



17 July 2020

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Subject: Appeal 373/2019 regarding licence KK06 FL0138

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

Felling licence KK06 FL0138 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 31 October 2019.

Hearing

A hearing of appeal 373/2019 was held by the FAC on 16 July 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Gallagher, Mr. Pat Coman, Mr. Vincent Upton

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including the application details, processing of the application by the Department of Agriculture Food and the Marine (DAFM), the grounds of appeal, and all submissions made before deciding to confirm the decision to grant the licence (Reference KK06 FL0138).

The proposal is for the clearfelling of 5.22ha and reforestation of 4.96ha Sitka Spruce at Raheendonore, Co. Kilkenny. The site is located approximately 8km east of Thomastown and approximately 5km south west of Graiguenamanagh. It forms part of a larger area of forestry. This is generally a rural agricultural area with dispersed settlement pattern out of the towns mentioned and has other areas of forestry within a 3km radius of the proposal site. Underlying soils are stated to be 72.8% acid brown earths, brown podzols and 27.2% lithosols and regosols. The slope is stated to be moderate. The Upper Fiddaun stream is approximately 460m to the south west and the Kilmacshane River is approximately 530m to the north.

In processing the application, the DAFM carried out a Stage 1 screening of Natura 2000 sites within 15km. Following assessment, the DAFM concluded that the proposal would not be likely to have significant effects on any of the Natura 2000 sites examined.

The DAFM issued a Licence on 31 October 2019 subject to standard conditions.

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 make a decision in accordance with the requirements of the Habitats and EIA Directives. There was no proper assessment carried out and no assessment of cumulative impacts. Reference is made to a series of Court judgments and, in particular, judgments in *Kelly v An Bord Pleanála*, and *Holohan v An Bord Pleanála*. It is argued that if mud was to enter the lakes it could have an effect on a SAC/SPA.

In response to the grounds of appeal, the DAFM state that there are no lakes near or adjacent to the project lands, and the nearest lake is at 10.4km and not hydrologically connected.

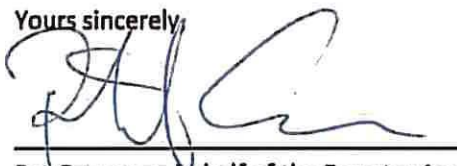
The DAFM submitted a revised Appropriate Assessment screening to the FAC dated 12 May 2020 and listed other projects for an in-combination assessment. These were circulated to the Parties for comments/observations and a submission by the appellant was received. This revised screening concludes that there is no possibility of significant effects on the River Barrow and River Nore SAC, Thomastown Quarry SAC or the Blackstairs Mountains SAC. The revised assessment concludes that the possibility of significant effects on the River Nore SPA could not be discounted because of the proximity of the proposed site to habitat suited to the qualifying interest for the designated site, the Kingfisher. Conversely the submitted in-combination assessment concluded that there was no potential for the project to contribute to any effects, when considered in-combination with other plans and projects. In these circumstances, the FAC carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive. Following its screening assessment, the FAC agreed with the DAFM conclusion that the proposed felling would not give rise to the possibility of significant effects on any of the SACs listed. The FAC did not agree with the DAFM conclusion in the revised screening that the possibility of significant effects on the River Nore SPA could not be discounted, for reasons of the nature and scale of the proposal, the separation distance and the absence of suitable habitat for the Kingfisher on or in proximity to the proposed site. The FAC concluded that there is no possibility of significant effects arising from the proposal on the River Nore SPA. The FAC further concluded that there is no possibility of mud or debris arising from the proposal giving rise to the possibility of significant effects on any Natura 2000 site. The FAC screening and an examination of environmental effects are contained in the public file.

Felling 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 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.

The FAC concluded that the proposed felling and reforestation by itself, or in combination with other plans and projects in the area, would not be likely to have significant effects on the environment. The grounds of appeal did not identify any particular lake of concern and the FAC could not identify any hydrological connection between the proposed felling and any lake. Thus, no threat to a lake or other water body considered likely to arise from the proposal.

In deciding to confirm the decision to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee

Proposal and location

The proposal is for the clearfelling of 5.22ha and reforestation of 4.96ha Sitka Spruce and other conifers at Raheendonore, Co. Kilkenny. The soil type is mineral and primarily brown earths and the site is on a moderate slope. The site is located approximately 8km east of Thomastown and approximately 5km south west of Graigeunamanagh. It forms part of a larger area of forestry. This is generally a rural agricultural area with dispersed settlement pattern out of the towns mentioned, and has other areas of forestry within a 3km radius of the proposal site. The Upper Fiddaun stream is approximately 460m to the south west; this appears to rise near the proposed site and flows south. The Kilmacshane River is approximately 530m to the north and this flows in a south westerly direction. There is mature forestry between the proposed site and the Kilmacshane River.

Appropriate Assessment Screening

The proposed felling is not directly connected with or necessary to the management of any Natura 2000 site.

Having regard to the nature and scale of the proposal and the characteristics of the receiving environment, the FAC concluded that it would be reasonable to conduct a Stage 1 screening of all Natura 2000 sites within a 15km radius of the proposed lands. In carrying out its assessment, the FAC did not consider any measures designed to avoid or reduce any effects on any Natura 2000 site.

There are 4 Natura 2000 sites within a 15km radius and these, together with their qualifying interests, are as follows:

Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
002162	River Barrow and River Nore SAC	1559.49	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 1410 Mediterranean salt meadows 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation 4030 European dry heaths 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels 7220 Petrifying springs with tufa formation* 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior* Species 1029 Freshwater Pearl Mussel 1016 Desmoulin's Whorl Snail	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf

			1355 Otter 1092 White-clawed Crayfish 1106 Salmon 1421 Killarney Fern 1103 Twaite Shad 1990 Nore Pearl Mussel 1095 Sea Lamprey 1096 Brook Lamprey 1099 River Lamprey	
002252	Thomastown Quarry SAC	7304.64	Habitats 7220 Petrifying springs with tufa formation*	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002252.pdf
000770	Blackstairs Mountains SAC	11014.35	Habitats 4010 Northern Atlantic wet heaths with Erica tetralix 4030 European dry heaths	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000770.pdf
004233	River Nore SPA	3605.07	Birds A229 Kingfisher	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004233.pdf

The FAC noted that there is no connectivity between the proposed site and the River Nore and River Barrow SAC and, as such, there is no pathway for the transmission of any effects. Having regard to the nature of the proposal, the absence of hydrological connectivity and separation distance and to the qualifying interests and conservation objectives for this designated site, the FAC concluded that there is no possibility of significant effects. With regard to the Thomastown Quarry SAC, the FAC considered the qualifying interest and conservation objective for this site, the absence of hydrological connectivity or pathway between the proposal and the designated site, and the separation distance between the two, and concluded that there is no possibility of significant effects arising from the proposal on this site. The Blackstairs Mountains SAC is within a different water body catchment with no connectivity and no pathway from the proposed site. Having regard to the qualifying interests and conservation objectives for this designated site, the separation distance and the absence of any hydrological connectivity, the FAC concluded that there is no possibility of significant effects arising from the proposed development on this Natura 2000 site. In coming to these conclusions in respect of the River Barrow and River Nore SAC, Thomastown Quarry SAC and Blackstairs Mountains SAC, the FAC agreed with the conclusions reached by the DAFM in respect of the same sites.

The River Nore's SPA qualifying interest is the Kingfisher and the conservation objective is to maintain and restore the favourable conservation condition of this species. The DAFM screening form, dated October 2019, reached a conclusion of no possible effect on the SPA due to separation distance. In a revised Appropriate Assessment screening form dated 12th May 2020, and submitted to the FAC subsequent to the appeal, the DAFM concluded that the possibility of an effect on this Natura 2000 site could not be ruled out due to the proximity of the proposal site to potential habitat for the Kingfisher. The FAC did not agree with this new conclusion dated 12th May 2020 for the following reasons:

- The separation distance (3605m) between the proposal site and the River Nore SPA
- The absence of any habitat suitable for the Kingfisher on the project lands, which is composed of mature coniferous forest without any aquatic features.
- The separation distance between the project lands and any habitat considered suitable for the Kingfisher. In this regard the FAC considered the separation distance to the Upper Fiddaun stream and the characteristics of that stream and noted that the Kilmacshane River is separated from the project lands by mature forestry. The River Nore SPA is approximately 4440m downstream of the upper reaches of the Upper Fiddaun River.
- The nature and scale of the proposal and the short-term and intermittent nature of any noise or general disturbance arising from the proposed felling operations.

In these circumstances, having regard to the nature and scale of the proposed development, the separation distance to the River Nore SPA, the absence of suitable habitat for the Kingfisher on and adjacent to the proposal site, the FAC concluded that there is no possibility of significant effects on the River Nore SPA arising from the proposed development.

The FAC considered the conditions attaching to the issued Licence and concluded that these could not be considered as requiring measures designed to avoid or reduce effects on any Natura 2000 site.

In terms of possible in-combination effects, non-forestry developments recorded in the general vicinity include dwellings, milking parlours, slatted storage tank and storage sheds. These projects would only have localised impacts and could not combine with the proposed felling to give rise to significant effects on any Natura 2000 site. Forestry related developments include areas of afforestation, a forest road and felling licences. These could not combine with the proposed felling to give rise to the possibility of significant in-combination effects on any Natura 2000 site. Having regard to the conclusions reached above and to the characteristics of the permitted projects and the surrounding area, the FAC concluded that the proposed felling alone, or in-combination with other projects or land uses, would not give rise to the possibility of significant effects on any Natura 2000 site.

Examination of environmental impacts

Felling 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 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 impacts, the proposed site forms part of a larger area of forestry at this location managed for timber production. There are other areas of maturing forestry in the wider area. The receiving environment is characterised as a rural agricultural area with dispersed settlement pattern. The proposed development will give rise to noise and general disturbance during operations but this will be short-term, intermittent and not significant. It is likely that there will be increased activity on

local roads but this would be short-term and not significant. There will be visual impact due to the felling of trees and this will change over time as reforestation takes hold and matures. There is no direct hydrological connection to any lake and any run-off occurring would be localised, short-term and would not impact significantly on water quality. Climate change effects would be imperceptible resulting from the felling and reforestation. Overall, the FAC concluded that the proposed felling and reforestation by itself or in combination with other plans and projects in the area, would not be likely to have significant effects on the environment.

Des R. Johnson

On behalf of the Forestry Appeals Committee

16th July 2020.