



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26th April 2021

Subject: Appeal FAC665/2020 & FAC671/2020 regarding licence CN86370

Dear [REDACTED]

I refer to the appeals 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 203 metres of forest road works at Carricknagrow, Co. Cavan. was approved by the Department of Agriculture, Food and the Marine (DAFM) on 13th August 2020.

Hearing

A hearing of appeals FAC665/2020 & FAC671/2020 was held by the FAC on the 16th 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. Martin Regan

Applicant Representatives: [REDACTED]

Appellant FAC665/2020: [REDACTED]

Appellant FAC671/2020: [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 vary the decision of the Minister regarding licence CN86370.

The licence decision pertains to 203 metres of forest road works at Carricknagrow, Co. Cavan. 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. The road is described as servicing a forest of 8ha planted in 1998. The

site is described as a gley soil with a peat layer, flat and at an elevation of 60 to 70 metres. Construction would be through excavation. Photos of the site notice and the site notice in situ were provided. The nearest village is Dowra which lies c.6.7km to the south. The application was referred to Cavan County Council on 15/06/20 and no response was recorded. A submission from a member of the public was received on 17/06/20.

The DAFM recorded a screening for Appropriate Assessment and identified that the proposal does not overlap with a European site and that four sites are within 15km of the proposal and that there is no need to extend the radius in this instance. These sites are Boleybrack Mountain SAC 002032, Corratirrim SAC 000979, Cuilcagh - Anierin Uplands SAC 000584 and Lough Gill SAC 001976. A consideration of other plans and projects in-combination with the proposal was also recorded. Each European site is considered in turn and it was concluded that the proposal was not required to proceed to Appropriate Assessment and reasons are provided. Additionally, consideration of the proposal across a series of criteria are recorded and the DAFM concluded that the proposal should not be subject to the EIA process. The application was approved on 13/08/2020 with conditions including,
Consult with Leitrim Co Co at all times with regard to usage of public roads,
Adhere to forestry & water quality guidelines,
All guidelines to apply

Two appeals against the granting of the licence. FAC665/2020 submits that no legal Appropriate Assessment screening has taken place, the cumulative forest roads in this forest exceeds 2km, no legal screening for Environmental Impact Assessment has taken place and no Environmental Impact Assessment has taken place.

The grounds of FAC671/2020 contend, inter alia, that there has been a breach of Articles 2(1), 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 application did not contain sufficient information to make the determination and that the details of the application are not an accurate representation of those required under Regulation 6(2) of the Forestry Regulations 2017. It is submitted that the individual Stage 1 AA Natura site conclusions are based on errors of fact and that the in combination information lacks detail and clarity to enable a definitive position to be reached. It is submitted that the proposed design and construction of the forest road does not take into account soil, terrain and slope in a way that mitigates against any environmental damage. It is 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 submitted that the licence conditions do not provide a system of protection for wild birds under the Birds Directive or animal species listed in IV(a) of the Habitats Directive.

In a statement to the FAC, the DAFM submitted that decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act. It was submitted that both a desk audit and field

inspection were carried out and that the submissions and appeals were reviewed and that all criteria have been fully adhered to and approval is in order. The Department additionally submits 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, are adequately considered within the current procedures. The Department submits that it complied with these requirements by assessing the information submitted by the applicant and which it considers compliant with the requirements set out in Article 4(4) and Annex IIA, while taking into account of the results of the preliminary verifications or assessments of the effects on the environment carried out under Birds and Habitats Directives and the Water Framework Directive. It is submitted that the DAFM applies a wide range of checks and balances during its evaluation of licence applications in relation to the protection of water, as set out in the DAFM document *Forests and Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018) and that any licence issued is conditional on adherence to the relevant licence conditions. It is submitted that site-specific measures prescribed by the DAFM to mitigate against impacts on the Special Conservation Interests and Qualifying Interests of the screen-in European sites were identified in the AA determination documents. It is submitted that it is a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply.

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. It was submitted that the response in the DAFM statement to ground 11 contains an error and that no Appropriate Assessment was undertaken in this case. 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. Following questioning, it was submitted that the licence condition that related to consultation with Leitrim County Council was included in error and that the proposal is in Cavan and that there was no reason for the consultation. 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 zone in or adjoining the proposal and that any water leaving the road would filter through the forest floor. On questioning it was submitted that the haulage route would not be likely to enter County Leitrim and that there was no requirement in this case to consult with Leitrim County Council but that, as a matter of procedure, the Applicant regularly corresponds with all local authorities where it operates.

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 Regulation 6(2) of the Forestry Regulations 2017 and the EU EIA Directive, while no specific reference or example is provided. Regulation 6(2) requires the submission of mapped

information regarding the proposal as well as the information in Schedule 1 of the Regulations. As noted, 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 203 metres the forest road works are considerably 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. The proposed road connects to a minor public road and it is submitted that an existing entrance is in place. The application was referred to Cavan County Council but no response was provided.

The lands are located in the Shannon [Upper]_SC_010 of the Upper Shannon 26A Catchment. The closest marked watercourse is c.330 metres to the west, the Black river. This river forms part of the Water Framework Directive (WFD) waterbody Shannon (Upper)_020 which has been assigned a status of Good (2013-2018) and Not At Risk regarding the WFD objectives. The site is flat and described as a mixture of mineral and peat soils. The shore of Carricknacranoge Lake lies c.180 metres to the south and there is no evidence of a hydrological connection to the lake which drains to the west. This lake does not appear to have been assigned a WFD status. The FAC is satisfied that given the distance and the nature and scale of the proposal, including the specification details, that these waterbodies would not be impacted 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 four sites within 15km of the proposal. Boleybrack Mountain SAC lies over 2km to the west of the proposal. There is no evidence of a direct hydrological connection to the site and or of the presence of the related species and habitats on the lands of the proposed forest road works. Cuilcagh - Anierin Uplands SAC lies over 4km to the east and there is no evidence of a pathway of effects to this site either. The FAC identified that Cuilcagh Mountain SAC UK001660 lies 5.7km to the east but is not recorded in the DAFM screening. This site forms the northern side of the Cuilcagh Mountains and is situated in the UK. While the FAC considered that the failure to record this site represented an error that it could not be considered a serious or significant error having regard to the nature and scale of the proposal and the location relative to that SAC. Corratirrim SAC lies over 5.4km to the northeast of the proposal and is situated in the Erne Catchment with no hydrological connection to the proposal. Lough Gill SAC lies over 13km to the west and is in the Sligo Bay Catchment. While the grounds contend that the screening conclusions include errors in fact no examples or evidence of this was submitted. 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 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 responses provided as Not Applicable. The grounds of appeal suggest that the forest road does not take into account soli, terrain and slope in a way that mitigates against any environmental damage. The Applicant submitted that the application would have been 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 proposal would involve the construction of 203 metres of forest road to meet the public road where an existing entrance is submitted to be in place. The lands are described as flat and on mineral soil with a shallow peat layer. 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 or animals listed under Annex IV (a) of the Habitats 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 felling 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 CN86370.

During the oral hearing, the FAC question the inclusion of a licence condition related to consultation with Leitrim County Council. The DAFM submitted that this was included in error and that the proposal is in Cavan and that the referral was made to Cavan County Council. The Applicant submitted that there would be no reason to consult with Leitrim County Council in this case while they are in regular communication with the local authorities in the counties in which they operate. The FAC considered that the inclusion of this condition was an obvious error but that it constituted a serious error as it was not reasonable to require such consultation in the absence of any reason. The FAC is therefore varying the licence decision to remove the following condition,

Consult with Leitrim Co Co at all times with regard to usage of public roads.

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 satisfied that a serious error was made in making the decision through the inclusion of a condition unrelated to the application or decision. The FAC is thus varying the decision of the Minister regarding licence CN86370 in line with Article 14B of the Agricultural Appeals Act 2001, as amended to remove the identified licence condition. In varying 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 Vincent Upton.

Vincent Upton/On Behalf of the Forestry Appeals Committee