



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

20 May 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: FAC 123/2019

Subject: Appeal in relation to felling licence TFL00275019

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 TFL00275019.

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 TFL00275019 was granted by the Department on 24 April 2019.

Hearing

A hearing of appeal 123/2019 was conducted by the FAC on 12 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 application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to cancel the decision regarding this licence (Reference TFL 00275019).

The proposal is for felling on a site area stated to be 2.24ha at Aughnish, Ramelton, Co. Donegal. The application harvest year was 2019. Replanting would be 15% Broadleaves and 85% Sitka Spruce. The site is crossed by/adjoins an aquatic zone with a stream shown running along the western site boundary northwards towards Lough Swilly. A broad range of soil types is given for the site and the site slope is stated to range from flat to very steep. This is predominantly a rural agricultural area but with extensive ribbon development along public roads. Text submitted by the applicant to clarify the Operations map proposes an number of mitigation measures viz:

**An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee**

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

- 10m buffer zone from the public road
- 15m buffer zone from a watercourse
- 50m aquatic buffer zone from the refuelling area
- 50m aquatic buffer zone from the chemical storage area
- Low bridge to be lined with brash mats

Text submitted by the applicant in order to clarify the Hazards Map proposes a number of mitigation measures to be initiated during Operations viz:

- 20m buffer zone from any SAC/SPA
- 20m buffer zone from any Watercourse/EPA Hydrology Water

The DAFM referred the application to Donegal County Council and NPWS. There is no record of any responses on file.

The DAFM approved the Licence on 24.04.19 subject to standard conditions, and an additional condition requires no conifers within 30m of the public road.

The decision to approve the Licence is subject to a single appeal. The grounds contend that, based on the information supplied, it is not possible to grant approval in accordance with the provisions of EU Directives, no proper assessment has been carried out. Reference is made to a number of Court Judgments.

The Forestry Appeals Committee requested further information from the DAFM in relation to procedures adopted in its appropriate assessment screening regarding the consideration of mitigation measures, and details of other projects in the area that could give rise to cumulative effects. In response the DAFM stated that Standards of Good Forestry Practice had been taken into account as mitigation measures designed to avoid or reduce effects on a Natura 2000 site and that, if screened again for Appropriate Assessment the proposal would not be screened out. No details were provided of other projects.

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 10th May 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The report identifies 3 Natura 2000 sites (and their qualifying interests) located, at least in part, within 15 kilometres of the project lands. These are:

- Lough Swilly SAC (Separation approx.1km)
- Lough Swilly SPA (Separation approx.1km)
- Leannan River SAC (Separation approx. 2.8km) *

* The report notes that the Leenan River SAC overlaps with the Derryveagh and Glendowen Mountains SPA and Lough Fern SPA.

The report noted that there is a hydrological connection from the proposed site to Lough Swilly provided by a stream running along the western boundary of the site. There is no hydrological connection to the Leenan River SAC (qualifying interest includes the freshwater pearl mussel) but the report notes that the haulage route from the site may cross the bridge over the river at



**An Coiste um Achomhairc
Foraolseachta**

Forestry Appeals Committee

Ramelton. In relation to Lough Swilly SAC it is concluded that the likelihood of significant effects arising from the proposed felling and reforestation operations could jeopardise the integrity of the Natura 2000 site. The lack of 'transparency' regarding assessment for in-combination effects is noted. In relation to Leenan River SAC, the report concludes that wind blown debris could enter the river at Ramelton on the haulage route and, although unlikely to be significant, the potential effects of this on the SAC had not been assessed by the DAFM.

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 Lough Swilly SAC, having regard to the proximity, hydrological connectivity and qualifying interests of that Natura 2000 site. The FAC, while noting that the potential for impacts from wind-blown debris on the Leenan River had not be assessed by the DAFM and that the qualifying interests include the freshwater pearl mussel, concluded that there is no evidence to suggest that there is any likelihood of significant effects on this Natura 2000 site arising from the proposed development either alone, or in-combination with other plans or projects.

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).

Based on the information before it, including the DAFM submission in response to the Further Information request and contained in the consultant's report, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence. Furthermore, the FAC concluded that, applying the Precautionary Principle, the likelihood of significant effects on Lough Swilly SAC and SPA resulting from the proposed felling and reforestation could not be discounted at this stage. In such circumstances, the FAC decided to cancel the decision.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

APPLICATION FOR TECHNICAL APPROVAL FOR A FELLING LICENCE

[REDACTED]

[REDACTED]

TOWN LAND.

COUNTY.

[REDACTED]

[REDACTED]

Aughnish

Donegal

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PROPOSAL

Clear felling with reforestation

Species proposed for felling is Sitka Spruce

Reforestation species
Sitka Spruce.

SITE

Felled Area
2.24 ha. (3570 trees proposed for felling)

Area proposed for replanting
2.24 ha (3960 trees proposed for replanting)

Soil Type
Unknown

Existing Land Use
Afforestation

Access

The Harvesting Operations Map accompanying the application shows an onsite lay - by located along the northern site boundary where it adjoins the public road;; it appears that the felled timber will be hauled to the lay -by from where haulage vehicles will transport it in a westerly direction along the Aughnish Road towards Ramelton,

Boundaries

The site is adjoined on its northern boundary by the Aughnish Road; the Aughnish Road is flanked on its opposite margin to the north by what appears to be scrub land. Scrub land also appears to adjoin the southern boundary of the site; agricultural land adjoins its eastern and western boundaries.

The O.S map submitted as part of the application documentation shows a river/watercourse flowing northwards along/through the western boundary of the site into Lough Swilly just east of Begirris Point, The distance between the site and the outlet into Lough Swilly would appear to be approx 1 km or less.

Adjoining land uses and Surrounding Environment

The site lies approx 2 kms east of the outer edges of the small town of Ramelton. The surrounding area would appear to be largely agricultural grazing land. The Aughnish road from which the site is accessed is characterised by significant ribbon development.

The site appears to lie almost equidistant from Drongawn Lough which forms the lower reaches of Lough Swilly to the east and the Leannan River which flows through the town of Ramelton to the west and into the Swilly at the bridge in Ramelton. Afforestation within the surrounding area is small scale and infrequent. The dominant feature in the area is Lough Swilly whose lower reaches are described on Google Earth as Drongawn Lough. The site lies, at its nearest point less than 1 km south of the margins of the Lough.

LICENCE DETAILS

Text submitted by the applicant in order to clarify the Operations Map proposes a number of mitigation measures viz:

- 10m buffer zone from the public road
- 15m buffer zone from a watercourse
- 50m aquatic buffer zone from the refuelling area
- 50m aquatic buffer zone from the chemical storage area
- Low bridge to be lined with brash mats

Text submitted by the applicant in order to clarify the Hazards Map proposes a number of mitigation measures to be initiated during Operations viz:

- 20m buffer zone from any SAC/SPA
- 20m buffer zone from any Watercourse/EPA Hydrology Water

Approval for a Licence was granted on the 24.04.2019

Conditions attached to the Licence deal with felling operations (Schedule 2), replanting (Schedule 3), harvest type (Schedule 4) and include the following:

- Felling and replanting to comply with a suite of Guidelines
- Treatment of stumps with urea
- On site preservation for a defined period of time of trees planted as part of a reforestation scheme
- Prior approval from DAFM for aerial fertilisation of restocking site
- Protection of the public road network
- Commencement of felling operations only after a min. period of 28 days after grant of licence
- Erection of site notice
- Conifers not to be planted within 30 m of public road
- Harvest Plan to be completed prior to commencement of felling
- Site to be replanted within 2 years of the end of clear felling

REFERRALS

NPWS (28.01.2019)

Donegal Co. Council; (28.01.2019)

Replies not received from the above bodies within permitted timeframe
APPELLANT'S SUBMISSION (28.02.2019 and 23.04.2019)

On the basis of information submitted it is not possible to grant a Licence which would be in compliance with the E.I.A and Habitats Directives having regard to judgements of the CJRU in the following cases: C-258/11, C-164/17, C- 323/17, C-461/17

23.04.2019

There has not been any assessment of cumulative effects.

AA SCREENING FORM (01.04.2019)

The screening was carried out by way of desk assessment only.

Qn 2 on the Screening form asks if the site lies 3 km or less from a Natura site. A tick box response confirms that it does

Qn. 6 on the form asks if the Natura site comprises an SAC ; a tick box response to that question is positive but further responses state that the project will not have a significant effect on any terrestrial habitat nor on any terrestrial or aquatic species listed as having a qualifying interest for that SAC.

Qn 7 on the form asks if the Natura site comprises a SPA; a tick box response to that question is negative; that response would appear to be incorrect - Lough Swilly is a Natura 2000 site by virtue of being both a SAC and a SPA. As a result of that incorrect determination Qns. 7A 7B and 7C were left unanswered.

The Inspectors Screening conclusion is that as the project site is 3 km or less from the Natura site, the possibility of a significant effect cannot be ruled out; however having considered a number of factors viz

- Nature, size and location of project
- Potential negative consequences (immediate and future)
- Potential pathways
- Sensitivity of ecological receptors
- In combination effects with other existing plans and projects.
But particularly having regard to
- The small scale nature of the project and
- The flat stable nature of the project location and
Having excluded any safeguards which are above and beyond those set out in Guidelines AND any specific measures that might otherwise be attached to the Licence recommendation, it is determined that the project can be screened out and that an Appropriate Assessment is not required

FORESTRY DIVISION STATEMENT TO THE FORESTRY APPEAL COMMITTEE

A statement of the 22/1/20

- (a) confirmed that a desk review of the application had been undertaken
- (b) listed the Assessment Criteria used
- (c) concluded that as all Guidelines and Regulations had been strictly adhered to, a change to the original decision to approve the Licence was not recommended.

However an accompanying statement did acknowledge that:

Stage 1 Screening of the Appropriate Assessment Procedure initially carried out to assess the likely effects of the proposed development on the receiving environment, took into account mitigation measures which, although based on good forest practice, did have the potential to avoid or reduce the likely effects of that development on the integrity of any Natura 2000 site - having regard to the conservation objectives of those sites. The project was therefore screened out for purposes of Appropriate Assessment; Under the revised Appropriate Assessment Procedure currently in use however the project would not be screened out.

NATURA 2000 SITES

At its closest point the project location lies less than 1 km south of Lough Swilly SAC and SPA. The GIS.EPA.ie mapping system shows a watercourse/river flowing northwards through/along the western boundary of the project site into Lough Swilly less than a kilometre distant east of Begirris Point

The site also lies approx 2.28 kms east of the western inlet of Lough Swilly SAC and SPA, and 2.19 kms from an eastern inlet which penetrates southwards as far as Letterkenny; The Qualifying Interests for Lough Swilly SAC are :

Estuaries, Coastal Lagoons, Atlantic Salt Meadows, Molinia Meadows, Old Sessile Oak Woods, and Otter

The Conservation Objective for the SAC is to maintain the favourable conservation condition of the Estuaries and to restore the favourable conservation condition of the Lagoons, Salt Meadows, Oak Woods and Otter as defined by lists of their respective attributes and targets

The Qualifying Interests for Lough Swilly SPA are :

21 species of wintering birds and 3 species of breeding birds as well as wetland and water birds.

The Conservation Objective for the SPA is to maintain the favourable conservation condition of the 24 species of birds in Lough Swilly as defined by lists of their respective attributes and targets.

The site also lies approx 2.8 kms east at its closest point (as the crow flies) from the Leannan River SAC which flows into the lower reaches of the Swilly at the bridge at Ramelton

The Qualifying Interests for the Leannan SAC are:

Oligotrophic waters containing very few minerals of sandy plains, Oligotrophic to mesotrophic standing waters, Margaritifera margaritifera (Freshwater Pearl Mussel) Salmon, Otter, Slender Naiad

The Conservation Objective for the SAC is to restore the favourable conservation condition of the above interests as defined by lists of their respective attributes and targets; in the case of otter however the conservation objective is maintenance of its conservation condition.

It should also be noted that the Leannan River SAC overlaps with Derryveagh and Glendowen Mountains SPA and Lough Fern SPA. Hence the Conservation Objectives for the Leannan are to be used in conjunction with those of the overlapping SPA designations. There does not appear however to be any hydrological pathway between the project site and The Leannan river

EIA PRELIMINARY EXAMINATION/

In the current case a licence has been applied for clear felling an area of 2.24 ha. By reference to Directive 2011/92/EU as amended by Directive 2014/52/EU, projects identified at Annex II Para 1(d) therein are "initial afforestation and deforestation for the purposes of conversion to another type of landuse"

In the current case where felling is followed by reforestation an EIA Preliminary Examination is not required.

APPROPRIATE ASSESSMENT

The purpose of A.A is to assess in a focused and detailed manner, the impact of the proposed afforestation on the integrity of the identified SAC,s and SPA.

The A.A process consists of a series of sequential steps which are set out below - Screening, Stage 1(a) and 1 (b)

Screening, Stage 1(a)

The issue here is whether the project is directly connected with or necessary to the management of the European site(s).

In the current case the project is not directly connected with or necessary to the management of a European site(s). Screening therefore proceeds to Stage 1(b)

Stage 1(b)

The issues for determination here are whether the project is likely,

(a) on an individual basis

(b) on a cumulative basis

To have a significant effect on any Natura 2000 site having regard to the conservation objectives of that site.

Given

- The nature, scale, and likely duration of the proposed project - felling of 3570 trees, reforestation of another 3960 saplings/trees, haulage and other transportation operations associated with both felling and reforestation, provision of adjacent/on site chemical and refuelling areas,
- The short distance - less than a kilometre between the site and the margins of Lough Swilly,
- The presence of a watercourse running through/along the western boundary of the site northwards into the Lough

- A public road bridge adjacent to the site which spans the watercourse and over which haulage vehicles are likely to travel
- The provision of a lay-by adjacent to the public road and in close proximity to the watercourse
- The detritus from the site likely to enter the watercourse as a result of both ground spread and wind blow
- The Qualifying Interests and associated Conservation Objectives for Lough Swilly SAC - in particular Estuaries, Coastal Lagoons and Atlantic Salt Meadows

I consider that the likelihood of significant effects on the lower reaches, at least, of Lough Swilly SAC, arising from the proposed felling and reforestation operation could jeopardise the integrity of the Swilly SAC.

Having regard therefore to the nature of the proposal, and the particular site location and physical factors pertaining thereto, I consider that an Appropriate Assessment Screening requires to be carried out to determine whether on an individual basis the project is likely to have a significant effect on the Lough Swilly SAC/SPA having regard to the conservation objectives for the SAC and SPA

However such a determination can only be arrived at on the basis of objective scientific information. Comments from NPWS on the proposed project, therefore, although not previously forthcoming within the appointed timescale, could be resought and incorporated into/ accompany an NIS submission which I also consider to be essential in the current case.

In regard to whether the project is likely, on a cumulative basis, to have a significant effect on the Swilly SAC/SPA Natura 2000 site having regard to the conservation objectives of the SAC and SPA I consider that there is a lack of transparency in the supporting information used to arrive at the screening conclusions eg. the various plans and projects referred to "in combination effects with other plans and projects" but were not individually identified as neither were any potential negative consequences. I consider that transparency is essential in order to ensure that robust screening has been carried out and the veracity of any conclusion reached is not in doubt.

In regard to the Leannan River SAC, although there is not any hydrological pathway between the project site and that river, it would appear that the haulage route may cross the bridge at Ramelton with the potential for wind blown debris to enter the water there. Although any resultant effects are unlikely to be significant there is not any evidence that they have been considered in screening for Appropriate Assessment; hence there is not any certainty that the integrity of the Leannan River SAC will not in view of its Qualifying Interests and associated Conservation Objectives be adversely affected/impacted

CONCLUSION

In the case of EIA, as the proposed project does not fall within a class of project set out under Annex II of the amended EIA Directive, it can be screened out for EIA purposes

In regard to Appropriate Assessment Screening Stage 1 (b) referred to above, a conclusion cannot be drawn that the proposed project will not be likely to have significant effects on Lough Swilly SAC (either on an individual or cumulative basis) having regard to the hydrological pathway which exists between the project site and the Lough and the requirement that mitigation measures not be taken into account in drawing such a

conclusion. The Forestry Service decision therefore to screen out the proposed development for Appropriate Assessment would appear to have been premature and in error.

In the context of the uncertainty now arising as to whether the project is likely to have a significant effect on Lough Swilly and indeed on the Leannan River,, either individually or cumulatively with other plans and projects, it may now be appropriate to seek a NIS incorporating objective scientific opinion from relevant bodies/sources, to determine whether the proposed felling and reforestation will adversely affect the integrity of those Natura sites by reference to their conservation objectives as a SAC and SPA.

Mary Cunneen
10.5.2020