



**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

7 July 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Our ref: FAC 307/2019**

**Subject: Appeal in relation to afforestation licence CN82993**

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 CN82993.

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 CN82993 was granted by the Department on 29 October 2019.

**Hearing**

A hearing of appeal 307/2019 was conducted by the FAC on 23 June 2020.

**FAC Members:**

Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Pat Coman  
and Mr Jim Byrne

**Decision**

Having regard to all the information before it the FAC has decided to cancel the decision of the Minister in respect of licence CN82993 for the reasons set out below.

The proposal comprises 15.24 ha of afforestation and 1546m fencing in Meeltran, Co. Mayo comprising 85% Sitka Spruce and additional broadleaves. The site comprises mineral peat per application. The proposal includes mounding, slit planting and 250 kg granulated rock phosphate in year three, and the use of herbicide. The site stands at an elevation of 80 - 90m, and is currently in agricultural use, with the vegetation consisting of grass and rush. The southeastern corner of the proposal has access to the N17 road.

There are 6 SAC located within 15 km of the proposal, the closest being the River Moy SAC at a distance of 832m. A river/stream runs along the south eastern boundary of the site. It joins the Glone River, a tributary of the Moy which is listed as a salmonid river.

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The licence was granted with the following conditions:

Aquatic zone identified on biomap from 6" map is a relevant watercourse

Adhere to Archaeological conditions

Adhere to Environmental requirements for Afforestation

All guidelines to apply

There is a single appeal against the licence approval. The grounds of appeal are:

*Based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU;*

*Case C-258/11, Peter Sweetman and Others v An Bord Pleanala*

*Case C-164/17, Ede) Grace and Peter Sweetman v An Bord Pleanala*

*Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta*

*The appropriate assessment procedure of 26 November 2018 was employed in approving the application.*

*The test for Appropriate Assessment Screening in Irish Lat is set out by "Finlay Geoghan J. in Kelly – v An Bord Pleanala...*

*"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."*

In response to the appeal the DAFM stated;

*The appropriate assessment procedure of 26 November 2018 was employed in approving the application.*

Prior to making its decision and following an examination of the information furnished by the Applicant and the Department and taking into account the aquatic feature present, and the screening conducted by the Department which confirms that standard conditions were used as mitigation in respect of European sites, the FAC concluded in the first instance that conducting its own screening for appropriate assessment on the application would be impaired by the increased setback and the view by the Department that standard conditions were required in this instance in order to mitigate the likely significant effects, and secondly that as the Department took mitigation into account when screening, the screening could not be upheld to ascertain as to whether or not the project would likely have a significant effect either alone or individually in combination with other plans or projects on any Natura site in the vicinity.

The FAC concluded based on all available information and taking into account the identified mitigation that in applying the Precautionary Principle, the likelihood of significant effects on the River Moy SAC resulting from the proposed afforestation could not be discounted. In such circumstances the FAC made a decision to cancel the licence.

Yours sincerely,



**An Coiste um Achomhairc  
Fóraiseachta**

**Forestry Appeals Committee**

*Jim Byrne*

Jim Byrne, on behalf of the Forestry Appeals Committee

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