



**An Coiste um Achomhairc  
Foraoiseachta**

**Forestry Appeals Committee**

**22 October 2020**

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

[REDACTED]

**Our ref: 125/2020**

**Subject: Appeal in relation to felling licence CK13-FL0202**

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 CK13-FL0202.

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 CK13-FL0202 was granted by the Department on 25 February 2020.

#### **Hearing**

An oral hearing of appeal 125/2020 was conducted by the FAC on 15 October 2020.

#### **FAC Members:**

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy 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, submissions made at the Oral Hearing and all other submissions before deciding to set aside and remit the decision to grant this licence (Reference CK13-FL0202).

The application proposal is for the clear-fell of a stated area of 27.63ha of Lodgepole and restocking with 90% Sitka Spruce (23.62ha) and 10% Broadleaves (2.62ha) at Knockaroura, Co. Cork. A Harvest Plan was submitted with the application. It is stated that there is no direct water connectivity to the nearest aquatic zone. Soils are stated to be 98% Regosols, Podzols and Lithosols, and 2% Peats. The slope is stated to be predominantly steep (15-30%). Two Natura 2000 sites are identified within a 15km zone – Blackwater River (Cork/Waterford) SAC and Kilcolman Bog SPA.

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Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 076 106 4418  
057 863 1900

The application was referred to Cork County Council and the DAFM Archaeologist. The County Council referred to planning legislation that may apply and recommend that the matter be referred to the Archaeologist. The Archaeologist identified 3 Recorded Monuments – Kerb Circle, Radial Stone Cairn and Stone Cairn and recommended conditions relating to the protection of these.

The licence issued on 25<sup>th</sup> February 2020 and is exercisable until 31<sup>st</sup> December 2022. It relates to 27.63ha of clear-fell and restocking with 90% Sitka Spruce and 10% Broadleaves. In addition to standard conditions applied to felling licences, there are three additional conditions, two of which relate to archaeological matters and the third requires adjacent unplanted areas, felled under licence CK13-FL0098 to be replanted and have at least one growing season prior to the commencement of felling.

There is a single appeal against the decision to grant the licence. The written grounds contend that there is a breach of Articles 4(3), 4(4) and 4(5) of the Environmental Impact Assessment (EIA) Directive, it should be standard for a felling licence to include a condition requiring an ecological survey to be carried out by a competent person if works are to be carried out during the bird breeding and rearing period, and any mitigation measures proposed should be implemented, and that the Appropriate Assessment screening is flawed as qualifying interests are not included in the determination and the Coillte map indicates that the site is within a Freshwater Pearl Mussel zone.

In response, the DAFM stated that tree felling is not an activity to which the EIA Directive applies. It is a legal principle that, if the grant of a consent does not expressly exempt the holder from an obligation to obtain a second consent or to adhere to any other restrictions on the timing of activities or similar where set out in statute elsewhere, those other obligations and restrictions continue to apply. An Appropriate Assessment screening was completed by the Inspector and screened out European sites. A number of qualifying interests were truncated in documentation, but all were considered in the screening exercise and the determination is considered sound. The DAFM relied solely on the applicants' submission in considering in combination effects before deciding to grant the licence but subsequently carried out a further in combination assessment post decision, the conclusions of which were consistent with the conclusions of the earlier in combination assessment.

During the Oral Hearing, the appellant contended that, under the restocking permitted under the licence, approximately 5% of the site would be left as open space and that this constituted a change in land use bring the proposal within a class of development to which the EIA Directive applies. He stated that there was a huge potential for the presence of birds on this site which should be protected in accordance with the requirements of the Birds Directive. The appellant contended that the site is highly susceptible to landslides and under Geological Survey of Ireland (GSI) criteria would be classified as medium to high risk. It was further contended that the NPWS, Inland Fisheries Ireland and the EPA should have been consulted. The DAFM stated that such referrals were not deemed necessary in this case.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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





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referred to in Annex I. Annex II 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 II). 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 concludes that the felling 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 similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). At the Oral Hearing, the appellant argued that, based on the application submitted, the reforestation would leave portion of the site as open space and, as such, would constitute a change of land use. The FAC considers that there is no basis for this contention. The application suggested that a small portion of the site (1.39ha) would be left unplanted but not for the purposes of a change in land use. The oral evidence from the applicants was that this open area would be ancillary to the forestry land use. The FAC noted that the open area would not be maintained as open space, would not have public access as a dedicated open space and that the licence granted does not consent to any change in land use. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive as the proposed development is not of a class of development covered by the Directive.

The appellant introduced the issue of potential landslides at the Oral Hearing and stated that this should have been considered and assessed in the context of EIA or Appropriate Assessment screening. This contention was based on criteria contained on the GSI website. Reference was made to the slope on the site and the separation distance to the nearest watercourse which, in turn links to a SAC which has Freshwater Pearl Mussel as a qualifying interest. The applicants referred to the separation distance and also to the flat nature of the intervening land between the project lands and the nearest watercourse. On this issue, the FAC concluded that the proposed development alone would not give rise to any likelihood of significant effects on the Blackwater River (Cork/Waterford) SAC.

In regard to any requirement for the curtailment of felling activities during the bird breeding and rearing season, the granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute and, as such, is not necessary as a condition attaching to the felling licence. The applicants indicated that, as a matter of course, inspections take place before any felling commences to determine any actions needed in respect of the protection of birds nesting and rearing. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on this site while contending that there is significant potential for the presence of birds on the site. Based on the evidence before it, the FAC concluded that a condition of the nature detailed by the appellant should not be attached to the licence.

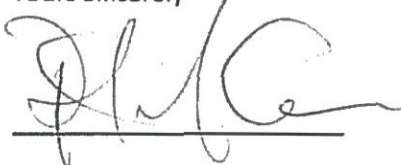
The Harvest Plan set out in the licence condition is essentially an operator's manual for the carrying out of the development permitted by the licence. Condition (h) of the licence requires a Harvest Plan to be completed prior to the commencement of felling. The FAC noted that all works included in a

Harvest Plan carried out must comply with the terms of the licence. In these circumstances, the FAC considers that the implementation of the Harvest Plan would not create the likelihood of significant effects occurring on any Natura 2000 site or on the environment.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to 2 Natura 2000 sites and concluded that the proposed project alone would not be likely to have significant effects on any Natura 2000 site. The FAC is satisfied that the procedures adopted by the DAFM in reaching the conclusion that the proposed development alone would not be likely to give rise to significant effects, were correct. The FAC noted that the qualifying interests listed in this assessment were truncated on the DAFM documentation, but considered that this was not a serious or significant error as there was no possibility of any significant effects on the designated sites for the reasons given in the DAFM assessment. However, in respect of its assessment of in combination effects, the DAFM relied solely on information submitted by the applicant before making its decision. The DAFM subsequently submitted to the FAC listings of other plans and projects (which were significantly different from the details submitted by the applicant), including forest roads, afforestation and felling projects. Having regard to the nature of the site and the surrounding area, and to the nature and number of other forestry projects listed, the FAC is satisfied that the failure of the DAFM to carry out a satisfactory in combination assessment prior to the granting of the licence constituted a significant error in the making of the decision the subject of the appeal.

In the above circumstances, the FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out an assessment of the proposed development on Natura 2000 sites within a 15km radius of the project lands specifically in combination with other plans and projects, before making the decision in respect of the licence.

Yours Sincerely

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

Pat Coman, on behalf of the FAC