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22 May, 2020

**Subject:** Appeal FAC 196 - 2019 - CN84120 – 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 was issued by the Department of Agriculture, Food and the Marine on 26<sup>th</sup> August 2019.

#### **Hearing**

A hearing was conducted by the FAC on the 12<sup>th</sup> 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 CN84120 for the reasons set out below.

The decision related to an approval for a Forest Road Licence of 80m length. The licence was issued with the following conditions:

- Planning permission required prior to works commencing or written declaration from local authority that none are required.
- Adhere to forestry and water quality guidelines
- All guidelines to apply,

The grounds of appeal were;

*To clarify, there is a lacking of proper assessment.*

*There is no assessment of cumulative effects for example.*

*I am not the person paid to do the assessment.*

*Reading the Holohan judgement would be a help to you.*

*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 Pleanala*

*Case C-164/17, Ede) Grace and Peter Sweetman v An Bord Pleanala*

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

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

In its statement to the FAC dated 17<sup>th</sup> December 2019 DAFM stated :-

"There is no hydrological connection to the above Natura Site . The standard operating procedure for AA screening was applied at the time of approval".

Before making its decision the FAC undertook an appropriate assessment screening and examined the proposal regarding the EIA Directive. These were based on the information provided by the parties and information available in the public domain and are available on the public file. On the basis of the available evidence the FAC considered the project is not necessary for or connected with the management of any Natura site. There is one European site within 15km from the proposed forest road, The Cuilcagh-Anieran Uplands SAC.

There is no hydrological connectivity from the proposed forest road to the listed Natura site which is at a higher elevation than the proposed forest road which lies at an elevation of 90m and the boundary of the SAC is some 6.7 km from the proposal. The Qualifying Interests include habitats and a species

associated with upland areas. The proposal will be situated in a coniferous forest and the qualifying interests of the SAC have not been recorded on the proposal site.

While the land surrounding the proposed forest road is primarily agricultural there is mature forestry to the northwest and west both separated by blocks of agricultural land. There are additional small blocks of forestry in all directions none on a large scale. The only other licenced forestry activity appears to be for felling including the following licences TFL00430619 for thinning of 4.23 ha, TFL00355819 for thinning of 2.68 ha, and TFL00220218 for thinning of 7.78 ha.

The area is rural and remote with one off houses sparsely populating the general area. There are only 2 recorded planning applications in the townland of Drumany (tenants) in the last 5 years, both in respect of houses.

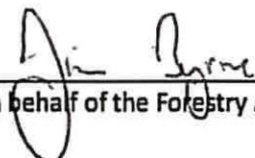
These other developments would not combine with the proposal to result in significant impacts on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests of the European site, the fact of no hydrological linkage and the separation distance, 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. The FAC is satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to the licence do not require any measures to avoid or reduce effects on a European site.

The project is considerably below the 2000 m threshold for the mandatory submission of an Environmental Impact Assessment Report with the application. The project is located in a remote rural landscape with existing agriculture and forests. The landscape is not designated as sensitive in the County Development Plan and is considered to have a high capacity to accommodate forestry.

As noted above there is one European site in the area and there is no likelihood of significant effect on this site from the proposed forest road. There are mature forests to the north east and west. 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

  
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.





**CN84120      Drumany (tenants), Co. Leitrim**

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 proposal is for an 80m forest road. The site use is described as currently non- agricultural land on a mineral soil. The forest due for harvesting in the next 3 years is 2.82 ha and stands at an elevation of 92m. The proposed road to be 3.4 m wide to consist of 350 – 400 mm crushed stone. The forest road will not be visible to any surrounding house with mature forestry to three of the four sides. It leads to a public road with very few houses close by in any direction. The site is situated in the Erne catchment. The road itself does not adjoin an aquatic feature but a stream runs to the west of the associated forest

**Appropriate Assessment Screening**

The site is not related to or necessary for the management of any European site. There is one European site within 15km from the proposed forest road, The Cuilcagh-Anieran Uplands SAC which is listed below alongside the qualifying interests and direct distance from its boundary to the proposed forest road site.

There is no hydrological connectivity from the proposed forest road to the listed Natura site which is at a higher elevation than the proposed forest road which lies at an elevation of 90m and the boundary of the SAC is some 6.7 km from the proposal. This is a large SAC of 9,763 ha and its qualifying interests include habitats and a species associated with upland areas. The proposal will be situated in a coniferous forest and the qualifying interests of the SAC have not been recorded on the proposal site. The next closest European sites are over 21 km away and given the scale and degree of separation sites the likelihood of significant impacts on sites outside of 15 km are not considered possible.

While the land surrounding the proposed forest road is primarily agricultural there is mature forestry to the northwest and west both separated by blocks of agricultural land. There are additional small blocks of forestry in all directions none on a large scale. The only other licenced forestry activity appears to be for felling including the following licences TFL00430619 for thinning of 4.23 ha, TFL00355819 for thinning of 2.68 ha, and TFL00220218 for thinning of 7.78 ha.

The area is rural and remote with one-off houses sparsely populating the general area. There are only 2 recorded planning applications in the townland of Drumany (tenants) in the last 5 years, both in respect of houses.

These other developments would not combine with the proposal to result in significant impacts 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 no hydrological linkage and the separation distance, 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 forest road proposed is substantially sub-threshold and is located in a remote rural landscape with existing agriculture and forests. The landscape is not designated as sensitive in the County Development Plan and is considered to have a high capacity to accommodate forestry. The Drumrooske river flows approximately 80m west of proposed forest road separated by a public road, and another band of forestry in the same plantation. The Drumrooske river joins the Ballinamore and Ballyconnell Canal 338 m downstream of the proposed road. This runs into the Aughacashlaun river which flows into St John's Lough at a straight line distance of 1.7 km.

Kiltyfinnan lake is approximately 600m NW of proposed road. There are 4 more lakes within 1.5km of the site. Na Carraige Lough lies 700m northeast of the proposed road, and Castlefore Lough lies 1 km to the Southwest. There is no connectivity from the proposed site to these lakes.

As noted above there is one European site in the area and there is no likelihood of significant effect on this site from the proposed forest road. There are mature forests to the north east and west. 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.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	000584	Cuilcagh - Anierin Uplands SAC	6673.49	<b>Habitats</b> 3110 Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) 3160 Natural dystrophic lakes and ponds 4010 Northern Atlantic wet heaths with Erica tetralix 4030 European dry heaths 4060 Alpine and Boreal heaths 6230 Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)* 7130 Blanket bogs (* if active bog) 7140 Transition mires and quaking bogs

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
				<p>7220 Petrifying springs with tufa formation (Cratoneurion)*</p> <p>8110 Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani)</p> <p>8220 Siliceous rocky slopes with chasmophytic vegetation</p> <p><b>Species</b></p> <p>1393 Slender Green Feather-moss (<i>Drepanocladus vernicosus</i>)</p>

Vincent Upton on behalf of the Forestry Appeals Committee

