



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

14 January 2021

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FAC ref: 654/2020

**Subject:** Appeal in relation to licence CN86327

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN86327.

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 the parties to the appeal.

#### **Background**

Forest Road licence CN86327 was granted by the Department of Agriculture, Food and Marine (DAFM) on 13 August 2020.

#### **Hearing**

An oral hearing of appeal 654/2020 was conducted by the FAC on 05 January 2021.

#### **Attendees:**

FAC:	Mr Des Johnson (Chairperson), Ms Paula Lynch & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Applicant representative:	[REDACTED]
DAFM representatives:	Mr Martin Regan & Ms Mary Coogan

#### **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, submissions made at the Oral Hearing and all other submissions, before deciding to vary the decision to grant this licence (Reference CN 86327).

The proposal is for a forestry road 380m in length to service a stated area of 10.43ha at Unshogagh, Co. Cavan. The road specification is per the COFORD Manual. Surface material depth is 100mm. The

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gradient is 1:10 – 1:9 and the cross slope is flat to 1:16. Construction type is stated to be 'excavate'. A culvert 1 x 300mm is proposed for 300m of the proposed road. The site is at an elevation of 120-140m. Underlying soils are stated to be predominantly podzols and well drained.

The Inspector's Certification states that the application was referred to Cavan County Council, but no response is recorded.

The Inspector's Certification states that the application was desk assessed. The project lands do not adjoin or contain an aquatic zone. There are no archaeological sites or monuments recorded and the project lands are not sensitive to fisheries and there are no populations of Freshwater Pearl Mussel likely to be affected. The lands are not in a Prime Scenic Area or High Amenity Area under the provisions of the County Development Plan. The forest cover currently in the underlying waterbody is stated to be 20.89% and the forest cover within a 5km radius of the project lands is stated to be 12.83%. An Appropriate Assessment screening was carried out in respect of four Natura 2000 sites identified within a radius of 15km of the project lands, namely Boleybrack Mountain SAC, Corratirrim SAC, Cuilcagh-Anierin Uplands SAC and Lough Gill SAC. All of the designated sites were screened out for Appropriate Assessment based on the absence of any aquatic zone within or adjoining the project area, and the absence of any significant relevant watercourse(s) within or adjoining the project area. Other plans and projects considered for in-combination effects included slatted sheds and a telecommunications mast, and forestry related projects – afforestation (4), forestry roads (5), private felling (3) and Coillte felling (6) (*figures recorded since 2017*).

The licence issued on 13 August 2020. It is subject to standard conditions plus additional condition requiring consultation with Leitrim County Council with regard to the use of public roads, adherence to Forestry & Water Quality Guidelines, and all guidelines to apply.

There is a single appeal against the decision to grant the licence. The grounds contend that this development was screened in, and no Appropriate Assessment according to EU and Irish law was carried out.

In response, the DAFM stated that the decision issued was in accordance with the DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. All standards and procedures were adhered to.

The FAC sat in person at an Oral Hearing in Portlaoise on 5<sup>th</sup> January 2021. The DAFM and the applicants participated electronically; the appellant did not participate. At the Oral Hearing the DAFM outlined the background to the case and the procedures adopted in reaching its decision. It confirmed that the site was both desk and field assessed, and that an Appropriate Assessment screening had been completed before the decision to grant the licence had been made. The DAFM stated that the in-combination assessment had been undertaken separately to the screening of the individual sites and had been completed on 27 July 2020, in advance of the decision to grant the licence. The person responsible for the in-combination assessment was not present at the Oral Hearing. The applicants (Coillte) stated that the person who made the application was now retired and had nothing further to add to the original application or in response to the written grounds of appeal.

In addressing the written grounds of appeal, the FAC noted that the information before the Committee indicated that the DAFM had carried out an Appropriate Assessment screening for 4 Natura 2000 sites and, following assessment, screened all of the listed sites out for Appropriate Assessment. The





screening undertaken listed the sites, their qualifying interests and conservation objectives, and examined the possibility of potential pathways. The sites were screened out for reasons of the absence of any aquatic zone within or adjoining the project area, and the absence of any significant relevant watercourse(s) within or adjoining the project area. Other projects considered by the DAFM included slatted sheds and a telecommunications mast, and forestry related projects (since 2017) – afforestation (4), forestry roads (5), private felling (3) and Coillte felling (6). There is no hydrological connection or other obvious pathways between the listed projects and the proposed development. The FAC considered that the grounds of appeal did not refer to any specific significant or serious error in the procedures adopted by the DAFM in the Appropriate Assessment screening or in the conclusions reached. The FAC noted that there are 2 additional Natura 2000 sites in Northern Ireland within a 15km radius of the project lands – Cuilcagh Mountains SAC (approximately 4.5km separation) and West Fermanagh Scarplands SAC (separation distance approximately 10km). Both of these sites are designated on the basis of a variety of terrestrial habitats<sup>1</sup>. The Cuilcagh Mountains SAC is divided from the proposal in full by the Cuilcagh-Anierin Uplands SAC. The West Fermanagh Scarplands SAC is within the Erne Catchment. Having regard to the nature and scale of the proposed development, the absence of hydrological connectivity or pathway, the separation distances, intervening land uses, and the interests for which the sites are designated, the FAC concluded that there is no likelihood of significant effects arising on these two listed sites resulting from the forestry road, individually or in combination with other plans or projects. While the FAC considers there was an error in the DAFM screening in stating to have included all European Sites with a 15km radius, the FAC considers that, in the particular circumstances of this case, this does not constitute a significant or serious error regards the decision to issue licence CN86327.

The proposed forestry road is significantly sub-threshold for the purposes of EIA. The FAC considered the detailed specification for the proposed road and the characteristics of the surrounding area, noting that this is a rural agricultural area with significant forestry cover and a dispersed settlement pattern. The immediate surrounds comprise mature forestry. The proposed road would extend to an existing road leading on to the regional route R206. The proposed development would have no significant visual impact. It is likely to increase traffic movements on the public road on a short-term basis but not to a significant extent. Noise and disturbance may occur over the short-term but this would likely be very limited and would not give rise to loss of amenity in the surrounding area. Subject to compliance with the conditions of the licence there would be no significant impacts on water or air quality or on climate. The FAC concluded that the proposed development alone, or cumulatively with other projects and land uses, would not be likely to give rise to significant effects on the environment.

The FAC noted that the licence contains a condition (No.7) requiring consultation with Leitrim County Council at all times with regard to usage of the public roads. This is a significant error. Having regard to the location of the site, the FAC considered that the requirement should properly be to Cavan

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<sup>1</sup> Cuilcagh Mountains SAC – Blanket Bogs, Alpine and boreal heaths, European dry heaths, Natural dystrophic lakes and ponds, North Atlantic wet heaths, Siliceous rock slopes with chasnohytic vegetation and Siliceous scree. West Fermanagh Scarplands SAC – Blanket Bogs, Limestone pavements, Petrifying springs with tufa formation, Tilio-Acerion forests of slope, screes and ravines, Alkaline fens, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Natural eutrophic lakes, North Atlantic wet heaths and Semi-natural grasslands.

County Council. The FAC concluded that Condition No.7 should be amended to clarify that the consultation should be to Cavan County Council.

The FAC concluded that a significant error had occurred in the making of the decision by the DAFM. This can be remedied by amending the terms of the licence. In deciding to vary the decision to grant the licence, the FAC concluded that the terms of the licence should be retained with the exception of Condition 7, which should be amended to read as follows:

*7. Environmental & Silvicultural Considerations*

*Consult with Cavan County Council at all times with regard to usage of public roads*

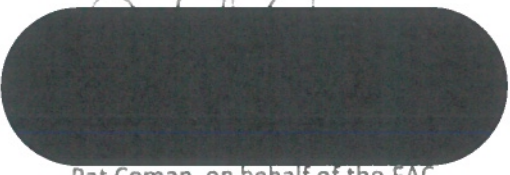
*Adhere to forestry & water quality guidelines*

*All guidelines to apply*

Reason: in the interests of orderly development and good forestry practice.

The FAC concluded that, subject to the amendment of Condition 7 as set out, the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely



Pat Coman, on behalf of the FAC