



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

18th March 2021

**Subject:** Appeal FAC077/2020 regarding licence CN84722

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 CN84722 is for the construction of a forest road 165 metres in length at Bohola Co. Mayo. which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 10<sup>th</sup> February 2020.

#### **Hearing**

An oral hearing of appeal FAC077/2020 was held by the FAC on 12<sup>th</sup> March 2021.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr Iain Douglas, Mr. Vincent Upton  
Secretary to the FAC: Ms. Marie Dobbyn

Applicant: [REDACTED]

DAFM Representatives: Ms. Mary Coogan, Mr. David Ryan.

Appellant: [REDACTED]

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN84722.

#### **Licence.**

The licence pertains to the construction of a forest road 165 metres in length at Bohola, Co. Mayo. The proposed road is off an existing public road and which has an existing entrance. The specification of the road construction and maps delineating the route were submitted with the application. The road is

stated to service to serve 6.89 ha of forest for harvesting and forestry management. The soil type underlying the project area is stated as predominantly podzols in nature. The slope is predominantly flat to moderate. The vegetation type within the project area comprise coniferous plantation (WD4) and the construction method would be excavation.

The proposal was referred to Mayo County Council who did not respond.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered four sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Balla Turlough SAC 000463; Ballinafad SAC 002081; Lough Conn and Lough Cullin SPA 004228; River Moy SAC 002298. In combination was also assessed. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required. The proposal was assessed in relation any potential impact on archaeological remains and a report from the archaeologist concluded no impacts arising from the proposed road but recommended conditions. The licence was issued on the 10<sup>th</sup> February 2020 subject to standard conditions and a specific condition relating to archaeology (no.12).

#### **Appeal.**

There is one appeal against the decision.

The grounds raise the issue of Balla Turlough SAC and hydrological connection and there is no evidence in relation to underground movement on which the inspector could make a decision. The Project requires AA Screening and the AA Screening does not comply with law. Reference is made to Court decisions on the matter including *Kelly v An Bord Pleanála*, C258/11. Reference to obligations under 2011 EC (Birds and Natural Habitats) Regulations referring specifically to keeping of records. Reference is also made the CEJF Judgement C323-17 and that all aspects of likely effects must be considered referring to a NPWS document.

In a statement to the FAC, in regard to the granted proposed new road CN84722 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. The Statement from Inspectorate indicates that the application was screened for the requirement for Appropriate Assessment using the Appropriate Assessment Procedure SOP 05Nov2019, The Bird Foraging Table v06Jan20, The Habitat Table v18Dec19 and the Species Table v30Jan20. Appropriate Assessment was deemed not to be required.

An oral hearing was held of which all parties were notified and representatives of the DAFM and the applicant attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that 3 sites were initially screened out and that a field inspection was carried out and that after this inspection the remaining site was screened out. Details relating to the



inspection of the site was outlined indicating no aquatic zone on the site; there were no issues in principle relating to archaeology but that there was a set back from the railway line required; that hydrological connections were examined; that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same four sites as the DAFM within 15km from the proposal. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered nature, scale and location of the proposal, the European sites identified and their conservation objectives and the reasons provided by the DAFM. The DAFM considered each site in turn and provided the reasons for screening all the sites out for appropriate assessment. Details of other plans and projects were also examined. The FAC is satisfied that the DAFM did not make any serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

At the hearing the FAC raised issues relating to the road construction and the entrance and connection to the public road network given the width of the public road adjoining the site and the applicant indicated that construction vehicles of an appropriate scale and weight would be used in the construction. The issue of turloughs were raised in particular Balla Turlough SAC and potential hydrological connection which was raised in the grounds of appeal. In relation to the latter, it was indicated that the site was over 10 kilometres distant from this turlough and reference was made to the pattern of overland flows which were northwards and the turlough was to the southwest. Based on the information and the site inspection referral to NPWS was not considered as necessary.

The issues were addressed by DAFM to the satisfaction of the FAC. The inspector's determination and recommendation was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details and is considered adequately reasoned.

In addressing the grounds of appeal, the FAC considered whether the decision was in compliance with the requirements of the Habitats and EIA directives, the assessment of the licence assessment and whether there is an assessment of cumulative effects and procedures applied which led to the decision to grant the licence.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory and that 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to 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 DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was required to undergo the EIA process. The proposal as described is being for 165 metres of forest road construction in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIA.

In relation to hydrological connections the site is within the Carroward \_10 River Waterbodies WFD which has a moderate status for the period 2013-2018. The FAC is satisfied based on the information available to it, that there is an absence of an aquatic zone on or proximate to the site and there is no direct or proximate hydrological connection exists to a waterbody.

Specifically in relation to Balla Turlough, this turlough is approximately ten kilometres to the south west and in relation to this turlough it is recorded on the NPWS information on this turlough that there was no evidence of external drainage pertaining to this turlough. The distance is considerably greater than that identified in the appeal and no evidence of a pathway or possible effects were submitted. Data from the Geological Survey of Ireland (GSI) do not show any karst features in the general vicinity of the proposed road and the road would not involve any deep excavation. Data from the GSI also show a large area of sandstone lying between the proposed road and the Turlough. Everything in relation to overland flows would indicate northern flows in the Bohola area and the turlough is to the south west. On the basis of the information available there is no evidence to suggest any hydro connection surface or sub terrestrial between the turlough and the licence site or that any effects could occur on the SAC.

The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence CN84722.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and 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 CN84722 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,

[Redacted]

---

Derek Daly On Behalf of the Forestry Appeals Committee

