



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22th April 2021.

Subject: Appeal FAC 249/2020 regarding licence CN85445

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

Licence CN85445 is for the construction of a forest road 499 metres in length at Knockmeal, Co Kerry, which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 14th of May 2020 subject to standard conditions.

Hearing

An oral hearing of appeal FAC 249/2020 was held by the FAC on 12th April 2021.

In attendance:

FAC Members; Mr. Myles Mac Donncadha (Deputy Chairperson), Mr. James Conway and Mr. Derek Daly.
Secretary to the FAC: Ms Heather Goodwin; Ms. Marie Dobbyn (observer)

DAFM Representatives: Ms Mary Coogan, Mr. Michael O'Brien.

Appellant: [REDACTED]

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN85445.

Licence.

The licence pertains to the construction of a forest road of 499 metres in length to serve 16.11 hectares of forestry at Knockmeal, Co. Kerry. The proposed road commences at a farmyard and runs along existing field boundaries to the wooded area. It is in the Tralee Bay – Feale WFD Catchment (code 23), the Feale_SC_30 and Feale_060 River Sub Basin. The Feale_060 water body has a moderate WFD status (2013 -2018). The method of construction is excavation with fill and top finished with a class 804 material. The Inspector Certification refers to the predominant soil type underlining the project area as predominantly podzolic in nature and the slope as predominantly flat to moderate (<15%). The project area does not adjoin or contain any aquatic zones, the vegetation type(s) within the project area is comprised of grassland.

The proposal was referred to Kerry Co Council and no response was received.

An Appropriate Assessment screening was carried out and recorded on the file. Three Natura sites were found to be within 15kms of the project site and all were screened out. The Lower River Shannon SAC 002165 was screened out because of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection and the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. The Moanveanlagh Bog SAC 002351 was also screened out because of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection and the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. The Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 was also screened out owing to the unsuitability of the project area for use by any species listed as a qualifying interest.

An In-combination assessment dated the 7th May 2020 is on the file. It concludes “Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites’ listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure 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. Therefore, 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 site(s) listed above”.

The overall conclusion therefore was to screen out all sites concluding that there was no possibility of a significant effect on any Natura site, and that Appropriate Assessment was not required.

The licence was issued on the 14th of May 2020 subject to standard conditions.

Appeal.

There is one appeal against the decision.

The grounds contend that the test for Appropriate Assessment screening it is necessary merely to determine that there may be an effect rather than to state it will not have a significant effect. If the development is within 15 kilometres of a Natura 2000 it must be screened in. The licence does not comply with the Habitats Directive and reference is made to the stated judgement EUCJ 323-17. A map showing all SACs and SPAs and the site of the proposed development should be attached in relation to a screening. Details of all forestry in the area should be given to show there is not a cumulative afforestation of more than 50 hectares and all forest roads should be shown. Reference is made to the judgement EUCJ 254-19. It also references the Court of Justice stating that it has repeatedly held that the Member States' obligation arising from a directive to achieve the result envisaged by the Directive and their duty to take all appropriate measures, to ensure fulfilment of that obligation which is binding on all the authorities of Member States and the grounds also set out that this must apply to the FAC as the obligation is binding on all the authorities of Member States.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the relevant standards and procedures had been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that a field visit was conducted on 23/01/2020; standard operating procedures by the forest standards manual were adhered to. The forest road specification is in line with the COFORD Forest Road Manual. All environmental requirements were considered and identified with an appropriate screening and it was deemed that there was no possibility that this project will have a significant effect on any Natura site, due to physical separation and the lack of any ecological pathway.

An oral hearing was held of which all parties were notified and representatives of the DAFM attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that three were initially screened out and that there was no possibility of a significant effect on any Natura site. It was clarified by the Forestry Inspector that the project was the subject of a field inspection on the 23rd of January 2020 and that the AA screening assessed potential effects on Natura Sites including Hydrological connection and that drainage arising from the development would run northwards into the farmyard drainage system. There was no watercourses adjoining or crossing the project site. The site would not impact on the Hen Harrier species as it was not within the SPA or an identified Red Zone of the species.

At the hearing the FAC raised issues relating to the road construction, the drainage pattern in the area with particular reference to any potential presence of a watercourse in the project area and also in relation to a watercourse located to the south of the project area. In response it was indicated that drainage along the proposed road will run northwards rather than to the south and the site does not cross a watercourse. The issues raised were addressed by DAFM to the satisfaction of the FAC. The inspector's determination and recommendation were also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details.

In addressing the grounds of appeal, the FAC considered *inter alia*; whether or not the decision was in compliance with 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.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to 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 DAFM 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. The proposal is for 499 metres of forest road construction to facilitate the management of commercial forest for timber production, which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision concerning EIA.

In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same three sites; The Lower River Shannon SAC 002165; The Moanveanlagh Bog SAC 002351 and The Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 as the DAFM within 15km from the proposal. 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 road works are located outside of any European site. There is no evidence of protected habitats or species on the site. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

Specifically, in relation to potential hydrological impacts on Natura sites and on water quality generally, at the oral hearing the DAFM submitted that the field inspection clearly identified, from an assessment of the topography of the site and the pattern of contours and slopes, that surface water from the road would drain northwards away from any watercourse and be directed into the farmyard complex drainage system and there was no direct pathway to any watercourse. The FAC is satisfied based on the

responses received that the construction measures and the accompanying method of drainage as proposed will not impact on any Natura sites or any receiving waters.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. 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 complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN85445 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government Policy and Good Forestry Practice.

Yours sincerely,

A black rectangular redaction box covering the signature of Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee

