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30th March 2021.

Subject: Appeal FAC095/2020 regarding licence CN84390

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 CN84390 is for the construction of a forest road 200 metres in length at Brahalish, Durrus, Co. Cork, which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 24th February 2020.

Hearing

An oral hearing of appeal FAC095/2020 was held by the FAC on 26th March 2021.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

DAFM Representatives: Ms. Mary Coogan, Mr. Eugene Curran.

Appellant: [REDACTED] Not present.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN84390.

Licence.

The licence pertains to the construction of a forest road 200 metres in length at Brahalish, Durrus, Co. Cork. The proposed road is off an existing public road which has an existing entrance onto the public

road. The proposed road is an upgrade of an existing farm road and the specification of the road construction and maps delineating the route were submitted with the application which indicate additional base strengthening and top dressing of the existing roadway where it is considered necessary. The road will facilitate the harvesting and management of 8.37 hectares of forestry. The soil type underlying the project area is stated as predominantly podzols in nature. The slope is predominantly flat to moderate. The vegetation type within the project area comprise coniferous plantation (WD4) and the construction method would be excavation as required.

The proposal was referred to Cork County Council who in a response dated the 9th October 2019/09/10/2019 indicated no objection and indicated conditions requiring agreement on a haulage route for extracted timber.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered nine sites within 15 kilometres 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 Barley Cove to Ballyrisode Point SAC 001040; Cahal Mountains SAC 000093; Dunbeacon Shingle SAC 002280; Farranamanagh Lough SAC 002189; Glengarriff Harbour and Woodland SAC 00009; Reen Point Shingle SAC 002281; Roaringwater Bay and Islands SAC 000101; Sheeps Head SAC 000102 and Sheeps Head to Toe Head SPA 00415. An In combination assessment was also carried out and is to be found on the file. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required. The licence was issued on the 24th February 2020 subject to standard conditions.

Appeal.

There is one appeal against the decision. The grounds raise the issue that maps of the area would appear to indicate roads in this plantation exceed 2 kilometres. Reference is made to the FAC and its obligations which are binding on all the authorities of Member States. Reference is made to the requirements of the Habitats Directive; to the judgement in Kelly v An Bord Pleanála; to EUCJ Judgement C258-11 and to retention of records and availability of records. Reference is also made to EUCJ Judgement C323-17. It also contended that in relation to Appropriate Assessment all aspects of likely effects must be considered referring to a NPWS document.

In a statement to the FAC, in regard to the proposed road CN84390 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that indicates after examination of maps no hydrological threat to any Natura sites was identified.

An oral hearing was held of which all parties were notified and representatives of the DAFM attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that 9 sites were initially screened out and that there was no possibility of a significant

effect on any Natura site. In addition to examining data sets it was indicated that a field inspection was carried out on the 20/09/2019, that the proposal was an upgrading of an existing road and that no impact on Natura sites or receiving waters would arise.

At the hearing the FAC raised issues relating to the road construction and the entrance and connection to the public road network, clarification in relation to the existing road which is being upgraded, that the current crossing of the watercourse is by fording and the construction of a culvert will be an enhancement in relation to water quality. There was clarification in relation to the screening undertaken and in relation to aspects of the Inspector Certification. The existing pattern of the road network in the area and of forest roads was also raised in the context of the stated grounds of appeal.

The issues were addressed by DAFM to the satisfaction of the FAC. The inspector's determination and recommendation was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details.

In addressing the grounds of appeal, the FAC considered in the first instance whether the decision was in compliance with the requirements of the Habitats and EIA directives, the assessment of the licence assessment and whether there is an assessment of cumulative effects and procedures applied which led to the decision to grant the licence.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory and that 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to 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 DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was 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 is also an upgrade of an existing road and not the formation of a new road. 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 examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS

and identified the same nine sites as the DAFM within 15km from the proposal Barley Cove to Ballyrisode Point SAC 001040; Cahal Mountains SAC 000093; Dunbeacon Shingle SAC 002280; Farranamanagh Lough SAC 002189; Glengarriff Harbour and Woodland SAC 00009; Reen Point Shingle SAC 002281; Roaringwater Bay and Islands SAC 000101; Sheeps Head SAC 000102 and Sheeps Head to Toe Head SPA 00415. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered nature, scale and location of the proposal, the European sites identified and their conservation objectives and the reasons provided by the DAFM. The DAFM considered each site in turn and provided the reasons for screening all the sites out for appropriate assessment. Details of other plans and projects were also examined. The proposed road works are located outside of any European site and would be undertaken on an existing farm track on managed agricultural and forest land and there is no evidence of protected habitats or species on the site. The closest streams drain southerly and to the sea with no connection to any European site. 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.

Specifically, in relation to the grounds of appeal it was indicated that the proposed road will be the only forest road in the plantation and there is not 2 kilometres of existing forest roads. At the oral hearing the DAFM submitted that there are fire breaks along the northern section of the larger forest area which might appear as roads from aerial imagery. The FAC is satisfied in relation to the response received.

In relation to hydrogeological impacts, the existing road crosses an existing watercourse by fording and it is proposed to construct a culvert to replace the existing ford which will reduce direct and indirect impacts on the watercourse. The FAC is satisfied based on the information available to it and as the proposal is an upgrading of an existing road that the construction measures as proposed will not impact on Natura sites or receiving waters.

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 CN84390 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 black rectangular redaction box covering the signature of the official.

Derek Daly On Behalf of the Forestry Appeals Committee