



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

07 October 2020

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Our ref: 589/2020

Subject: Appeal in relation to forest road licence CN83943

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) in respect of forest road licence CN83943.

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 CN83943 was granted by the DAFM on 22 July 2020.

Hearing

A hearing of appeal 589/20 was conducted by the FAC on 02 October 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy and Mr Pat Coman

Decision

The 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 vary the decision of the Minister in respect of this licence (Reference CN 83943) as follows:

Condition 3 be omitted from the licence.

The proposal is for a forest road 400m in length to facilitate the clear-felling of 19.77ha at Blakesmountain, Co Clare. The carriageway width is 3.4m in a formation width of 5.5m. Soil drains of 450mm-750mm are proposed for mineral soils and 750mm for peat. The road is at close to the 800ft contour and would be constructed on an embankment with depressions to be filled in.

The licence was issued on 22nd July 2020 subject to standard conditions plus condition 3 requires compliance with Ecological Survey and Management Plan submitted (Note: these are not on the file)

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and condition 7 requires that there be no deviation from the proposed route without the consent of FS. Construction to be in accordance with COFORD Manual.

There is a single appeal against the decision to grant the licence. The grounds contend that the legitimacy of this forest has not been established, and the FAC should not rely on the fact that the NPWS did not make an individual objection. There is a requirement for the FAC to carry out EIA screening. All forest roads in the forest and their lengths must be taken into account. There is non-compliance with the Habitats Directive or basic guidelines of the NPWS. The development is within 15km of Natura sites and this is a trigger for AA. It is not appropriate to take mitigation measures into account. The Article 6(3) assessment must not have lacunae and must have complete, precise and definitive findings. A map showing the SACs and SPAs should have been provided. Details of all forestry in the area should have been shown and also the total length of forest roads.

In response, the DAFM state that there is no hydrological connection or pathway from the project lands to the river approximately 75m to the SE at the nearest point and that the section of the proposed road nearest to the river is downhill from the river. There is no hydrological connection associated with the project lands. The proposed road is not within the limits of the foraging distances of any species in the Inner Galway Bay SPA or the Cliffs of Moher SPA. All Natura 2000 sites within 15km are screened out. No in-combination effects are possible.

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), and an examination of environmental effects. The report, dated 30th September 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 10 Natura 2000 sites within 15km of the project lands. Having regard to the nature and scale of the proposal and the characteristics of the surrounding area, the FAC considered that this was reasonable and that there would be no possibility of significant effects arising on Natura 2000 sites beyond this radius.

Inisheer Island SAC is 14.4km separated and, without any pathway for effects would not be impacted by the proposed development. The report concludes that there is no hydrological link to the Inagh River Estuary SAC (13.5km separated) as the project lands are in a different river catchment. There is no downstream hydrological connection to the East Burren Complex SAC (13.3km separated). The Cliffs of Moher SPA (10.9km separated) has, as its qualifying interests, seashore/cliff species of birds and the project lands do not provide habitat of choice or suitable for these species. The proposed development would have no impact on the birds listed. Likewise, Inner Galway Bay SPA (9.4km separated) would not be significantly impacted as the project lands do not provide habitat of choice or suitable for the bird species listed. Ballyvaughan Turlough SAC (9.1km separated) is in the Kinvara-Coastal River catchment and the project lands drain the other way. In addition, the proposed road would be constructed above ground level with no excavation into bedrock. There is no hydrological or other pathway to the Galway Bay Complex SAC (9.0km separated) or the Moneen Mountain SAC (6.3km separated). There is no hydrological connection to Ballyteige (Clare) SAC (5.2km separated) or to the Black Head-Poulsallagh Complex SAC (1.8km separated).



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The report does not identify any relevant planning permissions likely to give rise to in-combination effects. It concludes that, having regard to the self-contained and relative small-scale of the current proposal, no likely significant in-combination effects are anticipated. The FAC noted that the proposed road is within a mature area of forest and would join with an existing road, and concluded that, as the proposed length of road was not likely to have significant effects on any Natura 2000 site, there is no likelihood of in-combination effects arising with the existing road or forestry.

The FAC is satisfied that the screening procedure detailed in the consultant's report is in accordance with the requirements of the Habitats Directive. The conditions attached to the licence could not be considered as measures designed to avoid or reduce effects on any Natura 2000 site. Furthermore, the proposed development is not connected with or necessary to the management of any Natura 2000 site. The FAC agrees with and adopts the findings of the report in respect of the Natura 2000 sites identified. The FAC concludes that the proposed forest road alone, or in-combination with other plans and projects would not be likely to have significant effects on any Natura 2000 site.

The proposed development is a class of development covered by the EIA Directive and is sub-threshold. Combined with the existing forest road it would still be significantly sub-threshold. The consultant report carried out a screening in accordance with the provisions of the EIA Directive and concluded that the proposed development, alone or in-combination with other plans or projects, would not have significant environmental effects. The FAC is satisfied that the screening carried out meets the requirements of the Directive and adopts the consultant's conclusion. The FAC concluded that the proposed development, alone or cumulatively with other plans and projects, would not be likely to have significant effects on the environment.

The grounds of appeal raise other issues. They contend that the legitimacy of the existing forest has not been established but offer no evidence to support this contention and the FAC is not in possession of any information to support the contention. The FAC is satisfied that the screening assessments carried out as detailed in the consultant's report, and as adopted by the FAC do contain complete, precise and definitive findings and satisfy the requirements of the Habitats and EIA Directives.

The FAC noted that condition 3 of the licence appears to be inserted in error and does not appear to relate to the proposed development. As such, the FAC decided to omit the condition requiring the Minister's decision to be varied.

In deciding to vary the decision of the Minister to grant the licence, the FAC considers that the proposed development is consistent with Government policy and Good Forestry practice.

Yours sincerely,

Pat Coman on behalf of the Forestry Appeals Committee

FAC Case Ref. 589/2020

DAFM Case Ref CN83943

Details of application:

The application is for a licence to construct a forest road 400 metres in length in a rural area in the townland of Blakesmountain in County Clare. The plans submitted indicate that the road would link in to an existing forest road which has access from a local public road.

The documentation submitted indicates that the forest road is required to facilitate the clear-felling of an area of 19.77 hectares of forest (Pre-approval submission from the applicant).

The information submitted indicates that the carriageway width would be 3.4 metres and the formation width 5.5 metres. It is stated that the road would be constructed above the existing ground on an embankment. Formation works would involve the levelling of depressions. Sub-soil drains of 450-750 mm are indicated for mineral soils and 750 mm for peat. The drains would be a minimum of 2 metres from the road edges.

Location and details of project lands:

The road would be constructed in an area of mature forestry which forms part of a larger forest area on the western flank of Slieve Elva in a rural area about 4.5 kilometres to the north of the town of Lisdoonvarna in north Co. Clare. Access to the area and onto which the forest road would have access is from a local road which runs in a generally north south direction and which connects Fanore village to the north with Lisdoonvarna to the south. The road runs through a largely un-inhabited upland area between Slieve Elva to the east and a smaller/lower hill called Knockauns Mountain to the west. Knockauns Mountain rises to 983 feet AOD and Slieve Elva rises to over 1100 feet AOD.

The O.S. maps indicate that the road proposed would be close to the 800-foot contour. The maps also indicate that there are some drains or streams in the area and the road would appear to cross at least one stream. There are no streams indicated at the location of the proposed road on the EPA maps and it is not clear if the drainage system was altered when the lands were planted. The older 25 inch to a mile map indicates a drain flowing towards the northwest although it ends a short distance away to the northwest. This may be an error as the main drainage in the vicinity is through the streams to the southeast of the proposed road which are indicated on the Bio map submitted by the applicant. The inspector, however, states that the nearest part of the proposed road, to the stream to the southeast, is lower than the level of the stream. This suggests that the older O.S map may have identified the flow direction correctly and the drain may have infiltrated to below ground level further to the northwest. (I note that the O.S. maps indicate a swallow

hole on the east side of Blakes Mountain about 2 kilometres from the location of the proposed road).

The main stream (to the south east of the proposed road) flows towards the southwest and joins another stream from the east close to the local road. The combined stream passed under the road at a small bridge which appears to be known as Blakes Bridge. The stream continues towards the southwest as Glenaruin River to a location known as Poulbunough where it appears to go underground before later joining the Aille River which flows to the sea near Doolin. (The submission from Clare Co Council refers to this drainage system - submission dated 15/7/20-. A second submission from the Co. Council included in the documentation and which has the same reference number -submission dated 17/7/20- appears to refer to a different proposal at a location near Kilkee in the southwest of the county).

The land uses in the area are a mixture of forestry and agriculture with forestry being predominant in the local vicinity. The lands indicated for tree-felling on the application maps are part of a larger forest area. There are additional forested lands to the south and north of the harvest lands now indicated and there is also a large forested area on the west side of the local road serving the area.

The agricultural use of lands in the area is limited to rough grazing due to the upland location, soil character and a significant amount of rock outcrop. There are no houses located in the local vicinity.

DAFM decision:

The Department decided to approve the project and to grant a licence. The licence was subject to 7 conditions.

Condition number 2 requires Compliance with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology. Condition number 3 requires compliance with Ecological Survey and Management Plan as submitted (applies to both elements of the Native Woodland Scheme). (I am not aware of any Ecological Survey and Management Plan having been submitted and condition number 3 does not appear relevant to the construction of a forest road within an existing mature coniferous plantation).

Condition number 7 states

Environmental & Silvicultural Considerations

No deviation from the proposed route is permitted without prior consent from the Forest Service,

All construction to be carried out in accordance with the COFORD forest roads manual,

All guidelines to apply

Grounds of appeal:

The appellant submits that before granting a license, it was necessary for the Minister to establish the legitimacy of the actual forest. As this has not been done it is necessary for the FAC to do this. The appellant queries the authority on which the FS and the FAC overruled the judgement of Finlay J. It is submitted that by requesting further information from the Forest Service, the FAC has upheld the appeal. It is submitted that incomplete decisions should be returned to the Forest Service.

The submission document from the NPWS is attached to the appeal. The FAC is requested to note that if the Department is not in a position to make specific comments on a particular referral at the time, no inference should be drawn that the Department is satisfied or otherwise with the proposed activity. The FAC should not rely on the fact that the NPWS did not make an individual objection. It is necessary for the FAC to carry out an Environmental Impact Assessment screening. To do that it is submitted that all roads in the forest and the distance of each must be listed.

It is submitted that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive or the basic guidelines of the NPWS. The test for Appropriate Assessment Screening in Irish and EU law is that it is merely necessary to determine that there may be an effect on a Natura site rather than to state that it will not have a significant effect. It is submitted that if the development is within 15km of a Natura 2000 site it has to be screened in for Appropriate Assessment.

The EU judgement in case C-323/17 stated that Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications of a plan or project, for a site concerned, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site. The court also stated, in the judgement, that this conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment.

It is submitted that the EU Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned. i.e. If it is said to be in a different catchment, the screening must state the catchment that the application is in. It is also necessary to realise that birds can fly and they do all rely on watercourses to move. A map showing the SACs and SPAs and the site of the proposed development should be attached.

In screening for Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50ha. It is also necessary to give the total length of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out the development which includes thinning and clear-felling. 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 opinion of advocate general Kokott in Case C-254/19 is referenced to support this submission.

DAFM response to appeal:

It is submitted that the application for 400m of road was inspected on the 18/06/2020. It was deemed that there was no hydrological connection / pathway from the proposed road alignment to the river which is 75m to the South East at its nearest point. It is submitted that the section of road that is nearest to the river is actually downhill from the river which is meandering downhill from higher ground to the east. There is therefore no hydrological connection associated with the proposal and hence no possibility of any pathway to an aquatic SAC or SPA.

The Bird Foraging table was referred to and it was deemed that the proposed road was not within the limits of any of the foraging distances of any species in the Inner Galway Bay SPA 004031 or the Cliffs of Moher SPA 004005. All Natura 2000 designations within the 15km zone of impact were screened out.

The application was referred to Inland Fisheries Ireland and Clare Co. Council which were noted but their responses focused around the nearby river which is 75m at its nearest point from the proposed road. No archaeological issues were identified. The road specifications were satisfactory and there were no issues pertaining to insufficient engineering specification being the potential cause of problems arising from road failures.

An in-combination report was compiled and sent to the District Inspector. This report deemed that no in-combination effects were possible. The application was approved with conditions.

Appropriate Assessment screening:

There are 10 Natura 2000 sites located at least in part within 15 kilometres of the lands where the road is proposed. The sites, in order of distance from the location, are

Inisheer Island SAC 001275 located in the Atlantic, at the nearest point about 14.4 kilometres from the project lands,

Inagh River Estuary SAC 000036 located to the southwest, at the nearest point about 13.5 kilometres from the lands,

East Burren Complex SAC 001926 located, to the east, at the nearest point about 13.3 kilometres from the project lands,

Cliffs of Moher SPA 004005 located, to the southwest at the nearest point about 10.9 kilometres from the lands,

Inner Galway Bay SPA 000268 located, to the northeast, at the closest point about 9.4 kilometres from the project lands,

Ballyvaughan Turlough SAC 00099 located, to the northeast, at the closest point about 9.1 kilometres from the lands,

Galway Bay Complex SAC 000268 located, to the northeast, at the closest point about 9.0 kilometres from the project lands,

Moneen Mountain SAC 000054 located, to the east, about 6.3 kilometres from the project lands,

Ballyteige (Clare) SAC 000994 located to the south about 5.2 kilometres from the project lands and

Black Head-Poulsallagh Complex SAC 000020 located at the closest point about 1.8 kilometres to the northwest and about 2.1 kilometres to the northeast of the lands where the forest road is proposed.

Many of the sites referred to are very large and significant parts of the larger sites are more than 15 kilometres from the project lands.

The Inisheer Island SAC is located out in the Atlantic almost entirely over 15 kilometres from the lands. The small-scale project proposed would clearly have no impact on this SAC.

The Inagh River Estuary SAC is located over 13 kilometres away to the south east. This SAC is in the drainage catchment of the Inagh River. The project lands are in the catchment of the Aille River which flows into the Atlantic near Doolin which is about 8 kilometres north of Liscannor Bay to which the Inagh drains. There is no hydrological link from the project lands to the Inagh River Estuary SAC.

The qualifying interests of the Inagh Estuary SAC are

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

The conservation objectives are to restore the favourable conservation of the habitats for which the site has been designated.

Having regard to the qualifying interests, the conservation objectives and in the absence of any hydrological connection from the lands to the Natura site and having regard to the distance the small-scale project in question would not be likely to have any significant effect on the Inagh Estuary SAC.

The East Burren Complex SAC is located, to the east, at the nearest point about 13.3 kilometres from the project lands. This SAC is in the drainage catchment of the Kinvara-Coastal and the Shannon catchments. There is no hydrological downstream connection from the project lands to the SAC in question.

The qualifying interests of the East Burren SAC are

Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp. [3140]

Turloughs [3180]

Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation [3260]

Alpine and Boreal heaths [4060]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Calaminarian grasslands of the *Violetalia calaminariae* [6130]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]

Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]

Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* [7210]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Alkaline fens [7230]

Limestone pavements [8240]

Caves not open to the public [8310]

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

Euphydryas aurinia (Marsh Fritillary) [1065]

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

Lutra lutra (Otter) [1355]

The conservation interests are to maintain or restore the favourable conservation condition of the habitats and species for which the site has been designated.

Whilst there the soil cover in the area of the project lands appears to be relatively thin and there is evidence of karstification and ground water flow in the general area ground water flow normally reflects the regional surface water flow. The county council submission indicates the flow, although partly underground, is to the southwest. The EPA mapping also confirms this with the lands being in the Aille-Caher-Coastal river Catchment. The proposed road is also of modest scale and is proposed to be constructed above existing ground level without being excavated to or into bedrock level.

Having regard to the circumstances as set out above I consider that the proposal is not likely to have any significant effect on the East Burren Complex SAC.

The Cliffs of Moher SPA is located, to the southwest at the nearest point about 10.9 kilometres from the lands.

The qualifying or special interests of this SPA are

Fulmar (*Fulmarus glacialis*) [A009]

Kittiwake (*Rissa tridactyla*) [A188]

Guillemot (*Uria aalge*) [A199]

Razorbill (*Alca torda*) [A200]

Puffin (*Fratercula arctica*) [A204]

Chough (*Pyrrhocorax pyrrhocorax*) [A346]

The conservation objectives are to maintain or restore the favourable conservation condition of the species for which the site has been designated.

An inland mature coniferous forest is not a habitat of choice or suitable for the seashore/cliff species of birds for which the SPA has been designated. The small-scale project would have no impact on the birds referred to. The proposal, accordingly is unlikely to have any significant effect on the Cliffs of Moher SPA.

The Inner Galway Bay SPA is located, to the northeast, at the closest point about 9.4 kilometres from the project lands,

The qualifying or special interests of the SPA are

Black-throated Diver (*Gavia arctica*) [A002]

Great Northern Diver (*Gavia immer*) [A003]

Cormorant (*Phalacrocorax carbo*) [A017]

Grey Heron (*Ardea cinerea*) [A028]

Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Red-breasted Merganser (*Mergus serrator*) [A069]

Ringed Plover (*Charadrius hiaticula*) [A137]

Golden Plover (*Pluvialis apricaria*) [A140]

Lapwing (*Vanellus vanellus*) [A142]

Dunlin (*Calidris alpina*) [A149]

Bar-tailed Godwit (*Limosa lapponica*) [A157]

Curlew (*Numenius arquata*) [A160]

Redshank (*Tringa totanus*) [A162]

Turnstone (*Arenaria interpres*) [A169]

Black-headed Gull (*Chroicocephalus ridibundus*) [A179]

Common Gull (*Larus canus*) [A182]

Sandwich Tern (*Sterna sandvicensis*) [A191]

Common Tern (*Sterna hirundo*) [A193]

Wetland and Waterbirds [A999]

The conservation objectives are to maintain the favourable conservation condition of the species for which the SPA has been designated.

An inland mature coniferous forest is not a habitat of choice or suitable for the seashore waterbird species for which the SPA has been designated. Having regard to this and the distance involved the small-scale project would have no impact on the birds referred to. The proposal, accordingly is unlikely to have any significant effect on the Inner Galway Bay SPA.

Ballyvaughan Turlough SAC is located, to the northeast, at the closest point about 9.1 kilometres from the lands. The SAC is located in the Kinvara-Coastal river catchment. The drainage from the area where the project lands are located is in the opposite direction. There are also a number of intervening streams between the lands and the turlough which would intercept water flow towards the northeast.

Whilst the soil cover in the area of the project lands appears to be relatively thin and there is evidence of karstification and ground water flow in the general area ground water flow normally reflects the regional surface water flow. The county council submission indicates the flow, although partly underground, is to the southwest. The EPA mapping also confirms this, with the lands being in the Aille-Caher-Coastal river Catchment. The higher part of Slieve Alva is also located to the east and northeast of the project lands. The proposed road is of modest scale and is proposed to be constructed above existing ground level without excavations to or into bedrock level.

Having regard to the circumstances as set out above I consider that the proposal is not likely to have any significant effect on the Ballyvaughan Turlough SAC.

The Galway Bay Complex SAC is located, to the northeast, at the closest point about 9.0 kilometres from the project lands. The closest part of the SAC to the project lands is in the Kinvara-Coastal catchment.

The qualifying interests of the Galway Bay Complex SAC are

Mudflats and sandflats not covered by seawater at low tide [1140]

Coastal lagoons [1150]

Large shallow inlets and bays [1160]

Reefs [1170]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glaucopuccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Turloughs [3180]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]

Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae* [7210]

Alkaline fens [7230]

Limestone pavements [8240]

Lutra lutra (Otter) [1355]

Phoca vitulina (Harbour Seal) [1365]

The conservation objectives are to maintain or restore the favourable conservation condition of the habitats and species for which the SAC has been designated.

Having regard to the absence of any hydrological or other potentially impacting pathway and to the distance involved I consider that the small-scale project in question is not likely to have a significant effect on any of the qualifying species or habitats in this SAC. In so far as turloughs are concerned similar arguments apply as for the Ballyvaughan Turlough SAC.

Having regard to the circumstances set out above I consider that the project is not likely to have any significant effect on the Galway Bay Complex SAC.

Moneen Mountain SAC is located, to the east, about 6.3 kilometres from the project lands. Part of the SAC is located in the Kinvara-Coastal catchment and part in the Shannon catchment. None of the SAC is in the Aille-Caher-Coastal catchment.

The qualifying interests of the Moneen Mountain SAC are

Turloughs [3180]

Alpine and Boreal heaths [4060]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Limestone pavements [8240]

Euphydryas aurinia (Marsh Fritillary) [1065]

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

The conservation objectives for the SAC are to maintain or restore the favourable conservation condition of the habitats and species for which the site has been selected.

Having regard to the absence of any hydrological or other potentially impacting pathway and to the distance involved I consider that the small-scale project in question is not likely to have a significant effect on any of the qualifying species or habitats in this SAC. In so far as turloughs are concerned similar arguments apply as for the Ballyvaughan Turlough SAC.

Having regard to the circumstances set out above I consider that the small-scale project proposed in a mature coniferous forest area is not likely to have any significant effect on the Moneen Mountain SAC.

Ballyteige (Clare) SAC is located to the south about 5.2 kilometres from the project lands. This SAC is located in the same regional catchment as the subject lands (The Aille-Caher-Coastal catchment). The SAC however is located beside a stream which flows westwards south of Lisdoonvarna and which joins the stream from the northeast which drains the project land area at a location to the west of Lisdoonvarna. There is accordingly no hydrological connection from the project lands to this SAC.

The qualifying interests of the Ballyteige (Clare) SAC are *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*). The conservation objectives are to maintain or restore the favourable conservation condition of this habitat.

Having regard to the absence of a hydrological or other impacting pathway from the project lands to the SAC and the distance involved I consider that the proposed project is not likely to have any significant effect on the Ballyteige (Clare) SAC.

The Black Head-Poulsallagh Complex SAC is located at the closest point about 1.8 kilometres to the northwest and about 2.1 kilometres to the northeast of the lands where the forest road is proposed. The SAC wraps around the coastal area of Blackhead to the north of where the project lands are located.

The Black Head-Poulsallagh Complex SAC is located partly in the Kinvara-Coastal catchment and partly in the Aille-Caher-Coastal catchment. The part in the latter catchment is, however, located in the Coastal part of the catchment and the SAC does not drain to the Aille River to the southwest to which the project lands drain. There is accordingly no hydrological connection from the project lands to the SAC.

The qualifying interests of the Black Head-Poulsallagh Complex SAC are

Reefs [1170]

Perennial vegetation of stony banks [1220]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation [3260]

Alpine and Boreal heaths [4060]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]

Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Limestone pavements [8240]

Submerged or partially submerged sea caves [8330]

The conservation objectives are to maintain the favourable conservation condition of the habitats for which the site has been designated.

In the absence of any hydrological downstream connection or other potentially impacting pathway from the project lands to the SAC I consider that, although relatively close to the SAC, the small-scale project proposed would not be likely to have any significant effect on the Black Head-Poulsallagh Complex SAC having regard to the qualifying interests (which do not include turloughs) and the conservation objectives.

On checking myplan.ie I find that no planning permissions have been granted for development in the vicinity since 2010. The Department in its in-combination assessment lists 88 planning permissions for new developments or retention permissions. Many of the permissions listed appear to be for developments in or near the village of Doolin about 8 kilometres to the southwest. These developments would have no in-combination effect on any Natura site with the forest road now proposed. The nearest permission to the project lands is case reference 17900, for the retention of alterations to a previously permitted house and an upgraded percolation area on lands about 2.5 kilometres to the south. The nearest other permissions for development are in the village of Fanore about 3.5/4 kilometres to the northwest. None of these would have any in-combination effect with the forest road now proposed. I also consider that the development would not have any significant effect on Natura 2000 sites in combination with developments envisaged by the County Clare development plan. This plan contains provisions to protect, and prevent developments which would adversely impact on, Natura 2000 sites

The forest road would be a continuation of an existing forest road which is located closer to the main stream to the south east than that the current proposal. It would be located within a large forested area. I do not have details indicating the locations of other forestry related approved developments but having regard to the self-contained and relative small-scale of the current proposal I do not envisage any significant in-combination effects, on any Natura 2000 site, with other forestry developments.

In the above assessment I have not considered the normal good forest road construction practices referred to in the documentation and in the licence in forming my conclusions. (I have also not considered any habitats survey and management plan as referred to in condition 1 of the licence as I have not seen any such survey or plan). I consider, however, that compliance with the various Forest Service 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 such developments, and are not designed to prevent any significant effect on the Natura 2000 sites.

The proposal is clearly not necessary to or connected with the management of any Natura 2000 site. I conclude that the proposed forest road, of itself or in- combination with any other plans or projects, is not likely to have any significant effect on any

Natura 2000 site. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

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 nor deforestation (nor clear-felling) are referred to in Annex 1. 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). 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 a rural area where the predominant land uses are forestry and agriculture but with forestry being dominant locally in the area in question here. The wider area is one of scenic and heritage value and significance. The area is designated as a heritage landscape in the current Co Clare Development Plan. The forest road would, however, be located within a large area of forestry and I do not consider that it would have a significant impact on the wider landscape.

The construction of the forest road proposed and subsequent clear-felling of trees in the harvest area, will give rise to some vehicular traffic and, in a later phase, the transport of timber on the local roads. This will cause some inconvenience in the short term but it 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 forest road proposed, in compliance with the standard conditions referred to, would not be likely to give rise to significant effects on the environment due to water or air pollution, including any emissions which might have significant effect on climate change. I note, in this regard, that the forest road proposed would be further from the main stream than the existing forest road of which it would be an extension.

There are no National Monuments located within the project lands. There are however several such monuments on lands to the northwest. Some of these are

indicated on the Bio map submitted with the application. The monuments are mainly ringforts, cashels and enclosures. The proposed forest road and subsequent clear-felling would have no effect on the monuments in question.

Although the wider area is of significance from a landscape and cultural heritage perspective, the existing forest is a commercial enterprise which forms part of the landscape. The forest road proposed is significantly less than the 2000 metre length for which Environmental Impact Assessment would be mandatory according to the Irish regulations. The entire forest road, including the section constructed from the local road and that now proposed would still be only about half of the length for which Environmental Impact Assessment would be mandatory. I consider that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. 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, of itself or cumulatively with other projects, 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

30/9/ 2020

