

Official Use Only	FAC Reference _____
Date Received	_____
Received on time?	Yes/No
3rd Party	Yes <input type="checkbox"/> No <input type="checkbox"/>
Checked by:	_____

N86643

# NOTICE OF APPEAL FORM

Appeal to the Forestry Appeals Committee (FAC)

This form represents the format of appeal required by the FAC and must be employed in submitting an appeal in line with the Forestry Appeals Committee Regulations 2020.

**Appeals submitted in any other format will not be accepted.**

Appellant Details	
<p><b>IMPORTANT NOTE: IF THERE IS MORE THAN ONE PERSON MAKING AN APPEAL A SEPARATE NOTICE OF APPEAL FORM MUST BE SUBMITTED BY EACH APPELLANT.</b></p> <p><b>AN APPEAL RECEIVED WITH MULTIPLE APPELLANTS LISTED WILL BE DEEMED INVALID.</b></p> <p>PLEASE COMPLETE ALL FIELDS.</p>	
1. Name of Appellant:	[REDACTED]
2. Address of Appellant: (Please include Eircode)	[REDACTED]
3. Telephone Number:	[REDACTED]
4. Email: <small>Please note by providing an email address all correspondence from the FAC may issue via email</small>	[REDACTED]
Details of decision of the Minister for Agriculture, Food and the Marine (DAFM) to be appealed A SEPARATE FORM MUST BE COMPLETED FOR EACH DECISION	
5. Decision Reference <sup>1</sup> : <i>Please tick the appropriate licence type and provide the licence number</i>	<input checked="" type="checkbox"/> Afforestation (CN): CN86643, <input type="checkbox"/> Forest Road Works: (CN): _____ <input type="checkbox"/> Felling Licence: _____ <input type="checkbox"/> Aerial Fertilisation (AFA): _____
6. Date of Decision under appeal <sup>1</sup> : 18 July 2022 / /	7. Town land and County: Rathoran, Kerry
8. Please indicate if you are the APPLICANT <sup>2</sup> named in the Decision : No <input checked="" type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/>	

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<sup>1</sup> Available on DAFM website <https://www.gov.ie/en/publication/642e6-forestry>

<sup>2</sup> Applicant refers to the person who made the application to the Department of Agriculture Food and the Marine for the licence, approval or entry in a register that is the subject to this appeal.

## 9. Appellant's Grounds of Appeals and supporting documents/information

The appellant must complete Section 14 overleaf by setting out in writing all of the grounds of appeal that must be specific to the licence including the facts and reasoning on which the appellant intends to rely and in accordance with Section 14.B(4) of the Agriculture Appeals Act 2001 (as amended) must include with their appeal all documents, particulars or other information that they consider relevant and a list of any such documents, particulars or other information.

## 10. Fee to be included with appeal

The Forestry (Miscellaneous Provisions) Act 2020 provides for the collection of fees of €200. Please include €200 by way of postal order, bank draft or cheque with this form. Payments should be made payable to the Forestry Appeals Committee. **Please note that failure to submit the fee with your appeal will result in your appeal being deemed invalid.**

## 11. Hearing of appeals

Appeal hearings are held by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois, R32 DTW5, or in another venue in Portlaoise, or when deemed appropriate remotely. The Forestry Appeals Committee shall determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, it considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Any fees that any representative(s) may charge or any expenses incurred by the appellant or their representative(s) attending a hearing shall be borne by appellants or their representative(s). Where held, appellants shall be advised of the date, time and location of the oral hearing and it will not be possible to change the date once scheduled. Names of any person(s) accompanying appellants or nominated to attend an oral hearing on an appellant's behalf must be provided on request. Where an email is provided all communications from the FAC may issue via email only.

## 12. Submission of appeals

Appeals may be submitted by post. The postal address is **Forestry Appeals Committee, Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois, R32 DTW5**. The Notice of Appeal Form must be signed by the appellant. **Appeals and payments that are not received within the statutory deadline cannot be accepted.**

### Statutory Deadline for Receipt of Appeals

Any decisions issued by the Minister for Agriculture, Food and the Marine (DAFM) are subject to the statutory 14-day deadline i.e. The FAC Notice of Appeal Forms must be received by this office along with the €200 fee within 14 days of the DAFM decision.

If you do not receive an acknowledgement of your appeal please contact the Forestry Appeals Committee via Tel: (057) 8667167; or e-mail: [forestry@agriappeals.gov.ie](mailto:forestry@agriappeals.gov.ie).

## 13. Processing of your appeal and sharing of information

### Data Protection – GDPR

- i. The Forestry Appeals Committee (FAC) collects personal data to process appeal applications personal data may be used for statistical, research and analysis purposes in some circumstances, but will only be done so in compliance with the Data Protection legislation in force. Data used for such purposes will be pseudonymised (masked) or anonymised, as appropriate, to protect to the security and confidentiality of the data. The use of the data in this way may facilitate the Forestry Appeals Committee (FAC) in informing policy decisions into the future The FAC is fully committed to keeping all personal data submitted by its customers fully safe and secure during administrative processes.
- ii. The AAO, when processing a FAC appeal, may share data collected from the appellant with other relevant parties and the appeal data may be included in the record of and read publicly at any oral hearing held for the relevant appeal and may be published on a public website. The Agricultural Appeals Act 2001, as amended, and Forestry Appeals Committee Regulations 2020 provides for this sharing of data.
- iii. The DAFM Statement on the grounds of appeal will be provided to all parties to the appeal.
- iv. Information relating to appeals shall be retained by the FAC for a minimum of 7 years.



THE JUDGEMENT In Case C-258/11 states at 44

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that **it cannot 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 works proposed on the protected site concerned (see, to this effect, Case C-404/09 *Commission v Spain*, paragraph 100 and the case-law cited). It is for the national court to establish whether the assessment of the implications for the site meets these requirements.

The Appropriate Assessment in this case does not comply.

29/07/2020 - Submission received from member of the public, outlining obligations under the Habitats Directive, and Environmental Impact Assessment.

The Appropriate Assessment states that it took the following submission into consideration.

**It did not.**

► The fencing required shall be installed in a manner that will not impede any movement of otter along the riparian corridor. The proposed fencing required adjacent the southern/south-eastern boundary of Plot 6 will be installed (outside the water setback area) a minimum of 20m back from the edge of the watercourse.

This will ensure that otter foraging/commuting routes are not impeded.

**This is not in compliance with Case C-258/11**

In the event that otter resting sites/breeding sites are encountered/observed at the project site/project

area, then the Forest Service will be immediately notified and works in this area will be avoided, and the project Ecologist will advise on the installation of recognised buffer distances, where no operations will take place or a derogation licence from NPWS may be required.

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**This is evidence of a lacuna.**

Use existing crossings of relevant watercourses **where possible.**

**This is evidence of a lacuna.**

Install silt traps down stream of any temporary crossings of relevant watercourses/drains carrying water.

► Location and design of silt traps will be informed by Registered Forester/and or Site Ecologist prior to commencement of forestry operations.

► The number, design and size of sediment traps must be sufficient to protect against the sedimentation of any receiving aquatic zone during afforestation and throughout the remainder of the forest rotation.

Contingency Plan will be in place detailing the procedures and structures for response to any emergencies on site and will be readily available. The plan will clearly inform all machine drivers/site

personnel how to act and who to contact, should an unexpected event arise that may create a risk to the environment, including deterioration of downstream watercourses.

**This is evidence of a lacuna.**

**The otter is a species given "strict protection" in the Habitats Directive therefore any assessment must be complete.**

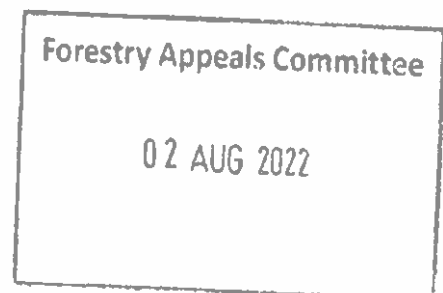
**The Hen Harrier is a species protected under the Birds and Habitat Directives not just its nest.** The fact that the Appropriate Assessment contains "No forestry operations associated with this licence shall take place during the hen harrier breeding season (i.e. no works shall be carried out between 1st March to 15th August, inclusive)." Shows that this is a site used by Hen Harriers.

**No Environmental Impact Assessment screening according to the Directive has taken place as the cumulative effects have not been assessed.**

**The limitation to 14 days does not comply with the Environmental Impact Assessment Directive.**

**AN APPEAL RECEIVED WITH MULTIPLE APPELLANTS LISTED WILL BE DEEMED INVALID.**

**This statement has no validity in law.**



## **ANNEX I TO THE APPEAL.**

The Forest Appeal Committee has four distinct sets of legal tasks when it deals an appeal.

Firstly, it must assess the requirement for the development to be subjected to Environmental Impact Assessment, according to the Environmental Impact Assessment Directive and the case law of the CJEU.

### **PROJECTS REFERRED TO IN ARTICLE 4(2)**

d) Initial afforestation and deforestation for the purposes of conversion to another type of land use.

Land use which has been converted without Environmental Impact Assessment must be assessed as unforested.

The Directive states at

Article 4.3 When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account, paying particular attention to

*(v) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ( 1 ) and to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ( 2 );*

### **The cumulative assessment cannot in law be limited to five years.**

Secondly, and different in nature to the first two tasks, the FAC is the competent authority having responsibilities under the **Habitats Directive., and must carry out a screening for Appropriate Assessment.**

- 1. The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26. 26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49: "47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.*

This point is further explained in the CJEU decision In Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta which states;

*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, for a site concerned, of a plan or project, 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 threshold the any decision to grant permission must pass in this context is explained in paragraph 44 of CJEU Case 258/11

*"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot 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 works proposed on the protected site concerned."*

This is a strict standard and the FAC does not have legal jurisdiction to give permission if it is not met.

Thirdly the development must be assessed for compliance with the requirements of the Water Framework Directive.



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PLEASE RESPOND ONLY BY EMAIL

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