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1st October 2020

Subject: Appeal FAC447/2019 regarding licence TFL00270119

Dear [REDACTED]

I refer to your 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 TFL00270119 for thinning of 5.48ha at Coolan/Coolowen, Co. Cork was issued by the Department of Agriculture, Food and the Marine (DAFM) on 13th December 2019.

Hearing

A hearing of appeal FAC447/2019 was held by the FAC on 23rd September 2020.

FAC Members: Mr. Des Johnson (Chair), Mr. Pat Coman, Mr. Vincent Upton and Ms. Bernadette Murphy.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence TFL00270119.

The licence is subject to standard and specific conditions, relating to adherence to harvesting and archaeological guidelines, the thinning operation and archaeological exclusion zones:

The felling licence pertains to thinning, in 2019 and 2024, of 5.48ha planted in 2002 in 4 plots (Plot 1 (0.75ha), Plot 2 (1.05ha), Plot 3 (2.51ha) & Plot 4 (1.17ha), with no clearfelling or replanting. There is a mix of 3 of the following species on each plot - Sycamore, Alder, Birch, Sitka Spruce, Japanese Larch, Norway Spruce & Scots Pine. Details of harvesting operations were provided by the licence applicant, including the stacking area and oil storage location. DAFM give the slope as predominantly flat to moderate (<15%). The Geological Survey of Ireland identifies the geology of the area as mudstone. DAFM have described the soil as both podzolic and gley in nature on file. Soil maps give the soil type as typical brown podzolics. The Knocknasuff River rises to South (c240m) of the project but is not directly connected to the proposal and flows West to the Manin, Shournagh and Lee Rivers eventually flowing to Cork Harbour. The project is in Lee Catchment 19 and the Manin Sub Catchment 10 (19_5). The forest is situated in an agricultural and rural landscape and adjoins only another small forest at the South West corner, being otherwise surrounded by agricultural land. There are single dwellings and ribbon development along public roads surrounding the project, but at a remove and access

already exists via a farm laneway to a minor public road to the West. The proposal was considered by a DAFM archaeologist that noted that there are no recorded monuments on site but 2 sites are contiguous to the Western boundary and specific conditions were attached to the licence.

There is one appeal against the decision. The grounds relate to the appropriate assessment screening undertaken by the DAFM and suggest that an appropriate assessment should have been undertaken. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that the inspector did not show evidence on which responses that they provided in the screening were based and that in this case an appropriate assessment was legally required.

In a statement to FAC, DAFM stated this site was referred to the District Inspector in June 2019. The Forestry Inspector stated that an EIA screening was undertaken and further states that a desk assessment of the site was carried out, as per the Forest Service Standard Operating Procedures and the Appropriate Assessment Procedure, 3rd of October 2018. DAFM specify that due to the proximity of the site to the Blackwater River (Cork/Waterford) SAC 002170 lying 13km to the north and Cork Harbour SPA 004030 located 12km east of the site, a screening was carried out on the application. DAFM state that primarily due to the lack of any watercourses on the site and the consequent lack of any hydrological connections to either Natura site, the conclusion of the screening was that this project, both alone and in combination with other plans or projects, will not have a significant effect on these NATURA sites and a recommendation to grant a licence was given.

In considering the appeal and before making a decision, the FAC undertook a screening in relation to the requirements of the Habitats Directive and an examination of environmental effects and copies of these considerations are contained in the public file. The proposal is not connected with or necessary to the management of any European site. There are 2 sites whose boundaries fall within 15km of the proposal. The Great Island Channel SAC lies just beyond 15km but joins with the Cork Harbour SPA.

Blackwater River (Cork/Waterford) SAC (002170) is the closest Natura site and lies 11.5km to the North West of the project. There is no hydrological connection with the proposal area and the terrestrial habitats of the SAC are not present on site. The Knocknasuff River rises to South of the project and flows West to the Manin, Shournagh and Lee Rivers eventually flowing to Cork Harbour/ Great Island Channel (joined) sites. The project is in Lee Catchment 19 rather than the Blackwater Catchment 18. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SAC. *Cork Harbour SPA (004030)* lies 11.7km to the South East of the project and at a hydrological distance of c25km. The Knocknasuff River rises to South (c240m) of the project but is not directly connected to the proposal and flows West to the Manin, Shournagh and Lee Rivers eventually flowing to Cork Harbour/ Great Island Channel (joined) sites at a hydrological distance of c25km. The project is in Lee Catchment 19 as are the 2 latter sites above. The project is in the Manin Sub Catchment 10 (19_5). The Cork Harbour and Great Island Channel sites are in Tibbotstown Sub Catchment 10 (19_2). There appears to be an area of wet/marshy land between the proposal and the river source. An Aquatic Zone was marked on application map on Western boundary. DAFM state that the project area does not adjoin or contain an Aquatic Zone(s). No drains or watercourses were identified by FAC in or adjoining the proposal on EPA or Ordnance Survey maps. FAC found no evidence of a direct hydrological connection and conclude that any drain present is of a limited nature and incapable of transporting significant

amounts of debris or silt and there is no likelihood of significant effects. The hydrological distance of c25km also removes any likelihood of significant effects. In addition, the proposal is not considered suitable habitat for the wetland birds and waterbirds listed as *Qualifying Interests* for this SPA. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SPA. *Great Island Channel SAC (001058)* lies 15.6km to the South East of the project and joins Cork Harbour from the East. The hydrological considerations are therefore the same as those set out above for *Cork Harbour SPA*. There is no likelihood of significant effects arising on the mudflat, sandflat and salt meadow habitats of this SAC for the same reasons i.e lack of hydrological pathway. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SAC.

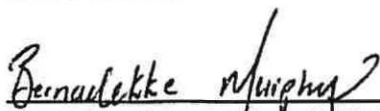
The sites considered by the FAC and the conclusions reached reflect those of the DAFM and the FAC is satisfied that the DAFM screening conclusion was correct and appropriate. In these circumstances the FAC found the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required. There are no licence conditions that relate to the mitigation of effects on a European site and none were considered in the screening. FAC also concluded 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 due to the absence of any pathway for significant effects.

Having regard to the nature, small scale and location of the proposal, its degree of separation from and the absence of direct hydrological connectivity with European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

The FAC also examined the proposal with regards to the EU EIA Directive and considers that the proposed thinning does not come within the classes of project covered by that Directive. FAC does not consider that the proposal would result in any real likelihood of a significant effect on the environment.

In deciding to confirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,



Bernadette Murphy On Behalf of the Forestry Appeals Committee

Coolan/Coolowen Cork

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 likelihood of significant effects on the environment. These considerations were based on information provided by parties to the appeal, including the original application, and available in the public domain. The FAC is satisfied that the information available to it is sufficient to undertake these considerations of the proposal.

Proposal Details

The felling licence pertains to thinning in 2019 & 2024 of 5.48ha planted in 2002 in 4 plots (Plot 1 (0.75ha), Plot 2 (1.05ha), Plot 3 (2.51ha) & Plot 4 (1.17ha), with no clearfelling or replanting. There is a mix of 3 of the following species on each plot - Sycamore, Alder, Birch, Sitka Spruce, Japanese Larch, Norway Spruce & Scots Pine. Details of harvesting operations were provided by the licence applicant, including the stacking area and oil storage location. DAFM give the slope as predominantly flat to moderate (<15%). The Geological Survey of Ireland identifies the geology of the area as mudstone. DAFM have described the soil as both podzolic and gley in nature on file. Soil maps give the soil type as typical brown podzolics (Ross Carberry 900e).

Appropriate Assessment Screening

The proposal is for thinning in a managed forest and is not connected with or necessary to the management of any European site. There are 2 sites whose boundaries fall within 15km of the proposal. They are listed below alongside their distance from the closest boundary to the centre of the proposal, and its qualifying interests and conservation objectives. The Great Island Channel SAC lies just beyond 15km but joins with the Cork Harbour SPA.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
SAC	002170	Blackwater River (Cork/Waterford) SAC	11542.86	Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1220 Perennial vegetation of stony banks 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* Species 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1106 Salmon (<i>Salmo salar</i>) 1421 Killarney Fern (<i>Trichomanes speciosum</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1355 Otter (<i>Lutra lutra</i>) 1103 Twaite Shad (<i>Alosa fallax fallax</i>) 1092 White-clawed Crayfish	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002170.pdf

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
				<i>(Austropotamobius pallipes)</i> 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>)	
SAC	001058	Great Island Channel SAC	15675.68	Habitats 1140 Mudflats and sandflats not covered by seawater at low tide 1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)	http://www.nps.ie/sites/default/files/protected-sites/conservation_objectives/C0001058.pdf
SPA	004030	Cork Harbour SPA	11735.88	Birds A056 Shoveler (<i>Anas clypeata</i>) A149 Dunlin (<i>Calidris alpina</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A050 Wigeon (<i>Anas penelope</i>) A028 Grey Heron (<i>Ardea cinerea</i>) A069 Red-breasted Merganser (<i>Mergus serrator</i>) A142 Lapwing (<i>Vanellus vanellus</i>) A130 Oystercatcher (<i>Haematopus ostralegus</i>) A141 Grey Plover (<i>Pluvialis squatarola</i>) A052 Teal (<i>Anas crecca</i>) A054 Pintail (<i>Anas acuta</i>) A157 Bar-tailed Godwit (<i>Limosa lapponica</i>) A162 Redshank (<i>Tringa totanus</i>) A183 Lesser Black-backed Gull (<i>Larus fuscus</i>) A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) A004 Little Grebe (<i>Tachybaptus ruficollis</i>) A160 Curlew (<i>Numenius arquata</i>) A182 Common Gull (<i>Larus canus</i>) A048 Shelduck (<i>Tadorna tadorna</i>) A017 Cormorant (<i>Phalacrocorax carbo</i>) A193 Common Tern (<i>Sterna hirundo</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) A156 Black-tailed Godwit (<i>Limosa limosa</i>) Habitats Wetlands	http://www.nps.ie/sites/default/files/protected-sites/conservation_objectives/C0004030.pdf

1. *Blackwater River (Cork/Waterford) SAC (002170)* is the closest Natura site and lies 11.5km to the North West of the project. There is no hydrological connection with the proposal area and the terrestrial habitats of the SAC are not present on site. The Knocknasuff River rises to South of the project and flows West to the Manin, Shournagh and Lee Rivers eventually flowing to Cork Harbour/ Great Island Channel (joined) sites. The project is in Lee Catchment 19 rather than the Blackwater Catchment 18. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SAC.

2. *Cork Harbour SPA (004030)* lies 11.7km to the South East of the project and at a hydrological distance of c25km. The Knocknasuff River rises to South (c240m) of the project but is not directly connected to the proposal and flows West to the Manin, Shournagh and Lee Rivers eventually flowing to Cork Harbour/ Great Island Channel (joined) sites at a hydrological distance of c25km. The project is in Lee Catchment 19 as are the 2 latter sites above. The project is in the Manin Sub Catchment 10 (19_5). The Cork Harbour and Great Island Channel sites are in Tibbstown Sub Catchment 10 (19_2). There appears to be an area of wet/marshy land between the proposal and the river source. An *Aquatic Zone* was marked on the application map on Western boundary. DAFM state that the project area does not adjoin or contain an *Aquatic Zone(s)*. No drains or watercourses were identified by FAC in or adjoining the proposal on EPA or Ordnance Survey maps. FAC found no evidence of a direct hydrological connection and conclude that any drain present is of a limited nature and incapable of transporting significant amounts of debris or silt and there is no likelihood of significant effects. The hydrological distance of c25km also removes any likelihood of significant effects. In addition the proposal is not considered suitable habitat for the wetland birds and waterbirds listed as *Qualifying Interests* for this SPA. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SPA.

3. *Great Island Channel SAC (001058)* lies 15.6km to the South East of the project and joins Cork Harbour from the East. The hydrological considerations are therefore the same as those set out above for *Cork Harbour SPA*. There is no likelihood of significant effects arising on the mudflat, sandflat and salt meadow habitats of this SAC for the same reasons i.e lack of hydrological pathway. The degree of separation would preclude any other form of significant effect and there is no likelihood of significant effects arising on this SAC.

In Combination Effects

The forest adjoins only another small forest at the South West corner and is otherwise surrounded by agricultural land. The proposal has access to the public road via a farm laneway. There are 3 afforestation projects (FP953, CN30525, CN30522), 1 forest road licence (CN61038) and 1 felling licence (TFL00273819) recorded in the townland. There are 10 planning applications listed in the townland on Cork County Council planning and these include for stables and ancillary works and a 2 storey dwelling with ancillary works Ballygibbon and a change of use from stables to apartments in Coolowen, other permissions local to the project relate to retention and these other plans and projects pose no likelihood of a significant effect on a European site when considered in-combination with the proposal. The area is rural and agricultural. Due to the absence of any pathway for significant effects from the proposal to a European site and the nature and scale of the proposal, there is no likelihood of the project on its own or in combination with other plans and projects resulting in an in-combination effect with the proposal. There are no licence conditions that relate to the mitigation of effects on a European site and none were considered in the screening.

In conclusion having regard to the nature, small scale and location of the proposal, its degree of separation from and the absence of direct hydrological connectivity with European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

Examination of Environmental Impacts

The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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. Neither afforestation nor deforestation are referred to in Annex I. Annex II 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 II). 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 felling 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).

The proposal is of a small scale and for a thinning, without the clearance of land. No clearfelling or replanting is proposed. The activities are normal in a managed forest and would be carried out under licence, with conditions to adhere to a series of requirements and guidelines. The forest is situated in an agricultural and rural landscape and such activities would not be out of keeping with the area. There are single dwellings and ribbon development along public roads surrounding the project, but at a remove and access already exists via a farm laneway to a minor public road to

the West. Traffic and noise will likely increase during operations but this would be short-term and intermittent and not out of keeping with other management practices in the area. There are a number of conditions related to the protection of biodiversity and water quality on the licence and, taking account of the scale and nature of the proposal and noting the absence of a direct hydrological connection, the proposal is not considered likely to result in a significant impact on water quality or biodiversity. The site is not considered fisheries or acid sensitive. FAC concluded that there is no likelihood of a significant effect on any European site. Ardamadane Wood Natural Heritage Area (001799) (recorded as proposed), a deciduous Oak and Birch woodland with some scrub woodland and improved agricultural grassland, lies within 2 km of the project but is separated from it by a railway line and the N20 road. In these circumstances given the separation and habitats concerned, FAC does not consider that the project will impact the NHA site. There are conditions on the licence regarding the management of operations that mean that the occurrence of waste and pollution of a significant degree are not likely. There are no recorded monuments in the project area, while 2 protected structures (Fulachtaí Fia - COO062-074001 & COO62-074002) adjoin the Western side (Plot 1 and 2), as does the farm laneway that is to be used for access. An archaeological report was prepared before the licensing of the proposal and archaeological conditions are attached to the licence. The FAC is satisfied that these are appropriate and acceptable. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and does not consider that it would result in any real likelihood of a significant effect on the environment.


Bernadette Murphy

On Behalf of the Forestry Appeals Committee