



04 June 2020

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**Subject:** Appeal 314/2019 against licence CN84544

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 CN84544 for 249 metres of forest road construction at Mullacastle, Co. Cavan was issued by the Department of Agriculture, Food and the Marine on 29 October 2019.

#### **Hearing**

A hearing of appeal 314/2019 was held by the FAC on 20 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 CN84544.

The proposal is for 249m of forest road at Mullacastle, Co Cavan, to initially service the first thinning of 9.94 ha (a 2003 plantation). The main section of the proposal is straight northeast to southwest with a small section in a spur to northwest. The forest area to be serviced has an aquatic zone along much of its southern boundary. The road entrance will be close to a road junction and there was a referral to Cavan County Council and reply included that public road is not assessed for bearing capacity. Construction is by excavation, 400mm pavement depth and crushed stone used.

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 goes on to quote from that judgement.

In a statement to the FAC, the DAFM state the decision met their criteria to confirm the licence. The DAFM go on to provide details of their assessment procedure and what criteria they took account of and how the proposal was screened out for appropriate assessment.

In considering the appeal and before making a decision, 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.

There are five European sites within 15km of the proposed road. The boundary of Lough Sheelin SPA is some 2.3 km in direct distance southerly from the proposed road. The Conservation Objectives are to maintain /restore the favourable conservation condition of the Bird species and the wetland habitats of the Qualifying Interests. The proposal is in a separate catchment to the SPA and has no direct hydrological connection to it. In addition, the road would be constructed in existing managed forest which would not be considered as suitable habitat for the qualifying interests of the SPA. Lough Kinale and Deragh Lough SPA, Moneybeg and Clareisland Bogs SAC, Derragh Bog SAC all are at considerable distances from the proposal, beyond the typical foraging or regenerative range of the related species and habitats, in separate sub-catchments and with no hydrological connection. White Lough, Ben Loughs and Lough Doo SAC lies in a separate catchment and its boundary lies some 14.7km from the proposal. There is a hydrological connection at the southern boundary of the forest to be serviced by the project to Lough Oughter Complex SPA and Lough Oughter and Associated Loughs SAC but this is via the Kilnaleck R. Gowna Lough and the Erne R. is in excess of 40 km hydrological distance and no likelihood of a significant effect on either site arises especially with regard to their qualifying interests.

There are no conditions on the licence that relate to the mitigation of effects on a given European site and such measures were not taken into account in the screening. Having regard to the nature, scale and location of the proposal, its proximity and 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 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

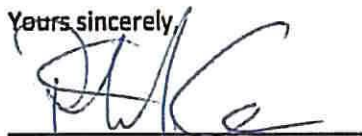


consider if sub-threshold developments are likely to have significant effects on the environment and, as such, require EIA.

The FAC considered the information on file and in the public domain in respect of the description of the proposed development and its location. The proposal poses no likelihood of a significant effect on any European Site. The proposal at 249m is significantly sub threshold for mandatory EIA. The proposal does not extend any existing forest road to create a cumulative effect and enters an existing forestry so will not have any extensive effect on the environment, and except from construction phase and sporadic maintenance which are not considered to be significant will have no effect. There are some agriculture production units in the environs related to pig production and mushroom production, and a village close by, but this proposed project would not be likely to give rise to significant effects on the environment on its own or cumulatively with these other projects/plans.

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 'P. 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.



## **Appropriate Assessment Screening of CN84544 and preliminary EIA examination**

### **Background**

The proposal is for 249m of forest road at Mullacastle, Co Cavan, to initially service the first thinning of 9.94 ha (a 2003 plantation). Main section straight northeast to southwest with a small spur to west near end. The forest area to be serviced has an aquatic zone along much of its southern boundary, this is not shown on OS or EPA maps but contours infer the area drains to south and west and the Kilnaleck River at c. 1 km is the most likely outfall, a river that flows to Gowna (lough) with outflow to the Erne R..

Entrance will be close to a public road junction and there was a referral to Cavan County Council and a reply included that public road is not assessed for bearing capacity. Construction is by excavation, 400mm pavement depth and crushed stone used.

*Licence conditions* - adhere to Coford forest roads building manual - All guidelines to apply. None of these conditions are considered mitigation measures in respect of any Natura site

### **Screening**

#### ***European sites;***

1. **SAC002340 Moneybeg and Clareisland Bogs SAC 8.2 km: Habitats;** 7110 Active raised bogs\*, 7120 Degraded raised bogs still capable of natural regeneration, 7150 Depressions on peat substrates of the Rhynchosporion
2. **SAC002201 Derragh Bog SAC 12.5 km: Habitats;** 7120 Degraded raised bogs still capable of natural regeneration, 91D0 Bog woodland\*
3. **SAC000007 Lough Oughter and Associated Loughs SAC 14.8km: Habitats;** 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation  
91D0 Bog woodland\* **Species;** 1355 Otter (*Lutra lutra*)
4. **SAC001810 White Lough, Ben Loughs and Lough Doo SAC 17.9 km: Habitats;** 3140 Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. **Species;** 1092 White-clawed Crayfish (*Austropotamobius pallipes*)
5. **SAC002299 River Boyne and River Blackwater SAC 18.7 km: Habitats;** 7230 Alkaline fens, 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae)\* **Species;** 1106 Salmon (*Salmo salar*), 1355 Otter (*Lutra lutra*), 1099 River Lamprey (*Lampetra fluviatilis*)
6. **SPA004065 Lough Sheelin SPA 4.6 km: Birds;** A067 Goldeneye (*Bucephala clangula*), A061 Tufted Duck (*Aythya fuligula*), A059 Pochard (*Aythya ferina*), A005 Great Crested Grebe (*Podiceps cristatus*) **Habitats;** Wetlands



7. **SPA004061 Lough Kinale and Derragh Lough SPA 11.3 km: Birds;** A059 Pochard (*Aythya ferina*), A061 Tufted Duck (*Aythya fuligula*)     **Habitats; Wetlands**
8. **SPA004049 Lough Oughter Complex SPA 14.6 km: Birds;** A050 Wigeon (*Anas penelope*), A038 Whooper Swan (*Cygnus cygnus*), A005 Great Crested Grebe (*Podiceps cristatus*)  
**Habitats; Wetlands**
9. **SPA004232 River Boyne and River Blackwater SPA 18.7 km: Birds;** A229 Kingfisher (*Alcedo atthis*)

The project site is in the Erne Catchment and the closest European site, Lough Sheelin SPA at 4.6 km, is in the Upper Shannon catchment. The qualifying interests of Lough Sheelin SPA are waterfowl & wetland habitats and with no hydrological connection and for reason of distance there can be no likelihood of significant effect from the proposal. There is a hydrological connection at the southern boundary of the forest to be serviced by the project to Lough Oughter Complex SPA and Lough Oughter and Associated Loughs SAC but this via the Kilnaleck R. Gowna Lough and the Erne R. is in excess of 40 km hydrological distance and no likelihood of a significant effect on either site arises especially with regard to their qualifying interests. For other European sites listed, without connectivity and at the distances, there can be no likelihood of a significant effect on their qualifying interest habitats or species. This includes Lough Kinale and Derragh Lough SPA both with waterfowl and wetlands habitats qualifying interests. The absence of a hydrological connection from the project site or associated forestry to the River Boyne and River Blackwater SPA and the SAC at 18.7km and having regard to their qualifying interests excludes the likelihood of a significant effect. The qualifying interests of Moneybeg and Claireisland Bogs SAC relate to raised bogs and peat and there is no likelihood that the forest road at Mullacastle will have a significant effect on the European site, likewise with regard to Derragh Bog SAC. White Lough, Ben Loughs and Lough Doo SAC at 17.9 km lacks any connection and no likelihood of a significant effect arises.

#### ***In combination***

In processing DAFM had examined a number of websites including Cavan County Development plan, An Bord Pleanála, and EPA mapping for non-forestry projects in the vicinity of the proposed Forest Road area. Some of the non-forestry projects include; new dwelling (04618), demolish derelict house (04908), extension to pig house (12156), new pig tunnel (9119596). In addition Kilnaleck village is within 1km of the proposal and contains an intensive agricultural production unit and there is also a licensed sow unit within 500m of the proposal, both of these are self contained units and without any hydrological connection the proposal does not create a cumulative effect on any European site.

#### ***AAS conclusion***

Having regard to Article 6(3) of the Habitats Directive (92/43/EEC), the FAC is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of a significant effect on a European site, and the need for an appropriate assessment does not arise.

#### **Preliminary examination for EIA;**

The DAFM information shows there is 8.21% forestry within a 5 km radius, and was 5.8% 5 years ago. The proposal poses no likelihood of a significant effect on any European Site. The proposal at

249m is significantly sub threshold for mandatory EIA. The proposal does not extend any existing forest road to create a cumulative significant effect on the environment, and enters an existing managed forestry so will not have any extensive effect on the environment, and the construction phase, sporadic use and maintenance which will not create significant effects will also pose no long term significant effect. The proposal is not within a designated area and significant effects on designated sites are not considered likely as previously described. There are some agriculture production units in the environs related to pig production and mushroom production, and a village close by, but this proposed project would not be likely to give rise to significant effects on the environment on its own or cumulatively with these other projects/plans.

Pat Coman on behalf of the FAC 03 June 2020

