



**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

07 May 2021

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**FAC ref: 606/20**

**Subject: Appeal in relation to felling licence CN06-FL0043**

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN06-FL0043.

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**

Licence CN06-FL0043 was granted by the DAFM on 04 August 2020.

**Hearing**

An oral hearing of appeal 606/20 was conducted by the FAC on 13 April 2021.

**Attendees:**

**FAC Members:** Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman

**Secretary to the FAC:** Mr Michael Ryan

**DAFM representatives:** Mr Anthony Dunbar & Ms Eilish Kehoe

**Applicant representative:** [REDACTED]

**Decision**

The FAC considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the oral hearing and all other submissions before deciding to affirm the decision to grant this licence (Reference CN06-FL0043).

The proposal comprises the clear felling of 2.86 ha of Sitka spruce, Norway spruce and smaller amounts of Elm, Douglas fir and other broadleaves and the replanting with 80% Sitka Spruce and 20% Oak at Bellamont Forest, Co. Cavan. The application sought 0.14 ha of open space. The application

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Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 057 866 7167  
057 863 1900

included a pre-screening report. The proposal is in two plots with other forestry in between. Plot 1 is c. 60m southeast of Town Lough and plot 2 is c. 160m west of Town Lough, there is also an apparently man-made lake / water feature c. 70m northeast of plot 2. There are no EPA mapped watercourses within or bordering either plot. Town Lough is joined by the Killvaughan river to Wood Lough and in turn to Dromore Lough. The Drumore Lakes pNHA embraces each of these lakes. The plots are on moderate slopes <15%. Underlying soil type is given as surface water gleys c. 90% and ground water gleys c. 10%. The proposal is in the Erne Catchment, the Drumore SC\_020 Sub-Catchment, and in the Drumore\_060 River Waterbody.

There were referrals of the application to both the National Parks and Wildlife Services (NPWS) and to the Cavan County Council. The NPWS responded on 18 October 2019 that they had no comments to make and attached an appendix – Nature Conservation Recommendations for NPWS. No response is evidenced from the Local Authority.

The DAFM undertook an Appropriate Assessment (AA) screening of Natura sites within a 15km radius of the proposal. The screening included the Upper Lough Erne SPA (UK9020071) which was screened out for Stage 2 AA for reason of the absence of a direct hydrological connection, and subsequent lack of any pathway, hydrological or otherwise. The DAFM also completed an in-combination report on week of 30 July 2020 focusing on the general vicinity of the project area in the River Sub-basin Dromore\_060. The report looked at a number of planning permissions for both Cavan County Council and Monaghan County Council in the period 2015 to 2020 mostly involving dwelling related permissions, but including cattle shed, poultry house, boiler house and other developments. Checks of An Bord Pleanála and the EPA websites are evidenced with a wastewater treatment plant identified. Other forestry related projects comprised 1 afforestation project, 1 forest road and 1 private felling project, as well as 9 Coillte felling licences. The report included that the River Sub-basin Dromore\_060 has approximately 27% forest cover which is higher than the national average of 11%. The DAFM concluded that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects. The overall conclusion was that there is no possibility of the felling and reforestation project (CN06-FL0043) having any significant effect, either individually or in combination with other plans or projects, on the European site.

The licence was granted subject to the relatively standard conditions 'A' to 'G', and the additional conditions 'H' and 'I' as set out for in the licence which relate to the retention of all broadleaves where safe to do so, and that the proposed works must adhere to the Environmental Requirements for Afforestation, December 2016 (DAFM, 2016), the Felling & Reforestation Standards (v. Oct. 2019), the Forestry Standards Manual including Appendix 21 (DAFM, 2015), the Forest Harvesting & the Environment Guidelines (DAFM, 2000) and the Felling & Reforestation Policy (DAFM, 2017).

There is one appeal against the licence and the grounds are summarised as follows.

- Before granting the licence, the Minister must establish the legitimacy of the existing forest. It is now necessary for the FAC to do this.
- By requesting further information from the DAFM, the FAC has upheld the appeal. Incomplete applications should be returned to the Forestry Service.
- No reliance should be placed on the fact that NPWS did not make a specific response.
- The appellant was refused access to the iFORIS database and was hindered in making his appeal





- The decision does not comply with the Habitats, Birds or EIA Directives or basic guidelines of the NPWS
- There is no need to establish a significant effect to trigger AA - it is merely necessary to determine that there may be a significant effect (Kelly v An Bord Pleanála). The Appropriate Assessment screening shows that there may be such an effect.
- If the development is within 15km of a Natura 2000 site, it has been screened in for AA
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site
- The assessment carried out in accordance with the provisions of the Habitats Directive must not have lacunae and must be capable of dispensing with all reasonable scientific doubt as to the effects on a Natura 2000 site
- The catchment the proposed development is in should be stated
- There should be a map showing all SACs and SPAs relevant
- Details of all forestry in the area should be stated
- It is the duty of the FAC to carry out a full screening for AA and EIA.

The DAFM replied to the grounds of appeal that the area 2.86 ha licenced is comprised mainly of coniferous forest planted in 1986-1991 in two separate plots c. 170 m apart. The DAFM submits that the felling and replanting of the area licenced is consistent with best forest practice, DAFM standard procedures in relation to AA, S.I. 191/2017 and the 2014 Forestry Act. The felling and reforestation is not directly connected with or necessary to the management of any European site. The project has been subject to AA Screening for European sites within 15 km. The AA Screening involved a review of Special Conservation Interests of the screened site (i.e. Upper Lough Erne SPA UK9020071). The DAFM concluded from the screening exercise that it can be excluded, based on objective scientific information, that the project itself (i.e. individually) will have a significant effect on Upper Lough Erne SPA UK9020071, due to the absence of a direct hydrological connection, and subsequent lack of any pathway, hydrological or otherwise. As set out in the in-combination assessment attached to the AA Screening, as there is no likelihood of the project itself (i.e. individually) having a significant effect on this European Site, there is no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects. The in-combination assessment considers both forestry and non-forestry projects in the vicinity of the project. Following AA screening, DAFM has determined that there is no possibility of the project having any significant effect, either individually or in combination with other plans or projects, on any of the European site(s). The DAFM also stated with regard to the adjacent Dromore Lakes pNHA, a condition of the licence requires the licensee to ensure that all felling and planting operations are carried out in accordance with Forestry and Water Quality, Forest Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry and Aerial Fertilisation guidelines and the Code of Best Forest Practice - Ireland and the Irish National Forest Standard published by the Department. These conditions provide adequate protection for the pNHA, associated lakes and adjacent stream and river network. A felling licence was issued for the project having considered the comments and observations of referral bodies who submitted information to DAFM in respect of the licence (i.e. NPWS). Standard procedures were followed in respect of issuing referrals for this licence application.



The DAFM stated that Article 4(4) of the EIA Directive requires that where a category of project listed in Annex II of the Directive or in the national transposing legislation (i.e. where not otherwise automatically required by nationally prescribed thresholds or criteria) are required to be subject to a determination as to whether a sub-threshold EIA needs to be carried out or not, the applicant is required to provide information on the characteristics of the project and its likely significant effects on the environment. A detailed list of information to be provided is specified in Annex IIA of the Directive (as transposed by Schedule 1 of the Forestry Regulations 2017) and includes, amongst other things, a description of the physical characteristics of the whole project. However, because the standard operational activities of clear-felling and replanting an already established forest area are not so categorised either in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Article 4(4) of the Directive is not applicable.

The FAC held an Oral Hearing on 13 April 2021. The parties were invited to attend remotely. The appellant did not participate. The DAFM and applicant representatives participated remotely. The FAC sat remotely at this hearing. At the hearing the DAFM described the processes involved in considering the application, that there were referrals made to the NPWS and to Cavan County Council and a response was received from the NPWS only. The application assessment was desk based and an AA screening was undertaken with a single European site falling within a 15km radius of the proposal, Upper Lough Erne SPA. The conclusion was to screen out and an AA was not required, that there is no hydrological connection and the 'birds table' confirmed the proposal was outside of the foraging range of the bird species of the SPA. The DAFM confirmed that there were no thinning licences included in the in-combination assessment and indicated that a thinning project is located just south of the proposal, and there are no other harvest blocks within 120m of the proposal plots. The DAFM side confirmed the proposal plots are both within the Dromore Lakes pNHA and that the effect of the licence conditions negates any possible effects. The applicant's representative stated they conducted a desk and field assessment of the proposal, located within their BAU 3 midlands region, there are 2 plots c 162m apart, one plot is bounded to the north by farmland, Town Lough is c 50m north of one plot. There is an existing forest road in place. Ground conditions are firm, there are old cultivation drains on site and some within plot A have a flow of water which would go to Town Lough. There is a connection to Lough Oughter and Associated Loughs SAC through the Killyvaughan stream, Wood Lough, Drumore Lough, the Drumore River and the Annalee River, and the distance is c. 25.4 km. The applicant considers any potential for impact to be non-existent. There is no change of land use with the proposal and there is no EIA required. In response to the FAC the applicants confirmed the location of the identified drains on site and the flow channels and stressed that any flow is slow. The planting years were 1987 and 1991 and the area between both plots is oak and other broadleaf such as alder woodland. The DAFM stated the site drains are not visible on the 6" mapping and that under the standard conditions any such drains would require silts traps and there would as a result be no effect on the pNHA. The Dromore\_060 waterbody was confirmed to be of 'poor' status.

In addressing the grounds of appeal, the FAC noted that the appellant submitted several grounds relating to the duties of the FAC. The appellant also queried the legitimacy of the forest within the application area. The remit of the FAC is to decide if the Minister made a serious or significant error,





or series of errors, in deciding to issue the licence CN06-FL0043 and to decide if the licence was issued in compliance with fair procedures.

The FAC had regard to the appellant's submission that the decision does not comply with the Habitats Directive, the Birds Directive and the EIA Directive or the basic guidelines of the NPWS.

The FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. 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 (nor clear-felling or thinning) 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 FAC concludes that the clear-felling and 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 similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017).

In respect of the receiving environment and water quality, the conditions of the licence require that the felling and planting operation is carried out in accordance with Forestry and Water Quality, Forestry Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry and Aerial Fertilisation guidelines and the Code of Best Forest Practice – Ireland and the Irish National Forest Standard published by the Department, except as may otherwise be required in order to comply with the conditions of the licence. In addition, the proposed works are required to adhere to the Environmental Requirements for Afforestation, December 2016 (DAFM, 2016), the Felling & Reforestation Standards (v. Oct. 2019), the Forest Harvesting & the Environment Guidelines (DAFM, 2000), the Forestry Standards Manual (DAFM, 2015) and the Appendix 21 therein, and the Felling & Reforestation Policy (DAFM, 2017). There is likely to be a minor impact on traffic during operations, but this will be of a temporary nature. There are no recorded monuments on site. From the foregoing and having regard to the standard conditions applicable, the nature and scale of the proposal and the receiving environment, the FAC concluded that the proposal would not have any impact on water quality, or any significant impact on the environment. In addition, the FAC concluded there is no breach of the provisions of the EIA Directive in the decision to grant the licence.

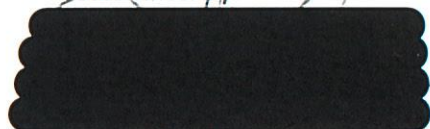
Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 AA screening in relation to 1 Natura 2000 site with the European site screened out for Stage 2 AA and an in-combination screening is also evidenced. The FAC

notes the Lough Oughter and Associated Loughs SAC is c. 15.3 km straight line distance from the proposal, just outside of the 15km radius used in the AA screening and per the EPA website is c. 30.2 km downstream from Town Lough, a distance well in excess of that stated by the applicant at the hearing. Also, the SAC is within a number of sub-catchments, the nearest to the proposal is the Annalee\_SC\_030 sub-catchment, and does not share any of these with the proposal. The FAC also notes that the Kilroosky Lough Cluster SAC is c. 15.4 km from the proposal, again just outside of the 15km radius used by the DAFM in the AA screening, but has no inflow or direct hydrological connectivity from the proposal and is in the Finn(Monaghan)\_SC\_020 sub-catchment. The FAC notes there is thinning project partly in the surrounds, namely CN06-FL0029 (2019) for an area of 64.70ha of which 2.4 ha is south of the proposal at appeal, the remaining plots are at some remove and not bordering Town Lough. The FAC is satisfied that the nature and scale of the proposal and this section of thinning when considered in combination would not be likely to give rise to significant effects. The FAC acknowledges there is a connection from the proposal to Town Lough via drains based on the applicant's evidence and is satisfied based on the nature and scale of the proposal, the intervening waterbodies, and the downstream distances involved that the conclusion of the AA screening of the project on its own and in-combination with other plans and projects is sound. Based on the evidence that the in-combination assessment was undertaken without regard for thinning projects in the vicinity examined for, the FAC considers this was an error by the DAFM but in this instance is not a significant or serious error.

Regards the contention the licence is contrary to the Birds Directive, the FAC notes there is no specific evidence submitted in respect of the presence of bird species, or reasons why the proposed development would threaten their protection. The FAC considers that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. In these circumstances, the FAC concludes there is no real related basis on which to affect the decision in respect of the proposal at appeal.

In the circumstances outlined above, and based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in the decision to issue licence CN06-FL0043 and did so in compliance with fair procedures. In deciding to affirm 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

A large black rectangular redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC