



**An Coiste um Achomhairc
Foraolseachta**

Forestry Appeals Committee

25 September 2020

[REDACTED]
[REDACTED]
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[REDACTED]

Our ref: FAC 438/2019

Subject: Appeal in relation to felling licence TFL00322119

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00322119.

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 TFL00322119 was granted by the Department on 25 November 2019.

Hearing

A hearing of appeal 438/19 was conducted by the FAC on 23 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, the grounds of appeal, and all submissions/observations, before deciding to confirm the decision to grant the Licence (TFL00322119).

The proposed development is for thinning of 9.25 ha at Corradoeey, Convoy, Co Donegal and comprised of 2.77 ha sycamore, 2.83 ha Japanese Larch and 3.65 ha Sitka Spruce. The proposal is in an area of mixed agricultural land and forestry, with larger forest areas on higher ground predominantly to the northwest. Per GSI the bedrock comprises Killeter Quartzite Formations. The proposal site has no hydrological connections. There are two streams rising in the surrounds, one c. 100m away to east and another c. 100m to south, these converge after a short distance and the confluence flows south to River Finn SAC at c. 3.7 km. The proposal is in the Foyle catchment and regards sub-catchments the south western side is in the Finn (Donegal) SC and northeast side in the

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Deel SC. There was referral by DAFM to Inland Fisheries Ireland and no response is evidenced. The conditions of the licence are standard with the addition that there is a water-main shown to be crossing site and its location must be marked.

There is a single appeal. The grounds of appeal contend that, the Forest Service in its Screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact, and that is a trigger for the requirement for Appropriate Assessment as it may have an effect. Also, the inspector answered the following questions;

Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process?

Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site?

To which the inspector answered yes but the inspector fails to show any evidence on which this answer is based. In most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in.

The grounds finally contend that in these circumstances the only legal answer is that the application has been screened in for Appropriate Assessment.

In response to the appeal, DAFM state that a desk audit of this application was carried out and they are satisfied that all criteria are adhered to. The FAC notes the initial screening for Appropriate Assessment by the DAFM, using a 3 km zone about the proposal, was revised to one taking a 15 km zone into account. However, in this instance there are Northern Ireland located European Sites that were not shown as taken into consideration.

The FAC undertook a stage 1 screening for Appropriate Assessment as required by the Habitats Directive 92/43/EEC and a copy is available on the public file. The proposed development is not connected with or necessary to the management of any Natura 2000 site. In addition, the conditions of licence are not shown to be in mitigation of any effects on any European 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 of the proposal. The FAC considered that there is no possibility of significant effects on any Natura site outside of that radius.

The proposal has no aquatic zone, the nearest is c. 100m away to the east and another to south consisting the rising of two streams, these join and flow to the River Finn and the Finn River SAC at a hydrological distance of just over 3.5 km. In addition to the hydrological connection from the rising of the streams goes through the River Finn to the River Foyle and Tributaries (NI) SAC which is both east and south east of the proposal at c. 15 km (c. 11km by straight line), at these distances and without a direct hydrological connection from the proposal the FAC is satisfied that no likelihood of a significant effect arises on the habitats or the species listed for the Finn River SAC or the River Foyle and Tributaries (NI) SAC. Moneygall Bog (NI) SAC is c. 9km south east of the proposal but has no connectivity with the proposal and no likelihood of an effect arises given this absence of connectivity. The proposal has no hydrological connection to Lough Swilly SAC and Lough Swilly SPA which are located in the Lough Swilly catchment and divided from the proposal by distance (over 13 km) and gradients, and in these circumstances is beyond the range of the otter and many of the bird species for foraging with the probable exception of the white fronted goose. However, as a semi



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Foraoiseachta

Forestry Appeals Committee

mature and mature forest the proposal does not provide suitable habitat to the bird species. The FAC is satisfied that no likelihood of significant effects arise with regards the qualifying interest and conservation objectives of the Lough Swilly European sites.

There is 18.28 ha forest thinning /clear felling within 500m per the IFORIS certification provided by DAFM. The proposal is a standalone forest bounded by a public roads and farmland. Forested lands to its north and their surrounds are served by river arteries independently flowing to the Finn River and without a hydrological connection to the proposal and based on topography and river courses the proposal does not converge with them. Donegal County Council planning shows applications for construction of a new silage pit, slatted cattle shed, pens and ancillary works (2019), construction of a new dwelling (2018), the change of an existing house design (2018) and the construction of a dwelling (2013) and further east the development of a milking premises to replace an existing facility. The FAC is satisfied that given the nature and scale of the proposal and the absence of any direct hydrological connections between it and any of these other plans and projects that there is no likelihood the proposal would in combination give rise to any likelihood of significant effects on any European site.

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

Felling 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 the environment, the proposed development will likely give rise to short term and intermittent noise and disturbance during felling operations, but this would not be significant. Without a hydrological connection and with no aquatic zones identified, the site is not likely to give rise to any significant effect in terms of water quality. Also, given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term. There would be no significant effects on any designated sites or archaeological sites. Having regard to the very limited scale of the proposal and the existing pattern of development in the area, including farmland and forestry projects, 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

TFL00322119 (appeal 438/19) screening and examination on environment

Background

Thinning of 9.25 ha at Corradooey, Convoy, Co Donegal - licence issued 25 November 2019 - comprised of 2.77 ha sycamore, 2.83 ha Japanese Larch and 3.65 ha Sitka Spruce. Proposal is in an area of mixed agricultural land and forestry, with larger forest areas on higher ground predominantly to the northwest. The proposal site has no hydrological connections. There are two streams rising in the surrounds, one c. 100m away to east and another c. 100m to south, and neither is shown to have any outflow from the site. These streams converge after a short distance and the confluence flows south to River Finn SAC at c. 3.7 km. The proposal is in the Foyle catchment and regards sub-catchments the south western side is in the Finn (Donegal) SC and northeast side in the Deel SC. There was referral by DAFM to Inland Fisheries Ireland and no response is evidenced.

Screening for Appropriate Assessment

EU Sites

The proposed development is not connected with or necessary to the management of any Natura 2000 site. In addition the conditions of licence are not shown to be in mitigation of any effects on any European 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 of the proposal. The FAC considered that there is no possibility of significant effects on any Natura site outside of that radius. The following are the details of the European sites;

Site Code	Site Name	Distance To (m)	Qualifying Interests
002301	River Finn SAC	3459.18	Habitats; 3110 Oligotrophic waters containing very few minerals of sandy plains 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 7130 Blanket bogs 7140 Transition mires and quaking bogs Species; 1355 Otter 1106 Salmon
002287	Lough Swilly SAC	13018.85	Habitats; 1130 Estuaries 1150 Coastal lagoons 1330 Atlantic salt meadows 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles Species; 1355 Otter
004075	Lough Swilly SPA	13346.44	Birds; A052 Teal A067 Goldeneye A043 Greylag Goose A193 Common Tern A028 Grey Heron A179 Black-headed Gull A149 Dunlin A053 Mallard A069 Red-breasted Merganser A164 Greenshank A162 Redshank A125 Coot (<i>Fulica atra</i>) A395 Greenland White-fronted Goose A038 Whooper Swan A048 Shelduck A182 Common Gull A130 Oystercatcher A005 Great Crested Grebe A191 Sandwich Tern A160 Curlew A056 Shoveler A050 Wigeon A062 Scaup A143 Knot Habitats; Wetlands
UK0030320	River Foyle and Tributaries (NI) SAC	C. 11 KM	Species; Otter / Atlantic Salmon Habitats; Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation
UK0030211	Moneygal Bog (NI) SAC	C. 9 KM	Habitats; Active raised bogs

The proposal has no aquatic zone, the nearest is c. 100m away to the east and another to south consisting the rising of two streams, these join after a short distance and flow to the River Finn and the Finn River SAC at a hydrological distance of just over 3.5 km. In addition to the hydrological connection from the rising of these streams through to the River Finn, the Finn flows to the River Foyle and Tributaries (NI) SAC which is both east and south east of the proposal at c. 15 km hydrological distance and c. 11km by straight line, at these distances and without a direct hydrological connection the FAC is satisfied that no likelihood of a significant effect arises on the habitats or the species listed for the Finn River SAC and there is no likelihood of an onward significant effect on the River Foyle and Tributaries (NI) SAC. Moneygall Bog (NI) SAC is c. 9km south east of the proposal but has no connectivity with the proposal and no likelihood of an effect arises given this absence of connectivity. The proposal has no hydrological connection to Lough Swilly SAC and Lough Swilly SPA which are located in the Lough Swilly catchment and divided from the proposal by distance (over 13 km) and gradients, and in these circumstances is beyond the range of the otter and many of the bird species for foraging with the probable exception of the white fronted goose. However, as a semi mature forest the proposal does not provide suitable habitat to the bird species. No likelihood of a significant effect arises with regards the qualifying interest and conservation objectives of the Lough Swilly European sites. Per GSI the bedrock comprises Killeter Quartzite Formations and nothing further arises.

In combination

There is 18.28 ha forest thinning /clear felling within 500m per the IFORIS certification provided by DAFM. Per mapping this is likely north of the application site. Stand alone forest bounded by a public road in addition to farmland to south-east between it and nearest watercourses. Also the lands to north and their surrounds are well served by river arteries independently flowing to the Finn River and without a hydrological connection and based on topography and river courses the proposal would not converge with them in any way. Donegal County Council planning shows applications for construction of a new silage pit, slatted cattle shed, pens and ancillary works (2019), construction of a new dwelling (2018), the change of an existing house design (2018) and the construction of a dwelling (2013) and further east the development of a milking premises to replace an existing facility. Given the nature and scale of the proposal and the absence of any direct hydrological connections between it and any of these other plans and projects the FAC is satisfied the proposal when considered in combination would not give rise to any likelihood of significant effects on any European site.

In conclusion the proposal on its own or in combination with other plans and projects causes no likelihood of significant effects on any European site.

Examination regards the environment

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 relatively small scale, will give rise to short term and intermittent noise and disturbance during felling operations but this would not be significant. Without a hydrological connection and with no aquatic zones identified, the site is not likely to give rise to any significant effect in terms of water quality. Also, given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term. There would be no significant effects on any designated sites or archaeological sites. The

site is not sensitive to fisheries. Having regard to the very limited scale of the proposal and the existing pattern of development in the area, including farmland and forestry projects, 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

23 September 2020

