



04 June 2020

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Subject: Appeal 300/2019 against licence CN84253

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 CN84253 for 190m of forest road construction at Carrownrod, Co. Sligo was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15 October 2019.

Hearing

A hearing of appeal 300/2019 was held by the FAC on 27 May 2020.

FAC Members: Mr. Des Johnson (Chairperson), 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 CN84253.

The proposal is for 190m of forest road to service 13.75 ha (first thinning of Sitka Spruce, Japanese Larch and Ash). The proposed road comprises a bell-mouth entrance, a 'T' junction turntable section and 100m road on a relatively flat site. Construction involves a build on top, soil is heavy clay and culverts are planned. There is no EPA watercourse on site or within the forestry to be serviced, however, the application bio-map on a 25" shows evidence of aquatic zones with flow directions to the north, one at the public road side and two within the forest to be serviced which converge through a system of land drains / streams. The Finned River is c.290m west of the site and across a public road and flows south to north, also the Ballybeg (Sligo) River is c. 700m east of the site and also flows south to north. There was referral by DAFM during processing to Shannon Region Fisheries Board due to 'the site is greater than 5 ha and fisheries sensitive' and no response was received back. Also, there was referral to Sligo County Council and a response was received regarding the public road.

There is one appeal against the decision. The grounds are that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and quotes from that July 2014 judgement; *"There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there maybe such an effect."*

In reply to the appeal, the DAFM state there is no hydrological connectivity to any Natura site and the approval went through the required Appropriate Assessment screening process including an in-combination assessment.

The FAC finds that Appropriate Assessment Screening by DAFM screened individually and for any in-combination effects for four European Sites and screened out the proposal. While there are no EPA mapped hydrological connections from the proposal site, there are aquatic zones shown on the application bio-map draining to north, most likely long-established drains or streams. However, the proposal site is in the Sligo Bay and Drowse Catchment and Easky sub-catchment, and all rivers in the surrounds flow north to the Atlantic sea at a distance of c. 2 km and there are no European sites within the area. The closest European site is the Ox Mountain Bogs SAC at c. 9 km and there is no obvious effect possible to this upland SAC from the proposal. Aughris Head SPA at c.12.7 km has the Kittiwake seabird as a sole qualifying interest and no possible effect arises. The others are the Killala Bay / River Moy Estuary SAC and SPA at c. 9.7km to which there is a complete absence of connectivity from this site and no possibility of an effect arises having regard to distance and conservation objectives. The FAC considers the screening undertaken by DAFM, which included a screening for possible in-combination effects, contains sufficient information in this instance having regard to Article 6(3) of the Habitats Directive and is satisfied the proposal was correctly screened out for Appropriate Assessment. In addition, there are no conditions on the licence that relate to the mitigation of effects on a given European site and the FAC is satisfied that such measures were not taken into account in the screening. The FAC, having regard to nature, scale and location of the proposal, its proximity and connectivity to European sites and those sites conservation objectives, concludes that the proposal itself or in combination with other plans or projects would not result in the possibility of a significant effect on a European site arising.

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 FAC has taken into account the information from the EIA examination undertaken

by DAFM in this case in considering for likely impacts of the proposal on the environment. The evidence shows there is 4.63% forest cover within 5km radius. The surrounding area is predominantly agricultural with a number of smaller to mid-sized forestry pockets spread throughout. The proposed roadway is significantly sub threshold for EIA at 190m and the surrounds will be within existing mature/semi mature managed forest. As noted, the proposal is not in a designated conservation area and is not considered likely to have a significant effect on a European site. Having regard to the nature, small scale and location of the proposal the FAC concluded before making its decision that there is no real likelihood of the proposal resulting in a significant effect on the environment and that EIA is not required in this instance.

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Pat Coman', 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.

