



27th April 2022

Subject: Appeal FAC008/2022 against licence decision CN89074

Dear

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 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.

Hearing

The FAC, having regard to the particular circumstances of the appeal, did not consider that it was necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC008/2022 was held by the FAC on 20th April 2022. In attendance were:

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

Secretary to the FAC: Mr. Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, 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 CN89074.

Background

The licence decision pertains to 360 metres of forest road works at Meelickroe, Co. Roscommon to service an area of forest of 13.6 hectares that was planted in 2002. The proposed forest road follows an existing track through semi-mature forest and meets a minor public road. The proposal as described would involve the widening of an existing entrance from the public road but not the creation of a new entrance. The site is described as flat to moderately sloped and on a shallow peat soil on clay. The proposal was desk and field inspected by the Department of Agriculture, Food and the Marine (DAFM).

The application included site and operational details and maps. The Biomap shows the forest to be served outlined in red and the route of the road, the public road and a river to the south that flows easterly. The site notice is also marked. Plans of the forest road entrance, condition of the public road with photos, and a proposed haulage route are submitted with the application document which were prepared by a Civil Engineer. A relaxation of the technical standards is recorded and it is noted that sightlines of 90 metres

are achievable for a design speed of 60km/hr which reflects Table 2 of the *Technical Standards for the Design of Forest Road Entrances from Public Roads*.

There was one submission from a member of the public on the application. This was a letter from the Appellant's Solicitor on their behalf and referenced a right of way in their favour that they considered would be impacted by the proposal and included a number of other letters.

The application was referred to a DAFM Archaeologist in relation to a recorded monument, a bridge, lying some 130 metres from the proposal. The Archaeologist responded that the works posed no evident threat to the monument and that no special archaeological conditions were required.

The application was referred to Roscommon County Council and to the NPWS, Department of Housing, Local Government and Heritage (DHLGH). No response from the County Council is recorded. The NPWS/DHLGH responded stating that the application is beside a Lough Namucka Natural Heritage Area and adjacent to a river which flows in the NHA and may cause siltation. The NPWS/DHLGH recommend a screening for Appropriate Assessment and submitted a document with general observations on forestry applications.

The DAFM undertook a screening for Appropriate Assessment and recorded thirteen European sites within 15km and that there were no reasons to include sites outside of this radius. Each site is considered in turn and its qualifying interests and conservation objectives are identified and reasons are provided for the screening conclusions. Each site is screened out individually and a separate consideration the proposal in combination with other plans and projects, both forestry and non-forestry is recorded. It is recorded that the proposal is of medium scale and located within the sub-basins of the Island 20 and Island 30 waterbodies and the existing forest cover is recorded. It is concluded,

Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any significant effect on the above European Site(s).

The DAFM recorded an Assessment to Determine EIA Requirement and considered the application across a range of criteria including project description, cumulative effect and extent of project, water, soil, terrain, slope, archaeology and designated and non-designated habitats. It was concluded that the project should not proceed to the EIA process.

The licence was issued on 1st February 2022 with conditions, including

Condition: The forest road project and all associated operations shall be carried out and 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 (as amended by periodic Circulars).

Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment.

The file includes notification letters to the Applicant, Appellant and the County Council.

Appeal

There is one third party appeal and the full grounds of appeal were provided to the Applicant and the DAFM and a summary follows. The grounds were prepared on behalf of the Appellant by a Solicitor. The grounds record the details of the site notice and submit that the proposal amounts to a substantial change and alteration in width, extent, scope and direction of the route of the existing right of way and that the site notice is invalid in that it does not describe the proposed work accurately.

It is submitted that, in reviewing the application, no consideration was given or regard had for the existing property rights of their client. It is submitted that that it is a basic principle that such proposed applications do not impact or affect any pre-established property rights of third parties and that it is assumed that if the applicant did not own the underlying property that no valid licence could be given even if all other aspects of the application were to the Department standard. It is submitted that the decision as recited appears to focus solely and exclusively on the criteria of the particular specifications of the project and no regard has been made to the underlying ownership issues and that this is flawed. It is requested that the FAC provide any further communications from the applicant or the Department. It is further noted that their client's application to the PRA to confirm their right of way is ongoing.

In responding to the appeal, the DAFM submitted the details and dates of the processing of the application, that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act, and referred to the documents on the publicly available Forestry Licence Viewer¹. The statement provided by the DAFM submits that the existing right of way track will need formation and pavement layers to allow for the bearing capacity of fully loaded trucks and is not an upgrade of a current road. It is submitted that while changes will be made to allow for the construction there will be no change proposed in the direction of the current track and that there is nothing in the other elements of the construction that would impede access for a third party rights holder. It is submitted that consideration was given to right of way, that no issues were foreseen and that the licence was issued focusing on road construction details.

The DAFM statement was provided to the parties to the appeal. DAFM documents related to the application and licence had been uploaded to the publicly available Forestry Licence Viewer and the DAFM referred the FAC to these files in its response. The FAC understood these documents formed part of the response to the appeal and were considered to fulfil the requirements of Regulation 7 of SI 418 of 2020. The Appellant and Applicant were informed of the provision of these documents, and it is these documents that the FAC considered in making its decision.

FAC Consideration of the Appeal Grounds

The FAC considered, firstly, the grounds related to the content of the site notice. The location of the site notice is identified on the mapping submitted with the application. Also submitted were a copy of the site notice and a photograph of the erected site notice. The site notice appears to have been erected on the public road and to be visible and legible. The site notice records the details as 360 metres of new road and the widening of an existing entrance from the public road. As submitted by the Appellant, zero metres are

¹ <https://forestry-maps.apps.rhos.agriculture.gov.ie/>

recorded under the heading Upgrade of Existing Road. The track which is referred to by both the Appellant and the DAFM can be readily viewed on aerial imagery of the site and on the maps submitted with the application and the proposed forest road follows this route with the addition of the turning bays at the eastern end.

The Forestry Act 2014 provides the following definitions,

“forest road” means a road (other than a public road) that serves a forest;

“forest road works” means the construction of a forest road or works ancillary to such construction (whether or not such construction involves the removal of trees)

Part 5 of this Act addresses the applications and the granting of licences for forest roadworks by the Minister for Agriculture, Food and the Marine for forest road works. Regulation 11 of the Forestry Regulations 2017 (SI 191 of 2017) addresses *Site Notice in respect of afforestation and forest road works* and requires an applicant to erect a notice at the entrance from the public road to the land. The nature of forest road works is also addressed in the DAFM *Forestry Standards Manual 2015*.

The grounds of appeal do not suggest that the existing track constitutes a forest road. The grounds of appeal do not contend that there were any deficiencies in the location, visibility or duration of the erection of the site notice but submit that the details are incorrect. The operations, as applied for and licenced, involve the construction of a new forest road with the laying of base and surface pavement layers. The site notice includes details of where further information may be obtained, either through the online Forestry Licence Viewer or at DAFM offices. The FAC is not satisfied that an error occurred in the making of the decision in relation to these grounds of appeal.

The grounds contend that there was no consideration of the impacts of the works on a traditional right of way and that a licence could not be granted if the land was not owned by the licence applicant. The FAC considers that deciding on matters of land ownership and rights of way are civil matters that properly fall to the Courts to determine.

Regulation 6 of SI 191 of 2017 require an application to include the telephone and email address of the owner of the lands if different to the person making the application. In relation to CN89074, the FAC examined the relevant folios and considered that the owner of the lands was the person who made the application and in whose name the licence was issued. The FAC did not consider, therefore, that the application was deficient or that an error had been made in the making of the decision in this regard.

The licence as issued states,

This licence confers no title to the ownership of any land specified herein.

In their letter of the 11th July 2018 that was provided with their submission on the application, the Appellant notes that the licence Applicant is the owner of the lands across which they claim to have a right

of way. In any case, although not fully stated in the grounds, should the Appellant wish to make a claim of ownership of the land this is clearly not a matter that falls within the remit of the FAC.

In relation to alleged impacts on a submitted right of way, the FAC noted that the Appellant has applied to the PRA (Property Registration Authority) to confirm their right of way and that the processes is described as continuing. Therefore, at the time of the application being made and of the licence being issued a right of way had not been registered. The Appellant had made a submission on the application in relation to these matters, which is recorded, and the DAFM contend that this was given consideration during the processing of the application.

The grounds of appeal do not provide any specific substantiation of what impacts they consider might arise from the works. It is likely that the works, by their nature, would cause some localised disruption to the lands and a limited increase in traffic during the operations themselves. The application includes details and specifications of the works and the works are required to be completed in line with the conditions as stated. These works are unlikely to extend beyond a limited number of weeks and once completed a higher quality access road would be in place. The FAC cannot confirm a right of way for any party. The FAC is not satisfied that an error was made in relation to the matters raised concerning an alleged right of way or the ownership of the lands in the making of the decision under Section 7 of the Forestry Act 2014 or the Forestry Regulations 2017 as they pertain to forest road works.

While not raised in the grounds of appeal, the FAC in considering the file also examined the conclusions reached by the DAFM in relation to the EU Habitats and EIA Directives as previously noted. The FAC examined publicly available information provided by the NPWS and EPA and identified the same European sites within the vicinity of the proposal. The FAC agreed with the conclusions of the DAFM that the proposal itself, or in combination with other plans and projects would not result in any likelihood of significant effects on a European site and that Appropriate Assessment (AA) is not required in this case. The FAC also examined the record of the decision that the proposal would not proceed to the EIA process. The FAC noted that consideration of the nature, scale and location of the proposal and relevant criteria are recorded. The Applicant submitted details of the operations and environmental considerations, including a Biomap. The application was further considered by a DAFM Archaeologist in relation to a recorded monument outside of the lands and it was concluded that this would not be impacted. The FAC agreed with the conclusion of the DAFM that the proposal would not result in any likely significant effects on the environment and that an EIA was not required in this instance. The FAC noted that a planning permission for a forest road entrance was granted by the County Council in 2018 which also recorded no requirement for AA or EIA.

Conclusion

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. As outlined in this letter, the FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without regard to fair procedures. The FAC is, thus, affirming the decision of the Minister regarding licence CN89074 in line with Article 14B

of the Agricultural Appeals Act 2001, as amended. In affirming the decision, the FAC considered that the proposal as licenced is in keeping with Good Forest Practice and Government Policy.

Yours sincerely,

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Vincent Upton, On Behalf of the Forestry Appeals Committee