



[REDACTED]

3<sup>rd</sup> December 2020

**Subject:** Appeal FAC080/2020 regarding licence LS01-FL0077

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence LS01-FL0077 for felling and replanting of 5.04 ha at Brittas, Glenkeen Lower, Co. Laois was approved by the Department of Agriculture, Food and the Marine (DAFM) on 4<sup>th</sup> February 2020.

#### **Hearing**

An oral hearing of appeal FAC080/2020 was held by the FAC on 20<sup>th</sup> November 2020.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Ms. Claire Kennedy, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Anthony Dunbar, Ms. Eilish Kehoe

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence LS01-FL0077.

The licence pertains to the felling and replanting of 5.04 ha at Brittas, Glenkeen Lower, Co. Laois. The forest is currently comprised of Sitka spruce and the site would be replanted with the same species and is indicated as standard conifer reforestation for roundwood production. The site comprises to distinct plots of land in close proximity to each other. The site is on the northern fringe of the Slieve Bloom Mountains on a moderate with a gradient of 0-15% with underlying soil types of approximately. 28.53%,

Surface water Gleys, Ground water Gleys; 43.66%, Acid Brown Earths, Brown Podzolics; 10.43%, Peaty Gleys (Shallow); 6.71%, Surface water Gleys (Shallow), Ground water Gleys, (Shallow) and 10.79%, Lithosols, Regosols. The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. An appropriate assessment pre-screening report was also provided with the application.

The DAFM undertook and documented an appropriate assessment screening that found five European sites within 15km and found that there was no reason to extend this radius in this case. Four sites, Slieve Bloom Mountains SAC 000412; Charleville Wood SAC 000571; Clonaslee Eskers and Derry Bog SAC 000859 and the River Barrow and River Nore SAC 002162 were screened out due to the absence of lack of any pathway, hydrological or otherwise between the site and the Natura sites. Slieve Bloom Mountains 004160 was screened in due to the location of the project within the Natura site. An appropriate assessment report and determination was undertaken and dated 6<sup>th</sup> February 2020.

The development it is noted was referred to Laois County Council on the 5<sup>th</sup> of March 2019 and no response was received.

The licence was approved with a number of conditions attached which related to the mitigation of effects as outlined in the appropriate assessment report.

There is one appeal against the decision. The grounds contend that the appropriate assessment screening does not comply with the law. Reference is made to the hen harrier species and as this project is a replanting application was an adequate Appropriate Assessment ever carried out in relation to the hen harrier. The grounds proceed to submit suggested shortcomings in the information and evidence provided in text attribute to an Inspector and suggests that no in combination screening was available to comment on. The grounds further submit text regarding obligations on public authorities; to legal obligations of the Forestry Appeals Committee; refers to court judgements in support of the grounds of appeal and the identified and provision of information and the consideration of measures designed to avoid or reduce the harmful effects of the plan or project on European sites. A text attributed to the Department of Culture, Heritage and the Gaeltacht was also submitted.

In a statement to the FAC, that in regard to the granted Felling licence application LS01-FL0077, information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Prescreening Report and associated Pre-screening Report methodology document were considered during the licencing process. The DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km.

The Department identified the possibility of the project having a significant effect on a screened European site the Slieve Bloom Mountains SPA 004160 and therefore was screened in. The AA Screening

involved a review of Special Conservation Interests and Conservation Objectives of this European site and which have been considered in the AA Report and AA Determination Statement.

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 submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. They submitted that they considered the application information provided by the Applicant including harvesting and operational procedures, maps and a pre-screening report. They submitted that the qualifying interests of European sites were truncated in the original screening form. They submit that the Slieve Bloom Mountains SPA 004160 was screened in for appropriate assessment on a precautionary basis and that an appropriate assessment report and determination had been prepared.

The potential for the project to result in impacts on the Special Conservation Interest of the Slieve Bloom Mountains SPA 004160 was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts were described. The statement indicates that the mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the Special Conservation Interest of the Slieve Bloom Mountains SPA 004160 from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive. The measures described in the application documentation, together with an adherence to relevant environmental guidelines/requirements/standards and also to the site specific mitigation measures set in the AA Report and AA Determination statement ensure that the proposed felling and reforestation project LS01-FL0077 will not result in any adverse effect on any European Site.

In relation to LS01-FL0077, the potential for the proposed project to contribute to an in-combination impact on European sites was also considered by DAFM. It was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect on the Slieve Bloom Mountains SPA 004160 and associated Special Conservation Interest and Conservation Objectives. There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects. The site-specific mitigations identified in the Report and AA Determination Statement were attached as conditions of licence issued for felling and reforestation project LS01-FL0077.

*The DAFM determined, "pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (LS01-FL0077), either individually or in combination with other plans or projects, will not adversely affect the integrity of any European site. A felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM. The site-specific mitigations identified in the Report and AA Determination Statement were attached as conditions of licence issued for felling and reforestation project LS01-FL0077".*

*Note that the licence was issued on 04/02/2020 on the basis of a draft AA Report and AA Determination Statement". The finalised AA Report and AA Determination Statement is dated 06/02/2020.*

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM presented an overview of their processing of the licence and the screening and appropriate assessment undertaken. They submitted that the proposal lies within Slieve Bloom SPA and that the protocol agreed with the NPWS regarding Hen Harrier had been adhered to. The NPWS were notified of the licence application and in a response the NPWS noted that the location of the proposed development is situated in a location likely to impact on the Natura 2000 site: the Slieve Bloom Mountains SPA, 004160 and in order to mitigate against any potential impacts to these sites it was recommended that the following conditions be attached to any grant of permission that may issue:

*"As the area is within a Hen Harrier Red Zone works should take place from August 15th to March 31st. If works are to take place outside these dates then an Appropriate Assessment Screening should be carried out as per Forest Service guidelines".*

The DAFM also at the hearing outlined non standard conditions specific to the licence and condition (k) specifically refers to the matters raised in the NPWS response.

They submitted that other plans and projects had been considered as described in the appropriate assessment report. It was restated that the licence had been issued on a draft appropriate assessment report and determination and that the document was finalised on 6<sup>th</sup> February 2020. They submitted that the protocol includes a regular updating of nest sites and that the most recent data came from April 2020.

The Applicant's Representatives described the documents and information provided with the application. They submitted that the site which is in two parcels separated by a lake had been visited by one of their Environmental Officers and ground conditions were good. The nearest SACs were screened out owing an absence of a hydrogeological pathway and distance from the felling site. They further submitted that the proposal does not involve any deforestation for the purposes of land use change and does comprise a class of project covered by the EU EIA Directive.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same five sites as the DAFM within 15km from the proposal. These are, 412 Slieve Bloom Mountains SAC; 571 Charleville Wood SAC; 859 Clonaslee Eskers and Derry Bog SAC; 2162 River Barrow and River Nore SAC (6.8km) and 4160 Slieve Bloom Mountains SPA. The site is within 4160 Slieve Bloom Mountains SPA. The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

The DAFM considered each site in turn and provided the reasons for screening four of the sites out for appropriate assessment, with Slieve Bloom SPA being screened in based on proximity as the site is within the SPA. The DAFM identified this as being a precautionary approach. In addition, referrals were made to the NPWS and the protocol agreed with the NPWS regarding Hen Harrier was employed in the processing of the application. The NPWS response was noted and the condition attached in the

response. Furthermore, as identified by the DAFM in its statement to the FAC, the licence was issued on a draft appropriate assessment report and determination before it was finalised. The FAC considers and is satisfied that this issue constitutes a serious error in the making of the decision regarding licence LS01-FL0077.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that a serious error was made in making the decision and is setting aside and remitting the decision of the Minister regarding licence LS01-FL0077 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake an appropriate assessment of the proposal in relation to Slieve Bloom SPA before a new decision is made.

Yours sincerely,

  
Derek Daly On Behalf of the Forestry Appeals Committee

