

From: Cliona OBrien (Housing)
Sent: Friday 18 October 2024 10:30
To: Collins, Kevin; 'Fahy, Orla'
Cc: Sinead Cummins (Housing); Andy Bleasdale (Housing)
Subject: Complaint from Neil Foulkes: Hen Harrier mitigation
CK11-FL0108

Dear Orla, Kevin

Andy will be in touch separately with you and/or Seamus to seek a discussion soon with DAFM-FS about the substance of the issues being raised by Mr Foulkes, but in the meantime, please see below for the nature of the issues he is raising with us, more broadly in terms of compliance with the Directive but also in relation to this specific application/licence CK11-FL0108.

Kind regards
Cliona

From: Neil Foulkes <neilfoulkes62@gmail.com>
Sent: Friday 18 October 2024 09:13
To: Sinead Cummins (Housing) <Sinead.Cummins@npws.gov.ie>; Cliona OBrien (Housing) <Cliona.OBrien@npws.gov.ie>
Cc: Housing Mos <MOS@housing.gov.ie>; Andy Bleasdale (Housing) <Andy.Bleasdale@npws.gov.ie>
Subject: Hen Harrier mitigation CK11-FL0108

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Sinead, Cliona,

This is the mitigation now being applied by FS for Hen Harrier in 'Green Zones' (non Red Zone or HLNA). For the example identified it is the only mitigation in the AA.

"In relation to Hen Harrier, the following mitigation is required, presented in the form of conditions to be attached to any licence issued: 1. The site of this project lies within a Special Protection Area where hen harriers are a qualifying interest. If hen harrier breeding activity is identified within 1.2km of the project area, the National Parks & Wildlife Service should be notified immediately. If this activity is confirmed the Department will be informed and the licence amended to reflect this new status."

Any AA Determination based on this mitigation would have no chance of standing up in a court of law.

Who is going to identify any breeding activity? It does not rely on any monitoring or surveying to detect breeding birds.

It does not require the suspension of work pending confirmation of breeding activity - the complete opposite of the precautionary principle.

It does not exclude the possibility that birds could be nesting or seeking to nest in proximity to the site whilst works are ongoing. If birds are breeding, the mitigation permits disturbance.

In the event of breeding behaviour being reported it requires a process before the licence is amended. This period alone permits for the possibility of damage, destruction or disturbance.

It does not assess the restoration objective of the SPA in terms of re-stocking the site (which is with 90% Sitka Spruce).

You will be able to check for yourselves how close this project area is to a recorded nest site.

This is only scratching the surface of grounds that would be brought before the court. I could go on but I am sure that you can see the inherent inadequacy of this mitigation. It flies in the face of the findings of the BWI report commissioned by Coillte and commented upon extensively by the NPWS.

This mitigation would have been agreed by DAFM's Mitigation Review Group - it is not the work of an errant ecologist. This is systemic and is a further breach of duty by DAFM of their responsibility under Section 27 of the BNHR's.

This is not a one-off incident. This is now standard mitigation for Green Zones / Non Red Zone / Non HLNA within the Hen Harrier SPA network.

I am imploring the NPWS to appeal against a decision of the Forest Service to lay down a marker that this irresponsible attitude to the conservation of this species will not be tolerated.

What is the point in developing a MoU with Coillte when they are complicit in this process. The mitigation in the Coillte NIS states;

" Using the best scientific data available to Coillte, potential disturbance to breeding hen harrier is not considered likely and potential disturbance operation(s) associated with this project can take place during the hen harrier breeding season." "Not likely" does not exclude the possibility and does not meet the strict test of Article 6(3).*

* 2019 as far as I am aware, so about 5 years out of date - no competent ecologist would rely on such out of date information. No attempt by Coillte to seek input from NPWS or any of the specialist Raptor groups.

Please note that Coillte's NIS was not available to the NPWS staff member who produced the submission. By an agreement between DAFM and Coillte, NIS's are not supplied by Coillte to DAFM until the consultation window has closed. NPWS were given an 8 week period from the 1st May to make a submission. The NIS was published on the licence viewer on the 5th July, days after the consultation window closed. The NPWS were intentionally deprived of an opportunity to view the NIS during the consultation period.

Can you please confirm that the NPWS will act on this matter? I would appreciate a prompt response as I am trying to raise the funds to appeal against this licence.

If you are not prepared to act then I will have to go directly to Europe. I think that I have brought enough material to you to demonstrate that the Forest Service is not compliant with their duty.

Yours sincerely, Neil Foulkes