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21st January, 2021

Subject: Appeal FAC666/2020 and FAC685/2020 regarding licence CN 86366

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 CN86366 for Non Grant Aided Forest Road at Derrynananta, Co. Cavan was approved by the Department of Agriculture, Food and the Marine (DAFM) on 21st August, 2020.

Hearing

An oral hearing of appeals FAC666/2020 and FAC685/2020 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 FAC685/2020: [REDACTED]

Appellant FAC666/2020: Not present

Applicant's Representatives: [REDACTED]

DAFM Representatives: Ms. Mary Coogan, Mr Martin Regan

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 CN86366.

The licence pertains to 625 metres of a forest road at Derrynananta Lower, Co. Cavan. This project comprises 625 metres of forest road works. The soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%).

The specification of the road construction and maps delineating the route were submitted with the application.

The DAFM undertook and documented an appropriate assessment screening that found three European sites within 15km, and found that there was no reason to extend this radius in this case. The European sites considered were Boleybrack Mountain SAC 002032, Corralmin SAC 000979 and Cuilcagh –Anerin Uplands SAC 000584. The three sites were screened out due to distance and /or the absence of lack of any pathway, hydrological or otherwise between the site and the Natura sites.

The development it is noted was referred to Cavan County Council on the 29th June, 2020 and no response was received. The licence was approved on 21st August, 2020 with standard conditions.

There are two appeals against the decision. The grounds contend that the application, approval and public notices have not fully and accurately identified the location of the site; that the route of the proposed road is not consistent between the different maps provided. The grounds contend that the licence was issued in breach of Articles 2 (1), 4(3) and 4(4) of the EU EIA Directive. In particular, it is submitted that the DAFM did not have regard to the criteria in Annex II of the Directive; that the DAFM, as the competent authority, has failed to carry out screening to determine the requirement for EIA; that the information submitted by the Applicant did not represent the whole project and that the competent authority did not consider information of the whole project in a screening and the application has not described any aspects of the environment which are likely to be significantly affected.

The grounds also refer to the inspector's determination recommendation as inadequately reasoned and an inadequate conclusion is reached based on the IFORIS checkbox. It is stated that the application for this licence does not represent the whole project therefore it is in breach of the EIA Directive.

It is stated that there is inadequate consideration of feedback from consultation bodies; the Stage 1 and Stage 2 AA determinations are not legally valid. It is submitted that this licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The cumulative impact of this project with other licensed and proposed projects has not been adequately assessed. The construction of the road does not take into account the forest and terrain. Reference is also made to the conditions of the licence and the absence of a general system of protection for all species of birds

It is submitted that the Appropriate Assessment screening did not comply with the decision of Finlay J in Kelly. Under the basic principles of EU law, the decision is invalid as the Minister is being a judge in his/her case. There has been no investigation as to whether the application site has complied with the requirements of EU law. According to the heads of the new bill the Minister has assumed control of the FAC.

In a statement to the FAC, the DAFM submitted that in regard to the granted proposed new road CN86366, information submitted by Coillte in the form of maps (GIS and softcopy), details of the road construction were considered during the licencing process. The site was subject to desk assessment and a site inspection was also carried out on the 14th of July 2020.

Standard procedures were followed in regard to spatial check related to designated sites at or near the project location. Standard procedures were followed in respect of referrals were issued to statutory bodies in respect of the licence application. The DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. They submitted that the qualifying interests of European sites were assessed and screened out and that the project will not adversely affect the integrity of s European site. DAFM subsequently carried out an in-combination assessment and concluded that it was deemed that there is no potential for the project to contribute to any effects, when considered in combination with other plans and projects and that it will not give rise to the possibility of an effect on the Natura site(s).

An oral hearing was held which was attended by representatives of the Applicant and the DAFM and the Appellant in FAC685/2020. The DAFM provided an overview of the processing of the application, including referrals, and reiterated the contentions outlined in its written statement. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken. DAFM also at the hearing outlined details relating to the in-combination assessment of the project including plans and projects and gave a detailed description of the site based on their site inspection. The DAFM submitted that some mistakes had been made in the record and submitted that there was no response from the County Council and that the proposal is not upstream from a designated site and that there is no hydrological connection with such a site. It was suggested that these would not impact on the approval of the application. The Appellant re-iterated parts of their grounds and queried the maps provided and distances and location of the proposal. They questioned whether environmental features had been identified on the maps and the hydrological connections with the proposal. It was submitted that the application should have been referred to the NPWS. They queried whether the water table would be lowered and whether there was a risk of landslide. They submitted that there could not be errors in the EIA record and that the use of fossil fuels was not considered. The Applicant's representatives described the documents and information provided with the application and submitted that the route had been assessed by an Engineer and that the route, construction type and specification reflected the conditions of the site and forest. They submitted that the road would be of a "build on top" type and would not result in a lowering of the water table. They submitted that there had been no change to the proposal or the length and that the submitted Biomap reflected the location of the forest road.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same three sites as the DAFM within 15km from the proposal. These are Boleybrack Mountain SAC 002032, Corralmin SAC 000979 and Cuilcagh –Anerin Uplands SAC 000584. The FAC is

satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

FAC considered each site in turn and provided the reasons for screening all of the sites out for appropriate assessment. The FAC is satisfied that the DAFM did not make any serious or significant error in their appropriate assessment screening and concurs with the conclusions reached.

At the hearing the FAC raised issues relating to the details of the in-combination; the road construction methodology, the layout and gradient of the road which were addressed by DAFM and the applicant to the satisfaction of the FAC.

The inspector's determination and recommendation based on the IFORIS checkbox was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and having regard to the field inspection undertaken.

The applicant's submission that the Bio map was correct and that there was no error on the mapping of the route of the proposed road was considered and accepted by the FAC, while noting that there was a minor variation on the wider location map. While the proposal lies c.100 metres from the boundary of Cuilcagh - Anierin Uplands SAC at the closest point there it is outside of the site and having regard to the nature, scale and location of the proposal and absence of a hydrological connection with the SAC the FAC does not consider that the DAFM erred in not referring it to the NPWS.

In relation to the EU EIA Directive, the 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 proposal is considerably sub-threshold for the mandatory submission of an EIA report.

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. The proposal as described is being for 625 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. The proposal is outside of any designated area for conservation or high landscape sensitivity and situated in a remote area. The FAC concluded that the submitted design and specification of the road demonstrate a consideration of the site characteristics. 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 EIAR. In relation to

hydrological connections the FAC is satisfied that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

In relation to the site name 'Derrynananta' the FAC acknowledges that the townland name of the site was not fully and accurately identified as 'Derrynananta Lower'. Derrynananta Lower adjoins Derrynananta Upper and both townlands are situated in the Electoral Division of Derrynananta and the name appears to be unique to these Townlands and Electoral Division in the County.. Having regard to the erection and position of a site notice, the submissions from the public at the application and appeals in relation to the project and the lack of dwellings and public roads in the vicinity of the proposed site the FAC is satisfied that there was no intention to mislead the public as this is the substantive name of the townland concerned and that the factors above indicate that the site area was readily identifiable.

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.

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 CN86366 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,



Mary Lawlor on behalf of the Forestry Appeals Committee