



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

21 April 2020

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Our ref: FAC 332/2019

**Subject:** Appeal in relation to felling licence CN04 FL0091

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 CN04 FL0091.

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 CN04 FL0091 was granted by the Department on 22 October 2019.

**Hearing**

A hearing of appeal 332/2019 was conducted by the FAC on 14 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 FAC has decided to confirm the decision of the Minister regarding licence CN04 FL0091:

In its statement to the FAC received on 05 February 2020, the Department of Agriculture, Food and the Marine included:

*As per the Appropriate Assessment Procedure SOP applicable at the time (v. 09Sept19), 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*

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*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, an Appropriate Assessment Pre-screening Report and associated methodology document (please see attached documents). Also considered were the comments and observations of referral bodies who submitted information to the Department in respect of the licence (see attached referral correspondence where applicable).*

*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 clearfell project was screened out and an Appropriate Assessment was deemed unnecessary.*

*For the purposes of 42(16) of S.I.477 / 2011, the DAFM has determined that the project will not adversely affect the integrity of any European sites.*

Proposal is for 2.72 ha of clear-fell (in Sitka Spruce) in Brackley, Co Cavan, of which 2.58 ha is stocked and 0.14 ha is open area. This is an elevated site and with 15-30% gradient to west on the south of Slieve Rushen. Replanting is with Sitka Spruce and there is no change of land use. Site has no watercourses mapped within it by EPA, and is within the Erne catchment and the Blackwater (Newtowngore) sub-catchment. The FAC considered that none of the conditions attached to licence require measures which are designed to mitigate effects on any European site in this instance.

There is a single appeal against the decision to grant. The grounds of appeal include that it was not possible this (licence) would be in compliance with the requirements of the Habitats Directive and EIA Directive based on the information supplied. The appeal grounds referred 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 Sections 26, 47, 48 and 49 of the judgement are referred to.

The FAC undertook an appropriate assessment screening of this proposal and examined the proposal with regards to the EIA Directive. These considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. The screening undertaken by the FAC is available on the public file.

The project is not necessary for or connected with the management of any Natura 2000 site. The following European sites were examined for due to distance from the project site; Lough Oughter and Associated Loughs SAC at 11 km distance and Lough Oughter Complex SPA at 13.1 km. The project site has no connectivity to any of the European sites and no species of interest (birds or otter) listed for the sites would be affected in any way by the site based on the current cropping, site unsuitability to wetland species and foraging range of the species at these distances. Also the Cuilcagh Aneirin Uplands SAC at a further distance is elevated in its own right and separately so from the proposal. Upper Lough Erne SAC is again at a distance from the site and north of Slieve Rushen and not have a hydrological connection. There are no watercourses on this site so the site has no hydro-connectivity, there is small watercourse 64m north of and above the site flowing away to its west, with mature/ semi-mature





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forestry in between and any pathway is unlikely. Brackley Lough is approx 1 km from the site and has a direct hydrological connection to a Lough Oughter and Associated Loughs SAC at c. 36 km but for reasons of disconnect from the proposal site and the extreme distance involved there is no possibility of a significant effect arising of the European site. Also, while the project site is within the Erne catchment, the same catchment as Lough Oughter, for reasons of an absence of direct hydrological connectivity and distance there is no likelihood of a significant effect on the European site.

The FAC also considered other plans and projects in combination with the proposal and no in combination effect is identified. The FAC 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. 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.

Furthermore, the FAC considers 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 considers 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.

The FAC also concluded that the proposal is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



## Appropriate Assessment Screening CN04 FL0091 (332/19) Brackley Co Cavan

The FAC undertook an appropriate assessment screening of this proposal and examined the proposal with regards to the EIA Directive. These considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. This screening was undertaken in advance of the FAC decision.

Proposal is for 2.72 ha of clear-fell (in Sitka Spruce) of which 2.58 ha is stocked and open area of 0.14 ha. This is an elevated site and sloping with 15-30% gradient to west on the south west slopes of Slieve Rushen. Replanting is with 100% Sitka Spruce and there is no change of land use. Site has no watercourses mapped within it by EPA, and is within the Erne catchment and the Blackwater (Newtowngore) sub-catchment.

### European sites

The project is not necessary for or connected with the management of any Natura 2000 site. The following European sites were examined for as they are nearest the project site; Lough Oughter and Associated Loughs SAC at 11 km distance and Lough Oughter Complex SPA at 13.1 km. The following sets out for each with qualifying interests;

Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
000007	Lough Oughter and Associated Loughs SAC	11028.96	<b>Habitats</b> 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* <b>Species</b> 1355 Otter ( <i>Lutra lutra</i> )
004049	Lough Oughter Complex SPA	13184.75	<b>Birds</b> A050 Wigeon ( <i>Anas penelope</i> ) A038 Whooper Swan ( <i>Cygnus cygnus</i> ) A005 Great Crested Grebe ( <i>Podiceps cristatus</i> ) <b>Habitats</b> Wetlands

UK0016614	Upper Lough Erne SAC	c. 10km	<b>Habitats</b> Natural eutrophic lakes with Magnopotamion or Hydrocharition Molinia meadows on calcerous, peaty or clayey silt laden soils Alkaline Fens Old sessile oak woods <b>Species</b> Otter / Back Salmon
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Project is in conifer forestry, has no connectivity to any of the European sites and no species of interest (birds or otter) listed for the sites would be affected in any way by the site based on the current cropping, site unsuitability to wetland species and foraging range of the species at these distances. Also at a further distance the Cuilcagh Aneirin Uplands SAC is elevated in its own right and separately so from the proposal.

There are no watercourses on this site so the site has no hydro-connectivity, there is watercourse 64m north of the site and uphill from it, with mature/ semi-mature forestry in between, and any pathway is unlikely. Upper Lough Erne SAC is c. 10km from the project and north of Slieve Rushen. Brackley Lough is approx 1 km from the site and has a direct hydrological connection to Upper Lough Erne SAC at c. 22 km and to Lough Oughter and Associated Loughs SAC at c. 36 km but for reasons of disconnect from the proposal site, and the extreme distances involved there is no possibility of a significant effect arising.

Site is within the Erne catchment and has no watercourses mapped within it by EPA, and the Blackwater (Newtowngore) sub-catchment, the same catchment as Lough Oughter but again for reasons of an absence of hydrological connectivity there is no likelihood of a significant effect.

The applicant provided information relevant to the screening for Appropriate Assessment in a pre-screening report at application. The information included as follows;

*The potential for the proposed project to contribute to an in-combination impact on European Natura sites 2000 SACS and SPAS was considered. The applicant has quantified internally licensed clearfells, roads and windfarms on lands managed by the applicant, in the vicinity of this harvest block.*

*Within a 1.5 kilometre vicinity of this harvest block, we've made the following observations: 10 licensed clearfell blocks, equating to 58.34 hectares. 0 constructed new roads, equating to 0.00 metres. 0 wind turbines with approved planning permission.*

*In addition to this, the county development plan was reviewed on 26/09/2019. No plans were observed within 1.5 kilometres of the harvest block. Geographical reference points of planning applications from the online planning system, MyPlan.ie, were consulted on 19/09/2019. There were no additional projects identified within 1.5 kilometres of the harvest block.*

The FAC identified the following felling licence areas in Brackley TD as recent; CN04 FL0092 3.27 ha, CN04 FL0056 5.13 ha and CN04 FL0059 of 5.55ha. Due to the nature of the surrounds there are mature forests in the area but these will not add to any effect from the proposal regards European sites. The other forestry related projects when considered in combination with the 2.58 ha of actual felling and replanting are not evidenced to create an in-combination effect for the project so as to give rise to any likely significant effect on a European site. Also Cavan County Council planning shows application 18277 granted in 2018 in the vicinity for a 2 storey dwelling and ancillaries, the most recent to that is from 2008, and no in combination effect is identified. Slieve Rushen wind-farm is positioned north of the proposal on the other side of Slieve Rushen and does not create an in-combination effect on any European Site when considered with this felling and replanting. Therefore, the FAC concludes 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.

***Examination regards screening for Environmental Impact Assessment (EIA):***

The project is sub-threshold in area for EIA, and comprises felling with replanting and no change of land use. 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. The FAC considers that the felling proposed does not come within the classes of project covered by the EU EIA Directive. The FAC also considers 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. The FAC considers that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary examination.

Pat Coman on behalf of the FAC - 20/04/2020

