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16th April 2020

Our ref: FAC078/2019 & FAC116/2019

Subject: Appeal in relation to afforestation licence CN83097, Lugmeeltan, Co. Leitrim

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 CN83097. 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 was granted by the Department on 15th April 2019.

Hearing

A hearing of appeals FAC078/2019 and FAC116/2019 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 CN83097.

The licence pertains to 8.14ha afforestation of Sitka spruce and broadleaves at Lugmeeltan, Co. Leitrim. Site preparation is proposed through ripping and woody weed removal with the application of 250kg granulated rock phosphate and herbicide weed control in years 0-3. No additional drainage is required. The application states that existing hedgerows and trees will be retained and that broadleaves planted after setback form public road. The licence was granted with conditions which included,

- Consult with Leitrim County Council District Engineer prior to starting work,
- No conifers within 30m of public road and plant a min of 20m of mixed broadleaves in irregular fashion,
- Adhere to forestry & water quality guidelines,
- All guidelines to apply

Two appeals were made against the decision and the FAC heard them together. One appeal stated that the planting would have a negative impact on residents in the area, that the proposal is within the

referral zone for the NPWS and no referral was made, that the area has a forest cover of over 60% and an EIA is warranted, that the proposal would have a negative impact on biodiversity and that the lands are currently high nature value farmland. The second appeal stated that based on the information supplied it would not be possible to make a decision that was in compliance with the requirements of the Habitats and EIA Directives and having regard to a number of judgements of the Court of Justice of the EU.

In a statement to the FAC, the DAFM stated that they were satisfied that their criteria were met in considering the application and confirmed the decision. The DAFM Inspector provided the following comment

I desk reviewed this application and according to SOP and Guidelines a field inspection would not be required but because of submissions received from the general public I carried out a field inspection on 20/3/19. I did, where possible, address concerns raised and I recommended additional broadleaves on both sides of the public road and no conifers within 30m of road. Site Notice was in order. Afforestation in the townland is 60.26%% but this, as per guidelines, would not affect the approving of this application. There are no environmental issues and there are no lands designated for such within 3km of the Afforestation site. There are no EPA streams within or draining directly from the site and there is no direct hydrological connection with any Natura site.

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 FAC notes that the proposal is in a remote area with no dwellings in the direct vicinity. It is bordered by an area of existing mature forest to the northwest and a public road crosses the proposal to the south. In line with the information provided by the DAFM there are no marked streams or rivers on the site and the closest river runs over 200m to the west. The site is at a considerable distance from any European site and there is no evidence of other sites within the vicinity that would require referral to the NPWS. The site is currently in agricultural use and existing hedgerows and trees will be retained as part of the proposal. There are evidently significant amounts of existing forest in the townland and vicinity but the response from the DAFM did not provide details of other plans or projects that were considered in their assessment.

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.

Furthermore, no information of other plans or projects were provided to the FAC to facilitate an assessment of the proposal. For these reasons, the FAC has decided to cancel the decision regarding CN83097.

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

