



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

04 June 2020

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Our ref: FAC 429/2019

Subject: Appeal in relation to forest road licence CN84346

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of forest road licence CN84346.

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 CN84346 was granted by the Department on 09 December 2019.

Hearing

A hearing of appeal 429/2019 was conducted by the FAC on 13 May 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Jim Byrne and Mr Pat Coman

Decision

Having considered all of the information before it, including a consultant's report, the FAC has decided to confirm the decision of the Minister to issue licence CN84346, for the reasons set out below:

The proposal is for 130m Forest Road licence in Knockhacrooka Lower, Co Waterford, and comprises a bell-mouth access and harvest road to serve clear-felling and thinning of 6.02 ha. Soil is mineral - brown earths, with very modest gradient. Construction is by excavation. The proposal site and associated forestry contains no evident aquatic zone, the Finisk River which forms part of the

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Blackwater River SAC is c. 450m from the proposal and 75m from nearest point of forest to be serviced. The proposal site and circa 1/3rd of the forest to be serviced is in Colligan-Mahon catchment and the remaining 2/3rd of forest to be serviced is within the Blackwater (Munster) catchment.

The licence conditions are – *Install roading, road drains, culverts/piping, bellmouth entrance, turning area as per standards and specifications set out in Cofords Forest Road Manual, - Adhere to all conditions contained in Planning Permission 19/248 received. - Be cognizant of water mains network adjoining public road., -Consult with adjacent house Owners, -All guidelines to apply. The FAC is satisfied there are no conditions specified that are mitigation towards a European site.*

There is one appeal before the committee and the grounds include that the Forest Service in its Screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact, and that is a trigger for the requirement for Appropriate Assessment as it may have an effect. The grounds also include that the inspector answered 'yes' to the following questions; *Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process? Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site?* but the inspector fails to show any evidence on which this answer is based. The appellant includes that in most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. The appellant contends that in these circumstances *"the only legal answer is that the application has been screened in for Appropriate Assessment"*.

In response to the appeal the Department of Agriculture Food and the Marine (DAFM), submitted that the proposed 120m forest road is located on flat, dry mineral soil with no water adjoining and no water to cross in road construction. The site is approx. 450m away from the Blackwater River (Cork/Waterford) SAC with a public road and dry, flat fields intervening and there is no hydrological pathway between the proposal and the SAC and no possible adverse effect on listed Qualifying Interests and Conservation Objectives now or in the future. DAFM went on to state a comprehensive and detailed Appropriate Assessment Screening was carried out for each of seven individual Natura sites within a 15km zone of consideration. DAFM state that following this screening and a review of all licensed and proposed forestry activity on IFORIS and all Planning Permission information available from the online Waterford County Council and An Bord Pleanála planning information systems as well as the EPA Licence Information System, concluded there is no potential for the proposed project to contribute to any adverse effects on any of the Natura sites either alone or in combination with existing land use and other plans and projects.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report, dated 10 May 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

The following Natura sites were included in the report; Comeragh Mountains SAC, Glendine Wood SAC, Blackwater River (Cork/Waterford) SAC, Blackwater Estuary SPA, Helvic Head to Ballyquin SPA,



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Forestry Appeals Committee

Blackwater Callows SPA and Dungarvan Harbour SPA. The report details for each Natura site, the qualifying interests and conservation objectives. In respect of the closest SAC the report sets out as follows; The Blackwater River (Cork/Waterford) is located in close proximity to the lands where the forest road is proposed. The Finisk River which is a tributary of the Blackwater is located a short distance away to the north and northwest. The Finisk joins the Blackwater south of Cappaquin. At the nearest point, which is to the north, the SAC is approximately 453 metres from the lands where the road is proposed. The OS maps however indicate that the public road rises upwards towards the north. There is accordingly no hydrological connection to the SAC in this direction. This assessment corresponds with the river catchments indicated on the EPA's online mapping. The project lands are indicated, on these maps, to be in the River Brickley-Colligan-Dalliban-Mahon-Tay-Coastal catchment. Drainage from this area is towards the southeast and towards Dungarvan. The subject lands accordingly are not in the catchment of the Blackwater and the small-scale forest road proposed would have no effect on the qualifying interests of the River Blackwater SAC. In addition, the report sets out that the Finisk River (the closest part of the SAC to the subject lands) is not indicated on Map 8 of the River Blackwater Conservation Objectives as one of the sections of river/stream with suitable habitats or known distribution for the Freshwater Pearl Mussel. These streams/ rivers are generally upstream of Cappoquin and in a separate sub-catchment downstream to which there is no hydrological connection from the project lands. The report concludes that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Having regard to the report and the requirements of Article 6(3) of the Habitats Directive (92/43/EEC), the FAC adopts the report and is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of a significant effect on a European site, and the need for an appropriate assessment does not arise.

The FAC also adopts the consultant's report regards a preliminary examination for EIA which concluded that the proposed project would not be likely to give rise to significant effects on the environment on its own or cumulatively with other projects/plans, and the possibility of significant effects on the environment can be ruled out. The FAC agrees with this conclusion for the reasons outlined in that report and an EIAR is not required.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

Note: The confirmation by the FAC should not be interpreted as meeting any requirement to obtain planning permission under planning legislation in circumstances where the provisions of that legislation require permission to be obtained. If you are in any doubt as to whether planning permission is required, it is recommended that you contact the relevant planning authority for clarification.

FAC Ref. 429/2019

DAFM Ref. CN84346.

Details of application:

The application was for the construction of a forest road measuring 130 metres in total length. This total road length appears to include 50 metres of a forest access road, a bell-mouthed access to the public road and a turning area located close to the roadside outside the area of trees. Due to the scale of the plans and the quality of the reproductions it is difficult to precisely identify the various detailed aspects of the road works proposed. The documentation indicates a road 3.4 metres wide in a formation width of 5.5 metres and a pavement depth of 300mm.

It is indicated that the road is required to facilitate the felling etc of an area of 6.02 hectares of a plantation of various ages. The elevation of the lands is stated to be 30-40 metres.

Location and details of project lands:

The plantation to be served is located a short distance to the north of the Dungarvan to Fermoy National Secondary road (N72) about 7 Kilometres to the east of Cappoquin. The forest road would have access onto a local road about 300 metres to the north of the N72.

The access onto the local road would be opposite a relatively new house built on the opposite side of the road from the plantation. There is also a relatively new house on the project lands side of the road in the land to the south of the proposed access to the plantation. The front part of the proposed road and the turning area would be constructed in what appears (from Google photography) to be a side garden attached to an older house located on the east side of the road a short distance to the north. This older house is one of two older houses located on the east side of the road to the north of the proposed access. There are some old buildings and sheds, which may have some industrial uses, located to the north of the houses.

Land uses in the area are a mixture of agriculture and forestry. The plantation to be served by the forest road appears to have been part of the demesne lands formally attached to Cappagh House which is located a short distance away to the east.

The lands in the area and in particular these to the west and south west of the local road appear to be of mineral soils and to be well drained. The old OS maps indicate a drain/stream or millrace running from north to south at the western edge of the plantation which is located a short distance back from the road. It is not clear from the documentation if this still exists or if it has been closed in. I note that in the pre-approval screening the inspector noted that there is a disused millrace nearby. It is

stated however in the response to the grounds of appeal that there is no water adjoining the lands and there is no water to cross.

Decision of DAFM:

The Department decided to grant approval and issue a licence. The licence was subject to 12 conditions. Many of the conditions relate to the issue of grant approval. Others are of a standard variety and require compliance with various standards and requirements. The applicant is also required to comply with all conditions of planning permission reference number 19/248, to consult with house owners and all Guidelines are "to apply".

Grounds of appeal:

It is submitted that the Forest Service in its Screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact. That is a trigger for the requirement for Appropriate Assessment as it may have an effect.

It is also submitted that the inspector answered yes to the following questions. Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process? and Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site? The inspector fails to show any evidence on which this answer is based.

In most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment it is in.

It is submitted that in these circumstances the only legal answer is that the application has been screened in for Appropriate Assessment.

DAFM response to the grounds of appeal:

The Department in its response states that the proposed forest road, in the townland of Knockacrooka Lower, is located on flat, dry mineral soil with no water adjoining and no water to cross in the road construction. It is submitted that the road proposed is approx. 450m away from the River Blackwater (Cork/Waterford) SAC 2170 with a public road and dry, flat fields intervening. It is submitted that, accordingly, there is no hydrological pathway between the short road proposal and the SAC and no possible adverse effect on the listed QI's and CO's of the SAC, now or in the future.

The inspector submits that he carried out a comprehensive and detailed AA Screening for each of the 7 individual Natura sites located within the 15km zone of consideration, on 21/11/19 as recorded in AA Screening Conclusions for Individual Natura sites in the final IFORIS certification. Following this and having reviewed all licensed and proposed forestry activity on IFORIS and all Planning Permission information available from the online WDCC and An Bord Pleanála planning information systems, as well as the EPA Licence Information System, as recorded, he concluded there is no potential for the proposed project to contribute to any

adverse effects on any of the Natura sites either when considered alone or in combination with existing land use and other plans and projects.

It is submitted that some technical and operational conditions were attached to the final certification for approval. An appeal by Mr Peter Sweetman, signed on 20/12/19, based on procedural grounds and lack of evidence from the Inspector, was received by the FAC.

Screening for Appropriate Assessment:

There are 7 Natura 2000 sites consisting of 3 SACs and 4 SPAs located, at least in part, within 15 kilometres of the lands where the forest road would be constructed.

The 7 Natura 2000 sites are

Comeragh Mountains SAC 001952

Glendine Wood SAC 002324

Blackwater River (Cork/Waterford) SAC 002170

Blackwater Estuary SPA 004028

Helvic Head to Ballyquin SPA 004192

Blackwater Callows SPA 004094

Dungarvan Harbour SPA 004032

The Comeragh Mountains SAC is located to the northeast, at the nearest point, about 9.95 kilometres from the location of the proposed road. The southwestern part of the Comeragh Mountain SAC drains to a river network which flows into the sea in Dungarvan (Colligan River). This is well to the east of the subject lands and there is no hydrological connection from the project lands to the SAC in question. The Comeragh Mountains SAC has as its qualifying interests

3110 Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation

4010 Northern Atlantic wet heaths with *Erica tetralix*

4030 European dry heaths 4060 Alpine and Boreal heaths

8110 Siliceous scree of the montane to snow levels (*Androsacetalia alpinae* and *Galeopsietalia ladani*)

8210 Calcareous rocky slopes with chasmophytic vegetation

8220 Siliceous rocky slopes with chasmophytic vegetation and

1393 Slender Green Feather-moss *Drepanocladus vernicosus*

Having regard to the lack of any hydrological connection, the distance to the SAC and the small-scale of the development there would be no impact on the qualifying habitats and species listed above.

The Glendine Wood SAC is located to the east of Dungarvan at a minimum distance of 10.1 kilometres from the project lands. The SAC is in a ravine in a river system (Glendine River) which flows to the sea at a location to the east of Dungarvan and to the east of the Colligan River referred to above. There is no hydrological connection from the project lands to the Glendine Wood SAC. The SAC has as its qualifying interest the Killarney Fern. Due to the distance involved and the lack of any hydrological connection the small-scale forest road proposed would have no impact on this SAC.

The Blackwater River (Cork/Waterford) is located in close proximity to the lands where the forest road is proposed. The Finisk River which is a tributary of the Blackwater is located a short distance away to the north and northwest. The Finisk joins the Blackwater south of Cappaquinn. At the nearest point, which is to the north, the SAC is approximately 453 metres from the lands where the road is proposed. The OS maps however indicate that the public road rises upwards towards the north. There is accordingly no hydrological connection to the SAC in this direction. This assessment corresponds with the river catchments indicated on the EPA's online mapping. The project lands are indicated, on these maps, to be in the River Brickley-Colligan-Dalliban-Mahon-Tay-Coastal catchment. Drainage from this area is towards the southeast and towards Dungarvan. The subject lands accordingly are not in the catchment of the Blackwater and the small-scale forest road proposed would have no effect on the qualifying interests of the River Blackwater SAC.

The qualifying interests of the River Blackwater SAC are

- 1029 Freshwater Pearl Mussel *Margaritifera margaritifera*
- 1092 White-clawed Crayfish *Austropotamobius pallipes*
- 1095 Sea Lamprey *Petromyzon marinus*
- 1096 Brook Lamprey *Lampetra planeri*
- 1099 River Lamprey *Lampetra fluviatilis*
- 1103 Twaite Shad *Alosa fallax*
- 1106 Atlantic Salmon *Salmo salar* (only in fresh water)
- 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide
- 1220 Perennial vegetation of stony banks
- 1310 Salicornia and other annuals colonizing mud and sand
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- 1355 Otter *Lutra lutra*
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)

1421 Killarney Fern *Trichomanes speciosum*

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation

91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

91E0 *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

91J0 **Taxus baccata* woods of the British Isle

This list includes the Freshwater Pearl Mussel which would need to be considered if the project lands were in the catchment of the Blackwater. I would point out, however, that the Finisk River (the closest part of the SAC to the subject lands) is not indicated on Map 8 of the River Blackwater Conservation Objectives as one of the sections of river/stream with suitable habitats or known distribution for the Freshwater Pearl Mussel. These streams/rivers are generally upstream of Cappoquin and in a separate sub-catchment downstream to which there is no hydrological connection from the project lands. Having regard to this, the small-scale nature of the project, the presence of a road and well-drained fields on mineral soils between the project lands and the SAC I would also conclude that the development would not be likely to have any significant effect on the River Blackwater SAC even if the lands were in the Blackwater catchment.

The 4 SPAs within a 15 kilometre of the lands i.e. Helvic Head to Ballyquin SPA 004192, Blackwater Estuary SPA 004028, Blackwater Callows SPA 004094, and Dungarvan Harbour SPA 004032 (which are located respectively, at the shortest distance from the project lands, 14.9, 14.33, 13.48 and 6.98 kilometres away) have as their special interests, inclusively,

A050 Wigeon *Anas penelope* wintering, A140 Golden Plover *Pluvialis apricaria* wintering, A142 Lapwing *Vanellus vanellus* wintering, A149 Dunlin *Calidris alpina* wintering, A156 Black-tailed Godwit *Limosa limosa* wintering, A157 Bar-tailed Godwit *Limosa lapponica* wintering, A160 Curlew *Numenius arquata* wintering, A162 Redshank *Tringa totanus* wintering, A999 Wetlands and waterbirds, A038 Whooper Swan *Cygnus Cygnus*, A050 Wigeon *Anas Penelope*, A052 Teal *Anas crecca*, A005 Great Crested Grebe *Podiceps cristatus* wintering, A046 Light-bellied Brent Goose *Branta bernicla hrota* wintering, A048 Shelduck *Tadorna tadorna* wintering, A069 Red-breasted Merganser *Mergus serrator* wintering, A130 Oystercatcher *Haematopus ostralegus* wintering, A141 Grey Plover *Pluvialis squatarola* wintering, A142 Lapwing *Vanellus vanellus* wintering, A143 Knot *Calidris canutus* wintering, A169 Turnstone *Arenaria interpres* wintering, A017 Cormorant *Phalacrocorax carbo*, A103 Peregrine *Falco peregrinus* A184, Herring Gull *Larus argentatus*, A188 Kittiwake *Rissa tridactyla*, and A346 Chough *Pyrrhocorax pyrrhocorax*.

The bulk of these special interests are water, estuary and sea-shore birds. A few are attracted to and require a sea-cliff habitat such as exists at the Helvic Head area. None are particularly suited to the habitat which exists in the project lands. The construction of the small-scale forest road proposed in this case will have no impact on the special interests of any of the SPAs referred to.

The documentation available, to me, does not contain details in relation to other forestry developments licenced in the area other than reference numbers. In checking the record of planning permissions in the vicinity nothing appears which would give rise to concern in relation to in-combination or cumulative effects. The most recent planning permissions in the area are the permission (19428) granted for the access to the public road from the forest road (described as a new back-in loading bay for use by forestry and all associated site works) and a permission for a 5 MW solar farm on lands on the opposite side of the road a short distance away to the north (15614). Permission was also granted for the change of use of an office, with alterations, to residential use and for the construction of a single storey house on a local road to the northeast (1154 and 14156). Other permissions include alterations to farm buildings, an entrance to the site of a thatched cottage and house extensions on lands close to the N72 to the west. Older permissions include those for the houses on the opposite side of the road and that on the lands to the south. I consider that consideration of in-combination or cumulative effects would not alter my conclusions as set out in the previous paragraph.

In the above assessment I have not considered the normal good afforestation practices referred to in the documentation in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all afforestation, and are not designed to prevent any significant effect on the Natura sites.

Screening for Environmental Impact Assessment (EIA):

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 11 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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, deforestation nor clear-felling are referred to in Annex 1. Annex 1 contains classes of development relating to road construction. An Environmental Impact Assessment is mandatory for any motorway, express road or 4 lane road longer than 10 kilometres. Annex 11 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 11). Annex 11 also contains a class of project, under the heading "infrastructure projects" described as "construction of roads, harbours and port installations including fishing harbours (projects not included in Annex 1)". 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 site is located in an area where the predominant land uses are agriculture and to a lesser extent forestry. The area is not designated as being of special or significant visual amenity value in the County Waterford Development Plan. The forest road proposed would only have a very localised impact. I consider that it would have no significant effect on the wider landscape. It would not be particularly prominent or out of character in the landscape. I consider that the forest road proposed would not have a significant impact on the landscape by itself or cumulatively with other developments.

The road construction will give rise to some additional heavy vehicle traffic on the local roads. This will cause some inconvenience in the short term but would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. I also consider that the project would not be likely to give rise to significant effects on the environment due to water or air pollution.

I note that there are no designated national monuments located in the lands where the road would be constructed.

The project would not be located in an area which is particularly sensitive. Any impacts on the environment would be localised and would not be significant on the wider environment. The length of forest road proposed is less than one fifteenth of the length for which an EIAR would be mandatory.

I consider that the proposed project would not be likely to give rise to significant effects on the environment. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening.

Overall conclusion:

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

10/ 5/ 2020

