



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

21 May 2020

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Our ref: FAC 351/2019

Subject: Appeal in relation to felling licence TFL00126718

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 TFL00126718.

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 TFL00126718 was granted by the Department on 24 October 2019.

Hearing

A hearing of appeal 351/2019 was conducted by the FAC on 19 May 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Jim Byrne and
Mr Pat Coman

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including the grounds of appeal before deciding to confirm the decision regarding this licence TFL 00126718.

Project site comprises 5.15 ha for thinning of sitka spruce 4.63 ha and ash 0.52 ha at Coolreacuil, Turlestrane, Co Sligo. No change of land use arises. There is no lake evident in the surrounds. This plantation is in a rural setting and close to public roads, dwellings are dispersed locally. Local lands are a mix of agricultural land, cutaway bog and possibly active bog, and there are some dispersed small areas of forestry.

Additional Licence condition; The proposed thinning is situated within an area important for breeding Curlew. There is no related restriction on thinning activity during the Curlew breeding season, 17th March to 17th July inclusive. However, the forest should not be accessed using unpaved ground across non-forest land (including fields & bogs) during the above breeding season.

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Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

The decision to approve the Licence is subject to a single appeal. and the grounds include 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" and includes further extracts. The appeal grounds also include 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".

In response to the FAC's request for additional information the DAFM concluded that *"individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.*

Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives. Therefore, DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura site(s) listed above".

Before reaching a decision, the FAC undertook an appropriate assessment screening and a preliminary examination of the proposal and a copy is available on the public file.

The project is not shown to be necessary for or connected to the management of any Natura 2000 site. The proposal does not have any evident hydrological connection with a European site. The proposal is in the Moy and Kilalla Bay catchment. The closest European site River Moy SAC has the following qualifying interests; **Habitats;** Active raised bogs, Degraded raised bogs still capable of natural regeneration, Depressions on peat substrates of the Rhynchosporion, Alkaline fens, Old sessile oak woods with Ilex and Blechnum in the British Isles, Alluvial forests with Alnus glutinosa and Fraxinus excelsior. **Species;** Brook Lamprey, Salmon, Otter, White-clawed Crayfish, and Sea Lamprey. Proposal site is mainly in conifer forestry and is for thinning, the otter is a species of interest for the River Moy SAC but at 120m to the edge of the SAC and divided by a public road with no hydrological connection it is unlikely there could be any effect by the proposed thinning, likewise no likelihood of a significant effect arises for the other species or habitats. Also the site has no connectivity to any of the other European sites and no species of interest (birds or wildlife) listed for those sites would likely be affected by the project based on the current cropping of mature trees, the unsuitability of the site to wetland species and the foraging range of the species listed. The habitat interests, in the absence of any connectivity are at no risk of any effect from the project. The Curlew is not amongst the qualifying interests for any of the European sites examined for and the additional licence conditions are not considered to be in place as mitigation for any European site. Other plans and projects were also examined for with regards any possibility of in-combination effects and none arose.

The FAC concluded that there is no evidence to suggest that there is any likelihood of significant effect(s) on a European site arising from the proposed development either alone, or in-combination with other plans or projects.

The site is located in an area where the predominant land use locally is agriculture and there is some forestry, no change of land use arises. Forestry by its nature involves thinning and such activity is



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Foraoiseachta**

Forestry Appeals Committee

normal and not out of character visually or otherwise in an area such as that in question. 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), and in any event does not give rise the likelihood of a significant effect on the environment.

The FAC concludes the project is in keeping with good forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

TFL00126718 (appeal 351/19)

Background

Project site comprises 5.15 ha for thinning of sitka spruce 4.63 ha and ash 0.52 ha at Coolrecuill, Turlestrane, Co Sligo – licence issued 24 October 2019. Sitka spruce in plot 292 forms the larger western side and adjacent ash in plot 283 is a long narrow eastern side plot, and plot 321 is approx 950m to south west along public road. No change of land use arises. No EPA watercourse connectivity to SAC or SPA and no evident land drains Project has no hydro connect to any Natura site up to at least 20km but plot 283 (0.06 ha) is within 120m of R Moy SAC. There is no lake evident in the surrounds. This plantation is in a rural setting and close to public roads, dwellings are dispersed locally. Local lands are a mix of agricultural land, cutaway bog and possibly active bog, and there is some dispersed small areas of forestry.

Additional Licence conditions; The proposed thinning is situated within an area important for breeding Curlew. There is no related restriction on thinning activity during the Curlew breeding season, 17th March to 17th July inclusive. However, the forest should not be accessed using unpaved ground across non-forest land (including fields & bogs) during the above breeding season.

European sites - AA Screening

The following are the European sites within a 15km radius of the proposal.

Site Code	Site Name	Distance To (m)	Qualifying Interests
000297	Lough Corrib SAC	6563.34	Habitats Oligotrophic waters containing very few minerals of sandy plains, Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoetes-Nanojuncetea, Hard oligo-mesotrophic waters with benthic vegetation of Chara spp., Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation, Semi-natural dry grasslands and scrubland facies on calcareous substrates, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Active raised bogs, Degraded raised bogs still capable of natural regeneration, Depressions on peat substrates of the Rhynchosporion, Calcareous fens with Cladium mariscus and species of the Caricion davallianae Petrifying springs with tufa formation, Alkaline fens, Limestone pavements, Old sessile oak woods with Ilex and Blechnum in the British Isles, Bog woodland Species Brook Lamprey, White-clawed Crayfish, Sea Lamprey, Slender Green Feather-moss, Salmon, Lesser Horseshoe Bat, Otter, Freshwater Pearl Mussel, Slender Naiad
002298	River Moy SAC	7019.70	Habitats Active raised bogs, Degraded raised bogs still capable of natural regeneration, Depressions on peat substrates of the Rhynchosporion, Alkaline fens, Old sessile oak woods with Ilex and Blechnum in the British Isles, Alluvial

Site Code	Site Name	Distance To (m)	Qualifying Interests
			forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> Species Brook Lamprey, Salmon, Otter, White-clawed Crayfish, Sea Lamprey
000475	Carrowkeel Turlough SAC	13325.72	Habitats Turloughs,
000607	Errit Lough SAC	14419.88	Habitats Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp.
001571	Urlaur Lakes SAC	14961.65	Habitats Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp.

The project is not shown to be necessary for or connected to the management of any Natura 2000 site. Proposal is in the Moy and Kilalla Bay catchment. The proposal does not have any evident hydrological connection with a European site. The closest European site River Moy SAC has the following qualifying interests; **Habitats**; Active raised bogs, Degraded raised bogs still capable of natural regeneration, Depressions on peat substrates of the Rhynchosporion, Alkaline fens, Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*. **Species**; Brook Lamprey, Salmon, Otter, White-clawed Crayfish, Sea Lamprey. There is no pathway for to give rise to any likelihood of significant effects. Project site is mainly in conifer forestry and is for thinning, the otter is a species of interest for the River Moy SAC but at 120m to the edge of the SAC and divided by a public road with no hydrological connection it is unlikely there could be any effect by the proposed thinning. Also site has no connectivity to any of the other European sites and no species of interest (birds or wildlife) listed above for those sites would be affected in any way by the project based on the current cropping of mature trees, the unsuitability of the site to wetland species and the foraging range of the species listed. The habitat interests, in the absence of any connectivity are at no risk of any effect from the project. The Curlew is not amongst the qualifying interests for any of the European sites listed herein and the additional licence conditions are not considered to be in place as mitigation for any European site. The proposal on its own is not likely to have any significant effect on any Natura 2000 site.

Other forestry related plans and projects listed by DAFM in response to the FAC's request comprise listing with areas of afforestation licences, forest road licences, and felling licences other than the proposal, many of these are noted to be in the much wider area and with the proximity of the River Moy SAC the FAC has examined for other additional projects, especially those within Coolreacill TD not identified by DAFM and otherwise available from publicly accessible websites. These are GFL20592 a general felling licence for thinning approved in 2017 for 9.86 ha and CN78311 for 197m of forest road. The proposal in this instance is a roadside proposal and there is no likelihood of a significant effect on a European site arising in combination with any of these projects. No EPA plans or projects are evident and there are no projects / plans identified from An Bord Pleanála's website. There are a number of planning permissions provided and reviewed by DAFM for any possible in-combination effects, amongst those 19240 is in the immediate vicinity within Coolreacill and is a retention, others not listed are 07461 (2007) new dwelling and ancillary works, 07246 (2007) alteration and extension to dwelling, 09548 (2009) new dwelling and ancillary works, of these most

are long established and none add to the thinning proposal to create the likelihood of a significant effect on a European site.

EIA preliminary examination

The site is located in an area where the predominant land use locally is agriculture and there is some forestry, no change of land use arises. Forestry by its nature involves thinning and such activity is normal and not out of character visually or otherwise in an area such as that in question. 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).

The Curlew is afforded protection as an Annex II species under the EU Birds Directive 2009/147/EC, the Wildlife Act as amended and the Birds and Natural Habitats Regulations 2011. The condition to the licence is precautionary and relates to use of the surrounding area and is in keeping with Article 5 of the Birds Directive 2009 / 147 / EC.

Pat Coman 20 May 2020

