



30 June 2020

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Subject: Appeal 294/2019 regarding licence CN84172

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 CN84172 for 380m of forest road at Drumbrughas, Co Cavan, was issued by the Department of Agriculture, Food and the Marine (DAFM) on 08 October 2019.

Hearing

A hearing of appeal 294/2019 was held by the FAC on 27 May 2020.

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

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal, before deciding to cancel the licence (Reference CN84172).

Licence relates to 380m of forest road at Drumbrughas, Co Cavan, to service 17 ha (first thinning) comprising Sitka Spruce, Norway Spruce and Ash. The proposal comprises three separate road sections to be integrated with existing forest roads within the forestry to be serviced. There are two shorter sections to be located at the east of the plantation, a bend section and a 't' junction section, and a longer section going east to west at the western side of the plantation, culverts are planned and there are apparently no public roads involved. Per the EPA mapping and application bio-maps there is no evident watercourse on site. Site elevations are 60m to 70m with 1:14 gradient, soil is mineral soil with a stated peat depth of 20 to 25cm and is well drained. The proposal is in the Erne Catchment. DAFM had referred to proposal to Cavan County Council and no response was received.

The licence was issued with the following conditions; *All guidelines to apply - Adhere to Coford's Forest Road Building manual (specifically section C.2 — Forest Road Drainage).*

The FAC considers none of these conditions are mitigation measures regards the proposal in respect of any European site.

There is one appeal against the licence and the grounds include that based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU; Case C-258/11, Case C-164/17, Case C-323/17 and Case C-461/17. The test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) "There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

In response to the appeal DAFM stated the project the proposed Forest Road application was subject to Appropriate Assessment Screening and the Natura 2000 sites within 15km of the proposed afforestation area were examined for any potential impact arising from the proposed operations. DAFM stated that a number of websites including Cavan County Development plan, An Bord Pleanala, and EPA mapping were examined for other projects in the vicinity of the proposed Forest Road area, and it was concluded that the proposed Forest Road will have no effect, either alone or in combination with other projects in the vicinity, to any Natura 2000 area.

The FAC noted there are two European Sites within a 15km radius of the proposal Lough Oughter and Associated Loughs SAC and Lough Oughter Complex Spa, of which the SAC is within c. 200m from the proposal. and the SPA is at 3.7 km approx of the forest to be serviced. The FAC undertook an appropriate assessment screening under 6(3) of the Habitats Directive 92/43/EEC and the screening report is available on the public file.

The screening examined for pathways and connectivity and while there is no watercourse on the proposal site or within the forest area to be serviced, the nearest waterbody at c.200m is Long Lough and the River Killynaher flows through. The forestry to be serviced borders the shore of Long Lough for c. 70m and this is also the boundary of the SAC. The Proposal is in the Erne Catchment, a catchment shared by both the SAC and SPA. Regards the SPA bird species at a distance of c. 3.8 km, while there will be traffic and noise at the road construction stage there is no evidence before the FAC that Long Lough is a breeding ground for these and a significant effect on the species is unlikely, also there can be no effect arising for the wetlands habitats of the SPA. Proximity of the SAC was considered regards the otter as a qualifying interest for which a conservation objective is that there be a sufficiently large range for the species to maintain itself and that the available range is not being reduced, the FAC concluded that the road building itself will not affect the range for the species in this instance and is unlikely to have a significant effect on the species for reason of extent of the SAC and the c. 200m of separation and there is no likely pathway for a significant effect on the species. There again is no likelihood of a significant effect on bog woodland by the proposal which is sited within commercial forestry.

Natural eutrophic lakes, a qualifying interest of the SAC, have as a favourable conservation objective that their specific structure and function be likely to continue to exist into the foreseeable future. The FAC considered that road construction stage has potential for some run off and the general slope is toward the lake. The forest area of 17 ha to be serviced by the proposal is directly connected to Lough Oughter and Associated Loughs SAC along the shoreline of Long Lough, with qualifying interests including natural eutrophic lakes and a felling licence is in place, and a greater area of the forest slopes toward Long Lough. The FAC considered that likely run-off from the road construction when considered in-combination with potential for run-off from the works on this area of forestry, such as thinning and clear-fell, have the potential to create an effect on the eutrophic lake interests of the SAC. In the absence of information on which to definitively establish run-off effects, the likelihood of a significant effect cannot be excluded in this instance and on this basis the FAC is unable to screen out the proposal when considered in combination with other plans and projects.

Yours sincerely,

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

Pat Coman on Behalf of the Forestry Appeals Committee

FAC AA Screening (294 19) for CN84172

Background

380m of forest road at Drumbrughas, Co Cavan, licence issued 08 October 2019. This is a harvesting road to service c. 17 ha initially for first thinning of Sitka Spruce, Norway Spruce and Ash. There are three separate road sections on the licence which are to be integrated with existing OS marked cul de sac roads to farm sheds and lands, two shorter pieces are at the east plantation (one a bend section and the other a 't' junction section) and thirdly a longer straight section in an east to west direction for the western side plantation, culverts are planned. Per EPA, there is no evident watercourse on site, elevations are 60m to 70m with 1:14 gradient, soils are described as mineral, peat depth of 20 to 25cm, and well drained. Road construction is by excavation, with 5.5m formation width and 4m carriageway width. GSI shows the proposal area to be Dartry Limestone formation over a regionally important aquifer.

Licence conditions

Approve with conditions - All guidelines to apply - Adhere to Coford's Forest Road Building manual (specifically section C.2 — Forest Road Drainage).

These are standard conditions and are not considered mitigation measures towards any European site.

European Sites

Site Code	Site Name	Distance To (m)	Qualifying Interests
000007	Lough Oughter and Associated Loughs SAC	236.99	Habitats; 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland Species; 1355 Otter (<i>Lutra lutra</i>)
004049	Lough Oughter Complex SPA	3888.25	Birds; 050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) Habitats; Wetlands

Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA are within a 15Kkm zone of the proposal, and the SAC is within c. 200m from the forest to be serviced with sections of this fragmented SAC to both the north and south of the proposal, and the SPA is at 3.7 km approx of the forest to be serviced.

There is no watercourse on the proposal site or within the forest area to be serviced, the nearest water-body at c.200m is Long Lough and the River Killynaher. The forestry to be serviced has an apparent hydro connect with the shore of Long Lough of c. 70m in length and this is also the boundary of the SAC. The Proposal is in the Erne Catchment, a catchment shared by both the SAC and SPA. Proximity of the SAC is considered regards the otter as a qualifying interest. The

conservation objectives for the SAC include for the otter that there be a sufficiently large range for the species to maintain itself and that the available range is not being reduced, the FAC concludes that the road building itself will not affect the range for the species in this instance is unlikely to have a significant effect on the species for reason of extent of the SAC and the c. 200m of separation. There again is no likelihood of a significant effect on bog woodland by the proposal which is sited within commercial forestry. The lakes within the SAC have natural eutrophic lakes as their qualifying interest and a favourable conservation objective is when their specific structure and function is likely to continue to exist into the foreseeable future. The construction stage with excavation and slope involved has potential for run-off. Regards the SPA bird species at a distance of c. 3.8 km, while there will be traffic and noise at the road construction stage there is no evidence before the FAC that Long Lough is a breeding ground for these and a significant effect on the species is unlikely, also there can be no effect arising for the wetlands habitats of the SPA.

In combination

Cavan County Council planning website shows a number of one off houses have been granted permission over the years mostly late 1990s and early 2000s, in recent years application 18151 was granted in 2018 for a free range poultry house in Rafian TD to east of the proposal and divided from the proposal by an area of mature/semi-mature forestry, also in 2007 a cattle shed including slatted tank was granted planning north of the proposal again in Rafian TD. An Bord Pleanala contained no results for the immediate area. EPA website also yielded no results for the immediate area.

The DAFM reports of September 2019 indicate there are no felling licences in place and one afforestation licence. DAFM website shows two felling licences in place from 2018; CN05-FL0049 (16.81 ha) Drumbrughas and CN05-FL0050 (3.69 ha) Drumsaladdy / Drumbrughas. A forest area of 17 ha is to be serviced by the proposal and is directly connected to Lough Oughter Associated Loughs SAC by 70m along the shoreline of Long Lough, with qualifying interests including natural eutrophic lakes. Due to the natural slope likely run-off from the forest road construction has the potential to be added to by works on this area of forestry such as thinning and clear-fell regards run off to the lake. This has the potential to create an effect on the eutrophic lake interests of the SAC, and in the absence of information on which to definitively establish run-off effects, the likelihood of a significant effect cannot be excluded in this instance.

AA Screening conclusion

On the basis of the information available, the FAC is unable to conclude the project should be screened out and especially so having regard to possible in-combination effects.

Pat Coman on behalf of the FAC 17 June 2020