



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

28 May 2020

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Our ref: FAC 358/2019

Subject: Appeal in relation to forest road licence CN83475

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 CN83475.

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 CN83475 was granted by the Department on 15 November 2019.

Hearing

A hearing of appeal 358/2019 was conducted by the FAC on 19 May 2020.

FAC Members:

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

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, and a consultant's report sought by the Committee, before deciding to cancel the decision in respect of this licence (Reference CN 83475).

The proposal is for a forest road 353m in length to serve a forest of 14.35ha at Kilderrihean, Co. Waterford. Harvest thinning is proposed for 2019/2020. The proposed road is 3.4m wide in minimum formation of 5.5m, and would have a pavement depth 330mm made up of 290mm sub-base and surface layer of 40mm. The soils are stated to be mineral and the site elevation is about 100.00m. The proposed site is in a rural agricultural area with a dispersed settlement pattern but with ribbon development along a public road a short distance to the east.

The DAFM approved the Licence on 15th November 2019 subject to 12 standard conditions.

**An Coiste um Achomhairc
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There is a single appeal against the decision to approve the Licence. The grounds contend that, based on the information supplied, it was not possible to approve the Licence in accordance with the provisions of the Habitats and EIA Directives. Reference is made to several Court judgments. In the case of *Finlay Geoghegan and Kelly v An Bord Pleanála* it was established that there is no need to establish an effect but merely necessary to determine that there may be such an effect. There was no assessment of cumulative effects undertaken.

In response the DAFM state that the proposed development is 120m from Blackwater River SAC on very flat, dry mineral soil with slightly raised topography between the road and the SAC and a green field and some mature woodland intervening. There is no hydrological pathway. There are 6 individual Natura 2000 sites within 15km radius and a comprehensive screening was carried out on each. There would be no adverse in-combination effects on any Natura 2000 sites.

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 13th 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 report identifies 6 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. These, together with their separation distances are:

1. Comeragh Mountains SAC (14.3km)
2. Lower River Suir SAC (14.4km)
3. Blackwater River (Cork/Waterford) SAC (120m)
4. Blackwater Estuary SPA (14km)
5. Blackwater Callows SPA (13km)
6. Dungarvan Harbour SPA (7.4km)

The report lists the qualifying interests for each site together with the conservation objectives. In relation to the Comeragh Mountains SAC and Lower River Suir SAC the report concludes that there is no hydrological connection from the proposed road site and that there would be no impact on the qualifying habitats or species listed for these sites. In respect of the 3 SPAs listed the report notes that the qualifying interests relate to water, estuary and sea-shore birds with none suited to agricultural lands. As such there is no likelihood of significant effects. The FAC is in agreement with the report findings for these 5 sites.

In respect of the Blackwater River (Cork/Waterford) SAC the report notes that the qualifying interests include the Freshwater Pearl Mussel (FWPM). There is no hydrological connection between the proposed road lands and this Natura 2000 site, and the intervening lands are flat and well drained. The report notes that the proposed site is only a short distance upstream of the tidal part of the SAC. The River Glannafallid (or Glenshelane) is closest to the SAC and this is not indicated as a section with suitable habitats or known distribution of FWPM. Noting that the NPWS did not respond with specific comments, the report concludes that the proposed development on its own would not be likely to have a significant effect on this Natura 2000 site.

The proposed site is approximately 120m from the Blackwater River (Cork/Waterford) SAC. The forestry it is proposed to serve lies within the boundaries of the SAC and the Glannafallid River flows through this forestry close to the SAC boundary nearest to the proposed site, before joining with the



**An Coiste um Achomhairc
Foraoiseachta**

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Blackwater River. The FAC concurred with the report in stating that the tree felling to be served by the proposed road would be significant. The report notes that the tree-felling would have to be screened on foot of a separate application for a licence. The consultant's screening does not cover the tree-planting, except in so far as any in-combination effect(s) might arise from the road construction. The FAC noted that the proposal before it would facilitate felling (thinning) to be carried out.

The FAC is concerned that information on applications and approvals (other than file reference numbers) for other forestry projects in the area, including the forestry to be directly served by the proposed road (if any), has not been provided and there is no assessment of their likelihood to give rise to in-combination effects. Given the particular circumstances pertaining to this proposal as outlined, including the proximity to the Blackwater River (Cork/Waterford) SAC, the siting of the forestry to be served by the proposed road within the SAC, the routing of the Glannafallid River through the SAC close to its nearest boundary to the proposed road, and the qualifying interests of the Natura 2000 site, the FAC considered that such an assessment of other forestry projects should have been carried out prior to the granting of the Licence. The FAC decided that, based on the information before it, and applying the Precautionary Principle, it could not conclude that the proposed development in-combination with other forestry projects in the area and, in particular, the 14.35ha of forestry to be served by the proposed road, would not be likely to give rise to the possibility of significant effects on the Blackwater River (Cork/Waterford) SAC, having regard to the qualifying interests of that site.

The FAC agreed with the conclusion of the consultant's report in respect of EIA screening, and the reasoning for that conclusion, that the possibility of significant effects on the environment, within the meaning of the EIA Directive, can be ruled out.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

FAC Ref. No. 358/2019

DAFM Ref No. CN83475

Details of application:

The application is for the construction of a forest road of 353 metres to serve a plantation of 14.35 hectares. The details submitted indicate that the road length would be 308 metres with an additional 30 metres being accounted for by a Bellmouth and an additional 15 metres being in a half Bellmouth. The plans indicate the half Bellmouth at the inner end of the forest road with the Bellmouth at the outer end where the forest road would join a laneway. The plans indicate a turning area, for trucks, at the eastern end of the laneway off which the forest road is proposed.

The information submitted indicates that the road would be 3.4 metres wide in a minimum formation width of 5.5 metres. The pavement depth would be a total of 330mm consisting of 290mm sub-base and a surface layer of 40mm.

Details of location and project lands:

The project lands are located close to the River Glennafallid a short distance to the southeast of the town of Cappoquinn in Co. Waterford. The Glennafallid River is a tributary of the River Blackwater. It flows southwards from the Knockmealdown Mountains and turns westwards near the subject lands before joining the Blackwater a short distance south of Cappoquinn. The old OS maps indicate the name of the river as the Glenshelane River. The Glenshelane and the Glennafallid join a short distance to the north. Both flow from the Knocknealdown Mountains.

The older OS maps for the area indicate that the Blackwater, (below the junction with the Glannafallid) and the lower part of the Glannafallid (or Glenshelane) are tidal. The maps indicate the project lands being at about the 100-foot contour. The maps indicate that a rail-line formerly crossed the lands and the river. It is not clear from the plans if a pedestrian path over the river still exists on the line of the old railway track. The OS maps indicate that there were 2 level crossings of the rail-line in the vicinity of the proposed road. This indicates relatively level lands in the area. One of the level crossings was near the location where the forest road would join the laneway and the other was a short distance to the northwest of the inner end of the proposed road.

The main land uses in the area are agriculture and forestry. The soils appear to be well drained mineral soils and drainage in the project lands does not appear to be impeded or poor. There is a significant amount of forestry along the river heading northwards from a location to the north of the location where the road is proposed (northwards from Beallicky Bridge). There is also some forestry located close by, beside the river, a short distance to the north of the inner section of the proposed road. These forested, nearby, areas appear to be the lands for which the forest road is required. The forested lands in question are within the River Blackwater SAC but the forest road as proposed does not extend into the plantation or SAC.

There are a number of houses on the public road frontages in the area. There is a group of houses located a short distance to the southeast at Bohernavogheragh Crossroads and there are also some houses to the north along the minor road onto which the forest road would link through the existing farmyard lane. Spot levels on the old OS maps indicate a general drop in ground levels towards Bohernavogheragh Crossroads. Without a detailed site inspection, it is not possible to be specific about slopes in individual fields.

Decision of DAFM:

The Department decided to grant approval and issue a licence

The licence is subject to 12 conditions. Many of the conditions are related to the grant application. The conditions are generally of a standard variety requiring compliance with standard requirements and guidelines for such developments. None appear to be specifically related to or designed to reduce or mitigate any effects on any Natura 2000 site. Condition no. 12 contains a number of subsections and requires the applicant to obtain the written approval of Waterford Co. Council as to whether or not the upgrading of the junction with the public road requires planning permission.

Grounds of appeal:

It is submitted that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the EU Habitats and EIA Directives, and having regard to the following judgements of the CJEU; Case C-258/11 Peter Sweetman and Others v An Bord Pleanala, Case C-164/17 Edel Grace and Peter Sweetman v An Bord Pleanala, Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta, and Case C-461/17 Brian Holohan and Others v An Bord Pleanala.

It is also submitted that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) "There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

In an earlier submission, which he requested be attached to all his appeals, the appellant stated that there is a lack of proper assessment e.g. there is no assessment of cumulative effects.

DAFM response to the grounds of appeal:

The Department in its response recommends that the recommendation to approve the project should be confirmed.

The inspector states that prior to making his recommendation to approve with conditions, he undertook a field inspection on 29/03/19 and evaluated the forest road application (CN83475) using various appropriate G1S datasets. The application was automatically referred to WDCC and NPWS on 27/03/19 with just NPWS returning with a "no comment" on 01/07/19. The proposed 353m forest road in the townland of Sunlawn, Co. WD is approx. 120m away from Blockwater R. (Cork/WD) SAC2170 on

very flat, dry mineral soil with no water adjoining and no water to cross in road construction with slightly raised topography between road and the SAC and a green field and some mature woodland intervening. Hence there is no hydrological pathway and no possible adverse effect on listed QI's and CO's of the SAC, now or in the future.

The inspector states that he carried out a comprehensive and detailed AA Screening for each of the 6 individual Natura Sites within the 15km zone of consideration on 07/11/19 as recorded in AA Screening Conclusions for Individual Natura Sites. Following this and having reviewed all licensed and proposed forestry activity on iFORiS and all Planning Permission information available from the online WD County Council and An Bord Pleanála Planning information systems as well as the EPA Licence information system, he concluded that there is no potential for the development, alone or in-combination with any other plan or project, to contribute to any adverse effects on any of the Natura 2000 sites.

Screening for Appropriate Assessment:

There are 6 Natura 2000 sites located, at least in part, within 15 kilometres of the proposed forest road. The sites in question are

Comeragh Mountains SAC 001952

Lower River Suir SAC 002137

Blackwater River (Cork/Waterford) SAC 002170

Blackwater Estuary SPA 004028

Blackwater Callows SPA 004094

Dungarvan Harbour SPA 004032

The Comeragh Mountains SAC is located to the northeast, at the nearest point, about 14.3 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 Lower River Suir SAC, at the nearest point to the north, is located about 14.4 kilometres from the location of the proposed road. The SAC in connection is in the catchment of the River Suir and there is no hydrological connection from the subject lands to the SAC as the subject lands are in the River Blackwater catchment.

The qualifying interests of the Lower River Suir 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 fallax*

1106 Salmon *Salmo salar*

1330 Atlantic salt meadows (*Glaucopuccinellietalia maritima*)

1355 Otter *Lutra lutra*

1410 Mediterranean salt meadows (*Juncetalia maritimi*)

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

6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels

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 Isles

Having regard to the distance from the lands to the Lower River Suir SAC and the absence of any hydrological connection from the lands to the SAC the small-scale development proposed would not have any effect on the SAC in question.

The River Blackwater SAC is located about 120 metres, at the nearest point, from the proposed forest road. The qualifying interests for this 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

The lands between the proposed road and the SAC are relatively flat and are well-drained. (The Departmental inspector refers to the ground on the SAC side of the proposed works being slightly higher than at the works location). There is no stream or drain on the lands to carry soil etc from the small-scale development proposed to the SAC or the river which is little further from the proposed forest road. The location of the proposed works is only a short distance upstream of the tidal part of the SAC.

Some of the species for which the SAC has been designated are extremely sensitive to water pollution in the form of nutrients and soil or debris e.g. the Freshwater Pearl Mussel. The location however is just upstream of the tidal part of the river. I would also point out, that the River Glannafallid (or Glenshelane), 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 proposed development would not affect the Freshwater Pearl Mussel or the conservation objectives for the species. It is also noted that the Department of Culture, Heritage and the Gaeltacht has no specific comments to make in its consultation response in this case.

Having regard to the circumstances set out in the previous paragraphs and to the qualifying interests of the SAC I consider that the small-scale forest road proposed is

not likely to give rise to any significant, or indeed any, effect on the River Blackwater SAC although located in close proximity to same.

The 3 SPAs located, in part, within a 15-kilometre distance i.e. Blackwater Estuary SPA, Dungarvan Harbour SPA and Blackwater Callows SPA, which are at the shortest distance, respectively, about 14, 13 and 7.4 kilometres from the project lands have as their special interests, inclusively, the following species.

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.

The special interests for which these SPAs are designated are water, estuary and sea-shore birds. None are particularly suited to the open agricultural habitat which exists in the project lands. The construction of the small-scale forest road proposed in this case will have no significant 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. It is noted that the forest road is required to allow for some tree felling (thinning) in the plantations to the north which are located in the River Blackwater SPA. It could be argued that the proposed road would have in-combination effects on the SPA with this tree-felling. Having regard to my conclusions set out above to the effect that the forest road construction would not be likely to have any effect on the SAC I consider that it would not also have any in-combination effect, with the tree-felling, which would be likely to be significant. This does not mean, of course, that the tree felling would not be likely to have any significant effect on the SAC. Any application for such tree felling would have to be screened for second stage Appropriate Assessment. My screening in this case does not cover that project except in so far as any in-combination effect(s) might arise from the road construction.

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. There are no recent planning permissions in the immediate vicinity. The closest recent permissions are for the demolition of a fire damaged thatched house and its replacement by a new house to the east of the location where the farmyard lane, off which the forest road would be constructed, joins the public road and permission for a nursing home and a number of extensions on the northside of the N72 to the southwest of the project lands. There are several permissions for various developments within the built-up part of Cappoquin. None of these developments would have any in-combination or cumulative effect with the forest road proposed. I

consider that consideration of in-combination or cumulative effects would not alter my conclusions as set out in the previous paragraphs.

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 forestry. The location where the forest road is proposed is outside the development area for the town as indicated in the current County Waterford Development Plan. No zoning is indicated for this area. Lands close by, to the west and the northwest, are indicated as part of a greenbelt area and as designated for open space and amenity purposes. The area is not designated as being of special or significant visual amenity value in the County Waterford Development Plan although it is a visually attractive rural area close to the town. The forest road proposed would 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 nearest such site is located near Bohernavogheragh Crossroads about 600 metres away to the southeast. This was the site of a battle in the middle of the 16th century. The construction of the forest road proposed would have no effect on this site.

The project would not be located in an area which is particularly sensitive although the area is a visually attractive one close to the edge of the town of Cappoquin. 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 fifth 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

13/ 5/ 2020