



**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

02 June 2020

[REDACTED]  
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[REDACTED]  
[REDACTED]

**Our ref: FAC 226/2019**

**Subject: Appeal in relation to forest road licence CN83997**

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 CN83997.

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 CN83997 was granted by the Department on 27 August 2019.

**Hearing**

A hearing of appeal 226/2019 was conducted by the FAC on 27 May 2020.

**FAC Members:**

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

**Decision**

Having considered all of the information before it, including a consultant's report, the FAC has decided to confirm the decision of the Minister to issue licence CN 83997 for the reasons set out below:

The proposal is for 390m of forest road with carriage width 3.5m at Cooragannive, Co Cork to service 12.8 ha of forestry clear fell. The road is to run south to north and then with a dogleg to north-east. The Ilen River is 700m to east of the site, and the Lissangle River runs from the northern section of the lands containing the road and forestry but is not connected to either. Construction is to include excavation, grading and compaction, and run off culverts are included. The application bio-map shows a stream rising at the forest road location and flowing to the south east and it is reasonable to conclude this goes to the Ilen River at c. 700m based on map land features. The licence conditions are standard – *all guidelines to apply*, and there are no conditions specified that are deemed mitigation towards any European site. During application processing there was referral by the Department of Agriculture Food and the Marine to Cork County Council and response was received back.

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Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 076 106 4418  
057 863 1900

There is one appeal before the committee and the grounds include that based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to the following European Court of Justice Rulings; C-258/11, C-164/17, C-323/17 and C-461/17.

In response to the appeal the Department of Agriculture Food and the Marine (DAFM), submitted that the road is not hydrologically connected to any Natura site, and there is no evident reason not to approve the application. The FAC noted the Ilen River connects to Roaring Water Bay and Islands SAC at in excess of 17 km distance, a river to which the stream on site outflows to. European sites within a 15 km radius of the proposal are Moyross Wood SAC c. 9.5 km, Roaring Water Bay and Islands SAC c. 9.5 km, Lough Hyne Nature Reserve and Environs SAC c. 10 km, Castletownshend SAC c. 10 km and Sheep's Head to Toe Head SPA c. 10.8 km.

The FAC subsequently sought and received additional information from DAFM. In the reply DAFM stated that initial assessment of the likely impacts of the proposed development on the receiving environment, took into consideration standards of good forest practice. However on applying the Appropriate Assessment procedure in respect of Screening, those same standards were not taken into account as mitigation measures as they were neither directly nor indirectly relevant in terms of their potential to avoid or reduce any potential significant effects of the proposed development on the integrity of any Natura sites in view of those sites conservation objectives. Furthermore, if the current Appropriate Assessment procedure were to be applied in respect of the proposed development, the application would still be screened out.

The FAC undertook an appropriate assessment screening in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The screening report is available on the public file. A consultant's report sought and received by the FAC, dated 24 May 2020, was also considered by the FAC in coming to its decision and a copy of the report is also contained on the public file.

The proposal is within the Bandon-Ilen Catchment and the Ilen sub-catchment, with outflows to the southwest. Lough Hyne Nature Reserve and Environs SAC and Sheeps Head to Toe Head SPA have no connectivity with the proposal site and at in or about 10 km a project of this size will have no likelihood of a significant effect on the habitats or species involved. Also, Castletownshend SAC is southeast of the proposal and for reason of distance, contours and the sole qualifying interest the proposal bears no likelihood of a significant effect on the SAC or on its interest. An approximation of the hydrological distance from the proposal via the Ilen River to the Roaring Water Bay and Islands SAC is c. 19 km. At that distance the proposal for 390m of forest road bears no likelihood of causing a significant effect on the SAC interests or conservation objectives which are to maintain the favourable conservation condition of large shallow inlets and bays within the SAC. Having regard to distance and unsuitable habitats the species of interest for the SAC, the proposal poses no likelihood



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of causing a significant effect on its own or in-combination with other plans or projects. The GSI information for the area shows the bedrock comprises purple mudstone and siltstone.

Cork County Council planning maps show modest activity in the vicinity of the project at Cooragannive, there is a dwelling permission from 2000 to the east of the proposal and some dwelling permissions to the west within Maune TD most are pre 2005. A recent one (2018) 18423 involved a farmyard development to construct a milking parlour, dairy with soiled water tank, plant room, roofed collecting yard / feed area with slatted tank. Permission was also sought to construct 2 walled silage pits, that is a standalone development and does not add to any possible effect from the proposal to create a likely significant effect on a European site. In addition, there is a disused quarry c. 700m south east of the proposal site which is without any obvious connectivity. No possibility of a significant effect arises from the proposal when considered in-combination with other plans and projects.

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

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

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

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



CN83997 (APPEAL 226/19)

**Screening Appropriate Assessment**

**Project**

The proposal is for 390m of forest road with carriage width 3.5m at Cooragannive, Co Cork to service 12.8 ha of forestry clear fell. The road is to run south to north and then with a dogleg to north-east. The Ilen River is 700m to east of the site, and the Lissangle River runs from v the northern section of the lands containing the road and forestry but is not connected to either. The application bio-map shows a stream rising at the forest road location and flowing to south east and it is reasonable to conclude this goes to the Ilen River at c. 700m based on map land features. Construction is to include excavation, grading and compaction, and run off culverts are included. The licence conditions are standard – *all guidelines to apply*, and there are no conditions specified that are deemed mitigation towards any European site.

**European Sites**

There are four European Sites within a 15 km radius of the proposal at Cooragannive, none in close proximity.

Site Name	Distance To (m)	Direction To	Qualifying Interests
000101	Roaringwater Bay and Islands SAC	9568.64	<b>Habitats</b> 1160 Large shallow inlets and bays 1170 Reefs 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 4030 European dry heaths 8330 Submerged or partially submerged sea caves <b>Species</b> 1351 Harbour Porpoise ( <i>Phocoena phocoena</i> ) 1355 Otter ( <i>Lutra lutra</i> ) 1364 Grey Seal ( <i>Halichoerus grypus</i> )
000097	Lough Hyne Nature Reserve and Environs SAC	9997.89	<b>Habitats</b> 1160 Large shallow inlets and bays 1170 Reefs 8330 Submerged or partially submerged sea caves
001547	Castletownshend SAC	10042.14	<b>Species</b> 1421 Killarney Fern ( <i>Trichomanes speciosum</i> )
004156	Sheep's Head to Toe Head SPA	10806.68	<b>Birds</b> A103 Peregrine ( <i>Falco peregrinus</i> ) A346 Chough ( <i>Pyrrhocorax pyrrhocorax</i> )

The proposal is within the Bandon Ilen Catchment and the Ilen sub-catchment, with outflows to the south west. Lough Hyne Nature Reserve and Environs SAC and Sheeps Head to Toe Head SPA have no connectivity with the proposal site and at in or about 10 km a project of this size will have no likelihood of a significant effect on the habitats or species involved. Also, Castletownshend SAC is south east of the proposal and for reason of distance, contours and the sole qualifying interest the proposal bears no likelihood of a significant effect on the SAC or on its interest. An approximation of the hydrological distance from the proposal via the Ilen River to the Roaring Water Bay and Islands SAC is c. 19 km. At that distance the proposal for 390m of forest road bears no likelihood of giving rise to a significant effect on the interests or conservation objectives which are to maintain the favourable conservation condition of large shallow inlets and bays within the SAC. Having regard to distance and unsuitable habitats the species of interest for the SAC, the likelihood of a significant effect from the project does not arise. The GSI information for the area shows the bedrock comprises purple mudstone and siltstone. There is no likelihood that the project on its own can have a significant effect on any of the European sites.

#### ***In combination***

DAFM provided extensive lists of planning applications (43 applications), one EPA licence (industrial) and forestry projects as follows Forest Roads 2007 to 2019 (12 licences), Afforestation 2005 to 2019 (21 licences) and Felling 2017 to 2019 (34 licences) with no reference to project locations, proximity or connections, and concluded there is no likelihood of any in-combination significant effects on a European site.

Cork County Council planning maps show modest activity in the vicinity of the project at Cooragannive, there is a dwelling permission from 2000 to the east of the proposal and some dwelling permissions to the west within Maune TD most are pre 2005, one recent (2018) 18423 and involved a farm yard development to construct a milking parlour, dairy with soiled water tank, plant room, roofed collecting yard / feed area with slatted tank. Permission was also sought to construct 2 walled silage pits, that is a standalone development and does not add to any possible effect from the proposal to create a likely significant effect on a European site. In addition, there is a disused quarry c. 700m south east of the proposal site which is without any obvious connectivity. No possibility of a significant effect arises from the proposal when considered in-combination with other plans and projects.

#### ***Screening conclusion (AA)***

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

#### **Preliminary Examination for EIA (Report by Ms M Cuneen adopted by the FAC)**

Under the Forestry Reg's 2017 (S.I. No. 191 of 2017) the EIA mandatory threshold for a road is 2000m.(Art.13) (2) (d). In the current case the proposed road length of 390 m is significantly below the threshold. Where a development is sub threshold, criteria used to determine whether such development should be subject to an EIS, are set out in 3 broad groupings at Schedule 3 of the above

Regs, viz 1.Characteristics of projects, 2.Locations of projects, and 3.Type and Characteristics of Potential Impacts. Having regard to the above criteria, but in particular

- Nature, scale and construction methodology of the proposed development
- To the Inspector Certification - Pre - Approval Report finding that "On a cumulative basis the proposed road in conjunction with other forest roads in the area does not total in excess of 2000m."
- To the matters considered in the EIA assessment section of the Inspector's Certification - Pre - Approval Report,
- the absence of any significant impacts likely to arise having regard to the nature of other existing and approved projects as indicated in the Forest Division Statement to the FAC,
- the approved and existing land use which the project will service,
- the absorption of the natural environment to accommodate the proposed project having regard to the length of the River Ilen watercourse between the development site and the SAC of Roaringwater Bay,
- the limited magnitude and spatial extent of the impact likely to be generated by a road of the scale proposed,

Significant effects on the environment are unlikely to be generated either individually or on a cumulative basis by the proposed project, and that an EIAR is therefore unnecessary.

Pat Coman, on behalf of the FAC 02 June 2020

