



10 February 2021

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Tree Felling Licence approval TFL00395019.

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

Tree Felling Licence TFL00395019 was granted by the Department on 10 December, 2019.

Hearing

A hearing of appeal 004/2020 was conducted by the FAC on 9 November, 2020.

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Ms. Bernadette Murphy.

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to set aside & remit the decision to grant this Tree Felling Licence (Reference TFL00395019).

The proposal is for harvesting activity in two blocks of forestry adjacent to one another with a species composition of Sitka spruce/Japanese Larch mixture (14.18ha) and Norway spruce (6.72ha) in Tonyclea, Co. Monaghan. The operations comprise 12.87ha of thinning and 7.43ha of clearfelling (including subsequent replanting). The applicant indicated that both thinning and clearfell operations were to be carried out in 2019.

The project area borders a recently clearfelled plantation to the west, agricultural land with buildings to the south and scrub/heather land alongside young forestry to the north and is not adjacent to a public road. Soils are brown podzolics in nature and the slope is predominantly flat to moderate (<15%). The project is located within the WFD catchment of Lough Neagh & Lower Bann and sub-catchment of Mountain Water (SC_03_020).

The project lies wholly within the Slieve Beagh SPA (SPA code:004167) and is in a designated 'Red zone' for Hen Harrier (*circus cyaneus*). The stream found adjacent and to north of the project area is hydrologically connected to the Mountainwater River. There are three other designated Natura 2000 sites within a 15km radius of the project (all located within Northern Ireland). These are Magheraveely Marl Loughs SAC (UK9020302), Slieve Beagh-Mullaghfad-Lisnaskea SPA (UK0016622) and Slieve Beagh SAC (UK0016622) at distances of 10 kms, 3.4 kms and 4.5 kms, respectively.

DAFM referred the licence to Inland Fisheries Ireland (IFI) and Monaghan County Council for consultation. The views of NPWS were sought in relation to this licence but no responses are on file. Comments were received from IFI to the effect that the project area is adjacent to a tributary of the Mountainwater River which has a hydrological connection downstream to a valuable Brown Trout fishery. They requested that protection measures should be put in place to ensure that no deterioration of water quality would arise from harvesting operations. This included a suitable buffer zone and setbacks to be put in place during harvesting and replanting that adhere to all guidelines for such. Monaghan County Council referred solely to that fact that the site lies within the Slieve Beagh SPA, which is a Natura 2000 site designated under EU Habitats Directive (1992) and Birds Directive (1979).

On 11/10/2019 the Forest Service District Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. One Natura 2000 site (Slieve Beagh SPA) was identified along with its qualifying interests and an assessment was made to determine if the proposed development would be likely to have a significant effect thereon.

The Assessment concluded that the activity could be licenced on the basis that the project would not be likely to have a significant effect on the SPA or its qualifying interests, due to the following:



- Mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures the Forestry Standards Manual, Standards for Felling and reforestation.
- The timing of operations to avoid Hen Harrier breeding season.

DAFM issued a licence on 10/12/2019 together with the standard felling licence conditions and an additional condition specifying that all operations must take place outside of the Hen Harrier breeding season.

There is one appeal against the decision. The grounds relate to the appropriate assessment screening undertaken by the DAFM and suggest that an appropriate assessment should have been undertaken. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that in this case an appropriate assessment was legally required. It is further submitted 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 a site. It is suggested that a decision must comply with Commission notice C (2018) 7621. The grounds contend that the Irish Courts have interpreted the requirements for appropriate assessment screening in *Kelly v An Bord Pleanála and others* 2013 802 JR 25/07/2014 and goes on to quote from that judgement.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the licence application had been processed according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time. The Appropriate Assessment Guidelines was later updated (05/11/2019) and according to DAFM if applying the new guidelines the site would now be screened in due to a potential for an unknown effect on the Qualifying Interest of the SPA due to the proposed activities. The file does not contain any revised Appropriate Assessment Screening submitted as part of the inspector commentary on the appeal.

The FAC had regard to the record of the decision under appeal and the submitted grounds. There is no evidence before the FAC regarding other plans and projects that might have been considered in the appropriate assessment screening, or may be present in the area. The FAC notes that the sites and Qualifying Interests of UK Natura 2000 sites were also not considered and that DAFM itself refers to a possible change in outcome of the Screening process if the project was reassessed according to current guidelines, although the evidence for this conclusion is not furnished.

The FAC cannot therefore determine whether the appropriate assessment screening, undertaken by the DAFM and referred to in the grounds of appeal, was sufficient to conclude that there is no likelihood of the proposal resulting in a significant effect on a European site itself or in combination with other plans and projects. The FAC is satisfied that this constitutes a significant error and is therefore setting aside the decision and remitting it to the Minister for the appropriate assessment screening to be undertaken and documented, to include a consideration of all relevant Natura 2000 sites, plans and projects in combination with the proposal.

Yours sincerely

Mr. Myles Mac Donncadha (on behalf of the FAC)