



[REDACTED]

11 January 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 in respect of Tree Felling Licence approval TFL00337719.

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 TFL00337719 was granted by the Department on 17 July, 2020.

Hearing

A hearing of appeal 549/2020 was conducted by the FAC on 23 November, 2020.

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

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 affirm the decision to grant this Tree Felling Licence (Reference TFL00337719).

The proposal is for harvesting activity in a single block of Sitka spruce forestry, planted in 1975 in Killanena, Co. Clare and the operations comprise of 0.79ha of Clearfelling (including subsequent replanting). The applicant indicated that clearfell operations were to be carried out in 2019.

The project area borders a recently clearfelled forestry plantation to the north, along with mature forestry to the north east and agricultural land and a residential dwelling to the south and is adjacent to the public road. 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 River Shannon (25C) and sub-catchment of Graney (Shannon SC_20).

The project lies wholly within the Slieve Aughty Mountains SPA (SPA code:004168) with qualifying interests for Hen Harrier (*Circus cyaneus*) and Merlin (*Falco columbarius*) bird species.

There are twenty other designated Natura 2000 sites within a 15km radius of the project. These are Ballyogan Lough SAC (000019), Carrowbaun, Newhall and Ballylee Turloughs SAC (002293), Coole-Garryland Complex SAC (000252), Coole-Garryland SPA (004107), Cregg House Stables, Crusheen SAC (002317), Drummin Wood SAC (002181), East Burren Complex SAC (001926), Glendree Bog SAC (001912), Gortacarnaun Wood SAC (002180), Kiltartan Cave (Coole) SAC (000286), Lough Coy SAC (002117), Lough Cutra SAC (000299), Lough Cutra SPA (004056), Loughatorick South Bog SAC (000308), Moyree River System SAC (000057), Old Domestic Buildings, Rylane SAC (002314), Peterswell Turlough SAC (000318), Pollagoona Bog SAC (002126), Sonnagh Bog SAC (001913), Termon Lough SAC (001321).

No watercourses have been identified in or adjacent to the project area.

DAFM referred the licence to National Parks & Wildlife Service (NPWS) and Clare County Council for consultation. Comments were received from NPWS to the effect that the project area is located within the Slieve Aughty Mountains SPA for Hen Harrier and Merlin. They stated that the proposed project area does not lie within a Higher Likelihood of Nesting Area (HLNA) for Hen Harrier and that the proposed works should follow the protocol agreed between National Parks & Wildlife Service and the Forest Service for operational works in Hen Harrier Special Protection Areas. NPWS also stated that if felling was to take place between 1st April and 15th August the local conservation ranger should be contacted. There was no reply from Clare County Council on file.

The Forest Service District Inspector undertook a Stage 1 screening assessment on 3 September 2019 and again on 29 October 2019 in relation to the provisions of the Habitats Directive using the guidelines in place at the time. The result of this process was that Slieve Aughty Mountains SPA 004168, Lough Cultra SPA 004056 and Coole-Garryland SPA 00107 were screened in for Appropriate Assessment. Dated 08/07/2020, the resulting Appropriate Assessment concludes that only the Slieve Aughty Mountains SPA should be screened in but that the project, individually or in combination with other plans or projects will not adversely affect the integrity of any European site if managed according to the conditions of the licence. In relation to the qualifying interests of Hen Harrier, the area is not located in a High Likelihood of Nesting Area for the species (in agreement with NPWS initial referral) and adherence to Appendix 21 of the Forestry Standards Manual (2015) would mitigate any effects on the species. They also determined that in the case of Merlin species, that the area was not a suitable breeding habitat.

DAFM issued a licence on 17 July 2020 together with the standard felling licence conditions and additional conditions outlined below, including attaching the Appropriate Assessment report. 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.

Conditions of approval are also as follows:

- Refer to the attached Appropriate Assessment Determination Report regarding requirements relating to the timing of operations and the requirement to notify the National Parks and Wildlife Service in Advance of operations proceeding.
- No disturbance operations associated with the licence is to take place during the Hen Harrier breeding season (1st April – 15th August inclusive).
- A two-year licence to clearfell 0.79ha of Sitka Spruce and replant with Sitka Spruce and Additional Broadleaves.

There is one appeal against the decision and the grounds of the appeal includes requests to establish the legitimacy of the forest; maps of the project site and SAC's and SPA's; proof that cumulative afforestation does not exceed 50ha; the total length of roads not included in the application. It is also asserted that a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening be undertaken in accordance with the law.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the licence application had been processed according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time. The Appropriate Assessment Guidelines had later been updated (05/11/2019) and according to the version current at the time of the request for comment one site would now be screened in (Slieve Aughty Mountains SPA).

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).

Under Article 6(3) of the Habitats Directive, a plan or project not directly connected with, or necessary to, the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case DAFM undertook a Stage 1 screening in relation to twenty one European sites (eighteen SACs & 3 SPAs) one of which (Slieve Aughty Mountains SPA 004168) is overlapped by the project. The FAC examined publicly available information from the NPWS and EPA and identified the same twenty one sites, all of which are within 15km of the project. Each site is considered in the screening in turn along with its qualifying interests and conservation objectives and the reasons for the screening conclusions. The grounds of appeal do not identify any specific concerns with the conclusions reached. The DAFM concluded that an appropriate assessment should be undertaken in relation to Slieve Aughty Mountains SPA (004168), Lough Cultra SPA (004056), Coole-Garryland SPA (004107), with the other sites screened out. An appropriate assessment report and determination was prepared with ecological review, in reviewing the initial screening in a further screening in the appropriate assessment report, the Lough Cultra SPA (004056) and Coole-Garryland SPA (004107) were screened out along with the previously screened out sites, with only Slieve Aughty Mountains SPA (004168) screened in. The reasons on which these screening decisions were made are set out and recorded in the Appropriate Assessment report for the project. In the appropriate assessment section of the report, the special conservation interests, conservation objectives, adverse impacts and the species-specific mitigation measures in relation to the Slieve Aughty Mountains SPA are described. The appropriate assessment determination outlined that as the project overlaps with a High Likelihood Nesting Area relating to Hen Harrier (*Circus cyaneus*), the Special Conservation Interest of the SPA, no potential disturbance operations associated with the project may take place during the Hen Harrier breeding season and it was determined that in the case of Merlin (*Falco columbarius*) that the area was not a suitable breeding habitat. Mitigation measures were derived and incorporated into the licence conditions. The grounds of appeal do not identify a specific concern regarding effects, impacts or mitigation measures described in the appropriate assessment report and determination. Other plans and projects considered in-combination with the proposal are described. The FAC, having considered the information available to it, including the grounds of appeal, considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The procedures adopted by the DAFM in their assessment are considered to be acceptable. The DAFM determination concludes that;

"the Department of Agriculture, Food & the Marine has determined, pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), and based on objective information, that no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of any European site.

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 Site."

Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding appropriate assessment and concurs with the conclusions provided.

The FAC had regard to the record of the decision under appeal and the submitted grounds. In deciding to affirm the decision to grant the licence, the FAC considered that the making of the decision by the DAFM did not involve any serious or significant error or a series of errors or that the decision was made without complying with fair procedure. The FAC further concluded that the proposed development of itself, or in combination with other plans or projects, would not be likely to have an adverse effect on the integrity of any Natura 2000 site and would not give rise to the likelihood of significant effects on the environment. In the above circumstances, the FAC concluded that the decision of the DAFM should be to affirm the decision on this licence.

Yours sincerely

A large black oval redaction box covering the signature of Mr. Myles Mac Donncadha.

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