



11 January 2021

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FAC ref: 254/2020

**Subject:** Appeal in relation to forest road licence CN83936

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 licence CN83936.

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 CN83936 was granted by the Department of Agriculture, Food and Marine (DAFM) on 27 May 2020.

#### Hearing

An oral hearing of appeal 254/2020 was conducted by the FAC on 05 January 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch  
& Mr Pat Coman

Secretary to the FAC: [REDACTED]

Applicant representatives: [REDACTED]

DAFM representatives: Mr Kevin Keary & Ms Mary Coogan

#### Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN83936).

Proposal comprises 340m of forest road at Sellernaun East, Co Clare to service the harvesting of 13.6 ha. Site elevations are 150m to 160m and slope is predominantly flat to moderate. The predominant soil type underlying the project area is highly modified peat and peaty podzols in nature. The project

area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise coniferous high forest. Reports show that there is 11.6% forest cover on the waterbody and 29.5% forest cover within a 5km radius of the proposal. The Derryconn River is north and east of the proposal and flows to south but is not directly connected and the proposal site has no relevant watercourse. The proposal is located within the Lower Shannon catchment and Bow\_SC\_10 sub-catchment. Construction will require 15m of tree clearance, construction is by 'embankment' (build on top) with drains to 750mm depth on peat soils, a 5.5m formation width and 3.4m carriage width. The proposed road uses an existing bell-mouth entrance from the public road and is not an extension to an existing forest road.

The application was the subject of both a desk and field assessment by the DAFM and the application was referred by the DAFM to Clare County Council, Inland Fisheries Ireland (IFI) and the National Parks and Wildlife Services (NPWS), as well as internally referred to the DAFM Archaeologist. No response from the County Council is evidenced. The NPWS replied and raised the following;

- Lies within the Slieve Aughty Mountains SPA for Hen Harrier and Merlin
- The proposed felling is not within a HLNA (Higher Likelihood of Nesting Area) for the Hen Harrier
- Any proposed felling works should follow the protocol agreed between the NPWS and the Forest Service for operational works within Hen Harrier SPAs
- If felling between 01 April and 15 August contact the NPWS officer
- Ensure no nesting Hen Harrier is disturbed
- Comply with Regulation 27 of SI 477 of 2011

The NPWS also attached an appendix with general points. The IFI replied with no particular objection but recommended use of a clear span bridge or embedded culverts if water crossing. The internal archaeologist referred to a standing stone within 190m to east / southeast of the proposal and recommended conditions to be attached to the licence.

The DAFM completed a Stage 1 screening for Appropriate Assessment (AA) and identified Natura sites; Cloonmoylan Bog SAC, Derrycrag Wood Nature Reserve SAC, Lough Derg (Shannon) SPA, Lough Derg North-east Shore SAC, Loughatorick South Bog SAC, Pollagoona Bog SAC, Pollnaknockaun Wood Nature Reserve SAC, Rosturra Wood SAC, Slieve Aughty Mountains SPA and Slieve Bernagh Bog SAC. The application was referred to the DAFM Ecologist and an AA Report was completed with the Slieve Aughty Mountains SPA screened in due to the proposal's location within the SPA. The AA Determination (19 May 2020) described required measures to mitigate adverse effects on the conservation objectives of the Special Conservation Interest species of the SPA.

Licence issued with the following conditions on 27 May 2020;

- Strictly no operations associated with this licence shall take place during the period 1<sup>st</sup> March to 31st August inclusive,
- The proposed works shall adhere to the COFORD Forest Road Manual (Ryan et al., 2004), Forest Harvesting & the Environment Guidelines (DAFM, 2000) and Appendix 21 of the Forestry Standards Manual (DAFM, 2015),
- Adhere to the attached archaeological requirements,
- Adhere to forestry & archaeology guidelines,





- Adhere to forestry biodiversity guidelines

There is one appeal against the decision to grant the licence. The grounds of appeal include that the decision of the Minister does not comply with the Habitats, Birds and EIA Directives. In Irish and EU law it is only necessary to determine that there 'may be such an effect' to trigger AA. Also, if the development is within 15km of a Natura 2000 site, AA is triggered. Mitigation measures cannot be considered at AA screening stage. The appellant stated sections 36 and 38 from CJEU case C-323/17. The Appellant stated that for EIA screening it is necessary to give details of all forestry in the area to show that the threshold for EIA has not been reached and it is the duty of the FAC to carry out full AA screening and EIA screening. Also, it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clear-fell. The Appellant seeks precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned and *'it is also necessary to realise that birds can fly, they do all rely on watercourses to move'*. The Appellant sought that a map showing the SACs and SPAs and the site of the proposed development should be attached. The Appellant included extract from an opinion of Advocate General Kokott in Case C-254/19 at 64 and referred to point (3) that the obligation of a national court to interpret national law as far as possible in accordance with EU law does not require that the parties to the proceedings before it expressly assert that specific interpretation, if those parties allege at least an infringement of the relevant provisions of EU law. Stating this must apply to the FAC as the obligation is binding on all the authorities of Member States.

In response to the grounds of appeal the DAFM stated the proposal was field inspected on the 14 August 2019 there were no hydrological connections linking the proposed route of the road and any downstream Natura2000 sites, special attention was paid to the presence of a ditch indicated on the 1:10560 scale map. Responses to referrals to NPWS, Clare Co. Council, Fisheries and Archaeology were received and read. NPWS had stated their requirement that certain conditions on the timing of works be adhered to i.e. No works between the 01 of April and the 15 of August are permitted without prior consultation with the local NPWS ranger. Ten Natura 2000 sites were found within a 15km zone of impact. In the AA Report Slieve Aughty Mountains SPA was screened in and sections 7, 8 and 9 of the AA Report outline the mitigation measures required to prevent any adverse impacts to Special Conservation Interests or their habitats. An in-combination report was also compiled and concluded that no adverse impacts would come about as a result of the proposal taking into account the employment of the appropriate mitigation measures. The AA Determination subsequently details the mitigation measures as relating to the timing of the works associated with the proposal and the requirement for standard of construction methodology in accordance with the COFORD forest road manual.

The FAC held an Oral Hearing on 05 January 2021. The parties were invited to attend in person or to join electronically. The DAFM and the Applicant both participated electronically. The FAC sat in person at this hearing. The Appellant did not participate. At the hearing, the DAFM detailed their

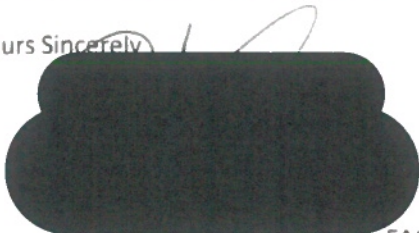
approach to processing and issuing the licence application and the reasons for the additional licence conditions. The DAFM confirmed the AA Report and AA Determination were completed by a DAFM Ecologist prior to any decision on the licence and the conditions of the licence include the mitigations from the AA. The DAFM Inspector described the site and the assessment of a ditch on site in establishing there is no relevant watercourse. The Applicants confirmed they wished to rely on the application information and added that the application road distance of 340m is well sub-threshold for mandatory EIA. The DAFM confirmed the application was screened for EIA and that the road is not an extension of an existing forest road, instead it goes from the public road to a dead-end. The DAFM outlined the reasons for screening in the proposal for AA and the mitigations applied in respect of the Merlin, prohibiting works during the period 01 March to 31 August.

The FAC considered the AA screening, the AA Report and AA Determination in this instance. The FAC considered that the procedures adopted in these were consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound. Having regard to the screening and to the in-combination assessment the FAC is satisfied there is no likelihood of significant effects from the proposal on any of the screened-out Natura 2000 sites listed. The FAC noted that the recommended conditions, as contained in the Determination, had been incorporated into the licence granted. The FAC concluded that the proposed development, carried out in accordance with the mitigation measures recommended in the Determination and attached to the licence as conditions, would not adversely affect the integrity of the Slieve Aughty Mountains SPA having regard to its conservation objectives and would not affect its preservation at favourable conservation status.

The proposed forestry road is significantly sub-threshold for the purposes of EIA. The screening undertaken by the DAFM is evidenced to the FAC. In addition, the FAC considered the detailed specification for the proposed road and the characteristics of the surrounding area, noting that this is a rural area with little settlement, the surrounds comprise unenclosed upland and areas of forestry cover. The immediate surrounds comprise mature forestry. The proposed road would extend to an existing public road leading on to the regional route R206. The proposed development would have no significant visual impact. It is likely to increase traffic movements on the public road on a short-term basis but not to a significant extent. Noise and disturbance may occur over the short-term, but this would likely be very limited and would not give rise to loss of amenity in the surrounding area. Subject to compliance with the conditions of the licence there would be no significant impacts on water or air quality or on climate. The FAC concluded that the proposed development alone, or cumulatively with other projects and land uses, would not be likely to give rise to significant effects on the environment.

In deciding to affirm the decision to grant the licence, 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 covers the signature of Pat Coman.

Pat Coman, on behalf of the FAC