



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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

06 March 2020

Our ref: FAC 075/2018

Subject: Appeal in relation to licence CN80377

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above forest road 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

Forest Road licence CN80377 was issued on 28 March 2018, with conditions.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 18 February 2020.

Attendees:

Department Representatives: Mr Jahn Crane and Ms Mary Coogan

FAC Members: Mr Des Johnson (Chairperson), Mr James Conway, Mr Pat Coman and Mr Vincent Upton

Secretary to the FAC: Ms Ruth Kinehan

Decision

Having regard to the evidence, written and oral, before it and in particular the following considerations, the FAC has decided to confirm the decision of the Minister regarding licence CN80377:

In its statement to the FAC dated 09 July 2018, the Department of Agriculture, Food and the Marine stated:

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

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

"Prior to the making a recommendation to approve with conditions, the Forestry Inspector evaluated the project (CN80377) using the appropriate GIS datasets.

The proposed forest road (200 m) is 5.4 km north of Lough Sheelin SPA (004065) (see Map). There is no hydrological connectivity from the project area to this Natura site.

The Appropriate Assessment Procedure Table was applied, as per the Forest Service Appropriate Assessment Procedure: Forestry Inspector's Manual (September 2013). None of the six spatial scenarios listed for Forest Road Construction (i.e. Scenarios 1–6) applied, and nor was the discretionary scenario (i.e. Scenario 7) triggered.

Therefore, it was determined that the possibility of a significant effect on any NATURA site did not arise, and the project was screen out for the purpose of Appropriate Assessment. As per the above procedure, the completion of an individual AA Screening Form was not required."

Additional information provided by the Department side in response to the FAC and was provided to the parties to the appeal. Neither statement A nor statement B as set out in the appeal was used in this instance. The FAC considered that none of the conditions attached to the licence require measures which are designed to mitigate effects on a European site, in this instance.

The additional licence conditions are as follows;

- Adhere to the COFORD Forest Road Building Manual,
- A valid felling licence is required prior to commencing harvesting operations,
- Internal Roads & Turning Bays 15m,
- All guidelines to apply,

The proposed 200m of forest road is sub-threshold for the purposes of EIA and is to service the first thinning of 12.53 ha of forestry. Having regard to the nature, scale, location and design of the proposed forest road, the nature and extent of existing forest roads, afforestation and felling in the area and to the characteristics of the surrounding environment, the FAC concludes that the proposed forest road either by itself, or in combination with other projects and land uses in the area, would not give rise to any real likelihood of significant effects on the environment and that the submission of an environmental impact statement of the proposal is not required. The FAC are satisfied that the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) have been met.

The grounds of appeal state that the Department failed to make the Appropriate Assessment screening report available on request, the screening exercise carried out was fundamentally flawed and not in compliance with Court judgments issued which set the threshold for Stage 1 screening for Appropriate Assessment very low with regard to the possibility for significant effects.

Before coming to its decision to confirm the licence the Forestry Appeals Committee examined the requirement for EIA and undertook a Stage 1 screening for Appropriate Assessment; these are contained on the public file.

From the evidence available to the FAC, the project site is moderately sloped, described as mineral soil and free draining, an area licenced for thinning has a moderate slope to the northeast. There are

An Coiste um Achomhairc
Foraolseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

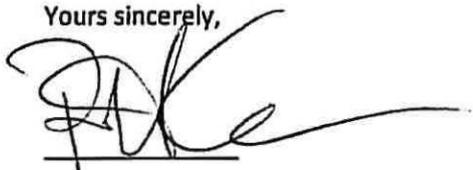
no EPA identified watercourses on the site of the road, the area to be serviced by the road has a hydrological connection to the Kinnaleck River and onwards to the Lough Oughter SAC and Lough Oughter SPA at 12.8 km but at 38 km hydrological distance. Due to hydrological distance and the size and nature of the project CN80377 no possibility of a significant effect arises for the interests of those SAC and SPA sites. Other European Sites in the area include the Moneybeg and Clareisland Bogs SAC at 8.9 km, Derragh Bog SAC at 11.7 km, and Lough Kinale and Derragh Lough SPA at 10.3 km. The site at appeal is unsuited to the qualifying interest bird species of the SPAs; Goldeneye, Tufted Duck, Pochard, Great Crested Grebe, Wigeon and Whooper Swan, all of which are waterfowl, this is for reason of unsuitable foraging and distance from the SPAs. Also, there is no possible effect from this site on the interests of the closest SACs based on distance and the absence of a hydrological connection. The FAC concludes that this project on its own can have no possible effect on the Natura sites set out for.

The additional information provided by the Department sets out for local planning grants, other forest road projects, felling projects and afforestation projects in the locality. When any of these projects are considered in combination with the project at appeal, the project at appeal does not add effect which in combination could give rise to possible significant effects on a European Site. Based on the evidence no meaningful pathway for effects is identified and the FAC are satisfied from the evidence that the project CN80377 on its own or in-combination with other plans or projects will not give rise to any possibility of a significant impact on a European site.

The Forestry Appeals Committee concludes there is no potential for significant effects and an appropriate assessment is not required and the project can proceed as proposed. The Forestry Appeals Committee also concluded that the proposal is consistent with Government policy and Good Forestry practice.

Note: The confirming of this 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 in any doubt as to whether planning permission is required, it is recommended that contact be made with the relevant planning authority for clarification.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee

