



01 February 2021

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

**FAC ref:** 018/2020

**Subject:** Appeal in relation to felling licence TFL00377819

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence TFL00377819.

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 TFL00377819 was granted by the Department of Agriculture, Food and Marine (DAFM) on 31 December 2019.

#### **Hearing**

An oral hearing of appeal 018/20 was conducted by the FAC on 21 January 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman

Secretary to the FAC: Mr Michael Ryan

Applicant: [REDACTED]

Applicant representative: [REDACTED]

DAFM representatives: Mr Robert Hamilton & Ms Eilish Kehoe

*Mr Dan Molloy of the Agriculture Appeals Office attended as an observer*

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the 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 TFL00377819).

Proposal comprises 37.93 ha of existing forestry for thinning at Garranurton, Co Waterford, in 23 plots with varied species including Ash, Sitka Spruce and Japanese Larch to Norway Spruce, Alder and Pedunculate Oak etc planted 1997 and 1998. There are watercourses in the vicinity, the Faha R. is

west c. 190m where closest and flows southward, the Brenan R. is east c. 290m where closest and flows to east, the Garranurton R. is north and rises c. 50m from the proposal. The proposal does not contain or adjoin an aquatic zone. The proposal is in the Colligan Mahon Catchment and the Mahon\_SC\_10 Sub-catchment, and the Mahon\_30 river sub-basin. National Soils describe acid deep well drained mineral soils, acid brown earths, brown podzols. Slope is flat to moderate. The vegetation type(s) within the project area comprise semi-mature coniferous and broadleaf plantations with hedgerows. Certification says 1.11 % of digitised forest area within a 5km radius is currently for thinning or clear felling. There are 75.88 ha for thinning or clear fell within a 500m radius including the proposal.

The application was desk assessed. There was referral to the DAFM archaeologist and there were related conditions recommended due to two ringforts, a standing stone, a settlement cluster and an enclosure identified in the surrounding area. There was referral to Inland Fisheries Ireland (IFI) and a response that the proposal is in the upper reaches of a tributary of the Mahon River that represents an important salmon spawning system. IFI requested that a detailed overview of the drainage is undertaken and that the applicant demonstrates that heavy machinery can move on site with soil erosion and nutrient loss, also there can be no discharges to waters affecting biological water quality.

The DAFM carried out Appropriate Assessment (AA) screening on designated sites within a 15km radius of the project lands. and screened out each site individually with reasons; Comeragh Mountains SAC 001952, Dungarvan Harbour SPA 004032, Glendine Wood SAC 002324, Helvick Head SAC 000665, Helvick Head to Ballyquin SPA 004192, Lower River Suir SAC 002137, Mid-Waterford Coast SPA 004193. An in-combination screening (17 December 2019) looked at planning permissions, EPA, and a number of forestry related projects and concluded there would be no likelihood of significant effects on any Natura Sites when considered in-combination with the proposal.

A licence was issued on 31 December 2019 and is exercisable for 10 years. Licence comprised what are standard conditions plus the additional conditions (h), (i) and (j), where (i) sets out detailed archaeology related conditions. These are set out on the licence.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that in screening for AA the DAFM found that there were Natura sites within the 15km zone of impact, that is a trigger for the requirement for AA as it may have an effect. The Appellant states the Inspector answered 'yes' to questions 3 and 4 but failed to show any evidence on which the answer is based. In most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. In these circumstances the only legal answer is that the application has been screened in for AA. The Appellant referred to extract from judgement in Case C-323/17 on Article 6(3) of Council Directive 92/43/EEC that it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The Appellant submits that safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on that site. Also, any decision must comply with Commission notice "Managing Natura 2000 sites the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" Brussels, 21.11.2018 C(2018) 7621 final" and that the Irish Courts have interpreted the requirements for AA Screening in the judgement Kelly - v- An Bord Pleanála & others 2013 802 JR 25/07/2014 of Finlay Geoghegan J. which states there is



agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paragraphs 47-49. The Appellant includes the following: 47. It follows that the possibility of there being a significant effect on the site will generate the need for an AA for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an AA. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

In response the DAFM Inspector states that prior to making recommendations to approve with conditions the Tree Felling Licence application was evaluated using various appropriate GIS datasets on the DAFMS's IFORIS system. The Inspector did not carry out a site inspection due to knowing the plantation very well from previous inspections. The application was referred to both IFI with a response for detailed overview of drainage deemed inappropriate as there is no water on site and to the DAFM's Archaeologist with a response to adhere to various operational exclusion zones as well as Forestry and Archaeology Guidelines. The proposed 37.93ha thinning site is located in the townland of Garranturton on very flat, dry mineral soil with no water adjoining (as per 6 inch raster maps) approx. 2500m away from Mid-Waterford Coast SPA which exceeds foraging distance of any of the four Special Conservation Interests (SCIs) for the SPA (as per then operational Bird Foraging Table). As there is no hydrological pathway between the thinning proposal and any SAC site there is no possible adverse effect from the proposed project itself on listed QI's and Conservation Objectives of any SAC site, now or in the future. The DAFM state an AA Screening was conducted for five Natura sites within a 15km zone of consideration on 17 December 2019, and is fully recorded in AA Screening Conclusions in the final IFORIS certification page on foot of a detailed and comprehensive In-Combination Assessment carried out by DAFM personnel drawing from all licensed and proposed forestry activity on IFORIS and all Planning Permission information available from the online Waterford County Council, An Bord Pleanála planning information systems and the EPA Licence Information System. Consequently, it could be concluded there is no potential for proposed project to contribute to any adverse effects on any of the Natura sites either when considered alone or in-combination with existing land use and other plans and projects. Some technical and operational conditions were attached to final certification for approval. The Inspector's were subject to internal audit with no amendments made.

The FAC convened an Oral Hearing on 21 January 2021. The parties were invited to attend in person or to join electronically. The DAFM, Applicant and the Applicant's Representative participated electronically. The Appellant did not participate. At the hearing the DAFM set out the background to the decision to grant the licence TFL00377819 with conditions. Regards the IFI response, the DAFM described the site as a dry flat mineral site with no aquatic zones, with agricultural land between it and the nearest watercourses, and that while not inspected regards this application the site has been previously inspected by the same Inspector, c 1.5 years previous to hearing. The DAFM described an area of Ash within the proposal that had been affected by Chalara and how thinning is used to assist in this and referred to condition (h) of the licence. The Applicant described the background to the planting of the proposal and that all environmental procedures have been strictly adhered to by him

and that where possible work is done manually with extensive use of brash to protect roots and soil. The DAFM stated reasons were given for the decision to screen out the proposal for AA. The DAFM described a number of monuments in the surrounds, the buffer zones at planting, the referral to the DAFM Archaeologist and the licence conditions applied. There had been a previous thinning licence for the proposal with works undertaken c. 2012/2013.

In addressing the grounds of appeal the FAC considered the AA Screening. The Natura sites within a 15km radius of the proposal comprise the Comeragh Mountains SAC at c. 7.1 km, the Glendine Wood SAC at c. 11.3 km, the Lower River Suir SAC at c. 12.1 km, the Helvick Head SAC at c. 13.9 km, the Mid-Waterford Coast SPA at c. 4.1 km, the Dungarvan Harbour SPA at c. 12 km and the Helvick Head to Ballyquin SPA at c. 13.9 km. The nearest EPA marked watercourse the Garranturton R. and the Brenan R. flow to the Ballybanoge South R. a tributary of the Mahon and that river system goes to sea beside the Mid-Waterford Coast SPA at c. 9km (downstream distance) for which the SCIs comprise the bird species; Cormorant, Chough, Herring Gull, Peregrine, and wetlands habitats. The FAC is satisfied that the proposal is not a suitable habitat for these bird species and is sufficiently distanced from the SPA so as not to give rise to any likely effects on the SCIs and finds no issue with the AA screening. The evidence before the FAC is that there are no aquatic zones on the proposal site. Part of the Comeragh Mountains SAC is in the upper reaches of both the same catchment and sub-catchment as the proposal but for reasons of elevation, distance and absence of pathway the proposal can have no effect and the screening conclusions are considered sound. The FAC is satisfied on the basis of location, works and the absence of pathways that consideration of sites within a 15 km radius of the proposal was in order in this instance. The FAC is satisfied in this instance that none of the licence conditions are in mitigation of any likely effects on any Natura site, as none exist in this instance.

In the matter of the question 3 of the DAFM Certification referred to in the grounds of appeal, and having regard to the response on the appeal and the additional conditions on the licence, the FAC is satisfied the Inspector reviewed the referral responses and submissions received in relation to this project and the AA screening process. Also regards the question 4, again referred to in the appeal, the FAC is satisfied from the AA screening and the in-combination assessment that there was sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site.

The procedures adopted by the DAFM in their assessment are considered acceptable in this particular instance. Having regard to the nature and scale of the proposal, the characteristics of the surrounding area and other forestry projects listed by DAFM, the FAC concurs with the conclusion that there is no likelihood of significant effects on any Natura 2000 site arising from the proposed development in-combination with other projects or land uses in the area.

The EIA Directive 2011/92/EU, as amended by 2014/52/EU, sets out, in Annex I 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 are referred to in Annex I. 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



**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

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 felling of trees, 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).

The proposal is in a rural agricultural area, grassland farming predominant, some forestry, relatively sparse settlement pattern locally. The FAC acknowledges there will be some disturbance when thinning works are in progress but these by their nature will be temporary and are normal activities in a managed forest carried out under licence and with conditions to adhere to a series of requirements and guidelines. The conditions include that the licensee shall ensure that all felling and planting operations are carried out in accordance with Forestry and Water quality, Forest Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry and Aerial Fertilisation guidelines and the Code of Best Forest Practice -Ireland and the Irish National Forest Standard published by the DAFM. In conclusion the FAC does not consider that the licensed thinning would result in any likelihood of a significant effect on the environment.

In deciding to affirm the decision to grant the licence, the FAC considered that the making of the decision by the DAFM did not involve any serious or significant error or a series of errors or that the decision was made without complying with fair procedure. The FAC further concluded that the proposed development would be consistent with Government policy and good forestry practice.

Yours Sincerely

Pat Coman, on behalf of the FAC

