



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

12 November 2020

[REDACTED]
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[REDACTED]
[REDACTED]

[REDACTED]

Our ref: 270/2020

Subject: Appeal in relation to felling licence LS15 FL0053

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 LS15 FL0053.

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 LS15 FL0053 was granted by the Department on 27 February 2020.

Hearing

An oral hearing of appeal 270/2020 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 LS15-FL0053).

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Forestry Appeals Committee

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The application (dated 2nd October 2019) is for clear-felling and restocking of a stated site area of 5.48ha at Knockbaun, Co. Laois. Trees to be felled and restocked are 100% Sitka Spruce. A Harvest Plan is submitted. An Appropriate Assessment Pre-screening report identifies 3 SACs and 1 SPA within a 15km radius of the project lands. There is also a second 'Appropriate Assessment Pre-Screening Report' completed on 7th May 2020 and submitted by the applicants (pre-dates the date of issue of the licence). This identifies 3 SACs and 1 SPA within 15km radius and concludes that the proposed project will not individually or in combination with other listed plans or projects have a significant effect on any relevant listed European sites.

The DAFM referred the application to Laois County Council. In response, the County Council state that the proposed development is not within a NHA, SAC or National Park, an Architectural/Archaeological site or Prime Scenic Area. The site is within a source protection area and on a local tertiary road.

The DAFM carried out a Screening for Appropriate Assessment. This listed 4 Natura 2000 sites (3 SACs – Ballyprior Grassland, Lisbigney Bog and River Barrow & River Nore, and 1 SPA – River Nore). This concluded that there is no possibility of significant effects on Ballyprior Grassland and Lisbigney Bog SACs due to the location of the project lands within a separate water body catchment with no upstream connection and lack of pathway. It concluded that there is no possibility of a significant effect on the River Barrow & River Nore SAC "having considered the expert opinion and the rationale presented in Pre-screening Report (regarding hydrological distance, project area, soil type and depth, site slope and project separation distance) submitted by the applicant". In regard to the River Nore SPA it concludes no likelihood of significant effects due to separation distance.

The licence issued on 22nd May 2020 and is exercisable until 31st December 2022. It relates to a site area of 5.48ha and is subject to standard conditions (with reasons) plus conditions requiring aquatic zone setbacks and other conditions related to the protection of water quality.

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 AA 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.

There is an 'AA Report and AA Determination Statement for 16.37ha of felling and reforestation, LS13-FL0053, located at Ballinaclogh Upper, Co. Laois' on file. This was prepared by DAFM and is dated 24 March 2020. At the Oral Hearing the DAFM accepted that this document was submitted due to clerical error and should not be considered in the context of this appeal. The FAC did not consider this report in its determination.

The FAC sat in person at an Oral Hearing in Portlaoise on 6th 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. The DAFM submitted its view that the proposed felling and restocking did not constitute an activity covered by the EIA Directive. The DAFM Stage 1 screening for Appropriate Assessment was based on the information submitted with the application which had been prepared by qualified experts. The nearest population of Freshwater Pearl Mussels is in excess of 26km hydrological distance from the project lands. Conditions attached to the licence would ensure the protection of water quality generally but were not mitigation measures in respect of any Natura 2000 site. The DAFM stated that the project lands were within a Source Protection Area and that licence conditions would ensure the protection of water quality. The applicants stated that the subject forest was planted in around 1985 and that there were no setbacks provided to watercourses. The potential for impacts on any Natura 2000 site was non-existent and the applicants agreed with the conclusions of the DAFM screening. The applicants pre-screening submitted with the application had been prepared by suitably qualified experts. Procedures and practices adopted would ensure the protection of birds during nesting and rearing periods.

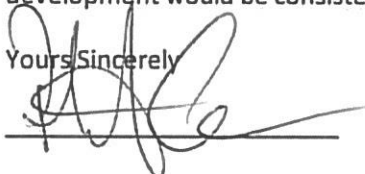
Addressing the grounds of appeal the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 3 SACs and 1 SPA within a 15km radius of the project 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 were in a different water body with no upstream connection and no pathway in the case of Ballyprior Grassland SAC and Lisbigney Bog SAC. In the case of the River Barrow and River Nore SAC, the possibility of significant effects was discounted having considered the expert opinion and rationale presented in the application documentation regarding hydrological distance, project area, soil type and depth and separation distance. In the case of the River Nore SPA, the likelihood of significant effects was discounted for reason of separation distance. In respect of in-combination effects, the FAC noted clarifications presented at the Oral Hearing, that 1 afforestation project is awaiting decision (1 km to

the south), and that licences were issued to 2 road projects, 2 private felling projects at distances of 1 to 2 km to the north east of the project lands, and 3 Coillte felling licences to the north east (approximately 2km), to the south (approximately 300m) and to the east (approximately 2.5km). Other projects listed are either carried out or awaiting approval. No evidence has been presented to the FAC to indicate that any of the existing projects are giving rise to any environmental problems or significant effects on any Natura 2000 site, and there is no convincing evidence before the FAC to indicate that there are other plans and projects in the area which, combined with then proposed development, would be likely to give rise to significant effects on any Natura 2000 site. In particular, the FAC noted the evidence presented regarding the hydrological distance to the nearest population of freshwater pearl mussels. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

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 be 'Pat Coman', written over a horizontal line.

Pat Coman, on behalf of the FAC