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25th February 2021

Subject: Appeal FAC588/2020 and FAC603/2020 regarding licence CN84243

Dear [REDACTED]

I refer to the 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 CN84243 for 350 metres of forest road works at Lagduff More, Co. Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 17th July 2020.

Hearing

An oral hearing of appeals FAC588/2020 and FAC603/2020 was held by the FAC on 19th February 2021.

In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Appellant [REDACTED]

Appellant [REDACTED]

Applicant's Representative: [REDACTED]

DAFM Representatives: Mr. David Ryan, Ms. Oral Coffey, Ms. Mary Coogan

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 CN84243.

The licence pertains to a forest road of 350 metres at Lagduff More, Co. Mayo to service a forest area of 16.6 ha which is 37 years old. The application includes a description of the proposal, environmental considerations, specification prepared by a Chartered Engineer, and maps. The road would be

constructed through the embankment or build on top method. The site is described as lying at 30 to 33 metres in elevation and on a deep peat soil on a flat to gentle slope. The proposed road connects to an existing shorter road that leads to the public road and an existing entrance is in place. A site notice was erected and a photo of a notice at a forest entrance is on file. The application was referred to the NPWS and Mayo County Council. The NPWS responded noting that the road is within a forest that is adjacent to the Owenduff-Nepin Special Area for Conservation (SAC) and Bangor Erris Bog NHA. They submitted that there are no conservation issues with the forest road and that standard guidelines should apply when felling commences but the road constitutes a separate application. A document with an overview of obligations on public authorities was also submitted. The DAFM undertook a screening for Appropriate Assessment and identified twelve European sites within fifteen kilometres of the proposal. Eleven of the sites are screened out and reasons are provided and Owenduff/Nepin Complex SPA was screened in to proceed to Appropriate Assessment. The screening was subject to review by an Ecologist that confirmed the screening conclusions and noted that the proposal lies 630 metres from the Owenduff-Nepin Complex SPA and that there is potential for disturbance or displacement related effects on the Special Conservation Interest species. An appropriate assessment report and determination were prepared by the Ecologist that outlined potential adverse effects and specified mitigation measures that precludes operations between 1st March and 31st August inclusive. An approval letter was issued on 17th July 2020 with conditions.

There are two appeals against the decision to approve the licence. The grounds of FAC603/2020 submit, inter alia, that there has been a breach of Article 4(3), 4(4) and 4(5) of the EIA Directive 2014/52/EU in that all of the criteria in Annex III have not been taken into account by the DAFM, the application does not represent the whole project, and that required information has not been provided and the EIA screening is invalid. It is submitted that the determination regarding EIA is inadequately reasoned. It is submitted that there is no evidence that the impact on a nationally designated site has been adequately considered, that the Stage 1 AA Determination contains a fundamental error and is therefore not valid, and that there is potential for impacts on water quality and, as a result, impacts on the qualifying interests of a Natura 2000 site. It is submitted that the application threatens the achievement of the objectives set out in the River Basin Management Plan for Ireland 2018-2021. FAC588/2020 contends that the legitimacy of the forest has not been established. The notice of appeal refers to obligations on the FSC (sic, assumed to be the FAC). That the fact that the NPWS did not make an individual objection can not be relied upon. That all roads in the forest and distances must be listed. It is submitted that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive or the NPWS guidelines. It is submitted that if the development is within 15km of a Natura 2000 site then it has been screened in, that a map showing SACs and SPAs should be attached, that details of all forestry in the area should be provided and that the total area of forest and total kilometres of road should be provided. A document on headed paper of the Department of Culture, Heritage and the Gaeltacht was also submitted that contains general observations from the NPWS in relation to forestry application referrals.

In a statement to the FAC, the DAFM submit the criteria outlined in Annex III of the EU EIA Directive area are adequately considered within the current procedures and submits further details, that it assessed

potential cumulative effects and other plans and projects, that the application details regarding the proposed road and that the DAFM complied with its requirements under the Directive. It is submitted that the approval was issued in accordance with all procedures and SOP's effective at the time of issue, that the application was referred to the DAFM ecology unit which prepared an Appropriate Assessment Report and Determination and these are on file. It is submitted that the Owenduff Nephin pNHA is approximately 550m distant and the Bangor Erris Bog is approximately 500m distant from the project area and that standard mitigation was determined appropriate and effective in avoiding any negative effects on these sites.

An oral hearing of the appeals was held and attended by Representatives of the DAFM and the Applicant, and the Appellant of appeal FAC603/2020. The DAFM described the processing of the application and the information provided. The proposed road would extend an existing length of 250 metre of forest road that led to the public road. They reviewed the Appropriate Assessment screening undertaken and had been reviewed by an Ecologist who undertook the Appropriate Assessment regarding Owenduff/Nephin Complex SPA 004098 and the associated measures are attached to the licence conditions. They submitted that felling licences were considered in-combination with the forest road as documented.

The Appellant submitted that the proposal lies within the catchment of the Tullaghaunnashammer waterbody and that this has not been assigned a status by the EPA and that as a result no decision can be made that would be in compliance with the Water Framework Directive. The Appellant made reference to a recent Judgement of Ms. Justice Niamh Hyland in the High Court regarding a Judicial Review of a decision of An Bord Pleanala in this regard. It was submitted that the sub-basin has hydrological connectivity with Blacksod Bay/Broad Haven SPA (4037) and that, as a result, this site should have been screened in for Appropriate Assessment. They submitted that the proposal could threaten Erris Bog NHA.

The Applicant described the application information and the site. They submitted that an Engineer had walked the site on 9th April 2019 to line out the road which would serve all management purposes of the identified forest. They identified no watercourses on the site which was described as a recently felled forest on mineral soil with a smaller length of existing forest on peat soil. They submitted that the closest watercourse lay 125 metres to the northwest as indicated on the submitted Biomap, that the site is flat and that there is no connection with the watercourse. They submitted that all material would be sourced from local, certified quarries and that the licence conditions would be adhered to and no operations would be undertaken during the period identified on the licence conditions.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The FAC considered the grounds of both appeals relating the screening for Appropriate Assessment undertaken by the DAFM as contained on the record of the decision. The DAFM examined twelve sites in their screening for Appropriate Assessment and

determined that there was no need to extend this radius in this case. In the record, each site is listed alongside its qualifying interests or special conservations interests and reasons are provided for screening each one out. The FAC consulted publicly available information from the EPA and NPWS and identified the same twelve sites within 15km. The closest sites to the proposed road are Owenduff/Nepin Complex SAC and Owenduff/Nepin Complex SPA the closest boundary of which lies c.630 metres to the southeast. The SAC was screened out on the basis of an absence of hydrological connectivity and distance. No evidence was submitted to the FAC to contradict this conclusion. The qualifying interests of the SAC are a number of terrestrial and aquatic habitats and species. The proposal is for the construction of a forest road through embankment on an area of recently felled coniferous plantation and some standing coniferous plantation, which are not habitats associated with the SAC. The proposal lies outside of the SAC and at a significant remove, would not directly impact on habitats or species related to the SAC, and there is no evidence of a hydrological connection to the SAC. The FAC are satisfied that the DAFM did not err in its conclusions regarding the SAC. Owenduff/Nepin Complex SPA proceeded to Appropriate Assessment as the SPA *"is located 630 metres from the proposed forest road. Therefore there is potential for disturbance or displacement related effects to the Special Conservation Interest species"*. The Appropriate Assessment Report concluded that mitigation was required in the form of an exclusion of operations during the period 1st March to 31st August. At the oral hearing, the Appellant submitted that they considered this to be a precautionary approach and appropriate in this case. The FAC are satisfied that the DAFM did not err in its conclusions regarding the SPA.

A stream to the north of the proposed road drains to the Tullaghaunnashammer, that flows northwesterly to the coast and enters the sea at the boundary of Blacksod Bay/Broad Haven SPA. The hydrological distance from the watercourse at the closest point to the proposed road and the SPA is c.6km. The proposal is to construct 350 metres of forest road using the embankment method on a mineral and peat soil. The site is described as flat to gently sloped and Ordnance Survey Ireland maps indicate the site to be flat. The closest watercourse according to the submitted Biomap and data from the EPA lies c.125 metres to the north west with no direct connection to the proposed road. The Appellant submitted at the oral hearing that the proposal would threaten the wetland habitat of Blacksod Bay/Broad Haven SPA (4037) and that this should have proceeded to Appropriate Assessment. The DAFM Ecologist submitted that there is no hydrological connection with this SPA and confirmed the decision to screen out the SPA. The FAC considered the absence of a direct hydrological pathway, distance to the SPA, nature and characteristics of the site and concluded that the DAFM did not make an error in screening the site out for Appropriate Assessment. The FAC considered the documented consideration of other plans and projects in combination with the proposal, which includes felling licences in the area. The FAC is satisfied that the DAFM did not err in undertaking a Stage 1 Screening and Stage 2 Appropriate Assessment and concurs with the overall conclusions reached.

The stream to the northwest of the site forms part of the Tullaghaunnashammer 010 waterbody which has not been assigned a status under the Water Framework Directive (WFD) based on data provided by the EPA. The stream lies c.125 metres from the proposed road at its closest point. The road would be built on flat, mineral and peat soil through the embankment or build on top method without excavation. Based on the nature, scale and location of the proposal and the surrounding area and the evidence

before the FAC concluded that there is no real risk of surface runoff reaching the watercourse. There is no evidence of drains or other direct hydrological pathway from the road site to the watercourse. The FAC concluded that the watercourse would not be affected by the proposed road nor would the road represent any threat to water quality generally. In this instance, the FAC concluded that no issues in relation to the River Basin Management Plan or Water Framework Directive would arise and that the DAFM did not err in its decision making in this regard.

In addressing both appeals, the FAC considered that the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) 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. Neither afforestation nor deforestation is referred to in Annex I. 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 2,000 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 road is submitted to serve the current forest that was 37 years old at the time of application, making its planting year of 1982. 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. A record of these considerations was kept. The proposal is described as being for 350 metres of forest road construction, in a recently felled and managed forest, which is considerably sub-threshold for the mandatory submission of an EIAR. The road would extend an existing stretch of 250 metres of forest road that leads to the public road. The land is situated outside of an SAC or SPA and is surrounded by managed forest. A number of other designated sites, including Bangor Erris Bog NHA (001473), lie in the general vicinity but at a considerable remove and there is no evidence of a direct hydrological pathway from the road site to these designated sites. The road would also lie proximate to Ballycroy National Park. The NPWS was consulted on the road application and responded that no conservation issues arose. The DAFM completed a screening and Appropriate Assessment of the proposal. The FAC did not consider that any evidence was before it that the proposal represented a significant threat to water quality or the environment. The FAC considered the information provided, including maps and specification details, and considered that the DAFM had sufficient information before it to consider and screen the application and noted that a field inspection had been undertaken by the DAFM. 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 EIA.

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 CN84243 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 Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee