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31 December 2020

**Subject:** Appeal FAC 415/2020 in relation to licence CN84590

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of forest road licence CN84590. 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 the parties to the appeal.

#### **Background**

Forest road licence CN84590 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 23<sup>rd</sup> June 2020.

#### **Hearing**

A hearing of appeal FAC 415/2020 was conducted by the FAC on 22<sup>nd</sup> December 2020. FAC members in attendance: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton.

#### **Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to set aside and remit the decision of the Minister for Agriculture, Food and Marine to grant licence CN84590.

The decision pertains to 300 meters(m) of forest road at Leckaun and Lisgavneen, Co. Leitrim to serve 2.81 hectares of forestry. The specifications of the road were included with the application and it would be constructed through excavation and outlines 15m tree clearance and a carriage width of 4m. The nearest village is submitted as Drumkeeran and the site elevation as 265 to 271m.

The proposal was desk and field assessed by DAFM. The DAFM certification states the soil type underlying the project area to be predominantly podzols in nature, the slope to be predominantly flat to moderate (<15%), that the project area does not adjoin or contain an aquatic zone(s) and the vegetation type(s) within the project area comprise conifer forest. DAFM undertook a stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, and found six European sites within 15km of the proposal and there was no reason to extend this radius in this case. The sites are Boleybrack Mountain SAC, Lough Gill SAC, Unshin River SAC, Lough Arrow SAC, Cuilcagh Anierin Uplands SAC and Lough Arrow SPA. The sites were considered in turn with their qualifying interests listed and the reasons for screening each site out provided. DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The

application was referred to Leitrim County Council and two conflicting responses were found on file; one which raised significant public safety concerns with regard to traffic hazard for all road users and a later response that stated the Planning Authority had no objection to the proposed forest road, but if the proposal proceeded that conditions it outlined should be included with the approval. DAFM issued a licence on 26 August 2019 together with standard conditions and some additional environmental and silvicultural conditions including that *"prior to the commencement of any work Coillte Engineer to consult with District Engineer of Leitrim County Council and agree all matters pertaining to the use of Public Roads"*.

There is one appeal against the decision to grant the licence. The grounds of appeal contend that this submission does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive and the test for Appropriate Assessment Screening in Irish and EU law is 'it is merely necessary to determine there may be such an effect' rather than state it will not have a significant effect. It is elaborated on that it is said to be in a different catchment, that the screening must state the catchment that the application is in, that it is also necessary to realise that birds can fly that they do not all rely on watercourses to move, that a map showing the SACs and SPAs and the site of the proposed development should be attached. With regard to screening for EIA it is contended that it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50 hectares, that it is necessary to give the total km of the forest roads in the area and show that no roads that are not included will be needed to carry out this development, that includes thinning and clearfell and that it is the duty of the FAC to carry out a full Appropriate Assessment screening and a full EIA Screening in accordance with the law. Case 323/17 of the Court of Justice of the European Union is quoted as is the Opinion of Advocate General Kokott in Case 254/19.

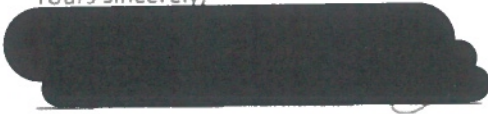
The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures, SI 191 of 2017 and the Forestry Act 2014, that they carried out both a desk audit and field inspection and reviewed the submission/appeal and that they satisfied that the procedures operating at the time were fully adhered to and approval is in order.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU 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. The decision under appeal relates to a licence for forest road of 300m to serve 2.81 hectares, so is significantly sub-threshold for mandatory EIA, as set in Irish Regulations. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, with the percentage of forest cover within the underlying waterbody and 5km outlined and the length of the proposed road and other recent, ongoing or planned road works within the area considered and determined that the project was not required to undergo the EIA process. The grounds of appeal do not identify a specific effect on the environment of concern. The FAC is not satisfied that a serious or significant error or a series of errors was made in relation to this consideration and concurs with the conclusion.

The FAC considered the grounds with regard to the Habitats and Birds Directives and in doing so considered under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. The FAC find that DAFM undertook a stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, and found six European sites within 15km of the proposal and screened out each site given reasons. An in-combination assessment being attached to the Appropriate Assessment screening was referred to in the DAFM's considerations of each site but there is no record or evidence of such a consideration before the FAC.

Based on the information before it, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for appropriate assessment were not satisfactorily met prior to the granting of the licence. The FAC considers there is a lack of evidence that possible in-combination effects with other plans or projects in the vicinity were considered for. The FAC considers this represents a serious error in the making of the decision to grant the licence. In such circumstances, the FAC decided the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment of the proposed development to include a consideration of other plans or projects in combination with the proposal under the requirements of the Article 6 of the Habitats Directive before making a new decision in respect of the licence.

Yours sincerely,

A large black rectangular redaction box covers the signature of James Conway.

James Conway, on behalf of the Forestry Appeals Committee