



18 February 2021

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

Our ref: 185/2020

Subject: Appeal in relation to felling licence TY06-FL0086

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 TY06-FL0086.

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 TY06-FL0086 was granted by the Department on 25 March 2020.

#### Hearing

An oral hearing of appeal 185/2020 was conducted by the FAC on 09 February 2021.

#### Attendees:

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

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

**DAFM representatives:** Mr Frank Barrett and Ms Eilish Kehoe

#### 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, including the response to a request for further information by the FAC, before deciding to affirm the decision to grant this licence (Reference TY06-FL0086).

The proposal comprises 4.35 ha of clear-felling at Glenmore Upper, Latteragh, Co Tipperary, currently stocked with Sitka Spruce 95% and Willow 5%. Following clearfell, replanting is to be with Sitka Spruce 100%. The application seeks 0.22 ha of open space. The underlying soil type is approximately; Acid Brown Earths, Brown Podzolics (75%) & Lithosols, Regosols (25%). The slope is west to northwest and

predominantly steep (15-30%). The proposal is within the Lower Shannon catchment, the Nenagh\_SC\_010 sub-catchment, and within the Nenagh\_030 waterbody. The proposal is divided by an existing roadway, is bounded to the west by agricultural grassland and by existing forestry on all other sides. The application included a harvest plan document and a pre-screening report compiled by the applicant. The application was desk assessed, was subject of a referral to Tipperary County Council and no response is evidenced.

In processing the application, the DAFM completed a Stage 1 Appropriate Assessment (AA) screening with reference to the provisions of Article 6(3) of the Habitats Directive, of the following EU sites within a 15 km radius and all were screened out with reasons given.

- The Slievefelim to Silvermines Mountains SPA due to the separation distance between the Natura site and the project.
- The Kilduff, Devilsbit Mountain SAC and the Bolingbrook Hill SAC for reasons of an absence of a direct upstream hydrological connection and a subsequent lack of any pathway, hydrological or otherwise.
- The Lower River Shannon SAC, the Lower River Suir SAC and the Silvermine Mountains SAC for reason of the location of the project area within a separate water body catchment to that containing the Natura sites, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.

The DAFM conducted an in-combination assessment and concluded that the proposed development alone or in-combination with other plans and projects would not be likely to have a significant effect on any Natura 2000 site.

The licence was issued subject to standard conditions (a) to (h) along with an additional condition (i), as set out on the licence, and the licence is valid until 31 December 2022.

There is a single appeal against the decision to grant the licence, the grounds include that there is a breach of Article 4(3) of the EIA Directive as there was no screening for EIA, that there is also a breach of Article 4(4) of the EIA Directive. That on the same date as this application was made a further nine applications were made for the same FMU totalling 68.38ha. The application does not cover the whole project and project splitting is not permitted, and the proposal is part of a much larger scheduled programme of works. The grounds also contended that there is a breach of Article 4(5) of the EIA Directive when the whole project is not addressed. The Appellant states the Forest Service failed to supply, on request a copy of the EIA screening report for this licence. The appeal contends that clear-felling has the potential to impact on water quality, that part of this site is in the catchment of the Ollatrim\_010 and the current status of this water-body is 'poor' and it is listed as being 'at risk', and forestry is listed as a significant pressure on the waterbody. Also, part of the site is in the catchment of the Nenagh\_030 waterbody and the current status of the waterbody is moderate. The grounds include that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive. That there is a breach of Article 10(3) of the Forestry Regulations, and the Appellant made a submission in respect of this application under Regulation 10 but was not notified of the decision by the Minister as required under Regulation (21), and none of the exemptions contained in paragraph (2) of Regulation 21 apply, and that the Appellant has been compromised in their capacity to make an appeal in respect of a decision on an application on which they made a submission.





In response, the DAFM set out with regard to Article 4(3) of the EIA Directive, that because the standard operational activities of clear-felling and replanting of an already established forest area are not within the specified categories of forestry activities or projects set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017, and are not so categorised 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(3) of the Directive is not applicable. DAFM also ruled out any breach of Article 4(4). The DAFM stated the area licensed as TY06-FL0086 is completely within the Nenagh\_030 river sub basin, and that the DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). Any felling licence issued is conditional on adherence to the *Interim Standards for Felling and Reforestation* (DAFM, 2019). These measures cover a wide range of issues, including pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works. In relation to reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. The water-related eco-system services that such a buffer delivers is described in the document *Woodland for Water: Creating new native woodlands to protect and enhance Ireland's waters* (DAFM, 2018), with benefits further enhanced if accompanied by adjoin native woodland. Further setbacks are also required along relevant watercourses and water-related hotspots throughout the site, where present. With the application of this restructuring, the level of protection regarding water will increase. In this instance the licence application TY06-FL0086 was referred to the Local Authority in line with current practice and procedures. The DAFM set out regards correspondence related to requests from the Appellant for copies of licence applications and related documents and notes that the appellant has successfully exercised their right to appeal the granted felling licence application TY06-FL0086. The DAFM set out that the AA Screening report was completed by the Inspector and contains the recommendations regarding screened out European Sites. DAFM stated that a number of the Qualifying Interests (QIs)/Special Conservation Interests (SCIs) were truncated on the AA Screening form for project TY06-FL0085 when outputting the form related to the screening exercise. However, all QIs/SCIs were considered during the screening exercise itself and the screening determination is considered sound.

On 12 May 2020 the FAC sought additional information from the Appellant, and while a response was received on 14 May 2020 the requested information was not provided.

The FAC held an Oral Hearing on 09 February 2021. The parties were invited to attend in person or to join remotely. Both the Appellant and the Applicant were invited to participate in person or remotely and neither participated, the DAFM participated remotely. The FAC sat in person and remotely at this hearing. At the oral hearing the DAFM set out the processing undergone in issuing the licence, that there was a referral to the Local Authority with no response, an AA Screening and an in-combination assessment were finalised on 25 March 2020 before the decision to issue the licence and no AA was required. The DAFM described the checks regards stream and rivers and confirmed the nearest stream is c. 250m, and the proposal is solely within the Nenagh\_030 water-body catchment. The DAFM confirmed the in-combination aspect of felling licences was considered, and while there are a number of felling blocks in the vicinity, they amount to less than 25 ha. The DAFM stated the Appellant was issued notice of the licence decision on 17 April 2020 along with copies of application documents, having made a request in respect of this licence on 13 March 2020, and while provided late this would have been within the time period for appeal of the licence decision.

In addressing the grounds of appeal, 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) 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 felling 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 similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). The FAC considers the licence issued is for the felling and reforestation of 4.35 ha and does not consent to any change of land use. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

In regard to any requirement for the curtailment of felling activities during the bird breeding and rearing season, the FAC noted that the Appellant did not submit any specific details in relation to bird nesting or rearing on this site. The FAC considers the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute and, the FAC concluded that a condition of the nature detailed by the appellant should not be attached to 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 carried out a Stage 1 AA screening in relation to six Natura 2000 sites and concluded that the proposed project alone and in-combination with other plans or projects would not be likely to have significant effects on any Natura 2000 site. The FAC, noting the proposal is c. 6.8 km from the nearest SAC and in a different catchment and is c. 7.1 km from the nearest SPA and does not





**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

comprise suitable foraging or nesting habitat for the special conservation interest thereon, and that the nearest downstream connection is at c. 32 km to the Lough Derg (Shannon) SPA, is satisfied the screening conclusion is sound in this instance.

The EPA mapping data shows the plot is located entirely within the Nenagh\_030 waterbody, a water body that is of 'moderate' status and 'not at risk' per the EPA data. The Appellant's grounds regard the Ollatrim\_010 waterbody do not arise for the proposal. While the EPA mapping does not indicate any watercourse on or alongside the proposal, the Ordnance Survey 6" mapping shows a minor stream feature flows west all along the southern edge of the proposal, this flows to become the Holy Well Bigpark stream which in turn enters the Nenagh River at c. 1.6 km. The FAC, having regard to the licence conditions, including condition (a) and the additional condition (i), and to the nature and scale of the proposal, is satisfied there can be no real effect on the water-body from the northern plot of the proposal and no likelihood of significant impact, and that no serious or significant error arises in this regard in the decision to award the licence.

The DAFM have confirmed there was delay in the provision of information and notification of the decision to the Appellant. However, the FAC is cognisant the Appellant was provided with the information and decision notice prior to the expiry of the 28 days period afforded for an appeal to the FAC.

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

Pat Coman, on behalf of the FAC