



5 June 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Appeal FAC 400 - 2019 - CN82813 – Application for a Forest Road.

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

Approval for a Forest Road Licence in Bryanmore Lower, Co Westmeath was issued by the Department of Agriculture, Food and the Marine on 26th November 2019.

Hearing

A hearing of appeal 400/2019 was conducted by the FAC on the 20th May 2020.

In attendance at the hearing:

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

Decision

Having regard to all the evidence before it, the FAC decided to confirm the decision of the Minister regarding Forest Road Licence CN82813 for the reasons set out below.

The decision related to an approval for a Forest Road Licence of 300m length. The licence was issued on 26th November 2019 subject to standard conditions. The FAC is satisfied that none of the licence conditions are applied as mitigation measures for any European site.

There is a single appeal against the decision to approve the licence. The grounds of appeal are:

Based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU;

Case C-258/11, Peter Sweetman and Others v An Bord Pleanála

Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanála

Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta

Case C-461/17, Brian Holohan and Others v An Bord Pleanála

The test for Appropriate Assessment Screening in Irish Law is set out by "Finlay Geoghan J. in Kelly – v An Bord Pleanála...

"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."

All forestry developments since 1989 must be assessed for cumulative effects.

In its statement to the FAC dated 17th February 2020 DAFM stated:

"Ideal case for the Appeals process. Access point changed and chosen by Co Co Engineer. Proposal on free draining brown earth soil, where a road could be built on top or topsoil excavated with no hydrological connection and no drainage of any kind required.

Change of access has resulted in ineligibility of project for grant aid- failing to attain appropriate standard as outlined in the Coford Road Manual- so if the road is constructed along revised layout the owner will have to cover the associated cost.

I understand there are no plans now to construct a forest road, it is intended to forward all timber from the plantation to a loading bay some distance away. This new arrangement is quite acceptable and is practiced in many parts of the country."

Following an examination of the information on file and the EPA public website the FAC carried out a screening in accordance with the provisions of the Habitats Directive and a preliminary examination in respect of the EIA. The appropriate assessment screening, which is available on the public file examined the 7 Natura 2000 sites within 15 km of the proposed site.

The proposal is for a 300m forest road. The site use is described as semi-mature coniferous forest on a silty-clay mineral soil. First thinning of the forest was due in 2019 on an area of 11.5 ha. The site stands at an elevation of 90 – 100m. The proposed road would be 3.4 m wide with a pavement depth of 600mm comprising 550mm crushed stone with 50mm of CL 804 overlay. The forest road leads to a public road with very few houses close by in any direction.

The site is situated in the Upper Shannon catchment, and the Breensford sub-catchment. The geology in the area is comprised of limestone. There is no evidence of karst landforms in or adjacent to the site.

The Carn Park Bog at a distance of 4.3 km from the proposed forest road has active raised bogs amongst its qualifying interests. Given the lack of hydrological connectivity there is no possibility of a significant effect on the SAC from the proposal. The Lough Ree SAC and SPA at respective distances of 6.5 km and 6.7km have amongst the qualifying interests limestone pavements, the mallard, and the otter. A stream flows from north west corner of the forest where the road is to be situated starting approximately 170m

from the proposed road. The stream joins the Breensford river which drains into the Lough Ree SAC/SPA at a distance of 10.5 km from the proposed forest road. The route is circuitous and passes through Lough Twy before passing into Lough Ree SAC/ SPA. There is a hydrological connection, however, given the distance and the fact that a lake is traversed before the river reaches the Lough Ree SAC/SPA there is no likelihood of a significant effect on the Natura sites from the proposed forest road. The Crosswood Bog SAC (7.6 km) and Ballymore Fen SAC (9.4 km) list raised bogs and quaking bogs amongst their qualifying interests. Given the lack of hydrological connectivity there is no likely effect of the SAC's from the proposed forest road. The River Shannon Callows SAC (11.6 km) and Middle Shannon Callows SPA (11.6 km) list limestone pavements, and the otter amongst their qualifying interests. Given the lack of hydrological connection and the greater separation distance from the proposed forest road and there is no likelihood of a significant effect from the proposed forest road.

There are 2 planning permissions associated with the locality and both are agricultural in nature. In regard to other forestry related projects there is a felling licence (for thinning) applied for in respect of the forest where the proposed road is to be located. These other developments would not combine with the proposal to result in any likelihood of significant effects on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests of the European site, the fact of the sole hydrological linkage and the separation distance and taking into account the qualifying interests, the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects


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 Forestry 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 forest road is substantially sub-threshold at 300m and will serve an area of 11.5 ha for a first thinning. The proposal is situated in a remote rural landscape and it is surrounded by agricultural land with some established forests. The landscape is not designated as sensitive in the Westmeath County Development Plan and is in keeping with the objective of encouraging forestry related development as a means of diversifying from traditional farming activity. The proposed road will meet a public road and planning permission was received from the County Council who considered that the site *"would not give rise to significant adverse direct, indirect or secondary impact on the integrity of any nearby Natura site having regard to their conservation objectives and it has been deemed that the development is unlikely to have significant effects on any European site"*.

The FAC concluded that 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.

In deciding to confirm the licence, the FAC considered that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely


Jim Byrne on behalf of the Forestry Appeals Committee

Note: The confirming of this decision should not be interpreted as meeting any requirements 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.

CN82813 Bryanmore Lower, Co Westmeath - 22 May 2020

Before making a decision, the Forestry Appeals Committee undertook an appropriate assessment screening and an examination of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain.

The licence was approved on 26 November 2019 subject to the standard conditions. The FAC is satisfied that none of the licence conditions are applied as mitigation measures for any European site.

The proposal is for a 300m forest road. The site use is described as semi-mature coniferous forest on a silty-clay mineral soil. First thinning of the forest was due in 2019 on an area of 11.5 ha. The site stands at an elevation of 90 – 100m.

The proposed road would be 3.4 m wide with a pavement depth of 600mm comprising 550mm crushed stone with 50mm of CL 804 overlay. The forest road leads to a public road with very few houses close by in any direction. Planning permission was received for the forest road entrance, with the Council noting that; *Due to the nature of the proposal for a new forestry access and the distance to the nearest SPA, SAC, and NHA it is considered that it would not give rise to adverse director secondary impacts on the integrity of any nearby Natura 2000 sites having regard to their conservation objectives and it has been deemed that the development is unlikely to have significant effects on any European site.*

The site is situated in the Upper Shannon catchment, and the Breensford sub-catchment. The geology in the area is comprised of limestone. There is no evidence of karst landforms in or adjacent to the site.

Appropriate Assessment Screening

The site is not related to or necessary for the management of any European site. There are 7 European sites within 15km from the proposed forest road. They are listed below along with their distance from the proposed forest road along.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	002336	Carn Park Bog SAC	4325.00	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration
SAC	000440	Lough Ree SAC	6529.31	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
				sites) 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7230 Alkaline fens 8240 Limestone pavements* 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91D0 Bog woodland* Species 1355 Otter (<i>Lutra lutra</i>)
SAC	002337	Crosswood Bog SAC	7679.34	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration
SAC	002313	Ballymore Fen SAC	9491.55	Habitats 7140 Transition mires and quaking bogs
SAC	000216	River Shannon Callows SAC	11683.82	Habitats 6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) 6510 Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) 8240 Limestone pavements* 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* Species 1355 Otter (<i>Lutra lutra</i>)
SPA	004064	Lough Ree SPA	6702.30	Birds A038 Whooper Swan (<i>Cygnus cygnus</i>) A056 Shoveler (<i>Anas clypeata</i>) A067 Goldeneye (<i>Bucephala clangula</i>) A050 Wigeon (<i>Anas penelope</i>) A142 Lapwing (<i>Vanellus vanellus</i>) A193 Common Tern (<i>Sterna hirundo</i>) A065 Common Scoter (<i>Melanitta nigra</i>) A125 Coot (<i>Fulica atra</i>) A052 Teal (<i>Anas crecca</i>) A004 Little Grebe (<i>Tachybaptus ruficollis</i>) A053 Mallard (<i>Anas platyrhynchos</i>) A061 Tufted Duck (<i>Aythya fuligula</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) Habitats Wetlands

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SPA	004096	Middle Shannon Callows SPA	11683.82	Birds A156 Black-tailed Godwit (<i>Limosa limosa</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A122 Corncrake (<i>Crex crex</i>) A142 Lapwing (<i>Vanellus vanellus</i>) Habitats Wetlands

The Carn Park Bog at a distance of 4.3 km from the proposed forest road has active raised bogs amongst its qualifying interests. Given the lack of hydrological connectivity there is no possibility of a significant effect on the SAC from the proposal. The Lough Ree SAC and SPA at respective distances of 6.5 km and 6.7km have amongst the qualifying interests limestone pavements, the mallard, and the otter. A stream flows from north west corner of the forest where the road is to be situated starting approximately 170m from the proposed road. The stream joins the Breensford river which drains into the Lough Ree SAC/SPA at a distance of 10.5 km from the proposed forest road. The route is circuitous and passes through Lough Twy before passing into Lough Ree SAC/ SPA. There is a hydrological connection, however, given the distance and the fact that a lake is traversed before the river reaches the Lough Ree SAC/SPA there is no likelihood of a significant effect on the Natura sites from the proposed forest road. The Crosswood Bog SAC (7.6 km) and Ballymore Fen SAC (9.4 km) list raised bogs and quaking bogs amongst their qualifying interests. Given the lack of hydrological connectivity there is no likely effect of the SAC's from the proposed forest road. The River Shannon Callows SAC (11.6 km) and Middle Shannon Callows SPA (11.6 km) list limestone pavements, and the otter amongst their qualifying interests. Given the lack of hydrological connection and the greater separation distance from the proposed forest road and there is no likelihood of a significant effect from the proposed forest road.

There are 2 planning permissions associated with the locality and both are agricultural in nature. In regard to other forestry related projects there is a felling licence (for thinning) applied for in respect of the forest where the proposed road is to be located. These other developments would not combine with the proposal to result in any likelihood of significant effects on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests of the European site, the fact of the sole hydrological linkage and the separation distance and taking into account the qualifying interests, the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects

EIA Examination

The EU Directive (Directive 2011/92/EU as amended by Directive 2014//52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex 11 contains a list of projects for which member states

must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 in relation to forestry licence applications require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, 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 serve an area of 11.5 ha for a first thinning. The proposal is located in a remote rural landscape and surrounded by agricultural land with some established forests. The landscape is not designated as sensitive in the County Development Plan and is in keeping with the objective of encouraging forestry and forestry related development as a means of diversifying from traditional farming activity. The proposed road will meet a public road and planning permission was received from the County Council who considered that the site *"would not give rise to significant adverse direct, indirect or secondary impact on the integrity of any nearby Natura site having regard to their conservation objectives and it has been deemed that the development is unlikely to have significant effects on any European site"*.

The FAC concluded that 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.

Jim Byrne

On behalf of the FAC