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20th January 2021

Subject: Appeal FAC661/2020 regarding licence CN86742

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 CN86742 is for the construction of a forest roadway 230 metres in length at Carncreagh, Co. Clare was approved by the Department of Agriculture, Food and the Marine (DAFM) on 13th August 2020.

Hearing

An oral hearing of appeal FAC661/2020 was held by the FAC on 8th December 2021.

In attendance:

FAC Members: Mr. Donal Maguire (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. Kevin Keary, Ms. Mary Coogan

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN86742

The licence pertains to the construction of 230 metres of roadway at Carncreagh, Co. Clare. The soil type underlying the roadway is described as mineral, shallow peat and deep peat and the construction method would be embankment (build on top). The specification of the road construction and maps delineating the route were submitted with the application. The road is stated to service 19.93 ha of

forest for harvesting. The proposal was referred to Clare County Council and Inland Fisheries Ireland who both responded with conditions and recommendations in relation to the proposed development.

An appropriate assessment pre-screening report was also provided with the application and recorded on the file. The screening considered seven sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Carrowmore Point to Spanish Point and Islands SAC 001021; Knockanira House SAC 002318; Lower River Shannon SAC 002165; Mid-Clare Coast SPA 004182; Newhall and Edenvale Complex SAC 002091; Pouladatig Cave SAC 000037 and River Shannon and River Fergus Estuaries SPA 004077. The proposal was screened out for appropriate assessment by the DAFM and reasons are provided. The DAFM also recorded that on the basis of its examination the application should not be subject to the EIA process and criteria are listed. The licence was issued on 13th August 2020 with conditions.

There is one appeal against the decision.

The grounds contend that the licence was issued in breach of Articles 2(1), 4(3) 4(4) and 4(5) 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 as a forest road is not the entire project and that the competent authority did not consider information of the whole project in a screening and the application has not described all aspects of the environment which are likely to be significantly affected. It is stated that the purpose of the EIA Directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive.

The grounds also refer to the inspector's determination recommendation as inadequately reasoned and an inadequate conclusion is reached based on the IFORIS checkbox. The construction of the road does not take into account the forest and terrain. It is also stated 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. There is inadequate consideration of the feedback from proscribed bodies. There is inadequate protection of listed birds and animal species

In a statement to the FAC, that in regard to the granted proposed new road CN86742, 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 16th of July 2020. 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.

As regards Article 4(3) of the EIA Directive, DAFM submitted 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 and that the application for 230 metres of forest road was considered under the detailed process.

As regards the specific point as the consideration given to the cumulation of any impact from this application for 230m of Forest Road with any impact of other existing or approved projects a detailed list of existing or approved projects around the was taken also into consideration by the certifying inspector in the making of their determination that an environmental impact assessment (EIA) was not required for this application and provided the reasons for reaching that conclusion and that District Inspectors carry out an assessment of possible in-combination impacts of all forest related plans/projects in the vicinity of the application. The Department as a consequence submitted that the legal requirements of Article 4(3) of the EIA Directive have been fulfilled.-The Department also indicated compliance with Articles 4(4) and 4(5).

In relation to other matters raised in the grounds of appeal, it was indicated that the site was the subject of a site inspection by the Department inspector that hydrological connections could not be established between the route of the road and the drain that flows along the southern boundary of the plantation; that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters or the NHA to the south east. It was also indicated that the site notice was posted at the entrance to the property and conformed to requirements.

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. 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 including nearby forestry projects and gave a detailed description of the site based on their site inspection.

The Applicant's representatives described the documents and information provided with the application.

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 seven sites as the DAFM within 15km from the proposal. These are, Carrowmore Point to Spanish Point and Islands SAC 001021; Knockanira House SAC 002318; Lower River Shannon SAC 002165; Mid-Clare Coast SPA 004182; Newhall and Edenvale Complex SAC 002091; Pouladattig Cave SAC 000037 and River Shannon and River Fergus Estuaries SPA 004077. 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.

The DAFM considered each site in turn and provided the reasons for screening all of the sites out for appropriate assessment. Details of other plans and projects were examined at the oral hearing and the DAFM submitted that there were no afforestation or other forest road licences in recent years in the vicinity and that one felling licence application (CE07-FL098) was identified since 2018 and that this area is associated with and was considered in-combination with the forest road. 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 and procedures in relation to consulting with the County Council 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 the application details. Regarding submissions from prescribed bodies, the DAFM submitted at the oral hearing that these were considered as part of the decision-making process and that the Inspector had confirmed that there was no hydrological connection from the proposed road to a waterbody and that they had made the decision having regard to their legal remit. The Applicant submitted that the route was inspected prior to the application and that the design and specification was chosen by the Engineer to reflect the site conditions and that certified local suppliers of materials would be engaged and that they would directly engage with the County Council.

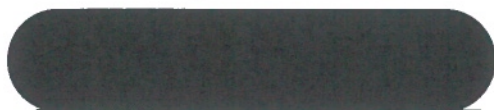
In relation to the EU EIA Directive, the Directive sets out in Annex II a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require the compliance 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 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 230 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 proposed forest road is an extension of an existing road and that an existing entrance to the public road is in place. 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 based on the information available to it, that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

Regarding the protection of birds and animal species, no evidence of their presence on the site or impacts on these species were provided and the FAC does not consider that the issuing of the licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence CN86742.

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 CN86742 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,



Derek Daly On Behalf of the Forestry Appeals Committee