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21st June 2021

Subject: Appeal FAC 675/2020 relating to Licence CN86062.

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 14A (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.

Licence

Licence application CN86062 is for the construction of a forest road of 123 metres in length in the townland of Riesk, Co. Kilkenny. The application was received by the DAFM on 15/04/2020 and two third-party submissions are on record. The licence was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 12/08/2020 with no conditions.

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

Hearing

An oral hearing of the above appeal, of which all parties were notified, was held by the FAC on the 4th of June 2021.

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| FAC Members: | Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas. |
| Appellant: | [REDACTED] (Did not attend). |
| Applicants: | [REDACTED] (Did not attend). |
| DAFM | Ms. Mary Coogan and Mr. Ciaran Nugent (replacing Mr. Robert Windle). |
| Secretary to the FAC | Ms. Marie Dobbyn. |

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the DAFM, the record of the decision by the DAFM (in particular the Inspector's certification), the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister regarding licence CN86062.

Background

An Inspector's Certification Report certified by the DAFM on 30/07/2020 indicates that a desk assessment and a field inspection were carried out on the site. The predominant soil type underlying the project area are brown earths in nature. The slope is predominantly flat to moderate (<15%) and that the site does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area GA1 (Improved Agricultural Grassland).

The report also notes that there are 4 Natura 2000 sites within 15Km of the proposed forest road (3 SAC, 1 SPA) and records an Appropriate Assessment (AA) screening decision to screen out the application for each site as follows:

| Natura 2000 Site | Reason for Screening out for Appropriate Assessment |
|--|--|
| River Barrow And River Nore SAC 002162 | The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. |
| Spa Hill & Clomantagh Hill SAC 000849 | the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site |
| Loughans SAC 000407 | the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site |
| River Nore SPA 004233 | the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site |

The report contains an undated in-combination assessment carried out by the DAFM which concludes that the project, when considered in-combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed forest road in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed road to EIA.

The licence application was referred to Kilkenny Co. Co. who replied on 17/07/2020 with 2 observations (i) forest roads is exempted development (ii) access to public road is exempted development. The licence application was also referred to Inland Fisheries Ireland (IFI) from whom no reply was received.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

1. The notification for the decision on this application was inadequate - there are two townlands with the name Riesk in Co. Kilkenny and the notification of the decision on the DAFM website has not sufficiently identified the townland to which this application applies.
2. Breach of Article 2(1) and Article 4(3) EIA Directive (screening non-compliant with Annex III)
3. The Determination of the Inspector in terms of the requirement for EIA is inadequately reasoned.

4. There is insufficient information included with the application to permit the Inspector to make a conclusive determination as to whether an EIA is required.
5. The proposed design and construction of the forest road does not take into account soil, terrain and slope in a way that mitigates against any environmental damage.
6. Issues raised with the Forest Service by the general public have not been examined and considered.
7. There is no evidence to indicate that archaeological considerations have been taken in to account.
8. The details in the application are not an accurate or complete representation of those required under Regulation 6 (2) of the Forestry Regulations (2017). The application was not legally complete and could not have been processed legally
9. This licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21
10. The Stage 1 AA conclusion is not legally valid.
11. There is insufficient detail and clarity in the In Combination information to enable a definitive position to be reached on the cumulative effect of this project with other plans and projects.
12. Licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of Habitats Directive.
13. Licence conditions do not provide a general system of protection for all species of birds as required by Article 5 of the Birds Directive.

Oral Hearing

At the oral hearing, the DAFM provided a Statement of Fact dated 15/10/2020 confirming the administrative details of licence CN86062 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

A Statement of Fact was provided by the DAFM Inspectorate dated 09/11/2020 stating that the relevant Appropriate Assessment (AA) procedure of 5th Nov 2019 was applied and that the project was screened out after following Standard Operating Procedures.

The DAFM submitted to the FAC that there was an obvious error in question 16 of the Inspector's Certification *"Do the proposed design and construction of the forest road take into account soil, terrain and slope in a way that mitigates against any environmental damage."* which was answered as "no" when the correct answer was "Yes".

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photography confirms that the road subject of this licence application runs from a farmyard through agricultural grassland before entering the forest.

Soil type is identified on the EPA maps as Surface water Gleys, and Groundwater Gleys, which are generally an acid, deep, poorly drained, mineral soil.

There is a WFD River Waterbody, the Bregagh (Kilkenny)_010 runs along southern boundary of the forest to be served by the forest road. In the period 2013-2018, the water quality status of the Bregagh (Kilkenny)_010 was poor and classified as being at risk in the WFD 3rd Cycle. Agriculture is identified as

the cause (pressure) of the risk. There is no direct hydrological connection between the location of the proposed forest road and this river waterbody.

The site is located in the Nore Catchment and the Nore_SC_090 sub-catchment.

The underlying groundwater body is the Ballingarry (IE_SE_G_009) and is identified as being at risk in the WFD 3rd Cycle programme.

The proposed forest road is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that there are 4 Natura 2000 sites identified as being within 15km of the site and those are the 4 sites examined in the DAFM AA Screening.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC noted that the site is not located in a Highly Scenic or Visually Pleasing in the Kilkenny County Development Plan 2014 but that the proposed forest road is located partially within an existing farm complex and that the route appears to run alongside an existing hedgerow. The FAC is of the view that the proposed forest road will not impact on the landscape.

The FAC considered the grounds of appeal under the following headings,

Incorrect Townland.

The FAC notes that the locational information contained in the Forest Roads Decisions Report published by the DAFM is townland and county. In addition, it is a requirement that a site notice is erected at the location of the proposed road. The FAC concluded that in the making of this appeal the appellant has not been disadvantaged by the fact that there are two townlands of the same name in county Kilkenny and that public notification was adequate in this case.

EIA Directive.

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 forest road below the specified 2000 metre parameter where the Minister considers such development would be likely to have significant effects on the environment.

Furthermore the FAC noted that with regard to the forestry to be served by this road 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 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 123 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. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

Article 6(2) of the Forestry Regulations 2017

With regard to the appellant's view that the details in the application are not an accurate representation of those required under Regulation 6(2) of the Forestry Regulations 2017. The FAC notes the appellant has not furnished any substantiation on this ground of appeal. The application included a forest road specification, forest and environmental information and maps showing the lands and forest road and environmental features. The FAC considered that the information provided was adequate for the purposes of assessing the application.

EU Water Framework Directive

With regard to the appellant's view that the proposed forest road and associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The FAC notes that there is no WFD surface waterbody in the vicinity of this site and forestry is not regarded as a threat to ground or surface waterbodies nor is forestry identified as a pressure in the WFD 3rd Cycle assessment. Having regard to the nature, scale and location of the proposal and the requirements under which operations are required to be undertaken; the FAC considers that the proposed forest road does not pose a risk to the river waterbody or to water quality generally.

Appropriate Assessment Screening

With regard to the Habitats Directive, the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of all of the Natura 2000 sites listed, the DAFM discounted the possibility of significant effects arising for the reasons stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site. The FAC is not satisfied that an error was made in making the decision in this regard.

Licence conditions relating to the protection animal and bird species.

In relation to the ground of appeal that the licence conditions do not provide a system of protection for wild animals and birds during the period of breeding and rearing consistent with the requirements of the Habitats and Birds Directives. The FAC 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. The FAC noted that the appellant did not submit any details in relation to animals or bird nesting or rearing on the proposed site. The FAC considered that the DAFM had completed a screening for Appropriate Assessment and had undertaken a site inspection prior to making the decision. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant are not necessary.

Archaeology.

The FAC notes that the nearest archaeological sites to this proposed farm road are 0.8 km to the north and 1.3 Km to the south. The Inspector's Certification Report, Environmental Considerations questions 4.1, 4.2 and Assessment to Determine EIA Requirement, questions 17 and 18 address the impact of the development on archaeology to the effect that it will not have any impact given the distance parameter of 200 metres.

Submissions from the General Public.

The FAC notes, based on the statement provided to the FAC, that the two submissions from members of the public included on the record appear to have been made outside the statutory period for the receipt of submissions (ie. 30 days from the public notice published by the DAFM). The concerns raised in the submissions (roads and environment) already form part of the Inspector's Certification.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that no serious or significant error or 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 CN86062 in accordance with Section 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 the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee