



28th January 2022

Subject: Appeal FAC 141/2021 relating to Licence CN87088

Dear:

I refer to an 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 14A (1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

Decision

Having regard to the evidence before it, including the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM, all materials on file, and in particular the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN87088.

Licence

The licence is for the construction of a forest road 954 metres in length in the townland of Drumna, Co. Leitrim. Licence CN87088 was submitted to the DAFM on the 14th of September 2020. On the 4th of November 2021 the DAFM issued a notice granting the licence with conditions.

There is one appeal against the decision to grant the licence.

Forestry Appeals Committee.

The appeal was considered by at the sitting of the FAC held on the 17th of January 2022. The FAC Members present were: Mr. Myles Mac Donncadha (Deputy Chairperson), Mr Derek Daly and Mr. Iain Douglas.

Hearing

At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM. Following examination and assessment of documentation on the file before it, the FAC decided an oral hearing was not warranted in this instance.

Background

The proposal consists of a forest road 954 metres in length to serve an area of 38.16 Ha. The licence application was referred to Leitrim County Council (Planning Section) on the 4th of November 2020 which replied on 7th December 2020 that it had no objection to the internal road but drawing attention to need for consent for the entrance onto the public road and a reply of the 18th of December 2020

requesting further information on the consent of adjoining landowners and details for the drainage of the public road. A letter requesting the further information issued on the 2nd of March 2021 and a reminder on the 19th of May 2021. The further information was submitted on the 10th of September 2021 and Leitrim County Council replied on the 22nd of September 2021 stating that the landowner consent was still outstanding.

The final (4th) Inspector's Certification Report (with a spatial run dated the 1st of November 2021) states that the site was desk assessed only and screened out the need for Appropriate Assessment (AA) of the one site identified as being within 15km of the proposed forest road (the Lough Oughter & Associated Loughs SAC - Site Code 000007) on the ground that *"The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. Upper Shannon 26a"*.

The applicant's Appropriate Assessment Pre-Screening Report of 14th May 2021 also identifies the Lough Forbes Complex SAC (Site Code 001818) some 20 km distant from the site which although hydrologically connected to the site is of sufficient distance (23.6 km hydrologically) to be able to exclude any impact on the SAC.

The Inspector's Certification Report describes the soil type underlying the project area as being predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the project area is not crossed by or adjoins an aquatic zone(s). The vegetation type(s) within the project area comprises of conifer forest.

The Inspector's Certification Report is accompanied by an in-combination assessment carried out by the DAFM dated the 1st of November 2021 that concludes that *"there is no likelihood of the proposed forest road project CN87088 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests/Special Conservation Interests and Conservation Objectives, as listed in the main body of this report, in light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project."*

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed forest road to determine whether the proposed forest road requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to subject the proposed forest road to EIA.

Appeal

There was one appeal against the decision to refuse the licence and the grounds of appeal are summarised as follows:

1. Adverse impact on the residential amenity by traffic and machinery noise, traffic volume, traffic headlights leading to potential sleep deprivation,
2. The close proximity of an alternative access, the original entrance granted permission under P16/195,
3. Damage to public road & paved area outside appellant's front boundary wall

The applicant has made a submission to the FAC addressing the issue of landowners' consent.

Hearing

DAFM Statement of Fact provided to the FAC

At the hearing the FAC had before a SoF provided by the DAFM dated 26th of November 2021 which confirms the administrative details of licence application CN87088; that indicates that only desk assessment was carried out on the proposed forest road and that the DAFM was satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application. The SoF included a statement dated the 22nd of November 2021 from the Forestry Inspector confirming that the current Appropriate Assessment screening of November 2019 was carried out, that the standard operating procedures were applied, and contained a written response to the grounds of appeal.

Consideration by FAC.

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services. Aerial photography and mapping, including that submitted with the application show that the eastern section of the forest road (circa 131 m) runs along the boundary of improved agricultural grassland to the proposed entrance. EPA mapping shows the soil underlying the site as Mineral Alluvium underlying the agricultural portion of the site and Surface-water and Groundwater Gleys underlying the forestry.

Appropriate Assessment (AA).

The FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of the single Natura 2000 sites listed, the DAFM discounted the possibility of significant effects arising for the reason stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

Environmental Impact Assessment (EIA).

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, or landscape and cumulative effects, and determined that the project was not required to undergo EIA.

The FAC notes that the proposed forest road is not located in an area of High Visual Amenity identified in the Leitrim County Development Plan 2015-2021. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale, and location of the proposal.

Water Framework Directive (WFD).

EPA mapping shows the site lying within the 26C Upper Shannon WFD Catchment. The relevant sub catchment is the Cloone[LoughRinn]_SC_010 within which forestry is not identified as a pressure. EPA mapping shows the WFD river waterbody Cloone_20 running through the forest some 43 metres west

of the western terminus of the road. Glashacloonaraveela_010 as the waterbody crossing the site. The WFD Assessment of this river waterbody is that its status is Good in the period 2013-2018 and is Not at Risk. The underlying Ground Water body is Mohill IE_SH_G_171 which is Not at Risk.

FAC Considerations.

In addressing the grounds of appeal, the FAC considered the following.

Impact on the residential amenity.

The FAC noted that the proposal subject of this appeal is for the construction of a forest road using standard construction methods and machinery and given the limited distance the construction is likely to be of short duration in which case the volume of traffic in constructing the road and noise generated by the road making machinery will be limited and similarly of short duration. The entrance to the appellant's residence is located on opposite side of the public road and some 62m south of the proposed forest road entrance and is sufficiently distant that there will be minimum impact on the residential amenity of the appellant's residence from construction work. The FAC also noted the conditions of the licence require adherence to Technical Standard for the Design of Forest Entrances from Public Roads, the COFORD Forest Road Manual and the Forestry Standards Manual.

This ground of appeal, in referring to *"the level of noise created by forestry machinery and HGVs day and night."* appears to be concerned with the felling and transport of the timber this road will serve. The forest was planted 1996 and it appears that the forest road is required to facilitate the first thinning of the plantation rather than clearfell (according to the Management Plan submitted) however the felling will be subject to a separate licence and as such a separate appeal. While the site being served is relatively large, harvesting interventions are typically at a maximum frequency of 3-4 years and take place during daylight hours. The FAC considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

Alternative access.

The FAC noted appeal submission dated 6th January 2022 received from the applicant sets out that the previous owners of the forest obtained planning permission from Leitrim County Council for *"the upgrading of an existing agricultural entrance to a forest bell mouth entrance onto a public road including all other associated site works"* reference P16/195 and stated that this alternative access is not available to the current owner. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

Damage to public road & paved area outside appellant's front boundary wall.

The FAC noted that the licence was referred to Leitrim County Council and that in its response the county council did not raise any concerns regarding the damage to the public road. The FAC is aware that there is a protocol between applicants and Local Authorities for the repair of any damage to the public road system and that the conditions of the licence require the applicant to liaise with Leitrim County Council. Additionally, there are statutory provisions under the Roads Act to ensure roads are maintained in a fit condition. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the DAFM Statements of Fact. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister to grant licence CN87088 in

accordance with Section 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, the Habitats Directive, good forestry practice, the protection of the environment, health and public safety.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee

