



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

Our ref: FAC162/2018, FAC163/2018, FAC164/2018, FAC166/2018 CN78293

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

3<sup>rd</sup> February 2020

**Subject:** Appeals in relation to licence CN78293 Manragh Upper, Co. Cavan

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine on licence CN78293. 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 appeals.

#### Background

Afforestation licence CN78293 for 6.91 ha at Manragh Upper, Co. Cavan was granted by the Department of Agriculture, Food and Marine on 09/08/2018.

#### Hearing

A hearing of appeals FAC162/2018, FAC163/2018, FAC164/2018, FAC166/2018 was conducted by the FAC on 14th January 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In Attendance at the Hearing:

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

**DAFM Reps:** Mr Martin Regan and Ms Lisa Chiagara

An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

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**Secretary to the FAC:** Ms. Ruth Kinehan

**Appellants:**

[REDACTED]  
[REDACTED]

**Applicant:**

[REDACTED]  
[REDACTED]

### **Decision**

Having regard to the evidence, written and oral, before it and, in particular, the considerations and reasons set out below, the FAC has decided to confirm the decision of the Minister regarding licence CN78293.

In relation to concerns raised regarding the impact of the proposal on the landscape, tourism and the view from the public road and surrounding areas, the FAC has considered the proposal, including the amendments that were made by the Applicant, their Forester and the DAFM to address these concerns. The minimum setback, without consent, required under the Forestry Standards Manual is 60 metres. In the proposed site, the setback along much of the public road has been extended considerably from the required distance, including the complete exclusion of the southern plot closest to the public road and an Appellant's dwelling. Coupled with the planting of broadleaf species along this side of the development the FAC considers that the design and nature of the proposal will minimise the visual impact from the public road. While accepting the potential inconvenience created by the potential visual impairment between one Appellant's dwelling and land that they own above the proposed forest, the FAC does not consider that this issue is sufficient to limit the Applicant's right to manage their land as they wish, within the boundaries of the law.

The proposed forest will be situated on a mineral soil site and surrounded by existing agricultural land at a low elevation, which would not generally be considered an area with a high risk of fires and the FAC is satisfied that the Forestry Standards Manual has been met on this issue. The FAC also recognises that the proposal has been amended to extend the setback from the public road and does not consider that this planting poses a substantial health and safety risk. Issues of illegal dumping are a national issue that are controlled by other authorities. The encroachment of deer onto roads and agricultural land is a national issue in relation to which the FAC has no function.

During the appeal it was suggested by an Appellant that the DAFM District Inspector did not take account of the Corratirrim SAC. However, there is evidence that the DAFM District Inspector did consider the Corratirrim SAC in their assessment but referred the application to the DAFM Ecologist on the basis of the Cuilcagh Anieran Uplands SAC solely. The DAFM on consideration of the application concluded that the proposal would not have a significant effect on the SAC. In additional information sought by the FAC and provided to all parties the DAFM noted that their assessment process has changed and that they took account of certain measures in their licence decision. The FAC therefore





considered the potential impact of the original application, without measures, on designated sites in the area before making its decision.

The Corratirrim SAC lies to the north of the proposal and lists limestone pavement as its qualifying interest. The Appellant raised concerns regarding the potential spread of non-native tree species to this habitat. The proposed site is 1.2 km from the SAC which is beyond the normal regeneration range of Sitka spruce<sup>1</sup>. The SAC is situated at a higher elevation than the proposed planting and is separated by agricultural and forest land. The boundary of the Cuilcagh - Anierin Uplands SAC lies 1.9 km to the south of the proposed afforestation. It has been designated on the basis of containing a number of habitats associated with upland areas and lies at a higher elevation from the proposal. Boleybrack Mountain SAC is the next closest SAC and lies over 6km to the west of the site. The FAC is satisfied that this proposal will not result in the possibility of a significant effect on any designated European sites.

While an Appellant claimed that Sitka spruce is an invasive species, it has evidently not been classified as such legally and the measures related to invasive species are not required for this tree species.

The Appellant identified a number of perceived shortcomings in the maps provided with the proposal related to wayleaves, hedgerows, archaeological sites and features and aquatic zones. The FAC was provided with a report and licence conditions from the DAFM Archaeologist who reviewed the file on the request of the District Inspector. The Archaeologist placed a setback around not only the ringfort but also around lime kilns and other historic structures as is evident in the conditions of the licence. The original proposal had also stated that "small stone buildings excluded from application". The FAC was also provided with a landscape report and a report from the DAFM Ecologist indicating areas of existing habitat that will be retained and enhanced through broadleaf planting, which have been incorporated into the conditions on the licence. The aquatic buffer is marked on the Biomap provided with the application. The wayleave identified by the Appellant lies in an area that appears to have been entirely excluded from any planting in the application.

Issues regarding public notice and consultation were raised in the written grounds of appeal and during the oral hearing. During the oral hearing the DAFM explained that the requirements regarding notice have changed since this application was made and that the original application had satisfied the requirements at the time. The Applicant's Representative noted that they had contacted some neighbours in the area to discuss the planned planting. The FAC considers new measures that have been introduced by the DAFM to be an important improvement but are satisfied that the application met the requirements of the time. The FAC also recognises that the proposed planting was amended to address the concerns of neighbours on the basis of observations that they made.

Regarding possible impacts on the Garvagh lake, the FAC examined the proposal including the setback from the river, in which no planting, drainage or herbicide use will take place and the planting of broadleaf species between the setback and the proposed spruce planting. Under the Ecologists report incorporated into the licence, fertilisation can only take place where required based on soil fertility

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<sup>1</sup> <https://www.mdpi.com/1999-4907/8/1/24>



analysis. The FAC is satisfied that the proposal as licenced does not pose a significant threat to water quality.

The FAC has no role in the enforcement of the conditions of state aid.

Regarding the impact on biodiversity in the area, the FAC recognises that this land is currently in agricultural use and that the proposal retains much of the existing habitat as indicated in the Ecologist report. The planting of diverse tree species will help to broaden the range of habitat in the area and provide new nesting and foraging opportunities. No evidence was provided that the proposed land contains habitat or foraging area of protected species. The confirmation of this decision in no way removes the protection of species provided for under National and EU legislation.

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. Landowners have the right to afforest their lands, once doing so within the law.

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