



4 February, 2021

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Subject: Appeals FAC 712 and 737 of 2020 regarding Forest Road licence CN86500

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

The Forest Road licence CN86500 was granted by the Department of Agriculture, Food and Marine (DAFM) on 1/09/2020.

Hearing

An oral hearing of appeals FAC 712 and 737 of 2020 was held by the FAC on 12/01/2021. In attendance were:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms Paula Lynch.

FAC Secretary: Mr. Michael Ryan.

Appellants: [REDACTED]

[REDACTED] did not participate.

Applicant's

Representatives:

DAFM

Representatives: Ms Mary Coogan and Mr Martin Regan.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN86500.

The licence pertains to 600m of forest road at Croagh, Co Donegal, the nearest town is Inver, to service the harvesting of 14.71 ha. of forestry. The site elevations are 130m to 170m and the slope is predominantly flat to moderate <15%. The soil type underlying the project area is predominantly blanket bog in nature. The project area does not adjoin or contain an aquatic zone(s). The vegetation type within the project area comprises forest. Reports show that there is 6.41% forest cover in the waterbody and 18.57% forest cover within a 5km radius of the proposal. The proposal is located within the River Sub Basin_Oily_010. Construction of the road will require 15m of tree clearance. Construction is by excavation (providing drainage can be obtained), with 2 or 3 drains excavated a minimum of 3m from the roadway edge. There is a formation depth of (i) 5.5m or (ii) 7m min., depending on depth of peat and also a 3.4m carriage width. The proposed road is not a creation of a new entrance from a public road and is not widening an existing entrance from a public road.

The application was the subject of both a desk and field assessment by the DAFM and the application was referred by the DAFM to Donegal County Council and Inland Fisheries Ireland (IFI). Responses were received from both consultees. The following is a summary of the response from the County Council:

- Lies within an area of Moderate Scenic Amenity (MSA) and is not affected by any defined 'Views and Prospects' as defined in the County Donegal Development Plan, 2018-2024.
- Considered by them that there will not be an adverse impact upon scenic amenities at or beyond the site.

The following is a summary of the response from the IFI:

- Applicant should adhere strictly to appropriate sections of:
 - Forestry and Water Quality Guidelines.
 - Forest Harvesting and the Environment Guidelines.

- Code of Best Forest Practice Ireland.
- Relevant COFORD guidelines.

The DAFM completed a Stage 1 screening for Appropriate Assessment (AA) and identified 12 Natura sites:

Donegal Bay (Murvagh) SAC 000133, Donegal Bay SPA 004151, Lough Eske and Ardnamona Wood SAC 000163, Lough Nillan Bog (Carrickatlieve) SAC 000165, Lough Nillan Bog SPA 004110, Meenaguse Scragh SAC 001880, Meenaguse/Ardbane Bog SAC 000172, Sheskinmore Lough SPA 004090, Slieve Tooley/Tormore Island/Loughros Beg Bay SAC 000190, St. Johns Point SAC 000191, West Donegal Coast SPA 004150 , West Of Ardara/Maas Road SAC 000197.

All were reviewed in detail and screened out. The project was also subject to an assessment to determine an EIA requirement. It is significantly sub-threshold, was reviewed but was determined not to be subject to the EIA process. An in combination screening was also carried out, focusing on the general vicinity of the project area, which looked at planning permissions (8), An Bord Pleanála (0), the County Development Plan, EPA (0), and the DAFM internal records where 12 forestry related projects are listed. The DAFM deemed that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on the Natura sites listed. The licence with standard conditions was issued on 1/9/2020.

There are two appeals against the decision. The grounds are as set out in the Notices of Appeal and are briefly summarised as follows:

Summary of grounds of the first appeal

- There is a breach of Articles 4(3), 4(4) and 4(5) of the EIA Directive. Criteria from Annex III of the EIA Directive are not taken into account. Details of the whole project are not submitted. The Forest Road is not a whole project. There is project splitting.
- The determination of the inspector in terms of the requirement for EIA is inadequately reasoned. There is an error in law. Reference made to Iforis checkbox responses.
- Insufficient information is included with the application to permit the inspector to make a conclusive determination regarding EIA.
- The licence threatens the achievement of the objectives of the River basin Management Plan for the underlying waterbody or waterbodies.
- The Stage 1 conclusion for AA is not legally valid.
- Licence conditions do not provide for the strict protection of Annex IV animal species.

- Licence conditions do not provide a general scheme of protection for wild birds prohibiting deliberate destruction or damage to their nests and eggs or removal of their nests.

Summary of grounds of the second appeal:

- No legal AA screening has taken place, contention that the following line is not permitted in a screening: *'Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura site in view of those sites' conservation objectives'*.
- EIA - The accumulation of roads in this forest exceed 2kms and EIA is required.

The DAFM statement of 23 and 24/11/2020 sets out their response. In summary, the DAFM submitted that it was satisfied that all criteria as outlined in its standards and procedures had been adhered to in making a decision on the application. It was stated that the application was field and desk assessed by the Inspector and the AA screening procedure applicable at the time was applied. It was further stated by the Department's Forestry Inspector that *'I as District Inspector carried out both a desk audit and field inspection and reviewed submission/appeal. I am satisfied that all criteria referred to above have been fully adhered to and approval is in order'*.

The FAC convened an Oral Hearing on 12/1/2021, commencing at 15.30pm. The parties were invited to attend in person or to join electronically. There were two Appellants with separate appeals against this licence and one of them participated, electronically. The DAFM and the Applicant also participated electronically. The Appellant who joined the hearing electronically participated fully for the introduction (which included a summary of their written grounds of appeal), for DAFM's presentation, for the Applicant's presentation and for commencement of their own presentation, but experienced difficulties with their internet connection from 16.03 onwards. The hearing was paused temporarily by the FAC and, during the paused period, the FAC also explored alternatives with the Appellant. As the Appellant's internet connection could not be restored and alternative forms of communication (mobile 'phone and landline connection) were stated to be inadequate and, in the case of the landline provided by the appellant with the application, could not be agreed with the appellant, with the consent of the other parties to the hearing, the FAC agreed to permit the Appellant to make a further written submission on their written grounds of appeal within a period of 10 days (before 22 January, 2021). The FAC records show that the Appellant remained connected to the oral hearing for the remainder of proceedings which closed at 16.35. No further written submission on the Appellant's written grounds of appeal was received by the FAC.

During their presentation to the oral hearing, the DAFM described how the proposal was both desk and field inspected and reiterated that they had reviewed the submission/appeal in full and were satisfied that all criteria had been fully adhered to and that approval was in order.

The Applicant gave a brief overview of their application process. They submitted that they had carried out a ground inspection of the site before the application and confirmed that the road was needed to gain access to an unroaded area of forestry. The forest road did not need an Environmental Impact Assessment (EIA) because it was sub-threshold, and they also advised that there were no watercourses crossing the road project. Under questioning by FAC they advised that there were watercourses in the forest area, to the NE and to NW of the project site. The road construction method would be excavation. Under questioning by the FAC, the Applicant confirmed that the forest road continues on from an existing road. They confirmed that the length of the existing road to the crossroads is 960m approx., and that it was constructed 25 years ago. The road from the crossroads to the spur was built by them 3 years ago, with a length of 360m. They confirmed that the combined length of the existing forest roads came to 1320m. They emphasised that the old forest road of 960m in length was constructed 25 years ago.

As regards the licence granted, the DAFM explained that it was the standard licence with no specific conditions (only standard ones numbered 1 to 6), and read the licence in to the record.

In response to queries by the FAC, the DAFM Forestry Inspector explained that the three dates for certification noted on the Statement reflected each stage of the process on the iForis system; requests for further information stage, field inspection stage and the final date being the date of final certification. They explained that all the detail at the previous certification stages is available at the last stage too, except for the further information requests. The FAC queried further the EIA process. The DAFM Forestry Inspector gave a brief overview, explaining the input from the Iforis programme as well as his own experience and expertise, into the assessment to determine an EIA requirement. The assessment covers a range of criteria which includes, inter alia, cumulative effect and extent of project, water, soil, terrain and slope, archaeology, landscape and visual amenity, designated and non-designated areas, social factors. In relation to question 3 on the Iforis assessment, the DAFM Forester explained that they provided the response based on their expertise and knowledge of working in the locality over the years. In this particular case it was determined that the project was not required to undergo the EIA process.

In addressing the grounds of the first appeal, the FAC considered the grounds relating to the Environmental Impact Assessment (EIA). The EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II 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. The Irish Regulations, 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 proposal as described is for the construction of 600 metres of forest road to service 14.71 ha of commercial, managed forest for felling. The proposal is considerably sub-threshold for the mandatory submission of an EIA report. The FAC considered the evidence given at the oral hearing regarding the existing forest road and noted that the length of the existing road to the crossroads is 960m approx., that it was constructed 25 years ago, that the length of the road from the crossroads to the spur was 360m and that it was built by the Applicant 3 years ago. They noted that the combined length of the existing forest roads comes to 1320m and that even if taken all together, the total road length including the project under appeal would, at 1920m, be under the threshold for mandatory EIA.

With regard to the assessment to determine the EIA requirement , the FAC reviewed the DAFM process and noted that they considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The grounds of appeal do not outline any specific errors regarding significant effects on the environment of the proposal. The FAC is satisfied that no serious or significant error or a series of errors occurred in the conclusion by DAFM that an EIA was not required in this case.

With regard to the ground of appeal concerning inadequate consideration given to the achievement of the objectives of the River Basin Management Plan, the FAC noted that on the Assessment to Determine EIA Requirement the proposed forest road is recorded as not being in an area designated sensitive to fisheries. The FAC noted that the project does not adjoin or contain an aquatic zone and that there are no significant relevant watercourses within or adjoining the project area. In addition, the licence contains the standard condition at (2) requiring compliance with Departmental guidelines and requirements for, inter alia, Water Quality. Therefore, the FAC concluded that adequate consideration was given to the objectives of the River Basin Management Plan with regard to approval of this project.

The FAC considered the Stage 1 AA screening undertaken by the DAFM. The grounds of appeal do not identify any specific European site, pathways or effects of concern. The FAC noted that the DAFM identified and reviewed in detail the 12 European sites within 15km of the proposal. The DAFM considered each site in turn and provided reasons for screening each site out for AA. Furthermore, details of other plans and projects considered in combination with the proposal were documented. The DAFM in considering the proposal identified that *'the project was not directly connected with or necessary to the management of the site'*, in relation to each European site listed. The FAC is satisfied that no serious or significant error or a series of errors occurred in the DAFM's conclusion that an AA was not required in this case.

As regards the grounds of appeal concerning licence conditions and a system of protection for animal species listed in Annex IV (a) of the Habitats Directive and concerning licence conditions and a general system of protection as required by the Birds Directive for all species of wild birds, the granting of the forest road licence does not exempt the holder from meeting any legal requirements set out in any other statute and, as such, they are not necessary as conditions attaching to this licence. The FAC noted that the appellant did not submit any specific details in relation to animal species breeding, rearing, hibernating or migrating on the site or any in relation birds nesting or rearing on this site. In these circumstances, the FAC concluded that conditions should not be attached to the licence.

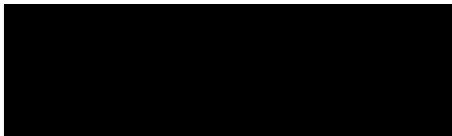
In addressing the grounds of the second appeal, the FAC considered the contention regarding the legality of the AA screening and the issue of the text mentioned. The text in question, quoted in the ground of appeal, is as follows: *'Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura site in view of those sites' conservation objectives'*. The FAC noted that as part of the Stage 1 AA, 12 Natura sites within a 15km radius of the project area were identified, examined and screened out and that the In-Combination Report included a review of activities as well as forestry activity in the vicinity. With regard to the In-Combination Statement, the FAC considers that one of the concluding paragraphs contain some wording that is inappropriate for a Stage 1 screening, particularly with regard to the integrity of the sites. However, the overall In-Combination conclusion states the DAFM deems that this project, when considered in-combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites listed. Having considered in detail the procedures and depth of analysis undertaken by the DAFM with regard to the screening of the 12 Natura sites, as well as its analysis and examination of other plans and projects through the In-Combination assessment, and the FAC's own examination of the evidence before it as well as evidence available on public

websites, the FAC concludes that the procedures adopted were robust and that there is no evidence that the conclusion reached was not sound.

With regard to the grounds of the second appeal about the requirement for an EIA, this matter was discussed in an earlier paragraph. The FAC considered all the evidence before it, the road length and existing roads were reviewed and the project was found not to exceed the threshold for a mandatory EIA. FAC also took into account the procedures and reviews carried out by the DAFM as part of their assessment and is satisfied that no serious or significant error or a series of errors occurred in the conclusion by DAFM that an EIA was not required in this case.

In considering the appeals the FAC had regard to the record of the decision and the submitted grounds of appeal, submissions received including at the oral hearing. The FAC is satisfied that a serious or significant error or a series of errors was not made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN86500 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice

Yours sincerely,

A solid black rectangular box used to redact the signature of Paula Lynch.

Paula Lynch on Behalf of the Forestry Appeals Committee