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22nd April 2021.

Subject: Appeal FAC 165/2020 regarding licence CN85356

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 CN85356 is for the construction of a forest road 465 metres in length at Carricknagrow, Co Cavan, which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 12th of March 2020.

Hearing

An oral hearing of appeal FAC 165/2020 was held by the FAC on 26th March 2021.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr. Iain Douglas and Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

DAFM Representatives: Mr. Jhan Crane.

Appellant: [REDACTED]

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN85356.

Licence.

The licence pertains to the construction of a forest road of 465 metres in length at Carricknagrow, Co Cavan. The predominant soil type underlying the project area is described as being predominantly

podzols in nature. The slope is mostly flat to moderate (<15%). The project area does not adjoin or contain any aquatic zones. The vegetation type within the project area is comprised of conifer plantation

The proposal was referred to Cavan Co Council on the 15.01.20 but no response was received.

An Appropriate Assessment screening was carried out and recorded on the file. Four Natura sites were found to be within 15kms of the project site and all were screened out. The Boleybrack Mountain SAC was screened out because of the absence within and adjacent to the project area, of any habitat listed as a qualifying interest of the Natura site, also because of the absence of any aquatic zone within or adjoining the project area and because of the absence of any significant relevant watercourse within or adjoining the project area and for Other factors. It was also noted that the project area is 2.1km from the SAC and is beyond any zone of influence regarding any of the qualifying interests. The Corratimm SAC was also screened out because there were no habitats within or adjacent to the project area listed as a qualifying interest of the Nature site. It was noted that the project area is 6.7km from the SAC and, as such, is beyond the zone of influence of any of the qualifying interests of the SAC. The Cuilcagh - Anienn Uplands SAC was also screened out for the same reasons and it was noted that it was 4.3km from SAC and thus beyond the zone of influence of the qualifying interests. Similarly, the Lough Gill SAC was also screened out because of the absence of any aquatic zone within or adjoining the project area and because the project area is 13.6km from the SAC and thus beyond the zone of influence of the qualifying interests.

An In-combination assessment dated the 26.02.20 was carried out and is on the file. It states "Individually, the project does not represent a source, or if so, no pathway for an adverse effect on any European site exists. Consequently, the DAFM deems that there is no potential for the project to contribute to any such effects, when considered in-combination with other plans and projects." The overall conclusion was to screen out all sites concluding that there was no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required. The record also includes a conclusion that the application should not be subject to the EIA process following a consideration across a range of factors including the cumulative effect and extent of project, water, soil, terrain and slope, and other criteria. The licence was issued on the 12th of March 2020 subject to standard conditions.

Appeal.

There is one appeal against the decision. *Inter alia*, the grounds raise the issues that "No Environmental Impact Assessment screening has taken place." That "It appears that the developed roads in the area exceed 2km therefore Environmental Impact Assessment is required." That potential issues with regard to Turloughs have not been adequately considered and that there is a lack of Compliance with the NPWS 'General Remarks' document to Forest Service.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the relevant standards and procedures had been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that after an examination of all relevant maps that no hydrological threat to any Natura sites was identified.

An oral hearing was held of which all parties were notified and a representative of the DAFM attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that four sites were initially screened out and that there was no possibility of a significant effect on any Natura site.

At the hearing the FAC raised issues relating to the road construction and the entrance and connection to the public road network. There was clarification in relation to the screening undertaken and in relation to aspects of the Inspector's Certification. The road network in the area and access to it was also raised. The issues raised were addressed by DAFM to the satisfaction of the FAC. The DAFM submitted that no other forest roads have been constructed in the forest and that the route of the road would largely follow an existing agricultural track. The inspector's determination and recommendation were also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details.

In addressing the grounds of appeal, the FAC considered *inter alia*; whether or not the decision was in compliance with 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 465 metres of forest road construction in a commercial forest managed 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 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. While the grounds contend that no Environmental Impact Assessment screening has taken place, the record shows such a screening and the reasons for the determination.

In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same four sites as the DAFM within 15km from the proposal. 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. There is no 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 Appropriate Assessment screening and concurs with the conclusions reached.

Specifically, in relation to the grounds of appeal it was indicated that the proposed road will be the only forest road in the plantation and there are no existing forest roads. At the oral hearing the DAFM submitted that there are fire breaks and some old farm tracks within the forest area which might be mistaken for forest roads from the aerial imagery in the maps accompanying the application. The FAC is satisfied in relation to the response received.

In relation to potential hydrogeological impacts, the FAC sought and received adequate reassurance that there were no watercourses on the site and although there is a small lough relatively close to the project area there is no hydrological pathway or connection to it from the proposed development. It was also confirmed that there was no incidence or history of Turloughs occurring in the vicinity. The FAC is satisfied that the construction measures as proposed will not impact on any Natura sites or receiving waters.

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 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 CN85356 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 Donal Maguire.

Donal Maguire on behalf of the Forestry Appeals Committee