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24th April 2020

Our ref: FAC342/2019

Subject: Appeal in relation to felling licence KK02-FL0157

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 licence KK02-FL0157. 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 KK02-FL0157 for felling and replanting at Croghtenclogh, Kilkenny Co. was granted by the Department of Agriculture, Food and the Marine on 22nd October 2019.

Hearing

A hearing of appeal FAC342/2019 was conducted by the FAC on 15th April 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor and Mr Pat Coman

Decision

Having regard to the evidence before it and the following considerations, the Forestry Appeals Committee (FAC) has decided to cancel the decision of the Minister of Agriculture, Food and the Marine regarding licence KK02-FL0157.

The licence was granted for the felling and replanting of 4.74 ha at Croghtenclogh, Kilkenny. The forest is currently comprised of Sitka spruce and the same species will be replanted. The site is described as comprising surface water and ground water gleys with a moderate slope. The application was referred to the County Council which did not reply.

The grounds of appeal suggested that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives and

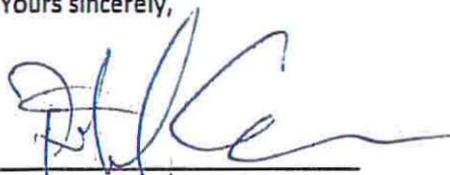
that the test for appropriate assessment (AA) screening in Irish law is as set out by Finlay Geoghan J. in Kelly v ABP and goes on to quote from that High Court decision. The grounds also state that *"If mud was to enter the lakes it could have an effect on the SAC/SPA. The fact that the distance is just over 15 km has no relevance to the fact that there still may be an effect."*

The DAFM in a statement to the FAC described the assessment procedure undertaken in considering the licence application, including information submitted by the applicant. The application was screened out for appropriate assessment. The statement goes on to note that there are no lakes near or adjacent to the felling licence area and that the nearest lake is 5.4km from the site and is not hydrologically connected. The DAFM also state that the site has no hydrological connection to nearby streams or rivers. The AA screening conducted by the DAFM was also provided which concluded that there is no possibility of the project having a significant effect due *"to the location of the project outside of the Natura site and mandatory adherence to any safeguards within the project, as set out in the Standards for Felling & Reforestation"*.

In considering the grounds of appeal, the FAC noted that the felling area lies some 2.1km from the boundary of the River Barrow and River Nore SAC (reference code 2162) and that there is a hydrological connection. The River Dinin flows adjacent to the southern end of the felling site and flows directly to the SAC. The felling licence was issued with thirty conditions attached, many of which relate to protecting water quality and managing sediment, and are more numerous than standard licences. The FAC can not identify any other reason for these specific conditions other than the proximity to the SAC. The Applicant stated in their pre-screening report that there are eight felling licences granted for 44.36ha within 1.5km of the site. The DAFM also states that there are licences for clearfelling and thinning in the vicinity. However, there is no information provided regarding the location of these licences or how the DAFM accounted for them in their assessment. It is evident from maps of the felling area that there are other mature managed forests adjoining the River Dinin in the area.

The FAC is not satisfied that a screening for appropriate assessment in line with the requirements of the Habitats Directive was undertaken prior to the granting of the licence. In particular, the FAC is not satisfied that the proximity of the proposal to an SAC and its direct connection by the River Dinin were sufficiently considered. In addition, the FAC considers the nature and number of conditions attached to the licence to likely relate to the proximity of the felling site to an SAC and are designed to mitigate potential impacts on it, and does not have sufficient information regarding other projects in the vicinity of the proposal or how they were assessed in this case. Thus the FAC, in adopting the precautionary principle, has decided to cancel the DAFM decision in relation to KK02-FL0157.

Yours sincerely,



Pat Coman On Behalf of the Forestry Appeals Committee