



25 June 2020

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Subject: Appeals 405/19 & 433/2019 regarding licence CN82871

Dear [REDACTED]

I refer to the appeals 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 CN82871 for 110m of forest road at Curraghbanania, Co. Leitrim, was issued by the Department of Agriculture, Food and the Marine (DAFM) on 21 November 2019.

Hearing

A hearing of appeals 405/2019 and 433/2019 was held by the FAC on 23 June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, 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 and the grounds of appeal, further invited submissions and carried out a screening in accordance with the provisions of the Habitats Directive and an examination in respect of environmental impact assessment before deciding to cancel the decision to approve the licence (Reference CN 82871).

The proposal is for a forest road 110m in length and 3,4m wide to service 4.8ha forestry for harvesting within the next 3 years at Curraghbanania, Co. Leitrim. The surrounding landscape is rural and agricultural in character but with extensive area of forestry. Settlement is sparse and dispersed. The project lands are sited to the west of a very narrow public road with hedgerows either side. There are two right angle bends in the road approximately 400m to the south. There is an existing single storey dwelling on the opposite side of the public road to the proposed site. There is an existing track and farm gate at the location of the proposed lands.

The Inspector's Certification notes that the site is within 3km upstream of a designated site (pNHA), and in a moderately sensitive landscape. It states that Cuilcagh-Anierin Uplands SAC is within 15km and lists the qualifying interests for this site. It screens out the need for Appropriate Assessment due to the

absence of any aquatic zone or significant watercourse on the site and no pathway for in-combination effects. There is 24.9% forest cover within 5km of the proposed site (up from 20.09% five years ago). There are no freshwater pearl mussel issues, no archaeological sites and no marked ways affecting the site. The project lands are not in a Prime Scenic Area or High Amenity landscape.

The DAFM referred the application to Leitrim County Council who responded that this is a private lane and an existing field entrance with access on to the public road. The area has a High Capacity for forestry. Appropriate Assessment should consider the relationship of the proposal with other forestry in the greater area. The entrance may require planning permission if widening and improvement works are involved. Conditions are recommended in the event of a decision to approve a Licence, including a need to contact the District Engineer.

The DAFM approved the Licence which issued on 21st November 2019. The Licence is subject to standard conditions.

There are two appeals against the DAFM decision to approve the Licence. The first contends that, based on the information supplied it is not possible to grant a Licence which would be in accordance with the provisions of the Habitats and EIA Directives. Reference is made to Court judgments and, in particular *Finlay Geoghegan in Kelly v An Bord Pleanála*. The appellant contends that all forestry developments since 1989 must be assessed for cumulative effects.

The second appeal contends as follows:

- The Registered Forester did not submit a legally complete application and Forestry Service did not ensure adequate environmental oversight in respect of the application
- The BioMap submitted does not conform to Forestry Regulation 6(2) and does not show legally required details
- Roadside hedgerows have already been removed from the site and the Forestry Inspector fails to mention this
- AA and EIA screenings have not been adequately considered for in-combination effects
- Approvals for roads in plantations are restricted to cases where thinning/harvesting will take place within 3 years. Harvesting of timber must be assumed
- For the purposes of EIA screening, a forest road must be treated as a single project to avoid project splitting. The forest road is fundamental to the entire project which is the harvesting of trees and cumulative effects of both phases must be assessed as part of the screening.
- There is no data on carbon emissions which will result directly and indirectly, including from harvesting. No assessment of cumulative impact on carbon emissions
- The site is less than 500m and hydrologically connected to a pNHA (Cromlin Bridge Wood NHA 1403). Any surface water from the proposed road will drain to a watercourse within 3km upstream and hydrologically connected to a pNHA. There is no referral to NPWS, IFI or the Forestry Service ecologist.

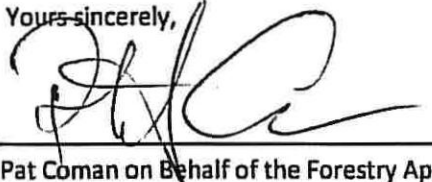
In response, the DAFM state that the application was field and desk assessed. All criteria were adhered to and the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. The DAFM response was circulated and further submissions on its contents were invited. One appellant responded raising general queries for the FAC, new issues and response to the issues raised in the DAFM response. The FAC considered that new issues should not be considered at this stage and that there was sufficient other information on file in order to decide the appeal.

The FAC considered that the principle of the proposed development should be considered in the first instance. In its consideration of the proposed development, the FAC carried out a Stage 1 screening in accordance with the provisions of the Habitats Directive, and an examination in the context of Environmental Impact Assessment. The screening assessment and examination are contained in the public file. There is a single Natura 2000 site within 15km – Cuilcagh-Anerin SAC at a separation distance of 2776m and there is no hydrological connection between the proposed site and this Natura 2000 site and no likelihood of significant effects on this site, having regard to its qualifying interests and conservation objective.

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 110m in length is significantly sub-threshold for the purposes of mandatory EIA.

Having regard to the particular circumstances in this case, including the significant extent of existing forestry projects in the area (24.9% within a 5km radius), and to the fact that significant areas of this existing forestry are in proximity and hydrologically connected, it is considered important to consider the potential for cumulative effects on the environment from both existing forestry and non-forestry projects and land uses. However, there is no information provided on file in respect of other plans and projects in this area, both forestry and non-forestry, with the potential to give rise to cumulative effects on the environment. As such, it is not possible for the FAC to carry out an examination of likely environmental effects and their significance, or to determine that the proposed development, considered cumulatively with other projects, would not be likely to have significant effects on the environment, within the meaning of the EIA Directive. For this reason, the FAC has decided to cancel the Licence.

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

CN 82871 Assessments

Proposed development and location

The proposal is for a forest road 110m in length and 3,4m wide to service 4.8ha forestry for harvesting within the next 3 years at an address stated to be Curraghnabania, Co. Leitrim. The surrounding landscape is rural and agricultural in character but with extensive area of forestry. Settlement is sparse and dispersed. The project lands are sited to the west of a very narrow public road with hedgerows either side. There are two right angle bends in the road approximately 400m to the south. There is an existing single storey dwelling on the opposite side of the public road to the proposed site. There is an existing track and farm gate at the location of the proposed lands.

Appropriate Assessment Screening

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

Having regard to the nature and scale of the proposed development and to its location, the FAC considered that Natura 2000 sites within a radius of 15km should be screened. There is a single Natura 2000 site within this radius – the Cuilcagh-Anierin Uplands SAC. This is at a separation distance of 2776m and its qualifying interests are as set out as follows:

- Oligotrophic waters containing very few minerals of sandy plains
- Natural dystrophic lakes and ponds
- Northern Atlantic wet heaths with *Erica tetralix*
- European dry heaths
- Alpine and Boreal heaths
- Species rich *Nardus* grasslands, on siliceous substrates in mountain areas
- Blanket bogs
- Transition mires and quaking bogs
- Petrifying springs with tufa formation
- Siliceous scree of the montane to snow levels
- Siliceous rocky slopes with chasmophytic vegetation
- Slender Green-Feather moss.

There is no aquatic zone on the proposed site and no significant watercourse. There is no hydrological connectivity to this Natura 2000 site. Having regard to the nature and scale of the proposed development, the absence of hydrological connectivity, the separation distance between this Natura 2000 site and the proposed site, and to the qualifying interests and conservation objectives for this Natura 2000 site, there is no likelihood of significant effects on the Cuilcagh-Anierin SAC arising from the proposed development. There is a stream (Drumbad) approximately 150m to the south flowing in an easterly and southerly direction but this has no connectivity with the Natura 2000 site. The proposed road development, in-combination with the adjoining forestry would not give rise to significant effects on any Natura 2000 site.

Environmental Impact Assessment 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 110m in length is significantly sub-threshold for the purposes of mandatory EIA.

Having regard to the significant extent of existing forestry in the area (24.9% within a 5km radius) it is considered important to consider the potential for cumulative effects on the environment. There is also a proposed Natural Heritage Area (pNHA) hydrologically connected to the adjoining forestry at a distance of approximately 330m downstream. While other forestry in the wider area is hydrologically connected to this site, including the adjoining forestry which may be serviced by the proposed road, the proposed road itself is not hydrologically connected to either the stream or the pNHA. However, there is no information on the file in respect of other plans and projects in this area, both forestry and non-forestry, with the potential to give rise to cumulative effects on the environment. As such, it is not possible for the FAC to carry out an EIA examination or to determine that the proposed development, considered cumulatively with other projects, would not be likely to have significant effects on the environment, within the meaning of the EIA Directive.

Des Johnson

On behalf of the Forestry Appeals Committee

25th June 2020.