



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

*K* February, 2021

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**Our ref: 736/2020**

**Subject:** Appeals in relation to Forest Road Licence CN86281

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN86281. 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 the parties to the appeal.

**Background**

The Forest Road Licence CN86281 was granted by the Department on 10/09/2020.

**Hearing**

An oral hearing of appeals FAC 736 and 782/2020, both regarding the decision to issue the licence CN86281, was conducted by the FAC on 14/01/2021.

**Attendees:**

FAC: Mr Des Johnson (Chairperson), Ms Paula Lynch & Mr Pat Coman.

Secretary to the FAC: Mr Michael Ryan.

Appellants: [REDACTED]  
[REDACTED]

Applicant: [REDACTED]

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Foraoiseachta  
Forestry Appeals Committee

Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWTS

Eon/Telephone 076 106 4418  
057 863 1900

DAFM:

Mr Martin Regan and Ms Mary Coogan

### **Decision**

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN86281).

The licence pertains to 650 meters of forest road at Gortinar, Co Leitrim, nearest town Manorhamilton, to service the harvesting of 21.58 ha. Site elevations are 100m to 150m and the slope is predominantly flat to moderate <15% with shallow peat soil. The specifications of the road were included with the application and it would be constructed through excavation (providing drainage obtained) and outlines a 15m tree clearance and a carriage width of 3.4m.

The proposal was desk inspected and field inspected by the DAFM on 9/6/2020. The DAFM certification stated that underlying soil type is predominantly podzols in nature. The project area does not adjoin or contain an aquatic zone(s). The vegetation type within the project area comprises forest. Reports show that there is 4.8% forest cover in the underlying waterbody and 10.47% forest cover within a 5km radius of the proposal. The proposal is located within the River Sub Basin Bonet\_020.

The DAFM undertook a screening in accordance with the provisions of the Habitats Directive. They observed that 7 European Sites lay within the 15km radius of the proposal: Arroo Mountain SAC 001403, Ben Bulbin, Gleniff And Glenade Complex SAC 000623, Boleybrack Mountain SAC 002032, Glenade Lough SAC 001919, Lough Gill SAC 001976, Lough Melvin SAC 000428, Sligo/Leitrim Uplands SPA 004187. All were reviewed in detail and screened out because of absence of any aquatic zone within or adjacent, and absence of any significant relevant watercourse within or adjoining the area. The potential for the proposed project to contribute to an in-combination impact on European sites was also considered by the DAFM. The Department of Housing, Planning and Local Government website was consulted and 6 developments were found (dwellings, farming). The An Bord Pleanála and the Environmental Protection Agency websites were consulted and did not show any projects in the vicinity. The Leitrim County Development Plan 2015-2021 was also consulted. The internal DAFM records were consulted and 2 afforestation projects, 1 Forest Road and 4 Felling Licences were identified at various stages of application /approval. The DAFM found the project to be in line with the Forestry Programme 2014-2020. The DAFM concluded that the project, individually, does not represent a source or if so has no pathway for an effect on any of the Natura sites listed in the Appropriate Assessment (AA) screening and consequently the DAFM deemed that the project, when considered in-combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites listed. A screening assessment to determine Environmental Impact Assessment (EIA)



requirement was also conducted and the DAFM concluded that the application should not be subject to the EIA process.

The application was referred to Leitrim County Council. The Council responded and the following is a summary:

- No objection to proposed forest road subject to the forestry developer verifying road access to the public road.
- Should proposal proceed, conditions should be included in approval;
  - Consult with District Engineer re use of public roads, weights, remedial road works. Bonding against damage to public roads may be required
  - Contact details of forestry contractor and site manager to be submitted to Planning Authority before commencement
  - All works carried out to Best Practice Guidelines produced by Forestry Service and in particular re. protecting water quality.

The licence was issued on 10/9/2020 and was approved with conditions:

- Consult with local Leitrim County Council Engineer with regard to usage of public roads and prior to commencement of any works.
- Adhere to forestry and water quality guidelines
- All guidelines to apply.

There are two appeals against the decision to grant the licence. The grounds of appeal are set out in the Notice of Appeal Forms dated 12/9/2020 and 22/9/2020. The grounds are briefly summarised as follows:

#### Grounds of First Appeal

- There is a breach of Articles 2(1), 4(3), 4(4) and 4(5) of the EIA Directive. Criteria from Annex III of the EIA Directive are not taken into account. Details of the whole project are not submitted (see felling licence LM04-FL0056). The Forest Road is not a whole project. Project splitting is not permitted.
- The determination of the inspector in terms of the requirement for EIA is inadequately reasoned. There is an error in law in processing the application.
- Insufficient information is included with the application to permit the inspector to make a conclusive determination regarding EIA.
- There was no referral to the NPWS (in referral zone for SAC).
- The licence threatens the achievement of the objectives of the River Basin Management Plan for the underlying waterbody or waterbodies. IFI not consulted and area within Priority area for action under WFD.



- The assessment failed to take into account the potential for a landslide that could have an impact on the Lough Gill SAC water quality and qualifying interests.
- The Stage 1 conclusion for AA is not legally valid. The project is upstream in the catchment of an SAC with aquatic qualifying interests and reference was made to Article 6.3 of the Habitats Directive.
- There is insufficient detail and clarity in the in-combination information
- Licence conditions do not provide for the strict protection of Annex IV species
- Licence conditions do not provide a general scheme of protection for wild birds prohibiting deliberate destruction or damage to their nests and eggs or removal of their nests.

#### Grounds of Second Appeal

- There is no legal Appropriate Assessment
- The accumulation of forest roads exceeds 2kms. EIA is required.
- Second last line of DAFM'S In-Combination Statement '*not permitted in a screening*'  
(The second last line of the DAFM'S In-Combination Statement is stated thus: '*Furthermore, it is considered that the regulatory systems in place for approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure that they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives*').

The DAFM statement of 24/11/2020 sets out their response. In summary, it was stated that the application was field and desk assessed by the Inspector and the Appropriate Assessment procedure applicable at the time was fully applied. In relation to the proposal, they stated that 7 Natura sites were identified within the 15km radius of the area and were screened out due to '*No likelihood of a significant effect on any European site and Appropriate Assessment not required*'. It was further stated by the Department's Forestry Inspector that '*I as District Inspector carried out both a desk audit and field inspection and reviewed submission/appeal. I am satisfied that all criteria referred to above have been fully adhered to and approval is in order*'.

The FAC convened an Oral Hearing on 14/1/2021. The parties were invited to attend in person or to join electronically. There were two Appellants with separate appeals against this licence and one of them participated, electronically. The DAFM and the Applicant also participated electronically.

The DAFM described how the proposal was both desk and field inspected and reiterated that they reviewed the submission/appeal in full and were satisfied that all criteria had been fully adhered to and that approval was in order. Under questioning by the FAC, the DAFM explained that with regard to the licence for LM04-FL0056, they were dealing with a



separate licence for the project being the Forest Road under CN86281 and that the licence mentioned had been reviewed as part of the In-Combination report with regard to the project.

The Appellant participating at the Oral Hearing elaborated on their grounds of appeal. In brief the following matters were raised: query about the certification dates noted on the iFORIS system /Inspector Certification Pre-Approval printout, project appearing to extend beyond the site boundary, occurrence of project splitting, issue of access to public road required resolution, Lough Melvin SAC in Northern Ireland not identified and screened, how were screening out conclusions (absence of any aquatic zone within or adjacent, and absence of any significant relevant watercourse within or adjoining the area) determined, matter of water on the site, site drains and question of drainage, and queries on iFORIS checkbox entries by the DAFM Forestry Inspector.

The Applicant explained that they had carried out a ground survey of the site on 11/12/2019. They described how the project is for 650m of forest road, to be put at the end of a forest road built a long time ago. They explained that the road is below the EIA threshold. They also described how there was no water on site and no risk of a hydrological connection to any SAC. The site was described as flat with no risk of landslide and the roadside drains will drain over forest ground.

The FAC queried the DAFM about the site mapping and the DAFM explained that the project did not extend beyond the site boundary, that there could sometimes be a mapping error because of digitisation, but that they were satisfied that the location of the site was not an issue with this project. In relation to the three certification dates on the iFORIS system, the Department's Forestry Inspector explained that each stage of the process is signed off on the iFORIS system. The final certification, which took place after the field inspection, was recorded as a desk based process. The FAC also queried the soil type. The soil type was described as less than 1m peat with underlying mineral soil. The Applicant described how he had assessed the soil by examining the layers apparent from the sides of the existing road. He described the peat layer as shallow with no risk of landslide. The DAFM Inspector also advised about observation of the soil type during their ground inspection and the method of observational analysis using a soil stick.

Under questioning by the FAC as regards the existing road, water on site, road construction and drainage, the Applicant advised that the existing road was not recent, was put in approx. 5 to 8 years ago. They also advised that the road would not cross a watercourse, that the slope is generally SW to NE and that any surface water would run off into the roadside drains and by overland filtration through forest grounds. They explained further in relation to drainage that there was enough vegetation to absorb and filter any overland flow



of water. With regard to excavation, the Applicant advised that the peat would be stripped to less than 1m, the mineral gley would be shaped up and stone aggregate deposited on top. They explained that the stone aggregate would be sourced from certified quarries and that there were a number of such quarries in Leitrim and Donegal. The excavated peat would be tidied up and deposited on both sides of the road, but mostly on the lower side. As regards access, the Applicant advised that Coillte had full ownership of grounds where road construction is to take place. They further explained that the road had been used by Coillte over the years, that they had spoken to the local farmer and that there was no issue over use of the right of way and access from the public road. The DAFM Forestry Inspector advised that they were only concerned with the application for a forest road licence.

The FAC queried the Appellant further about the Lough Melvin SAC, mentioning that there were two sites, one in the Republic and one in Northern Ireland and whether it was the risk or the inclusion that was at issue. The Appellant advised that the Northern Irish site should have been included and screened. They contended that there was potential for water and silt to move off the project site. The Appellant also referred to the NPWS as not having been consulted. The DAFM Forestry Inspector explained that the sites were not in the referral zone for mandatory referral to the NPWS and that their decision not to exercise the discretionary referral option was an objective one. With regard to the matter of damaging effects of silt and water, the DAFM Forestry Inspector advised that they were confident that the site would not give rise to such effects. They also mentioned the condition attached to the licence about adherence to forestry and water quality guidelines.

In relation to the written grounds of appeal for the first appeal, regarding EIA, the FAC noted that the proposed forestry road is sub-threshold for the purposes of mandatory EIA. The FAC considered the screening undertaken by the DAFM as evidenced to the FAC and the procedures followed by the DAFM before concluding that EIA was not required in the case. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impacts arising from the proposed development, to enable a screening for EIA and to enable a completion of the required checkboxes on the iFORIS system in this regard. In addition, the FAC noted the detailed information submitted describing the proposed development, submitted information relating to the location, forestry coverage in the townland and in the underlying waterbody and the field inspection carried out in advance of the making of the decision. The FAC noted that the DAFM had considered other projects, including forestry related projects in an in-combination assessment. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that procedures followed by the DAFM were flawed or that the conclusion that an EIA is not required, is incorrect.

The FAC noted that as part of the Stage 1 AA screening, 7 Natura sites within a 15km radius of the project area were identified, examined and screened out and that the In-Combination



Report included a review of activities as well as forestry activity including LM04-FL0056. With regard to the In-Combination Statement, the FAC considers that one of the concluding paragraphs contain some wording that is inappropriate for a Stage 1 screening, particularly with regard to the integrity of the sites. However, the overall In-Combination conclusion states the DAFM deems 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 listed. Having considered in detail the procedures and depth of analysis undertaken by the DAFM with regard to the screening of the 7 Natura sites, as well as its thorough analysis and examination of other plans and projects through the In-Combination assessment, and the FAC's own examination of the evidence before it as well as evidence available on public websites, the FAC concludes that the procedures adopted were robust and that there is no evidence that the conclusion reached was not sound.

With regard to the contention raised at the oral hearing that the Lough Melvin Northern Irish SAC was not screened as part of the process, the FAC examined the extent and location of the Lough and noted that the majority of the lough is located in County Leitrim with a small North Eastern corner in Co. Fermanagh, Northern Ireland, at a distance of 12kms approx., from the project site. The FAC considered also that both Lough Melvin SAC and Lough Melvin SAC NI are in the Erne Catchment and that the project site is in a different catchment; the Sligo Bay & Drowse catchment. Therefore, having regard to the nature and scale of the proposed development, 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, the separation distances, intervening land uses, the difference in catchments and the interests for which the sites are designated, the FAC concluded that there is no likelihood of significant effects arising on the Northern Irish corner of the Lough, resulting from the forestry road, individually or in combination with other plans or projects. While the FAC considers there was an error in the DAFM screening in stating to have included all European Sites with a 15km radius when the Lough Melvin SAC NI was not included, the FAC considers, in the particular circumstances of this case, that this does not constitute a significant or serious error regarding the decision to issue licence CN86281.

In relation to the contention made at the oral hearing that the project extended beyond the site boundary, the FAC examined in detail the maps and ortho imagery provided and taking into account the contributions made on this matter by the DAFM and the Applicant during the oral hearing, concluded that there was no inaccurate representation of the proposed road.

In relation to the matter of referral to the NPWS, the FAC noted that DAFM gave evidence at the oral hearing that the sites were not within the mandatory referral zone. Having regard to the nature and scale of the proposed project, the characteristics of the receiving



environment, the evidence from the DAFM field inspection and the evidence from the oral hearing, the FAC considered that there was no mandatory requirement for a referral and that the DAFM had exercised the discretion open to it in this regard.

With regard to the ground of appeal concerning the threat to achievement of the objectives of the River Basin Management Plan and the non-referral to the IFI, the FAC noted that on the Assessment to Determine EIA Requirement the proposed forest road is recorded as not in an area designated as being sensitive to fisheries. Furthermore, the FAC noted that the licence conditions specify following the Environmental and Silvicultural Considerations such as 'adherence to forestry and water quality guidelines' and 'all guidelines to apply'. The Forestry and Water Quality Guidelines describe a range of measures intended to cover all situations relating to forestry and water quality, including the use of silt traps for managing sediment and also drain management measures. Having regard to the scale and nature of the proposal and the conditions under which operations would be undertaken, the FAC concluded that the proposal does not represent a significant threat to water quality.

The FAC considered the written ground of appeal concerning the potential for a landslide that could have an impact on the Lough Gill SAC water quality and qualifying interests. It examined the screening process carried out by the DAFM whereby the Lough Gill SAC was included in the screening exercise within a 15km radius and that it was reviewed, including the qualifying interests and conservation objectives, and screened out because of the absence of any aquatic zone within or adjoining the project area, and absence of any significant relevant watercourse within or adjoining the project area. The FAC also took into account the contributions made by the DAFM Forestry Inspector and Applicant at the oral hearing regarding their ground inspections of the site, their evaluation of the soil, the predominantly flat level of the site, the drainage of roadside drains over vegetation and forest ground and the shallowness of the peat layer on the ground (less than 1m) overlying the mineral gley. Therefore, the FAC could not concur with this ground of appeal and concluded that the proposal does not represent a significant threat to the European site.

As regards the grounds of appeal concerning licence conditions and a system of protection for animal species listed in Annex IV of the Habitats Directive and concerning licence conditions and a general system of protection for all species of wild birds, the granting of the forest road licence does not exempt the holder from meeting any legal requirements set out in any other statute and, as such, they are not necessary as conditions attaching to this licence. The FAC noted that the appellant did not submit any specific details in relation to animal species breeding, rearing, hibernating or migrating on the site or any in relation birds nesting or rearing on this site. In these circumstances, the FAC concluded that conditions should not be attached to the licence.

In relation to the grounds of the second appeal, the FAC considered the contention that there was no legal Appropriate Assessment and the contention that the second last line of DAFM'S In-Combination Statement is '*not permitted in a screening*'. The FAC considered





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these contentions with regard to the Habitats Directives and Article 6(3) of that Directive. The FAC considered the Appropriate Assessment screening and the In-Combination Report in this case. The FAC noted the detailed information submitted and reviewed, and considered that the procedures adopted in these were consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound. The matter regarding the inclusion of inappropriate terminology in the In-Combination Statement and FAC's conclusion on this has been discussed in an earlier paragraph. Having regard to the screening and to the in-combination assessment the FAC is satisfied there is no likelihood of significant effects from the proposal on any of the screened out Natura 2000 sites listed. The FAC is satisfied that the proposed development, on its own or in combination with the other plans and projects, would not give rise to the likelihood of a significant effect on the Natura sites listed.

As regards the ground of appeal relating to the accumulation of forest roads, the FAC notes that this project is for 650m of forest road and does not exceed the threshold. The FAC note that the existing forest road was built 5 to 8 years ago. As explained in earlier paragraphs, the FAC considers, based on the information before it, that there is no convincing evidence before it to indicate that procedures followed by the DAFM in the screening were flawed or that the conclusion that an EIA is not required, is incorrect.

In deciding to affirm the decision of the Minister to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely

Paula Lynch on behalf of the FAC