



27 April 2020

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Our ref: FAC 345/2019

Subject: Appeal in relation to felling licence KK04-FL0113

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence KK04-FL0113.

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 the parties to the appeal.

#### Background

Felling licence KK04-FL0113 was granted by the Department on 22 October 2019.

#### Hearing

A hearing of appeal 345/2019 was conducted by the FAC on 15 April 2020.

#### FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor  
and Mr Pat Coman

#### Decision

Having considered all of the information before it, including a consultant's report, the FAC decided to confirm the licence relating to KK04-FL0113 for the reasons set out below.

The proposal is for felling and reforestation on a site area of 0.50ha at Catstown, Co Kilkenny. The 0.5ha site forms part of a larger area of mature/semi-mature forestry along its northern boundary, otherwise the wider area consists of agricultural land.

The Licence to clearfell and replant the site is subject to general type conditions along with one specific to the site; *as per page 13 of the Code of Best Forest Practice and page 9 of Forestry and Landscape Guidelines, no conifers are to be replanted within 20m of the public road. Broadleaves should be planted within the strip 10-20m from the public road, in an undulating fashion to create a sequence of varying spaces. Sharply defined edges should be avoided to create a gradual transition from forest to open ground. The minimum initial planting density required within the buffer zone is*

An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 076 106 4418  
057 863 1900

1,100 stems / ha. The FAC considers that none of the conditions of the licence are mitigation measures for this proposal regards any European site.

There is a single appeal against the granting of the licence. The grounds argue that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014)", that "..... there is no need to *establish* such an effect; it is, as Ireland observe, merely necessary to determine that there may be such an effect". Also the grounds argue that the distance being over 15 km has no relevance to the fact that there still may be an effect. The grounds include that if mud was to enter the lakes it could have an effect on the SAC/SPA. However, on this issue no lake was identified by the appellant and the evidence shows the nearest EPA identified lake, a very minor one, is at c. 940m with no hydrological connectivity to the project site.

In response to the appeal, the DAFM stated that screening for Appropriate Assessment was carried out, focusing on Natura sites within a 15 km zone around the proposed clear-felling area and included consideration of information submitted by the applicant as part of the licence application, viz; map information, harvesting and establishment environmental operational procedures, an Appropriate Assessment Pre-screening Report and associated methodology document. The statement went to state that the Department deemed that the project, when considered in combination with other plans and projects identified in the Pre-screening Report would not give rise to the possibility of a significant effect on any of those Natura sites.

The FAC undertook an appropriate assessment screening of this proposal. The FAC's considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. The screening report is available on the public file.

The project is not necessary for or connected with the management of any European site. European sites were examined for included; the River Nore SPA at 10.7 km, Thomastown Quarry SAC at 13.2 km, the Lower River Suir SAC at 8.6 km, the River Barrow and River Nore SAC at 3.7 km, and the Hugginstown Fen SAC at 1.0 km with alkaline fens the sole qualifying interest. There are no watercourses on the proposal site. There is a small EPA identified lake approx 980m north-east of the site, with mature/semi-mature forestry in between, and any pathway is extremely unlikely. The nearest watercourse is the Pollanassa river at 990m, and the proposal site is in the Nore Catchment. However, the proposal site is currently in conifer forestry, the site has no direct connectivity to any of the European sites and their habitats, also no species of interest (snail, fish, shellfish, birds or otter) listed for the sites would be affected in any discernible way by the site based on the current cropping, site unsuitability to wetland species and foraging range of the species at these distances, as well as the absence of any hydrological connectivity.

The FAC concludes that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any European site. In these circumstances the FAC found the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

The FAC also examined with regards to the EIA Directive and considers that the proposed felling and replanting does not come within the classes of project covered by the EU EIA Directive. The FAC also





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considers that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects.

In deciding to confirm the licence, the FAC considered that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee



## Appropriate Assessment Screening KK04 FL0113 (345/19) Catstown Co Kilkenny

The FAC undertook an appropriate assessment screening of this proposal and examined the proposal with regards to the EIA Directive. These considerations were based on the information provided with the appeal, by the Department of Agriculture Food and the Marine and information available in the public domain. This screening was undertaken in advance of the FAC decision.

Proposal is for 0.50 ha of clear-fell (in Sitka Spruce) with an 85% canopy and replanting with Sitka Spruce so no change of land use. Acid brown earth, brown podzolics. Modest slope of around 15% and is set well away from dwellings, there is a cluster of farm houses and farm yards c. 500m to its west and the site is beside a minor public road which is an apparent cul de sac.

### European sites

The project is not necessary for or connected with the management of any Natura 2000 site. The following European sites were examined for as they are nearest the project site;

Site Code	Site Name	Distance To (m)	Qualifying Interests
000404	Hugginstown Fen SAC	1079.94	<b>Habitats;</b> Alkaline fens
002162	River Barrow and River Nore SAC	3744.12	<p><b>Habitats;</b> 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 meadows / Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation</p> <p>/ European dry heaths/ Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>/ Petrifying springs with tufa formation / Old sessile oak woods with Ilex and Blechnum in the British Isles/ Alluvial forests with Alnus glutinosa and Fraxinus excelsior</p> <p><b>Species;</b> 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</p>
002137	Lower River Suir SAC	8610.07	<p><b>Habitats;</b> Atlantic salt meadows / Mediterranean salt meadows / Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-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</p> <p><b>Species;</b> White-clawed Crayfish / Freshwater Pearl Mussel / River Lamprey / Brook Lamprey / Otter / Sea Lamprey / Twaite</p>



Site Code	Site Name	Distance To (m)	Qualifying Interests
			Shad / Salmon
002252	Thomastown Quarry SAC	13281.72	<b>Habitats;</b> Petrifying springs with tufa formation
004233	River Nore SPA	10779.92	<b>Birds;</b> Kingfisher

Other Natura sites considered were the Comeragh Mountains SAC at 25 km and the Blackstairs Mountains SAC at 26 km both at considerable distance, separated by significant rivers and upland from the proposed site and unaffected in any way. The nearest watercourse is the Pollanassa River at 990m. Site is in the Nore Catchment and Nore sub-catchment. However, the project site is currently in conifer forestry, the site has no direct connectivity to any of the European sites and their habitats, also no species of interest (snail, fish, shellfish, birds or otter) listed for the sites would be affected in any way by the site based on the current cropping, site unsuitability to wetland species and foraging range of the species at these distances, as well as absence of any hydro connection.

There are no watercourses on this site, there is very minute lake approx 980m north-east of the site, with mature/ semi-mature forestry in between, and any pathway is extremely unlikely.

The applicant provided information relevant to the screening for Appropriate Assessment in a pre-screening report at application. The information included as follows; planning permissions / applications; 15614 car garage, 15681 dwelling with sewage treatment and percolation area, 17136 dwelling with sewage treatment and percolation area, 16224 dormer dwelling and garage with sewage treatment and percolation area, and 15702 dormer type extension to existing dwelling. In addition the FAC looked at Kilkenny County Council planning applications and could not add to what the applicant provided, there are a number of pre-2008 permissions showing. The FAC considers none of these developments to be of such a nature so as to in-combination with the project site create any likelihood of a significant effect on a European site.

Also the applicant identified 4.4 ha of clearfelling within the locality. The FAC identified the following felling licence areas in Catstown TD as recent; KK04-FL0122 for 13.9 ha February 2020 applied, and KK04-FL0049 for 30.65 ha thinning from Oct 2017. The project is attached to a larger plantation within Catstown TD, however, when absence of connectivity and distance are taken into consideration, as well as the fact these are mature / semi-mature forestry, these other forestry related projects when considered in combination with the 0.50 ha of felling and replanting are not evidenced to create an in-combination effect for the project so as to give rise to any likely significant effect on a European site.

Therefore, the FAC concludes that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

The sole added condition to the licence KK04 FL0113 is as follows; *As per page 13 of the Code of Best Forest Practice and page 9 of Forestry and Landscape Guidelines, no conifers are to be replanted*

*within 20m of the public road. Broadleaves should be planted within the strip 10-20m from the public road, in an undulating fashion to create a sequence of varying spaces. Sharply defined edges should be avoided to create a gradual transition from forest to open ground. The minimum initial planting density required within the buffer zone is 1,100 stems / ha. None of the conditions of the licence are considered mitigation measures for this proposal regards any European site.*

***Examination regards screening for Environmental Impact Assessment (EIA):***

The project is sub-threshold in area for EIA, and comprises felling with replanting and no change of land use. 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 FAC considers that the felling proposed does not come within the classes of project covered by the EU EIA Directive. The FAC also considers that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. The FAC considers that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary examination.

Pat Coman, on behalf of FAC

22/04/2020

