



12th May 2025

Subject: Appeal FAC 112/2024 against licence decision CN94725

Dear Sir,

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

Hearing

A hearing of appeal FAC 112/2024 was held remotely by the FAC on 15/04/2025. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman & Mr. Derek Daly.
Secretary to the FAC: Ms. Aedin Doran.

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.

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant licence CN94725. The reasons for this decision are set out hereunder.

Background

The licence decision relates to the afforestation of 7.76 hectares at Laragh and Ross, Co Roscommon. The application is recorded as having been published 29/03/2024. The Applicant and Registered Forester has certified that the claimed area does not include areas of biodiversity enhancement (ABE) in excess of 15% and that the site notice in the format prescribed has been erected at the entrance to the site. The site is stated not to be in a Curlew Breeding Buffer, not within a Special Protection Area (SPA), Special Area of Conservation (SAC) or Nature Heritage Area (NHA), and not within one of the top eight Freshwater Pearl Mussel catchments.

The project area is stated not to be within an area designated as being potentially acid sensitive in relation to surface waters, is not within an area identified as being sensitive for fisheries, is not within a Zone of Contribution, Source Protection Area or 250 metres buffer for a drinking water abstraction point, is not within a High Status Objective Waterbody, and is not in the sub-basin of a waterbody where forestry is characterised as a pressure by the EPA (alone or alongside other pressures), is not within or immediately upstream of the sub-basin of a River Waterbody deemed 'At Risk' or subject to review under the relevant River Basin Management Plan, and is not within or immediately upstream of the sub-basin of a River Waterbody, the status of which has been classed as 'Bad' or 'Moderate' under the current River Basin Management Plan. It is also stated not to be within or immediately upstream of a Lake Waterbody deemed 'At Risk' or subject to review under the relevant River Basin Management Plan nor within or immediately upstream of a Lake Waterbody, the status of which has been classed as 'Bad' to 'Moderate' under the relevant River Basin Management Plan.

The project area is stated not to be wholly or partially within the foraging range of a Special Conservation Interest of a SPA, as per the Bird Foraging Table, and is within an area wholly or partially within the Bird Watch Ireland (BWI) Breeding Wader Hotspot map. The project area is said not to be within a HNVf area with a score of 0.5 SD or greater, does not overlap with the Irish Semi-Natural Grasslands Survey layer, and does not contain Annex I habitat(s). The project area is also stated not to be within 200 metres of a listed archaeological site or monument and not within or adjoining an Archaeological Area, a Zone of Archaeological Amenity, a World Heritage Site, a site on the Tentative List of World Heritage Sites, or a historic battlefield, and does not contain or adjoin a Protected Structure or a building or structure in the National Inventory of Architectural Heritage.

The project area is described as having both mineral and peat soil, is said to be exposed / moderately exposed with a neutral aspect agricultural land and having a Grass, Grass / Rush vegetation type. The pre-approval submission on file shows the proposed planting as a mix of Native Tree species. The application includes Biodiversity / Operational Mapping, a fencing map, a location map and operational details in the form of the applicant's pre-approval submission report. The Biodiversity map shows the public road, hedgerows, utilised building, aquatic zones, relevant water courses, the location of a 10-20KV electricity line, various associated setbacks, and the location of the site notices. Plot numbers / boundaries are also on the maps. The proposal includes 2353 metres of stock-sheep fencing. There is also a current environment and habitats map on file as marked completed on 26/03/2024.

No fertilizer is to be applied to the project and ground preparation would include scrap mounding with no drainage. Manual herbicide control is proposed in year 1, pit planting would be used, and no firebreaks are included. The application was referred to Roscommon County Council who in response sought to be informed of the DAFM decision on the application.

Breeding Wader & Wetlands Report for afforestation project located at Laragh & Ross, Co. Roscommon dated 27/02/2024

This report which is prepared by a Consultant Ecologist for the DAFM concludes that in relation to snipe;

'The project is located within the Birdwatch Ireland Breeding Waders Hotspot layer, specifically within the 10km layer for suitability to breeding Snipe (IFORIS, 2024). See fig. 3 for further information. Snipe were noted at survey on 20/2/2024 in plots 6 and 7. See fig 4. For detail.

In general, Snipe can be found on coastal grazing marshes, damp lowland grassland subject to freshwater flooding or waterlogging such as floodplain grasslands, and isolated pockets of poorly drained grassland. Snipe also breed on moorland bogs and marshy rough pasture, and on marginal grassland.

They generally prefer fields with more tall cover than other waders. A varied sward with 30-40% short (10-30cm) and 60-70% tussocks and rushes (50-80cm) is ideal. Some dead plant litter (10-20%) and up to 20-30% soggy ground or shallow standing water are also important. Parts of this site within the wet grassland areas suit Snipe, in particular, the area of flood risk in plot 6 and their presence was noted at survey. The areas of improved grassland and scrub do not suit Snipe for foraging or breeding.

Grassland in the project area hosts areas of tall rushes suited to Snipe. Field size is large enough to minimize edge effects. The more intensively-managed areas utilised by grazing cattle are unsuitable for breeding Snipe'.

The report also sets out that *'Based on results of desktop study / Application details / Site Inspection, it can be concluded that the north end of plot 6 which is susceptible to flood and found within the wetland layer is a wetland habitat according to Irish Ramsar Wetlands Committee, 2018. Irish Wetland Types – an identification guide and field survey manual. EPA, Johnstown Castle, Ireland. However, it is a wet grassland, semi-natural habitat and does not presently correspond to an Annex I habitat primarily due to the relative scarcity of positive indicators, the relative abundance of grasses to forbs and the height of the sward and lack of recent management in the wet grassland in recent times'.*

The FAC notes that the licence as issued required at condition 6 that Plot 6 is to remain unplanted.

Appropriate Assessment Screening (AAS)

The AA screening report on file dated 06/08/2024 as prepared by Heather Farrimond, Envirico Ltd identified sixteen European sites within 15km. These are listed below.

- Corliskea-Trien-Cloonfelliv Bog SAC IE0002110 (c. 1.1 km West of the project area).
- Kilsallagh Bog SAC IE0000285 (c. 5.5 km Southwest of the project area).
- Cloonchambers Bog SAC IE0000600 (c. 8.5 km Northwest of the project area).
- Lisnageeragh Bog and Ballinastack Turlough SAC IE0000296 (c. 9.3 km South Southwest of the project area).
- Bellanagare Bog SPA IE0004105 (c. 9.8 km North of the project area).
- Bellanagare Bog SAC IE0000592 (c. 9.8 km North of the project area).
- Mullygollan Turlough SAC IE0000612 (c. 10.4 km East Northeast of the project area).
- Croaghill Turlough SAC IE0000255 (c. 10.6 km West Southwest of the project area).
- Drumalough Bog SAC IE0002338 (c. 11.0 km Northwest of the project area).
- Coolcam Turlough SAC IE0000218 (c. 12.3 km West of the project area).
- Lough Lurgreen Bog-Glenamaddy Turlough SAC IE0000301 (c. 12.4 km South Southwest of the project area).

- Williamstown Turloughs SAC IE0002296 (c. 13.3 km West Southwest of the project area).
- Lough Corrib SAC IE0000297 (c. 13.5 km West Southwest of the project area).
- River Suck Callows SPA IE0004097 (c. 14.5 km Southeast of the project area).
- Camderry Bog SAC IE0002347 (c. 14.5 km South of the project area).
- Carrowbehy-Caher Bog SAC IE0000597 (c. 15.0 km West Northwest of the project area).

River Suck Callows SPA IE0004097 is screened in and the other fifteen European Sites are screened out. The screening report records reasons for the screening conclusions reached.

In-Combination Assessment (Screening Stage)

An 'Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN94725' is on file. This report is labelled as "Incombination Screening Stage" on the FLV. The report itself is undated but states that "Various online resources, datasets and DAFM's own databases were consulted on the 06-AUG-2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin SUCK_050.". The report is marked as being an Appendix A to the AA screening report on file. The Statement in the In-Combination Report has the following wording.

'It is concluded that there is no likelihood of the proposed Afforestation project CN94725, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment'.

Appropriate Assessment Report (AAR)

The record shows an Appropriate Assessment Report (AAR) dated 06/08/2024 described as being for 'Afforestation project CN94725, located at Laragh and Ross, Co. Roscommon'. This report examined the screened in site (River Suck Callows SPA IE0004097) and records that mitigation measures are required in respect of its Special Conservation Interest 'Wetland and Waterbirds [A999]'. It sets out the mitigation measures required at Section 4 of the report. The AAR concludes that the proposed Afforestation project under CN94725, with mitigation measures identified, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of the European site listed in the report. It also states that the project was considered in-combination with other plans in the area that could result in potential

significant cumulative effects on the European site and that no potential significant cumulative effects are predicted with the plans and projects listed in the in-combination assessment which is said to accompany the report.

DAFM Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN94725.

On file is a document titled 'Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN94725' which is itself undated and is marked as an Appendix to the AAR on file. This In-Combination report is in respect of the screened in site.

'It is concluded that there is no possibility that the Afforestation project CN94725, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) in-combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that those plans and projects do not give rise to any adverse effect on the integrity of those same European Sites. It is concluded that this project, when considered in combination with other plans and projects, will not adversely affect the integrity of those same European Site(s). Note that this relates to the proposed activities under CN94725 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted'.

Appropriate Assessment Determination (AAD).

An Appropriate Assessment Determination (AAD) for afforestation project CN94725, located at Laragh and Ross, Co. Roscommon and dated 20/09/2024 is on the record of the file. At section 4 of the AAD it outlines mitigation measures that it states will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in-combination with other plans and projects. It also states that DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site.

Assessment to Determine EIA Requirement.

The DAFM carried out an Assessment to Determine EIA Requirement based on an inspection certified on 26/09/2024 and being in advance of making the decision to grant the licence subject of the appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, HNVf, landscape, amenity and recreation, transfrontier, cumulative impact, and determined that the project was not required to undergo EIA. The assessment includes that the amount and type of forest cover in this locality is known to be a significant issue. A comment is recorded on the EIA screening form as follows: 'Though low level

of forest cover in the area, there is a submission from locals saying any further afforestation would be unwelcome'. The form records that the project area contains or adjoins a listed archaeological site or monument and that this sensitivity has been addressed by 'the Archaeology and Built Heritage Section' and any resulting recommendation(s) enacted through conditions to be attached to the afforestation licence (if issued).

Submissions

Two submissions received during the application processing period are on the record of the application file.

Licence

The decision to approve the licence application with conditions is dated 27/09/2024.

Appeal

There is one third party appeal against the issue of the licence. The grounds of appeal submit that the proposed site is in an SAC area designated for wading birds and that it will impact on the curlews in the area.

Ministers (DAFM) Statement (SOF)

A response to the appeal (SOF) was provided on behalf of the Minister for Agriculture, Food and the Marine. This outlines the procedure adopted by the DAFM in processing the application and the related dates. It is submitted that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act as amended.

The statement submits that in relation to the location of the project area that 'The site is not located with any Natura 2000 site. This was checked on the Department's Iforis system, which is a database for a large number of environmental databases, including Ireland's Natura 2000 network. The closest Natura 2000 site is located West around 1 km away and is called Corliskea/Trien/Cloonfellov Bog SAC.

As part of the Department's assessment process, the site was also assessed for the presence of Curlew. An ecologist reviewed this as part of the AAD (dated 20/9/24) and found that the proposal would not impact negatively on Curlew or breeding waders in general'.

WFD related

The project area (on the catchments.ie map) is shown to be in the vicinity of the Suck_050. The waterbody is shown to have a Good Status recorded for the 2016- 2021 period which is based on monitoring. It is recorded as not being at risk. The proposal is underlain by the Suck South Ground Waterbody which is also recorded as having Good status which is not at risk.

Considerations of the FAC

The FAC in the first instance considered whether an oral hearing was required in the case of the appeal and having regard to the particular circumstances of the appeal the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

The FAC considered the grounds in the appeal which submitted that the proposed site is in an SAC designated for wading birds and that it will impact on the curlews in the area. The FAC noted the content of the Minister's SOF wherein it set out that the DAFM checked the location of the project area and that it found that the site is not located with any Natura 2000 site and that the closest Natura 2000 site is located West around 1 km away and is called Corliskea/Trien/Cloonfolliv Bog SAC.

The FAC checked online sources including the Environmental Protection Agency (EPA) website as to whether the project area is located in an SAC and established that it is not. The FAC also noted the response in the SOF wherein it set out that as part of the Department's assessment process, the site was also assessed for the presence of Curlew and that an ecologist reviewed this as part of the AAD (dated 20/9/24) and found that the proposal would not impact negatively on Curlew or breeding waders in general.

The FAC noted that the appellant did not provide specific details of species present on the project lands or give convincing reasons to show how the proposed development would be likely to give rise to adverse effects on wading birds and curlews. The FAC also noted the contents of a report prepared by Ms Heather Farrimond, Field Ecologist, Envirico Ltd, on behalf of the DAFM, as an Assessment of Ecology Report(s) submitted by Applicant. The assessment by Ms Farrimond states that the Breeding Wader and Wetland report, submitted by the applicant, was assessed by Envirico and all information submitted satisfies requirements. It also states that it is considered relevant for making decisions and recommendations to the application and that following assessment by DAFM, it is determined that CN94725 will not have a significant effect on breeding waders and wetlands, provided the following mitigation is implemented.

- Plot 6 should be retained as a bioplot for Snipe.
- Given the slope, soil and environmental sensitivity, apply a 30 metre-wide water setback from the aquatic zone adjoining Plot 3. This water setback contains the approx. 20m pluvial flood risk zone and a 10m water set-back. This setback is to remain undisturbed and unplanted.

The FAC, based on the information available to it, finds no reason to conclude that the DAFM has erred in its processing of the application in so far as these grounds are concerned.

In relation to Appropriate Assessment the FAC finds that the file record includes a number of documents including:

- An Appropriate Assessment Screening (AAS) dated 06/08/2024,
- An 'Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN94725' which is itself undated,
- An Appropriate Assessment Report (AAR) dated 06/08/2024,
- An Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN94725 which itself is undated,
- An Appropriate Assessment Determination (AAD) dated 20/09/2024

The FAC finds that the In-combination assessment, which itself is undated and is marked as an appendix to the Appropriate Assessment Screening Report, and therefore presents as being for the screened-out sites, includes the following text in the statement at section 6. *'It is concluded that there is no likelihood of the proposed Afforestation project CN94725, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects.....'*

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. It appears to the FAC that it is not clear that the wording in this In-combination statement relating to the screened out sites demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of *'residual effect(s)'* that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC's view, the reference to *'residual effects'* in the In-Combination report / assessment on file, that appears to deal with the screened-out sites, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being *'residual'*.

The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term *'residual effects'* is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government published a guidance document on Appropriate Assessment entitled *Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities* (DEHLG, 2009). This document states on page 40,

'If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions'.

The FAC considers that this represents a serious error in the processing of the application such that the set aside and remittal of the decision in this case is required. The FAC considers that in the context of undertaking the screening again the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The FAC finds that the In-Combination assessment on file, which is itself undated, presents as an appendix to the AAR, and is dated the 06/08/2024, states in the opening paragraph that *'Various online resources,*

datasets and DAFM's own databases were consulted on the 20-SEP-2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin SUCK_050'. The FAC considers that it is an error in a report to make reference to an Appendix which on the face of the record available to the FAC postdates the report that it is appended to and that this represents a further serious error in the processing of the application.

In relation to the Assessment to Determine EIA Requirement to be found on the file for this licence decision the FAC finds that the DAFM recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, HNVf, landscape, amenity and recreation, transfrontier, cumulative impact, and determined that the project was not required to undergo EIA. The assessment includes that the amount and type of forest cover in this locality is known to be a significant issue, and that a comment is recorded on the EIA screening form, acknowledging the submission from locals saying any further afforestation would be unwelcome. The Inspector's note on the screening form records that the project area contains or adjoins a listed archaeological site or monument and that this sensitivity been addressed by 'the Archaeology and Built Heritage Section' and any resulting recommendation(s) enacted through conditions to be attached to the afforestation licence (if issued).

However, in reaching a decision not to undertake an EIA the Minister was required to consider potential cumulative effects with other plans and projects. The document prepared by the DAFM only refers to forest cover and other forestry projects. There is no indication on the record of the decision that potential cumulative effects with non-forestry projects were considered which would constitute a further error in the processing of the application.

The FAC concluded that the decision in relation to licence CN94725 should be set aside and remitted in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, and given the nature of the errors, the FAC considered that the Minister should subject the proposal to a fresh Appropriate Assessment Screening that identifies and assesses likely significant effects on European sites of the proposal itself and in-combination with other plans and projects and, where they occur, mitigation measures and an assessment as to whether the proposal would impact on the integrity of a European site and to also undertake a new Assessment to Determine EIA Requirement, in keeping with the requirements of the EU EIA Directive and the Forestry Regulations 2017, prior to the making of a new decision. The FAC also considers that a new period of public consultation should be undertaken prior to the making of a new decision.

Yours sincerely,

 Seamus Neely

On Behalf of the Forestry Appeals Committee

