



17 September 2020

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Subject: Appeal FAC301/2019 regarding licence TFL00309619

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 TFL00309619 for felling and replanting of 22.1 ha at Cloonagh, Co. Longford was issued by the Department of Agriculture, Food and the Marine (DAFM) on 16th October 2019.

Hearing

A hearing of appeal FAC301/2019 was held by the FAC on 8th 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 TFL00309619.

The licence pertains to a felling licence for 22.1 ha of Sitka spruce and replanting with 90% Sitka spruce and 10% broadleaf. The site is relatively flat at an elevation of 110 to 120 metres. The forest is 30 years old and there is estimated to be 900 trees per hectare. The forest lies in the Inny sub-catchment of the Upper Shannon Catchment and there are no marked aquatic features in or adjacent to the proposal based on EPA maps. The closest stream lies some 450 metres to the south and is separated by agricultural fields and some existing forests. There is existing access onto minor public road from the forest. The proposal was referred to the County Council which responded that it has no objection subject to the guidelines of the DAFM being adhered to and the protection of the public road and existing services. These issues are included in the licence conditions.

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.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision meets their criteria and guidelines and that they confirm the licence. They suggest that the proposal was assessed following the relevant guidelines and standard operating procedure relevant at the time and that the proposed harvesting/replanting operations were considered, IFORIS maps were consulted for presence of; watercourses, protected habitats/species, Archaeology, adequate access, soil types, sensitive landscapes, water quality, flooding and topography. They suggest that all Natura sites within 15km have been screened out due to a lack of hydrological connectivity and degree of separation. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area.

In considering the appeal and before making a decision, the FAC undertook an examination in relation to the requirements of the Habitats and an examination in regards effects on the environment respectively 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 eight sites whose boundaries fall within 15km of the proposal. Given the nature and scale of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. The next closest site is Ardagullion Bog SAC which lies 15.7km to the northeast and with no hydrological pathway to the proposal. 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.

Mount Jessop Bog SAC lies over 6 km to the northwest in a separate catchment and the proposal would not result in the likelihood of a significant effect on this site. Brown Bog SAC and Lough Forbes Complex SAC are 12.6km and 14.2km to the northwest in a separate catchment and with no hydrological connection and a likelihood of a significant effect on these sites would not arise. Ballykenny-Fisherstown Bog SPA lies 14.2km to the northwest in a separate catchment and beyond the typical foraging range of the associated qualifying interest and the site, being a mature forest, would not be considered suitable foraging habitat for this species. Glen Lough SPA lies over 9km to the east and the proposal would occur in a mature forest that would not be considered suitable nesting or foraging habitat for the associated qualifying interest and the degree of separation would preclude any form of disturbance. The hydrological distance from the closest marked water courses, being the stream c.450 metres to the south, to the nearest European sites, being Lough Ree SAC and SPA, is c.35 km. The direct distance to the boundaries of these European sites is over 12km. Based on the nature of the site and in the absence of a pathway it is unlikely that any sediment would reach the closest watercourse, however, were this to occur the degree of settling and dilution that would occur over the c.35km distance would ensure that

the proposal could not result in any likelihood of effects on the SAC or SPA. The terrestrial habitats associated with Lough Ree SAC are not present on the proposal site and the degree of separation would preclude any other form of impact. The qualifying interests of Lough Ree SPA are primarily wetland and wading birds and the proposal site would not be considered suitable habitat for such species. The degree of separation would preclude any other form of disturbance. The area is generally rural and agricultural with ribbon development following the public road to the west with some associated permissions. A small number of felling licences have been granted in the area. Having regard to the nature, 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.

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.

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 be 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee





FAC301/2019 TFL00309619 Cloonagh, Co. Longford

9th 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 a felling licence for 22.1 ha of Sitka spruce and replanting with 90% Sitka spruce and 10% broadleaf. The site is relatively flat at an elevation of 110 to 120 metres. The forest is 30 years old and there is estimated to be 900 trees per hectare. The forest lies in the Inny subcatchment of the Upper Shannon Catchment and there are no marked aquatic features in or adjacent to the proposal based on EPA maps. The closest streams lies some 450 metres to the south and is separated by agricultural fields and some existing forests. There is existing access onto minor public road from the forest. The proposal was referred to the County Council which responded that it has no objection subject to the guidelines of the DAFM being adhered to and the protection of the public road and existing services. These issues are included in the licence conditions.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are eight 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. The next closest site is Ardagullion Bog SAC which lies 15.7km to the northeast and with no hydrological pathway to the proposal. 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.

Mount Jessop Bog SAC lies over 6 km to the northwest in a separate catchment and the proposal would not result in the likelihood of a significant effect on this site due to the absence of any hydrological connection or pathway of effects. Brown Bog SAC and Lough Forbes Complex SAC are 12.6km and 14.2km to the northwest in a separate catchment and with no hydrological connection and a likelihood of a significant effect on these sites would not arise. Ballykenny-Fisherstown Bog SPA lies 14.2km to the northwest in a separate catchment and beyond the typical foraging range of the associated qualifying interest and the site, being a mature forest, would not be considered suitable foraging habitat for this species. Glen Lough SPA lies over 9km to the east and the proposal would occur in a mature forest that would not be considered suitable nesting or foraging habitat for the associated qualifying interest and the degree of separation would preclude any form of disturbance. The hydrological distance from the closest marked water courses, being the stream c.450 metres to the south, to the nearest European sites, being Lough Ree SAC and SPA, is c.35 km. The direct distance to the boundaries of these European sites is over 12km. Based on the nature of the site and in the absence of a pathway it is unlikely that any sediment would reach the closest watercourse, however, were this to occur the degree of settling and dilution that would occur over the c.35km distance would ensure that the proposal could not result in any likelihood of effects on the SAC or SPA. The terrestrial habitats associated with Lough Ree SAC are not present on the proposal site and the degree of separation would preclude any other form of impact. The qualifying interests of Lough Ree SPA are primarily wetland and wading birds and the proposal site

would not be considered suitable habitat for such species. The degree of separation would preclude any other form of disturbance.

The area is generally rural and agricultural with ribbon development following the public road to the west with some associated permissions. These include permission for a single storey extension granted 11/6/2020 (2016 Longford Co Co), proposed construction of a two storey type dwelling house, detached garage, entrance, boundary fence/wall, proprietary waste-water treatment system with percolation area and all ancillary site works 26/01/2017 (16293 Longford Co. Co.). No emission points were identified on information provided by the EPA and no issues of relevance to the proposal in regards European sites were identified in the Longford County Development Plan. There are a number of small existing forests to the north of the proposal and some younger forests to the south. Felling licences have been granted in the vicinity including TFL00341719 thinning licence (11.95 ha) granted in 02-Mar-2020, TFL00311119 thinning (16.68 ha) granted 27-03-2019, LD03-FL0082 clearfell (4.29 ha) 13-Mar-19. Due to the absence of a pathway for significant effects from the proposal and any European sites 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 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	002202	Mount Jessop Bog SAC	6021.72	Habitats 7120 Degraded raised bogs still capable of natural regeneration 91D0 Bog woodland*	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002202.pdf	No likelihood of significant effects
SAC	000440	Lough Ree SAC	12013.50	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	002346	Brown Bog SAC	12574.04	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002346.pdf	No likelihood of significant effects

				capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	sites/conservation_objectives/CO002346.pdf	
SAC	001818	Lough Forbes Complex SAC	14244.14	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001818.pdf	No likelihood of significant effects
SPA	004045	Glen Lough SPA	9105.13	Birds A038 Whooper Swan (<i>Cygnus cygnus</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004045.pdf	No likelihood of significant effects
SPA	004064	Lough Ree SPA	12040.09	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/protected-sites/conservation_objectives/CO004064.pdf	No likelihood of significant effects
SPA	004101	Ballykeny-Fisherstown Bog SPA	14237.41	Birds A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004101.pdf	No likelihood of significant effects
SAC	002341	Ardallion Bog SAC	15.7	Habitats Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the	https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002341.pdf	No likelihood of significant effects

				Rhynchosporion [7150]	pdf	
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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 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 proposal is of a medium scale and for felling and replanting 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. 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. The replanting with a portion of broadleaves may enhance the habitat value of the forest. 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 proposal was considered by the County Council which did not object subject to a number of factors that were reflected in the licence conditions. There are no recorded monuments that could be impacted by the proposal. 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