



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

**21 April 2020**

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[REDACTED]

**Our ref: FAC 346/2019**

**Subject: Appeal in relation to felling licence KK05 FL0072**

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 KK05 FL0072.

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 KK05 FL0072 was granted by the Department on 22 October 2019.

**Hearing**

A hearing of appeal 346/2019 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 regard to the evidence before it and the following considerations, the FAC has decided to confirm the decision of the Minister regarding licence KK05 FL0072.

In its statement to the FAC received on 18 March 2020, the Department of Agriculture, Food and the Marine included:

*As per the Appropriate Assessment Procedure SOP applicable at the time (v. 09Sept19),  
screening for Appropriate Assessment was carried out, focusing on Natura sites within a 15*

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*km zone around the proposed clear-felling area (or 'Harvest Block') detailed in the Tree Felling Licence application (see attached DAFM Appropriate Assessment Screening Form). Various information submitted by Coillte as part of the licence application was considered. This information included: map information (both GIS-based and softcopy PDFs), harvesting and establishment environmental operational procedures, an Appropriate Assessment Pre-screening Report and associated methodology document (please see attached documents). Also considered were the comments and observations of referral bodies who submitted information to the Department in respect of the licence (see attached referral correspondence where applicable).*

*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.*

*For the purposes of 42(16) of 5.1.477 / 2011, the DAFM has determined that the project will not adversely affect the integrity of any European sites.*

*A Tree Felling Licence was subsequently issued for the clearfell project (see attached documents).*

*There are no lakes near or adjacent to this felling licence application area. The nearest lake (not hydrologically connected) is 3.4 km to the west. There are no streams or rivers directly connected to the felling area.*

The decision to issue the licence pertains to 7.32 hectares of felling and reforestation at Castlebanny, Co. Kilkenny. The site is in the Suir Catchment and Blackwater (Kilmacow) sub-catchment. There are no watercourses on this moderately sloped site. The licence has no added conditions.

There is a single appeal against the decision to issue the licence. The grounds of appeal include the contention that it was not possible to carry out an assessment in accordance with the requirements of the Habitats Directive based on the information submitted and that no proper assessment was carried out. Reference is made to Court judgments and to an absence of an assessment of cumulative effects. The grounds are also that if mud was to enter the lakes it could have an effect on the SAC/SPA. The fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. No lake was identified by the appellant and the evidence shows the nearest lake is at 3.4 km with no hydrological connectivity to the project site.

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 11 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 sites located, at least in part, within 15 kilometres of the project lands and this is considered to be appropriate in this case. These are the Thomastown Quarry SAC located, at the closest point, 9.62 kilometres to the north, the Hugginstown Fen SAC located, at the nearest point, 5.72 kilometres to the southwest, the River Barrow and River Nore SAC located, at the





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nearest point, 2.08 kilometres to the east, and the River Nore SPA located, at the nearest point, 6.83 kilometres to the northeast. The FAC has taken into consideration and agrees with the contents of this report in respect of each of the individual Natura 2000 sites, having regard to the qualifying interests of those sites, and concludes 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. 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 considered that none of the conditions attached to licence require measures which are designed to mitigate effects on any European site in this instance.

Furthermore, 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). In addition, 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.

The FAC also concluded that the proposal is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



**FAC Case Ref: 346/2019****DAFM Case Ref: KK05-FL0072***Details of application:*

The application, which was submitted on the 4 March 2019, was for the clear-felling and replanting of a Sitka Spruce plantation measuring 7.32 hectares in the townland of Castlebanny in Co. Kilkenny. The information submitted indicated restocking of 6.95 hectares with an open area of 0.37 hectares. The application was accompanied by a pre-screening Appropriate Assessment report. This concluded that a second stage AA was not required. The application also included a long list of Coillte's environmental and safety rules for harvesting. (Coillte Harvest Plan)

The application drawings appear to show a county road running through the lands. This seems, however to be the line of a track or road which previously existed but which no longer exists. There is no evidence of a road through the lands on the aerial photography of the area.

*Details of location and lands:*

The lands involved in the application are part of a much larger forested area in a rural area of Co. Kilkenny about 8.5 kilometres south of Thomastown and about 4 kilometres southeast of the village of Ballyhale. The lands are in an upland area above the 500-foot contour. There is a bench mark indicated on the historic OS map a short distance to the north of the lands indicating a height of 753 feet AOD. The lands rise further towards the northeast.

The predominant land use in the immediate vicinity of the project lands is forestry. The lands in question form part of a larger forest. The most recent aerial photography indicates that clear-felling has been carried out, in recent years, in the lands immediately to the south, east and west. There are forest roads along the north and east boundaries of the lands where felling is proposed. The aerial photography indicates mature forestry to the north of the forest road at the northern edge of the project lands. There is significant additional forestry to the north, south and east.

Neither the EPA's inventory nor the historic OS maps indicate any stream immediately abutting the subject lands. The historic OS maps indicate a stream or drain a short distance from the southeast corner of the lands. This appears to drain towards the southwest before turning southwards. The drainage then continues southwards as the Derrylacky River, to lukeswell, and then as the Black River, which joins the Suir River near Waterford. This drainage arrangement corresponds with the EPA's mapping of river catchments which indicates the lands are located in the Suir catchment rather than the Nore catchment which is located a short distance away to the east.

*Decision of the DAFM:*

The Department decided to approve the clear-felling and to grant a licence. The licence was subject to 8 conditions. The conditions are standard DAFM licence



conditions requiring compliance with various guidelines and standards. There is no suggestion or evidence that any of the conditions have been imposed in order to mitigate or control the effects of the project on any Natura 2000 site.

*Grounds of appeal:*

It is submitted that based on the information submitted, with the application, 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. He submits that the test for Appropriate Assessment in Irish law is set out in this judgement. The judgement quotes from a European Union Advocate General's Opinion which 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 the EU Advocate General's Opinion referred to in the judgement, states "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 clear-fell project was screened out and an Appropriate Assessment was deemed unnecessary.

The Department also submits that there is no hydrological connection from the lands to the adjacent lake. It is submitted that the nearest lake (not hydrologically connected) is 3.4 kilometres to the west. The Department also states that there are no streams or rivers directly connected to the felling area.



*Appropriate Assessment screening:*

There are 4 Natura sites located, at least in part, within 15 kilometres of the project lands. These are:

Thomastown Quarry SAC located, at the closest point, 9.62 kilometres to the north.

Hugginstown Fen SAC located, at the nearest point, 5.72 kilometres to the southwest.

River Barrow and River Nore SAC located, at the nearest point, 2.08 kilometres to the east.

River Nore SPA located, at the nearest point, 6.83 kilometres to the northeast.

My measurements of the shortest distances to the 3 SACs are slightly less than the distances given in the pre-screening AA report submitted by the applicant. The differences are marginal and of no significance to my conclusions.

Thomastown Quarry SAC has been designated with a qualifying interest of "Code 7220 Petrifying springs with tufa formation (Cratoneurion)". The SAC is located to the north of Thomastown and north of the Nore River. It is located in the Nore River catchment. There is no hydrological connection from the project lands, in the Suir catchment, to the SAC. In these circumstances the project will have no impact or effect on the SAC having regard to the reason for its designation.

Hugginstown Fen SAC has been designated with a qualifying interest of "Code 7230 Alkaline fens". The SAC is located in the River Suir catchment. It is however in a different sub-catchment. The drainage from the area in the vicinity of the project lands joins the drainage from the SAC area downstream of the SAC. There is, accordingly no hydrological connection between the project lands and the Hugginstown Fen SAC. The project would not affect the water regime or flow in the SAC. It would not, accordingly, have any effect on the SAC having regard to the reason for its designation.

The River Barrow and River Nore SAC is located in relatively close proximity to the project lands. The lands, however, are in a different river catchment and as indicated above drainage from the area, where the lands are located, is southwards to the River Suir. The following are the qualifying interests of the River Barrow and River Nore SAC:

"Qualifying Interests \* indicates a priority habitat under the Habitats Directive 1016 Desmoulin's whorl snail *Vertigo moulinsiana* 1029 Freshwater pearl mussel *Margaritifera margaritifera* 1092 White-clawed crayfish *Austropotamobius pallipes* 1095 Sea lamprey *Petromyzon marinus* 1096 Brook lamprey *Lampetra planeri* 1099 River lamprey *Lampetra fluviatilis* 1103 Twaite shad *Alosa fallax* 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1310 Salicornia and other annuals colonizing mud and sand 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*) 1421 Killarney fern *Trichomanes speciosum* 1990 Nore freshwater pearl



mussel *Margaritifera durrovensis* 3260 Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* 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 (*Cratoneurion*) 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles 91E0 \* Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion alba*)”

Some of the qualifying interests referred to could be affected by a significant alteration to water quality in their habitats. As the project lands, however, are located in a different river catchment with no hydrological connection to the SAC in question, except over 20 kilometres downstream near Cheekpoint, east of Waterford, the tree felling proposed will have no impact on the SAC having regard to its qualifying interests and the conservation objectives for the site and the distance to the location where the Suir joins the Barrow/Nore. The conservation objectives are generally to maintain or restore the favourable conservation condition of the habitats and species for which the Natura site has been selected. (As there is no river or stream linking the project lands to the SAC and there is no river or stream directly adjoining the lands the tree felling proposed would have no impact on the habitat of the otter in the designated SAC).

The special interest of the River Nore SPA is the Kingfisher. A mature coniferous plantation with no river or stream is not a suitable habitat for this species. The proposed development would have no effect on the SPA in question having regard to the reason for which it was designated.

The Lower River Suir SAC is at the closest point located over 16 kilometres to the west of the project lands. Drainage from the vicinity of the project lands is southwards and the hydrological distance to the confluence with the Lower Suir SAC, near Waterford, is in excess of 20 kilometres. The tree felling proposed would have no effect on this SAC having regard to the distance involved.

I noted in checking the history of planning permissions, in recent years, that there have been very few applications or planning permissions in the immediate vicinity. As the lands are set back a considerable distance from public roads this is not surprising. The nearest planning permissions are for agricultural developments near the public road to the west. These have been identified in the pre-screening AA report submitted by the applicant. Other permissions in the general area are for single houses and house extensions. I do not consider that the tree felling proposed would have any in combination or cumulative effects with these developments. I do not have details indicating the locations of other forestry related developments but as I consider that the development of itself would have no effect on any of the Natura sites, I do not envisage any significant in combination effects. (I note that the Department states in the screening form, that there are licences for clear-felling of 9.37 hectares and thinning of 30.68 hectares in the vicinity. The pre-screening report from Coillte indicated it had licences for 45.87 hectares of clear-felling within 1.5 kilometres).

In the above assessment I have not considered the normal good felling practices referred to in the documentation and in the licence 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 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.

#### *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 11 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 use locally is forestry and the predominant uses in the wider area are agriculture and forestry. Forestry by its nature involves afforestation, thinning, clear-felling and re-planting. 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 value in the current Co. Kilkenny development plan. The area is located in an area identified as the South-Eastern Hills in the landscape character assessment map. The trees in question are located within a wider forested area and are not



prominent in views from the surrounding road network. They are not prominent in the landscape and are not of such exceptional visual significance or value as to be considered essential or vital components of the landscape. I consider that the felling and replanting 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 this 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 500 metres away to the northeast. This "rath" site is located in lands which are forested but the monument itself appears not to have been planted. The proposed development would have no effect on the monument 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

11 April 2020