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22<sup>nd</sup> May 2020

**Subject: Appeal FAC295/2019 against licence CN84089**

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 CN84089 for 155 metres of forest road at Gorteen or Go, Cavan was issued by the Department of Agriculture, Food and the Marine on 9<sup>th</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC295/2019 was held by the FAC on 19<sup>th</sup> May 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, 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 CN84089.

The licence pertains to 155 metres of forest road at Gorteen or Go, Cavan. The forest will serve 8.81 hectares of forest comprised of Sitka spruce, Japanese larch, Oak, Scots pine and Norway spruce. The site is described as flat to moderate on a well-drained, mineral podzol soil without an aquatic zone. Construction will be through excavation with a total pavement depth of 400 mm and will occur on an existing agricultural track and coniferous woodland. The application was referred to Cavan County Council.

There is one appeal against the decision. The grounds suggest 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 stated that they are satisfied that the decision met their criteria and guidelines that they confirm the licence. The DAFM went on to provide details of their assessment procedure, including for specific species and habitats, and what criteria they took account of and how the proposal was screened 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 with 15km from the proposal. Upper Lough Erne SAC, Upper Lough Erne SPA, and Moninea Bog SAC lie over 11 km to the north in separate sub-catchments with no hydrological connection to the forest road. There is no direct hydrological connection from the proposed road with either Lough Oughter and Associated Loughs SAC or Lough Oughter Complex SPA, the boundaries of which lie 1.1 km and 1.3 km from the proposed road respectively. The land on which the road would be constructed consists of an existing agricultural track and coniferous forest, at a remove from any aquatic area, and would not be considered suitable habitat for the qualifying interests of the SPAs or SACs. There are few other plans or projects approved in this area and applications and permissions granted are typically of a domestic or agricultural nature. There are no conditions on the licence that are designed to mitigate effects on a European site. Having regard to the nature and scale of the proposal, its proximity to European sites and those sites conservation objectives, the FAC concluded 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.

Annex II of the 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 the construction of roads. This is transposed into Irish Regulations as afforestation involving an area of more than 50 ha and forest road construction of lengths 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 significantly sub-threshold at 155 metres and is proposed on an existing agricultural track and managed forest. Having regard to the nature, scale and location of the proposal, and considering other projects in the vicinity, the FAC concluded that there is no real likelihood of it having a significant effect on the environment.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and submissions received.

Yours sincerely,



Pat Coman, on Behalf of the Forestry Appeals Committee



Before reaching a decision the FAC undertook a screening of the proposal in relation to the requirements of the Habitats and EIA Directives. These considerations were based on information provided in the DAFM file, including the application, any additional information, the appeal, submissions and information in the public domain.

The licence pertains to 155 metres of forest road at Gorteen or Go, Cavan. The forest will serve 8.81 hectares of forest comprised of Sitka spruce, Japanese larch, Oak, Scots pine and Norway spruce for thinning in 2019 and a felling licence for a first thinning has been granted. The site is described as flat to moderate on a well-drained, mineral podzol soil without an aquatic zone. Construction will be through excavation with a total pavement depth of 400 mm and will occur on an existing agricultural track and coniferous woodland. A marked river runs west-east some 400 metres south of the proposed road but adjacent to the forest to be thinned and an unmarked drain runs north to south to the west. Possible impacts of forest road construction generally could include changes in land-use and habitat, sedimentation from excavation and importation of stone, changes in drainage, and noise and visual impact.

#### **Appropriate Assessment Screening**

There are five European sites with 15km which are listed below alongside their direct distances from the closest boundary to the proposed forest road and qualifying interests. Upper Lough Erne SAC, Upper Lough Erne SPA, Moninea Bog SAC lie over 11 km to the north in separate subcatchments with no hydrological connection to the forest road. There is no direct hydrological connection from the proposed road with either Lough Oughter and Associated Loughs SAC or Lough Oughter Complex SPA, the boundaries of which lie 1.1 km and 1.3 km from the proposed road respectively. The land on which the road would be constructed consists of an existing agricultural track and coniferous forest, at a remove from any aquatic area, and would not be considered suitable habitat for the qualifying interests of the SPAs or SACs. The proposal is at a significant distance from the boundary of the SAC and SPA which would preclude impacts from noise or light, which would be temporary in nature in any case. The proposed road lies over 400 m from the closest marked waterbody, a river to the south. An agricultural drain runs some 100 metres to the east of the road but is divided by the public road and agricultural fields. The forest to be served is divided into a number of stands of different species. The river runs west-east to the south of the most southerly stand that flows to the SAC. The forest is setback from the river and divided by a strip of grassland and a mature hedgerow, which runs around the perimeter of the forest, and felling in this area would not increase the impact of the proposed forest road. There are few other plans or projects related to this area and applications and permissions granted are typically of a domestic or agricultural nature, aside from a sub station and land fill on private land, and these would not combine with the proposed road to increase its impact. There are no conditions on the licence that are designed to mitigate effects on a European site. Having regard to the nature and scale of the proposal, its proximity to European sites and those sites conservation objectives, the FAC concluded 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.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
SAC	7	Lough Oughter and Associated Loughs SAC	1066.09	<b>Habitats</b> 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 91D0 Bog woodland* <b>Species</b> 1355 Otter ( <i>Lutra lutra</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000007.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000007.pdf</a>
SPA	4049	Lough Oughter Complex SPA	1343.53	<b>Birds</b> A050 Wigeon ( <i>Anas penelope</i> ) A038 Whooper Swan ( <i>Cygnus cygnus</i> ) A005 Great Crested Grebe ( <i>Podiceps cristatus</i> ) <b>Habitats</b> Wetlands	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004049.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004049.pdf</a>
SAC	UK0 0166 14	Upper Lough Erne SAC	11100	Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation Old sessile oak woods with Ilex and Blechnum in the British Isles Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, S Bog woodland Alkaline fen Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinia caerulea) Otter <i>Lutra lutra</i> Atlantic salmon <i>Salmo salar</i>	<a href="https://www.daera-ni.gov.uk/sites/default/files/publications/doe/land-information-upper-lough-erne-conservation-objectives-2015.pdf">https://www.daera-ni.gov.uk/sites/default/files/publications/doe/land-information-upper-lough-erne-conservation-objectives-2015.pdf</a>
SPA	UK9 0200 71	Upper Lough Erne SPA	11100	Whooper Swan wintering population	<a href="https://www.daera-ni.gov.uk/sites/default/files/publications/doe/upper-lough-erne-spa-conservation-objectives-2015.pdf">https://www.daera-ni.gov.uk/sites/default/files/publications/doe/upper-lough-erne-spa-conservation-objectives-2015.pdf</a>
SAC	UK0 0302 12	Moninea Bog SAC	12650	Degraded raised bog still capable of regeneration Depressions on peat substrates of the Rhynchosporium	<a href="https://www.daera-ni.gov.uk/sites/default/files/publications/doe/land-information-moninea-bog-conservation-objectives-2015.pdf">https://www.daera-ni.gov.uk/sites/default/files/publications/doe/land-information-moninea-bog-conservation-objectives-2015.pdf</a>

### Environmental Impact Assessment Preliminary Examination

Annex II of the 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 the construction of roads. This is transposed into Irish Regulations as afforestation involving an area of more than 50 ha and forest road construction of lengths 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 significantly sub-threshold at 155 metres and is proposed on an existing agricultural track and managed forest. The area is rural in nature and comprised mainly of managed agricultural and forest land. The proposed road is not adjoined by any aquatic feature and has no conservation designations. The road adjoins a minor public road but will not involve the creation of a new entrance or widening of the entrance and there are few dwellings in the vicinity. There are general conditions attached to the licence regarding the management of operations and their possible environmental impacts. The operations will create an increase in traffic, including heavy vehicles, but this would be of a temporary nature and would not be out of keeping with land-uses in the area. Having regard to the nature, scale and location of the proposal, and considering other projects in the vicinity, the FAC concluded that there is no real likelihood of it having a significant effect on the environment.

Vincent Upton, On Behalf of the Forestry Appeals Committee

