

Coogan, Mary

From: Coogan, Mary
Sent: Monday 11 July 2022 18:46
To: forestry agriappeals
Cc: Curran, Eugene; OBrien, MichaelG; Forestry Support Unit; Coogan, Mary
Subject: DAFM Statement FAC071/2022 CN89533
Attachments: CN89533 DAFM Statement FAC071 2022.docx

Please note that DAFM Statement FAC071/2022 CN89533 has been uploaded to FAC Cloud Link today.

Please note that no copy file is provided as IFORIS documentation is visible on the Forestry Licence Viewer for this contract.

Regards,

Mary Coogan,

Forestry Support Unit.

Mary Coogan
Forestry Division, Forestry Support Unit,
Rannóg/Seirbhís Foraoiseachta, Rannóg Cheadúchan,

An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and Marine
Eastát Chaisleán Sheonach, Contae Loch Gorman, Y35 PN52
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Forestry Division Statement to the Forestry Appeals Committee

FAC Reference	FAC071/2022
File Reference	CN89533
Scheme	Afforestation
Species proposed	GPC 3
Approved Area	9.57 Hectares

Summary of application:

Date Submitted	27/09/2021
Site Notice date	27/09/2021
Date Application Advertised	04/10/2021
Referrals to referral bodies	SW Regional Fisheries Board 15/11/2021 – No Reply
Date Referred to Inspector	15/11/2021 - Certified 10/02/2022 08/03/2022 - Certified 08/06/2022 Inspect at 1 st Instalment
Desk Assessment/Desk & Field Assessment	Field & Desk Assessment, Field Inspection 09/02/2022
Submissions Received	No submissions received
Appropriate Assessment Screening	Natura Site 1, 2, 3, 4 - Screen Out: No likelihood of a significant effect on any European site, and Appropriate Assessment not required. (AA Pre-Screening Report – May 2021 and NIS May 2021 received from forester on behalf of applicant.)
Recommendation from Inspector	Approve with Conditions
Decision	- All existing trees and hedgerows within the site shall be retained. Reason: In the interests of protecting the character of the landscape and the protection of the environment, in particular, habitats for flora and fauna. - Upon commencement of work on site, the licensee shall notify the Department in writing. Any necessary additional documentation, as may be required by a condition attached to the Licence, shall be included with this Notice of Commencement.

	<p>Reason: To enable the Department to verify compliance with the Licence and the conditions attached thereto.</p> <p>- The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars).</p> <p>Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment</p>
Date Decision Issued	14/06/2022
Date Decision Advertised	15/06/2022

Administrative Comments:

The decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act.

Please see the statement from the Inspectorate.

Approval issued on the 14th June 2022 which was a Tuesday. The decision was then advertised on the next advertising day, which was Wednesday 15th June 2022. This is standard practice, so the decision was not late being advertised. The documents were available as soon as they were made public. There was a full two weeks in which to appeal.

Name: Mary Coogan

Grade: EO

Date: 11/07/2022

Grounds of Appeal

- v. Transparency and openness in the use of personal data is important to the FAC which aims to fully inform all its customers about the purpose(s) for which their data will be used and why, where it may be shared elsewhere and why and how long their data may be held by the FAC. This information and the information on the rights of customers who provide personal data to the FAC are detailed in the data protection section on the Appeals Office's website www.agriappeals.gov.ie.
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14. Appellant's Grounds and Statement (additional pages may be included if required)

④
UNDUPLICATE PROCESS: The licence was issued on the 14th June 2022 but the decision was not known to the public until 15th June.
The Aarhus convention Compliance Committee in findings and recommendations with regard to communication ACCC/C/2015/131 concerning compliance by the UK and Northern Ireland "Adopted by the Compliance Committee on 26 July 2021. Paragraph 129 stated "More generally, however, the Committee considers that a rule that the time frame for the public to challenge a decision is calculated from the date the decision was taken, and not the date when the decision became known to the public, is manifestly unfair. Moreover, it may create an incentive for public authorities not to make decisions under article 6 of the Convention promptly available, knowing that there will then be less opportunity for those decisions to be challenged."

15. Declaration

By signing the declaration below you are making an appeal against the decision referred to in this Notice of Appeal Form and declaring that your appeal details may be provided to other relevant parties and may be included in the record of and read publicly at any oral hearing held for this appeal and may be published.

I declare that the information contained in my appeal is true and accurate and that I have read and accept the rules governing the submission and processing of appeals by the Forestry Appeals Committee including Sections 14 A to 14F of the Agriculture Appeals Act, 2001, the Forestry (Miscellaneous Provisions) Act, 2020 and the Forestry Appeals Committee Regulations 2020.

Signature of Appellant: _____

Date: _____

Version 10/08/2021

23/6/2022

Forestry Appeals Committee

27 JUN 2022

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The delayed publication of the decision to award this licence within the already narrow window is manifestly unfair and contrary to due process. AA Screening: The AA Screening Determination for this project is flawed for two Natura 2000 sites. SPA 004161. The NIS submitted by the applicant details the habitats on site as; "The principal habitats present are wet grassland (G54) dominated by dense Soft Rush, and scrub (WS1) dominated by Willow, Common Gorse and Bramble. A tract of peaty wet grassland occurs to the North, but still rushes (mostly *Juncus acutiflorus/articulatus*) dominate. There are small pockets of cutaway bog (PB4). There are no natural watercourses on site. Drainage channels (FW4) present along field boundaries are often nonfunctional, being very shallow and m-filled silt and engulfed by vegetation. Reasonably mature hedgerow (W1) occurs along field boundaries"

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The NIS states "The proposed afforestation lands may provide some suitable foraging (and possible nesting) habitat for this species" and the NIS indicates a potential for impact on Hen Harrier and includes details of mitigation. DAFM's AA screening protocol (which evidences no scientific rationale) indicates a screen out for afforestation where the project is less than 11km from the SPA, not overlapped by a Red Area (High likelihood of Nesting Area) and does not contain the described foraging habitat. Notwithstanding the fact that is no scientific basis provided for the screen out scenario used by the Forest Service this project did not meet the Department's test for screening out being < 1 km from the SPA and contains suitable foraging habitat "The species forage over open heath, scrub and farmland habitats during the Breeding Season".

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14. Appellant's Grounds and Statement (additional pages may be included if required)

(O'Donoghue 2012 as cited in NPWS, 2015) (Bird foraging table 6-1-2020). (4)

This habitat described in the NIS is suitable foraging habitat for Hen Harriers but the AA screening makes no reference to the NIS. The screening Determination for stacks to Mullaghareirk Mountains, West Emerick Hills and Mount Eagle SPA 004161 states:

I conclude that it can be excluded, based on objective scientific information, that the project itself (ie individually) will not have a significant effect on this European site, due to the following findings:
 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 hydrological connection. The absence of any significant watercourse(s) within or adjoining the project area. These conclusions are not

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relevant to the Qualifying Interest of the Natura site which is the Hen Harrier and Determination is Flawed as a result (S)

The proximity of the nearest Hen Harrier nest location is not identified in the AAS which is a significant lacunae in that assessment.

The screening determination for SAC 002170 is also flawed. The project site is hydrologically connected to the SAC and a significant effect cannot be eliminated. The test for degree of certainty required to screen out this project for a possible impact on the SAC has not been met.

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Signature of Appellant

Date

23/6/2022

Forestry Appeals Committee

27 JUN 2022

Statement from Inspectorate.

Assessment Criteria	
Was the AA screening procedure at the time of approval applied? (Y/N)	Yes
What version of the AA procedure?	Nov19
Standard Operating Procedures applied? (Y/N)	Yes

Based on the information supplied by the appellant, do you recommend any change to the original decision?

(Tick as appropriate)

No change		Confirm recommendation to grant licence		Revise conditions of licence		Remit licence for reassessment	X	Revoke licence	
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I have reviewed the grounds of appeal for CN89533, FAC 071/2022 and on further consideration I recommend the above the afforestation licence be remitted back to the Minister for reassessment to carry out a new AA screening under Article 6 of the Habitats Directive, for any likely significant effects of the proposed development on Natura sites, in combination with other plans and projects.

Name: Eugene Curran

Role: District Forestry Inspector

Date: 11/7/2022