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24th April 2020

Our ref: FAC331/2019

Subject: Appeal in relation to felling licence CN06-FL0037

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of licence CN06-FL0037. 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 CN06-FL0037 for felling and replanting at Bellamont Forest, Co. Cavan was granted by the Department of Agriculture, Food and the Marine on 22nd October 2019.

Hearing

A hearing of appeal FAC331/2019 was conducted by the FAC on 14th 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 CN06-FL0037.

The felling licence was granted for a 3.91 ha clearfell and replanting at Bellamont Forest, Co. Cavan. The forest is currently composed of Sitka spruce with some ash and replanting with 90% Norway spruce and 10% broadleaf is proposed. The site is described as mainly comprising a mineral, surface water gley soil and with a moderate slope. There are other existing forests in the area and a number of lakes, the closest being Town Lake. The application was referred to the NPWS which did not object to the proposal but requested that scrub and ditches be retained and that felling is suspended during periods of high

rainfall, as well as making general observations about the obligations of the DAFM. The Applicant provided details of other projects in the area and noted that 22.84 ha had been licensed for felling with 1.5km.

The grounds of appeal included the following,

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;

The test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. In; Kelly - v- An Bord Pleanala [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."

This current development is project split into 4 applications. These sites adjoin Dromore Lakes pNHA 000001 which are protected under the Cavan county Development Plan.

If mud was to enter the lakes it could have an effect on the SAC/SPA

The fact that the distance is just over 15 km has no relevance to the fact that there still may be an effect, There is continuous hydrological connectivity between Dromore Lakes and The Lough Oughter Natura 2000 sites

The grounds go on to quote from a High Court Decision and to suggest that cumulative effects have not been accounted for in the assessment.

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 briefly 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 go on to state that there is no hydrological connection between the felling site and Town Lough, the closest lake to the felling, and that the Applicant must abide by Forestry and Water Quality, Forest Biodiversity guidelines. In regards the Appellants claims that the project has been split in different parts, the DAFM note that the four licences apparently referred to by the Appellant are spread across a distance of 2.6km. They also suggest that if any sediment was to enter the 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 Habitats Directive and also examined it from the perspective of the Environmental Impact Assessment (EIA) Directive. These considerations are available on the public file. There is one European site within 15km from the felling site. The eastern boundary of the Upper Lough Erne SPA is situated 14.8km northwest of the site in direct distance. This SPA covers a total area of 5,787 ha. The proposal is for felling and replanting of a coniferous forest which would not be considered suitable nesting or foraging habitat for the qualifying interest of this SPA and is at a considerable distance from the SPA, which would preclude noise or physical disturbance. Town Lough is the closest lake to the forest, although not directly connected, and is joined to the network of Dromore lakes by a stream. Dromore River flows from the western end of Dromore lakes and flows westerly. This river joins the Annalee River, which flows into the Lough Oughter and Associated Loughs SAC. The hydrological distance from Town Lough to the boundary of this SAC is some 30km. Furthermore, the felling site has no water features and were any surface runoff to reach the lake it could not move downstream in any significant amount due to the settling, diluting and restricting system of

streams and lakes. There are felling licences granted in the vicinity but these would not impact on the nature and degree of separation between the site and Lough Oughter and Associated Loughs SAC. There are no conditions attached to the licence that relate to the mitigation of effects on a European site nor were such measures taken into account in the screening. Having regard to the small scale and location of the proposal, other developments in the area, the qualifying interests of Natura 2000 sites, 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.

The licence pertains to the felling and replanting of trees which is not a class of development included in the EIA Directive or considered for EIA in the Forestry Regulations 2017. The felling is of a small scale and is within the wider landscape of a commercially managed forest, and is at a remove from the pNHA. The projects referred to by the appellant are at a considerable remove from each other. The FAC concluded that there was no real likelihood of the proposal having a significant effect on the environment.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on Behalf of the Forestry Appeals Committee



FAC331/2019 CN06-FL0037

17th April 2020

Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the EIA Directive. These considerations were based on information provided by parties to the appeal and available in the public domain.

The felling licence was granted for a 3.91 ha clearfell and replanting at Bellamont Forest, Co, Cavan. The forest is currently composed of Sitka spruce with some ash and replanting with 90% Norway spruce and 10% broadleaf is proposed. The site is described as mainly comprising a mineral, surface water gley soil and with a moderate slope. There are other existing forests in the area and a number of lakes, the closest being Town Lake, and the proposal is in the Erne catchment. The application was referred to the NPWS which did not object to the proposal but requested that scrub and ditches be retained and that felling is suspended during periods of high rainfall, as well as making general observations about the obligations of the DAFM. The Applicant provided details of other projects in the area and noted that 22.84 ha had been licensed for felling with 1.5km.

Appropriate Assessment Screening

There is one European site within 15km from the felling site. The eastern boundary of the Upper Lough Erne SPA is situated 14.8km northwest of the site in direct distance. This SPA covers a total area of 5,787 ha. The proposal is for felling and replanting of a coniferous forest which would not be considered suitable nesting or foraging habitat for the qualifying interest of this SPA and is at a considerable distance from the SPA, which would preclude noise or physical disturbance. The next closest European site is Kilroosky Lough Cluster SAC which lies over 16km to the north in direct distance. The SAC is in the same broad catchment as the proposal but in a different subcatchment, upstream and is at a considerable hydrological remove. Town Lough is the closest lake to the forest, although not directly connected, and is joined to the network of Dromore lakes by a stream. Dromore River flows from the western end of Dromore lakes and flows westerly. This river joins the Annalee River, which flows into the Lough Oughter and Associated Loughs SAC. The hydrological distance from Town Lough to the boundary of this SAC is some 30km, while the direct distance is 16.3 km. Furthermore, the felling site has no water features and were any surface runoff to reach the lake it could not move downstream in any significant amount due to the settling, diluting and restricting effects of the system of streams and lakes. There are felling licences granted in the vicinity and a number of planning permissions related to small scale developments but these would not impact on the nature and degree of separation between the site and Lough Oughter and Associated Loughs SAC or any other European site. There are no conditions attached to the licence that relate to the mitigation of effects on a European site nor were such measures taken into account in the screening. Having regard to the small scale and location of the proposal, the qualifying interests of the sites, 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	Site	Site	Distance To	Qualifying Interests	Conservation Objectives
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Type	Code	Name	(m)	(* denotes a priority habitat)	
SPA	UK90 2007 1	Upper Lough Erne SPA	14768	Species Whooper Swan <i>Cygnus cygnus</i>	https://www.daera-ni.gov.uk/publications/upper-lough-erne-special-protection-area
SAC	1786	Kilroosky Lough Cluster SAC	16081	Habitats 3140 Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. 7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae* 7230 Alkaline fens Species 1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO001786.pdf
SAC	7	Lough Oughter and Associate d Loughs SAC	16307	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO000007.pdf

Environmental Impact Assessment Examination

As described above, the licence pertains to the felling and replanting of trees which does not fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. The felling is of a small scale and the area will be replanted afterwards and is within the wider landscape of a commercially managed forest. The area does contain water features and is at a remove from the pNHA. There are conditions attached to the licence that regulate operations associated with the felling to provide some protections for water and biodiversity and any possible impacts are unlikely to be significant and will likely be of a temporary nature. There is likely to be an impact on traffic during operations but this will be of a temporary nature. The application was considered by the NPWS which did not object to the development aside from requiring the protection of water in line with guidelines. The FAC concluded that the proposal would not result in any real likelihood of a significant effect, itself or cumulatively with other projects.

Vincent Upton On Behalf of the FAC