



**An Coiste um Achomhairc
Foraolseachta**

Forestry Appeals Committee

30 September 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: FAC 380/19

Subject: Appeal in relation to felling licence KK06 FL0139

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 felling licence KK06 FL0139.

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 KK06 FL0139 was granted by the Department on 15 November 2019.

Hearing

A hearing of appeal 380/19 was conducted by the FAC on 15 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, and all submissions before deciding to confirm the decision to grant this licence (Reference KK06-FL0139).

The proposal is for felling and reforestation on a stated site area of 4.45ha . The site forms part of a larger mature forestry plantation planted in 1968. Felling is proposed for 2020. A Harvest Plan is submitted with the application. The underlying soils are stated to be approximately 60% acid brown earths, brown podzolics and 40% lithosols and regosols. The slope is moderate. Five Natura 2000 sites are identified within a 15km radius (4 SAC and 1 SPA) and it is stated that the harvest block is within a water basin that has hydrological connectivity to an aquatic SAC but no connectivity to a Water framework Directive river.

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The DAFM referred the application to Inland Fisheries Ireland and Kilkenny County Council. No replies are contained on the file.

The Licence was issued on 15th November 2019 subject to standard conditions and condition (h) requiring a Harvest Plan to be completed and agreed prior to commencement of felling.

There is a single appeal against the decision to grant the licence. The grounds contend that, based on the information supplied, it is not possible to grant a licence in accordance with the provisions of the Habitats and EIA Directives. No proper assessment was carried out and there was no assessment of cumulative effects. Reference is made to the Court judgment of Kelly v An Bord Pleanála. If mud was to enter lakes it could have a significant effect. The 15km radius is of no relevance as there may be an effect.

In response, the DAFM state that the decision was issued in accordance with S.I. 191/2017 and the 2014 Forestry Act. All standards and procedures in operation at the time were adhered to (09.09.20). The nearest lake (not hydrologically connected) is approximately 10km to the south east.

In order to inform its decision, the FAC carried out a Stage 1 screening assessment in accordance with the provisions of the Habitats Directive and an examination of the likely significant effects on the environment. Copies of these are contained in the public file. Having regard to the nature and scale of the proposed development and its location, the FAC considered that the screening should assess the possibility of significant effects on Natura sites within a 15km radius, having regard to their qualifying interests and associated conservation objectives. The FAC considered that there was no possibility of significant effects arising for designated sites beyond that radius. The FAC considered that the proposed felling and reforestation is not connected with or necessary to the management of any Natura 2000 site.

There are 4 Natura sites within a 15km radius – the River Barrow & River Nore SAC, Blackstairs Mountains SAC, Thomastown Quarry SAC and River Nore SPA. The River Slaney SAC is marginally outside the 15km radius. The FAC noted that there are no streams or rivers on or adjoining the project site (epa maps), and that the nearest rivers are the River Duiske approximately 330m to the west and the River Tinnapark approximately 790m to the east. While both of these rivers link with the River Barrow & River Nore SAC there is no direct hydrological connection between the project lands and these rivers. Due to the nature and scale of the proposal, the absence of hydrological connectivity and separation distances, the FAC concluded that there is no possibility of significant effects arising on the River Barrow & River Nore SAC or any of the other SACs assessed. The FAC further concluded that, due to the absence of hydrological connectivity and the separation distance, there is no possibility of significant effects on the River Nore SPA, having regard to its qualifying interest and associated conservation objective. Furthermore, having regard to the characteristics of the surrounding area and, as the proposed development would not be likely to give rise to significant effects alone, the FAC concluded that there is no likelihood of significant effects arising in combination with other plans and projects in the area. The FAC noted that a DAFM screening dated January 2020 reached similar conclusions of no likelihood of significant effects.

The FAC considered that the proposed felling and reforestation is not a class of development to which the EIA Directive applies. Following an examination, the FAC concluded that the proposed



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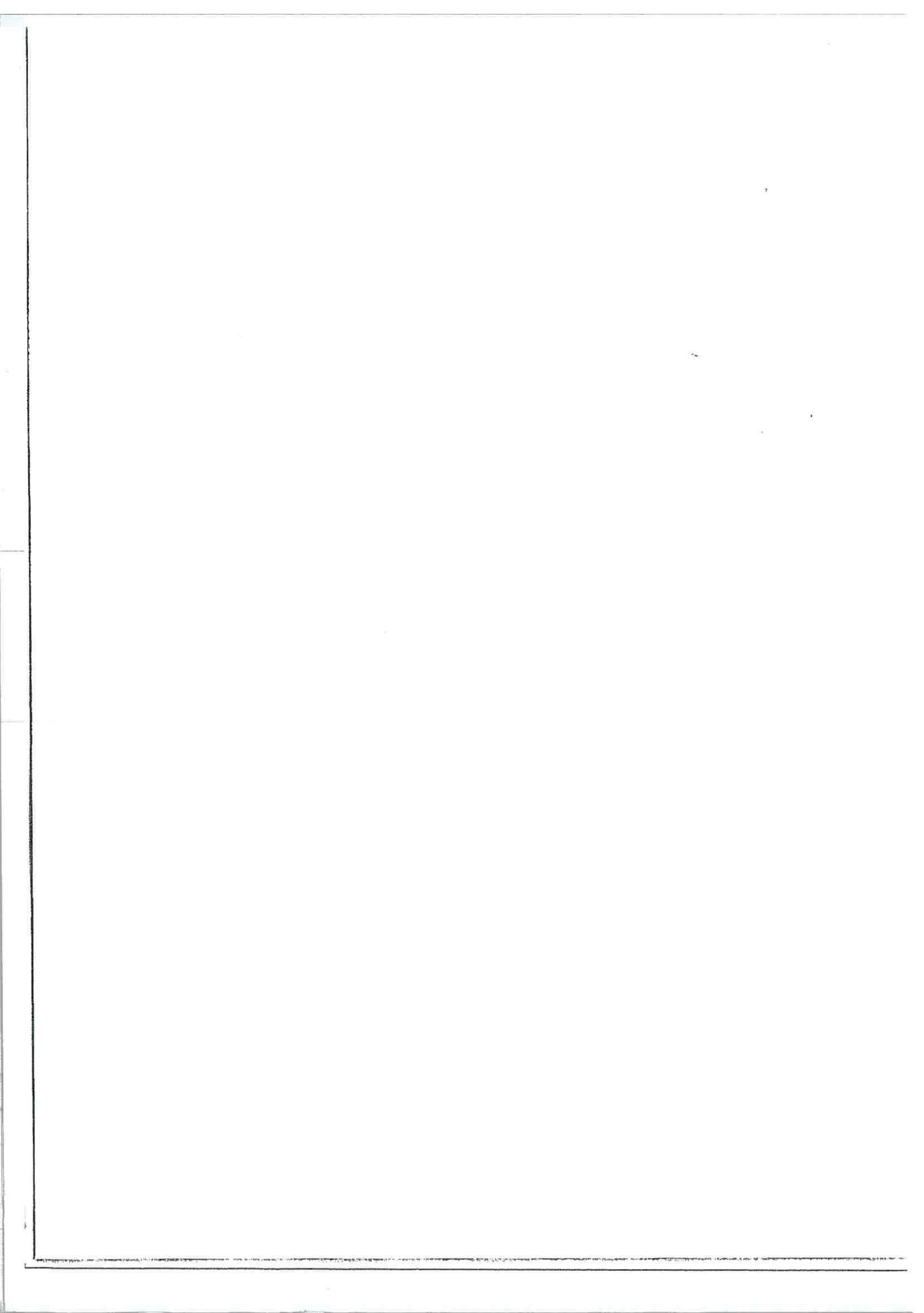
Forestry Appeals Committee

development alone, or cumulatively with other plans and projects, would not have a significant effect on the environment.

In deciding to confirm 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,

Pat Coman on behalf of the Forestry Appeals Committee



KK 06-FL0139

Proposed development and location

The proposal is for felling of a stated site area of 4.45ha. This forms part of a larger mature forest plantation. The surrounding area is rural and agricultural in character but with significant areas of forestry and woodland. There is significant residential ribbon development along public roads. The River Duiske is approx. 330m to west (across fields and a public road) and R. Tinnapark approx. 790m to the east (across agricultural fields). Both link with R Barrow and R Nore SAC at approx. 3287m hydrological distance downstream

Screening for Appropriate Assessment

The proposed development of 4.45ha felling and reforestation is not connected with or necessary to the management of any Natura 2000 site.

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 15km. The FAC considered that there is no possibility of significant effects on any Natura site outside of that radius.

There are 4 Natura 2000 sites within a 15km radius of the project site. These, together with their qualifying interests and direct separation distance, are listed below:

| Site Code | Site Name | Distance To (m) | Qualifying Interests (* denotes a priority habitat) | Conservation Objectives |
|------------------|---------------------------------|------------------------|---|---|
| 002162 | River Barrow and River Nore SAC | 2582.97 | Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1170 Reefs 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of | http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf |

| Site Code | Site Name | Distance To (m) | Qualifying Interests (* denotes a priority habitat) | Conservation Objectives |
|-----------|-----------|-----------------|---|-------------------------|
| | | | <p>plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation</p> <p>4030 European dry heaths</p> <p>6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>7220 Petrifying springs with tufa formation (Cratoneurion)*</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1016 Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1421 Killarney Fern (<i>Trichomanes speciosum</i>)</p> <p>1103 Twaite Shad (<i>Alosa fallax fallax</i>)</p> <p>1990 Nore Pearl</p> | |

| Site Code | Site Name | Distance To (m) | Qualifying Interests (* denotes a priority habitat) | Conservation Objectives |
|-----------|---------------------------|-----------------|--|---|
| | | | Mussel (<i>Margaritifera durrovensis</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>) | |
| 000770 | Blackstairs Mountains SAC | 8501.53 | Habitats 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 4030 European dry heaths | http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000770.pdf |
| 002252 | Thomastown Quarry SAC | 9842.90 | Habitats 7220 Petrifying springs with tufa formation (Cratoneurion)* | http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002252.pdf |
| 004233 | River Nore SPA | 5242.81 | Birds A229 Kingfisher (<i>Alcedo atthis</i>) | http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004233.pdf |

The River Slaney SAC is estimated marginally in excess of 15km from the project lands. There are no streams or rivers on or adjoining the project site (epa maps). The nearest rivers are the River Duiske approximately 330m to the west and the River Tinnapark approximately 790m to the east. The former is separated from the project site by fields, a number of private roads and a public road, and the latter is separated by agricultural fields. Both of these rivers link with the River Barrow and River Nore SAC at a hydrological distance of approximately 3300m, but there is no hydrological connection between the project site and these two watercourses. Historic maps of the area do not show any drains which could connect the project site to the rivers listed and none are identified in the information submitted to the FAC.. Having regard to the nature and scale of the proposed development, the absence of hydrological connectivity and separation distances, there is no possibility of significant effects arising from the proposed development on the River Barrow and River Nore SAC, Blackstairs Mountains SAC, Thomastown Quarry SAC, or any other SAC. Furthermore, this is a rural agricultural area with significant areas of forestry and a dispersed settlement pattern. Forestry related projects in the general area include CN 87222 forest road (350m), KK 06-FL0148 clearfell (7.24ha) and KK 06-

FL0150 clearfell (2.49ha) at Brandonhill, and KK 06-FL0151 clearfell (5.26ha) and KK 06-FL0147 clearfell (2.22ha) at Raheendonore.. As such, there is no possibility that the proposed development alone is likely to have any significant impacts on any Natura 2000 site, the FAC concluded that there is no possibility of in-combination effects with other projects and land uses in the area that would give rise to significant effects on any Natura 2000 site. The River Nore SPA has the Kingfisher as its qualifying interest. The project site, being mature forestry with no aquatic zone does not provide suitable habitat for the Kingfisher. The proposed development will create short-term and intermittent noise and disturbance but, having regard to the separation distance between the project lands and the designated site, there is no possibility of significant effects on the River Nore SPA alone or in-combination, having regard to the site's qualifying interest.

Examination of effects on the environment

Felling (and reforestation) does not fall within a class of development to which the EIA Directive applies and the proposed operation 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 proposed development, which is relatively small in scale, will give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. There would be a visual impact which will change over time resulting from felling and reforestation. The site does not have hydrological connection to any significant watercourse and any impact on water quality will be short-term and locally confined. There is no direct hydrological connectivity to the Duske and Tinnapark Rivers, which are approximately 330m and 790m removed. There would be no significant impact on fisheries or on any designated site and no significant impact on any archaeological site. Having regard to the limited 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.

Des Johnson

On behalf of the Forestry Appeals Committee

18th September 2020.