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22nd January 2021

Subject: Appeal FAC060/2020 regarding licence CN80562

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 CN80562 for 430 metres of forest road works at Tawnaghbeg, Co. Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 23rd January 2020.

Hearing

An oral hearing of appeals FAC060/2020 was held by the FAC on 20th January 2021. In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present [REDACTED]

Applicant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. David Ryan, Ms. Mary Coogan

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 CN80562.

The licence decision pertains to 430 metres of forest road to service a forest area of 18.27 ha. The forest is comprised of Sitka spruce, Japanese larch, alder, birch and ash. Road specification details, maps and environmental considerations were provided with the application. A site notice dated 24th July 2019 was erected and photos of the notice in place were submitted to the DAFM. The DAFM undertook a

screening for Appropriate Assessment and recorded ten European sites within 15km of the proposal and screened the proposal out for appropriate assessment. The site is described as a well-drained mineral soil. The application was referred to the DCHG/NPWS and the County Council. Department of Culture, Heritage and the Gaeltacht responded that they had no comment to make on the application and provided general information regarding obligations on public authorities. The County Council did not respond to the DAFM referral. The Applicant provided a letter from Mayo County Council that stated that the forest road is exempted development. The licence was approved on 23rd January 2020 with conditions

Adhere to COFORD Forest Road Manual Standards,
Adhere to forestry & water quality guidelines,
All guidelines to apply,

There is one appeal against the decision which submits that the Appropriate Assessment Screening carried out by the Minister does not comply with the law. Reference is made to the judgement of Finlay Geoghegan in *J. Kelly -v- An Bord Pleanla & others* 2013 802 JR 25/07/2014 and obligations on public authorities regarding record keeping. It is submitted that the screening must establish what catchment the proposal is in and whether there is a hydrological connection in relation to Turloughs. It was submitted that there was not an in-combination assessment under the Habitat's Directive.

In a statement to the FAC, the DAFM submitted that the decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act. It is submitted that the application was screened for the requirement for Appropriate Assessment using the Appropriate Assessment Standard Operating Procedures and that Appropriate Assessment was not deemed to be required.

An oral hearing of the appeal was held which was attended by the Applicant and their Representative and Representatives of the DAFM. The DAFM described the processing of the application including environmental considerations. It was submitted that the proposal had been desk and field assessed and the proposed route of the road was walked and was comprised of an existing, disused agricultural lane which would be upgraded. It was confirmed that the road length was 430 metres. It was submitted that the soil type was a mineral gley and that the site was flat with a gentle slope at the start of the route. It was submitted that the closest watercourses were 150 metres to the south and 250 metres to the north and that the proposed road was not hydrologically connected to any watercourse. It was submitted that the closest European site is situated in a separate catchment to the proposed road. The Applicant and their Representative described the site and the application process. They submitted that the road would follow an existing farm lane and employ a build on top method and that the design was chosen to minimise disturbance to the area. It was submitted that a management plan had been provided with the application that provided details of the plantation and that a road had been put in place previously close to the public road. It was submitted that the area is not classified as landscape sensitive and would not impact on any designated site. It was submitted that the Applicant had attained a Section 5 declaration from the County Council stating that the road was exempted development and had submitted this to the DAFM.


The FAC considered the grounds relating the screening for Appropriate Assessment undertaken by the DAFM as contained on the record of the decision. The DAFM examined ten sites in their screening and determined that there was no need to extend this radius in this case. In the record, each site is listed alongside its qualifying interests or special conservations interests and reasons are provided for screening each one out. The FAC consulted publicly available information from the EPA and NPWS and identified the same ten sites within 15km. River Moy SAC is the closest European site at c.1.2km at the closest point and separated by existing managed agricultural and forest land and public roads and dwellings. The qualifying interests of this SAC are a number of aquatic species and terrestrial habitats. No evidence of a hydrological connection from the proposed forest road and the SAC was recorded or provided to the FAC. The DAFM recorded that there are no aquatic zones or significant relevant watercourses in or adjoining the proposal area. The proposal would be built through existing semi-mature coniferous forest which is not a habitat associated with the SAC. The next closest European site is Flughany Bog SAC to the north and its qualifying interests are terrestrial habitats and no evidence of a pathway of effects to this site were provided. The closest European site with Turlough habitat is Doocastle Turlough SAC some 5km to the northwest. This SAC lies in the Sligo Bay and Drowse Catchment while the proposal is situated in the Moy and Killala Bay Catchment and there is no evidence before the FAC of a hydrological connection from the proposal to this SAC or any Turlough habitat. The DAFM undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and 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 conditions attached to the licence are of a general nature and the FAC concluded that no conditions could be construed as measures designed to avoid or reduce effects on a European site and no such measures would be required to reach the decision to screen the proposal out for Appropriate Assessment. The grounds of appeal do not identify a specific European site, effects or pathways of concern. Based on the information available to it, the FAC concurs with the conclusions reached by the DAFM and is not satisfied that an error was made in the making of the decision regarding screening for Appropriate Assessment.

While not directly queried in the grounds, the FAC also considered the record of the DAFM in regard to Environmental Impact Assessment (EIA). The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. A record of these considerations was kept. The proposal is described as being for 430 metres of forest road construction, in a managed forest, which is considerably sub-threshold for the mandatory submission of an EIAR. The land is situated outside of any designated areas for conservation or of high landscape sensitivity and is surrounded by managed forest and agricultural land. The FAC did not consider that any evidence was before it that the proposal represented a significant threat to water quality or the environment. The FAC considered the information provided, including maps and specification details, and considered that the DAFM had sufficient information before it to consider and screen the application and noted that a field inspection had been undertaken by the DAFM. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would

not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIA.

In considering the appeal the FAC had regard to the record of the decision and 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 is thus affirming the decision of the Minister regarding licence CN80562 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,



Vincent Upton On Behalf of the Forestry Appeals Committee