</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 LM10-FL0033.

The licence pertains to 4.63 ha of felling of Sitka spruce with some other conifers and broadleaves and replanting of Sitka spruce. The underlying soil type is given as Surface water Gleys and Ground water Gleys with a moderate slope (0-15%). The proposal is within the Shannon (Upper) 070 waterbody and a small, stream adjoins the western boundary which meets the River Shannon after some 175 metres and flows southerly. The proposal lies some 4 km to the east of Carrick on Shannon within a managed forest and the N4 runs to the south, but the forest is setback from the road. There is an existing forest road to the west that runs north to meet a minor road. The application was referred to Leitrim County Council which did not object to the proposal but requested that the District Engineer is informed prior to operations. The licence was issued on 15<sup>th</sup> November 2019 with standard conditions and conditions related to the submission from 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.

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 any sediment or mud entering a lake is highly unlikely to move down stream (to any connected SPA/SAC) as the waterbody/lake itself will act as a large sediment trap.

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.

The proposal is not connected with or necessary to the management of any European site. There are no European sites within 15km from the site. The small, stream running beside the western boundary of the proposal joins the Shannon and flows southerly through a series of lakes including Lough Boderg and eventually enters Ballykenny-Fisherstown Bog SPA and Lough Forbes Complex SAC after a hydrological distance of some 23km. Even in the absence of any best practice, were any surface runoff to reach the stream adjoining the forest it would be diluted and settled in the extensive system of rivers and lakes that lie between the proposal and the sites. The proposal is at a considerable distance from these sites which would preclude any noise or other disturbance and a mature coniferous forest would not be suitable habitat for the qualifying interest of the SPA and habitats associated with the SAC are not present on site. Significant effects on either of these European sites are not likely. 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. There are no conditions on the licence that relate to the mitigation of effects on a European site. Having regard to the nature, scale and location of the proposal, its proximity 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.

The proposal is of a small scale and 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 are a number of conditions related to the protection of water quality on the licence and, taking account of the scale and degree of hydrological connectivity, the proposal is not considered likely to impact on water quality or any designated sites in the area, including Lough Bofin and Lough Boderg pNHA. 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, while a number are present outside of the proposal area. 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.

While no specific lakes were identified by the Appellant in their grounds, the FAC is satisfied that the proposal does not represent a significant threat to water quality or any lakes having regard to the scale of the proposal and the regulatory regime under which the proposal will be undertaken.

In deciding to confirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be 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, the grounds of appeal and any submissions received.

Yours sincerely,

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

Pat Coman on behalf of the Forestry Appeals Committee





FAC385/2019 LM10-FL0033 Mountcampbell, Co. Leitrim

24<sup>th</sup> 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 4.63 ha of felling of Sitka spruce with some other conifers and broadleaves and reforestation of Sitka spruce. The underlying soil type is given as Surface water Gleys and Ground water Gleys with a moderate slope (0-15%). The proposal is within the Shannon (Upper) 070 waterbody and a small, stream adjoins the western boundary which meets the River Shannon after some 175 metres and flows southerly. The proposal lies some 4 km to the east of Carrick on Shannon within a managed forest and the N4 runs to the south but the forest is setback from the road. There is an existing forest road to the west that runs north to meet a minor road.

#### Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are no European sites within 15km from the site. The small, stream running beside the western boundary of the proposal joins the Shannon and flows southerly through a series of lakes including Lough Boderg and eventually enters Ballykenny-Fisherstown Bog SPA and Lough Forbes Complex SAC after a hydrological distance of some 23km. Even in the absence of any best practice measures, were any surface runoff to reach the stream adjoining the forest it would be diluted and settled in the extensive system of rivers and lakes that lie between the proposal and the sites. The proposal is at a considerable distance from these sites which would preclude any noise or other disturbance and a mature coniferous forest would not be suitable habitat for the qualifying interest of the SPA and habitats associated with the SAC are not present on site. Significant effects on either of these European sites are not likely. Significant effects on other European sites outside of the 15km radius are not considered likely based on the nature and scale of the proposal and the degree of separation. There are no conditions on the licence that relate to the mitigation of 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.

Having regard to the nature, scale and location of the proposal, its proximity 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	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Conclusion
SPA	4101	Ballykenny-Fisherstown	Birds	<a href="http://www.npws.ie/sites/default/fil">http://www.npws.ie/sites/default/fil</a>	No Likelihood of Significant



		Bog SPA	A395 Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> )	es/protected-sites/conservation_objectives/CO004101.pdf	Effects
SAC	1818	Lough Forbes Complex SAC	<p><b>Habitats</b></p> <p>3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation</p> <p>7110 Active raised bogs*</p> <p>7120 Degraded raised bogs still capable of natural regeneration</p> <p>7150 Depressions on peat substrates of the Rhynchosporion</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p>	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001818.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001818.pdf</a>	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 of a small scale and 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 are a number of conditions related to the protection of water quality on the licence and, taking account of the scale and degree of hydrological connectivity, the proposal is not considered likely to impact on water quality or any designated sites in the area, including Lough Bofin and Lough Boderg pNHA. 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. The proposal was considered by the County Council which did not object subject to a number of factors that were reflected in the licence conditions. There are no recorded monuments that could be impacted by the proposal, while a number are present outside of the proposal area. 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.

Vincent Upton

On Behalf of the Forestry Appeals Committee

