



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

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25<sup>th</sup> September 2020

**Subject:** Appeal FAC232/2020 and FAC233/2020 regarding licence CN85400

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**

Licence CN85400 for afforestation of 7.55 ha at Ballyglavin, Co. Cork was issued by the Department of Agriculture, Food and the Marine (DAFM) on 22<sup>nd</sup> April 2020.

#### **Hearing**

A hearing of appeals FAC232/2020 and FAC233/2020 was held by the FAC on 9<sup>th</sup> September 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Bernadette Murphy, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it, including the licence application, processing of the licence by the DAFM, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence CN85400 to include the following condition:

*For reasons of residential amenity the unplanted setback from dwellings to the east and north of the proposed planting is extended to 70 metres. The first three planting rows adjacent to these setbacks to be planted with a mixture of light-crowned and smaller tree species such as birch, alder, mountain ash or hazel.*

The licence pertains to 7.55 hectares of afforestation of native woodland, described as pedunculate oak, birch, alder, and other broadleaves planted in groups, with 900 metres of fencing at Ballyglavin, Co. Cork. Site preparation would be through mounding with drainage. No use of fertiliser is proposed and herbicide and manual weed control would be employed in year 1. The site is described as flat to moderate on a brown earth soil with a northern aspect, not crossed or adjoining an aquatic zone and is currently improved grassland with a grass, rush, furze vegetation type at an elevation of 136-157 m. The proposal was considered by a DAFM archaeologist that noted that there are no recorded monuments on

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Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DTW5

Eon/Telephone 076 106 4418  
057 863 1900

site but historic buildings are contiguous to the southwestern corner and specific conditions were attached to the licence. The application was referred to Inland Fisheries Ireland who raised no objection subject to DAFM guidelines being adhered to, An Taisce which did not reply and Cork County Council which replied stating no comment. There are a number of dwellings to the south, north and east of the proposal and unplanted setbacks of 60 metres are proposed.

There are two appeals against the decision to issue the licence. The grounds of appeal relate primarily to visual and residential amenity. In particular, it is contended that the planting would reduce light levels to dwellings and gardens and this would negatively impact on families and mental health in the area. The grounds suggest that property values would be negatively impacted by the proposal. It is suggested that the planting could have an adverse effect on broadband and mobile phone signals. The grounds also contend that the planting could have a negative impact on drainage and services on adjoining lands and impact on drinking wells and that the trees could be hazardous during storms and would impact on roads. It is suggested that the proposal is not 60 metres from one dwelling and that there is already a number of forests and trees in the area and along the road. Concern is expressed regarding an increase in wildlife in the area as a result of the planting and the impact of leaves and branches on adjoining properties.

In a written statement to the FAC that was provided to parties before the hearing, the DAFM stated that they are satisfied that the proposal meets their criteria and guidelines. The statement goes on to suggest that a 60 metres unplanted setback, as required under the Department's afforestation requirements, would form part of the proposal and that this would address the issue of light levels into dwellings and properties. They also suggest that as the proposal is for planting deciduous species that this would further address the issue of light. They suggest that the land is flat and composed of mineral brown earth soils and that drainage should not be negatively impacted by the proposal and that setbacks from drinking wells are also required. They further suggest that issues of phone signals and internet connections are a matter for the service providers. They suggest that the proposal, being of mixed, native tree species would enhance the landscape and that the proposal was considered by the County Council, which offered no comment.

Regarding impacts on the landscape and local residents the FAC considered the evidence available to it including the application, the grounds of appeal, DAFM statement and publicly available maps and information. The proposed planting would take place on a flat site on improved agricultural land with existing hedgerows and individual trees c.7km northwest of Youghal. There is no evidence of aquatic features on or adjoining the site and public roads run to the south and east of the proposal which are associated with ribbon developments with a number of private dwellings. The wider landscape is a mixture of agriculture and forests and has been designated as moderately sensitive in the County Development Plan. The County Council had no comment to make on the proposal when it was referred to them. The FAC concluded that the proposal being of mixed native tree species planted on flat, agricultural land would not negatively impact on the visual amenity of the area and may provide some benefits. However, it took particular note of its proximity to local dwellings and the orientation of those dwellings relative to the project lands. The FAC considered that the residential amenity of dwellings to

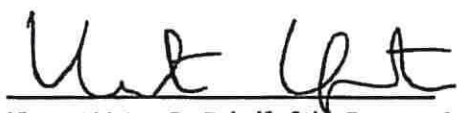


the south of the proposal is unlikely to be negatively impacted as light levels would not be impacted and that the 60 metre unplanted setback is acceptable. The proposed forest would be located to the west and southwest of a number of dwellings and will be visible across the western perspective of the houses. A significant impact on light levels in the dwellings and properties during the summer months would not occur however there may be some impact during winter evenings. In these particular circumstances and, for reasons of residential amenity, the FAC has extended the setback around these dwellings to 70 metres and required the planting of light-crowned and smaller species in the three rows adjoining these setbacks.

The proposal would involve the planting of trees on mineral brown earth soils and the FAC does not consider that there is any evidence that the proposal would negatively impact on drainage in adjoining land, particularly when considering the nature and current management of the land. The FAC concluded that the unplanted setbacks would be sufficient to address issues in relation to services in adjoining properties. The change from agricultural use to forest would decrease the intensity of management on the land and the FAC does not consider that there is any evidence that the proposal would negatively impact on water quality in the area. The FAC considers that the setback regarding public roads is in line with the Forestry Standards Manual and is acceptable in this case taking account of the nature of the proposal. The proposal provides for deer fencing of the afforestation area. Regarding broadband & phone signals in the area the FAC noted the flat nature of the site and the slow-growing nature of the species and does not consider that there is evidence provided that the proposal would have a significant impact on broadband and phone signals in the area or that, in the unlikely event of any problems arising, this issue could not be addressed by service providers. The FAC considered possible impacts on designated areas and the potential for significant effects on the environment which are available on the public file. The FAC concluded that the proposal would not be likely to result in significant effects on any designated sites or result in significant effects on the environment. The FAC does not consider that the issue of property values falls within its remit while noting that no convincing evidence has been submitted by the appellants in this regard. The proposal is for the planting of mixed, native woodland on existing managed agricultural land and the FAC concluded that it may provide some benefits regarding biodiversity, carbon sequestration and visual amenity.

In deciding to vary the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. 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 any submissions received.

Yours sincerely,

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

Vincent Upton On Behalf of the Forestry Appeals Committee





Before making a decision, the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening and an examination regarding the likelihood of impacts on the environment of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain.

The licence pertains to 7.55 hectares of afforestation of native woodland, described as pedunculate oak, birch, alder, other broadleaves planted in groups, with 900 metres of fencing at Ballyglavin, Co. Cork. Site preparation would be through mounding with drainage. No use of fertiliser is proposed and herbicide and manual weed control would be employed in year 1. The site is described as flat to moderate on a brown earth soil and a northern aspect, not crossed or adjoining an aquatic zone and is currently improved grassland with a grass, rush, furze vegetation type at an elevation of 136-157 m elevation. The application was referred to Inland Fisheries Ireland who raised no objection subject to DAFM guidelines being adhered to, An Taisce which did not reply and Cork County Comment which replied with no comment. There are a number of dwellings to the south and east of the proposal and setbacks of 60 metres are proposed. Having regard to the particular circumstances of this proposal the FAC is proposing to extend these setbacks to 70 metres for reasons of residential amenity.

#### **Appropriate Assessment Screening**

The proposal is not connected with or necessary to the management of any European site. There are four European sites within 15km and based on the nature and scale of the development significant impacts on sites outside of this radius are not considered possible. These European sites and their direct distances to the proposal and qualifying interests are listed below. There are no licence conditions that relate to the mitigation of impacts on European sites and none were included in this assessment. The additional conditions included by the FAC relate to residential amenity and good forestry practice generally and have no relation to any European site.

The boundary of the Blackwater River (Cork/Waterford) SAC lies 1.9km to the east. There are no aquatic features on or adjacent to the proposal site. The closest aquatic feature is a stream that lies some 175 metres to the west and is separated by a field network and hedgerows from the proposal and there is no evidence of any hydrological connection to this stream. This stream flows north to join the SAC but at the estuary which would not be suitable habitat for the more sensitive qualifying interests of the SAC. In particular the proposal is not within a subcatchment that contains freshwater pearl mussel and the population and suitable habitats for this species are situated much further north and away from the estuary. The habitats associated with this SAC have not been recorded on site which is comprised of improved agricultural land. Having particular regard to the absence of a hydrological connection, the likelihood of a significant effect on this SAC does not arise. The boundary of Blackwater Estuary SPA lies some 2.4km to the east and its conservation objectives relate to a number of wetland and waterbirds. The proposal would occur on improved pasture and tillage land on a brown earth soil and there is no evidence of aquatic zones or suitable habitat for the related species. The degree of separation would



preclude noise or other forms of direct disturbance. The boundaries of Ballymacoda (Clonpriest and Pillmore) SAC and Ballymacoda Bay SPA are situated 8.5 km south of the proposal in a separate catchment from the proposal. The absence of a hydrological connection and degree of separation would ensure the likelihood of significant effects on these sites would not arise, which have been designated for primarily coastal species and habitats.

Other afforestation licences have been granted in the area but few in recent years with none which are directly adjacent to the proposal. There are other forestry licences in the wider vicinity for forest road works and felling. There are also a number of permissions granted for dwellings and agricultural buildings in the general vicinity. Due to the absence of a pathway for significant effects from the proposal and any European sites and the nature and scale of the proposal and other projects, these other plans and projects would not result in in-combination effects with the proposal.

Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites in proximity to the proposal, the absence of a hydrological connection or other pathway of effect and the separation distance to those sites, the FAC concluded that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	002170	Blackwater River (Cork/Waterford) SAC	1864.13	<b>Habitats</b> 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1220 Perennial vegetation of stony banks 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritima) 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* <b>Species</b> 1096 Brook Lamprey ( <i>Lampetra planeri</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002170.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0002170.pdf</a>	No likelihood of significant effects

				1106 Salmon ( <i>Salmo salar</i> ) 1421 Killarney Fern ( <i>Trichomanes speciosum</i> ) 1095 Sea Lamprey ( <i>Petromyzon marinus</i> ) 1355 Otter ( <i>Lutra lutra</i> ) 1103 Twaite Shad ( <i>Alosa fallax fallax</i> ) 1092 White-clawed Crayfish ( <i>Austropotamobius pallipes</i> ) 1029 Freshwater Pearl Mussel ( <i>Margaritifera margaritifera</i> ) 1099 River Lamprey ( <i>Lampetra fluviatilis</i> )		
SAC	000 077	Ballymacoda (Clonpriest and Pillmore) SAC	8441.85	<b>Habitats</b> 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows ( <i>Glaucopuccinellietalia maritimae</i> ) 1410 Mediterranean salt meadows ( <i>Juncetalia maritimi</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0000077.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0000077.pdf</a>	No likelihood of significant effects
SPA	004 028	Blackwater Estuary SPA	2387.97	<b>Birds</b> A157 Bar-tailed Godwit ( <i>Limosa lapponica</i> ) A140 Golden Plover ( <i>Pluvialis apricaria</i> ) A050 Wigeon ( <i>Anas penelope</i> ) A156 Black-tailed Godwit ( <i>Limosa limosa</i> ) A162 Redshank ( <i>Tringa totanus</i> ) A160 Curlew ( <i>Numenius arquata</i> ) A142 Lapwing ( <i>Vanellus vanellus</i> ) A149 Dunlin ( <i>Calidris alpina</i> ) <b>Habitats</b> Wetlands	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0004028.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0004028.pdf</a>	No likelihood of significant effects
SPA	004 023	Ballymacoda Bay SPA	8461.99	<b>Birds</b> A050 Wigeon ( <i>Anas penelope</i> ) A156 Black-tailed Godwit ( <i>Limosa limosa</i> ) A052 Teal ( <i>Anas crecca</i> ) A179 Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) A144 Sanderling ( <i>Calidris alba</i> ) A162 Redshank ( <i>Tringa totanus</i> ) A142 Lapwing ( <i>Vanellus vanellus</i> ) A160 Curlew ( <i>Numenius arquata</i> ) A137 Ringed Plover ( <i>Charadrius hiaticula</i> ) A182 Common Gull ( <i>Larus canus</i> ) A157 Bar-tailed Godwit ( <i>Limosa</i>	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0004023.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/C0004023.pdf</a>	No likelihood of significant effects



				<i>lapponica</i> A169 Turnstone ( <i>Arenaria interpres</i> ) A183 Lesser Black-backed Gull ( <i>Larus fuscus</i> ) A140 Golden Plover ( <i>Pluvialis apricaria</i> ) A141 Grey Plover ( <i>Pluvialis squatarola</i> ) A149 Dunlin ( <i>Calidris alpina</i> ) <b>Habitats</b> Wetlands		
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### EIA Preliminary Examination

The EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which Member States must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 in relation to forestry licence applications require compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The proposed afforestation is substantially sub-threshold and is located in a rural landscape with existing agriculture and forests. The soil is described as brown earth and the land is currently in agricultural use, aerial imagery of the area would suggest a mixture of pasture and tillage in the general vicinity. The proposed operations would be in keeping with land use practices and once established the proposal would result in fewer inputs to the land than its current use. The site is in an area that is generally considered fisheries sensitive but there are no marked aquatic areas in or adjoining the site and no hydrological connection with any aquatic feature. The area is generally rural and agricultural with a number of existing forests in the wider landscape c.7km northwest of Youghal. The landscape is considered moderately sensitive in the County Development Plan and the application was referred to the County Council who offered no comment. The FAC concluded that the proposal of mixed, deciduous native woodland would provide some benefits in regards visual amenity in the general area but not of a significant degree. There are public roads and dwellings to the south and east of the site and setbacks of 10 metres and 60 metres, respectively were proposed. In the particular circumstances of this case, including the site and orientation of residential property relative to the project site, and in order to minimise impact on the residential amenities of those properties the FAC is proposing to extend the setback to 70 metres. The FAC considers that the proposal would not result in a significant effect on residential amenity. There are existing hedgerows on site which will be maintained and the proposal of mixed, native tree species will likely provide greater biodiversity benefits than the existing agricultural land. There are no recorded archaeological monuments on or adjoining the site but historic buildings are present at the southwestern edge of the proposal and have been considered by the DAFM archaeologist. The conditions attached to the licence related to the protection of these buildings are



considered sufficient and acceptable to the FAC. There are existing forests in the area and afforestation licences have been granted for the general area but these are not considered to lead to significant cumulative effects having particular regard to the managed, agricultural landscape in which the proposal would take place and the nature and scale of the proposal and existing forests in the wider landscape.

Having regard to the nature, scale and location of the proposal, the FAC concluded that there is no real likelihood of it resulting in a significant effect on the environment, itself or cumulatively with other projects, and that the submission of an Environmental Impact Assessment Report or EIA is not required.

Vincent Upton On Behalf of the Forestry Appeals Committee

