



30 November 2020

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Our ref: FAC 007/2017

Subject: Appeal in relation to afforestation licence CN78923

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) in respect of afforestation licence CN78923.

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 CN78923 was granted by the Department on 30 August 2017.

Hearing

An oral hearing of appeal 007/2017 was conducted by the FAC on 24 November 2020.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Bernadette Murphy & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
DAFM representatives:	Mr Ciaran Nugent & Ms Mary Coogan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made

at the Oral Hearing and all other submissions, before deciding to set aside and remit the decision to grant this licence (CN 78923).

The proposal is for afforestation on a stated site of 2.83ha. composed of (2 plots) at Caher (connell), Co. Limerick. The proposal is for 90% Sitka Spruce and 10% Broadleaves. Ground preparation would involve mounding. Slit planting is proposed and Granulated Rock Phosphate would be applied at a rate of 250kg/ha. Herbicide control is proposed for years 0-2 inclusive. Stock fencing of 150m would be provided. The proposal would involve a change of land use from agriculture to forestry. The site is currently in grass/grass rush. It is at elevations of 190m to 200m, and gently slopes to the west with the fall going towards the River Feale. An ESB line bisects the project lands.

There were no referrals and the DAFM consideration was desk assessed. Submissions were lodged by local residents during the DAFM consideration of the application.

The licence was issued on 30th August 2017 subject to standard conditions and the following additional conditions:

- A number of objections have been received from neighbouring residents. Impacts on neighbouring landowners will be reduced via implementation of 60m setbacks from dwelling houses and associated buildings.
- All interfaces with dwelling setbacks and public road are to be planted with broadleaves. Applicants should consult with neighbours to outline mitigation measures prior to commencement of works.
- Dwelling houses/buildings setback 60m
- Public Road setback – broadleaves 10m and conifers 20m.

The decision to grant the licence is subject to appeal from local residents. The grounds contend that the proposed forestry would cause darkness (and loss of sunlight) and give rise to bees and insects. Existing housing would be surrounded by forestry. Turpine will contaminate spring water supplies. There would be adverse impacts on the quality of life for residents in the area and depreciation in the value of land in the area. The proposal will have adverse impacts on internet services. Concern is expressed regarding danger from falling trees in the area and the potential for fire hazard. Anti-social activities in the area include the dumping of rubbish and these could be exacerbated. There is already excess forestry in this area. Local roads are unsuitable for forestry lorries. There are Hen Harriers, skylark and other ground nesting birds in the area.

In response, the DAFM state that the application was examined, considered and certified for approval based on a desktop audit. This area is not zoned or designated as a residential area and is predominantly in agricultural use. The conditions applied to the licence, in addition to standard operating procedures and guidelines would address the concerns of neighbouring residents.

The FAC sat in person at an Oral Hearing in Portlaoise on 6th November 2020. The parties were invited to attend in person or by electronic means. The DAFM participated electronically but the applicant and appellant did not participate. The DAFM detailed the procedures followed in the making of the decision to grant the licence. The area is predominantly an agricultural area with clusters of housing. The issues raised by the appellants mostly relate to residential amenities and social issues. The DAFM



stated that the assessments undertaken at the time of the granting of the licence (30.08.2017) were different and less complex than assessments that would now be carried out. In response to questions, the DAFM stated that the area is not in a designated SPA and that the nearest SPA is in excess of 6km separation distance. Hen Harrier procedures were not applied at the time of considering the application. The River Feale catchment, which is designated for salmon, is an important factor. This is not a high risk' site. The DAFM have no information on wells in the area but an assumption could be made that there are wells serving housing in the area. Septic tank systems would pose greater risk to any such wells than the proposed afforestation. The appellants' contention that the proposal would interfere with internet connection in the area is not proven. The DAFM accepted that the viability of the proposed development, as permitted by the licence and attached conditions, was questionable.

In addressing the grounds of appeal, the FAC noted that alleged anti-social activities in the area were a matter for law enforcement and not a consideration in this appeal. The orientation of the proposed afforestation and separation distances from dwellings in the area were considered, and the FAC concluded that, subject to the setbacks as required in the conditions attached to the licence, there would be no significant loss of sunlight or light to nearby dwellings. The contentions that the proposal would lead to depreciation of property values or would contaminate water supplies are not substantiated and, based on the information before it, not accepted by the FAC. The FAC considered that there is no convincing evidence presented that the proposed development would give rise to a fire hazard or would be likely to endanger public safety as a result of falling trees. The FAC considered that the local roads could safely facilitate traffic arising from the proposed afforestation. While the grounds of appeal contend that internet services would be affected by the proposal, the FAC considers that there is no convincing information presented to support this contention. The FAC noted the submissions made in respect of the Hen Harrier, Skylark and other ground nesting birds in the vicinity, but that no specific evidence had been presented by the appellants in this regard.

The FAC considered that the proposed development should have been subject to screening in accordance with the provisions of Article 6(3) of the Habitats Directive and that this had not been carried out prior to the making of the decision to grant the licence. In these circumstances, the FAC decided that the decision under appeal should be set aside and remitted to the Minister to carry out a comprehensive screening in accordance with the requirements of Article 6(3) of the Habitats Directive.

Yours Sincerely

Pát Coman, on behalf of the FAC

