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29<sup>th</sup> April 2021

**Subject:** Appeal FAC 755/2020 relating to Licence CN86895.

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

**Licence**

Licence application CN86895 is for the construction of a forest road of 180 metres in length in the townland of Coolyregan Co. Cork. The application was submitted to the DAFM on 15/07/2020. The licence was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 01/09/2020 subject to a number of standard conditions.

There is one appeal against the decision to grant the licence.

**Hearing**

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 23<sup>rd</sup> of April 2021.

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.

Appellant: [REDACTED]

Applicants: [REDACTED]  
[REDACTED]

DAFM Ms. Mary Coogan and Mr. Brian Mahoney.

Secretary to the FAC Ms. Marie Dobbyn.

**Decision**

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the DAFM, the applicant and, the record of the decision by the DAFM, the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence reference CN86895 at Coolyregan, Co. Cork.

## Background

An undated Inspector's Certification Pre-Approval Report certified by the DAFM on 20/08/2020 indicates that a desk assessment was made and a field inspection carried out on the site on 13/08/2020. The report describes the soil type underlying the site as predominantly brown earths with a predominantly flat to moderate slope (<15%) and that the site does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise improved grassland and conifer forest.

The report also notes that there are 7 Natura 2000 sites within 15Km of the proposed forest road and records an Appropriate Assessment (AA) screening decision to screen out the application for each site as follows:

Natura 2000 Site	Reason for Screening out for Appropriate Assessment
Ballyhoura Mountains SAC 002036	Other factors, as per habitat and birds foraging table
Blackwater Callows SPA 004094	Other factors, as per habitat and birds foraging table
Blackwater River (Cork/Waterford) SAC 002170	The absence of any aquatic zone within or adjoining the project area
Carrigeenamronety Hill SAC 002037	Other factors, as per habitat and birds foraging table*
Galtee Mountains SAC 000646	Other factors, as per habitat and birds foraging table
Lower River Suir SAC 002137	The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.
Moanour Mountain SAC 002257	The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. Other factors, as per habitats table.

\*Confirmed at oral hearing

The report contains an undated in-combination assessment carried out by the DAFM which concludes that the project, when considered in-combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Pre-Approval Report also contains an assessment of the environmental factors relating to the proposed forest road in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed road to the EIA process.

The licence application was referred to Cork County Council on 28/07/2020 who indicated in their response of 27/08/2020 that it had no comment to make on the licence application.



## **Appeal**

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- The afforestation of these lands was carried out without appropriate screening for the requirement for an EIA or an AA under Article 6 (3) of the Habitats Directive. A retrospective assessment of the need for an EIA and an AA should be carried out prior to any new licence being granted.
- Breach of Article 2(1) and Article 4 (3) of the EIA Directive 2014/52/EU
- Breach of Article 4 (4) of the EIA Directive 2014/52/EU
- Breach of Article 4 (5) of the EIA Directive 2014/52/EU
- The Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned and in consequence, an error of law in the processing of this application.
- There is insufficient information included with the application to permit the Inspector to make a conclusive determination as to whether an EIA is required.
- The details in the application are not an accurate representation of those required under Regulation 6(2) of the Forestry Regulations (2017).
- The licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21.
- The Stage 1 AA conclusion is not legally valid; the project is in the catchment of a Natura 2000 site with aquatic qualifying interests. In screening out the project the Inspector has not applied a proper test which has led to an inadequate screening conclusion.
- Licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration as required by Article 12 of the Habitats Directive.
- Licence conditions do not provide a general system of protection for all species of birds as required by Article 5 of the Birds Directive prohibiting in particular the deliberate destruction of, or damage to, their nests and eggs or removal of their nests.

## **Oral Hearing**

At the oral hearing, the DAFM provided a Statement of Fact dated 30/11/2020 confirming the administrative details of licence CN86895 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

A Statement of Fact was provided by the DAFM Inspectorate dated 25/11/2020 stating that the relevant Appropriate Assessment (AA) procedure of 5<sup>th</sup> Nov 2019 was applied and that the project was screened out after Standard Operating Procedures were followed.

The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed prior to the licence being issued. The DAFM confirmed date of the in-combination statement was 18/08/2020.

The DAFM Inspector stated that he had carried out a field inspection of the site on 13/08/2020 and that there was no hydrological connection from the proposed road to the any of the Natura 2000 sites identified in the Appropriate Assessment Screening. He also confirmed that the Carrigeenamronety Hill SAC (Site Code 002037) was screened out for the same reason as the Galtee Mountains SAC (Site Code 000646). The Inspector corrected the IFORIS record for Questions 22 & 23 dealing with consultation with

the local authority both of which should read yes instead of no. In relation to question 28 referral to Forest Service ecologist the answer should be yes instead of no and that in fact the ecologist carried out the in-combination assessment.

Coillte, the applicant's representative confirmed to the FAC that it was acting in partnership with the applicant and it had carried out a field inspection. Coillte stated that it had examined all aspects of the development and was satisfied, in particular, that there was no hydrological connection from the site to any watercourse, that no water would leave the site and that water would percolate to ground. Coillte also confirmed that the site of the road is not connect to the drain on the east of the forestry that terminates in the farmyard.

#### **Consideration by the FAC**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photography indicates that the road subject of this licence application runs through a farmyard and agricultural grassland before entering the forest.

Soil type is identified on the EPA maps as Acid Brown Earths, Brown Podzolics, which are generally an acid, deep, well- drained, mineral soil.

There is a WFD River Waterbody, the Funshion\_020 approximately 1km north of the proposed forest road. The Funshion\_020 is classified in the WFD River Waterbody Status Report 2013-2018 as being of Good water quality status and not at risk. Forestry is not identified as a pressure. The WFD 3<sup>rd</sup> Cycle categorises the river waterbody as not at risk. There is no direct hydrological connection between the site and this river waterbody.

The Funshion\_020 River Waterbody is part of the WFD Catchment 18 the Blackwater (Munster) Catchment and the Funshion\_SC\_10 Sub Catchment.

The underlying groundwater body is Mitchelstown (IE\_SW\_G\_082) and has good overall status. The ground waterbody is identified as not being at risk in the WFD 3<sup>rd</sup> Cycle programme.

The proposed forest road is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that there are 7 Natura 2000 sites (6 SAC & 1SPA) identified as being within 15km of the site and those are the 7 sites examined in the DAFM AA Screening.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC noted that the site is located in a High Value Landscape set out in the Cork County Development Plan 2014 but that the proposed forest road is located partially within an existing farm complex and that the route follows an existing farm track to the forest. It is proposed to thin the forest at this time. The FAC is of the view that the proposed forest road will not impact on the landscape.



The FAC considered the grounds of appeal under the following headings,

#### **EIA Directive.**

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that Annex II contains a list of projects for which member states must determine through thresholds, or on a case-by-case basis (or both), whether or not EIA is required. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to the construction of a forest road of a length greater than 2000 metres and any forest road below the specified 2000 metre parameter where the Minister considers such development would be likely to have significant effects on the environment.

Furthermore the FAC noted that with regard to the forestry to be served by this road neither afforestation nor deforestation is referred to in Annex I. Annex II 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 II). 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 existing forestry, planted in 2001 amounts to 6.42 Ha. is significantly sub-threshold for the mandatory submission of an EIAR.

The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was not required to undergo the EIA process. The proposal is for 180 metres of forest road construction to facilitate the management of commercial forest for timber production, which is considerably sub-threshold for the mandatory submission of an EIAR. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

#### **Article 6(2) of the Forestry Regulations 2017**

With regard to the appellant’s view that the details in the application are not an accurate representation of those required under Regulation 6(2) of the Forestry Regulations 2017. The FAC considered the documentation submitted, in particular the Biodiversity Map shows the items required by Article 6(2) where relevant. Having examined aerial photography from 2020 the FAC is satisfied that the Biodiversity Map shows the relevant public roads, archaeological sites and aquatic features. The existing access and proposed forest road are marked. The FAC is satisfied that the application and mapped information was appropriate in this case.

#### **EU Water Framework Directive**

With regard to the appellant’s view that the proposed forest road and associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21. The FAC notes that there is no WFD surface waterbody in the vicinity of this site and forestry is not regarded as a threat to ground or surface waterbodies in the Munster Blackwater Catchment Assessment 2010-2015 nor is forestry identified as a pressure in the WFD 3<sup>rd</sup> Cycle assessment. Having regard to the nature, scale and location of the proposal and the conditions under which operations would be undertaken; the FAC considers that the proposed forest road does not pose a risk to the river waterbody or to water quality generally.

**Appropriate Assessment Screening**

With regard to the Habitats Directive, the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of all of the Natura 2000 sites listed, the DAFM discounted the possibility of significant effects arising for the reasons stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

**Licence conditions relating to the protection animal and bird species.**

In relation to the ground of appeal that the licence conditions do not provide a system of protection for wild animals and birds during the period of breeding and rearing consistent with the requirements of the Habitats and Birds Directives. The FAC note that the granting of a licence for a forest road does not exempt the holder from complying with any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to animals or bird nesting or rearing on the proposed site. The FAC considered that the DAFM had completed a screening for Appropriate Assessment and had undertaken a site inspection prior to making the decision. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant are not warranted.

**Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that no serious or significant error or series of errors were made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN86895 in accordance with Section 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

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Iain Douglas, On Behalf of the Forestry Appeals Committee