



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

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

24 April, 2020

Subject: Appeal FAC082/19 - CN83381 – Afforestation Licence Drumakee, Kerry

Dear [REDACTED]

I refer to the appeal 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

Afforestation Licence for 5.01 hectares was approved by the Department of Agriculture, Food and the Marine on 17th April, 2019.

Hearing

A hearing was conducted by the FAC on the 7th April, 2020.

In attendance at the hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Mary Lawlor
& Mr Vincent Upton

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

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

Decision

Having regard to the written evidence before it and, in particular, the considerations and reasoning set out below, the FAC has decided to cancel the decision of the Minister regarding licence CN83381.

The decision related to an afforestation licence for 5.01 hectares at Drumakee, Co. Kerry comprising of Sitka Spruce, Pedunculate Oak and Scots Pine. The licence was issued with the following conditions:

- Adhere to forestry & water quality guidelines,
- All guidelines to apply

The grounds of appeal outlined that the appropriate assessment undertaken by the DAFM in granting the licence was flawed in law.

In its statement to the FAC dated 19th June 2019 DAFM stated :-

"The Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application."

.....that the project area was greater than 3 km from any Natura site and did not overlap with any FPM catchments.....It was deemed that the project would not have a significant impact on the local or surrounding environment due to the mandatory adherence to safeguards within the project, as set out in published Forest Service guidelines, requirements and procedures."

The proposed project has 8 Natura 2000 sites listed within 15kms the closest being the Lower Shannon River which is at c. 3.1 kms, the next closest being Ballyseedy Wood SAC at c. 10.6kms. There is a watercourse to the north east of the afforestation site but with no direct connectivity to it.

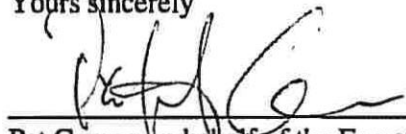
No information was provided to the FAC regarding other forestry or non-forestry projects in the vicinity.

The FAC requested additional information from the DAFM regarding mitigation measures and plans or projects that they had taken into account in their screening of this application. In the response provided, the DAFM stated that mitigation measures designed to avoid or reduce impacts on Natura 2000 sites had been considered and stated that if the project was screened under the revised Appropriate Assessment procedures, they would not screen out this proposal. The DAFM did not provide any further information regarding other plans and projects in the area as requested.

Based on the information before it, including the DAFM submission in response to the Further Information request, the FAC considered that the requirements of the Habitats Directive in respect of screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence and, in particular, it appears that mitigation measures were taken into account at the screening stage inappropriately. Furthermore, no information on other plans or projects was provided to the FAC.

For these reasons and in these specific circumstances, the FAC has decided to cancel the decision regarding CN83381.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee

