



**Our Ref:** FAC022/2019 – FAC029/2019 CN82094 (please quote on all correspondence)

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[REDACTED]  
[REDACTED]

7<sup>th</sup> February 2020

***Subject: Appeals in relation to licence CN82094 Seltan (McDonald)***

Dear [REDACTED]

I refer to the appeals 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**

Technical Approval for Afforestation License CN82094 for planting of 17.27 hectares in Seltan (McDonald) was issued on 9<sup>th</sup> January 2019, with conditions.

**Hearing**

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 21<sup>st</sup> January 2020.

In attendance at the oral hearing:

<b>FAC Members:</b>	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr Vincent Upton
<b>Secretary to the FAC:</b>	Ms. Ruth Kinehan
<b>Appellants:</b>	[REDACTED] [REDACTED]
<b>Applicant:</b>	[REDACTED]
<b>Applicant's Representative:</b>	[REDACTED]
<b>Department Representative:</b>	Mr Seppi Honna, Mr Colin Gallagher



## Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations and reasoning set out below, the FAC has decided to vary the decision of the Minister regarding licence CN82094 with the following additional conditions:

*Maintain a minimum 5 metre unplanted setback from the relevant watercourse running along the northern boundary of plot 640 and across plot 675, maintain a 5 metre unplanted habitat setback from the hedgerow running southeast-northwest to the south of the relevant watercourse setback in plot 640. Between these setbacks, where planting is undertaken, employ only deciduous native broadleaf species, plant on scrap or inverted mounds or pit plant.*

*Provide a setback of 5 metres on either side of the track that runs east-west across the northern half of plot 807 and no planting to occur on the track. For the avoidance of doubt, this condition does not infer any right to any party in relation to this land and only relates to the location of planted trees.*

These conditions in no way remove any legal obligations on the applicant and are additional to existing conditions or requirements on the licence issued by the Department of Agriculture, Food and the Marine (DAFM).

At the oral hearing a single spokesperson was nominated to speak for all Appellant's present. The issues below thus relate to all grounds of appeal submitted to the FAC.

In addition to standard licence conditions the following additional conditions were attached to the licence:

- Parcel 675 to be planted with either Alder/Birch or P.Oak (GPC6 or 8) at Form 2 stage,
- Include 10% of the conifer species planted as Scots pine planted (in groups) along the edges and on the more elevated sections of the site to improve the landscape features of the overall plantation,
- Adhere to Environmental Requirements for Afforestation,
- All guidelines to apply
- Specific Archaeological Conditions:  
20m wide exclusion zone/setback required to be established from the outermost extent of the each ringfort (LE 028-008 and LE 028-009), as illustrated. Fencing, plus access. No deep drains within 30m of either ringfort. 10m wide unplanted buffer zones/setbacks required to be established around the remains of the historic farm buildings, and 5m wide unplanted buffer zone/setbacks required to be established around attached infields, as illustrated. These latter unplanted archaeological buffer zones /setbacks do not require to be fenced in their own right. Archaeological monitoring of all ground preparation and drainage works in the area highlighted in PINK, i.e. beside exclusion zone and the banks of Drumaleague Lough, is also required. See attached archaeological report and accompanying illustrative map for further details, including specific measurements.

The FAC notes that the boundaries provided in the application maps do not represent actual planting areas but rather the total application area. Setbacks of 60 metres are identified for dwellings in the Bio Map provided, and must be implemented around all dwellings within 60 metres of the forest





unless consent is granted by the homeowner. The location and design of the proposed planting means that no areas directly south of an adjacent dwelling will be planted. This will limit the impact of the planting on light availability to dwellings. As noted in the application and by the Appellants the area already contains a number of mature trees and trees and forests are not out of keeping with the landscape in the area, although they are more typically deciduous broadleaves. The application was referred to the County Council which did not object to the planting and to An Taisce which did not respond. The application states that stone walls and hedgerows, including mature trees, will be maintained on site. Hedgerows have been mapped on the Bio Map provided and an area of 0.56 ha of retained hedgerows have been declared in the application. The maintenance of hedgerows is included in the Environmental Requirements for Afforestation, adherence to which is a condition on the licence. The use of herbicides is governed by the European Communities (Sustainable Use of Pesticides) Regulations 2012 (S.I.155/2012) and the Environmental Requirements for Afforestation exclude the use of herbicides from water setbacks or within stated distances.

Plot 675 will be planted with deciduous native broadleaves as stated in the conditions on the licence. This plot runs close to the public road at the north east of the proposed area and will require a road setback in parts. A 60 metre setback is also required around the dwellings situated to the east of plot 807. A 20 metre setback without planting from Drumaleague Lough is included in the original proposal. As described below, the FAC is including a requirement to plant only broadleaf species along the recognised water setback to the north of the proposed area. No planting will take place within the water setback and an additional setback has been included around the established hedgerow and mature trees to the south of the channel to protect and enhance this existing habitat. This should enhance the visual impact of the proposal on the surrounding landscape and reduce the shading of lands to the north of the application area. Overall, while this proposed planting will have an impact on the landscape in the area the FAC considers the scale and design of the planting, taking account of conditions on the licence, to be acceptable.

During the oral hearing it was noted by a number of Appellants that a stream is located to the north of plot 640 and crosses plot 675. The FAC also notes that an Appellant had previously made an observation to the DAFM regarding a stream in this location prior to the licence being issued. This stream was not included in the application maps nor identified by the DAFM during inspection. During the oral hearing it was noted by the Applicant's Representative that no stream is marked in this location on EPA maps or historic 6-inch (1:10,560) maps, the latter is used by the DAFM to define aquatic zones within the Environmental Requirements for Afforestation. In addition to the Appellant's submissions, other publicly available historic maps, 25-inch (1:2,500), and aerial imagery (<https://www.bing.com/maps/aerial>) show that a drainage channel or stream does exist in this area. The FAC recognises that a drainage channel or stream is present in this area. The Environmental Requirements for Afforestation require a 5m setback for Relevant Watercourses. Due to the uncertainty regarding the status of this channel and to enhance the visual impact of this edge, the FAC is attaching a condition to include a water setback and a habitat setback and only broadleaf planting between the relevant watercourse and the hedgerow to the south.

An issue was raised during the oral hearing regarding access across the site to a building in adjacent land. A track is evident on aerial photographs along the top of plot 807 running east to west. This issue was introduced during the oral hearing by someone acting as a representative of an Appellant. No evidence was provided to the FAC regarding a right of way across the lands along the track in question and no right of way has been registered with the Property Registration Authority regarding





this track. During the oral hearing the Applicant's representative suggested that a 5 metre setback could be included along this area. The FAC is therefore attaching a condition to avoid planting within 5 metres of this track. However, this does not in any way confirm any right to any individual regarding the use of this land and relates solely to where trees will be planted on the site.

The proposal was referred to a DAFM Archaeologist due to the presence of two ringforts on site and conditions related to the archaeological report were included on the licence. This includes setbacks around the ringforts and the historic farmhouse and surrounding in fields, which also incorporate some of the more established hedgerows and mature trees. During the oral hearing an Appellant raised a concern regarding archaeological monitoring in relation to mounding and drainage. Archaeological monitoring on much of the site was included in the original licence conditions. The FAC is satisfied that the site was assessed by a suitably qualified individual and that the archaeological conditions attached to the licence are acceptable.

During the oral hearing and in some grounds of appeal concerns were raised regarding the possible impact of the proposal on protected bird species, including the Hen Harrier and Curlew. The DAFM referred to data from the NPWS on nest sites of a number of species and noted that none occurred in or around this area. No evidence was provided to the FAC regarding the presence of any protected species on the site, which is agricultural in nature. As previously noted the existing hedgerows and stone walls will be maintained on the site and the FAC has included additional conditions related to water and habitat setbacks and additional broadleaf planting.

While the FAC considers that the mapping of proposals and communication with those who make observations on proposals could be improved, it does not consider that these issues will materially affect the outcome of the application, in this case.

Issues regarding the funding of forest planting, agriculture and other land uses and its impact on land purchases is a national policy issue which lies outside of the remit of the FAC. Landowners have the right to afforest their lands, once doing so within the law. The FAC concluded that the proposal is consistent with Government policy and good forestry practice and would not be detrimental to the amenities of the area.

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 submissions and observations received, including information provided at the Oral Hearing.

Yours sincerely,

Vincent Upton on Behalf of the Forestry Appeals Committee