



**An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee**

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28th May 2020

Subject: Appeal FAC401/2019 regarding licence CN83509

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 CN83509 for 640 metres of forest road at Cartron, Ballymaurice Co. Longford was issued by the Department of Agriculture, Food and the Marine on 19th November 2019.

Hearing

A hearing of appeal FAC401/2019 was held by the FAC on 27th May 2020.

FAC Members: Mr. Des Johnson (Chairperson), 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 CN83509.

The proposal relates to a forest road of 640 metre in three sections at Cartron, Ballymaurice Co. Longford. The site is described as flat on heavy clay soil and the road would be constructed through excavation and the laying of stone pavement to a depth of 550mm. The forest road will serve 25.02 hectares of forest planted in 2002 and comprised of Sitka spruce, Japanese larch, ash and alder due for thinning in 2019. Planning permission was attained for the road entrance and the proposal was referred to the County Council that replied with reference to issues regarding the maintenance of the public road.

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. There is also reference to the assessment of cumulative effects.

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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 go on to state that the operational proposals, were reviewed and considered and that the area was viewed on IFORIS maps for any potential impact on European sites, watercourses, Archaeology, Forest Cover, protected species and habitats (Curlew, FWPM, Small white Orchid, Hen Harrier). They state that the soil type, topography, landscape sensitivity and likelihood of flooding were also examined. They state that there will be no impact from this proposal and note the European sites considered in their assessment.

In considering the appeal and before making a decision, the FAC undertook a screening and examination of the proposal in relation to the requirements of the Habitats and EIA Directives and copies of these considerations are contained in the public file.

The proposal is situated in the Inny (Shannon) subcatchment in the Upper Shannon catchment. The forests to be served lie at the boundary of two catchments and the land drains to the northwest and southeast. There are existing drains/streams on the northerly and middle road section, which likely drain into a stream that runs westerly and joins the Camlin River. This river eventually flows into Ballykenny-Fisherstown Bog SPA and Lough Forbes Complex SAC at a hydrological distance of some 40km. Ardagullion Bog SAC is the closest European site and lies some 3km to the south with no hydrological connection and the proposed road would not impact on the drainage of the SAC or regenerative capacity of the qualifying interests at this distance. Derragh Bog SAC is to the northeast of the site at 5.9km from the proposal with no hydrological connection and upstream from a drainage perspective. Garriskil Bog SAC and Lough Derravarragh SPA lie over 10km to the southeast in a separate subcatchment. The proposal will take place in a mature coniferous forest with no hydrological features which would not be considered suitable habitat for the qualifying interests of Lough Kinale and Derragh Lough SPA, Lough Sheelin SPA, Garriskil Bog SPA, Glen Lough SPA, or Lough Iron SPA and is a considerable distance from these sites with no hydrological connection. Moneybeg and Clareisland Bogs SAC lies over 8km from the proposal and in a different subcatchment with no hydrological connection. The FAC noted that there are no conditions on the licence designed to mitigate possible effects on a European site and details of other plans and projects are provided and considered as part of this screening. Having regard to the characteristics 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 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 proposal at 640 metre is sub-threshold for mandatory EIA. The forest road is proposed in managed coniferous forest adjoining a public road and planning permission has been attained. The proposal is to the south of Granard but in a generally rural area with few other developments and a limited number of other forestry licences granted. Forest cover within 5km is given as 7.7%. The construction will be a once off event and use and maintenance will be intermittent, in line with management activities in the forest, and any increase in traffic will be of a temporary nature. There is a recorded monument close to but outside of the proposal and no impacts are likely. There are conditions on the licence that provide for the mitigation of impacts on biodiversity and water quality generally but not for the purpose of avoiding or reducing effects on any European site. An impact on a European site is not considered likely. 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 and that the need for environmental impact assessment can be excluded without the requirement for a formal screening.

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 any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Pat Goman', written over a horizontal line.

Pat Goman On Behalf of the Forestry Appeals Committee



Before reaching a decision, the FAC undertook a screening and examination 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 sought, the appeal grounds, submissions and information in the public domain.

The proposal relates to a forest road of 640 metre in three sections at Cartron, Ballymaurice Co. Longford. The site is described as flat on heavy clay and the road would be constructed through excavation and laying of stone pavement to a depth of 550mm. The forest road will serve 25.02 hectares of forest planted in 2002 and comprised of Sitka spruce, Japanese larch, ash and alder due for thinning in 2019. Possible impacts of forest road construction generally might include changes to hydrology and drainage, sedimentation, land use change and habitat loss, and noise and light pollution during construction and operations.

Appropriate Assessment Screening

The proposal is divided into three sections of forest road and is situated in the Inny (Shannon) subcatchment in the Upper Shannon catchment. European sites within 15km of the proposal and their qualifying interests are listed below alongside the direct distance from the middle of the proposal to the boundary of the sites. The forests to be served lie at the boundary of two catchments and the land drains to the northwest and southeast. There are existing drains/streams on the northerly and middle road section, which likely drain into a stream that runs westerly and joins the Camlin River. This river eventually flows into Ballykenny-Fisherstown Bog SPA and Lough Forbes Complex SAC at a hydrological distance of some 40km. Based on this degree of separation and the nature of the drains and streams the possibility of a significant effect arising from this forest road and felling in the forest would not arise.

Ardagullion Bog SAC is the closest European site and lies some 3km to the south with no hydrological connection and would not impact on the drainage of the SAC or regenerative capacity of the qualifying interests at this distance. Derragh Bog SAC is to the northeast of the site at 5.9km from the proposal with no hydrological connection and upstream from a drainage perspective. Garriskil Bog SAC and Lough Derravarragh SPA lie over 10km to the southeast in a separate subcatchment. A stream to the south of one forest stand to be serviced by the road runs southeasterly to join a river that flows into the SAC and SPA at a hydrological distance of some 13km. Any activities in that forest would not combine with the forest road proposal to increase the effect of the forest road on these European sites. The proposal will take place in a mature coniferous forest with no hydrological features and this would not be considered suitable habitat for the qualifying interests of Lough Kinale and Derragh Lough SPA, Lough Sheelin SPA, Garriskil Bog SPA, Glen Lough SPA, or Lough Iron SPA and is a considerable distance from these sites with no hydrological connection. Moneybeg and Clareisland Bogs SAC lies over 8km from the proposal and in a different subcatchment with no hydrological connection. The FAC noted that there are no conditions on the licence designed to mitigate possible effects on a European site and details of other plans and projects are provided and considered as part of the screening. Having regard to the

characteristics 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.

EIA Preliminary 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 proposal at 640m is subthreshold for mandatory EIA. The forest road is proposed in managed coniferous forest adjoining a public road and planning permission has been attained. The proposal is to the south of Granard but in a generally rural area with few other developments and a limited number of other forestry licences granted, including a number for afforestation. Forest cover within 5km is given as 7.7%. The construction will be a once off event and use and maintenance will be intermittent, in line with management activities in the forest, and any increase in traffic will be of a temporary nature. There is a recorded monument close to but outside of the proposal and no impacts are likely. There are conditions on the licence that provide for the mitigation of impacts on biodiversity and water quality generally. An impact on a European site is not considered likely. 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 and that the need for environmental impact assessment can be excluded without the requirement for a formal screening.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
Habitats					
SAC	2341	Ardagulli on Bog SAC	2942.05	7110 Active raised bogs*	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002341.pdf
				7120 Degraded raised bogs still capable of natural regeneration	
				7150 Depressions on peat substrates of the Rhynchosporion	
Habitats					
SAC	2201	Derragh Bog SAC	5903.29	7120 Degraded raised bogs still capable of natural regeneration	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002201.pdf
				91D0 Bog woodland*	

				Habitats	
		Moneybeg and Clare Island Bogs		7110 Active raised bogs*	
				7120 Degraded raised bogs still capable of natural regeneration	
				7150 Depressions on peat substrates of the Rhynchosporion	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002340.pdf
SAC	2340	SAC	8530.03		
				Habitats	
				7110 Active raised bogs*	
				7120 Degraded raised bogs still capable of natural regeneration	
				7150 Depressions on peat substrates of the Rhynchosporion	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000679.pdf
SAC	679	Garriskil Bog SAC	10287.49		
				Birds	
				A059 Pochard (<i>Aythya ferina</i>)	
				A061 Tufted Duck (<i>Aythya fuligula</i>)	
		Lough Kinale and Derragh Lough		Habitats	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004061.pdf
SPA	4061	SPA	5256.17	Wetlands	
				Birds	
				A067 Goldeneye (<i>Bucephala clangula</i>)	
				A061 Tufted Duck (<i>Aythya fuligula</i>)	
				A059 Pochard (<i>Aythya ferina</i>)	
				A005 Great Crested Grebe (<i>Podiceps cristatus</i>)	
		Lough Sheelin		Habitats	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004065.pdf
SPA	4065	SPA	8714.58	Wetlands	
				Birds	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004102.pdf
		Garriskil Bog		A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)	
SPA	4102	Bog SPA	10321.86		
				Birds	
				A038 Whooper Swan (<i>Cygnus cygnus</i>)	
				A061 Tufted Duck (<i>Aythya fuligula</i>)	
		Lough Derravarragh		A125 Coot (<i>Fulica atra</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004043.pdf
SPA	4043	agh SPA	11607.25	A059 Pochard (<i>Aythya ferina</i>)	

				Habitats	
				Wetlands	
		Glen Lough		Birds	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004045.pdf
SPA	4045	SPA	12505.62	A038 Whooper Swan (<i>Cygnus cygnus</i>)	
				Birds	
				A052 Teal (<i>Anas crecca</i>)	
				A050 Wigeon (<i>Anas penelope</i>)	
				A125 Coot (<i>Fulica atra</i>)	
				A140 Golden Plover (<i>Pluvialis apricaria</i>)	
				A056 Shoveler (<i>Anas clypeata</i>)	
				A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)	
				A038 Whooper Swan (<i>Cygnus cygnus</i>)	
				Habitats	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004046.pdf
SPA	4046	Lough Iron SPA	14520.71	Wetlands	

Vincent Upton On Behalf of the Forestry Appeals Committee