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16th April 2020

Our ref: FAC018/2019, FAC019/2019, FAC020/2019, FAC021/2019 CN80723

Subject: Appeal in relation to afforestation licence CN80723, Cloonsnaghta, Co. Clare

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of licence CN80723. 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

Afforestation licence CN80723 at Cloonsnaghta, Co. Clare was granted by the Department on 9th January 2019.

Hearing

A hearing of appeals FAC018/2019, FAC019/2019, FAC020/2019 and FAC021/2019 against licence CN80723 was conducted by the FAC on 7th April 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor and Mr Pat Coman

Decision

Having regard to the evidence before it and the following considerations, the FAC has decided to cancel the decision of the Minister regarding licence CN80723.

The decision relates to afforestation of 6.63ha with 691m fencing at Cloonsnaghta, Co. Clare. This area would comprise 4.96 ha of Sitka spruce and broadleaves, 0.39ha of open space, and 1.28 ha of native woodland (alder, birch willow, other broadleaves). Site preparation would be undertaken through mounding with no additional drainage. No fertiliser is proposed and herbicide weed control would be undertaken in years 0-3. The site is described as mainly flat with a gley, highly modified peat soil type and a vegetation type is pasture, grass rush. The land is currently in agricultural use. A river runs to the north of one of the plots and there are a number of dwellings in the vicinity of the proposed planting. The decision was issued with conditions including,

- Install aquatic buffers in plot 1 to adhere to fresh water pearl mussel requirements i.e. 15m buffers plus 5m of pit planted broadleaves.
- There has been a slight reduction in area to take account of local submissions.,
- Plot 1 has been changed to GPC 10,
- Adhere to forestry biodiversity Guidelines

Four appeals were submitted against this decision by property owners in the vicinity and these appeals were heard together by the FAC. The grounds of appeal, which have been circulated to parties, are similar in nature and include concern for a water main that runs through part of the site, concern for the impact on views from the dwellings, potential impact on mobile and broadband required for work and security, concern that wildlife and water would be impacted, concern that wildlife would be attracted to the area.

In the statement submitted to the DAFM and circulated to parties, the DAFM state that they are satisfied that their criteria have been met and do not recommend any changes to the proposal. The Inspector states that the DAFM had requested amendments to the original proposal in light of submissions made by property owners in the vicinity and this is evident in the revised maps of the project. It is also noted that a number of appellants' dwellings sit at an elevation and look over the site. The DAFM Inspector also notes that the applicant's agent is aware of the watermains on site and that it does not present an insurmountable problem.

The FAC noted that the licence was granted with a number of conditions attached to it including the mandatory adherence to the Forestry Standards Manual. Section 6.5.4 of those standards requires the maintenance of a corridor of 15m in relation to watermains. It would have been beneficial if the DAFM had related this requirement to the appellants in their correspondence, but this corridor would be required whether explicitly stated on the licence or not. The proposal was evidently amended to provide for a greater setback from dwellings in the vicinity and to maintain line of sight with the public road. In combination with the setting of the dwellings, this would lessen the visual impact of the proposal. The proposal was also amended to include a portion of native woodland adjacent to the watercourse in the vicinity and, in combination with other measures and the removal of livestock, this plot should be of benefit to the local wildlife and watercourse. Potential impacts on mobile reception may be limited by the use of alternative providers and, it is noted by the DAFM, that other masts and providers are present in the area. The FAC considers that much of the design of the proposal is of an acceptable nature and there is evidence of amendments made in response to the original submissions of the appellants.

However, the FAC requested additional information from the DAFM regarding mitigation measures and other plans and projects included in the appropriate assessment screening under the Habitats Directive in their consideration of the proposal and the following response was provided,

When the Forest Service of the Department of Agriculture, Food and the Marine, first assessed the likely effects of this proposed development on the local receiving environment it did take into consideration standards of good forest practice, and more specifically when applying the Appropriate Assessment Procedure then in use to carry out an Appropriate Assessment Stage 1 screening in respect of the proposed development, it also took those same standards of good forest practice into its consideration as mitigation measures in terms of their potential to avoid or reduce the likely effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.

Therefore, if the application was screened again today, under the revised Appropriate Assessment Procedure currently in use, it would not be screened out.

The proposal lies some 3km upstream of the Lower River Shannon SAC and within the Cloon River Freshwater Pearl Mussel catchment. There is evidence in the application process and in the conditions of the licence that measures designed to reduce the possible impact of the proposal were taken into account at the screening stage as described in the information from the DAFM. Based on the

information before it, including the DAFM submission in response to the Further Information request, the FAC considered that the requirements of the Habitats Directive in respect of screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence and, in particular, it appears that mitigation measures were taken into account at the screening stage inappropriately. Furthermore, no information on other plans or projects was provided to the FAC. For these reasons and in these specific circumstances, the FAC has decided to cancel the decision regarding CN80723.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on Behalf of the Forestry Appeals Committee

