



18 January, 2021

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Our ref: 748/2020

Subject: Appeal in relation to Forest Road Licence CN86494

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN86494. 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

The Forest Road Licence CN86494 was granted by the Department on 2/09/2020.

Hearing

An oral hearing of appeal FAC 748/2020 was conducted by the FAC on 7/01/2021.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Ms Paula Lynch & Mr Pat Coman.
Secretary to the FAC:	Mr Michael Ryan.
Appellant:	[REDACTED] did not attend.
Applicant;	[REDACTED]
DAFM:	Mr Martin Regan and Ms Mary Coogan

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the 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 CN86494).

The licence pertains to 150 meters of forest road at Cabry, near Carndonagh, Co. Donegal. to serve 2.15 hectares of forestry. The specifications of the road were included with the application and it would be constructed through embankment and outlines 15m tree clearance and a carriage width of 3.4m.

The proposal was desk and field inspected by the DAFM on 29/6/2020. The DAFM certification stated that underlying soil type is predominantly blanket bog in nature and that the slope is predominantly flat to moderate (<15%). It was also stated that the project area is crossed by /adjoins an aquatic zone and the vegetation type within the project area comprises forest. The project is located in the

Bogstown River_SC_010 sub catchment, in the Donogh-Moville Catchment. It is further stated that in the underlying waterbody there is currently 2.2% forest cover and the percentage 5 years ago was 2.2%. The approx. percentage of forest cover within 5km is 12.37% and this was the same 5 years ago.

The DAFM undertook a screening in accordance with the provisions of the Habitats Directive. They observed that 4 European Sites lay within the 15km radius of the proposal: Lough Foyle SPA 004087, Magheradrumman Bog SAC 000168, North Inishowen Coast SAC 002012 and Trawbreaga Bay SPA 004034 and reviewed same. Lough Foyle SPA 004087 was screened out because of the nature and small scale of project, absence of any aquatic zone within or adjacent, and absence of any significant relevant watercourse within or adjoining the area. The Magheradrumman Bog SAC 000168, the North Inishowen Coast SAC 002012 and Trawbreaga Bay SPA 004034 were screened out due to location of the project area in a separate water body catchment to that containing the Natura site, with no upstream connection and a lack of any hydrological connection. The potential for the proposed project to contribute to an in-combination impact on European sites was also considered by the DAFM. The Department of Housing, Planning and Local Government website was consulted and 8 developments were found (dwellings, farming, communications infrastructure, forest road). The An Bord Pleanála and the Environmental Protection Agency websites were consulted and did not show any projects in the vicinity. The Donegal County Development Plan 2018-2024 was also consulted. The internal DAFM records were consulted and 2 afforestation projects, 1 Forest Road and 2 Felling Licences were identified at various stages of application /approval. The DAFM found the project to be in line with the Forestry Programme 2014-2020. The DAFM concluded that the project, individually, does not represent a source or if so has no pathway for an effect on any of the Natura sites listed in the Appropriate Assessment (AA) screening and consequently the DAFM deemed that there was no potential for the project to contribute to any effects , when considered in-combination with other plans and projects, on the Natura sites listed. A screening assessment to determine Environmental Impact Assessment (EIA) requirement was also conducted and the DAFM concluded that none was required.

There were two referrals: Donegal County Council, the Northern Region Fisheries Board/ the Loughs Agency. There was no response from the County Council. A response was received from the Loughs Agency dated 17/8/2020 and 6 'advisory notes' were recommended for inclusion on the licence. These related to pollution interception, track ruttings, use of best environmental practices to protect water quality, no removal/disturbance of material from river beds in Lough Foyle and Carlingford area, the fact that it is an offence to cause pollution detrimental to fisheries, and consideration to be given to sensitivity of nearby receiving waters. The licence was issued on 2/09/2020 with the standard conditions 1 to 6 as well as condition 7 relating to adherence to forestry and water quality guidelines.

There is a single appeal against the decision to grant the licence. The grounds of appeal are set out in the Notice of Appeal Form dated 11/9/2020 and are briefly summarised as follows:

- There is a breach of Articles 2(1), 4(3), 4(4) and 4(5) of the EIA Directive. Criteria from Annex III of the EIA Directive are not taken into account. Details of the whole project are not submitted. The Forest Road is not a whole project.
- The project area identified for the Forest Road is not consistent with the project area of DL07-FL0066 which is the related felling licence. There is a mapped hydrological connection between DL07-FL0066 and a Natura 2000 site.



- The determination of the inspector in terms of the requirement for EIA is inadequately reasoned. There is an error in law.
- Insufficient information is included with the application to permit the inspector to make a conclusive determination regarding EIA
- Details of the application are not accurate when compared with OSI imaging
- The licence threatens the achievement of the objectives of the River basin Management Plan for the underlying waterbody or waterbodies
- The Stage 1 conclusion for AA is not legally valid. The site is within the catchment area and zone of influence of a Natura 2000 site.
- Licence conditions do not provide for the strict protection of Annex IV species
- Licence conditions do not provide a general scheme of protection for wild birds prohibiting deliberate destruction or damage to their nests and eggs or removal of their nests.

The DAFM statement of 17/11/2020 and 24/11/2020 sets out their response. In brief, it was stated that the application was field and desk assessed by the Inspector and the Appropriate Assessment procedure relevant at the time was fully applied. In relation to the proposal, they stated that the 4 Natura sites identified within the 15km radius of the area were screened out due to 'No likelihood of a significant effect on any European site and Appropriate Assessment not required'. It was further stated by the Department's Forestry Inspector that *'I as District Inspector carried out both a desk audit and field inspection and reviewed submission/appeal. I am satisfied that all criteria referred to above have been fully adhered to and approval is in order'*. The approval was with the condition: *'Adherence to forestry & water quality guidelines'*.

The FAC convened an Oral Hearing on 7/1/2021. The parties were invited to attend in person or to join electronically. The FAC, DAFM and the Applicant participated electronically. The Appellant did not participate. The DAFM described how the proposal was both desk and field inspected and reiterated that they reviewed the submission/appeal in full and were satisfied that all criteria had been fully adhered to and that approval was in order. Under questioning by the FAC, the DAFM explained that with regard to the licence for DL07-FL0066, they were dealing with a separate licence for the Forest Road under CN86494, that the stream is on the far eastern boundary of the DL07-FL066 site but not hydrologically connected to the project with a separation distance of approx. 10m distance and a break in between of a public road.

The applicant described how they had carried out a ground survey of the site, before their desk assessment and explained how there was no hydrological link to a European site and that the felling licence referred to by the appellant was a different project mainly across the public road and that the stream was on the other side also. The FAC queried the in-combination effect and the DAFM explained that the felling licence mentioned was considered as part of the In-Combination Report.

The proximity to Lough Foyle SPA and its Qualifying Interests were also queried by FAC and the DAFM explained that this SPA and its Qualifying Interests were fully considered in the AA screening and the SPA was screened out (per AA screening: due to nature of project, small scale, absence of aquatic zone within or adjoining project, absence of any significant relevant watercourse within or adjoining watercourse). The question of referral to the Inland Fisheries Ireland (IFI) was raised by FAC and the

DAFM Forestry Inspector advised that referrals were made to the IFI, who referred them to the relevant body being the Loughs Agency. The Loughs Agency responded to DAFM on 17/8/2020 recommending inclusion of advisory notes. The DAFM therefore approved the licence with the addition of the condition 'Adhere to forestry and water quality guidelines'.

The FAC queried the DAFM regarding the adequacy of the bio map/OSI image and its accuracy. The DAFM Forestry Inspector advised that they regarded the map as accurate, adequate, well prepared and to be fully acceptable. The Applicant also described how the proposed forest road in question is clearly marked on the map as the dotted line from A to B which is also set out in the legend to the map. They advised that an existing forest road is visible on the ortho imagery and bio map, in the area across the public road from the proposal and that it is described in the bio map's legend as 'existing forest road'. The DAFM confirmed that there are no wayleaves.

The FAC queried further the situation of the site as regards slope and drainage. The applicant's engineer explained the slope is NE to SW, that any drainage would be in that direction away from the county road, away from the stream, and that there was no physical connection underneath the road towards the stream on the opposite side. The DAFM Forestry Inspector confirmed that the AA screening and In Combination report had been fully considered and taken into account before arriving at a decision in the case.

In relation to the written grounds of appeal regarding EIA, the FAC noted that the proposed forestry road is significantly sub-threshold for the purposes of EIA. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. 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. The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, 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 decision under appeal relates to a licence for forest road of 150m to serve 2.15 hectares, so is significantly sub-threshold for mandatory EIA, as set out in the Irish Regulations, and does not extend any existing forest road.

With regard to the project, the screening undertaken by the DAFM was evidenced to the FAC and the FAC examined the procedures followed by the DAFM before concluding that EIA was not required in the case. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impacts arising from the proposed development, to enable a screening for EIA. In this regard, the FAC noted the detailed information submitted describing the proposed development, submitted information relating to the location, forestry coverage in the townland and in the underlying waterbody and the field inspection carried out in advance of the making of the decision. The FAC noted that the DAFM had considered other projects, including forestry related projects, in an in-combination assessment. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that procedures followed by the DAFM in the screening were flawed or that the conclusion that an EIA is not required, is incorrect.

The appellant contended that the project road area was not consistent with the area of DL07-FL0066 (which relates to a felling licence in the area) which has a hydrological connection to a Natura site. The



FAC noted that the project area under appeal relates to the 150m forest road. The FAC also noted that as part of the Stage 1 AA, the Natura sites within a 15km radius of the project area were identified and screened out and that the In-Combination Report, which reviewed forestry activity, including DL07-FL0066 in the river sub basin of the project, concluded that the project when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on the Natura sites listed.

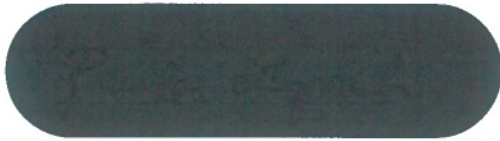
In relation to the contention that the OSI imaging details in the application were not accurate, the FAC examined in detail the maps and ortho imagery provided and took into account the contributions on this matter made by the DAFM and the applicant during the oral hearing, and concluded that there was no inaccurate representation.

With regard to the ground of appeal concerning the threat to achievement of the objectives of the River Basin Management Plan and the non-referral to the IFI, the FAC noted that referrals were made to the IFI, who referred the DAFM to the relevant body being the Loughs Agency. The Loughs Agency responded to the DAFM and the DAFM confirmed that the Agency's recommendation on inclusion of advisory notes in any approval was addressed by them by including on the licence the additional condition of 'Adhere to forestry and water quality guidelines'. The FAC conclude therefore that the required consultations were carried out in relation to impacts on achievement of objectives for the underlying waterbody/ies under the River Basin Management Plan for Ireland 2018-2021.

The FAC considered the grounds with regard to the Habitats Directives and Article 6(3) of that Directive. The FAC considered the Appropriate Assessment screening and the In-Combination Report in this case. The FAC considered that the procedures adopted in these were consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound. Having regard to the screening and to the in-combination assessment the FAC is satisfied there is no likelihood of significant effects from the proposal on any of the screened out Natura 2000 sites listed. The FAC noted that the recommendation by the Loughs Agency had been incorporated into the licence granted. The FAC is satisfied that the proposed development, on its own or in combination with the other plans and projects, would not give rise to the likelihood of a significant effect on the Natura sites listed. As regards the grounds of appeal concerning licence conditions and a system of protection for animal species listed in Annex IV (a) of the Habitats Directive and concerning licence conditions and a general system of protection for all species of birds as required under Article 5 of the Birds Directive, the granting of the forest road licence does not exempt the holder from meeting any legal requirements set out in any other statute and, as such, they are not necessary as conditions attaching to this licence. The FAC noted that the appellant did not submit any specific details in relation to animal species breeding, rearing, hibernating or migrating on the site nor any in relation birds nesting or rearing on this site. In these circumstances, the FAC concluded that conditions should not be attached to the licence.

In deciding to affirm the decision of the Minister to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely

A dark, rounded rectangular redaction box covering the signature of Paula Lynch.

Paula Lynch on behalf of the FAC