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11th June 2021

Subject: Appeal FAC 251/2020 regarding licence CN85537

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 CN85537 is for the construction of a forest road 220 metres in length at Drummeel, Co Longford which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 27th May 2020 subject to standard conditions.

Hearing

A hearing of appeal FAC 251/2020 was held by a division of the FAC on 24th May 2021. In attendance: FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN85537.

Licence

The licence pertains to the construction of a forest road of 220 metres in length to serve 9.08 hectares planted in 2004 at Drummeel, Co Longford. The proposed forest road is accessed from the public road. The project site is within the River Sub Basin CAMLIN_020 (River Waterbody status for the CAMLIN_020 is high for the 2013-18 assessment period) and in terms of risk is indicated as not at risk. The method of construction is excavation. The inspector certification refers to predominant to the soil type underlining the project area as predominantly podzolic in nature. The slope is predominantly flat to moderate. The project area is not crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass, rushes and trees.

The proposal was referred to Longford Co Council and the response dated the 11th May 2020 indicated no objections and recommended conditions. There is no indication or reference to any requirement for a grant of planning permission in relation to access onto the public road.

An Appropriate Assessment screening was carried out and recorded on the file. Seven Natura sites were found to be within 15kms of the project site, namely Ardnagullion Bog SAC 002341, Deragh Bog SAC 002201, Garriskil Bog SAC 000679, Garriskil Bog SPA 004102, Glen Lough SPA 004045, Lough Kinale and Deragh Lough SPA 004041, Mount Jessop Bog SAC 002202. All sites were screened out by reference to the proposal site being downstream of the Natura Site and the subsequent lack of hydrological connection. The overall screening conclusion was that there was no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

In-combination assessments dated with a reference to the week of 25th May 2020 are on the file indicating no effects on any Natura site concluding that the project does not have a potential to contribute to any effects when considered in-combination with other plans and projects.

The licence was issued on the 27th May 2020 subject to standard conditions.

Appeal

There is one appeal against the decision to grant the licence.

The grounds of appeal contend that the decision does not comply with Habitats, Birds and EIA Directives. That the test for AA screening is merely to determine that there is an effect rather than to state it will not have a significant effect. If a development is within 15 kilometres of a Natura site it must be screened in and in this regard, reference is made to EUCJ 323/17. It is also contended that screening must include complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effect on the European site concerned. The assessment must state the catchment the proposed licence application is located within and there is reference to birds can fly and rely on watercourses that move. The grounds also state that a map indicating Natura sites and the proposed development should be attached and also it is necessary to indicate all roads and forestry in the area to show cumulative effects of forestry. The grounds also reference that there are legal obligations on the FAC in relation to compliance with European Law and Directives.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the relevant standards and procedures had been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that a field inspection indicated no drains on the site and no drainage is required to facilitate this project. Reference is also made to the project as outside of the foraging range of qualifying interests of Natura 2000 sites and no effect on any designation is expected.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to 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 is for 220 metres of forest road construction to facilitate the management of commercial forest for timber production, which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds, submissions at the oral hearing 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 concerning EIA.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM. The FAC considered that the decision of the Minister before it related to the 220 metres of forest road works. 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; Ardnagullion Bog SAC 002341; Deragh Bog SAC 002201; Garriskil Bog SAC 000679; Garriskil Bog SPA 00410; Glen Lough SPA 004045; Lough Kinale and Deragh Lough SPA 004041 and Mount Jessop Bog SAC 002202. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed road works are located outside of any European site and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

Specifically, in relation to potential hydrological impacts on Natura 2000 sites and on water quality generally, it is noted in the statement provided to the FAC by the DAFM that a field inspection revealed

that there are no drains present on the site and no drainage is required to facilitate this project. The FAC also examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes, mapping and aerial imagery of the area concluded that there is no watercourse on the site, surface water from the proposed road would not drain directly to a watercourse and there was no direct pathway to any watercourse. The FAC is satisfied based on the submissions received that the construction measures and the accompanying method of drainage as proposed will not impact on any Natura 2000 sites or any receiving waters.

In relation to the ground of appeal referring to birds it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC considered that the DAFM had undertaken a site inspection, completed a screening for Appropriate Assessment, and there was an absence of information to conclude effect on qualifying interests and species based on these matters prior to making the decision. The FAC also note that the granting of a licence for a forest road does not exempt the holder from complying with any legal requirements set out in any other statute.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. 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 CN85537 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 Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee