



[REDACTED]

22nd December 2021.

Subject: Appeal FAC 125/2021 regarding licence CN87289.

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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN87289 is for the construction of forest roads 150 metres in length at Carrickateane, Co. Longford. which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 27th August 2021 subject to conditions.

Hearing

A hearing of appeal FAC 125/2021 was held by a division of the FAC on the 6th December 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas and Mr Derek Daly.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all other submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN87289.

Licence

The licence pertains to the initial construction of a forest road 80 metres in length at Carrickateane, Co. Longford to serve an existing forest of 4.96 hectares planted in 2003 with a predominant mix of Sitka Spruce 77%, Japanese Larch 20% and ADB 3%. The means of construction is excavation with a base of crushed stone and a pavement overlay. The application was accompanied by mapping including location and biodiversity, proposed road layout and road specifications.

Revisions to the proposal were submitted increasing the overall length to 150 metres reflecting requests for further information and consideration of submissions received from the local authority. Details submitted in the course of the assessment of the licence included mapping including location, biodiversity, proposed road layout, road specifications and subsequently revisions to the entrance and internal

circulation and a number of reports including an engineer's report, gradient report, a report indicating drainage details, accompanying photographs, proposed haulage route and condition of the road network.

The site is within the CAMLIN_30 River Waterbody WFD, the EPA records the status is good and in terms of risk is indicated as not at risk.

The inspector certification refers to soil type underlying the project area as being predominantly podzols in nature. The slope is predominantly flat to moderate to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise Wet grassland and conifer plantation.

The licence application was referred to Longford County Council who in an initial response dated 14th December 2020 indicated no objections subject to conditions. In a further response dated the 8th July 2021 Longford County Council submitted comments, indicating that a back-in facility is not acceptable and proposals should allow for lorries to drive in and turn within the forestry and then drive out again. Conditions are recommended in relation to an internal turning facility; Appropriate Traffic Management to be in place for the construction period; drainage shall be designed to ensure that no water runs out from the proposed road onto the public road.

A submission was also made by the appellant.

The DAFM Inspector recorded a screening for Appropriate Assessment in which four European sites are recorded within 15 kilometres of the project area and were screened out. Ardagullion Bog SAC 002341 was screened out due to the absence of any aquatic zone within or adjoining the project area, the absence of any significant relevant watercourse(s) within or adjoining the project area and also distance. Clooneen Bog SAC 002348 was screened out due to the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site and also distance. Ballykenny Fisherstown Bog SPA 004101 and Lough Forbes Complex SAC 001818 were screened out due to the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. The overall conclusion was to Screen Out with no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

An In Combination report dated the 25th August 2021 concludes 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.

Appeal

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

The initial grounds of appeal refer to;

- The location of the proposed entrance of the forest road and its position relative to the entrance to the appellant's dwelling on the opposite side of the road.

- The appellant considers that the entrance could be located to an alternative location to reduce potential impact referring to a possible entrance at allocation with stone pillars.
- Issues of roadside drainage and water standing during inclement weather are also raised.

In a further submission by the appellant reference is made to the narrow width of the public road and issues of passing vehicles and reiterating the view that the entrance be relocated which would also be beneficial in relation to the regulation of traffic flows on the road.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The licence application was desk and field assessed.

The Statement from Inspectorate indicates that;

- The forest road project and all associated operations to be completed in accordance with the measures set out in the Technical Standard for the Design of Forest Entrances from Public Roads, the COFORD Forest Road Manual and the Forestry Standards Manual.
- The site was inspected on the 7th April 2021 and no watercourses or significant drains were found while inspecting the proposed route.
- The proposed project comprising 150m of forest road servicing 10.1ha of conifer will be subject to low volume intermittent use it is not envisioned that this will have a detrimental impact on the residence opposite.
- Proposed location sited away from stone pillars due to this area containing a ruined dwelling.

Assessment of Appeal.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

The FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA Directives. Regarding Environmental Impact Assessment (EIA) and related matters, 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 mandatory EIA 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 150 metres of forest road and is sub-threshold for the mandatory submission of an EIA report. In this case the FAC found that the DAFM assessed the proposal and 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.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the construction of forest roads 150 metres in length. Having examined the documentation submitted, the FAC identified the same four Natura sites as the DAFM within 15km from the proposal and the FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed works are located outside of any European site, the project site was the subject of a field inspection and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is therefore satisfied, having regard to the record of the decision, that no serious or significant error was made in the decision regarding Appropriate Assessment screening.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally the FAC has examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes, mapping and aerial imagery of the area and is satisfied based on the submissions received that the proposed project will not impact on any Natura 2000 sites or any receiving waters. Having examined the matters raised the FAC concluded that the proposed road will not impact on a Natura Site or qualifying interests in relation to potential hydrological impacts.

In relation to WFD the project is within the CAMLIN_40 River Waterbody WFD, the status of which is good and in terms of risk is indicated as not at risk. Based on assessment of the project including assessment of potential hydrological impact, the scale and nature of the project and connectivity it is considered that the licence will have no effect on receiving waters.

In relation to the stated grounds of appeal the primary issues relate to the location of the entrance onto the public road and its impact on the appellant's residence and residential amenity, the narrow nature of the public road, issues relating to drainage on the public road and that alternative locations were available which in addition to alleviating impact on their dwelling would have beneficial effects on traffic flow on the public road.

The FAC examined the documentation submitted in relation these issues. It noted that the application was the subject of a request for further response from the Local Authority in relation to the opening of a new entrance on to the county road and related road matters.

The response received from the applicant was also noted, including the detailed points made in a wide range of material including drawings and reports to address the matters raised. Having considered these issues the FAC would note that the proposed access point will to some degree impact on the amenities

currently enjoyed. It is however also noted that DAFM on field inspection indicated that no watercourses or significant drains were found during the inspection on the proposed route and that the revised entrance details and the COFORD Manual do provide for the control of water from the site discharging onto the public road which would address current issues of standing water. In terms of traffic generated the project will not generate constant use but will be intermittent in nature confined largely to periods of thinning and felling and therefore will not significantly impact traffic flows and no issues of sightline visibility arise given the geometry of the road at this location. In relation to an alternative location for the entrance the concern is noted but there is no compelling traffic related reason to require the access to relocate.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and other submissions received. The FAC is satisfied that no significant errors was made in making the decision at the assessment stages or that the decision was made without regard to fair procedures. The FAC is affirming the decision of the Minister regarding licence CN87289 in line with Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the proposal as licenced is in keeping with Good Forestry Practice and Government Policy.

Yours sincerely,

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Derek Daly On Behalf of the Forestry Appeals Committee