



**An Coiste um Achomhairc  
Foraoiseachta**

**Forestry Appeals Committee**

**20 April 2020**

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

**Our ref: FAC 343/2019**

**Subject: Appeal in relation to felling licence KK02-FL0159**

**Dear [REDACTED]**

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence KK02-FL0159.

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 KK02-FL0159 was granted by the Department on 22 October 2019.

**Hearing**

A hearing of appeal 343/2019 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**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the licence (Reference KK02-FL0159).

The proposal is for clearfell of 10ha and replanting of 9.5ha (with 0.5ha open space) on a site at Firoda Upper, Co.Kilkenny. Trees to be harvested and replanted are Sitka Spruce. The subject lands are in 2 separate plots and form part of a larger plantation. There are significantly sized plantations to the

**An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee**

Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 076 106 4418  
057 863 1900

south-west and north-west of the site. This is an upland rural area at approximately 800 feet and the wider area is a mixture of forestry and agricultural land uses and a dispersed settlement pattern. A small stream/drain is indicated on OS map flowing eastwards from the lands and along the northern boundary of the eastern block of the subject lands. However, the EPA system shows no hydrological connectivity. There is another stream/drain flowing eastwards at about 150m to the south of the western block of the subject lands.

The Licence was granted on 22<sup>nd</sup> October 2019 subject to standard conditions requiring compliance with various standards and guidelines. There are no conditions requiring measures to avoid or reduce the effects on any Natura 2000 site.

There is a single appeal against the decision to grant the Licence. The grounds of appeal contend that, based on the information supplied, it was not possible to make a decision in compliance with the provisions of the Habitats Directive and that no proper assessment was carried out. It is only necessary to establish that there may be an effect. If mud could get into the lake (unnamed) it could have an effect.

In response to the grounds of appeal, the DAFM contend that the proposed development alone would not have any effect on a Natura 2000 site, and that the lake referred to is 740m away with no hydrological connection.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report, dated 3<sup>rd</sup> April 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The FAC is satisfied that the screening procedure detailed in the report is in accordance with the requirements of the Habitats Directive. The report details 4 Natura 2000 sites within a radius of 15km of the proposed felling site (3 SACs and 1 SPAs) and this is considered to be appropriate in this case. Cullahill Mountain SAC is at a distance of 14.3km, on the opposite side of the River Nore and without hydrological connection to the proposed lands. Lisbegney Bog SAC is 5.5km distance, in a different catchment and with no hydrological connectivity. The River Nore SPA is at a distance of 4.8km. The River Barrow and River Nore SAC is at a distance of approximately 3.5km and there is no direct hydrological connection with the proposed lands. There is a small stream/drain a short distance (approximately 20m) to the east of the eastern plot and another small stream a short distance to the south of the western plot. The consultant's report notes that the nearest point to the SAC is some distance upstream of Castlecomer. The nearest hydrological connection from the area where the project lands are located to the SAC is to the River Dinin or Deen in Castlecomer. This river appears to be also known as the Comer River. The distance here is about 5 Kms. The report concludes that, having regard to the qualifying interests of the River Barrow and River Nore SAC and the nature and location of the project in question, it was reasonable for the Department to conclude that the project would not have any significant effect on the SAC in question, individually or in combination with any other project. The FAC concurs with that conclusion. Furthermore, the FAC agrees with, and adopts the findings of the report in respect of each of the individual Natura 2000 sites, having regard to the qualifying interests of those sites, and with the overall conclusion that the proposed development by itself, or in combination with other plans or projects, would not be likely to give rise to significant effects on any Natura 2000 site. In these





**An Coiste um Achomhairc  
Foraoiseachta**

**Forestry Appeals Committee**

circumstances the FAC considers that the carrying out of Appropriate Assessment as referred to in Article 6(3) of the Habitats Directive is not required.

The FAC agrees with the conclusion of the consultant's report that the proposed felling does not come within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU). Furthermore, the proposed replanting is not initial afforestation and does not involve any change in the use of the land. The FAC also concludes that the proposed development by itself, or cumulatively with other permitted projects would not be likely to give rise to significant effects on the environment.

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



**FAC Case Ref: 343/2019**

**DAFM Case Ref: KK02-FL0159**

*Details of application:*

The application is to clearfell a forestry plot of 10 Hectares in the townland of Firoda Upper in County Kilkenny. Some general environmental rules for harvesting were submitted with the application. The documentation indicates that the trees to be harvested are Sitka Spruce and the lands would be replanted with Sitka Spruce. The application indicates a replanted area of 9.5 Ha. with .5 of a Ha. open space. Schedule 3 of the licence indicates that 10 Ha. would be replanted with Sitka Spruce. The map submitted indicated the lands in 2 separated plots with a public road and other lands between the 2 plots.

*Location and details of project lands:*

The project lands are located in an upland rural area about 4 Km. to the northwest of the town of Castlecomer in County Kilkenny. The older OS maps indicate the lands being located at approximately 800 feet AOD. The maps indicate the 800-foot contour traversing the lands. On the 25-inch to one mile map a small stream/drain is indicated flowing eastwards from the lands and along the northern boundary of the eastern block of the project lands. There is another stream/drain, also flowing eastwards, indicated about 150 metres to the south of the western block of the project lands.

Land uses in the area are a mixture of agriculture and forestry. The most recent aerial mapping indicates the 2 plots being part of a larger plantation with coniferous trees in the lands between the 2 plots where tree felling is proposed. There are also significant sized coniferous plantations a short distance away to the southwest and northwest. Apart from the agriculture and forestry uses referred to there are some houses in the area although the area is not intensely developed with houses. The nearest house is a relatively new house located near the road in the lands immediately to the north of the eastern plot where tree felling is proposed.

*Decision of DAFM:*

The Department decided to grant a licence for the proposed tree felling. Full details of the licence are not contained in the documents available to me. I assume, however, that the licence was subject to normal conditions requiring compliance with various standards and guidelines but that no specific condition was imposed to mitigate or control effects on any Natura 2000 site.

*Grounds of appeal:*

It is submitted that based on the information submitted it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA Directives.



The appellant refers to a High Court decision given by Ms Finlay Geoghegan on 25 July 2014. The judgement, in a quotation from a European Court of Judgement decision, states that for Appropriate Assessment to be a mandatory requirement there is no need to *establish* that there would be a significant effect on a Natura 2000 site. It is merely necessary to determine that there *may* be such an effect. A further quotation, from a EU Court decision, referred to in the judgement states that "It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3)".

In an earlier submission, which he requested be attached to all his appeals, the appellant stated that there is a lack of proper assessment. He submits, for example, that there is no assessment of cumulative effects. (This submission pre-dates the date of the current appeal).

The appellant submits that if mud was to get into the lake it could have an effect on the SAC/SPA. He submits that the fact that the distance is over 15 Km has no relevance to the fact that there may still be an effect. (The appellant does not indicate what lake or SAC/SPA he is referring to).

*DAFM response to grounds of appeal:*

In its response the Department refers to the documentation submitted, including the pre-screening report on Appropriate Assessment, and to the screening exercise carried out by the Department. It is submitted that having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives in the context of possible sources and pathways for impact, the Department deemed that the project, when considered in combination with other plans and projects (as identified in the Pre-screening Report), will not give rise to the possibility of a significant effect on any of those Natura sites. As such, the clearfell project was screened out and an Appropriate Assessment was deemed unnecessary.

The Department also submits that there is no lake close to the project lands. The nearest lake is 740 metres away and there is no hydrological from the lands to the lake.

*Appropriate Assessment screening:*

There are 4 Natura 2000 sites located at least in part within 15 Km of the project lands. The sites in question are 831 Cullahill Mountain SAC, 869 Lisbigney Bog SAC, 2162 River Barrow and River Nore SAC and 4233 River Nore SPA.

The Cullahill Mountain SAC is located, at the nearest point, about 14.3 Kms from the project lands and to the southwest of the lands. The SAC is on the opposite side of the River Nore from the project lands and there is no hydrological connectivity between the lands and the SAC in question. The qualifying interests for the designation of this SAC are "Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco Brometalia*) (Grassland)"

It is inconceivable that the project would have any effect, much less a significant effect on the SAC having regard to the nature of the qualifying interest, the distance



and the hydrological circumstances referred to. There is no pathway through which an effect could arise.

Lisbegney Bog SAC is located, at the nearest point, about 5.5 Kms to the northwest of the project lands. The SAC is in a different sub-catchment from the project lands and there is no hydrological connection from the lands to the SAC. The qualifying interests are "Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* [7210] and *Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]" Due to the absence of any hydrological connection there would not be any effect on this SAC, having regard to its qualifying interests and conservation objectives. (The conservation objects are "To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected").

The River Barrow and River Nore SAC is located, at the nearest point about 3.5 Kms, from the project lands. The nearest point to the SAC is some distance upstream of Castlecomer. The nearest hydrological connection from the area where the project lands are located to the SAC is to the River Dinin or Deen in Castlecomer. This river appears to be also known as the Comer River. The distance here is about 5 Kms.

The qualifying interests of the River Barrow and River Nore SAC are:

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Reefs [1170]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glaucopuccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

European dry heaths [4030]

Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

*Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]

*Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]

*Austropotamobius pallipes* (White-clawed Crayfish) [1092]

*Petromyzon marinus* (Sea Lamprey) [1095]

*Lampetra planeri* (Brook Lamprey) [1096]



*Lampetra fluviatilis* (River Lamprey) [1099]

*Alosa fallax fallax* (Twaite Shad) [1103]

*Salmo salar* (Salmon) [1106]

*Lutra lutra* (Otter) [1355]

*Trichomanes speciosum* (Killarney Fern) [1421]

*Margaritifera durrovensis* (Nore Pearl Mussel) [1990]

The conservation objectives are generally to maintain and/or restore the favourable conservation condition of the site for the habitats or species for which the site is designated. The drainage system between the project lands and Castlecomer is not part of the SAC and has not been designated. I consider that any mud or debris which would enter the drainage system close to the project lands would have little or no effect 5 Km downstream at Castlecomer. Most of the habitats listed are to be found much further downstream. I consider that the project is unlikely to have any significant effect on the habitats listed.

I accept that some of the species for which the SAC has been designated are particularly sensitive to water pollution in the form of suspended solids, nutrients or mud. I refer in particular to the Freshwater Pearl Mussel and the Nore Pearl Mussel.

The NPWS conservation objective in relation to the Freshwater Pearl Mussel states "The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species. Please note that the Nore freshwater pearl mussel (*Margaritifera durrovensis*) remains a qualifying species for this SAC. This document contains a conservation objective for the latter species." There is accordingly at present no specific Conservation Objective except for the Nore Freshwater Pearl Mussel.

The Conservation Objective relevant to the Nore Freshwater Pearl Mussel refers to the presence of this species in a stretch of the Nore River upstream of Ballyragget. The conservation objective is to restore the favourable conservation condition of the Nore freshwater pearl mussel in the River Barrow and River Nore SAC, which is defined by a list of attributes and targets set out in detail in the Conservation Objectives. The stretch of river indicated on Map 7 of the maps attached to the Conservation Objectives is a significant distance from Castlecomer and upstream of same. The Dinin or Deen River joins the Nore about 11 Kms downstream of Ballyragget.

Of the various qualifying interests listed for the River Barrow and River Nore SAC the only one identified in the Deen River on the maps attached to the Conservation Objectives document on the NPWS website is the White Clawed Crayfish. The major threat to this species is indicated to be alien crayfish and disease. It is stated that this species is widespread throughout the SAC. The characteristics of the species is indicated to be "Crayfish need high habitat heterogeneity. Larger crayfish must have stones to hide under, or an earthen bank in which to burrow. Hatchlings shelter in vegetation, gravel and among fine tree-roots. Smaller crayfish are typically found among weed and debris in shallow water. Larger juveniles in particular may also be



found among cobbles and detritus such as leaf litter. These conditions must be available on the whole length of occupied habitat." I consider that the project proposed is not likely to have any significant effect on this species.

Having regard to the qualifying interests of the River Barrow and River Nore SAC and the nature and location of the project in question here I consider it was reasonable for the Department to conclude that the project would not individually or in combination with any other project have any significant effect on the SAC in question. I noted in checking the history of planning permissions, in recent years, that most permissions are for single houses, extensions or modifications to permissions. I noted also that planning permission has been granted for a forest road access onto the public road from the western block, of the plots applied for. I do not have details indicating the locations of other forestry related developments but I do not envisage any significant in combination effects. (I note that the Department states that there are licences for clear-felling of about 20 Ha and thinning of about 11 Ha).

The River Nore SPA is located a minimum of about 4.8 Kms from the project lands. The SPA is, at the nearest point, to the west of the lands. The special interest of this SPA is the Kingfisher. The mature coniferous plantation in the project lands is not a suitable or appropriate habitat for this species. The development would have no significant impact on this Natura 2000 site having regard to its special interest and conservation objectives.

I am not aware of what lake the appellant refers to in the grounds of appeal. I have noted none in the vicinity of the project lands. Neither am I aware of what Natura 2000 site, outside a 15 Km radius, he considers might be affected.

In the above assessment I have not considered the normal good felling practices referred to in the documentation in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all felling, and are not designed to prevent any significant effect on the Natura 2000 sites.

The proposal is clearly not necessary for or connected with the management of any Natura 2000 site. I conclude, also, that the proposed felling 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.

#### *Screening for Environmental Impact Assessment (EIA):*

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 111 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.



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. It appears to me that 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). I will, however, consider the likely effects of the proposal on the environment.

The site is located in an area where the predominant land uses are agriculture and forestry. Forestry by its nature involves afforestation, thinning, clear-felling and replanting. Such activities are normal and not out of character visually or otherwise in an area such as that in question. The area is not designated as being of exceptional or special visual amenity significance, although the Castlecomer plateau, where the lands are located, are identified in the County Kilkenny development plan as an upland area and some of such areas are indicated to be sensitive to new development. The trees in question are visible from some locations along the surrounding road network. They are not however particularly prominent and are not of such exceptional amenity value as to warrant retention. I consider that the felling proposed would not have a significant impact on the landscape.

The felling will give rise to the transport of timber on the local roads. This will cause some inconvenience in the short term but is an inevitable consequence of the afforestation and would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. I also consider that the tree felling proposed would not be likely to give rise to significant effects on the environment due to water or air pollution.

There are no National Monuments located within the project lands. The nearest such monument is located about 400 metres away to the southwest on the opposite side of the local road from the larger plot. The next nearest monument is about 500 metres away to the northeast. The proposed project would have no effect on either of the monuments in question.

I consider that the felling proposed does not come within the classes of project covered by the EU EIA Directive. I also consider 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. I consider that the possibility of significant



effects on the environment can be ruled out on the basis of this preliminary screening

*Overall conclusion:*

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

3 April 2020

