



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

26 February 2021

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[REDACTED]  
[REDACTED]

Our ref: 732/2020

**Subject:** Appeal in relation to felling licence TY16-FL0059

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and the Marine (DAFM) in respect of felling licence TY16-FL0059.

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 TY16-FL0059 was granted by the Department on 04 September 2020.

#### Hearing

An oral hearing of appeal 732/2020 was conducted by the FAC on 16 February 2021.

#### Attendees:

**FAC Members:** Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy and Mr Pat Coman

**Secretary to the FAC:** Mr Michael Ryan

**Applicant representatives:** [REDACTED]

**DAFM representatives:** Mr Frank Barrett and Ms Eilish Kehoe

#### 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 TY16-FL0059).

The proposal is for the clear-felling of 10.33 ha of Sitka Spruce, Japanese Larch, Lodgepole Pine (south coastal), Scots Pine given as planted 1933, and other broadleaves, these trees were planted 1986 to 1996. Proposed replanting is with 100% Sitka Spruce. The proposal is located at Rossadrehid, Co

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Tipperary on a relatively sloped site on the lower north facing elevations of the Galtee Mountains. The application seeks 0.52 ha of open space. The Underlying soil type is given as approximately 82%, Peaty Gleys & 18%, Podzols (Peaty), Lithosols, Peats. Proposal is within the Suir Catchment, the Suir\_SC\_090 Sub-Catchment, and the Aherlow\_060 waterbody (moderate status).

The DAFM referred the application to Inland Fisheries Ireland and to Tipperary County Council, and neither body responded.

Application included a harvest plan document and a pre-screening of 3 SAC Natura sites, identifying 24.07 ha of other clearfelling projects within 1.5 km and stating the harvest block is located within a water basin that has hydrological connectivity to an aquatic SAC. The applicants submitted a second pre-screening document to the DAFM dated 23 July 2020 which included there is an aquatic zone, the Rossadrehid Stream, present along the eastern side of the project area, which constitutes a hydrological link with the Lower River Suir SAC, located approximately 1.8km downstream of the project site. This aquatic zone runs south-north on the eastern side of the site, which flows north, into the Aherlow River approximately 1.8km away in hydrological distance. The Aherlow River is part of the Lower River Suir SAC. The pre-screening identified the Lower River Suir SAC (Site Code: 002137) at a distance of 1774 metres and a possible effect. An in-combination section identified 410 ha of clearfelling projects by the applicant and another 3.79 ha which are private projects. In addition, the applicant submitted a Natura Impact Statement (NIS) dated 24 July 2020 in respect of the Lower River Suir SAC which included required mitigations regards the EU site.

In processing the application the DAFM completed a Stage 1 Appropriate Assessment (AA) Screening on 24 August 2020 with reference to the provisions of Article 6(3) of the Habitats Directive, identifying Natura 2000 sites within 15km of the project lands and listing their Qualifying Interests (QIs) and Special Conservation Interests (SCIs), and assessing the possibility of effects on the Natura 2000 sites listed; Galtee Mountains SAC, Lower River Suir SAC, Moanour Mountain SAC and River Barrow and River Nore SAC. The following Natura 2000 sites were screened in for stage 2 AA; Moanour Mountain SAC, River Barrow and River Nore SAC and Lower River Suir SAC. The DAFM also conducted an in-combination assessment and concluded that the proposed development alone or in-combination with other plans or projects would not be likely to have a significant effect on any Natura 2000 site. An AA Determination (27 August 2020) confirmed the proposal under TY16-FL0059 is not directly connected with or necessary to the management of any European site, and was completed in respect of the Lower River Suir SAC. The AA Determination included as follows regards the other European sites being screened out;

- Galtee Mountains SAC IE0000646 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Moanour Mountain SAC IE0002257 - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- River Barrow and River Nore SAC IE0002162 - Due to the large downstream hydrological distance (> 100 km) that exists between the project area and this SAC.

The AA Determination set out a number of mitigations (a) to (i) and that works shall adhere to the Environmental Requirements for Afforestation, December 2016 (DAFM, 2016), Forestry Standards Manual (DAFM, 2015), Forest Harvesting & the Environment Guidelines (DAFM, 2000), Felling &



Reforestation Standards (v. Oct. 2019) (see Forest Service Circular 14 / 2019), Felling & Reforestation Policy (DAFM, 2017), Forestry and Otter guidelines (DAFM, 2009). The stated basis for the AA Determination is given as follows: *the medium 10 ha gently sloping site on peaty gleys is hydrologically connected to the Lower River Suir SAC 002137 by an aquatic zone that crosses the site. The project may affect freshwater species requiring good water quality and clean gravels for spawning, as well as otter moving upstream from the SAC along the riverbank. Although the SAC is designated for Freshwater Pearl Mussel, the site is outside the relevant catchment and there are no known downstream population of mussels. The required mitigation will protect the aquatic zone using standard sediment control measures, prevent disturbance from machinery along the aquatic zone and retain bankside habitat suitable for otter. Mitigation measures specified here will therefore ensure no adverse impacts on the integrity of the listed European Sites.*

The licence was issued subject to standard conditions (a) to (g) and additional conditions denoted (h) to (q), as set out on the licence, and valid until 31 December 2022.

There is a single appeal against the decision to grant the licence, the grounds include as follows;

- No EIA screening has ever been carried out
- It is necessary to establish if the planting of this forest complied with the law
- No AA Screening has been carried out according to the Directive and implementing Irish legislation

In response, the DAFM addressed the written grounds of appeal, the proposal has been subject to the DAFM's AA Screening for European sites within 15 km from the project. The DAFM identified the possibility of the project having a significant effect on a screened European site and AA was carried out for the Lower River Suir SAC. The potential for the project to result in impacts on the Special Conservation Interests of the Lower River Suir SAC was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts were described. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the Special Conservation Interests (SCIs) of the Lower River Suir SAC from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AA Determination ensure that the proposed felling and reforestation project TY16-FL0059 will not result in any adverse effect on any European Site. In relation to TY16-FL0059, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by DAFM. It was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect on the SCIs and Conservation Objectives of the Lower River Suir SAC and there is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects. The DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Determination Statement for TY16-FL0059.

The DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site. A felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM. The site-specific mitigations identified in the AA Determination Statement were attached as conditions of licence issued for felling and reforestation for TY16-FL0059.

The DAFM submits that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed).

Furthermore, an application for a licence to clear-fell and replant an established plantation forest does not constitute a change or extension of an earlier authorisation for that project [within the meaning of Point 13 of Annex II of the EIA Directive] (if such an authorisation was originally required), as the future clear-felling and replanting (being as it is a standard operational activity integral to many such projects) would have been envisioned and accounted for at time of the plantation forest's establishment as one of the main cyclical management options going forward.

On the other hand, there is also no requirement on a forest owner/forest manager to apply for a licence for clear-felling and replanting to continue to operate the forest. As set out inter alia in the Department's Felling and Reforestation Policy document (May 2017) there are a variety of different harvesting / management interventions available to owners/managers to aid them in their management of the forest and the fulfilment of the objectives they have for it, including for example Continuous Cover Forestry (CCF) which involves the periodic felling of portions of the trees from the canopy to promote the regeneration of young trees.

The FAC held an Oral Hearing on 16 February 2021. The parties were invited to attend in person or to join remotely. The DAFM and the Applicant participated remotely. The Appellant did not participate. The FAC sat in person and remotely at this hearing. At the hearing the DAFM set out the processing undergone in issuing the licence, the application was desk assessed, there were referrals to the Local Authority and to Inland Fisheries Ireland with no response. An AA Screening was undertaken by the DAFM of European Sites within a 15 km radius of the proposal, and the project was screened in for AA. An AA Determination was completed and reviewed by an Ecologist and mitigations therein were applied as conditions to the licence. The DAFM clarified the Lower River Suir SAC was screened in, and there was focus on the Qualifying Interests and Conservation Objectives of that site to ensure no deleterious effect and to maintain the integrity of the European Site. This was prior to any decision to issue the licence. The DAFM stated there was no deforestation involved. The Applicants described the information submitted with the application including maps, a pre-screening and details of environmental and safety measures in a Harvest Plan. The Applicants stated that the site comprises a peaty gley soil, is within the Aherlow\_060 sub-catchment, the Muskerry stream flows north from the proposal some 2.7km before entering the Lower River Suir SAC. The applicants confirmed the Galtee Mountains SAC is upslope from the proposal. The applicants confirmed the NIS was submitted based on their own analysis on the pre-screening and was not requested by the DAFM. The DAFM confirmed



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that while the Inspector had screened in 3 European Sites on the AA Screening, and would have had use of a series of tables and GIS layers in undertaking the AA Screening. The Ecologist undertook a review of the screening when compiling the AA Determination. The Ecologist would have been provided with the AA Screening, the applicant's NIS and a draft AA Determination. The DAFM referred to Section 2 of the AA Determination as the screening element by the Ecologist. In response to questions the DAFM confirmed there was no formal documenting of the review of the initial screening. The applicants stated there were parallels between the NIS and the AA Determination and sites screened in or out could be reconsidered in them.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that a screening in the context of the EIA Directive was not undertaken and did the first planting comply with the law. There is no evidence before the FAC that the initial planting was not in compliance with the law. The FAC's remit is to decide the appeal against TY16-FL0059. The EU EIA 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 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 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). The FAC considers the licence issued is for the felling and reforestation of 10.33 ha and does not consent to any change of land use. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

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 or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to four Natura 2000 sites and completed an AA Determination in respect of one of those sites for which an NIS had been provided by the applicant, all be it prior to any AA Screening by the competent authority. The FAC has noted that the reasoning in the AA screening completed by the DAFM Inspector when screening in the Moanour Mountain SAC was a possible effect due to the fact that direct hydrological connectivity exists between the project area and the SAC, and for the River Barrow and River Nore SAC there was a possible effect due to the direct hydrological connectivity exists between the project area and this SAC. Two sites subsequently screened out by the Ecologist at the stage 2 AA Determination. While the NIS provided by the applicants is comprehensive regards the Lower River Suir SAC, no AA Report is filed for any of

the European Sites that were screened in by the Inspector and there is no documented review by the Ecologist of the AA Screening undertaken by the Inspector.

While the FAC notes that Moanour SAC is not downstream from the proposal, and is an elevated SAC on Slievenamuck Hill c. 9.2 km distance northwest from the proposal across the Glen of Aherlow, and the River Barrow and River Nore SAC is at a downstream distance of c. 115 km at an estuary point, there remains a deficit in the screening and AA process in their regard that should have been resolved prior to any AA Determination. The FAC considers this to be a significant error in the process that led to the decision to award the licence TY06-FL0059.

In the above circumstances, the FAC concluded that the decision of DAFM should be set aside and remitted to the Minister to carry out a new AA Screening under Article 6(3) of the Habitats Directive, for any likely significant effects of the proposed development on Natura sites, on its own or in combination with other plans and projects, and where necessary an AA before making a new decision in respect of the licence.

Yours Sincerely

A large black rectangular redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC