



03 July 2020

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Subject: Appeal 430/2019 regarding licence CN84260

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 CN84260 for 250 metres of forest road at Clonoony, Co. Monaghan, was issued by the Department of Agriculture, Food and the Marine (DAFM) on 09 December 2019.

Hearing

A hearing of appeal 430/2019 was held by the FAC on 16 June 2020.

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

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 CN84260).

Licence relates to 250m of forest road at Clonoony Co Monaghan, a harvesting road to service 10.02 ha (first thinning). The applied-on road comprises two individual sections, one from minor public road to east and comprises a bell mouth and straight 55m, the other a 't' shaped with bell mouth 195m in from N54 to a western block. At construction a 15m tree clearance is required and a foundation width of 5.5m, construction is by excavation. Site comprises mineral soil per application. Elevations are 50m with very modest slope. Site map shows watercourse proximate to road site – section D-E, the forest to be serviced does not have a connecting watercourse. A forest section at north side of the N54 does have a connection (2.5 km via May-Hill R. to Lough Oughter and Associated Loughs SAC) but is not serviced by the planned road. EPA mapping identifies the Clonura river south of the proposal and crosses under the public road en

route to Upper Lough Erne SAC and to Lough Oughter and Associated Loughs SAC. Site is in the Erne catchment and the Finn (Monaghan) sub catchment.

Area is stated to be within 'areas of secondary amenity value – buffered 1km – Ulster Canal. The application was referred by DAFM to Monaghan County Council and reply was received that;

- no grant of planning permission relates to the subject lands
- no Tree Preservation Orders pertaining to the subject lands
- subject lands are not located within a designated site (Special Protection Area, Special Areas of Conservation, Natural Heritage Area, proposed Natural Heritage Area)

The licence was issued with the following conditions; Approve with conditions - *All guidelines to apply – Adhere to forestry & water quality guidelines – Adhere to current standards for felling and reforestation - Adhere to Coford's Forest Road Building manual.*

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 the Forest Service screening for appropriate assessment found that there were Natura sites within the 15km zone of impact and that is a trigger for Appropriate Assessment as it may have an effect. The appellant went on to contend that the inspector answered the following questions: Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process? Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site? To which the inspector answered yes but the inspector fails to show any evidence on which this answer is based. The grounds also included that in most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. In these circumstances the only legal answer is that the application has been screened in for Appropriate Assessment.

In response to the appeal DAFM stated the project was screened for Appropriate Assessment according to Forest Service Appropriate Assessment Procedure (version 5th November 2019); *The proposed operations were considered and the following websites/mapping tools were consulted; Forest Service IFORIS, EPA Mapping, Co. Monaghan Development plan, An Bord Pleanála. After consulting the websites it was clear that no pathway between the project and any Natura 2000 area existed. Three Natura 2000 areas are located within 15km of the project area; Lough Oughter SAC 2.9km away, Lough Oughter SPA 11.3km away and Kilrooskey lough SAC 6.9km away. The closest pathway is a small watercourse which passes under the county road, to the south of the project area, and flows through 4 lakes before entering Lough Oughter SAC after 2.9km. The project area and the forest it serves is separated by a field. It is proposed that the timber will be forwarded from the forest and stacked along the northern side of the project area. With the Forest Road being outside the harvesting area, it is anticipated that less brash and sediment will accumulate in the area around the Forest Road. At the end of the Appropriate Assessment Screening the proposed application for Forest Road Licence was Screened Out as there was no perceived effect to any Natura 2000 area either directly or in combination with other projects in the vicinity'.*

There is no information before the FAC that confirms a distance of 15km is a trigger for an Appropriate Assessment. The FAC found there are four European Sites within a 15km radius of the proposal, and Slieve Beagh SPA is c. 18.4 km distance with the Hen Harrier as its sole qualifying interest. 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 FAC is satisfied that there is no likelihood the proposal would give rise to a significant effect on the Hen Harrier interest of the SPA at this distance and proposal size. Also, there is no likelihood of significant effects regards the bird interests of Lough Oughter Complex SPA for reason of distance and scale of project. The FAC considered the proposed road section D-E, per application maps, is proximate to the Clonura River and that road section A-B-C is not proximate to any watercourse. The closest European site to the proposal is Upper Lough Erne SAC, an extensive SAC, and its southern most points lie between the proposal and Lough Oughter and Associated Loughs SAC at c. 1.9km straight line and c. 4.3km by river from the point south of road section D-E.

The interests for the Upper Lough Erne SAC are natural eutrophic lakes, old sessile oak woods, alluvial forests, and the otter. While the proposed forest road section D-E does not cross the river, the FAC is satisfied a sufficient hydrological connection exists for the purposes of screening due to the proximity of the road section to the river. The FAC concluded that at c. 4.3 km hydrological distance the likelihood of a significant effect on the habitat interests of the Upper Lough Erne SAC or the habitats of Lough Oughter and Associated Loughs SAC does not arise. However, with regards species, the otter, Annex II and Annex VI listed, is a qualifying interest of the SAC and the home range of the otter would encompass this distance of separation. While there is no evidence before the FAC of a holt at or near the proposal, the proximity of the proposal to the Clonura River and in turn to the SAC is of concern. In this matter the FAC is cognisant that *the home range of otters depends on the quality of the foraging habitat and other resources and is usually 5 to 15km but it can vary* (Services, 2009).

On the basis of the evidence before it, the FAC considered there is a lacking information regards the otter, and possible disturbance in this instance, on which to reasonably conclude the project should be screened out for appropriate assessment, and instead the FAC has deemed the precautionary principle should be applied and the decision to grant CN84260 be cancelled.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Coman', is written over a horizontal line.

Pat Coman on Behalf of the Forestry Appeals Committee

Appeal 430 19 for CN84260 heard 16 June 2020

FAC; Des Johnson chairman, Vincent Upton, Jim Byrne and Pat Coman

Background presented;

Proposal is for 250m of forest road at Clonoony Co Monaghan, licence issued 09 December 2019. Harvesting road to service 10.02 ha (first thinning). Applied on road comprises two individual roads, one in to a block from public road to west and comprises a bell mouth and straight 55m, the other a 't' shaped with bell mouth 195m in from road to north of an eastern block. 15m tree clearance required and foundation width of 5.5m and construction is by excavation. Mineral soil. Site map shows watercourses proximate but not connecting to road, forest to be serviced again does not have a connecting watercourse, section at north side of public road does have a connection (2.5 km via *May-Hill R. to Lough Oughter and Associated Loughs SAC*) but is not serviced by the planned road. EPA, no evident wc at the western road site or areas to be serviced by the roads have no hydrological connection to any European site – in line with bio-map – eastern section is in beside wc. Site is in the Erne catchment and the Finn (Monaghan) sub catchment. Elevations are 50m with very modest slope. Only desk inspected

Area is stated to be within 'areas of secondary amenity value – buffered 1km – Ulster Canal. Referred to Monaghan Co Co and reply received that;

- no grant of planning permission relates to the subject lands
- no Tree Preservation Orders pertaining to the subject lands
- subject lands are not located within a designated site (Special Protection Area, Special Areas of Conservation, Natural Heritage Area, proposed Natural Heritage Area)

Licence conditions

Approve with conditions - All guidelines to apply – Adhere to forestry & water quality guidelines – Adhere to current standards for felling and reforestation - Adhere to Coford's Forest Road Building manual

Appeal – there is one appeal that is by P Sweetman against the licence – grounds are;

The Forest Service screening for appropriate assessment found that there were Natura sites within the 15km zone of impact. That is a trigger for Appropriate Assessment as it may have an effect;

The inspector answered the following questions.

Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process?

Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site? To which the inspector answered yes but the inspector fails to show any evidence on which this answer is based.

In most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. In these circumstances the only legal answer is that the application has been screened in for Appropriate Assessment.

DAFM reply

The Application for Forest Road Licence, CN84260 (hereafter referred to as 'the project'), was processed in accordance with all Forest Service Guidelines and Standard Operating Procedures. The

following text addresses the specific concerns highlighted in the Appellants Grounds of Appeal. The project was screened for Appropriate Assessment according to Forest Service Appropriate Assessment Procedure (version 5th November 2019). The proposed operations were considered and the following websites/mapping tools were consulted; Forest Service IFORIS, EPA Mapping, Co. Monaghan Development plan, An Bord Pleanála. After consulting the websites it was clear that no pathway between the project and any Natura 2000 area existed. Three Natura 2000 areas are located within 15km of the project area; Lough Oughter SAC 2.9km away, Lough Oughter SPA 11.3km away and Kilrooskey lough SAC 6.9km away. The closest pathway is a small watercourse which passes under the county road, to the south of the project area, and flows through 4 lakes before entering Lough Oughter SAC after 2.9km. The project area and the forest it serves is separated by a field. It is proposed that the timber will be forwarded from the forest and stacked along the northern side of the project area. With the Forest Road being outside the harvesting area, it is anticipated that less brash and sediment will accumulate in the area around the Forest Road. At the end of the Appropriate Assessment Screening the proposed application for Forest Road Licence was Screened Out as there was no perceived effect to any Natura 2000 area either directly or in combination with other projects in the vicinity

Jhan Crane FI

Notes

There are 3 European Sites within 15 km per DAFM, Lough Oughter and Associated Loughs SAC, Lough Oughter Complex SPA and Kilrooskey Lough Cluster SAC.

Site Name	Distance To (m)	Qualifying interests
Lough Oughter and Associated Loughs SAC	2891.63	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)
Kilrooskey Lough Cluster SAC	6919.70	Habitats 3140 Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. 7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae* 7230 Alkaline fens Species 1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)
Lough Oughter Complex SPA	11377.71	Birds A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A005 Great Crested Grebe (<i>Podiceps cristatus</i>) Habitats Wetlands

Screening by DAFM includes some details of plans and projects but there is no discussion regards them. As regards likelihood of significant effects from the proposal there is nothing likely. Screening for in-combination comprises a listing of plans and projects without any reasoning and this requires a screening by FAC.

Roadway is well sub threshold for EIA and there is no obvious significant effect on the environment evident. Forestry levels are quite low at 7% within 5km radius. Smaller pockets is the norm. There are a number of smaller lakes in the vicinity, Clonoony Lough is closest, and mostly rural farm house dwellings. One section of road (to west) accesses directly onto the N54 on a relatively straight stretch but there has been consultation with the County Council.

Withhold deciding until screening and preliminary examination for EIA is completed and presented to members.

Pat Coman on behalf of the FAC 16 June 2020

