

[REDACTED]



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

15 February 2021

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 Felling licence TFL00362219.

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 TFL00362219 was granted by the Department on 05/11/2019.

#### Hearing

A hearing of appeal 374/19 was conducted by the FAC on 09/11/2020.

**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 and remit the decision to grant this licence (Reference TFL00362219).

The proposal is for harvesting activity in two blocks of forestry (Plot 1 - 1.66ha & Plot 2 - 0.46 ha) with a species composition of Sitka Spruce in Tonyclea, Co. Monaghan. The operations comprise of clearfelling with subsequent replanting of both with 85% Sitka Spruce and 15% Birch. The applicant indicated that the clearfell operations were to be carried out in 2019.

The northern boundary of Plot 1 is adjacent to the public road and agricultural land borders to the East and West. This plot adjoins a larger forest plantation to the South. The southern boundary of Plot 2 is adjacent to the public road and rough scrubland adjoins on the other 3 sides. This plot is located a short distance to the East of Plot 1 at the opposite side of the public road. A residential property is located on a plot opposite to the proposal.

Soils are described as predominately podzolic in nature and the slope as predominantly flat to moderate (<15%). The project is located within the WFD catchment of Lough Neagh & Lower Bann (03) and sub-catchment of Mountain Water (SC\_10\_03\_02).

Plot 1 lies wholly within the Slieve Beagh SPA (SPA code:004167) while Plot 2 is not with the SPA. The proposal is described on the licence as being located in a designated 'Red zone' for Hen Harrier (*circus cyaneus*). No watercourses have been identified in or adjacent to the plots. 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).

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 areas are adjacent to a tributary of the Mountainwater River important to fisheries as it supports stocks of Brown Trout and other species and has a water quality status of good. They requested that protection measures should be put in place to ensure that no deterioration of water quality would arise from harvesting operations. IFI requested that a suitable buffer zone be put in place during replanting. Adherence to all guidelines for both operations was also sought by IFI. Monaghan County Council referred 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). The County Council indicated that no planning permissions or tree preservation orders pertain and that parts of the proposal areas are prone to pluvial flooding (as per OPW maps).

The Forest Service District Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive. The Appropriate Assessment Screening protocol used examined designated Natura 2000 sites within a 15km

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radius of the project within the Republic Of Ireland. 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 05/11/2019 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. The licence also specifies that adherence to Standards for Felling and Reforestation (October 2019) and the Forestry Standards Manual (Specifically - Appendix 21- Hen Harrier) is required. It is also a condition of the licence that a public road setback of 10m for broadleaves and 20m conifers is implemented.

There is one appeal against the decision. The grounds contend that based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives. The submission quotes judgments regarding the test for Appropriate Assessment Screening suggesting that there is no need to establish such an effect merely that there may be such an effect and that the threshold at the first stage of Article 6(3) is a very low one, operating merely as a trigger, in order to determine whether an Appropriate Assessment must be undertaken. The Appellant submits that if mud was to enter the lakes it could have an effect on the SAC/SPA and that the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect.

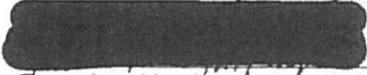
In a statement to the FAC, DAFM responded to the grounds of appeal indicating that this project was screened for Appropriate Assessment under older guidelines than current guidelines. DAFM also state that the proposed harvesting operations are partially within Slieve Beagh SPA but not within Hen Harrier Red Area. DAFM conclude by saying that if the project was screened for Appropriate Assessment using the current standards the project would be 'screened in' and Appropriate Assessment would be required.

The FAC had regard to the record of the decision under appeal and the submitted grounds. 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 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 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 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 felling and subsequent replanting 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).

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 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 also notes conflicting evidence on file regarding the location of the proposal relative to a Hen Harrier Red Area.

In the circumstances outlined above, the FAC is not satisfied that the Appropriate Assessment screening procedures would allow the DAFM reach the conclusion that there is no likelihood of the proposal itself resulting in a significant effect on a European site. Furthermore, based on the evidence before it, the FAC cannot determine that a sufficient Appropriate Assessment screening was undertaken by the DAFM to support the conclusion that there was no likelihood of the proposal resulting in a significant effect on a European site 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

A black rectangular redaction box covering the signature of Bernadette Murphy.

Bernadette Murphy, (on behalf of the FAC)