



04 June 2020

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Subject: Appeal 206/19 against licence CN83710

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 CN83710 for 204 metres of forest road construction at Gurraneigh, Co. Cork was issued by the Department of Agriculture, Food and the Marine on 28 August 2019.

Hearing

A hearing of appeal 206/2019 was held by the FAC on 13 May 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman and 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 CN83710.

Proposal comprises 204m of forest road, a harvesting road to initially service first thinning of 8.17 ha, the main section being a straight northeast to southwest length with a 40m spur to north. Site elevations are 150m to 180m per application and the proposal is described as extending from a farm roadway.

The application is ticked for FWPM catchment, but the site is not within any FWPM catchment per the datasets/maps contained on the EPA website and the FAC is satisfied this is the case. The site is located within the Lee, Cork Harbour and Youghal Bay catchment and the nearest EPA watercourse to the proposal is the Knockaneirk River (minor) at c. 500m. There is no evidence showing a watercourse on site.

Additional licence conditions are as follows;

- *Have drains either side of the road to keep the formation dry.,*
- *Adhere to COFORD roads manual specification and dimensions.,*
- *Use at least 200mm of 4-6 inch crushed stone as pavement base.,*
- *Adhere to forestry & water quality guidelines, All guidelines to apply*
- *None of these conditions are mitigation regards any European Site in this instance.*

There is one appeal against the decision. The grounds are 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; C-258/11, C-164/17, C-323/17 and C-461/17. Also, 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 a statement to the FAC, the DAFM responded that the Appropriate Assessment Screening standard operating procedure of 26 November 2018 was applied, and with no Natura sites located within 3km of this application, under that procedure the project individually could have no effect on any Natura site. DAFM provided further information in the response relating to all Natura site within a 15 km radius of the proposal and details for other plans and projects for consideration in-combination with the proposal.

In considering the appeal, and before deciding on the appeal, the FAC undertook an appropriate assessment screening and a preliminary examination of the proposal regarding the requirements of the EU Habitats and EIA Directives. These considerations are available on the public file.

The proposal has no hydrological connections to any European site, there is also no watercourse evidenced on site or within the forest area to be serviced. There is no likelihood of a significant effect on the qualifying interest habitats and species of the nearest Natura sites, the Gearagh SAC and SPA, or on the conservation objectives of those sites at over 7km and without connectivity. The nearest watercourse c. 500m is a tributary to the R Bride and has a hydrological connection to Cork Harbour SAC but at well in excess of 30km, and as the proposal does not have a connection and is also c. 500m removed no likelihood of a significant effect on this European site arises. Finally, with regards the Bandon River SAC at a distance of 12.4 km, without any connectivity and being located in a different catchment (the Bandon-Ilen catchment), there is no likelihood of this proposal having a significant effect on the SAC, its qualifying interests or conservation objectives.

With regards other forestry projects, the FAC notes felling licence TFL00134918 was granted in 2018 for the felling of 5.37 ha, CN69059 was granted in 2014 licence for 6.46 ha of afforestation, there is no detail provided or in the public domain regards FP665, CN21872 and CN19236 other than based on serial numbers these are long established. There is a 4 turbine wind-farm directly north of the proposal, planning was granted in 2003 (032047) and extension in 2008 (099783), and there are a number of private dwellings and farm buildings granted permissions in the local area. The area is predominantly agricultural with smaller areas of forestry sporadically occurring. The FAC is satisfied no likelihood of a significant effect on a European site arises from the proposal when considered in combination with other plans and projects.

Having regard to the nature, scale and location of the proposal, its lacking of proximity and of connectedness to European sites, the conservation objectives of those sites, and other plans and projects in the area, the FAC concluded that the proposed forest road itself or in combination with other plans or projects would not result in the possibility of a significant effect on a European site.

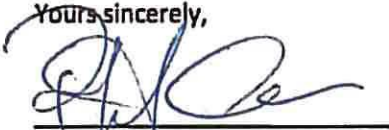
Annex II of the EU EIA Directive lists classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. This includes "initial afforestation and deforestation for the purpose of conversion to another type of land use" and road construction. This is transposed into Irish Regulations (Irish Forestry Regulations 2017) as afforestation involving an area of more than 50 ha or forest road construction of greater than 2,000 metres; the Regulations also provide for the Minister to consider if sub-threshold developments are likely to have significant effects on the environment and, as such, require EIA. The proposed forest road is substantially sub-threshold.

The proposal is located in a remote rural landscape and will for the most part be within an existing forest, the general area is sparsely populated primarily with one-off housing, and the local area is predominantly agricultural. There is the windfarm in the vicinity but the installation of this 204m forest road is at a sufficient distance and remove, so as not to be considered a cumulative significant effect on the local environment. As noted above there is no likelihood of a significant effect on any European site from the proposed forest road.

The FAC is satisfied there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

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

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

Note: The confirmation by the FAC 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 planning permission is required, it is recommended that you contact the relevant planning authority for clarification.

Screening and preliminary examination for CN83710

Appropriate Assessment Screening

Background

Proposal comprises 204m of forest road at Gannanereagh (Gurranreigh), Co Cork, licence issued 28 August 2019, a harvesting road to service first thinning of 8.17 ha, the main section being a straight northeast to southwest length with a 40m spur to north. Site elevations are 150m to 180m per application and the proposal is described as extending from a farm roadway.

Application has box ticked for FWPM catchment but the site is not within any FWPM catchment per the datasets/maps contained on the EPA website. The site is otherwise in the Lee, Cork Harbour and Youghal Bay catchment and the nearest EPA watercourse is Knockaneirk River (minor) at c. 500m, there is no evidence showing a watercourse on site and there is no hydrological connection to any European site.

Additional licence conditions comprise the following; Have drains either side of the road to keep the formation dry., Adhere to COFORD roads manual specification and dimensions., Use at least 200mm of 4-6 inch crushed stone as pavement base., Adhere to forestry & water quality guidelines, All guidelines to apply

None of these conditions are mitigation regards any European Site in this instance and none were taken into account in the screening herein.

European sites

There are three European sites within a 15 km radius of the proposal;

Site code	Site name	Distance	Qualifying Interests
000108	The Gearagh SAC	7302.96	Habitats Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation / Rivers with muddy banks with Chenopodium rubri p.p. and Bidentium p.p. vegetation / Old sessile oak woods with Ilex and Blechnum in the British Isles / Alluvial forests with Alnus glutinosa and Fraxinus excelsior Species; Otter
002171	Bandon River SAC	12430.78	Habitats Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation / Alluvial forests with Alnus glutinosa and Fraxinus excelsior Species; Brook Lamprey / Freshwater Pearl Mussel
004109	The Gearagh SPA	7729.44	Birds; Wigeon / Mallard / Teal / Coot Habitats; Wetlands

In a response to the FAC the DAFM provided the following information; *The proposed forest road is 7.4km from the Georagh SAC 000108, 7.8km from the Georagh SPA 004109 and 12.3km from the*

Bandon River SAC 002171. There is no hydrological connectivity from the project area to any of these Natura sites.

The proposal has no hydrological connections to any European site, there is also no watercourse evidenced on site or within the forest area to be serviced, the nearest watercourse is c. 500m and is a tributary to the R Bride. There is no likelihood of a significant effect on the qualifying interest habitats and species of the nearest Natura sites, the Gearagh SAC and SPA, or on the conservation objectives of those sites at over 7km and without connectivity. The nearest watercourse c. 500m has a hydrological connection to Cork Harbour SAC but at well in excess of 30km, and as the proposal does not have any connection no likelihood of a significant effect arises. Having regard to distance of 12.4 km to the River Bandon SAC and the absence of any connectivity and being located in a different catchment, Bandon-Ilen catchment, there is no likelihood that this proposal for 204m of forest road having a significant effect on the SAC, its qualifying interests or conservation objectives.

In combination

In a response to the FAC the DAFM provided the following information; An in-combination-assessment was carried out on the project on the 24/07/2019. The potential for the proposed project to contribute to an in-combination impact on European sites was considered. The online planning systems for Cork County Council was consulted and non-forestry projects identified in the vicinity of the project, i.e. in the Townland of Garranreagh include: Dwellings construction of domestic garage 174430. A windfarm was granted planning permission in the townland on the 22/01/2009, planning number 089783. There are a number of other dwellings/farm buildings located in the above townland/surrounding townlands. The Cork County Development Plan was also reviewed, in particular, objectives therein relating to Natura 2000 sites. I consulted the DAFM's iFORIS MapViewer on the 24/07/2019 and other forestry-related projects identified in the vicinity of the project include: Afforestation CN21872, CN69059, FP665 and CN19236. Licensed felling in the area is TFL00134918.

Licence TFL00134918 was granted in 2018 for the felling of 5.37 ha, CN69059 is a 2014 licence for 6.46 ha of afforestation. No detail to hand regards FP665, CN21872 and CN19236 other than based on serial numbers are long established. There is a 4 turbine wind-farm directly to north of the project, planning was granted in 2003 (032047) and extension in 2008 (099783), and a number of private dwellings and farm buildings have been granted permissions in the local area. The area is predominantly agricultural with smaller areas of forestry sporadically occurring. No likely effect arises from the proposal that when considered in combination with other plans or projects identified lead to the likelihood of a significant effect on a European site

Having regard to the nature, scale and location of the proposal, distance of remove and absence of connection to European sites, the conservation objectives of those sites, and other plans and projects in the area the, FAC concluded that the proposed forest road itself or in combination with other plans or projects would not result in the possibility of a significant effect on a European site.

Preliminary Examination for EIA

The Irish Forestry Regulations 2017 in relation to forestry licence applications require compliance with the EIA process for applications relating to the construction of a forest road of a length greater

than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposed forest road is substantially sub-threshold and will for the most part be within an existing forest. The proposal is in a very rural area, reasonably remote with one-off houses sparsely populating the general area, which is predominantly agricultural. There is the windfarm in the vicinity but the installation of this 204m forest road is at sufficient distance and remove, so as not to be considered a likely cumulative significant effect on the local environment. As noted above there is no likelihood of a significant effect on any European site from the proposed forest road. There is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

Pat Coman on behalf of the FAC, 15 May 2020

