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28th June 2021

Subject: Appeal FAC 735/2020 regarding licence CN86260

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, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

A licence for 350 metres of forest road works at Garafine Co Galway was issued by the Department of Agriculture, Food and the Marine (DAFM) on 18/09/2020.

Hearing

A hearing of appeals FAC 735/2020 was held by the FAC on the 4th of June 2021. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

DAFM Representatives: Ms. Mary Coogan & Mr. Donal Keegan

Applicant: [REDACTED]

Appellant FAC 735/2020: [REDACTED]

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 CN86260

The licence decision pertains to 350 metres of forest road works at Garafine Co Galway. The application documentation on file includes road specification details, environmental considerations, maps showing the area to be served, the route of the road, the location of the site notice and environmental information as well as aerial imagery and a location map. The predominant soil type underlining the project area is described as being predominantly podzols in nature. The slope is described as flat to moderate (<15%). The project area is crossed by deep agricultural drains. The vegetation type within the project area is comprised of grass. The site was the subject of a field inspection by Forest Service on the 14/08/2020. The inspector noted that water from the site flows north then east, for approximately 17km before establishing a hydrological link with the River Suck Callows SPA. It was noted in the field report that the existing entrance was sufficient for forestry operations and that there was a pre-existing farm road already in place along the first section of the proposed route. The road was being constructed, in the first instance, to facilitate the 1st and 2nd thinning of 12ha of an existing plantation, such operations being covered by licence TFL0048692. It is the only roadway servicing the forest in question.

The application was referred to Galway County Council on the 09/06/2020, there is no record of a reply.

The DAFM recorded a screening for Appropriate Assessment and identified that Carrownagappul Bog SAC 00124, Curraghlahanagh Bog SAC 002350, Lough Corrib SAC 000297, River Suck Callows SPA 004097 and Shankill West Bog SAC 000326 were within a 15Km radius of the proposal. These natura sites were all screened out on the basis of their physical separation and distance from the proposed development in accordance with the relevant Bird and Habitat tables used by DAFM for the purpose of screening.

A consideration of other plans and projects in-combination with the proposal was carried out, dated the 14/09/2020. It stated that the project lies in a rural landscape in Garrafine Co Galway in the River Sub BasinAhascragh_020. The River Sub BasinAhascragh_020 has approximately 9% forest cover which is lower than the national average of 11%. At 350 metres the project is considered medium in scale. It further noted that forestry activity, including afforestation, forest roading and felling, had been either submitted and were still under evaluation, had been licenced with approvals in place or completed and approved, in the River Sub Basin in the last 5 years and that these were listed in the in-combination report. The DAFM concluded that this project, in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites. The DAFM stated that "Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no

potential for the project to contribute to any effects. when considered in combination with other plans and projects”.

Additionally, consideration of the proposal across a series of criteria are recorded on the file and the DAFM concluded that the proposal should not be subject to the EIA process.

There is one appeal against the licence decision, the grounds are:

- That no legal Appropriate Assessment screening has taken place
- That the accumulation of forest roads in this forest exceeds 2km. Therefore, an Environmental Impact Assessment is required
- That mitigation was applied at screening stage

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. It was submitted that both a desk audit and field inspection were carried out and that all submissions and appeals were reviewed and that all criteria had been fully adhered to and that the approval was in order. The Department additionally 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, were adequately considered within the current procedures. The Department submits that it complied with these requirements by assessing the information submitted by the applicant, which it considers compliant with the requirements set out in Article 4(4) and Annex IIA, while taking into account the results of the preliminary verifications or assessments of the effects on the environment carried out under the Birds and Habitats Directives and the Water Framework Directive.

An oral hearing of the appeal was held on the 6th of June 2021, of which all parties were notified, and attended by representatives of the DAFM. The DAFM outlined their processing of the application and read through their written statement. The DAFM submitted that all criteria and procedures were adhered to, that the site had been field inspected and that the DAFM was satisfied that the particulars of the application were correct. Regarding the design of the road, it was submitted that the DAFM was satisfied that the proposed road design was acceptable and appropriate in this case. The Forest Service Inspector noted that the main drain on the site had been culverted in the past where it would be crossed by the road and that the drains on site had been dry and vegetated over when he visited the site. He explained that there would be no

significant excavation necessary for the road construction and that approved material would be imported to create fill where required on this flat site.

The FAC considered in the first instance the grounds that relate to the Appropriate Assessment of the proposal. The FAC noted that the application includes road specification details, environmental considerations, maps showing the area to be served, the route of the road, the location of the site notice and environmental information as well as aerial imagery and a location map. This includes information regarding the location of the proposal in relation to areas designated for conservation and other environmental information. The maps submitted, including a Biomap, which identifies the location of the proposal and any environmental features proximate to the proposal.

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 proposed forest road is not situated within any European site and is not directly connected with or necessary to the management of the site. As noted, 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. 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. The FAC questioned the DAFM in relation to a number of anomalous responses provided in the electronically completed certification report, the FAC was satisfied that these were minor clerical errors. The FAC noted that the proposal had been desk and field assessed and the DAFM Inspector had considered the nature of the proposal and the lands. The proposal is of a small scale and would be constructed through a build on top method. The FAC is not satisfied that the Appropriate Assessment screening undertaken by the DAFM contains significant or serious errors.

Regarding the remaining Environmental Impact Assessment (EIA) and related matters in the grounds, the FAC considered that 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. The DAFM also completed a screening for Appropriate Assessment and considered other conservation sites and issues. At 350 metres the forest road works are sub-threshold for the mandatory submission of an EIA Report. As noted, the proposed forest road is the only forest road for the area and would be located in an area of managed forest and is outside of any areas designated for nature conservation or landscape preservation. 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.

With regard to the ground that the DAFM had applied mitigation during the AA screening, the FAC noted that the appellant educed the DAFM statement *"Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives"*. The FAC is of the view that this is a generic statement by the DAFM in relation to other plans and projects and that it does not constitute mitigation, as such, at the AA screening stage of the assessment. While the FAC does not consider that it was necessary to include this text in the screening undertaken it does not consider that this text has any effect on the conclusions reached regarding the proposed road and so could not be considered to constitute a serious or significant error.

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 error was made in making the decision. The FAC is thus affirming the decision of the Minister regarding licence CN86260 in line with Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,



Donal Maguire on behalf of the forestry Appeals Committee

