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20th April 2021

Subject: Appeal FAC 239/2020 regarding licence CN85379

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 CN85379 for 960 metres of forest road at Lisvarrinane, Co. Tipperary was approved by the Department of Agriculture, Food and the Marine (DAFM) on 7th May 2020.

Hearing

An oral hearing of appeal FAC 239/2020 was held by the FAC on 12th April 2021.

In attendance at Oral Hearing:

Department Representative(s):	Ms. Mary Coogan, Mr. Robert Hamilton,
Appellant:	Not in attendance,
Applicant / Representative(s):	Not in attendance,
FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.
Secretary to the FAC:	Ms. Heather Goodwin, Ms. Marie Dobbyn (Observer).

Decision

Having regard to the evidence before it, including the licence application, processing 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 CN85379.

The licence pertains to 960 metres of forest road to service 38.72 ha of forest at Lisvarrinane, Co. Tipperary. The soil type underlying the project is described in the Inspector's Certification documentation on file as being predominantly brown podzolic in nature, the site is described as having a slope that is flat to moderate and the project area is said not to contain / adjoin an aquatic zone. The nearest waterbody

to the project is the Aherlow_030 which lies c. 200m to the east at its nearest point at a location, where according to contours, the land drains generally in a north to south direction. The Aherlow_030 has been assigned a 'moderate' WFD status by the EPA in the 2013-18 assessment period and while it is categorised as being at risk, forestry is not listed as a pressure. There is stated to be an existing entrance with the public road and the proposed roadworks were described at oral hearing by the DAFM representative as comprising a light upgrade of an existing farm track for some 400m, the construction of the road for some 440m along the route of an existing track and the remainder, being some 120m, as new construction. The specification of the road was provided with the application.

The DAFM undertook a screening of the proposal for Appropriate Assessment and found that there were three European sites (Lower River Suir SAC, Galtee Mountains SAC, and Manour Mountain SAC) within 15km of the proposed road and that there was no reason to extend this radius in this case. Each site was considered in turn along with its Qualifying Interests and all three sites were screened out for the purposes of Appropriate Assessment. The reasons for the screening conclusions reached in respect of each site is provided in the screening documentation found on file. The DAFM also recorded other plans and projects that were considered in combination with the proposal. The DAFM 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 application was referred to the Tipperary County Council and no response is to be found on file. The licence was approved on 7th May 2020.

There is one appeal against the decision. The grounds contend that there is, a breach of Article 4 (3) of the EIA Directive 2014/52/EU submitting that a number of criteria set out in Annex III do not form part of the screening assessment, a breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the developer has not provided all of the information required under Annex III A, a breach of Article 4 (5) of the EIA Directive 2014/52/EU submitting that the application does not represent the whole project and that required information has not been provided, a non (full) compliance of the application with Forestry Regulation 6(2), a flaw in the DAFM Stage 1 Appropriate Assessment Conclusion, an inadequate consideration of the objectives of the WFD River Basin Management Plan, an inadequacy in a condition of the licence and a submission 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 Article 5 of the Birds Directive.

In a statement to the FAC, the DAFM submitted that the decision was issued in accordance with the procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures listed in the statement have been adhered to in making a decision on the application. The statement also provides a response to the grounds of appeal. At the oral hearing the DAFM representatives outlined the processing of the application, the information submitted by the applicant and that the project was desk assessed. The DAFM described the Appropriate Assessment and EIA considerations undertaken and the conclusions reached and reiterated the broad content of the statement of facts provided to the FAC. In response to queries from the FAC at oral hearing the DAFM representative clarified some entries on the file record as available to the FAC. In particular he confirmed that the answer provided by the certifying inspector to question 3.2 in the '*Environmental Considerations*'

section of the inspector's certification with regard to the location of the project area relative to sites that have certain stated classifications / designations was correct. He also confirmed, in response to query at oral hearing, that the answer to question number 16 on the '*Assessment to Determine EIA Requirement*' should have been a 'yes' rather than a 'no' as shown. While this is an error in the record the FAC finds that it is not a significant error and having regard to the submission by DAFM at oral hearing.

The FAC, in the first instance, considered the Appropriate Assessment screening and determination undertaken by the DAFM. The grounds of appeal submit that the DAFM stage 1 Appropriate Assessment conclusion is flawed. The FAC finds that the screening of the proposal for Appropriate Assessment established that there were three European sites (Lower River Suir SAC, Galtee Mountains SAC, and Manour Mountain SAC) within 15km of the proposed road and that there was no reason to extend this radius in this case. Each site was found to have been considered in turn and all three sites were screened out for the purposes of Appropriate Assessment. The FAC finds that the reasons for the screening conclusions reached in respect of each site are provided in the screening documentation on file and that the DAFM also recorded other plans and projects that were considered in combination with the proposal. The DAFM representative in response to a query at oral hearing, confirmed that the project area was located c. 200-250m from the nearest point of the Manour Mountain SAC and that it was the contention of the DAFM that the Appropriate Assessment screening carried out and conclusion reached in relation to this European Site was in compliance with the requirements of the law and relevant procedures. The FAC examined publicly available information from the NPWS and EPA and identified the same three European sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC further considers that the procedures adopted by the DAFM provide for opportunities for the public to make submissions on the proposal. The FAC considered that the procedures adopted by the DAFM in their assessment are considered to be acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

The FAC considered the contention in the grounds of appeal that there had been an inadequate consideration of the objectives of the WFD River Basin Management Plan. In doing so the FAC noted the content of the DAFM statement and the submissions made at oral hearing. The Appellant did not submit any specific information regarding effects on water quality or specific matters relating to the pathways related to the proposal. The grounds submit that the site is in the catchment of the Aherlow_030 and that same has a poor WFD status. The FAC examined publicly available information from the EPA and identified that the project lies c. 200m west of the nearest point of the Aherlow_030 waterbody in a location, where according to the contours of the ground, the land drains generally in a north to south direction. The FAC further finds that the Aherlow_030 waterbody has been assigned a 'moderate' WFD status by the EPA in the 2013-18 assessment period and while it is categorised as being at risk, forestry is not listed as a pressure. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

In relation to the contention in the appeal grounds that the application submitted is not fully compliant with Forestry Regulation 6(2), the DAFM representative, in response to query at the oral hearing, provided a summary of the application as submitted including maps and asserted that the application materials provided DAFM with sufficient information to enable it process the licence and make a determination on it. The FAC, having considered the application, information available to it on the file, the submissions made, the related ground of appeal and the submissions made by the DAFM at oral hearing agreed that the application submitted had sufficient information, including maps, to inform the decision-making process and further considered that the DAFM had not erred in its processing of the application as it related to this ground of appeal. In relation to the contention in the appeal grounds that the licence condition requiring consultation with the house owner adjacent to the start of the proposed road layout was inadequate and vague the DAFM representative in response to query from the FAC explained that the purpose of this condition was to ensure that the owner / occupants of the house in question would be aware of the proposed works. He further submitted that compliance with the condition as included in the licence will ensure that this happens. The FAC, having considered the information available to it on the file, the submissions made, the related ground of appeal and the submissions made by the DAFM at oral hearing agreed that the condition in the licence relating to this ground of appeal is adequate. The FAC is therefore not satisfied that a serious or significant error or a series of errors was made in making the decision as it relates to this ground of appeal.


Regarding Environmental Impact Assessment (EIA) and related matters in the grounds of appeal, the FAC noted the submission by the DAFM representative at oral hearing that the answer to question number 16 on the *'Assessment to Determine EIA Requirement'* should have been a 'yes' rather than a 'no' (ie confirming that proposed design and construction of the forest road take into account soil, terrain and slope in a way that mitigates against any environmental damage). In considering these grounds, 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 a forest road of 960m, and so is sub threshold for mandatory EIA as set in Irish Regulations. The road would be built along the line of an existing farm track for some 400m, along the line of an existing track for a further 440m and as new construction for some 120m and outside of any area designated for conservation. The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to

undergo the EIA process. The DAFM in their considerations on this, in the section focusing on the cumulative effect, recorded answers to questions on both the length of the proposed forest road and the length of forest road in the area when the proposed road is considered in combination with other recent, ongoing or planned work, and the responses indicated lengths of less than 2000m. The DAFM also included the approximate percentage 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 FAC having considered all of the evidence before it, is not satisfied that a serious or significant error or a series of errors was made by DAFM in relation to their EIA consideration and concurs with the conclusion reached regarding EIA and considered that breaches of Articles 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU had not occurred in this case.

Regarding the contention in the 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 Article 5 of the Birds Directive, the FAC noted that the grounds had not provided any specific information regarding the presence of any species or habitats in the area. The FAC considered the existing legislative safeguards in place with regard to the matters raised in these grounds and that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC further considered the nature, scale and location of the proposal being for forest road works substantially along an existing track in an area of managed agricultural and forestry land. The FAC finds that the granting of the licence for the road in this case does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC is satisfied, based on the information available to it, that the inclusion of a condition as raised in these grounds of appeal in this case, was not required and that an error had not been made by the DAFM in the processing of the application as it relates to this ground of appeal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, 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 CN85379 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,


Seamus Neely On Behalf of the Forestry Appeals Committee.

