



**An Coiste um  
Achomhairc  
Foraoiseachta  
Forestry  
Appeals  
Committee**

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

26/03/2020

**Our ref: FAC 180/2018**

**Subject: Appeal in relation to licence CN81888**

Dear [REDACTED]

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

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**

Afforestation licence CN81888 at Rathcahill West, Co Limerick was issued on 11 October 2018 with conditions.

**Hearing**

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 03 March 2020.

**In attendance at the oral hearing**

**Applicant:** [REDACTED]  
**Applicant Representative:** [REDACTED]  
**Department Representatives:** Mr Seppi Hona and Ms Lisa Chigara  
**FAC Members:** Mr Des Johnson (Chairperson), Ms Mary Lawlor, Mr Vincent Upton and Mr Pat Coman  
**Secretary to the FAC:** Ms Ruth Kinehan

**Decision**

Having regard 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 CN81888.

The proposal is for afforestation on a site of 12.28 ha at Rathcahill West, Co Limerick. The site with an elevation of 200-240m on mineral soil is stated to be enclosed agricultural land with grass, grass rush vegetation and is currently in mixed agricultural use. This is a rural agricultural area with a generally dispersed settlement pattern, but with a number of dwellings proximate to the proposed

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site. There is some existing forestry in the vicinity. There is a watercourse at the south of the site fronted by plot 783 which is on the licence to be planted subject to setback from the stream.

In respect of setback distances from houses there is a requirement in the absence of agreement that a minimum setback distance of 60m is in place. At the hearing the applicant's side confirmed a setback was in addition applied to the old house (not currently lived in) on the site. The applicant's side also confirmed account was taken of right of way. The appellant's house west of plot 334 was confirmed at the hearing to be south facing. The licence conditions include that the 60m house setback (334) be edged by a 20m plot of GPC 6 (pure oak). The planting to the east of the appellant's houses is on higher ground to a gradient of 240m, and the land east of the proposed site rises higher to just above 280m. There was no referral of the application to the local authority prior to issuing the licence and there is no designated highly sensitive landscape identified to the FAC regards the site. On balance the FAC is satisfied the standard setbacks address matters of light and views for each of the houses within the provisions of the Forestry Standards Manual.

During consideration of the file, the FAC requested further information in respect of the appropriate assessment procedures adopted by the Department of Agriculture Food and the Marine. In reply, the Department stated that, in carrying out its screening, mitigation measures were considered in terms of their potential to avoid or reduce the likely effects on the integrity of European sites and that if the application was re-screened at this stage it would not be screened out. The response did not supply further information in respect of potential for in-combination effects with other plans or projects in the area. At the Oral Hearing, the Inspector reiterated the view expressed in the submission of further information that the application would not be screened out if rescreened.

The FAC considers 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. As a public authority the FAC proceeded to screen for appropriate assessment under Article 6(3) of the Habitats Directive, a copy of which is on the public file. The Lower River Shannon SAC is at a hydrological distance of 7.4 km and a straight-line distance of 2.7 km and qualifying interests include salmon and freshwater pearl mussel. The salmonid Eegaun River was set out for by Inland Fisheries Ireland in response to a referral by the Department and silt traps were recommended. The FAC considers the possibility of a significant effect on the SAC waters and the qualifying interests are deemed at least uncertain at this stage of screening. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is at 365m from the site. The SPA's qualifying interest is the Hen Harrier and while there is no evidence provided of foraging by Hen Harrier on this agricultural land or of Hen Harrier nesting within the project site or proximate to it, the surrounding nature of sections of the SPA to the site, at all points of the compass, is of concern with regards the Hen Harrier. Works on the site would involve machinery and activities which may need to be further assessed for any possible disturbances. The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered by the possibility of significant effects and as such effects are deemed to be at least uncertain in this instance the FAC considers the project should not be screened out. In the absence of sufficient information, no screening for possible in combination effects was undertaken and no further assessment is undertaken.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee

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