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9th March 2021

Subject: Appeal FAC 074/2018 in relation to licence CN77570

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). 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

Licence CN77570 for forest road of 450 meters(m) at Mein and Kilballyhemiken, Co. Tipperary was granted by the DAFM on 22nd March 2018.

Hearing

A hearing of appeal FAC 074/2018 was held by the FAC on 3rd March 2021. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister to grant this licence CN77570.

The licence pertains to 450m of forest road at Mein and Kilballyhemiken, Co. Tipperary to serve 22.5 hectares of forestry. The proposal is for two separate stretches of road in unconnected forests but which are proximate to each other. The most northern section is for 340m in Mein which would join an existing private road that leads to the public road. The other section in Kilballyhemiken to the south west of the previous one is for 110m. The forests are comprised of ash, Norway spruce and Sitka spruce. The roads would be constructed through the existing managed forests and maps and specification details were provided with the application.

The application was referred to Tipperary County Council, Inland Fisheries Ireland (IFI) and DAFM Archaeology. Tipperary County Council responded stating they had no objection. IFI replied stating that they had no objection provided all works/operations are compatible with protection of the aquatic environment. DAFM Archaeology replied referring to a standing stone c. 170m south of the southern road and a ringfort c. 200m north of the northern stretch of road. The DAFM considered the application

across a range of criteria and concluded that it should not be subject to Environmental Impact Assessment (EIA). The DAFM approved the application on 22nd March 2018.

The decision to grant the licence is subject to one appeal. The grounds submit that the DAFM failed to provide an Appropriate Assessment (AA) screening in relation to the decision and that the AA procedure adopted by the DAFM is flawed. In particular reference is made to the consideration of conditions and that these are mitigation measures. Reference is made to the Judgement of the CJEU in case C323/2017 in this regard.

In a statement to the FAC in responding to the appeal, the DAFM submitted that the site had been field inspected and assessed using GIS and that the proposed forest road (450m) comprises two separate lengths, which are 2040m and 3100m to the northeast of the Kilduff, Devilsbit Mountain SAC (000934) and there is no hydrological connectivity from the project area to this Natura site. It submitted that none of the scenarios employed by the DAFM in their procedures at the time were triggered and therefore, it was determined that the possibility of a significant effect on any Natura site did not arise, and the project was screen out for the purpose of Appropriate Assessment and therefore the completion of an individual Appropriate Assessment screening form was not required.

In addressing the Appropriate Assessment grounds of appeal, the FAC 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 and projects, having regard to the conservation objectives of that designated site. The DAFM submitted that they did not record a consideration and decision regarding screening for Appropriate Assessment. The FAC is not satisfied that a proper consideration of the potential significant effects of the proposal itself and in combination with other plans and projects on a European site was completed before the approval of the licence and that this would constitute a serious error. The FAC is therefore remitting the decision to the Minister to undertake a new screening of the likely significant effects of the proposal on European sites itself and in-combination with other plans and projects.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that a serious error was made in making the decision. The FAC is thus setting aside and remitting the decision of the Minister regarding licence CN77570 in line with Article 14B of the Agriculture Appeals Act 2001, as amended to undertake a new screening for Appropriate Assessment under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

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

James Conway, On Behalf of the Forestry Appeals Committee