



[REDACTED]

30th November 2020

Subject: Appeal FAC255/2020 regarding licence CN85570

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 CN85570 for 420 metres of forest road at Clonglaskan, Co. Cork was approved by the Department of Agriculture, Food and the Marine (DAFM) on 27th May 2020.

Hearing

An oral hearing of appeals FAC255/2020 was held by the FAC on 18th November 2020. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Seamus Neely, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Eugene Curran, Mr. Colin Gallagher

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 affirm the decision of the Minister regarding licence CN85570.

The licence pertains to 420 metres of forest road to service 6.2 ha of forest which is 38 years old and submitted to be scheduled for felling in the next 3 years at Clonglaskan, Co. Cork. There is stated to be an existing entrance onto a public road. Soil type is described as mineral and the site is flat to gently sloped at an elevation of 90 to 100 metres. The specifications of the road were provided with the application and it would be constructed through excavation and the land is currently under forest and

grass. The nearest village is submitted as Castletownbearhaven. The proposal is submitted to be outside of any designated site and is not within 3km upstream of any such site. The application notes that while there are no recorded monuments in the proposal area there is a monument 320 m from the proposed road, monument (number CO114-049) and there is another monument 400 m from the proposed road, monument (number CO114-049001). The DAFM undertook a screening for appropriate assessment of the proposal and found that there were seven European sites within 15km of the proposed road and that there was no reason to extend this radius in this case. The sites are considered in turn with their qualifying interests listed and the reason for screening each site out provided. The DAFM also recorded other plans and projects that were considered in combination with the proposal. The application was referred to a DAFM Archaeologist who considered the recorded monuments in the general area outside of the proposal site and concluded that adherence with standard forestry and archaeology guidelines was sufficient in this case. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The application was referred to the Cork County Council but no response was provided. The licence was approved with conditions on 27th May 2020.

There is one appeal against the decision. The grounds contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. It suggests that the Forest Service identified that there were Natura 2000 sites within 15km and that in this case an appropriate assessment was legally required. The grounds include quotes from Case C-323/17 regarding measures considered at the screening stage for appropriate assessment. The grounds suggest that where an EIA screening is undertaken that other forestry projects in the area must be taken into account, including felling. The Appellant also submitted grounds relating to suggested legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the DAFM submitted that it is satisfied that all criteria as outlined in its standards and procedures have been adhered to in making a decision on the application. It further submits that there are no hydrological connections to any SAC and that the SPA concerns two species, fulmars are ocean dwelling gulls that breed on cliffs and choughs that graze on green fields and breed on coastal cliffs and that neither will be effected by this road construction.

An oral hearing of the appeal was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM representatives outlined the processing of the application and the information submitted by the Applicant including maps of the proposal. They described the appropriate assessment and EIA considerations undertaken and the conclusions reached. They submitted that the proposed road site is not crossed by any water feature and is not hydrologically connected to any SAC. They submitted that an error had occurred in recording the absence of an aquatic zone. They submitted that the Beara Peninsula SPA is the closest European site and reiterated their written submission that the proposal area would not be suitable habitat or have an effect on the associated bird species. They submitted that the road does not extend any existing forest road. The Applicant outlined their application documents. They submitted that they had visited the site before the application was made to identify the most appropriate location and that an existing maintenance trail

lies along part of the proposed route and that they found no watercourses crossing the site. They submitted that an existing entrance to the public road and turning area is present at the southern end of the proposal.

The FAC, in the first instance, considered the appropriate assessment screening undertaken by the DAFM. The FAC concluded that the proposal is not connected with or necessary to the management of any European site. The grounds of appeal do not identify any specific European site, pathways or effects of concern. Using publicly available information from the NPWS and EPA the FAC confirmed the same seven sites as the DAFM lie within 15km of the proposal. The FAC considered that given the nature, scale and location of the proposal there was no need to extend this radius in this case. The identified sites and direct distances to the centre of the proposal are Beara Peninsula SPA 004155 (2.1km), Cleanderry Wood SAC 001043 (9.9km), Glanmore Bog SAC 001879 (9.7km), Iveragh Peninsula SPA 004154 (14.9km), Kenmare River SAC 002158 (4.2km), Sheeps Head SAC 000102 (13.9km) and Sheeps Head to Toe Head SPA 004156 (13.9km). The DAFM considered each site in turn and provided reasons for screening each site out for appropriate assessment. Furthermore, details of other plans and projects considered in combination with the proposal were documented. While the licence conditions include standards and guidelines and these are considered in the processing of the application, the FAC concluded that these conditions are related to general good forest practice and environmental protection and could not be considered to be measures intended to avoid or reduce the harmful effects of the project on a European site in this case. Furthermore, the DAFM in considering the proposal identify an absence of pathway and/or receptor in relation to the screening of each European site. Based on the information before it, the FAC is satisfied that no serious or significant error or a series of errors occurred in the DAFMs conclusion that an appropriate assessment was not required in this case and that the proposal, itself or in combination with other plans and projects, is not likely to result in any significant effects on a European site.

The FAC considered the grounds relating to Environmental Impact Assessment (EIA). 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. 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 proposal as described is for the construction of 420 metres of forest road to service 6.2 ha of commercial, managed forest for felling and does not extend an existing forest road. The proposal is considerably sub-threshold for the mandatory submission of an EIA report. 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 grounds of appeal do not outline any specific concerns regarding significant effects on the environment of the proposal. The FAC considered the nature, scale and location of the proposal and the information provided on the file and is satisfied that no serious or

significant error or a series of errors occurred in the DAFMs conclusion that an EIA was not required in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is satisfied that a serious or significant error or a series of errors was not made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN85570 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 large black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee