



An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

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24 April, 2020

Subject: Appeal FAC218/2019 TFL00131618 – Felling licence

Cornahilt, Cavan

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

Background

Felling Licence TFL00131618 for 10.43 hectares was approved by the Department of Agriculture, Food and the Marine on 22nd August, 2019.

Hearing

A hearing was conducted by the FAC on the 14th April, 2020.

In attendance at the hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Mary Lawlor
& Mr Vincent Upton

Decision

Having regard to the evidence, before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence TFL00131618. The decision is related to 10.43 hectares of thinning and clearfell at Cornahilt, Cavan.

The licence was issued with the following conditions:

- Ensure public safety at all times.
- Clearfelled areas shall be replanted with groups (25+) of broadleaves along periphery. All mature broadleaves which are healthy and windfirm shall be retained.

There is a single appeal against the decision to grant. The grounds of appeal contend that it was not possible to carry out an assessment in accordance with the requirements of the Habitats Directive based on the information submitted and that no proper assessment was carried out. Reference is made to Court judgments and to an absence of an assessment of cumulative effects.

The statement provided by the DAFM in response to the appeal states that there is no possibility of a significant effect on any Natura site, and that an Appropriate Assessment is not required. There is no hydrological connection or obvious threat to any Natura site.

Additional information provided by the DAFM stated that it was determined that there are no other extant or proposed plans or projects which are likely to give rise to any such significant effect or effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.

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 April 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The FAC is satisfied that the screening procedure detailed in the report is in accordance with the requirements of the Habitats Directive. The report details 7 Natura 2000 sites within a radius of 20km of the proposed felling site (4 SACs and 3 SPAs) and this is considered to be appropriate in this case. The FAC agrees with, and adopts the findings of the report in respect of each of the individual Natura 2000 sites, having regard to the qualifying interests of those sites, and with the overall conclusion that the proposed development by itself, or in combination with other plans or projects, would not be likely to give rise to significant effects on any Natura 2000 site. In these circumstances the FAC considers that the carrying out of Appropriate Assessment as referred to in Article 6(3) of the Habitats Directive is not required.

Furthermore, 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). The proposed replanting is not initial afforestation and does not involve any change in the use of the land. The FAC also concludes 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.

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

Yours sincerely

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

Pat Coman on behalf of the Forestry Appeals Committee

APPLICATION FOR TECHNICAL APPROVAL FOR A GENERAL FELLING LICENCE

[REDACTED]

[REDACTED]

T.F.L. NO.

TFL 00131618

TOWN LAND.

CORNAHILT

COUNTY.

CAVAN

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PROPOSAL

Clear fell with replanting
Thinning

Species proposed for felling

Norway Spruce
Sitka Spruce

Reforestation Species

Sitka Spruce
Birch

Access

From Local Road (Beechwood Ave)

SITE

The site comprises 3 plots :

Plots 2 and 3 (clear felling and replanting) have a combined area of 9.71 ha.

Plot 1 (thinning) is 1.11 ha. in area.

Boundaries and Adjoining Land Uses

Local road to the N.W. (Beechwood Ave)

Residential estate to the N.E. and E.

Single dwelling and some fields to the N.W.

Fields to the S. S.W. and S.E.

Approx 180m beyond the N.W corner of Plot No 2 and separated from it by the public road lies a semicircular tree ring or enclosure - Recorded Monument - CV038-013.

Within Plot No.3 at its S.Eastern corner lies a further tree ring, also semicircular in shape; that however is not a Recorded Monument but is afforded a level of protection

Settlement pattern

The site lies within the south eastern environs of Ballyjamesduff adjacent to new residential development there.

Access

Access is from the local road, Beechwood Ave.

Other Forestry in the area.

Infrequent and dispersed small tracts of afforestation are to be found to the S. and S.E.
Several larger tracts lie to the N.W towards Drumscriddan.

LICENCE DETAILS

██████████
████████████████████

Date of Licence Application

14.3.2018

Decision Issued

22.8.19

Conditions

A number of conditions are attached to the Licence -

- Schedule 2 contains 5 conditions which identify the species of trees to be felled, their associated land parcels and replanting details.

Other conditions not contained within Schedule 2 require "inter alia"

- all felling and planting operations to be carried out in accordance with a number of Forestry Guidelines and the Code of Best Forest Practice.
- Archaeological conditions which require a 40 m. diameter exclusion zone to be provided around the Recorded Monument CV038-013 as well as an operational buffer zone of min diameter 10 m at the tree ring in the S.E corner of Plot 3; further details regarding felling and replanting and operational works at the site of the S.E tree ring are also set out.
- Schedule 3 sets out replanting requirements
- Schedule 4 refers to various Harvest Type Descriptions

REFERRALS

Cavan Co. Co.

GROUND OFS OF APPEAL

Three submissions objecting to the felling licence were lodged by the appellant; the first was dated 2018-4-27 - despite the fact that the Licence did not issue until 22.8.2019. The second and third were received on the 23.4.2019 and the 6.9.2019. The grounds of appeal may be summarised as follows:

1. The Forest Service is required to comply with the decision of the CJEU in the case C-323/17 viz that: Art 6(3) of Directive 92/43/EEC (conservation of natural habitats and wild flora and fauna) must be interpreted as meaning that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.
2. It is therefore necessary to screen all applications which drain into a SAC or are within 15 km of a SAC or SPA
3. It is necessary also to carry out an assessment of cumulative impacts
4. 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 having regard to CJEU judgements - C-258/11, C-164/17, C323/17 and C-461/17.
5. The appellant requires access under Directive 2003/4/EC to the application file, all documents and assessments, including the decision, and the AA Screening Report. The appellant states that Directive 2003/4/EC requires member states to take necessary measures to ensure that public authorities organise active and systematic

dissemination of all environmental information relevant to the authorities functions, to the public esp by way of telecommunications and/or electronic technology)

AA SCREENING FORM

An AA Screening Form received in the Felling Licence Section of the DAFM on the 11.6.2019 identified 4 scenarios which would be likely to trigger AA Screening for the proposed Licence application; none of those were deemed applicable in the current case.

FAC INFORMATION REQUEST

1.Details of any plans or projects or both which when assessed in combination with the proposed development is/are likely to give rise to a significant effect(s) on a European site in view of that sites conservation objectives

2. Identify any mitigation measures, proposed to avoid or reduce the likely effects of the proposed development on the environment, which were considered during the Screening Assessment

FOREST SERVICE RESPONSE

Three separate responses were submitted to the F.A.C on the 12.11.2019, the 14.11.2019 and he 19.2.2020. The first and second responses were identical in substance.

Re 1 above, on an individual basis the proposed development, was determined to not be capable of giving rise to a significant effect(s) on the integrity of any Natura 2000 sites having regard to

- the conservation objectives of the Natura sites
- The absence of any aquatic zone within or adjoining the project area
- Other factors i.e. distance, qualifying interests of SAC's and SPA's

Re cumulative impacts of the proposed development with other plans and projects (viz planning applications, planning appeals, EPA website, Co. Development Plan, IFORIS), it was determined that there are not any extant or proposed plans /projects which are likely to give rise to significant effects on the integrity of any Natura 2000 sites having regard to those sites' conservation objectives; That is because the regulatory systems associated with those plans and projects will ensure the avoidance of environmental pollution or the creation of direct/indirect effects on the integrity of the Natura sites - having regard to their conservation objectives.

Furthermore a detailed investigation of other sources of likely cumulative impacts determined that were none either extant or proposed that were likely to give rise to significant effects on the integrity of any Natura sites having regard to those sites conservation objectives. A detailed list of the sources examined was attached to the response at Appendices I and II

Re 2 above - when the likely effects of the proposed development on the receiving environment were first assessed, standards of good forest practice were taken into consideration.

However when applying the Appropriate Assessment Procedure then in use, to carry out the Stage 1 screening, standards of good forest practice were not taken into account as mitigation measures, as they were neither directly nor indirectly relevant in terms of their potential to avoid or reduce any potential significant effects of the development on the integrity of any Natura 2000 sites, - in view of those sites conservation objectives. Furthermore if the current A. A procedure were to be applied in respect of the proposed development the application would still be screened out

NATURA SITES

Natura 2000 sites which lie within 20 kms approx from the proposed clear fell plots are:

Lough Sheelin SPA - 6.8 kms. to the S.W.

Its Conservation Objective is to maintain or restore the favourable conservation condition of this wetlands habitat as a resource for the regularly occurring migratory water birds that use it

Moneybeg and Clareisland Bogs. SAC.- 10 kms to the S.W

These comprise active and degraded raised bogs still capable of regeneration. They are a priority habitat at Annex 1 of the E.U's Habitats Directive: they are a rare habitat in the E.U and are becoming increasingly so in Ireland which has a special responsibility for their conservation at international level. The Conservation Objective is to restore the favourable conservation condition of these active raised bogs.

River Boyne & Blackwater SAC.and SPA - 14 kms to the S.E

The Objective for the SAC is to maintain or restore the favourable conservation condition of the Annex 1 habitat(s) viz Alkaline Fens and Alluvial Forests and/or the Annex II species viz River Lamprey, salmon and otter, for which the SAC was selected

The Objective for the SPA is to maintain or restore the favourable conservation condition of the Kingfisher bird species

Lough Kinale and Darragh Lough. SPA. - 15.5 kms to the S.W

Conservation Objective is to maintain or restore the favourable conservation condition of this wetlands habitat as a resource for the regularly occurring migratory water birds that use it

Derragh Bog. SAC - 16 kms to the S.W

This bog is a degraded raised bog which is still capable of natural regeneration ; it is also notable as a priority habitat of bog woodland. Its Conservation Objective is to maintain and restore the Annex 1 Habitats and Annex II species for which it has been selected.

Lough Oughter & associated Loughs SAC. - 20 kms to the N.W.

These comprise an area in excess of 5000 ha; they are designated as an SAC due to 3 habitats - Natural Eutrophic Lakes, Otter species, and the priority habitat of bog woodland. The Conservation Objective is to maintain or restore the favourable conservation condition of the Annex 1 an/or Annex II habitats and species for which the SAC was selected

The EPA national layered mapping system shows that the site is not drained by any streams, nor does it have any hydrological connection with any river which flows either into or out of any of the above Natura 2000 sites.

EIA PRELIMINARY EXAMINATION/SCREENING

By reference to Directive 2011/92/EU as amended by Directive 2014/52/EU, projects identified at Annex II Para 1(d) therein include "initial afforestation and deforestation for the purposes of conversion to another type of land use". As the proposed clear felling, reforestation and thinning of the identified plots do not fall within a class of development specified in the Directive, an EIAR is not required in the current case.

APPROPRIATE ASSESSMENT

The purpose of Appropriate Assessment is to determine in a focused and detailed manner, the impact of the proposed felling and reforestation project on the integrity of Natura 2000 sites by reference to their Conservation Objectives. In the current case I have taken into consideration only those Natura sites which lie at a distance of 20 kms or less from the plots proposed for clear felling; (see above.)

Stage 1 in the AA process is "Screening"; this stage can consist of one or two steps; **Step 1** determines if the project is directly connected with or necessary to the management of the Natura 2000 or European site. Should the determination be positive then no further action is required. In the current case however as the determination is negative, screening must proceed onwards to Step 2

Step 2 determines if the project is likely to have a significant effect -
(i) on an individual basis or
(ii) cumulatively, with other plans and projects,
on the European site(s) having regard to the sites' Conservation Objectives.

Re (i) above, I note that the Conservation Objectives for the SPA and SAC European sites identified depend "inter alia" on the maintenance and/or restoration of a favourable hydrological regime which will guarantee the continued existence of the habitats for which the sites have been selected. In the current case, and as the Forest Service response to the FAC noted, there is not any hydrological connection between the sites proposed for clear felling and the Natura sites. (Cf EPA, GIS map system)Given that factor and also additional factors such as the nature of the proposed project and its separation distance from the nearest Natura site, it must be concluded that the potential for the proposed project to have **any effect** on the Natura sites, let alone a **significant effect** on the integrity of those sites having regard to their conservation objectives is unlikely.

Re (ii) above, the appellant correctly drew attention to the need to determine whether cumulatively, ie. in conjunction with other plans and projects, the proposed clear felling and reforestation is likely to have a significant effect on surrounding European sites, having regard to the Conservation Objectives of those sites. It would appear that the Appropriate Assessment initially carried out by the Forest Service did not undertake such a

determination. However in their response to the FAC on the 19.2.2020, the Forest Service stated that a number of sources were consulted in regard to other plans and projects, which in conjunction with the proposed clear felling could potentially give rise to significant effects on surrounding Natura sites; following that consultation (details of which were provided to the FAC), the Forest Service concluded that, "there are no other extant or proposed plans or projects within those listed, that are likely to give rise to any such significant effect(s) on the integrity of any Natura 2000 sites in view of those sites' Conservation Objectives..."

While the consultation referred to in the response of the 19.02.2020 should have been carried out prior to determination of the licence, I have examined the list of plans and projects set out in the Appendices and endorse the above conclusion of the Forestry Division in regard to cumulative impacts.

Regarding the appellant's contention that it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site - the response of the Forest Service on that matter to the FAC is relevant. The response stated

When the Forest Service ...first assessed the effects of the proposed development on the local receiving environment it did take into consideration standards of good forest practice. However when applying the AA procedure then in use to carry out a Stage 1 screening... those standards...were not taken into account as mitigation measures as they were neither directly nor indirectly relevant in terms of their potential to avoid or reduce any potential significant effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.

I note that mitigation measures are aimed at avoiding or reducing significant effects on the environment; In the current case however perusal of the conditions contained in Schedules 2,3 and 4 of the Licence shows that they are not mitigation measures designed to avoid or reduce significant effects on the surrounding Natura sites - having regard to those sites' conservation objectives - but rather best practice guidelines, standards and codes, governing only the manner in which felling and reforestation works are to be carried out on site; those conditions do not appear to be particular to the Cornahilt site.

Re the appellant's reference to compliance by a public authority with Article 7 of Directive 2003/4/EEC, I am unable to comment on same.

CONCLUSION

I consider that the grounds of appeal as stated by the appellant cannot be endorsed in the current case for the reasons set out in the preceding paragraphs under "Appropriate Assessment"

Mary Cunneen
10.4.2020