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29 April 2020

**Our ref: FAC354/2019**

**Subject: Appeal in relation to felling licence CN07-FL0017**

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of licence CN07-FL0017. 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**

Licence CN07-FL0017 for felling and replanting of 3.68ha, at Crocknahattin, Cavan was granted by the Department of Agriculture, Food and the Marine on 22<sup>nd</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC354/2019 was conducted by the FAC on 15<sup>th</sup> April 2020.

**FAC Members:** Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor and Mr Pat Coman

#### **Decision**

Having regard to the evidence before it and the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister of Agriculture, Food and the Marine regarding licence CN07-FL0017.

One appeal was made against the decision to issue the licence. The grounds of appeal included the contention that based on the Information supplied it was not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives and go on to quote from an Irish High Court Decision in relation to appropriate assessment. The grounds also suggest that if mud was to enter the lakes it could have an effect on the SAC/SPA and the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. They also suggest that there has been no assessment of cumulative effects. The grounds do not reference a particular lake or SAC/SPA.

In a statement to the FAC, the DAFM stated that they are satisfied that their criteria and guidelines have been met and that no change to the licence is recommended. The DAFM Inspector described their

considerations and the assessment undertaken and the sources of information. They state that the proposal was screened out for appropriate assessment and that the DAFM 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 Natura sites. They also suggest that if any sediment was to enter a lake it is unlikely to move downstream.

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 EU Habitats Directive and also examined it from the perspective of the EU Environmental Impact Assessment (EIA) Directive. These considerations are available on the public file. The licence pertains to the felling and replanting of 3.68ha, at Crocknahattin, Co. Cavan. The forest is currently comprised of Sitka spruce and some ash and replanting with Norway spruce is proposed. The site is described as being composed of mainly gley soils. The proposed felling is for a number of stands, two of which adjoin a river flowing from Castle Lough to the northeast. This river continues southwesterly and flows through a number of lakes before joining the Blackwater River which enters Lough Ramor at Virginia. The Blackwater River continues from the southeast side of Lough Ramor and part of the River Boyne and River Blackwater SAC and SPA starts at this point, which is slightly more than 15km in direct distance from the felling site. The hydrological distance between the felling site and the SAC and SPA is 26km. The habitats associated with the SAC are not recorded on the site of the proposal and the degree of separation is beyond the foraging distance of the qualifying interest of the SPA. A tributary of the Blackwater River flows from Killyconny Bog (Cloghbally) SAC south of Lough Ramor and lies in a different subcatchment to the proposal and 14.8km away in direct distance. The applicant noted that there are 12ha licensed for clearfell within 1.5km from the proposal and the DAFM stated that licences for thinning have also been granted. There are a number of small scale developments that have been granted planning permission. Having regard to the small scale and location of the proposal, the qualifying interests of the SACs and SPA, and the separation distances the FAC concluded 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.

The EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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. Annex II 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 II). The Irish Forestry Regulations 2017 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 such project where the Minister considers such development would be likely to have significant effects on the environment. Thus the FAC concluded that the proposal of 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 FAC also concluded that there was no real likelihood of the proposal having a significant effect on the environment.

Yours sincerely,



Pat Coman on Behalf of the Forestry Appeals Committee



Before reaching a decision regarding the decision of the DAFM on CN07-FL0017, the FAC undertook an appropriate assessment screening of the proposal and an examination in the context of the EIA Directive. These considerations were based on the information provided with the appeal and by the DAFM, including the application, and information available in the public domain.

#### Appropriate Assessment Screening

The licence pertains to the felling and replanting of 3.68ha, at Crocknahattin, Co. Cavan. The forest is currently comprised of Sitka spruce and some ash and replanting with Norway spruce is proposed. The site is described as being composed of mainly gley soils. The proposed felling is for a number of stands, two of which adjoin a river flowing from Castle Lough to the northeast. This river continues southwesterly and flows through a number of lakes before joining the Blackwater River which enters Lough Ramor at Virginia. The Blackwater River continues from the southeast side of Lough Ramor and part of the River Boyne and River Blackwater SAC and SPA starts at this point, which is slightly more than 15km in direct distance from the felling site. The hydrological distance between the felling site and the SAC and SPA is 26km. Only a small portion of the overall proposal adjoins a river and the proposal itself is of a small scale at 3.68ha. Were any sediment or nutrient runoff to occur the river network, small lakes and Lough Ramor itself would substantially dilute it before it could reach the SAC and SPA. The habitats associated with the SAC are not recorded on the site of the proposal and given the nature and limited extent of connection in combination with the scale, the proposal would not produce impacts which could have a significant effect on the species associated with the SAC and the related conservation objectives. The proposal is considerably beyond the foraging range of the qualifying interest of the SPA. A tributary of the Blackwater River flows from Killyconny Bog (Cloghbally) SAC south of Lough Ramor. The SAC lies in a different subcatchment to the proposal and there is no real hydrological connection between the sites and it could not be considered possible for it to impact the hydrology of the SAC to a significant degree. The proposal does not contain the habitats associated with the SAC and is at a considerable remove that would preclude any direct impacts. The applicant noted that there are 12ha licensed for clearfell within 1.5km from the proposal and the DAFM stated that licences for thinning have also been granted. There are a number of small scale developments that have been granted planning permission. These other projects would not result in a significant effect in combination with the proposal. Having regard to the small scale and location of the proposal, the qualifying interests of the SACs and SPA, 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.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	6	Killyconny Bog (Cloghbally) SAC	14848.15	<b>Habitats</b> 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration
SAC	2299	River Boyne and River	15009.45	<b>Habitats</b> 7230 Alkaline fens

		Blackwater SAC		91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i> , <i>Salicion albae</i> )* <b>Species</b> 1106 Salmon ( <i>Salmo salar</i> ) 1355 Otter ( <i>Lutra lutra</i> ) 1099 River Lamprey ( <i>Lampetra fluviatilis</i> )
SPA	4232	River Boyne and River Blackwater SPA	15007.74	<b>Birds</b> A229 Kingfisher ( <i>Alcedo atthis</i> )

### EIA Examination

The EU Directive (Directive 2011/92/EU as amended by Directive 2014//52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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 I. Annex II 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 II). The Irish Forestry 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. Thus the FAC considers that 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 in this case is of a small scale and situated within a commercially managed forest close to Bailieborough. While there is a waterway adjoining part of the forest, the conditions attached to the licence provide for protection measures in relation to water quality and biodiversity. The felling and replanting will increase traffic and disturbance and will have a visual impact on a temporary basis but not to a significant degree. As noted, the proposal does not fall within a class of development included in the EIA Directive and the FAC does not consider that there is any real likelihood of it resulting in a significant impact on the environment.

Vincent Upton On Behalf of the Forestry Appeals Committee