



24 June 2020

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Subject: Appeal 376/2019 regarding licence SO10 FL0089

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

Felling licence SO10 FL0089 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15 November 2019.

Hearing

A hearing of appeal 376/2019 was held by the FAC on 23 June 2020 (deferred from 09 June).

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

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision in respect of this licence (Reference SO10 FL0089).

The proposal comprises the clear-felling of 22.01ha of forest at Carrowngilty, Co Sligo, and replanting with 98% Sitka Spruce and 2% Birch, with an open space area of 1.10ha. The site is shown to comprise c. 39.89% blanket peats and c. 60% surface water gleys & ground water gleys. The slope is predominantly Moderate 0-15%. The proposal site is crossed by the Feorish (Ballyfarnon) river and by streams and public roads and is located within the Feorish (Ballyfarnon) Sub-Catchment and the Upper Shannon Catchment. There was a referral to Sligo County Council and a general response was received which stated no objection. There was also referral to Inland Fisheries Ireland with no reply.

The licence was issued with added conditions;

- Sligo County Council Area Engineer to be contacted prior to the commencement of operations to discuss the haulage of timber from the site.
- As per page 13 of the Code of Best Forest Practice and page 9 of Forestry and Landscape Guidelines, no conifers are to be replanted within 20m of the public road. Broadleaves and diverse conifers should be planted within the strip 10-20m from the public
- As per page 11 of the Forestry and the Landscape Guidelines a 60m setback from dwellings must be observed unless otherwise agreed with the homeowner; following an agreement, a setback of 30m is permissible.
- 3 rows of broadleaves are to be planted adjacent to aquatic zone setbacks.

There is a single appeal against the decision to approve the Licence. The grounds contend 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. 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) *"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 grounds also include 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. Extracts were included from the judgement Finlay Geoghegan J. in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014).

In response to the appeal grounds DAFM stated an Appropriate Assessment Screening was undertaken focusing on Natura sites within a 15 km zone around the proposed clear-felling area and having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives in the context of possible sources and pathways for impact, the Department deemed that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any of those Natura sites.

On 26 May 2020 the applicant submitted additional information, which was circulated to the other parties to the appeal. The additional information included that the results of a "pre-screening" by the applicant shows no hydrological connection exists between the project area and any of the 7 sites and the nearest terrestrial distance is over 5 km. The appellant responded that birds of prey and the Kingfisher fly and do not swim.

The appellant does not identify any lake, the FAC found Eidin Lough is the nearest downstream lake (EPA) and is in excess of 35 km away by hydrological distance. There are 7 Natura 2000 sites located within a 15 kilometres radius of the project lands: Union Wood SAC (c. 13.5 km), Bricklieve Mountain and Keishcorran SAC (c. 10.1 km), Lough Arrow SAC (c. 6.7 km), Unshin River SAC (c. 5.5 km), Lough Gill SAC (c. 6.5 km), Boleybrack Mountain SAC (c. 13.7 km) and Lough Arrow SPA (c. 6.7 km). Of these only parts of Boleybrack Mountain SAC and Cuilcagh Aneirin Uplands SAC are within the same catchment as the proposal and neither has a downstream hydrological connection from the proposal. The FAC sought

a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report, dated 07 June 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. Having regard to the report, to the European Sites and to the location and nature of the project at appeal, the FAC is satisfied the conditions of the licence are not mitigation measures in regard to any European site. The FAC is also satisfied that neither birds of prey nor Kingfishers are listed as qualifying interests of the European sites set out for, the Peregrine falcon occurs as a qualifying interest of the Sligo/Leitrim Uplands SPA at c. 25 km distance and the felling and replanting of the proposal site has no likelihood of a significant effect on that qualifying interest taking account of distance and foraging requirement.

The report's findings include that the proposal is clearly not necessary for or connected with the management of any Natura 2000 site. The author concluded that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site, and in these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

The FAC is satisfied that the screening procedure detailed in the consultant's report is in accordance with the requirements of the Habitats Directive. The FAC agrees with and adopts the findings of the report in respect of the Natura 2000 sites identified and having regard to the qualifying interests for those sites. The FAC concluded that the proposed clear-felling alone, or in-combination with other projects would not be likely to have significant effects on any Natura 2000 site.

The report includes a preliminary screening for EIA and concluded the while the proposed development does not come within a class of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU), the proposal would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. The FAC considered that the consultant's EIA examination accurately identifies the nature and extent of likely effects on the environment arising from the proposed development, both alone and cumulatively. The FAC agrees with and adopts the conclusion of the consultant's report that the proposed clear-felling and replanting by itself, or cumulatively with other projects would not be likely to give rise to significant effects on the environment.

In deciding to confirm the licence the FAC concluded that the proposed clear-felling and replanting would be consistent with Government policy and Good Forestry Practice.

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

FAC Ref. No. 376/2019

DAFM Ref. No. SO10-FL0089

Details of Application:

The application, submitted by Coillte Teo. Is for the clear-felling and replanting of an area of slightly over 22 hectares of Sitka Spruce trees planted in 1990 in the townlands of Cartrontonlena and Carrownagilty in Co. Sligo. The replanting would be with 98% Sitka Spruce and 2% Birch. The restocking details on the application form indicate 20.91 hectares replanted and 1.01 hectares of open space.

It is stated on the AA Screening form that the soils are about 40% blanket peat and about 60% surface or ground water gleys. The slope is stated to be moderate of between 0 and 15%.

A copy of Coillte's Harvesting and Establishment Environmental Rules was submitted with the application.

Details of project lands and location:

The plantation to be clear-felled is located in an upland area in the southeast part of Co. Sligo a short distance to the southwest of the boundary with Co. Leitrim. The lands are in a rural area about 11 kilometres southeast of the village of Ballygawley and about 10 kilometres to the northwest of the village of Ballyfarnan.

The land uses in the area are a mixture of agriculture and forestry. There is a significant amount of forestry in this upland area. There are other plantations to the southeast and southwest of the project lands. There are several other forested lands in the general area. Forests in this area are almost all of coniferous species. There is a relatively small wind farm (6 turbines) located, at a higher level, on lands to the northeast.

The project lands are located on both sides of a local road which cuts across the northeast end of the lands. There is a small part of the lands located to the north of this public road. The main road from Ballyfarnan to Ballygawley is to the southwest of the lands with another forested area between the lands now in question and that road.

The older OS maps of the area indicate spot levels of 566 and 576 feet AOD on the road crossing the northern end of the site. The OS maps indicate ground levels rising towards the north and northeast. The OS maps also indicate a stream running southwards along the western edge of the northern part of the lands. Another stream, flowing generally westwards, cuts across near the centre of the lands and a further stream is indicated also flowing westwards near the southern end of the lands. The streams join to the west of the lands and the combined stream flows towards the southwest. This stream later loops around towards the southeast and continues past Ballyfarnan to join the Shannon River to the south of Lough Allen.

Decision of DAFM:

The Department decided to approve the clear-felling and to grant a licence. The licence was subject to 34 conditions. These are generally of a standard variety requiring compliance with various guidelines and requirements. They also contain provisions relating to the re-planting.

Grounds of appeal:

It is submitted that, based on the information submitted, it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA Directives.

The appellant refers to a High Court decision given by Ms Finlay Geoghegan on 25 July 2014. He submits that the test for Appropriate Assessment in Irish law is set out in this judgement. The judgement quotes from a European Union Advocate General's Opinion which states that for Appropriate Assessment to be a mandatory requirement there is no need to *establish* that there would be a significant effect on a Natura 2000 site. It is merely necessary to determine that there *may* be such an effect. A further quotation, from the EU Advocate General's Opinion referred to in the judgement, states "It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3)".

The appellant submits that if mud was to enter the lake it could have an effect on the SAC/SPA. He submits that the fact that the distance is over 15 kilometres has no relevance to the fact that there may still be an effect. (The appellant does not state which lake or Natura site he is referring to).

In a submission, which he had made prior to the appeal, the appellant stated that there is no proper assessment and there is no assessment of cumulative effects. He had requested that this be attached to all his appeals unless otherwise stated.

DAFM response to appeal:

It is submitted that as per the Appropriate Assessment Procedure applicable at the time, screening for Appropriate Assessment was carried out, focusing on Natura sites within a 15 km zone around the proposed clear-felling area (or 'Harvest Block') detailed in the Tree Felling Licence application. Various information submitted by Coillte as part of the licence application was considered. This information included: map information (both GIS-based and softcopy PDFs), harvesting and establishment environmental operational procedures, and Appropriate Assessment Pre-screening Report and associated methodology document. Also considered were the comments and observations of referral bodies who submitted information to the Department in respect of the licence.

It is submitted that having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives in the context of possible sources and pathways for impact, the Department deemed that the project, when considered in combination with other plans and projects (as identified in the Pre-screening Report), will not give rise to the possibility of a significant effect on any of those

Natura sites. As such, the clear-fell project was screened out and an Appropriate Assessment was deemed unnecessary. DAFM has determined that the project will not adversely affect the integrity of any European sites. A Tree Felling Licence was subsequently issued for the clear-fell project.

Appropriate Assessment screening:

There are 7 Natura 2000 sites located within 15 kilometres of the project lands. The Natura sites in question are:

Union Wood SAC

Bricklieve Mountain and Keishcorran SAC

Lough Arrow SAC

Unshin River SAC

Lough Gill SAC

Boleybrack Mountain SAC and

Lough Arrow SPA

In a submission on the appeal the applicant lists the 7 Natura sites referred to and gives distances from them to the lands in question. It is submitted that there is no hydrological connection from the lands to any of the sites and all sites are at a distance greater than 5 Kilometres. It is submitted that alone, the project does not represent a source, or if so, no pathway for significant effect on any European site exists. It is also stated that there is no potential for the project to contribute to any such effects when considered in-combination with any other plans/projects.

Union Wood SAC is located, at the nearest point, about 13.5 kilometres from the project lands. The SAC is located near Ballysadare town, in the catchment of the Ballysadare River. There is no hydrological connection from the project lands, which are in the Shannon catchment, to the SAC. The SAC has as its qualifying interests "Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles". Having regard to the distance and the absence of any hydrological or other potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Union Wood SAC.

Bricklieve Mountain and Keishcorran SAC is located, at the nearest point, about 9.8 kilometres to the southwest of the project lands. The SAC is located in the catchment of the Ballysadare River. The qualifying interests are Turloughs [3180] Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210] Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510] Calcareous and calcshist screes of the montane to alpine levels (*Thlaspietea rotundifolii*) [8120] *Euphydryas aurinia* (Marsh Fritillary) [1065] and *Austropotamobius pallipes* (White-clawed Crayfish) [1092] ". Having regard to the distance and the absence of any hydrological or other potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Bricklieve Mountain and Keshcorran SAC.

Lough Arrow SAC is located, at the nearest point, about 6.5 kilometres to the southwest. It is located in the catchment of the Ballysadare River and there is no hydrological connection from the project lands. The qualifying interests are "Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp. [3140]" Having regard to the distance and the absence of any hydrological or other potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Lough Arrow SAC.

The Unshin River SAC is located, at the nearest point, about 5.35 kilometres to the southwest of the project lands. The river flows towards the northwest and the SAC is in the catchment of the Ballysadare River. The qualifying interests are "Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260] Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210] *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410] Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0] *Salmo salar* (Salmon) [1106] and *Lutra lutra* (Otter) [1355]". Having regard to the distance and the absence of any hydrological or other potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Unshin River SAC.

Lough Gill SAC is located, at the nearest point, about 6.26 kilometres to the north of the project lands. This SAC is located in the catchment of the Garavogue River which enters the sea near Sligo town. The qualifying interests for this SAC are "Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition* - type vegetation [3150] Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210] Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0] Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0] *Austropotamobius pallipes* (White-clawed Crayfish) [1092] *Petromyzon marinus* (Sea Lamprey) [1095] *Lampetra planeri* (Brook Lamprey) [1096] *Lampetra fluviatilis* (River Lamprey) [1099] *Salmo salar* (Salmon) [1106] and *Lutra lutra* (Otter) [1355]". Having regard to the distance and the absence of any hydrological or other potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Lough Gill SAC.

Boleybrack Mountain SAC is located, at the nearest point, about 14 kilometres to the northeast of the project lands. Part of this SAC is located in the Garavogue River catchment and part, including the part closest to the project lands is in the Shannon catchment. The part in the Shannon catchment, however, drains into the northern end of Lough Allen and so is well upstream of where the drainage from the project lands joins the Shannon. There is no hydrological connection from the project lands to the SAC which is located in Co. Leitrim. The qualifying interests for the SAC are "Natural dystrophic lakes and ponds [3160] Northern Atlantic wet heaths with *Erica tetralix* [4010] European dry heaths [4030] *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410] and Blanket bogs (* if active bog) [7130]". Having regard to the distance and the absence of any hydrological or other

potentially impacting pathway the proposed tree felling would not be likely to have any significant effect on the Boleybrack Mountain SAC.

Lough Arrow SPA is located, at the nearest point, about 6.4 kilometres to the southwest of the project lands. It is located in the Ballysadare River catchment and there is no hydrological connection from the lands where the clear-felling and re-planting is proposed. The special interests for which the SPA has been designated are Little Grebe (*Tachybaptus ruficollis*) [A004] Tufted Duck (*Aythya fuligula*) [A061] and Wetland and Waterbirds [A999]. A mature forestry plantation is not a suitable or desired habitat for such water birds. The proposed development would not be likely to have any significant effect on the Lough Arrow SPA having regard to the species for which it has been designated and its conservation objectives.

The project lands are about 15.5 kilometres from Ballysadare Bay SAC and SPA. There is however no hydrological connection from the lands to the bay. The qualifying species for the designation of the SPA are water birds for which the project lands are not a suitable habitat. Having regard to this, the absence of any hydrological connection and the distance involved the proposed clear-felling and re-planting is not likely to give rise to any significant effect on the Ballysadare Bay SAC or SPA.

The appellant refers to the possibility of mud entering some lake. I am not aware of any lake in the vicinity and the appellant has not indicated which lake he is referring to or which Natura site might be affected.

I noted in checking the history of planning permissions, in recent years, that there have been very few applications or planning permissions in the vicinity. There is no record of any recently permitted development in the immediate vicinity. Some small-scale developments, for a couple of single houses and some modifications or extensions to houses have been permitted in the wider area. I do not consider that the tree felling proposed would have any in combination or cumulative effects with these developments. I do not have details indicating the locations of other forestry related developments but as I consider that the development of itself would have no effect on any of the Natura sites, I do not envisage any significant in combination effects. (I note that the Department states in the screening form, that there are licences for clear-felling of 30.58 hectares and thinning of 42.5 hectares in the area).

In the above assessment I have not considered the normal good felling practices referred to in the documentation and in the licence in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all felling, and are not designed to prevent any significant effect on the Natura 2000 sites.

The proposal is clearly not necessary for or connected with the management of any Natura 2000 site. I conclude that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

Screening for Environmental Impact Assessment (EIA):

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 11 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

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. It appears to me that 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). I will, however, consider the likely effects of the proposal on the environment.

The site is located in an area where the predominant land use locally is forestry and the predominant uses in the wider area are agriculture and forestry. Forestry by its nature involves afforestation, thinning, clear-felling and re-planting. Such activities are normal and not out of character visually or otherwise in an area such as that in question. The area is not designated as being of exceptional or special visual amenity value in the current Co. Sligo development plan although an area to the northeast, near the boundary with Co. Leitrim, is indicated to be a sensitive rural landscape and a visually vulnerable area. The trees to be felled are located within a wider forested area and are not particularly prominent in views from the surrounding road network although they are located adjacent to and on both sides of the local road near the northern end of the lands. They are not prominent in the landscape and are not of such exceptional visual significance or value as to be considered essential or vital components of the landscape. I consider that the felling and replanting proposed would not have a significant impact on the landscape.

The felling will give rise to the transport of timber on the local roads. This will cause some inconvenience in the short term but this is an inevitable consequence of the afforestation and would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact

Assessment process. I also consider that the tree felling and re-planting proposed, in compliance with the standard conditions referred to, would not be likely to give rise to significant effects on the environment due to any localised water or air pollution.

There are no National Monuments located within the project lands. The nearest such monument is located, near a stream, about 200 metres away to the southwest of the southwest corner of the lands. The proposed tree felling and re-planting would have no effect on the monument in question. The monument is the remains of a former sweathouse.

I consider that the felling proposed does not come within the classes of project covered by the EU EIA Directive. I also consider that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening.

Overall conclusion:

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

7 June 2020

