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25<sup>th</sup> September 2020

**Subject:** Appeal FAC444/2019 regarding licence TFL00375919

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 TFL00375919 for thinning of 4.65 ha at Gallonbane, Co. Cavan was issued by the Department of Agriculture, Food and the Marine (DAFM) on 6<sup>th</sup> December 2019.

#### **Hearing**

A hearing of appeal FAC444/2019 was held by the FAC on 23<sup>rd</sup> 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 TFL00375919.

The felling licence pertains to thinning of 4.65 ha of Norway spruce in 2019 and 2024 with no clearfelling or replanting, planted in 2002. Details of harvesting operations were provided by the licence applicant, including extraction racks and stacking area. The submitted maps also identified a relevant watercourse to the east. The site is crossed by an ESB line. The Geological Survey of Ireland identifies the geology of the area as sandstone and the DAFM describe the soil as podzolic in nature. The proposal is located in the Mountnugent subcatchment of the Upper Shannon (26F) catchment.

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 suggest that the appropriate assessment screening was undertaken following their procedures and that European sites within 15km were considered and that there is no hydrological connection with any designated site. They further submit that they considered the project in combination with other plans and projects having reviewed the planning systems of the County Council and An Bord Pleanála and the County Development Plan. Other forestry projects are also identified. The statement concludes that there is no potential for this project, to have any significant effects on a European site, when considered in combination with other plans and projects. Five sites are considered in the DAFM screening and are screened out.

In considering the appeal and before making a decision, the FAC undertook a screening in relation to the requirements of the Habitats Directive 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 five sites whose boundaries fall within 15km of the proposal.

The boundary of Moneybeg and Clareisland Bogs SAC lies to the southwest in a separate subcatchment from the proposal on the banks of Lough Sheelin and its qualifying interests are a number of terrestrial habitats. The absence of a pathway with this land and the degree of separation would ensure that no likelihood of a significant effect on this site by the proposal could occur. Derragh Bog SAC lies some 11.7km to the southwest in a separate subcatchment after Lough Sheelin and its qualifying interests are also a number of terrestrial habitats. The proposal is at a considerable distance from this SAC and there is no pathway for a significant effect to arise. White Lough, Ben Loughs and Lough Doo SAC lies 14.6km to the south in the Boyne catchment and no pathway of effects with the proposal is present. The boundary of Lough Sheelin SPA lies 2.3km to the southwest in a separate subcatchment and this SPA covers an area of 1,900 ha. Its conservation objectives relate to a number of wetland and water birds and the protection of the associated habitat. The proposal is in a semi-mature coniferous forest which would not be considered as suitable habitat for the associated species. There are no marked rivers or streams in the vicinity of the proposal but a relevant watercourse is marked on the applicants map to the north of the proposal. The agricultural field system in this area may have a drain network that could connect with streams in the area that join the Mountnugent river that flows into Lough Sheelin. The proposal is of a limited nature being for thinning and any such connection through agricultural drains would not have the capacity to transport significant amounts of runoff, such as sediment, to the stream and then into the river and further to the lake. Forestry is not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form prepared by the NPWS. There is no likelihood of the proposal resulting in a significant effect on this SPA. Lough Kinale and Derragh Lough SPA lies 10.8km to the southwest in a separate subcatchment after Lough Sheelin and its qualifying interests are a number of wetland and water birds and associated habitat. The proposal is in a semi-mature coniferous forest which would not be considered as suitable habitat for the associated species and the degree of separation ensures that a likelihood of significant effects does not arise.

The proposal would occur within a semi-mature forest surrounded by agricultural land with access to the public road. The forest does not adjoin another forest and is surrounded by agricultural land. There



is a forest road licence granted in the townland (CN84125). There are no recent afforestation or other felling licences granted in the area. The area is rural and agricultural and there are few other permissions granted, these include planning for a dwelling and slatted shed. 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 these 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. Having regard to the nature, small scale and location of the proposal, its degree of separation from 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 and that appropriate assessment under Article 6 of the Habitats Directive was not required. The FAC's conclusion concurred with the conclusion reached by the DAFM following screening.

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,

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

Vincent Upton On Behalf of the Forestry Appeals Committee





**FAC444/2019 TFL00375919 Gallonbane, Co. Cavan**

**23rd September 2020**

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.

The felling licence pertains to thinning of 4.65 ha of Norway spruce in 2019 and 2024 with no clearfelling or replanting, planted in 2002. Details of harvesting operations were provided by the licence applicant, including extraction racks and stacking area. The submitted maps also identified a relevant watercourse to the east. The site is crossed by an ESB line. The Geological Survey of Ireland identifies the geology of the area as sandstone and the DAFM describe the soil as podzolic in nature. The proposal is situated in the Mountnugent subcatchment of the Upper Shannon (26F) catchment.

#### **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 five 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 boundary of Moneybeg and Clareisland Bogs SAC lies to the southwest in a separate subcatchment from the proposal on the banks of Lough Sheelin and its qualifying interests are a number of terrestrial habitats. The absence of a pathway with this land and the degree of separation would ensure that no likelihood of a significant effect on this site by the proposal could occur. Derragh Bog SAC lies some 11.7km to the southwest in a separate subcatchment after Lough Sheelin and its qualifying interests are also a number of terrestrial habitats. The proposal is at a considerable distance from this SAC and there is no pathway for a significant effect to arise. White Lough, Ben Loughs and Lough Doo SAC lies 14.6km to the south in the Boyne catchment and no pathway of effects with the proposal is present. The boundary of Lough Sheelin SPA lies 2.3km to the southwest in a separate subcatchment and this SPA covers an area of 1,900 ha. Its conservation objectives relate to a number of wetland and water birds and the protection of the associated habitat. The proposal is in a semi-mature coniferous forest which would not be considered as suitable habitat for the associated species. There are no marked rivers or streams in the vicinity of the proposal but a relevant watercourse is marked on the applicants map to the north of the proposal. The agricultural field system in this area may have a drain network that could connect with streams in the area that join the Mountnugent river that flows into Lough Sheelin. The proposal is of a limited nature being for thinning and any such connection through agricultural drains would not have the capacity to transport significant amounts of runoff, such as sediment, to the stream and then into the river and further to the lake. Forestry is not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form prepared by the NPWS.



There is no likelihood of the proposal resulting in a significant effect on this SPA. Lough Kinale and Derragh Lough SPA lies 10.8km to the southwest in a separate subcatchment after Lough Sheelin and its qualifying interests are a number of wetland and water birds and associated habitat. The proposal is in a semi-mature coniferous forest which would not be considered as suitable habitat for the associated species and the degree of separation ensures that a likelihood of significant effects does not arise.

The proposal would occur within a semi-mature forest surrounded by agricultural land with access to the public road. The forest does not adjoin another forest and is surrounded by agricultural land. There is a forest road licence granted in the townland (CN84125) There are no recent afforestation or other felling licences granted in the area. The area is rural and agricultural and there are few other permissions granted, these include planning for a dwelling and slatted shed. 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 these 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.

Having regard to the nature, small scale and location of the proposal, its degree of separation from 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.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	002340	Moneybeg and Clare Island Bogs SAC	6044.43	<b>Habitats</b> 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002340.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002340.pdf</a>	No likelihood of significant effects
SAC	002201	Derragh Bog SAC	11732.96	<b>Habitats</b> 7120 Degraded raised bogs still capable of natural regeneration 91D0 Bog woodland*	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002201.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002201.pdf</a>	No likelihood of significant effects
SAC	001810	White Lough, Ben Loughs and Lough Doo SAC	14556.22	<b>Habitats</b> 3140 Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. <b>Species</b> 1092 White-clawed Crayfish ( <i>Austropotamobius pallipes</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001810.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001810.pdf</a>	No likelihood of significant effects
SPA	004065	Lough Sheelin SPA	2267.77	<b>Birds</b> 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> ) <b>Habitats</b> Wetlands	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004065.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004065.pdf</a>	No likelihood of significant effects

SPA	00406 1	Lough Kinale and Derragh Lough SPA	10795.5 3	<b>Birds</b> A059 Pochard ( <i>Aythya ferina</i> ) A061 Tufted Duck ( <i>Aythya fuligula</i> ) <b>Habitats</b> Wetlands	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO04061.pdf">http://www.npws .ie/sites/default/fi les/protected- sites/conservatio n_objectives/CO0 4061.pdf</a>	No likelihood of significant effects
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### 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, 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. No clearfelling or replanting is proposed. The forest is situated in an agricultural and rural landscape and such activities would not be out of keeping with the area. There is a single dwelling to the east and ribbon development further along the public road but at a remove and existing access to a minor public road to the west is provided. Traffic and noise will likely increase during operations but this would be of a limited nature and timescale and would not be 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 relevant watercourses adjacent to the site, 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. There are no nature conservation areas in the vicinity and the FAC concluded that there is no likelihood of a significant effect on any European 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 site and the proposal does not pose a threat to any recorded monuments. 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

