



Irish Forestry Unit Trust

4th February 2026

Subject: Appeal FAC070/2025 regarding licence decision TFL01141125

Dear Sir/Madam,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (The Minister). The FAC established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal. 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

A hearing of appeal FAC070/2025 was held remotely by the FAC on 16th December 2025. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Ed Carroll (Non-participating), Mr. Derek Daly, 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 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 vary the decision of the Minister regarding licence TFL01141125.

The FAC found that the following licence condition specifying that the replanting setback distance from dwelling houses is 30 metres was a serious error for the reasons outlined below.

The replanting setback distance from dwelling houses is 30 metres and 10m for roofed farm buildings.

Reason: In the interested of residential amenity.

The FAC is varying this condition so that the replanting setback distance from dwelling houses is 60 metres in keeping with the application and the Standards for Felling and Reforestation.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant a tree felling licence, subject to conditions, on 12.8 hectares at Leamanish, Co. Leitrim on the 18th June 2025.

The application was recorded as having been submitted on 21st February 2025 and included operational and environmental information, a harvest plan and a series of maps. The forest is divided into three plots of varying sizes and comprised of Sitka spruce. The forest is bound by a public road to the west at which access is marked and dwellings are identified northerly of the forest. An aquatic zone is marked transecting the western section and the forest is crossed by an ESB line. The application notes that the majority of the forest is windblown following Storm Éowyn. A temporary water crossing is marked leading to the forest road and entrance and the timber stacking and site compound would be located along the forest road. The forest would be replanted with 80% Sitka spruce, 10% broadleaves, and 10% open space.

The maps identify setbacks from the public road, aquatic zone and dwellings and broadleaf planting adjacent to setbacks is also identified.

The application was referred to Leitrim County Council, which provided a response from the Planning Department and the District Engineer. The submission described the landscape character of the area, that the land is not designated as an Area of Outstanding Natural Beauty or Area of High Visual Amenity in the Leitrim County Development Plan 2023-2029 and do not appear to impact on any monument site listed for protection under Section 12 of the National Monuments (Amendments) Act 1994. It is submitted that the Planning Authority has no objection to the proposed clear felling and that the Forest Service should satisfy itself as regards any requirements for Appropriate Assessment and Environmental Impact Assessment. It is requested that conditions be attached such that a "Forest Service representative" liaise District Engineers Office and satisfy the conditions and address any issues and that all work be carried out in accordance with the Best Practice Guidelines. The District Engineer requested a number of conditions be attached to the licence.

The record includes an Appropriate Assessment Screening Determination dated 27th May 2025 which states,

This screening for Appropriate Assessment has been undertaken to determine whether the proposed felling and reforestation project under TFL01141125 (henceforth referred to in this document as 'the project'), individually or in combination with other plans and projects, is likely to have a significant effect on any European site (i.e. Natura 2000 sites), in view of the site's conservation objectives.

Two European sites are identified specifically, Cuilcagh - Anierin Uplands SAC IE0000584 which is described as c.7.9 km North North West of the project and Lough Oughter and Associated Loughs SAC IE0000007 which is described as being outside of 15km from the project area and hydrologically

connected. The sites' conservation interests and objectives are identified and reasons are provided for the screening conclusion; both sites are screened out and it was determined that there was no requirement to proceed to Appropriate Assessment. The conclusion states,

Following AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 32 of 2020), DAFM has determined that there is no likelihood of the felling and reforestation project proposed under TFL01141125 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), for the reasons set out in Part A: Screening Report:

➤ *Cuilcagh - Anierin Uplands SAC IE0000584.*

➤ *Lough Oughter and Associated Loughs SAC IE0000007.*

As such, the project does not advance to the appropriate assessment stage in relation to these European Sites.

A second document entitled Appropriate Assessment Screening Report is also on file.

The record also includes a document entitled Project Description, Environmental and Social Considerations in which the proposal is considered across a range of criteria and it is stated that there is no requirement for the application to be subject to the EIA process.

The licence was granted, subject to conditions, on 18th June 2025.

Appeal

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

- The Harvest Plan indicates a number of features and hedgerows are not identified in the Harvest Plan Map. Hedgerows should have been retained and in the absence of the location standards cannot be enforced. The language in the Environmental Requirements for Afforestation is too general to ensure protection. The Harvest Plan does not indicate that there are any relevant watercourses, does not identify silt traps, and identifies extraction routes through hedgerows. There was no field survey by the DAFM, the Harvest Plan has insufficient detail and conditions should have been placed on the licence.,
- That reforestation with 80% exotic conifers is contrary to "Good forestry Practice". The forest has been subject to catastrophic windthrow which demonstrates that the site is not windfirm and is unsuitable for standard commercial coniferous forestry and to restock with the same species is contrary to "Good Forestry Practice". Licence conditions are not adequately reasoned.,

- Future windthrow risk is a lacuna in the assessment of the reforestation element of the project. The COFORD Windthrow Risk gives a windthrow risk that has not been assessed. Windthrow has implications for a number of features and the risk has not been assessed and this is not in keeping with the principle of "Good Forestry Practice",
- There was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention and the DAFM public consultation procedures were unfair. The grounds make reference to Annex I of the Aarhus Convention and suggest that as felling licences are subject to public consultation and Appropriate Assessment screening that they fall within the provisions of the Aarhus Convention. The grounds refer to finds of the Aarhus Convention Compliance Committee, a Regulatory Review and a decision of the Court of Appeal. The grounds submit that there are "properties that will be affected directly and indirectly by the works" and also make reference to a previous decision of the FAC and the provisions of the Forestry Regulations 2017. The grounds further submit that there was a failure to have regard to the social functions of forestry with reference to notification and the Forestry Act.,
- There was a breach of the Forestry Regulations in relation to the publication of information and public consultation with reference to submissions and screenings undertaken by the DAFM.,
- The DAFM cannot evidence that the lands were afforested in accordance with the law. There is no evidence on the record that the afforestation of the lands, or the associated forest road, were subject to screening under the Environmental Impact Assessment Directive or Habitats Directive. That an Environmental Impact Assessment screening of the afforestation should now be undertaken.,
- Licence conditions are not adequately reasoned with specific examples identified.,
- That the assessment for the project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable doubt as to the effects of the proposed works on the protected area concerned with reference to the screening conclusions in relation to European sites. Lough Oughter and Associated Loughs SAC is specifically identified. In-combination effects were not fully considered.,
- The application does not comply with the requirements for BLOW Reforestation objective.,
- That there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) with reference to bats and an NPWS publication.,
- That DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive. The grounds submit that there are no seasonal restrictions and that domestic law provides no protection.,
- There was inadequate assessment in the context of the Water Framework Directive.,
- The determination of the Environmental Impact Assessment Screening is based on an inadequately reasoned assessment and is unsound in law.,
- There are inadequate setbacks and inadequate risk assessment in relation to windthrow and the Water Framework Directive.,
- There are inadequate setbacks from ESB infrastructure.,
- Access to Justice cannot be demonstrated to be "not prohibitively expensive",

- Fees were not prescribed in accordance with the law.,
- The Felling and Reforestation Policy has not been subject to Strategic Environmental Assessment.,
- The Forestry Appeals Committee is structurally biased and breaches the principle of constitutional justice.,
- The DAFM has acted in a biased manner in the assessment of the application and contrary to “Good Forestry Practice”.

The appeal goes on to make some further commentary and requests in relation to the appeals process.

Minister’s statement

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

- (a) a statement showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and*
- (b) information, documents or items in the power or control of the Minister that is relevant to the appeal.*

The DAFM provided a statement (SOF) providing an overview of the decision and responding to the appeal, a full copy of which was provided to the parties and considered by the FAC. As the parties were advised, the FAC relied on the record of the decision as provided by the Minister on the online Forestry Licence viewer (FLV). The FAC had regard to the statement and record in full and, in brief summary, the statement submits that,

- The decision was made in compliance with DAFM procedures, SI 191 of 2017 and the Forestry Act 2014 and provides a response in relation to the grounds of appeal.,
- The Harvest Plan correctly identifies features and hedgerows are shown and mapped in a green dotted line. DAFM’s Standards for Felling and Reforestation address a number of the points raised. There are no silt traps identified as there are no relevant watercourses within the property.,
- Storm Eowyn was an extreme weather event which brought hurricane-force winds and was a significant meteorological event and damage associated with the storm should not be used as an indicator that the forest was unsuitable to the site. The DAFM has no concerns regarding the replanting proposal.,
- The DAFM rejects the grounds regarding public consultation and contends that this aspect of the appeal goes beyond the remit of a forestry licence appeal. The DAFM is satisfied that it is in compliance with the Aarhus convention. The DAFM describes the steps taken in relation to public consultation. This is also submitted in relation to the grounds in relation to the Minister having regard to the social function of forestry.,

- Regulation 10(4) of the Forestry Regulations 2017 leaves it to the discretion of the Department where additional information is submitted or created as to if or in what circumstances another 30-day period of public consultation is warranted.,
- It is not clear what specific environmental issues are being referred to in the grounds that refers to the lands not being afforested in accordance with the law. The DAFM consider that the grounds of appeal should be limited to the felling licence under appeal. The DAFM position is that the clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive.,
- The DAFM contests that the licence conditions are not adequately reasoned. The DAFM's policies in relation to the protection of water are outlined. Setbacks from dwelling houses are treated differently for existing forests as for afforestation and the condition in relation to contacting the local authority is in line with the submission from the local authority.,
- The DAFM provides an overview of the appropriate assessment screening, including the reasons and in-combination consideration and the legal basis for the screening.,
- In relation to the BLOW reforestation objective, the DAFM submits that the application includes a significant amount of management information covering all plots and that the Forest and Biodiversity Guidelines will be adhered to.,
- The DAFM submits that the licencing process administered by the Department represents the system of checks and balances by which the Department exercises its responsibilities with regard to protecting Annex IV species. It submits that concerns in relation to protected species can be raised as part of the public consultation process and that no concerns in relation to bat species were raised by the local authority and the habitat of lesser horseshoe bat is linked with broadleaved and mixed woodland. It is submitted that the granting of a felling licence does not exempt the holder from meeting legal requirements set out in the Wildlife Acts.,
- In relation to Article 5 of the Bird Directive, it is submitted that the granting of a felling licence does not exempt the holder from meeting legal requirements set out in the Wildlife Acts and that the grounds do not refer to any specific adverse effect under the heading. It is contested that DAFM procedures are inconsistent with Article 5 and it is submitted that the appeals process is not the appropriate forum to raise matters regarding the transposition of EU law.,
- DAFM policies in relation to the protection of water quality are outlined and it is submitted that licence conditions will ensure the protection of water bodies.,
- It is submitted that the position of the DAFM is that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive.,
- It is submitted that the setbacks are adequate to protect the quality of water in nearby waterbodies and reference is made to DAFM policies.,
- It is submitted that the appropriate competent authority is empowered to manage corridors around power lines and that the appeals process is not the correct forum to change existing policies.,

- That the appeal fee is appropriate and matters in relation to the appeals process are beyond the scope of an appeal.,
- That the Felling & Reforestation Policy (2017) was not required to be subject to an SEA as it is not a plan or programme with the meaning of the Directive.

The Notice of Appeal and DAFM statement were provided to the parties to the appeal who were provided with an opportunity to reply and no further submissions were received by the FAC.

Considerations of the FAC

At its sitting on the 16th December 2025, the FAC had before it the full DAFM record of the decision as made available on the Forestry Licence Viewer (FLV), the Notice of Appeal Form and grounds of appeal, the Statement of Fact (SoF) provided by the DAFM and all materials on file. As the parties were notified, the FAC referred to the record of the decision as is made available on the publicly available Forestry Licence Viewer (FLV).

The FAC considered in the first instance the grounds that alleged deficiencies in the application in relation to the mapping of features. In relation to hedgerows, the DAFM submit that hedgerows are identified. The FAC reviewed the mapping and noted that a network of hedgerows is clearly marked, with a dashed green line, on the maps submitted. In relation to relevant watercourses, the maps do not identify any such watercourses on the lands but do mark an aquatic zone, a river, in the western section. While the Harvest Plan mentions the use of silt traps, these are referred to in as being employed if required. The grounds refer to silt traps being identified in relation to the aquatic zone but such measures are not to be undertaken in aquatic zones and the application does not propose to undertake any operations in the river. The appeal provides no convincing evidence that the maps are deficient in relation to these grounds. The licence is for the felling of trees and not afforestation under the Forestry Act 2014. The retention of hedgerows would not exclude the possibility of cutting hedgerows in specific crossing points identified in the plan, if required, and this is provided for in the Standards for Felling and Reforestation (DAFM, 2019).

The grounds submit that there was no field inspection by the DAFM in relation to the application and this is not contested by the DAFM. The FAC considered that it would be unreasonable for the DAFM to conduct inspections of all application before them and that the grounds do not provide a basis as to why such a field inspection might be required in this case. In relation to the application, the FAC would consider that the content of a licence application forms the basis on which the licence is granted and that an applicant would be required to adhere with the operations and related provisions unless conditioned otherwise in the licence. The Applicant has identified extensive windthrow on the site and it is for the Applicant 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 grounds allege that the operations, and the replanting, do not align with “Good Forestry Practice” and go on to provide a definition attributed to the Forestry Act 2014. The FAC finds that the definition of ‘Good Forestry Practice’ as quoted in the grounds is provided for in the Forestry Act 2014 at Part 10 Article 32 and that this is specified to be in the context of compensation for the refusal of a felling licence and for the purposes of the related section of the Act and is not provided as a definition for the purposes of the Act as a whole. The grounds further allege that future windthrow risk is a lacuna in the assessment.

The FAC considered that the presence of extensive windblow on the site had been clearly identified in the application and referenced to the occurrence of Storm Éowyn. The application was considered by the Minister and assessed by a number of the technical staff of the DAFM. The position of the DAFM is that it has no concerns in relation to the replanting.

The licence decision before the FAC is for the felling of trees as provided for in the Forestry Act 2014 and the Forestry Regulations 2017. The Forestry Act 2014 provides for the Minister to produce and implement guidelines, codes of practice and standards for good forest practice and, as referred to in the statement from the DAFM, a number of such documents have been produced. The Forestry Regulations 2017 also require the Minister to have regard to such documents in making decisions on licence applications. The Minister has conditioned the licence on compliance with the Standards for Felling and Reforestation (DAFM, 2019) amongst other conditions. The FAC does not consider that the decision that was made was not in keeping with the Standards for Felling and Reforestation nor the Felling and Reforestation Policy ((DAFM, 2017) documents published by the DAFM. As referenced by the DAFM, Storm Éowyn was an extreme and unusual event. The grounds allege that the replanting is “foolhardy” but the role of the FAC is to consider an appeal and to determine whether serious or significant errors were made in the making of the decision.

The licence decision, the subject of the appeal, relates to the felling of trees as provided for under the Forestry Act 2014. The DAFM have produced a Felling and Reforestation Policy and a Standards for Felling and Reforestation (DAFM, 2019) which include certain provisions for the regulation of the replanting of lands. The conditions include setbacks from dwellings, aquatic features, and public roads which are identified as being adjacent to the site that are generally in keeping with these standards. An exception to this is the dwelling setback which, as noted in the grounds, is stated to be 30 metres, which the FAC considered to be an error, and this is addressed further below.

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, except for the issues arising in relation to the dwelling setback.

The FAC considered the contentions in relation to Public Notice and Public Participation and the Aarhus convention. The grounds contend that there has been inadequate and ineffective public notice in contravention of Article 6 (2) of the Aarhus Convention and that, relatedly, the Minister had failed to have regard to the social function of forestry. The grounds reference comments of the Court of Appeal in McCaffrey (McCaffrey v Minister for Agriculture Food and Marine [2017] IECA 247). The grounds make

reference to a previous decision of the FAC on the matter. The DAFM submit that any obligations that might arise under the Aarhus Convention are met through its procedures which are outlined.

The FAC understands that publication through the map-based FLV is the form of publication chosen by the Minister for Agriculture to inform the public and to make the application and decision freely available and accessible and to facilitate submissions. As the Appellant notes in their own grounds, they have pursued a number of previous appeals and are aware of the approach adopted by the DAFM.

The FAC understands the "Aarhus Convention" to be a reference to the *UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. The FAC understands the Aarhus Convention to be a convention under the UNECE and that it does not form part of domestic legislation as such. The Aarhus Convention has been transposed through a number of pieces of EU legislation, including the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU).

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 any other 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) and "Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment." (Class 13 (a) 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. The Forestry Regulations 2017 do not provide for the Minister to undertake an EIA in relation to a tree felling licence application. In this instance, the application is for the clearfelling of trees in a managed plantation that has already been subject to windthrow and would be replanted, with no change in land use, and does not constitute afforestation or deforestation for the purposes of land use change or any change or extension to an existing project. The operations are of a standard nature in the context of ongoing forest management in Ireland. The FAC does not consider that there was a requirement to undertake a screening for Environmental Impact Assessment or an Environmental Impact Assessment in processing the tree felling application.

The FAC finds that Article 6(2) of the Aarhus Convention refers to the public notification requirements where an environmental impact assessment is being undertaken and not at the screening stage. One of the requirements is that the public is informed of the fact that a development is subject to an assessment. The public clearly cannot be informed that a development is subject to an assessment before it has been

decided that the development is to be subject to such an assessment. The recital of the EIA Directives states,

'Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice.'

This is reflected in the consultation requirements provided for under Article 6 which is required after the competent authority has determined that a development is subject to an EIA. The procedure adopted in this case provided for a public consultation period in keeping with the requirements of the Forestry Regulations 2017 (SI 191 of 2017). The application was subject to a period of public consultation in relation to the application stage. The FAC considered that the comments attributed to the Court of Appeal and the Aarhus Convention Compliance Committee (ACCC) are referenced to a period prior to the current Forestry Regulations 2017 and procedures of the DAFM, including the availability of the FLV. The FLV is a standalone map based website that displays information on forestry licences.

The FAC considered that this ground of appeal effectively seeks to challenge Ireland's and the EU's transposition of the Aarhus Convention and related questions of law and the FAC considers, as the Appellant has noted that they are aware, that such matters would not fall within its jurisdiction to determine.

The grounds of appeal reference Regulation 10 of the Forestry Regulations 2017 and suggest that there is an inconsistency in the manner in which the notice is published by the Minister but the FAC do not understand that to be the case as all such applications are published on the FLV. The grounds also note the stated requirements of the Forestry Regulations 2017 in relation to the erection of a site notice during operations but this relates to the period after the licence decision has been made.

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 Regulation 10 (4) of the Forestry Regulations 2017, the grounds contend that the DAFM should have published the submission made by Leitrim County Council and allowed public submissions on the submission. The grounds go on to allege that screenings and other documents should have been subject to public consultation. The FAC would consider that the primary purpose of Regulation 10 (4) is to provide for public consultation in relation to the application that is made for a licence. While the Minister might extend the period for a specific purpose, for example if further information was submitted by an applicant, the FAC would not consider that the Minister is required to provide for a period of public consultation in relation to all of the documents created by the Minister or submissions made by prescribed bodies.

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 cannot evidence that the lands were afforested in accordance with the law but the FAC does not consider that the grounds provide any convincing evidence that the forest was established in a legally deficient manner. The Appellant provided no additional submission. The grounds contend that the current EIA related legislation, competent authorities and thresholds established in the Forestry Regulations 2017 should be retrospectively applied to an afforestation development from 2001. The FAC does not consider this to be reasonable. Since 2001, EIA legislation has changed both at EU and domestic levels and the thresholds and national competent authorities have also changed on a number of occasions. The FAC considers that its remit is to make a determination on the decision under appeal in accordance with the requirements of the Agriculture Appeals Act 2001, as amended. The grounds do not identify a significant effect on the environment that the Appellant believes to have occurred since the planting of the lands. The felling of trees is not a continuation or extension of the afforestation of the lands. As described by the Appellant the lands were in agricultural use prior to the afforestation of the lands and the afforestation occurred a number of decades prior to the application for the felling licence.

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 licence conditions are not adequately reasoned. The FAC reviewed the grounds and the submission from the DAFM. The FAC found the grounds to be comprised in the main of short comments on conditions but provide no real basis to conclude that a serious or significant error had occurred. The conditions relate to operations and are in keeping with the type of conditions that are attached to various forms of works undertaken in Ireland. By their nature, the obligations clearly attach to the licence holder and the FAC found the conditions to be clearly stated and to be in keeping with the standards established by the Minister. The application only relates to one felling intervention. The FAC did not consider that the grounds engaged with the totality of the decision and the details of the application. The application does not identify relevant watercourses on the site and the grounds provide no convincing reasons or evidence to consider that to be an error.

The grounds contend that the conditions do not provide sufficient powers to the prescribed body in relation to the submission that they made. Leitrim County Council requested that a condition be attached to the licence that would require a "Forest Service representative" liaise with the Council and satisfy conditions and issues raised by the District Engineer. The FAC would consider it unreasonable for a condition to be attached to a licence applied for by a member of the public that would require a public authority to satisfy conditions or issues of another public authority. Amongst other matters, this would restrict the actions of a member of the public where a condition was not met over which they have no control. The County Council is required to be notified and it is up to that authority to fulfil its function in keeping with the powers that have been provided to it under the relevant legislation.

The DAFM has satisfied itself in relation to Appropriate Assessment and Environmental Impact Assessment and the application includes provisions for open space and broadleaves to be incorporated into the forest. The licence conditions include adherence with the standards of good practice of 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, except for the issues arising in relation to the dwelling setback.

The FAC did find that the condition setting the setback from dwellings to 30 metres was a serious and significant error. The Appellant had proposed a setback of 60 metres which the FAC finds to be in keeping with the Standards for Felling and Reforestation (DAFM, 2019). The DAFM submitted that the setbacks for afforestation differ from those at replanting but the FAC did not find that to be the case in the standards and requirements published by the DAFM. The Applicant did not make a submission on the appeal and did not contest the grounds. The DAFM, in effect, changed the proposal of the Applicant and specified setbacks which were not in keeping with DAFM standards and did not provide a basis for this in the reasons stated. The FAC considered this to be a serious error but determined that this could be addressed through the varying of the decision so that the setback of 60 metres as applied for remained in place. The FAC considered the variation in the context of the overall making of the decision and the requirements of the relevant legislation. The variation would involve a relatively small area not being replanted within the same forest footprint and would be in keeping with the Standards for Felling and Reforestation (DAFM, 2019). The FAC was satisfied that the variation would have no further impact on the decision-making process and, in particular, could not be considered to interfere with the Appropriate Assessment screening undertaken by the DAFM.

In relation to the BLOW reforestation objective, the application does include an operational plan and the proposal does not include changing the objective of any forest plot. The proposal is to include a proportion of broadleaf planting and open space in each plot. The Standards for Felling and Reforestation (DAFM, 2019) to which the grounds refer, expressly state that the reforestation objective relates to the plot.

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 grounds that allege deficiencies in the Appropriate Assessment screening of the proposal. 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,

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.

In this instance the DAFM recorded a screening that recorded specific considerations of two European sites and screened them out on the basis of distance and the assimilative capacity of intervening waterbodies having considered the nature and location of the proposal, European sites and their qualifying interests and conservation objectives and potential sources and pathways. The screening document includes maps describing the site and its location relative to European sites.

The application relates to the felling of trees in a plantation on lands that do not lie within or adjacent to a European site. By their nature the operations would be limited in time and location. The file shows that Lough Oughter and Associated Loughs SAC lies more than 15km in direct distance from the proposal and is separated by an extensive network of rivers and lakes. The proposal was assessed by technical staff of the DAFM and the screening decision is clearly documented.

The grounds do not provide a basis as to how the proposal might have a significant effect on a European site and the Appellant has not claimed to have any technical expertise or to have engaged such an individual.

The FAC considered the requirements of the Forestry Regulations 2017 and Article 6 (3) of the EU Habitats Directive were met in this case.

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 been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species). The grounds make a general unreferenced claim that there are six species of bat native to Ireland in the general area and also refers to otter. The DAFM submitted that the licencing process represents the checks and balances by which their responsibilities are exercised and outlines stages of that process. It is further submitted that there are no populations of protected species confirmed in the project area or in the vicinity of the project area and that the granting of a felling licence does not exempt the holder from meeting the legal requirements of the Wildlife Acts or other legislation.

The FAC did not consider that the grounds provide a basis for how the identified species might be significantly impacted by the licenced activities. The lands are comprised primarily of semi-mature coniferous plantation which would not be considered to be a particularly rare or valuable habitat and would not have large trees or a well-developed understorey. The forest has already been subject to extensive windthrow and the application is for the felling of trees. There are protections in place in relation to hedgerows and broadleaf trees on site and in relation to the protection of water quality which include operational setbacks.

The grounds refer to an NPWS document that relates to activities undertaken by or on behalf of public authorities which does not describe the proposal. That document confirms that the granting of a permission or licence does not remove obligations under the relevant wildlife legislation and describes obligations that are placed on landowners and their agents in undertaking works. The FAC considered that the grounds in the main amounted to a challenge in relation to the legality of the Wildlife legislation and Ireland's transposition of EU Directives and that making such a determination would not fall within the remit of the FAC.

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

The grounds 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. It is submitted that the Wildlife Act gives an exemption for works in the ordinary course of forestry and that no protections exist. The DAFM submitted that the granting of a felling licence does not exempt the holder from meeting the legal requirements of the Wildlife Acts, that no specific adverse effects are referenced, and that the appeals process is not the appropriate forum for raising legal matters regarding the transposition of EU law.

The grounds make a general reference to Woodcock and submit that there is no evidence that the developer or the DAFM accessed or examined data from the National Woodcock Survey of 2021. The

grounds go on to state that the data is not publicly available and suggest that the survey coordinator be contacted. Under the Agriculture Appeals Act 2001, it is for the Appellant to provide all of the grounds and evidence on which they wish to rely. The FAC understands the Appellant's reference to the red list of birds of conservation concern to relate to a list generated by BirdWatch Ireland based on work they published in 2021. Woodcock is not listed in Annex I of the Birds Directive which requires the created of Special Protection Areas. The species is listed in Annex II and III which allows for the hunting and sale of the species. The species is one which can be hunted in Ireland under legislation which is the responsibility for the Minister for Heritage.

The licence decision relates to a felling licence in a semi-mature coniferous plantation which has been extensively impacted by windthrow. This would not be considered a particularly valuable or rare habitat and has already been subject to extensive damage as a result of an extreme weather event. The FAC does not consider that the grounds provide a convincing basis as to how the licenced activity could threaten a bird species.

The FAC considered that the grounds were seeking to challenge the legality of the Irish Wildlife legislation and Ireland's transposition of EU Directives and that making such a determination would not fall within the remit of the FAC. As previously noted, the FAC would understand that the granting of the tree felling licence by the Minister for Agriculture does not remove any legal obligations on the landowner and their agents that are provided under other statute.

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, inadequate setbacks and inadequate risk assessment in the context of the Water Framework Directive. The appellant submits that the forest is subdivided by part of the Yellow (Ballinamore) 20 river sub-basin which is of high-status. This corresponds to the submission of the application and the documentation of the DAFM. The grounds submit that the DAFM have not assessed impacts on the waterbody of the windblown trees and the proposal and that the measures are not sufficient to meet the required tests. The DAFM submitted that its basis for its evaluation of felling licence applications is set out in *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018) and that any felling licence issued is conditional on adherence to the *Standards for Felling and Reforestation* (DAFM, 2019).

The FAC found that the DAFM had specified a setback of 20 metres which was greater than that proposed by the applicant and is in keeping with the DAFM's published procedures in relation to setbacks in relation to waterbodies of high status. The application does not identify relevant watercourses on the site and the appeal provides no convincing evidence for concluding that this was incorrect. The grounds suggest that the Minister was not entitled to grant the licence where a portion of a lake downstream from the forest was not designated a status. However, the grounds provide no basis as to how the felling as licenced might impact on a waterbody downstream of the forest. The proposal is for the felling of trees in a managed

plantation forest that is already subject to windthrow and does not include any works on a waterbody. The application includes measures in relation to the protection of water quality and the licence was granted with a number of conditions related to the protection of water quality in keeping with the published standards of Good Forest Practice. The FAC considered the grounds to be general and speculative in nature.

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 document entitled "Project Description, Environmental and Social Considerations", the considerations of the FAC, in regards to, EIA screening and EIA have been previously outlined. The grounds allege that further reasons are required. The FAC finds that the DAFM have fulfilled their procedures and that no submission was made on the application. The reasons for the decision can be identified across the documentation on file including the licence and conditions and the screenings and assessments prepared 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 Standards for Felling and Reforestation (DAFM, 2019) require the mapping of utility lines in the Harvest Plan which was undertaken in this case. The line is identified in separate plots that run between plots 1 and 2 and 2 and 3. No operations are proposed within the plots containing the electricity line.

The FAC noted the submission in the statement from the DAFM that the matter of management of vegetation from Electricity Transmission lines and public roads are provided for in separate legislation, the enforcement of which falls to other authorities. The DAFM statement asserts that grounds of appeal are not the appropriate forum for calls to change existing national policy, which would involve input from a number of public bodies, and therefore beyond the remit of a forestry licence appeal. The FAC would agree with this position.

As previously noted, the FAC would understand that the definition of "Good Forest Practice" identified by the Appellant is stated in a specific context in the Forestry Act 2014. The FAC does not consider that the decision was made not in keeping with the Standards and Guidelines created by the Minister.

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

The grounds go on to challenge the appeals system itself and specifically the fee that is charged, in addition to other aspects of the process and the legislation. Under the Agriculture Appeals Act 2001, as amended, the Minister is empowered to set fees for appeals and the matters raised in the grounds do not relate to

the decision to grant TFL01141125 and are not matters for the FAC to determine. The appointment of individuals to the FAC is a matter for the Minister and the Chairperson is entitled to appoint members to sub-divisions of the FAC. The FAC considered that these grounds amounted to a challenge to the Agriculture Appeals Act 2001 itself.

The grounds further allege that the DAFM has acted in a biased manner in the assessment of the application but provide no reasons or evidence to substantiate this claim.

In relation to the holding of an oral hearing, the agriculture appeals Act 2001, as amended, provides that,

14C (1) The Forestry Appeal committee shall determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, it considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

The FAC is satisfied that it conducted the appeal in a fair and appropriate manner, in keeping with the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee 2020. The FAC was satisfied that there was no necessity to conduct an oral hearing in this instance and that all parties had been afforded an opportunity to express their position and to respond to the position of each other party.

The grounds submit that the Felling and Reforestation Policy has not been subject to a Strategic Environmental Assessment (SEA) and suggests that this was required to have occurred. The DAFM contest the grounds.

The FAC noted that the grounds have not alleged that any authority has made a determination on the necessity for an SEA to have been conducted in relation to the Policy. The FAC considered that making such a determination might not fall to the FAC to make but that it would consider the matter in the context of the submitted grounds.

The Felling and Reforestation Policy (DAFM, 2017) is a broad policy document that contains guidance of a general nature. The FAC would consider that the document was not produced to fulfil a legal requirement and was not mandatory in nature but that the Minister for Agriculture was entitled to produce such a document as guidance in relation to general felling and reforestation policies. Furthermore, the FAC would not understand the document to be binding on landowners in and of itself outside of any specific licence condition. In that context, the FAC would consider that there was no requirement for an SEA to have been undertaken. The FAC further noted that the Minister is required to undertake a screening for Appropriate Assessment and Appropriate Assessment, as required, in relation to tree felling licence applications under the Forestry Regulations 2017.

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.

Having considered appeal FAC070/2025, the FAC is satisfied that a serious error was made in the making of the decision in relation to the specification of a licence condition that the replanting setback distance from dwelling houses is 30 metres for the reasons outlined. The FAC is varying this condition so that the replanting setback distance from dwelling houses is 60 metres in keeping with the application and the Standards for Felling and Reforestation (DAFM, 2019).

Yours sincerely,

Vincent Upton on behalf of the Forestry Appeals Committee