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22nd December 2021

Subject: Appeal 127/2021 regarding licence CN87551

Dear [REDACTED]

I refer to appeals made 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 14 A (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.

Background and hearing

Licence CN87551 for the construction of 615m of new road at Coolboy and Knocknascrow, Co. Limerick was refused permission by DAFM on 20th September 2021. A hearing of appeal 127/2021 was held by a division of the FAC on the 6th December 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas and Mr. Derek Daly.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal and all submissions received, and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN87551 to the DAFM for completion of screening for Appropriate Assessment and EIA.

General

The proposal consists of one continuous section of road with turning area, comprising 515m longitudinal road and a standard 'T' type turning area of 100m. The predominant soil type underlying the project area is said in the Inspectors Certification report to be predominantly a highly modified peat or peaty podzol. The project area is crossed by / adjoins an aquatic zone(s) and the vegetation type within the project area is conifer forest aged between 16 and 27, some of which has already been thinned.

The site is located in the FUNSHION_020 sub-basin of the Funshion_SC_010 sub-catchment, which is located in the Blackwater (Munster) WFD Catchment. The site is drained by the Funshion waterbody which has a WFD 2013-2018 status of 'Good' and forestry is not identified as a pressure.

The project area does not fall within any designated Natura 2000 site, but five Natura Sites were identified within 15km of the project site: Galtee Mountains SAC 000646, Lower River Suir SAC 002137,

Moanour Mountain SAC 002257, Blackwater River (Cork/Waterford) SAC 002170, and Carrigeenamronety Hill SAC 002037.

The site was desk and field inspected and the proposal was referred to Limerick County Council and the National Parks and Wildlife Service (NPWS) with replies received from both. The NPWS made no specific comments while the local authority stated, among other recommendations, that 'works must be carried out with utmost sensitivity' given the sensitivity of the Blackwater River SAC. No further submissions were received.

In the section headed Appropriate Assessment Screening of the Inspectors Certification, an entry of 'Hold' is made where text describing screening assessments and conclusions are normally found for each Natura 2000 site. In the section dealing with screening for EIA, in response to the question 'Is this proposal in keeping with the achievement of an appropriate forest road network and density within the forest area being serviced?' an answer of 'No' is recorded.

Grounds of appeal

The applicant has appealed the decision of DAFM in this case. The grounds of appeal may be summarised as:

1. Contrary to the position of the DAFM inspector, the existing road network is not suitable for harvesting, and to proceed with it would not reflect good forestry practice
2. The proposed road should be constructed to avoid forwarding distances in excess of 500 metres.
3. The current road density is insufficient.
4. Contrary to the position of the DAFM inspector, the proposal does not seek to use the same area twice to justify the additional planned road construction.
5. Additional roads, up to the road density limit, can be added under the Forest Service "just in time, just enough" principle as expressed in the Forest Roads Scheme Manual.
6. There is precedent for additional roads to be added in a given area while not exceeding the overall area-based limit.
7. Site specific issues may occasionally require a road density higher than that indicated by the road density limits for grant aid, in the interests of environmental protection.
8. The existing road infrastructure is inadequate for clearfelling purposes because of the steep ground and higher volumes involved as well as the greatest distance to unthinned areas.

DAFM Statement to the FAC

DAFM statement to the FAC submits that the existing road network is suitable for harvesting and . submits that the served area for the road in question has previously been used in forest road applications and the current roading density is viewed as sufficient. An application for non-grant aid can be considered if the applicant wishes to proceed on this basis. No further grant aid can be applied to this area. The DAFM submits that the refusal is to ensure good forestry practice, the protection of the environment, health and public safety.

The DAFM suggests that certain portions of plot 2 and plot 3 that are more than 500 metres from an existing road are suggested as being eligible for grant aid to the level of 25 metres per hectare but these would present a significant departure from the current plan and require a new application. The point is made that the same area cannot be used twice in justification for a road grant and that

according to the 'Forest Roads Scheme SOP' (meaning the Forest Roads Scheme 2014-2020 edition 2/2015) only the minimum amount of roadway is allowed for grant aid, not necessarily the current maximum. Attention is again drawn to the fact that the applicant may also apply for permission for construction of a non-grant aided road.

FAC considerations

In addressing the grounds of appeal, the FAC considered in the first instance the adequacy of the existing road network and the similar grounds relating to road density. The DAFM in its Assessment to Determine EIA Requirement recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. In the section dealing with screening for EIA, the FAC noted that in answer to question four: 'Is this proposal in keeping with the achievement of an appropriate forest road network and density within the forest area being serviced?' an answer of 'No' is recorded. In the EIA screening section no further mention is made of inappropriate density and how this answer is reconciled with the finding that no EIA is required. The FAC considers that this is insufficiently explained and constitutes an error in respect of screening for EIA. In the Statement of Fact DAFM a rationale in support of refusal is provided that cites the grounds of 'good practice, protection of the environment and health and public safety'. The FAC finds that these issues too are insufficiently explained and that the screening for EIA is flawed when none of these issues are addressed there. In relation to road density limits for grant aid, the FAC has no remit in this regard. There will be circumstances where the landowner wishes to create additional forest roads over and above that which the DAFM feels is adequate. The DAFM may approve the landowner's proposal but refuse to grant aid them in full or in part. The former decision is within the scope of FAC to determine whereas the latter is not.

In addressing the application of Article 6(3) of the Habitats Directive, that any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans and projects, having regard to the conservation objectives of that designated site. The DAFM in this case produced an Inspector Certification with spatial run date of 30th April 2021 which identified five Natura 2000 sites within 15km of the proposal (Galtee Mountains SAC 000646 , Lower River Suir SAC 002137, Moanour Mountain SAC 002257, Blackwater River (Cork/Waterford) SAC 002170 and Carrigeenamronety Hill SAC 2037). In the section 'Appropriate Assessment Screening' an answer of 'Yes' is given to question four 'Is there sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site'. However, an entry of 'Hold' is made where text describing screening assessments and conclusions are normally found for each Natura 2000 site. The Blackwater River (Cork/Waterford) SAC 002170 has Freshwater Pearl Mussel identified as a qualifying interest. Question thirteen 'Are there populations of Freshwater Pearl Mussel likely to be effected by the proposed forest road?' is answered 'No' but the screening assessment and conclusions for this SAC are not provided, nor is any separate assessment of the threat to this species. The FAC considers these as significant errors in respect of screening for Appropriate Assessment in this case.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC is satisfied that a serious error or a series of

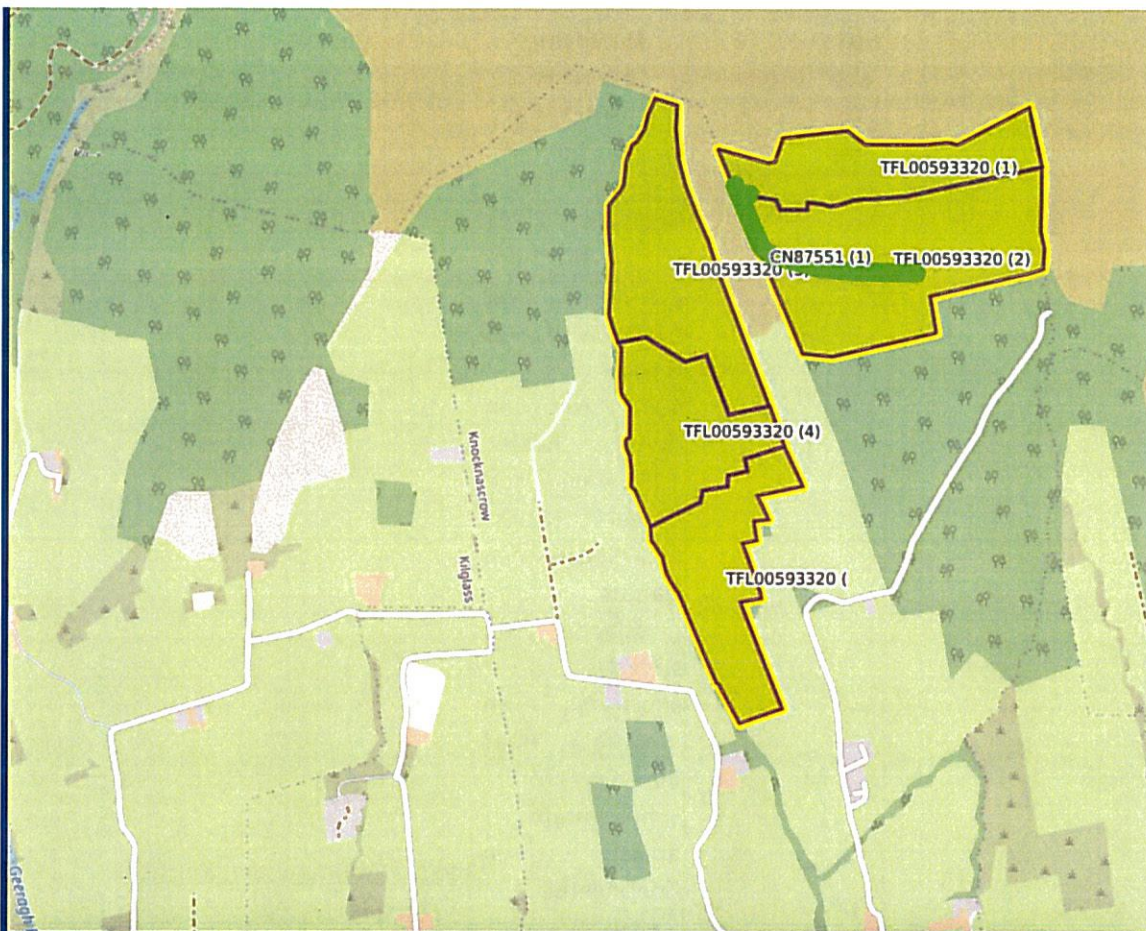
errors was made in making the decision and therefore the decision is to set aside and remit the decision back to the Minister to undertake an Appropriate Assessment screening of the proposal itself and in-combination assessment with other plans or projects (under Article 6 of the EU Habitats Directive) and a new screening for EIA (under the EU EIA Directive) and if necessary, an EIA, before a new decision is made in relation to the proposed road. The DAFM decision should clearly demarcate between the decision on grant aid and the general decision regarding the merits of the road proposal.

Yours sincerely,

A large black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee

Road (in green) with associated felling licence



LICENCE DETAILS

TFL00593320

Private Clearfell and Thinning

53.59(ha)

Application Details

Parcels (5)

Documents (10)

Status: Decision Pending

Date Received: 23-Nov-2020

Date Advertised: 16-Dec-2020

Date Approved/Refused: N/A

Location: Knocknascrow, Coolboy, Limerick

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SA C	000 646	Galtee Mountains SAC	1826.80	Within Distance	<p>Habitats</p> <p>4010 Northern Atlantic wet heaths with Erica tetralix</p> <p>4030 European dry heaths</p> <p>4060 Alpine and Boreal heaths</p> <p>6230 Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)*</p> <p>7130 Blanket bogs (* if active bog)</p> <p>8110 Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani)</p> <p>8210 Calcareous rocky slopes with chasmophytic vegetation</p> <p>8220 Siliceous rocky slopes with chasmophytic vegetation</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000646.pdf	

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SA C	002 137	Lower River Suir SAC	8428. 63	Within Distance	<p>Habitats</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p> <p>1410 Mediterranean salt meadows (Juncetalia maritimi)</p> <p>3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation</p> <p>6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion</p>	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002137.pdf	

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
					albae)* 91J0 Taxus baccata woods of the British Isles* Species 1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>) 1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>) 1099 River Lamprey (<i>Lamprolaima fluviatilis</i>) 1096 Brook Lamprey (<i>Lamprolaima planeri</i>) 1355 Otter (<i>Lutra lutra</i>) 1095 Sea Lamprey (<i>Petromyzon marinus</i>) 1103 Twaite Shad (<i>Alosa fallax fallax</i>) 1106 Salmon (<i>Salmo salar</i>)		
SAC	002257	Moanour Mountain SAC	11556.81	Within Distance	Habitats 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i>	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002257.pdf	

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
					4030 European dry heaths		
SAC	002170	Blackwater River (Cork/Waterford) SAC	11624.58	Within Distance	Habitats 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1220 Perennial vegetation of stony banks 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glaucopuccinellietalia maritima) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation 91A0 Old sessile oak woods with Ilex and	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002170.pdf	

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
					<p>Blechnum in the British Isles</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species</p> <p>1096 Brook Lamprey (<i>Lamprologus planeri</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1421 Killarney Fern (<i>Trichomanes speciosum</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1103 Twaite Shad (<i>Alosa fallax fallax</i>)</p> <p>1092 White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1099 River</p>		

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
					Lamprey (<i>Lamprologus fluviatilis</i>)		
SAC	002037	Carrigeena mronety Hill SAC	13357.37	Within Distance	Habitats 4030 European dry heaths Species 1421 Killarney Fern (<i>Trichomanes speciosum</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002037.pdf	

