



26th October 2022

Subject: Appeal FAC 065/2022 against licence decision CN90182

Dear i

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Oral Hearing

Having regard to the particular circumstances of the appeal, the FAC considered that it was necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

An oral hearing of appeal FAC065/2022 was held remotely by the FAC on 5th October 2022. In attendance:
FAC Members: Mr. Myles McDonagh (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas & Mr. Vincent Upton

Secretary to the FAC: Mr. Michael Ryan

Appellant:

Appellant's Representative:

DAFM Representatives: Ms. Mary Coogan, Mr. Jhan Crane.

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN90182. The reasons for this decision are set out hereunder.

Background

The decision relates to the refusal of an application for 230 metres of forest road works on 31st May 2022 at Mullymagowan, Killygrogan, Co. Cavan. The road is comprised of three sections (identified as sections 1-3 on the Forestry Licence Viewer and A-B-C-D, E-F and G-H, respectively on the Harvest Road Maps submitted with the application) that would serve three separate forests which are planned for harvest in 2022. The road would be constructed through excavation and the soil is described as flat and poorly drained with 300 mm of peat.

The application included construction and operational details, a management plan, details of the surrounding area, and maps including a harvesting road map and biodiversity map. The application was refused on 31st May 2022 and the refusal letters states,

- Forest Road constructed without approval

This refusal is to ensure good forestry practice, the protection of the environment, health and public safety. You are now required to remove your site notice immediately.

Appeal

There is one first party appeal against the decision and the grounds and response from the DAFM have been circulated to the parties. The grounds of appeal submit that a section of road works was undertaken prior to the Inspection carried out on 2nd March 2022. It is submitted that the Inspector proposed changes to be made to section 534 (also identified as section A-B-C-D) which were taken on board by the applicant and that this section was previously licenced under a different licence. It is submitted that the applicant believed that the application would be approved by 11th March 2022 and that the works commenced on another road section after this date. It is submitted that there was a certain amount of miscommunication and confusion which led to the construction of the forest road and that the road has not been utilised for timber extraction. It is submitted that both sections were built in excess of the forest road grant allowance and that the approval should be reinstated to allow felling to commence.

In response to the appeal the DAFM outlined the processing of the decision and the inspection of the lands. It was submitted that the lands were inspected on 2nd March 2022 at which time it was discovered that works had commenced on section G-H, as identified on the Biomap, and the Appellant was instructed that works could not commence without a valid approval. The ownership of another section of road was discussed. The layout of the section at A-B-C-D was discussed and that revised maps would be required for any amendments. A second field inspection was undertaken on 13th May 2022 and it was observed that works at section A-B-C-D had been completed and that site notices were not visible.

The Appellant made a further submission outlining that some of the works had been licenced previously and that they considered that there was confusion in relation to the approval process. They submitted that no further works have taken place on the roads.

At the oral hearing the parties made similar submissions to those submitted in writing. The Appellant and their representative submitted that they had understood that the works could proceed soon after the inspection had been undertaken in March. It was also submitted that the Inspector and Appellant had agreed on improvements regarding the layout of section A-B-C-D. The Inspector submitted that they had discussed an improved road layout and that they had given an estimated date by which the decision on the application could be expected by the applicant but had not indicated that the works could commence prior to the licence issuing. During the oral hearing the Applicant submitted that they had commenced some works as they had already engaged a contractor to undertake some work on their farmland and that

they had asked them to excavate some of the lands for the road as the machinery was available at the time. The application process was discussed and the Appellant submitted that they had wished to engage a different Forester than the one that they had engaged when they applied for CN84368. The site notices were discussed and it was submitted by the Appellant's representative that they had put them in place before the application was made. The DAFM Inspector submitted that the site notices were not in place when they undertook the site inspections and a letter had issued requesting the notices be re-erected. Both parties agreed that the works did not involve works under the Single Consent System pertaining to the public road network.

Considerations

The remit of the FAC as provided for under the Agriculture Appeals Act 2001 relates to specified decisions of the Minister for Agriculture, Food and the Marine and excludes grant aid. It appeared to the FAC that two instances of work commencing prior to a licence being issued have occurred. The first instance occurred in relation to the section identified as G-H where the Appellant submitted that they had a contractor on site for works in relation to their farm and asked them to undertake some excavation at the road site. The DAFM identified this during an inspection and informed the Appellant that they could not undertake the works without a licence. The Appellant submitted that the works were stopped, that the road is unfinished and that it has not been used for timber extraction. At this stage the DAFM does not appear to have initiated any proceedings and sent a further information request in relation to site notices. The FAC considers it reasonable for the applicant to conclude that the application was continuing to be processed at this stage.

During a second inspection, the DAFM identified works as having commenced at sections A-B-C-D, a separate section from G-H. Again, the DAFM instructed the Appellant to cease works and that the Appellant appears to have complied with this. A refusal letter was then issued for application CN90182. The FAC noted that works on this section had been licenced previously under CN84368 as stated in the grounds of appeal. While the DAFM submitted that CN84368 had been withdrawn the only evidence of this appears to be the inclusion of the word "withdrawn" on an online pre-approval system and a request from the Appellant to submit forms to change forester. The licence does not appear to have been revoked under the Forestry Act 2014.

The Appellant stated that he had submitted CN90182 as he was engaging a different Forester and understood that he needed to make a new application to change Forester. The DAFM submitted that it was the case that a new application must be made where a new Forester was being engaged and where a previous application could not be transferred. It appeared to the FAC that such a requirement related to applications for grant aid and that there appeared to be no reason as to why such a process would be required for licencing procedures. In relation to section A-B-C-D, it appeared to the FAC that the Appellant may have been required to apply for a licence that they did not appear to need as the works had already been licenced, in order to satisfy administrative requirements of the grant-aid system. However, this matter was not raised in the grounds of appeal and, in reality, refers to decisions made before the refusal for CN90182 was issued. At the oral hearing the DAFM submitted that the previous licence had been

withdrawn and referred to the pre-approval record and the Appellant had submitted that they were aware that they were making a new application for these sections.

In relation to the discussions that took place on the site during the first inspection, the FAC does not consider it likely that the Inspector would have indicated that the works could progress without a licence and appears to have made a general observation that the application was being progressed and that a licence would be issued in due course. In any case, the FAC is of the view that any general commentary from the Inspector would not supersede the requirement to attain a licence.

In responding to the appeal, the DAFM made reference to regulations from 2010 which have been revoked and replaced by the Forestry Regulations 2017. In general, the FAC considers that it would be reasonable for the Minister to refuse a licence for works which had already commenced, in whole or in part under the provisions of the Forestry Regulations 2017. In this instance, the FAC considered that the DAFM had not initiated procedures or issued a refusal in relation to the works at G-H and that the Appellant may have considered that they held a licence for works at A-B-C-D or at least that there was confusion on this issue which was created by the imposition of administrative requirements of the grant aid system on the licencing process.

Nonetheless, the Appellant had made a new application under CN90182 which included sections A-B-C-D and appears to have understood that the previous application was withdrawn. In addition, the Appellant had discussed these sections with the DAFM Inspector and appeared to be of the understanding that these sections were to be licenced under CN90182. While the grounds of appeal note that previous licences were issued for some of the sections, it was not submitted that the works on A-B-C-D had been undertaken under a different licence to CN90182. It is the decision in relation to CN90182 that is before the FAC.

The FAC considers that, while the Appellant may have commenced the works for practical reasons, forest road works had been commenced without a licence and that it was reasonable for the Minister to issue a refusal on that basis. While the FAC would have concerns regarding the overall approach of the DAFM as previously outlined, the FAC does not consider that this could be considered as a serious or significant error or a breach of fair procedures in this particular case as the Appellant had made the application for a licence for all sections, had discussed the nature of the works with the Inspector and had received a verbal warning regarding the undertaking of works without a licence before the decision was made. In considering the matter the FAC had regard to the limits of its function as provided for under the Agriculture Appeals Act 2001, as amended.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including those at the oral hearing. The FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision or that the decision was made without complying with fair procedure. The FAC is, thus, affirming the decision of the Minister regarding licence CN90182 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,

Vincent Upton, On Behalf of the Forestry Appeals Committee

