



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

Our ref: FAC093/2019 CN81889

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13th February 2020

Subject: Appeal in relation to licence CN81889, Bellavally Upper, Cavan

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine on licence CN81889. 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 CN81889, Bellavally Upper, Cavan was granted by the Department of Agriculture, Food and Marine on 3rd April 2019.

Hearing

An oral hearing of the appeal was conducted by the FAC on 28th January 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In Attendance at Hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton

Secretary to the FAC: Ms. Ruth Kinehan

Appellant: [REDACTED]
[REDACTED]

Applicant: [REDACTED]

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

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900



Department Representatives: Mr. Martin Regan, Mr. Colin Gallagher

Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations set out below, the FAC has decided to cancel the decision of the Minister regarding licence CN81889.

Regarding the suggestion that the site is unsuitable for afforestation under the DAFM guidelines, the site was assessed by a DAFM Inspector and a vegetation survey was provided by the applicant. This resulted in part of the original proposal being excluded on the basis of it being considered not sufficiently productive. The remaining proposal was deemed suitable and the FAC is satisfied with the assessment undertaken by the DAFM on this issue.

As noted at the oral hearing the site is currently in agricultural use and has been for some time. The DAFM refer to information from the NPWS regarding bird nesting sites in their assessment. This area has not been designated for conservation purposes and there is no evidence that the area contains protected habitats or species.

References were made to wayleaves and rights of way across the site held by appellants but these were described as being under application. The FAC examined the folio of this site and noted that only two wayleaves are registered in relation to this area and neither are held by the appellants.

The landscape behind the site contains mountain slopes and ridges and existing mature forest. The application was referred to the County Council which did not object to the proposal. Planting will be set back from the public road and agricultural fields lie between the proposed afforestation area and local houses.

Issues regarding national land use policies do not fall within the remit of the FAC. Furthermore, the FAC has no remit regarding state aid rules.

The licenced planting includes the establishment of native broadleaves in a plot of 0.72 ha adjacent to the river running along the east of the proposed site, including the required setbacks from the water course itself. This has the potential to diversify the available habitats in the area in addition to protecting the water course from activities on the remainder of the site. However, as noted below the FAC has not been provided with information regarding possible cumulative impacts in this area.

The FAC had requested additional information from the DAFM regarding the measures, and plans or projects that they had taken into account in their screening of this application. In the response provided, the DAFM noted that under new procedures they would not screen out this proposal and did not provide any further information regarding the assessment. During the oral hearing it was noted that an area to the west of the proposed afforestation has been planted in recent years and the area to the south contains semi-mature and mature coniferous forests and an established forest road. A



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In the absence of information on whether other plans or projects were taken into account in the screening of this licence, 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. Furthermore, the FAC has not been provided with sufficient information to consider this application itself. In this specific situation the FAC is cancelling the licence.

Yours sincerely,

Vincent Upton On Behalf of the Forestry Appeals Committee

¹ <https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF000584.pdf>



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FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton

Secretary to the FAC: Ms. Ruth Kinehan

Appellant: [REDACTED]
[REDACTED]

Applicant: [REDACTED]

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900



Department Representatives: Mr. Martin Regan, Mr. Colin Gallagher

Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations set out below, the FAC has decided to cancel the decision of the Minister regarding licence CN81889.

Regarding the suggestion that the site is unsuitable for afforestation under the DAFM guidelines, the site was assessed by a DAFM Inspector and a vegetation survey was provided by the applicant. This resulted in part of the original proposal being excluded on the basis of it being considered not sufficiently productive. The remaining proposal was deemed suitable and the FAC is satisfied with the assessment undertaken by the DAFM on this issue.

As noted at the oral hearing the site is currently in agricultural use and has been for some time. The DAFM refer to information from the NPWS regarding bird nesting sites in their assessment. This area has not been designated for conservation purposes and there is no evidence that the area contains protected habitats or species.

References were made to wayleaves and rights of way across the site held by appellants but these were described as being under application. The FAC examined the folio of this site and noted that only two wayleaves are registered in relation to this area and neither are held by the appellants.

The landscape behind the site contains mountain slopes and ridges and existing mature forest. The application was referred to the County Council which did not object to the proposal. Planting will be set back from the public road and agricultural fields lie between the proposed afforestation area and local houses.

Issues regarding national land use policies do not fall within the remit of the FAC. Furthermore, the FAC has no remit regarding state aid rules.

The licenced planting includes the establishment of native broadleaves in a plot of 0.72 ha adjacent to the river running along the east of the proposed site, including the required setbacks from the water course itself. This has the potential to diversify the available habitats in the area in addition to protecting the water course from activities on the remainder of the site. However, as noted below the FAC has not been provided with information regarding possible cumulative impacts in this area.

The FAC had requested additional information from the DAFM regarding the measures, and plans or projects that they had taken into account in their screening of this application. In the response provided, the DAFM noted that under new procedures they would not screen out this proposal and did not provide any further information regarding the assessment. During the oral hearing it was noted that an area to the west of the proposed afforestation has been planted in recent years and the area to the south contains semi-mature and mature coniferous forests and an established forest road. A

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An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

response from An Taisce noted that afforestation had taken place around the Cuilcaigh-Anieran SAC in the recent past and concerns were raised regarding possible loss of habitat and impacts on the hydrology of the area. The Cuilcaigh-Anieran SAC covers a large area of 9,735.5 ha and has a range of upland habitats included in its qualifying interests. No information was provided to the FAC regarding details of other afforestation or felling licences in this area. The "artificial planting on open ground (non-native trees)" (B01.02) outside the site is listed as a threat, pressure or activity that could have a negative impact on the SAC in the Natura 2000 data form provided by the NPWS¹.

In the absence of information on whether other plans or projects were taken into account in the screening of this licence, 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. Furthermore, the FAC has not been provided with sufficient information to consider this application itself. In this specific situation the FAC is cancelling the licence.

Yours sincerely,

Vincent Upton On Behalf of the Forestry Appeals Committee

¹ <https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF000584.pdf>

1. The first part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company. The names are listed in alphabetical order, and each name is followed by the position to which he or she has been appointed. The list is as follows:

Name	Position
Mr. A. B. C.	President
Mr. D. E. F.	Vice President
Mr. G. H. I.	Secretary
Mr. J. K. L.	Treasurer
Mr. M. N. O.	Director
Mr. P. Q. R.	Director
Mr. S. T. U.	Director
Mr. V. W. X.	Director
Mr. Y. Z. A.	Director
Mr. B. C. D.	Director
Mr. E. F. G.	Director
Mr. H. I. J.	Director
Mr. K. L. M.	Director
Mr. N. O. P.	Director
Mr. Q. R. S.	Director
Mr. T. U. V.	Director
Mr. W. X. Y.	Director
Mr. Z. A. B.	Director

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Mr. T. U. V.	Director
Mr. W. X. Y.	Director
Mr. Z. A. B.	Director



Our ref: FAC110/2019 CN81889

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13th February 2020

Subject: Appeal in relation to licence CN81889, Bellavally Upper, Cavan

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine on licence CN81889. 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 CN81889, Bellavally Upper, Cavan was granted by the Department of Agriculture, Food and Marine on 3rd April 2019.

Hearing

An oral hearing of the appeal was conducted by the FAC on 28th January 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In Attendance at Hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton

Secretary to the FAC: Ms. Ruth Kinehan

Appellant:

[REDACTED]
[REDACTED]

Applicant:

[REDACTED]

Department Representatives: Mr. Martin Regan, Mr. Colin Gallagher

An Coiste um Achomhairc
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Forestry Appeals Committee

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Decision

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Regarding the suggestion that the site is unsuitable for afforestation under the DAFM guidelines, the site was assessed by a DAFM Inspector and a vegetation survey was provided by the applicant. This resulted in part of the original proposal being excluded on the basis of it being considered not sufficiently productive. The remaining proposal was deemed suitable and the FAC is satisfied with the assessment undertaken by the DAFM on this issue.

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Issues regarding national land use policies do not fall within the remit of the FAC. Furthermore, the FAC has no remit regarding state aid rules.

The licenced planting includes the establishment of native broadleaves in a plot of 0.72 ha adjacent to the river running along the east of the proposed site, including the required setbacks from the water course itself. This has the potential to diversify the available habitats in the area in addition to protecting the water course from activities on the remainder of the site. However, as noted below the FAC has not been provided with information regarding possible cumulative impacts in this area.

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Vincent Upton On Behalf of the Forestry Appeals Committee

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