



30 July 2020

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Our ref: FAC 202/2019

Subject: Appeal in relation to afforestation licence CN83483

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN82117.

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 CN83483 was granted by the Department of Agriculture Food and the Marine (DAFM) on 16 August 2019.

Hearing

A hearing of appeal 202/2019 was conducted by the FAC on 28 April 2020.

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

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal, before deciding to cancel the Minister's decision regarding the licence (Reference CN 83483).

The proposal is for afforestation on a stated site area of 6.07ha, in three plots at Cool West, Co. Kerry. Planting is proposed on 5.18ha. The submitted details state that the soil type is predominantly podzols, the slope is flat to moderate. It is stated in the Inspector's Certification that the application was desk and field assessed and that the project area adjoins/is crossed by an aquatic zone.

The DAFM referred the application to Inland Fisheries and the response recommended conditions in the event of approval, including 10m buffer on all watercourses, pit planting and inverted mound planting to

be used where feasible, use of individual drainage channels discharging individually to buffer zones and no machinery movement in buffer zones.

The DAFM approved the licence on 28th August 2019 subject to standard conditions including:

- Plant small groups of whitebeam, rowan, and birch where possible
- Public road setback, Broadleaves 10m, Conifers 20m
- Adhere to forestry and water quality guidelines
- All guidelines to apply.

There is a single appeal against the DAFM decision to approve. The grounds contend that the proposal lacks a proper assessment, there is no assessment of cumulative effects, and the information supplied is inadequate to allow proper assessments to be carried out. Reference is made to several Court judgments.

In response, the DAFM state that there is no hydrological connection to Valentia Harbour SAC and no obvious environmental issues. The proposed project does not represent a source and there is no pathway for any adverse effect on a Natura 2000 site.

The FAC requested further information from the DAFM with regard to other plans and projects that could give rise to cumulative effects, and the screening process followed and, in particular, if mitigation measures designed to avoid or reduce effects on a Natura 2000 site were taken into consideration in the screening process. In response the DAFM stated that mitigation measures had been taken into account, information is submitted in respect of other plans and projects, including 3 afforestation licences, and the following Natura 2000 sites are listed:

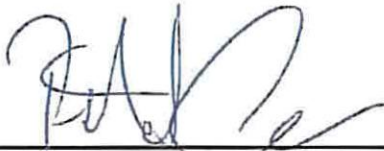
- Valentia Harbour/Portmagee Channel SAC (1414m)
- Ballinskelligs Bay & Inney Estuary SAC (10683m)
- Killarney National Park etc SAC (13626m)
- Blasket Islands SAC (14435m)
- Iveragh Peninsula SPA (952m)
- Puffin Island SPA (6664m)

The FAC noted the exposed nature of the project site and requested the views of the DAFM in respect of the viability of afforestation on this site. In response dated 29th June 2020, the DAFM responded with no particular concerns in this regard. This correspondence was circulated to the parties. The FAC also considered the location of the site adjoining a Ring of Kerry cycling route but noted that the site does not appear to have any specific amenity designation and no views and prospects across the site are listed for protection.

In determining this appeal, the FAC had particular regard to the Inspector's certification that the project site adjoins/is crossed by an aquatic zone, and the response of the DAFM to the request for Further Information that mitigation measures had been taken into account in the screening for Appropriate Assessment. While noting that the Bio-Map submitted with the application does not show any aquatic zone or watercourse on or adjoining the project site, and no such watercourse appears on EPA maps, the

FAC noted that the application had been both field and desk assessed by the DAFM. Based on the information provided by the DAFM by way of Further Information, the FAC is not satisfied that a Stage 1 screening was satisfactorily carried out in accordance with the provisions of the Habitats Directive and, further concluded that the likelihood of significant effects on a Natura 2000 site cannot be discounted. In these circumstances, and in adopting the Precautionary Principle, the FAC decided to cancel the decision to grant the Licence.

Yours Sincerely

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

Pat Coman, on behalf of the Forestry Appeals Committee

