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16th December 2021

Subject: Appeal FAC120/2021 in relation to forest road licence CN83988

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

Forest Road licence CN83988 was issued by the Department of Agriculture, Food, and the Marine (DAFM) on the 24/06/2021.

Hearing

A hearing of appeal FAC120/2021 was convened by the FAC on the 07/12/2021. In attendance:

FAC Members - Mr Des Johnson (Chairperson), Mr Seamus Neely & Mr Luke Sweetman

FAC Secretary - Mr Michael Ryan

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, and all other submissions, before deciding to affirm the decision to grant CN83988.

This licence is for the construction of 1,270m of forest road in Gortroe, Co. Limerick. The information on file indicates that the predominant soil type in the project area is Brown earths with Gley soils in parts. The slope is described as predominantly flat. The proposal is in the Mague_SC_010 Sub-Catchment, and the Mague_020 River Sub-Basin. The Mague_020 Waterbody was assigned 'Moderate' status under the Environmental Protection Agency (EPA) 2013-2018 reporting period. The wider site is drained by the Newtownshandrum Stream, the main channel of the River Mague and the Ballydaheen Stream. The former two watercourses flow along the northern boundary of the project site, while the Ballydaheen Stream flows through the project site. The Newtownshandrum Stream and the River Mague are buffered from the nearest point of forestry by approximately 30m. The buffer strip is colonised by dense scrub. The Forest road specification submitted by the applicant states the road will be constructed by excavation and the total pavement depth will be 350mm with 300mm base material (broken stone) and 50mm surface (804).

There are six Inspector's Certification documents on file. The 6th version (dated 23/06/2021) states that the application site was field, and desk assessed. The site is in an area that is not sensitive for fisheries. The proposal is not within 3km upstream of an NHA, pNHA, SAC, SPA, or National Park and does not contain or adjoin an archaeological site or a listed archaeological site or monument. The proposal is not within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Landscapes. The approximate percentage forest cover within 5km of the application area at present is listed as 8.98% with 0.41% in the underlying Waterbody.

Following assessment of the application, the DAFM issued an initial further information request (FIR) on 21/08/2019 requesting revision of the Bio Map and the road specification to use an "adequately sized culvert." Subsequently a revised Bio Map was submitted 23/08/2019. A second FIR issued 15/02/2021 requesting changes to the submitted Natura Impact Statement (NIS). This FIR raised the following issues: clarification of the status of the thinning operation referred to in the NIS, clarification of the current status of an aquatic zone visible on historic Ordnance Survey maps (but not recorded in the NIS or the revised Bio Map), the crossing of aquatic zones, the size of proposed culverts, proposed mitigation regarding impacts on Lamprey and Salmonid habitat, the management of old field drains on site, the signing of the NIS (and agreement on its contents) by both the Ecologist and the Registered Forester, and updating the dates on any revised documents.

Following an initial Appropriate Assessment (AA) Screening by the District Inspector, the application was referred to the Forestry Inspectorate's Ecology Unit. An AA Screening Determination was produced by

an Ecologist (dated 19/05/2021) which concluded that the project must advance to Appropriate Assessment stage. Subsequently, an AA Determination (AAD) was completed by an Ecologist (dated 18/06/2021) which lists the screened out European sites with reasons given. Screened in sites are listed (with reasons) as the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. The DAFM produced an In-Combination Report which consulted various online planning systems and datasets (including DAFM's own internal records) on the 29/04/2021 in relation to other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Maigne_020. The In-Combination statement says "This project lies in a rural landscape in Gortroe, Co. Limerick in the River Sub-Basin Maigne_020. The River Sub-Basin Maigne_020 has approximately 15% forest cover, which is higher than the national average of 11%. At 1270m the project is considered large in scale." The statement concludes that this project, when considered in combination with other plans and projects" will not give rise to the possibility of an adverse effect on any Natura sites."

The AAD states that the applicant's NIS (revised 17/03/2021) contains a fair and reasonable examination, evaluation and analysis of the likely significant effects of the activity on the environment and adequately and accurately identifies, describes and assesses those effects except in relation to a number of points to do with the use of an existing bridge over the Ballydaheen Stream, the size of culvert required at the aquatic zone crossing at point "D", and the erosion prevention measures in Appendix 4.

The AAD states "Adhere to the mitigations detailed in Section 5 of the NIS for CN83988 (revised 17/03/2021) with the following amendments" and prescribes additional mitigation measures relating to silt and sediment controls, chemical pollutant controls, and invasive species controls. AAD concludes "that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site."

The application was referred to Limerick County Council who responded that "any new entrance or modification of an existing entrance onto the public road will require planning permission."

The DAFM issued CN83988 on the 24/06/2021 with Additional Silvicultural and Environmental Conditions in Appendix A regarding; adherence to the mitigation measures in the AAD, completing works in accordance with the requirements of specified standards and guidelines, requiring a pavement surface of 100mm of 804, the termination of forest road drains outside of the water setbacks except in

flat areas where the drains can connect to the existing field drains via at least two geotextile silt traps and a pile of crushed rock in each of the drains.

Grounds of Appeal

There is one first party appeal against the licence (FAC120/2021). The grounds of appeal submit that the appellant is not agreeable to the requirement of 100mm pavement depth prescribed in the licence conditions. They submit that the 50mm pavement depth specified in their Forest Road Specifications document is suitable. The appellant submits that clarification on the depth of the surface layer required on a forest road was determined through an appeal to the DAFM in 2017 and quotes from a Forest Service Appeals Unit letter which states, *inter alia*, "the road can be constructed in accordance with the specification submitted namely 300mm base layer and 50mm surface layer as this is suitable based on the information supplied."

DAFM Response

The DAFM provided a written response to the grounds of appeal in the form of a Statement of Facts to the FAC. They outlined the processing of the appeal and the referral to an Ecologist and state that the AAD addresses the forest road drainage issues in a practical way.

Regarding the grounds of appeal, the Forestry Inspector states "It is common, long-standing practice to use a minimum of 100mm of 804 as the pavement surface layer on forest roads. In my experience, Coillte engineers (who build the most forest roads and have the most experience) always specify a minimum depth of 100mm of pavement surface material and on difficult sites they specify a minimum depth of 150mm of pavement surface material. A similar situation exists in the private sector, with the vast majority of the specifications submitted by private sector engineers, involved in building forest roads containing a minimum pavement depth of 100mm of 804 or '2 inch down.'" The Inspector states "From personal communications with Coillte engineers, they consider a minimum of 100mm depth of pavement surface material to be prudent in order to build a durable, long lasting road, which will not require excessive maintenance."

The Inspector contends that the outcome of the appeal for CN74902 was specific to the circumstances of that site and the prescribed specifications do not represent countrywide guidelines. The Inspector referenced a UK document - 'The Design and Use of the Structural Pavement of Unsealed Roads 2014. Timber Transport Forum.' The Inspector quotes from this document that "For the pavement to perform it needs to have a durable, impermeable top layer that spreads the load and sheds the surface water to

protect the sub-grade...The top 100mm of pavement must be a durable stone that will not readily break down under the wheel loading. It must be suitable for grading and rolling..." The Inspector contends that while the COFORD forest roads manual does not specify pavement surface material depths, section C.7 states, "minimise the permeability of the pavement as the formation or sub-grade must be kept as dry as possible to ensure maximum strength and to prevent degradation of the formation." The Inspector states that he believes "50mm depth of pavement surface material is insufficient. The inevitable deformation and rutting associated with harvesting and timber haulage, creates a high likelihood that a pavement surface layer which is 50mm in depth will be insufficient to maintain the required durable, impermeable top layer. There is a higher risk of water ingress to the pavement base and formation. The reduced depth of 50mm, as opposed to 100mm of pavement surface material, will also spread the load of vehicles less efficiently."

The Inspector's statement concludes that "based upon the points above, long standing forest roading practice, the requirement to obtain value for money in the grant aid scheme for the taxpayer, on this site I believe a pavement surface depth of at least 100mm is required."

Considerations of the FAC

The FAC convened a Hearing on the 7th December 2021 to consider appeal FAC120/2021. The FAC had regard, in the first instance, to the DAFM's processing of the application prior to deciding to issue CN83988. The FAC noted that the proposal was assessed by the DAFM to determine the requirement for EIA using the Inspector's Certification process in iFORIS. The DAFM considered the nature and scale of the proposal and its potential to have an impact on the environment across a range of criteria including, *inter alia*, an assessment of potential effects on water quality, designated sites, protected species, archaeological and landscape considerations, and the amount of existing forest cover and approved afforestation in the immediate surrounds of the proposal and within the underlying Waterbody. The DAFM also considered the proposal's potential to have a significant effect on European sites both individually and in combination with other plans and projects. To this end, an AA Screening Determination was made which led to an AAD, the mitigation measures from which were attached as licence conditions for CN83988. The FAC noted that there is a discrepancy between the amount of forest cover in the underlying Waterbody in the Inspector's Certification and the AA In-Combination statement. However, In the particular circumstances of this case, and having regard to the nature and scale of the proposal, the type and characteristics of potential impact, and the nature of the surrounding

landscape, the FAC is satisfied that the outcomes of the DAFM's screening for both EIA and AA are correct and concurs with the DAFM's conclusions in this regard.

The FAC considered the appellant's submission regarding suitable pavement depth for the proposed forest road. The FAC noted the appellant's reference to a previous decision by the Appeals Unit of the DAFM's Forest Service. The FAC noted that the decision in that particular case prescribed a 50mm surface layer based on the information supplied to them at the time. The FAC also considered the submission by the DAFM Forestry Inspector which stated, following a field assessment, and in the context of drainage issues on the site, that the prescribed 100mm pavement layer was required on the site and that it is common practice for forest road Engineers (both in private forestry and in Coillte) to specify 100mm pavement depth. The FAC is satisfied that the licence requirement for a 100mm pavement layer is based on an assessment of the particular circumstances pertaining to the appeal site and is in line with standard practice. Based on the information before it, the FAC concludes that the weight of evidence in this case lies with the DAFM position in requiring a 100mm pavement layer. The FAC notes that the appellant disagrees with the Inspector in this regard but the FAC does not consider that the appellant has provided any convincing evidence that the DAFM has made a serious or significant error or series of errors in the making of their decision.

Based on the information before it, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, in deciding to issue forest road licence CN83988 and did so in compliance with fair procedures. In deciding to affirm the decision of the Minister, the FAC considered that the proposed development is in line with Government policy and good forestry practice.

Yours sincerely,

A large black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee