



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

03/11/2021

**Subject:** Appeal FAC114/2021 against licence decision CN83302

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 Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

#### **Hearing**

The FAC, having regard to the particular circumstances of the appeal, did not consider that it was necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC114/2021 was held by the FAC on 14<sup>th</sup> October 2021. In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

#### **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 the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence CN83302.

#### **Background**

The licence decision relates to 810 metres of forest road works at Ballymabilla, Co Galway in the River Sub-Basin Ballymabilla\_010. The application states that the road would serve a forest of 35.49 ha planted in 1992 and in 2009. It lies on soil described as being highly modified peat and podzols on a predominantly flat to moderate slope. The application includes specification details, environmental information and maps showing the proposed route of the road and features on the lands. The specification states that the road would be constructed through

excavation. The DAFM made a number of requests for further information in regards to the lands on which the road works would take place and a detailed engineers survey of the road route. A number of Engineers reports are contained in the record.

The application was referred to Galway County Council on the 23/03/2020, no response was received.

There were three submissions from members of the public on the application which raised issues regarding the condition of adjacent roads and general obligations of the Minister for Agriculture, Food and the Marine.

The DAFM undertook a screening for Appropriate Assessment and concluded that the proposal should not proceed to Appropriate Assessment. Five European sites were identified as being within 15km of the project and it was not considered necessary to screen sites outside of this radius. These were:

Glenloughaun Esker SAC 002213

Lough Corrib SAC 000297

Lough Rea SAC 000304

Lough Rea SPA 004134

River Suck Callows SPA 004097

All of these sites were screened out based on their distance from and lack of connection with the proposed development.

An 'In-Combination Assessment Statement was completed on the 28/05/2021 and is on the file. In it, the DAFM conclude, "As set out, the project itself, i.e. individually, was deemed not to have an effect on certain European Site(s), as it does not represent a source, or if so, no pathway exists".

The decision to grant the licence was issued on 11/06/2021 with a number of conditions including, compliance with the requirements of: the Engineering specifications provided, *The Technical Standard for the Design of Forest Entrances from Public Roads*, *The COFORD Forest Road Manual*, *The Forestry Standards Manual*, *The Forestry and Water Quality Guidelines*, and also to the section entitled 'Road Planning Guidelines' in *The Forest Harvesting and Environment Guidelines*.

### **Grounds of appeal**

There is one appeal against the decision and the Notice of Appeal and full grounds of appeal were provided to all parties. The grounds contend that:

- The road that leads to the proposed entrance to the forestry Road is not of sufficient width or soundness for large trucks carrying big heavy loads
- Also, at the proposed entrance there is a very steep hill which would make it difficult for a truck turning as it is a very tight squeeze for a tractor
- the proposed roadway travels parallel and near a stream whose banks are built of stone and would not withstand heavy loads
- this stream is the only source of water for sheep and cattle. Plots A and B are farmed as one and stock have freely moved between them

In responding to the appeal, the DAFM submitted that the decision was made in accordance with their procedures, the Forestry Act 2014 and Forestry Regulations 2017. The DAFM also set out how they had made a number of requests for further information from the applicant and that the necessary information was received, comprising a number of engineering reports dated 10/02/2021 from **Cunningham design and Planning**, namely 1. An engineer's report, 2 A drainage report, 3. A gradient Report and 4. A report on the condition of the public road. Clarification was also given on the right of way issue, along the route of which a section of the proposed road was to be built.

#### **Considerations of the FAC**

The FAC considered, in the first instance, the DAFM's Appropriate Assessment of the application in the context of compliance with the EU's Environmental Directives. The FAC considered that 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 proposal is not connected with or necessary to the management of a European site and is not situated within an area designated for conservation. The FAC examined publicly available information provided by the EPA and NPWS and identified the same European sites within 15km of the proposal. The proposal lies in the Raford 010 Sub catchment of the Galway Bay Southeast Catchment. All of the European sites lie at a considerable distance from the proposal with Glenloughaun Esker SAC 002213 being the closest at over 11km to the east and in a separate catchment (Upper Shannon 26D) which also contains River Suck Callows SPA. Lough Corrib SAC lies over 12.5km to the northwest in the Corrib Catchment. Lough Rea and the associated SAC and SPA lie over 13km to the southwest and in a separate subcatchment. The FAC also considered European sites outside of the 15km radius and agreed with the DAFM conclusion that there was no need to extend the radius in this case having regard to the scale, nature and location of the proposal.



The reasons for screening out the European sites are recorded and relate to the distance from the proposal lands and the absence of any connection such that significant effects could not arise. The FAC confirmed these details having regard to the record and publicly available information from the EPA and NPWS and considers that there is no potential for any European site to be impacted by the forest road works and is not satisfied that an error was made in the making of the decision in this regard.

In relation to other potential impacts of the proposal on the environment, the FAC noted that the EU Environmental Impact Assessment (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. 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 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 works of 810 metres, so is sub threshold for mandatory EIA as set in Irish Regulations.

The DAFM recorded a consideration of the application across a range of criteria, including cumulative effect and extent of project, water, soil, terrain and slope designated and non-designated areas, archaeology, and landscape and visual amenity and determined that the project was not required to undergo the EIA process. The proposal is not located within an area designated as being fisheries sensitive or as a conservation area. In regards to water quality, the proposal lies in the Ballymabilla\_010 waterbody which has been assigned a Good status (2013-2018) and to be Not at Risk by the EPA in relation to the objectives of the Water Framework Directive. The proposal includes an Engineers report regarding drainage and the crossing of existing watercourses and it is a condition of the licence that this specification is adhered with in addition to the DAFMs Forestry and Water Quality Guidelines. The FAC noted that the operations do propose works within 50 metres of a watercourse but that, in this instance, no alternative routes were possible. This watercourse is identified as an Order 1 stream and named as part of the Ballymabilla by the EPA. The FAC considered that the proposal includes an extensive consideration of the works by a Chartered Engineer that includes consideration of drainage and slope and the specification of the works and concludes that no surface water runoff from the proposed entrance or forest road will flow out on to the adjacent streams. The

land is currently in agricultural use. Based on the information before it, the FAC does not consider that the proposal would pose a significant risk to water quality or impact on the status of a waterbody.

The proposal adjoins the end of a cul de sac on a minor public road and an existing entrance is in place and details of the forest entrance are recorded in the Engineer's report. Operations during construction would be limited in time and scale. The proposal does not lie in an area designated for conservation and would not result in any significant effects on a European site. The general landscape is one of agriculture and commercial forestry with scattered dwellings and agricultural buildings and the M6 lies close to the south. The proposal was referred to the local authority while no response was provided. The FAC did not consider that any convincing evidence was submitted that would suggest that the proposal is likely to have significant effects on the environment and should proceed to the EIA process and is not satisfied that an error was made in the making of the decision in this regard.

The FAC considered the specific grounds of the appeal and noted that the DAFM had made requests for further information (FIR) to the applicant on three occasions during their consideration of the application. These FIRs had been responded to, on behalf of the applicant, by a firm of Chartered Engineers who provided a range of detailed reports and surveys. This included a number of site layouts which include a detailed topographical and gradient assessment and a drainage assessment as noted. The engineering firm made a number of definitive statements and warranted certain key facts, which are largely captured in the attached quotations:

*We hereby certify that it is our professional opinion as Chartered Engineers that the proposed construction of the above-mentioned forest watercourse crossings and access road to facilitate the removal of timber does not constitute a risk to public safety with regards the surface water drainage in the area and whereby no surface water runoff from the proposed entrance or forest road will flow out on to the adjacent streams.*

*As the proposed entrance and access road are to be located over an existing right of way with existing public road alignment, a full bell mouth is not required as travel entering and existing the proposed entrance will not be required to make a turning manoeuvre to access same.*

*Therefore, it is not required to achieve sightlines of as traffic existing the entrance will be existing in a straight line onto a straight section of roadway as per the enclosed site layout drawings.*



*In addition, I hereby confirm that I have re-examined the existing stream crossings that are already in place and which have been used previously and hereby certify that these crossing are adequate to support the imposed loads that they will be subjected to during the thinning and clear fell of the relevant lands.*

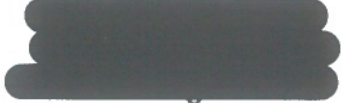
*Please note that we as Chartered Engineers and Assigned Certifiers will inspect and supervise the implementation of the above works prior to the completion of same to ensure that they are fit for purpose.*

They also provided a survey of the condition of the existing public road leading to the proposed project and found that it was in good condition and suitable, while the FAC considers that the management of the public road network falls to the relevant authorities. Based on the content of the Engineering reports, details in the application, and the other measures and screening undertaken, and the conditions attached to the licence the FAC is not satisfied that the DAFM made any serious errors in their assessment of the engineering aspects of this application to construct a forest road or in the making of the decision.

In regards to the management of adjacent land, it does not appear to the FAC that the proposal would involve the erection of barriers or would impact on adjoining lands or create a significant nuisance and the FAC does not consider that forest road works licences create any new rights to property. The FAC considers that matters of a civil nature, for example regarding the ownership of lands, are appropriately adjudicated on by the courts.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. 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 regard to fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN83302 in line with Article 14B of the Agricultural Appeals Act 2001, as amended and 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 the sender.

---

Donal Maguire on behalf of the forestry Appeals Committee