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28th May 2020

Subject: Appeal FAC308/2019 against licence CN84028

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 CN84028 for 90 metres of forest road at Smutternagh, Co. Roscommon was issued by the Department of Agriculture, Food and the Marine on 18th October 2019.

Hearing

A hearing of appeal FAC308/2019 was held by the FAC on 27th May 2020.

FAC Members: Mr. Des Johnson (Chairperson), 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 confirm the decision of the Minister regarding licence CN84028.

The licence pertains to 90 metres of forest road to serve 3.91 ha of forest composed of Sitka spruce planted in 1988 and due for felling. The site is described as flat to moderate sloped on brown podzolics which does not adjoin or contain an aquatic zone. Construction is proposed through excavation and the laying of 550 mm of crushed stone pavement. The proposal joins a minor road and the application states that the creation of a new entrance or widening of an existing entrance is not required. The general area is rural with existing mature forests and agricultural fields with mature hedgerows. Lough Key lies 1km to the south on the opposite side of a small hill and there are sensitive landscapes recognised in the County Development Plan in the area. The proposal was sent to Roscommon County Council which did not provide a response.

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 a lack of assessment of cumulative effects.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They note that the AA screening procedure relevant at the time was applied. They suggest that the closest Natura site is located 3.8km to the North of the proposed project area and that there is no hydrological connection to it as there is no significant relevant watercourse present within the proposal. They also suggest that the closest SPA is 4.1km from the proposal and undertook an in-combination assessment. They state that there will be no impact from this proposal and note the Natura 2000 sites considered in their assessment.

In considering the appeal and before making a decision, the FAC examined the assessments, and related information, undertaken by the DAFM regarding the Habitats and EIA Directives as provided. The European sites considered in the screening and the distances from the proposal to their boundaries are Lough Arrow SAC (3,976m), Bricklieve Mountains and Keishcorran SAC (7,420m) Unshin River SAC (11,475m) Lough Arrow SPA (4,301m) and Lough Gara SPA (12,869m). The FAC noted the degree of separation and lack of hydrological connection from the proposal to any European site and its unsuitability for the qualifying interests of the closest SPAs. Details of other plans and projects were provided with the assessment. The FAC also considered the range of information provided with the DAFM assessment to determine EIA requirement. The proposal is of a small scale and would occur in a managed forest and the FAC is satisfied that the information contained in the DAFM file and assessment provides sufficient information in order to carry out an Appropriate Assessment screening and examination in the context of the EIA Directive. There are no conditions on the licence that relate to the mitigation of possible effects on a European site. Having regard to the characteristics of the proposal, its proximity to European sites and those sites conservation objectives, the FAC concluded that the proposal itself, or in combination with other plans or projects, would not result in the possibility of a significant effect on a European site. Regarding EIA, the proposed forest road is significantly sub-threshold at 90 metres. Details of designations in the wider landscape are provided on the file along with information on other plans and projects. Having regard to the nature, small scale and location of the proposal, and considering other projects in the vicinity, the FAC concluded that there is no real likelihood of it having a significant effect on the environment and further screening or the undertaking of an EIA are not required.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. 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 submissions received.

Note: the granting of this licence should not be interpreted as meeting any requirement to obtain planning 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.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Pat Coman', written over a horizontal line.

Pat Coman On Behalf of the Forestry Appeals Committee

