



Forest Clover One Ltd & Sexton Lynchet Ltd

16 July 2026

FAC No. 11/2024 - Licence Ref No: CN92827

Dear Sir/Madam,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (DAFM) on 22/1/2024. 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.

Hearing and Determination

A hearing of this appeal was held remotely by the FAC on 28/12/024 and having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

FAC Members in attendance at the hearing were: Mr. Edmund Carroll (Chairperson), Mr Iain Douglas and Mr. Vincent Upton.

The Secretary to the FAC for the hearing was Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice and grounds of appeal, the Statement of Facts and submissions received, and in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN92827. The reasons for this decision are set out hereunder.

Background

This is an appeal in respect of the grant by the Minister for Agriculture Food and Marine of a forest licence number CN92827 for a forest road in the townland of Lavalla in the County of Sligo. This site is very close to the border with County Leitrim. The length of the forest road is 700 metres of which 140 meters is new and the remaining 560 metres is an upgrading of an existing right of way. The forest road is at the end of a right of way which begins from what might be called a county side road which leads onto the L1201.

The Appellant with his family reside on the side of the right of way approximately midway between the beginning of the right of way at the county side road and the commencement of the proposed forest road. The licence was granted on 22/01/2024 and the appeal was filed on 08/02/2024. The licence requires the forest road to be constructed in accordance with, inter alia, the Operational Proposals and Specifications enclosed, Departmental guidelines and

requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology and detailed standards and procedures as described in the current Forest Service Roads Scheme and the COFORD Forest Road Manual. In addition to the Department's environmental and silvicultural guidelines the following specific conditions were also included:

“Condition: Adhere to DAFM Ecologist Appropriate Assessment Determination dated 11/1/24 and attached. Reason: Protection of the environment –

Condition: Consult with Sligo County Council roads section with regard to haulage of timber on public roads. Reason: Upkeep of public roads and road safety.”

Sligo County Council being a prescribed body was consulted and responded with its observations and setting out its conditions for protection of the public roads and water quality including drinking water quality.

The National Parks and Wildlife Service, also being a prescribed body, was consulted and responded saying it had no comments upon the particular application but setting out its general observations in relation to forestry application referrals.

The new Forest Road being far less than the 2000 metre threshold and serving a forest area of less than 50 hectares was subjected to a subthreshold screening by the Department and screened out for Environmental Impact Assessment (EIA).

The Appropriate Assessment (AA) screening examined 12 SACs and all but one site i.e., the Lough Gill SAC IE0001976 were screened out. An AA was conducted in respect of the Lough Gill SAC and it was determined that no reasonable scientific doubt remained as to the absence of any adverse effect on the integrity of any European site.

Grounds of Appeal

The Grounds of Appeal can be summarised as follows:

1. Sligo County Council Conditions
 - a. Sligo Co. Co. conditions were not incorporated into the Licence;
 - b. Vibration Impact – no consideration given to local sensitive receptors to impacts from nuisance, noise and vibration to local residents, family home, workshop, shed buildings, farm animals as a result of use of road by heavy machinery required for both road construction and for transport of timber.
2. Assessment to determine EIA Requirement.
 - a. Department was remiss in not requiring an EIA. Department failed to take into account other felling licences and other ongoing and proposed forest roads in the area. Coillte has an application for 1565 m of forest road to service other nearby forests which means the combination of roads exceed 2000m and forests served exceed 50 ha.

- b. Because the forest road is grant aided it will be required to be open to the public which will oblige the Appellant to erect fencing along a section of the road in order to protect him from Occupier Liability Act claims.
- c. Forest Road Scheme paras 7.24 and 7.26 envisage co-operative ventures involving joint or shared access between forests and “where co-operative road applications are more cost effective and sustainable a single application may be refused”.
- d. Assessment to Determine EIA Requirement under the heading of Natural Resources Referral Responses asks if all referral responses were received and given due consideration but received a negative response. Observations of NPWS were not taken into account re biodiversity, Annex IV species, badgers, pine martens and stoat.
- e. Water and Freshwater Pearl Mussel (FPM).
 - i. Alleged sensitive area and impacts on water and FPM meant EIA was required;
 - ii. EIA screening not prepared in accord with environmental values of Forest Service Code of Best Forest Practice or Coford Forest Road Manual.
- f. Landscape Amenity and Recreation.
 - i. Failure to properly assess noise, vibration and traffic impact and have regard to Co. Co. requirement for half loads.
- g. EIA subthreshold Determination.
 - i. Inspector’s determination based on no scientific data or evidence and expressly acknowledged no account was taken of mitigation measures. It is contrary to NPWS general observations and Sligo Co. Co. conditions. Also, EIA screening assessment prepared well after AA which identified mitigation measures.

3. Inspector’s Certification report.

- a. Allegation that Inspector had consulted Appellant who addressed the issues is rejected.

4. Biodiversity site map

- a. Map in error in showing Right of Way in Forest Area of Plot 1. A ditch watercourse and fence separate the Right of Way from the Forest property.
- b. Map shows a site compound/Fuel Store on Appellant’s land adjacent to a watercourse. Appellant has not given permission for this.
- c. Map has omitted watercourses, hedgerows and ditches on both sides of the Right of Way which exist for over 400 metres of the Right of Way.
- d. Width of Right of Way between ditches/watercourses on both sides is merely 2.4m whereas forest road should be 3.4m. Detrimental damage to watercourses

flora and fauna is envisaged.

5. AA screening Report and Determination
 - a. Planning case reference numbers are not referenced in either Leitrim or Sligo Co. Co. planning portals
 - b. No reference is made to three planning applications for single storey domestic dwellings which are nearby.
6. AA screening report and in-combination assessment are inadequate by reason of the lack of reference to the three aforesaid planning applications for dwellings.
7. Supporting reports from ESC Environmental Ltd and Mel Casserly Consulting Engineer are also exhibited with the Grounds of Appeal.

Department's Statement of Fact.

The Department's replies in its Statement of Fact can be summarised as follows:

1. Sligo County Council Conditions

It is a condition of the licence to consult with Sligo Co. Co. Road engineer with regard to haulage of timber on public roads. The Council's comments relate to public roads and not to private rights of way.

The licence application is for a forest road which does not go past the Appellant's home. It is for the Applicant to abide by health and safety considerations including vibration at the Appellant's home. The Department is responsible for assessing the project along the route of the proposed forest road and not outside of it.
2. Assessment to determine EIA Requirement.

These are two distinct applicants and landowners. Department cannot insist on a joint road application. EIA is not required given projects are distinct and separate and both are below the EIA thresholds. Appropriate mitigation measures mean that the project can screen out for EIA.
3. Inspector's Certification report

All external referrals were completed. Inland Fisheries did not respond. NPWs responded with a no comment.

A condition was added to the licence requiring liaison with Sligo Co. Co. The additional conditions recommended by the Council are for the Council to manage and not the Minister.

An ecologist did assist the assessment. Additional conditions were not necessary for Annex IV species as none were found on site. Regardless, applicant is legally required to adhere to the relevant aspects of the Wildlife Act whilst carrying out Forest operations. The questions answered around water and FPM had been answered correctly and did not change the decision.

Answers to landscape, amenity and recreation were correctly answered as No. With mitigation measures and details of the operation itself no issue arises in respect of those aspects. Council response regarding half loads applies to the public roads not the current application.

Department confirms its decision in respect of not requiring an EIA. No additional mitigation measures were required in the screen-out decision. Standard conditions in the licence address any issues identified in screening decision and decision to award the licence. Department's forestry inspector has the professional capacity to reach a determination on the EIA screening. The EIA screening output demonstrates the process engaged in, in reaching a determination.

4. Biodiversity site map

Department did clarify with the Applicant the right of way issues and was satisfied with response.

The Biodiversity map dated 6/12/2022 outlines all environmental features required as part of the application and assessment process. The Department notes that in some cases there are finished road width limitations similar to this case and it accepts that the finished road width may only be around 2.4m wide. Applicant has a legal right to access this property and has provided the necessary evidence.

Marking the fuel storage area on a third-party property is an error. This can be addressed at operation stage by requiring that the storage takes place within the confines of the Applicant's property. The Department does not see the need to deviate from a licence approval due to such a minor error.

5. AA screening Report and Determination

Department acknowledges the error made in relation to the in-combination assessment, and concerning planning decisions from another county. Issue would not have an impact on the decision to approve the forest road licence. The in-combination assessment, in particular the non forest projects, is a small element of the assessment. None of the non-forest developments in the area would have an impact nor would the forest projects in the area. All would have undergone their own individual assessment. Regardless of the small error in noting non-forest projects from another county the in-combination assessment reached was correct and this project either alone or in combination with other projects (forest and non-forest) would not cause any significant impacts.

Consideration by the FAC

1. Sligo County Council Conditions

With regard to the contention that Sligo Co. Co. conditions were not incorporated into the Licence, the Licence does contain a condition requiring the Applicant to consult with Sligo Co. Co. roads section with regard to the haulage of timber on public roads. It will be a matter for the Council to monitor and supervise the Applicant with regard to haulage operations in respect of both construction and timber on and over the public roads. The Minister has no jurisdiction over the public roads or indeed the private right of way that is adjacent to the Appellant's home and is outside of the forest road the subject matter of the licence.

With regard to the impacts from nuisance, noise and vibration to local residents, family home, workshop, shed buildings, farm animals as a result of use of the road by heavy machinery required for both road construction and for transport of timber it will be for the Applicant to comply with Health and Safety requirements and as a matter of common law to have regard to the effects of its operations on other road users and neighbours. It is also a condition of the licence that the Applicant comply with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology and with the Forest Road Manual. It is also noted that both construction operations and timber haulage will be of relative short duration in the overall context.

In the circumstances the FAC does not see that the Minister has erred in this regard.

2. Assessment to Determine EIA Requirement.

Regarding the contention that the Department was remiss in not requiring an EIA and failed to take into account other felling licences and other ongoing and proposed forest roads in the area it is to be noted that this project is well below the threshold for EIA. Nonetheless, a screening for EIA was carried out and that determined that no EIA was required. The Department is correct to point out that this application and the Coillte application referred to by the Appellant are two separate and distinct applications and by separate and distinct landowners and developers. They cannot be obliged to make a joint application. The environmental impacts of the second forest road application can be taken into account during the EIA screening exercise when considering the in-combination effects of other plans and projects and this has determined that no significant environmental effects arise.

Whether the Appellant erects a new boundary fence between his land and the right of way is not a matter for the Minister but is a matter entirely within the Appellant's discretion. There is no evidence that future usage of the right of way over time will be significantly different from what it has been.

Regarding the Forest Road Scheme and paras 7.24 and 7.26 which envisage a co-operative venture involving joint or shared access between forests this is a scheme which is an entirely separate scheme from the Forest Road licensing system and is excluded from the jurisdiction of the FAC under Schedule 1 of the Agriculture Appeals Act 2001. In any event the particular paragraphs quoted indicate that they are permissive and not mandatory.

The Department explains that the "No" response to the question under the heading of Natural Resources Referral Responses as to whether all referral responses were received and given due consideration was due to the fact that there was no response from Inland Fisheries Ireland. With regard to the contention that the observations of NPWS were not taken into account regarding biodiversity, Annex IV species, badgers, pine martens and stoat, it is noted that the

NPWS had no comment on the particular application but did send on its general recommendations. The Department confirms that the application was assessed with input from an Ecologist and the species referred to were not found to be present on the site at any stage in advance of the licence decision. The report of the Appellant's Environmental consultant is noted which indicates the presence of certain protected species. The Applicant will in any event be subject to the obligations arising under the Wildlife Act and the Habitats Regulations and will have to comply with these obligations in respect of the species now identified to be present on the site.

With regard to Water and Freshwater Pearl Mussel the answers in the Assessment to Determine EIA have been correctly answered. It is noted that the ecological status of the Killanummery river was recorded as good in the AA Determination and currently remains so on the EPA waterbody website. Notwithstanding these sensitivities the Department has assessed that the proposed forest road does not itself have an impact that is likely to have significant effects and therefore no EIA is required. The FAC does not see that the Department has erred in this regard. There is nothing to suggest that the screening exercise has not been properly carried out. In respect of Landscape Amenity and Recreation and the matters contended for under that heading the Department is entitled to take the view that in the overall scheme of things there is not likely to be significant effects bearing in mind that the construction of the forest road will involve temporary operations as will the felling operations and will not be long lasting and persistent. Insofar as the county council is limiting haulage to half loads on public roads this will likely translate into the necessity for half loads on the right of way past the Appellant's home which will alleviate noise, nuisance and vibration effects.

With regard to the heading of EIA Subthreshold Determination, it must be noted that the Assessment to Determine EIA Requirement is the EIA screening exercise and the Department has made a determination that an EIA is not required. That determination was made after examining the relevant EIA Directive Annex III criteria including the matters set out in the Assessment to Determine EIA Report. Based on the answers and information available the Inspector was entitled to come to the conclusion that he did which was that it was not likely that there would be significant effects and accordingly that EIA was not required. The Department is also of the view that there are unlikely to be significant environmental effects from this particular road project without even taking into account mitigation effects. As a matter of law when it comes to EIA the Department is perfectly entitled to take mitigation measures into account when screening for EIA (see last sentence of Article 4(4) and Article 4(5) of the EIA Directive) and in this regard the exercise is unlike that required for AA screening where mitigation cannot be taken into account in the AA screening exercise. One would have thought that when one adds in the mitigation conditions including those identified in the AA Determination and conditioned into the Licence the likelihood of environmental effects including significant environmental effects would be even less. On this basis it is difficult to see that the Department has erred in coming to the conclusion that no EIA is required.

The Appellant has not identified anything to suggest that the screening is in error or is not in compliance with the EIA Directive, NPWS or Council recommendations or the guidance documents mentioned.

Inspector's Certification report

With regard to the Inspector's conclusion that the Applicant had addressed the issues identified in the Appellant's submission of 01/08/2023 it appears the Inspector is referring to the issues concerning the right of way and the Applicant's legal entitlement to use the right of way for the purposes of the proposed forest road. In that regard the Department states that it asked the applicant to clarify its entitlements and the clarification provided satisfied the Department in that regard. While the Department advised the Applicant to contact the Appellant it appears the Applicant chose not to do so. That was at its own risk. With regard to the other issues identified in the Appellant's submission these are addressed by the Minister in the licence and its conditions insofar as they are within his jurisdiction and as they have been repeated in this appeal they are being addressed in the course of the appeal.

Biodiversity site map

The Appellant contends that the Biodiversity Site Map is in error in showing the Right of Way in Forest Area of Plot 1. A ditch watercourse and fence separates the Right of Way from the Forest property.

- a. Map shows a site compound/Fuel Store on Appellant's land adjacent to a watercourse. Appellant has not given permission for this;
- b. Map has omitted watercourses, hedgerows and ditches on both sides of Right of Way which exist for over 400 metres of Right of Way;
- c. Width of Right of Way between ditches/watercourses on both sides is merely 2.4 whereas forest road should be 3.4m. detrimental damage to watercourses flora and fauna envisaged.

The Biodiversity map and the Harvesting road map show the position of the forest road the subject matter of the licence application and is not in error in that respect. The total length is 700m of which 140 meters is new with 560m metres involving an upgrade. The forest road is being developed upon part of a right of way which part is largely adjoining Plots 1 and 3. It may be that the maps might be considered to be showing that Plot 1 extends over the right of way but for the purposes of the road application nothing turns on this as the Applicant has a right of way to access Plots 1 and 3 which is not disputed. The positioning of the fuel storage area outside of Plot 1 and upon lands which are in the Appellant's ownership and in respect of which his consent has not been given is clearly an error. The fuel storage compound will have to be relocated to a part of Plot 1 or 3 which are within the Applicant's ownership. If this was the only error it could have been fixed by the FAC varying the licence to make clear that the fuel storage compound was not to be built where shown on the map but was to be built within the lands within the Applicant's ownership and at a place as agreed with the DAFM Inspector. However, as the licence is to be remitted this matter can be corrected in the course of the review of the licence.

With regard to the width of the forest road the Department acknowledges that in some case such as this the standard 3.4m width as specified in the Forest Road Manual cannot be achieved and as the existing right of way here is only 2.4m wide the Department accepts that this is a case where the 3.4m width requirement has to be relaxed. If anything, this may mean that the machinery that can traverse this narrower road may be more limited in size and this may also accommodate

some of the Appellant's concerns regarding vibration, noise and nuisance. However, it also means that in the context of a remittal of the licence that the Forest Road Specification and licence should be revised to reflect that the road is to be of a reduced width of 2.4m.

Given that the existing right of way does include drains on either side and these may feed onto a watercourse which may be relevant it does seem necessary that these should have been identified in the Biodiversity map and this is a matter that can be rectified upon remittal.

With reference to contentions in respect of habitats and wildlife, in particular badgers and the Marsh Fritillary Butterfly it is to be noted that this is an application for a forest road over an existing right of way of which only 140m out of 700m is new. The existing right of way part of the forest road is being re-laid and resurfaced which means no disturbance to any flora and very little to fauna. While it is claimed there is an abundance of Marsh Fritillary butterfly habitat in the area it clearly cannot be on the right of way. Or if there is some such habitat on the right of way then it is always going to be disturbed given that it is a right of way. Given that there is an abundance of such habitat in the area (particular areas are not identified) an additional 140 meters of new forest road is not likely to have any significant negative impact. The Badger is a protected species under the Wildlife legislation, and the applicant will be bound to comply with his legal obligations in respect thereof while the road is being constructed and felling operations are being carried out.

The AA screening identified the Lough Gill SAC as requiring an AA due to its location of 2.1km from the SAC and the identified hydrological connection. The AA considered and assessed the project and has required the imposition of a number of mitigation measures that are listed in the AA Determination to ensure that there will be no adverse effects on the Lough Gill SAC. These mitigation measures have been conditioned into the licence. In addition, the Applicant is required by the licence to comply with the requirements of the Forest Road Manual and guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology.

AA screening Report and Determination

The Appellant submits that in respect of the In-Combination statement the Planning case reference numbers are not referenced in either Leitrim or Sligo Co. Co. planning portals and further submits that no reference was made to three planning applications for single storey domestic dwellings. It is also submitted that the AA screening report and in-combination assessment are inadequate by reason of the lack of reference to the three aforesaid planning applications for dwellings.

The Department replies by acknowledging that an error has been made in relation to the referencing of planning decisions from another county but argues that it would not have an impact on the decision to approve the forest road licence. It argues the in-combination assessment, in particular the element around non-forest projects, is a small element of the in-combination assessment and that none of the non forest developments in the vicinity would have an impact alone or in-combination. Also, these other developments would have undergone their own assessment as part of the regulatory framework under which they operate.

Looking firstly at the in-combination report for the AA screening the FAC notes that that none of the non forest planning applications in the in-combination assessment report are from Sligo or

Leitrim or nearby and are not of any relevance to the in-combination assessment. That also explains why the three planning permissions for single storey dwellings identified by the Appellant have not been properly referenced. With regard to those three planning permissions, it is to be noted that one of these is located at the side of the right of way that leads onto the forest road and the other two are on the local county road just a few hundreds of metres away from the junction of the right of way with that local county road. In other words, they are all relatively adjacent to the proposed forest road.

The failure to identify non forest project planning applications from either Sligo or from Leitrim means that with respect to the screening stage there has been no examination at all of the in-combination effects of any non-forest projects in relation to this proposed forest road so the Department is really not in a position to say with the required level of certainty that whatever non forest developments are in the vicinity will not have an impact in combination with this proposed forest road. The In-combination assessment feeds into the AA screening decision and that decision is thereby undermined and flawed because of this omission. Theoretically, it can also be said that it feeds into the AA Determination insofar as a relevant European site may have been excluded from AA by reason this omission.

Turning to the AA Determination itself it is noted that again the Appellant is correct in identifying that the three planning permissions he refers to are not referenced in the Appropriate Assessment Report Appendix A. And the reason for that is that no planning permissions at all from Sligo are listed and accordingly have not been considered or assessed. It is only County Leitrim planning permissions that are listed and that are assessed. Again, that means that for the purposes of the AA Determination no in-combination assessment has taken place for non forest projects within the county of Sligo with respect to this forest road application. Again, because of that failure of consideration and assessment of Sligo non forest projects the Department is really not in a position to say with the required level of certainty that whatever non forest developments are in the vicinity will not have an impact in combination with this proposed forest road. There is a failure to comply with the test set out in the Supreme Court decision in *Connelly v ABP* (17/7/2018) that there be "the sort of complete, precise and definitive findings which would underpin a conclusion that no reasonable scientific doubt remained as to the absence of any identified potential detrimental effects on a protected site having regard to its conservation objectives." This must rank as a serious error which warrants that the forest road application be remitted to the Minister for the purposes of conducting a new AA screening and a new AA. Without pre-empting the new AA screening, it seems likely, given at least the hydrological connection to Lough Gill which has been found in the screening already carried out, that a new AA will be required in any event.

In addition it is to be noted that because the Assessment to Determine EIA Requirement in considering the cumulative effects of this forest road application also relies upon the consideration of the non-forest road projects listed in the AA In-combination report it will also be necessary to prepare a new Assessment to Determine EIA Requirement in order to ensure that all non-forest road projects have been properly considered in the screening for EIA. The FAC noted that there are two in-combination Statement on the FLV which are very largely identical except for the final conclusion. If, as seems likely, the concluding paragraph was amended then only the final draft should appear on the FLV in order to avoid unnecessary confusion.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statement of fact submitted by the DAFM. Based on the evidence before it, as outlined above, the FAC is satisfied that a series of significant or serious errors was made in the making of the decision to issue CN92827. The FAC is thus, setting aside the decision and remitting same to the Minister in accordance with Section 14B of the Agriculture Appeals Act 2001 as amended, to carry out an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, a new Appropriate Assessment Determination and to undertake a new Assessment for EIA Requirement, before a new decision is made.

Yours sincerely,



Edmun Carroll
On behalf of the Forestry Appeals Committee

