



[REDACTED]

10 June 2021

Subject: Appeal FAC 252/2020 in relation to licence CN84746

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 CN84746.

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 CN84746 for forest road works of 151 meters(m) at Cottage, Co. Mayo was granted by the Department of Agriculture, Food and the Marine (DAFM) on 27th May 2020.

Hearing

A hearing of appeal FAC 252/2020 was held by a division of the FAC on 24th May 2021. In attendance:
FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the notice of appeal, and all submissions received, before deciding to affirm the decision of the Minister to grant this licence (Reference CN84746).

The licence pertains to 151m of forest road at Cottage, Co. Mayo to serve 6.06 hectares of forestry. A pre approval submission report, photographs of the site notice, maps, management plan and the specifications of the road were found on the DAFM file as part of the application process. Construction is to be by excavation.

The proposal area is in the Corrib WFD catchment, Clare (Galway)_SC_010 subcatchment and Dalgan_020 River Sub Basin. The Dalgan_020 river waterbody, which adjoins the northern and western boundary of the area to be served has a good WFD status (2013 – 2018). The proposed road is at its closest c. 150m from the waterbody.

The application was desk assessed by DAFM and they submitted that it was referred to Mayo County Council, but that no reply was received. A stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, is documented as part of the DAFM Inspector's Certification document. This screening listed eleven European sites within 15km of the proposal, these being Lough Corrib SAC, River Moy SAC, Coolcam Turlough SAC, Williamstown Turloughs SAC, Carrowbehy/Caher Bog SAC, Errit Lough SAC, Croaghill Turlough SAC, Drumalough Bog SAC, Urlaur Lakes SAC, Cloonchambers Bog SAC and Derrinea Bog SAC and there was no reason to extend this radius in this

case. The sites were considered in turn with reasons given for screening out of each. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site. The DAFM also 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 DAFM approved the application on 27th May 2020 with conditions.

There is one appeal against the decision. Broadly the grounds of the appeal submitted are;

- This decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.
- The test for Appropriate Assessment Screening in Irish and EU law is:
 - 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.
- If the development is within 15km of a Natura 2000 site it must be screened in.
- The CJEU Case C-323/17 is quoted in regard to Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 and stated requirements under Appropriate Assessment screening and Environmental Impact Assessment are set out.
- It is the duty of the FAC to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening in accordance with the law.

The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures, SI 191 of 2017 and the Forestry Act 2014, and that all procedures/guidelines were adhered to. It was further submitted that approval was issued in accordance with all procedures and SOP's effective at the time of issue, the project was screened out using the Annex I Habitat table (18 December 2019) and the Bird Foraging Table (06 January 2020) and the Annex II Species Table (30 January 2020) and that the screening information is on file.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the decision does not comply with the EIA Directive. The EU 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. 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 forest road of 151m which is significantly sub threshold for the mandatory submission of an EIA as set in Irish Regulations. The road would be built through managed forest land and outside of any area designated for conservation. The grounds of appeal do not outline any specific concerns regarding significant effects on the environment of the proposal. The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC having considered all of the evidence before it, is not satisfied that a serious or significant error or a series of errors was made by the DAFM in relation to their EIA consideration and concurs with the conclusion.

In addressing the Habitat Directive 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 projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, found eleven European sites within 15km of the proposal - Lough Corrib SAC, River Moy SAC, Coolcam Turlough SAC, Williamstown Turloughs SAC, Carrowbehy/Caher Bog SAC, Errit Lough SAC, Croaghkill Turlough SAC, Drumalough Bog SAC, Urlaur Lakes SAC, Cloonchambers

Bog SAC and Derrinea Bog SAC - and there was no reason to extend this radius in this case. The DAFM considered each site in turn and listed the reasons for their screening conclusions giving in each case the separation distance and that there was no hydrological connection. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The DAFM Appropriate Assessment screening conclusion was to screen out all the sites for Appropriate Assessment. The FAC consulted publicly available information from the NPWS and EPA and identified the same eleven sites within 15km of the proposal area. The closest European site to the proposal area is the Lough Corrib SAC at a distance of c. 2.5km. The Dalgan_020 flows into the Lough Corrib SAC and that river waterbody adjoins the northern and western boundary of the area to be served. The proposed road is at closest c. 150m from the river waterbody and no hydrological connection is evidenced. In considering all the evidence before it, including the size, nature and location of the proposal and having regard to other plans and projects, 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.

In relation to the ground of appeal referring to the Birds Directive it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC considered that the DAFM had undertaken an assessment of the proposal, completed a screening for Appropriate Assessment, found eleven European sites within 15km, all of which are SACs, screening each of them out and that Appropriate Assessment was not required. The FAC also note that the granting of a licence for a forest road does not exempt the holder from complying with any legal requirements set out in any other statute.

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 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 in deciding to affirm the decision, considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

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

James Conway (on behalf of the Forestry Appeals Committee)

