



Mr. Seamus Monaghan

31st March 2026

Subject: Appeal FAC013/2024 regarding licence decision CN90277

Dear Mr. Monaghan,

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 (The Minister). The FAC established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal. The Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 provide the statutory basis for the functioning and operation of the FAC.

Hearing

Appeal FAC013/2024 was considered by a division of the FAC at a hearing held remotely on 6th March 2026. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas & Mr. Vincent Upton.

Secretary to the FAC: Ms. Aedín 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 Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and, in particular, the considerations described in this letter, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN90277.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant an afforestation licence on 13.47 hectares at Dunavinally, Co. Leitrim. The file includes a site notice dated 7th February 2022 and the application was published for public consultation on 18th February 2022. The application included operational and environmental information and a series of maps identifying operational and environmental features on and proximate to the site.

The application was subject to a previous licence decision of the Minister for Agriculture, Food and the Marine on 15th June 2022, which was appealed and subsequently set aside and remitted by the FAC. A new process was undertaken and a new decision was made. For the avoidance of doubt, it is the appeal against the decision of the Minister for Agriculture, Food and the Marine of 25th January 2024 that is the subject of this determination. Where a new procedure was required to be undertaken this was considered to form part of the record of the decision.

The land is currently in agricultural use and is comprised of grass, grass rush vegetation on a mineral, peat soil. The forest as licenced is divided into three plots with two plots to be planted with a mixture of Sitka spruce and broadleaves and a third plot of birch.

The maps show the site notice location on the public road and access to the site through an existing track and adequate access is submitted to be in place. The land is crossed by an aquatic zone and a setback is proposed. The land is crossed by a network of hedgerows and a drain runs north-south in plot 2, which are marked on the submitted Biomap.

There were three submissions from the members of the public during the consultation period, all objections. The objections related to considered impacts on neighbouring lands, water, and the county generally, including in relation to social and economic concerns. There were no referrals to prescribed bodies and no such body made a submission on the application.

The DAFM sought further information from the Applicant by letter dated 23rd January 2023 in relation to access from the public road to the site. The file includes a map of peat depths across the site that shows the most westerly section to lie on peat of greater than 45 cm. The record includes a DAFM Forestry Inspectorate High Nature Value Farmland (HNVF) Assessment Report prepared by an Ecologist. This was accompanied by photographs of the site and a habitat map and the lands were scored as moderate and it was determined that no additional measures were required.

The documents include an Appropriate Assessment Screening Report dated as certified on 23rd January 2024. This considers European sites within 15km of the proposal and identifies Cuilcagh - Anierin Uplands SAC 000584 specifically. The interests and objectives of the site are considered and it was determined that the proposal was not required to proceed to Appropriate Assessment due to the location of the project downstream from the site and subsequent lack of any hydrological connection. A separate document records other plans and projects considered in-combination with the proposal. The screening concludes,

AA Screening has been carried out in accordance with S.I.477 of 2011 (as amended) and S.I.191 of 2017 (as amended). The project is not directly connected with or necessary to the management of any European Site. Furthermore, DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on this European site.

The file also includes a document entitled "Assessment to Determine EIA Requirement" in which the proposal is considered across a range of criteria and it is concluded that that the application was not required to be subject to an Environmental Impact Assessment process. It is noted in the document that a site inspection was undertaken on 24th February 2022 and, in addition, the HNVF document records that a DAFM Ecologist conducted a site inspection on 28th November 2023.

The licence was granted on 25th January 2024 subject to conditions. The conditions include a number of specified setbacks and broadleaf planting in relation to dwellings and other features.

Appeal

There is one third party appeal against the granting of the licence and the full grounds of appeal were provided to the parties. In brief summary the grounds submit that,

- The licence application must be refused under Article 4(1) of the Water Framework Directive. It is submitted that the project area drains to Lough Sallagh and then to Lough Errew and that the two lakes have not been “accorded” a water quality status by the EPA as they were not required. The grounds make reference to case C431-13 and an opinion of an Advocate General in case C301/22. It is submitted that the conditions on the licence is evidence that the proposal may without mitigation, cause a deterioration of water quality.
- No rights of way are indicated on the BioMap and there is no written permission on the record. The application is not in keeping with section 5.3.1 of the Forestry Standards Manual, the site is land-locked in the absence of permissions, and the laneway serving the land is unsuitable.
- The EIA Screening Determination is not adequately reasoned with reference to questions in relation to the BirdWatch Ireland Breeding Wader Hotspot layer and the responses recorded.
- The AA screening in-combination assessment is deficient as there is no evidence of an actual assessment, the project has the capacity to act in conjunction with a myriad of other projects to impact on Natura 2000 sites in the Shannon system, the wrong County Development Plan is referenced.
- DAFM procedures are not consistent with the requirement for providing a General system of protection commensurate with Article 5 of the Birds Directive. The Wildlife Act provides an exemption to forestry activities and “...Ireland PLC has failed to transpose in to National Law the requirement for a General System of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive...”. There is no restriction in the licence on the season of work which includes removal of woody weeds. The licence needs to contain a condition restricting the period or requiring an ecological/ornithological survey.
- Forestry applications need to be screened for potential impacts on Annex IV (a) species. A related question in the Environmental Requirements for Afforestation has not been asked and answered. Bats are likely to occur on site and it is for the Minister to evidence that the necessary assessment has been conducted.

The Notice of Appeal also makes a number of claims in relation to the appeals system.

Minister’s statement

Under 7(2) of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418/2020), the Minister is required, in relation to each notice of appeal, to provide to the FAC,

(a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and

(b) information, documents or items in the power or control of the Minister that is relevant to the appeal.

The DAFM provided a statement (SOF) providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties and considered by the FAC. As the parties were advised, the FAC relied on the record of the decision as provided by the Minister on the online Forestry Licence viewer (FLV). The statement submitted that the decision was issued in accordance with DAFM procedures, SI 191 of 2027 and the Forestry Act 2014, as amended, and sought to contest the grounds. In brief summary the DAFM submitted that,

- The opinion of an Advocate General is not binding and the judgment in C-301/22 outlines the requirements for lake bodies under 0.5km² and the decision is quoted. It is submitted that DAFM procedures ensure that the project is not liable to cause deterioration of any surface water bodies.
- The FAC has already clarified its views in relation to civil matters. The applicant provided to the DAFM a signed declaration regarding the long use of an unregistered right of way and continuous and unimpeded use of the laneway for a period greater than 20 years that was sworn before a Commissioner of Oaths. This document is not on the FLV. The identification of rights of way on mapping is not mandatory. The Forestry Standards Manual (2024) acknowledges that large machinery access may not be required in all forests.
- In relation to breeding waders, the procedure is whether the site lies within the breeding wader layer and one or more of the layers of 5 wading species of concern. In this instance, there was no overlap with a species layer and consequently no assessment was required.
- The in-combination report did refer to the incorrect County Development Plan but the DAFM have reviewed both plans and found no material difference in relation to the matters DAFM needed to consider in assessing the application. In the DAFM's view there was not a significant error.
- In relation to Article 5 of the Birds Directive, a number of DAFM procedures are outlined. In relation to CN90277, the species mix is described and it is submitted that the proposal was screened out in relation to Appropriate Assessment and screened for High Nature Value Farmland.
- In relation to Annex IV species, a number of DAFM procedures are outlined. It is submitted that the grounds refer to a previous version of the Environmental Requirements for Afforestation. Procedures in relation to a range of species is outlined. In relation to bats, a research paper is referenced and it is submitted that the proposal is retaining linear features and the continuity of commuting corridors will be ensured and additional foraging habitat for bats will be provided.

The DAFM also submitted a description of the appeals system and that the fee is legal, fair, equitable and not prohibitively expensive.

Further submissions

The Notice of Appeal and Statement of Fact were provided to the parties and no further submissions were received.

Considerations of the FAC

At its sitting on the 6th March 2026, the FAC had before it the full DAFM record of the decision as made available on the Forestry Licence Viewer (FLV), the Notice of Appeal Form and grounds of appeal, the Statement of Fact (SoF) provided by the DAFM, and all materials on file. As the parties were notified, the FAC referred to the record of the decision as is made available on the publicly available Forestry Licence Viewer (FLV).

The FAC considered in the first instance the grounds that alleged deficiencies in the application in relation to the requirements of the Water Framework Directive. The FAC would share the DAFM's understanding that the decision of the CJEU comprises the relevant case law of the EU. The decision under appeal and the case referred to in the grounds relate to fundamentally different forms of development. In particular, the current case does not involve any exploitation of a waterbody. The decision under appeal relates to the planting of trees on agricultural land, which would remove the existing potential pressure and would likely decrease the use of inputs on the lands. The application and the licence conditions include measures designed to create a barrier between the activities and a waterbody. The waterbodies referred to in the grounds are some distance from the lands and the FAC does not consider that the grounds provide any convincing basis or evidence to consider that the proposal as licenced would adversely impact on any waterbody or water quality generally.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

In relation to access and rights of way, the grounds submit that a right of way is not indicated on the Biomap and that there is no written permission on the record. The DAFM submitted that a sworn statement was submitted by the applicant but was not published and that the Forestry Standards Manual (2024) acknowledges that large machinery access may not be required in all forests.

The FAC reviewed the record and found that the proposed access to the site was clearly marked on the mapping submitted. The Appellant has not claimed to have any interest in the lands and did not raise the issue of rights of way and access in its submission on the application. As noted, the FAC would not consider its remit to extend to making determinations on land ownership and other civil matters. In addition, the FAC would not understand that the Minister for Agriculture has such functions. Furthermore, the FAC does not consider that the granting of the licence confers any additional property rights to the holder that they did not already enjoy. The FAC confirmed the submission of a sworn statement and the Appellant did not contest the position of the DAFM. The FAC considered that access to the lands is clearly marked and that the mapping was not deficient in relation to the matters raised in these grounds and that making a determination on the ownership of property or rights of way did not fall within its remit.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds go on to submit that the screening for Environmental Impact Assessment (EIA) is not adequately reasoned and refers to responses given in the following,

- Is the project area wholly or partially within the BirdWatch Ireland (BWI) Breeding Wader Hotspot layer? Yes

- Has this sensitivity been addressed by the Ecology Section and any resulting recommendation(s) enacted, either through project redesign, conditions to be attached to the afforestation licence (if issued), or refusal? No

The DAFM outlined its procedure in relation to identifying areas of sensitivity in relation to certain species of wader. The FAC noted the response provided by the DAFM which was not contested by the Appellant. However, in making the determination in relation to EIA screening the Minister is required to give reasons. The FAC consider that, in the absence of a narrative response, the answers given in the screening are unclear. As presented it would suggest that an identified environmental sensitivity had not been assessed, whereas the DAFM have submitted that the relevant matters have been considered.

The FAC was satisfied that there were serious errors made in the making of the decision such that the decision should be set aside and remitted for the Minister to complete a new screening for Environmental Impact Assessment and where no Environmental Impact Assessment is considered necessary to provide reasons.

The grounds allege that the DAFM had not assessed other plans and projects in-combination with the proposal but provided no basis as to how the proposal might have a significant effect on a European site. The DAFM contested the grounds in general but accepted that the incorrect County Development Plan was referred to and submitted that having reviewed both documents the DAFM considered that there was no material difference in the matters relevant to the decision.

The FAC reviewed the screening determination and noted that the DAFM employed the following conclusion,

Furthermore, as set out in the in-combination assessment attached to this AA Screening, as there is no likelihood of the project itself (i.e. individually) having a significant effect on this European Site, there is no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects.

The FAC would consider that the DAFM employed the incorrect test in its determination as it failed to consider effects that might arise from the proposal that would not be significant themselves but could, in-combination with other plans and projects, result in a significant effect on a European site. The FAC was satisfied that this constituted a serious error in the making of the decision such that the decision should be set aside and remitted for the Minister to complete a new screening for Appropriate Assessment.

The grounds contend that DAFM procedures are not consistent with the requirement for providing a general system of protection commensurate with Article 5 of the Birds Directive, that the Wildlife Act provides an exemption to forestry activities and that "...Ireland PLC has failed to transpose in to National Law the requirement for a General system of protection for all wild birds consistent with the requirements of Article 5 of the Birds Directive...". The DAFM describe the proposal and procedure that was adopted in relation to Appropriate Assessment and High Nature Value Farmland.

The application and procedures of the DAFM included a Biomap of environmental features, a peat map, a Habitat map and a site visit by an Ecologist and an assessment for High Nature Value Farmland. The proposal is for the afforestation of agricultural land, including a significant component of native woodland. The grounds provide no convincing basis as to how the proposal as licenced could have an adverse impact on any bird species.

The FAC considered that the grounds were seeking to challenge the wildlife legislation and the transposition of EU law by "Ireland PLC" and that making such a determination did not fall within the remit of the FAC.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The grounds contend that there were shortcomings in the procedures of the DAFM with reference to Annex IV (a) species and makes references to bat species. The DAFM contest the grounds submitting that the question referred to in the appeal is from a previous procedure document which had been replaced. In relation to bats it is submitted that the linear features on the land would be retained and further habitat would be created.

The FAC found that the grounds referred to an outdated procedure of the DAFM. The FAC noted that the proposal is to afforest agricultural land with the inclusion of a significant proportion of native woodland. The habitats on site were mapped and the lands were subject to an assessment by an Ecologist. There are conditions on the licence in relation to the protection of habitats, including hedgerows and watercourses. The Appellant has not claimed to have any environmental expertise nor to have engaged such an individual and the FAC does not consider that the grounds provide any convincing basis to suggest that the proposal would have an adverse impact on any protected species.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

The notice of appeal goes on to make some commentary on the appeals system which the FAC did not consider related to the decision of the Minister for Agriculture, Food and the Marine and, instead, referred

to the statutory provisions under which the appeals process operates. The Agriculture Appeals Act 2001, as amended, provides for the setting of fees by the Minister.

The FAC considered the full appeal and submissions made, the record of the decision and all relevant material. Having completed its deliberation, the FAC was satisfied that serious errors were made in the making of the decision. Therefore, the FAC is setting aside and remitting the decision of the Minister for Agriculture, Food and the Marine in relation to the granting of licence CN90277 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new screening for Appropriate Assessment and to undertake a new screening for Environmental Impact Assessment and to provide reasons for its determination.

Yours sincerely,



Vincent Upton on behalf of the Forestry Appeals Committee