



20th May 2025

Subject: Appeal FAC109/2024 against licence decision CN94307

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. As the parties were advised the FAC relied on the publicly available information on the Forestry Licence Viewer in considering the appeal. A hearing of appeal FAC109/2024 was held remotely by the FAC on 29th April 2025. In attendance:

FAC Members:	Mr. Seamus Neely (Chairperson), Mr. Iain Douglas and Mr. Vincent Upton
Secretary to the FAC:	Ms. Aedín Doran

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 CN94307. The reasons for this decision are set out hereunder.

Background

The decision under appeal relates to the granting of an afforestation licence by the Minister for Agriculture, Food and the Marine at Knockerry west, Co. Clare. The application was published on 03/04/24 for 19.19 hectares. The application included operational and environmental information and a number of maps including habitats map, biomap, and fencing map. The application included a consideration of the proposal across a range of criteria and the Applicant submitted that significant effects on the environment were not considered likely and that additional reports were not required at the application stage.

The site is currently comprised of agricultural pasture primarily improved grassland and improved wet grassland on a mineral, organic soil. A watercourse borders the southern boundary and the application

site is divided by a public road at which access to the site is marked. There is a ringfort within the lands which is excluded and there are a number of dwellings close to the site primarily to the south and north with one dwelling located at the site access. Setbacks are stated for the road, watercourses, fort and houses. Two site notices are stated to have been erected at the access points and photos are provided. The proposal is divided into seven plots, although one plot (7) would not be planted with trees. Native woodland comprising common alder, birch and other species would be established in plots 1, 2, 3 and 6 and Sitka spruce and birch, at an 80:20 ratio, would be planted in the larger plots, 4 and 5. Planting would be through invert mounding with angle notch planting, no fertiliser application and herbicide weed control in the first two years. The lands would be fenced with 1,330 metres of stock fencing and no drainage would be required.

The application was referred to the County Council and An Taisce. The County Council made a submission requesting that the licence be conditioned on consulting with the Roads Engineer and access agreed and setbacks from the public road.

The application was subject to public consultation and five submissions were made. These were from neighbouring properties that objected to the proposal and raised concerns including impacts on residential amenity, the availability of land for local farmers, biodiversity and water quality and refer to a number of specific aspects of the application. The DAFM subsequently stated that a number of the submissions were from a previous application that had been withdrawn and that the submissions were “transferred” onto the new application and the parties were informed of this. These submissions are dated in 2023.

The DAFM undertook a screening for Appropriate Assessment in relation to Article 6(3) of the EU Habitats Directive. The screening is dated 04/07/2024 and prepared and reviewed by Ecologists. This is described as being based on the details of the application and a site visit by an Ecologist on behalf of the DAFM on 17/06/2024. It also noted the submissions by the prescribed body and members of the public. The application site is not within a European site and the screening identified seven European sites which are within 15km of the proposal. These are the Lower River Shannon SAC IE0002165, River Shannon and River Fergus Estuaries SPA IE0004077, Tullagher Lough and Bog SAC IE0002343, Carrowmore Dunes SAC IE0002250, Mid-Clare Coast SPA IE0004182, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161, and Carrowmore Point to Spanish Point and Islands SAC IE0001021. The Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA are the closest sites to the proposed afforestation and both are screened in with reference to a hydrological connection through the watercourse bounding the site and the consideration of in-combination effects. The Mid-Clare Coast SPA was also screened in in relation to potential displacement of a special conservation interest.

The DAFM prepared an Appropriate Assessment Report (AAR), dated 04/07/2024, that described the interests, conservation objectives and likely effects of the proposal and measures required. In relation to the SAC the primary concerns related to possible impacts on water quality and the aquatic species for which the SAC is designated. The AAR is dated 04/07/2024 and prepared and reviewed by Ecologists. Measures include specified operational setbacks around watercourses and controls on the use of inputs.

The AAR concludes,

It is concluded that the proposed Afforestation project under CN94307, 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(s) listed above. The project was also considered in combination with other plans in the area that could result in potential significant cumulative effects on these European site(s). No potential significant cumulative effects are predicted with the plans and projects listed in Appendix A.

Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site. This relates to the proposed activities under this project only. Any subsequent forestry-related activity requiring consent/grant aid shall be subjected to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted.

A second round of public consultation was undertaken and no submissions were made.

The DAFM prepared an Appropriate Assessment Determination, dated 17/09/2024, that noted the additional reports and submissions received, including the exclusion of plot 1, and concluded that these would not impact on the assessment undertaken. The Determination specifies the required measures and concludes,

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

As noted, the site contains a recorded monument, a ring fort, and the application excluded the fort and included a setback. The application was considered by a DAFM Archaeologist who recommended a setback be required and that a 5m setback be required from the townland boundary to the east and a 10m setback from a historic lime kiln which is located outside of the site boundary.

The application was subject to an *Ecology Assessment of Additional Environmental Considerations – Wetlands* dated 22/08/2024 which determined that the southernmost plot (Plot 1) was considered a wetland site and unsuitable for afforestation and should be excluded. This was noted in the AA Determination and the licence as issued excluded this plot.

The DAFM recorded a consideration of the proposal across a range of criteria and concluded that the proposal was not likely to result in significant effects on the environment and not required to be subject to an Environmental Impact Assessment.

The licence was issued on 19/09/2024 for an area of 16.86 hectares, subject to conditions including adherence with the measures outlined in the AA Determination and Archaeological conditions.

Appeal

There is one third party appeal and the full grounds were provided to all parties. In summary the grounds contend that there is no Appropriate Assessment on file for public consultation, that the separation distances are not sufficient to protect downstream waters, and that proper regard was not given to the Appellant's submission on the application.

The DAFM submitted a statement in response to the appeal which was provided to the parties. The statement outlined the procedures and processing of the application and submits that the decision was issued in keeping with the Forestry Act 2014 and the Forestry Regulations 2017. The DAFM submitted that the Appropriate Assessment Report was published and subject to a period of public consultation and that the Report outlined the assessment and the considerations including a field survey by an Ecologist and the submissions received. The statement outlines the measures in relation to water protection and describes them as going beyond standard measures and that coupled with the nature of the proposal and operations that adjoining and downstream waterbodies would be protected. The DAFM go on to describe the Appropriate Assessment process and submit that either a Natura Impact Statement submitted by an applicant or an Appropriate Assessment Report prepared by the DAFM may be relied upon and would be put out to public consultation. In this case the DAFM submit that the AAR was published on 15/07/24 and consultation was open before a final Determination was made on 19/09/24.

Considerations

The FAC considered in the first instance the grounds that contend that there was a requirement to submit a Natura Impact Statement (NIS) and a failure to make an NIS subject to public consultation. Part 8 of the Forestry Regulations 2017, as amended, addresses the undertaking of an Appropriate Assessment by the Minister for Agriculture. Under these Regulations, the Minister is empowered to require the submission of a Natura Impact Statement and is required to have regard to an NIS where submitted. However, the Regulations allow for the Minister to undertake an Appropriate Assessment without the submission of an NIS where information is available from other sources. In this case the DAFM have stated that an Appropriate Assessment Report (AAR) was prepared that was subject to public consultation before a final Appropriate Assessment Determination was completed. The FAC reviewed the record of the decision as provided on the Forestry Licence Viewer and found that the AAR was prepared in keeping with the dates of the identified second period of public consultation and that the AA Determination makes reference to this period and that no additional submissions were made. The FAC considers that this is in keeping with the requirements of the Forestry Regulations 2017 and is not satisfied that a serious or significant error was made in this regard.

In relation to the Appropriate Assessment (AA) itself, the grounds make some general claims of deficiencies but do not provide any real technical detail in relation to suggested significant effects of the proposal. As previously outlined the DAFM identified seven European sites which were specifically screened for significant effects. Each was considered in turn with its interests and objectives and reasons were provided for the screening conclusion. The proposal is for the planting of trees on agricultural land with limited site preparation and use of inputs. The DAFM determined that three European sites should

proceed to Appropriate Assessment. The AAR provided further detail of the effects on each interest of the European sites.

The FAC noted that in relation to the River Shannon and River Fergus Estuaries SPA IE0004077 and the interests Light-bellied Brent Goose (*Branta bernicla hrota*) [A046] and Whooper Swan (*Cygnus cygnus*) [A038] the following is recorded (emphasis added),

The project area contains suitable foraging habitat for these SCIs (Improved Agricultural Grassland (GA1), Wet Grassland (GS4)). The surrounding landscape is predominately agricultural and contains land similar to that within the project area which may also provide suitable foraging habitat for these SCIs. The habitat change to forestry in this area will not cause a significant adverse effect to these SCIs.

There is a hydrological connection of ca. 8.2 km (instream distance) between the project area and River Shannon and River Fergus Estuaries SPA IE0004077. Changes to water quality through addition of sediment, nutrient and pollutant (oil/fuel) could have indirect adverse effects on this species by negatively impacting on their supporting habitats cannot be ruled out.

And the report goes on to determine that no mitigation measures are required in relation to these interests and that it could be determined that the proposal would have no adverse impact on the integrity of the site. The FAC does not consider that the correct tests were implemented in relation to these interests as the assessment found that adverse effects could not be ruled out but did not provide an assessment or a basis for how the ultimate conclusion could be reached. The FAC considered this to be a serious error that would require the decision to be set aside and remitted for the assessment to be completed correctly.

The appeal goes on to allege that the “separation distances” conditioned on the licence are not sufficient to protect downstream waters with reference to the hydrology of the site as described in the screening determination. The grounds also submit that proper regard was not given to the submission on the application in relation to existing poor water quality and that the conditions are “token” in nature and do not take in to account the status quo. The FAC understands the reference to separation distances to relate to the operational setback areas proposed in the application and conditioned in the licence. The lands lie primarily in the Tarmon Lough Stream 10 sub basin with a smaller section in the Wood 10.

The primary connection to a watercourse was through plot 1 which bounded a waterbody with poor status. Plot 1 was subsequently removed and the afforestation of this plot was not licenced. Further connections would occur through agricultural drains and there are setbacks specified from this in keeping with long established good forest practice. The pressures identified on the Wood 10 are agriculture pasture which is the current use of the land and the proposal would result in a decrease in the pressure coming from agricultural use. The Tarmon Lough Stream 10 has good status and is not considered at risk.

The DAFM refer to the submissions from the public in the AA processes and the EIA screening. The DAFM suggest that the buffer zone will protect water quality as opposed to the status quo whereby livestock are free to roam to and through the aquatic zone.

The proposal itself is for the planting of trees on agricultural land using invert mounding, a lower impact method, and with limited use of inputs including no use of fertiliser. While forestry operations have been associated with pressures on water quality this has been linked to specific operations and practices in certain land conditions, in particular large-scale afforestation and felling on marginal land on organic soils and base poor geology in upstream catchments. The grounds of appeal do not substantiate the claim that the conditions are deficient and the FAC considers that there is no basis to reach such a conclusion having regard to the nature, scale and location of the proposal and the licence conditions specified. In relation to consideration of the status quo this is referred to by the DAFM in the record of the decision and the current use of the land represents a pressure on the Wood 10, which is at risk in relation to the objectives of the Water Framework Directive. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to this ground.

In relation to more general effects on the environment, the EIA screening recorded by the DAFM, in addressing the submissions made by the public, included that,

This application is an entirely FT 1 application, this will only be broadleaf planting.

There is a requirement to provide reasons in reaching a conclusion that an EIA is not required. In this case, part of the reasons provided was based on an interpretation that the proposal would be comprised entirely of broadleaf planting. However, the proposal as applied for and licenced is primarily comprised of mixed forest with a majority of conifer planting. The FAC considered that the reasons provided indicated an error in the EIA screening of the proposal and that this constituted a serious error that would require a new screening to be undertaken.

The DAFM further record that the project area is not within a HNV farmland area with a score of 0.5 SD or greater. However, in making the application, the Applicant submitted that the lands were within a HNVf area with a score of 0.5 SD or greater (8.1). The FAC considers that such a contradiction should have been addressed in the screening or further information sought from the Applicant as required.

Furthermore, 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.

The grounds make reference to the Appellant's submission on the application and submit that due regard was not given to its contents in relation to aquatic setbacks and the AA process. The FAC also had regard to the other matters raised in the Appellant's submission on the application, which included a suggestion

that the landowner is not identified in the application. The FAC reviewed the record of the decision as publicly available on the Forestry Licence Viewer and found that landowner to be recorded in a number of records including the Pre-approval report and copies of the site notice and that the declared landowner corresponds to that identified by the Appellant in their initial submission. In addition to the matters addressed previously in this letter, the submission referred to a pNHA which is not a European site and consideration of pNHAs are recorded in the EIA screening. The submission made reference to Poulasherry Bay, however neither waterbody proximate to the site enter the sea at that bay. In relation to access, access is recorded as being in place and the land is currently in agricultural use. The decision under appeal relates to a licence to afforest land granted under the Forestry Act 2014. The submission went on to make references to matters of residential amenity. The DAFM recorded these submissions on the file and made references in their assessment of the licence application. The applicant is required to include setbacks of 60 metres from all dwellings. The Appellant is well setback from the planting and the fields adjoining their property would not be planted and no planting would occur to the south of the residence. The FAC is not satisfied that a serious or significant error was made in the making of the decision in regard to these matters. However, as previously noted the FAC did consider that serious errors were made in the EIA screening.

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 errors were made in the making of the decision to grant licence CN94307. The FAC is, thus, setting aside and remitting the decision of the Minister to ensure, that before a new decision is made, the project is subject to a new Appropriate Assessment of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive and the Forestry Regulations 2017, and to undertake a new Assessment to Determine EIA Requirement, in keeping with the requirements of the EU EIA Directive and the Forestry Regulations 2017 and to address the errors identified by the FAC in this letter.

Yours sincerely,



Vincent Updon, On Behalf of the Forestry Appeals Committee

