



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

22 January 2021

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FAC ref: 695/2020 & 709/2020

Subject: Appeal in relation to licence CN84470

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN84470.

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 CN84470 was granted by the Department of Agriculture, Food and Marine (DAFM) on 26 August 2020.

Hearing

An oral hearing of appeals 695/2020 & 709/2020 was conducted by the FAC on 12 January 2021.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Ms Paula Lynch & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Applicant representatives:	[REDACTED]
DAFM representatives:	Mr Martin Regan & Ms Mary Coogan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by 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 CN 84470).

The proposal is for a forest road of 150m to service a site area of 5.6ha at Carrickatlieve Glebe, Co. Donegal. The formation width is 5.5m and the carriageway width is 3.4m with 100mm camber. The

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maximum gradient is 1:10 and the minimum 1:100. Sub-soil drains – 450mm deep and minimum of 2m from the roadway edge are proposed. The proposal includes 2 or 3 interceptor drains at a minimum of 3m from the roadway edge. The soil type is stated to be mineral and the elevation 150-155m. The site is not sensitive to fisheries, and there are no archaeological sites or features. Access to the site is stated to have been in existence since before 21.09.2011.

The DAFM referred the application to Donegal County Council and Inland Fisheries Ireland (IFI). In response, the County Council stated that there are no current or historical planning applications in the vicinity. This is an Area of Moderate Scenic Amenity as per the County Development Plan. There are no buildings/structures (RPS/NIAH) or Recorded Monuments (SMA) on the site. The IFI response advises adherence to specified guidelines and Code of Best Forest Practice.

The Inspector's Certification records the assessment of Natura 2000 sites within 15km screened as follows:

- Donegal Bay (Murvagh) SAC
- Donegal Bay SAC
- Donegal Bay SPA
- Lough Nilan Bog (Carrickatlieve) SAC
- Lough Nilan Bay SPA
- Meenaguse Scragh SAC
- Meenaguse/Ardbane Bog SAC
- Sheskinmore Lough SPA
- Slieve Tooey/Tormore Island/Loughros Bay Bog SAC
- St. John's Point SAC
- West Donegal Coast SPA
- West of Adrara/Maas Road SAC

All sites were screened out for Appropriate Assessment due to the absence of any significant relevant watercourse.

The DAFM further produced an Appropriate Assessment Report (AAR) following a re-examination of the Inspector's screening. This states that the site is within Donegal Bay North WFD Catchment, and WFD Sub Catchment Area Stragar_SC_010. The closest stream is c.50m to the south/south west forming the Oily River, with WFD status of 'High', and ultimately enters McSwynes Bay at greater than 15km downstream. The revised screening screens in *Lough Nilan Bog SPA*. There is an assessment of this Natura 2000 site listing each qualifying interest, conservation objectives, the potential for adverse impacts and mitigation measures. The AAR recommends the following mitigations in respect of the Merlin, Golden Plover and Dunlin

- No forestry operations to take place during the period 1 March to 31 August, inclusive
- Adhere to COFORD Road Manual, Forest & Environmental Guidelines.

In-combination effects are examined. Non forestry projects listed include electricity infrastructure, residential and a forest access road. Forestry related projects include Afforestation (1), Forestry Roads (2), Private felling (0) and Coillte felling (9).



The conclusion of the AAR is that there is no possibility of the forest road project having any significant effect individually, or in combination with other plans or projects on any of the following:

- Donegal Bay (Murvagh) SAC
- Donegal Bay SPA
- Lough Nillan Bog (Carrickatlieve) SAC
- Meenaguse Scragh SAC
- Meenaguse/Ardbane Bog SAC
- Sheskinmore Lough SPA
- Slieve Tooey/Tormore Island/Loughros Bay Bog SAC
- St. John's Point SAC
- West Donegal Coast SPA
- West of Ardara/Maas Road SAC
- Lough Eske and Ardnamona Wood SAC

It is further concluded that the proposed development, with mitigation measures identified, will individually not result in any adverse effect or residual adverse effects on the integrity of the Lough Nillan Bog SPA. There is no potential for any cumulative adverse effects on the European site, when considered in combination with other plans and projects, due to prescribed mitigation measures.

The Appropriate Assessment Determination was prepared by a DAFM ecologist and completed on 12.08.20. This confirms the conclusion of the AAR and the basis for the determination is set out in detail.

The licence was issued on 26.08.20. It is subject to standard conditions plus the following

- Consult with adjoining neighbours with regard to the erection of gates and take steps in conjunction with neighbours to prevent illegal dumping
- Adhere to conditions in the attached AA Determination dated 12.08.20
- Adhere to forestry & water quality guidelines
- All guidelines to apply

There are two appeals against the decision to grant the licence. The first appeal contends that no legal Appropriate Assessment screening was carried out. The cumulative forest roads in this forest exceed 2kms. No legal EIA has taken place and there was no Environmental Impact screening. In-combination effects were assessed using internal systems. It is not permissible to conclude that regulatory systems in place for the approval, operations (including permitted emissions) and the monitoring of the effects of other plans or projects are such that they will ensure that these do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any European sites in view of the conservation objectives for those sites. The second appeal contends that there is a breach of Articles 4(3), 4(4) and 4(5) of the EIA Directive. The whole project has not been considered. The Inspector's EIA determination is not adequately reasoned. There is an error in law in the processing of the application. There is insufficient information submitted to enable the Inspector to make a conclusive EIA determination. The licence and its associated operations threaten the achievement of the objectives for the underlying waterbody. The Stage 1 Appropriate Assessment screening is not legally

valid. The mitigation measures in the Appropriate Assessment Determination are inadequate. Residual effects from this project cannot be excluded. The Appropriate Assessment in-combination assessment is based on assumptions that cannot be substantiated. The Minister did not consult with the public in making the Appropriate Assessment Determination.


The FAC convened an Oral Hearing on 12 January 2021. The Committee sat in person and the DAFM and applicants participated remotely. The appellants did not attend. The DAFM confirmed that the Appropriate Assessment Report and Appropriate Assessment Determination were considered before the decision to grant the licence was made. The application was both field and desk assessed. An additional Natura 2000 site was added to the Appropriate Assessment Report - Lough Eske and Ardnamona Wood SAC – following a review of the Inspector's screening for Appropriate Assessment. This site had been screened out as it is at a separation distance of approximately 17km and in a different sub catchment with no hydrological connection. The applicant's stated that there are no watercourses on the site. There is peat on the site of no more than 1 metre deep, so an excavation method of construction is proposed. Excavation would be for a width of approximately 7.5m width and the final surface would be of imported stone from an authorised quarry.

Addressing the grounds of appeal, the FAC considers that no convincing specific evidence has been provided to indicate that the Appropriate Assessment procedures adopted by the DAFM in the Appropriate Assessment Report were incorrect or that the Determination made was erroneous. The FAC noted the evidence of the DAFM that the Report and Determination fed into the decision-making procedures leading to the grant of the licence. Recommended mitigation measures in the Appropriate Assessment Report and Determination were included as conditions of the licence. In respect of requirements of the EIA Directive, the FAC notes that the proposed road at 150m is significantly sub-threshold for mandatory EIA. The FAC considers that there was adequate information submitted with the application in regard to project description, location and the type and characteristics of potential impacts in order to carry out a preliminary screening for EIA. The FAC noted that this is a rural area with a dispersed settlement pattern, mainly focussed along the public road. There is ribbon development along the public road, both sides, a short distance to the north west of the project lands. The wider area has a significant coverage of mature and maturing forestry. Based on the information before it, the FAC concludes that the proposed road development alone, or in combination with other projects and land uses in this area, would not be likely to have any significant effect on the environment.

The FAC noted that no specific information has been provided by the appellant to indicate that the proposed development would threaten the underlying waterbody or that there is any realistic risk of residual impacts arising. The FAC is satisfied that the DAFM procedures adopted in this case were consistent with the requirements of both the EIA and Habitats Directives.

In deciding to affirm the decision to grant the licence, the DAFM concludes that the proposed development would be consistent with Government Policy and Good Forestry Practice.

Yours Sincerely,



Pat Coman, on behalf of the FAC