



An
Bord
Pleanála

Inspector's Report ABP-310085-21

Question

Whether the selective felling and clearing of trees and construction of a new road access corridor to and from the public road within a forest plantation for purposes other than for forestry, and the development of access road within a forest plantation for purposes other than forestry development is or is not development and is or is not exempted development.

Location

Glenpipe, Tullogher, Co. Kilkenny.

Declaration

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC627

Applicant for Declaration

Alex Walsh

Planning Authority Decision

Is exempted development

Referral

Referred by

Alex Walsh

Owner/ Occupier

Coillte

Observer(s)

None

Date of Site Inspection

1st December 2022

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The site is located in a Coillte forest at Glenpipe, Tullogher, Co. Kilkenny c. 5km to the north of the village of Mullinavat. The surrounding area is lowly populated rural landscape.
- 1.2. The site consists of forestry lands on both sides of the local road at this location. Works have recently been carried out including the felling and clearing of trees, and the clearance and tidying of existing forestry tracks on both sides of the road. There was evidence of new hardcore on an existing track.

2.0 The Question

- 2.1. The question before the Board is as follows:

Is the selective felling and clearing of trees and construction of a new access corridor to and from the public road within a forest plantation for purposes other than for forestry, and the development of access road within a forest plantation or purposes other than forestry development and if so is it exempted.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated the 31st of March 2021, Kilkenny County Council decided that:

The works carried out on site are exempted forestry works i.e. land surveying, harvesting, tree felling, internal road works relating to forest maintenance purposes which are considered exempted development under Section 4(1)(ia) of the Planning and Development Act 2000-2020 and Articles 8F and 8G of the Planning and Development Regulations 2001 as amended with reference to the Forestry Act 2014.

The selective felling and clearing of trees and construction of a new access corridor to and from the public road within a forest plantation is for forestry related purposes, is development and is exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Report noted that the site was inspected by both the Area Engineer and the Area Planner and no conclusive evidence of unauthorised development was evident. It was stated that the works that have been carried out relate to construction, maintenance or improvement of private roads serving forests and felling of forested Coillte lands which are generally exempt from planning permission. However it cannot be definitely stated that no unauthorised development has taken place. In this regard Further Information was requested from both the referrer and the wind farm developer. Having regard to the further information submitted, it was considered that the works related to forestry works and were exempted development.

3.2.2. Other Technical Reports

- Area Engineer- detailed report examining various locations within the site including delivery routes for wind turbines included in the planning application. Concludes that there is no evidence of unauthorised development.

4.0 Planning History

ABP 309306

Permission granted for 21 wind turbines, improvement of existing site entrance onto the R704, creation of two new site entrances onto the L7451 and ancillary works at this location.

5.0 Policy Context

5.1. Development Plan

- The site is within the area covered by the Kilkenny County Development Plan 2020-2027.

5.2. Natural Heritage Designations

- The River Nore SPA is located c. 10.5km from the site.

6.0 The Referral

6.1. Referrer's Case

- The works are not forest works by Coillte.
- This is a new delivery route for wind turbines.
- A map is attached to this response which indicates that the original access road as granted in the wind farm application was c. 100m from the referrer's dwelling and the current road is c. 285m from the referrer's dwelling.

6.2. Planning Authority Response

- In a response to the Board dated 20th of May 2021, Kilkenny Co. Co. state that they have no further comments.

6.3. Coillte Response to Further Information Request

- In a letter dated the 26th February 2021, the landowner Coillte states the following:

No forest road widening, pipe laying or ground works have been undertaken on behalf of the wind farm project in respect of forest lands on which a wind farm is proposed at Castlebanny, known as Castlebanny Wind Farm. Land surveying

works were carried out to inform junction design and sightline assessment at junctions L7451 and R704 to assist with the preparation of the Castlebanny Wind Farm application.

Works undertaken in our Castlebanny/ Glenpipe/ Derrylacky properties in the second half of 2020 were exclusively to do with our day-to-day harvesting and forest maintenance operations. The groundworks conducted here, which were completed by contract staff, are in no way linked to the proposed windfarm development in the area.

6.4. Coillte Response to Referral

- In a response to the Board dated the 19th of May 2021, it is stated that the works on Coillte lands were solely routine harvesting and forestry maintenance works and as such are exempted forestry works under Section 4(1) (ia) of the Planning and Development Act 2002-2020 and Articles 8F and 8G of the Planning and Development Regulations as amended with reference to Forestry Act 2014. The works were authorised by the Forest Service and the relevant licence Nos. are KK05-FL0070, KK05-FL0072, and KK05-FL0075.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 as amended

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- Section 4(1)(i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species

- Section 4(1)(ia) development (other than development consisting of the provision of access to a national road within the meaning of the Roads Act 1993) that consists of –
- (I) the construction, maintenance or improvement of a road (other than a public road) that serves a forest or woodland, or
- (II) works ancillary to such construction, maintenance or improvement

7.2. Planning and Development Regulations, 2001 as amended

- Article 6 (1) states as follows: “Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.’
- Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of such development would –
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
 - (iii) endanger public safety by reason of traffic hazard or obstruction or road users
- Article 8F of the Planning and Development Regulations 2001 (as amended), provides that ‘Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –
 - (a) the thinning, felling or replanting of trees, forests or woodlands, or
 - (b) works ancillary thereto, shall be exempted development’.

7.2.1. Article 8G of the Planning and Development Regulations 2001 (as amended), provides that ‘Development (other than where the development consists of provision of access to a national road within the meaning of the Roads Act 1993 (No. 14 of 1993) that is licenced or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of

(a) the construction, maintenance or improvement of a road (other than a public road within the said meaning), that serves a forest or woodland, or

(b) works ancillary thereto,

shall be exempted development.

8.0 Precedents

8.1. Previous cases which raise similar issues to the current case, include:

- RL2485 The Board decided that the filling of 0.8 hectare area with inert materials and the construction of a forestry road at Cruagh, Rockbrook, Rathfarnham, Dublin was development and was not exempted development.
- ABP 301512 decided that the widening of an existing entrance to facilitate the extraction of timber from a forestry plantation at Attimanus, Kilnagross, Co. Leitrim was development and was not exempted development.

9.0 Assessment

9.1. Is or is not development

9.1.1. The works referred to Section 2(1) of the Act defines ‘works’ as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

9.1.2. Section 3(1) of the Act defines development as “...the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

9.1.3. In this regard, I am satisfied that the question posed and to which the referral relates are 'works'. I am satisfied that the said 'works' comprise 'development'. This determined, consideration is required as to whether the 'works' would constitute 'exempted development'.

9.2. Is or is not exempted development

9.2.1. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not.

9.2.2. The case made by the developer is that the works were solely routine harvesting and forestry maintenance works and as such are exempted forestry works under Section 4(1) (ia) of the Planning and Development Act 2002-2020 and Articles 8F and 8G of the Planning and Development Regulations as amended with reference to the Forestry Act 2014. The works were authorised by the Forest Service and the relevant licence Nos. are KK05-FL0070, KK05-FL0072, and KK05-FL0075.

9.2.3. The case made by the referrer that such works are not routine forestry works but are connected with the proposed delivery routes for the Castlebanny Wind Farm application.

9.2.4. I note that the Planning Authority conducted an examination of all of the routes identified in the planning application and concluded that there was no conclusive evidence that unauthorised development in relation to the proposed windfarm had taken place.

9.2.5. A Further Information request was issued to Coillte in relation to tree felling at this location. The response indicated that:

'No forest road widening, pipe laying or ground works have been undertaken on behalf of the wind farm project in respect of forest lands on which a wind farm is proposed at Castlebanny.'

9.2.6. At the time of the site inspection, there was no evidence of construction of the wind farm or a new access onto the public road. I noted that there was tree felling and clearance works to existing tracks and alterations and improvement of existing forestry tracks which serve forestry lands on both sides of the local road at this

location. Maintenance works to tracks including the laying of new hardcore along tracks was evident.

9.2.7. I note that there are a number of precedent cases in relation to the construction and maintenance of forestry roads. The Board decided that such works were development and not exempted development.

9.2.8. There have been a number of amendments to the Planning and Development Regulations and the Planning and Development Act since the precedent cases.

- Article 8F of the Planning and Development Regulations 2001 (as amended), provides that ‘Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –

(a) the thinning, felling or replanting of trees, forests or woodlands, or

(b) works ancillary thereto, shall be exempted development’.

- Article 8G of the Planning and Development Regulations 2001 (as amended), provides that ‘Development (other than where the development consists of provision of access to a national road within the meaning of the Roads Act 1993 (No. 14 of 1993) that is licenced or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of

(a) the construction, maintenance or improvement of a road (other than a public road within the said meaning), that serves a forest or woodland, or

(b) works ancillary thereto,

shall be exempted development.

9.2.9. I consider that the works carried out at this location consists of the thinning and felling of trees and the maintenance and improvement of forestry tracks and can avail of the exemption under Section 4(1)(i) and 4(1)(ia) of the Planning and Development Act 2000 as amended. As such, I consider the works to be exempted development. The works carried out do not require appropriate assessment or environmental impact assessment.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether or not the selective felling and clearing of trees and construction of a new road access corridor to and from the public road within a forest plantation for purposes other than for forestry, and the development of an access road within a forest plantation for purposes other than forestry development is or is not development and is or is not exempted development;

AND WHEREAS Alex Walsh, High Trees, Glenpipe, Tullogher, Co. Kilkenny requested a declaration on this question from Kilkenny County Council and the Council issued a declaration on the 31st day of March 2021 stating that the matter was exempted development;

AND WHEREAS Alex Walsh, High Trees, Glenpipe, Tullogher, Co. Kilkenny referred this declaration for review to An Bord Pleanála on the 28th day of April 2021;

WHEREAS An Bord Pleanála in considering this referral, had regard particularly to:

- (a) Sections 2(1), 3(1) and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 8F and 8G of the Planning and Development Regulations, 2001, as amended,
- (c) the documentation and submissions received from the parties to the referral and
- (d) the planning history of the site

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works carried out provide for the felling and clearance of trees and the maintenance and improvement of existing forestry tracks and come within the scope of definition of development as contained in section 3 of the Planning and Development Act, 2000 (as amended).
- (b) The felling and clearance of trees and the widening and improvement of existing forestry tracks, come within the scope of Articles 8F and 8G of the Planning and Development Regulations, 2001, (as amended).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) the 2000 Act, hereby decides that the felling and clearance of trees and the widening and improvement of existing forestry tracks is development and is exempted development.

Emer Doyle

Planning Inspector

14th June 2024