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14th May 2020

Subject: Appeal FAC170/2019 CN82987

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

Forest road licence CN82987 was refused by the Department of Agriculture, Food and the Marine on 25th June 2019.

Hearing

A hearing of appeal FAC170/2019 was held by the FAC on 23rd April 2020

FAC Members: Mr. Des Johnson (Chairperson), Ms Mary Lawlor, Mr. Pat Coman, Mr. Vincent Upton

Decision

Having regard to the evidence before it and the following considerations, the FAC has decided to cancel the decision of the Minister regarding licence CN82987.

The original application for a forest road of 250 metres without the creation of a new entrance or the widening of an entrance from the public road was made on 13th December 2018. The proposal was refused on 25th June 2019 and the following reasons were provided,

The proposed route is sub-optimal opening up the southern boundary to windblow and leaving the north-west of the plantation unnecessarily far from the proposed road. A forest road should run along the open strip just to the east of the overgrown farm lane running into the centre of the plantation.

An appeal was submitted by the forestry management company which contended that their proposal was not sub-optimal. They suggest that the proposed road is less than 500 metres from the furthest tree and that this is an acceptable distance financially and silviculturally. They also suggest that the route avoids crossing racks and drains which could increase the risk of windblow. They suggest that the southern boundary has a grassy ditch that provides shelter and that the forest runs downslope to the north and that wind will rise over the forest. They note that the DAFM referred to an "open strip" but that this was planted with broadleaves and that the proposal from the DAFM would open up the south-westerly corner. They note that opening up the forest and removing the edge trees will increase the risk of wind damage but that this will be addressed at thinning stage and that the remaining trees will become more stable as they grow. They note that there is an old farm lane along the route proposed by

the DAFM but that it lies two metres below the ground level of the forest and that construction along this route will entail either filling in this area with imported material or widening the track and excavating the road leaving it at least two metres below the level of the forest. They also consider the steepness of this route to present a logistical challenge when timber is being transported off of the site and that the road would create a pathway leading down to the watercourse to the north.

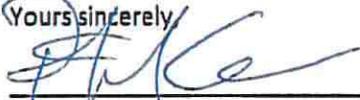
In a statement to the FAC, the DAFM stated they are satisfied with the assessment and recommended that no change be made to the decision. They note that the prevailing wind is south-westerly and that many of the major storms are southerly. They state that it is their opinion that the risk of windblow is higher in the route proposed by the licence applicant compared to the DAFM proposed route. They suggest that the forest is not sheltered and that the crest of the hill is only slightly higher than the height of the trees. They also suggest that the DAFM proposed route would not involve the removal of trees for the first 100 metres. They suggest that the DAFM proposed route provides a shorter forwarding route and that the applicant's route would involve a long forwarding distance and they also suggest that ramps could be used to cross the farm track, which could be used to stack timber. They contend that where guidelines are followed the forest road would not have an impact on the designated watercourse to the north and that it lies over 200 metres from their proposed route.

The FAC is of the view that the consideration in this case is whether or not the proposed road is acceptable and not whether there is an alternative route which may, in the view of the DAFM, be preferable. The FAC notes that the application details refer to the proposed road and not the DAFM alternative.

The FAC also notes that, based on ordnance survey maps much of the forest lies below the crest of the hill to the south and the land slopes to the north. Nevertheless, the southern section of the forest is likely to suffer windblow and the Appellant is aware of this and considers the associated costs to be acceptable. Any intervention in this forest, whether road construction or thinning, will likely present an increased risk of windblow irrespective of its location. The forwarding distance is significant, but the landowner is best placed to consider whether the associated financial costs are acceptable as they must bear them. Alternative routes may also be associated with additional costs in construction and maintenance in addition to other risks and impacts on the forest and the surrounding area. The proposed road sits on the far side of the forest from the closest river and avoids drains leading towards the waterbody. Consideration should be given to the long-term use of the forest road and not just immediate requirements. The current forest may be midway through its rotation, but the forest road will serve multiple rotations in the future and will require maintenance and upgrading. Notwithstanding potential drawbacks identified, and the DAFM view regarding an option which they consider to be preferable, the FAC considers that, on balance, based on the information before it, the potential drawbacks are not of such a nature and scale as would warrant rejection of the proposed development.

The FAC is not a licensing authority and the cancellation of this decision does not represent the granting of a licence. A licence can only be granted by the Minister when all of the statutory obligations are met. 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



Pat Coman On-Behalf of the Forestry Appeals Committee