



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

10 February 2020

[REDACTED]
[REDACTED]
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Our ref: FAC 191/2018

Subject: Appeal in relation to afforestation licence CN82506

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 CN82506.

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 CN82506 was granted by the Department on 26 November 2018.

Hearing

An oral hearing of appeal 191/2018 was conducted by the FAC on 21 January 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois

In Attendance at Oral Hearing:

Department Representative: Mr Eugene Curran (Forestry Inspector) and Mr Colin Gallagher (EO)

Appellant: [REDACTED]

Appellant's Representative: [REDACTED]

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

Secretary to the FAC; Ms Ruth Kinehan

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Decision

Having regards 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 CN82506:

In its statement to the FAC dated 11 February 2018, the Department of Agriculture, Food and the Marine stated:

The application as it stands is not unreasonable. However, having consulted with the contractor the application could be amended to make it more acceptable to neighbouring land owners.

The licence comprises 16.36 ha of afforestation along with 1740m of associated sheep stock fencing. The additional conditions on the licence are stated as follows; (1) Plant small groups of Scots pine, rowan, whitebeam and birch where possible. (2) Public Road Setback; Broadleaves 10m, Conifers 20m. (3) All guidelines to apply. Of these the FAC considers conditions (2) and (3) are standard conditions applicable to all licences. The Department's statement indicated possible amendment of the application, however, no details of proposed changes were provided and in this regard it is the issued licence that is under appeal and examined for.

The grounds of appeal refer to the consultation process afforded the appellant by the Department, and how submissions were made to the Department. This is not a matter that the Forestry Appeals Committee has a function regards the confirmation, cancellation or varying of a licence under appeal. The Forestry Appeals Committee has a responsibility to afford each party fair procedures in their dealings with the Committee.

The licence includes the following planting permissions;

Plot 4 (015)	0.60 ha	Sitka Spruce 0.51 ha Additional Broadleaf 0.09 ha (planting in groups)
Plot 3 (973)	14.18 ha	Sitka Spruce 12.05 ha Additional Broadleaf 2.13 ha (planting in groups)
Plot 2 (738)	1.03 ha	Sitka Spruce 0.88 ha Additional Broadleaf 0.15 ha (planting in groups)
Plot 1 (736)	0.55 ha	Sitka Spruce 0.39 ha Additional Broadleaf 0.16 ha (planting in groups)

A heavily treed area at the north is excluded from the licence lands as existing woodland, an old farmhouse area is excluded and ESB power line is afforded a 20m corridor.

The greater part of plot 3 and all of plot 4 are listed as moderate for landscape sensitivity by Cork County Council. The site is not within any European site (SAC/SPA) and has no hydrological connection to any European site at any distance of up to 25 km downstream. European sites in the area comprise Deeryclogher (Kockboy) Bog SAC 001873 at 6.7km with blanket bogs the qualifying interest and to which the licence site has no connectivity, Bandon River SAC 002171 at 12.7 km to the east with no hydrological connection and Glanlough Woods SAC 002315 at 13.7 km with the Lesser Horseshoe Bat as the qualifying interest.

The grounds of appeal challenged the determination that the site was an exposed one, the evidence before the FAC shows this is not the case. However, this does not provide grounds on which to in any way affect the licence. The lands are agricultural lands. The site has moderate slope to the north with a fall of approximately 110m, from 200m to 90m above sea-level, over a site length of 830m, a 1:8 gradient (approx). The Department's response to the FAC regards additional information includes that there is 'no aquatic zone within or adjoining the site'. The plots are all within the River Ouvane sub-



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basin. The Inspector's certification confirms the project area is crossed by / adjoins an aquatic zone. The application included a Bio-Diversity map setting out 200m of road setback, 1500m of internal tracks, 850m of retained hedges/scrub and 220m of aquatic setbacks. None of the 200m of watercourse locations or retained hedgerows were identified on the map. The licence also shows drainage is required. The appellant identified a drain to the north-east of the site that connects to the Ouvane river via a tributary.

The grounds of appeal include the amenity value of the R584 roadway (Butter Rd). There was no referral of the application to the Cork County Council. There is no indication provided that the site is deemed high amenity or highly landscape sensitive by Cork County Council, indeed the FAC notes that the greater part of the site toward the north (that part further away from the R584) is deemed moderate for landscape sensitivity and there are forestry areas well established along that route and these include conifers. There is no such landscape designation attached to the green land closest to the R584 and the FAC finds no basis in this regard to affect the licence.

The licence includes fertilisation of 250 kg granulated rock phosphate per hectare and for manual herbicide applications in years 0 to year 2. Fertiliser and herbicide applications must comply with the exclusion areas and controls specified for in the Environmental Requirements for Afforestation.

No forest roads are required or licenced at this initial afforestation and where forest roads are subsequently required a forest road licence must be sought. Matters relating to the public road are within the remit of the County Council. Also, clear felling requires a felling licence and any such felling will require application and assessment when sought.

The appeal grounds disputed soil types and included a statement that Bog Cotton grows on an area of the lands and is an indicator species regards soils. The applicant's forester undertakes an assessment of the site soils under Section 8 of the Forestry Standards Manual. Soil analysis is only required in specified cases, 8.2.1 of the Forestry Standards Manual specifies as follows; *"Each site being assessed for suitability must, amongst other things, undergo a preliminary soil investigation by a Registered Forester. There must be sufficient depth of topsoil on sites to facilitate vigorous tree growth which must be maintained throughout the rotation. Foresters must check every site for the presence of shell marl and high lime soils. In areas where the soil reacts or where there is clear effervescence with dilute (10%) hydrochloric acid (HCl) occurring within 70 cm of the surface, a detailed soil sampling and chemical analysis must be carried out.*

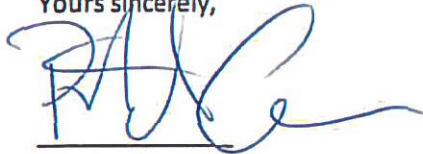
Appendix 14 sets out the required soil sampling procedures and details of the information to be submitted to the Forest Service". There is no evidence showing soil analysis of this more detailed nature was required on the site. Soils were certified by the Department Inspector as 'predominantly podzols in nature'.

The bio-diversity map is required to include cultivation direction, and none is shown in this instance, existing hedgerows are not mapped, and no hedgerows are marked for retention and/or setback while the bio-diversity map legend indicates 850m of hedgerow exists. In addition, the evidence shows there are existing trees on the project area. Individual high forest trees and areas of high forest trees of less than 0.10 ha must be retained as additional bio-diversity area. Also, per Section 6 of the Forestry Standards Manual areas of high forest in excess of 0.10 ha must be excluded from the project.

Excluded woodland to the north was identified at the hearing, as was the old farmhouse to the south and the ESB corridor and site notice location, other areas of existing woodland were identified within the site.

The grounds of appeal include that the Ouvane river is host to Freshwater Pearl Mussel (*Margaritifera margaritifera*). The FAC does not deem that the information provided to it regarding the assessment of the proposal contains sufficient consideration of possible impacts on local water courses. In particular, there appears to be a lack of information on cultivation and drainage methods and the presence and location of aquatic features on site which together have the potential to create a pathway to the Ouvane river or its tributaries. In addition, as the Freshwater Pearl Mussel is an Annex II and Annex V species from the Habitats Directive and owing to the sloped nature of the site and proximity of the Ouvane River and a tributary, the Inchiroe River, and information published by the EPA regarding populations within the wider catchment, and taking account of the scale of the project, the FAC considers that the precautionary principle should apply and that the current licence should be cancelled.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee