



[REDACTED]

30<sup>th</sup> July 2021

**Subject:** Appeal FAC 870/2020 regarding licence LS01-FL0084

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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence LS01-FL0084 for felling and replanting of forest on 22.37 ha in two separate plots at Glendine and Gorragh Upper, Co. Laois was issued by the Department of Agriculture, Food and the Marine (DAFM) on 11<sup>th</sup> December 2020.

#### **Hearing**

A hearing of appeal FAC 870/2020 was held by the FAC on 7<sup>th</sup> July 2021. The FAC Members in attendance at the hearing were Mr. John Evans (Deputy Chair of the FAC), Mr. Seamus Neely and Mr. Iain Douglas.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine regarding licence LS01-FL0084.

#### **General**

The licence pertains to the felling and replanting of forest on 22.37ha in two separate plots at Glendine and Gorragh Upper, Co. Laois. The forest is currently composed of Sitka spruce (30.1%), Lodgepole Pine LPS (66.5%) and Birch (3.4%) planted in 2008 and 2009 and replanting would be of Sitka spruce (40%) and LPS (60%) of the replanted area and 10% of the project area is to be open space. The application is

accompanied by a location and felling (bio) map. The project area is within the GORRAGH\_010 sub-basin and the waterbody has a Good Water Framework Directive status assigned to it in the 2013-18 assessment period and is not at risk. The site is described as having a predominantly moderate slope (<15%), the habitat is described as predominantly coniferous plantation (WD4) and the soil type underlying the project area is described in the DAFM Appropriate Assessment screening documentation as being approximately; 51.2%, Surface water Gleys, Ground water Gleys, 48.4%, Peaty Gleys and 0.4%, Lithosols, and Regosols.

The file shows that the application was desk assessed and that two submissions were received from members of the public. The application was referred to the Laois Co Council on 5<sup>th</sup> March 2019, and to both the National Parks and Wildlife Service (NPWS) and the Inland Fisheries Ireland (IFI) on 6<sup>th</sup> March 2019. There is no record on file of a response from the Council and the IFI made a submission raising no specific objection while making some commentary on the proposal. The NPWS made a submission which outlined the nature conservation recommendations for the Department of Culture, Heritage and the Gaeltacht for the felling application. It stated that the compartment is wholly situated within the Slieve Bloom Mountain Special Protection Area SPA (site code 004160) and that the proposed felling site is within a Hen Harrier 'Higher Likelihood Nesting Area' (HLNA). It recommended that the proposed works should take place from August 15<sup>th</sup> to March 31<sup>st</sup> to avoid disturbance of nesting birds and that if works are to take place outside these dates, then an Appropriate Assessment Screening should be undertaken as per Forest Service guidelines. It also states that the compartment bounds the Slieve Bloom Mountains SAC and may contain open mountain blanket bog and heath habitats, both Annex 1 and priority habitats under the Habitats Directive. It sets out that any trees encroaching on to open mountain habitat on lands owned by the Applicant should be felled by chainsaw to ensure the SAC habitats are not damaged by the encroaching conifers over time or by heavy machinery attempting to remedy the problem. It sets out that firebreaks shall not be ploughed, sprayed or cut without Appropriate Assessment Screening within the Slieve Bloom Mountain SPA. In addition, the submission attaches an appendix containing more general points that are of relevance as an assistance to DAFM in considering the application.

#### **Applicants Pre-Screening Report (30/09/2020)**

The applicant has submitted an Appropriate Assessment Pre-Screening report dated 30<sup>th</sup> September 2020. It states that the project area consists predominantly of plantation conifer high forest and areas of mixed broadleaved/conifer woodland and burned plantation, and that it is made up of six sub-compartments, primarily composed of Sitka spruce, Lodgepole pine (south coastal) and to a lesser extent, Birch, forming closed canopy over the majority of the project area. It states that there are no aquatic zones present within the project area, that a relevant watercourse flows adjacent to the southwestern boundary of sub compartments 1, 5, and the southern boundary of sub-compartment 9, which flows south east towards the Gorrageh River (order 2). Sub-compartment 7 is said to be located on a slope that varies from approximately 460m down to 420m in a south easterly direction towards the Gorrageh River while sub compartment 4 is located on a slope that varies from approximately 350m down to 320m in an easterly direction towards the Gorrageh River. The Gorrageh River, it states, continues in a northerly direction, merging with the Clodiagh [Tullaghmore] River (order 3), which is approximately 18.5km (at the closest point) downstream for the Charleville Wood SAC. It sets out that the Clodiagh [Tullamore] River continues

flowing northwest before turning south, where it merges with the Brosna River (order 6) which is designated for the River Shannon Callows SAC and the Middle Shannon Callows SPA approximately 59.2km (at the closest point) downstream of the project area. It further states that the Brosna River then flows south into Lough Derg, which is designated for the Lough Derg North East Shore SAC and the Lough Derg (Shannon) SPA approximately 85.6km (at the closest point) downstream of the project area and that the Shannon [Lower] River (order 7) flows south from Lough Derg constituting a hydrological connection with the Lower River Shannon SAC approximately 126.2km (at the closest point) downstream of the project area. The River Shannon and River Fergus Estuaries SPA are said to be approximately 156km (at the closest point) downstream of the project area, before ultimately discharging into the Shannon Estuary. The project area is said to be located within the Slieve Bloom Mountains SPA (Overlap of 22.37ha) and sub-compartments 7 and 9 are bordered to the northwest by the Slieve Bloom Mountains SAC (Overlap of 0.32ha) however it states that no SAC habitat is present within the project area, and all activity will be directed away from adjoining SAC habitat and towards the forest road. This report states that the project area is part of a larger conifer plantation of varying age and classes. The surrounding area is described as upland, supporting conifer plantation, recently felled woodland and blanket bog. The wider landscape is said to support improved agricultural grassland, pockets of rough grazing, scrub and cutover bog. The report indicates that the project area is located on blanket peat (BktPt) and peaty gley (AminSRPT, AminPDPT) soils on a gentle slope in easterly and south easterly directions. It also states that the project area is accessible via an existing forest road (LS01R0034).

The pre-screening examined fourteen European sites (Charleville Wood SAC, Slieve Bloom Mountains SAC, Slieve Bloom Mountains SPA, Clonaslee Eskers and Derry Bog SAC, Coolrain Bog SAC, Knockacoller Bog SAC, River Barrow and River Nore SAC, River Nore SPA, River Shannon Callows SAC, Middle Shannon Callows SPA, Lough Derg (Shannon) SPA, Lough Derg, North-east Shore SAC, Lower River Shannon SAC, and River Shannon and River Fergus Estuaries SPA). The pre-screening report set out that it had been determined that the project will have direct, indirect or in combination effects on three listed European sites, namely Charleville Wood SAC, Slieve Bloom Mountains SAC, and Slieve Bloom Mountains SPA. It went on to recommend that the project should therefore proceed to Appropriate Assessment (Stage 2) for the three named sites.

#### **Natura Impact Statement (submitted by the applicant) (30/09/2020)**

There is also a Natura Impact Statement (NIS) on file which is dated 30<sup>th</sup> September as submitted by the applicant. It is titled as being for *'Clearfell and Reforestation project LS01-FL0079, LS01-FL0080, LS01-FL0083 and LS01-FL0084, located in the vicinity of Glendine, Gorrageh Upper, Scarroon, Co. Laois'*. It sets out the qualifications of those involved in its preparation and the legal framework for NIS. It deals with the *'Specific Details for LS01-FL0084: Clearfell & Reforestation'* for this project beginning at page 19 of 84 in the NIS. It states that due to inherent levels of fertility, no fertiliser application is required to promote the establishment and growth of newly planted trees and that if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, herbicide (glyphosate) will be required to manage competing vegetation through manual spot spray application, to encourage rapid tree growth and to reduce trees losses through competition.

The NIS sets out site specific project details for each project covered by the report / statement. The NIS also sets out that downstream hydrological connections exist for the Slieve Bloom Mountains SAC (overlap of 0.32 ha), Charleville Wood SAC (distance: 18.5km at the closest point), and that the following European sites, which were excluded from the AA process (Coillte) at Pre-Screening stage, are also hydrologically linked to the project;

- River Shannon Callows SAC - Distance: 59.2km (at the closest point),
- Middle Shannon Callows SPA – Distance: 59.2km (at the closest point),
- Lough Derg (Shannon) SPA – Distance: 85.6km (at the closest point),
- Lough Derg, North-east Shore SAC – Distance: 85.6km (at the closest point),
- Lower River Shannon SAC – Distance: 126.2km (at the closest point),
- River Shannon and River Fergus Estuaries SPA – Distance: 156km (at the closest point).

It also describes that there are overlaps with;

- Slieve Bloom Mountains SAC – Overlap of 0.32 ha,
- Slieve Bloom Mountains SPA – Overlap of 22.37 ha.

The NIS also sets out that the project area will be re-established by windrow and mounding and then planted with 60% Lodgepole pine -South Coastal @ 2500 trees per hectare, and 40% Sitka spruce @ 2500 trees per hectare. It states that plants used in restocking will be treated off site in a nursery with an insecticide (acetamiprid) approved by Pesticide Registration and Control Division, DAFM. The site is to be monitored for any damage to young trees from newly emerged pine weevil (*Hylobius abietis*), and if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, a top up spot spray maybe applied to prevent excessive levels of damage and tree losses. It says that due to inherent levels of fertility, no fertiliser application is required to promote the establishment and growth of newly planted trees and if deemed necessary following an appraisal of the project area through Coillte's Integrated Pest Management Policy, herbicide (glyphosate) will be required to manage competing vegetation through manual spot spray application, to encourage rapid tree growth and to reduce trees losses through competition.

It sets out that the Charleville Wood SAC (13.4km), Slieve Bloom Mountains SAC (overlap of 0.32 hectares), and Slieve Bloom Mountains SPA 004160 (overlap of 22.37 hectares) have been screened in. The NIS at section 2 deals with the screened in European sites, examines the potential impacts and sets out proposed mitigations. The proposed mitigations are set out at section 3 for all the projects covered in the report / statement while ensuring that those relevant to a specific site are distinguishable. The NIS deals with 'Residuals', with 'In-Combination Plans & Projects On European Sites' at section 5, with 'Collated Mitigation Measures' at section 6, and with 'AUTHOR DECLARATION' at section 7. Various maps relevant to the projects considered in the NIS are included at Appendix 1 and IFS soil classifications are set out in Appendix 2.

### **Appropriate Assessment screening and Determination (DAFM) (6/10/2020) & In-combination report**

An Appropriate Assessment Screening (AAS) and Determination report undertaken by DAFM and dated 6<sup>th</sup> October 2020 is to be found on file. It examined ten European Sites namely; Slieve Bloom Mountains SAC (overlaps), Slieve Bloom Mountains SPA (overlaps), River Barrow and River Nore SAC (within 15km), Clonaslee Eskers and Derry Bog SAC (within 15km), River Nore SPA (within 15km), Charleville Wood SAC (within 15km), Coolrain Bog SAC (within 15km), Knockacoller Bog SAC (within 15km), Middle Shannon Callows SPA, and River Shannon Callows SAC. Four sites (Slieve Bloom Mountains SAC, Slieve Bloom Mountains SPA, Charleville Wood SAC, and River Shannon Callows SAC) are screened in for Appropriate Assessment and the other six sites are screened out. The reasons for the screening conclusions reached in respect of each of the ten sites are recorded in the report on file. There is a separate in-combination report / document on file which has a project specific statement included in it. It is based on a spatial run of 05/10/2020 and gives details of the information sources consulted in preparing the report.

### **Appropriate Assessment Determination Report (DAFM) (09/12/2020)**

An Appropriate Assessment Determination (AAD) report dated 9<sup>th</sup> December 2020 is to be found on file. It sets out that in concluding the Appropriate Assessment Screening, the Minister has determined that there is no likelihood of the felling and reforestation project LS01-FL0084 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), in view of their conservation objective, for the reasons set out:

- River Barrow and River Nore SAC - 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.
- Clonaslee Eskers and Derry Bog SAC - Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- River Nore SPA - Due to the separation distance between the Natura site and the project.
- Coolrain Bog SAC - 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.
- Knockacoller Bog SAC - 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.
- Middle Shannon Callows SPA - Due to the separation distance between the Natura site and the project.
- River Shannon Callows SAC - Due to the scale and nature of the activity, the large downstream hydrological distance (> 55 km) separating the project and the Natura site, with sufficient volume and surface area for settlement, dispersion and dilution of any possible nutrient sediment or siltation residue from the site.

It also sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of felling and reforestation project LS01-FL0084 having a significant effect, either individually or in

combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Bloom Mountains SAC - Possible effect due to the direct hydrological connectivity exists between the project area and this SAC (overlap .32ha).
- Slieve Bloom Mountains SPA - Possible effect due to the location of the project within the Natura site.
- Charleville Wood SAC - Possible effect due to the direct hydrological connectivity exists between the project area and this SAC.

The Appropriate Assessment Determination report in section 3 (at pages 3 and 4) sets out that the Minister determined that an Appropriate Assessment of the activity proposed under LS01-FL0084 was required in relation to the above 'screened in' European sites. It states that for this reason,

*'The applicant submitted a Natura Impact Statement (completed 30/09/2020) to facilitate the Minister carrying out an appropriate assessment. Niall Phelan, acting on behalf of the DAFM, subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".'*

*In undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the following were taken into account:*

- *the initial application LS01-FL0084, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer), responses from referral bodies and submissions from 3rd parties;*
- *any subsequent supporting documentation received from the applicant;*
- *any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site;*
- *if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6;*
- *any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise;*
- *any supplementary information furnished in relation to any such report or statement,*
- *if appropriate, any further information sought by the Minister and furnished by the applicant in relation to a Natura Impact Statement,*
- *any information or advice obtained by the Minister,*
- *any other relevant information'.*

The AAD report at section 4 (pages 4, 5 and 6) sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project. In concluding the report sets out that the basis for this AA Determination is that the project is on a site which has a gentle to steep blanket peaty project area containing plantation conifer high forest and areas of recently felled woodland and burned plantation, consisting of 6 sub compartments. Located within the Slieve Bloom Mountains SPA and directly south of the Slieve Bloom Mountains SAC it shares its border with the European site in its most northern section. Appropriate movement restrictions have been set to protect the SAC habitat features while operational timing restrictions have been set given that the site is partially designated as HLNA for Hen Harrier. While no aquatic features are within the project area the various sub compartments are located on a slope falling from approx. 450m to 360m towards the Gorragh River. The Gorragh River continues north merging with the Clodiagh [Tullaghmore] River which is designated for Charleville Wood SAC (approx. 18.5km downstream). All broadleaves will be retained where safe to do so to support the screened European site features. Appropriate aquatic and watercourse measure protections have also been set out, for the relevant designated features. In combination, the above measures will eliminate any pathways of impact of significance to the screened in features. The report concludes that;

*'Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.'*

## **Appeal**

There is one appeal against the decision to issue the licence in this case. The full grounds of appeal have been considered by the FAC and are to be found on file. The following is a summary of the appeal;

- It references court cases / judgements including Commission observations to the CJEU Case C-461/17 Brian Holohan and others and includes connected quotes / extracts,
- It references European Commission Observations in Case C-323/17, People Over Wind Peter Sweetman And Coillte Teoranta and includes connected quotes / extracts,
- It submits that there is no evidence submitted that any of the afforestation in the overall forest was ever subjected to even an EIA screening,
- It submits that no Information has been provided and there has been no assessment of the alternative of returning the site to Nature for the benefit of rgw (sic) Hen Harrier,
- It submits that the Minister has not made an assessment under the Habitats Directive and that the Minister has not made a screening under the Environmental Impact Assessment Directive,
- It submits that a specific list of cases are all part of the same forest unit and therefore the Forest Service in permitting them as multiple applications is practicing project splitting and seeks the return of €1000 (understood by the FAC to be appeal fees for appeals against stated licences).

## **DAFM Statement to the FAC**

In a statement to the FAC, the DAFM stated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria outlined in its standards and procedures policy have been adhered to in the making of a decision on the application. It also records the relevant application processing dates, sets out that there were two submissions received from third parties, that it was referred to Laois County Council, the National Parks and Wildlife Service (NPWS), and Inland Fisheries Ireland (IFI). It states that it was desk assessed and records that the IFI responded on 22<sup>nd</sup> April 2019 and that the NPWS responded on 17<sup>th</sup> June 2019. The statement sets out that the FAC is independent of the DAFM and carries out its functions in an independent and impartial manner in regard to the appeal process. It sets out that in regard to the granted felling licence application, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document and a Natura Impact Statement (NIS) were considered during the licencing process. It states that these documents are stored on file and have been submitted to the FAC in respect of appeal reference FAC 870/2020. It states that the licenced area comprises WD4 coniferous forest planted between 2008 and 2009 and includes a number of fire damaged areas. The statement submits that the felling and replanting of the area licenced by DAFM as LS01-FL0084 is consistent with best forest practice, DAFM standard procedures in relation to Appropriate Assessment, and S.I. 191/2017 and the 2014 Forestry Act. It sets out that in consideration of the felling licence application for LS01-FL0084, the DAFM carried out and documented an AA Screening exercise, arrived at a determination that the proposed felling and reforestation project meets the threshold of being considered likely to have significant effects on European sites, carried out and documented a Stage 2 Appropriate Assessment exercise and produced a formal determination as per Regulation 19(5) of SI 191 of 2017, as amended, and per Regulation 42(16) of SI 477 of 2011. This formal determination, the statement sets out, stated that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation measures identified. The formal determination also states that based on objective information, no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site. The statement goes on to provide additional narrative in response to the appeal.

## **Consideration of the appeal by the FAC**

In considering the grounds of appeal, the FAC considered, in the first instance, the contentions in the grounds in relation to the Environmental Impact Assessment (EIA) Directive and related matters. In this context the FAC considered whether the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. The EU EIA 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 Forestry Regulations 2017 (S.I. 191 of 2017), in relation to forestry

licence applications, require mandatory EIA 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 decision before the FAC relates to the felling and subsequent replanting of 22.37 ha of commercial managed forest. The FAC concluded that the felling and 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 not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case.

The FAC considered the contention in the grounds of appeal relating to Appropriate Assessment and related matters. In this regard the FAC finds that the applicant has submitted an Appropriate Assessment Pre-Screening report dated 30<sup>th</sup> September 2020 which examined fourteen European sites and set out that it had been determined that the project will have direct, indirect or in combination effects on three of these fourteen sites. The three European sites concerned are, Charleville Wood SAC, Slieve Bloom Mountains SAC, and Slieve Bloom Mountains SPA. The pre-screening report went on to recommend that the project should proceed to Appropriate Assessment (Stage 2) for the three named sites.

The FAC finds that there is also a Natura Impact Statement (NIS) on file as submitted by the applicant and which also has a completion date of 30<sup>th</sup> September 2020. The FAC finds that the NIS sets out that the Charleville Wood SAC (13.4km), Slieve Bloom Mountains SAC (overlap of 0.32 hectares), and Slieve Bloom Mountains SPA (overlap of 22.37 hectares) have been screened in. The FAC further finds that the NIS at section 2 deals with the screened in European sites, examines the potential impacts and sets out proposed mitigations at section 3 for all the projects covered in the report / statement while ensuring that those relevant to a specific site are distinguishable. The NIS is found to deal with '*Residuals*' at section 4, with '*In-Combination Plans & Projects On European Sites*' at section 5, with '*Collated Mitigation Measures*' at section 6, and with '*Author Declaration*' at section 7. Maps relevant to the projects considered in the NIS are to be found at Appendix 1 and IFS soil classifications are to be found in Appendix 2 of the NIS.

The FAC finds that an Appropriate Assessment Screening (AAS) and Determination report was undertaken by DAFM and dated 6<sup>th</sup> October 2020. The FAC finds that the AAS examined ten European sites namely; Slieve Bloom Mountains SAC (overlaps), Slieve Bloom Mountains SPA (overlaps), River Barrow and River Nore SAC (within 15km), Clonaslee Eskers and Derry Bog SAC (within 15km), River Nore SPA (within 15km), Charleville Wood SAC (within 15km), Coolrain Bog SAC (within 15km), Knockacoller Bog SAC (within 15km), Middle Shannon Callows SPA, and River Shannon Callows SAC. Four sites (Slieve Bloom Mountains SAC, Slieve Bloom Mountains SPA, Charleville Wood SAC, and River Shannon Callows SAC) are found to be screened in for Appropriate Assessment and the other six sites are screened out. The FAC finds that the reasons for the screening conclusions reached in respect of each of the ten sites are recorded on file. The FAC further finds there is a separate in-combination report / document on file. It is based on a spatial run of 05/10/2020, it gives details of the information sources consulted in preparing the report and includes a project specific statement.

The FAC finds that there is an Appropriate Assessment Determination (AAD) report dated 9<sup>th</sup> December 2020 on file. The AAD sets out that in concluding the Appropriate Assessment Screening, the Minister has determined that there is the likelihood of felling and reforestation project LS01-FL0084 having a significant effect, either individually or in combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Bloom Mountains SAC - Possible effect due to the direct hydrological connectivity exists between the project area and this SAC (overlap .32ha).
- Slieve Bloom Mountains SPA - Possible effect due to the location of the project within the Natura site.
- Charleville Wood SAC - Possible effect due to the direct hydrological connectivity exists between the project area and this SAC.

The Appropriate Assessment Determination report in section 3 (at pages 3 and 4) sets out that the Minister determined that an Appropriate Assessment of the activity proposed under LS01-FL0084 was required in relation to the above 'screened in' European sites. The FAC finds that the AAD records that in undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the DAFM took into account;

- the initial application LS01-FL0084, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer), responses from referral bodies and submissions from 3rd parties,
- any subsequent supporting documentation received from the applicant,
- any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site,
- if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6,
- any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise,
- any supplementary information furnished in relation to any such report or statement,
- if appropriate, any further information sought by the Minister and furnished by the applicant in relation to a Natura Impact Statement,
- any information or advice obtained by the Minister, and
- any other relevant information.

The FAC finds that the AAD report at section 4 (pages 4, 5 and 6) sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project.

In arriving at a conclusion as to whether the DAFM have erred in its processing of this licence application as it relates to Appropriate Assessment the FAC considered all of the relevant documentation on file in this connection including the Appropriate Assessment pre-screening report (30/09/2020) and the Natura Impact Assessment Statement (30/09/2020) as submitted by the applicant, the DAFM Appropriate Assessment screening and Determination report (6/10/2020) and the DAFM Appropriate Assessment Determination and report (9/12/2020). The FAC finds that the DAFM Appropriate Assessment screening and Determination report (6/10/2020) examined ten European sites and screened in four (Slieve Bloom Mountains SAC, Slieve Bloom Mountains SPA, Charleville Wood SAC, and River Shannon Callows SAC). The FAC finds that the DAFM Appropriate Assessment Determination report (9/12/2020) examined / dealt with ten European sites and recorded three (Slieve Bloom Mountains SAC, Slieve Bloom Mountains SPA, and Charleville Wood SAC) as being screened in. The FAC therefore found that one European site (River Shannon Callows SAC) which was screened in the DAFM AAS (6/10/2020) and wherein its details, including its qualifying interests (listed) & conservation objectives, were considered, was not subjected to Appropriate Assessment. However, the FAC further finds that this site was considered and was recorded as being screened out in the DAFM AAD and that the reasons for the conclusion to screen it out was recorded in the AAD report at page 2.

The FAC examined publicly available information from the NPWS and EPA and identified the same European sites as examined in the DAFM Appropriate Assessment screening (6/10/2020) and the DAFM Appropriate Assessment Determination report (9/12/2020). While the FAC noted that the DAFM Appropriate Assessment Determination report (at pages 2 and 3) recorded that the River Shannon Callows SAC IE0000216 (which the DAFM AAS recorded as being screened in) had been screened out '*Due to the scale and nature of the activity, the large downstream hydrological distance (> 55 km) separating the project and the Natura site, with sufficient volume and surface area for settlement, dispersion and dilution of any possible nutrient sediment or siltation residue from the site*', it considered that the AAD report has not evidenced sufficiently (by listing in the report) that the Special Conservation Interests in their specifics (Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410], Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510], Limestone pavements [8240], Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicionalbae) [91E0], Lutra lutra (Otter) [1355]) had been fully considered. The FAC also noted that the DAFM AAD made no reference to the screening conclusion reached (screened in) in respect of the same SAC in the DAFM AAS (6/10/2020). The FAC considered that this represents a significant or serious error in the processing of the application of the licence in this case as it relates to Appropriate Assessment.

The FAC considered the contention in the grounds that there is no evidence submitted that any of the afforestation in the overall forest was ever subjected to an EIA screening. The Information available to the FAC from the application materials indicated that the existing forest was planted in 2008 and 2009. There is no information before the FAC that this was initial afforestation or replacement of existing forestry, or if the forestry, the subject of the current proposal, is in any way, unauthorised. Based on the information before it on this issue, the FAC finds no reason to conclude that there was any significant or serious error made in the making of the decision to grant the licence as it relates to this contention. In relation to the contention in the grounds regarding the appeal fees the FAC finds that where a person wishes to make an

appeal under the Agriculture Appeals Act 2001 (as amended) in respect of forestry licencing, a €200 appeal fee is payable per appeal in respect of each licence being appealed. The FAC further finds that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020. The FAC therefore finds no reason to conclude that there was any significant or serious error made in the making of the decision to grant the licence as it relates to this ground in the appeal.

The FAC considered the contention in the appeal that there has been no assessment of the alternative of returning the site to Nature for the benefit of the Hen Harrier. The FAC noted that the application was referred to the NPWS who responded and that the DAFM considered the said response in the processing of the application. The FAC also noted that the proposal was subjected to Appropriate Assessment and that mitigations were derived, including in relation to the Hen Harrier and that these have been included as conditions in the licence. The FAC therefore finds no reason to conclude that there was any significant or serious error made in the making of the decision to grant the licence as it relates to this ground in the appeal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is satisfied that a serious or significant error or a series of errors was made in making the decision in relation to licence LS01-FL0084. The FAC is therefore setting aside and remitting the decision regarding licence LS01-FL0084 to the Minister to carry out a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

  
Seamus Neely On Behalf of the Forestry Appeals Committee