



29 July 2020

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

[REDACTED]  
[REDACTED]

**Subject: Appeal 363/2019 regarding licence MN01 FL0074**

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

#### **Background**

Felling licence MN01 FL0074 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 30 October 2019.

#### **Hearing**

A hearing of appeal 363/2019 was held by the FAC on 22 July 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Gallagher, Mr. Pat Coman, Mr. Vincent Upton

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including the application details, processing of the application by the Department of Agriculture Food and the Marine (DAFM), the grounds of appeal, and all submissions made before deciding to confirm the decision to grant the licence (Reference MN01 FL0074).

The proposal at Kilanny, Co Monaghan comprises 3.91 ha for clear-felling and replanting. The forest for felling consists primarily of Sitka Spruce with a small amount of Japanese Larch and minute amount of alder and was established in 1967. Replanting will be with 100% Sitka Spruce. The underlying soil type is given as approx. 31.6 % Basin Peats and Blanket Peats, 40.2% Surface water Gleys and Ground water Gleys and & 28.2% Renzinas and Lithosols. The current habitat is described as coniferous forest. The proposal site is mostly triangular and is surrounded on 2 sides by the Kilanny river (EPA data) and therefore has

extensive aquatic zone. The site is close to the NI border, is in the Lough Neagh and Lower Bann Catchment and the Blackwater (Augher) sub-catchment.

There are additional conditions on the licence related to the aquatic zones, and include;

- Apply a 10m water set back on both sides of aquatic zones and exclude all machine traffic from these areas.
- Interceptor drains should be installed along the outer edge of water set back to intercept sediment and allow drain water to filter slowly through the vegetation in the water-setback zone.

The full conditions are specified on the licence.

There is a single appeal against the decision to grant the licence. The grounds of appeal include 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, and that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in *Kelly -v- An Bord Pleanála* [2014] IEHC 400 (25 July 2014) "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." Extract is quoted from the judgement section 26. The grounds also if mud was to enter the lakes it could have an effect on the SAC/SPA and the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. No lakes were identified by the appellant.

In a response to the appeal DAFM stated that for the purposes of 42(16) of S.I.477 / 2011, the DAFM has determined that the project will not adversely affect the integrity of any European sites. That as per the Appropriate Assessment Procedure SOP applicable at the time (v. 09Sept19), screening for Appropriate Assessment was carried out, focusing on Natura sites within a 15 km zone around the proposed clearfelling area (or 'Harvest Block') detailed in the Tree Felling Licence application. Also, having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives in the context of possible sources and pathways for impact, the DAFM deemed that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any of those Natura sites. As such, the clearfell project was screened out by DAFM and an Appropriate Assessment was deemed unnecessary.

The DAFM have submitted an Appropriate Assessment Screening, dated 08 May 2020, to the FAC and listed other plans/projects under an in-combination assessment, these were circulated to the parties. This new screening by DAFM concludes that there is no likelihood of significant effects on European sites from the proposal on its own or when considered in-combination with other plans and projects.

In the absence of adequate assessment of the in-combination listed plans and projects, the FAC carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive. The screening undertaken is available on the public file. The FAC considered that having regard to the nature and limited scale of the proposal and the characteristics of the receiving environment, that all Natura 2000 sites within a 15km radius should be included in a screening for Appropriate Assessment and that it could be concluded, at the outset, that there would be no likelihood of significant effects on designated sites



outside of this radius. The FAC carried out a screening assessment on Natura 2000 sites within a 15km radius of the project site without considering any measures that could be considered as mitigation measures designed to avoid or reduce impacts on any Natura 2000 site. There are 3 Natura 2000 sites within 15km radius and these, together with their separation distances are as follows: The Slieve Beagh SPA (c. 2.5 km), Slieve Beag Mullaghfad Lisnaskea SPA (c. 3.7 km) and Slieve Beag SAC (c. 5.5 km). In addition to the foregoing Kilroosky Lough Cluster SAC is at 22.8km but in the absence of any hydrological connection with the proposal site there is no likelihood of any significant effects on the site from the proposal. Also the Kilanny river flows around the proposal and heads north to join a Blackwater tributary flowing east and then north east eventually to the Lough Neagh and Lough Beg SPA in Northern Ireland at a hydrological distance of more than 50km across relatively flat terrain and over which any possible outflows from the proposal, without conditions, would be well dissipated and would not in any way be likely to give rise to significant effects on the European site.

The Slieve Beagh SPA and the neighbouring Slieve Beag Mullaghfad Lisnaskea SPA comprise c. 11396 Ha and are upland from the proposal. The Hen harrier is the sole qualifying interest to both sites. The site synopsis for Slieve Beag SPA includes that the mix of forestry and open areas provides optimum habitat conditions for this rare bird, which is listed on Annex I of the E.U. Birds Directive. The site synopsis also states that the early stages of new and second-rotation conifer plantations are the most frequently used nesting sites, though some pairs may still nest in tall heather of unplanted bogs and heath, and that Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank. Also, birds will often forage in openings and gaps within forests. The proposal to clearfell and replant is of a small scale and not considered to be an impediment to the interests of these SPAs. The current coniferous habitat is not considered a suitable nesting and foraging ground. While the replanted forest has the potential to provide suitable nesting habitat, given the scale of the proposal and its degree of separation this could not be considered likely to result in a significant effect, positive or negative, on the SPA and its conservation objective. The Slieve Beag SAC is to the north west and west of Slieve Beag SPA and at altitudes up to 433m is above and separated from the proposal not alone by distance but by elevation, and there is no possibility of any significant effect on the SAC or its interests arising from the proposal.

None of the licence conditions are considered to be mitigation measures in respect of any European site in this instance.

Other plans and projects were considered in the screening and the FAC is satisfied there is no likelihood of significant effects on any European sites arising from the proposal when considered in-combination with other plans and projects. The FAC concluded there is no likelihood of significant effects on any European sites arising from the proposal when considered on its own or in-combination with other plans and projects.

The licence concerns the felling and replanting of trees with no change of land use and does not fall within the classes of development covered by the Environmental Impact Assessment Directive (2011/92/EU as amended by 2014/52/EU Directive) or considered for EIA in the Forestry Regulations 2017. In carrying out

its examination of environmental effects, the FAC considered the details of the proposed development, the characteristics of the receiving environment, and the nature of effects normally associated with felling, reforestation and management of commercial forestry. Direct effects would include haulage, possible run-off and possible storage of felled wood awaiting transportation, whereas indirect effects would include noise and general disturbance. All of these impacts would be limited in scale and intensity and would be short-term, intermittent and would not be significant. There would be some visual impact which would change over time and for this project would be localised and not significant. Impacts on the Killanny and Blackwater would be minimal, and reduced based on the standard conditions and specific conditions applied, also More Lough is c. 718m from the proposal but is not hydrologically connected as a stream flowing from the lake joins to the Killanny river north of the proposal and flows to the north. There are windfarms in the wider area but no significant cumulative effects on the environment would arise with these and the proposed development. Overall, the FAC concluded that the proposed felling and reforestation by itself or in combination with other projects and land uses in the area, would not be likely to have significant effects on the environment.

In deciding to confirm the decision to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



Pat Coman on behalf of the Forestry Appeals Committee



## Appropriate Assessment Screening and examination in respect of EIA regard MN01 FL0074 (appeal 363-19)

### Background

The proposal comprises 3.91 ha for clearfell and replanting at Kilanny Co Monaghan. The forest consists primarily Sitka Spruce with a small amount of Japanese Larch and minute amount of alder 1% and was established in 1967. Replanting will be with 100% Sitka Spruce.

The proposal site is mostly triangular and is surrounded on 2 sides by the Kilanny river (EPA data) and therefore has extensive aquatic zone. The site is close to the NI border, is in the Lough Neagh and Lower Bann Catchment and the Blackwater (Augher) sub-catchment.

The underlying soil type is given as approx. 31.64%, Basin Peats, Blanket Peats (some) & 40.22%, Surface water Gleys, Ground water Gleys & 28.24%, Renzinas, Lithosols. The current habitat is described as coniferous forest

There are additional conditions on the licence related to the aquatic zones, and include;

- Apply a 10m water set back on both sides of aquatic zones, and exclude all machine traffic from these areas.
- Interceptor drains should be installed along the outer edge of water set back to intercept sediment and allow drain water to filter slowly through the vegetation in the water-setback zone.

### AA Screening

The FAC is satisfied that the proposed felling would not be directly connected with, or necessary to, the management of any Natura 2000 site.

### European sites

Having regard to the nature and limited scale of the proposal and the characteristics of the receiving environment, the FAC considered that all Natura 2000 sites within a 15km radius should be included in a screening for Appropriate Assessment and that it could be concluded, at the outset, that there would be no likelihood of significant effects on designated sites outside of this radius. The FAC carried out a screening assessment on Natura 2000 sites within a 15km radius of the project site without considering any measures that could be considered as mitigation measures designed to avoid or reduce impacts on any Natura 2000 site. There are 3 Natura 2000 sites within 15km radius and these, together with their separation distances and qualifying interests are as follows:

Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
004167	Slieve Beagh SPA	2558.42m	<b>Birds</b> Hen Harrier
UK9030302	Slieve Beagh Mullaghfad Lisnaskea SPA	3.7km	<b>Birds</b> Hen Harrier
UK0016622	Slieve Beagh SAC	5.5km	<b>Habitats</b> ; Active Blanket Bog 1112Ha, European Dry Heaths 80 ha, Natural Dystrophic lakes and pools ~15 ha.

In addition to the foregoing Kilroosky Lough Cluster SAC is at 22.8km with qualifying interests of Hard Mesotrophic Waters, Calcareous fens and Alkaline fens. However, Kilroosky Lough cluster has no hydrological connection with the proposal site and there is no likelihood of any significant effects from the proposal.

The Kilanny river flows around the proposal and heads north to join a Blackwater tributary flowing east and then north east eventually to the Lough Neagh and Lough Beg SPA in Northern Ireland, comprising 3 eutrophic water bodies and wetlands, and is an important site for the Whooper Swan, the common tern and other waterfowl such as the Great Crested Grebe, Pochard and many others. The SPA is a hydrological distance of more than 50km from the proposal across relatively flat terrain and over which any possible outflows from the proposal, without conditions, would be well dissipated and would not in any way be likely to give rise to significant effects on the European site.

The Slieve Beagh SPA is upland from the proposal and contains c. 3455 Ha and the neighbouring Slieve Beag Mullaghfad Lisnaskea SPA comprises c. 8941 Ha and these combine to 11396 Ha. The Hen harrier is the sole qualifying interest to both sites. The site synopsis for Slieve Beag SPA includes that the mix of forestry and open areas provides optimum habitat conditions for this rare bird, which is listed on Annex I of the E.U. Birds Directive. The early stages of new and second-rotation conifer plantations are the most frequently used nesting sites, though some pairs may still nest in tall heather of unplanted bogs and heath. Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank. Birds will often forage in openings and gaps within forests. The proposal to clearfell and replant is of a small scale and not considered to be an impediment to the interests of these SPAs, and the current habitat is considered unsuitable to nesting and foraging of the species. While the replanted forest has the potential to provide suitable nesting habitat, given the scale of the proposal and its degree of separation this could not be considered likely to result in a significant effect, positive or negative, on the SPA and its conservation objective.

The Slieve Beag SAC is to the north west and west of Slieve Beag SPA and at altitudes up to 433m is above and separated from the proposal not alone by distance but by elevation, and there is no possibility of any significant effect on the SAC or its interests arising from the proposal.

None of the licence conditions are considered to be mitigation measures in respect of that particular or any other European site.

The project on its own has no likelihood of having a significant effect on any of the European sites.

### ***In combination***

Other projects considered include two dwelling planning permissions from 2017-2019, a dairy farm development from 2015, and two wind turbine related developments – County Council reference 1041, each of these is at a sufficient remove from the proposal so as not to give rise to any possibility of combined effects on a European site. In the immediate area there are clusters of forestry some of which are large but the immediate area is predominantly agricultural, forestry is a predominant feature on the foothills of Slieve Beag to the west and north-west of the proposal. DAFM have provided licence numbers for 9 afforestation licences, 2 private felling licences and 11 Coillte felling licences from 2017 onwards which are mostly at a remove from the proposal, as well as 3 forest road licences. Currently an application exists for 17.36 ha of afforestation in an area straddling Killanny, Aghamackalinn and Dernadarrieff to the east of the proposal and no licence is yet



issued, this proposal comprises green land and is a different habitat to the proposal and the FAC considers this project will not combine with the proposal to create any likelihood of significant effects on a European site.

The FAC is satisfied there is no likelihood of significant effects on any European sites arising from the proposal when considered in-combination with other plans and projects.

### ***Conclusion***

The FAC is satisfied there is no likelihood of significant effects on any European sites arising from the proposal when considered on its own or in-combination with other plans and projects.

### **Examination in respect of the Environment**

The proposed felling and reforestation does not fall within a class of development to which the EIA Directive applies and with replanting there is no change of land use, the proposed operation does not include any works which would be 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 carrying out its examination of environmental effects, the FAC considered the details of the proposed development, the characteristics of the receiving environment, and the nature of effects normally associated with felling, reforestation and management of commercial forestry. Direct effects would include haulage, possible run-off and possible storage of felled wood awaiting transportation, whereas indirect effects would include noise and general disturbance. All of these impacts would be limited in scale and intensity and would be short-term, intermittent and would not be significant. There would be some visual impact which would change over time and for this project would be localised and not significant. Impacts on the Killanny and Blackwater would be minimal, and reduced based on the standard conditions and specific conditions applied, also More Lough is c. 718m from the proposal but if not hydrologically connected as the lake is exited by a stream that joins to the Killanny river north of the proposal and flows to north. There are windfarms in the wider area but no significant cumulative effects on the environment would arise with these and the proposed development. Overall, the FAC concluded that the proposed felling and reforestation by itself or in combination with other projects and land uses in the area, would not be likely to have significant effects on the environment.

Pat Coman on behalf of the FAC

28 July 2020

