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19/3/2020

Our ref: FAC 194/2018

Subject: Appeal in relation to afforestation licence CN80524

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) on licence CN80524.

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

A decision to not approve an application for an afforestation licence on CN80524 was issued by the DAFM on 14 November 2018.

Hearing

An oral hearing was conducted by the FAC on 10 March 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In attendance at Oral hearing:

FAC Members:	Mr. Des Johnson (Chairperson), Mr. James Conway & Mr. Vincent Upton
Appellant:	[REDACTED]
DAFM Representatives:	Mr. Kevin Keary & Ms. Janet Farrell
Secretary to the FAC:	Ms. Ruth Kinehan

Decision

Having regard to the evidence before it and, in particular, the considerations set out below, the FAC has decided to confirm the decision of the Minister regarding an application for afforestation licence on CN80524:

The proposal is for afforestation on a stated site area of 6.32 hectares at Ardcullen Marshes, Co. Kerry. The site is described as enclosed agricultural land, with a grass, grass rush type vegetation. Drainage would be required for adequate establishment. The site bounds the Cashen-Feale River to the east, existing forestry to the north, a public road to the west and agricultural lands to the south. It is relatively

flat. There is a drain along the northern boundary flowing eastwards towards the river. There is an existing levy adjoining the Cashen-Feale River and the water in the river is stated to be brackish. The wider area is rural in character with mainly a dispersed settlement pattern but with Ballyduff Village a short distance to the south-west.

The DAFM refused to approve the proposal by letter dated 14th November 2018 for reasons described as "*Environmental Considerations*". These were elaborated on at the Oral Hearing as relating to screening procedures under the Habitats Directive and the unsuitability of the site for forestry arising from the risk of flooding with brackish water should the river levy burst. In response to referral of the application proposal, An Taisce pointed to the proximity to the Lower River Shannon SAC and the Cashen River Estuary pNHA, the need for appropriate assessment under the Habitats Directive arising from potential negative impact on otters, the nutrient sensitivity of the adjoining and nearby river and estuary and the need for assessment of cumulative impacts. Kerry County Council response stated that the proposal should be screened for appropriate assessment.

The 1st Party written response to the grounds of appeal stated that flood relief works had been carried out between 1951 and 1957 and that flooding had ceased since, further improvement works are planned, and that other plantations in the area are growing well.

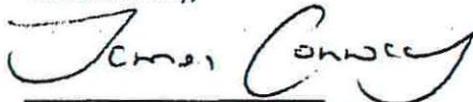
The FAC requested further information from the Department in respect of the screening procedures followed for appropriate assessment. In response, the DAFM stated that mitigation measures had been considered in terms of their potential to avoid or reduce the likely effects on the integrity of Natura 2000 sites, and, that if the application was re-screened under new procedures by the DAFM, it would not be screened out. This view was confirmed by the Inspector at the Oral Hearing.

Based on the information before it, including the DAFM submission in response to the Further Information request and the submission made at the Oral Hearing, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence. Furthermore, in the absence of essential information relating to relevant European sites, and other plans and projects in the vicinity, the Committee concluded that it is not in a position to satisfactorily evaluate the likely significant effects of the proposal on the environment or on any relevant European sites.

The DAFM contend that the site is not suitable for the proposed afforestation, as they consider there are a lot of risks for potential gain. There is evidence that this low-lying site (or portion of the site) is in a flood plain, notwithstanding the fact that improvements have been carried out including the provision of a levy between the river and the site. Should the levy fail, the flood water on this site would be brackish and likely detrimental to tree survival. On the other hand, the FAC noted the apparent success of the adjoining forestry to the north. On this issue, based on the information before it, the FAC concluded that, on balance, the weight of evidence supports the DAFM contention.

For the reasons set out above the FAC decided to confirm the decision to refuse the licence.

Yours sincerely,



James Conway, on behalf of the Forestry Appeals Committee