



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

24<sup>th</sup> July 2020

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**Subject:** Appeal FAC379/2019 regarding licence LS03-FL0019

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**

Licence LS03-FL0019 for felling and replanting of 4.99 ha at Cappakeel, Co. Laois was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15<sup>th</sup> November 2019.

#### **Hearing**

A hearing of appeal FAC379/2019 was held by the FAC on 22<sup>nd</sup> July 2020.

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

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence LS03-FL0019.

The licence pertains to 4.99ha of felling of Norway spruce and some Scots pine and reforestation with Norway spruce. The underlying soil type is provided as approx. 98.6%, Basin Peats, Blanket Peats and 1.4%, Peaty Gleys with a moderate slope (0-15%). The project is within the waterbody Dunrally Stream 020 (100%) in the Barrow catchment. The M7 motorway borders to the northwest and a minor road runs to the west. Derries wood NHA lies to the northeast but is not connected to the proposal. The forest is immediately surrounded by agricultural land and does not directly adjoin any other forest.

There is no evidence of any water feature close to the site and the closest marked river based on EPA data is 1.7km to the southeast.

There is one appeal against the decision. The grounds suggest 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 suggest that the test for Appropriate Assessment Screening in Irish Law is set out by 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 the grounds of appeal.

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 suggest that there are no lakes near or adjacent to this felling licence application area, that the nearest lake (not hydrologically connected) is 1.7km to the south east of the proposal.

In considering the appeal and before making a decision, the FAC undertook an examination in relation to the requirements of the Habitats and Directives respectively and copies of these are contained in the public file.

There are three European sites within 15km of the site and based on the scale, nature and location of the proposal significant effects on sites outside of this radius would not occur. The River Barrow and River Nore SAC lies to the east of the proposal, over 6km at the nearest point. The proposal has no aquatic zone in or adjacent to it and the closest marked stream or river is 1.7km away. There is no hydrological connection between the proposal and the SAC and the degree of separation would preclude other pathways of effects. While noting that a number of the qualifying interests of this SAC are sensitive to water pollution and sedimentation, in particular, there is no pathway of effect between the proposal and the SAC and no likelihood of significant effects arising. The boundary of Mountmellick SAC lies 7.7km to the northwest of the proposal. Forestry is not listed as a threat in the NPWS Natura 2000 data form, the proposal would occur in a habitat which is unsuitable for the qualifying interest of the SAC and there is no pathway of effect with this SAC. Ballyprior Grassland SAC lies 11.6km to the south and with no hydrological connection and no possibility of impacts on the hydrology of the site and no other pathway of effect exists given the degree of separation. There are no conditions attached to the licence that relate to the mitigation of effects on a European site. There are a number of planning permissions granted in the area, but these are of a primarily residential and agricultural nature and are not adjacent to the forest. The County Development Plan was also examined, and no related issues were identified. A small number of forest licences have been granted for roading and felling in the vicinity but these would not combine with the proposal to result in the likelihood of a significant effect given the absence of a pathway of effects and the forest under consideration is set apart from any other forest.



Having regard to the nature, scale and location of the proposal, its proximity and absence of connectivity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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 1. Annex 11 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 11). 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 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 of a small scale and involves felling and replanting which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. The replanting of the forest will ensure that the resource is maintained. The area is rural and agricultural, and these activities would not be out of keeping with the general area. The M7 runs along the northern side of the forest but is setback and given the scale of the proposal visual impacts would be limited. There are no aquatic features close to the proposal and impacts on any lakes or water quality generally are not likely. Derries wood pNHA lies to the northeast and east but is not connected to the forest and no impacts on this site are likely. Traffic will likely increase as a result of the operations and there may be some noise disturbance, but this will be of a temporary nature. There are no recorded monuments that could be impacted by the proposal. There is no evidence of protected species or habitats in the area and the proposal is not considered likely to result in significant effects on a European site. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive and does not consider that it would result in any real likelihood of a significant effect on the environment. In this case, formal screening or the submission of an EIAR is not required.

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,

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

Pat Coman on behalf of the Forestry Appeals Committee





FAC379/19 LS03-FL0019

Cappakeel, Co. Laois

23rd July 2020

Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the EIA Directive. These considerations were based on information provided by parties to the appeal and available in the public domain.

The licence pertains to 4.99ha of felling of Norway spruce and some Scots pine and reforestation with Norway spruce. The underlying soil type is provided as approx. 98.6%, Basin Peats, Blanket Peats and 1.4%, Peaty Gleys with a moderate slope (0-15%). The project is within the waterbody Dunrally Stream 020 (100%) in the Barrow catchment. The M7 motorway borders to the northwest and a minor road runs to the west. Derries wood NHA lies to the northeast but is not connected to the proposal. The forest is immediately surrounded by agricultural land and does not directly adjoin any other forest. There is no evidence of any water feature close to site and the closest marked river based on EPA data is 1.7km to the southeast.

#### **Appropriate Assessment Screening**

The proposal is not connected with or necessary to the management of any European site. There are three European sites within 15km of the site and based on the scale, nature and location of the proposal significant effects on sites outside of this radius would not occur. The direct distance qualifying interests and conservation objectives are referred to below.

The River Barrow and River Nore SAC lies to the east of the proposal, over 6km at the nearest point. The proposal has no aquatic zone in or adjacent to it and the closest marked stream or river is 1.7km away. There is no hydrological connection between the proposal and the SAC and the degree of separation would preclude other pathways of effects. While noting that a number of the qualifying interests of this SAC are sensitive to water pollution and sedimentation, in particular, there is no pathway of effect between the proposal and the SAC and no likelihood of significant effects arising. The boundary of Mountmellick SAC lies 7.7km to the northwest of the proposal. Forestry is not listed as threat in the NPWS Natura 2000 data form, the proposal would occur in a habitat which is unsuitable for the qualifying interest of the SAC and there is no pathway of effect with this SAC. Ballyprior Grassland SAC lies 11.6km to the south and with no hydrological connection and no possibility of impacts on the hydrology of the site and no other pathway of effect exists given the degree of separation. There are no conditions attached to the licence that relate to the mitigation on effects on a European site and none were considered in this screening.

There are a number of planning permissions granted in the area but these are of a primarily residential and agricultural nature and are not adjacent to the forest. The County Development Plan was also examined and no related issues were identified. A small number of forest licences have been granted for roading and felling in the vicinity but these would not combine with the proposal to result in the likelihood of a significant effect given the absence of a pathway of effects and the forest under consideration is set apart from any other forest.

Having regard to the nature, scale and location of the proposal, its proximity and connectivity to European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not



likely to have any significant effect on any European site, itself or in combination with other plans or projects.

| Site Type | Site Code | Site Name                       | Distance To (m) | Qualifying Interests<br>(* denotes a priority habitat)  | Conservation Objectives   | Conclusion                           |
|-----------|-----------|---------------------------------|-----------------|---|---|--------------------------------------|
| SAC       | 2162      | River Barrow and River Nore SAC | 6223.91         | <b>Habitats</b><br>1130 Estuaries<br>1140 Mudflats and sandflats not covered by seawater at low tide<br>1170 Reefs<br>1310 Salicornia and other annuals colonising mud and sand<br>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)<br>1410 Mediterranean salt meadows (Juncetalia maritimi)<br>3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation<br>4030 European dry heaths<br>6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels<br>7220 Petrifying springs with tufa formation (Cratoneurion)*<br>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles<br>91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*<br><b>Species</b><br>1029 Freshwater Pearl Mussel ( <i>Margaritifera margaritifera</i> )<br>1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> )<br>1355 Otter ( <i>Lutra lutra</i> )<br>1092 White-clawed Crayfish ( <i>Austropotamobius pallipes</i> )<br>1106 Salmon ( <i>Salmo salar</i> )<br>1421 Killarney Fern ( <i>Trichomanes speciosum</i> )<br>1103 Twait Shad ( <i>Alosa fallax fallax</i> )<br>1990 Nore Pearl Mussel ( <i>Margaritifera durrovensis</i> )<br>1095 Sea Lamprey ( <i>Petromyzon marinus</i> )<br>1096 Brook Lamprey ( <i>Lampetra planeri</i> )<br>1099 River Lamprey ( <i>Lampetra fluviatilis</i> ) | <a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002162.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002162.pdf</a> | No likelihood of significant effects |
| SAC       | 2141      | Mountmellick SAC                | 7669.08         | <b>Species</b><br>1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> )   | <a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002141.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002141.pdf</a> | No likelihood of significant effects |
| SAC       | 2256      | Ballyprior Grassland SAC        | 11613.07        | <b>Habitats</b><br>6210 Semi-natural dry grasslands and scrubland facies  | <a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002256.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002256.pdf</a> | No likelihood of significant effects |

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|--|--|--|--|---|---|---------|
|  |  |  |  | on calcareous substrates (Festuco-Brometalia) (*<br>important orchid sites) | <a href="#">lt/files/protected-sites/conservation_objectives/C0002256.pdf</a> | effects |
|--|--|--|--|---|---|---------|

### Examination of Environmental Impacts

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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 1. Annex 11 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 11). 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 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).

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Vincent Upton

On Behalf of the Forestry Appeals Committee

