



04 June 2020

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Subject: Appeal 298/19 against licence CN84468

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 CN84468 for 150 metres of forest road construction was issued by the Department of Agriculture, Food and the Marine on 08 October 2019.

Hearing

A hearing of appeal 298/2019 was held by the FAC on 27 May 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman and 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, the grounds of appeal, and all submissions/observations before deciding to confirm the licence decision (Reference CN 84468).

The proposal is for a forest road, 150m in length at Killydonnell, Co. Donegal. The road would have a carriageway width of 3.4m within a formation of 5.5m minimum. Underlying soils are stated to be podzols, the slope is flat to moderate and there is no aquatic zone on or adjoining the site. Harvesting of 10.2ha is to take place over the next 3 years. An access has existed since 2011 (this is clearly visible on aerial photography). The area is rural and agricultural in character, with a significant but dispersed

settlement pattern. Drongawn Lough is approximately 1200m to the east, and this feeds into Lough Swilly. There is stated to be 4.9% forestry within a radius of 5km of the proposed site.

The DAFM referred the application to Donegal County Council and, in response, it is stated that the site is located within an existing large commercial forest plantation. The site is in a designated High Scenic Amenity Area but one with a capacity to absorb sensitively located development. There are no buildings/structures within the vicinity and, as such, there are no built heritage or conservation concerns. The County Council raises no objection.

Prior to making its decision, the DAFM carried out a screening for Appropriate Assessment. Seven sites were identified within a 15km radius and these were listed, along with their separation distances and qualifying interests. While there are no details of other projects in the area and no assessment of cumulative effects, the DAFM concluded that there is no likelihood of significant effects on any Natura 2000 site due to the absence of any aquatic zone and the absence of any significant watercourse.

The DAFM decided to approve the Licence which issued on 8th October 2019, subject to standard conditions.

There is a single appeal against the decision to approve the Licence. The grounds of appeal contend that, based on the information provided it is not possible to grant approval in accordance with the provisions of the Habitats and EIA Directives. Reference is made to Court judgments and, in particular, *Finlay Geoghegan in Keppy v An Bord Pleanála* which states that there is no need to establish such an effect but it is merely necessary to determine that there may be such an effect.

Prior to making its decision, the FAC carried out a screening for Appropriate Assessment (including an assessment of the likelihood of in-combination impacts) and a preliminary examination in the context of EIA. The FAC considered 7 Natura 2000 sites within a 15km radius of the proposed site, together with their separation distances and qualifying interests (these are the same sites as identified and assessed by the DAFM). The FAC noted that there are no rivers/streams on the proposed site or in the adjoining forest. There is a stream shown on the EPA website adjacent to the north west of the existing forest to be serviced and this is on the opposite side of the public road. This links to Lough Swilly SAC and SPA. The qualifying interests for Lough Swilly SAC are estuaries, coastal, lagoons, Atlantic salt meadows, old sessile oak woods and the otter, while the qualifying interests for Lough Swilly SPA refer to a wide range of bird species, including sea birds and waterfowl. Having regard to the nature and scale of the proposed development, and the absence of direct hydrological connectivity and the qualifying interests of Lough Swilly SAC and SPA, the FAC agrees with the DAFM conclusion that the proposed development would not give rise to the likelihood of significant effects on these Natura 2000 sites or on any Natura 2000 sites, having regard to the qualifying interests of those sites. The FAC noted that the proposed development is not directly connected with, or necessary to the management of any Natura 2000 site, and that there are no conditions attaching to the Licence that relate to measures designed to avoid or reduce the effects on any Natura 2000 site.

The FAC concluded that the proposed forest road of 150m is significantly sub-threshold for mandatory EIA under the provisions of the EIA Directive and transposing legislation and that mandatory EIA is not required. The FAC carried out a preliminary examination in the context of likelihood of significant effects on the environment arising from the proposed development alone, or cumulatively with other projects and land uses in the area. Having regard to the nature and scale of the proposal, the characteristics of the surrounding receiving environment, including the existing pattern of development, and the absence of hydrological connectivity or any likelihood of significant effects on a Natura 2000 site, the FAC concluded that the proposed development alone or cumulatively with other projects and land uses, would not be likely to have a significant effect on the environment, within the meaning of the EIA Directive and that formal screening for EIA is not required.

In confirming the Licence decision, the FAC concluded that the proposed forest road development is consistent with Government policy and Good Forestry Practice.

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

Pat Coman on behalf of the Forestry Appeals Committee.

Note: the granting of this licence 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 or not planning permission is required, it is recommended that you contact the relevant planning authority for clarification.

CN 84468

Proposed development and surrounds

The proposal is for a forest road (non-grant aided), 150m in length at Killydonnell, Co. Donegal. The site is approximately 5km south east of Ramelton. The road would have a carriageway width of 3.4m within a formation of 5.5m minimum. Underlying soils are stated to be podzols, the slope is flat to moderate and there is no aquatic zone on or adjoining the site. Harvesting of 10.2ha is to take place over the next 3 years. An access has existed since 2011 (this is clearly visible on aerial photography). The area is rural and agricultural in character, with a significant but dispersed settlement pattern. Drongawn Lough is approximately 1200m to the east, and this feeds into Lough Swilly. There are few other areas of scattered forestry within a 3km radius of the site.

Appropriate Assessment

The proposed road is not directly connected with or necessary to the management of any Natura 2000 site.

There are 7 Natura 2000 sites within a radius of 15km of the proposed site. These, together with their separation distances and qualifying interest are as follows:

- **Lough Swilly SAC** 1051m
Estuaries
Coastal lagoons
Atlantic salt meadows
Molinia meadows on calcareous, peaty or clayey-silt-laden soils
Old sessile oak woods with Ilex and Blechnum in the British Isles
Otter
- **Leannan River SAC** 3493m
Oligotrophic waters containing very few minerals of sandy plains
Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoetes-Nanojuncetea [3130]
Freshwater Pearl Mussel
Salmon
Otter
Slender Naiad
- **Bayyarr Wood SAC** 6594m
Old sessile oak woods with Ilex and Blechnum in the British Isles
- **Mulroy Bay SAC** 10263m
Mudflats and sandflats not covered by seawater at low tide

Large shallow inlets and bays

Reefs

Otter

- River Finn SAC 13382m

Oligotrophic waters containing very few minerals of sandy plains

Northern Atlantic wet heaths

Blanket bogs (* if active bog)

Transition mires and quaking bogs

Salmon

Otter

- Lough Swilly SPA 1070m

Great Crested Grebe

Grey Heron

Whooper Swan

Greylag Goose

Shelduck

Wigeon

Teal

Mallard

Shoveler

Scaup

Goldeneye

Red-breasted Merganser

Coot

Oystercatcher

Knot

Dunlin

Curlew

Redshank

Greenshank

Black-headed Gull

Common Gull

Sandwich Tern

Common Tern

Greenland White-fronted Goose

Wetland and Waterbirds

- Lough Fenn SPA 6861m

Pochard – wintering

Wetlands and waterbirds

The FAC noted that there are no rivers/streams on the proposed site or in the adjoining forest. There is a stream shown on the EPA website adjacent to the north west of the existing forest to be serviced and this is on the opposite side of the public road. This links to Lough Swilly SAC and SPA. Having regard to the nature and scale of the proposed development, and the absence of direct hydrological connectivity and the qualifying interests of Lough Swilly SAC and SPA, the FAC concludes that the proposed development would not give rise to the likelihood of significant effects on these Natura 2000 sites or on any Natura 2000 sites. In regard to the other SACs listed, the FAC concluded that, having regard to nature and scale of the proposal, the lack of hydrological connectivity and separation distances, the proposed development would not be likely to have significant effects on any Natura 2000 site.

In terms of in-combination effects, the FAC considered the rural, agricultural character of the area, the significant but dispersed settlement pattern, mostly along public roads and the low level of dispersed forestry. Planning records indicate one-off housing, much of which is now well established, cattle shed, slatted shed and silo with effluent tank in the last 15 years in Killydonnell. Having regard to the nature and scale of the proposal and the characteristics of the receiving environment, the FAC concluded that the proposed forest road, in combination with other projects and land uses, would not be likely to give rise to significant effects on any Natura 2000 site.

The FAC concluded that there are no conditions attaching to the Licence that relate to measures designed to avoid or reduce the effects on any Natura 2000 site.

EIA examination

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 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 development at 150m in length is significantly sub-threshold for the purposes of mandatory EIA.

The FAC considered the characteristics of the receiving environment, which is rural and agricultural and has a significant but dispersed settlement pattern mostly along public roads, the absence of hydrological connectivity and the nature and scale of other developments permitted in this area over the past 15 years. The FAC concluded that the proposed 150m forest road to serve harvesting of 10.2ha over the next 3 years, considered cumulatively with other projects and land uses, would not have a significant effect on the environment and that formal screening for EIA is not required.

Des Johnson

On behalf of the Forestry Appeals Committee

1st June 2020.