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26th April 2021

Subject: Appeal FAC 312/2020 and 410/2020 regarding licence CN83971

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

Background

A licence for 850 metres of forest road works at Knockrath Big Co Wicklow was issued by the Department of Agriculture, Food and the Marine (DAFM) on 19/06/2020.

Hearing

A hearing of appeals FAC 312/2020 and 410/2020 was held by the FAC on the 16th of April 2021. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

DAFM Representatives: Ms. Mary Coogan, Mr. Robert Windle and Mr Alan Booth

Applicant Representatives: [REDACTED]

Appellant FAC 410/2020: [REDACTED]

Appellant FAC 312/2020: [REDACTED]

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made 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 CN83971

The licence decision pertains to 850 metres of forest road works at Knockrath Big Co Wicklow. The proposed works are in two parts, the first involves the upgrading of 200m of existing forest road and the second, concerns the construction of 650m of new forest road. The application includes road specification details, environmental considerations, maps showing the area to be served, the route of the road, the location of the site notice and environmental information as well as aerial imagery and a location map. This project lies in a rural landscape in County Wicklow in the River Sub Basin Avonmore_050 and Avonbeg_030. The River Sub Basin Avonmore_050 and Avonbe_030 have approximately 41 % and 36% forest cover respectively, which is higher than the national average of 11%. The predominant soil type underlining the project area is described as being predominantly brown earths in nature. The slope is predominantly flat to moderate (<15%). The inspector reports, based on two field visits, that the project area does not adjoin or contain an aquatic zone. The vegetation type within the project area is comprised of type WD4.

The application was referred to Wicklow County Council on the 16/08/2019 and a reply was received on the 10/09/2019 raising no objection, but the local authority sought to impose potential financial obligations on the applicants in the event of wear and tear of the public road system becoming apparent at some point in the future, notwithstanding, the FS inspector did not consider it practicable or appropriate to recommend the transposition of this into a licence condition. It was also referred to Inland Fisheries Ireland on the 16/08/2019. No reply was received.

The DAFM recorded a screening for Appropriate Assessment and identified that the proposal does not overlap with a European site and that five sites are within 15km of the proposal and that there was no need to extend the radius in this instance. Each European site was considered in turn and it was concluded that in the case of the SAC's that the proposal was not required to proceed to Appropriate Assessment and reasons are provided below. In the case of the Wicklow Mountains SPA, the Forest Service (FS) Inspector referred the case to the FS ecology unit. The ecologist assessed the application and then screened it out, giving reasons for doing so, set out below.

The SAC sites are; Deputy's Pass Nature Reserve SAC, Wicklow Mountains SAC and Vale of Clara (Rathdrum Wood) SAC which were all screened out due to the absence within and adjacent to the project area, of any habitat listed as a qualifying interest of the Natura sites and the Slaney River Valley SAC, which was screened out due to the location of the project area being within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.

In the case of the Wicklow Mountains SPA, the FS ecologist made the following assessment in screening it out, "the proposed development is located approximately 2.2km from the SPA. This is within the core foraging range for A098 Merlin *Falco columbarius*; however, the proposed forest road involves an upgrade of an existing road (200m) and the new road (650m) is located predominantly in existing conifer plantation. Merlin hunt over open habitat such as moors, heathland, bog or natural grassland and prefer to nest directly adjacent to this habitat, or in clearings over a hectare in size. The surrounding landscape consists of woodland and is unsuitable foraging habitat".

A consideration of other plans and projects in-combination with the proposal carried out on the 25.05.20 was also recorded. The DAFM concluded 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".

Additionally, consideration of the proposal across a series of criteria are recorded on the file and the DAFM concluded that the proposal should not be subject to the EIA process. The application was approved on 19.06.20.

There are two appeals against the granting of the licence. FAC 410/2020 submits that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.

The grounds of FAC312/2020 contend, *inter alia*, that there has been a breach of Article 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU (The FAC understands this to refer to Directive 2011/92/EU as amended by Directive 2014/52/EU) in that a number of criteria required under the Annex III are not taken into account and that the whole project has not been identified or assessed. It is further submitted that the Determination reached by the DAFM is inadequately reasoned and that the Stage 1 AA Natura assessment is not legally valid. It is further submitted that the licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. It is also submitted that the licence conditions do not provide a system of protection for wild birds under the Birds Directive.

In a statement to the FAC, the DAFM submitted that decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. It was submitted that both a desk audit and field inspection (on the 29/01/20) were carried out and that all submissions and appeals were reviewed and that all criteria have been fully adhered to and that the approval is in order. The Department additionally submitted that the relevant selection criteria set out in Annex III of the EIA Directive, which are referenced in Article 4(3) in relation to projects that should be subject to an EIA screening, were adequately considered within the current procedures. The Department submits that it complied with these requirements by assessing the information submitted by the applicant, which it considers compliant with the requirements set out in Article 4(4) and Annex IIA, while taking into account the results of the preliminary verifications or assessments of the effects on the environment carried out under the Birds and Habitats Directives and the Water Framework Directive.

An oral hearing of the appeal was held on 16th April 2021, of which all parties were notified, and attended by representatives of the DAFM and the Applicant. The DAFM outlined their processing of the application and read through their written statement. The DAFM submitted that all criteria and

procedures were adhered with and that the site was field inspected and that the DAFM is satisfied that the particulars of the application are correct. Regarding the design of the road, it was submitted that the DAFM is satisfied that the proposed road design was acceptable and appropriate in this case. The Applicant submitted that the road was designed following desk and field assessment by an Engineer and confirmed the details of the application including the specification and mapping, and that an existing entrance is in place in line with the site notice. It was confirmed that there are no relevant watercourses or aquatic zones in or adjoining the proposal and that any water leaving the road would filter through the forest floor.

The FAC considered in the first instance the grounds that relate to the information provided in the application. The grounds contend that the application contains inaccurate and insufficient information with reference to the EU EIA Directive. The FAC noted that the application includes road specification details, environmental considerations, maps showing the area to be served, the route of the road, the location of the site notice and environmental information as well as aerial imagery and a location map. This includes information regarding the location of the proposal in relation to areas designated for conservation and other environmental information. The maps submitted, including a Biomap, identify the location of the proposal and any environmental features proximate to the proposal. The FAC is satisfied that the information submitted by the Applicant was appropriate and acceptable in this case and is not satisfied that the DAFM have erred in this regard.

Regarding the remaining Environmental Impact Assessment (EIA) and related matters in the grounds, the FAC considered that 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. In this instance the proposal is considered across a number of criteria including the Project Description, Cumulative effect and extent of project, Water, Soil, terrain, slope and other factors. The DAFM also completed a screening for Appropriate Assessment and considered other conservation sites and issues. Answers are provided to the listed questions. At 850 metres the forest road works are sub-threshold for the mandatory submission of an EIA Report. As noted, the forest road would be located in an area of managed forest and is outside of any areas designated for nature conservation or landscape preservation.

Regarding the ground concerning the Water Framework Directive, the FAC noted that there was no watercourse on the site and when that is taken into consideration together with the comprehensive measures set out in the COFORD Forest Road Construction Manual that no pathway of effect would exist. The FAC is satisfied that given the nature and scale of the proposal, including the specification details, that no relevant waterbodies would be affected and that there is no convincing evidence that the DAFM have erred regarding the requirements of the Water Framework Directive.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The proposed forest road is not situated within any European site and is not directly connected with or necessary to the management of the site. As noted, the DAFM recorded a screening for Appropriate Assessment that included plans and projects considered in-combination with the proposed forest road works. The FAC considered the range and type of plans and projects considered in-combination with the proposed road and concluded that they were acceptable. The FAC consulted publicly available information provided by the NPWS and EPA and identified the same five sites within 15km of the proposal. The DAFM had completed each section of its determination and the responses appeared to the FAC to be in keeping with the facts of the matter. The FAC questioned the DAFM in relation to a number of anomalous responses provided in the electronically completed certification report, the FAC was satisfied that these were minor clerical errors. The FAC concurs with the conclusions reached in the DAFM screening that the proposal was not required to proceed to Appropriate Assessment under Article 6(3) of the Habitats Directive. The FAC is not satisfied that the screening contains significant or serious errors.

The Applicant submitted that the application was made following desk and field assessment by a qualified and highly experienced professional. The DAFM submitted that it was satisfied with the design and specification of the forest road and that the Application was satisfactorily prepared. The FAC noted the details of the application and the nature of the proposal. The FAC consulted publicly available maps and information and confirmed the details and noted that historic maps show a history of land management in the area. The FAC considered that the design and specification were appropriate and acceptable and that there was no evidence that significant environmental damage would occur. Based on the evidence available to it, the FAC is not satisfied that an error occurred in the EIA determination recorded by the DAFM. The FAC is satisfied that, having regard to the nature, scale and location of the proposal, that the DAFM conclusion regarding EIA is sufficiently reasoned and the FAC concurs with the conclusion reached.

In relation to the appellant's stated grounds of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. The FAC had regard to the DAFM record, including the screenings and assessment undertaken. The FAC noted that no details or evidence of the presence of species on the site was provided by the Appellant. The FAC considered that the granting of a licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC is not satisfied that an error was made in making the decision in this regard in relation to CN83971.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is not satisfied that a serious error was made in making the decision. The FAC is thus affirming the decision of the Minister regarding licence CN83971 in line with Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,

A black rectangular redaction box covering the signature of Donal Maguire.

Donal Maguire on behalf of the forestry Appeals Committee