



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

28 October 2020

[REDACTED]
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Our ref: 150/2020

Subject: Appeal in relation to Forest Road Licence CN83368

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of licence CN83368.

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

Forest Road licence CN83368 was granted by the Department on 02 March 2020.

Hearing

A hearing of appeal 150/2020 was conducted by the FAC on 07 October 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy and Mr Pat Coman

Decision

The Forestry Appeals Committee (FAC) having considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal and all submissions/observations, considers there are a series of errors with regards the conditions of the licence and has decided to set aside the decision of the Minister and to remit the decision to issue licence CN83368 back to the DAFM for the reasons set out below.

The proposal comprises 225m of Forest Road at Cashel, Co Donegal, a harvesting road to serve 5.6 ha of forestry that is mostly in Sitka Spruce, with a small amount of Japanese Larch (0.3 ha) and ash (0.1 ha), initially for first thinning. Construction of the new road is by excavation with 15m tree clearance and a 3.4m carriage width when completed. The proposal was both field and desk inspected by the DAFM inspector who stated soils are predominantly podzols in nature, and slope is moderate <15% and site does not adjoin an aquatic zone. The evidence shows that the waterbody has 0.11% forest cover and there is 5.1% forest cover within 5km radius, that the area is sensitive for fisheries and has archaeology sites. The evidence shows a relatively short farm road in from Carndonagh road, and that the proposed forest road is to be constructed going south east from a point just prior to the farmyard until entering forestry (section XA indicated as 100m) where it will

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then arc to south and have a small spur (section ABC of which AB is indicated as 75m and C as 50m). The route of the proposed forest road is located c.95m from a Recorded Monument (1) standing stone (DG 011-053) to the north and (2) 85m from Recorded Monument —standing stone (DG 011-054) to the southwest.

In processing the application for licence the DAFM referred it to Donegal County Council and Northern Region Fisheries Board referrals, and Inland Fisheries Ireland replied on 26 March 2019 that the applicant should adhere strictly to the appropriate sections of the Forestry and Water Quality Guidelines, the Forest Harvesting and the Environment Guidelines, the Code of Best Forest Practice Ireland and the relevant COFORD guidelines. No reply is evidenced from the County Council.

There are additional conditions attached to the licence such as;

- Adhere to Archaeologist's report attached,

However, all conditions are set out on the licence CN83368 as conditions for the payment of grant.

There is one appeal before the committee, with further submissions, and the full grounds of appeal have been considered, the following are a brief summary of grounds;

- The applicant intends to connect the proposed new forestry road to the existing farmland road that leads from the main public Carndonagh-Derry Road to the applicant's farmyard and to the appellant's property and lands.
- The existing farmland road is clearly defined as being within the appellant's Folio (attached a copy folio and plan for DL6179) showing appellant owns folio since 1988.
- While the existing access road is on the appellant's private property (Folio DL6179) the applicant has a Right of Way over/on it only to the gates of his existing Farmyard.
- The applicant is not land-locked and possesses another road that accesses his forestry from the Carndonagh-Derry road and is c. 230 metres south of the appellant's existing road.
- There is an existing turning area outside of applicant's farm gate but is for turning farm machinery and not for stock piling timber.
- The appellant does not agree with the existing road / right of way being used for forestry purposes.
- The DAFM were made aware of issues prior to granting the licence
- The appellant cannot accept that the public can use the road when constructed, this would be trespass and also has concerns about liabilities that might arise on their property
- Storm water is an issue regards erosion, damage, repair, flash flooding. There is also a damage risk to an existing culvert by the heavy machinery that will be required.

In response to the appeal, DAFM stated the District Inspector desk audited and field inspected this application and is satisfied that all criteria have been adhered to and the approval is in order. The DAFM believes this is a legal matter between two parties and is unable to give judgement on same. DAFM stated that with regard to storm water run-off and forestry machinery using the existing entrance, there will not be any issue with same.

A response on the grounds of appeal on behalf of the applicant sets out that there is contact with the Property Registration Authority on matters relating. Also, the appellant has no other 'road accesses to the plantation.



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On the basis of the information and evidence before it, the FAC is satisfied the project is not necessary for or connected with the management of any Natura 2000 site and that none of the conditions of the licence in this instance are in mitigation of any effects on a European site. There are 6 European Sites within a 15km radius of the proposal, these are Malin Head SPA at 14.4 km, Lough Foyle SPA at 10.7 km, Trawbreaga Bay SPA at 5.5 km, North Inishowen Coast SAC at 5.5 km, Maheraghdrumman Bog SAC at 3.8 km, and Lough Swilly SAC at 15 km. The proposal was screened out for Appropriate Assessment by the DAFM with no likelihood of significant effects arising for any of the European sites from the proposal on its own or in-combination with other plans and projects, and the FAC is satisfied in this instance with the procedure followed by the DAFM.

The FAC notes the current Land Direct mapping shows the access road from the R240 to be north of the applicant's folio boundary and within folio plan for DL6179. The access road enters from the R240, is a minor laneway apparently accessing farmyard, lands and a house. Other accesses are not examined for. The FAC is satisfied the applied for road X-A, A-B and C under CN83368 is to be located entirely within the applicant's lands. It is the decision to issue the forest road licence that is before the FAC. The FAC considers the issues regards the access road are matters between the appellant and the applicant which the FAC has no remit to adjudicate in any manner upon. In relation to the suggestion of the forest road impacting on the hydrology and drainage of surrounding lands, the FAC does not consider that it has been provided with any convincing evidence of such potential impacts. Furthermore, it does not consider such impacts to be likely, having regard to the characteristics of the site provided to it, and where the forest road is constructed following good practice and the COFORD forest road manual.

Concerns in the grounds of appeal regards public access relate solely to Forest Road Grant Scheme eligibility conditions and the FAC considers this is not a licensing matter and should not be a condition of the licence to construct a forest road under the provisions of Section 7 of the Forestry Act 2014 in this instance. The FAC considers the eligibility conditions of the Forest Road Scheme payments are inappropriate to the granting of a licence and these conditions should be considered separately and not be contained in the licence CN83368. The FAC has no remit or powers regards eligibility or ineligibility for such grant aid.

The licence should reflect only those conditions on which the decision to grant permission to construct the road are based upon, and not as in this instance be a compilation of conditions for the payment of grant aid. The decision of the Minister is therefore set aside, and the application is remitted to the licensing stage to apply appropriate conditions.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

