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23rd December 2020

Subject: Appeal FAC069/2020 regarding licence CN84241

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 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.

Background

Licence CN84241 for 200 metres of forest road works at Bohehs, Co. Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 5th February 2020.

Hearing

An oral hearing of appeals FAC069/2020 was held by the FAC on 18th December 2020. In attendance:
FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Ms. Claire Kennedy Mr. Vincent Upton
Secretary to the FAC: Ms. Marie Dobbyn
Appellant: Not present
Applicant's Representatives: [Redacted]
DAFM Representatives: Mr. David Ryan, Ms. Janet Farrell

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN84241.

The licence pertains to 200 metres of forest road construction to service a forest area of 7.2 ha at Bohehs, Co. Mayo. The soil type is described as peat and the construction method would be embankment (build on top) and the specification of the road construction and maps were submitted with the application. The proposal was referred to the Mayo County Council. An appropriate assessment

screening was undertaken and recorded on the file. The screening considered eight sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Brackloon Woods SAC 000471, Clew Bay Complex SAC 001482, Lough Carra SPA 004051, Lough Carra/Mask Complex SAC 001774, Newport River SAC 002144, Owenduff/Nephin Complex SAC 000534, Owenduff/Nephin Complex SPA 004098 and River Moy SAC 002298. The proposal was screened out for appropriate assessment and reasons are provided. The licence was issued on 5th February 2020 with conditions.

There is one appeal against the decision. The grounds contend that the Bohehs, Mayo townland is within 30 metres of an SAC and that the appropriate assessment screening undertaken by the Minister does not comply with the law and that a Natura Impact Statement is required. Reference is made to definition of significant effects in the decision of Finlay Geoghegan in J. Kelly -v- An Bord Pleanala & others 2013 802 JR 25/07/2014. The appeal submits obligations concerning record keeping and information that should be identified in relation to catchments and turloughs. Reference to CJEU judgement in Case C-323/17 regarding the consideration of measures intended to avoid or reduce harmful effects of a plan or project on a European site was also made. A document submitted to be from the NPWS was also provided.

In a statement to the FAC, the DAFM submitted that the application was screened for the requirement for Appropriate Assessment using the Appropriate Assessment Procedure SOP 05Nov2019, The Bird Foraging Table v06Jan20, The Habitat Table v18Dec19 and that Appropriate Assessment was deemed not to be required. It was also submitted that the application is in the townland of Bohehs DED Islandeady, not Boheh DED Knappagh.

An oral hearing of the appeal was held and attended by representatives of the DAFM and the Applicant. The DAFM provided an overview of the processing of the application including the appropriate assessment screening undertaken. It was submitted again that the application is in the townland of Bohehs DED Islandeady, not Boheh DED Knappagh and that the closest European site was 5km from the site being Newport River SAC and that the development was over 7km from the boundary of the River Moy SAC and that there was no direct hydrological connection with either site or any other European site. The reasons for screening each European site considered were submitted and other plans. The Applicant described the information provided with the application and the nature of the site. They contended that there was no European site in the area.

The FAC considered the appropriate assessment screening undertaken by the DAFM as recorded and referred to publicly available information provided by the EPA and NPWS. The FAC confirmed the same eight sites and distances from the proposal location to the eight European sites identified. There is no evidence of any hydrological connection to any European site and the proposal is at a considerable remove from any site. The proposal itself is within the Castlebar (010) subcatchment of the Moy and Killala Catchment. It was submitted at the oral hearing that the closest watercourse is 150 metres from the proposal and that this stream flows to the south and through three lakes before meeting the River Moy SAC. The FAC considered publicly available information and could not identify any evidence that

would contradict this conclusion and confirmed that the boundary of the River Moy SAC is some 20 km in hydrological distance from the closest watercourse to the proposal and that there is no evidence of a direct connection from the proposal to any watercourse. The proposal or the proposal townland are not within 20 metres of the River Moy SAC or any other European site. The DAFM considered and recorded other plans and projects with the proposal. The grounds of appeal do not identify specific effects or pathways of concern. The FAC is satisfied that the DAFM did not make any serious or significant error in their appropriate assessment screening and concurs with the conclusions reached.

While the grounds of appeal do not raise specific concerns regarding environmental impact assessment, the FAC also considered the DAFM record of this consideration. The EU EIA Directive sets out in Annex II 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. The Irish Regulations, 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 proposal is considerably sub-threshold for the mandatory submission of an EIA report. 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 as described is being for 200 metres of forest road construction in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. It was confirmed that the forest road was an extension of an existing road of 300 metres and that an existing entrance to the public road is in place. 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 made regarding EIA.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was 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 CN84241 in line with Article 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 large black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton Or Behalf of the Forestry Appeals Committee

