



An Coiste um Achomhairc  
Foraolseachta

Forestry Appeals Committee

09 April 2020

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

Our ref: FAC 079/2019

Subject: Appeal in relation to afforestation licence CN83139

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 CN83139.

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 CN83139 was granted by the Department on 11 April 2019.

**Hearing**

A hearing of appeal 079/2019 was conducted by the FAC on 07 April 2020.

**FAC Members:**

Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor  
and Mr Pat Coman

**Decision**

Having regard to the evidence before it and the following considerations, the FAC has decided to cancel the decision of the Minister regarding licence CN83139:

In its statement to the FAC received on 01 October 2019, the Department of Agriculture, Food and the Marine stated:

*This application was desk audited only on and Appropriate Assessment screen carried out on the 04/03/2019. This area had previously been applied for under a different contract number (cn80951) which was inspected on the 03/05/2018.*

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*CN83139 as assessed for any potential negative effects the application may have on the surrounding environment with special attention being paid to the Fresh Water Pearl Mussel area to the east but the waters on the site are flowing away from the Cloon catchment where the Fresh Water Pearl Mussel is known to reside. While the site was within 3kms of the Lower Shannon SAC 002165, it was not connected to it hydrologically and I determined that none of the qualifying interests of the SAC would be negatively impacted by the proposal. In light of the lack of hydrological connection and distance, DAFM is satisfied that no impacts will occur as a result of this proposal. An in combination assessment was also carried out to assess forest and non forest projects in the area — it was concluded that no in combination impacts will occur.*

The Committee requested additional information from the Department of Agriculture Food and Marine regarding any measures considered designed to avoid or reduce impacts on a Natura 2000 site and details of other plans and projects included in the appropriate assessment screening under the Habitats Directive in their Habitats screening, and the following response was received;

*When the Forest Service of the Department of Agriculture, Food and the Marine, first assessed the likely effects of this proposed development on the local receiving environment it did take into consideration standards of good forest practice, and more specifically when applying the Appropriate Assessment Procedure then in use to carry out an Appropriate Assessment Stage 1 screening in respect of the proposed development, it also took those same standards of good forest practice into its consideration as mitigation measures in terms of their potential to avoid or reduce the likely effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.*

*Therefore, if the application was screened again today, under the revised Appropriate Assessment Procedure currently in use, it would not be screened out.*

CN83139 relates to 6.54 ha of afforestation in 5 plots to be planted with 85% SS and 15% ADB (Birch), an unplanted division exists between plots for a high voltage power line per file OS map and all hedgerows are to be retained. The soil on the site is mineral peat and vegetation is grass, grass-rush, molinia/calluna and furze. The site comprises enclosed lands with neutral aspect, which is in agricultural use with elevations of between 40m to 50m. The licence includes for fertiliser (250 kg ground rock phosphate) and use of herbicides in years 1 to year 3. Ground preparation is stated to be by mounding and planting by angle notch. Plot 635 fronts to the Drumdigus River which flows east to west along N boundary of plot.

The Cloone River is east of the proposal and not connected. The Lower River Shannon SAC is the nearest European site at 3km or thereabouts and has a hydrological connection at 9.2km downstream, also the River Shannon and River Fergus Estuaries SPA at 3.7km has a hydrological connection at 8.7km downstream. Regarding other European Sites the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is at 14.1 km distance with Hen Harrier the only qualifying interest and is across the Shannon Estuary. The project site is located within the Shannon Estuary North catchment. The FAC notes the application bio-map has included an above standard 25m water setback for plot 635 although this is not reflected as a licence condition. The FAC also observed areas of existing forest in the immediate vicinity of the proposal.





**An Colste um Achomhairc  
Foraolseachta**

**Forestry Appeals Committee**

The FAC has not been provided with In-combination information for the site in respect of afforestation, forestry, felling or forest roads in the area and cannot undertake this aspect of the screening and any further screening with the information to hand would be insufficient to draw a conclusion from.

In the absence of information on other plans or projects, coupled with the response provided by the DAFM, the FAC does not consider that the screening of this licence satisfies the provisions of the Habitats Directive in respect of the protection of habitats and species and the precautionary principle must apply. In this specific situation the FAC is cancelling the decision to grant licence CN83139.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



**FAC 079/2019 CN83139 afforestation licence for 6.54 hectares at Carrowreagh West Co Clare**

**09 April 2020**

**Appropriate Assessment Screening**

The decision to issue the licence pertains to 6.54 ha of afforestation with 550m fencing, and comprises of 5 plots to be planted with 85% SS and 15% ADB (Birch) these are fragmented from each other – an unplanted division exists between plots due to a High voltage line per file OS map. The soil on the site is mineral peat and vegetation is grass, grass-rush, molinia/calluna and furze. The site comprises enclosed lands with neutral aspect – in agricultural use with elevations of between 40m to 50m. The licence includes for fertiliser (250 kg ground rock phosphate) and use of herbicides in years 1 to year 3. Ground preparation is by mounding and planting by angle notch. All hedgerows are to be retained. Plot 635 fronts to the Drumdigus River – flows east to west along N boundary of plot.

**European Sites;**

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests
SAC	002165	Lower River Shannon SAC	3023m Distance 9266m Downstream	<b>Habitats</b> Sandbanks which are slightly covered by sea water all the time <b>Estuaries</b> Mudflats and sandflats not covered by seawater at low tide Coastal lagoons Large shallow inlets and bays Reefs Perennial vegetation of stony banks Vegetated sea cliffs of the Atlantic and Baltic coasts Salicornia and other annuals colonising mud and sand Atlantic salt meadows Mediterranean salt meadows Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation Molinia meadows on calcareous, peaty or clayey-silt-laden soils Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> <b>Species</b> Freshwater Pearl Mussel / River Lamprey / Common Bottlenose Dolphin Otter / Brook Lamprey / Sea Lamprey Salmon
SPA	004077	River Shannon and River Fergus Estuaries SPA	8759m Downstream 3775m	<b>Birds</b> Black-headed Gull / Grey Plover Whooper Swan / Golden Plover



Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests
			Distance	Shelduck / Bar-tailed Light-bellied Brent Goose / Ringed Plover Black-tailed Godwit / Curlew Greenshank / Wigeon Redshank / Lapwing Cormorant / Shoveler Teal / Knot Scaup / Pintail Dunlin <b>Habitats</b> Wetlands

The Cloone River is close by and the Lower River Shannon SAC is the nearest European site, there is a hydrological connection at 9.2km downstream to the Shannon (SAC is at 3 km straight line distance), and to the River Shannon and River Fergus Estuaries SPA at 8.7km downstream and SPA is at 3.7km straight line. Plot 635 fronts to the Drumdigus River – flows east to west along N boundary of plot – away from the Cloone. FWPM is a qualifying SAC interest and SAC is salmonid. Regards other European Sites the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is at 14.1 km distance with Hen Harrier the only qualifying interest and is across the Shannon Estuary – there is no possible effect. The project site is located within the Shannon Estuary North catchment. The FAC notes the application bio-map has included an above standard 25m water setback for plot 635 although this is not reflected as a licence condition.

In response to the FAC the Department have stated that standards of good forestry practice were taken in consideration as mitigation and if screened today would not be screened out.

In addition there are no plans or projects identified for in combination screening – especially regards forestry and there are a number of plantations evident in the area, the Department's screening states the SAC is in a different water body but that does not fully hold as there is a hydrological connection albeit flowing to west of the project site onto the estuary section of SAC rather than to east to the Cloone river tributaries sections of the SAC. While this makes any effect on FWPM and salmonid unlikely, there are many other species listed for the SAC and the SPA.

The FAC is provided with insufficient in-combination information for the site in respect of afforestation, forestry, felling or forest roads in the area and cannot undertake this aspect of the screening and any further screening with the information to hand would be insufficient to draw a conclusion from and the precautionary principle must apply.

In the absence of information on other plans or projects, coupled with the response provided by the DAFM, the FAC does not consider that the screening of this licence satisfies national and EU law-regarding the protection of habitats.

Pat Coman on behalf of the FAC 09/04/2020

