



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

19 February 2020

[REDACTED]
[REDACTED]
[REDACTED]

Our ref: FAC 045/2018

Subject: Appeal in relation to afforestation licence CN80299

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN80299.

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 CN80299 was granted by the Department on 19 February 2018.

Hearing

An oral hearing of appeal 045/2018 was conducted by the FAC on 18 February 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois

In Attendance at Oral Hearing:

Department Representative: Mr David Ryan and Ms Mary Coogan

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr James Conway and Mr Pat Coman

Secretary to the FAC; Ms Ruth Kinehan

Decision

Having regards to the evidence, both written and oral, before it and the following considerations, the FAC has decided to cancel the decision of the Minister regarding licence CN80299:

The proposal is for afforestation on a stated site area of 3.63 ha. The site elevation is stated to be exposed, with elevations between 70m and 75m, and the soil type is mineral. The vegetation on the

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Kilminchy Court,
Portlaoise,
Co Laois
R32 DWTS

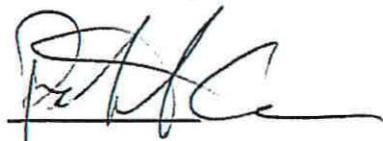
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site is grass/rush. This is a rural agricultural area with a dispersed settlement pattern. The proposed site adjoins existing forestry to the north west and south west. There is a stream along the south western boundary and this flows northwards (evidence supplied by the inspector at the Oral Hearing based on the site inspection) initially and then meanders westwards before eventually disappearing into a sink hole – indicating possible underlying karst limestone. The Balla Turlough SAC is approximately 6.0km south-east of the proposed site and the River Moy SAC is approximately 6.3km east of the site. The sink hole is stated to be at an elevation of about 60m whereas the Balla Turlough is stated to be at about 40m. There is no information in respect of any hydrogeological link between the proposed site and the Turlough. There is a public road along the north-eastern site boundary

The grounds of appeal state that the DAFM Stage 1 screening for Appropriate Assessment is fundamentally flawed and not in compliance with the Kelly v An Bord Pleanála court judgment. It also states that there was no screening for in-combination effects. In response to a request for Further Information by the Forestry Appeals Committee, the DAFM stated that, in carrying out its Appropriate Assessment screening, mitigation measures were considered in terms of their potential to avoid or reduce the likely effects of the proposal on the integrity of Natura 2000 sites and that, if the screening was carried out again, the proposal would not be screened out. At the Oral Hearing the DAFM inspector reiterated that, under new AA procedures now adopted, the potential for significant impacts on a Natura 2000 site could not be discounted, no in-combination effects had been considered and that the proposal would not be screened out for AA if considered again.

Based on the information before it, including the DAFM submission in response to the Further Information request and the submission made at the Oral Hearing, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence. Furthermore, in the absence of essential information relating to relevant European sites, and other plans and projects in the vicinity, the Committee concluded that it is not in a position to satisfactorily evaluate the likely significant effects of the proposal on the environment or on any relevant European sites. In such circumstances, the FAC decided to cancel the licence.

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