



28th August 2026

Subject: Appeal FAC144/2024 regarding licence decision CN92497

Dear Sir/Madam,

I refer to your 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 FAC144/2024 was considered by a division of the FAC at a hearing held remotely on 25th June 2026.
In attendance:

FAC Members: Mr. Liam Ward (Deputy Chairperson), Mr. Iain Douglas & 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 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 CN92497.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant an afforestation licence on 3.57 hectares at Cornacreeve, Derrinkeher (brady), Co. Leitrim. The application included operational and environmental information and a series of maps.

The application was for planting on three plots totalling an area of 7.23 hectares. Plots 1 and 2 would be planted with Sitka spruce and broadleaves and plot 3 would be comprised of native broadleaf species

including common alder, downy birch and pedunculate oak. Ground preparation would be through woody weed removal, mounding and pit planting without additional drainage and planting using the pit or slit method. No fertiliser application is proposed and weed control would be through herbicide control in years 1 and 2 and manual methods.

The application was referred to Leitrim County Council and An Taisce. The County Council submitted a form that stated that the Council had no objections subject to a number of conditions which are outlined.

The DAFM wrote to the Applicant on 18th May 2023 requesting that encroaching alder scrub be mapped as a bio area and retained. A map is on file that identifies retention areas in plots 1 and 2.

Included on the file is a document entitled "Appropriate Assessment Pre-Screening Report for afforestation project, located at Derrinkeher/Cornacreeve, Co. Leitrim" dated 29th March 2023 and prepared by a Consultant Ecologist. This was based on a habitat survey and provides more detail of the lands and operations. The report identifies three Special Areas of Conservation, considers each in turn and gives reasons for the screening conclusion. It concludes that there is no likelihood of the proposed afforestation project having a significant effect on any European site. There is also a soil report on file prepared by the same Consultant Ecologist that records the soil type as gley across the lands with a smaller area of peaty gley in plot 2 and modified peat in the northwest corner of plot 3.

The file further includes a High Nature Value farmland (HNVf) Field Report dated 10th September 2024 and prepared by an Ecologist. This found that the lands had a low score for High Nature Value farmland and did not contain Annex habitat outside of the area that were subject to exclusion. Also on file is an Ecology Report dated 10th September 2024 which is stated to be based on two field assessments. This identifies areas that are recommended for exclusion. The file includes a document entitled "High Nature Value farmland (HNVf) Assessment Review" dated 20th November 2024. This indicates that the lands score low for semi-natural habitat indicators and is suitable for all types of afforestation, areas of molinia meadow have been excluded, suitable marsh fritillary habitat is not present on the lands that could be planted amongst other findings and includes some measures.

The DAFM recorded an Appropriate Assessment screening determination dated 26th November 2024. This describes the site and operations, identifies two European sites within 15km of the proposal and the potential for significant effects to arise. Other plans and projects considered in-combination with the proposal are recorded in a separate document. The DAFM conclude that the proposal is not required to proceed to Appropriate Assessment.

The proposal was also considered across a range of criteria and it was determined that the application was not required to be subject to an Environmental Impact Assessment.

The decision to grant the licence was issued, subject to conditions, on the 4th December 2024 for an area of 3.57 hectares. The conditions include adherence with the measures stated in the Ecology Report and High Nature Value Farming Report.

Appeal

There is one third party appeal against the granting of the licence. The full grounds of appeal were provided to all parties and considered by the FAC. In short summary the grounds submit that,

- The application was not compliant with section 5(2) of the Forestry Regulations as there is no map on the file that meets the requirements of this section and retrospective provision of information does not make the application legally compliant.
- There has been a material change to the project that required re-notification to the local public in relation to the change in area.
- Licence condition 2 cannot be understood by the layperson.
- Licence conditions are not consistent with the reasons for the conditions with reference to condition 3. The licence permits drainage for the FT1 plot which is on deep peat. It is stated that no drainage was required but mounding would be undertaken. Conditions lack clarity and existing trees are not recorded.
- Screening for impacts on Hen Harrier is incomplete and deficient, part of the area falls within an area identified by the National Parks and Wildlife Service as an important breeding area for Hen Harrier outside of the Special Protection Areas and there has been no consultation and no assessment for impacts on Hen Harrier. The process does not meet Ireland's obligations under the Birds Directive.
- The determination of the EIA screening is based on inadequately reasoned assessment and is deficient with reference to a number of its components. The Minister has a conflict of interest given the afforestation target. The whole project has not been assessed, future access has not been adequately considered. A number of recorded responses are incorrect and lack reasoning. The process went beyond the 90 days stated in the Directive.
- The Appropriate Assessment under Article 6(3) of the Habitats Directive is deficient. The screening does not contain precise and definitive findings as the area has been amended from the 7.22 hectares that was screened. References are made to documents from the OPR and NPWS. There has been no in combination assessment for the project.
- Access to justice is prohibitively expensive with reference to the appeal fee.
- The licence application must be refused under Article 4(1) of the Water Framework Directive. The project drains to Camagh Lough which has not been accorded a water quality status by the EPA. Reference is made to the judgement in C431-13 and the Advocate General opinion in C-301/22 and it is submitted that the project may cause a deterioration of water quality. The Minister has failed to comply with his general function under Section 5 (1)(n) of the Forestry Act.
- DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. The licence contains no seasonal restrictions or mitigations to protect all wild birds during the period of breeding and rearing.
- There was inadequate assessment under Article 12 of the Habitats Directive (Annex IV species). Reference is made to the Birds and Natural Habitats Regulations and an NPWS document. It is submitted that there are six of the nine species of bat native to Ireland within their range within OS square H11.
- Areas for biodiversity enhancement are not identified and the Biomaps incorrectly reflect the modified project.

- The High Nature Value Farmland Assessment lack scientific rigour. The views of the NPWS should be sought in relation to the method that the DAFM employs. The DAFM did not consider having excluded habitat what impacts might arise from planting adjacent to these habitats. A Marsh Fritillary Survey should have been required as high levels of Devil's Bit Scabious were noted.
- The practical operability of the project is highly questionable when all of the exclusions are applied.
- There was a breach of Articles 6 (3) and (4) of the Environmental Impact Assessment Directive in relation to material being made available to the public as part of the consultation process. A copy of a briefing document was submitted.
- The appeal includes a summary and a number of comments on the appeals process.

Minister's statement

Under 7(2) of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418/2020), the Minister for Agriculture, Food and the Marine 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 submitted a statement in response to the appeal and the full statement was provided to the parties and considered by the FAC.

The statement provides an overview of the processing of the application including key dates and submits that the decision was made in compliance with DAFM procedures, the Forestry Act 2014 and the Forestry Regulations 2017. In brief summary the statement submits that,

- The mapping requirements of Regulation 5(2) were met.
- There has been no material change to the application, the proposal was for the planting of mixed conifer high forest and broadleaf high forest and the nature of the proposal remains the same.
- The Annex states that the operational details apply except where otherwise identified in the conditions attached to the licence and that conditions related to Ecology Report and HNMF measures are included. The protection of hedgerows is clearly stated.
- The DAFM strongly disputes the Appellant's assertion that screening for impacts is incomplete and deficient. DAFM has a robust and scientifically informed procedure for the assessment of Hen Harrier and collaborates closely with the NPWS. The application is not located within the Hen Harrier breeding distribution layer and a breeding assessment was not required and there are no European sites with the species as an interest within the zone of influence.
- The DAFM fundamentally disagrees with the Appellant's contention in relation to EIA. DAFM's approach is in keeping with the guidance of the European Commission. DAFM is required to examine a proposed projects potential impact alongside other and existing projects and the nature, size and location of the development amongst other considerations. There are no

prescriptive methods for assessment impacts and the DAFM employ a combination of spatial and temporal criteria similar to other competent authorities. The courts have clarified the concept of project splitting. The Appellant have failed to particularise any applicable statutory provisions or clear point of EIA law, failed to identify any applicable point or principle set out in national guidance, failed to identify any other project proposed by the same Applicant where there is a functional or legal dependency. The DAFM rejects the contention that there is a conflict of interest in the decision making of the Minister, that the promotional role is undertaken without prejudice to the functions conferred by the Act which include the role in safeguarding the environment. The majority of frontline promotion is undertaken by Teagasc and DAFM staff must comply with stated standards.

- The Appropriate Assessment screening followed a detailed and thorough process that delivers precise, complete and definitive findings. The screening was initiated in 2023 and completed in 2024 and while the overall size of the project has changed the findings are still valid. An in-combination assessment was completed.
- DAFM is satisfied that the fee regime introduced for appeals to the Forestry Appeals Committee is legal, fair, equitable and not prohibitively expensive.
- In relation to the Water Framework Directive, an opinion of an Advocate General is not binding. An interpretation of the decision in C-301/22 is provided and the DAFM submits that it meets the requirements. Potential effects on the status of a waterbody are assessed as part of the DAFM procedures in the context of obligations arising from the Water Framework Directive.
- The DAFM has a range of measures that considers key sensitivities including protected species and a range of additional measures are enacted. The application is not in a conservation area and there are a number of conditions on the licence which benefit birds.
- The application and licence conditions include the protection of trees and hedgerows, and other linear features, and other measures which will ensure the continuity of commuting corridors and provide additional foraging habitat for bats. The licence conditions will ensure no significant effects on foraging and protect commuting corridors for otter.
- Areas for biodiversity enhancement and excluded habitats are clearly recorded.
- The DAFM has a policy and procedures in relation to High Nature Value Farmland. The site partially overlapped with a HNMF layer and a HNMF assessment was undertaken which excluded an area of Molinia meadow and wetland flush habitat. As outlined the documentation a Marsh Fritillary larval survey was undertaken which found that the area that was not excluded was unsuitable for the species and no measures were required. A number of measures were recommended which were attached to the licence.
- The Environmental Requirements for Afforestation provide for the establishment and management of setbacks.
- The DAFM has set policies and procedures in relation to the publication of documentation for consultation, which is outlined. The DAFM rejects the grounds and submits that this aspect goes beyond the remit of a forestry licence. Ireland, and the DAFM, are in full compliance with the Aarhus Convention. The forestry licencing process is very accessible and documentation is made available through the Forestry Licence Viewer.

Further Submissions

The Appellant made a submission in response to the DAFM statement which contested the position of the DAFM. The FAC sought a clarification from the DAFM in relation to the grounds questioning whether referral should have been undertaken in this case. The DAFM responded that referral was discretionary and that application was subject to ecological assessment by the DAFM. This response was circulated to the parties and an unsigned submission purporting to be from the Appellant was made contending that the application should have been referred to the NPWS. The FAC requested that the sender identify themselves but this information was not provided.

Considerations of the FAC

Regarding the provisions of 5(2) of SI 191 of 2017, the FAC noted that while the grounds contend that a map showing the required features was not provided by the Applicant, the grounds do not identify which requirements the Appellant considers not to have been met in this instance. The DAFM contend that the maps submitted showed the applicable features.

The FAC reviewed the documents made available to it and noted that the application was accompanied by a series of maps that showed the outline of the plots and a number of features included those listed in Regulation 5(2). The FAC did not consider that there was any reason to consider that the application was deficient in relation to this appeal. While not identified by the Appellant, the FAC did note that the DAFM had requested that an area of encroaching scrub, alder, be excluded but this related to the processing of the application and was in keeping with the discretion of the Minister.

The Appellant went on to contend in a further submission that the Biomap reproduced in the DAFM statement was not made available during the public consultation process as it was published on the 18th May. However, this does not align with the information provided on the Forestry Licence Viewer which records the map being published on 20th March 2023 and would have been available during the public consultation process.

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 further contends that there has been a material change to the project in relation to the project as the area has been reduced and the number of plots has changed. The grounds refer to the information on the site notice and contends that the change should have been notified to the local public by means of an amended site notice. The DAFM contend that there has been no material change and that the nature of the proposal remains the same and that only the area changed. The DAFM contend that the public would not be impacted and that there was no requirement to undertake a second period of advertisement.

The FAC noted that the exclusions of areas were undertaken after an assessment by the DAFM and the reasons are provided in the documentation. The licence as granted relates to afforestation of the same nature and within the same footprint as the application. The FAC did not consider that the erection of a new site notice or a second period of consultation was required in this instance.

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 licence condition 2 is not understandable to the layperson with reference to the requirements and standards of good practice, the volume of material and the fact that the documents may be amended by circular. The DAFM contend that the conditions are clear.

The FAC considered that the Minister for Agriculture, Food and the Marine is entitled to set standards of good practice under the Forestry Act 2014 and is required to have regard to such standards under the Forestry Regulations 2017. The setting of such standards and the conditioning of such standards on licences and permissions is commonly employed across multiple areas in Ireland and is well understood by individuals working in such areas. The licence holder and their agents, as appropriate, would be required to ensure that the licence conditions are met.

Regarding the content of Appendix A, the FAC does not agree with the Appellant's contention that certain activities not described in the application are permitted as a result of the content of the Appendix. The grounds contend that there is deep peat on the site but fail to provide any evidence of this. A soil survey was undertaken of the site which did not identify deep peat. The Appellant contends that there is a contradiction between the inclusion of mounding and the suggestion that drainage was not required but the process of mounding and drainage are separate activities. While part of the reason for undertaking mounding is to improve soil drainage at the planting site this differs from field drainage and this distinction would be well understood by individuals working in land management or related areas. With regard to hedgerows and trees, the mapping submitted shows hedgerows and areas of scrub and the lands were subject to ecological assessment. The licence holder will be required to adhere with the licence conditions.

The FAC considered that there was no basis to conclude that the licence conditions were not implementable or contained serious errors. 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 and that licence conditions are not consistent with the reason for the conditions.

The grounds contend that the screening for impacts on Hen Harrier is incomplete and deficient but provided no basis to conclude that the activity could have a significant impact on the species. The grounds contend that the procedure adopted by the DAFM is deficient but provide no evidence of this. The DAFM described their Hen Harrier procedures and how it interacts with the NPWS which is reflective of the standards published by the DAFM. The DAFM have submitted that it undertook its procedure and that the

application is not located in the breeding distribution layer of the species. The proposal is not located within or proximate to any Special Protection Area which has been designated for the protection of Hen Harrier. 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 and that licence conditions are not consistent with the reason for the conditions.

In relation to referrals, the FAC considers that the forestry legislation provides discretion to the Minister in relation to the making of referrals to prescribed bodies and that there was no reason to consider that a referral to the NPWS was mandatory in this instance.

The FAC considered the ground that the determination of the EIA Screening is based on inadequately reasoned assessment. The DAFM submits that it contests the grounds and outlines its position regarding EIA screening.

The EU EIA Directive defines an Environmental Impact Assessment (EIA) and identifies the projects which are required to be subject to EIA. The Directive sets out in Annex I, a list of projects for which Environmental Impact Assessment (EIA) is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation, nor a class of development related to the proposal under appeal, are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II).

The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified threshold where the Minister considers such development would be likely to have significant effects on the environment. In this instance the application is well below the threshold for a mandatory EIA and the DAFM undertook a screening process to determine whether a sub-threshold EIA might be required.

The FAC considered that the grounds fail to identify any significant effects on the environment that the Appellant considers likely to occur or to engage meaningfully with the application and the processing of the application by the DAFM. The grounds are, in the main, of a general nature. The screening document of the DAFM makes it clear that it should be read alongside other documents on file and other identified sources of information. The DAFM procedures are outlined in the DAFM's standards and requirements. The grounds include a number of general queries but, in general, provide no basis as to how a serious error was made in the decision.

However, the grounds do argue that there is no basis in law for restricting cumulative impacts solely to forestry related projects. This is acknowledged in the DAFM response in which it is submitted that a screening should consider other plans and projects and not just of the same type. However, in the screening undertaken by the DAFM it is recorded that only forestry projects were considered. 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 to the Minister to undertake a new screening.

The Appellant further contends that there is a conflict of interest between the Ministers afforestation policies and the regulation of afforestation. The DAFM contests the argument and submits that the promotional function of the Minister is expressly stated as being without prejudice to the other functions conferred on the Minister. The DAFM has outsourced the majority of its frontline promotional work to Teagasc and examples are provided and DAFM officials are required to comply with the Civil Service Code of Standards and Behaviour. The grounds make a claim that the comments from the Inspector lack impartiality but provide no basis for this.

In undertaking an EIA screening consideration must be given to a wide range of criteria and may involve a range of assessment, as was undertaken in this case, and it is therefore understandable that the screening was completed a day before the issuing of the licence. The R+N score is a plant based scoring system and there is detailed information on file that outlines the plant species identified on site. The DAFM excluded significant areas of the application.

The grounds claim that the whole project was not assessed but the application is for the afforestation of the lands and the application and processing of the application by the DAFM clearly related to the afforestation of the lands and associated activities. National legislation provides a separate consent process for afforestation, forest road works and tree felling. The application identified the access to the lands and submitted that adequate access was in place and the application was assessed by the DAFM. The Appellant claims that a previous screening was undertaken but provide no evidence of this. The timing of the screening relies on the availability of information and other assessments of the DAFM. There is no basis to consider that the Appellant, rather than the Applicant, has been disadvantaged by the period in which it took the DAFM to process the application.

The FAC considered the ground to be generic in nature and related to the functions of the Minister as provided for in the Forestry Act 2014. The grounds provide no basis to consider that a conflict of interest arose in relation to the decision made in CN92497. The FAC found the other matters raised to be of a general nature and do not raise any specific environmental concerns or identify what significant effects on the environment that the Appellant considers likely to arise.

The grounds contend that the Appropriate Assessment under Article 6(3) of the Habitats Directive is deficient as it did not contain precise and definitive findings. The DAFM contest the grounds.

Article 6 of Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora states,

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the

site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

The Forestry Regulations 2017, as amended, provide for the Minister to undertake an Appropriate Assessment including that,

19. (1) Where the Minister receives an application for a licence under sections 17 or 22 of the Principal Act, which is not directly connected with or necessary to the management of a European site, the Minister shall carry out a screening for appropriate assessment of the development, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site.

(2) Subject to paragraph (8), if following an assessment in accordance with paragraph (1), in the opinion of the Minister the proposed development is likely to have a significant effect, either individually or in combination with other plans or projects, on a European site, or the Minister is unable to determine the likely effects of the proposed development on a European site, at any time following the application for the licence the Minister may require the applicant by notice in writing to furnish a Natura Impact Statement and the applicant is to furnish the statement within the period specified in the notice.

....

(8) Where the Minister is of the view that environmental impact assessment is required under Part 7 for the development, or information required for an appropriate assessment is available through other sources, the Minister may waive an obligation under this Regulation provided the information relevant to the appropriate assessment and the relevant conclusions with regard to it must be readily identifiable in the EIS or by way of the other sources.

In this instance, the DAFM undertook a screening for Appropriate Assessment (AA), and not an Appropriate Assessment as suggested in the grounds, and determined that the proposal was not required to be subject to an AA.

In relation to the quotes attributed to the OPR and NPWS, the change identified in the grounds was not submitted or made by the applicant but resulted from the assessment of the DAFM. It was not further information or a change instigated by the Applicant. It would be an unreasonable interpretation of the advisory document to exclude any and all changes irrespective of how they came about, who made them and for what purpose. Consent granting authorities have an array of considerations that must be completed in the context of processing a licence application and the attachment of conditions to licences.

A reasonable interpretation of the advice is that any change that has the potential to impact on the screening conclusion should not occur without a new formal screening being undertaken. In this instance, the change identified by the Appellant is a reduction of activity on the site which would clearly not have any effect on the screening process or conclusion. In any case the Appellant does not identify any specific environmental concerns or outlined in any way how the proposal might impact on a European site or how the test in relation to Appropriate Assessment was not met in this case. The proposal is for the afforestation of agricultural land that is not located within or proximate to any European site.

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 submits that access to justice is prohibitively expensive with reference to the appeal fee. The matter does not relate to the decision made in relation to CN92947 and making a determination on the legality of the fee is not within the remit of the FAC to determine.

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 grounds that the Minister was required to refuse permission under the Water Framework Directive (WFD), the FAC found that the Appellant incorrectly relied upon the opinion of an Advocate General instead of the decision of the Court of Justice. The proposal involves the afforestation of agricultural land and was subject to assessment by the DAFM. The hydrology of the lands was mapped and included with the application and the licence conditions include conditions in relation to the protection of water quality. The FAC considered that there was no basis to conclude that the proposal would result in the deterioration of any waterbody or impede any waterbody from reaching a good status or any other requirement or objective of the WFD.

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 allege that the DAFM procedures are not consistent with the requirement for providing a General System of Protection commensurate with Article 5 of the Birds Directive and that there are no seasonal restrictions. Neither the grounds nor the Appellant's further submission provide any basis to consider that the proposal represents a threat to any bird species. The DAFM in response provided an overview of the procedures adopted that can protect and benefit bird species.

The application is for the afforestation of agricultural land where existing hedgerows and trees would be retained. The lands are not located within or proximate to any designated area. The DAFM undertook a number of assessments of the site and excluded substantial areas based on an assessment of the habitats

encountered. The DAFM recorded a specific determination in relation to a number of bird species in its Assessment to Determine EIA Requirement document.

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 submit that there has been inadequate assessment under Article 12 of the Habitats Directive and references Annex IV species and the Birds and Natural Habitats Regulations. The grounds submit that NPWS Guidance in,

Strict Protection of Animal Species. Guidance for Public authorities on the Application of Articles 12 and of the EU Habitats Directive to development/works undertaken by or on behalf of a Public authority

has not been followed. As the title suggests and as stated in the contents, that document provides guidance to public authorities in relation to development/works undertaken by or on their behalf, which does not describe the circumstances under appeal.

The grounds make an unsubstantiated claim that there are at least six of the nine species of bat native to Ireland within their range in OS square H11 and makes no specific claim in relation to otter but states that it is for the Minister to evidence that the necessary assessment has been conducted and not for the appellants to provide evidence of bats or otters on the site. The grounds do not engage with the proposal which involves the afforestation of agricultural land or the processing of the application which included a number of assessments resulting in specified areas being excluded. The grounds do not provide a basis to consider that the application as licenced might impact on any protected species.

The Appellant has not claimed to have any environmental expertise, nor to have engaged such an individual, while the Applicant had engaged a Forester and Ecologist to submit the application and the DAFM assessment included a number of technical staff. The FAC would understand that the granting of an afforestation licence does not remove any legal protections or obligations on the landowner or their agents that are 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.

The appeal submits that areas for biodiversity enhancement are not identified. The DAFM submit that the maps submitted include biodiversity plot tables and additionally conditions related to the protection of habitats area included.

The FAC finds that biodiversity areas of setbacks and retained habitats are clearly marked on the application mapping. The DAFM have excluded specified areas from any afforestation works and this is clearly identified. The Appellant claims that a Bio Table was not included in the map made available for public consultation but this is not correct.

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 submit that the High Nature Value Farmland Assessment lacks scientific rigour and suggest that the method applied by the DAFM is flawed. It is further submitted that the impacts on adjoining lands from afforestation were not assessed and that a Marsh Fritillary Survey should have been required. The DAFM provide an overview of their policy and the assessment of CN92497 including that a Marsh Fritillary Survey was undertaken.

The FAC considered that the grounds demonstrate that the Appellant had not engaged with the processing and assessments of the DAFM as the Appellant was not aware of the assessments undertaken which are readily available on the Forestry Licence Viewer. The measures specified by the DAFM include both the exclusion of specified areas and the imposition of setbacks from the identified habitats.

The role of the FAC is to consider and determine an appeal concerning a specific decision of the Minister for Agriculture, Food and the Marine and not to assess overall methods of the DAFM outside of that specific process. The Appellant has not claimed to have any environmental expertise, nor to have engaged such an individual, while the Applicant had engaged a Forester and Ecologist to submit the application and the DAFM assessment included a number of technical staff, including Ecologists. In the absence of any environmental qualifications or experience, the FAC does not consider that the Appellant would be in a position to comment on what a “self-respecting” Ecologist might do or how to receive a qualification in ecology.

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 claim that the conditions make the operability of the licence highly questionable. The DAFM outlined how setbacks are specified and treated during operations, referencing the Environmental Requirements for Afforestation.

The FAC found that the areas to be excluded are clearly defined and it is clear in the licence conditions how the excluded areas and setbacks must be treated. While there will be clear restrictions in some specified areas there is no reason to consider that this made the project inoperable and it will be for the licence holder to ensure that the licence conditions are met.

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 further claims that there has been a breach of Article 6(3) and (4) of the Environmental Impact Assessment Directive in relation to the availability of information during the public consultation process. The appeal is accompanied by a briefing document. The DAFM outlined their policies in relation to public consultation in response.

The FAC found that Article 6(3) and (4) of Directive 2011/92/EU as amended by Directive 2014/52/EU relates to the undertaking of an Environmental Impact Assessment (EIA). The DAFM undertook a screening for EIA, for which public consultation is not mandatory, and determined that the proposal was not required to be subject to an EIA. Accordingly, there is no basis to the Appellant's claim.

The DAFM did undertake a public consultation and no submissions were received. The Forestry Licence Viewer records that the application and maps were made available during that period. While the DAFM requested that areas of scrub be excluded the FAC did not consider that such information could be considered of significance that would warrant a second period of public consultation.

However, the FAC found that the Ecological report submitted by the Applicant which is dated 29th March 2023 and a Soil Report dated 26th May 2023 were not made available during the public consultation process. The FAC found that in this instance these documents contain information that is relevant to the application and were submitted by the Applicant and were completed during the public consultation process. The FAC considers that in the specific circumstances of this case these documents should have been made available during the public consultation period and that the Minister is entitled to extend the public consultation period where new information is published.

The FAC was satisfied that a serious error was made in the making of the decision in relation to these grounds.

The FAC considered the full grounds of appeal and submissions made, the record of the decision and all relevant material. Having completed its deliberation of appeal FAC144/2024, the FAC was satisfied that serious and significant 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 CN92497 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to make the full application available for public consultation as required under the Forestry Regulations 2017 and to undertake a new screening for Environmental Impact Assessment.

Yours sincerely,

on behalf of the Forestry Appeals Committee

