



22nd April 2025.

Subject: FAC 057/2024 regarding CN83195

Dear

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (DAFM). 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 the parties to the appeal.

Hearing and Decision

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC 057/2024 was held remotely by the FAC on the 20/11/2024.

In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman, and Mr. Derek Daly.

Secretary to the FAC: Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notices of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN83195. The reasons for this decision are set out hereunder.

Background

The project was the subject of a previous FAC decision file ref no 149/2020 on 15/07/2022 to set aside and remit the decision of the Minister for Agriculture, Food and the Marine. The decision letter, which was dated 18/07/2022, also indicated that the DAFM should draw the applicant's attention to the specific concerns raised in the Appellant's original submission on the application with respect to the services and maintenance of the private road. A further application for a licence was submitted and a licence (CN83195) for a road of an approved length of 410 metres at Lissyvurriheen, County Clare was issued by the DAFM on the 20/05/2024.

The project subject of appeal FAC 057/2024 involves the construction of a road with an approved length of 410 metres on WD4 habitat to serve for the harvesting of an area of 19.53 hectares. The project area

is described as situated on a moderate (0-15%) slope and is comprised of 75% lithosols/regosols, 24% blanket peat soils and 1% peaty podzols/lithosols/peat soils. The proposed road route is crossed by a relevant watercourse, as shown in the submitted BioMap which flows south-west for 1.6km before merging with the Lissyvurriheen river. This subsequently flows a further 1.2km downstream to the Lower River Shannon SAC and 5.7km downstream to the River Shannon & River Fergus Estuaries SPA.

The project site is shown on EPA mapping as being located within the River Sub-Basin CLOON CLARE_0201. Mapping data indicates the status of this waterbody is good and it is recorded as not being at risk.

Applicant Documentation

The application material (which predated the first DAFM decision to approve the licence) included a harvest roadmap, road construction specifications for two road segments, a management plan for the forest to be serviced, forest road information, an aerial image of the site, a species map and a bio map. There was also further information requested during the previous processing of the application and details of the road construction method, and a revised road specification was submitted. Also on file are details of stream crossings and control of silt, a commentary that the road has been in existence since the forest was established. Two dwelling houses are marked on the mapping. Land registry details were also submitted.

Subsequent to the previous FAC decision to set aside and remit the first DAFM decision to approve this licence the DAFM wrote to the applicant (applicant's agent) on 25/07/2022 as below.

'Further to the FAC decision relation to this application following a 3rd party submission, the applicant needs to address the following issues from an Engineering perspective: Wear and Tear of the approach road which is used by other parties. The sharp turn on the approach road to the dwelling and its suitability for timber lorries. The presence of service pipes crossing under the road at the dwelling. The proximity of passing heavy vehicles 6m from the dwelling. When these issues have been resolved please notify the Forest Service'.

The applicant's agent made a reply to the DAFM dated 10/09/2022 which is marked as uploaded on the FLV on the 23/04/2023. This correspondence in summary submitted that in relation to wear and tear that the approach road is very suitable for timber lorries, that work will need to be done in dry weather, the video surveillance will be carried out before and after road building and harvesting as proof of prior condition of the road in the event of dispute and that the owner will make good damage caused during the operations.

The correspondence states that the bend is more than suitable for timber lorries and that it is suitable for a rigid and trailer type. The correspondence sets out that their client (which the FAC understands to be the applicant) is willing to accept responsibility for any damage caused to the pipes and underground utility facilities on condition that they complied with statutory regulations existing at the time of installation. It also states that the timber lorries will drive the route that is currently there and that there is nothing else to discuss on this matter.

The proposed road has provision for a sub-base and pavement surfacing and with provision for culverts and silt traps for sediment control and interceptor drains.

DAFM Assessment

There is an Appropriate Assessment Screening Report (AASRD) dated 09/03/2023 on file as carried out by a DAFM Ecologist. It examines four European sites and screens in the Lower River Shannon SAC IE0002165 and the River Shannon and River Fergus Estuaries SPA IE0004077. Two sites were screened out: Barrigone SAC IE0000432 and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161. Reasons are provided for the screening conclusions reached for each of the European Sites examined.

There is an Appropriate Assessment Report (AAR) on file prepared by a consultant ecologist on behalf of the Minister for Agriculture, Food and the Marine and dated 14/03/2023 which in Section 4 sets out the mitigation measures required in the case of the proposal. Section 5 is an Assessment of Potential Residual Impacts which indicates *the project design, together with adherence to the relevant site-specific mitigation measures set out above, ensure that potential residual impacts do not arise and that the project itself (i.e., individually) will not prevent or obstruct the Qualifying Interests of the Lower River Shannon SAC IE0002165 and the River Shannon and River Fergus Estuaries SPA IE0004077*. Section 6 outlines an in-combination assessment with an In-Combination Statement indicated as completed on the 09/03/2023. It concludes that there is no possibility that the proposed forest road project CN83195, with mitigation measures set out in Section 4, will itself, i.e. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Lower River Shannon SAC and River Shannon & River Fergus Estuaries SPA. Similarly, there is no likelihood of any residual effect(s) that might arise, which do not in themselves have an adverse effect, creating an adverse effect in-combination with other plans and projects. Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of the above European Site(s).

An Appropriate Assessment Determination (AAD) which includes some redactions, is to be found on the FLV under the heading 'Other'. It was prepared by a consultant ecologist on behalf of the Minister for Agriculture, Food and the Marine and dated 29/04/2024 and outlines mitigation measures in section 4. The basis for this AA Determination refers to a hydrological connection to the Lower River Shannon SAC (ca. 2.6 km downstream) and the River Shannon and River Fergus Estuaries SPA (ca. 6.8km downstream). The AAD refers to the Freshwater pearl mussel (FPM) as a qualifying interest and Otter also as a QI of the aforementioned SAC. Freshwater otter habitat, it states, has been mapped ca. 2.6 km downstream. The AAD states that *"in light of the peat-rich soil and FPM populations, operations will only commence in drier months will be drawn up and followed, with records kept. Appropriate watercourse measure protections have been set out including specific otter measures and good practice aquatic measures for the relevant designated features. The above conditions in combination, along with adherence to the guidance cited, will eliminate pathways of impact of significance to European sites"*.

An Appropriate Assessment Report Appendix A: In-combination report for Forest Road project CN83195 is on file. It refers to various online resources, datasets and DAFM's own databases that were consulted

on the 29/04/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin CLOON (CLARE)_020. It contains an In-Combination Statement relating to the screened-in European site which concluded that there is no possibility that the Forest Road project CN83195, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report and there is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects.

The DAFM, in keeping with the requirements of the previous FAC decision relating to this licence, carried out an Assessment to Determine EIA Requirement dated the 20/05/2024 and certified on 07/05/2024, in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, landscape, amenity and recreation, Transfrontier, cumulative effects and referrals and submissions and determined that the project was not required to undergo EIA.

An Inspector's Certification Report, date inspection certified on the 07/05/2024 and dated 20/05/2024 recommends permission subject to conditions.

Referrals

The FAC noted, based on documentation submitted, that the application was referred to Clare County Council prior to the previous DAFM decision which was set aside and remitted by the FAC. The Local Authority in a response dated the 11/03/2019 referred to issues of water quality and the presence of FPM in the Cloon River and the necessity for measures to protect water quality.

Decision

The decision to approve and the licence, which is subject to this appeal, issued on the 20/05/2024 and is marked as uploaded to FLV on the same date.

Appeal

There is one appeal against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file. The Notice of the appeal and full grounds of the appeal were provided to the relevant parties. A Statement of Fact (SOF) was received by the FAC from the DAFM has and was provided to the relevant parties. In summary, the grounds refer to;

- The absence of consultation as a resident on the road and that other parties were spoken to,
- The appellant's dwelling being 6 metres from the laneway and reference is made to underground services on the laneway,
- The applicant having no right to interfere with the right of way and the right of way is not suitable for trucks,

- The appellant's concerns in relation to the impact arising on his property, his amenities and underground services and suitability of the laneway for the anticipated volume and type of traffic arising from the project.

DAFM Statement (SOF) to the FAC

In summary, the SOF outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted (among other matters) that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act.

Specifically in relation to the grounds as submitted the SOF outlines a chronology in relation to assessing the project and indicates that;

- The submissions received from the appellant were read and considered in the assessment of the application and final decision.
- A further information request was sent to the applicant to prove a Right of Way across Folio 1671 to the benefit of the appellants laneway.
- A sworn affidavit with a map showing the right of way was produced by the applicant.
- In relation to concerns to the connections under the laneway and that the road is not built for heavy machinery, the SOF submits that in an email on 12/03/2019, the applicant's agent sent a statement that they will complete a site-specific method statement along with consult with neighbours on the right of way to mitigate any damage to the laneway.
- Consultation with the applicant's agent is to occur prior to works commencing in order to mitigate against any damage along with consultation regarding the nature of the works will provide the appellant with secure information.
- Under DAFM's Forest Road Entrance – Scenario & Policy document, that this is scenario 9 - Poor condition of private road (not included in the application). The SOF submits that assessment of the application is for the forest road applied for and there is no role for DAFM in assessment on the quality of the private road.
- The applicant's agent sent a statement that (the applicant / agent) will complete a site-specific method statement along with consult with neighbours on the right of way to mitigate any damage to the laneway.
- A revised in combination statement was uploaded to "CN on 22/03/2024 the figures in relation to forest cover have now been resolved".
- The SOF also submits that the department of Agriculture Food & the Marine considers the site notice with information at the marked location of application, as providing members of the public an opportunity to consult in the form of submissions.

Consideration of FAC

As alluded to earlier in this letter and having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister for Agriculture, Food, and the Marine, and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures.

In addressing the grounds of appeal, the FAC considered the completeness of the assessment of the licence application and an examination of the procedures applied which led to the decision to grant the licence. The FAC also had regard to the documentation provided through the DAFM's FLV as notified to the parties, the notices of appeal, and the statements provided by the DAFM.

In considering the documentation on the file the FAC noted in the SOF, that in the statement from the DAFM's Forestry Inspectorate in point 3, reference is made to "*A further information request was sent to the applicant to prove a Right of Way across Folio 1671 to the benefit of the appellants laneway. A sworn affidavit with a map showing the right of way was produced by the applicant. In relation to concerns to the connections under the laneway and that the road is not built for heavy machinery, in an email on 12/03/2019, the applicants agent sent a statement that will complete a site-specific method statement along with consult with neighbours on the right of way to mitigate any damage to the laneway*". Having examined the documentation on the file as shown on the Forestry Licence Viewer the FAC did not find any correspondence relating to the email of the 12/03/2019 or any other documentation relating or associated with this email. The FAC subsequent to its hearing on 20/11/2024 requested that this documentation be submitted by way of further information. In addition, in the Statement from the Inspectorate in points 9, 10 and 11 reference is made to a document named as DAFM's Forest Road Entrance – Scenario & Policy document. The FAC also requested a copy of this document be furnished by a way of further information.

The documentation was received from DAFM and circulated to the parties. A response from the applicant included a report in relation to the road and the suitability of the road for the purpose of the project which was circulated. In response the appellant reiterated the position outlined in the grounds of appeal in relation to a right of way, the condition of the road and the unsuitability of the road for the purpose proposed.

The grounds of appeal express a number of concerns primarily in relation to the issue of the road access and impact on the appellant's property and suitability of the laneway for the anticipated volume and type of traffic arising from the project.

In making a decision on the construction of a road, the Minister is required to undertake a number of processes and to have regard to certain matters. This includes, in keeping with Article 6 of the EU Habitats Directive, considering the likely significant effects of a proposal itself or in-combination with other plans and projects on European sites, Special Areas of Conservation and Special Protection Areas, having regard to the conservation objectives of those sites and determining whether an Appropriate Assessment is required. In relation to the broader environment, the Minister must also consider what likely significant effects may arise from a proposal and whether an Environmental Impact Assessment is required.

The DAFM, in keeping with the requirements of the previous FAC decision relating to this licence, carried out an Assessment to Determine EIA Requirement dated the 20/05/2024 and certified on 07/05/2024, in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, landscape, amenity and recreation, Transfrontier, cumulative effects and referrals and submissions and resolving the discrepancies between the figures for forest cover and determined that the project was not required to undergo EIA.

In relation to EIA, the 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. At 410 metres, the proposed project is significantly below the threshold for mandatory EIA. The FAC having reviewed the documentation does not consider there is a requirement for EIA and concludes that DAFM has not erred in relation to the determination for an EIA.

The DAFM, in keeping with the requirements of the previous FAC decision relating to this licence, carried out an Assessment to Determine EIA Requirement dated the 20/05/2024 and certified on 07/05/2024, in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, landscape, amenity and recreation, Transfrontier, cumulative effects and referrals and submissions and resolving the discrepancies between the figures for forest cover and determined that the project was not required to undergo EIA.

In relation to Appropriate Assessment, the FAC finds that the DAFM, in its processing of the application which led to the decision subject of this appeal (FAC 057/2024), carried out a fresh Appropriate Assessment screening of the proposal under Article 6(3) of the EU Habitats Directive. Accordingly, the FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the Habitats Directives. The FAC finds that the DAFM prepared the following documents / reports.

- An Appropriate Assessment Screening Report (AASRD) dated 09/03/2023 carried out by a DAFM Ecologist. This examines four European sites and screens in the Lower River Shannon SAC IE0002165 and the River Shannon and River Fergus Estuaries SPA IE0004077. Two sites were screened out, Barrigone SAC IE0000432 and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161. Reasons are provided for the screening conclusions reached for the four European Sites concerned.
- An Appropriate Assessment Report (AAR) on file prepared by a consultant ecologist on behalf of the Minister for Agriculture, Food and the Marine and dated 14/03/2023 which in Section 4 sets out the mitigation measures required in the case of the proposal. Section 5 is an

Assessment of Potential Residual Impacts and section 6 outlines an in-combination assessment with an In-Combination Statement indicated as completed on the: 09/03/2023.

- An Appropriate Assessment Determination dated 29/04/2024 is on file which sets out that the works as proposed in the AAR dated 14/03/2023 for CN86043 should be adhered to and sets out the mitigation measures prescribed and concludes based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.
- An Appropriate Assessment Report Appendix A: In-combination report for Forest Road project CN83195 is on file. It refers to various online resources, datasets and DAFM's own databases that were consulted on the 29/04/ 2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin CLOON (CLARE)_020. It contains an In-Combination Statement relating to the screened in European site. Section 6 is an In-Combination Statement which concluded that there is no possibility that the Forest Road project CN83195, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report and there is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects. It is noted that the Objectives relating to Natura 2000 sites set out within the Clare County Development Plan 2017-2023 were consulted. The FAC also noted that the Clare County Development Plan 2023-2029 came into effect on 20/04/2023 and was the statutory development plan on the 29/04/2024.

In relation to Appropriate Assessment (AA), the FAC noted that four European sites are recorded in the Appropriate Assessment Screening Report as lying within 15km of the project area, defined as the likely zone of impact and that two sites were screened out and subsequently an AAR and AAD was carried out with an overall conclusion of no likelihood of an adverse and residual effect on any European site.

The FAC noted that the proposed project is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the four sites identified for initial screening are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites and were the subject of an Appropriate Assessment in relation to the potential impacts of the likely significant effects of Afforestation project CN93195. The proposal is for the construction of a road that lies outside and at a considerable distance from the closest European site.

In the Appropriate Assessment Report for Forest Road construction project CN83195 dated the 14/03/2023 the report concludes in section 6 *“that there is no possibility that the proposed forest road project CN83195, with mitigation measures set out in Section 4, will itself, i.e. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Lower River Shannon SAC and River Shannon & River Fergus Estuaries SPA. Similarly, there is no likelihood of any residual effect(s) that might arise, which do not in themselves have an adverse effect, creating an adverse effect in-combination with other plans and projects. Therefore, there is no potential for the proposed project to*

contribute to any adverse effect on the integrity of the above European Site(s), when considered in combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure that they too do not give rise to any adverse effect on the integrity of these European Sites. Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of the above European Site(s)''.

The Statement as quoted above as appearing within a report dated 14/03/2023 is recorded as having been signed off on 09/03/2023. The said statement which is dated 09/03/2023, relies on the application of mitigation measures that have been formulated on the 14/03/2023. The FAC considers that it is a serious error to rely with the statement dated 09/03/2023 on a report which postdates it.

The FAC also notes that the AASRD (screening report) makes reference to '*the in-combination assessment attached to this AA Screening*'. However, the FAC finds no screening stage in-combination assessment on file as the version included in the AAR makes reference to and relies on mitigations being applied and appears to only relate to the screened-in European site. The FAC considers that this represents a further error in the processing of that application as it relates to Appropriate Assessment.

Notwithstanding this, a separate report titled '*An Appropriate Assessment Report Appendix A: In-combination report for Forest Road project CN83195*' which is undated and which refers to databases consulted on the 29/04/2024 concludes that

'there is no likelihood of the proposed Afforestation project CN86043, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions'' Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment.'

The FAC also notes that in the Appropriate Assessment Report Appendix A: In-combination report for Forest Road project CN83195 which is undated but which refers to databases consulted on the 29th April 2024 and that database relied on the provisions of the Clare County Development Plan 2017-2023 as consulted but on that date the Clare County Development Plan 2023-2029 had been in effect since the 20th April 2023 and was the statutory development plan on the 29th April 2024. The FAC considers this to be a serious error.

Specifically, to the grounds of appeal the grounds refers to the absence of consultation with the appellant as a resident. There is no information before the FAC to suggest that statutory procedures in relation to consultation were not adhered to or that site notices were not erected or required to give notice of the project.

In relation to the impact of the proposed traffic on the road and potential damage to property the FAC considers that this is a civil matter and does not fall within its remit. The FAC noted that documentation submitted included a statement that the applicant will complete a site-specific method statement along with consulting with neighbours on the right of way to mitigate any damage to the laneway. Such an approach would be reasonable however it is not specifically required by condition in the decision to approve the licence. The FAC considers that it would be appropriate that such a condition should be included. The FAC considers that a condition of this nature should also address any matters relating to damage to underground services raised in the grounds of appeal.

Matters raised in the grounds of appeal in relation to the right of way are not within the remit of the FAC as this matter is a civil matter.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a serious error or a series of errors were made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN83195 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, and to address the other issues raised previously in this letter before a new decision is made.

Yours sincerely,

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Derek Daly On Behalf of the Forestry Appeals Committee