



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

11 September 2020

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[REDACTED]
[REDACTED]
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Our ref: FAC 320/2019

Subject: Appeal in relation to felling licence TFL00331519

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence TFL00331519.

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 TFL00331519 was granted by the Department on 21 October 2019.

Hearing

A hearing of appeal 320/19 was conducted by the FAC on 09 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, all submissions/observations, and carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive and an examination in respect of environmental effects, before deciding to confirm the decision of the Minister regarding licence TFL00331519.

The proposal at Druminshin Glebe, Co Leitrim is for 4.95 ha of clear felling of Sitka Spruce and a small amount of Japanese Larch (plots 1 to 3) and Ash (plot 4), and reforestation with 85% Sitka Spruce, 15% birch in plots 1 to 3 and plot 4 (0.35ha) to be 100% birch and the proposal plots are split by a cul-de-sac accessing 3 houses/small farmyards. This is roadside (R201) stand of mature trees. Carrigallen village is c. 4 km distance by road. This is a rural area with mix of agriculture and forestry, and there is sparse rural housing in the immediate area. Certification shows the predominant soil type underlining

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the project area is predominantly podzols in nature. The slope is predominantly flat to moderate and the project area does not adjoin or contain an aquatic zone(s).

There is a single appeal against the decision to grant the Licence. The grounds of appeal contend that, based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU; Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, Case C-164/17, *Edel Grace and Peter Sweetman v An Bord Pleanála*, Case C-323/17 *People Over Wind and Peter Sweetman v Coillte Teoranta* and Case C-461/17 *Brian Holohan and Others v An Bord Pleanála*. The grounds contend that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan 3. in; *Kelly -v- An Bord Pleanála* [2014] IEHC 400 (25 July 2014); and provides the following extract; "there is no need to *establish* such an effect; it is, as Ireland observes, merely necessary to determine that there *maybe* such an effect." The grounds also include that if mud was to enter the lakes it could have an effect on the SAC/SPA (*no lake is identified*), and the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect.

In response to the appeal grounds the DAFM set out that the relevant Appropriate Assessment procedure relevant at the time was applied, all Natura 2000 sites were screened out in conjunction with an in-combination assessment of all forest and non-forest plans/projects, and that all AA screening information is on file. The file provided had copies of a screening undertaken on 18 June 2019, and a further screening undertaken post licence, no details regards in-combination screening were provided even though referred to in the statement and screening conclusions.

The FAC undertook an appropriate assessment screening of this proposal to examine for any likelihood of significant effects on a European site in accordance with the requirements of 6(3) of the Habitats Directive 92/43/EC and the Habitats Regulations SI 477/2011. The FAC's considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. The screening report is available on the public file. The proposal is not connected with or necessary to the management of any Natura 2000 site. No special conditions are attached to the licence and the conditions thereon are standard and not in mitigation in respect of any European Sites. Having regard to the nature and scale of the development and its location, the FAC considered it reasonable to screen for possible effects, if any, with regards to Natura 2000 sites within a radius of c. 15km of the proposal. The following sites were included in the screening; Lough Oughter & Associated Loughs SAC and Lough Oughter Complex SPA. In addition, consideration was given to the Cuilcagh Anerg Uplands SAC.

The FAC gave consideration to the fact the proposal is within the Erne catchment as are the above Lough Oughter related European sites and is in the same Cullies sub-catchment as part of the Natura sites. The Carrigallen stream rises c. 780m south of the proposal and is separated from the proposal by a public road, farmed grassland and other forestry. This rising point of the Carrigallen is c. 16.5 km by hydrological distance to the perimeter of Lough Oughter and Associated Loughs SAC and flows through the following Loughs en-route; Gulladoo, Drumart, Rockfield, Glasshouse and Laheen. Having considered the distances of separation, the absence of direct hydrological connection from the proposal site, the size of the proposal and the Loughs arising between the Carrigallen and the Natura sites the FAC is satisfied there is no possibility of the proposal having a significant effect on the habitats or species of the sites. In addition, the proposal is a conifer plantation and is unsuitable habitat and



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feeding ground for any of the listed bird species or the otter at these distances. In addition, the Cuilcagh Anerin Uplands SAC is an upland site at c. 19 km but is without connectivity and considering elevations there is no likelihood of any significant effects from the proposal. The FAC also considered other plans and projects in the area, planning permissions and other forestry related projects were identified and examined for.

The FAC concludes that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any European site. 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.

The FAC also examined with regards to the EIA Directive and considers that the proposed felling and replanting does not come within the classes of project covered by the EU EIA Directive. The FAC also considers 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.

In deciding to confirm the licence, the FAC considered that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee

Screening and preliminary examination TFL00331519 – appeal 320-19

The proposal at Druminshin Glebe, Co Leitrim is for 4.95 ha of clear felling of Sitka Spruce, a small amount of Japanese Larch and Ash (plot 4), and reforestation with 85% Sitka Spruce, 15% birch in 3 plots and all of plot 4 (0.35ha) to be 100% birch. A roadside (R201) stand of mature trees. Carrigallen village is c. 2 km straight line and c. 4 km by road. Rural area with mix of agriculture and forestry, sparse rural housing in the immediate area and the plots are split by a cul-de-sac accessing 3 houses/small farmyards. Certification shows the soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s).

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any Natura 2000 site. The licence conditions are standard and not in mitigation in respect of any European Sites.

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 c. 15km.

European sites

Site Code	Site Name	Distance To (Km)	Qualifying Interests (* denotes a priority habitat)
000007	Lough Oughter and Associated Loughs SAC	7.4	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)
004049	Lough Oughter Complex SPA	9.6	Birds A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) Habitats Wetlands

The closest watercourse (un-named) is 720m to west of the proposal eventually goes to Cloone River through lakes to Rinn River and into Lough Forbes Complex SAC and bordering the Ballykenny-Fisherstown Bog SPA at c. 32km hydrological distance. However, that is within the Upper Shannon catchment and the proposal is within the Erne catchment. The proposal shares the Erne catchment with the above Lough Oughter related European sites and is in the same Cullies sub-catchment. There is an EPA marked watercourse, the Carrigallen, rising c. 780m south of the proposal and is separated from the proposal site by a public road, farmed grassland and other forestry. This rising point of the Carrigallen is c. 16.5 km by hydrological distance to the perimeter of Lough Oughter and Associated Loughs SAC and flows through the following Loughs en route; Gulladoo, Drumart, Rockfield, Glasshouse and Laheen. Having considered the distances of separation, the absence of direct hydrological connection, the size of the proposal and the number Loughs arising between the proposal

and the Natura sites there is no possibility of the proposal having an effect on the habitats of the sites. In addition, the proposal is a conifer plantation and is unsuitable habitat and feeding ground for any of the species listed in either site. The proposal does not provide habitat for any of the listed bird species or the otter at these distances and being comprised of mature forest. Also, in the absence of connectivity there is no potential for an effect on the EU sites by the proposal and there is no likelihood of significant effects. In addition, the Cuilcagh Anerg Uplands SAC is an upland site at c. 19 km but is without connectivity and considering elevations there is no likelihood of any significant effects from the proposal.

In combination

In the direct area there are planning applications evidenced on the Leitrim County Council Planning website as follows; 041072 a 2004 retention of dwelling, 02429 a 2002 dwelling extension, 01845 a 2001 dwelling, 14117 a 2014 dwelling extension. In effect there are only relatively minor projects shown on Leitrim Co Co planning for this location and each is a self-contained dwelling, no in-combination effect arises for any European site when considered in addition to the proposal. Also, the EPA website shows Carrigallan village has a sewage treatment facility, this is at the furthest side of the village from the proposal and has no connectivity being on a different system of tributaries to the Cullies river. There are a number of other forestry related projects in the area, TFL00391619 concerns 8 ha of thinning, TFL00534120 5.02 ha of thinning, CN83928 concerns 10.82 ha of afforestation. Other projects are at some remove. While these in addition to the proposal at appeal indicate a larger level of such project activity within the general area, again the combined areas and works at the distances involved to European sites and with the absence of a hydrological connection do not combine with the proposal to give rise to the likelihood of significant effects on a European site.

The FAC is satisfied 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.

Examination for any Environmental Effects

Felling (and reforestation) does not fall within a class of development to which the EIA Directive applies, and the proposal 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 relatively small proposed development will give rise to short-term and intermittent noise and disturbance during felling and replanting operations, but this would not be significant. There would be a visual impact which will change over time resulting from clear-felling and reforestation. The site does not have hydrological connection to any significant watercourse and any impact on water quality while unlikely would be short-term and locally confined. There would be no significant effect on any designated site and no significant impact on any archaeological site. Having regard to the small scale of the proposal and the existing pattern of development in the area, including 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 - 08/09/2020