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17<sup>th</sup> July 2020

**Subject:** Appeal FAC355/2019 regarding licence CW01-FL0046

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 (DAFM). 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**

Licence CW01-FL0046 for felling of 7.36 ha at Coolculleen, Co. Kilkenny was issued by the Department of Agriculture, Food and the Marine on 31<sup>st</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC355/2019 was held by the FAC on 16<sup>th</sup> July 2020.

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

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to cancel the decision of the Minister regarding licence CW01-FL0046.

The licence decision relates to 7.36 ha of felling and replanting at Coolcullen, Co. Kilkenny. The forest is composed of Sitka spruce and the same species will be replanted. The soil type is a mixture of mineral and peat and the slope is described as moderate. The licence was granted with a number of additional conditions related to water quality. There is a stream running adjacent to the northern boundary of the forest. The proposal was referred to Kilkenny County Council, but no response was provided. The DAFM undertook a screening for appropriate assessment, in particular the River Barrow and River Nore SAC and the River Nore SPA and screened the proposal out for appropriate assessment.

There is one appeal against the decision. The grounds include that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds include that the test for Appropriate Assessment Screening in Irish Law is set out by Finlay Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. The grounds also suggest that if mud was to enter the lakes it could have an effect on the SAC/SPA and that the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. The specific lakes are not identified.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They suggest that all Natura sites within 15km have been screened out due to a lack of connectivity to any of the Natura sites. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area. Finally, they state that there are no lakes near or adjacent to this felling licence application area, that the nearest lake (not hydrologically connected) is 7.6 km to the west and that there are no streams or rivers directly connected to the felling area.

The DAFM made an additional submission of a revised appropriate assessment screening and in-combination assessment, dated 8<sup>th</sup> of May 2020 which was provided to all parties. In the revised screening the DAFM concluded that a possible effect on the River Nore & River Barrow SAC could not be ruled out due to the direct hydrological connectivity that exists between the project area and the SAC while the River Nore SPA was again screened out due to separation distance.

In considering the appeal and before making a decision, the FAC considered the likelihood of possible significant effects on European sites and the environment.

There are two European sites within 15km of the proposal, the River Barrow and River Nore SAC and the River Nore SPA. Given the nature, scale and location of the proposal, significant effects on European sites outside of this radius were not considered likely. The boundary of the River Nore SPA is over 14km from the proposal and the qualifying interest of this SPA is the Kingfisher. Due to the degree of separation, significant effects on this SPA are not considered likely. The boundary of the River Barrow and River Nore SAC is less than 1km from the proposal and there is direct hydrological connection between the proposal and the SAC. The qualifying interests of this SAC include a number of species that are highly sensitive to changes in water quality although the most sensitive habitats are upstream of the proposal. The FAC does not consider that there is sufficient information available to it regarding possible effects of the proposal on the conservation objectives of this SAC noting in particular the direct hydrological connection.

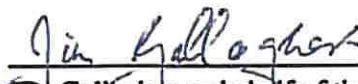


The EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. 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 Forestry 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. Thus the FAC considers that the felling of trees 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 is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is for felling of an area of 7.36 ha within a commercially managed forest and the resource will be renewed through replanting. The general area is remote and rural and there are other areas of forest and agricultural land in the surrounding landscape. Having regard to the nature, scale and location of the proposal, and other projects, the FAC concluded that there is no real likelihood of the proposal having a significant effect on the environment. However, due to the lack of available information regarding possible effects arising from the proposal on the conservation objectives of the River Barrow and River Nore SAC, the FAC has decided to cancel the decision regarding licence CW01-FL0046.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

  
Jim Gallagher on behalf of the Forestry Appeals Committee

