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31st March 2021

Subject: Appeal FAC 437/2020 relating to Licence CN86050.

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 reference CN86050 for the construction of a forest road 675 metres in length in the townlands of Kilnamaddyroe and Clogher, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 26th of June 2020.

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 12th of March 2021.

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.
Appellant: [REDACTED]
Applicant: [REDACTED]
DAFM Ms. Mary Coogan, Mr. Seppi Hona
Secretary to the FAC Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the applicant and the DAFM, including the record of the decision by the DAFM, the notice of appeal, and, the considerations set out hereunder, the FAC has decided that the licence decision CN86050 should be set aside and remitted to the Minister to request from the applicant, a revised Forest Roads application map showing the entire harvest area to be served by the proposed forest road and to undertake a new screening for Appropriate Assessment and a determination as to whether the application should be subject to the EIA process, before a new decision is made.

Licence

The licence pertains to the construction of a forest road 675 metres in length located within an existing conifer plantation. The aerial photographs submitted with the application shows the development joining an existing forest road. The application was submitted to the DAFM on the 27th of March 2020.

The licence application was referred to Leitrim County Council on 11/05/2020. A response outside the statutory time period was received on 01/07/2020. The DAFM indicated at the hearing that Leitrim County Council had no objection to the proposal.

An undated Inspector's Certification - Pre-Approval Report but with a certification date of 23/06/2020 in the Statement of Fact submitted by the DAFM indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly podzols in nature, with a predominantly flat to moderate (<15%) slope and that the road crosses/ adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise conifer plantation.

The report notes that there is 1 Natura 2000 site within 15Km of the proposed forest road, the Cuilcagh - Anierin Uplands SAC Site Code 000584

The report records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that:

- The location of the project area is downstream of the Natura 2000 site, the Cuilcagh - Anierin Uplands SAC Site Code 000584 and the subsequent lack of any hydrological connection to that site.

The report refers to an in-combination assessment carried out by DAFM that this project, when considered in combination with other plans and projects, would not give rise to the possibility of an effect on the Natura 2000 site listed above.

The Inspector's Certification - Pre-Approval Report also contains an assessment of the environmental factors relating to the proposed forest road to determine whether an Environmental Impact Assessment Report (EiAR) is required. The report concludes that the proposed road should not be subject to the EIA process.

One submission was received on the licence application from the Save Leitrim Group on 05/06/2020.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

1. The failure of DAFM to provide relevant records that have informed its decision to award this licence in a timely manner is a fundamental breach of European Law in the processing of the licence;
2. A breach of article 4 (3) of the EIA Directive 2014/52/EU in that a number of criteria set out in Annex III have not been included in the DAFM screening assessment and have not been taken in to account;
3. A breach of Article 4 (4) of the EIA Directive 2014/52/EU in that the licence application does not represent the whole project;

4. A breach of Article 4(5) of the EIA Directive 2014/52/EU in that the applicant has not provided all information to the DAFM, as the application for this licence does not represent the whole project.

At the oral hearing, the DAFM provided a Statement of Fact dated 06/08/2020 to the FAC confirming the administrative details of the licence CN86050 as outlined above and states that the Department is satisfied that all criteria in its standards and procedures had been adhered to in making the decision on the licence application. A Statement of Fact was provided by the DAFM Inspectorate dated 28/09/2020 indicates that the relevant Appropriate Assessment (AA) procedure was applied at the time (05Nov2019), that the project was screened out after appropriate consultation with Local authority as required under Forest Service procedures and notes that the local authority response was only received on 01/07/2020 after the licence was issued.

The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed and that the submission received from the Save Leitrim Group was considered prior to the issuing of the licence. The DAFM also stated that the road subject of this licence had not been built, that the watercourse crossings would be constructed to the Coford requirements with a standard culvert and would have no impact on river waterbody. The DAFM stated that the adjoining forest had been a felling licence LM12FL0030.

The appellant restated his view that the failure to supply him records in a timely manner amounted to a breach of the EIA Directive. The appellant indicated that clear-felling of the forestry had already taken place and disputed that the construction of the road complied with the specifications and that the access to the Coillte forestry was not part of this licence.

The appellant confirmed to the FAC that it was his view that a number of criteria, such as cultural heritage population, human health and emissions amongst others, as set out in Annex III of the EIA Directive had not been addressed.

The applicant confirmed to the FAC that plots 1, 2 and 3 as shown on the licence application had been clear-felled but that the forest road was also to serve another plantation adjoining to the east and was not shown on the application drawings. The applicant stated that the road was to be constructed on light peat over mineral soil and not deep peat. The applicant also confirmed to the FAC that the road drainage was to be side drains and silt traps.

In concluding the appellant stated that the river waterbody Yellow (Ballinamore)_030 was unassigned by the EPA and is categorised as at risk and that forestry is identified as a pressure in the catchment. The appellant was not aware of any update from the EPA. The appellant also stated that the water crossings were of log bridge construction.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services. The site is located approximately 5km north-north-west of Ballinamore in an existing forest comprising mainly of Sitka spruce. The forest adjoins an existing forest to the north, east and west and by managed agricultural land to the south and other forest plantations. The existing forest road runs east to west.

Soil type is identified as Gley on the GSI mapping, which is generally a deep poorly drained mineral soil.

The stream bounding the forest on the north is identified as River Waterbody Yellow (Ballinamore) 030, part of the Blackwater [Newtowngore]_SC_020 sub catchment. The proposed road crosses this river waterbody c.260 metres west of the start of the road. A northern spur of the proposed road crosses an unidentified stream. The ecological status of the Yellow (Ballinamore)_030 river waterbody is unassigned in the River Waterbody WFD Status report 2013-2018 and is at risk but forestry is not identified as a pressure. The WFD 3rd Cycle has the sub-catchment at risk from anthropogenic sources.

The underlying groundwater body is Newtown-Ballyconnell (IEGBNI_NW_G_031) with an overall status of good. The waterbody not at risk under the WFD 3rd Cycle.

The proposed road is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the only Natura site identified as being within 15km of the site is the single site examined in the AA Screening.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site due to the road being situated at a considerable distance from any European site. The road is being built through an existing managed forest and the fact that there is no evidence that it would impact on protected species or habitats. The FAC concurs with the conclusions reached but noted that no record of an in-combination assessment was attached to the file.

The FAC noted that the soil is an acid, poorly draining mineral soil and that the road crosses two watercourses. An unidentified stream running east to west across the site and a stream, designated as a river waterbody, the Yellow (Ballinamore)_030 under the Water Framework Directive, running south to north along the east site boundary with the Coillte forest.

The FAC noted that under the Forestry Regulations 2017 Article 6(2)(a), an application for a licence in respect of forest road works should contain an Ordnance Survey map or other map with the boundary of the land to which the application relates delineated and the route of the proposed road clearly marked. As confirmed by the applicant the proposed road was also to serve the Coillte forest to the east this forest is not included in the licence documentation.

In addressing the grounds of appeal, the FAC considered the following matters,

Availability of Documents

The FAC notes that the appellant submitted his appeal within the appropriate period specified in the Forestry Appeals Committee Regulations 2020 and was furnished with a complete set of documents as soon as was practicable. The oral hearing process facilitates an appellant to make further comments based on that documentation which, in this case, the appellant did.

Regarding the maps submitted with the application, the FAC concluded that the area to be served by the forest road has not been identified completely on the submitted maps as would be required under the Forestry Regulations 2017. The FAC is therefore remitting the decision to the Minister to request a revised map with the boundary of the land to which the application relates delineated and the route of the proposed road clearly marked and any other features required by the Minister.

EIA Directive.

With regard to the three grounds of appeal relating to Article 4 of the EU EIA Directive. The FAC considered that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains

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. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require 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. At 675 metres, the forest road is significantly sub-threshold for the mandatory submission of an EIAR. The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required. However, as noted the FAC is remitting the decision to the Minister to request a revised map in line with the Forestry Regulations 2017. In light of this, the FAC concluded that the application should undergo a new screening for Appropriate Assessment and a determination as to whether the application should undergo the EIA process. These considerations should include a record of other plans and projects in combination with the proposal and whether the application could affect the Yellow (Ballinamore)_030 waterbody.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that a serious error was made in making the decision regarding Licence CN86050 and that the decision should be remitted to the Minister to request from the applicant, a revised Forest Roads application map showing the entire harvest area to be served by the proposed forest road and new screening for Appropriate Assessment and a determination whether the application should be subject to the EIA process as described, before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee

