



[REDACTED]

25th March 2020

Subject: Appeal FAC091/2018 against felling licence decision LS13-FL0026

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

A licence, LS13-FL0026, for the felling of 2.46 hectares at Cullenagh, Laois was approved on 12th April 2018.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on the 10th March 2020.

In attendance at the hearing:

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| FAC Members: | Mr. Des Johnson (Chairperson), Mr. James Conway & Mr Vincent Upton |
| Secretary to the FAC: | Ms. Ruth Kinehan |
| Appellant: | Not present |
| Applicant: | Not present |
| DAFM Representative: | Mr. Frank Barrett & Ms. Eilish Kehoe |

Decision

Having regard to the evidence before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence LS13-FL0026.

The grounds of appeal stated that the appropriate assessment undertaken by the DAFM in granting the licence was flawed in law and that conditions attached to the licence were mitigation measures. In a statement provided to the FAC, the DAFM stated that the licence had been considered following their appropriate assessment procedures of the time and that no scenarios that would require an appropriate assessment (AA) were triggered and that following the procedure "the completion of an individual AA

Screening Form was not required". The FAC had requested more information from the DAFM when the notice of appeal was received and the DAFM could not provide a copy of an AA screening. During the oral hearing the DAFM provided further information in respect of the proposed felling and other projects in the area. The FAC therefore undertook an appropriate assessment screening of the proposed felling in line with the requirements of the Habitats Directive based on the information available to it. This included an independent consultant's report commissioned by the FAC, information provided by the DAFM and information in the public domain. This assessment and the consultants report are available on the public file.

The felling licence relates to a clearfell of an area of 2.46 ha and is relatively small in scale. The proposed felling is contained within an existing mature, coniferous forest and an area of replanted forest is present to the east. Felling licences have been issued for a number of forests in the vicinity and areas to the north and south of the proposed clearfell have been felled in recent years. At the oral hearing the DAFM provided further information on licences in the vicinity of the site. The forest is not bounded by any aquatic feature but a small stream rises to the east less than 100 m from the boundary. The forest is situated within the Barrow catchment at an elevation of 200-250 m on the northern side of Cullenagh Mountain. A number of felling and afforestation licences have been granted in the area and there are a number of other projects within the vicinity, information on which was provided by the DAFM at the oral hearing. Permission has also been granted for the development of 18 wind turbines in the area. There is an existing forest road network which, it was established at the oral hearing, will be used for transporting harvested timber from the forest.

The closest European site in straight line distance is the River Barrow and River Nore SAC, a portion of which lies some 5.5 km to the south. This SAC covers an area of 12,367.76 ha. Of note in its qualifying interests is the Nore Pearl Mussel (*Margaritifera durrovensis*) which has been recorded in the River Nore that runs to the south of the proposed felling but over 5km at its closest point in direct distance. As stated the proposed felling lies in the Barrow catchment on the northern side of the Cullenagh Mountain in a sub-catchment that drains to the north. There is no hydrological connection with the Nore and the proposed area does not drain into its catchment.

The small stream to the east of the proposed felling site flows north before meeting the Cush river and continues through Portlaoise. The stream is bounded by established broadleaf woodland. The Cush river meets the River Barrow (River Barrow and River Nore SAC) at a hydrological distance of 24km. Due to the separation between the proposed felling and the stream and the scale of the proposal, in addition to the degree of separation with the SAC, the FAC concluded that the possibility of this felling having a significant effect on the SAC by itself or in combination with other plans or projects would not occur.

The Ballyprior Grassland SAC and Lisbigney Bog SAC are situated in separate catchments to the proposal and have been designated for habitats and species that could not be affected given the level of separation between the felling and the SACs. The FAC therefore concluded that the possibility of the felling having a significant effect on the SAC by itself or in combination with other plans or projects would not occur.

A part of the River Nore SPA and Slieve Bloom Mountains SPA lies within 15 km from the proposed felling which have been designated on the basis of the Kingfisher (*Alcedo atthis*) and Hen Harrier (*Circus cyaneus*) respectively. The boundary of these sites lies at a considerable remove from the felling. Furthermore, the felling is proposed in a mature, closed canopy coniferous plantation which would not be considered suitable foraging or breeding habitat for these species. The FAC therefore concluded that

the possibility of the felling having a significant effect on these SPAs by itself or in combination with other plans or projects would not occur. The scale and nature of the proposed felling coupled with the degree of separation from European sites outside of a 15 km radius would ensure that no significant effects could arise. Before making the decision to confirm the decision of the DAFM, the FAC concluded that the proposed felling, alone or in combination with other plans or projects, would not result in the possibility of a significant effect on any European sites. The FAC concluded that this proposal did not include any measures designed to avoid or reduce possible impacts on a European site.

The FAC considered that the proposal is consistent with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application and at the oral hearing, the processing of the application by the DAFM including its screening for Appropriate Assessment, the independent consultant's report, the grounds of appeal and any submissions and observations received.

Yours sincerely,

A handwritten signature in black ink that reads "James Conway". The signature is written in a cursive style with a horizontal line underneath the name.

James Conway, on behalf of the Forestry Appeals Committee

