



26 June 2020

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Subject: Appeal 426/2019 regarding licence CN83314

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 CN83314 for 140m of forest road at Urlaur, Co Mayo, was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17 December 2019.

Hearing

A hearing of appeal 426/2019 was held by the FAC on 10 June 2020.

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

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision to approve the Licence (Reference CN 83314).

The proposal is for a forest road 140m in length to serve harvesting of 11.1ha within the next 3 years at Urlaur, Kilkelly, Co. Mayo. Soils are stated to be predominantly podzols and the slope flat to moderate. There is no aquatic zone within or adjoining the proposed lands.

Before making its decision, the DAFM carried out a Screening for Appropriate Assessment. Six Natura 2000 sites were identified as being within a 15km radius of the proposed lands, and the qualifying interests of each Natura site were listed. Carrowbehy/Caher Bog SAC lies within a separate water body catchment with no hydrological connection and 9km separation. Derrinea Bog SAC is not hydrologically connected and at a separation distance of 5km. Drumalough Bog SAC, Errit Lough SAC and River Moy SAC are all within different water body catchments with no hydrological connection and separation distances of

11km, 6km and 5km respectively. Urlaur lakes SAC is not hydrologically connected due to the absence of an aquatic zone or significant watercourse on the proposed site for the forest road. Other projects, both forestry and non-forestry, are listed and include dwellings, forest road accesses, sewage treatment works < 500pe, and the following forestry related projects approved since 2016 – afforestation (6), forest road (1) and felling (3). The application was referred to Mayo County Council but no response was received. The DAFM approved the Licence and issued it dated 17th December 2019, subject to standard conditions.

The DAFM decision is subject to a single appeal. The grounds submitted contend that the DAFM found that there were Natura sites within 15km and that this is a trigger for a requirement for Appropriate Assessment as there may be an effect. The Inspector fails to show how he concluded that there was sufficient information on which to form a sound judgment on whether or not the proposed development is likely to have a significant effect on a Natura site. The Inspector failed to state which catchment the Natura sites are in.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, the Stage 1 screening for Appropriate Assessment carried out by the DAFM. The report, dated 7th June 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

The consultant's report notes that the proposed development is not directly connected with or necessary to the management of any Natura 2000 site. It identifies 6 Natura 2000 sites within a 15km radius, and these are the same sites as identified and assessed by the DAFM as follows:

- Carrowbehy/Caher Bog SAC (9km separation approx.)
Qualifying interests – Active and Degraded raised bogs.
- Derrinea Bog SAC (5km separation approx.)
Qualifying interest - Active and Degraded raised bogs.
- Drumalough Bog SAC (11km separation approx.)
Qualifying interests - Active and Degraded raised bogs.
- Errit Lough SAC (6km separation approx.)
Qualifying interests – Hard oligo-mesotrophic waters with benthic vegetation.
- River Moy SAC (5km separation approx.)
Qualifying interests - Active and Degraded raised bogs, sessile oak woods, alluvial forests, Atlantic salmon, sea and brook lamprey, otter, white-clawed crayfish.
- Urlaur Lakes SAC (700m separation approx.)
Qualifying interests – Hard oligo-mesotrophic waters with benthic vegetation, semi-natural dry grasslands and scrubland facies on calcareous substrates, alkaline fens.

The report concludes that Derrinea Bog SAC and Urlaur Lakes SAC are the only Natura 2000 sites with a potential hydrological connection to the proposed site. The report examines the potential connection and notes that it may be in the form of drainage channels which run between the project lands and Urlaur Lakes SAC to the south, and a stream network to the east that outfalls into the Black River, which in turn flows south for a distance of approximately 4.5km to a point where it intersects with the Derrinea Bog, encircling its northern and eastern perimeters. The separation distance to Derrinea Bog SAC is just under 7km and the separation distance to Urlaur Lakes SAC is about 1.3km. The report notes that it is clear that

while there is a potential hydrological pathway, such a connection is not likely given the separation between the proposed forest road and the drainage channels that lie approximately 70m to the north. In respect of this issue, the FAC noted the absence of any aquatic zone or any significant watercourse on the proposed lands and concluded that there is no direct hydrological connection to any of the listed Natura 2000 sites.

The consultant's report notes that the DAFM provided information on other projects in the area and concludes that these would not give rise to in-combination impacts. The FAC agrees with and adopts the conclusion of the consultant's report that the screening exercise carried out by the DAFM is sufficiently robust to support the conclusion of no likely significant effects on any Natura 2000 site, having regard to the conservation interests for such sites.

The proposed development is significantly sub-threshold for the purposes of the EIA Directive. The consultant's report concludes that "it would appear, as the Inspector has indicated, that significant effects on the environment are unlikely to be generated either individually or on a cumulative basis by the proposed project. An EIAR would therefore appear to be unnecessary in the current case". The FAC notes the consultant's conclusion and is satisfied that an EIAR is not required in this case. The FAC proceeded to carry out an examination of the proposal in the context of environmental impacts. The proposed development would serve an existing mature forest and would access on to the N83 approximately 3.5km south-east of Knock Airport. The applicants indicate that planning permission has been granted for the access. This is a rural agricultural area characterised by small enclosed agricultural fields, forestry and a dispersed settlement pattern. There is 15.14% forest cover within a 5km radius of the proposed site. The area is not a designated landscape and there are no archaeological features on the proposed lands or adjoining forest. There are no Pearl Mussel considerations and the area is not sensitive for fisheries. There would be no significant effects on any Natura 2000 sites and any impact on water quality would be minimal and short-term. Construction noise and disturbance would be insignificant. Having regard to the nature and scale of the proposal and the characteristics of the surrounding environment, the FAC concludes that the proposed development alone, or in-combination with other projects and land uses in the area, would not be likely to give rise to significant effects on the environment, within the meaning of the EIA Directive, and that EIA is not required.

In deciding to confirm the decision to approve the Licence the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours sincerely



Pat Coman on behalf of the Forestry Appeals Committee

Note: The confirming of the decision to approve the licence should not be interpreted as meeting any requirement to obtain permission under planning legislation in circumstances where the provisions of

that legislation require permission to be obtained. If you are in any doubt as to whether or not planning permission is required, it is recommended that you contact the relevant planning authority for clarification.

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CONTRACT NO. : CN 83314

TOWN LAND. : URLAUR

COUNTY. : MAYO

██████████ : ██████████

██████████ : ██████████

1. PROPOSAL

Forest Road

Purpose: Harvesting
Length: 140m. (90m harvest rd, 30m bell-mouth, 20m reverse rd)
Carriageway width: 3.4m.
Tree clearance 15 m.
Entrance works: Creation of new 3m.wide bell-mouth entrance.

Construction Method

Strip organic peat soil
Excavate and camber sub grade material
Grade and compact with vibrating roller
Provide stream and formation run-off culverts @ 40-100 m intervals
Use of brush mats to prevent rutting and protection of watercourses using silt traps and buffer zones (Cf Bio Map)

Planning Permission

Applicant states that planning permission has been granted for bell-mouth entrance. However it would appear that permission was granted to "construct 2 in no forest road accesses with associated turning heads and security gates including all other ancillary site works and services at Tavraun/Urlaur."... (P18/739)

Forest Area serviced

11.1 ha.

Harvest Area

The Pre Approval Submission Report states that the area due for harvesting in the next 3 years is 11.1 ha.

However Annex 3 of the Forest Road Scheme Required Information document states that 6 ha. are proposed for thinning/harvesting in the next 3 years

Plantation Age

Planting year was 1994

2. SITE DETAILS

Existing land use

Afforestation

Soil Type

Mineral - podzolic

Elevation

85.0 - 86.0 O.D.

Geology
Unknown

Boundaries and adjoining Landuses

The proposed forest road location is adjoined on all sides by the applicant's 11.1 acre tract of afforested land; the proposed road access point "A" will be taken from the public road which tracks the western boundary of the afforested lands.

Aquatic Zones

There do not appear to be any aquatic zones within or adjoining the project site location :what **may be** a potential drainage channel lies approx 70m north of the proposed forest road within the 11.1 ha site ; the channel runs parallel with the road alignment A-C-B shown on the O.S map accompanying the application .

(I have been unable to definitively identify the dotted line symbol on the gis.epa.ie mapping system as either a drainage channel or town land boundary or both)

3. SURROUNDING ENVIRONMENT

The proposed forest road will be accessed from the N83 at a point approx. 3.5 Kms S.E. of Knock airport.

The road will service a tract of afforested lands which in turn forms part of an extensive belt of afforestation covering the central part of the county, running north towards Carrowcastle and eastwards to Castlerea in Co Roscommon

Google Earth maps show a landscape which appears to be substantively modified in terms of afforestation; however it is also characterised by an absence of any strong ribbon development and would appear to be still very rural in nature

4. REFERRALS

None

5. INSPECTOR CERTIFICATION - PRE - APPROVAL (6.11.2019)

This was based on a desk Inspection only. The Certification

- Identified 6 Natura 2000 sites lying within 15 kms of the project location
- Screened the proposed project for both EIA and Appropriate Assessment.
- Determined in regard to EIA, that when assessed against a number of criteria, (forest roads and forest cover in the area, impact on aquatic zones, impact on water quality in the area, impacts on soil, terrain, archaeology, landscape, designated areas, social factors, compliance with safety standards, trans frontier impacts, and also the magnitude, complexity, probability, duration, frequency reversibility of the impact), AND when the cumulative effects/impacts of the project were also taken into account, the project should not be subject to the EIA process.
- Determined in regard to Appropriate Assessment that the project be screened out for the purposes of same, based on an examination of the Qualifying Interests for each of the Natura 2000 sites and the fact that having regard to a number of considerations esp absence of connectivity between the project and the Natura sites, there was no possibility that the project would have a significant effect on any Natura site.

- The Certification then recommended Licence Approval. (N.B a list of planning/forestry related projects which were identified for the purposes of assessing cumulative impacts, were attached to the Certification)

6. AA SCREENING FORM

The Form noted that as the project site lay less than 3 kms from Urlaur Lakes SAC (regardless of hydrological connection), the potential for a significant effect on that site could not be eliminated. However having considered the nature, size, and location of the project, potential negative consequences, both immediate and future, potential pathways, qualifying interest and conservation objectives for the SAC, and potential cumulative impacts, it was deemed that the project would not have a significant effect on Urlaur Lakes having regard to

- The absence of any aquatic zone crossing or adjoining the project area
- The absence of any significant relevant watercourses within the project area
- Mandatory adherence to safeguards contained in published Forest Service Guidelines. that the project could be screened out for the purposes of A.A"

The Inspector therefore screened out the project for the purposes of Appropriate Assessment

7. APPELLANT'S SUBMISSION. (Rec'd 23.4.2019)

- Although the Inspector stated that there was sufficient information within the application and elsewhere to determine whether or not the project was likely to have a significant effect on a Natura site, he failed to adduce evidence in that regard .
- Although the inspector states that the Natura site is in a different catchment to that of the project location, he fails to identify that catchment.
- The legal conclusion therefore is that the application has been screened in for Appropriate Assessment.
- In a submission stamped RECEIVED from the appellant on the 10.7.2019, the appellant states that it would "not be possible to grant a licence for the ...**felling applications** which would be in compliance with the EIA and Habitats Directives" having regard to judgements of the CJRU which clarify interpretations of those Directives.
However as the current licence application is for construction of a forest road and not for felling, I would suggest that the July submission is not in point.

8. LICENCE DETAILS

Licence approved on 17.12. 2019

Conditions attached for Grant purposes are:

Completion date of road works by 16.12. 2022

Compliance with enclosed specified Operational Proposals and Specifications

Compliance with Dept. Guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology
Compliance with Environmental and Silvicultural Conditions
Tree felling to be carried out only within the road reserve.

Appendix A

Adherence to :

CoFoRD Forest Road Manual Standards

Felling and Reforestation Standards

Forestry and Water Quality Guidelines

All Guidelines.

9. DAFM (FOREST DIVISION) STATEMENT TO FAC. (Rec'd 24.4.2020)

The statement noted that

(i) a desk and field assessment had been carried out. (However the Inspector Certification - Pre Approval indicated a desk inspection only)

(ii) In regard to AA Screening, 'The only Natura sites on which the project could possibly have an effect were deemed to be Derrinea Bog... and Urlaur Lakes...'

(iii) In the case of Derrinea Bog potential impacts were ruled out due to the distance of the project location from the Bog and the absence of any aquatic zone within or adjoining the project area

(iv) In the case of Urlaur Lakes potential impacts were also ruled out due to the absence of any aquatic zone/significant relevant watercourses within or adjoining the project area, and mandatory adherence to standard safeguards integral to the project.

(v) Re catchments the inspector stated that "the available data sets were used to determine (that) the application area is in a separate catchment to all of the Natura sites within 15 kms except for Derrinea Bog SAC and Urlaur Lakes SAC. As stated the reason there can be no effect on these Natura sites is due to 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, significant distance ...to the Natura sites ...and Qualifying Interests/Species with no hydrological connection. N.B. The syntax @ Para (v) above is confusing and would appear to contain an unintended contradiction re catchment areas

10. NATURA 2000 SITES

Carrowbehy/Caher Bog SAC

Qualifying Interests are Active and Degraded raised Bogs, Rhynchosporion and Butterfly (Euphydryas Aaurinia)

The conservation objective is to maintain/restore the favourable conservation condition of the Bog

This SAC lies approx 9 kms S.E of the project location

There is not any pathway-source-receptor connection between the SAC and the project site

Derrinea Bog SAC

Qualifying Interests are Active and Degraded raised Bogs, and Rhynchosporion

Conservation Objectives are "to restore the favourable conservation condition of the Bog as defined by a list of attributes and targets"

This SAC lies approx 5 kms as the crow flies, S.E. of the project location.

It would appear that a drainage ditch /channel crosses the project site from west to east running parallel with the proposed forest road A- B; the channel which lies approx 70 m north of A-B discharges into a stream which in turn outfalls into the Black River some 1.4 kms to the east. Approximately 4.5kms S.E of the outfall, the Black River flows around the northern and eastern perimeter of Derrinea Bog. However in the absence of a site inspection, I cannot be definitive about the presence of a drainage channel to the north of the proposed forest.

Drumalough Bog SAC

Qualifying Interests are Active and Degraded raised Bogs, and Rhynchosporion Conservation Objectives are "to maintain/restore the favourable conservation condition of the Bog as defined by a list of their attributes and targets"

This SAC lies approx 11kms of the project location. There is not any pathway-source-receptor connection between the SAC and the project site

Errit Lough SAC

Qualifying Interests are Hard oligo-mesotrophic waters with Benthic vegetation of Chara. Conservation Objectives are "to maintain/restore the favourable conservation condition of the Qualifying Interests as defined by a list of attributes and targets"

This SAC lies approx 6kms to the S.E. of the project location. There is not any pathway-source-receptor connection between the SAC and the project site

River Moy SAC

Qualifying Interests are Active and Degraded raised Bogs, Rhynchosporion, sessile oak woods, alluvial forests, Atlantic salmon, sea and brook lamprey, otter, and white clawed crayfish.

Conservation Objectives are "to maintain the favourable conservation condition of the Qualifying Interests as defined by a list of attributes and targets"

As the crow flies the nearest point of the SAC to the site lies approx 5 km to the west. There is not any hydrological connection between the project location and the SAC.

Urlaur Lakes SAC

Qualifying interests are .Hard oligo-mesotrophic waters with Benthic vegetation of Chara, semi natural dry grasslands and scrubland facies on alcareous substrates, alkaline fens. Conservation objectives are to restore the favourable conservation condition of the Qualifying Interests as defined by a list of attributes and targets.

Urlaur Lakes are 4 lakes which lie close to each other and at their nearest point approx 700 m. south of the project site (as the crow flies); the lakes are hydrologically linked. The potential drainage channel which I have referred to above (cf Derrinea Bog) would appear to connect to Lough Nanoge (part of the Urlaur Lake complex) via a small stream; However in the absence of a site inspection I cannot be definitive about the presence of a drainage channel.

11. EIA PRELIMINARY EXAMINATION/SCREENING

Under the Forestry Reg's 2017 (S.I. No. 191 of 2017) the EIA mandatory threshold for a road is 2000m.(Art.13) (2) (d). In the current case the proposed road length of 180 m is significantly below the threshold.

Where a development is sub threshold, criteria used to determine whether such development should be subject to an EIS, are set out in 3 broad groupings at Schedule 3

of the above Regs, viz 1.Characteristics of projects, 2.Locations of projects, and 3.Type and Characteristics of Potential Impacts.

Having regard to the above criteria, but in particular

- to the length of the proposed forest road, the type of construction process proposed which is likely to pose a low risk of material contamination,
- the approved and existing land use which the project will service,
- To the fact that the potential drainage channel which **may** provide a connection between the afforested lands which the proposed road will service, lies 70m approx north of that road
- the absorption capacity of the natural environment to accommodate any impacts likely to arise from the proposed project having regard to the 4.5 km (approx) length of the Black River watercourse between the stream outfall and Derrinea Bog, and the 1.3kms between the potential channel and Lough Nanoge
- the limited magnitude and spatial extent of any impact likely to be generated by a road of the scale proposed
- To the extensive range of issues considered in the EIA assessment section of the Inspector's Certification - Pre - Approval Report, including cumulative effects/impacts and the subsequent finding that those impacts are not likely to be significant for the purposes of EIA (**Cf Inspector Certification - Pre - Approval @ 5** above).
It would appear, as the Inspector has indicated, that significant effects on the environment are unlikely to be generated either individually or on a cumulative basis by the proposed project. An EIAR would therefore appear to be unnecessary in the current case.

12. APPROPRIATE ASSESSMENT

The purpose of A.A. is to assess in a focused and detailed manner, the impact of the proposed development on the integrity of surrounding Natura sites, which lie within a one and 15 km radius of the site.

Stage 1 of the A.A process comprises Screening to (a) assess whether the project is directly connected with or necessary to the management of the Natura 2000 sites identified

(b) whether the project is likely on an individual basis to have a significant effect on the integrity of the Natura 2000 sites having regard to their Qualifying Interests and Conservation objectives

(c) whether the project is likely in combination with other plans and projects to have a significant effect on the integrity of the Natura 2000 sites having regard to their Qualifying Interests and Conservation objectives.

(d) Whether within Stage 1 of the A.A Screening process, mitigation measures have been used to screen out a project from advancing to Stage 2 of the A.A process.(cf.CJRU and Irish Court decisions)

Re (a) above as the project is not directly connected with or necessary to the management of a European site(s) screening therefore proceeds to Stage 1(b).

Re (b) above, 6 Natura sites lie within 15 km of the proposed project location; of those the gis.epa.ie mapping system shows Derrinea Bog and Urlaur Lakes as the only Natura 2000 sites which have a potential hydrological connection with the project location; the connection **may** be via what would appear to be a system of drainage channels which run

between the project site and Urlaur Lakes to the south, and a stream network approx 1.4 m. in length to the east; that stream network outfalls into the Black River which in turn flows southwards for a distance of approx 4.5 kms to a point where it intersects with Derrinea Bog encircling its northern and eastern perimeters Overall the total length of watercourse (drainage channel, stream and river) between the project location and Derrinea Bog is just under 7 kms. and in the case of Urlaur Lakes some 1.3 kms. However what is clear is that while there is a potential hydrological pathway between the SAC sites of Derrinea Bog and Urlaur Lakes, such a connection is unlikely given the separation distance between the proposed road "A -C -B" and the (potential) drainage channel which lies some 70m to the north. (In the case of an application for a licence to harvest the afforested lands however, the existence of any hydrological connection may need to be definitively ascertained).

Having regard therefore to the above, to the facts considered by the Inspector in his screening for A.Assessment and also to the following factors viz:

(i) the modest length of proposed road

(ii) the type of construction process proposed which ensures that the proposed development is unlikely to pose a material risk of contamination, and hence unlikely to give rise to significant effects/impacts on the environment

(iii) the limited duration of the project - having regard to the length and construction process of the proposed road

(iv) the nature of the Qualifying Interests and Conservation Objectives for the SAC sites of Derrinea Bog and Urlaur Lakes,

I consider that the A.A Screening conclusion reached by the inspector should be endorsed.

Re the appellant's argument -

- *that although the Inspector stated that there was sufficient information within the application and elsewhere to determine whether or not the project was likely to have a significant effect on a Natura site, he failed to adduce evidence in that regard.*

I am unable to concur; The Inspector Certification - Pre - Approval document and the Appropriate Assessment Screening Conclusion both contain, comprehensive, and supporting evidence for the Inspector's conclusions re potentially significant impacts on a Natura site.

- *Although the inspector states that the Natura site is in a different catchment to that of the project location, he fails to identify that catchment.*

I do not consider the above statement to be a valid ground of appeal; I consider that once the inspector had satisfied himself that a Natura site was in a different catchment to that of the project location, there would not appear to be any onus on the inspector, helpful as it may have been, to identify that Natura site catchment.

Re (c) above - cumulative impacts - the Inspector Certification - Pre- Approval Report also considered same and concluded that there was no possibility that the project would have a significant effect on any Natura site. I also note that plans and projects consulted in regard to cumulative impacts were placed as documentation on file

Re (d) above - mitigation - I refer to the Inspector's A.A. Screening conclusion which states that he had "excluded any safeguards within the project that are 'over and beyond' those set out in published Forest Service guidelines, requirements and procedures , and any specific measures that might otherwise be attached to any recommendation to 'Approve with Conditions'.

Having regard to the conditions attached to the Licence I concur with that statement

13. CONCLUSION

In the current case I am unable to concur with the grounds of objection cited. Furthermore I consider that the Screening exercise carried out by the Inspector in respect of EIA and A.A is sufficiently robust to support the conclusions reached in regard to both.

Mary Cunneen .7.6.2020

