



18 November 2020

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Our ref: 118/2019

Subject: Appeal in relation to Afforestation Licence CN83296

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 licence CN83296.

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 CN83296 was granted by the Department on 16 April 2019.

Hearing

An oral hearing of appeal 118/2019 was conducted by the FAC on 08 October 2020.

Attendees:

FAC Members;	Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy and Mr Pat Coman
Secretary to the FAC;	Ms Ruth Kinehan
Appellant;	[REDACTED]
Applicant;	[REDACTED]
Applicant's representative;	[REDACTED]
DAFM;	Mr Robert Windle (Forestry Inspector) and Ms Janet Farrell (HEO)

Decision

The Forestry Appeals Committee (FAC) having considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal and all submissions/observations including those from the oral hearing of the appeal, before deciding to set aside and remit the decision to grant this licence CN83296.

The proposal comprises 5.14 ha of afforestation, in 3 plots, at Crutt, Co Kilkenny with 550m of stock fencing. Planting of 85% of the area is to be with Sitka Spruce and the remaining 15% to be with

additional broadleaves (70% Oak and 30% others). The proposal includes unplanted set back areas. Soil type is described as mineral, elevations are between 140m and 160m, and land is classified as enclosed. Plot 1 (093) comprises 1.91 ha and is to the north, plot 2 (169) comprises 2.37 ha is on the other side of a public road and to the south of plot 1, and plot 3 (181) of 0.86 ha is further south from plot 2. Operational details include manually applied herbicides in years 1 and 2 and zero fertiliser. Ground preparation is by mounding and planting methods are by angle notch, pit and slit. The proposal is within the Nore Catchment, plot 1 is within the Nore_60 sub-catchment, while plots 2 and 3 are within the Dinin North_10 sub-catchment.

In processing the application for licence there were no referrals by the DAFM. The DAFM carried out a screening for appropriate assessment as is required by Article 6(3) of the Habitats Directive, and screened the proposal for appropriate assessment. Inspector certification confirms the proposal (part of plot 1) is within a Fresh Water Pearl Mussel catchment area.

There are additional conditions attached to the licence as follows;

- ADB to consist of 70% Oak and 30% other broadleaf,
- 10 rows of broadleaf trees to be planted along house setback, 5 rows along all other field boundaries,
- House setback 60m, strictly adhere to all other setbacks,
- Adhere to forestry & water quality guidelines,
- All guidelines to apply,

There is one appeal against the decision to grant the licence and the grounds of appeal are summarised as follows:

- The appellants recently completed construction of a new dwelling and this would be unreasonably affected
- There would be a loss of southerly elevation due to the height of the mature trees
- Low rising sunlight would be completely blocked from the house and garden
- The proposal would lead to increased isolation. When the trees are mature, the house would no longer be visible from the public road
- There would be a negative impact on the fertility of agricultural land and this may impact on the viability and value of the appellants' dairy farm
- Fire concerns
- Concern for the integrity and stability of the narrow access road
- There would be a lack of biodiversity in these single species evergreen conifer trees.

In response to the appeal, DAFM stated the District Inspector field inspected the application on 09 April 2019 and evaluated using the appropriate GIS datasets, and the appropriate assessment screening standard operating procedure of 26 November 2018 was applied. The statement erroneously refers to a forest road. The proposal is stated to be 5.8 km from the River Barrow and River Nore SAC and that there is no hydrological connectivity from the proposal to any of the Natura sites, and there is no possibility that the project, individually, will have an impact of this Natura site. The DAFM Inspector stated conditions 1 and 2 were added to soften boundaries with native broadleaves and set backs were addressed by condition 3, and Circular 12/2016 refers.



At the oral hearing the applicant's side stated that the decision to afforest the land takes account of the owner's personal circumstances, that all guidelines were adhered to and licence was approved, and the applicant should be allowed his income from the project. The appellant stated concern regards their dwelling and views, and contended that sunlight will be affected by mature trees. Also, concerns regards shading of public road and possible effects on land fertility, along with increased fire risk and increased isolation and impact on health. The appellant confirmed their main concerns are with plot 1, nearest their home, and has concerns regarding fertility regards the other plots. It was noted at the hearing the nearest conifers to the dwelling would be planted at 80m due to the licence conditions. Land drains and the location of a well were detailed for by the appellant. The applicant's side stated that the area nearest the appellant's house can be planted with small growing trees, and in general trees will be clear felled at 21-23m, there will be standard road setbacks. A drain on plot 1 was discussed (east to west). On the question of only planting broadleaves in plot 1 the appellant confirmed there would still be issues. The DAFM stated there were no drains at inspection (plot 1), no running water. The DAFM stated there was no hydrological connection to a Natura site, including from plot 3. The DAFM stated there have been no reports of fire issues in that area.

The Forestry Standards Manual (2015) sets out for setbacks at section The FAC considers the pre-existing forestry in the surrounds of the appellants dwelling, albeit at a remove, will be added to by the proposal to afforest plot 1 south-west of the dwelling will add to horizon impacted and give rise to greater enclosure. The FAC considers additional regard should be given to leaving the northern area of the plot unplanted to assist in addressing these issues, that is the area above the old field boundary/drain that runs west to east in the upper section of the plot.

On the basis of the information and evidence before it, the FAC is satisfied the project is not necessary for or connected with the management of any Natura 2000 site. The stated factors on which the DAFM deemed the project will not have a significant impact on a Natura site were; *the absence within and adjacent to the project area, of any of the habitats listed as qualifying interests of the Natura site / the absence of any aquatic zone crossing or adjoining the project area / the lack of any significant relevant watercourses within the project area / mandatory adherence to any safeguards within the project, as set out in published Forest Service Guidelines, requirements and procedures.*

There are 4 European Sites within a 15km radius of the proposal, these are River Blackwater and River Nore SAC at c.2.8km, Lisbigney Bog SAC at c.6.4km, Ballyprior Grassland SAC at c.14.0km, and the River Nore SPA at c.5.7km. The proposal was screened out for Appropriate Assessment by the DAFM with no likelihood of significant effects arising for any of the European sites on grounds that included for no hydrological connection with a European Site. The evidence before the FAC indicates there is such a connection from plot 3 to the River Blackwater and River Nore SAC. The downstream distance per EPA mapping is c.5.9km. In addition plot 1 is confirmed as being entirely with the Nore Freshwater Pearl Mussel Catchment. The FAC is satisfied in this instance with the procedure followed by the DAFM in screening on 11 April 2019, prior to the decision to issue the licence, did

not take account of the downstream connectivity, incorrectly took adherence to guidelines into account in assessing any likelihood of significant effects and made a conclusion regards effects that was improper to the screening stage – screening conclusion 2; *the project will not have a significant impact*. In addition to the foregoing there is no evidence that possible in combination effects with other plans and projects were considered for.

The FAC considers these factors comprise a significant error in the decision to grant the licence. The FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment of the proposed development on the Natura 2000 sites on its own and in-combination with other plans and projects, before making a new decision in respect of the licence.

Yours sincerely,

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

Pat Coman, on behalf of the Forestry Appeals Committee