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12<sup>th</sup> January 2021

**Subject:** Appeal FAC 257/2020 regarding licence CN85370

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**

Licence CN85370 for 750 metres of forest road at Aghavannagh (Revell), Co. Wicklow was approved by the Department of Agriculture, Food and the Marine (DAFM) on 21<sup>st</sup> May 2020.

#### **Hearing**

An oral hearing of appeal FAC 257/2020, of which all parties were notified, and representatives of the DAFM and the Applicant attended, was held by the FAC on 6<sup>th</sup> January 2021.

#### **In attendance at Oral Hearing:**

Department Representative(s):	Ms. Mary Coogan, Mr. Robert Windle,
Appellant:	Not in attendance,
Applicant / Representative(s):	[REDACTED]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr Vincent Upton and Mr. Seamus Neely.
Secretary to the FAC:	Ms. Marie Dobbyn.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN85370.

The licence pertains to 750 metres of forest road to service 24.15 ha of forest and submitted to be scheduled for felling in the next 3 years at Aghavannagh (Revell), Co. Wicklow. There is stated to be an existing entrance onto a public road. Soil type is described as mineral and the site is described as being flat to gently sloping and is at an elevation of 250 to 300 metres. It is stated that the project area does not adjoin or contain an aquatic zone(s). The specifications of the road were provided with the application and it would be constructed through excavation and the land is currently under forest. The proposal is submitted to be outside of any designated site and is not within 3km upstream of any such site. The certification on file notes that there are no recorded monuments in the proposal area nor are there any within 200m of it. The DAFM undertook a screening for appropriate assessment of the proposal and found that there were four European sites (3 SAC & 1 SPA) within 15km of the proposed road and that there was no reason to extend this radius in this case. The four sites identified are, 0701 River Valley SAC (screened out), 0733 Vale of Clara (Rathdrum Wood) SAC (screened out), 2122 Wicklow Mountains SAC (screened out) and 4040 Wicklow Mountains SPA (screened in). While the recommendation of the District Inspector as set out in the initial AA screening report was to screen out all four European sites, the DAFM on review in the AA report of 19<sup>th</sup> May 2020 added to the rationale for screening out two of the sites (0733 Vale of Clara (Rathdrum Wood) SAC and 2122 Wicklow Mountains SAC) and screened in the 4040 Wicklow Mountains SPA for Appropriate Assessment. The sites are all considered in turn in the AA report of 19<sup>th</sup> May 2020 with their qualifying interests listed and the reason for screening out the three sites provided. The project advanced to Appropriate Assessment for the fourth site (4040 Wicklow Mountains SPA). The DAFM also recorded other plans and projects that were considered in combination with the proposal. The 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 the Wicklow County Council and a response was received. The licence was approved with conditions on 21<sup>st</sup> May 2020.

There is one appeal against the decision. The grounds contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. It submits that the test for Appropriate Assessment Screening in Irish and EU law is that it is merely necessary to determine that there may be such an effect - rather than to state that it will not have a significant effect. It submits that if the development is within 15km of a Natura 2000 site it has been (sic) screened in. The grounds include quotes from Case C-323/17 regarding measures considered at the screening stage for appropriate assessment. The grounds submit that where an EIA screening is undertaken that other forestry projects in the area must be taken into account. The grounds also include quotes from Case C-254/19. The Appellant also submitted grounds relating to suggested legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the DAFM submitted that the relevant selection criteria set out in Annex III of the EIA Directive, which are referenced in Article 4(3) in relation to projects that should be subject to an EIA screening, are adequately considered within the procedures and sets out the process under which this project (CN85370) was considered. The DAFM also submitted that the content and consideration of the documentation, as listed in the statement and file provided, is sufficient for the purposes of identifying which of the criteria set out in Annex III of the Directive (and schedule 3 of the Forestry Regulations 2017) were deemed relevant in the case of this 750 metre road project and thus taken into account by the



certifying Inspector in his consideration and the reasoning by the certifying Inspector for his determination that an environmental impact statement was not required for this project.

An oral hearing of the appeal was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM representatives outlined the processing of the application and the information submitted by the Applicant including maps of the proposal. They described the appropriate assessment and EIA considerations undertaken and the conclusions reached. They reiterated the broad content of the statement of facts provided to the FAC. The DAFM representative, in response to questions at the oral hearing confirmed that the reference number quoted (CN84106) in the AA Determination at page 4 was an error and should have read CN85370 as it did elsewhere throughout the AA Determination report. The DAFM submitted that the AA Report and Determination had been prepared by a qualified ecologist. The Applicant outlined their application documents and submitted that the site had been visited by Coillte personnel before the application was made, to identify the most appropriate location for the proposed route and that they found no watercourses crossing the site. They submitted that there is an existing entrance to the public road and that the forests in the area were in their second or third rotation.

The FAC, in the first instance, considered the appropriate assessment screening and report undertaken by the DAFM. The grounds of appeal do not identify any specific European site, pathways or effects of concern. Using publicly available information from the NPWS and EPA the FAC confirmed the same four sites as the DAFM within 15km of the proposal. The FAC considered that given the nature, scale and location of the proposal there was no need to extend this radius in this case. The FAC noted that the four sites identified within 15 km of the project (0701 River Valley SAC, 0733 Vale of Clara (Rathdrum Wood) SAC, 2122 Wicklow Mountains SAC and 4040 Wicklow Mountains SPA) were each considered in turn by DAFM and the reasons for screening each of the three sites screened out were provided. The FAC further noted that the DAFM carried out an Appropriate Assessment on the fourth site (4040 Wicklow Mountains SPA) which listed its Special Conservation Interests (Merlin and Peregrine), dealt with the Components of the Conservation Objectives, indicated whether there is potential for adverse impact from the project and set out mitigation where required, this includes an exclusion of works during a specified period. The FAC noted that the licence issued had a condition that included a requirement that the applicant strictly adhere to all mitigation outlined in the Appropriate Assessment Determination for the project. The DAFM also recorded other plans and projects that were considered in combination with the proposal.

The FAC noted that the DAFM had considered the environmental effects of the proposal across a range of criteria and had determined that the project was not required to undergo the EIA process. The application was referred to the Wicklow County Council and a response was received. The licence was approved with conditions on 21<sup>st</sup> May 2020. The grounds of appeal do not refer to a specific European site or specific effects. While the licence conditions include standards and guidelines and these are considered in the processing of the application, the FAC concluded that these conditions are related to general good forest practice and environmental protection and could not be considered to be measures intended to avoid or reduce the harmful effects of the project on a European site in this case. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding appropriate assessment and concurs with the conclusions provided.

The FAC considered the grounds relating to Environmental Impact Assessment (EIA). The EU 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. 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 proposal as described is for the construction of 750 metres of forest road to service 24.15 ha of commercial, managed forest for felling and does not extend an existing forest road. The proposal is considerably sub-threshold for the mandatory submission of an EIA report. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The grounds of appeal do not outline any specific concerns regarding significant effects on the environment of the proposal. The FAC is not satisfied that a serious or significant error or a series of errors occurred in the DAFMs conclusion regarding EIA. The FAC is satisfied that an EIA was not required in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, submissions received including at the oral hearing. 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 complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN85370 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice

Yours sincerely,

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Seamus Neely On Behalf of the Forestry Appeals Committee