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24th June 2021

Subject: Appeal FAC 647/2020 regarding licence CN86362

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 CN86362 is for the construction of a forest road 110 metres in length at Coolrecuill, Co Sligo which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 11th August 2020 subject to conditions.

Hearing

An oral hearing of appeal FAC 647/2020 was held by a division of the FAC on the 31st May 2021.

In attendance:

Department Representative(s); Ms Mary Coogan, Mr Seppi Hona.

Applicant; Not Present

Appellant; Not Present

FAC Members; Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly.

Secretary to the FAC; Mr Michael Ryan, Ms. Ruth Kinehan (Observer).

Decision

Having regard to the evidence before it, including the record of the decision 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 CN86362.

Licence

The licence pertains to the construction of a forest road of 110 metres in length to serve 6.94 hectares planted in 2004 at Coolrecuill, Co Sligo. The proposed forest road is accessed from the public road. The project site is within the River Sub Basin MOY_060 (River Waterbody status for the MOY_060 is GOOD

for the 2013-18 assessment period) and in terms of risk is indicated as not at risk. The method of construction is excavation. An engineer's report is submitted in relation to the proposed entrance, the roadside drainage and the condition of the local road in relation to width and alignment onto which the forest road will access. There are detailed drawings relating to the entrance onto the public road reflecting the variation between the site levels on the road and the lands to be harvested. There are also photographs of the public road on the file and details regarding haulage routes.

The inspector certification refers to predominant soil type underlining the project area is highly modified peat and peaty podzols in nature. The slope is predominantly flat to moderate. The project area is not crossed by or adjoining an aquatic zone(s). The vegetation type(s) within the project area comprises conifer woodland.

The licence application was referred to Inland Fisheries Ireland on the 7th May 2020 and no response was received within four weeks. A subsequent response dated the 7th September 2020 indicated no objections and recommended conditions.

An Appropriate Assessment screening was carried out by DAFM and recorded on the file. Six Natura sites were found to be within 15kms of the project site, namely Doocastle Turlough SAC 000492; Lough Hoe Bog SAC000633; Lough Nabrickkeagh SAC 000634; Ox Mountains Bog SAC 002006; River Moy SAC 002298 and Turloughmore (Sligo) SAC 000637. All sites were screened out by reference to the proposal sites referring to distance; the absence of watercourse and aquatic zone within or adjoining the project area 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 14th July 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 11th August 2020 subject to conditions with specific conditions included in an Appendix 1.

Appeal

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

The grounds of appeal contends that the decision is a breach of Articles 2 (1) and 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; is in breach of 4(4) of the EIA Directive 2014/52/EU submitting that the project does not represent the whole project and is part of a larger programme of works; is in breach of 4(5) of the EIA Directive 2014/52/EU submitting that as the application does not represent the whole project the determination is invalid; that the Determination of the Inspector in terms of the requirement for an EIA is inadequately reasoned as there is no foundation for the conclusion reached on the basis of the

responses to the IFORIS checkbox queries or any other basis upon which this conclusion is made; there is insufficient information submitted included with the application to enable the Inspector to make a conclusive determination as to whether EIA is required; the proposed design and construction together with the conditions to approve do not meet safety related standards in the COFORD Manual and safety issues raised by the Local Authority; there is insufficient consideration of feedback from consulted bodies and conditions of Sligo County Council were not included in the terms of consent; 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 for Ireland 2018-21; the Stage 1 conclusion is not legally valid referencing the project is hydrologically connected to the River Moy SAC; 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 referring 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.

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. The Statement from the Forestry Inspectorate sets out the criteria for the assessment of the licence including an overview of statutory requirements in relation to EIA and the project to be considered; that the proposal is sub threshold for EIA; there is no hydrological connection and the reasons for screening out Natura 2000 sites are stated for each individual site. DAFM determines conditions to be included in licences and all local authority requirements deemed necessary by DAFM are included.

In the course of the oral hearing clarification was sought by the FAC in relation to the road access, characteristics of the site based on the field inspection, drainage and hydrological connection, coverage of forestry on the area, clarification in relation to question 33 of the Inspector's Certification (pertaining to compliance with safety-related standards set out in COFORD Forest Road Manual and that the response should have been yes and the conditions of the licence in particular those relating to the response from Sligo County Council.

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 110 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 as it related to the 110 metres of forest road works. The FAC examined publicly available information from the EPA and NPWS and identified the same six sites as the DAFM within 15km from the proposal; Doocastle Turlough SAC 000492; Lough Hoe Bog SAC000633; Lough Nabrickkeagh SAC 000634; Ox Mountains Bog SAC 002006; River Moy SAC 002298 and Turloughmore (Sligo) SAC 000637. 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 that at the oral hearing in response to the matter being raised by the FAC the DAFM indicated that the field inspection revealed that there are no drains present on the site, no specific drainage works are required to facilitate this project and standard road construction methods would be applied. 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 adjoining or crossing the route of the proposed road, that 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. It is also noted that IFI raised no objections to the development in relation to protection of species and that requested the Forestry and Water Quality Guidelines are strictly adhered to and it is noted by the FAC that is required in the conditions of the licence.

In relation to the grounds of appeal and specifically that there was an insufficient consideration of feedback from consulted bodies and that conditions of Sligo County Council were not included in the terms of consent the FAC finds that the conditions of the licence includes as an appendix the conditions as indicated by the County Council other than the requirement of a bond. These conditions include that a road condition survey shall be undertaken by the Sligo County Council Local Area Engineer and an agent of applicant pre commencement of road construction and on completion of road construction works and that a traffic management plan shall be submitted and agreed with Sligo County Council Local Area office prior to commencement of works reflecting ongoing consultation and feedback. The FAC considers that there was sufficient consideration of feedback. It was also clarified at the oral hearing that the proposal complies with the safety standards as set out in the COFORD Manual and although the response in the Inspector's Certification was an error the FAC is satisfied, based on the response at the oral hearing, that it does not constitute a serious error.

In relation to the ground of appeal referring to protections for birds it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC, having considered that the DAFM had undertaken a site inspection and completed a screening for Appropriate Assessment, concluded that there is 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 CN86362 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

