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18th January 2021

Subject: Appeal FAC783/2020 regarding licence CN86279

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 CN86279 for 250 metres of forest road works at Glackaunadarragh, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 8th September 2020.

Hearing

An oral hearing of appeals FAC783/2020 was held by the FAC on 8th January 2021. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Ms. Mary Lawlor, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Martin Regan, 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 CN86279.

The licence decision pertains to 250 metres of forest road at Glackaunadarragh, Co. Leitrim. The forest road is an extension of an existing forest road of c.50 metres that meets the public road and is stated to serve an area of 4.77 ha which is 52 years old. The specification details of the road and maps were submitted in the application. A site notice is recorded as being erected on 17th April 2020. The road

would be constructed through excavation and the site is described as a shallow peat on a flat to gently sloping site. The proposal was referred to County Council who recommended that the District Engineer be contacted, details of the contractor be provided and for works to be carried out in line with best practice guidelines. An additional submission was made by a County Council Engineer stating that a specified haulage route should be used and that the route is in poor condition and that the developer must contribute to strengthening works. The licence was issued on 8th September 2020 with a number of conditions including,

Consult with Leitrim County Council Local Engineer prior to commencement of any work with regard to usage of public roads and compliance with all conditions regarding same ,

Adhere to forestry & water quality guidelines,

All guidelines to apply

There is one appeal against the decision. The grounds submit that there has been a breach of Articles 2(1), 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU. In particular, the grounds submit that a number of criteria set out in Annex III do not form part of the standard screening assessment, that the application does not represent the whole project and that as the application does not represent the whole project the determination is not valid. The grounds further contend that the determination is inadequately reasons and that there is insufficient information included with the application to permit a conclusive determination to be made. It is submitted that the project area does adjoin an aquatic zone and that it lies within 0.5km from an NHA and is hydrologically connected to a designated area and that the NPWS has not been consulted. It is submitted that there was a failure to consult with Roscommon and Sligo County Councils and that the transportation of materials would impact on the road network in these counties. It is submitted that the licence and the associated operations threaten the achievement of the objectives of the underlying waterbodies under the River Basin Management Plan. It is contended that the assessment of the project failed to take account of the potential for landslides, that there is insufficient detail and clarity in the in combination information and that the licence conditions do not provide a system of protection for animal species listed in Annex IV (a) or a general system of protection for birds under Article 5 of the Habitats Directive.

In response to the appeal, the DAFM provided a statement to the FAC that stated that the Department is satisfied that all criteria in its standards and procedures have been adhered to in making a decision on the application. It is submitted that both a desk audit and field inspection of the application was carried out and that the submission/appeal has been reviewed. It states that the DAFM is satisfied that all criteria referred to have been fully adhered to and approval is in order.

An oral hearing of the appeal was held of which all parties were notified and representatives of the DAFM and the Applicant attended. At the oral hearing the DAFM submitted that the site was desk and field inspected and that they confirmed their original decision and that all of their assessments were undertaken following DAFM procedures. It was submitted that upon inspection no hydrological connection was identified between the proposal and any designated area. The Applicant submitted that they had undertaken a field assessment before choosing the route that they would apply for and that the decision reflected the topography of the land in relation to crossing the gradient and the existing

entrance to the public road. They submitted that they are experienced Engineers and that it was their professional opinion that there was no risk of landslide. It was submitted that the road would have no hydrological connection with a designated site or river and that there are no aquatic zones on the site. It was submitted that the Applicant is in regular contact with the County Council and the District Engineer in particular and that agreed haulage routes are in place in this case on roads within the county. In addition, it was submitted that all licence conditions in this regard would be adhered with in this case.

The FAC, in the first instance considered the grounds relating to the EU EIA Directive and related issues. The FAC understands the grounds to refer to Directive 2011/92/EU as amended by Directive 2014/52/EU. 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.

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 the 250 metres of forest road construction in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. It was confirmed that the forest road was an extension of an existing stretch of 50 metres and that an existing entrance to the public road is in place. The boundary of Corry Mountain Bog NHA lies some 300 metres to the north of the proposed road and the road would be built through mature, managed forest. It was submitted at the oral hearing that the DAFM had undertaken a desk and field assessment of the proposed road and establishment that it is not hydrologically linked to the NHA or the closest watercourse. It was submitted that the design of the forest road reflected the topography and soil type of the area and that the operations would not pose any risk of landslide. While there is no evidence of a hydrological connection from the forest road to a watercourse the FAC noted that conditions would require the management of operations in line with specified requirements that include measures for the protection of water. The FAC did not consider that any evidence was before it that the proposal represented a significant threat to water quality. Regarding the application, 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. 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.

Regarding referrals to the NPWS, the DAFM submitted at the oral hearing that while the project falls within 0.5km from an NHA that it was not within a specified NPWS referral zone and that referrals are discretionary and that there was no connection to the NHA. The FAC is satisfied that the road lies some

300 metres from the closest boundary to the NHA and is outside of the designated site and that there is no evidence of a hydrological connection or pathway of effects on the NHA. In relation to referrals to County Councils, the proposal was referred to Leitrim County Council and it was submitted at the oral hearings that a haulage route has been agreed with the County Council and that the route would not cross into other counties. The FAC is satisfied that and that the DAFM did not err in the making and consideration of referrals.

Regarding appropriate assessment, the DAFM screened the proposal and identified seven sites within 15km. In the record of the decision, each of these sites are listed and considered in turn, with their qualifying interests, and reasons are provided for screening each one out. The DAFM recorded other plans and projects considered in-combination with the proposal itself and concluded that DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on a European site. The grounds of appeal do not identify a specific European site, effects or other plans or projects of concern. The FAC had regard to the record of the decision, the submitted grounds and publicly available information from the EPA and NPWS and could not identify a pathway of significant effects from the proposal itself or in combination with other plans and projects. The FAC concurs with the conclusions reached by the DAFM in its appropriate assessment screening in relation to European sites and the requirements of Article 6 of the EU Habitats Directive.

In regard to the attachment of further conditions in relation to bird and animal species, the FAC noted that the Appellant did not submit any specific details in relation to bird nesting or rearing or protected species of animal on the site. The FAC concluded that the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute and that it was not satisfied that the DAFM had erred in the attachment of licence conditions.

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 CN86279 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