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26th June 2020

Subject: Appeal FAC357/2019 regarding licence KK05-FL0070

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 KK05-FL0070 for felling of 6.75 ha at Castlebanny, Co. Kilkenny was issued by the Department of Agriculture, Food and the Marine on 31st October 2019.

Hearing

A hearing of appeal FAC357/2019 was held by the FAC on 23 June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, 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 KK05-FL0070.

The licence decision relates to 6.75ha of felling and replanting at Castlebanny, Co. Kilkenny. The underlying soil type is described as mixed including surface water gleys and ground water gleys. The slope is predominantly moderate 0-15%. The forest is currently composed of Sitka spruce with a small area of oak and replanting of Sitka spruce and birch would take place. The site is contained in the Suir catchment but does not contain or adjoin an aquatic area, but a stream rises some 100 metres to the south. There was a referral letter sent to the County Council, but no response was provided.

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. There is also reference to the assessment of cumulative effects.

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 2.6 km to the west and that there are no streams or rivers directly connected to the felling area.

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

There are five European sites within 15km of the proposal. A boundary of the River Barrow and River Nore SAC is situated 3.3 km to the east of the proposal but lies in a separate catchment and with no hydrological connection and the habitats and species associated with this SAC have not been recorded on site and coniferous forest would not be considered a suitable habitat for the related species. A boundary of River Nore SPA lies 7.8km to the east of the site and in a different catchment. In addition to it being a very considerable distance from the site, the proposal would occur in mature coniferous forest without any water features and would not generally be considered suitable habitat for the qualifying interest of this SPA. Hugginstown Fen SAC lies 4.7km to the west and with no hydrological connection to the proposal and there is no pathway of impact with the proposal. Thomastown Quarry SAC lies over 11km to the north of the proposal in a separate catchment with no connection to the proposal. The Lower River Suir SAC is situated almost 15km to the south in direct distance and over 20km in hydrological distance from the stream that rises to the south of the site. This stream eventually joins the Blackwater and flows through Mulinavat and joins the Suir at Waterford well below the location and suitable habitats of many of the qualifying interests of the SAC. Having regard to the nature and scale of the project, its proximity and extent of connection to European sites and their conservation objectives, the FAC concluded that the proposal, itself or in combination with other plans and projects, would not result in the possibility of a significant effect on a European site arising.

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

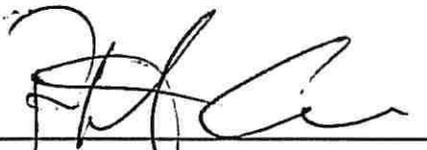
relation to forestry licence applications require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified 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 6.75 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.

There is no evidence of hydrological connection between the proposal and any lakes and the FAC does not consider that the proposal poses a significant threat to any lakes or water quality generally.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. 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





FAC357/2019 KK05-FL0070 Assessment

25th June 2020

Before making a decision, the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening and an examination regarding the likelihood of impacts on the environment of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain.

The licence decision relates to 6.75ha of felling and reforestation at Castlebanny, Co. Kilkenny. The underlying soil type is described as mixed including surface water gleys and ground water gleys. The slope is predominantly moderate 0-15%. The forest is currently composed of Sitka spruce with a small area of oak and replanting of Sitka spruce and birch would take place. The site is contained in the Suir catchment but does not contain or adjoin an aquatic area but a stream rises some 100 metres to the south. There was a referral letter sent to the County Council but no response was provided.

Appropriate Assessment Screening

There are five European sites within 15km of the proposal which are listed below alongside their direct distances to the proposal and details. Given the scale and nature of the proposal and surrounding area, significant effects on European sites outside of that radius are not considered possible.

A boundary of the River Barrow and River Nore SAC is situated 3.3 km to the east of the proposal but lies in a separate catchment and with no hydrological connection and the habitats and species associated with this SAC have not been recorded on site and coniferous forest would not be considered a suitable habitat for the related species. A boundary of River Nore SPA lies 7.8km to the east of the site and in a different catchment. In addition to being a very considerable distance from the site, the proposal would occur in mature coniferous forest without any water features and would not generally be considered suitable habitat for the qualifying interest of this SPA. Hugginstown Fen SAC lies 4.7km to the west and with no hydrological connection to the proposal and there is no pathway of impact with the proposal. Thomastown Quarry SAC lies over 11km to the north of the proposal in a separate catchment with no connection to the proposal. The Lower River Suir SAC is situated almost 15km to the south in direct distance and over 20km in hydrological distance from the stream that rises to the south of the site. This stream eventually joins the Blackwater and flows through Mulinavat and joins the Suir at Waterford well below the location and suitable habitats of many of the qualifying interests of the SAC. There is no evidence of direct connection with the SAC and if sediment or nutrients were to reach the stream to the south, they would be diluted by the considerable hydrological distance to the connection at Waterford and, in combination, with the location of the connection with the SAC there is no likelihood of significant impacts on the conservation objectives of this SAC.

The broader area has a number of dwellings and extensions permitted and agricultural buildings, such as slatted sheds. There is existing permission for a GSM mast and permission has been applied for the development of a 22 turbine windfarm with grid connection and all associated infrastructure. The proposal is within a mature primarily coniferous forest and other felling licences have been granted in the vicinity. There have been few afforestation licences in the area in recent years.



Having regard to the nature and scale of the project, its proximity and extent of connection to European sites and their conservation objectives, the FAC concluded that the proposal, itself or in combination with other plans and projects, would not result in the possibility of a significant effect on a European site arising.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
SAC	2162	River Barrow and River Nore SAC	3282.01	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 (<i>Glauco-Puccinellietalia maritima</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 3260 Water courses of plain to montane levels with the <i>Ranunculum fluitantis</i> and <i>Callitriche-Batrachion</i> 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 (<i>Cratoneurion</i>)* 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* Species 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1016 Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>) 1355 Otter (<i>Lutra lutra</i>) 1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>) 1106 Salmon (<i>Salmo salar</i>) 1421 Killarney Fern (<i>Trichomanes speciosum</i>) 1103 Twait Shad (<i>Alosa fallax fallax</i>) 1990 Nore Pearl Mussel (<i>Margaritifera durrovensis</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf
SAC	404	Hugginstown Fen SAC	4681.07	Habitats 7230 Alkaline fens	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000404.pdf



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SAC	2252	Thomastown Quarry SAC	11161.15	Habitats 7220 Petrifying springs with tufa formation (Cratoneurion)*	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002252.pdf
SAC	2137	Lower River Suir SAC	14688.96	Habitats 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 3260 Water courses of plain to montane levels with the <i>Ranunculon fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* 91J0 <i>Taxus baccata</i> woods of the British Isles* Species 1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>) 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>) 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1355 Otter (<i>Lutra lutra</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1103 Twaite Shad (<i>Alosa fallax fallax</i>) 1106 Salmon (<i>Salmo salar</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002137.pdf
SPA	4233	River Nore SPA	7757.61	Birds A229 Kingfisher (<i>Alcedo atthis</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004233.pdf

EIA Examination

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 6.75 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. The forest does not adjoin a public road but there are a number of dwellings and buildings to the west but at a remove. Traffic will likely increase in the area during operations but this will be of a temporary nature and would not be out of keeping with other land management practices in the area. The proposal is not within a European site and is not considered to be likely to impact on one. The forest is not within any other designated area and there are no recorded monuments in the proposed area. There are no aquatic features on or adjoining the proposal.

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.

Vincent Upton on Behalf of the Forestry Appeals Committee