



**An Coiste um Achomhairc
Foraoiseachta**
Forestry Appeals Committee

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

26th April 2021

Subject: Appeal FAC 258/2020 relating to Licence CN85472.

Dear [REDACTED]

I refer to your 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 14A (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.

Licence

Licence application CN85472 is for the construction of a forest road of 450 metres in length in two separate and distinct parts, a new entrance onto the public road in the townland of Parkstown Upper which is also the subject of a planning application and an upgrade and extension of an existing farm road in the townlands of Haggard and Parkstown Upper both Co. Kilkenny. The application was submitted to the DAFM on 16/01/2020. One submission was received on the licence application on 17/02/2020. The licence was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 21/05/2020 subject to conditions including adherence to the conditions of planning permission 20/70 and specific archaeological conditions.

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

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 16th of April 2021.

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.

Appellant: [REDACTED]

Applicant: [REDACTED]
[REDACTED]

DAFM Ms. Mary Coogan and Robert Hamilton.
Secretary to the FAC Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the DAFM, the applicant and, the record of the decision by the DAFM, the notice and grounds of appeal, and

the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence reference CN85472 at Parkstown Upper and Haggard, Co. Kilkenny.

Background

An undated Inspector's Certification Pre-Approval Report certified by the DAFM on 15/05/2020 indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly brown earths with a predominantly flat to moderate slope (<15%) and that the site does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise agricultural grassland and hedgerows.

The report notes that there are 4 Natura 2000 site within 15Km of the proposed forest road and records an Appropriate Assessment (AA) screening decision to screen out the application for each site for the following reasons:

Hugginstown Fen SAC 000404 The absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site.

Lower River Suir SAC 002137 The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.

River Barrow And River Nore SAC 002162 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.

River Nore SPA 004233 The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura 2000 site & distance of the proposed development the SPA (11.8 km) which far exceeds foraging distance of the Kingfisher the only Q.I of the SPA.

The report also contains an in-combination assessment carried out by the DAFM dated 15/05/2020 which concludes that the project, when considered in-combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Pre-Approval Report also contains an assessment of the environmental factors relating to the proposed forest road in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed road to the EIA process.

The licence application was referred to the archaeology section of the Forest Service Inspectorate. The archaeology report dated 11/05/2020 noted that part of the road was adjacent to a Recorded Monument (KK 040-014), a ring fort and that it has already been compromised by the construction of a farmyard and buildings. The report recommended that a number of specific conditions be attached to the licence.

The licence application was referred to Kilkenny County Council who indicated in their response of 21/02/2020 that the entrance onto the public road at Parkstown Upper was the subject of a planning application P20/70. Planning Permission, P20/70 was granted by Kilkenny County Council on 14/07/2020 subject to two conditions.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- The decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.
- The test for Appropriate Assessment Screening is to determine that there may be such an effect rather than to state that it will not have a significant effect.
- All Natura 2000 sites within 15km of the proposed development have to be screened in.
- A map showing the SACs and SPAs and the site of the proposed development should be attached.
- Screening for EIA to include all forestry in the area and show that the cumulative afforestation does not exceed 50 Ha., the total km of the forest roads in the area and show that roads which are not included in the application are not required to carry out the development, including thinning and clearfell.
- The FAC is required to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law.

Oral Hearing

At the oral hearing, the DAFM provided a Statement of Fact dated 22/06/2020 confirming the administrative details of licence CN85472 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

A Statement of Fact was provided by the DAFM Inspectorate dated 23/06/2020 stating that the relevant Appropriate Assessment (AA) procedure of Nov. 2019 was applied and that the project was screened out after Standard Operating Procedures were followed.

The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed and that the third party submission on the licence application was considered prior to the licence being issued.

The DAFM Inspector stated that while there was no field inspection he was familiar with the area from previous experience and that the ground was flat and dry with brown earth soils. The site was 1.2km from the Barrow/Nore SAC and that there was no hydrological connection from the proposed development to the SAC.

Coillte, the applicant's representative confirmed to the FAC that it was acting in partnership with the applicant and it had inspected the site in the field. Coillte confirmed that there was no hydrological connection from the site to any watercourse, that no water would leave the site and that water would percolate to ground. Coillte also stated that the walkover of the site included an examination of the archaeological site adjoining the proposed forest road.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photography indicates that both parts of this licence application run through agricultural grassland and alongside hedgerows prior to entering the forest.

Soil type is identified on the EPA maps as Acid Brown Earths, Brown Podzolics, which are generally an acid, deep, well drained, mineral soil.

There is a WFD River Waterbody, the Oaklands_010 approximately 910m from the proposed eastern forest road. The Oaklands_010 is classified in the WFD River Waterbody Status report 2013-2018 as being of unassigned ecological status, as being at risk and being under significant pressure. The pressures on this river waterbody are identified as agricultural pasture and an urban agglomeration. Forestry is not identified as a pressure. The WFD 3rd Cycle categorises the river waterbody as being at risk. There is no direct hydrological connection between the site and this river waterbody.

The Oaklands_010 River Waterbody is part of the WFD Nore 15 Catchment and the Nore_SC_140 Sub Catchment.

The underlying groundwater body is Inistioge (IE_SE_G_076) and has good overall status. The ground waterbody is identified as not being at risk in the WFD 3rd Cycle programme.

The proposed forest road is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that there are 4 Natura 2000 sites identified as being within 15km of the site and those are the 4 sites examined in the AA Screening.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC noted that the site is not within a Highly Scenic Area or Protected View set out in the Kilkenny County Development Plan 2014-2020

In addressing the grounds of appeal, the FAC considered the following matters,

The decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.

This ground contends that the decision does not comply with the Habitats, Birds and EIA Directives but provides no substantiation for this assertion.

With regard to Habitats and Birds Directives, the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 3 SACs and 1 SPA within a 15km radius of the development. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this distance. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of all of the Natura 2000 sites listed the DAFM discounted the possibility of significant effects arising for the reasons stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

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 450 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.

The test for Appropriate Assessment Screening is to determine that there may be such an effect rather than to state that it will not have a significant effect.

The FAC is satisfied that, in considering whether the proposed development, itself or in-combination with other plans and projects, would have significant effects on the Natura 2000 site identified, the AA Screening has been carried out properly by the DAFM.

All Natura 2000 sites within 15km of the proposed development have to be screened in.

The FAC notes that the national guidance on AA Screening recommends that any Natura 2000 site within a likely zone of impact of 15 km from the development should be included for screening but that that screening in or out of a Natura 2000 site must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. The FAC is satisfied that, in considering all Natura 2000 sites within 15km of the proposed development the AA Screening has been carried out properly by the DAFM.

A map showing the SACs and SPAs and the site of the proposed development should be attached.

The FAC notes that the national guidance on AA Screening simply requires the identification of relevant Natura 2000 sites, and compilation of information on their qualifying interests and conservation objectives. The FAC is satisfied that that, in addition to the details provided in the application and the considerations undertaken by the DAFM, the listing of all Natura 2000 sites within 15km of the proposed development and their Qualifying Interests in tabular form the requirement of AA Screening has been met by the DAFM.

Screening for EIA to include all forestry in the area and show that the cumulative afforestation does not exceed 50 Ha. the total km of the forest roads in the area and show that roads which are not included in the application are not required to carry out the development, including thinning and clearfell.

The FAC notes that this licence is for a forest road only and that the DAFM in its Assessment to Determine EIA Requirement addresses the matter of cumulation of forest roads in the area. The DAFM indicates that the length of the proposed forest road (450m) together with other recent, ongoing or planned forest road works in the area do not exceed 2000m.

The FAC is required to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law.

The FAC notes that its stated purpose is to conduct hearings on appeals against a decision of the Minister. The matters referred to in this ground of appeal are outside the remit of the FAC.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that no serious or significant error or series of errors were 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 CN85472 in accordance with Section 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 large black rectangular redaction box covering the signature of the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee