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22nd October 2021.

Subject: Appeal FAC 122/2021 regarding licence CN83585

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CN83585 for the afforestation of 3.58 hectares with the construction of 500 metres of fencing at Drumhierny, Co. Leitrim which was granted by the DAFM on the on the 17th August 2021.

A previous licence decision on CN83585 was the subject of a previous decision of the FAC dated the 22nd March 2021, which was to set aside and remit the decision back to the Minister to carry out a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive and to undertake an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made. The hearing and determination of appeal FAC 122/2021 by the FAC relates to a new decision on this application.

Hearing

A hearing of appeal FAC 122/2021 was held by the FAC on 14th October 2021 by a sub-division of the FAC attended by Mr. Donal Maguire (Deputy Chairperson), and Mr. Derek Daly. Secretary to the FAC: Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions made at the oral hearing, all other submissions received, all materials on file, and in particular the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN83585.

Licence

The licence pertains to an application for an afforestation licence for 3.58 hectares at Drumhierny, Co. Leitrim on a site which is divided into 3 plots. In plot 1 which has an area of 0.6 hectares GPC 6 planting is proposed with a mix of Pedunculate Oak and Birch; in plot 2 with an area of 0.91 hectares GPC 6

planting is also proposed with a similar species mix of Pedunculate Oak and Birch and plot 3 with an area of 2.07 hectares is proposed as GPC 3 with a mix of Sitka Spruce and Birch. Ground preparation is indicated as mounding with angle notch planting.

Documentation on file refers to the predominant soil type underlining the project area is predominantly brown podzolics in nature. The slope is predominantly flat to moderate. The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project comprises grass/rush. Documentation submitted includes site notice and mapping including fencing maps and a series of biomaps. In relation to WFD project lies within the River Sub-Basin Shannon (Upper)_040 River Waterbody WFD, status is moderate and in terms of risk is indicated as at risk.

The assessment of the licence application by DAFM included a desk and field assessment as indicated in the Statement of Facts (SoF) to the FAC. The decision was to approve and the licence was issued on the 17th August 2021 subject to conditions.

Condition 5 outlines any additional conditions including plant an undulating band 5 to 8 rows deep of native broadleaf species suited to the immediate site, birch, rowan, willow, hazel & oak where appropriate along the eastern edge of plot 3 facing the adjoining field. Plant irregular shaped groups of Scots pine 10 to 15 trees in size throughout plot 3.

In relation to Appropriate Assessment screening the project was the subject of an Appropriate Assessment Screening Determination where three sites were identified within a 15 kilometre radius. The Inspector's Certification refers to a date of the 12th August 2021. Cuilcagh - Anierin Uplands SAC 000584 was screened out due to the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection; Lough Arrow SAC 001673 which was screened out due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. Upper Shannon 26A and Lough Arrow SPA 004050 which was screened out due to distance. The overall conclusion was to screen out due to no likelihood of a significant effect on any European site, and Appropriate Assessment not required.

An In-Combination report refers to a date of the 12th August 2021 refers to the site being within the River Sub-Basin Shannon (Upper)_040 which has approximately 12% forest cover, which is higher than the national average of 11%. At 3.58 hectares the project is considered lower in scale. The report indicates that individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects and DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites.

Appeal

There is one appeal against the decision to grant the licence.

The grounds of appeal in summary refer to;

- The road proposed to be used and the entrance at point A as indicated on the biomap is a traffic hazard. Reference is DAFM Circular 16 of 2016 a copy of which is attached.
- Reference is made to the response of Leitrim County Council and the issue of exempted development where material works and improvement works are carried out to an agricultural entrance and in this regard, reference is also made to an ABP reference in this regard.
- There is a requirement to comply with technical standards for an entrance and the existing entrance is sub standard.
- Reference is made to the Forestry Inspector Standard Operating Procedure for Forest Roads Schemes and Licencing in particular Appendix 6 details of which are submitted.
- The appellants considers the existing entrance substandard, requires material improvement and constitutes a traffic hazard.

In a statement to the FAC, the DAFM indicated in relation to appeal that the decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the standards and procedures have been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that the existing agricultural gate provides adequate access to public road as per Forestry Manual Standards 5.3.2.

The appellants provided a further submission dated 11th October 2021 referencing the Forestry Standards Manual (DAFM, 2015) and the statement from the DAFM in relation to their grounds of appeal.

Assessment of Appeal

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the 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. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and 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 for the afforestation of 3.58 hectares which is substantially subthreshold. The DAFM undertook a sub-threshold consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA.

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 DAFM did not err in its decision concerning EIA.

In relation to the Habitats Directive, the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening and Determination. The FAC examined publicly available information from the EPA and NPWS and identified the same three sites within a 15 kilometre radius. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the screening conclusions provided by the DAFM.

The FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 3.58 hectares. Having examined the documentation submitted the FAC has identified the same three sites as the DAFM within 15km from the proposal. The DAFM considered each site in turn and provided the reasons for screening out all the sites. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The proposed works are located outside of any European site and the FAC has not been provided with evidence of there being protected habitats or species on the site and the FAC concurs with the conclusion of no likelihood of a significant effect on any Natura site, and that Appropriate Assessment is not required. Details of other plans and projects were also examined including other forestry projects. An In-Combination report refers to a date of the 12th August 2021 concluding that individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions and that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects on the Natura sites. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

In relation to matters arising in the grounds of appeal, the FAC noted that the focus of the appeal is in relation to the access to be used and issues of traffic hazard arising from the access. The grounds refer to the road proposed to be used for access and the entrance at point A as indicated on the biomap is a traffic hazard and there is a requirement to comply with technical standards for an entrance and the existing entrance is sub-standard. The submission made reference to a number of technical documents relating to forestry roads and entrances copies of which are attached and which include DAFM Circular 16 of 2016, Forestry Inspector Standard Operating Procedure for Forest Roads Schemes and Licencing October 2020, Technical Standard Design of Forest Entrances from Public Roads. The appellant considers the existing entrance substandard, requires material improvement and constitutes a traffic hazard. Reference is also made to the response of Leitrim County Council and the issue of exempted development where material works and improvement works are carried out to an agricultural entrance and in this regard, reference is also made to an ABP reference in this regard.

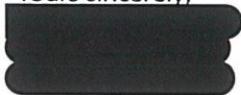
In relation to this issue the proposal is for afforestation of lands using an existing field entrance which DAFM has indicated provides adequate access to the public road. The project site fronts onto a narrow local road and the existing entrance based on an examination of mapping is located on the inner curve of a bend and the gate is set back from the road. This entrance is currently used for agricultural

purposes which could typically include a range of activities bringing stock to and from the field, ongoing inspection and feeding of stock and cutting of silage/hay.

The current proposal will likely involve a lower level of traffic in relation to afforestation operations and the nature of vehicles used would likely equate to current vehicles operating at the site. Reference is made to felling in the grounds of appeal but this will not occur for many years and there are options given the site frontage to develop an access or a forest road to facilitate felling which would have to comply with the relevant standards and legislation applying at the time. It is also noted that the technical guidance and operation manuals that relate to new entrances and improvements to existing entrances, do permit relaxation and departure from the standards stated based on circumstances specific to the location and following set procedures. Having examined the matter the FAC are not satisfied that the project as applied for and licenced will give rise to a traffic hazard and does not consider that the access is such that the proposal could not be carried out and is not satisfied that an error was made in the making of the decision in this regard.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and other submissions received. The FAC is not satisfied that a serious or significant error or series of errors were made in making the decision or that the decision was made without regard to fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN83585 in line with Article 14B of the Agricultural Appeals Act 2001 as amended. In affirming the decision the FAC considered that the proposal as licenced is in keeping with Good Forest Practice and Government Policy.

Yours sincerely,

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

Derek Daly On Behalf of the Forestry Appeals Committee

