



Paul Reynolds & Patricia Downey Reynolds

16th July 2026

Subject: Appeal FAC092/2024 regarding licence decision CN91115

Dear Mr. Reynolds & Ms Downey Reynolds,

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 FAC092/2024 was considered by a division of the FAC at a hearing held remotely on 5th May 2026. In attendance:

FAC Members: Mr. Myles McDonagh (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 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 set aside and remit the decision of the Minister regarding licence CN91115.

Background

The appeal is against the decision of the Minister for Agriculture, Food and the Marine to grant an afforestation licence on 6.12 hectares at Drumconny, Co. Leitrim. The application included operational and environmental information and a series of maps.

As licenced, the forest would be comprised of 8 plots, with plots 1, 2 and 7 planted with Sitka spruce and broadleaves and the remaining plots planted with pedunculate oak or birch. The site is described as enclosed agricultural land with a grass rush vegetation type on a mineral soil. Soil preparation would be through ripping and mounding, without additional drainage, and angle notch planting. No fertiliser would be employed and weed control would be through herbicide use and manual methods. Road access is said to be provided.

The application shows the lands as being located in a remote rural area and to be bisected by a public road. The record includes a site notice dated 22nd October 2022 and a photograph of an erected site notice. The application shows the main plots to be separated from the smaller plot by a high voltage ESB line and a 10-20kW line runs north-south. Both are excluded from the planting area. The lands are crossed by a network of hedgerows and a watercourse is mapped to the west of the lands. Areas of scrub are marked and it is stated that these would be retained. Setbacks are included in relation to the identified features.

The DAFM wrote to the applicant on 24th March 2023 requesting that a fencing map be updated and that one Bio plot be excluded. A reminder was sent on 22nd May 2023. A number of additional maps are on file including a Biomap with identified scrub areas. The file includes a peat map in which the depth of peat is mapped across the site.

The file includes a screening for Appropriate Assessment dated 15/05/2024, which is described as being prepared following a site visit on 22-23/04/24. This describes the lands and proposal and the location of the lands relative to European sites. Three sites are identified in particular, Clooneen Bog SAC IE0002348, Lough Forbes Complex SAC IE0001818, Ballykenny-Fisherstown Bog SPA IE0004101. Other plans and projects considered in-combination with the proposal are also recorded. The screening concludes that the proposal did not need to proceed to Appropriate Assessment.

The record also includes an assessment of High Nature Value Farmland which specified a section of the main plot to be planted with native broadleaf species. A habitat map was prepared by the Ecologist and photographs of the land were taken.

The DAFM recorded a document entitled "Assessment to Determine EIA Requirement" in which the proposal is considered across a range of criteria and it is 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 record includes a DAFM Archaeologist report in which proximity to recorded monuments are noted and setbacks are specified in relation to any upstanding remains around existing historic features and the townland boundary to the west in addition to exclusion zones around the monuments that lie outside of the lands.

The licence was granted, subject to conditions, on 5th September 2024.

Appeal

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

- The application was not legally compliant with reference to Section 5(2) of the Forestry Regulations 2017 and the related mapping requirements. Reference is made to the public road network, archaeological features and hedgerows. It is submitted that the Pre-Approval Submission contained false information in relation to the soil type.
- There was undue process with reference to the availability of documentation which are listed. That the EIA screening decision was not made within 90 days.
- There has been a material change to the project as the original application had three parcels for an area of 6.43 hectares and the licenced project has 8 plots for an area of 6.12 hectares. The Appropriate Assessment refers to three plots and the Forestry Standards Manual provides for procedures that may be adopted in light of material changes to applications. It is unclear when the material change occurred.
- There is no evidence of adequate access being in place at Plot 2, access to plot 4 was made after 2014 and the road is not suitable for commercial forestry traffic. The local roads authority was not consulted.
- The determination of the Environmental Impact Assessment Screening is based on inadequately reasoned assessment. The Minister awarding the licence is also the promotional authority and has a conflict of interest with reference to Article 9a of the EIA Directive 2014. There is no evidence to support the response in relation to the R+N score and the contention that the amount and type of forestry is not known locally to be a significant issue and the proposal is within the range of the curlew. Explanation needs to be given as to how planting native broadleaves helps to protect high Nature Value Farmland. Mitigation measures were considered as part of the determination.
- The Appropriate Assessment under article 6(3) of the Habitats Directive is deficient. The Assessment description of the project does not align with the licence and the In-combination report does not include an assessment and refers to the incorrect County Development Plan.,
- The DAFM has required not to authorise the licence as Lough Sallagh and Lough Errew were not accorded a water quality status by the EPA with reference to the opinion of an Advocate General.
- DAFM procedures are not consistent with the requirement for providing a General System of protection commensurate with Article 5 of the Birds Directive as there are no seasonal restrictions or mitigations.
- There has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) and reference is made to the Birds and Habitats Regulations, a publication of the NPWS, and bats and otter.
- The lands are High Nature Value Farmland.

Minister's statement

The DAFM provided a statement responding to the appeal which outlined the processing of the application and submitted that the decision was issued in compliance with DAFM procedures, the Forestry Regulations 2017, and the Forestry Act 2014. The DAFM contest the grounds and submit, in brief summary,

- The public road linear feature is not shown but the public road can be clearly seen in the aerial imagery and the setback is noted on the document. Archaeological features are not shown in the Biomap but are included in the Archaeology report, which includes site specific measures. Hedgerows were recorded by the registered forester and reviewed by the inspector and ground surveys represent a more accurate determination than mapping. The application did record the soil type as mineral and a later peat survey identified areas of peat and this informed later assessments.
- The project was screened out for Appropriate Assessment and so was subject to one period of public consultation. The identified documents came after the application was advertised.
- There has been no material change in the application, the application was for mixed conifer and broadleaf plots and for pure broadleaf plots and the only change has been a change in size from 6.52 hectares to 6.12 hectares which has no impact on the receiving environment.
- The application met the criteria of the Local Authority as no concerns were raised. Public roads are the responsibility of the local authority who maintain and expand the county road network as required. The current state of the road is deemed sufficient for afforestation and reference is made to the Forestry Standards Manual. The project is well serviced by the public road and was deemed sufficiently accessible.
- The suggested conflict of interest is rejected, the Forestry Act states that the promotional role of the Minister is without prejudice to their other functions. The DAFM has outsourced the majority of its frontline promotion to Teagasc and the DAFM has separate administrative divisions. Civil servants are required to comply with the Civil Service Code of Standards and Behaviour. The grounds cite no applicable statutory provision or clear point of EIA case law.
- No submissions or objections were received during the consultation process, a site notice was erected and the application was advertised on the Forestry Licence Viewer. The application did not require a referral to the Local Authority. The application does not fall within 1.5km of the curlew layer which is the agreed assessment area. The 10km squares are indicative only and are not used by the DAFM in the manner proposed by the appellant. The DAFM approach is in line with its state aid EU approval for the Forestry Programme.
- The High Nature Value Farmland score is an indicative national layer. A more detailed assessment was undertaken by the DAFM that found the area to be moderate in nature and recommended native broadleaf planting.
- The DAFM disputes the assertion that there are lacunae in the Appropriate Assessment process. It is noted that the project size was changed and that native broadleaves were required in one plot this was in keeping with the Forestry Programme 2023-2027 and the AA Screening Determination, dated 15/05/2024, acknowledges that the project as a whole was required to be assessed in light of the additional constraints and restrictions to enhance the protection of the environment provided for in the current programme and to that end, an up-to-date in-combination was

produced and considered to ensure that the conditions reached regarding the European sites are accurate and applicable. The DAFM does not consider that there is any legal or practical need to re-assess the application for the purposes of AA. It is acknowledged that the County Development Plan (CDP) referred to is not current but the current CDP was examined and there are no material differences in relation to matters that the DAFM would be required to consider as part of the application.

- The grounds refer to the opinion of an Advocate General which is not determinative. The Court of Justice has issued a determinative decision on the questions referred to them by the Irish High Court and the grounds do not reflect the obligations on competent authorities.
- The procedures adopted by the DAFM in relation to a number of species and land and soil types are outlined including in relation to bird species. The application was assessed and not found to be located within a Hen Harrier distribution layer, an SPA or any other designated/protected area for birds. The licence conditions include adherence with the Environmental Requirements for Afforestation and the Forestry Standards Manual, which includes the retention of hedgerows.
- In relation to bats the conditions will ensure the continuity of commuting corridors and provide additional foraging habitat for bats and will ensure no significant effects on foraging and protect commuting corridors for otter.
- The DAFM procedure for High Nature Value Farmland is outlined and it is submitted that the agreed procedure was adopted in this instance. It is again stated that the High Nature Value Farmland score referred to in the grounds is from an indicative national layer. A more detailed assessment was undertaken by the DAFM that found the area to be moderate in nature and recommended native broadleaf planting.
- A letter from the DAFM Archaeologist was also submitted *as regards protection of the archaeological and built heritage resource there is nothing therein that would have changed the substance of the decision made to approve afforestation license nor should any additional specific conditions have been recommended.* It is submitted that archaeological site or features should be understood to be a recorded or registered monument or features of comparable antiquity. The standing stone and megalithic tomb referred to in the Archaeology report fall outside of the site, would not be directly or indirectly affected, and while it would be preferable for such monuments in the environs of a proposal to be mapped, their inclusion would not have had any material difference on the decision. That the buildings and lime kilns identified in the report are not archaeological sites or features for the purposes of the regulations. In relation to the publication of the report, there are no statutory provisions that would require that such a report to be made available before a final decision, such reports are draft internal advisory reports, publication would allow the applicant to challenge the decision, and such DAFM cases are studies containing the expert opinion or advice by those experts which are used for the purposes of a decision by the DAFM. The legal test regarding the capacity of individuals affected by a decision to challenge decisions has been met.

Further submission

The Appellant made a further submission in response to the statement from the DAFM. This submitted that the application was received over 3 months before the site notice was erected. The submission disputes the contentions of the DAFM and restates the position of the appellant.

Considerations of the FAC

Regarding the provisions of Regulation 5(2), the FAC considered that a number of maps were submitted as part of the application including a location map that shows the public road and one of the recorded monuments identified in the archaeological report. There are no recorded monuments within the site and, as noted by the DAFM Archaeologist, no recorded monuments would be impacted by the proposal. The licence conditions include provisions for the protection of more recent features should be they standing but these do not constitute protected monuments. The grounds provide no basis to conclude that hedgerows are not shown in the mapping submitted and the site was subject to inspection. According to the survey undertaken the land is primarily on mineral soils and a peat map was submitted.

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

Regarding the public consultation process and the availability of certain documentation, the FAC considered that some of the identified documents were internal documents of the DAFM generated during the processing of the application and that there was no requirement to make such documents available. However, a number of the identified documents did form part of the application. The reason given by the DAFM for the documents not being available is that they were received after the consultation period. However, the Forestry Regulations 2017 envisage the Minister extending the period as required where additional application documentation is published. The FAC does not consider that the fact that application documents might be received late in the process is a reason for the application not being subject to public consultation as required and, furthermore, that the Forestry Regulations 2017 empower the Minister to extend the period of public consultation. The FAC determined that the failure to ensure that the application was made available for public consultation represented a serious error in the making of the decision such that the decision should be set aside and remitted to the Minister.

In relation to changes to the site area, the application was for 6.52 hectares while the licenced area is for 6.12 hectares. In this instance the file includes requests from the DAFM to amend certain areas on the site. The overall proposal has not materially changed and includes afforestation within the stated footprint. The grounds provide no basis to consider that the changes would have had any impact on the Appropriate Assessment screening or were of a material nature such that re-publication would have been required.

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

Regarding access, the FAC considered the grounds to be speculative and provided no basis or evidence for the FAC to conclude that a serious error was made. The application declared that adequate access was in place and the site was inspected by the DAFM. The application appeared to be in keeping with the Forestry Standards Manual as submitted 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.

Regarding considerations in relation to Environmental Impact Assessment, the grounds make specific reference to Article 9a of the EU EIA Directive 2014. That Article relates to a Member State ensuring that a competent authority perform its duties arising under the Directive in an objective manner and implement appropriate separation between conflicting functions where the competent authority is the developer. In this instance, the Minister for Agriculture is not the developer and the DAFM have described the separation of functions implemented internally and externally.

As described, the grounds are general in nature and relate to the overall functions of the Minister for Agriculture and the powers prescribed under national legislation. It is not, in effect, related to the specific decision made in relation to afforestation licence CN91115. There is no evidence that that decision was not made objectively. Regarding the time period in which the decision not to undertake an EIA was made, it is not clear how the Appellant, as opposed to the Applicant, might be impacted by this and the decision was made within 90 days of the Appropriate Assessment screening being completed.

The FAC considered that the challenge is in effect against Ireland's transposition of an EU Directive and the provisions of national legislation and that the determination of such matters does not fall within the remit of the FAC, as the Appellant has been previously advised.

The grounds make a number of general subjective claims but provide no basis to consider that the proposal is likely to result in significant effects on the environment or that an Environmental Impact Assessment was required. The lands were subject to an ecological field inspection by the DAFM and the application was prepared by a forester. The habitats present on the site were assessed. High Nature Value Farmland is not a specific habitat type but a policy-related designation and the DAFM completed its procedure and found the lands to have a medium score. The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff, including Foresters and Ecologists, by the DAFM. There were no submissions made during the public consultation period. The proposal is for the afforestation of agricultural land in a remote rural area. However, in relation to the challenge regarding the consideration of cumulative effects the FAC found that the DAFM only had regard to forestry projects and did not consider any other form of plan or project. The FAC would understand that the DAFM was not entitled to limit their consideration only to projects of the same kind. The FAC was satisfied that this constituted a serious error such that the DAFM should undertake a new screening for EIA.

Regarding the screening for Appropriate Assessment, the grounds contend that the project details and description of site and surrounds do not align with the licenced project. The only specific claim that is made in the grounds is that the area differs, but this relates to the exclusion of a small area from the project in line with the policies and procedures of the DAFM. The grounds do not provide a basis as to how the proposal might result in a significant effect on a European site. The FAC was not satisfied that the changes to the proposal that were made after the screening process could have any impact on the screening conclusion.

However, as noted in the grounds, in considering potential effects of other plans and projects that might work in-combination with the proposal, the FAC found that the DAFM had referred to the incorrect County Development Plan. The FAC was satisfied that this constituted a serious error such that the DAFM should undertake a new screening for Appropriate Assessment. Furthermore, in relation to Lough Forbes SAC the following reasoning is included,

Screen out - The project is > 20 km hydrologically from this European site and the separation distance will allow for sufficient deterioration of water quality that could negatively affect these QI's. The connecting watercourse also passes through 3 smaller lakes before entering this SAC, allowing for settlement of silt and ensuring water quality is maintained.

While the intention is clear the actual text contains obvious flaws and the FAC considered that in the context of a screening for Appropriate Assessment would be considered deficient.

Regarding the suggestion that the Minister was required to refuse permission under the Water Framework Directive (WFD), the FAC found that the Appellant incorrectly relied upon the opinion of an Advocate General instead of the decision of the Court of Justice. The proposal involves the afforestation of agricultural land and is subject to conditions. The FAC considered that there was no basis to conclude that the proposal would result in the deterioration of any waterbody or impede any waterbody from reaching a good status or any other requirement or objective of the WFD.

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

The grounds allege that the DAFM procedures are not consistent with the requirement for providing a General System of Protection commensurate with Article 5 of the Birds Directive and that there are no seasonal restrictions or mitigations. The DAFM in response outline a number of procedures that are adopted for afforestation applications that relate to birds and general protections related to the environment.

The FAC considered that the grounds were general in nature, do not engage meaningfully with the record of the decision, and provided no basis as to how the proposal as licenced might impact on any bird species. The Applicant and the DAFM undertook a surveys and assessments of the land, which include a screening

for Appropriate Assessment and habitat classification. The lands do not lie within any designated area and the proposal is for the afforestation of land that is currently used for agriculture. The grounds question a number of statements recorded by the DAFM but provide no basis to contest the findings. The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff, including Foresters and Ecologists, 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 contend that there has been inadequate assessment under Article 12 of the Habitats Directive (Annex IV species) and refer to the Birds and Natural Habitats Regulations. The grounds make a general unreferenced claim that there are seven species of bat native to Ireland in the general area and also refers to otter. The grounds submit that NPWS Guidance in,

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

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

The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual, while the application was assessed by a number of technical staff, including Foresters and Ecologists, of the DAFM. The grounds do not engage with the actual proposal nor the processing of the application by the DAFM and provides no basis as to how the proposal as licenced might have an adverse impact on any species. The proposal is for the afforestation of agricultural land and would not involve any works in a river or on a building. Hedgerows and trees that are currently on site would be retained and areas of scrub have been excluded. The granting of the licence does not remove any protections provided in other legislation unless such is specifically provided for.

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 High Nature Value Farmland, the DAFM completed a procedure in this regard and the grounds are general and speculative.

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, 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 CN91115 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended. In undertaking a new decision, the Minister should make the application subject to a period of public consultation and undertake new screenings for Appropriate Assessment and Environmental Impact Assessment in keeping with the requirements of the Forestry Regulations 2017.

Yours sincerely,



Vincent Upton on behalf of the Forestry Appeals Committee