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15th November 2021

Subject: Appeal FAC 083/2021 in relation to forest road licence CN87555

Dear [REDACTED]

I refer to the 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 14 A (1) of the Agriculture Appeals Act 2001, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Hearing

Licence CN87555 for forest roading was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 07/04/2021. A Hearing of appeal FAC 083/2021 was held by the FAC on the 12/10/2021. Following examination and assessment of documentation on the file before it, the FAC decided to consider the appeal further at an Oral Hearing which was convened on 02/11/2021.

In attendance at the hearing on 12/10/2021:

FAC Members: Mr Des Johnson (Chairperson), Mr Seamus Neely & Mr Luke Sweetman.
FAC Secretary: Mr Michael Ryan.

In attendance at the oral hearing on 12/10/2021:

FAC Members: Mr Des Johnson (Chairperson), Mr Seamus Neely & Mr Luke Sweetman.
FAC Secretary: Mr Michael Ryan.
Applicant's Representatives: [REDACTED]
Appellant / Representative: [REDACTED]
DAFM: Ms Mary Coogan & Mr Donal Keegan.

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 at the Oral Hearings and all other submissions, before deciding to allow the appeal and set aside the decision to grant licence CN87555.

Background

This licence is for the construction of 1095 metres of forest road in three separate pieces at Doon, Co. Galway. The Inspector's Certification on file states the soil type is predominantly podzols in nature, the slope is predominantly flat to moderate (<15%) and the project area is crossed by / adjoins aquatic zones. The vegetation type(s) within the project area comprises conifer and broadleaf forest. The project area is located in two river sub-basins (CARRA-020 and LECARROW STREAM_010) – both waterbodies have been assigned a GOOD status under the Environmental Protection Agency (EPA) 2013-2018 Water Framework Directive reporting period. The Inspector's Certification document on file also states that the application was desk and field assessed (29/03/2021). The proposal is said not to be in a fisheries-sensitive area, not within the 0-0.5 km buffer zone of a SAC, SPA, National Park, NHA, pNHA or Nature Reserve, nor within a Freshwater Pearl Mussel 6km zone. The project area is said not to adjoin a listed archaeological site or monument, and there is said to be no impact on a Way Marked Way, on a densely populated area or areas used by the public for recreation. Neither is the area within a Prime Scenic Area as per the County Development Plan or in an area listed as having Outstanding landscape.

The application was referred to Western Region Fisheries Board and Galway County Council and there is no reply to be found from either on file. The application was referred to the DAFM's Archaeologist on 20/12/2020 and the resulting Archaeologist's submission (dated 27/12/2020) set out two conditions for inclusion in the licence relating to monitoring and reporting during construction works. This submission was agreed with the National Monuments Service. In processing the application, the DAFM completed a Stage 1 Appropriate Assessment (AA) Screening which screened the following four European sites within 15km of the proposal: Lough Corrib SAC 000297, Lough Rea SAC 000304, Lough Rea SPA 004134 and Slieve Aughty Mountains SPA 004168. All four sites were screened out for reasons relating primarily to distance and physical separation between the project area and the said European Sites.

The DAFM considered the proposal's potential to contribute to an In-Combination effect on European sites. Various planning websites were consulted along with the DAFM's internal records for other plans

and projects focusing on the general vicinity of the project area in the River Sub-Basins CARRA-020 and LECARROW STREAM_010. Paragraph 2.1 of the In-Combination report includes an In-Combination Statement for the project – the conclusion of which states that DAFM excludes the likelihood of project CN87555, either individually or In-Combination with other plans and projects, having a significant effect on the European Sites listed in the report. The DAFM issued the licence on the 7/04/2021 subject to relatively standard conditions 1 – 15. Condition 15 also included a requirement to comply with the conditions set out by the DAFM Archaeologist.

Grounds of Appeal

There is one appeal against the issue of the licence in this case. The written grounds of appeal are summarised below:

1. Submission that the forest road will increase surface water runoff into the back of appellant's property and cause additional drainage problems,
2. Submission that the ground rises steeply from back of appellant's house,
3. Submission of opinion that the proposed forest road will devalue appellant's house,
4. Queries who will pay if trucks damage drainage.

DAFM Statement to the FAC

The DAFM provided a written response to the grounds of appeal in a statement to the FAC which includes confirmation regarding the processing of the licence application to the requirements of the law and procedures, and also sets out the various processing dates. It includes a response to the appeal grounds from the Inspector which sets out that this forest road licence application was reviewed and that being aware of an archaeological feature within the planted area the DAFM Archaeologist was contacted to seek views on the proposed works. It was confirmed that an archaeological report was received and that same is available on IFORIS. The statement confirmed that the site was inspected on the 29/03/21, that a single consent pack accompanied the licence application together with engineer's drawings and sight lines, in terms of material widening of the existing entrance, and that this was reviewed on site. The statement sets out that alternative routes were considered by DAFM before settling on the approval of the proposed route. The statement notes that a solicitor's letter was received by DAFM on 26/07/21, stating that the land on which the proposed new bellmouth entrance and first length of the proposed forest road was to

be built was not owned by the Applicant. It sets out that folio details were checked by DAFM, and that it was confirmed that the land parcel in question, GY67103F, is not owned by the applicant. It notes that the decision to recommend approval of this application was based on an incorrect declaration by the registered forester to Q2 on the application form, wherein it stated that the Applicant owned all the land involved in the application.

Hearing / Oral Hearing

The FAC convened a hearing of the appeal on the 12/10/2021 and following examination and assessment of documentation on the file before it, the FAC decided to consider the appeal further at an oral hearing which was convened on 02/11/2021. The FAC sat remotely for this hearing. The DAFM, the applicant's representatives, the appellant and the appellant's solicitor participated remotely. At the outset of the oral hearing the Chairman sought and obtained a confirmation from the Coillte personnel in attendance at the hearing that they had been formally instructed by the applicant to represent her at the hearing.

The DAFM described the background to the processing of the application. Responding to FAC questions, the DAFM confirmed that they were not aware at the time of making the decision on the licence application that the applicant did not own a portion of the land over which part of the forest road and bellmouth entrance was to be constructed and that it had relied on the content of the application as submitted. The DAFM answered some further questions from the FAC regarding clarifications as to the location of the appellant's property in relation to the route / location of the proposed road. The DAFM representative also confirmed that the 'No' answer recorded to question 16 in the Inspector's report on file in relation to whether the design and construction of the proposed road took into account soil, terrain and slope in a way that mitigates against environmental damage, was entered in error and that same should have been 'Yes'. Similarly, it was confirmed that that the 'No' answer recorded to question 33 in the Inspector's report on file in relation to safety related standards was an error and that same should have been a 'Yes'.

The applicant's representatives set out the background and some detail relating to the application for the licence in this case including in relation to the site notice, soil type, the excavation proposed and the materials to be used in the construction of the road. It was also confirmed that the application documentation and maps were provided for the applicant by Coillte. It was asserted by the applicant's representatives that the lands on which the bellmouth is proposed are 'registered to the Blackfords'.

The appellant asserted that the 'real owner' of the lands on which it is proposed to construct the bellmouth entrance and first portion of the proposed road adjoining same is [REDACTED] It was confirmed by the DAFM representative that the lands at the bellmouth and at the first short portion of the road were in fact registered to [REDACTED] The appellant also queried whether an existing route could be used for the extraction of the timber. Some detail was provided by the DAFM representative as to the DAFM'S consideration of this matter during the processing of the licence application. The appellant's solicitor confirmed that he inspected the site of the proposed bellmouth entrance and road and asserted that the FAC should take into consideration that all of the lands over which the forest road is to be constructed are not owned by the applicant. He confirmed that the appellant had not and will not consent to the proposal. In response to a question from the FAC as to why a right of way / access, as asserted by them is not registered, the applicant's representative indicated that this may be down to an error and that it was this matter that the applicant was formalising at present.

The FAC considered the full grounds of appeal and had regard to all materials on file and submissions made, including at the oral hearing. The FAC, in considering the content of the statement of fact as made to it by the DAFM wherein it sets out that *'the Decision to recommend approval of this application was based on an incorrect declaration by the Registered forester to Q2 on the application Form, stating that the Applicant owned all the land involved in the application'*, considered that a serious error had been made in the application made to the DAFM. The FAC further considered that based on the information available to it including in relation to the ownership issues arising, that it was not satisfied that the applicant would be in a position to construct the road as proposed. The FAC is satisfied that a serious or significant error was made in the application for licence in this case and has decided to allow the appeal and set aside the decision regarding licence CN87555.

Yours sincerely,


Seamus Neely On Behalf of the Forestry Appeals Committee

