



22 January 2021

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FAC ref: 194/2020

**Subject:** Appeal in relation to licence CN84678

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 CN84678.

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 CN84678 was granted by the Department of Agriculture, Food and Marine (DAFM) on 18 March 2020.

#### **Hearing**

An oral hearing of appeal 194/2020 was conducted by the FAC on 19 January 2021.

#### **Attendees:**

FAC:	Mr Des Johnson (Chairperson), Ms Paula Lynch & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Applicant representative:	[REDACTED]
DAFM representatives:	Mr David Ryan & 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 CN 84678).

The proposal is for a forest Road of 150m to serve a stated area of 3.3ha. at Sallymount, Corrower, Co. Mayo. Soils are stated to be deep peat and the slope is flat to gentle. A 'Build on Top' type road

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construction is proposed with a formation width of 5.5m, camber of 200-250mm and carriageway width of 3.4m. The project lands are stated to be at an elevation of 20-25m.

The Inspector's Pre-approval screening notes there are no archaeological sites or features on the project lands and this is not an area of Scenic Amenity. Access was in existence on 21 September 2011. There is 3.76% forest cover in underlying waterbody and 7% forest cover within 5km. There are no populations of FWPM likely to be affected. The area is not sensitive to fisheries.

The DAFM carried out an Appropriate Assessment screening of Natura 2000 sites within a 15km radius. The following sites were assessed and screened out for Stage 2 Appropriate Assessment:

1. Killala Bay/River Moy Estuary SAC
2. Killala Bay/River Moy Estuary SPA
3. Lough Conn & Lough Cuilin SPA
4. Lough Hoe Bog SAC
5. Lough Nabrickkeagh Bog SAC
6. Ox Mountains SAC
7. River Moy SAC

Reasons for the conclusions to screen out these sites are as follows: Site 1 - the absence of an aquatic zone on or adjoining the project site, no significant relevant watercourse, mandatory adherence to standard safeguards integral to the project, Sites 2 and 3 – separation distances, Site 4, 5 and 6 – separation distances and absence of hydrological connections, Site 7 - unsuitability of the project area for any species listed as Qualifying Interests, no aquatic zone on or adjoining the site, no significant relevant watercourse, and mandatory adherence to standard safeguards integral to the project, and separation distance. In respect of in-combination effects, the DAFM considered non-forestry projects – 2 dwellings, and forestry related projects - afforestation (4), forest roads (0), private felling (2), Coillte felling (8). (It was confirmed by the DAFM at the Oral Hearing that this in-combination assessment was dated 3 March 2020). The conclusion of the Appropriate Assessment screening was that the project does not represent a source or, if so, there is no pathway for an adverse effect on any European site. There is no potential for in-combination effects with other plans or projects.

The DAFM referred the application to Mayo County Council but there is no response recorded.

The licence issued on 18.03.20. It is subject to standard conditions plus 'Environmental & Silvicultural Considerations':

- Adhere to CoFoRD Forest Manual Standards
- Adhere to Standards of Felling & Reforestation
- Adhere to Forestry & Landscape Guidelines
- Adhere to Forestry & Water Quality Guidelines.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the length of other forest roads listed are not given and there is no assessment of these in the EIA screening. The Inspector considered potential negative consequences, both immediate and in the future. Therefore, he performed an Appropriate Assessment. A Natura Impact Statement is required. The Appropriate Assessment screening does not comply with the law. The FAC has duties in relation to Nature Conservation and for screening for Appropriate Assessment, and the carrying out of Appropriate Assessment where necessary. It is not appropriate to take mitigation measures into





consideration in Appropriate Assessment screening. The likely effects of all aspects of the operation must be considered and screened in combination with other forestry operation and management activities.

In response, the DAFM state that the approval was granted in accordance with the Standard Operating Procedures effective at the time of issue. There are no aquatic zones or relevant watercourses on the site. The nearest aquatic zone is 300m distance away. An in-combination effects assessment was completed on 3.03.20. The length of the forest roads listed are 350m, 330m and 200m respectively (these figures may exclude turning areas and bell mouths).

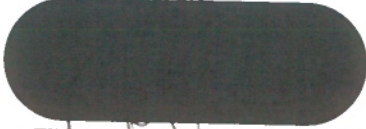
The FAC convened an Oral Hearing on 19 January 2021 in Portlaoise. The Committee sat in person and the DAFM and the applicants attended and participated remotely. The appellant did not attend or participate. The DAFM stated that the site had been field assessed on 3 December 2019 and that there is no aquatic zone on the project lands. The nearest aquatic zone is greater than 300m separated. The site is flat and comprises blanket bog. The applicants stated that they had carried out desk and field assessments. The proposed road would join with a well-established forest road and a 'Build on top' method of construction was proposed. The FAC, noting the evidence before it that there is no aquatic zone on the project lands, and that the nearest aquatic zone is in excess of 300m from the project lands, queried the reasons given by the DAFM for screening out Killala Bay/River Moy Estuary SAC and the River Moy SAC and, in particular if the DAFM had considered mitigation measures in the screening exercise while also confirming the absence of any aquatic zones or relevant watercourses within or adjoining the proposal site, and the unsuitability of the site for use by the qualifying interest species of the River Moy SAC. The DAFM stated that reference had been made to 'mandatory adherence to standard safeguards integral to the project' in error, and that there are no potential consequences for any of the qualifying interests in these Natura 2000 sites arising from the proposed development. Based on all of the information before it, including information relating to the absence of any aquatic zones on, or in close proximity to the project site, the FAC accepts that there would be no likelihood of significant effects on any of the Natura 2000 sites screened arising from the proposed development, and that a consideration of mitigation measures is not required to reach this conclusion. As such, the FAC considers that there is no requirement for the submission of a Natura Impact Statement and that the error that occurred in the DAFM screening was not a serious or significant error in the circumstances outlined.

In terms of EIA, the FAC considers that there was adequate information before the DAFM in respect of the characteristics of the project, location and the type and characteristics of potential impact, in order to carry out a screening. The proposed project is significantly sub-threshold for mandatory EIA. The existing forestry road the proposal would adjoin is approximately 640m in length and was constructed in excess of 30 years ago. The project lands are blanket peat and a 'Build on top' method of construction is proposed. The project lands are within an existing mature forestry on a flat to gentle slope. The wider area is rural and agricultural in character and existing settlement is sparse and predominantly sites along public roads in the wider area. This is not a Scenic Amenity Area and there are no archaeological sites or features on the project lands. The area is not sensitive to fisheries. Forest cover in the underlying water body is 3.76% and there is 7% forest cover within 5 kms. The

construction of the road is likely to cause some noise and disturbance in the immediate vicinity, but this would be short-term and insignificant. There would be short-term, small scale increase in traffic on adjacent public roads, but this would not be significant. There would be no significant effects on any Natura 2000 sites and no significant impacts on water quality. The proposed development would not be likely to have any significant effects on the environment.

In deciding to affirm the licence, the FAC concluded that the proposed development would be in accordance with Government Policy and Good Forestry Practice.

Yours Sincerely

A large black oval redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC