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22th April 2021

Subject: Appeal FAC 434/2020 in relation to licence CN86244

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 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CN86244 for forest road of 626 meters(m) at Leabeg, Co. Offaly was granted by the DAFM on 15th July 2020.

Hearing

An oral hearing of appeal FAC 434/2020, of which all parties were notified, was held by the FAC on 14th April 2021. In attendance:

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Seppi Hona & Ms. Mary Coogan
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 at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence CN86244.

The licence pertains to 626m of forest road at Leabeg, Co. Offaly to serve 25.04 hectares of forestry. A pre-approval submission report together with a photo of the site notice, maps, management plan, haulage proposal, and the specifications of the road were included with the application and construction is to be by 'Build on Top'. The proposal is for two separate pieces of road to serve two separate plantations in close proximity; plot 1 to be served by new road with bellmouth and plots 2, 3 & 4 to be served by upgrade of 255m of road and a new short spur road of 51m and bellmouth. In total 371m of

new road and 255m upgrade of road, all of which will access off the same private road to the public road (R357). The soil type is given as peat.

Site details on Inspector's certification document are given as; This project comprises 626 metres of forest road works. The predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise of trees and grasses.

The proposal was desk assessed by DAFM and referred to Offaly County Council. They replied making a number of observations such as; there is an entrance from R357 to the private road that provides access to the forested area and proposed forest road works, the land is in an area of High Amenity (Lough Boora) and classified High Sensitivity Landscape Area but not within or adjacent to a SAC or SPA. It also stated it is in close proximity to a number of residential properties along the regional road (R439), advising care when entering and leaving the site, and to make every effort to implement measures to protect water quality.

The DAFM undertook a stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, and found eight European sites within 15km of the proposal and there was no reason to extend this radius in this case. The sites were considered in turn with their qualifying interests listed and the reasons for screening out each site are provided. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site listed. The DAFM also considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The licence issued on 15th July 2020.

The decision to grant the Licence is subject to one appeal. The grounds of the appeal broadly are;

- That the Directive is in meters not %, querying what the total distance of roads is in the cumulative area.
- That the decision does not comply with the Habitats Directive, the Birds Directive, and the Environmental Impact Assessment Directive for the following reasons:
 - That the test for Appropriate Assessment Screening (of a proposed project) in Irish and EU law is that is merely necessary to determine that there may be an effect rather than to state that it will not have a significant effect.
 - That if a development is within 15km of a Natura 2000 site it has been screened in.
 - That the judgement in Case C-323/17 People Over Wind and Peter Sweetman v Coillte by the Court of Justice of the European Union (CJEU) applies, and that:
 - It is not appropriate, as the screening stage, to take account of the measures intended to avoid or reduce the effects of the plan or project on that site;
 - That an assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings capable of removing all scientific doubt as to the effects of the proposed works on the protected site concerned.

- That a map showing the SACs and SPAs and the site of the proposed development should be attached.
- That regarding screening for Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50h, and also that it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development including thinning and clear-fell.
- That it is the duty of the FAC to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law.
- The Opinion of the Advocate General Kokott in Case-C 254/19 was quoted to support the grounds.

In a statement to the FAC, the DAFM submitted that their decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act, and submitted *"No hydrological connection in existence on the project route or required as part of the construction. This project is outside of commuting range of the listed qualifying interests of associated Natura sites. No effect is expected."*

At the oral hearing, the DAFM opened by summarising their approach to processing the application and issuing the licence and that they have notified the applicant of the withdrawal of the licence pending the appeal outcome. The DAFM in responses to questions from the FAC clarified that the in combination assessment that was before the certifying Inspector prior to his decision consisted of a 21 page document that included a consideration of forestry and non forestry plans and projects and an in combination statement; that the other forestry projects listed included one afforestation, one forest road, two private felling licences (one of which is not approved) and no Coillte data as none was found. The DAFM confirmed that this included felling licence TFL00354619. The DAFM acknowledged an anomaly in the letter, following the decision, issued to the person who made a submission on the application and that there was work ongoing at a wider level to address certain anomalies in DAFM documentation. In the recording of the site details in the Inspector's Certification document he submitted that there are a limited number of options available to the Inspector to describe the site and accepted that the soil type was peat based on the application details. He expressed the DAFM's satisfaction that they considered all factors appropriately, referring to the DAFM Statement on the appeal regarding the lack of hydrological connection and the nature of the Natura 2000 sites in the Appropriate Assessment Screening, and that they were content with their conclusions.

In addressing the grounds of appeal, the FAC considered, in the first instance, compliance with the EIA Directive. In considering this aspect, the FAC notes that the EU EIA Directive sets out, in Annex I, a list of projects for which EIA is mandatory. 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. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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 felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal relates to a licence for forest road of 626m, so is significantly sub threshold for the mandatory submission of an EIA report as set in Irish Regulations. The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. In its consideration of cumulative effects, the DAFM recorded an answer 'No' to the question; *When considered in combination, does the proposed forest road AND other recent, ongoing or planned works, represent the construction of single or multiple lengths of forest road totalling 2000 m or more within the area?* The DAFM also included the approximate % forest cover in the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded that based on the extent of the forest cover and the forest road network that the cumulative effect of this proposal was not likely to have a significant impact. The DAFM submitted at oral hearing that their in combination assessment identified only one other forest road project, of a length of 70m in the vicinity of the proposal area. Neither of the two sections of proposed road under this appeal amounting to 626m adjoin or cross a watercourse. The area lies outside of any conservation area and the DAFM completed a screening for Appropriate Assessment and determined that no significant effects would occur on any SAC or SPA. The FAC is not satisfied that a serious or significant error or a series of errors was made in relation to the EIA considerations and concurs with the conclusion.

In addressing the Habitats and Birds Directives and Appropriate Assessment grounds of appeal, the FAC 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 projects, having regard to the conservation objectives of that designated site. The DAFM, in this case, undertook their own Stage 1 screening, and found eight European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Charleville Wood SAC 000571, Clara Bog SAC 000572, Clonaslee Eskers And Derry Bog SAC 000859, Ferbane Bog SAC 000575, Middle Shannon Callows SPA 004096, Moyclare Bog SAC 000581, River Shannon Callows SAC 000216 and Slieve Bloom Mountains SPA 004160. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The FAC consulted publicly available information from the NPWS and EPA and identified the same eight sites. The closest site is Ferbane Bog SAC 000575 which lies c. 7.2km away. The two SPAs within 15km lie over 13km away at its closest point. The area to be served by the western section of road adjoins and is crossed by the Boora_020 river waterbody which has a good WFD status (2013 -2018) and is a tributary of the River Brosna. The DAFM submitted that the proposal area is not hydrologically connected and the FAC in reviewing this on publicly available maps find it c. 150m from the Boora_020 waterbody. The area is in the Lower River Shannon WFD Catchment (code 25) and the Brosna_SC_050. The DAFM also undertook and recorded a consideration of other

plans and projects, including forestry and non-forestry projects, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC having considered all of the this, is satisfied that no likelihood of significant effects arise from the proposal itself or in combination with other plans and projects, due to the distance involved, the size and nature of the proposal and having regard to other plans and projects. The procedures adopted by the DAFM in their assessment are considered to be acceptable. In considering all the evidence before it the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding Appropriate Assessment and concurs with the conclusions provided.

In considering the appeal the FAC had regard to the record of the decision, 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 in deciding to affirm the decision, 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 James Conway.

James Conway, On Behalf of the Forestry Appeals Committee

