



11th September 2020

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Subject: Appeal FAC362/2019 regarding licence MN01-FL0073

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence decision 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 MN01-FL0073 for felling and replanting of 8.1 ha at Dernaved, Co. Monaghan was issued by the Department of Agriculture, Food and the Marine (DAFM) on 31st October 2019.

Hearing

A hearing of appeal FAC362/2019 was held by the FAC on 8th September 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Bernadette Murphy, Mr. Vincent Upton

Decision

Having regard to the evidence before it, including the licence application, Departmental file, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence MN01-FL0073.

The licence pertains to the felling of 8.1 ha. currently composed of Sitka spruce with some lodgepole pine and Japanese larch at Dernaved, Co. Monaghan. Replanting would be of Sitka spruce with 0.41 ha of open space being retained. The site lies between 90 and 100 metre elevation and is generally flat. A river flows through a small, section of the forest to the west, adjacent to a laneway that bisects the forest, and flows northerly to join the Blackwater which then flows easterly. There are no forests adjoining the proposal, which is surrounded by agricultural land. The border with Northern Ireland lies to the north of the proposal. There is a submission from Inland Fisheries Ireland on file highlighting that the proposal should be carried out in accordance with DAFM guidelines and that setbacks should be retained on replanting. This is reflected in the conditions on the licence and the proposal.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to a number of listed judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. The appeal grounds also state 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 may be such an effect.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They suggest that the proposal was assessed following the relevant guidelines and standard operating procedure relevant at the time and that the proposed harvesting/replanting operations were considered. They suggest that all Natura sites within 15km have been screened out due to a lack of hydrological connectivity and degree of separation. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area.

In considering the appeal and before making a decision, the FAC undertook an examination in relation to the requirements of the Habitats Directive and an examination in regards effects on the environment and copies of these considerations are contained in the public file.

The proposal is not connected with or necessary to the management of any European site. There are three sites whose boundaries fall within 15km of the proposal. Given the nature and scale of the proposal, the FAC concluded that significant effects on sites outside of this radius are not likely. The boundaries of Slieve Beagh SPA and Slieve Beagh-Mullaghfad-Lisnaskea SPA lie some 5km to the west and southwest of the proposal. The NPWS describe Slieve Beagh SPA as being primarily composed of mountain blanket bog, cut-over bog and forestry and note that it is one of the strongholds for Hen Harrier in Ireland. This is a large European site covering 3,455 ha and forestry activities are not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form. Slieve Beagh-Mullaghfad-Lisnaskea SPA covers a further 8,936ha on the northern side of the mountain. The proposal relates to the felling and replanting of an area of 8.1 ha of mature coniferous forest some 5km from the eastern boundary of the SPAs. Mature coniferous forests are not considered suitable nesting or foraging habitat for this species. While the replanted area may provide some suitable habitat this would be for a limited period, of a small scale and outside of the primary range of the species from the SPAs. Given the small scale and nature of the proposal and the degree of separation significant effects on these SPAs are not likely. Slieve Beagh SAC comprise a similar but smaller area on the northern section of Slieve Beagh and its qualifying interests relate to a number of mountain habitats. These habitats are not present on the site of the proposal and the proposal is not hydrologically connected to the site and the boundary lies some 7km from the proposal, well beyond the regenerative range of the forest. The proposal is not likely to result in significant effects on this SAC. The area is generally remote, agricultural and rural and there are no other forests adjacent to the proposal. A small

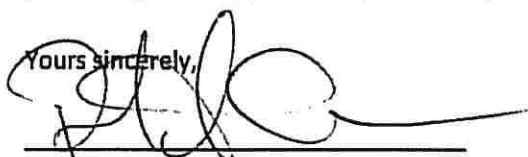
number of planning permissions have been granted for dwellings and agricultural buildings in the general vicinity in recent years. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, these other plans and projects would not result in in-combination effects with the proposal. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening. Having regard to the nature, scale and location of the proposal, its separation from European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

The EU 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 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 of trees 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 is similarly not covered by the Irish regulations (S.I. 191 of 2017). The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and, following examination, concludes that the proposed development would not result in any real likelihood of a significant effect on the environment.

The grounds of appeal do not identify specific lakes and there are no lakes in the vicinity of the proposal. The stream at the west of the proposal flows north adjacent to c.50 metres of the forest to join the Blackwater which flows east before turning north and eventually flowing into Lough Neagh. The direct distance from the proposal to the lake is over 30km and the hydrological distance is over 50km. The FAC does not consider that there is any likelihood of an impact arising over this distance and does not consider that the proposal represents a significant threat to any lakes or water quality generally.

In deciding to confirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee



FAC362/2019 MN01-FL0073 Dernaved, Co. Monaghan

9th September 2020

Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the likelihood of significant effects on the environment. These considerations were based on information provided parties to the appeal, including the original application, and available in the public domain. The FAC is satisfied that the information available to it is sufficient to undertake these considerations of the proposal.

The licence pertains to the felling of 8.1 ha. currently composed of Sitka spruce with some lodgepole pine and Japanese larch at Dernaved, Co. Monaghan. Replanting would be of Sitka spruce with 0.41 ha of open space being retained. The site lies between 90 and 100 metre elevation and is generally flat. A river flows through a small, section of the forest to the west, adjacent to a laneway that bisects the forest, and flows northerly to join the Blackwater which then flows easterly. There are no forest adjoining the proposal, which is surrounded by agricultural land. The border with Northern Ireland lies to the north of the proposal. There is a submission from Inland Fisheries Ireland on file highlighting that the proposal should be carried out in accordance with DAFM guidelines and that setbacks should be retained on replanting. This is reflected in the conditions on the licence and the proposal.

Appropriate Assessment Screening

The proposal is not connected with or necessary to the management of any European site. There are three sites whose boundaries fall within 15km of the proposal that are listed below alongside the distance from the boundary to the centre of the proposal and their qualifying interests. Given the nature and scale of the proposal, the FAC concluded that significant effects on sites outside of this radius would not be possible. The stream at the west of the proposal flows adjacent to c.50 metres of the forest to the north to join the Blackwater which flows east before turning north and eventually flowing into Lough Neagh and Lough Beg SPA, which covers 41,188 ha. The direct distance from the proposal to the SPA is over 30km and the hydrological distance is over 50km. Having regard to the nature and scale of the proposal and other plans and projects, the FAC concluded that there is no likelihood of the proposal, itself or in combination with other plans and projects, resulting in a likelihood of a significant effect over this distance.

The boundaries of Slieve Beagh SPA and Slieve Beagh-Mullaghfad-Lisnaskea SPA lie some 5km to the west and southwest of the proposal. The NPWS describe Slieve Beagh SPA as being primarily composed of mountain blanket bog, cut-over bog and forestry and note that it is one of the strongholds for Hen Harrier in Ireland. This is a large European site covering 3,455 ha and the conservation objective is "to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA". The site synopsis notes 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. Birds will often forage in openings and gaps within forests." Other research has noted further travelling distances for this species at other sites¹. Forestry activities are not listed amongst the most important impacts and activities with high effect on the site in the Natura 2000 data form. Slieve Beagh-Mullaghfad-Lisnaskea SPA covers a further 8,936ha on the northern side of the mountain. In

¹ Arroyo, B., Leckie, F., Amar, A., McCluskie, A. & Redpath, S. 2014. Ranging behaviour of Hen Harriers breeding in special protection areas in Scotland. *Bird Study* 61: 48–55.

defining the boundaries the conservation objectives note that "All Hen Harrier nesting areas in the area used since 1997 are incorporated within the SPAs. In order to provide adequate foraging areas, the proposed boundary is based on a foraging radius of 2.5km around all confirmed and probable nest sites recorded in 1997, 1998 and 2004". The proposal relates to the felling and replanting of an area of 8.1 ha of mature coniferous forest some 5km from the eastern boundary of the SPAs. Mature coniferous forests are not considered suitable nesting or foraging habitat for this species. While the replanted area may provide some suitable habitat this would be for a limited period, of a small scale and outside of the primary range of the species from the SPAs. Given the small scale and nature of the proposal and the degree of separation significant effects on these SPAs are not likely. Slieve Beagh SAC comprise a similar but smaller area on the northern section of Slieve Beagh and its qualifying interests relate to a number of mountain habitats. These habitats are not present on the site of the proposal and the proposal is not hydrologically connected to the site and the boundary lies some 7km from the proposal, well beyond the regenerative range of the forest. The proposal is not likely to result in significant effects on this SAC.

The area is generally remote, agricultural and rural and there are no other forests adjacent to the proposal. A small number of planning permissions have been granted for dwellings and agricultural buildings in the general vicinity in recent years. No emission points were identified on information provided by the EPA and no issues of relevance to the proposal in regards European sites were identified in the Monaghan County Development Plan. There are a number of mature forests in the area but few afforestation licences have been granted in recent years. Within the wider area six felling licences were granted in 2017 and two in 2019 and no felling licences have been granted to the applicant within 1.5km of the proposal. The closest forest is Favour Royal Forest in Northern Ireland. The management plan for this forest, prepared by the Forest Service of Northern Ireland states that the last felling in this forest took place in 2015 and no felling has taken place in recent years. It is also planned to manage this forest for amenity purposes using low impact silvicultural methods in the future. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, these other plans and projects would not result in in-combination effects with the proposal. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening.

Having regard to the nature, scale and location of the proposal, its separation from European sites and the conservation objectives of those sites, the FAC concludes that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SPA	004167	Slieve Beagh SPA	4763.62	Birds A082 Hen Harrier (<i>Circus cyaneus</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004167.pdf	No likelihood of significant effects
SAC		Slieve Beagh SAC	6,900	Habitats Active Blanket Bog Natural dystrophic lakes and pools European Dry Heaths	https://www.daera-ni.gov.uk/sites/default/files/publications/doe/Conservation%20Objectives%20282017%29.%20%20Slieve%20Beagh%20SAC.%20%20Version%202.1%20-%20amendment%2010.	No likelihood of significant effects

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SPA		Slieve Beagh-Mullaghfad - Lisnaskea SPA	5000	Species Hen Harrier (<i>Circus cyaneus</i>)	https://www.daera-ni.gov.uk/sites/default/files/publications/doe/slieve-beagh-mullaghfad-lisnaskea-SPA-conservation-objectives-2015.pdf	No likelihood of significant effects
SPA	UK90 2009 1	Lough Neagh and Lough Beg SAC	30000	Common Tern breeding population Great Crested Grebe breeding population Great Crested Grebe passage population Whooper Swan wintering population Bewick's Swan wintering population Golden Plover wintering population Great Crested Grebe wintering population Pochard wintering population Tufted Duck wintering population Scaup wintering population Goldeneye wintering population Little Grebe wintering population Cormorant wintering population Greylag Goose wintering population Shelduck wintering population Wigeon wintering population Gadwall wintering population Teal wintering population Mallard wintering Shoveler wintering population Coot wintering population Lapwing wintering population Waterfowl assemblage	https://www.daera-ni.gov.uk/sites/default/files/publications/doe/lough-neagh-lough-beg-spa-conservation-objectives-2015.pdf	No likelihood of significant effects

Examination of Environmental Impacts

The EU 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 criteria 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 of trees 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 is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is of a small scale and for felling and replanting which would be normal activities in a commercially managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines that reflect submissions from referral bodies. The replanting of the forest will ensure that the resource is maintained over the long term. The area is rural and remote and these activities would not be out of keeping with the general landscape. There are a number of conditions related to the protection of biodiversity and water quality on the licence and, taking account of the scale and degree of hydrological connectivity, the proposal is not considered likely to result in a significant impact on water quality or biodiversity. The retention of an unplanted area may enhance the habitat diversity of the forest and provide additional water quality benefits. There is no evidence of protected species or habitats in or adjacent to the site and there are no conservation areas in the vicinity. The FAC concluded that there is no likelihood of a significant effect on any European site. There is an existing access to a minor road that leads to a public road from the forest and traffic will likely increase as a result of the operations and there may be some noise disturbance but this will be of a localised and temporary nature. There are conditions on the licence regarding the management of operations that mean that the occurrence of waste and pollution of a significant degree are not likely. There are no recorded monuments that could be impacted by the proposal. While the proposal lies close to the border with Northern Ireland, the FAC concluded that there would no requirement to refer the proposal to authorities in Northern Ireland as there is no likelihood of significant effects on conservation sites, water quality, the landscape or the environment. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulation and does not consider that it would result in any real likelihood of a significant effect on the environment.

Vincent Upton
On Behalf of the Forestry Appeals Committee