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24th February 2021

Subject: Appeal FAC195/2020 regarding licence CN79663

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 CN79663 is for the construction of a forest road 160 metres in length at Gortaganniv, Co. Clare which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 18th March 2020.

Hearing

An oral hearing of appeal FAC195/2020 was held by the FAC on 19th February 2021.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr John Evans, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant: [REDACTED]

DAFM Representatives: Ms. Mary Coogan, Mr. Kevin Keary.

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 CN79663.

Licence.

The licence pertains to the construction of a forest road 160 metres in length at Gortaganniv, Co. Clare. The proposed road is a new road off an existing public road and includes the widening of an existing entrance. The specification of the road construction and maps delineating the route were submitted

with the application. The road is stated to service 5.58 ha of forest for harvesting and forestry management. The soil type underlying the roadway is described as silty clay and the construction method would be excavation.

The proposal was referred to Clare County Council who did not respond. It is, however, noted that planning permission was granted by Clare County Council for an entrance onto the public road for the proposed road under ref P19/352 on the 21st June 2019.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered fifteen sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Ballyallia Lake SAC 000014; Ballyallia Lake SPA 004041; Batlycufinan Lake SAC 000016; Baltycullinan, Old Domestic Building SAC 002246; Corofin Wetlands SPA 004220; Dromore Woods And Loughs SAC 000032; East Burren Complex SAC 001926; Knockanira House SAC 002318; Lower River Shannon SAC 002165; Newhall and Edenvale Complex SAC 002091; Old Domestic Building (Keevagh) SAC 002010; Old Farm Buildings, Ballymacrogan SAC 002245; Poutadatig Cave SAC 000037; River Shannon and River Fergus Estuaries SPA 004077 and Toonagh Estate SAC 002247. In combination was also assessed. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required.

The proposal was assessed in relation any potential impact on archaeological remains and a report from the archaeologist concluded no impacts arising from the proposed road. The licence was issued on the 18th March 2020 with conditions.

Appeal.

There is one appeal against the decision.

The grounds contend that the licence which was issued was based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives; references is made to judgements of the CJEU and Irish Courts; there is a lacking of proper assessment with specific reference made to turloughs and ground water flows.

In a statement to the FAC, in regard to the granted proposed new road CN79663 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 following standards and procedures have been adhered to in making a decision on the application. The Statement from Inspectorate indicates that the AA procedure applied was that operable in November 2019. The site was field inspected on the 09/12/2019 and reinspected on the 07/02/2020. The application the inspector indicates is not hydrologically connected to any Natura 2000 site because there is no pathway to the aquatic zone that is 116m to the south east. The proposed road is situated on a dry hill. The road is outside any bird foraging distances (version 6" of January, 2020) and bat foraging distances for Natura 2000 Sites that are within the 15km zone of impact. The road is also outside any of the distances required to trigger

screening in for Special Areas of Conservation (Annex I Habitat Table (version 18 Dec 2019)). All Natura 2000 sites were screened out. An in-combination effects report was compiled which deemed 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.

An oral hearing was held of which all parties were notified and representatives of the DAFM attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken. Details relating to the inspection of the site was outlined; there were no issues relating to archaeology; that the road specification was altered in the course of the assessment in relation to the amount of stone required for the road that hydrological connections were examined; that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

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 fifteen sites as the DAFM within 15km from the proposal. These are Ballyallia Lake SAC 000014; Ballyallia Lake SPA 004041; Batlycufinan Lake SAC 000016; Baltycullinan, Old Domestic Building SAC 002246; Corofin Wetlands SPA 004220; Dromore Woods And Loughs SAC 000032; East Burren Complex SAC 001926; Knockanira House SAC 002318; Lower River Shannon SAC 002165; Newhall and Edenvale Complex SAC 002091; Old Domestic Building (Keevagh) SAC 002010; Old Farm Buildings, Ballymacrogan SAC 002245; Poutadatig Cave SAC 000037; River Shannon and River Fergus Estuaries SPA 004077 and Toonagh Estate SAC 002247. The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

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 examined at the oral hearing. 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.

At the hearing the FAC raised issues relating to the road construction, the planning permission granted by Clare County Council, archaeology, clarification in relation to the preparation of the in-combination report, that the proposed road was a standalone road and the issue of turloughs were raised. In relation to the latter, it was indicated that the site was not in a karst/limestone area and the presence of turloughs was not evident in the general area of the site. The issues were addressed by DAFM to the satisfaction of the FAC. The inspector's determination and recommendation was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details and is considered adequately reasoned.

In addressing the grounds of appeal, the FAC considered whether the decision was in compliance with the requirements of the Habitats and EIA directives, the assessment of the licence assessment and whether there is an assessment of cumulative effects and 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 required to undergo the EIA process. The proposal as described is being for 160 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 made regarding EIAR.

In relation to hydrological connections the site is within the the Inagh (Ennistymon) _20 catchment which has a moderate status for the period 2013-2018. The FAC is satisfied based on the information available to it, that no direct or proximate hydrological connection exists to a waterbody; there is no evidence in relation to the presence of turloughs given the nature of the underlying geology and therefore there is no identified possibility of a negative impact on any receiving waters.

The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence CN79663.

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 CN79663 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,



Derek Daly On Behalf of the Forestry Appeals Committee