



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

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18th May 2021

Subject: Appeal FAC 250/2020 relating to Licence CN85156

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 CN85156 is for the construction of a forest road 350 metres in length in the townland of Agharra, Co. Longford. The proposed forest road services an area of 14.52 Ha. of mainly conifer plantation. The application was submitted to the Department of Agriculture, Food and the Marine (DAFM) on 24/02/2020. One third party submission was received on the licence application dated 07/04/2020 by the DAFM. The licence was approved by the DAFM on the 28/05/2020 subject to a number of standard of conditions.

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

Hearing

The appeal was considered by FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr Iain Douglas, Mr. Vincent Upton on the 7th of May 2021.

Decision

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the Statements of Fact submitted by the DAFM, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence reference CN85156 at Agharra, Co. Longford.

Background

An undated Inspector's Certification Pre-Approval Report certified by the DAFM on 24/05/2020 indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise of grasses and trees.

The report notes that there are 9 Natura 2000 sites within 15Km of the proposed forest road, 5 SACs and 4 SPAs [Ballymore Fen SAC 002313, Ballymore Fen SAC 002313, Garriskil Bog SAC 000679, Garriskil Bog SPA 004102, Glen Lough SPA 004045, Lough Iron SPA 004046, Lough Owel SAC 000688, Lough Owel SPA 004047, Mount Jessop Bog SAC 002202] and records an Appropriate Assessment (AA) Screening decision to screen out the application for these sites. The reason stated was the position of the project area downstream from the Nature site and the subsequent lack of any hydrological connection.

The report also contains an undated in-combination assessment carried out for the project by the DAFM dated 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 National Parks & Wildlife Service (NPWS). The NPWS report dated 06/05/2021 noted that the NPWS had no comment to make and attached general observations on the duties of a public authority with regard to the Habitats & Birds Directives and Appropriate Assessment.

The licence application was referred to Longford County Council who indicated in its response of 01/04/2021 that it had no objection to the forest road subject to four conditions. These conditions were superseded by the condition attached to planning permission ref. 20/40 for the construction of a new forestry access entrance to an existing mature forestry and all ancillary works issued on 26/06/2020 after licence issued.

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.
- A map showing the SACs and SPAs and the site of the proposed development should be attached.
- Screening for EIA must include details of 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 no roads which are not included in the application will be needed to carry out this development, including thinning and clearfell.
- It is the duty of the FAC to carry out both a full AA Screening and a full EIA Screening in accordance with the law.

Evidence before the FAC

At the hearing FAC had before it, addition to the record of the decision, a Statement of Fact (SoF) dated 24/07/2020 provided by the DAFM confirming the administrative details of licence CN85156 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.

The FAC also FAC had before it an SoF was provided by the DAFM Inspectorate dated 01/02/2021 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. It also states that a field inspection was in fact carried out which revealed that no hydrological connection from the proposed location of the forest road to a watercourse exists and no drainage is required. The SoF also states that This project is outside of commuting range of the listed qualifying interests of associated Natura sites.

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 the forest to be served by the road is bounded by agricultural grassland and forestry on the west, by agricultural grassland on the east, a public road on the north and the river Inny to the south. The proposed forest road itself is fully contained within the existing forest and located in the west of the western portion of 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 in the northern section of the forest and basin peat in the southern part.

There is a WFD River Waterbody, the Inny_090 bisecting the forest circa 140m east of the proposed forest road. The Inny_090 is classified in the WFD River Waterbody Status report 2013-2018 as good water quality status with no risk identified. The WFD 3rd Cycle categorises the river waterbody as not being at risk. The Bio Map submitted with the application shows that there is direct hydrological connectivity between the forestry and the main body of Inny_90 waterbody via drains on the east and west boundaries of the forest.

The Inny_90 River Waterbody is part of the WFD 26F Upper Shannon Catchment and the Inny[Shannon]_SC_080 Sub Catchment.

The underlying groundwater body is the Inny IE_SH_G_110 with the risk to reviewed due to Anthropogenic Pressures in the WFD River Waterbody Status report 2013-2018. 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 9 Natura 2000 sites identified as being within 15km of the site and those are the 9 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 identified in the Longford County Development Plan 2015-2021

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 for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 5 SACs and 4 SPAs 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 conclusion based on those procedures 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 was appropriate.

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 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 FAC notes that 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 350 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.

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 Inspector's Certification Pre-Approval Report 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 (350m) 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 within the statutory provisions considers an appeal made in relation to a decision to issue a licence and the procedures undertaken in relation to how the decision was made. 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 following notification of the appeal. 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 CN85156 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 black rectangular redaction box covering the signature of Iain Douglas.

Iain Douglas, On Behalf of the Forestry Appeals Committee

