



30 March 2020

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Our ref: FAC 078/2018

Subject: Appeal in relation to forest road licence CN80404

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) on licence CN80404.

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 CN80404 was granted by the Department on 27 March 2018.

Hearing

An oral hearing was conducted by the FAC on 18 February 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In Attendance at Oral Hearing:

FAC Members:	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton
Appellant:	[REDACTED]
Applicant:	Not present
DAFM Representatives:	Mr. Robert Hamilton & Ms. Mary Coogan
Secretary to the FAC:	Ms. Ruth Kinehan

Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations below, the FAC has decided to cancel the decision of the Minister regarding licence CN80404.

The decision related to a forest road licence of 160 meters in length to service forestry area of 8.06 hectares for first thinning in Tullig townland, Co. Kerry. The licence was issued with the following additional conditions:

- Full compliance with forest roading guidelines to be observed,
- Adhere to forestry & water quality guidelines,
- All guidelines to apply.

In its statement to the FAC, dated 9 July 2018, DAFM stated:

"Prior to making a recommendation to approve with conditions, the Forestry Inspector evaluated the project (CN80404) using the appropriate GIS datasets.

The proposed forest road (160 m) is 0.6 km west of the Stack's to Mullaghareirk Mountains, West Limerick Hills & Mount Eagle SPA (004161) (see Map). There is no hydrological connectivity from the project area to this Natura site.

The Appropriate Assessment Procedure Table was applied, as per the Forest Service Appropriate Assessment Procedure: Forestry Inspector's Manual (September 2013). None of the six spatial scenarios listed for Forest Road Construction (i.e. Scenarios 1-6) applied, and nor was the discretionary scenario (i.e. Scenario 7) triggered.

Therefore, it was determined that the possibility of a significant effect on any NATURA site did not arise, and the project was screened out for the purpose of Appropriate Assessment. As per the above procedure, the completion of an individual AA Screening Form was not required."

Additional information provided by DAFM in response to the FAC concluded that; *"if the application was screened again today, under the revised Appropriate Assessment Procedure currently in use, it would not be screened out."*

However a further response was provided by DAFM which included a list of Natura 2000 sites within 15km of the proposed site and their qualifying interests and with regard to in-combination effects, details from online planning systems consulted focusing on the area of the townland containing the project and the objectives relating to Natura 2000 sites within the Kerry County Development Plan 2015-2021 and concluded that:

"... Individually, the project does not represent a source, or if so, no pathway for an adverse effect on any European site exists. Consequently, the DAFM deems that there is no potential for the project to contribute to any such effects, when considered in-combination with other plans and projects.

... Therefore, the DAFM deems that this 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 FAC noted the Natura 2000 sites within 15km of the proposed forest road, their separation distances, and the qualifying interests of the sites.

The proposed site is some 2.4 kilometers from the Lower River Shannon SAC with no direct hydrological connection. No other Natura 2000 sites are hydrologically connected to the proposed site. A watercourse though runs along the end of the thinning area to the east which is to be served by the road and this watercourse hydroconnects to the Lower River Shannon SAC. The qualifying interests of this SAC includes the freshwater pearl mussel, which is listed as an Annex II & V species under the Habitats Directive.

The proposed site lies some 422 meters to the north west of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and its qualifying interest is the Hen Harrier. The DAFM at the

oral hearing stated that following the procedure under their Bird Foraging Table (version 6th Jan. 2020) for the Hen Harrier that for forest roading, thinning, clearfelling & reforestation, where the projects is outside the SPA and not overlapped by a Red Area (High Likelihood of Nesting Area), that they screen out the project under their Appropriate Assessment procedure, but only do so for afforestation projects where the project is over 11 kilometers from the SPA due to their foraging distance of 11 kilometers and the Hen harrier being so sensitive to afforestation. They also argued that only dealing with a relatively very short road project in this case and contended that opening a segment in a coniferous forest would potentially benefit the Hen Harrier and other species such as the Merlin in Co. Kerry. The appellant at the oral hearing disputed the use of the Department's Bird Foraging Table, challenged that there should have been an assessment of impacts either positive or negative within the Hen Harrier's foraging distance of 11 kilometers plus 1 kilometer, and claimed that there was none, and reiterated from the submitted grounds of appeal that the project required an appropriate assessment screening of the in combination effects and in addition needed an environmental impact assessment (EIA).

The proposed forest road is substantially sub-threshold for the purposes of the EIA Directive and does not require mandatory environmental impact assessment. The FAC considered that the proposed forest road should be assessed in the context of cumulative impacts with the forest to be serviced and other adjoining and adjacent forestry in the area, together with other existing land uses in the vicinity.

The FAC noted that this is predominantly a rural agricultural area with a dispersed settlement pattern. The environmental factors considered are as listed in Article 3 of the EIA Directive. The FAC concluded that the proposed road in combination would have no likely significant impacts on population, land, soil, material assets, cultural heritage or the landscape. In terms of biodiversity, there is likely to be positive impacts resulting from the proposed road, as this would facilitate the opening up of small areas for foraging and circulation of wildlife; this positive impact is not likely to be significant. Forestry is likely to have positive effects in terms of air and carbon sequestration but, given the scale of the proposed development alone, and in combination with other forestry in the area, this is not likely to be significant. The interaction between these identified impacts is not likely to be significant either. There is evidence also that this is a relatively dry site and it is considered that the construction of the road alone would not result in significant effects on water.

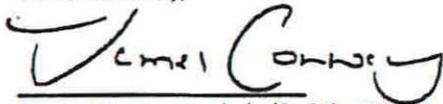
From the evidence available to the FAC, the area to be served by the road is moderately sloped. There are no EPA identified watercourses adjoining the forest road but, to the east there is a watercourse at the end of the plantation to be served and this is connected to the Lower River Shannon SAC.

Lower River Shannon SAC is at a distance of 2.4 km with no hydrological connectivity to the forest road but it is connected to the area to be served by the proposed road, and the Stacks's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is at 422 meters separation and its qualifying interest is Hen Harrier. The FAC noted the hydrological connection between the forestry to be serviced by the proposed road and the Lower Shannon SAC and noted that a qualifying interest for this Natura 2000 site is the freshwater pearl mussel, which is particularly sensitive to changes in water quality and siltation. Applying the Precautionary Principle, the FAC is not satisfied, without detailed screening, that no possibility of a significant effect on a European Site arises when considered against the works licenced and the interests of that SAC. The FAC noted the proximity of the SPA and the Hen Harrier as a qualifying interest, but considered that the possibility of the proposed development alone, or in combination with other plans and projects, would be imperceptible.

The FAC, then in applying the Precautionary Principle, considered that the possibility for significant effects on a Natura 2000 site could not be discounted and that the licence should be cancelled.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and submissions and observations received, including information provided at the Oral Hearing.

Yours sincerely,

A handwritten signature in black ink that reads "James Conway". The signature is written in a cursive style with a large, stylized 'J' and 'C'.

James Conway, on behalf of the Forestry Appeals Committee

CN80404

Proposed Development

CN80404 relates to 160 meters in length of forest road to service forestry area of 8.06 hectares for first thinning in Tullig townland, Co. Kerry. The proposed road is to link an existing forest to an existing lane which then links to a public road. The proposed site is in a rural agricultural area with fields generally bounded by hedgerows, and with a dispersed settlement pattern.

There is a watercourse at the end of the plantation to the east which is to be served by the road which hydroconnects to the Lower River Shannon SAC. The site elevation is c110 meters and the slope is stated to be modest.

Environmental Impact Assessment (EIA) Preliminary Examination

The proposed forest road 160 meters in Tullig townland, Co Kerry is sub-threshold for the purposes of EIA. Having regard to the nature, scale, location and design of the proposed forest road, the nature and extent of existing forestry in the area and to the characteristics of the surrounding environment, which is rural and agricultural in nature and with a sparse and dispersed settlement pattern, the FAC concluded that the proposed forest road either by itself, or in combination with other projects and land uses in the area would not be likely to have significant impacts on the environment.

Appropriate Assessment (AA) Screening

A desk study was carried out by the FAC to evaluate all available information on the project and the Natura sites in its vicinity. The project identified as CN80404 is not within a Natura site nor considered necessary for the management of any Natura site. The closest Natura 2000 site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA at circa 0.4 km, with the next closest being the Lower River Shannon SAC at circa 2.4 km. The proposal does not include any design features designed to avoid or reduce effects on any European site.

The FAC is satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to the DAFM licence do not require any measures to avoid or reduce effects on a European site.

Natura 2000 Sites

The following European sites are within a 15 km zone of the project area. Their qualifying interests are listed in appendix at the end of this document.

Site Type	Site Code	Site Name	Distance To (m)
SAC	002165	Lower River Shannon SAC	2410.79
SAC	002112	Ballyseedy Wood SAC	12205.57
SAC	002070	Tralee Bay and Magharees Peninsula, West to Cloghane SAC	14416.71
SAC	002185	Slieve Mish Mountains SAC	14651.99
SPA	004161	Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	421.55
SPA	004188	Tralee Bay Complex SPA	14262.99
SPA	004189	Kerry Head SPA	14853.14

Assessment of Significant Effects

From the evidence available to the FAC, the area to be served by the road is moderately sloped. There are no EPA identified watercourses adjoining the forest road but, to the east there is a watercourse at the end of the plantation to be served and this is connected to the Lower River Shannon SAC.

Lower River Shannon SAC is at a distance of 2.4 km with no hydrological connectivity to the forest road but it is connected to the area to be served by the proposed road, and the Stacks's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is at 421 meters separation and its qualifying interest is Hen Harrier. The FAC noted the hydrological connection between the forestry to be serviced by the proposed road and the Lower Shannon SAC and noted that a qualifying interest for this Natura 2000 site is the freshwater pearl mussel, which is particularly sensitive to changes in water quality and siltation. Applying the Precautionary Principle, the FAC is not satisfied, without detailed screening, that no possibility of a significant effect on a European Site arises when considered against the works licenced and the interests of that SAC. The FAC noted the proximity of the SPA and the Hen Harrier as a qualifying interest, but considered that the possibility of the proposed development alone, or in combination with other plans and projects, would be imperceptible.

James Conway for the Forestry Appeals Committee

13 March 2020

Appendix: Natura 2000 Sites within 15 km of project area and their Qualifying Interests

Site Name	Qualifying Interests (* denotes a priority habitat)
Lower River Shannon SAC	<p>Habitats 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 Coastal lagoons* 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p> <p>Species 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1099 River Lamprey (<i>Lampetra fluviatilis</i>) 1349 Common Bottlenose Dolphin (<i>Tursiops truncatus</i>) 1355 Otter (<i>Lutra lutra</i>) 1096 Brook Lamprey (<i>Lampetra planeri</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1106 Salmon (<i>Salmo salar</i>)</p>
Ballyseedy Wood SAC	<p>Habitats 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p>
Tralee Bay and Magharees Peninsula, West to Cloghane SAC	<p>Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 Coastal lagoons*</p>

Site Name	Qualifying Interests (* denotes a priority habitat)
	1160 Large shallow inlets and bays 1170 Reefs 1210 Annual vegetation of drift lines 1220 Perennial vegetation of stony banks 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)* 2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) 2190 Humid dune slacks 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* Species 1395 Petalwort (<i>Petalophyllum ralfsii</i>) 1355 Otter (<i>Lutra lutra</i>)
Slieve Mish Mountains SAC	Habitats 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 4030 European dry heaths 4060 Alpine and Boreal heaths 8110 Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) 8210 Calcareous rocky slopes with chasmophytic vegetation 8220 Siliceous rocky slopes with chasmophytic vegetation Species 1421 Killarney Fern (<i>Trichomanes speciosum</i>)
Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	Birds A082 Hen Harrier (<i>Circus cyaneus</i>)
Tralee Bay Complex SPA	Birds A052 Teal (<i>Anas crecca</i>) A054 Pintail (<i>Anas acuta</i>) A137 Ringed Plover (<i>Charadrius hiaticula</i>) A157 Bar-tailed Godwit (<i>Limosa lapponica</i>) A142 Lapwing (<i>Vanellus vanellus</i>)

Site Name	Qualifying Interests (* denotes a priority habitat)
	A048 Shelduck (<i>Tadorna tadorna</i>) A053 Mallard (<i>Anas platyrhynchos</i>) A149 Dunlin (<i>Calidris alpina</i>) A169 Turnstone (<i>Arenaria interpres</i>) A130 Oystercatcher (<i>Haematopus ostralegus</i>) A062 Scaup (<i>Aythya marila</i>) A182 Common Gull (<i>Larus canus</i>) A156 Black-tailed Godwit (<i>Limosa limosa</i>) A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>) A141 Grey Plover (<i>Pluvialis squatarola</i>) A140 Golden Plover (<i>Pluvialis apricaria</i>) A144 Sanderling (<i>Calidris alba</i>) A160 Curlew (<i>Numenius arquata</i>) A050 Wigeon (<i>Anas penelope</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>) A162 Redshank (<i>Tringa totanus</i>) A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) Habitats Wetlands
Kerry Head SPA	Birds A346 Chough (<i>Pyrrhocorax pyrrhocorax</i>) A009 Fulmar (<i>Fulmarus glacialis</i>)

