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27th January 2021

Subject: Appeal FAC749/2020 regarding licence CN85930

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 CN85930 is for the construction of a forest non grant aided roadway 160 metres in length at Glengort South and Caherlevoy, Co. Limerick which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 27th August 2020.

Hearing

An oral hearing of appeal FAC749/2020 was held by the FAC on 15th January 2021.

In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Michael O'Brien, Ms. Mary Coogan, Dr Elaine Bennett, Senior Scientist, Fehily Timoney and Company.

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 CN85930

The licence pertains to the construction of 160 metres of roadway at Glengort South and Caherlevoy, Co. Limerick. The soil type underlying the roadway is described as mineral and the construction method would be excavation. The specification of the road construction and maps delineating the route were submitted with the application. The road is stated to service 5.97 ha of forest for harvesting and forestry management. The proposal was referred to Limerick County Council who did not respond and NPWS

who in a response indicated that owing to the site's location within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 if works are to occur within the hen harrier breeding season Appropriate Assessment was required.

An appropriate assessment pre-screening report was provided with the application and recorded on the file. The screening considered three 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 Lower River Shannon SAC 002165; Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 and Blackwater River (Cork/Waterford) SAC 002170. Two sites were screened in Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 as the site is within the SPA and the Lower River Shannon SAC 002165 due to potential hydro connectivity and the remaining site was screened out. An Appropriate Assessment Screening Report and Determination was subsequently carried out and determined based on objective information, that no reasonable scientific doubt remains of any adverse effect on the integrity of any European site.

Mitigation measures are outlined and an in-combination assessment of possible In-Combination Effects was also carried out. The mitigation measures were proposed to avoid adverse effect to eliminate the potential for disturbance operations associated with this project during the prescribed period relating to the Hen Harrier breeding season. The licence was issued on the 27th August 2020 with conditions.

There is one appeal against the decision.

The grounds contend that the licence was issued in breach of Articles 2(1), 4(3) 4(4) and 4(5) of the EU EIA Directive. In particular, it is submitted that the DAFM did not have regard to the criteria in Annex III of the Directive; that the DAFM, as the competent authority, has failed to carry out screening to determine the requirement for EIA; that the information submitted by the Applicant did not represent the whole project as a forest road is not the entire project and that the competent authority did not consider information of the whole project in a screening and the application has not described all aspects of the environment which are likely to be significantly affected. It is stated that the purpose of the EIA Directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive.

The grounds also refer to the inspector's determination recommendation as inadequately reasoned and an inadequate conclusion is reached based on the IFORIS checkbox. The impact on cultural heritage is not considered. There is inadequate assessment and detailed information submitted in relation to in-combination effects. It is also stated that this Licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018- 21. There is insufficient detail in relation to mitigation measures and there is inadequate protection of listed birds and animal species

In a statement to the FAC, that in regard to the granted proposed new road CN85930 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. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. in this regard, the qualifying interests of the Natura 2000 sites in question by using the latest information available and subsequently some Natura 2000 sites were assessed and screened out, the remaining have had an appropriate assessment report (AAR) and subsequently an appropriate assessment determination (AAD) was carried out. Following the recommendation from the AAD it was recommended that this licence proceed.

It was also indicated that the site was the subject of a desk assessment and also a site inspection by the Department inspector on the 05/08/2020.

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken. Dr Bennett on behalf of the DAFM outlined details relating to the AA screening and determination, that two sites were screened in on the basis of the precautionary principle even though initial screening indicated potential effects were remote, that hydrological connections were examined; that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

The Applicant's representatives described the documents and information provided with the application. The Applicant at the hearing submitted that the site and proposed route was inspected prior to the application and that the design and specification was chosen by the Engineer to reflect the site conditions which was considered to be dry, that there was not direct hydrogeological connectivity arising in relation to the site; that certified local suppliers of materials would be engaged and that they would directly engage with the County Council.

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 three sites as the DAFM within 15km from the proposal. These are Lower River Shannon SAC 002165; Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 and Blackwater River (Cork/Waterford) SAC 002170. The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

The DAFM considered each site in turn and provided the reasons for screening one site out for appropriate assessment and the subsequent AA assessment of the remaining two sites. Details of other plans and projects were examined at the oral hearing. 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.

At the hearing the FAC raised issues relating to the details of the AA screening and Determination, the in-combination; road construction methodology and entrance, hydrogeological connectivity, mitigation measures and potential impact on any cultural site which were addressed by DAFM and the applicant 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. The inspector's determination and recommendation based on the IFORIS checkbox was also reviewed by the FAC and is considered adequately reasoned.

The two sites screened in and assessed were examined under the precautionary principle as hydrogeological links were considered highly remote given the distance to the nearest watercourse and in relation to the hen harrier; the most recent data was examined and mitigation measures are proposed which relate to operations on the site in the breeding season.

In relation to the EU EIA Directive, the 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 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 160 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 likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIA.

In relation to hydrological connections the FAC is satisfied based on the information available to it, that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

Regarding the protection of birds and animal species, no evidence of their presence on the site or impacts on these species were provided, the conditions of the licence provide for mitigation measures in particular during the breeding season of the hen harrier species and the FAC does not consider that the issuing of the licence does not exempt the holder from meeting any legal requirements set out in any

other statute. The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence CN85930.

In relation to cultural heritage as raised in the grounds of appeal there is no evidence of any site within 200 metres of the proposed road and the FAC are satisfied that there are provisions in place should a site being unearthed in the construction of the road.

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 CN85930 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 Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee

