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24th May 2021

Subject: Appeal FAC 701/2020 in relation to licence CN86611

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). 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 CN86611 for forest road of 215 meters(m) at at Kiltycreen, Co. Sligo was approved by the DAFM on 7th of September 2020.

Hearing

An oral hearing of appeal FAC 701/2020, of which all parties were notified, was held by the FAC on 21st April 2021. In attendance:

FAC Members:

Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway

Appellant:

Applicant / Representative(s):

Department Representative(s):

Secretary to the FAC:

Mr. Seppi Hona & Ms. Mary Coogan

Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence CN86611.

Summary of licence and file

The licence pertains to 215m of forest road at Kiltycreen, Co. Sligo to serve 12.22 hectares of forestry. Various documentation including an application form, photo of the site notice, maps, bio-map, management plan and the specifications of the road were observed by the FAC to be on the DAFM file which records the application process. The application was made under the single consent process for forest roads, and an engineer's report providing details of the road design, sight lines and other

information relevant to how the road will exit to the public road is on file. Construction is to be of a "Excavate-mineral/build on top-Peat" nature. The proposed forest road would exit onto an existing small local public road, itself a cul-de-sac, at a location just under 5km North West of Gorteen village. The proposed road runs in a straight line almost on a south-southwest to north-northeast direction. The bio-map on file shows a watercourse bounding the site to be serviced to the south. EPA mapping shows this to be the Knocknageeha_35 stream, part of the Clooneen (Sligo)_020 Water Body, the stated WFD Status for which is Moderate in the 2013-2018 monitoring cycle.

A third-party submission was received on the 29th of July 2020 in relation to the application. A referral to Sligo County Council is not on file, however a response from that local authority is on file dated as received on the 30th of July 2020. This includes a number of proposed conditions and advisory statements.

A Forest Service Inspector's certification report is on file which notes a desk only assessment of the application. This contains a screening for Appropriate Assessment for the purposes of the Natura Directives, which references an in-combination report. This in-combination report is on file, and refers to searches of various planning systems including the EPA, Sligo County Council, An Bord Pleanála, and DAFM as having taken place on the week of the 28th of August 2020.

The Inspector's certification describes the site as having a predominant soil type underlining the project area that is predominantly podzols in nature. It gives the slope as predominantly flat to moderate (<15%), and states that the project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area is stated to comprise conifer plantation with some Ash.

The screening for Appropriate Assessment was based on a buffer distance of 15km from the project site, which was deemed as sufficient with sites outside that distance not being required to be included in the screening. Within that radius, 13 sites were identified and screened as follows:

1. Bricklieve Mountains and Keishcorran SAC 001656 – Screen out
2. Callow Bog SAC 000595 – Screen out
3. Cloonakillina Lough SAC 001899 – Screen out
4. Doocastle Turlough SAC 000492 – Screen out
5. Flughany Bog SAC 000497 – Screen out
6. Lough Arrow SAC 001673 – Screen out
7. Lough Arrow SPA 004050 – Screen out
8. Lough Gara SPA 004048 – Screen out
9. River Moy SAC 002298 – Screen out
10. Templehouse And Cloonacleigha Loughs SAC 000636 – Screen out
11. Tullaghanrock Bog SAC 002354 – Screen out
12. Turloughmore (Sligo) SAC 000637 – Screen out
13. Unshin River SAC 001898 – Screen out

Reasons for screening out were as follows:

- The absence of any aquatic zone within or adjoining the project area. (Sites 1,2, 3, 4, 5, 6, 9, 10, 11, 12, 13)
- The absence of any significant relevant watercourse(s) within or adjoining the project area. (Sites 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13)

- The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. (Sites 7 and 8)
- Other factors - distance (Sites 7 and 8)
- With reference to the in-combination assessment report, the absence of a likelihood of the project itself (i.e. individually) having a significant effect on the European Site, there being no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects (all sites).

The Inspector's certification report also includes an Assessment to Determine EIA requirements This considers the project across a range of criteria including general project characteristics, water, archaeology, landscape and visual amenity, non-designated and designated sites and habitats, social factors, safety, and public participation. The assessment concludes that an EIA is not required.

The DAFM issued a licence to the applicant on the 7th of September 2020 which contains conditions of a standard nature and reflective of the comments submitted by Sligo County Council.

Grounds of Appeal and Statement of Fact.

The decision to grant the licence is subject to one appeal. The grounds of the appeal broadly are;

1. A breach of Article 4 (3) of the EIA Directive 2014 152/EU by reason of failure to take into account all of the relevant selection criteria set out in Annex III of the Directive when assessing the requirement for an EIA of a sub-threshold application.
2. A breach of Article 4 (4) of the EIA Directive 2014 152/EU by reason of the developer not providing all of the information required under Annex II A of the Directive, specifically that the application for the licence does not represent the whole project therefore it is not in compliance with the EIA Directive.
3. A breach of Article 4 (5) of the EIA Directive 2014 152/EU for similar reasons to above.
4. 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
5. That the Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned, that 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 the conclusion is made and there is, in consequence, an error of law in the processing of this application.
6. That the Stage I AA Determination is not legally valid by reason of failure to ensure that the assessment has no lacunae and to ensure that it contains 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.
7. That the application and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. Specifically the appellant submits that the project area is within a Priority Area for Action but relevant referral bodies have not been consulted and that in the absence of an adequate assessment of the cumulative impact of this project with other existing forestry and non-forestry projects and land uses, approved and proposed, in the same catchment the achievement of the objectives set for the underlying

waterbody or waterbodies under the River Basin Management Plan for Ireland cannot be assured.

8. That 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
9. 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 those species, particularly during the period of breeding, rearing, hibernation and migration.
10. That the licence approval 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.
11. That there has been inadequate consideration of all of the issues raised in a third party submission.

In a statement to the FAC, the DAFM submitted that their decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act, and provided responses to the grounds of appeal with regard to EIA. These state, inter alia, that: the various responses provided by the inspector are informed by a number of sources that cover a wide range of considerations that are relevant to the criteria set out in Annex III of the Directive; that when applying a screening procedure for sub-threshold EIA and making a determination the Competent Authority is required to take in to account where relevant the results of preliminary verifications or assessments carried out pursuant to legislation other than the EIA directive; that information submitted by the developer, together with these other sources of information, formed part of the consideration of the requirement for EIA; and that a detailed list of existing or approved projects around the application was available to inform the determination in relation EIA requirement

The statement provided by the DAFM also addressed those grounds relating to licence conditions; asserted conformity with the Single Consent Process including review by Sligo County Council, and submitted that there is no hydrological connection from the proposal to any water course.

Oral Hearing

At Oral Hearing the DAFM summarised the processing of the licence application as recorded in the Statement of Fact, highlighted the role of the single consent process for Forestry Roads and the role it played in relation to the application.

The appellant re-affirmed the written grounds of appeal. They submitted that the forest is adjoined by an aquatic zone at the southern perimeter and that the felling licence had not been considered.

In response to questions from members of the FAC, the DAFM submitted that while the site to be serviced adjoins a watercourse, the project under consideration which is for the construction of a forest road does not as it is ca. 200m from the EPA mapped watercourse, is on a flat site and there are no active drains in the vicinity of the road. On this point, the appellant submitted that this constituted

project-splitting and that as the road was being built to service an area of forest it could not be considered in isolation from other elements of the forest management. DAFM submitted that other projects relating to the forest would be subject to separate licencing processes, and that a later consented project would have to take into account and consider the earlier consented project(s) as part of an in-combination assessment.

Consideration by the FAC

In addressing the grounds of appeal the FAC had regard for the Grounds of Appeal, the Statement of Fact, submissions at oral hearing, the DAFM file recording the processing of the licence application, and publically available sources of information such as mapping provided by the EPA, OSI and DAFM.

The FAC considered, in the first instance, as to the completeness of the assessment to determine for EIA requirements. In considering this aspect, 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. 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 215m, so is sub threshold for mandatory EIA as set in Irish Regulations. The road would be built through managed forest land outside of any area designated for conservation. 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 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 the DAFM in relation to their EIA consideration and concurs with the conclusion reached.

In addressing the Appropriate Assessment grounds of appeal, the FAC considered, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans and projects, having regard to the conservation objectives of that designated site. In the grounds of appeal, the appellant submits that the screening for Appropriate Assessment is not legally valid because of the possibility of lacunae and the need to remove reasonable scientific doubt through the provision of complete, precise, and definitive findings; but provides no detail of where such lacunae may arise. The DAFM, in this case, undertook a Stage 1 screening, and found thirteen European sites within 15 km of the proposal area as outlined above, and that there was no reason to extend the zone of influence in this case. The sites identified were considered together with their qualifying interests or special conservation interests, and in each case the possibility of impact was screened out and reasons for this

conclusion were recorded. The FAC consulted publicly available information from the NPWS and EPA and identified the same thirteen sites. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects on the week the 28th of August 2020 in a stand-alone document, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. On the basis of the foregoing, the FAC is not satisfied that an error was made by DAFM in the processing of the application in relation to Appropriate Assessment as required by the Natura Directives.

The FAC considered the contention in the grounds of appeal that the application and its associated operations threaten the achievement of the objectives set for the underlining waterbody under the WFD River Basin Management Plan for Ireland in 2018-21. In doing so, the FAC reviewed EPA maps and data and find the proposal area is in the *35_Sligo Bay & Drowse* catchment and the *Owenmore[Sligo]_SC_020* subcatchment. The *Clooneen (Sligo)_020* waterbody can be observed to bound the site to be serviced to the south, some 180m to the south of the southern most part of the proposed road. OSI maps indicate some land drains on the site, in excess of 100m from the southern most part of the proposed road, with no evident direct hydrological connection to the watercourse to the south. OSI contour maps confirm the site description in the Inspector's certification of the site being on a flat to moderate slope. The granted licence includes standard conditions relating to the adherence to practices designed to protect water quality. In summary based on the information available to it and having regard to the nature of the proposal, namely construction of a forest road, the location of it and its terrain and the conditions under which operations would be undertaken, the FAC is not satisfied that there was inadequate consideration of water matters by DAFM in their decision making as it relates to this ground of appeal and is not satisfied that the proposal poses a significant threat to water quality.

In relation to the submitted 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 the Birds Directive and relating to the requirements of Article 12 of the Habitats Directive, the FAC had regard for the statement of fact provided by the DAFM. The FAC notes that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. The FAC also notes that the licence conditions contain reference to standards of good forestry practice. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant should not be attached to the licence.

Concerning the ground of appeal that there had been inadequate consideration of all of the issues raised in a third-party submission, the FAC noted the Inspector's certification which indicates that all referral responses and submissions received in relation to the application had been reviewed. The third-party submission, from the appellant, lists a number of points in relation to the proposed licence in relation to national laws and regulations, the EIA Directive, the Habitats Directive, water quality, licence conditions other environmental considerations. Some, though not all, of these are restated or expanded upon in the written grounds of appeal and were not elaborated on at Oral Hearing. Having reviewed the

procedures followed in the granting of the licence, the FAC is satisfied that adequate consideration was given to the third-party submission.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and 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 regarding licence CN86611 nor that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision in relation to licence CN86611, 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 John Evans.

John Evans, On Behalf of the Forestry Appeals Committee

