



Coillte,

28th July 2026

Subject: Appeal FAC 010/2025 regarding CN96343

Dear Sir or Madam,

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.

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, the post-appeal submission and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN96343.

THE LICENCE.

Licence CN96343 is for the construction of a forest road 295 metres long in the townland of Garryfluigh Co. Cavan as set out in the licence application.

The application for the licence was published on the Forestry Licence Viewer (FLV) on 21/11/2024. A decision approving the licence was issued on 10/01/2025 subject to a number of conditions including Standard Forest Road conditions, compliance with the Technical Standard for the Design of Forest Entrances from Public Roads, the COFORD Forest Road Manual, the Forestry Standards Manual and a number of other DAFM Guidelines.

FORESTRY APPEALS COMMITTEE.

A sitting of the FAC was held remotely on the 25th of June 2026 at which appeal Ref: FAC 010/2025 against the decision to grant licence CN96343 as dated 10/01/2025 was considered. The FAC members present were:

FAC Members: Mr. Liam Ward (Deputy Chairperson), Mr. Vincent Upton, Mr. Iain Douglas.

Secretary to the FAC: Mr. Radoslaw Wojtczak.

At the sitting the FAC had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM and a post appeal submission from the appellant.

BACKGROUND.

The proposed forest road is to serve the forest area of 14.91 Ha subject of felling licence LM09-FL0066.

The site is located some 7 Km north of the village of Ballinamore, Co. Leitrim.

The soils on the site are described as being predominantly highly modified peat and peaty podzols. The slope across the site is described as predominantly flat to moderate (<15%). The habitat on site is described as Conifer plantation, hedgerow, and scrub. There is an aquatic zone ca. 60m south-west of the proposed forest road. The Forest Road Specification indicates that it is proposed to construct 3 culverts for the road but not to the aquatic zone.

The site lies in the Erne 36 Water Framework Directive (WFD) Catchment and the Blackwater[Newtowngore]_SC_010 Sub-catchment and is 100% within the Derradda Stream_010 River Sub-Basin. The nearest WFD River Waterbody is Derradda Stream_010 (EPA name Garryfluigh 36) which was of High Status in the 2019-2024 monitoring period and is Not at Risk. Forestry was not identified as a pressure on the river waterbody. The site is underlain by the Anierin-Cuilcagh East IEGBNI_NW_G_035 Groundwater body, which was of Good Status in the 2019-2024 monitoring period and is Not at Risk. Forestry was not identified as a pressure on the groundwater body.

The application documents before the FAC on the FLV included an undated Inet Pre Approval Submission Report, Biodiversity Maps dated 21/10/2024 & 22/10/2024, a Harvesting Road Map and Road Specification both dated 22/10/2024, copy of the Site Notice dated 25/10/2024, a photograph of the Site Notice dated 25/10/2024 in-situ. All uploaded to the FLV on 21/11/2024.

The licence application was referred to Cavan County Council on 25/11/2024. The council responded on 04/12/2024 indicating that the proposal may have an impact on the road network, that the public road network is to be kept clear of any debris, that the council should be contacted if there was any damage to the public road, that Existing open/piped field drains were to be cleaned and maintained, that the applicant was to liaise with and seek the approval of the occupants of neighbouring habitable dwellings and adjoining landowners, that no excess or additional surface water should be generated by the proposal, that any hedges should be cleared to ensure adequate sightlines, that the applicant would be liable for any costs incurred by the local authority because of any damage/nuisance caused by the proposal.

The DAFM documents before the FAC on file on the FLV include, a Site Details Report dated 01/10/2025, an Inspector's Certification Report, an EIA Requirement, an AA Screening Report (AASR) and an AASR In-Combination Report all dated 06/01/2025. All uploaded to the FLV 10/01/2025.

SUBMISSIONS.

The FLV records that there was no submission on the licence application.

APPROPRIATE ASSESSMENT.

The Inspector's AASR dated 06/01/2025 assessed 1 Natura 2000 site within 15 Km of the proposed forest road, the Cuilcagh - Anierin Uplands SAC (Site Code 000584). The AASRD concluded that there was no likelihood of the proposed forest road project having a significant effect, individually, on the European sites by reason of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection. The project area is 430m from the SAC and will have no effect on the habitats and species of Qualifying Interest in the SAC.

The DAFM AASR determined that:

“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.”

DAFM AASR In-combination recorded other plans and projects which were considered in-combination with the proposed forest road for effects on the Natura 2000 site.

THE APPEAL.

There is one third-party appeal against the decision to approve the forest road licence. The Notice of Appeal and full grounds of appeal were provided to the parties. The grounds of appeal are summarised as:

1. The licence application was not compliant with Section 11(1)(b) of the Forestry Regulations 2017 as the site notice was not located at the point where the project will be accessed from the public road.
2. There was a breach of Section 11(1)(b) and 11(2)(b) of the Forestry Regulations 2017 as the site notice was erected after the application was submitted and that the site notice was not maintained in place for the appropriate period.
3. There was undue process in that a number of documents were not made available to the public until after the licence was approved.
4. There was a breach of Section 10(4) of the Forestry Regulations 2017 as the public were not afforded an opportunity to comment on the documents published after the licence was approved.
5. There are errors in the Applicant's Pre Approval Submission Report.
6. There is a failure to provide details of expected emissions contrary to Article 4(4) of the EIA Directive.
7. The determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment, contains errors and is unsound in law.
8. The Applicant has not demonstrated it has adequate access to the site.
9. Access to Justice is prohibitively expensive.

The appeal concludes with a summary to the submission raising issues with regard to the DAFM's acceptance and processing of the licence and an Oral Hearing was requested.

Minister's Statement.

The DAFM submitted a SoF to the Forestry Appeals Committee dated 09/10/2025 providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties. In summary the statement submits that:

- (a) The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act (as amended).
- (b) The SoF response to the grounds of appeal is summarised as follows:
 1. That the site notice adhered to the Forestry Regulations 2017 and that the site notice location is clearly recorded on the biodiversity map and was easily visible and legible by persons using the public road.
 2. The site notice was erected on 25/10/2024 with the application being entered onto the Department's electronic system on 29/10/2024 (4 days after the erection of the site notice).

3. The DAFM procedures and documentation made public during those procedures are set out in detail.
4. The Department's position on the publication of documents had been outlined clearly under the previous answer given in the response to Ground 3 above.
5. The DAFM was satisfied the information contained with the Pre-Approval Submission Report was relevant at the time of assessment, that project and all associated operations contained in the proposal were deemed consistent with the requirements of the COFORD Forest Road Manual and the 'Road Planning Guidelines' section of the Forest Harvesting and the Environment Guidelines, that the information used during the processing of the application did not require a specific Hen Harrier Breeding Area Assessment.
6. That in the context of the EIA Directive, the emissions associated with this project are considered negligible, and no significant environmental effects are predicted as a result of emissions from the proposed forest road construction.
7. The DAFM sets out how it considers the proposal complies with the COFORD Forest Road Manual and provides responses to the questions in the Environmental Impact Assessment Screening that the Appellant considers are in error.
8. The DAFM sets out the requirements of the Forestry Regulations 2017 regarding legal interest in the land on which the forest road is to be constructed.
9. The DAFM is satisfied that the fee regime for submissions on licence applications and appeals to the Forestry Appeals Committee (FAC) is legal, fair, equitable and not prohibitively expensive and that the fee regime is fully compliant with DAFM's obligations under the Aarhus Convention and the ruling of the CJEU in Case C-216/05.

Post-Appeal Submission.

There was a post-appeal submission by the Appellant in response to the DAFM SoF. The FAC considered the Appellant's post-appeal submission to be an elaboration of matters raised in the appeal proper.

CONSIDERATION BY THE FAC.

At its sitting on the 25th of June 2026 the FAC had before it the DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, the SoF provided by the DAFM, and the Appellant's post-appeal submission.

The FAC, having reviewed all the documentation and submissions, including that of the Appellant, considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

The FAC considered the grounds of appeal under the following headings, Site Notice, Undue Process, Application Documentation, Article 4 (4) of the EIA Directive, EIA Screening, Site Access, Access to Justice & Fees, Other Matters.

Site Notice.

The FAC considered the grounds of appeal that the site notice was not erected at the point where the project accesses the public road, that it was not in place for the required period contrary to Section 11 (1)(b) and 11(2)(b) of the Forestry Regulations 2017. In considering this ground of appeal the FAC noted the DAFM response marked as Grounds 1 and 2 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the site notice was not located at the point where the access to the site meets the public road. The Appellant contends that the photograph of the site notice in-situ shows the notice being at the junction of local roads L5335 & L5338 which is not at the point where the access

to the site meets the public road. The Appellant has adduced no evidence that such was the case and relies on the Applicant's photographs submitted as part of the application. The FAC functions under the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020. Under the legislation a party to an appeal must provide all of the grounds, documents and evidence upon which they wish to rely in the appeal.

With regard to the contention that the site notice was erected after the licence application was submitted. The Appellant references 17/10/2024 as the date indicated on the FLV that application was received by the DAFM. The FAC noted that such date does not appear on the list of dates on the FLV. The DAFM states that the application was entered onto the DAFM electronic system on 29/10/2024 four days after the site notice was erected on 25/10/2024. The FAC noted that licence CN96343 was published on the DAFM website "Forest Roads Applications" list of 22/11/2024 some four weeks after the site notice was erected on 25/10/2024. The FAC finds that on the evidence available to it the site notice was erected before the making of the application in accordance with Article 11(1) of the Forestry Regulations 2017 (as amended).

With regard to the contention that the site notice was not kept in place or maintained for the required period, the FAC noted that the Appellant has adduced no evidence to support that such was the case although it states it has such evidence. The FAC functions under the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020. Under the legislation a party to an appeal must provide all of the grounds, documents and evidence upon which they wish to rely in the appeal.

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 this ground.

Undue Process.

The FAC considered the ground of appeal that a number of documents were not published until after the decision to award the licence was made contrary to Section 10(4) of the Forestry Regulations 2017. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 3 and 4 of the DAFM SoF dated 09/10/2025.

The FAC noted that the documents uploaded to the FLV on 10/01/2025 comprised a Site Details Report an Inspector's Certification Report, an EIA Requirement, an AA Screening Report (AASR) and an AASR In-Combination Report, the Cavan County Council response and the decision letter.

The FAC would consider that the primary purpose of Regulation 10(4) is to provide for public consultation in relation to the application that is made for a licence. None of these documents form part of the licence application and neither do they require to be subject to any public consultation process in and of themselves. While the Minister might extend the period for a specific purpose, for example if further information was submitted by an applicant, the FAC would not consider that the Minister is required to provide for a period of public consultation in relation to all of the documents created by the Minister.

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 this ground.

Application Documentation.

The FAC considered the ground of appeal that there were errors in the Application Documentation. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 5 of the DAFM SoF dated 09/10/2025.

The Appellant contends that the “No” response to question 9.1 of the Pre Approval Submission Report is in error as the site of the proposed forest road is within an Important Breeding Area for Hen Harrier outside of the six Special Protection Areas (SPAs) designated for the species. but has adduced no evidence that would demonstrate the response is in error or that the Hen Harrier might be significantly impacted by the licenced activities. The lands are comprised of mature coniferous plantation which would not be considered to be a suitable habitat for the species.

With regard to the contention that the response to question 6a of the Pre Approval Submission Report is in error as no account has been taken of the material widening of the entrance from the public road. The FAC noted that the proposed forest road exits onto an existing forest road which is not part of this licence application, but which does exit onto the public road. The FAC noted the Applicant’s “Yes” response to question 6a of the Pre Approval Submission Report *“Can you certify that an access was in existence on 21st September 2011 and that it does not require material widening to facilitate this proposed forest road?”* The Appellant has adduced no evidence that the Applicant’s response to question 6a is in error.

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 this ground.

Article 4(4) of the EIA Directive.

The FAC considered the ground of appeal that there was a failure to provide details of expected emissions contrary to Article 4(4) of the EIA Directive. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 6 of the DAFM SoF dated 09/10/2025.

This ground of appeal makes reference to Annex IIA(3) of the EIA Directive and contends that the developer is required to submit information on the expected residues and emissions and the production of waste from the proposal but has not done so.

The FAC noted that Annex IIA(3) of the EIA Directive has been transposed into Irish Law with regard to Forest Roads, in Schedule 1 of the Forestry Regulations 2017 as follows:

“INFORMATION TO BE PROVIDED BY THE APPLICANT FOR AFFORESTATION OR FOREST ROAD LICENCE.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

(a) the expected residues and emissions and the production of waste, where relevant;”

The FAC, having examined the information to be submitted by the applicant in the pro-forma – “Pre-Approval Submission Report” and more particularly in the “Roads Specification”, noted that there is no heading or section in the document that refers to expected residues, emissions, or waste, however, the details of the construction method are provided in the application. The grounds do not identify any likely

significant effects from the proposal. The application is for a relatively short section of forest road which, when completed, would not involve any ongoing residues, emissions, or the production of waste.

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 this ground.

EIA Screening.

The FAC considered the ground of appeal that the EIA Screening Report has multiple errors, is inadequately reasoned and is unsound in law. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 7 of the DAFM SoF dated 09/10/2025.

With regard to the contention that the “Yes” response to the question – *“Are the physical characteristics and design of the forest road project appropriate in relation to the slope and soil, as evident onsite along the proposed route?”* is an error, and other matters relating to the design and construction of the forest road. The FAC noted that the DAFM is satisfied that the proposed forest road Forest Road Specification prepared by the applicant’s engineer complies with the provisions of the COFORD Forest Road Manual. The Appellant has not claimed to have any engineering expertise nor to have engaged such an individual.

With regard to the “Yes” response to the question - *Where it is proposed as part of the project, to create a new entrance onto a public road, or to widen an existing entrance, are the physical characteristics and design of that entrance appropriate in relation to road traffic and road safety?* The FAC noted that the DAFM acknowledged that the response is an error and that it is not intended to create a new entrance onto a public road, or to widen an existing entrance. The FAC noted that all documentation did indicate that no new entrance or widening of an existing entrance onto a public road was proposed but does not consider the error to be significant.

With regard to the contention that the “No” response to the question – *When considered in combination, does the proposed forest road AND other recent, ongoing or planned road works, represent the construction of single or multiple lengths of forest road totalling 2000 m or more within the forest area?* is an error. The FAC noted that the proposal is for a single road of 295m in a forest area of 14.91 Ha. and that the amount of forest road cited by the Appellant and the DAFM in its SoF relate to the forest road projects identified in the AASR In-combination Report the area of which is the River Sub-Basin Derradda Stream_010, and at 13 Km² is an area significantly greater than the “forest area” which the road is to serve. The FAC does not consider the response to be an error.

With regard to the contention that the “No” response to the questions – *Based on the extent of forest cover as outlined above, and the existing forest road network (if any) therein, and when considered alongside other projects in the area, is there a likely significant cumulative impact on the environment from this project?* and *Is the level of forestry-related traffic on public roads known to be a significant issue within this locality?* are errors. The FAC noted that the Inspector is required to advance reasons for the responses and has done so. The FAC noted that the percentage of forest cover within 5 Km increased from 27.62% to 28.45% which is less than 1% and that that there were no submissions made on the licence application and does not consider the responses to be in error.

The grounds of appeal question the DAFM assessment regarding cumulative impact, and the Appellant submitted an aerial photograph purporting to show forest cover which the Appellant does not consider to be moderate. The FAC did not consider the map to be useful as there was no legend for the various colour representations, no scale for the map and the quality of reproduction made it difficult to relate

area of the map to a recognised publicly available map viewer. The FAC noted that the DAFM in their considerations on the “Cumulative effect and extent of project” recorded answers to questions in the Assessment to Determine EIA Requirement relating to, existing afforestation of 3 years or less and any proposed afforestation within a 500m radius exceeding 50 Ha., the approximate % forest cover in the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded that based on the extent of the forest cover that the cumulative effect of this proposal was not likely to have a significant impact.

The FAC however noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-combination Report carried out as part of the AA process and dated the 06-Jan-2025, that this is not explicitly cross-referenced in the EIA Determination. The EIA Determination itself only refers to forestry projects. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant effect on the environment might be found in separate documents, based on the foregoing it is not apparent if adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC was satisfied that this would not meet the required standard for an EIA screening and that this constituted a serious error in the making of the decision.

With regard to the “No” response to the question - *Is the project area wholly or partially within the Current Distribution and Breeding Distribution for Hen Harrier, as recorded in the current NPWS Article 12 Report?* The FAC noted that the Appellant acknowledges that the response is “technically correct” but questions the DAFM procedure. The FAC does not consider that DAFM compliance with its own procedure to be an error.

With regard to the questions regarding archaeology the FAC noted that publicly available information (Tailte Éireann Geohive and the National Monuments Service Historic Environment Viewer) indicate that there is no National Monument or Recorded Site or Monument within 200m of this site. The FAC noted that the DAFM “Yes” response to the question- *Is the project area 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?* is an error, but does not consider the error to be significant.

With regard to the “No” response to the question - *Is there potential for the project to impact negatively on any adjoining or nearby dwelling(s), public road(s), infrastructure and/ or densely populated area(s)?* The FAC noted that the proposed project, a forest road, is located within an existing forest and that there are no dwellings within 60m of the proposed forest road. The FAC further noted that the private roadway referred to by the Appellant is used by the existing forest road network in the area.

With regard to the question - *Do the characteristics of the project indicate any likely significant effects in terms of the production of waste, pollution and nuisances, risks of major accidents or disasters (including those caused by climate change), or risks to human health?* The Appellant contends that “Cumulatively forest roads are contributing to Ireland’s emissions which in turn are contributing to climate change.” (See FAC consideration of Article 4(4) of the EIA Directive above).

With regard to the question - *Was the application referred to the necessary Consultation Bodies, as required by referral procedures?* The Appellant contends that Leitrim County Council as roads authority and the NPWS as competent authority for the protection of Hen Harrier should have been consulted. The

FAC noted that the DAFM is the competent authority for issuing forestry licences and that referrals to local authorities and other bodies is a matter for the DAFM.

The FAC is satisfied that a serious or significant error or a series of errors was made in the making of the decision and that the licence should be remitted to the Minister and as the licence is being remitted for this and other reasons the DAFM should avail of the opportunity to correct those errors identified above.

Site Access.

The FAC considered the ground of appeal that the Applicant has not demonstrated it has access to the project site. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 8 of the DAFM SoF dated 09/10/2025.

The FAC noted that the Applicant indicated the access route from the proposed forest road to the public road on the biomap submitted with the application. The FAC further noted that the same private access road referred to by the Appellant serves a number of other existing forest roads.

The existence, nature and use of rights of way and any disputes regarding the same are considered civil matters that would not fall within the remit of the FAC to resolve. In any case, the Appellant in this instance has not provided any evidence or details of any contested access or right of way. The FAC would understand that the granting of the tree felling licence does not confer any title or additional rights to any party in relation to a right of way.

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 this ground.

Access to Justice & Fees.

The FAC considered the ground of appeal which contends that is prohibitively expensive and that the legislation governing appeals to the FAC is possibly contrary to European Law. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 9 of the DAFM SoF dated 09/10/2025.

The FAC considers this ground of appeal is not related to a decision of the Minister concerning Section 7 of the Forestry Act 2014 nor the Forestry Regulations 2017 but is instead seeking to challenge the provisions of the Agriculture Appeals Act 2001, as amended, and related legislation.

The FAC noted that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020 and has been correctly applied by the FAC.

The FAC is not the correct forum to seek to challenge legislation and the FAC understands that decisions of public bodies may be challenged through the Judicial Review process in line with the Rules of the Superior Courts.

The FAC was satisfied that the matters raised did not fall within its remit to determine.

Other Matters.

The FAC noted that the DAFM SoF incorrectly states that the road length is 395m rather than 295m referred to in the application documentation and licence as issued.

In considering the grounds of appeal that likely significant effects on the environment had not been properly assessed the FAC found that in screening for Appropriate Assessment the DAFM recorded the following:-

“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 considers this to be a serious error as it suggests that the screening undertaken did not consider effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site and that the DAFM had employed the incorrect test in making its determination. The FAC considers that the decision should be set-aside and remitted for a new screening for Appropriate Assessment to be undertaken, and Appropriate Assessment as required, before a new decision is made. The screening should consider the potential for significant effects to arise from the felling and replanting application itself and in-combination with other plans and projects.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the Notice and grounds of appeal, and the SoF submitted by the DAFM. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence CN96343 was made. The FAC is satisfied that a serious or significant error or series of errors was made in the process of making of the decision, the FAC is therefore setting aside and remitting the decision of the Minister for Agriculture, Food and Marine to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive and to also undertake a new EIA screening, in keeping with the requirements of the EU EIA Directive and the Forestry Regulations 2017 and to address the errors identified by the FAC earlier in this letter prior to the making of a new decision.

Yours sincerely,

10

On Behalf of the Forestry Appeals Committee