



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

13th July 2021

Subject: Appeal FAC 256/2020 in relation to licence CN85588

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 (as amended), has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CN85588 for forest road of 295 meters(m) at Moanlahan, Raheen, Co. Cork was approved by the DAFM on 22nd May 2020.

Hearing

A hearing of appeal FAC 256/2020 was held by the FAC on 26th May 2021. Members of the FAC in attendance were Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions made, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant licence CN85588.

Summary of licence and file

The licence relates to the construction of a forest road in two sections and comprising 295 metres total length to serve 16.21 ha of forestry. The application is dated the 8th of January 2020. Various documentation including application forms with details of construction, site notice, photo of the site notice in situ, bio-map, location maps, site management plan, a pre-approval submission and the specifications of the road were observed by the FAC to be on the DAFM file which records the application process. These show a longer piece of road (240m) to be ca. 9.5km southwest of Fermoy and ca. 6.7km west Rathcormack. A second, shorter (55m), piece of road is ca. 800m to the west.

The application documentation (Annex 3) indicates that felling is to be a thinning of Sitka spruce and Lodgepole Pine planted in 1997. Total forest area is given in Annex 3 as 25.96ha and the Harvest Area is stated to be 16.21ha. The road design (Annex 2) is to be "Excavate and Formation" for both sections of road. The pavement surface is to be 804 grade stone, the gradient is to be 1:12, and having a cross slope of 1:20. The biomap shows few features of interest in the plots related to the longer section save an ESB 10Kv line some distance from the road. Watercourses and Hedgerows/Scrub are marked on the biomap relating to the second section of road and these can be seen to be some distance (over 400m) from the proposed road section.

There were no submissions from the public. The application was referred to Cork County Council on the 20th of February 2020 and no reply is to be found on file. A referral was also made to the DAFM archaeology section, who made recommendations. The DAFM archaeology referred these recommendations to the Department of Culture, Heritage and the Gaeltacht for observation who agreed with the DAFM recommendations. A response was sent to the Forest Service on the 30th of April 2020. These recommendations centre around maintaining a 30m operations exclusion zone around the monument in the forest to be serviced (which is a Fulacht Fia).

A Forest Service Inspector's certification report is on file which notes both desk and field assessments of the application. The certification describes the site as having a predominant soil type underlying the project area that is predominantly podzols in nature. It gives the slope as predominantly flat to moderate (<15%), and states that the project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area is stated to comprise conifer forest.

The Inspector's certification includes a screening for Appropriate Assessment. This identifies the two Natura sites: the Blackwater Callows SPA [4094] and the Blackwater River (Cork/Waterford) SAC [2170]; as being within 15km of the project area. The SPA is screened out on the basis of a Birds Foraging table, while the SAC is screened out on the basis of: the absence of any aquatic zone within or adjoining the project area; and the absence of any significant relevant watercourses within or adjoining the project area.

The screening also states that the project will not affect these sites as a result of in-combination effects. An in-combination report is on file detailing planning searches as having taken place on the week of the 6th of May 2020. It includes the felling licence for the area to be served and notes that the felling licence has been referred for archaeological assessment.

The Inspector's certification report also includes a consideration of requirement for Environmental Impact Assessment which includes consideration of spatial information in the vicinity of the site carried out on the 21st May 2020. This considers the project across a range of criteria including general project characteristics, water, archaeology, landscape and visual amenity, non-designated and designated sites and habitats, social factors, safety, and public participation. The assessment concludes that an EIA is not required.

The DAFM issued a licence to the applicant on the 18th August 2020 which contains conditions of a standard nature, archaeological conditions, details of a gate to be installed and the requirement for drains.

Grounds of Appeal and Statement of Fact.

There is one appeal against the decision to grant the licence. In summary the grounds are:

1. That the decision does not comply with the Habitats Directive, the Birds Directive, and the Environmental Impact Assessment Directive or the basic guidelines of the NPWS, for the following reasons:
 - a. That the test for Appropriate Assessment Screening (of a proposed project) in Irish and EU law is that is merely necessary to determine that there may be an effect rather than to state that it will not have a significant effect.
 - b. That if a development is within 15km of a Natura 2000 site it has been screened in.
 - c. That the judgement in Case C-323/17 People Over Wind and Peter Sweetman v Coillte by the Court of Justice of the European Union (CJEU) applies, and that:
 - i. It is not appropriate, as the screening stage, to take account of the measures intended to avoid or reduce the effects of the plan or project on that site;
 - ii. That an assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings capable of removing all scientific doubt as to the effects of the proposed works on the protected site concerned.
 - d. That a map showing the SACs and SPAs and the site of the proposed development should be attached.
 - e. That regarding screening for Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50h, and also that it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development including thinning and clear-fell.
2. That it is the duty of the FAC to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law.

In statements to the FAC, the DAFM submitted that the decision was issued in accordance with DAFM procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act. The statement notes that the Appropriate Assessment Determination (which the FAC takes to refer to the screening) was carried out by the DAFM Ecology Unit.

Consideration by the FAC

In addressing the grounds of appeal the FAC had regard for the Grounds of Appeal, the Statement of Fact, the DAFM file relating to the processing of the licence application, and publicly available sources of information such as mapping provided by the EPA, OSI and DAFM.

The FAC considered, in the first instance, as to the completeness of the assessment to determine for EIA requirements and those grounds relating to EIA. In considering this aspect, the FAC notes that the EU EIA 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. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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 a forest road of 295m, so is sub threshold for mandatory EIA as set in Irish Regulations. The road would be built to and through managed forest land outside of any area designated for conservation. The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC having considered all of the evidence before it, is not satisfied that a serious or significant error or a series of errors was made by the DAFM in relation to their EIA consideration and concurs with the conclusion reached.

In addressing the grounds of appeal relating to Appropriate Assessment, the FAC considered, under Article 6(3) of the Habitats Directive, that any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans and projects, having regard to the conservation objectives of that designated site. The DAFM, in this case, undertook a Stage 1 screening, and found two European sites within 15 km of the proposal area as outlined above, and that there was no reason to extend the zone of influence in this case. The sites identified were considered together with their qualifying interests or special conservation interests, and in each case the possibility of impact was screened out and reasons for this conclusion were recorded.

The FAC consulted publicly available information from the NPWS and EPA and readily identified the same two sites. The project site can be observed to be ca. 350m from the Bride (Blackwater)_020 river at its closest point, the status of which is Good under the 2013/2018 monitoring cycle as record by the EPA. The DAFM recorded that the site had been desk and field assessed by a DAFM Inspector who recorded that there are no aquatic zones or significant relevant watercourses within or adjoining the site. This was confirmed in the statement to the FAC and it was submitted to have been undertaken in

March 2020 and that no watercourses are on site. Blackwater Callows SPA lies some 11.4km to the northeast at its closest distance and has been designated for a number of water and wetland birds species and associated habitat. The DAFM submitted that this was screened out having regard to the foraging table developed by the DAFM. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects on the week the 6th of May 2020 in a stand-alone document, and they 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 any Natura site. On the basis of the foregoing, the FAC is not satisfied that an error was made by DAFM in the processing of the application in relation to Appropriate Assessment as required by the Habitats and Birds Directives.

In relation to the ground of appeal referring to the Birds Directive it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC considered that the DAFM had undertaken an assessment of the proposal, completed a screening for Appropriate Assessment, found two European sites within 15km, one of which is an SPA (which the FAC found to be at a distance of c. 11.4km), screening each of them out and that Appropriate Assessment was not required. The FAC also note that the granting of a licence for a forest road does not exempt the holder from complying with any legal requirements set out in any other statute.

In considering the appeals the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions made. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision regarding licence CN85588 and neither that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision in relation to licence CN85588, 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 John Evans.

John Evans, On Behalf of the Forestry Appeals Committee

