



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

12 November 2020

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

Our ref: 269/2020

**Subject:** Appeal in relation to felling licence WW08 FL0191

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence WW08 FL0191.

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 WW08 FL0191 was granted by the Department on 22 May 2020.

**Hearing**

An oral hearing of appeal 269/2020 was conducted by the FAC on 06 November 2020.

**Attendees:**

FAC:	Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy & Mr Pat Coman
Secretary to the FAC:	Ms Ruth Kinehan
Applicant representatives:	[REDACTED]
DAFM representatives:	Mr Frank Barrett & Ms Eilish Kehoe

Notification and details were issued to the appellant and the appellant did not attend the oral hearing

**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, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference WW08-FL0191).

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The proposal is for the felling and restocking on a stated site area of 4.65ha at Ballycullen, Co. Wicklow. Trees to be felled are birch (.07ha), Scots Pine (3.75ha) and Sitka Spruce (0.83ha). Replanting would be with Douglas Fir (98%) and Rowan (2%). A Harvest Plan and Appropriate Assessment Pre-screening Report are submitted with the application. A second Appropriate Assessment Pre-screening Report was subsequently submitted by the applicant on 20<sup>th</sup> May 2020.

The DAFM referred the application to Wicklow County Council and Inland Fisheries Ireland. The response from IFI was submitted through an email by DAFM on 6<sup>th</sup> February 2020 and was read into the record at the Oral Hearing.

The Licence was issued on 22<sup>nd</sup> May 2020 and is exercisable until 31<sup>st</sup> December 2022. It is subject to standard conditions plus a series of conditions relating to the protection of water quality and the protection of the environment.

There is a single appeal against the decision to grant the licence. The grounds contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. The test for Appropriate Assessment in Irish and EU Law is that "it is merely necessary to determine that there may be such an effect" and not that there will be no significant effect. If development is within 15km of a Natura 2000 site it should be screened in. It is not appropriate to take account of mitigation measures at Appropriate Assessment screening stage. Assessment carried out under Article 6(3) of the Habitats Directive must contain complete, precise and definitive findings and conclusions removing all reasonable scientific doubts as to effects on a protected site. River catchments should be identified. A map showing SACs and SPAs should be attached. All forestry in the area should be detailed showing that cumulative afforestation does not exceed 50ha. the same details should be provided for forest roads. It is the duty of the FAC to carry out a full Appropriate Assessment screening and a full EIA screening.

In response, the DAFM state that the application was the subject of DAFM's AA Screening procedure and sites within a 15km radius were examined. Application information, including the Appropriate Assessment Pre-screening Report, was considered. It was concluded that the proposed project alone, or in combination with other plans and projects identified by the applicant would not give rise to the possibility of a significant effect on European sites. It was also determined that there would be no adverse effect on the integrity of any European site. A number of qualifying interests were truncated on the AA Screening form, but all were considered in the screening exercise. The DAFM carried out an in-combination assessment and the conclusion is consistent with the applicants' in combination assessment.

The FAC sat in person at an Oral Hearing in Portlaoise on 6<sup>th</sup> November 2020. The parties were invited to attend in person or by electronic means. The DAFM and the applicants participated electronically but the appellant did not participate. At the Oral Hearing the DAFM clarified that the applicants had submitted a Pre-screening report to the DAFM on 20<sup>th</sup> May 2020, and the DAFM carried out an in-combination assessment on 21<sup>st</sup> May 2020. The licence issued on 22<sup>nd</sup> May 2020. The DAFM stated that a Stage 1 screening for Appropriate Assessment had been carried out for Natura sites within a 15km radius. Twelve designated sites were identified (9 SACs and 3 SPAs). All of the listed sites had been screened out for Appropriate Assessment for reasons including the absence of direct hydrological connection in the case of the SACs and separation distances in the case of the SPAs. The DAFM submitted that Inland Fisheries Ireland had requested that the proposed development be



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Forestry Appeals Committee

carried out in line with forestry guidelines, that their officer be contacted prior to operations commencing and that ground stability be kept under review. The applicants referred to their Pre-screening report submitted on 20<sup>th</sup> May 2020 and stated that the closest European site was at a separation distance of approximately 4.5km. This is a benign site in terms of soil type, slope and separation distances to designated sites.

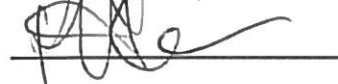
Addressing the grounds of appeal the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 9 SACs and 3 SPAs within a 15km radius of the project lands. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this distance. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site and assessing the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of the SACs listed that the DAFM discounted the possibility of significant effects arising for reasons that the project lands did not have direct upstream hydrological connection and lacked a pathway to the following SACs – Vale of Clara (Rathdrum Wood), Deputy's Pass Nature Reserve, Wicklow Mountains, Carriggower Bog, Wicklow Reef, Buckronev-Brittas Dunes and Fen, and Glen of the Downs. In respect of the Murrough Wetlands SAC, the likelihood of significant effects was discounted "having considered the expert opinion and the rationale presented in the Pre-screening Report (regarding hydrological distance, project area, soil type and depth, site slope and project separation distance) submitted by the applicant. In respect of the 3 SPAs – the Murrough, Wicklow Mountains and Wicklow Head – the likelihood of significant effects was discounted based on separation distances. The FAC noted that the DAFM had carried out an in-combination assessment before making its decision. No evidence was before the FAC to indicate that any of the plans or projects listed were giving rise to the likelihood of significant effects on any Natura site when considered in-combination with the proposal. The FAC noted that there was no evidence of aquatic zones on the site and that the project lands lie within the Avoca-Vartry river catchment, and Vartry\_SC\_010 sub catchment. Having regard to the nature and scale of the proposed development, the characteristics of the surrounding area, the separation distance between the project lands and the Ballycurry River (approximately 530m to the south east) and the procedures adopted by the DAFM in carrying out its screening assessment, including an in-combination assessment, the FAC concluded that the DAFM had met the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached of no likelihood of significant effects on any Natura 2000 site were correct.

The grounds of appeal contend that the decision does not comply with the EIA or Birds Directives but does not provide any convincing reasons for this contention. In respect of the EIA Directive, the FAC concludes that felling and reforestation do not represent a class of development covered by the Directive and that the proposed development does not involve any works, which of themselves, would be a class of development covered by the Directive. As such, the FAC does not accept that there is a requirement for EIA screening in this case. Having regard to the nature and scale of the development,

and the characteristics of the surrounding environment, the FAC concluded that the proposed development alone, or cumulatively with other plans and projects, would not be likely to have a significant effect on the environment.

In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely

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

Pat Coman, on behalf of the FAC