



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

**24 September 2020**

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

**Our ref: FAC 442/2019**

**Subject: Appeal in relation to felling licence TFL00363419**

**Dear [REDACTED]**

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00363419.

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 TFL00363419 was granted by the Department on 10 December 2019.

**Hearing**

A hearing of appeal 442/19 was conducted by the FAC on 23 September 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, and all submissions/observations, before deciding to confirm the decision in respect of this licence (Reference TFL 00363419).

The proposal is for felling (thinning) on a stated site of 2.31ha at Clonbrown, County Offaly. There are 4 plots proposed for thinning as follows:

- Plot 1 (0.55ha) Scots Pine and Pedunculate Oak in 2019 & 2023
- Plot 2 (0.40ha) Scots Pine and Pedunculate Oak in 2019 & 2023
- Plot 3 (0.60ha) Norway Spruce in 2024 & 2028
- Plot 4 (0.76ha) Common Alder in 2019 & 2023

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The Inspector's certification notes that the site is not sensitive to fisheries and is not within a designated site or a High Amenity Area. Soils are stated to be predominantly podzols and the slope is flat to moderate. The site is crossed by/adjoins an aquatic zone. The FAC also noted that the certification states that the proposal is "not compatible with Water Framework objectives" (following its assessment the FAC concludes that this is not the case). The Inspector refers to 4 Natura 2000 sites within 15km as follows:

1. Mouds Bog SAC
2. Pollardstown Fen SAC
3. River Barrow & River Nore SAC
4. The Long Derries, Edenderry SAC

The DAFM screening assessment notes that the project lands are downstream of Mouds Bog SAC, Pollardstown Fen SAC and The Long Derries Edenderry SAC with no hydrological connection. In respect of the River Barrow and River Nore SAC, this is at a considerable separation distance (16.2km downstream distance). The overall conclusion is that the proposed development alone, or in combination would not be likely to have significant effects on any Natura 2000 sites.

There were no referrals of the application.

The Licence was issued on 10<sup>th</sup> December 2019 subject to standard conditions.

There is a single appeal. The grounds of appeal contend that, based on the information supplied, it is not possible to grant a licence in accordance with the provisions of the Habitats and EIA Directives. Reference is made to relevant Court judgments. There are Natura 2000 sites within 15km and this is a trigger for Appropriate assessment. The Inspector does not give any evidence on which he based conclusions in respect of Natura sites, and does not state which catchment the Natura 2000 sites are within. The only legal answer is to screen the proposed project in for Appropriate Assessment.

In response, the DAFM state that there was an undisturbed buffer installed at development stage and this is fully intact. A broadleaf plot was planted adjoining the buffer zone. There is no hydro connectivity between the plantation and the watercourse. There would be no significant effect on any Natura 2000 site.

In addressing the grounds of appeal, and to inform its decision, the FAC assessed the possibility of significant effects on any Natura 2000 sites within a 15km radius of the proposed development alone or in-combination with other projects and land uses in the area. The FAC considered that, having regard to the nature and scale of the proposal, there is no possibility of significant effects arising for Natura 2000 sites beyond that distance. While noting that two of the plots proposed for thinning are adjacent to the Figile River, this watercourse does not connect to any Natura 2000 site for in excess of 15km hydrological distance. Having regard to the nature and scale of the proposed development, the separation distances and the existing pattern of development in the area, there is no possibility of the proposed development alone, or in-combination with other projects, including cutaway peat and forestry, giving rise to significant effects on any Natura 2000 site. The FAC's conclusion concurred with the conclusion reached by the DAFM following its assessment.

Felling (thinning) does not fall within a class of development to which the EIA Directive applies, and the proposed operation does not include works which, by themselves, would be a class of



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development to which the EIA Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive. Furthermore, the FAC concluded that the proposed small-scale thinning would not have any significant effects on the environment

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee





**TFL 00363419**

***Proposed development and location***

The proposal is for felling (thinning) on a stated site of 2.31ha at Clonbrown, County Offaly. There are 4 plots proposed for thinning as follows:

- Plot 1 (0.55ha) Scots Pine and Pedunculate Oak in 2019 & 2023
- Plot 2 (0.40ha) Scots Pine and Pedunculate Oak in 2019 & 2023
- Plot 3 (0.60ha) Norway Spruce in 2024 & 2028
- Plot 4 (0.76ha) Common Alder in 2019 & 2023

The Inspector's certification notes that the site is not sensitive to fisheries, is not within a designated site or a High Amenity Area. Soils are stated to be predominantly podzols and the slope is flat to moderate. The site is crossed by/adjoins an aquatic zone.

This is a rural agricultural area with a sparse and dispersed settlement pattern. There are very extensive areas of cutaway peat in the wider area and existing forestry in close proximity to two of the proposed plots. The area is drained by the Ballygarrett and Figile Rivers and the Figile also drains through a very significant expanse of cutaway peat to the north-east of the proposed development.

***Screening for Appropriate assessment***

The proposed development (2.31ha felling) is not connected with or necessary to the management of any Natura 2000 site.

Having regard to the nature and scale of the development and its location, it is reasonable to consider and assess possible effects, if any, on Natura 2000 sites within a radius of 15km of the centre point of the separation between the eastern and western plots. The FAC considered that there is no possibility of significant effects on any Natura site outside of that radius.

There is 3 Natura 2000 sites within the 15km radius – The Long Derries, Edenderry SAC, River Barrow and River Nore SAC and Pollardstown Fen SAC (Mounds Bog SAC is marginally in excess of the 15km radius). These, together with their qualifying interests and direct separation distance, are listed below:

Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
000925	The Long Derris, Edenderry SAC	7459.54	<b>Habitats</b> 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites)
002162	River Barrow and River Nore SAC	10177.03	<b>Habitats</b> 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1170 Reefs 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glaucio-Puccinellietalia maritimae) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion 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 albae)* <b>Species</b> 1029 Freshwater Pearl Mussel ( <i>Margaritifera margaritifera</i> ) 1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> ) 1355 Otter ( <i>Lutra lutra</i> ) 1092 White-clawed Crayfish ( <i>Austropotamobius pallipes</i> ) 1106 Salmon ( <i>Salmo salar</i> ) 1421 Killarney Fern ( <i>Trichomanes speciosum</i> ) 1103 Twaite Shad ( <i>Alosa fallax fallax</i> ) 1990 Nore Pearl Mussel ( <i>Margaritifera durrovensis</i> ) 1095 Sea Lamprey ( <i>Petromyzon marinus</i> )



Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
			1096 Brook Lamprey ( <i>Lampetra planeri</i> ) 1099 River Lamprey ( <i>Lampetra fluviatilis</i> )
000396	Pollardstown Fen SAC	14937.80	<b>Habitats</b> 7210 Calcareous fens with <i>Cladium mariscus</i> and species of the Caricion davallianae* 7220 Petrifying springs with tufa formation (Cratoneurion)* 7230 Alkaline fens <b>Species</b> 1014 Narrow-mouthed Whorl Snail ( <i>Vertigo angustior</i> ) 1013 Geyer's Whorl Snail ( <i>Vertigo geyeri</i> ) 1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> )

Mouds Bog SAC has as its qualifying interests active raised bogs, degraded raised bogs capable of regeneration and depressions on peat substrates. Having regard to the separation distance and the absence of hydrological connectivity, the proposed development does not give rise to any possibility of significant effects on this Natura 2000 site.

The two south-western areas of forestry are adjacent to the River Figile which flows in a southerly direction. The north-eastern plots are approximately 130m separated from the River Ballygarrett, which flows in a westerly direction before joining with the River Figile. The proposed development is in the Barrow catchment. There are no Natura 2000 sites within 15km downstream of the River Figile adjacent to the south easterly plots and hydrologically significantly further from the north-easterly plots. Having regard to the nature and scale of the proposal and to the separation distance involved, there is no possibility of the proposed development giving rise to significant effects on any Natura 2000 site. There are large areas of cutaway peat in the wider area, and existing forestry. While there is the possibility of run-off from the bog and adjacent forestry (in the event of felling) into the Ballygarrett and Figile rivers, this would be very limited in extent and would not combine to give rise to significant effects on an Natura 2000 site.

None of the conditions attaching to the Licence granted require any measures to be taken to avoid or reduce effects on any Natura 2000 site.

### ***Examination of environmental effects***

Felling (thinning) does not fall within a class of development to which the EIA Directive applies and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive.

In terms of environmental effects, the proposed development, which is small in scale, will give rise to short-term and intermittent noise and disturbance during felling operations but this would not be significant. The north-easterly plots are removed from the Ballygarrett River and would not give rise to any likely significant effect in terms of water quality. The south-easterly plots are adjacent to the River Figile but, given the nature and scale of the proposed development, any run-off would be very limited, localised and short-term. There would be no significant effects on any designated sites or archaeological sites. The site is not sensitive to fisheries. Having regard to the very limited scale of the proposal and the existing pattern of development in the area, including cutaway peat and forestry projects, there is no possibility that the proposed development alone, or cumulatively with other projects, plans or land uses, would give rise to significant effects on the environment.

Des Johnson

On behalf of the Forestry Appeals Committee

24<sup>th</sup> September 2020.