



27th February 2024

NOTES: Appeal FAC 007/2023 against licence decision CN86703

Dear

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

Hearing

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC 007/2023 was held remotely by the FAC on 28th November 2023.

In attendance

FAC Members: Mr John Evans (Deputy Chairperson), Mr. Iain Douglas, & Mr. Vincent Upton

Secretary to the FAC: Ms Ruth Kinehan

The file of the decision was made available to the FAC by way of the Forestry Licence Viewer (FLV).

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, the Statement of Fact (SoF) and associated documentation provided by the Department of Agriculture, Food and the Marine (DAFM), and all other submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN86703.

Background

The licence decision is a refusal for forest road works at Glenagragara, Dromreask, Co. Limerick. The proposed road is of 281m in length. A refusal letter was issued by DAFM on the 24/04/2023.

The application

The application is for the construction of two sections of forest road to service forestry located in four plots located either side of the R524 which runs broadly in a north-south direction. From the mapping on the FLV, the proposed lengths of forest road can be seen to open on to the R524. The southernmost of these entrances is on a point of the road where there is a small deviation from the overall north/south

orientation. Plot 1 is to the west of the road and is also bounded by it on its eastern side. A second block, consisting of plots 2, 3 and 4 is ca. 310m to the south of Plot 1 and is located on the eastern side of the road set back by some 100m. These three plots are separated to accommodate power lines. While located in Co. Limerick, the forestry to be serviced is ca. 500m from the boundary with County Kerry at its closest point.

Various documents associated with the application are available on the FLV and are shown as having been uploaded on the 13/06/2020. These include:

- A plan and section design for two road entrances showing gradients dated 10/10/2019.
- An undated file showing a series of views of the road.
- A copy of the site notice dated 12/06/2020 (with redactions)
- Photos of two site notices close-up and in-situ (with redactions).
- Road Construction specifications dated 01/05/2020 (Annex 2 form) (with redactions). This states that an additional 20m Bellmouth is as per circular 2 of 2016.
- Forest Road Scheme Require Information dated 01/05/2020 (Annex 3 form) (with redactions).
- Biodiversity map dated 12/06/2020 showing features that include boundary of site to be served, road location, location of a culvert, relevant water course, aquatic zone. powerlines, hedgerows, forest road locations, site notices, stacking area, and fuel storage.
- Propose haulage route, dated 01/05/2020, showing haulage from the site proceeding in a southerly direction along the R524 toward Abbeyfeale. This is uploaded to the FLV as "other".
- An undated site location map based on OSI 6" mapping showing the location of the site relative to villages and townlands in the locality.
- Forest Entrance maps based on OSI mapping (1:2500 scale) dated 12/06/2020.

Redactions where indicated are of the applicant's name only. This information is available to the FAC by virtue of the submitted appeal.

Also on file and uploaded to the FLV on the 23/06/2020 is an Engineers report dated 19/06/2020 signed by a Chartered Engineer, declaring that adequate site lines can be achieved at the proposed entrances, and that the proposals have been designed in accordance with COFORD standards and consequently the do not constitute an undue risk to Public Safety.

Processing by the DAFM

Referrals and Submissions

There are three referrals to prescribed bodies on file all dated and uploaded to the FLV on the 08/07/2020. The three bodies are the Shannon Regional Fisheries Board (at Ashbourne Business Park, Dock Road Limerick), National Parks and Wildlife (at Ballinfad, Nrth Boyle, Co. Roscommon), and the Planning Department of Limerick City and County Council (at County Hall, Dooradoyle, Limerick).

An undated Prescribed Body Appendix is also on file uploaded to the FLV on the 10/09/2021. This states that the number of entrances within 100m of the proposed forest entrance on both sides of the road and in both directions is zero.

No response from SRFB (Inland Fisheries Ireland) or NPWS is on file.

A response from Limerick County Council is on file dated the 17/07/2020 and uploaded to the FLV on the 21/07/2020. This makes the initial general observation that:

The drawings submitted are of poor quality and the layout does not appear to be on a topographical survey but on OSI mapping which does not allow for an accurate layout of the existing and what is required to carry out the proposed works. It states the observations are made regarding a Single Consent Forest Road Application. (sic)

The response includes observations in relation to: Sightlines and Stopping Sight Distances; Impact Measurement; Compensation mechanism Options; Internal Access Road to Forestry; and Drainage of Entrances. For most of these observations suggested/required conditions are provided and there are a number of references to adherence the *Technical Standard Design of Forest Entrances from Public Roads*. In relation to the sightlines, the response states that the applicant has indicated these incorrectly, and that they are 62m in a northerly direction and 68m in a southerly direction which is not acceptable to Limerick City and County Council on a regional road. It also notes that some boundaries that would be required to be setback to achieve DMRB¹ requirements (from a point 3m back from the road edge at the centre of the proposed entrance extending 160m in either direction) are not within ownership of the applicant. It also notes that the application does not state stopping distances.

A submission dated the 29/07/2020 and uploaded to the FLV on the 30/07/2020 is on file from a redacted party. This makes several points about processes relating to European and environmental law and is in relation to a number of Forest Road applications including the application under appeal.

Appropriate Assessment (AA)

On file are an AA Report (AAR) dated the 19/08/2021 (uploaded to the FLV on the 27/08/2021) and an AA Determination (AAD) dated the 09/12/2021 (uploaded to the FLV 13/02/2023). These refer to a screening for Appropriate Assessment having been carried out, with Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA, and Lower River Shannon SAC both screened in. The AAD notes the same screened in sites, and notes that the River Shannon and River Fergus Estuaries and Moanveanlagh Bog SAC were screened out due to

the separation distance between the Natura site and the project and lack of a sufficient pathway of impact, hydrological or otherwise and the separation distance between the Natura site and the project and lack of a sufficient pathway of impact, hydrological or otherwise respectively.

The AAR relies on an assessment of in-combination effects, attached as an appendix. This includes the statement:

It is concluded that the proposed forest road, with mitigation measures set out in Section 4, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of any European Site, and associated Qualifying Interests and Conservation Objectives. There is therefore no potential for the proposed works to contribute to any

¹ The FAC takes this to be a reference to the Design Manual for Roads and Bridges (DMRB) published by Transport Infrastructure Ireland.

cumulative adverse effects on these European sites, when considered in-combination with other plans and projects, because the mitigations stated are sufficient to ensure impacts, either alone or in-combination, are negligible to the features of the designated sites.

The AAD includes a number of proposed mitigation measures in relation the Hen Harrier and downstream aquatic habitat, and also notes that:

there is the possibility of potential drains/watercourses located within the vicinity of the works to create a hydrological connection to the GALEY_030 waterbody (Moderate WFD status, At Risk).

Further documentation

Other documents on file include:

- Correspondence from an Agricultural Inspector at the Agricultural Environment and Structures Division of DAFM dated the 02/12/2022 and showing as uploaded to the FLV on 30/08/2023. The inspector states that he has undertaken a review of the file, is in agreement with Limerick County Council and makes comments that are subsequently captured in the refusal letter (see below).
- An undated Pre-Approval Submission report marked as *Further Information* when uploaded to the FLV on the 30/08/2023. This states that the number of entrances within 100m of the proposed forest entrances on both sides of the road and in both directions is 8. The answer "Yes" is given to the question "Will there be a relaxation from the standard".

Issuing of the refusal, withdrawal and re-issue.

A letter from DAFM issued on the 13/02/2023 (marked as *Correspondence* when uploaded to the FLV on the 30/08/23). This stated that the application had been refused, and that:

The applicant has sought reduced sightlines on a regional road without providing any supporting information for a reduced design speed. Reduced sightlines may not be sought where no speed survey has been undertaken. It is our assessment from the profile of the regional road that the design speed will be at least 80 kmph.

As such, the requested reduced sightlines are not acceptable. In this case the applicant should seek a meeting with Limerick County Council and agree an acceptable Departure from the Technical Standard. This should be done as a new application for single consent. Alternatively, the applicant can try and develop a solution with full 160m sightlines at each entrance.

A letter from the DAFM issued on the 24/04/2023 (uploaded to the FLV on the 24/04/2023) noted the refusal, and stated that there had been an error in the advertising of the decision on the DAFM website. As a result, the decision was withdrawn and reissued with a new 14 day period of appeal allowed.

A further letter dated the 24/04/2023 (marked as a *Pre-approval Refusal letter Forest Road* when uploaded to the FLV on the 24/04/2023). This restated the refusal information as in the letter of the 13/02/2023.

A Pre-approval Refusal letter Forest Road was uploaded to the FLV and dated the 24/04/2023 and stated that the application had been refused. This included the same commentary as the letter issued on the 13/02/2023 and quoted above.

The Appeal and Statement of Fact

There is one first party appeal to the decision to refuse a licence, with a single ground of appeal. On the Notice of Appeal Form dated the 01/05/2023, the applicant states:

I wish to appeal the decision on CN86703 – 23-4-23. The technical standard for the design of forest entrance from public roads do allow for a relaxation of the standards in difficult circumstances. It also states in cases where it is not possible to relocate the forest entrance it may be permitted for alternative solutions to be found.

It is the opinion of my forester that my application meets this requirement.

There was no communication by the Department in nearly 3yrs as to an issue and neither me or my agent were provided with an opportunity to seek a relaxation or put forward and alternative solution in advance of the decision being taken to reject my application.

If given a chance I am quite sure a solution can be found.

Statement of Fact

DAFM provided a Statement of Fact (SoF) to the FAC. This confirms the details noted above (though it states in error that Limerick County Council provided no response). It states the application was submitted on the 13/06/2020.

It also states that:

The pre-approval submission report was not made public due to an admin error until 30/08/2023. The date on the Forestry Licence Viewer (FLV) indicating the report was made public on 30/08/2023 is correct.

In addition to what effectively is a restatement of the reasons provided in the refusal letter, the Inspector's comments also state that:

Following DAFM's Engineering Assessment it was deemed that this application should be refused and under Section (7) Departures from Technical Standard within the Technical Standard Design of Forest Entrances from Public Roads. The following should now take place.

"In these exceptional situations, the Road Authority may be prepared to agree to a Departure from the Technical Standard where the standard, including permitted Relaxations, is not realistically achievable. Forest entrance Designers faced by such situations and wishing to consider pursuing this course shall discuss any such option at an early stage in design with the Road Authority. Proposals to adopt Departures from the Technical Standard must be submitted by the Designer to the Road Authority and formal approval received BEFORE incorporation into a design layout."

Furthermore, it should be noted "Relaxations and Departures will be assessed in terms of their effects on the economic worth of the scheme, the environment as well as Road Safety and Engineering."

Consideration by the FAC

In the first instance the FAC considered whether it was necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Having had regard to the documentation on file, the committee determined that an oral hearing was not required.

Before considering the specific ground of appeal, the FAC considered the processing of the licence application by the DAFM regarding adherence to European law and fair procedures, noting that the decision under appeal was a refusal for the grant of a licence. The FAC observed that an AAD and AAR are on file, and that both reference European sites being screened in and out for full (stage 2) assessment, but that no documentary evidence of the screening (Stage 1) assessment (in the form of an AA Screening Report and Determination) is on file. There is a requirement to publish the screening as part of the public consultation process. . Were this a decision to grant a licence, the FAC consider that this would represent an error that would necessitate the decision being set aside and remitted to the Minister for a new decision.

As the appeal relates to a decision to refuse a licence, the FAC then considered the specific ground of appeal, specifically that the technical standard for the design of forest entrance from public roads do allow for a relaxation of the standards in difficult circumstances, and that in cases where it is not possible to relocate the forest entrance it may be permitted for alternative solutions to be found.

The FAC note that the application was supported by a report dated 19/06/2020 authored by a Chartered Engineer, and that it states that adequate site lines can be achieved at the proposed entrances, and that the proposals have been designed in accordance with COFORD standards and consequently they do not constitute an undue risk to Public Safety.

The application documentation also includes a Road Construction specification dated 01/05/2020 (Annex 2 form) (with redactions). This states that an additional 20m Bellmouth is as per circular 2 of 2016.

Commentary from Limerick City and County Council, which is agreed with by the Agricultural Inspector at the Agricultural Environment and Structures Division of DAFM, refers to the *Technical Standard Design of Forest Entrances from Public Roads*. This is referenced and introduced in Circular 03/2020 "*Application Procedure for Forest Road Works Licences Including an Entrance onto a Public Road or Material Widening of an Existing Entrance*" issued on the 18/02/2020, and was issued by DAFM following the coming into force of Section 8 of the Planning and Development (Amendment) Act 2018 and the Forestry (Amendment) (No. 2) Regulations, 2020 (SI No. 39 of 2020) which gave effect to a single consent system for entrances to forestry roads. The FAC notes that these standards were introduced four months before the application date, and that the Circular notes that

The technical standard has been jointly developed with the Department of Transport, Tourism and Sport. The document sets out the required design and construction standards for forest entrances from public roads. Registered Foresters must familiarise themselves

with this document, where they are making applications for forest road works licences, that include forest entrances.

Circular 03/2020 also introduces a guidance document entitled *Forest Entrances – Requirements for Mandatory Consultation* (“the Requirements”) which sets out the application process and required documents for an application for forest road works that involves an entrance from the public road. Section 4 of that document sets out those documents that must accompany the application. These include, where a departure from the standard is to be used, the written agreement from the relevant Road Authority. In this instance that authority would be Limerick City and County Council. No such written agreement appears to be on file.

On this basis, the FAC is satisfied that DAFM did not have adequate information on which a decision to grant a licence could be made. The FAC further considers that a request for further information in the form of a written agreement from the Road Authority, as provided for in Section 7 of the Requirements would not be an appropriate course of action as the Requirements also state at section 4 that such an agreement should be obtained before the submission of an application.

The Requirements at Section 4 also states that a licence application for a forest road that involves an entrance should be accompanied by a plan of forest entrance (scale 1:2,500) showing the forest road and “all other entrances to public road within sightlines”. Such a plan is to be found on file, although the scan quality provided on the FLV is of poor quality. Despite this, a number the existence of other entrances can be seen on the plan. In the Pre-Approval Submission report marked as *Further Information* when uploaded to the FLV on the 30/08/2023 it is stated that the number of entrances within 100m of the proposed forest entrances on both sides of the road and in both directions is eight. In An undated Prescribed Body Appendix is also on file uploaded to the FLV on the 10/09/2021 it is stated that the number of Number of entrances within 100m of the proposed forest entrance on both sides of the road and in both directions is zero. The FAC understands that the Prescribed Body Appendix is a document produced by DAFM to accompany referrals to statutory consultees, and that in this instance the Appendix would have been provided to Limerick City and County Council. The FAC considers that while the disparity in the information provided to DAFM by the applicant, and by DAFM to the statutory consultees, relating to the number of entrances within 100m represents a minor error, the information provided to Limerick City and County Council was sufficient for an informed view to be taken on the application.

Conclusion

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a minor error was made in the making of the decision in respect of licence CN86703, but that there was not adequate information provided by the applicant on which a grant of a licence could be made. The FAC is therefore affirming the decision of the Minister to refuse the licence.

John Evans, On behalf of the Forestry Appeals Committee.

