



30 July 2020

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Subject: Appeal 384/19 regarding licence LM08 FL0144

Dear [REDACTED]

I refer to the 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

Licence LM08 FL0144 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15 November 2019.

Hearing

A hearing of appeal 384/19 was held by the FAC on 23 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 application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision to grant this licence (Reference LM08 FL0144).

The proposal is for 5.14ha of clear-fell and reforestation of 4.88ha with 100% Sitka spruce at Tullinwanna, Tullynacross and Tullynamoyle, County Leitrim. The current mature forest was planted in 1960 and is comprised of Sitka spruce and a small area of Norway spruce. At replanting 0.26 ha will be left unplanted as open space. The underlying soils are stated to be peaty gleys. The site is in a steep ravine and has a watercourse (the Drumderg) flowing southwards through it. This river skirts the boundary of the Boleybrack SAC to the north of the project site. Boleybrack Mountain appears to be a watershed with streams flowing both north and south from it. The project site forms part of a larger area of forestry and the wider area is extensively forested, (including forestry roads) at differing stages of maturity. Boleybrack

Mountain SAC is to the north and the area between the project site and the boundary of the SAC is forested. There is a windfarm to the north-east of the project site in close proximity to a boundary of the Boleybrack SAC.

The application identifies 4 Natura 2000 sites within a radius of 15km of the project site – Cuilcagh-Anierin Uplands SAC (11793m), Arroo Mountain SAC (14058m), Lough Gill SAC (6007m) and Boleybrack Mountain SAC (556m). It is stated that the harvest block is not within a water basin with hydrological connectivity to an aquatic SAC. It is stated that there are other licences for clearfell of 2.06ha within 1.5km of the site.

The DAFM referred the application to Leitrim County Council. The local authority raised no objection in principle subject to conditions relating to archaeological requirements, liaison with the Department of Culture and Heritage and requirements for the protection of receiving waters. It is suggested that there was also a referral to the DAFM archaeologist but there is no response on file.

The Licence was issued on 15th November 2019 and is exercisable until 31st December 2022. It is subject to standard conditions, with additional conditions in respect of the protection of receiving waters including a setback of 10m on both sides of aquatic zones, provision of silt traps and controlled use of extraction routes.

There is a single appeal against the decision to grant the Licence. The grounds contend that, based on the information supplied it is not possible to make a decision in accordance with the requirements of the Habitats and EIA Directives. There was no proper assessment and no assessment of cumulative impacts. Reference is made to Court judgments. It is suggested that if mud was to enter lakes this could cause an effect on SAC/SPA and the 15km distance is not relevant as the project could have an effect.

In response the DAFM state that Screening was carried out on Natura 2000 sites within 15km and that there is no possibility of a significant effect on any screened site. It is suggested that any sediment or mud entering a lake is highly unlikely to move downstream to any SAC/SPA and that the lake would act as a sediment trap.

The DAFM submitted a revised Appropriate Assessment screening form to the FAC (undated), and this was circulated to the parties. The screening identifies 4 Natura 2000 sites within 15km, namely Boleybrack Mountain SAC, Lough Gill SAC, Cuilcagh-Anierin Uplands SAC and Arroo Mountain SAC. It concludes that there is no possibility of a significant effect on any of the listed sites for reasons relating to the downstream location of the project site in respect of Boleybrack Mountain SAC, the absence of hydrological connectivity and pathway to Lough Gill SAC and Arroo Mountain SAC, and location within a different waterbody catchment with no upstream connection and no pathway to Cuilcagh-Anierin Uplands SAC. In terms of in-combination effects non-forestry projects include one-off dwellings, windfarms and agricultural buildings. An extensive list of forestry projects is also supplied.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the

Habitats Directive (92/43/EEC). The report, dated 7th July 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

The report notes that there is no evidence that the proposed clearfell is necessary for, or connected to, the management of any European site and the FAC concurs with this finding. The report includes a screening of all SACs within a 15km radius and all SPAs within a 20km radius. It concludes that the following can be screened out for Appropriate Assessment:

- Lough Gill SAC
- Cuilcagh-Anierin SAC
- Arroo Mountains SAC
- Sligo/Leitrim SPA
- Lough Arrow SPA

In respect of Boleybrack Mountain SAC, the report concludes that, based on the information available, there is potential for significant direct and indirect effects on the site due to the proximity of the project site, the potential extension of the qualifying interests from the SAC into buffer zones between the designated site and the project site, the use of the SAC for nesting and foraging of the Golden Plover and Hen Harrier respectively, and the use of the SAC as a feeding habitat for other bird species. The report quotes from the Site Synopsis for the Boleybrack SAC which makes particular reference to the Golden Plover and Hen Harrier, both Annex I species.

Having regard to the differing conclusions of the DAFM and those contained in the consultant's report, particularly in respect of Boleybrack Mountain SAC, the FAC carried out a screening in accordance with the provisions of Article 6(3) of the Habitats Directive and an examination of environmental effects, and these are contained in the public file. The FAC concluded that, having regard to the nature and scale of the proposal, screening should include all Natura 2000 sites within a 15km radius. The FAC concluded that there would be no possibility of significant effects on any Natura 2000 site, having regard to the conservation objectives for the sites. In deciding not to accept the conclusion of the consultant's report in respect of Boleybrack Mountain SAC, the FAC, in addition to carrying out its own screening, took regard of the following:

1. The project lands do not contain any of the habitats for which the SAC is designated.
2. The project lands do not provide any habitat suitable for foraging or the nesting of Annex I bird species
3. The qualifying interests for the SAC are specified and do not include any species, including bird species
4. There is no evidence that the habitats for which the SAC is designated extend into the area intervening between the project lands and the SAC. The proposal would take place in a mature, coniferous forest that is c.60 years old.
5. The project lands are downstream from the SAC and there is no hydrological pathway for any significant impacts arising on any of the qualifying interests of the SAC
6. Any impacts arising in terms of noise and disturbance would be limited, of short-term duration and not of significance in terms of impact on any Natura 2000 site
7. While the wider area is extensively forested, it is at different stages of maturity and any impacts from noise and disturbance would not be cumulative.

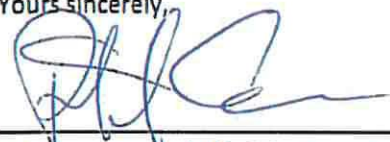
The FAC concluded that the proposed development alone, or in-combination with other plans and projects would not have a significant effect on any Natura 2000 site, having regard to the conservation objective(s) for the site.

The FAC examined the proposed development for potential environmental effects. The proposed felling and reforestation do not fall within a class of development to which the EIA Directive applies, and the proposed operation does not include works which, by themselves, 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 a visual impact which would change over time; this would be localised and not significant. Any impacts from run-off into the Drumderg would be limited due to the nature and scale of the proposed development, in addition to the licence conditions regarding the management of operations and would not be significant. Due to the hydrological separation distance any material reaching Belhavel Lough would be naturally diluted and deposited. 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 of the Minister to grant the Licence the FAC considered 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

LM 08-FL0144

Proposed development and location

The proposal is for 5.14ha of clearfell and reforestation of 4.88ha with 100% Sitka spruce at Tullinwanna, Tullynacross and Tullynamoyle, County Leitrim. The current mature forest was planted in 1960 and is comprised of Sitka spruce and a small area of Norway spruce. At replanting 0.26 ha will be left unplanted as open space. The underlying soils are stated to be peaty gleys. The site is in a steep ravine and has a watercourse (the Drumderg) flowing southwards through it. This river skirts the boundary of the Boleybrack SAC to the north of the project site. Boleybrack Mountain appears to be a watershed with streams flowing both north and south from it. The project site forms part of a larger area of forestry and the wider area is extensively forested, (including forestry roads) at differing stages of maturity. Boleybrack Mountain SAC is to the north and the area between the project site and the boundary of the SAC is forested. There is a windfarm to the north-east of the project site in close proximity to a boundary of the Boleybrack SAC.

The application identifies 4 Natura 2000 sites within a radius of 15km of the project site – Cuilcagh-Anierin SAC (11793m), Arroo Mountain SAC (14058m), Lough Gill SAC (6007m) and Boleybrack Mountain SAC (556m). It is stated that the harvest block is not within a water basin with hydrological connectivity to an aquatic SAC. It is stated that there are other licences for clearfell of 2.06ha within 1.5km of the site.

Appropriate Assessment screening

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

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 4 Natura 2000 sites within 15km radius and these, together with their separation distances and qualifying interests are as follows:

Boleybrack Mountain SAC (298m direct separation)

Natural dystrophic lakes and ponds

Northern Atlantic wet heaths with *Erica tetralix*

European dry heaths

Molinia meadows on calcareous, peaty or clayey-silt-laden soils

Blanket bogs (* if active bog)

Lough Gill SAC (6164m direct separation)

Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites)

Old sessile oak woods with Ilex and Blechnum in the British Isles

Alluvial forests with Alnus glutinosa and Fraxinus excelsior

White-clawed Crayfish

Sea Lamprey

Brook Lamprey

River Lamprey

Salmon

Otter

Cuilcagh-Anierin Uplands SAC (11608m direct separation)

Oligotrophic waters containing very few minerals of sandy plains

Natural dystrophic lakes and ponds

Northern Atlantic wet heaths with Erica tetralix

European dry heaths

Alpine and Boreal heaths

Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)

Blanket bogs (* if active bog)

Transition mires and quaking bogs

Petrifying springs with tufa formation

Siliceous scree of the montane to snow levels

Siliceous rocky slopes with chasmophytic vegetation

Slender Green Feather-moss

Arroo Mountain SAC (13949m direct separation)

Northern Atlantic wet heaths with Erica tetralix

European dry heaths

Alpine and Boreal heaths

Blanket bogs (* if active bog)

Petrifying springs with tufa formation (Cratoneurion)

Calcareous and calcshist screes of the montane to alpine levels

Calcareous rocky slopes with chasmophytic vegetation

While the Drumderg River skirts the Boleybrack Mountain SAC and links to the project site, the latter is downstream at a hydrological distance of approximately 500m. Boleybrack Mountain SAC covers an area of 4,242.3 ha and the qualifying interests for this SAC are habitats with no species listed. The Drumderg River also connects to Lough Gill at a hydrological distance of 11722m but passes through Belhavel Lough (2km in length from inflow to outflow). The qualifying interests for Lough Gill SAC include both habitats and species. There is no direct hydrological connectivity from the project site to Cuilcagh-Anierin Uplands SAC or the Arroo Mountain SAC. The Cuilcagh-Anierin Uplands SAC drains into the Shannon Upper catchment, whereas the other three listed SACs drain into the Sligo Bay & Drowse catchment.

With regard to the Arroo Mountains SAC and the Cuilcagh-Anierin Uplands SAC, the FAC concluded that, having regard to the nature and scale of the proposal, the absence of direct hydrological connectivity and any pathway for the transfer of effects, the separation distances and the qualifying interests, there is no possibility of significant effects on these two Natura 2000 sites, having regard to their conservation objectives. With regard to the Lough Gill SAC, the FAC concluded that the proposed development would not give rise to the possibility of significant effects on any of the qualifying interests of this site, due to the hydrological separation distance and the fact that the Drumderg River passes through Belhavel Lough before entering Lough Gill SAC. Any siltation arising from the proposed felling and reforestation would be very limited and would naturally deposit long before reaching Lough Gill. The FAC noted that the Licence granted includes conditions in respect of the provision of silt traps and setbacks from aquatic zones, but concluded that these could not be considered as measures designed to avoid or reduce effects on the Lough Gill SAC due to nature and limited scale of the proposed development, the hydrological separation distance between the project lands and the designated site, the intervention of Belhavel Lough along the route of the Drumderg River and the qualifying interests and conservation objectives for the SAC.

The Boleybrack Mountain SAC, while hydrologically linked, is upstream, and the project site, which is established, mature forest, does not support the habitats for which the SAC is designated. The FAC concluded that the proposed development, located downstream of this extensive SAC, and with a hydrological separation of approximately 500m, would not be likely to give rise to the possibility of direct or indirect significant effects on the Boleybrack Mountain SAC, having regard to its qualifying interests and conservation objectives. The site synopsis for the SAC refers to its importance in respect of nesting for the Golden Plover and possible foraging for the Hen Harrier. Both are Annex I species but are not included as qualifying interests for the SAC. The FAC concluded that the project site does not include habitat suitable for nesting of the Golden Plover or foraging for the Hen Harrier, and that indirect effects, such as noise and general disturbance, would be short-term, intermittent and would not give rise to any significant effects on these bird species.

In terms of in combination effects, this is an area with significant forestry at different stages of maturity. There is already an existing extensive network of forestry roads. Thinning and felling activities within this wider forestry area would be staggered over a number of years due to the differing stages of maturity. The FAC concluded that, as the proposed development alone would not give rise to the possibility of significant effects on any Natura 2000 site, considered in combination with activities associated with the management of existing and adjacent forestry, would not be likely to give rise

to significant direct or indirect effects on any Natura 2000 site, having regard to the site's conservation objectives. There are existing windfarms in the wider area; any effects from these, considered in combination with the proposed development, would not be significant in the context of any Natura 2000 site. This is a rural area with sparse and dispersed settlement and other land uses in the wider area are agricultural, characterised by small, enclosed fields. The proposed development considered in combination with these existing land uses, would not give rise to significant effects on any Natura 2000 site, having regard to its conservation objectives.

Examination of Environmental Effects.

Felling and reforestation does not fall within a class of development to which the EIA Directive applies and the proposed operation does not include works which, by themselves, 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 a visual impact which would change over time; this would be localised and not significant. Any impacts from run-off into the Drumderg would be limited due to the nature and scale of the proposed development, in addition to the licence conditions regarding the management of operations and would not be significant. Due to the hydrological separation distance any material reaching Belhavel Lough would be naturally diluted and deposited. 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.

Des Johnson

On behalf of the Forestry Appeals Committee

22nd July 2020

LAND OWNER:



DAFM FILE REF.

LM08-FL0144

TOWNLANDS:

TULLINWANNIA,
TULLYNACROSS &
TULLYNAMOYLE

COUNTY.

LEITRIM

SCREENING FOR APPROPRIATE ASSESSMENT

1. SITE LOCATION

As the crow flies, the project site lies approx 21 kms east of Sligo town, 9.5 kms east of Dromahair in Co Leitrim and 4 kms east of the small village off Killargue, also in Co. Leitrim. At its nearest point the site also lies approx 15 kms west of the border with N. Ireland.

Google maps show the project location lying close to the peak of Lackagh Mountain/Boleybrack Mountain SAC in a visually majestic landscape. Below the peak of the mountain its upper slopes, particularly on its northern, southern and western faces are characterised by a mix of extensive belts of mature conifers, young planting and clearfelled areas; below the conifer belts lie a patchwork of small fields and loughs where there is evidence of only infrequent and scattered rural residential development

The nearest loughs to the project site are Tullinloughan Lough some 1.6 kms to the north, Lacken Lough some 2.1 kms to the north east, Belhavel Lough some 2.2 kms to the south west, and Lough Allan, approx 7 kms to the south.

The gis.epa.ie mapping system shows the surrounding area characterised by a network of small rivers/streams flowing down all sides of Lackagh/Boleybrack Mountain SAC and feeding into Lough Gill SAC, Belhavel Lough or Lough Allen.

Belhavel Lough - a large body of water not a Natura site - lies 2.25 kms approx S.E. Of the project site.

A quarry - Kerrigan's Quarry lies some 3.6 kms to the west of the site.

Three wind farms - the Tullynamoyle, Garvagh Glebe and Tullynahow wind farms lie approx 450m, to the N.W, 8.5kms and 12 kms to the S.W respectively, from the project site.

(Distances referred to above have been measured as the crow flies)

The nearest public road to the project site is the R280; the project site can be accessed from the R 280 only via an unsurfaced network of forest roads.

Belhavel Lough - a large body of water some 2kms long and up to 1 km in width lies 2.25 kms approx S.E of the project site.(Belhavel is not however a SAC)

The border with N. Ireland runs through Lough MacNea at a distance some 13.5 kms away to the north west.

2. SITE DESCRIPTION

The Licence application provides minimal information in regard to the site other than it is 5.14 ha in area.

Information on soil type is provided in the AA Screening Form (Jan 2020) by the Forest Inspector who indicates that the underlying soil type is almost entirely a mix of surface water, ground water and peaty gleys.

There is not any information on site boundaries, (eg.drainage ditches, fences) nor on site slopes or O.D levels. However the Felling Licence Application Map shows a river flowing through the site.

3. CHARACTERISTICS OF THE PROPOSED PROJECT

1. Clear felling of Sitka Spruce and reforestation by conifer species for Wood Production.
2. Information is not available in regard to transport routes, road upgrading works, if any, and associated ancillary and site development works (eg storage facilities for timber, machinery, and chemicals)

4. LICENCE

A Licence to clearfell the proposed site was applied for on the 28.2.2019. A Harvest Plan incorporating a suite of general environmental and site safety rules accompanied the application as did a brief AA Pre-Screening Report.

The Licence with conditions attached issued on the 15.11.2019. The conditions appear to be standard in nature and not site specific. The Licence was suspended on the 2.12.2019 due to submission of an appeal

APPELLANT'S SUBMISSION

Having regard particularly to recent judgements by the CJRU and the information submitted to the public, it is not possible to grant a Licence which would be in compliance with the Habitats and EIA Directives...The fact that a Natura 2000 site lies at a distance greater than 15 kms distant from the project location is not relevant given that a project even at that distance could have an effect on that Natura site.

FORESTRY INSPECTOR'S APPROPRIATE ASSESSMENT SCREENING AND CONCLUSION (20.01.2020)

The inspector identified the following Likely Zones of Impact within 15 kms of the project location:

Boleybrack Mountain SAC

Conclusion - Screen out the project - Appropriate Assessment is not required in relation to this Natura site as the felling site is downstream of the Natura site and as there is no possibility of the project itself having a significant effect on the Natura site, there is not any potential for it to contribute to any cumulative adverse effects on the site when considered in-combination with other plans and projects

Lough Gill SAC

Screening Conclusion - Screen out the project- an Appropriate Assessment is not required in relation to that Natura 2000 site due to the absence of a direct upstream hydrological connection and subsequent lack of any hydrological or other pathway. Furthermore as there is no possibility of the project itself having a significant effect on the Natura site, there is not any potential for it to contribute to any cumulative adverse effects on the site when considered in-combination with other plans and projects

Cuilcagh - Anieirin Uplands SAC

Screening Conclusion - Screen out the project - Appropriate Assessment is not required in relation to that Natura 2000 site due to the location of the project area within a separate water body catchment to that containing the Natura site with no upstream connection and the subsequent lack of any pathway hydrological or otherwise. Furthermore as there is no possibility of the project itself having a significant effect on the Natura site, there is not any potential for it to contribute to any cumulative adverse effects on the site when considered in-combination with other plans and projects

Arroo Mountain SAC

Screening Conclusion - Screen out the project- an Appropriate Assessment is not required in relation to that Natura 2000 site due to the absence of a direct upstream hydrological connection and subsequent lack of any hydrological or other pathway. Furthermore as there is no possibility of the project itself having a significant

effect on the Natura site, there is not any potential for it to contribute to any cumulative adverse effects on the site when considered in-combination with other plans and projects

FORESTRY DIVISION STATEMENT TO FAC (31.1.2020)

Having reviewed the details of relevant European sites, their qualifying interests and conservation objectives, DAFM deemed that the project when considered in combination with other plans and projects as identified in the pre screening report, will not give rise to the possibility of a significant effect on the relevant screened European sites. As such the clearfell and reforestation project was screened out and an Appropriate Assessment deemed not required in relation to the European sites considered during the screening exercise

APPROPRIATE ASSESSMENT SCREENING IN RESPECT OF THE PROPOSED PROJECT AS REQUIRED UNDER ARTICLE 6 OF THE HABITATS DIRECTIVE (92/43/EEC)

The Appropriate Assessment Screening carried out below relates to Stage 1 of the Screening Process ie.

(A) Is the project directly connected with or necessary to the management of a European site

(B) If not, is the project likely to have a significant effect individually on a European site in view of the conservation objectives of that site?

(C) Is the project likely to have a significant effect in combination with other plans and projects on a European site in view of the conservation objectives of that site?

Re **(A)** above, there is not any evidence submitted by the Licence applicant, that the proposed clear fell is necessary for, or connected to the management of any European site.

Re **(B)** above - Is the project likely to have a significant effect individually on a European (Natura) site in view of the conservation objectives of that site?

I have screened the following European (Natura) sites, in terms of the source/ pathway/ receptor model to determine whether the project is likely to have a significant effect(s) on those sites having regard to their Qualifying interests and Conservation Objectives. Prior to that screening I interrogated the epa.gis.ie mapping system to determine the hydrological characteristics of the project site;

The mapping system revealed a significant network of river/stream channels on all faces of Boleybrack Mountain SAC; the streams/rivers appear to originate mainly in the tarns which are scattered across the plateau of the mountain adjacent to the summit: one of those streams/rivers which is part of the Cashel Stream Complex appears to flow through/in close proximity to, the project site. All streams/rivers in the Cashel complex flow into Belhavel Lough. Belhavel Lough is not a SAC.

In accordance with the precautionary principle, I initially identified and considered those Natura 2000 sites which encircle the project location within a 20 km radius. However as I was unable to find any direct hydrological connection between the project site and any of the SACs within that radial distance, (by reference to the epa.gis.ie mapping system) I have restricted the Assessment to those SAC sites within a 15 km radius of the project site, concluding that that would likely be the max range within which indirect effects were likely to significantly impact on a SAC.

However in the case of SPAs the Assessment Screening was widened to take into consideration those sites which lie within a 20 km radius of the project site on the basis that that would comfortably allow for the dispersal and foraging ranges of bird species to be taken into consideration.

The sites which were assessed in regard to potential direct and indirect effects generated by the proposed project therefore are as follows::

Boleybrack Mountain SAC

Boleybrack Mountain SAC lies approx. 350 m upstream and north of the project site.

Qualifying Interests: Dystrophic Lakes and Ponds/Wet and dry Heaths/Molinia

Meadows/Blanket Bogs

Conservation Objectives: To maintain the favourable conservation condition of Lakes and Ponds, Wet and Dry heaths, Molinia Meadows, and Blanket Bogs as defined by lists of their respective attributes and targets

In the case of Boleybrack Mountain SAC, although it lies uphill of the project site, and therefore is unlikely to be impacted hydrologically by the proposed project, the project does pose a risk factor to the SAC due to its close proximity to the SAC and hence potential for damage or destruction of those habitats which are identified as qualifying interests for the SAC and which while originating within the SAC may now well extend beyond the SAC boundary

The Site Synopsis for the SAC as compiled by NPWS is particularly instructive in this regard where it states that the site is dominated by

Active blanket mountain bog and wet heath ...that dry heath is widely distributed throughout this site... while acid grassland supports a variety of grass and herb species... The site provides excellent areas of feeding habitat for Red snipe, Grouse, Curlews and Ravens. Golden Plover nests within the site(2-3 pairs) while Hen Harrier may use the site for foraging. Both these species are listed on Annex I of the Birds Directive.

Much of the site is bounded by mature coniferous forestry plantations; recent planting on areas of blanket bog has caused significant local damage.

The site is of considerable conservation importance for the various habitats listed on Annex I of the Habitats Directive that it supports, in particular the good examples of blanket mountain bog and wet heath. The examples of these habitats on the site are the best remaining in the northern half of the country. The presence of a number of rare plant species and of a variety of bird species adds to the conservation significance of the site

In the current case given:

1. The proximity of the project site to Boleybrack Mountain SAC
2. The potential extension of qualifying interests for the SAC beyond its current site boundary and into a buffer zone, adjacent to/within, the afforested areas now proposed for clear felling
3. The use of the SAC for nesting and foraging by Golden Plover and Hen Harrier respectively - both Annex I species in the Birds Directive;
4. The use of the SAC also as a feeding habitat for other bird species referred to in the Synopsis above,

there is potential for significant direct and indirect effects on the SAC to occur as a result of the proposed project; examples of direct effects include destruction/damage to one or more of the habitats listed as qualifying interests for the SAC even though such habitats may lie outside the boundary of the SAC. I refer eg to felling and associated operational works eg transportation/on site haulage/chemical treatment and storage; indirect effects include impacts from noise and close activity which could result in damage/destruction to one or more of the habitats used for nesting or foraging purposes including in particular

abandonment of nesting grounds by Annex I bird species; although those Annex I bird species are not relevant to the Conservation Objectives their presence within the SAC may be based on/relevant to the ecological functions of the site which relate to its Conservation Objectives.

Based on the information which is available to me In the current case, (uphill location of the SAC to the project site), I consider that hydrological impacts are unlikely to arise as a result of the proposed project.

However, in regard to the qualifying interests of the site I consider that the applicant has failed to provide adequate information supported by relevant scientific evidence which would allow me to conclude on the basis of the precautionary principle that a likelihood of other non hydrologically associated significant effects, either of a direct or indirect nature, and relevant to the conservation objectives of Boleybrack Mountain SAC, do not exist as a consequence of the proposed development

Lough Gill SAC

At its nearest point Lough Gill SAC lies approx 8 kms due west of the project site location. Qualifying Interests are Eutrophic Lakes, Semi dry natural grasslands, Sessile Oak Woods, Alluvial forests, Crayfish, Sea, River and Brook Lamprey, Salmon and and Otter. Conservation Objectives are to maintain or restore the favourable Conservation Conditions of the Annex 1 Habitat and/or the Annex II species for which the site has been selected.

I consider that there is not any potential for direct/indirect hydrological impacts on the above site given that: the project location is not connected directly with Lough Gill SAC ; it is connected only indirectly via a stream/river which flows through/adjacent to the project site and onwards to the eastern shore of Belhavel Lough some 2 kms distant from the project site. There any sediment potentially carried by the stream from the project site will likely be deposited in the slower flowing waters of the Lough before those waters outflow into Lough Gill SAC approx some 6 km distant (as measured along the length of the watercourse) to the west.

Other hydrologically related effects on the SAC which alter its water regime and hence impact potentially on the crayfish and lamprey habitats (eg chemical spillage /seepage from the project site into the adjoining river/stream are also unlikely given the absence of any direct source pathway receptor connection between the project location and the Natura 2000 site and the separation distances involved.

I consider therefore that the project site can be screened out for the purposes of Appropriate Assessment in regard to the above SAC.

Cuilcagh - Anieirin Uplands SAC

At their nearest point the Aneurin Uplands lie approx 12 kms to the south east of the project site.

Qualifying Interests are Oligotrophic waters, Dystrophic Lakes, Heaths, grasslands, Blanket Bogs, Transition Mires and Quaking Bogs, Petrifying Springs, Scree, Rocky Slopes, and Feather Moss

Conservation Objectives are to maintain the favourable Conservation Condition of the above Qualifying Interests as defined by lists of their respective targets and attributes.

I consider that there is not any potential for significant direct/indirect impacts, hydrological or otherwise on the above site given :

The absence of any source pathway receptor connection between the project site and the Cuilcagh - Anieirin Uplands SAC

The separation distance involved even when prevailing S.W winds are taken into account; The nature of many of the Qualifying Interests associated with the Cuilcagh- Aneirin Uplands SAC eg. scree, rocky slopes, which are unlikely to render them vulnerable to impacts from the proposed tree felling.

I consider therefore that the project site can be screened out for the purposes of Appropriate Assessment in regard to the above SAC.

Arroo Mountain SAC

At its nearest point Arroo mountain SAC lies approx 13.8 kms north of the project site. Qualifying Interests are: Heaths, Blanket Bogs Petrifying Springs, Scree and Rocky Springs

Conservation Objectives are To maintain or restore the favourable conservation conditions of the Qualifying interests above as defined by lists of their respective targets and attributes

Given the nature of the above Qualifying Interests, the scale and likely duration of the proposed project, its separation distance from the SAC, the absence of any source-pathway-receptor between the project site and Arroo Mountain SAC, I consider that the project site can be screened out for the purposes of Appropriate Assessment in regard to the above SAC.

Sligo/Leitrim Uplands SPA

At its nearest point the Sligo/Leitrim Uplands lie approx 19 kms to the north west of the project site

Qualifying Interests are Peregrine Falcons (nationally important site) and Choughs (internationally important site)

Conservation Objectives are To maintain/restore the favourable conservation condition of the bird species listed as special conservation interests for this SPA.

Given the absence of any source- pathway- receptor connection between the above SAC and the project site, the lack of evidence for any indirect connection/impacts between the project site and the SAC, the separation distance involved, the likely duration of the proposed project, and the nature of the Qualifying Interest for the SAC, I consider that the proposed project is unlikely to have any significant direct /indirect effects on the SPA. I conclude therefore that the project can be screened out for the purposes of Appropriate Assessment.

Lough Arrow SPA

At its nearest point Lough Arrow SPA lies approx 20 kms to the south west of the project site

Qualifying Interests are Little Grebe, Tufted Duck

Conservation Objectives are To maintain/restore the favourable conservation condition of the bird species listed as special conservation interests for this SPA

Given that a threat to both species would appear to be the transformation of their habitat wetlands by way of inter alia, destruction, pollution or recreational use, I consider that the nature, scale, and duration of the proposed project, and its separation distance from the above Natura 2000 site makes it unlikely that the project will pose any significant effect on the SPA. I conclude therefore that the project can be screened out for the purposes of Appropriate Assessment.

Re (C) above - Cumulative Impacts

The Screening process here requires that the potential likely significant effects (direct and indirect) of the project **in combination with other plans and projects** on the European site within the context of the site's conservation objectives be identified in light of best scientific knowledge in the field

I have assessed the proposed project therefore in conjunction with the following:

1.Cavan Co. Dev Plan 2014-2020

Forestry Policy and Forestry Objectives within the County are set out at Chapter 3 of the Plan; the policies and objectives acknowledge the role that forestry plays in the commercial life of the county but notes that in that context forestry development must not only be well managed but also resisted where they are likely to have adverse impacts on the environment eg where they interfere with views, create negative impacts on sensitive upland area and threaten biodiversity eg the biodiversity of salmon spawning rivers. I therefore conclude that the Co Dev Plan as adopted will not impact adversely on the integrity of any of the Natura sites considered above and in fact provides for the integration of ecological considerations associated with forest development within its stated policies and objectives.

2.Planning applications

Major planning application within the vicinity of the appeal site are those associated with the 3 windfarms I have already referred to at "Site Location" .The closest windfarm to the site is at Tullynamoyle where the boundary of the windfarm lies approx 750m east of the project site.

While the windfarm and proposed project have little in common in terms of operational procedures, they are both potential sources of disturbance to the qualifying interests of Boleybrack SAC. However the cumulative effects are unlikely to be significant as the windfarm has been operational for almost 10 years (although the most recent extension to it was barely 3 years ago) hence any resultant effects are now well established while any potential impacts from the proposed clear felling project are likely to be of limited duration and intensity; on that basis the combination of impacts from the proposed project even in conjunction with those from the existing windfarm are unlikely to generate significant impacts on the environment of Boleybrack SAC. That argument also holds good for the other 2 windfarms at Garvagh Glebe and Tullynahowe particularly when considering their cumulative effects vis a vis each other as well as cumulatively in conjunction with the project site.

Appeals to ABP

I was unable to find any appeals which because of their nature and/or size were appropriate for consideration as part of cumulative effects

Forestry Projects

As can be seen on Google maps, the area adjacent to the project site and well beyond is characterised by significant and dense stretches of coniferous woodland plantations within Leitrim and on adjoining lands in Counties Cavan and Sligo. Forestry development is not only an ongoing activity in the County in terms of reforestation of clearfelled sites but is also a development with expansionist characteristics.Although the current afforestation licence relates to a single block of land of modest area, the reality is that the forestry block is an incremental unit in a much larger area of afforestation whose cumulative impacts are potentially significant ; In that context submission of county wide /regional Information on

cumulative impacts associated with clear felling and afforestation programmes and schedules would have been appropriate,- I refer to cumulative impacts resulting for example from ecological disturbance of soils in close proximity to SAC's and SPA's ,and/or cumulative impacts of sediment laden run-off into streams feeding into SACs and SPA's .

While the potential impacts on SAC's and SPAs generated by the proposed project within a defined radial zone have been identified and dismissed due to absence of a source pathway receptor connection, I am not reassured that that conclusion tells the complete story of potentially wider cumulative impacts in the current case

CONCLUSION IN REGARD TO SCREENING FOR APPROPRIATE ASSESSMENT

In carrying out Screening for Appropriate Assessment I have had regard to information contained on file, particularly inter alia, in the

- Forestry Inspector's AA Screening Form of Jan 2020 where he concluded that the project should be screened out for the purposes of Appropriate Assessment
- The Forestry Division Statement to the FAC which recommended that the project be screened out for the purposes of Appropriate Assessment on the basis that it does not give rise to a significant effect on any Natura site
- The Tree Felling Licence where I interrogated the terms of the Licence for potential mitigation conditions.

I consider that interrogation of the above documents and certain others contained on file is required by way of the European Communities Birds and Habitats Regulations 2011, S.I. 477, Part V, Art.47.21.

I have concluded in regard to Stage 1 Screening for Appropriate Assessment that the proposed project except in the case of Boleybrack Mountain SAC, is unlikely to generate significant effects/impacts either on an individual basis and/or cumulatively in conjunction with other plans and projects in regard to those SACs which lie within a 15km radius of the project location. Other therefore than in the case of Boleybrack Mountain SAC I conclude that the proposed project can be screened out for Appropriate Assessment.

In the case of Boleybrack Mountain SAC the close proximity of the project location to the SAC and hence potentially significant impacts in regard to damage or destruction of habitats identified as qualifying interests for the SAC, and which while formerly originating within the SAC may now well extend beyond the SAC boundary, may arise.I refer to "inter alia" potential for significant damage impacts due to felling and associated operational works such as transportation activity/noise/on site haulage noise/chemical treatment and storage; the damage impacts I envision are destruction to/abandonment of one or more of the habitats used for nesting or foraging purposes by Annex I bird species; although those Annex I bird species are not relevant to the Conservation Objectives their presence within the SAC are likely relevant to the ecological functions of the site which relate to its Conservation Objectives.

In conclusion therefore I am not satisfied that the applicant has provided adequate information supported by relevant scientific evidence which would allow me to conclude on the basis of the precautionary principle that non hydrologically associated significant effects, either of a direct or indirect nature, and relevant to the conservation objectives of Boleybrack Mountain SAC, do not exist as a consequence of the proposed individual project. On that basis I consider that the proposed project can not be screened out for Appropriate Assessment

EIA SCREENING

In the current case a licence has been applied for clear felling an area of 5.14 ha and subsequent reforestation of that area.

By reference to Directive 2011/92/EU as amended by Directive 2014/52/EU, projects identified at Annex II Para 1(d) therein are "initial afforestation and deforestation for the purposes of conversion to another type of landuse"

EIA Preliminary/Examination/Screening for "Felling" followed by reforestation therefore would not appear to be required other than where the felling may be described as deforestation for the purposes of conversion to another landuse. In the current case it is proposed that felling will be followed by reforestation .

I consider therefore that an EIAR is not required in the current case having regard to the projects described at Annex II Para 1(d) of the Directive and

The modest scale of the proposed project

The likely short duration of the proposed felling and reforestation schedule

The absence of any hydrological connection between the project and the surrounding environment ,in particular the Natura 2000 sites which lie in close proximity to the project location.

Conclusion;

As the proposed project falls outside the description of EIS projects listed at Annex II of the Directive , and as it is unlikely to have significant effects on the environment, an EIAR is not required.

M Cunneen

12.7.2020