



**An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee**

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19<sup>th</sup> June 2020

**Subject: Appeal FAC403/2019 regarding licence CN84076**

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

#### **Background**

Licence CN84076 for 150 metres of forest road at Ardachrin, Co. Donegal was issued by the Department of Agriculture, Food and the Marine on 19th November 2019.

#### **Hearing**

A hearing of appeal FAC403/2019 was held by the FAC on 16<sup>th</sup> June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to cancel the decision of the Minister regarding licence CN84076.

The decision pertains to a licence for 150 metres of forest road at Ardachrin, Co. Donegal to service 15.4 hectares of 43-year-old forest. The application provides the road specification which will be constructed through excavation and describes the site as flat to gentle sloping on a mineral soil. The proposal would take place in a mature coniferous forest and there is a minor public road to the east and a stream rises some 80m to the east. The boundary of Glenveagh National Park is to the northwest. The proposal was sent to Inland Fisheries Ireland, who responded regarding adherence to forestry guidelines, and to the County Council who suggested that the existing forestry served by the proposed forest road is located within and adjoining Natura 2000 sites, Cloghnagore Bog and Glenveagh National Park SAC (Site Code 002047) Derryveagh and Glendowan Mountains SPA (Site Code 004039) and Cloghnagore Bog and Glenveagh National Park proposed Natural Heritage Areas. They also note that the site is now designated as an area of high landscape amenity with the capacity to absorb sensitively located and designed developments and provide other recommendations. The DAFM considered nine Natura 2000

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sites with 15km of the proposal in their screening and noted, in particular, the lack of hydrological connectivity between the proposals and the Natura 2000 sites.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. There is also reference to the assessment of cumulative effects.

In considering the appeal, the FAC considered the likelihood of significant effects arising from the proposal on Natura 2000 sites and the environment based on the information provided and information in the public domain. The proposal is located within the Leannan Freshwater Pearl Mussel Catchment and situated approximately 3.6 km from the boundary of the Leannan SAC. The stream that is marked as rising some 80 metres to the east of the proposal flows north east into the SAC and Gartan Lough, which is connected to a number of rivers with well documented populations of freshwater pearl mussels recognised in the conservation objectives provided by the NPWS. While the proposed road is at a remove from the stream, and the exact nature of the stream can not be determined, there are evidently existing drains in the vicinity and the road construction will involve excavation and drainage and the control of runoff with culverts. There is no information available to the FAC regarding the location of the forest to be serviced and the possibility of the harvesting providing a pathway between the road and the stream or resulting in additional impacts can not be assessed. Based on the information available to it and having regard to the sensitivity of the associated qualifying interests, the FAC does not consider that it has sufficient information to conclude that the proposal, alone or in combination, would not result in any likelihood of a significant effect on Leannan SAC in the absence of appropriate mitigation measures. For that reason and in adopting the precautionary principle the FAC has decided to cancel the decision regarding licence CN84076.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,



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Pat Coman on Behalf of the Forestry Appeals Committee