



23 July 2020

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

[REDACTED]
[REDACTED]

Subject: Appeal 381/2019 regarding licence TY14 FL0113

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 TY14 FL0113 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15 November 2019.

Hearing

A hearing of appeal 381/2019 was held by the FAC on 22 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 TY14 FL0113).

The proposal is for the clear-felling of 2.58ha at Macreary, Co Tipperary and replanting with Douglas Fir on 2.45 ha with the rest left as open space and involves no change of land use. The proposal site is relatively steep and at elevations of between 100m to 200m on the south slope of Curraghdobbin. The proposal site has no evident aquatic zones on EPA and is set amongst existing mature/semi-mature forestry. There are streams forming lower down on the south side of Curraghdobbin. The underlying soil

type is approx. 99.95% Acid Brown Earths and Brown Podzolics. The project is within the Lingaun sub-catchment, within the Suir catchment and is not within a Freshwater Pearl Mussel catchment.

The DAFM issued the Licence on 15 November 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. That 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*. The grounds also include 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 for the purposes of 42(16) of S.I.477 / 2011, DAFM has determined that the project will not adversely affect the integrity of any European sites. That a felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM in respect of the licence (see attached referral correspondence where applicable). DAFM stated there are no stream/streams at or adjacent to the felling site, and the nearest lake, which is not hydrologically connected, is c. 1.6 km to the south east.

The DAFM submitted a revised Appropriate Assessment screening to the FAC (undated) and listed other plans/projects under an in-combination assessment. These were circulated to the parties for comments/observations and a submission by the appellant was received. This revised screening by DAFM concludes that there is no possibility of significant effects on the River Suir SAC, the River Barrow and River Nore SAC and the Hugginstown Fen SAC, and that there was no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.

In the absence of sufficient assessment of the in-combination listed plans and projects, the FAC carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive. The screening undertaken is available on the public file. The FAC considered that due to the scale and nature of the project sites within or close to a 15km radius of the proposal should be screened for the purposes of appropriate assessment. The European sites considered were the Lower River Suir SAC (c. 2.5km), the River Barrow and River Nore SAC (c. 12.7km), the Hugginstown Fen SAC (c. 13.8km), the Comeragh Mountains SAC (c. 15.1km) and the River Nore SPA (c. 15.4km).

The proposal site is in the Lingaun sub-catchment and the Suir catchment and is not within a FWPM catchment. The nearest lake is at 1.6 km. There are no aquatic zones on the site and as a result no hydrological pathway for any effects to be created from debris or silt from the felling or replanting. The closest European site is the Lower River Suir SAC at c. 2.5 km, and shares both the sub-catchment and catchment with the proposal site. The salt laden habitats of the Lower River Suir or the freshwater habitats

are not at any likely risk of significant effects from the proposal and neither are the floodplain or riverbank forests which are qualifying interests. The species of lamprey and salmon and their spawning is not likely to be significantly affected by the proposal based on distance and the absence of an aquatic zone or direct hydrological connectivity. Likewise, the FWPM, where the proposal is not within a FWPM catchment, and again does not have an aquatic zone or a direct hydrological connection to the SAC, and the FAC is satisfied a significant effect is unlikely. Also, the otter and crayfish are unlikely to be significantly affected for reason of distance and the absence of a hydrological connection. The remaining European sites, the closest of which is at c. 13.8km, are excluded from any possibility of significant effects on their qualifying interests or conservation objectives owing to distance of separation, elevations, unsuitable habitat and an absence of hydrological connectivity. The FAC also examined for other plans and projects and concluded the proposal on its own or in combination with these other plans and projects did not give rise to any likelihood of significant effects on a European site.

The appeal grounds refer to a lake but does not identify any lake. While DAFM refer to a lake at 1.6km from the proposal, the FAC considers this is a very minute waterbody similar to a pond. The FAC could not identify any hydrological connection between the proposed felling and any lake.

The licence concerns the felling and replanting of trees with no change of land use and does not fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. This felling is small scale and the area will be replanted afterwards and is within the wider landscape of a commercial forest managed for timber production. The area does not contain water features and is at a remove from the SAC. There is likely to be a minor and temporary impact on traffic during operations and would not be significant. A 53ha proposed thinning project in Castletown (c. 4km from the proposal), not yet approved per the evidence provided, is considered to be at sufficient remove so as not to combine with the proposal regards any potential noise or traffic volumes by way of potential disturbances to create any likely significant effects. There are no recorded monuments on site. There are conditions attached to the licence regarding the management on site and the drawing up and use of a harvest plan. In addition to not being a class of development included in the EIA Directive, the felling and replanting does not give rise to any likelihood of a significant effect, itself or cumulatively with other projects, on the environment.

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,



Pat Coman on behalf of the Forestry Appeals Committee

FAC Appropriate Assessment Screening and examination regards environment for TY14-FL0113 – appeal 381/19

Background

Licence issued 15 November 2017 for the clear felling and replanting of 2.58 ha at Macreary, Co Tipperary. The proposal involves no change of land use. European Larch is the species to be felled and to be replanted with Douglas Fir on 2.45 ha with remainder left as open space. Site is at 100 to 200 m on south slope of Curraghdobbin (foothills going east of Slievenamon). Site has no evident aquatic zones on EPA and is set amongst existing mature/semi-mature forestry. There are streams forming lower down on the south side, but nothing shows them on or proximate to the site. The underlying soil type is approx. 99.95%, Acid Brown Earths, Brown Podzolics Steep 15-30%. The habitat is predominantly conifers.

Appropriate Assessment Screening

There are no additional conditions on licence, and none of the standard conditions are considered by the FAC to be in mitigation regards any European sites and mitigation measures are not considered in this screening. The FAC concluded that the proposed felling would not be directly connected with, or necessary to the management of any Natura 2000 site.

European Sites

The FAC considered that due to the scale and nature of the project sites within or close to a 15km radius of the proposal should be screened for the purposes of Appropriate assessment. There are 5 Natura 2000 sites within 15km and these, together with qualifying interests and separation distances are as follows:

Site Code	Site Name	Distance To (m)	Qualifying Interests
002137	Lower River Suir SAC	2530.95	Habitats; Atlantic salt meadows / Mediterranean salt meadows / Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation / Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels / Old sessile oak woods with Ilex and Blechnum in the British Isles / Alluvial forests with Alnus glutinosa and Fraxinus excelsior / Taxus baccata woods of the British Isles Species; White-clawed Crayfish / Freshwater Pearl Mussel / River Lamprey / Brook Lamprey / Otter / Sea Lamprey / Twaiter Shad / Salmon
002162	River Barrow and River Nore SAC	12710.63	Habitats; Estuaries / Mudflats and sandflats not covered by seawater at low tide / Reefs / Salicornia and other annuals colonising mud and sand / Atlantic salt meadows / Mediterranean salt / Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation / European dry heaths / Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels / Petrifying springs with tufa formation / Old sessile oak woods with Ilex and Blechnum in the British Isles / Alluvial

Site Code	Site Name	Distance To (m)	Qualifying Interests
			forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> Species; Freshwater Pearl Mussel / Desmoulin's Whorl Snail / Otter / White-clawed Crayfish / Salmon / Killarney Fern / Twaite Shad / Nore Pearl Mussel / Sea Lamprey / Brook Lamprey / River Lamprey
000404	Hugginstown Fen SAC	13866.32	Habitats; Alkaline fens
001952	Comeragh Mountains SAC	15100.68	Habitats; Oligotrophic waters containing very few minerals of sandy plains / Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation / Northern Atlantic wet heaths with <i>Erica tetralix</i> / European dry heaths/ Alpine and Boreal heaths / Siliceous scree of the montane to snow levels / Calcareous rocky slopes with chasmophytic vegetation / Siliceous rocky slopes with chasmophytic vegetation Species; Slender Green Feather-moss
004233	River Nore SPA	15429.15	Birds; Kingfisher

The proposal site is in the Linguan sub-catchment and the Suir catchment and is not within a FWPM catchment. The nearest lake is at 1.6 km. There are no aquatic zones on the site and as a result no hydrological pathway for any effects to be created from debris or silt from the felling or replanting. The closest European site is the Lower River Suir SAC at c. 2.5 km, and shares both the sub-catchment and catchment with the proposal site. The salt laden habitats of the Lower River Suir or the freshwater habitats are not at any likely risk of significant effects from the proposal and neither are the floodplain or riverbank forests which are qualifying interests. The species of lamprey and salmon and their spawning is not likely to be significantly affected by the proposal based on distance and the absence of an aquatic zone or direct hydrological connectivity. Likewise, the FWPM, where the proposal is not within a FWPM catchment, and again does not have an aquatic zone or a direct hydrological connection to the SAC, and the FAC is satisfied a significant effect is unlikely. Also, the otter and crayfish are unlikely to be significantly affected for reason of distance and the absence of a hydrological connection.

The remaining European sites, the closest of which is at c. 13.8km, are excluded from any possibility of significant effects owing to distance of separation, elevations, unsuitable habitat and an absence of hydrological connectivity. There can be no possibility of significant effects on their qualifying interests or conservation objectives.

The Lower River Suir SAC is west and south of the proposal, with the Newtown-Lower stream rising c. 350m south east of the proposal, it flows to the Linguan R. a tributary to the R. Suir which it joins at c. 5.3 km from the proposal. The Linguan is part of the SAC. The closest FWPM catchment, the Clodaigh, is south of the R. Suir and not likely to be affected by the proposal.

The proposal on its own poses no likelihood of a significant effect on any European site.

In Combination

The in-combination statement by DAFM contains a list of 41 planning permission related projects many of which are from applications within Carrick-On-Suir town at c. 6km distance from the proposal. Those within reasonable vicinity of the proposal comprise dwellings and ancillary works, including 13371 a 2013 bungalow project, 2064 a 2020 granny flat extension, and 17600494 a 2 storey dwelling, and due to an absence of pathway from the proposal within other mature forestry no in-combination effects arise for further consideration. Other forestry comprises two afforestation projects - one of 11.98ha, 10 private felling licence projects of which one is for 53ha and currently referred to a DAFM ecologist. This 53 ha felling application as published refers to a thinning of 53.07 ha at Castletown, Ballyhenebery and Whitechurch, an area located on the eastern side of the Linguan R. and so divided from the proposal by the river and c. 4km away from the proposal, apparently comprises mature estate woodland easily discernible within Castletown and fringed by Ballyhenebery and Whitechurch to the south and east. The DAFM report also refers to 2 EPA urban wastewater sites for Carrick-On-Suir which do not combine with the proposal to create the likelihood of significant effects on any European sites, as the proposal does not pose a likelihood of creating any effects at that distance. The EPA website does not present any other projects. The proposal when considered in-combination with other plans and projects poses no likelihood of significant effects on any European site.

Examination for Environmental Impacts

The licence concerns the felling and replanting of trees with no change of land use and does not fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. This felling is small scale and the area will be replanted afterwards and is within the wider landscape of a commercial forest managed for timber production. The area does not contain water features and is at a remove from the SAC. There is likely to be a minor and temporary impact on traffic during operations and would not be significant. There are no recorded monuments on site. There are conditions attached to the licence regarding the management on site and the drawing up and use of a harvest plan. A 53ha proposed thinning project, not yet been approved per the evidence provided, is considered to be at sufficient remove from the proposal so as not to combine with the proposal regards any potential noise or traffic volumes by way of potential disturbances. The felling proposal, in addition to not being a class of development included in the EIA Directive, the felling and replanting does not give rise to any likelihood of a significant effect, itself or cumulatively with other projects, on the environment. In this case, a formal screening or the submission of an EIAR are not required.

Pat Coman on behalf of the FAC - 22 July 2020

