



An Coiste um Achomhairc  
Foraioiseachta

Forestry Appeals Committee

30 September 2020

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

**Our ref: FAC 321/19**

**Subject: Appeal in relation to felling licence TFL00336819**

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00336819.

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 TFL00336819 was granted by the Department on 10 December 2019.

#### **Hearing**

A hearing of appeal 321/19 was conducted by the FAC on 22 September 2020.

#### **FAC Members:**

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy 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 in respect of this licence (Reference TFL00336819).

The proposal is located at Moneycass Glebe, Tullyco, Co Cavan and involves the thinning of 10.71 ha cropped with Sitka Spruce and Japanese Larch. The proposal site is fragmented (7 plots) over a reasonably large but localised area with the main body by the roadside at Moneycass. Plots 1 and 2 are separated from each other by a power line and separated from plots 3 and 4 by a public road. Plots 3 and 4 are again separated from each other by a power line. Plots 5 and 6 are at a remove of c. 150m to the east, and plot 7 c. 600m to the south. The EPA mapping system shows Drumhallagh stream rising at the proposal site by plot 3 and flowing north by the tip of plot 1 to the Laragh River. The Laragh turns south-west at c. 2.3km from the proposal and then north to join the Annalee River

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in Northern Ireland and flowing to Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at over 30 km hydrological distance from the proposal by this hydrological pathway. The proposal is in the Erne Catchment and Laragh Sub-Catchment. The proposal is located within a rural agricultural area with a sparse and dispersed settlement pattern, there are some areas of forestry in the surrounds but there is mostly agricultural land adjacent to proposal.

All of the conditions of the licence are standard and none of the conditions attached to the licence are in mitigation of effects on any European Site in this instance.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that 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, and having regard to the following judgements of the CJEU; Case C-258/11, Case C-164/17, Case C-323/17 and Case C-461/17. That 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 *maybe* such an effect."

In response to the appeal, the DAFM state that the application was processed according to Forest Service Guidelines and Standard Operating Procedures relevant at the time, and the proposed harvesting operations have also been considered according to current Appropriate Assessment procedures. DAFM state there are Natura 2000 sites within 15km of the project area: Lough Oughter SAC (12.1km) - the project area is hydrologically linked to the SAC but beyond the range of influence according to Forest Service 'Bird Foraging Table', 'Habitat Table' and Forestry and otter guidelines. Lough Oughter SPA (14.7) - the project area is hydrologically linked to the SPA but beyond the range of influence according to Forest Service 'Bird Foraging Table' and 'Habitat Table', and the application should be 'Screened out.

The FAC carried out a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC), and an examination of environmental effects, copies of these are contained in the public file. The FAC is satisfied the proposed development is not connected with or necessary to the management of any Natura 2000 site. Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, on Natura 2000 sites within a radius of 15km. The FAC considered that there is no likelihood of significant effects on any Natura site outside of that radius.

Based on the application maps and the EPA mapping system there are no aquatic zones shown within plots 2, 4, 5, 6 or 7. There is an aquatic zone bordering plots 1 and 3. The Drumhallagh stream rises by plot 3 and flows north by the tip of plot 1 to the Laragh River, which in turn flows to the Annalee River in Northern Ireland and on to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at over 30 km hydrological distance from the proposal. The proposal is in the Erne Catchment, as are the Natura sites, and the Laragh Sub-Catchment. The proposal consists of forestry planted in 2002 and is not considered suitable habitat for the bird species of Lough Oughter Complex SPA, also taking account of the interim distance, c. 14.8 km straight line and more than 38.8 km hydrologically, there is no likelihood of any significant effects on the qualifying interests or conservation objectives of the SPA. The proposal being a thinning of semi mature forestry and being separated from the Lough Oughter and Associated Loughs SAC by a hydrological





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distance of c. 31.15 km (EPA mapping) is also not likely to cause any significant effects to any of the qualifying interests or conservation objectives of the European sites, the qualifying interests of which comprise natural eutrophic lakes, bog woodland and the otter. There is otherwise an absence of connectivity for the proposal plots to give rise to any likely significant effects on European sites.

Other plans and projects in the area include few planning permissions of a recent nature; 2017 (17135) demolish section of dwelling and erect extension, and 2016 (16272) retention of extension and alterations, 2019 (19401) demolition of pig houses and the erection of pig houses a project that was screened out under 6(3) of the Habitats Directive during the planning application process, there are other much older permissions. Other forestry projects in the area include 9.61 ha of thinning at Carrickacroma and 295m of forest road at Carrickacroma, these are at a divide from the proposal by public roads and agricultural lands. None of these plans or projects combines with the proposal to create any likelihood of significant effects on the European sites at the distances of separation.

The FAC is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of significant effects on any European site.

Felling (thinning) does not fall within a class of development to which the EIA Directive applies and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive. In terms of environmental effects, the proposed development, which is moderate in scale, is expected to give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. The northern plots 1 and 3 are quite small (1.53 ha and 0.57 ha respectively) and divided by public road from each other and given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term and would not give rise to any likely significant effect in terms of water quality. The site is not sensitive to fisheries. There would be no significant effects on any designated sites or archaeological sites. Having regard to the scale and nature of the proposal and the existing pattern of development in the area, there is no possibility that the proposed development alone, or cumulatively with other projects, plans or land uses, would give rise to significant effects on the environment.

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

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee



## **TFL00336819 (appeal 321/20) Appropriate Assessment Screening and environment examination**

### **Background**

The proposal is located at Moneycass Glebe, Tullyco, Co Cavan and involves the thinning of 10.71 ha cropped with Sitka Spruce and Japanese Larch. The proposal site is fragmented (7 plots) over a reasonably large but localised area with the main body by the roadside at Moneycass. Plots 1 and 2 are separated from each other by a power line and separated from plots 3 and 4 by a public road. Plots 3 and 4 are again separated from each other by a power line. Plots 5 and 6 are at a remove of c. 150m to the east, and plot 7 c. 600m to the south. The EPA mapping system shows Drumhallagh stream rising at the proposal site by plot 3 and flowing north by the tip of plot 1 to the Laragh River. The Laragh turns south-west at c. 2.3km from the proposal and then north to join the Annalee River in Northern Ireland and flowing to Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at over 30 km hydrological distance from the proposal by this hydrological pathway. The proposal is in the Erne catchment and Laragh SC. The proposal is located within a rural agricultural area with a sparse and dispersed settlement pattern, there are some areas of forestry in the surrounds but there is mostly agricultural land adjacent to proposal. All of the conditions of the licence are standard and none of the conditions attached to the licence are in mitigation of effects on any European Site in this instance.

### **EU Sites**

The proposed development is not connected with or necessary to the management of any Natura 2000 site. Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, on Natura 2000 sites within a radius of 15km. The FAC considered that there is no possibility of significant effects on any Natura site outside of that radius. There are two Natura sites within 15km and these are as follows;

<b>Site Code</b>	<b>Site Name</b>	<b>Distance To (m)</b>	<b>Qualifying Interests</b>
000007	Lough Oughter and Associated Loughs SAC	12222.22	<b>Habitats</b> 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation / 91D0 Bog woodland <b>Species</b> 1355 Otter
004049	Lough Oughter Complex SPA	14858.85	<b>Birds</b> A050 Wigeon / A038 Whooper Swan / A005 Great Crested Grebe <b>Habitats</b> Wetlands

Based on the application maps and the EPA mapping system the FAC is satisfied that while there are land drains in the area there are no aquatic zones shown within plots 2, 4, 5, 6 or 7. There is an aquatic zone bordering plots 1 and 3. The Drumhallagh stream rises by plot 3 and flows north by the tip of plot 1 to the Laragh River, which in turn flows to join the Annalee River in Northern Ireland and on to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at over 30



km hydrological distance from the proposal. The proposal is in the Erne catchment and Laragh SC. The proposal consists of forestry planted in 2002 and is not considered suitable habitat for the bird species of Lough Oughter Complex SPA, also taking account of the interim distance, c. 14.8 km straight line and more than 38.8 km hydrologically, neither is there any likelihood of a significant effect on the qualifying interests or conservation objectives of the SPA. The proposal being a thinning of semi mature forestry and being separated from the Lough Oughter and Associated Loughs SAC by a hydrological distance of c. 31.15 km (EPA mapping) is not likely to cause a significant effect to any of the qualifying interests of the European site comprising natural eutrophic lakes, bog woodland and the otter. There is otherwise an absence of connectivity for the proposal plots to give rise to any likely significant effects on European sites.

Other plans and projects in the area include few planning permissions of a recent nature; 2017 (17135) demolish section of dwelling and erect extension, and 2016 (16272) retention of extension and alterations, 2019 (19401) demolition of 2 pig houses and the erection of 3 such houses and was screened out in a screening under 6(3) of the Habitats Directive during the application process, there are older permissions for example in 2011 (1191) dwelling and ancillary works. Other forestry projects in the area include 9.61 ha of thinning at Carrickacroma and 295m of forest road at Carrickacroma, these are at a divide from the proposal by public roads and agricultural lands. None of these plans or projects combine with the proposal to create any likelihood of significant effects on the European sites at the distances of separation.

The FAC is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of significant effects on any European site.

#### ***Examination of environmental effects***

Felling (thinning) does not fall within a class of development to which the EIA Directive applies and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive.

In terms of environmental effects, the proposed development, which is moderate in scale, is expected to give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. The northern plots 1 and 3 are quite small (1.53 ha and 0.57 ha respectively) and divided by public road from each other and given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term and would not give rise to any likely significant effect in terms of water quality. There would be no significant effects on any designated sites or archaeological sites. The site is not sensitive to fisheries. Having regard to the scale and nature of the proposal and the existing pattern of development in the area, there is no possibility that the proposed development alone, or cumulatively with other projects, plans or land uses, would give rise to significant effects on the environment.

Pat Coman on behalf of the Forestry Appeals Committee

29 September 2020