

Daniel O'Connor

From: Appeals2
Sent: Monday 29 January 2024 12:36
To: Daniel O'Connor
Subject: FW: ABP-318213-23-NPWS Response
Attachments: ABP_318213_23_ResponseNPWS.pdf

From: Aine Lynch (Housing) <Aine.Lynch@npws.gov.ie>

Sent: Monday, January 29, 2024 12:09 PM

To: Appeals2 <appeals@pleanala.ie>

Subject: ABP-318213-23-NPWS Response

Dear Mr. O Connor,

I refer to your letter dated 15.01.2024, ABP Reference No: ABP-318213-23/Planning Authority Reference Number: NA0617. In accordance with Section 131 of the Planning and Development Act (as amended), please find attached NPWS's response as requested to submission made by Coillte on the 15th December 2023.

If I can be of any further assistance then please do not hesitate to contact me.

Is mise le meas,

Áine Lynch

Dr. Áine Lynch

Bainisteoir Réigiúnach Thiobraid Árann Thuaidh/Luimnigh
Regional Manager N.Tipperary/Limerick

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National Parks and Wildlife Service

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Date: 29.01.2024

Case Number: ABP-318213-23
Planning Authority Reference Number: NA0617

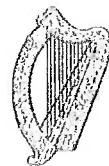
Dear Mr. O Connor,

Thank you for your correspondence of 15-01-24 and the opportunity to make observations in relation to the submission dated 15th December 2023 from Coillte on the above case number **ABP-318213-23**.

To clarify our position; we did not suggest that the proposed activity is subject to exemption under Section 5(8) of the Planning and Development Act (PDA). We have made an application to the Board as provided for under Section 5(8)(a)(ii) seeking a determination as to whether the aforementioned project is development and if it is development whether or not it is exempted development. We suspect the project is development but that it is exempted development described under Section 4(1)(i) of the PDA and also exempted by regulations (The Planning and Development Regulations (PDR)) made in accordance with Section 4(2) of the PDA and we seek a determination from the Board to clarify whether or not this is the case.

We note under the PDA Section 4(i) that development consisting of the felling of trees, forests or woodlands or works ancillary to that development are exempted development (but not including the replacement of broadleaf high forest by conifer species; which is not the case in this project). We further note that Article 8F of the PDR states that "*Development (other than replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No.31 of 2014) and that consists of- (a) the thinning, felling or replanting of trees, forests or woodlands, or (b) works ancillary thereto, shall be exempted development.*"

We welcome that Coillte supports our view that that the proposed project is subject to an exemption. We also very much welcome Coillte's plans to restore peatlands. However, we question Coillte's statement that the current legal framework would require them to seek planning permission in all cases; hence the purpose of our submission to the Board in this case. We acknowledge projects exceeding various thresholds (as outlined in previous correspondence) would require planning permission but we do not believe the current proposed project falls into that category. As stated previously, the sole purpose of the project is to benefit the environment.



We draw your attention to the phrase licensed or **approved** [emphasis added] under section 6 of the Forestry Act 2014 (N0.31 of 2014). Section 6 of S.I. 31/2014 is copied below:

Specific functions of Minister

6. Without prejudice to any other functions conferred on the Minister by this Act, the Minister may—

(a) grant licences and, where appropriate, attach conditions thereto, for—

(i) the felling or otherwise removing of a tree or trees and the thinning of a forest,

(ii) afforestation,

(iii) forest road works, and

(iv) aerial fertilisation of forests,

(b) give approvals and, where appropriate, attach conditions thereto, for forest management plans,

(c) give approval for and provide grants for any activity related to his or her functions under the relevant statutory provisions and may attach conditions thereto,

(d) produce and implement guidelines, codes of practice and standards for good forest practice,

(e) purchase or otherwise acquire, or dispose of, land suitable for afforestation or for any other forestry-related activities,

(f) develop and maintain forest inventories,

(g) undertake, participate in or promote any scheme or project related to his or her functions,

(h) undertake the collection, preparation, publication and distribution of statistics relating to forestry,

(i) prescribe fees pursuant to section 25,

(j) prescribe forms for the purposes of the Forestry Acts 1988 to 2014, and

(k) make regulations relating to any of the foregoing functions.

As outlined earlier, we suggest the Forestry Section 19(1)C(iv) application process and determination by DAFM that felling is exempt from licence and any obligation to replant for environmental reasons; while not a licence, requires the **opinion of the Minister** and is in this context equivalent. It is an "**approval**" for a forest management plan requiring the opinion of the Minister as identified in Section 6 of S.I. 31/2014 (Forestry Act) and further referenced in article 2(a) of S.I. 45/2020 (PDA, exempted development Regulations). We believe this view is further supported in part 2(a) of S.I. 45/2020 (and also previous amending S.I.) by the distinction and separate inclusion of "*thinning, felling or replanting of trees, forests or woodlands,*" and we infer from this that both felling and replanting are distinctly separately exempted and exemption of one is not dependent on the other occurring i.e. permanent removal of non-native coniferous trees as a potential change of land use and development is also part of the intended exemption.

It appears to this Department a significant consideration in the drafting of Article 2(A) OF S.I. 45/2020 and previous exemptions of such projects was to exempt an activity from the additional requirement for planning permission when it already required statutory consent via another mechanism and would be regulated in that manner. The current case entails: