

Coogan, Mary

From: Coogan, Mary
Sent: Thursday 22 September 2022 18:36
To: forestry agriappeals
Cc: Connaire, Daniel; OBrien, MichaelG; Forestry Support Unit; Coogan, Mary
Subject: DAFM Statement FAC031/2022 CN89306
Attachments: CN89306 DAFM Statement FAC031 2022.pdf

Please note that DAFM Statement FAC031/2022 CN89306 (Coillte) has been uploaded to FAC Cloud Link today.

Please note that no copy file is provided as IFORIS documentation is visible on the Forestry Licence Viewer for this contract.

Regards,

Mary Coogan,

Forestry Support Unit.

Mary Coogan
Forestry Division, Forestry Support Unit,
Rannóg/Seirbhís Foraoiseachta, Rannóg Cheadúchan,

An Roinn Talmhaíochta, Bia agus Mara
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Forestry Division Statement to the Forestry Appeals Committee

FAC Reference	FAC031/2022
File Reference	CN89306
Scheme	Forest Road (Non-Grant Aided)
Approved Length (M)	552 metres

Summary of application:

Date Submitted	09/08/2021
Site Notice date	26/07/2021
Date Application Advertised	11/08/2021
Referrals to referral bodies	Leitrim County Council 13/08/2021 - Reply 21/09/2021
Ecology	Appropriate Assessment Screening Report & Determination 18/11/2021 by Niall Phelan on behalf of DAFM Ecology Report 08/03/2022 by Niall Phelan, Environmental Facilitation Ltd., on behalf of DAFM
Date Referred to Inspector	13/08/2021 - Certified 23/08/2021 26/10/2021 - Certified 11/03/2022
Desk Assessment/Desk & Field Assessment	Desk only assessment
Submissions Received	No submissions received
Appropriate Assessment Screening	Natura Site 1, Screen Out: No likelihood of a significant effect on any European site, and Appropriate Assessment not required.
Recommendation from Inspector	Approve with Conditions
Decision	- The forest road project and all associated operations shall be carried out and completed in accordance with the measures set out in the Technical Standard for the Design of Forest Entrances from Public Roads, the COFORD Forest Road Manual and the Forestry Standards Manual (as amended by periodic Circulars). Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment. - The forest road project and all associated operations shall be carried out and completed in accordance with the requirements of the Forestry and Water Quality

	<p>Guidelines, the COFORD Forest Road Manual and also to the section entitled 'Road Planning Guidelines' in the Forest Harvesting and the Environment Guidelines. Reason: In the interests of protecting water quality and aquatic ecosystems, ensuring good forest practice, and the protection of the environment.</p> <p>- The forest road project and all associated operations shall be carried out and completed in accordance with the requirements of the Forestry and Biodiversity Guidelines. Reason: In order to protect the environment, in particular habitats for flora and fauna, and in the interest of the development of biodiversity value of forests.</p> <p>- Condition: Adhere to the mitigation measures set out in the attached Ecology Report, dated 08/03/2022. Reason: In the interests of protection of the environment, in particular the protection of biodiversity features, species and habitats.</p> <p>- Prior to commencement of any work liaise with Leitrim County Council.</p>
Date Decision Issued	21/03/2022
Date Decision Advertised	23/03/2022

Administrative Comments:

The decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act.

Please see the statement from the Inspectorate.

Admin Response

The application was approved on Monday 21st March 2022 and the decision was placed on the Department's website on Wednesday 23rd March 2022. It is general practice for the licence and the EIA screening information to be made public on the Forestry Licence Viewer (FLV) at the same time as the licence issues to the applicant and forester. Earlier documents are made public at different stages during the processing of the file. We are aware that there were 28 documents on the FLV on 28th March 2022 at 13:37pm as we received a query from a member of the public on the 28th and have a screenshot to show that the licence and EIA screening information were available on the FLV when checked at that time. Currently our IT Unit has been unable to provide a list of the dates and times when documents on a file have been made public on the FLV. On the 28th there was still time to appeal as the appeal window did not expire until Monday 04th April 2022.

Name: Mary Coogan

Grade: EO

Date: 22/09/2022

Grounds of Appeal

Forestry Appeals Commission

Grounds of Appeal: CN89306

POTTORE, LETTRINI 01 APR 2022

Failure of Due Process

This Road was approved on 21st March 2022. As of the 28th March no licence or EIA Screening information has been published on the FLV. See appended screenshot.

The Department's website states;

"Further information on forestry licence applications may be obtained in the Department's Forestry Licence Viewer (FLV). Documentation for applications received from 11 January 2021, will appear in the FLV, once the application is advertised and open for public consultation. Submissions will be available in the FLV once they are received and processed. Additional documentation will be uploaded to the FLV, when the application is decided. These documents will include;

The main reasons and considerations on which the decision to grant or refuse an approval is based, and where conditions are attached to any grant of approval, the reasons for the conditions,

A description of the measures to avoid, reduce, and if possible, offset any major adverse effects of the development."

This information is not available on the FLV and there has been a failure of due process. DAFM has failed to support its decision by the publication of the information that supports its decision

Public Consultation failures

This application is in breach of Regulation 11 parts 1 and 2 of the Forestry Regulations (2017).

Site Notice in respect of afforestation and forest road works

11. (1) Where an application involves—

(b) forest road works

the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons

using the public road, and shall not be obscured or concealed at any time.

(2) A notice under paragraph (1) shall—

(b) be maintained in position on the land concerned for a period of not less than 5 weeks from the date of the application and shall be renewed or replaced if it is removed or becomes defaced or illegible within that period

This licence indicates two sections of Forest Road at two separate locations (approximately 225m apart); for reference a long section and a short section.

For the short section of road

Our members use this road on a daily basis and no Site Notice has been observed at this location

We contend that a Site Notice has not been erected at the entrance from the public road to the land to which the application relates (point SN A on the BioMap).

It certainly cannot be evidenced that a Site Notice has been maintained in position on the land concerned for a period of not less than 5 weeks from the date of the application (point SN A on the BioMap).

On this basis there has been a failure in the context of the Public Consultation under the Forestry Regulations.

There is no evidence in the project documentation to indicate that DAFM carried out a field visit to confirm the presence of correctly erected Site Notices.

We note that the Site Notice for the long section is still in place.

We are in possession of a video clip taken on the 30-8-21 which covers the whole length of road with no evidence of any Site Notice for the short length of road.

The BioMap had to be updated as a result of a FIR (made on 26-8). The updated BioMap is dated 22-10-21 but this was outside the public consultation period. The updated BioMap was not provided to the prescribed bodies. Neither the public nor the prescribed bodies have had an opportunity to comment on a legally complete application.

Application Errors

The On Site Hydrology section of CN89306 Forest Road Construction.pdf states;

"There are NO AZ/RWC crossings required for this road"

This is contradicted by the BioMap which clearly indicates a crossing of an AZ.

Condition of the local road

One of the photographs of the condition of the local road is not representative of the actual road indicated in the project documentation as the haulage route. It would be far more relevant to show the condition of the road from the site entrance to the dwelling marked on the BioMap as this is the most vulnerable section of road to damage and is frequently subject to standing water due to poor drainage.

Also note that there is no evidence of a Site Notice in place in either photo. The road view indicated encompasses point SN A on the BioMap. If a Site Notice was erected that was legible from the public road it would be visible in these photographs.

Hen Harrier

The Ecology Report acknowledges the potential impact of the project on Hen Harrier; however the recommendations of the report use the start date for the Hen Harrier breeding season as 1st April. Based on the decisions made by the FAC in a number of appeals heard in late 2021 (the An Taisce cases) reflecting expert ornithological opinion, a date of the 1st March is more appropriate for the start of the Hen Harrier breeding period.

The Ecologist who carried out the Ecology Report is not an ornithological expert and has not visited the site in connection with this licence.

This licence does not provide sufficient protection against potential impact on a protected species.

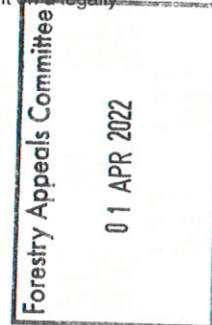
EIA Screening

No EIA Screening Report has been published for this project.

Water Quality

The long section of road runs up close to the boundary of Miskaun Glebe to the East. Approximately 90m of road (including the T Turn is actually located within the YELLOW (BALLINAMORE)_020. The only place that this has been identified is in the In Combination Report for the AA Screening; it has not been identified in the Ecology Report. The Townland Boundary between Pottore and Miskaun Glebe is a watercourse which, less than 200m downstream from the closest point to the proposed road, is a mapped EPA waterbody within the YELLOW (BALLINAMORE)_020.

The YELLOW (BALLINAMORE)_020 has not been assigned a water quality status by the EPA under the 2nd cycle of the WFD. Based on the Judgement in the JR of Case 740 2018 (Sweetman v ABP) a project cannot be awarded a licence where the Status of a water body which could be impacted by the project is unassigned as Member States are required under Article 4 of the WFD to refuse authorisation for an individual project where it may cause a deterioration of the status of the body of surface water or where it



jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive.

"The WFD, as interpreted by the CJEU, requires a Member State to ensure that the requirements of Article 4 are met before permission is granted. It cannot be so satisfied in respect of development affecting a water body whose status has (in breach of the WFD and the implementing regulations in Ireland) not been assigned by the EPA." Hyland judgement

"The EPA as the relevant authority in Ireland have an obligation to carry out the analysis required by Article V of the WFD in respect of surface water bodies and determining their status. If, as in the instant case, it does not fulfil its obligation in respect of any given surface water body, its failure to do so unfortunately has implications for any application for permission that potentially affects that water body." Hyland judgement

That is the case with this licence. It is hydrologically connected to an EPA mapped water body and there are requirements relating to water quality included in the Ecology Report – we must assume that these have been transferred over to the licence but this is not available on the FLV.

The issue is not whether this project is of a similar nature to that in the Hyland judgement. The issue is a very simple one - does this project have the potential to impact on water quality? If the answer is Yes then consent cannot be awarded consistent with the Hyland judgement. Given the conditions in the Ecology Report then the answer is Yes.

BioMap

The Townland Boundary between Pottore and Miskaun Glebe is a watercourse, as are many Townland Boundaries. This is shown on the OSI map but has not been indicated on the BioMap. The Site Compound / Fuel Storage area is within 50m of this relevant watercourse which, less than 200m downstream, becomes an EPA mapped watercourse. The EPA mapped waterbody does not rise at this point. This is the same stream, the same water; any distinction in terms of category is purely arbitrary. The potential for impact on water quality to an EPA waterbody is not diminished by mere classification. The location of the Site Compound / Fuel Storage area poses an unnecessary risk to water quality.

Oral Hearing

would like to request an oral hearing of this appeal

Forestry Appeals Committee
01 APR 2022



01 APR 2022
Forestry Appeals Committee

27-3-22 No Site Notice in place

FLV 17
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Bio Agri Move
Department of Agriculture,
Food and the Marine

LICENCE DETAILS CN89306 Forest Road (552.00m)

Application Details Documents (23)

Date Received	Document Description
11-MAR-2022	in Collaboration Statement
08-MAR-2022	Ecology Report
29-NOV-2021	AA Screening Determination
22-OCT-2021	Bio-Diversity/Topographical Map

No licence or EIA Screening details published

07:15 26/03/2022

01 APR 2022
Forestry Appeals Committee

Statement from Inspectorate.

Assessment Criteria	
Was the AA screening procedure at the time of approval applied? (Y/N)	Yes
What version of the AA procedure?	Nov19
Standard Operating Procedures applied? (Y/N)	Yes

Based on the information supplied by the appellant, do you recommend any change to the original decision?

(Tick as appropriate)

No change	<input checked="" type="checkbox"/>	Confirm recommendation to grant licence	<input type="checkbox"/>	Revise conditions of licence	<input type="checkbox"/>	Remit licence for reassessment	<input type="checkbox"/>	Revoke licence	<input type="checkbox"/>
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- Regarding the Forest Road Construction report and the statement on hydrology. This was addressed via DAFM further information requesting an updated bio map to reflect relevant water courses in project area.
- Regarding Hen Harrier, a member of the public stated in emails to DAFM (not related to specific projects) that the NPWS Conservation ranger has reported the presence of breeding Hen Harrier in a number of townlands in wider area. While no documents or evidence was provided for this claim an ecology report was produced out of prudence. There are no Special Protection Areas for Hen Harrier within 15km of project area. Project is not within a Red Zone or high likely hood of nesting area. Adherence to the mitigations set out in the ecology report is a condition of the licence.
- Regarding water quality, Project largely falls with YELLOW (BALLINAMORE)_010 sub catchment which has been assigned a water status by the EPA, YELLOW (BALLINAMORE)_020 as also been given a water quality status by the EPA. This project does not jeopardise the potential attainment or retention of a "good" status for either water body. This project proposes 552m forest road works. The forest road project and all associated operations shall be carried out and completed in accordance with the requirements of the Forestry and Water Quality Guidelines, the COFORD Forest Road Manual and also to the section entitled 'Road Planning Guidelines' in the Forest Harvesting and the Environment Guidelines as a condition of approval.
- Regarding the bio map, DAFM accepts there is a relevant water course on the Boundary between Pottore and Miskaun Glebe townlands this however does not intersect the proposed project area. DAFM accepts that the proposed site compound/fuel storage area is mapped with 50m of a relevant watercourse. This is a mapping oversight but does not affect the licencing decision, it is a condition of the licence to adhere to the Forestry and Water Quality Guidelines and the COFORD Forest Road Manual.
- DAFM would like to request an in person oral hearing.

Name: Daniel Connaire

Role: Forestry Inspector

Date: 26/05/2022

