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14th June 2021

Subject: Appeal FAC739/2020 and FAC781/2020 regarding licence CN84428

Dear [REDACTED]

I refer to the appeals 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 and Hearing

Licence CN84428 for 595 metres of forest road works at Gortermone, Annaghboy, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 10th September 2020. An oral hearing of appeals FAC739/2020 and FAC781/2020 was held by the FAC on 2nd June 2021.

In attendance at Oral Hearing:

FAC Members:	Mr. Seamus Neely (Deputy Chairperson), Mr. Iain Douglas, Mr. John Evans and Mr. Vincent Upton.
Secretary to the FAC:	Ms. Marie Dobbyn.
Department Representatives:	Ms. Mary Coogan, Mr. Martin Regan,
Appellant FAC781/2020:	Not present
Appellant FAC739/2020:	Not present
Applicant:	Not present

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 set aside and remit the decision of the Minister regarding licence CN84428.

The licence decision pertains to 595 metres of forest road works at Gortermone, Annaghboy, Co. Leitrim. The project area is described as being on a podzolic soil on a flat to moderate (<15%) slope and does not adjoin or contain an aquatic zone and is comprised of forest. The application includes a biomap, fire plan and species map, construction specification and environmental information. The forest road would serve an area of 17.56 ha which was planted in 2002. The record includes a screening for Appropriate Assessment undertaken by the DAFM which identifies eight European sites within 15km.

These are Arroo Mountain SAC 001403, Ben Bulbin, Gleniff And Glenade Complex SAC 000623, Boleybrack Mountain SAC 002032, Cuilcagh - Anierin Uplands SAC 000584, Glenade Lough SAC 001919, Lough Gill SAC 001976, Lough Melvin SAC 000428, and Sligo/Leitrim Uplands SPA 004187. A record of other plans and projects considered in-combination with the proposal was also kept. The DAFM concluded that the project should not proceed to Appropriate Assessment. The DAFM also recorded a consideration of the application across a range of criteria and a determination that the forest road works should not proceed to the EIA process. The application was referred to Leitrim County Council which responded in relation to the location of the proposal and includes requests for the contractor to notify them prior to works commencing. There was one submission from a member of the public regarding general requirements of the Minister. The licence was approved on 10th September 2020 and includes general and special conditions, including archaeological conditions.

There are two appeals against the decision and the full grounds of appeal were provided to the appeal parties. The grounds of FAC781/2020 submit that the afforestation of the lands was carried out without appropriate screening for the requirement for an EIA or an AA under Article 6 (3) of the Habitats Directive and that no licence should be awarded for any further activity on this project site until there has been a retrospective assessment of the need for an EIA and an AA has been conducted for the afforestation of these lands. It is submitted that there has been a breach of Article 2(1) and Article 4 (3) of the EIA Directive 2014/52/EU in that a number of criteria set out in Annex III do not form part of the standard FS (Forest Service) screening assessment. The grounds further submit that the EIA Determination is inadequately reasoned and there is no foundation for the conclusion reached on the basis of the responses to the checkbox queries and these include errors and unqualified uncertainties. It is submitted that there is insufficient Information included with the application to permit the Inspector to make a conclusive determination as to whether an EIA is required and does not contain information required under Regulation 6 (2) of the Forestry Regulations (2017). It is submitted that the NPWS has not been consulted on this project and that the Inspector's Certification indicates that this project is in a referral zone for an SAC. It is submitted that the licence and its associated operations threaten the achievement of the objectives set for the underlying water body or waterbodies under the River Basin Management Plan for Ireland 2018-21 and that adequate consultation and the assessment of cumulative impacts has not taken place and that Inland Fisheries Ireland has not been consulted. It is submitted that the Stage 1 AA (Appropriate Assessment) conclusion is not legally valid and that a screening conclusion has not been provided for a Nature 2000 site and that an assessment carried out under Article 6 (3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned. It is submitted that licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of the Habitats Directive In their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration or a general system of protection for all species of birds required by Article 5 of the Birds Directive and referred to in Article 1 of that Directive.

FAC739/2020 submits that that no legal Appropriate Assessment screening has taken place and that the accumulation of forest roads in this forest exceeds 2km and therefore, an Environmental Impact Assessment is required. The grounds submit text,

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.

and submits that this text is not permitted in a screening.

In a statement to the FAC in response to the appeal, the DAFM submitted that an Assessment of Afforestation Proposal for EIA Requirement Form had been completed in this case which requires the completion of some 40 questions under a series of main headings, all of which are relatable to relevant criteria set out in Annex III of the Directive (and Schedule 3 of the Forestry Regulations 2017). It is submitted that a desk and field assessment was undertaken and that all criteria have been fully adhered with.

An oral hearing of the appeal was held, of which all parties were notified, and attended by representatives of the DAFM. During the oral hearing the DAFM restated their written submission and described the field assessment undertaken. They submitted that a detailed site assessment had been undertaken and that they established that water would not leave the site and that there was no hydrological pathway to any European site. Following questions by the FAC a number of responses provided in relation to the *Assessment to Determine EIA Requirement* were submitted to be errors and uncertainty was expressed regarding some of the questions in relation to the forest road design.

The FAC considered the contentions in the grounds of appeal regarding Environmental Impact Assessment (EIA) and related matters including that there is insufficient information in the application and available to inform the EIA requirement consideration. In considering these grounds, 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 decision under appeal relates to a licence for a forest road of 595 metres, 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 FAC noted the submission by the DAFM representative at oral hearing (and in response to questions posed by the FAC) in relation to a number of questions on the 'Assessment to Determine EIA Requirement'. In particular, it was submitted that responses provided to questions 10, 15, 16 and 19 C were made in error. This included a consideration of the design and construction of the forest road and the undertaking of archaeological monitoring. Based on the response provided to the appeal the FAC was not satisfied that due regard was given to these issues before the decision was made. The FAC is satisfied that this represents a series of errors in the making of the decision and that the decision should be remitted to the Minister to complete a new 'Assessment to Determine EIA Requirement'.

The FAC further considered the contention that the afforestation of the lands was carried out without appropriate screening for the requirement for an Environmental Impact Assessment or Appropriate Assessment EIA. The lands lie outside of any designated area in a landscape comprised of managed agricultural and forest land. The current forest was planted in 2002 and no evidence was submitted that this represented the afforestation of the land or that this afforestation was undertaken not in keeping with any procedural or legislative requirements. The FAC is not satisfied that an error was made in this regard.

Regarding the information provided with the application the FAC considered that no specific reference or example of deficiency is provided in the grounds. The FAC having considered the application on file including maps, specification details and environmental information considered that the information supplied by the applicant provided the DAFM with sufficient detail to facilitate the consideration of the application.

In relation to the contentions in the grounds of appeal regarding Appropriate Assessment and related matters, the FAC finds that the DAFM undertook a screening of the project for Appropriate Assessment which examined eight European sites within 15km and that there was no requirement to extend the radius in this case to include further European sites. The FAC examined publicly available information provided by the NPWS and EPA and identified the same eight sites within 15km of the proposal. The record includes consideration of each site and its associated qualifying interests and special conservation interests and reasons for the screening conclusion. Lough Gill SAC lies 2.8 km to the west of the proposal. No reasons are provided for the screening of this site on the record. The FAC is satisfied that this represents an error in the making of the decision and that a new screening should be undertaken to correct the record.

In relation to the text contained in the in-combination consideration,

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 considered that, in the context of the reasons recorded for not proceeding to Appropriate Assessment, including the absence of a pathway of effects, that the inclusion of this text was not necessary but would not affect the decision made.

The FAC considered the contention in the grounds of appeal that the licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody (or waterbodies) under the River Basin Management Plan 2018-2021. The Appellant did not submit any specific information regarding effects on water quality or specific matters relating to the pathways related to the proposal other than a reference to an absence of adequate referrals and assessment of cumulative impact. The FAC noted the content of the DAFM statement and the submissions made at oral hearing in response to questions from the FAC wherein the DAFM representative gave an account of the field inspection carried out. The proposed forest road would be situated in the Bonet_SC_020 sub-catchment in the Sligo Bay Catchment. The record does not show a watercourse within the proximity of the lands and no evidence of potential impacts were submitted to the FAC. The Bonet_050 waterbody lies some 800 metres to the southeast and has been assigned a Moderate status and as being At Risk regarding the Water Framework Directive. At such a distance and in the absence of any direct connection this waterbody would not be impacted by the proposal. There is no evidence before the FAC of a direct connection from the works to a waterbody or possible impacts on a waterbody. The FAC is not satisfied that the DAFM have erred in regard to the protection of water and the objectives of the River Basin Management Plan 2018-2021.

Regarding the contention in the appeal grounds that the 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 and that the licence conditions do not provide a general system of protection for all species of birds as would be required by Article 5 of the Birds Directive and referred to in Article I of that Directive; prohibiting in particular the deliberate destruction of, or damage to, their nests and eggs or removal of their nests, 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 in an area of managed forestry land, and the measures required by the DAFM. The grounds do not provide any evidence of the presence of particular species or habitats on the lands. 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 not satisfied that the DAFM have erred in relation to the specification of licence conditions in this regard.

In considering the appeal 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 satisfied that a serious or significant error or a series of errors were made in making the decision in relation to licence application CN84428. The FAC is therefore setting aside and remitting the decision regarding licence CN84428 to the Minister to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive and a new screening for Appropriate Assessment before a new decision is made.

Yours sincerely,

[Redacted Signature]

Vincent Upton On Behalf of the Forestry Appeals Committee