



Mr. John Burke

28th August 2026

Subject: Appeal FAC074/2024 regarding licence decision CN93374

Dear Mr. Burke,

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 FAC074/2024 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 CN93374.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant an afforestation licence on 21.48 hectares at Meeltraun (denis kelly), Swinefield, Meeltraun (daniel kelly), Hundredacres, Co. Roscommon.

The application was for 21.56 hectares and included operational and environmental information. The land is divided into eleven plots and plots 1-5, 7, and 11 would be planted with Forest Type 12 - Mixed high forests with mainly spruce, 20% broadleaves while plot 6 would be planted with Forest Type 1 – Native

forest. Three plots 8,9,10 would be retained as open space. The forest would be established using mounding with invert mounding in plot 6 and no additional drainage. Planting would be using slit planting with no fertiliser application and herbicide weed control at establishment. The proposal includes 3,500 metres of fencing. Adequate access to the site is recorded as being in place and three site notices were erected.

The applicant submitted a Natura Impact Statement (NIS) prepared by a Consultant Ecologist and dated 27th November 2023. This provides more details of the proposal and lands and describes the lands as currently composed of improved grasslands GA1 and wet grasslands GS4 over cutover peats, organo-mineral and mineral soils. A habitat map is also on file. The report notes that the river on the lands forms part of the Lough Corrib SAC 000297 and that there is a pathway to Lough Corrib SAC 000297 and Lough Corrib SPA 004042. The statement identifies specific interests of the Lough Corrib SAC, the likely significant effects, and the required measures. The document concludes,

It is objectively concluded, in light of the above objective scientific information, that, when the above mitigation measure(s) is / are implemented, the project, individually or in combination with other plans and projects, will not have an adverse effect on the integrity of any of the European Sites listed in Section 2 above, in view of their conservation objectives and in view of best scientific knowledge.

The application was referred to the NPWS/DHLGH, Inland Fisheries Ireland, An Taisce, and Roscommon County Council. The County Council responded submitting no objection subject to conditions. The NPWS made a submission that described the proximity of the lands to a number of conservation areas and that the lands were visited by NPWS staff. It is submitted that the land should be assessed in relation to Natura 2000 sites and local habitats and species. A set of general observations of the NPWS were also included.

The application was assessed by a DAFM Archaeologist which noted that a number of recorded monuments are adjacent to or overlapping the site. A set of specific measures are outlined that included exclusion areas and monitoring requirements.

On file is an Appropriate Assessment Determination (AAD) dated 9th July 2024. This provides a description of the screening process and the reasons for screening in or out European sites for Appropriate Assessment (AA). Lough Corrib SAC IE0000297 was screened in due to hydrological connectivity between the project and the European site. The required measures are stated which include a 20 metre setback from the river or the SAC boundary, whichever is greater. The document concludes,

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

Also on file is an Ecology Report/Ecological Assessment Report dated 15th July 2024. This is stated to be based on a field survey and the encountered habitats and species are described. The adjoining river is

assessed for white-clawed crayfish and it is concluded that the river does not provide suitable habitat for the species.

The DAFM recorded a consideration of the project across a range of criteria and includes references to the other assessments on file. It is concluded that it has been determined that the project is unlikely to give rise to significant effects on the environment by virtue of its nature, size and location and consequently, an environmental impact assessment is not required.

The licence was granted on 16th July 2024 subject to conditions, including compliance with the measures of the AAD.

Appeal

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

- The application was not compliant with Section 5(2) of the Forestry Regulations as public roads, hedgerows and other features are not clearly shown or are incorrectly shown. The grounds question why plots 4, 5 and 6 are included and the location of Biodiversity Enhancement Areas.
- There was undue process as certain documents were not made available as part of the public consultation process.
- There has been a material change to the project as the application area stated 21.56 hectares while the licence is awarded for an area of 21.48 hectares and there is no explanation on the file for the discrepancy.
- There is missing information including a peat map and breeding wader report as these issues were raised by the NPWS. There is no assessment for wetlands and High Nature Value Farming and no Appropriate Assessment screening determination or report and the submission from the IFI is not on file.
- Adequate access is not demonstrated and appears not to be in place.
- The location differs between the application and the NIS.,
- The determination of the EIA screening is based on an inadequately reason assessment. The Minister for Agriculture has a conflict of interest as the DAFM has a promotional and regulatory role. There is no evidence on file in relation to R+N score and it is queried why the application was referred to IFI while it is recorded that it is not in an area that is sensitive for fisheries. There is no assessment for peat. The Ecology Report did not indicate that there was a systematic assessment for the presence of Annex I habitat and the NIS was conducted in late November. The commentary of the inspector is challenged and the measures of the AAD cannot be considered to be standard.
- The Appropriate Assessment is deficient. There is no screening or Appropriate Assessment Report on file while the AAD refers to a screening. The NIS appears to assume that the screening has been undertaken and while the NIS was published there was no screening published at the same time. There are unjustified redactions in the NIS. The screening in the AAD does not include Lough Corrib SPA while the NIS refers to a hydrological link to that site. There is no scientific basis for the

mitigations indicated and they must be demonstrated. There is no specific mitigation for areas and activities within the SAC. There is an in-combination report for the screening but not for the determination and the in-combination is restricted to a single river sub-basin and refers to the wrong County Development Plan.

- The Ecology Report does not include the time or duration of the survey conducted on the 20th June 2024 or details of the weather conditions or the methodology adopted. The project is not consistent with the State Aid Decision. The Ecology Report refers to a screening report and determination and the findings are questioned with reference to the EPA assigned status of the waterbody.
- DAFM procedures are not consistent with the requirement for providing a general system of protection commensurate with Article 5 of the Birds Directive. The Ecology Report identifies species that are red and amber listed.
- There has not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive, notably bats which are referenced in the NIS and NPWS submission.

Minister's statement

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 Department considered the representation of various features was acceptable and sufficient to assess the application. There was a colour change to one linear feature in the revised biomap which the DAFM considered to be a minor change. The submitted maps were assessed using the DAFM system and by the District Inspector during a site visit. The Biodiversity Enhancement Areas are in keeping with the Environmental Requirements for Afforestation.
- In relation to consultation the DAFM rejects the grounds and asserts that they go beyond the remit of a forestry licence and an appeal. Ireland and the DAFM are in full compliance with the Aarhus Convention. The public consultation process is outlined including the Forestry Licence Viewer. Reasons are given as to why some documents mightn't be available during the public consultation phase.
- The DAFM may re-digitise maps to improve accuracy. In this instance there was a reduction in area of 0.08 hectares spread across 7 plots and the DAFM do not regard this as a material change.
- The DAFM has policies and procedures in relation to breeding waders, high nature value farmland, appropriate assessment and other matters which were complied with in this instance. The land was subject to an ecological assessment, which identified the habitats on site, and the NIS described the soil type and this was verified by the inspector.
- The site adjoins a public road and access is adequate and the ABE areas do not restrict access.
- The correct townlands are identified in the AA Determination and in the DAFM documentation.

- The DAFM rejects the claims made in relation to EIA. In relation to the contention that there is a conflict of interest in the decision making of the Minister, the DAFM submit the promotional role is undertaken without prejudice to the functions conferred by the Forestry Act 2014 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. Civil servants are required to abide by specific standards. The FAC is independent in its function under the Agriculture Appeals Act. The DAFM undertook ecological assessment in June 2024, while the NIS was based on a survey outside of the flowering season it was undertaken by a qualified ecologist. The soil type was deemed acceptable. Mitigations conditioned on the licence are outlined.
- An unsolicited NIS was submitted by the Applicant along with a pre-screening report. An ecologist working on behalf of the DAFM undertook an assessment of the NIS before reaching a conclusion in the AA Determination. There would be no effects on Lough Corrib SPA which is 67 km from the project based on hydrological distance. Mitigation measures were specified and the assessed reached the required conclusion. The incorrect CDP was considered but the DAFM have considered the appropriate CDP and there are no material differences in relation to matters the DAFM need to consider.
- The DAFM policies and procedures in relation to ecological reports are outlined. An assessment and report was conducted in 2024 as some time had passed since the original survey. The reference to an AA screening is an obvious typographical error. The Cloonfad_010 water quality has been recorded as deteriorating in recent years and the assessment of the ecologist was correct.
- DAFM policies and procedures in relation to specified bird species and habitats are outlined. A survey was undertaken by a DAFM ecologist as recorded and indicates the proposal would not impact on any bird species.
- DAFM policies and procedures in relation to specified bird species and habitats are outlined. A survey was undertaken by a DAFM ecologist as recorded. The proposal and licence conditions include protections for existing habitats such as hedgerows and features will provide benefits in terms of foraging. There are protections in relation to water quality.

Further submissions

A submission was received which was stated to be made on behalf of the Appellant. This contended that the DAFM had failed to rebut the grounds and the statement contains an error. It is submitted that the application was received on 23rd October 2023 which is before the site notice was erected which is an error under section 11 of the Forestry Regulations. The FAC sought clarity from the DAFM in relation to a number of documents which were not published or were not fully published on the Forestry Licence Viewer (FLV). The DAFM published a number of documents in full on the FLV and the FAC informed the parties and invited them to comment on the matter.

A submission was made by a Mr. Neil Foulkes and the FAC sought clarification from Mr. Foulkes as to what capacity he was acting in as he was not identified as the Appellant nor as an agent of the Appellant. Mr. Foulkes submitted that he prepared the appeal and submitted the NOAF and Grounds of Appeal on behalf

of the Appellant. Regulation 5(3) the Forestry Appeals Committee Regulations 2020 require an Appellant, when making an appeal, to provide the details of their agent. The FAC directed the Appellant to clarify Mr. Foulkes authorisation and the Appellant provided this clarification by email on 9th July 2026. The correspondence between the FAC and the Appellant and its agent were circulated to the other parties. On 14th July 2026, Mr. Foulkes made a submission in relation to the original correspondence from the FAC in relation to the newly published documents that submitted that the matter was significant and undermined the position of the DAFM that all documents were available to the public during the consultation process. The DAFM responded stating that it had no further submission to make.

Considerations of the FAC

The Appellant's agent had requested further information be provided on the documents that were published during the appeals process. However, the FAC was satisfied that there was sufficient information available to determine the appeal and there was no basis to seek further information.

The FAC considered in the first instance the grounds that the application was not compliant with Section 5(2) of the Forestry Regulations 2017 as public roads, hedgerows and the boundaries of Lough Corrib SAC are not correctly shown on the Biomap that was available during the public consultation and that altering project information after the fact is not conducive to natural justice and may be contrary to the law. The DAFM submit that the information provided with the application was deemed acceptable and sufficient to make an informed assessment of the application. It is submitted that a reviewed Biomap was submitted with a colour change to one section of a linear feature which the DAFM consider to be a minor change.

The FAC reviewed the record of the decision and found the application to have been accompanied by a number of maps including the Biomap, fencing map, habitat maps and a number of maps in the Natura Impact Statement. The FAC found the location of the public road to be clearly visible and marked on a number of maps and that the hedgerows and proximity to the SAC were well mapped and described including in the habitat maps and NIS prepared by a qualified Ecologist. All of this information was available on the Forestry Licence Viewer during the public consultation process.

In relation to the Biomap, this is a procedural document that is requested by the DAFM in making a licence application alongside other information and mapping. The grounds suggest that all information must be contained solely on this map but the Forestry Regulations 2017 do not make reference to a Biomap. The FAC considered that it is not correct to interpret Section 5(2) as requiring all information to be contained on a single map. Such an interpretation would clearly be unreasonable as applications may vary in size and complexity and there is no explicit restriction of the kind envisaged in the grounds. The FAC found the features identified in the grounds to be well described and mapped in the application documentation and the FAC determined that the appeal provides no basis to find that the requirements of Section 5(2) of the Forestry Regulations 2017 had not been met.

The grounds go on to question why Plots 4, 5 & 6 are not excluded from the project, that they are not integral to the project area and appear to be included to permit more conifers over the rest of the area.

The DAFM submitted that the delineation of plot boundaries to coincide ABE areas is acceptable in terms of project design and the plots identified in the grounds are integral parts of the forest area as is evident in the submitted maps. The DAFM refer to the Environmental Requirements for Afforestation and the specification of what areas can be included as ABEs.

The FAC reviewed the record and found Plots 4, 5 and 6 to form continuous parts of the overall area and are clearly integral parts of the projects as a whole. In relation to the species composition, a majority of the overall area of the identified plots would be planted with broadleaf species. In relation to setbacks, the applicant was required to include setbacks from dwellings, roads and rivers amongst other features and this has been undertaken and documented. The Areas for Biodiversity Enhancement (ABEs) are specified in keeping with the provisions of the Environmental Requirements for Afforestation.

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 submitted that there was undue process as a number of identified documents were not available during the public consultation. These included submissions from prescribed bodies, DAFM reports and site and plot details. The DAFM defended the public consultation process. Section 10 of the Forestry Regulations 2017 (SI 191 of 2017) provide for the Minister for Agriculture to publish notice of the application in a manner determined by the Minister, to make the application available, to allow for public consultation and to extend the period where new information is published.

In relation to the documents identified in the appeal, the FAC did not consider that any of these documents were required to be subject to public consultation and noted that the Appellant had made no submission during the consultation process. While the site and plot details documents include information on the application, the FAC found this information to be contained in the "Pre-approval submission report" document that was available during the consultation process and that there was no need, therefore, for the same information to be available in a second document. In relation to the DAFM reports, these were internal assessments generated by the DAFM during the process of making a determination on the application and did not form part of the application or submissions from the Applicant. Furthermore, the FAC did not consider that there was any basis for submissions made by third parties, including prescribed bodies, to be subject to public consultation.

However, the appeal goes on, in the context of Appropriate Assessment (AA), to submit that the Appropriate Assessment screening was not available. The DAFM recognises in its statement that document related to the AA screening should be available during the consultation process. In this instance, only one period of public consultation occurred as a Natura Impact Statement (NIS) was submitted with the application and was available during the initial consultation phase. The FAC sought and attained a copy of the AA screening undertaken by the DAFM but this was not made available during the consultation phase. It is a requirement for the screening to be made available during the consultation and the FAC was satisfied that a serious and significant error was made in the making of the decision by the failure to publish the

screening during the consultation relation to AA. Furthermore, a number of sections of the NIS were redacted that included the name of a specific species and the reasons why mitigation measures were not required to be undertaken. The name of the species could be readily identified in the public domain and the reasons were required to be made available as part of the consultation process. The FAC considered this to be a further serious error. The FAC considered that the Minister should be required to undertake a new public consultation process which includes the AA screening document and to undertake a new AA.

The grounds further submitted that there has been a material change in the project area as the area had changed from 21.56 hectares to 21.48 hectares and there is no explanation on file. The grounds refer to text in the Forestry Standards Manual in relation to changes to specifications. The DAFM submitted that it may re-digitise applications during the assessment process and that, in this instance, the change comprised 0.08 hectares spread across 7 plots and could not be considered to be a material change.

The only change identified in the grounds is a very small change to the overall area which the DAFM explain came about through re-digitisation of boundaries across 7 plots. There was no real change in the nature, scale or location of the proposal overall and the FAC was not satisfied that the very minor change in overall area could warrant the rejection of the application or extension of the consultation process or any other action by the DAFM.

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 there is information missing from the application. In relation to soil type and the Appellant's submission that there was no peat map, the DAFM submit that the soils were assessed and described as part of the application and the Forestry Inspector verified the soil through desk review and site walkover and the lands were subject to an Ecological assessment by the DAFM. The grounds provide no evidence that the soils were incorrectly specified in the application.

The grounds submit that there is no Breeding Wader Report or High Nature Value Farming Assessment on file. The DAFM submit that neither are required as the lands do not fall within hotspot areas for the specific bird species and that the lands were subject to habitat assessment and lands do not fall within the layer specified for High Nature Value Farmland. Furthermore, the lands were subject to assessment by Ecologists on behalf of the Applicant and the DAFM. The Appellant did not contest the position of the DAFM and the Appellant has not claimed to have an environmental expertise nor to have engaged such an individual in the preparation of their grounds.

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 adequate access has not been demonstrated to a number of the plots. The DAFM submit that access is in place, that the lands adjoin the public road and that the Forestry Standards Manual do not require the submission of legal documentation.

The FAC found that access to the plots was clearly marked on the maps submitted and that many of the plots were contiguous. The FAC found the grounds to be speculative and to not provide any actual evidence of a deficiency. The DAFM conducted a survey of the site and would be well-placed to determine whether access is in place as identified in the application.

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 the wrong area is identified in the project documentation as the NIS only refers to two townlands, Meeltraun and Hundredacres. The DAFM notes that the NIS title does only refer to two townlands but that the document includes maps of the location and that all DAFM documentation refers to the correct townlands.

The FAC found that the NIS does only refer to two townlands in the title but includes extensive mapping including habitat maps of all lands. It is evident that the NIS was undertaken for all of the applied for lands and that the error was only of a typographical nature. The NIS was published on the Forestry Licence Viewer (FLV) and the FLV is a map-based system that listed the correct townlands. An interested individual would have been informed of the location through the FLV. The Appellant has not claimed that they were disadvantaged by the error and did not make a submission on the application. The FAC considered that the error was a typographical error of no significance.

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 the Environmental Impact Assessment (EIA) screening is based on an inadequately reasoned assessment. It is submitted that Article 9a of the EIA Directive 2014 requires Member States to ensure that its competent authorities perform their Environmental Impact Assessment duties "in an objective manner and do not find themselves in a situation giving rise to a conflict of interest". It is submitted that the Minister's promotional role and the developing of specific afforestation targets result in a conflict of interest in relation to the Minister's regulatory role. The DAFM contests the grounds and submits that the promotional function of the Minister is stated in the relevant legislation as being without prejudice to the other functions conferred on the Minister including in relation to safeguarding the environment. It is further submitted that DAFM officials are required to comply with the Civil Service Code of Standards and Behaviour and that the Appellant has failed to particularise or substantiate their claims.

The FAC considered the grounds to be generic and provided no real basis as to how a conflict of interest had arisen in the specific awarding of a licence for CN93374. It is very common, and indeed often expected, that public authorities set out policies that include specific targets but there is no basis to conclude that setting an overall target would result in a conflict of interest in the regulation of the related activity.

The grounds then go on to challenge a number of responses provided in the DAFM documentation. These relate in the main to information submitted with the application and further recorded by the DAFM. The grounds provide no evidence that the information is incorrect and identify no significant effects on the environment that the Appellant considers likely to occur. Information related to the soil type and vegetation were submitted with the application would be readily verifiable through site inspection which was undertaken by the DAFM. The site was assessed by Ecologists on behalf of the Applicant and the DAFM at various times of the year including during summer and the related reports are available on the FLV. The grounds do not engage with the actual assessments undertaken but instead refer to commentary recorded in the Assessment to Determine EIA Requirement document. The FAC agrees with the Appellant's view that the Appropriate Assessment (AA) relates to specific species and habitats protected through the designation of European sites. However, as noted by the DAFM the Applicant's Ecologist had surveyed the habitats and species on site and the DAFM had undertaken its own ecological assessment. The grounds do not engage with the actual assessments undertaken by the DAFM.

The FAC would also agree that the mitigation measures specified in the AA would not be considered standard mitigations but the Inspector referred to the NIS in that section and had previously referenced the AA. There is nothing to indicate that the measures specified in the AA were not considered. The FAC considered that the potential error of responding in the manner identified could be considered a serious or significant error.

The FAC also considered the grounds that the licence contains no seasonal restrictions to protect breeding birds and that the Ecology Report identified a number of red-listed and amber-listed species. The DAFM provided a detailed response to this ground and explained the basis for not considering that further restrictions were required. The Appellant did not challenge these reasons. However, the FAC considered that, in the context of the information submitted by the Applicant and the recorded location of the proposal, the reasoning outlined in the response to the appeal should have been contained in the reasons provided as part of the process of screening for significant effects on the environment.

More generally the granting of the licence does not remove any protections under national legislation unless this is expressly provided for and the wildlife legislation comprises Ireland's primary transposition of the EU Birds and Habitats Directives.

The appeal grounds contend that the Appropriate Assessment under Article 6(3) of the Habitats Directive was deficient. As previously outlined the FAC considered the failure to publish the screening and the unnecessary redaction of the NIS during the public consultation amounted to serious and significant errors.

The grounds do not engage in a meaningful way with the assessment itself but claim that it lacks scientific evidence. Notably the grounds claim that there is no specific mitigation for the area within the SAC and that afforestation is an activity requiring consent under the Statutory Instrument for the SAC. There are a range of mitigation measures specified in the NIS and AAD related to the SAC, including a specified 20 metre setback from the river or the SAC whichever is greater. The Appellant is incorrect to state that there would be planting within the SAC. The Appellant's claims that the assessment has no scientific basis are unsubstantiated. The NIS and AAD were both prepared by qualified Ecologist following field assessment. The Appellant has not claimed to have any environmental expertise nor to have engaged such an individual in the preparation of the appeal.

The grounds make reference to Lough Corrib SPA not appearing in the AA Determination but the pre-screening document prepared by the Applicant's Ecologist determined that no AA was required for this site. The DAFM have adopted a procedure of generating an AA Report in lieu of an NIS at times but in this instance an NIS was submitted and the measures were generally adopted by the DAFM and recorded in its AA Determination. The FAC did not consider that there was any basis for an AA Report to be generated in this instance.

The Appellant is correct that in assessing other plans and projects in-combination with the proposal the DAFM relied on the incorrect County Development Plan. The FAC was satisfied that a new screening for Appropriate Assessment should be undertaken.

The grounds contend that there were serious deficiencies in the Ecology Report, that it is unclear why the report was undertaken and that the Ecologist's portrayal of the waterbody was not in keeping with the status accorded by the EPA. The DAFM defend the document and submit that the methodology is stated, that conditions were not inhibiting and provide the reasons for the report. It is further submitted that the waterbody has been recorded as declining by the EPA and links to related records were submitted.

The Appellant has not claimed to have any ecological or environmental expertise and no professional opinion has been submitted with the appeal. The FAC found the grounds to be unfounded as the DAFM had recorded the methodology and the reasoning for the report that was prepared by a qualified Ecologist. The Appellant does not appear to have been aware of the change in water quality recorded in the waterbody and the proposal itself does not involve any works in the waterbody and would be well-setback from the waterbody and SAC. An error was made in referring to the document as an AA screening but this is clearly a typographical error as evidenced by the content of the document.

The grounds claim that the decision does not accord with the State Aid Rules which the FAC understand are the rules set by the EU in relation to grant aid provided through the Forestry Programme. The FAC's remit does not include decisions on grant aid. In any case, the grounds are general and speculative. The proposal is not within a protected landscape and the County Council did not raise concerns in relation to the landscape. The lands are comprised of agricultural pasture and are located within a landscape of agriculture and forest. Setbacks would be implemented including in relation to dwellings, public roads and

rivers and the forest includes diverse species including specific areas of native woodland. Existing hedgerows and specified areas would be retained.

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

The grounds contend that there has not been an adequate assessment of the potential impact on species in Annex IV of the Habitats Directive and makes a specific reference to bats and the content of the NIS. The DAFM contest the grounds and submit that the Ecological reports considered a range of species as recorded, that linear features are protected, that the project does not lie within the foraging range of the bat roosts of the interest of the SAC, and that the project may provide benefits to bats and otters.

The conservation objectives of Lough Corrib SAC state that there are records of known roosts within the SAC and the DAFM have submitted that there are no such bat roosts within the area. The Appellant has not contested this. As previously noted there will be no planting within the SAC and any existing trees and hedgerows would be retained and a setback is required from the SAC amongst other measures. As noted by the DAFM the planting of trees may benefit a number of species including bats and there are specific measures in relation to the protection of water quality and otter. 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 unless this is expressly provided for. The NIS and assessment by the DAFM were undertaken by qualified Ecologists. The Appellant has not claimed to have any ecological or environmental expertise nor to have engaged such an individual.

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 Appellant's claim that the application was made on 23rd October 2023, the Appellant provided no evidence to substantiate this and a number of the application documents postdate this date. It is evident that the public consultation period occurred after the date of the erection of the site notice.

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 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 FAC074/2024, 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 CN93374 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening and to make the screening, NIS and application

documentation available during a new public consultation process. The DAFM should also complete a new AA Determination as required. In addition the DAFM should complete a new screening for Environmental Impact Assessment and ensure that reasons are provided for the screening conclusion. These actions should be completed before a new decision is made on the licence application.

Yours sincerely,

on behalf of the Forestry Appeals Committee

