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27th February 2020

Subject: CN79839 FAC077/2018 CN79839 Forest road licence Ballymartin, Co. Kilkenny

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

Forest Road licence CN79839 at Ballymartin, Co. Kilkenny was issued on 28th March 2018.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 25th February 2020.

In attendance at the oral hearing:

FAC Members:	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr James Conway & Mr Vincent Upton
Secretary to the FAC:	Ms. Ruth Kinehan
Appellant:	Not present
Applicant:	Not present
Department Representative:	Mr. Robert Hamilton, Ms. Mary Coogan

Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence CN79839.

The Appellant had submitted grounds of appeal relating to the appropriate assessment screening process and the consideration of cumulative impacts undertaken by the Department of Agriculture, Food and the Marine (DAFM). During the oral hearing the Appellant withdrew the specific grounds related to the appropriate assessment.

The licence is for 600m of forest road at Ballymartin, Co. Kilkenny to be constructed through excavation with the use of culverts close to the public road, which is to the east of the proposed site. The forest road is described as having no direct hydrological connection but services a forest area that is crossed by existing drains and is adjacent to a stream that rises to the southwest of the forest to be serviced and drains southerly. The site is described as dry and on mineral soil. The forest road will facilitate a first thinning of 27.3ha of semi-mature coniferous forest, Sitka spruce and Japanese larch, with a smaller area of broadleaves. There are extensive areas of mature forests to the north and east of the proposed forest road. A windfarm is located to the east with associated substation. There are additional felling and afforestation licences granted in the townland as provided by the DAFM. Before coming to its decision to confirm the licence the Forestry Appeals Committee examined the requirement for EIA and for Appropriate Assessment; these are contained on the public file.

There are four European sites within 15km. A boundary of the closest European site, the River Barrow and River Nore SAC, lies c.3.8km directly to the east but in a separate unconnected sub-catchment which drains to the north before joining the River Nore, which would preclude the possibility of a significant effect arising. The stream adjacent to the forest to be thinned joins the Blackwater river at Mullinavat and flows south before eventually meeting the Lower River Suir SAC at Waterford close to the estuary, which is some 20km along the watercourse from the forest. The nature and scale of the proposal, location and nature of the closest waterbody, and distance to this SAC would ensure that the possibility of a significant effect would not occur. Other European sites within and outside of the 15km radius can also be discounted due to the nature and scale of the proposal, absence of habitat related to the European sites, and degree of separation. For these reasons and taking account of other plans and projects in the vicinity, as noted above, the FAC concluded that there is no possibility of the forest road alone or in combination with other plans or projects resulting in the possibility of a significant effect on a European site.

The Forestry Regulations 2017 (S.I. No. 191 of 2017) sets a threshold of 2,000 m for mandatory EIA of forest roads but an EIA may be required for lengths below this where the road is likely to have a significant effect on the environment. The proposal before the FAC is sub-threshold for the purposes of EIA being 600m in length. It would facilitate the thinning of a stated area of 27.3 ha in a forest planted in 2001, which is not deforestation as defined in the EIA Directive as the proposal is for thinning and is not for the purposes of conversion to another type of land use. The FAC noted that this is predominantly a rural agricultural area with a dispersed settlement pattern but with a windfarm on the opposite side of a public road to the east and semi-mature and mature forests to the north and east. The FAC concluded that the proposed road in combination with other projects, including existing forestry and the adjacent wind farm, would not have likely significant impacts on population and human health, land, soil,

material assets, cultural heritage or the landscape. In terms of biodiversity, there is likely to be positive impacts resulting from the proposed road, as this would facilitate the opening up of small areas for foraging and movement of wildlife; this positive impact is not likely to be significant due to the nature and scale of thinning proposed. As noted previously the possibility of a significant effect on a European site will not arise with this development. There is evidence (accepted by the appellant) that this is a dry site and it is considered that the construction of the road alone, or in combination with proposed thinning would not result in likely significant effects on water. Forestry is likely to have a long-term positive effect in terms of carbon sequestration but, given the scale of the proposed development alone, and in combination with other forestry in the area, this is not likely to be significant. The interaction between the identified impacts is not likely to give rise to significant effects on the environment. Overall, the FAC concluded that the proposed development alone, and in combination with existing projects in the area, would not be likely to have significant effects on the environment and that EIA is not required in this case.

The FAC concluded that the proposal is consistent with Government policy and good forestry practice.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and submissions and observations received, including information provided at the Oral Hearing.

Note: The confirming of this decision should not be interpreted as meeting any requirement to obtain permission under planning legislation in circumstances where the provisions of that legislation require permission to be obtained. If you are in any doubt as to whether or not planning permission is required, it is recommended that you contact the relevant planning authority for clarification.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vincent Upton', written over a horizontal line.

Vincent Upton On Behalf of the Forestry Appeals Committee

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