



11th June 2020

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Subject: Appeal FAC010/2019 against licence refusal CN81518

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence refused by the Minister for Agriculture, Food and the Marine (DAFM). 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 all parties to the appeal.

Background

Licence CN81518 for 17.53 hectares of afforestation at Kilmacat, Co. Limerick was refused by the Department of Agriculture, Food and the Marine on 17th December 2018.

Hearing

A hearing of appeal FAC010/2019 was held by the FAC on 9th June 2020.

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

Decision

Having regard to the evidence before it, including the DAFM file and notice of appeal and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence CN81518.

The refusal relates to an application for 17.53 hectares afforestation of mixed native tree species, common alder, goat willow, downy birch and other broadleaves, at Kilmacat, Co. Limerick. The site is described as enclosed, agricultural land on peat soils. Site preparation would be through mounding and no fertiliser is proposed. It is proposed to retain the hedgerows on site and to include a 3 metre buffer in addition to an aquatic buffer. The land lies within the Dromore and Bleach Loughs proposed Natural Heritage Area (Site Code 001030). The proposal was referred by DAFM to the County Council, An Taisce and the NPWS. Only the NPWS replied and stated that the lands lie within a pNHA which is protected under the County Development Plan and that they considered that the submission of an Environmental Impact Statement would be required if the application was to proceed further. The DAFM refused the licence providing the following reasons,

- Shell Marl,
- Environmental Considerations,

- Incapable of producing commercial crop YC<14,
- Land Unplantable,
- Outside scope of Scheme,
- Refer to Appendix 13 of the Forestry Standards Manual, Shell Marl and Calcareous Soils. Trees planted where the rooting zone is influenced by marl rarely thrive. Concentrated shell marl is present from 10cm downwards. The water table is high at 20cm from the surface. Vegetation points to an R+N score of less than 4.9. There are concerns as to the affect the proposal would have on the proposed Natural Heritage Area Dromore & Bleach Loughs code 001030 and the NPWS state an EIA is required.

A first party appeal was made against the decision that stated that the land is suitable for native woodland establishment and that soil tests and the opinion of an expert would be provided to substantiate this. However, no further submissions or observations were made.

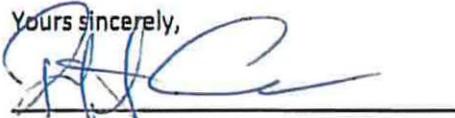
In a statement to the FAC following the appeal, the DAFM stated that they are satisfied that their procedures have been followed and confirmed their decision. The DAFM went on to note that the site was field inspected and tests for shell marl were undertaken using Hydrochloric acid (HCL). They again stated that shell marl lies at 10cm below the surface and that the water table lies at 20cm. They suggested that a plantation must grow vigorously to produce a full forest canopy.

The remit of the FAC is to hear and decide appeals submitted against decisions of the Minister for Agriculture, Food and the Marine and their Officers under Section 7 of the Forestry Act 2014 excluding grants and the Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to a licence for afforestation, felling of trees, forest road construction or aerial fertilisation of forests. Therefore, the FAC will not address issues related to a forestry scheme but only the decision to refuse an afforestation licence.

The lands lie between two lakes in an area that is classified as marl on the Teagasc subsoil map provided on the website of the EPA. There is no evidence to support the suggestion that the soils in this area are suitable for the establishment of a forest. Based on the information before it, particularly in relation to the presence of shell marl and a high-water table, the FAC is not satisfied that the proposed site is suited for forest establishment. The FAC concluded that the proposal is unlikely to result in a healthy forest and, as such, would not be in keeping with good forestry practice and confirmed the refusal decision.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,



Pat Coman on behalf of the Forestry Appeals Committee