



Michael Reilly

27th August 2026

Subject: Appeal FAC056/2024 regarding licence decision CN88483

Dear Mr. Reilly,

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 FAC056/2024 was considered by a division of the FAC at a hearing held remotely on 30th April 2026. In attendance:

FAC Members: Mr. Ed Carroll (Chairperson), Mr. Derek Daly & Mr. Vincent Upton

Secretary to the FAC: Mr. Radoslaw Wojtczak

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 Statements 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 allow the appeal and set aside the decision of the Minister regarding licence CN88483.

Background

The appeal concerns the decision of the Minister for Agriculture, Food and the Marine to grant an afforestation licence on 16.69 hectares at Aghamore, Breanross north, Co. Leitrim. The application included operational and environmental information and a number of maps. The lands are described as enclosed agricultural land on mineral soil with a grass, grass rush, furze. The initial application covered an area of 24.11 hectares divided into 5 plots, four of which would be planted with a mixture of 90% pedunculate oak and 10% beech and plot 4 would be retained unplanted. Site preparation would be

through woody weed removal, mounding and pit planting with no additional drainage or application of fertiliser. Weed control would be through herbicide control in years 0-3 and 3,932 metres of fencing is included.

The application noted the proximity of the lands to a number of designated areas and recorded monuments. A ringfort is located within plot 2 in the application as noted and a 20-metre setback is included. Setbacks are also included in relation to hedgerows, public roads, dwellings and rivers.

The application was referred to An Taisce, the NPWS, Department of Heritage, and Leitrim County Council. An Taisce submitted a response noting the requirement to assess cumulative effects with other projects and whether the lands are High Nature Value Farmland. The County Council submitted that it objected to three areas (388, 390, 391) as they fell within a High Amenity Area and an area considered to have a low capacity to accommodate forestry in the County Development Plan and did not object to the remaining areas subject to conditions. The NPWS submitted that it had carried out a site inspection and noted that parts of the lands were considered to be comprised of Annex I habitat.

A submission was made by the Appellant on the application which objected to the application.

The record includes an Archaeological Report dated 28th September 2021 prepared by the DAFM which sets out exclusion areas, setbacks and areas requiring archaeological monitoring in relation to recorded monuments and existing historic features on the site and in the surrounding landscape. A second report dated 18th January 2021 is on file which relates to the area excluding the plots to the north west.

On 21st October 2021 the DAFM wrote to the applicant requesting a number of amendments to be made to the maps submitted with the application. Bio maps dated 13th December 2021 are on file which have excluded the plots to the north west.

The DAFM recorded an Appropriate Assessment screening report dated 13th June 2022 in which three European sites are specifically identified Ballykenny-Fisherstown Bog SPA 004101, Clooneen Bog SAC 002348, Lough Forbes Complex SAC 00181. Each site is considered in turn and a screening decision is recorded. Other plans and projects considered in-combination with the proposal are also recorded in a separate document. The proposal was screened out for Appropriate Assessment.

A licence was granted for the application on 13th June 2022 subject to conditions. That decision was appealed to the FAC which determined that the decision should be set aside and remitted to the Minister making specific reference to the screenings process for Appropriate Assessment and Environmental Impact Assessment.

The record includes a High Nature Value Farmland Screening form dated 1st December 2023 which was based on a site inspection and noted that only a small portion of the land overlapped with a specific HNMF layer and noted the following description,

Application area has 4 or less positive indicator species present (excluding field boundaries/margins/water setbacks) and coverage is low. Entire sward appears grassy or is dominated (50%+) by soft rush. Negative indicators may dominate some areas.

A further document notes that the application is within a Bird Watch Ireland Breeding Wader Hotspot layer but not within a layer of any of the five species of concern (Dunlin, Golden Plover, Lapwing, Redshank, Snipe).

The DAFM recorded an Appropriate Assessment screening report dated 15th May 2024 in which three European sites are specifically identified Ballykenny-Fisherstown Bog SPA 004101, Clooneen Bog SAC 002348, Lough Forbes Complex SAC 00181. Each site is considered in turn and a screening decision is recorded. Other plans and projects considered in-combination with the proposal are also recorded. All sites are screened out for Appropriate Assessment.

The DAFM also includes a document entitled Assessment to Determine EIA Requirement in which the project is considered across a range of criteria and it is recorded that the proposal was not required to be subject to an Environmental Impact Assessment.

A decision to grant the licence, subject to a number of conditions, was issued on 15th May 2024.

Appeal

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

- There has been a material change from the original application as the area has changed from 24.11 hectares to 16.69 hectares when awarded. Reference is made to the Forestry Standards Manual (November 2023). The public consultation period ended in July 2021 which was prior to a number of documents being available. The grounds refer to a previous FAC determination on a decision on the application.
- Licence conditions do not clearly identify the correct reference material as there are no operational proposals entered.
- The application as not made in compliance with Article 5(2) of the Forestry Regulations as rights of way have not been indicated on the submitted map. A previous determination of the FAC accepted the position of the DAFM that the right of way lies outside of the project area.
- The screening test for Appropriate Assessment was not met. The reference to distance is not objective scientific evidence. There has been no ecological oversight and the In combination Report is basically a list of identified projects without evidence of an actual assessment. The wrong County Development Plan is referenced and the argument that forms part of the conclusion is an assumption.
- Forestry applications needs to be screened for the potential implications on the Annex IV (a) species, known to, or likely to occur within their natural range and the zone of influence of the

proposed forestry activity. Reference is made to bats and otter and the previous determination of the FAC.,

- Details of woody weed removal are not specified.,
- The Appellant objects to the position adopted in the EIA screening in relation to the consideration of cumulative effects.
- The project area is within a priority area for action under the water framework directive and this has not been identified by the applicant or the consenting authority. The project area drains to Lough Sallagh and Lough Errew both of which are pNHAs and neither have been accorded a formal water quality status by the EPA, the licence conditions are an acknowledgement that the project may cause deterioration of water quality and, in the absence of a formal water quality status determined by the national competent authority the DAFM was required to refuse authorisation.
- The appeal does on to make a number of comments on the appeals process and fees.

Minister's statement

The DAFM provided a statement in response to the appeal in which it is submitted that the decision was made in accordance with the DAFM procedures, Forestry Regulations 2017 and the Forestry act 2014. The DAFM contested the grounds of appeal and the statement can be briefly summarised,

- There are a number of reasons as to why documents may not be made available during the public consultation period such as redactions or internal advisory documents. An area of the proposal was excluded by the DAFM as it did not adhere to current rules and the DAFM does not accept that it constituted a material change and required additional consultation.,
- The DAFM accepts that the Operational Proposal Details in Appendix A is blank which arose from a computer error. The DAFM does not accept that this clerical error is a significant error as the licence has several site-specific reports and conditions.,
- The claim that there is a right of way on the land was raised in a previous appeal and is not correct as the right of way lies outside of the site. the requirement stated in the Forestry Standards Manual is not obligatory but the right of way is not include in the licence area.,
- The DAFM defends its approach to assessing cumulative and in-combination effects as being in keeping with other decision makers and EC Guidance and involves a combination of objective measures and professional judgement. The approach relies on a "source-pathway-receptor" model and assess other plans and projects at a variety of spatial extents. The Appellants have failed to particularise any applicable statutory provision or clear point of law or point of principle set out in national guidance. The DAFM accepts that the incorrect County Development Plan was considered but the DAFM have reviewed the current CDP and found no material difference in relation to matters the DAFM needed to consider in assessing the application.
- In relation to Article 12 and Annex IV species of the Habitats Directive, the DAFM outline a number of policies and procedures that have been adopted, including ecological assessment and submit that licences are conditioned on adherence with the standards set by the DAFM. With specific reference to bats, the application and licence would retain all hedgerows and trees on site and setbacks are included for rivers and existing mature trees. There are archaeological conditions that exclude works from the monuments and features on site and include setbacks and the licence will

ensure the continuity of commuting corridors and provide additional foraging habitat for bats. In relation to otter, the conditions will ensure no significant effects on foraging and protect commuting corridors.

- The removal of woody weeds is stated and refers to gorse and briars, there are conditions that protect hedgerows and trees on the site.
- The DAFM EIA screening noted and considered the submissions made by the Appellant on the application. The Agriculture Appeals Act 2001 provides that the FAC shall be independent in its function and such matters do not fall within the remit of the appeals process.,
- In relation to the Water Framework Directive, it is submitted that the opinion of an Advocate General is not determinative and quotes the decision of the Court of Justice on the questions put to it by the Irish High Court. The DAFM submits that the decision does not create an obligation to undertake an ad-hoc analysis but to meet the requirements set down by the Court.,
- The DAFM statement goes on to defend the fee and the statutory provisions of the appeals process.

Further Information

The Appellant made a submission in relation to the statement in which it is submitted that the application was invalid and contested the position of the DAFM in relation to the grounds. The submission was provided to the parties. The FAC sought further information from the DAFM regarding the specific claim of the Appellant that a right of way was present in a plot as identified in a specific folio. The DAFM accepted that a right of way did appear to be located within the plot but submitted that it would not be impacted by the proposal. An unattributed email purporting to be from the Appellant was received on 29th May 2026. The FAC contacted the Appellant to ascertain whether the submission was being made on their behalf but no response was received.

Considerations of the FAC

The FAC noted that the grounds contend in a number of instances that the decision of the FAC in relation to appeal FAC068/2022 contained errors and sought to challenge the decision of the FAC. The function of the FAC is to determine appeals against certain decision to the Minister for Agriculture, Food and the Marine made under the Forestry Act 2014 and the Forestry Regulations 2017. Decisions of the FAC are final and conclusive and, as the Appellant is aware, decisions can be challenged by way of application to the High Court for Judicial Review. The function of the FAC is not to determine appeals against decisions of the FAC and the FAC concluded that it would not make such determinations and would consider the grounds that sought to challenge the decision of the Minister for Agriculture, Food and the Marine and consider appeal FAC056/2024 on its own merits.

Regarding the changes to the plots, the FAC considered that the changes reflect the concerns submitted by a number of prescribed bodies regarding the plots that lie to the north west of the public road. The local authority raised specific objection to these plots and concerns regarding the habitats on site were raised by the NPWS. The FAC considered the exclusion occurred within the footprint of the proposed planting and was in keeping with the submissions from the prescribed bodies and that there would be no

reason to undertake a new public consultation in relation to this change. The lands which would be planted following the exclusion are within the original footprint and the nature of the proposal has not changed materially.

The FAC did not consider that there was any obligation on the DAFM to make available its internal reports for public consultation and Regulation 10 that is referred to in the grounds relates to the application.

The Appellant is not entitled to challenge a decision of the FAC to the FAC and such a challenge should have been addressed to the High Court.

In relation to the presence of a right of way on the lands. The FAC considered the submission from the DAFM that there does appear to be a registered right of way on the lands but that it would not be planted. The Applicant made no submission during the appeals process.

The FAC noted the provisions of the Forestry Regulations 2017 which included the requirement to show rights of way on a map as part of the making of an application for afforestation. The statutory requirements were not met in this instance and the FAC was satisfied that this constituted a serious error in the making of the application and the submission of the application. While a previous decision of the FAC had made a determination on similar grounds in a previous appeal, those grounds had not identified the specific folio and location of the right of way and the previous FAC decision was based on the information that was made available to the FAC in the course of that separate appeal, which differed from the information that was made available during the current appeal. The FAC determination, which is the subject of this letter, relates to appeal FAC056/2024, and the specific grounds and evidence provided, against the decision of the Minister of 15th May 2024, and the associated record of the Minister's decision.

In addition, the plot in question which is the most southerly plot is located at some distance from the larger plot and no site notice was erected at the access to the lands. According to the mapping submitted the site notice that was erected was located at the access to the plots to the north west of the public road that were removed.

The FAC was satisfied that serious errors were made in the making of the decision in relation to the application that was made. In that context the FAC determined that the appeal should be allowed and the decision set aside.

Having determined that the application was deficient the FAC considered whether the determination of the other grounds of appeal were moot. Having regard to the specific circumstances of the decision and appeal and the fact that the decision of the FAC might be subject to challenge the FAC considered that it would be appropriate to consider the remaining grounds.

In relation to the operational proposals as set out in Appendix A of the licence not being entered, the DAFM have accepted that this was an error. The FAC considered that there was no real significance to this

error as the Applicant would be required to adhere to the operations as they had outlined them in their application or as specified in the conditions of the licence.

In relation to the Appropriate Assessment screening undertaken by the DAFM. The grounds argue that there are errors in the screening process in relation to the tests imposed, the information relied upon and the reasons provided. However, the grounds provide no basis as to how the proposal might alone or in-combination have a significant effect on a European site or express any specific concerns.

Regarding the reference to distance in the reasons provided for the screening decision, the FAC would consider distance to be a key factor of consideration in relation to potential significant effects and that this was considered in addition to

- the project design (including associated operations and ancillary works) and location;
- the European Site, its qualifying interests and conservation objectives; and
- the possibility of potential sources and pathways,

While it would be preferable that the DAFM would express the specific distance this is, in reality, a matter of fact that can be readily attained by an interested party and the grounds of appeal provide no convincing basis to conclude that this could be considered a serious or significant error.

There are two screenings on file and both containing the following consideration of potential in-combination effects,

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 this to be the incorrect test as it fails to consider effects that might arise from the proposal itself which might not be significant themselves but which might, in-combination with other plans and projects, result in a significant effect on a European site. The DAFM, therefore, implemented the incorrect test in screening for Appropriate Assessment which is a serious error. Furthermore, in considering other plans and projects, the DAFM referred to the previous County Development Plan, which would constitute a further error.

In relation to Annex IV (a) species the grounds provide no basis for concluding that the proposal as licenced would result in any serious adverse impacts on such species. The proposal included the retention of existing hedgerows and broadleaf trees on site and does not involve any works on old buildings or in watercourses. The DAFM undertook a number of assessments of the habitats and excluded the lands at the north west. The granting of the licence does not remove any legal protections provided for under other legislation.

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 the term "woody weed" the FAC would consider the term to be readily understandable and to be in keeping with normal land management in Ireland, particularly in relation to agriculture and forestry. The term is not being employed as a habitat type as suggested in the grounds and is instead stated in relation to operational details.

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.

Regarding EIA screening the grounds raise an objection with the Appellant being described as a campaign group but the FAC did not consider that this could be considered to have any impact on the decision that was made. The DAFM recorded that it had regard to the submission that was made which it was required to do. The rest of the ground is of a general nature and does not allude to any significant effects on the environment which the Appellant considers would be likely to occur or why the proposal should be subject to an Environmental Impact Assessment.

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 the Water Framework Directive, the grounds incorrectly rely on a part of an opinion of an Advocate General and do not refer to the actual decision of the Court of Justice. The grounds put forward no reason to consider that the proposal could result in the deterioration of any water body. The proposal is for the afforestation of agricultural land that is subject to grazing and the issuing of the licence was subject to conditions, including conditions that relate to the protection of water quality.

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 appeal goes on to make a number of claims in relation to the appeals process which are relate to policy and the provisions of the legislation underpinning the appeals system which are not matters for the FAC to determine.

The FAC considered the full grounds of the appeal and submissions made, the record of the decision and all relevant material. Having completed its deliberation, the FAC was satisfied that serious and significant errors were made in the making of the decision, which included serious and significant errors in the making of the application. Therefore, the FAC is allowing the appeal and setting aside the decision of the Minister

for Agriculture, Food and the Marine in relation to the granting of licence CN88483 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,



Vincent Upton on behalf of the Forestry Appeals Committee

