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3rd June 2021

Subject: Appeals FAC 432/2020, 488/2020 & 540/2020 regarding licence CN86461

Dear [REDACTED]

I refer to appeals made to the Forestry Appeals Committee (FAC) in relation to the afforestation licence CN86461 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 the parties to the appeal.

Background

Licence CN86461 for 325 metres of forest road at Moydrum, Co. Westmeath was approved by the Department of Agriculture, Food and the Marine (DAFM) on 10th July 2020.

Hearing

An oral hearing of appeals FAC 432/2020, 488/2020 & 540/2020, of which all parties were notified, and representatives of the DAFM attended, was held by the FAC on 31st May 2021.

In attendance at Oral Hearing:

Department Representative(s):	Ms. Mary Coogan, Mr. Seppi Hona,
Appellant:	Not in attendance,
Applicant / Representative(s):	Not in attendance,
FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.
Secretary to the FAC:	Mr. Michael Ryan, Ms. Ruth Kinehan (Observer).

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 CN86461.

The licence pertains to 325 metres of forest road to service 10.8 ha of forest at Moydrum, Co. Westmeath. The Soil type underlying the project is described in the Inspectors Certification documentation on file as being predominantly brown podzolic in nature, the site is described as having a

slope that is flat to moderate and the project area is said not to contain / adjoin an aquatic zone. The project is located in Catchment 26E Upper Shannon, Sub-Catchment Breensford_SC_010 and Breensford_020 River Sub-Basin.

The River Waterbody WFD Status 2013-2018 (IE-SH-26B100400) for the river that adjoins the perimeter of the site indicates a good status. There is stated to be an existing entrance with the public road and the proposed roadworks were described at oral hearing by the DAFM representative as a low cost road given the dry nature of the site, and that it would be able to wind through the existing beech trees as they have a low stocking density. The specification of the road was provided with the application and it was described at Oral Hearing as being useful to manage the forest as a whole, which is at various stages of development.

The DAFM undertook a screening of the proposal for Appropriate Assessment and found that there were thirteen European sites (Ballynamona Bog and Corkip Lough SAC 002339, Carn Park Bog SAC 002336, Castlesampson Esker SAC 001625, Crosswood Bog SAC 002337, Ferbane Bog SAC 000575, Fin Lough SAC 000576, Lough Ree SAC 000440, Lough Ree SPA 004064, Middle Shannon Callows SPA 004096, Mongan Bog SAC 000580, Mongan Bog SPA 004017, Pilgrims Road Esker SAC 011776, River Shannon Callows SAC 000216) within 15km of the proposed road and that there was no reason to extend this radius in this case. Each site was considered in turn along with its Qualifying Interests and all thirteen sites were screened out for the purposes of Appropriate Assessment. The reasons for the screening conclusions reached in respect of each site is provided in the screening documentation found on file. The DAFM also recorded other plans and projects that were considered in combination with the proposal. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The application was referred to Westmeath County Council and no response is to be found on file. The licence was approved on 10th July 2020.

There are three appeals against the decision. Appeal 432/2020 questions the cumulative length of road and submits that 'the directive is in meters not %'. In appeal 488/2020 the grounds relate in large part to the forest area served rather than the road itself including; outlining the site as being within the Moydrum Castle Estate and that a heritage impact assessment is needed; unclear title to right of way; the existence of a formal protection for the trees and they being much older than indicated, the lack of EIA; the trees forming a sound barrier for the M6 motorway.

In appeal 540/2020 the grounds contend that there is; a breach of Article 4 (3) of the EIA Directive 2014/52/EU submitting that a number of criteria set out in Annex III do not form part of the screening assessment; a breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the developer has not provided all of the information required under Annex III A; a breach of Article 4 (5) of the EIA Directive 2014/52/EU submitting that the application does not represent the whole project and that required information has not been provided; the Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned; the DAFM Stage 1 Appropriate Assessment Determination is not legally valid per Article 6(3) of the Habitats Directive; an inadequate consideration

of the objectives of the WFD River Basin Management Plan; licence conditions do not provide, as would be required by Article 12 of the Habitats Directive, a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; an inadequacy in a condition of the licence and a submission that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive.

In a statement to the FAC, the DAFM submitted that the decision was issued in accordance with the procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures listed in the statement have been adhered to in making a decision on the application. The statement also provides a response to the grounds of appeal. At the oral hearing the DAFM representative outlined the processing of the application, the information submitted by the applicant and that the project was desk assessed. The DAFM described the Appropriate Assessment and EIA considerations undertaken and the conclusions reached and reiterated the broad content of the statement of facts provided to the FAC.

The FAC, in the first instance, considered the Appropriate Assessment screening undertaken by the DAFM. The grounds of appeal submit that the DAFM stage 1 Appropriate Assessment conclusion is flawed. The FAC finds that the screening of the proposal for Appropriate Assessment established that there were thirteen European sites within 15km of the proposed road and that there was no reason to extend this radius in this case. Each site was found to have been considered in turn and all sites were screened out for the purposes of Appropriate Assessment. The FAC finds that the reasons for the screening conclusions reached in respect of each site are provided in the screening documentation on file and that the DAFM also recorded other plans and projects that were considered in combination with the proposal. The DAFM representative in response to query at oral hearing, confirmed it was the contention of the DAFM that the Appropriate Assessment screening carried out and conclusion reached in relation to these European Sites was in compliance with the requirements of the law and relevant procedures. The FAC examined publicly available information from the NPWS and EPA and identified the same thirteen European sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

The FAC considered the contention in the grounds of appeal that there had been an inadequate consideration of the objectives of the WFD River Basin Management Plan. In doing so the FAC noted the content of the DAFM statement and the submissions made at oral hearing. The Appellant did not submit any specific information regarding effects on water quality or specific matters relating to the pathways potentially impacted by the proposal. The FAC finds that the Breensford_020 River waterbody has been assigned a 'good' WFD status by the EPA in the 2013-18 assessment period and forestry is not listed as a

pressure. The DAFM representative, at the oral hearing, reasserted that there was not a hydrological connection between the location of the proposed road and any watercourse. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

Regarding Environmental Impact Assessment (EIA) and related matters in the grounds of appeal, the FAC notes that the EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains 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. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II). 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 felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal relates to a licence for a forest road of 325m, and so is sub threshold for mandatory EIA as set in Irish Regulations. The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The DAFM in their considerations on this, in the section focusing on the cumulative effect, recorded answers to questions on both the length of the proposed forest road and the length of forest road in the area when the proposed road is considered in combination with other recent, ongoing or planned work, and the responses indicated lengths of less than 2000m. The DAFM concluded that based on the extent of the forest cover and the forest road network that the cumulative effect of this proposal was not likely to have a significant impact. The FAC having considered all of the evidence before it, is not satisfied that a serious or significant error or a series of errors was made by DAFM in relation to their EIA consideration and concurs with the conclusion reached regarding EIA and considered that breaches of Articles 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU had not occurred in this case.

Regarding the contention in the grounds of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive and related grounds in the appeal, the FAC noted that the grounds had not provided any specific information regarding the presence of any species or habitats in the area. The FAC considered the existing legislative safeguards in place with regard to the matters raised in these grounds and that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC further considered the nature, scale and location of the proposal being for forest road works substantially along an existing track in an area of managed agricultural and forestry land. The FAC finds that the granting of the licence for the road in this case does not exempt the holder from meeting any

legal requirements set out in any other statute. The FAC is satisfied, based on the information available to it, that the inclusion of a condition as raised in these grounds of appeal in this case, was not required and that an error had not been made by the DAFM in the processing of the application as it relates to this ground of appeal.

Regarding the grounds of appeal for FAC 488/2020 the FAC finds that there are no recorded monuments within the area of the proposal and no heritage impacts arise regarding Moydrum Castle Estate. Notwithstanding that the decision under appeal in this instance is for a road proposal, the hearing heard how the age of the forest is not relevant to its protection status and that the area does not fall into any such special category. In addition, the M6 motorway is nearly 2km distant from the site (with a railway located between them) and so the trees function as a sound barrier does not appear relevant to this appeal. In response to query at the oral hearing the DAFM representative asserted the DAFM position that there were no protected species recorded as being resident on the site. The FAC considered the information available to it on the file, the submissions made, including at the oral hearing and is therefore not satisfied that a serious or significant error or a series of errors was made in making the decision as it relates to the grounds of this appeal.

In considering these appeals the FAC had regard to the record of the decision and the submitted grounds of appeal, 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 CN86461 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,

A black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee.

