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26th April 2021

Subject: Appeal FAC591/2020 & FAC642/2020 regarding licence CN86533

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 220 metres of forest road works at Crooderry, Derryherk, Co. Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on 30th July 2020.

Hearing

A hearing of appeals FAC591/2020 & 642/2020 were held by the FAC on 14th April 2021. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr. Seamus Neely,
Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

DAFM Representatives: Ms. Mary Coogan, Mr. Momme Reibeisch

Applicant: Not present

Appellant FAC591/2020: Not present

Appellant FAC642/2020: Not present

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 CN86533.

The licence decision pertains to 220 metres of forest road works at Crooderry, Derryherk, Co. Roscommon. The application includes a project description, environmental considerations, road specification, and operational, biomap and location maps. The road would be constructed through excavation and the site is described as a heavy clay without peat. The road is submitted to serve an area

of 8.9 ha of forest. The Application notes that the forest road will connect to an existing forest road of 600 metres. The Application was referred to Roscommon County Council and no response was recorded. There was one submission from a member of the public. Photos of a site notice and a notice in situ were submitted.

The DAFM undertook and documented a screening for appropriate assessment and identified five European sites within 15km. These are Lough Arrow SAC, Bricklieve Mountains and Keishcorran SAC, Unshin River SAC, Cuilcagh - Anierin Uplands SAC and Lough Arrow SPA. Each site is considered in turn alongside their qualifying interests and conservation objectives and a conclusion and reasons are recorded. A consideration of other plans and projects in combination with the proposal was undertaken and dated 27/07/2020. It was concluded that the proposal should not proceed to Appropriate Assessment. The proposal was also considered across a range of criteria and a conclusion was recorded that the proposal should not undergo the Environmental Impact Assessment process. The licence was approved on 30th July 2020 with conditions.

There are two appeals against the decision. The grounds of FAC591/2020 question the legitimacy of the forest and contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive or the basic guidelines of the NPWS. A document entitled 'General observations from the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht in relation to forestry application referrals' was also submitted. The grounds contend that if a development is within 15km of a European site it is screened in as well as submitting requirements in relation to Appropriate Assessment and Environmental Impact Assessment screening.

The grounds of FAC642/2020 contend 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) and submits that a number of criteria required under Annex III are not taken into account and that the whole project has not been identified or assessed and that the determination is invalid. It is further submitted that the Determination reached by the DAFM is inadequately reasoned and contains errors. 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 the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. Furthermore, it was submitted that the AA (Appropriate Assessment) screening procedure relevant at the time was applied and the proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20 and that an in combination assessment was carried out and that all relevant information can be found on file.

In response to FAC642/2020, 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 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, 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 restated their written statement. The DAFM submitted that all criteria and procedures were adhered with and that the site was desk assessed and confirmed the conclusions reached regarding Appropriate Assessment and Environmental Impact Assessment. The FAC queried the assessments undertaken, the hydrology of the area, the reference to archaeology and forest cover in the area. The DAFM submitted that the closest recorded monument, as identified on the application was 280 metres from the proposal and was therefore not considered to be impacted by the operations and that there was no procedural reason for further notification. It was submitted that there are no EPA marked watercourse in the area and none marked on the mapping submitted.

The FAC considered in the first instance the grounds that relate to Environmental Impact Assessment (EIA) and related matters in the grounds. 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. Answers are provided to the listed questions. At 220 metres the forest road works are considerably sub-threshold for the mandatory submission of an EIA Report. The road would extend an existing forest road of c.380 metres that leads to the public road. As noted the forest road would be located in an area of managed forest and is outside of any areas designated for nature conservation. The road connects to a minor public road and it is submitted that an existing entrance is in place. The application was referred to the County Council but no response was provided.

The road would lie in Shannon[Upper]_SC_020 of the Upper Shannon 26A Catchment. The lands drain northeasterly and the closest marked watercourse in the subcatchment, c.700 metres from the proposal, forms part of the waterbody Shannon (Upper)_040 which has been assigned a Moderate status and at risk regarding the Water Framework Directive. The pressures that have been identified for this waterbody for the second WFD are Anthropogenic Pressures and Unknown while Forestry is not identified. The hydrology of the area was discussed at oral hearing and there is no evidence before the FAC that there is a direct connection to this waterbody. The proposal was referred to the County Council and no response was provided. The FAC is satisfied that given the distance and the nature and scale of the proposal, including the specification details, that the waterbody would not be impacted and that there is no convincing evidence that the DAFM have erred regarding the requirements of the Water Framework Directive. The DAFM recorded a consideration of these issues in relation to EIA.

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 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. Lough Arrow SAC and SPA and Bricklieve Mountains and Keishcorran SAC, and Unshin River SAC are in the Sligo Bay Catchment with no hydrological connection to the proposal. In addition, the proposal lies at a considerable spatial remove from the sites with the boundary of Lough Arrow lying over 5km to the west and the proposal would occur in a managed forest. The FAC concurs with the conclusions reached and is not satisfied that the DAFM have erred in concluding that the proposal was not required to proceed to Appropriate Assessment under Article 6(3) of the Habitats Directive. Furthermore, there are no Natural Heritage Areas or other conservation areas in the vicinity of the proposal or likely to be impacted by the operations. A consideration on these issues is recorded by the DAFM.

The Application identifies a recorded monument in proximity to the proposal. The DAFM at oral hearing suggested that this lies 280 metres from the proposal and that it would not be impacted by the works. The FAC consulted the recorded and publicly available information and confirmed the approximate distance from the monument to the works which are separated by existing forest. The FAC are satisfied with the explanation and conclusion provided by the DAFM.

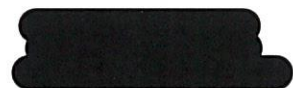
The grounds contend that the EIA determination of the DAFM contains errors but no specific details were submitted. The FAC had regard to the record of the decision and the information in the application. The DAFM had completed each section of its determination and the responses appeared to the FAC to be in keeping with the facts of the matter. 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 which include reference to datasets provided by the NPWS, such as Hen Harrier red zones or areas of higher likelihood of nesting in relation to SPAs and the conditions under which the operations would be undertaken. The FAC noted that no details or evidence of the presence of species or habitats 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 the proposal.

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 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 CN86533 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. 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 Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee

