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25th September 2020

Subject: Appeal FAC434/2019 regarding licence TFL00374719

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 TFL00374719 for thinning of 4.29 ha at Aghalattafraa, Co.Cavan was issued by the Department of Agriculture, Food and the Marine (DAFM) on 6th December 2019.

Hearing

A hearing of appeal FAC434/2019 was held by the FAC on 15th September 2020.

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

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 TFL00374719.

The licence pertains to 4.29 hectares of thinning of Sitka spruce and Japanese larch in 2019 and 2024. As it is a thinning with no clearfelling, no replanting is proposed following the felling. The forest was planted in 2011 with an area of the fields to the north and west left unplanted. Timber is proposed to be extracted through the southeast of the forest to a minor public road. A number of agricultural buildings are present close to the southeastern corner but the forest is well setback from any dwellings. The proposal is situated in Mountnugent subcatchment of the Upper Shannon Catchment. The forest is close to Cornagrow lake and while there is no evidence of a drainage system leading to the lake but the land slopes gently towards the lake. The forest does not immediately join any other managed forest while some scrub is present to the west and there are other managed forests in the general vicinity.

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 the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They note that the DAFM screening identified two sites within 15km Lough Sheelin SPA and Moneybeg and Clareisland Bog SAC and that Boyne/Blackwater SAC & SPA was just over 15km. They suggest that there is no hydrological pathway connecting the project area and the SAC/SPA and the project is beyond the range influence of any of the qualifying interests.

In considering the appeal and before making a decision, the FAC undertook a screening in relation to the requirements of the Habitats Directive and a copy has been placed on the public file. The proposal is not connected with or necessary to the management of any European site. There are three sites whose boundaries fall within 15km of the proposal. Given the nature, scale and location of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening.

The boundary of Moneybeg and Clareisland Bogs SAC lies 11.2 km to the southwest on the banks of Lough Sheelin and in a different subcatchment from the proposal. The conservation objectives of this SAC relate to a number of terrestrial habitats which have not been recorded on the site of the proposal which is a managed coniferous forest. There is no pathway of effects from the proposal to the SAC and no likelihood of significant effects exists. The boundary of Lough Sheelin SPA is 8km to the southwest and in a different subcatchment from the proposal. Lough Sheelin comprises 1,900 ha and has conservation objectives to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA and to maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly-occurring migratory waterbirds that utilise it. The qualifying interests of this SPA would not employ semi-mature coniferous forest as a habitat and the forest is at a considerable remove from the SPA. A river flows westerly from Cornagrow lake and meets Lough Sheelin after some 13km but as noted the forest itself is not directly connected to the lake. Even in the absence of any mitigation measures, were any surface runoff, such as sediment, to flow into the lake it would settle and be diluted before it could move downstream and there is a hydrological distance of 13km from the lake to the SPA. A likelihood of a significant effect on this SPA would not arise. A boundary of the River Boyne and River Blackwater SAC lies at 15km to the southeast in the Boyne catchment and there is no hydrological connection to the proposal and, coupled with the considerable distance, there is no likelihood of a significant effect arising. Having regard to the nature, scale and location of the proposal, its proximity to European sites and the conservation objectives of those sites, the FAC concludes 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's conclusion concurred with the conclusion reached by the DAFM following screening.

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 and subsequent replanting, 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 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 following examination, the FAC concluded that the proposed development would not result in any real likelihood of a significant effects 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,



Vincent Upton On Behalf of the Forestry Appeals Committee

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FAC434/2019 TFL00374719 Aghalattafrua, Co.Cavan

17th September 2020

Before making its decision and in considering the submitted appeal, 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.

The licence pertains to 4.29 hectares of thinning of Sitka spruce and Japanese larch in 2019 and 2024. As it is a thinning with no clearfelling, no replanting will occur following the felling. The forest was planted in 2011 with an area of the fields to the north and west left unplanted. Timber is proposed to be extracted through the southeast of the forest to a minor public road. A number of agricultural buildings are present close to the southeastern corner but the forest is well setback from any dwellings. The proposal is situated in Mounnugent subcatchment of the Upper Shannon Catchment. The forest is close to Cornagrow lake but there is no evidence of a drainage system leading to the lake but the land slopes gently towards the lake. The forest does not immediately join any other managed forest while some scrub is present to the west and there are other managed forests in the general vicinity.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are three sites whose boundaries fall within 15km of the proposal that are listed below alongside the distance from the boundary to the centre of the proposal and their qualifying interests. Given the nature and scale of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening.

The boundary of Moneybeg and Clareisland Bogs SAC lies 11.2 km to the southwest on the banks of Lough Sheelin and in a different subcatchment from the proposal. The conservation objectives of this SAC relate to a number of terrestrial habitats which have not been recorded on the site of the proposal which is a managed coniferous forest. There is no pathway of effects from the proposal to the SAC and no likelihood of significant effects exists. The boundary of Lough Sheelin SPA is 8km to the southwest and in a different subcatchment from the proposal. Lough Sheelin comprises 1,900 ha and has conservation objectives to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA and to maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly-occurring migratory waterbirds that utilise it. The qualifying interests of this SPA would not generally employ semi-mature coniferous forest as a habitat and the forest is at a considerable remove from the SPA. A river flows westerly from Cornagrow lake and meets Lough Sheelin after some 13km but as noted the forest itself is not directly connected to the lake. Even in the absence of any mitigation measures, were any surface runoff, such as sediment, to flow into the lake it would settle and be diluted before it could move downstream and there is a hydrological distance of 13km from the lake to the SPA. A likelihood of a significant effect on this SPA would not arise. A boundary of the River Boyne and River Blackwater SAC lies at 15km to the southeast in the Boyne catchment and there is no hydrological connection to the proposal and, coupled with the considerable distance, there is no likelihood of a significant effect arising.

There are very few planning permissions granted in this rural area and a small number of dwellings are situated to the east of the proposal, the closest planning permission is for a change of use from residential to a creche. The County Development Plan and EPA emission data were also examined and no related issues were identified. There are few other forestry licences granted in the area with one forest road licence (CN85119 for 139 m) and one thinning licence (TFL00533420) approved in 2020. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, these other plans and projects would not result in in-combination effects with the proposal.

Having regard to the nature, scale and location of the proposal, its proximity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	002340	Moneybeg and Clareisl and Bogs SAC	1185.07	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO02340.pdf	No likelihood of significant effects
SPA	004065	Lough Sheelin SPA	8076.03	Birds A067 Goldeneye (<i>Bucephala clangula</i>) A061 Tufted Duck (<i>Aythya fuligula</i>) A059 Pochard (<i>Aythya ferina</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) Habitats Wetlands	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO04065.pdf	No likelihood of significant effects
SAC	002299	River Boyne and River Blackwater SAC	1508.130	Habitats 7230 Alkaline fens 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* Species 1106 Salmon (<i>Salmo salar</i>) 1355 Otter (<i>Lutra lutra</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO02299.pdf	No likelihood of significant effects

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 thinning, without the clearance of land, which would be normal activities in a managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. The area is rural and agricultural and these activities would not be out of keeping with the general landscape. 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 degree of hydrological connectivity, the proposal is not considered likely to result in a significant impact on water quality or biodiversity. The site is close to Cornagrow lake and surrounded by agricultural land and some scrub. Geological survey of Ireland maps describe the geology in the area as sandstone and there is no evidence of underground hydrological connections in the area. There is no evidence of protected species or habitats in or adjacent to the site and there are no conservation areas in the vicinity. The FAC concluded that there is no likelihood of a significant effect on any European site. There is an existing access to the public road at the east of the site from the forest and traffic will likely increase as a result of the operations and there may be some noise disturbance but this will be of a localised and temporary nature. 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. 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.

Vincent Upton
On Behalf of the Forestry Appeals Committee

