



13th May 2025

Subject: Appeal FAC038/2024 against licence decision CN91244

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence decision issued by the Minister for Agriculture, Food and Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001-2020, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Hearing and Decision

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC038/2024 was held remotely by the FAC on 26th March 2025. In attendance:

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly and Mr. Vincent Upton.
Secretary to the FAC:	Ms. Ruth Kinehan.

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the FAC has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN91244. The reasons for this decision are set out hereunder.

Background

The decision under appeal relates to an afforestation licence application at Blackgardens, Co. Leitrim. The application was accompanied by operational and environmental information. The total application area covers 13.15 hectares across two plots with plot 1 being planted with Sitka spruce and broadleaf species and plot 2 retained as open space. The application was accompanied by a number of maps including a Biomap that displayed features on and adjoining the site and access to the public road. The record includes copies of a site notice which is marked as being located at the public road. The DAFM sought further information in relation to the mapping of watercourses, boundaries and features on site. The applicant further submitted revised mapping, a traffic management plan, High Nature Value Farmland screening form, and an invasive species management plan and additional maps. An opinion in

relation to the status of the existing entrance was also submitted. The site boundaries were amended to require native woodland planting on two smaller sections such that the application was for four plots.

The site is described as agricultural land, primarily comprised of wet grassland on a mineral soil, currently used for grazing sheep. Operations would include mounding and angle notch planting with the use of 250kg/ha granulated rock phosphate and manual weed control. The site would be fenced with 560 metres of sheep fencing.

The application was referred to An Taisce and Leitrim County Council. An Taisce made a submission referring to the requirement to screen the application for EIA considering cumulative effects, the undertaking of Appropriate Assessment in relation to Lough Gill SAC, and watercourse setbacks. The County Council included a response from the planning department and an Engineer's report that recommended refusal of the licence with reference to the Technical Standard for the Design of Forest Entrances from Public Roads.

The application was subject to two periods of public consultation and no submissions from the public are recorded.

The documentation includes an Appropriate Assessment screening report and determination dated 03/08/2023 that was stated to consider the application, submissions and a site visit reported by an Ecologist. It is noted that no Annex I habitats or Annex II or IV species were encountered during the site visit.

The site is not located within a European site and the screening notes six European sites within 15km. These are Lough Gill SAC IE0001976, Boleybrack Mountain SAC IE0002032, Arroo Mountain SAC IE0001403, Ben Bulbin, Gleniff and Glenade Complex SAC IE0000623, Glenade Lough SAC IE0001919, Cuilcagh - Anierin Uplands SAC IE0000584. Each site is considered in turn with its interests and conservation objectives and reasons are provided for the screening conclusion in each case. Other plans and projects were considered in combination with the proposal. It was determined that the proposal should proceed to Appropriate Assessment (AA) in relation to Lough Gill SAC IE0001976 on the basis that a hydrological connection existed from the project to the European site. All other sites were screened out and reasons are provided for the screening conclusions reached for each of the European Sites examined. An AA Report (dated 03/08/2023) was completed that describes each qualifying interest and potential effects and states the mitigations required. The effects and measures relate to aquatic species and habitats associated with the SAC. The measures include specified setbacks from aquatic zones and watercourses, management restrictions and control of invasive species. An AA Determination dated 10/10/2023 was also completed that outlined the AA process and again specified the required measures.

A DAFM Archaeologist prepared a report specifying adherence with the Environmental Requirements for Afforestation and setbacks from existing buildings and a historic pathway.

The licence was granted on 18/01/2024 subject to conditions.

The Minister subsequently revoked the licence as a submission from the County Council had not been considered. The documentation record the submission from the County Council and a new AA Determination (dated 28/02/2024) and EIA screening (dated 20/03/202). A new decision was then made on 21/03/2024, which was to grant the licence subject to conditions.

Appeal

There is one third party appeal against the decision and the full grounds of appeal have been provided to all parties. The grounds of appeal, in brief summary, contend that,

- The licence does not refer to the mitigations of the Appropriate Assessment,
- Access issues have not been resolved to the satisfaction of the Local roads Authority. The grounds make reference to a previous decision of the FAC, the submission of the local authority and the EIA screening,
- Errors and omissions in the ecological assessment, including failures to safeguard HNVP,
- Inadequate protection for wildlife, that DAFM procedures are not consistent with the requirements of the Birds Directive,
- The application is not compliant with the Forestry regulations, that project mapping fails to clearly show all legally required features,
- That the Appropriate Assessment contains lacunae,
- That there was inadequate consideration of the feedback from Prescribed bodies,
- That there were procedural errors in relation to FIRs,
- Afforestation of areas of wetlands authorised contrary to Para. 63 of the State Aid Decision.

A statement was made responding to the appeal by the DAFM and the full statement was provided to the parties. The statement provided an overview of the decision-making procedure and, in summary, submitted,

- That the DAFM accepts that reference was not made to mitigations required by the appropriate assessment and that the decision should be remitted,

- That the licence is for afforestation and not a single consent or forest road application. There is no proposal for the upgrading or widening of the existing entrance which are subject to a separate licencing process. That the submission from the County Council refers to forest roads and the application is for afforestation. That the DAFM is the competent authority for issuing afforestation licences and that standard operating procedures were adhered to and that adequate access exists per section 5.3.2 of the Forestry Standards Manual.
- The suggestion of bias is rejected and the decision was issued in accordance with DAFM procedures, SI 191 of 2017 and the Forestry Act 2014. That the project was screened for HNVP and a small area of highly modified basin peats which would be planted with native woodland.

The Appellant made a further submission contending that the Minister should revoke the decision and that not all matters raised in the appeal had been addressed with specific reference to EIA screening and access. The Applicant submitted that the existing access is sufficient and that they had also contacted a neighbouring forest owner who could work with them. The DAFM submitted that their policy is not to revoke a licence under appeal, that the fee is fair and that the AAD forms an integral part of the licencing decision.

Considerations

As the parties were informed the FAC relied on the Forestry Licence Viewer as the record of the decision and the documents and evidence that the Minister is required to provide in response to an appeal. A licence decision for these lands had been made in 2021, which was subject to a previous appeal and decision to set aside the decision as noted in the grounds. For the avoidance of doubt, it is the appeal against the decision of 21st March 2024 which is before the FAC and the subject of this decision. The Appellant has further contended that the decision should be revoked but it is the decision to grant the licence that has been appealed and is before the FAC. In relation to fees, it is the Minister for Agriculture that is empowered to prescribe fees and the refunding of fees. General matters of forest policy are also within the remit of the Minister for Agriculture.

The FAC noted that the Appellant failed to substantiate a significant number of their grounds. The Agriculture Appeals Act 2001-2020 requires an Appellant to submit all of the grounds and all of the documents and evidence on which they wish to rely in making an appeal.

The FAC considered in the first instance the grounds that contend that the measures outlined in the Appropriate Assessment were not conditioned and that the assessment contains lacunae.

In relation to the Appropriate Assessment Determination and Report, the FAC considers that the specific measures that must be adhered to were generated by the DAFM as part of the assessment process and not submitted as part of the application. The FAC would understand that adherence to these measures should have been attached as a condition of the licence and the DAFM have accepted that this did not occur and that this was an error. They further requested that the decision be remitted to address this and suggest that some further assessment may be required. The FAC is satisfied that this constituted a

serious and significant error and that, based on the DAFM submission, the most appropriate decision would be to remit the decision to ensure the process is completed correctly.

The grounds make a general contention that there are lacunae in the assessment and that there are issues with reference material but fail to identify any specific error. The FAC noted that in the screening document the DAFM note that they considered the qualifying interests and conservation objectives of European sites but in relation to Ben Bulbin, Gleniff and Glenade Complex SAC do not appear to record that the qualifying interests of the SAC include Blanket bogs (7130). Given the nature of the application and the considerable distance to the SAC there is clearly no basis to consider that this apparent error is of any significance, and the grounds do not contend such or identify this as an error. The decision is being remitted and the DAFM may amend this in redoing the process. The FAC further noted that the record of other plans and projects refers to an out of date County Development Plan referring to the Leitrim County Development Plan 2015-2021. The FAC noted that the Leitrim County Development Plan 2023-2029 came into effect on 21/3/2023 replacing the Leitrim County Development Plan 2015-2023 and was the statutory development plan at the time the In-Combination assessment was completed and that this represents a further serious error in the processing of the application.

The FAC noted the grounds do not identify any specific errors but the DAFM should address these issues in undertaking the assessment again and that on that basis the decision should be remitted to the screening stage.

In relation to access, the grounds make reference to a previous decision to set aside a decision on an application on the same lands. That decision was made in 2021 on a previous application, the decision now before the FAC is based on a new application, which includes new reports and information. The FAC does not consider itself to be generally bound by a previous decision on a different application.

The site has access in place currently, through an existing entrance onto the public road which has been used for agricultural purposes. The decision before the FAC is in relation to an afforestation application. The Applicant and the DAFM have submitted that the access is suitable for the purposes of the afforestation application.

The submission from the County Council Engineer is based on the requirements laid out in the Technical Standard for the Design of Forest Entrances from Public Roads. The Forestry Regulations 2017 provide for the Minister for Agriculture to have regard to these standards but only in the context of an application for forest road works, activities that are subject to a separate licencing decision. The Minister for Agriculture is further required to refuse a licence application where it does not conform with the standards but this is also stated to be in the context of an application for forest road works. The County Council submission states that the required sightlines may not be attainable but that details have not been provided. The submission goes on to note that no information has been submitted in relation to a relaxation or departure from the Standards. However, the Applicant was not submitting an application for forest road works and was not required to provide such information. Licence applications for afforestation and forest road works are separate processes under the forestry legislation.

The application includes an Engineer's report, which states that an application for planning or single consent would not be required, and a traffic management plan for the site. The Applicant is clearly aware that they may be required to attain a licence for forest road works in the future and the application displays an awareness of the technical requirements that may need to be met. They have also identified potential alternative options for extracting timber.

The decision was made on an afforestation application and does not include forest road works, which are addressed through separate applications under the Forestry Regulations 2017. A decision of the Minister for Agriculture on the application was revoked to allow for consideration of the submission from the County Council. In relation to the current appeal, a licence decision had been revoked to allow for the consideration of the submission and the licence as issued requires consultation with the County Council prior to the commencement of works. The FAC consider that it would be unreasonable to refuse an application on the basis that an Applicant did not provide information that is required under a separate and different form of application.

The grounds contend that there was inadequate consideration of feedback from prescribed bodies but does not substantiate the claim. As noted, a licence had been revoked on the application as the basis that the DAFM had not considered the submission from the County Council. The record of the DAFM notes the submission and the licence decision that was subsequently made including a condition to contact the County Council. An Taisce also made a submission in relation to undertaking screening for EIA and AA which were undertaken by the DAFM and referred to setbacks from water courses which are conditioned on the licence.

The FAC is not satisfied that a serious or significant error occurred in the making of the decision in relation to the grounds of appeal that relate to access and referrals.

The grounds allege a failure to safeguard High Nature Value Farmland but does not substantiate this. The record includes a screening for HNMF submitted as part of the application and the screening concludes that the site does not qualify as HNMF. The DAFM record that it agrees with the assessment and that the lands are intensively managed farmland with no Annex I habitats. The grounds contend that the DAFM procedures are not commensurate with the requirements of the Birds Directive but does not substantiate the claim. The proposal is for the afforestation of agricultural land outside of any conservation area and was subject to a number of assessments including habitat assessment. The granting of the licence does not remove any protections or requirements to adhere with other relevant legislation.

The grounds allege an error in the EIA Screening Determination but does not identify an error or substantiate the claim. The grounds allege a failure to comply with the Forestry Regulations in relation to mapping but does not substantiate the claim. The application including a number of maps including biomaps displaying environmental features such as watercourses, hedgerows and archaeological

features. The FAC is not satisfied that a serious or significant error occurred in the making of the decision in relation to these grounds of appeal.

The grounds contend a procedural failure regarding "FIR's" which the FAC understands to be Further Information Requests. This ground is not further substantiated. The DAFM did issue a number of such requests seeking further clarification as previously noted. The grounds do not identify a specific error. The Forestry Regulations 2017 do provide that the Minister may extend the period of public consultation where new information is submitted. In this case, the applicant appeared to have submitted the High Nature Value Farmland screening and the inclusion of two small areas of native woodland within the site after the period of public consultation, as recorded in the documents available to the FAC. The FAC considers that as these formed part of the application and were of some significance that the Minister should have opened the application for an additional period of public consultation and that the failure to do this was a serious error.

In relation to state aid rules regarding the provision of grant aid under forestry schemes, the remit of the FAC does not extend to decisions in relation to grant aid as provided in the Agriculture Appeals Act 2001-2020. The lands were subject to a habitat assessment as recorded.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the submissions received. In accordance with Article 14B of the Agricultural Appeals Act 2001-2020, as amended, the FAC is satisfied that serious and significant errors were made in the making of the decision in relation to licence CN91244. The FAC is thus setting aside and remitting the decision of the Minister to ensure, that before a new decision is made, the full application is subject to a new period of public consultation and an Appropriate Assessment (AA) screening, and AA as required, of the proposal itself and in combination with other plans and a new EIA screening are undertaken in keeping with the Forestry Regulations 2017

Yours sincerely,

Vincent Upton, On Behalf of the Forestry Appeals Committee

