



**An Coiste um Achomhairc  
Foraoiseachta**

**Forestry Appeals Committee**

**27 April 2020**

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**Our ref: FAC 375/2019**

**Subject: Appeal in relation to felling licence SO09 FL0029**

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 felling licence SO09 FL0029.

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**

Felling licence SO09 FL0029 was granted by the Department on 14 November 2019.

**Hearing**

A hearing of appeal 375/2019 was conducted by the FAC on 15 April 2020.

**FAC Members:**

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor  
and Mr Pat Coman

**Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, referral submission by Sligo County Council, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the licence (Reference SO09 FL0029).

The proposal is for felling on a site stated to be 15.89ha at Cloonagh, Co. Sligo.

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A licence was granted on 15<sup>th</sup> November 2019 subject to conditions. There is a single appeal against the decision to grant. The grounds of appeal contend that it was not possible to carry out an assessment in accordance with the requirements of the Habitats Directive based on the information supplied and that no proper assessment was carried out. Reference is made to Court judgments and to an absence of an assessment of cumulative effects.

In processing the application, the DAFM referred the case to Sligo County Council. In response the Council raised concerns regarding water quality and the need for the protection of same. It recommended that replanting should accord with all Guidelines and that a condition should be attached requiring an increased setback of 25m to any watercourse during replanting. Conditions attaching to the Licence require prior contact with the County Council engineer to discuss haulage from the site, and a setback of 30m from the public road from which all conifers are to be cleared and not replanted or allowed to regenerate. Broadleaves are to be planted within 10m of the road for landscaping purposes. Sligo County Council sought the following in what was a response to 8 felling licence application referrals; *we request that increased buffer zones (25m) are applied in proximity to any watercourses in proximity during any proposed replanting works.* There are no watercourses identified on this site, and while proximate to Tunnagh Lough (100m approx) and that lake is hydrologically connected to the Unshin River SAC at 6.8km per EPA – there is no watercourse or water-body to which the 25m would apply regards the replanting of the site

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 10<sup>th</sup> April 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The FAC is satisfied that the screening procedure detailed in the report is in accordance with the requirements of the Habitats Directive. The report details 11 Natura 2000 sites within a radius of 15km of the proposed felling site (8 SACs and 3 SPAs) and this is considered to be appropriate in this case. The FAC agrees with, and adopts the findings of the report in respect of each of the individual Natura 2000 sites, having regard to the qualifying interests of those sites, and with the overall conclusion that the proposed development by itself, or in combination with other plans or projects, would not be likely to give rise to significant effects on any Natura 2000 site. In these circumstances the FAC considers that the carrying out of Appropriate Assessment as referred to in Article 6(3) of the Habitats Directive is not required.

Furthermore, the FAC agrees with the conclusion of the consultant's report that the proposed felling does not come within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU). Furthermore, the proposed replanting is not initial afforestation and does not involve any change in the use of the land. The FAC also concludes that the proposed development by itself, or cumulatively with other permitted projects would not be likely to give rise to significant effects on the environment.

In deciding to confirm the licence, the FAC considered that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely,



**An Coiste um Achomhairc  
Foraoiseachta**

**Forestry Appeals Committee**

**Pat Coman, on behalf of the Forestry Appeals Committee**



**FAC Case Ref: 375/2019****DAFM Case Ref:SO09-FL0029***Details of application:*

The application is for the clear-felling of coniferous trees in an area of 15.89 hectares in the townland of Cloonagh about 8 Kilometres south of the village of Ballygawley in Co. Sligo. The application was submitted on 4 March 2019 and the DAFM decided to approve the application and grant a licence on 14 November 2019. The application was accompanied by a pre-screening AA report and a document listing a number of general harvesting environmental requirements (Coillte Harvest Plan) was also submitted. The documentation indicates that the lands are to be replanted with 100% Sitka Spruce following clear-felling. The documentation indicates the replanting of 15.1 hectares with an open space area of 0.79 hectares.

*Details of location and lands:*

The plantation to be felled is located in a rural area of County Sligo a couple of kilometres west of the boundary with Co. Leitrim. The main land uses in the area are agriculture and forestry. The project lands are part of a larger forested area and they adjoin forested lands to the west and to the east. There is also a considerable amount of forestry further to the north and to the northeast.

The information on file indicates peat soils on the lands. The vegetation is indicative of poor drainage conditions. There is a lake called Tunnagh Lough in the lands on the east side of the road opposite the southern end of the project lands. The lake is about 100 metres to the east of the lands located to the west of the road. The road in question runs in a north/south direction through the eastern part of the project lands. A section of forest to the north of the lake, to the east of the road, is part of the lands where felling is proposed.

The old OS maps indicate a stream at the southern end of the larger plot on the west side of the road running eastwards towards the road and towards the lake on the opposite side of the road. Streams/drains at the road edge further north are also indicated to be running southwards. The maps suggest that the lands in question drain, or at least drained in the past, towards the lake. It is conceivable that as part of the forestry operations the drainage pattern was altered and it may now connect to the stream flowing southwards from the lake although I have no evidence of this. The EPA maps indicate that the project lands are in the catchment of the Unshin River but the lands to the north are in the catchment of the Garavogue. (The Unshin flows to Ballysadare Bay whilst the Garavogue flows to Sligo/Cummeen Bay).

There is evidence that Tunnagh Lough was bigger in historic times and that some drainage works have lowered the water level. The surface water level in the lake given in the older OS maps is 247 feet AOD on 29 May 1907. The annotation on the map suggests a shallow lake subject to fluctuations in extent.

*DAFM decision:*

The decision was to approve the application and grant a licence subject to 10 conditions. The conditions are standard DAFM licence conditions and there is no suggestion or evidence that any of the conditions have been imposed in order to mitigate or control the effects of the project on any Natura 2000 site. Condition no 10 requires that all coniferous trees within 30 metres of the road shall be removed. The condition requires that broadleaf trees be planted, for landscaping, to within 10 metres of the road.

*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)".

In an earlier submission, which he requested be attached to all his appeals, the appellant stated that there is a lack of proper assessment. He submits, for example, that there is no assessment of cumulative effects. (This submission pre-dates the date of the current appeal).

The appellant submits that if mud was to get into the lake it could have an effect on the SAC/SPA. He submits that the fact that the distance is over 15 Km has no relevance to the fact that there may still be an effect. (The appellant does not indicate what lake or SAC/SPA he is referring to).

*DAFM response to grounds of appeal:*

In its response the Department refers to the documentation submitted, including the pre-screening report on Appropriate Assessment, and to the screening exercise carried out by the Department. 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.

The Department also submits that there is no hydrological connection from the lands to the adjacent lake. It is submitted that the nearest lake (not hydrologically

connected) is 100 metres to the west. (I assume the DAFM is referring to Tunnagh Lough which is the east of the lands on the western side of the public road and to the south of the plantation on the east side of the road). The Department also states that the felling area is not hydrologically connected to any adjacent streams or rivers.

*Appropriate Assessment screening:*

There are 11 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. These are:

Templehouse And Cloonacleigha Loughs SAC located, at the nearest point, 14.11 km from the project lands

Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC located, at the nearest point, 13.21 km from the lands

Bricklieve Mountains and Keishcorran SAC located, at the nearest point, 10.71 km from the lands

Ballysadare Bay SAC located, at the nearest point, 10.451 km from the project lands

Union Wood SAC located, at the nearest point, 8.16 km from the lands

Lough Arrow SAC located, at the nearest point, 8.10 km from the project lands

Lough Gill SAC located, at the nearest point, 5.42 km from the lands

Unshin River SAC located, at the nearest point, 3.76 km from the project lands

Cummeen Strand SPA located, at the nearest point, 13.87 km from the lands

Ballysadare Bay SPA located, at the nearest point, 10.38 km from the project lands

Lough Arrow SPA located, at the nearest point, 8.22 km from the lands

My measurements set out above for the SACs are slightly less than the measurements given in the pre-screening report submitted by the applicant. The differences, however, are marginal and make no difference to the assessment.

The Templehouse And Cloonacleigha Loughs SAC is located, at the nearest point, 14.11 km from the project lands. This SAC is located in a different sub-catchment of the Unshin River from the project lands. There is no hydrological connectivity from the lands to this SAC. The felling of the trees proposed would clearly have no effect on this SAC in the absence of any potentially impacting pathway.

The Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC is located, at the nearest point 13.21 km from the lands. This SAC is at the seaward end of the Garavogue river catchment and is not connected to the Unshin River catchment apart from in the outer part of Sligo Bay and through the Atlantic. The tree felling proposed would clearly have no impact on this SAC.

The Bricklieve Mountains and Keishcorran SAC is located at the nearest point 10.71 km from the project lands in an upland area to the west of Lough Arrow. There is no

hydrological connection from the project lands to this upland area. There is no pathway to facilitate any effect and the tree felling proposed would not have any impact on this SAC.

The Ballysadare Bay SAC is located, at the nearest point, 10.451 km from the project lands. The hydrological distance between the project lands and the SAC in question is however considerably longer. I estimate the distance along the watercourse at in excess of 23 kilometres.

The qualifying interests of the Ballysadare Bay SAC are

1014 Narrow-mouthed whorl snail *Vertigo angustior*

1130 Estuaries

1140 Mudflats and sandflats not covered by seawater at low tide

1365 Harbour seal *Phoca vitulina*

2110 Embryonic shifting dunes

2120 Shifting dunes along the shoreline with *SPPRSKLODDUHQDULD* (white dunes)

2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)

2190 Humid dune slacks

I consider that at the distance in question here the tree felling proposed would have no effect on the qualifying interests for which the SAC has been designated. The tree felling would have no noticeable effect on water quality, quantity or flow at the location of the SAC and it would not affect the habitats, of a geomorphological nature, referred to. The development would not accordingly be likely to have any significant effect on this SAC having regard to the qualifying interests for which the site has been designated.

The Union Wood SAC is located, at the nearest point, 8.16 km from the lands. Like Ballysadare Bay the distance along the hydrological route is considerably more. I estimate a distance of about 21 kilometres.

The qualifying interests of the Union Wood SAC are "Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]". The felling of coniferous trees as proposed over 20 kilometres away would have no impact of the oak woods in question.

The Lough Arrow SAC is located, at the nearest point, 8.10 km from the project lands. Considerations here are similar to those applying to the Bricklieve Mountains and Keishcorran SAC. There is no hydrological connection between the project lands and the Lough Arrow SAC, which is a different sub-catchment of the Unshin River. The qualifying interest of the SAC is "Code 3140 Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp". With no hydrological connection from the lands to the SAC there would be no impact on the qualifying interests.

The Lough Gill SAC is located, at the nearest point, 5.42 km from the project lands. The Lough Gill SAC, however, is located in a different river water catchment. It is in

the catchment of the Garavogue whilst the subject lands are in the catchment of the Unshin river. The qualifying interests of the Lough Gill SAC are "Code 3140 Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp". With no hydrological connection from the lands there would be no impact or effect on the SAC having regard to the qualifying interests.

The Unshin River SAC is located, at the nearest point, 3.76 km from the project lands. The hydrological distance to the SAC from the nearby lake (Tunnagh Lough) is about 6.27 kilometres. The qualifying interests of the SAC 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*) [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]

*Lutra lutra* (Otter) [1355]

The circuitous route of the hydrological connection from the lake to the SAC indicates a slow-moving river which would facilitate the precipitation of any debris or mud which might enter the river. In the event of drainage from the project lands being to the lake which the OS maps suggest the lake would also act as a precipitation basin or sedimentation tank. My conclusions however are not dependant on this. I consider that at the distance involved the tree felling proposed would not be likely to have any significant on the River Unshin SAC having regard to the qualifying interests and conservation objectives which are generally to maintain or restore the favourable conservation condition of the habitats and species for which the SAC has been designated.

The 3 SPAs i.e. Cummeen Strand SPA, Lough Arrow SPA and Ballysadare Bay SPA located, at least in part, within 15 kilometres of the project lands have as their special interests (collectively) the following species of birds: Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Grey Plover (*Pluvialis squatarola*) [A141], Dunlin (*Calidris alpina*) [A149], Bar-tailed Godwit (*Limosa lapponica*) [A157], Redshank (*Tringa totanus*) [A162], Wetland and Waterbirds [A999], Oystercatcher (*Haematopus ostralegus*) [A130] Little Grebe (*Tachybaptus ruficollis*) [A004] and Tufted Duck (*Aythya fuligula*) [A061]

The estuary and water-birds for which the SPAs have been designated do not depend on mature coniferous plantations to support their habitats. The project lands are not suitable habitats for the special interests of the relevant SPAs. The project would not be likely to have any significant effect on the species for which the SPAs have been designated.

I noted in checking the history of planning permissions, in recent years, that there have been very few applications or planning permissions in the immediate vicinity. The nearest planning permission is for a change of design for a house to the west of the forest block of which the subject lands form part. The next nearest permission is for an access to the public road from a forest road. This permission is also to the west. The access is from a different forest block than that of which the project lands form part. I noted 3 more permissions for accesses to the public road from forest roads at locations further east. None of these is in close proximity to the project lands. Other permissions in the general area are for a couple of houses and house extensions, 2 school extensions and alterations to a childcare facility. 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 I do not envisage any significant in combination effects. (I note that the Department states that there are licences for clear-felling of about 5 Ha and thinning of about 19 Ha in the vicinity).

In the above assessment I have not considered the normal good felling practices referred to in the documentation 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 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 uses are agriculture and forestry. Forestry by its nature involves afforestation, thinning, clear-felling and replanting. 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. Some parts of the rural landscape in this area are indicated to be a sensitive rural landscape in the development plan. One such area, located generally to the northeast, may include a part of the northern end of the project lands located to the east of the public road. (Due to the scale of the development plan maps it is not possible to precisely define the boundaries of the areas indicated) The trees in question are visible from some locations along the surrounding road network. They are not however particularly prominent 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 proposed would not be likely to give rise to significant effects on the environment due to water or air pollution.

There are no National Monuments located within the project lands. The nearest such monument is located about 100 metres away to the south of the part of the project lands located on the east side of the public road. This site which is indicated to be a crannog is now located to the north of Tunnagh Lough but it seems to have been located in a larger lake, which existed in earlier times. The national monuments' record indicates another site, also a possible crannog, close by and to the west of the lake. The information on the record suggests however that this is no longer considered to be a National Monument. The proposed development would have no effect on either of these sites.

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

10 April 2020