



An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

11th September 2020

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Subject: Appeal FAC392/2019 regarding licence TFL00321319

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

Licence TFL00321319 for felling and replanting of 31.31 ha at Ardbuckan, Co. Westmeath was issued by the Department of Agriculture, Food and the Marine (DAFM) on 16th October 2019.

Hearing

A hearing of appeal FAC392/2019 was held by the FAC on 9th 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, Departmental file, 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 TFL00321319.

The licence pertains to the thinning of 31.31 hectares divided into nine plots containing Norway spruce, pedunculate oak, and ash. The site is described as flat to moderate on a mineral, brown podzolic soil at an elevation of 60 to 70 metres. The forest is generally surrounded by agricultural land with some adjoining smaller blocks to the south and east. There is a recorded archaeological monument, an enclosure, within the forest and conditions relating to setbacks and exclusions from the monument have been included in the conditions. A minor public road adjoins the western edge and there is existing access from the forest. A single dwelling is situated c.85 metres from the forest edge to the west of the forest and there is some limited, ribbon development on roads in the area. The proposal is situated in the Inny (Shannon) subcatchment of the Upper Shannon catchment. There are no marked rivers or

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streams adjoining the site based on EPA data and the closest river is the Dungaloman river which flows c.500 metres to the east of the proposal.

There is one appeal against the decision. The grounds claim that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to a number of listed judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. The grounds go on to suggest that if mud was to enter lakes or rivers it could have an effect on a SAC/SPA and that "the excuse that the distance is over 15 km has no relevance to the fact that there still may be an effect". The grounds also suggest that in combination effects have not been assessed.

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 proposal was assessed following the relevant procedures and that all Natura 2000 sites within 15 km were assessed and all screened out and that an in-combination assessment was also carried 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 an examination of effects on the environment 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 seven 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.

Ballymore Fen lies over 6 km to the northeast in a separate subcatchment with no downstream hydrological connection and is designated for the conservation of a terrestrial habitat. The absence of a pathway of effects would ensure no likelihood of significant effects could arise regarding this SAC. Carn Park Bog SAC, Crosswood Bog SAC, Middle Shannon Callows SPA and River Shannon Callows SAC are all situated to the southwest in separate catchments from the proposal and at distances of 7.3km, 10.7km, 14.9km and 14.9km respectively. Middle Shannon Callows SPA has been designated for the conservation of a number of mainly wetland and water birds which would not employ mature forests as a habitat and the degree of separation would be outside their ranges. The degree and nature of separation would ensure that significant effects on the SACs would not be possible. The boundaries of Lough Ree SAC and Lough Ree SPA are c.10km to the west of the proposal in a separate catchment. There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest, a number of dwellings have been granted permission to the south and northwest of the forest. 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.

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.

No specific lakes are identified in the grounds and there are no marked streams or lakes in the direct vicinity of the proposal. The closest river is some 500 metres away and flows north-easterly to eventually meet Lough Ree. However, the FAC concluded that given the nature of the proposal and the degree and nature of separation that the proposal does not pose a significant threat to any lakes or water quality generally.

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 'P. Coman', with a long horizontal flourish extending to the right.

Pat Coman on Behalf of the Forestry Appeals Committee



FAC392/2019 TFL00321319 Ardbuckan, Co. Westmeath

10th 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 and any EIA Directive requirements. These considerations were based on information provided 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 the thinning of 31.31 hectares divided into nine plots containing Norway spruce, pedunculate oak, and ash. The site described as flat to moderate on a mineral, brown podzolic soil at an elevation of 60 to 70 metres. The forest is generally surrounded by agricultural land with some adjoining smaller blocks to the south and east. There is a recorded archaeological monument, an enclosure, within the forest and conditions relating to setbacks and exclusions from the monument have been included in the conditions. A minor public road adjoins the western edge and there is existing access from the forest. A single dwelling is situated c.85 metres from the forest edge to the west of the forest and there is some limited, ribbon development on roads in the area. The proposal is situated in the Inny (Shannon) subcatchment of the Upper Shannon catchment. There are no marked rivers or streams adjoining the site based on EPA data and the closest river is the Dungloman river which flows c.500 metres to the east of the proposal.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are seven 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.

Ballymore Fen lies over 6 km to the northeast in a separate subcatchment with no downstream hydrological connection and is designated for the conservation of a terrestrial habitat. The absence of a pathway of effects would ensure no likelihood of significant effects could arise regarding this SAC. Carn Park Bog SAC, Crosswood Bog SAC, Middle Shannon Callows SPA and River Shannon Callows SAC are all situated to the southwest in separate catchments from the proposal and at distances of 7.3km, 10.7km, 14.9km and 14.9km respectively. Middle Shannon Callows SPA has been designated for the conservation of a number of mainly wetland and water birds which would not employ mature forests as a habitat and the degree of separation would be outside their ranges. The degree and nature of separation would ensure that significant effects on the SACs would not be possible. The boundaries of Lough Ree SAC and Lough Ree SPA are c.10km to the west of the proposal in a separate catchment. While no hydrological connection is recorded on EPA data or on the file, aerial imagery and maps of the area would suggest agricultural drains may run from the eastern edge of the forest easterly and meet the Dungloman river some 500 metres away, which eventually flows into Lough Ree after some 15.9km. Even in the absence of mitigation measures the proposal, being for a thinning, and site, being flat and on a mineral soil, is not likely to generate significant amounts of sedimentation or runoff. The drains, if present, would not have the capacity to transport significant amounts of runoff if it was to occur and were any material to reach

the river the degree of settling and dilution that would occur over 15km would further ensure that significant effects on the SAC and SPA could not be considered likely.

There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest, a number of dwellings have been granted permission to the south- and northwest of the forest. The County Development Plan and EPA emission data were also examined and no related issues were identified. A number of forest licences have been granted for afforestation but none for felling in the vicinity. 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	002313	Ballymore Fen SAC	6182.89	Habitats 7140 Transition mires and quaking bogs	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO002313.pdf	No likelihood of significant effects
SAC	002336	Carn Park Bog SAC	7312.52	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO002336.pdf	No likelihood of significant effects
SAC	000440	Lough Ree SAC	9744.49	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7230 Alkaline fens 8240 Limestone pavements* 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO000440.pdf	No likelihood of significant effects
SAC	002337	Crosswood Bog SAC	10683.21	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO002337.pdf	No likelihood of significant effects
SAC	000216	River Shannon	14987.36	Habitats 6410 Molinia meadows on	http://www.npws.ie/sites/default/files/protected_sites/conservation_objectives/CO000216.pdf	No likelihood of

		Callows SAC		calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) 6510 Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) 8240 Limestone pavements* 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* Species 1355 Otter (<i>Lutra lutra</i>)	sites/conservation objectives/CO000216.pdf	significant effects
SPA	004064	Lough Ree SPA	9943.71	Birds A038 Whooper Swan (<i>Cygnus cygnus</i>) A056 Shoveler (<i>Anas clypeata</i>) A067 Goldeneye (<i>Bucephala clangula</i>) A050 Wigeon (<i>Anas penelope</i>) A142 Lapwing (<i>Vanellus vanellus</i>) A193 Common Tern (<i>Sterna hirundo</i>) A065 Common Scoter (<i>Melanitta nigra</i>) A125 Coot (<i>Fulica atra</i>) A052 Teal (<i>Anas crecca</i>) A004 Little Grebe (<i>Tachybaptus ruficollis</i>) A053 Mallard (<i>Anas platyrhynchos</i>) A061 Tufted Duck (<i>Aythya fuligula</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) Habitats Wetlands	http://www.npws.ie/sites/default/files/protectedsites/conservation objectives/CO004064.pdf	No likelihood of significant effects
SPA	004096	Middle Shannon Callows SPA	14987.36	Birds A156 Black-tailed Godwit (<i>Limosa limosa</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A122 Corncrake (<i>Crex crex</i>) A142 Lapwing (<i>Vanellus vanellus</i>) Habitats Wetlands	http://www.npws.ie/sites/default/files/protectedsites/conservation objectives/CO004096.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 medium scale and for thinning which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. There is a recorded monument, an enclosure, within the forest and was considered by the DAFM archaeologist and conditions have been attached regarding setbacks around the monument and the FAC are satisfied that these are acceptable. The replanting of the forest will ensure that the resource is maintained over the long term. 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. While agricultural drains may be present adjacent to the forest the occurrence of runoff being transported to the river is not likely and would be of a limited and localised nature and conditions on the licence would provide further protections. 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 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