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08. December 2020

**Subject:** Appeal FAC262/2020 regarding licence CN84762

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 CN84762 for the construction of 400 metres of forest road at Ballycommane, Co. Cork was approved by the Department of Agriculture, Food and the Marine (DAFM) on 19<sup>th</sup> May 2020

#### **Hearing**

An oral hearing of appeal FAC262/2020 was held by the FAC on the 13<sup>th</sup> of November 2020.

FAC Members in attendance: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Ms. Claire Kennedy, Mr. Vincent Upton

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Eugene Curran, Ms. Mary Coogan

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN84762.

This project relates to an application to construct 400 metres of forest road works in Ballycommane Co Cork to service a forest area of 15.4 ha for felling. The predominant soil type underlying the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The area concerned is not within any protected sites, either existing or candidate, and there are no archaeological or scenic considerations. DAFM identified seven Natura sites as lying within 15 km of the project area.

There is one appeal against the decision. The appellant asserts that the decision to grant the licence does not comply with the Habitats, Birds or EIA Directives. The grounds suggest that an appropriate assessment should have been undertaken. 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 suggest that where an EIA screening is undertaken that other forestry projects in the area must be taken into account. The Appellant also submitted grounds relating to legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the Department submitted that is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. It further submits that the proposal is not hydrologically connected to any Natura site and the application poses no threat to the environment.

An oral hearing was held of the appeal and attended by representatives of the Applicant and the DAFM. The DAFM submitted that they are satisfied that the approval met its procedures. The DAFM described the processing and screening undertaken, including references to specific European sites and their qualifying interests. They submitted that aquatic features are not present on the proposal site and that this issue was considered by the District Inspector. They reiterated their conclusion regarding the proposal. The Applicant outlined the application process and the information that they made available to the DAFM. They described the operation and the site conditions and submitted that the road entrance required planning permission and that this had been attained and details were provided.

In relation to the appropriate assessment screening, the FAC considered the information provided by the DAFM and the grounds of appeal. The grounds of appeal do not identify specific European sites, pathways or significant effects of concern. The DAFM documented seven sites within 15km and considered that there was no requirement to expand this radius in this case. The FAC examined publicly available information provided by the EPA and NPWS and confirmed that Caha Mountains SAC 000093, Dunbeacon Shingle SAC 002280, Farranamanagh Lough SAC 002189, Glengarriff Harbour And Woodland SAC 000090, Reen Point Shingle SAC 002281, Roaringwater Bay And Islands SAC 000101, Sheeps Head SAC 000102 lie within 15km. The DAFM considered each site in turn and provided details of their qualifying interests, special conservation interests and the reasons for screening each one out for appropriate assessment. The DAFM carried out an 'in-combination' examination and concluded that individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed within the relevant range. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.

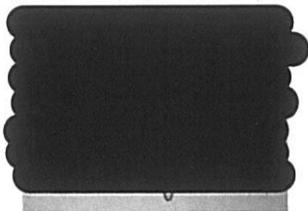
Therefore, DAFM deemed that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura site(s) listed above. While the licence includes a number of conditions that relate to the protection of water quality and the environment generally, the FAC is satisfied that there are no measures included that relate to the avoidance or reduction of significant effects on a European site and that none were considered in the screening or required to reach the conclusion. The DAFM determined that there was an absence of a pathway in each

case. Having examined their analysis in detail and based on the information before it, the FAC concur with the conclusion of the DAFM and is satisfied that no serious or significant error or a series of errors were made in making the screening decision.

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. In this instance, the forest road is considerably sub-threshold for the mandatory submission of the EIAR. The DAFM determined that the application was not required to undergo the EIA process and provided details of the characteristics and criteria employed in making that decision. The proposed forest road will service 15.4 ha of managed forest for felling and is not within any designated areas and is not considered likely to have a significant effect on a European site. The DAFM referred the application to the County Council and considered the response provided. There are no recorded monuments in the proposal area. The DAFM considered potential impacts on water and soil amongst other criteria outlined. The grounds of appeal do not identify specific environmental effects of concern in relation to the licensed project. The FAC is satisfied and concurs with the determination of the DAFM that the proposal should not have been subject to an EIA process.

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 CN84762 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 Donal Maguire.

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Donal Maguire On Behalf of the Forestry Appeals Committee

