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29th January 2021

Subject: Appeal FAC 539/2020 regarding licence CN85958

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 CN85958 for 150 metres of forest road works at Leghawny Co Donegal was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 9th of July 2020.

Hearing

An oral hearing of appeals FAC 539/2020 was held by the FAC on 15th January 2021.

In attendance: FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Ms. Mary Lawlor and Mr Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Martin Regan and Ms Mary Coogan

Decision

Having regard to the evidence before it, including the licence application, the processing of the application 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 CN85958.

The licence pertains to 150 metres of forest road construction at Leghawny Co Donegal. The Applicant submitted that the soil type is 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 Donegal Co Council and to Inland Fisheries Ireland, neither of whom raised any issues of substance.

An appropriate assessment screening was undertaken and recorded on the file. The screening considered fourteen sites within 15km and an in-combination assessment considering other plans and projects was carried out and documented. The European sites considered were screened out for appropriate assessment. The licence was issued on the 9th of July 2020 with conditions.

There is one appeal against the decision. The grounds contend that in making the decision, DAFM committed breaches of Article 2 & 4 of the EIA Directive 2014/52/EU, that the licence conditions do not provide a system of protection consistent with the requirements of Article 5 of the Birds Directive, that the licence conditions do not provide a system of protection consistent with the requirements of Article 12 of the Habitats Directive, that the development would impede the achievement of the objectives for certain river basins under the WFD, that Errors in the AA screening render it legally invalid, that the inspector's determination was not adequately reasoned and that the application should have been referred to NPWS.

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.

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. DAFM contended that there was no hydrological or any other connection with any European site. They submitted that a technical error had resulted in a No answer being ascribed to question 23 on the record of the EIA consideration but that the response from the County Council had been received and was considered as part of the decision making process. They submitted that they also considered the fact that Barnesmore Bog NHA is situated to the north of the proposal and concluded that no impacts would arise on the NHA. They submitted that they were confident given the distance and nature of the site that the watercourse to the south would not be impacted.

The Applicant described the information provided with the application and the nature of the site and confirmed, via their own field surveys, the DAFM contention that the proposed development had no connection with any stream or watercourse of any significance. They submitted that the closest watercourse to the proposed road was 110 metres to the south and that there was no connection with the watercourse and that the site was relatively flat and dry. They submitted that the route had been chosen by an Engineer and, in combination with the specification, reflected the site characteristics, and was to facilitate all forestry operations in the specified area. They

submitted that there would be no excavation and the road would be built employing an embankment or build on top method.

DAFM contended that individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites within 15km's of the development. Consequently, the DAFM contended that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.

The FAC considered the grounds with regard to the Habitats and Birds Directives and in doing so considered under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. The FAC find that DAFM undertook a stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, and found 14 European sites within 15km of the proposal and screened out each site. An in-combination assessment was submitted as part of the Appropriate Assessment screening.

The FAC examined publicly available information from the EPA and NPWS and confirmed the same 14 sites are present within 15km of the proposed road. River Foyle and Tributaries SAC (UK0030320) also lies some 8.2km at it closest point to the east of the site but, in addition to be a considerable distance from the proposal, is situated in the Foyle Catchment while the proposal lies in the Donegal Bay North Catchment and significant effects on this SAC could not be considered possible. The site is described as flat with a gentle slope to the south, south west and the closest watercourse in this direction is some 110 metres from the closest point to the proposed road. This river is unnamed in the EPA records and flows westerly to join the Drumenny River which continues westerly and flows into the boundaries of Lough Eske and Ardnamona Wood SAC after some 2.2 km. The qualifying interests of the SAC include a number of aquatic species which are sensitive to water quality and the proposal and SAC lie within the Eske Freshwater Pearl Mussel Catchment. The DAFM screened this SAC out due to the absence of any aquatic zone or relevant watercourse in or adjoining the site and submitted at the oral hearing that they were confident that water or sediment from the proposed road would not meet this watercourse.

The Applicant submitted that this was also their assessment following site inspection. The grounds of appeal do not identify any specific European site, pathways or effects of concern. Having regard to the nature, scale and location of the proposal and the information available to it, the FAC is not satisfied that the DAFM erred in their screening of this SAC. The FAC further considered the reasons provided to screen other European sites out. The next closest European site is Dunragh Loughs/Pettigo Plateau SAC, the boundary of which lies over 3km to the

southeast. The proposal is for the construction of 110 metres of forest road in a managed forest and there is no evidence of a hydrological connection with a watercourse or European site. The grounds of appeal do not identify specific effects or pathways of concern. Based on the information available to it, 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.

The FAC also considered the DAFM record of their consideration of the requirements of the EIA Directive. 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.

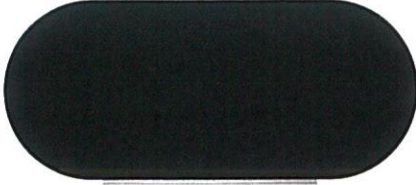
The proposal as described is being for 150 metres of forest road construction in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any real likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIA.

In regard to licence conditions related to bird and animal species, the FAC noted that the Appellant did not submit any specific details in relation to bird nesting or rearing or protected species of animal on the site. The FAC concluded that the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute and that it was not satisfied that the DAFM had erred in the attachment of licence conditions.

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 CN85958 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



Donal Maguire On Behalf of the Forestry Appeals Committee
