



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

08 May 2020

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Our ref: FAC 365/2019

Subject: Appeal in relation to felling licence TFL00350819

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 TFL00350819.

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 TFL00350819 was granted by the Department on 31 October 2019.

Hearing

A hearing of appeal 365/2019 was conducted by the FAC on 23 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 and the grounds of appeal, before deciding to confirm the decision of the Minister in respect of felling licence TFL00350816.

The proposal comprises 9.72 ha of thinning within 6 plots of which four are cropped in Sitka Spruce and two in Norway spruce, plots are divided by a public road. As this is thinning no change of land use arises, there is also a forest road in place. Elevation is between 170m and 180m with moderate slope. The plantation is in a rural setting and close to public roads, dwellings are dispersed locally and most are to west of project. A roadside house and farmyard exist in between the plantation plots. Site has a gentle slope to east. Local lands are mainly agricultural and there is some dispersed forestry.

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The licence TFL00350819 is subject to standard conditions, including to strictly adhere to the Standards of Felling & Reforestation (October 2019).

The decision to grant the Licence is subject to one appeal. The grounds include 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." Sections of the judgement were quoted. The grounds also included 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 grounds of appeal, the Department of Agriculture, Food and the Marine provided a statement that included as follows:

In reviewing the project application it has become apparent that an error had occurred during consideration of the projects hydrological connection to the SAC. The project is within the same WFD Catchment as Lough Oughter SAC but is some 34km upstream from SAC (16.7km in a direct line). With this degree of separation, the project, will have no significant effect on the SAC qualifying interests. The AA Screening text can be read below. The original decision to screen out the project would still stand in light of hydrological connection.

The FAC undertook an appropriate assessment screening of this proposal. The FAC's 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 report is available on the public file. European sites included in the screening considerations were Lough Oughter and Associated Loughs SAC at 16.8 km distance from the proposal and well in excess of 35 km hydrologically, River Boyne and River Blackwater SAC at 19.5 km, Lough Oughter Complex SPA at 19.2 km (*also over 35km hydrological connection*), Lough Sheelin SPA at 19.5 km and the River Boyne and River Blackwater SPA at 19.5 km. The FAC found the project is not necessary for or connected with the management of any European site.

Regards the proposal plot 352 has the Turfad River along its eastern edge and flows to north away from Lough Naglare which is c. 130m from plot. Also, the Gregettiagh River flows from southern tip of plot 111. The project site is in the Erne catchment. The project site is hydrologically connected to Lough Oughter and Associated Loughs SAC at in excess of 35km distance, an SAC that is also in the Erne catchment. With the distance involved regards connectivity to European sites, none of the species of interest (birds or wildlife) for the sites would be affected by the project, this is based upon the current cropping of mature trees, the unsuitability of the site to wetland species and the foraging range of the species listed for each of the above sites. The habitat interests, having regards to distance and connectivity are also deemed to be at no risk of any effect from the project. There is no likelihood of the proposed thinning having a significant effect on a Natura 2000 site.

The FAC also took into consideration other plans and projects and found that given the distances and as well as the qualifying interests and conservation objectives none of the plans and projects examined for would in combination with the proposal give rise to any likelihood of a significant



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effect on a European site. The proposed thinning, 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.

The FAC also examined with regards to the EIA Directive and considers that the proposed thinning does not come within the classes of project covered by the EU EIA Directive.

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

Yours sincerely

Pat Coman, on behalf of the Forestry Appeals Committee

Appropriate Assessment Screening for felling licence TFL00350819 (365/19) at Carrickacroman, Co Cavan

Details

Project site comprises 9.72 ha of thinning in 6 plots cropped 4 in sitka spruce and 2 in Norway spruce – divided by public road. As this is thinning no change of land use arises, there is a forest road in place. Licence has no conditions added that are specific to this site. Elevation is approx 180m-170m with moderate slope.

This plantation is in a rural setting and close to public roads, dwellings are dispersed locally and most are to west of project. A roadside house and farmyard exist in between the plantation plots. Site has a gentle slope to east. Local lands are mainly agricultural and there is some dispersed forestry.

European sites

The project is not shown to be necessary for or connected with the management of any Natura 2000 site. The following European sites were examined for due to being nearest the project;

Site Code	Site Name	Distance To (m)	Qualifying Interests
000007	Lough Oughter and Associated Loughs SAC	16814.58	Habitats Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation Bog woodland* Species Otter
002299	River Boyne and River Blackwater SAC	19577.57	Habitats Alkaline fens / Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> Species Salmon / Otter / River Lamprey
004049	Lough Oughter Complex SPA	19291.04	Birds Wigeon / Whooper Swan / Great Crested Grebe Habitats Wetlands
004065	Lough Sheelin SPA	19536.76	Birds Goldeneye / Tufted Duck / Pochard / Great Crested Grebe Habitats Wetlands
004232	River Boyne and River Blackwater SPA	19572.23	Birds Kingfisher

Plot 352 has the Turfad River along its eastern edge and flows to north away from Lough Naglare which is c. 130m from plot. The Gregettiagh River flows from southern tip of plot 111. The project

site has no hydrological connectivity to any Natura site up to at least 20km, there is connectivity to Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at well in excess of 35 km distance. The project site is currently in conifer forestry, and with the distance involved regards connectivity to European sites, no species of interest (birds or wildlife) listed above for the sites would be affected in any way by the project, this is based upon the current cropping of mature trees, the unsuitability of the site to wetland species and the foraging range of the species listed for each of the above sites. The habitat interests, having regards to distance and connectivity are at no risk of any effect from the project. The project site is in the Erne catchment. The proposed thinning is not likely to have any significant effect on any Natura 2000 site.

In combination

The additional information provided by the Department identified various forestry-related projects comprising 295m of Forest Road CN82869 approved in April 2019 and two older afforestation licences. In addition checks by the FAC of publicly available information on forestry related projects reveal a felling licence TFL00070417 for 16.15 ha was approved in September 2018. A check regards surrounding townlands identified the following forest road projects; CN78859 320m November 2017, CN80413 590m September 2018 and CN80378 440m January 2019.

Online planning for Cavan County Council and An Bord Pleanála identified non-forestry plans and projects in the vicinity of the project within Carrickcroman were 18433 new dwelling with garage, waste water treatment and percolation area, 19504 new dwelling with garage, waste water treatment and percolation area – not yet decided, 15535 new dwelling with garage and sewerage treatment facility, 15471 demolition of dwelling extensions and construction of dwelling extensions. A check of the EPA website revealed no projects or plans for consideration in combination with the project being screened.

Given the distances and that of connection as well as the qualifying interests and conservation objectives none of the plans and projects examined for would in combination with the project being screened give rise to any possibility of significant effect on a European site.

The proposed thinning, 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.

Preliminary examination regard to Environmental Impact Assessment (EIA):

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. Thinning is not 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. Thinning of trees, 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).

Pat Coman, on behalf of the FAC, 23 April 2020