



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

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27/02/2020

Our ref: FAC 034/2018

Subject: Appeal in relation to licence CN80170

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

Forest Road licence CN80170 was issued on 21 February 2018, with conditions.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 11 February 2020.

Attendees:

Department Representatives: Mr Robert Windle and Ms Janet Farrell

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

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 cancel the decision of the Minister regarding licence CN80170:

In its statement to the FAC dated 11 July 2018, the Department of Agriculture, Food and the Marine stated:

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Prior to making a recommendation to approve with conditions, the Forestry Inspector undertook a field inspection and evaluated the project (CN80170) using the appropriate GIS datasets.

The proposed forest road (144 m) is 2.8 km southwest of the River Barrow & River Nore SAC (002162) and 3 km southwest of the River Nore SPA (004233) (the SPA is contained within the boundary of the SAC) (see Map). There is no hydrological connectivity from the project area to either 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 screened out for the purpose of Appropriate Assessment. As per the above procedure, the completion of an individual AA Screening Form was not required.

The additional licence conditions are as follows;

- *Forest Road to be built as per the specification in the COFORD Forest Roads Manual.,*
- *Observe appropriate setbacks and use sediment traps as necessary to ensure that there is no potential for entry of suspended solids/sediments from this site to the adjacent watercourse following road excavation and formation works.,*
- *Before road construction starts, the applicant should contact Kilkenny County Council to ascertain whether Planning Permission is required.,*
- *Adhere to forestry & water quality guidelines,*
- *All guidelines to apply,*

Additional information provided by the Department side in response to the FAC concluded that if the application was screened again today under the revised Appropriate Assessment Procedure currently in use, it would not be screened out.

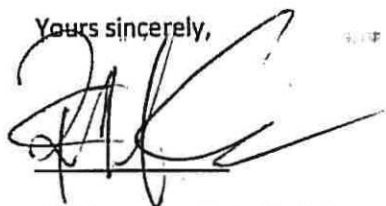
The proposal is for 144m of forest road to service thinning of an area of 7.20ha of broadleaves planted in 2003 (6.2 ha) and 2014 (1.0 ha). This associated forestry is in two adjoining plots and both are accessed by a private laneway. The proposal site is at the entrance from the public road at an elevation of approximately 140m. The forestry to be serviced slopes moderately to the south-east and is adjoined by more recent afforestation plots. The wider area is rural and agricultural in character but also supports areas of young and maturing forestry and has a collect of over 10 houses in the immediate vicinity but otherwise a sparse settlement pattern. The site is within the River Nore sub-catchment, and while the proposed road site does not have a hydrological connection there is a tributary EPA river approximately 400m south-east of the associated forestry and flows to north-east.

The proposed forest road is substantively sub-threshold for the purposes of the EIA Directive and does not require mandatory environmental impact assessment. Having regard to the nature and small scale of the proposed works, the characteristics of the site, the nature of the surrounding environment which is predominantly rural agricultural, the absence of hydrological connectivity to any designated European sites, the FAC concluded that, following a preliminary examination, there is no real likelihood of significant effects on the environment arising from the proposed forest road either by itself or cumulatively with other land uses in the area, and that the need for environmental impact assessment can be excluded without the requirement for a formal screening.

There are five European sites identified within a 15km radius of the proposed forest road. The nearest designated sites to the proposed forest road site are the River Barrow and River Nore SAC (002162) and the River Nore SPA (004233), all other European Sites are outside of 10 km with the Spahill and Clomantagh SAC (000849) at 10.4 km, The Loughrans SAC (000407) and Cullahill Mountain SAC (000831). The qualifying interests for the River Barrow and River Nore SAC include the very sensitive and Annex II pearl mussel species and while there is no direct hydrological connection there are apparent forest projects between the site and the watercourse. The FAC is provided with no in-combination information for the site in respect of afforestation, forestry, felling or forest roads in the area and cannot undertake this aspect of the screening and any further screening with the information to hand would be insufficient to draw a conclusion from and the precautionary principle must apply.

In the absence of information on other plans or projects, coupled with the response provided by the DAFM, the FAC does not consider that the screening of this licence satisfies national and EU law regarding the protection of habitats. In this specific situation the FAC is cancelling the licence.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee

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