



THE FORESTRY APPEALS COMMITTEE

**A Review of the Membership and Make-Up of the Forestry
Appeals Committee by Mr Seamus Neely, Chairperson**

23 September 2022

Review of the Membership and Make-Up of the Forestry Appeals Committee (FAC)

I am appointed Chairperson of the Forestry Appeals Committee having regard to Section 14A (as inserted by section 35 of the Forestry Act 2014 (No. 31 of 2014)) of the Agriculture Appeals Act 2001 (No. 29 of 2001), of the Forestry (Miscellaneous Provisions) Act 2020 (No. 15 of 2020), of S.I. No. 68 of 2018 Forestry Appeals Committee Regulations 2018 and of S.I. No 418 of 2020 Forestry Appeals Committee Regulations 2020. As Chairperson, I must ensure that the functions of the Forestry Appeals Committee are performed as efficiently and as expeditiously as may be consistent with fairness and natural justice.

As the appointed Chairperson of the FAC and having regard to the terms of my appointment, I am duty bound to deliver the following report to the Minister for Agriculture Food and the Marine as a full review of the membership and make-up of the FAC.

Background to this review

The Forestry Appeals Committee (FAC) was established under the Agriculture Appeals Act, 2001 as amended, to deal with appeals against decisions of the Department in relation to forestry licences. The FAC deals with appeals against decisions made by the Minister concerning applications for forestry licenses under the following headings:

- Afforestation,
- Tree felling,
- Forest road construction,
- Aerial fertilisation.

By way of brief background, the Agriculture Appeals Act 2001 introduced a statutory independent appeals provision in respect of entitlements to payments under the various Department of Agriculture, Food and the Marine (DAFM) schemes including the forestry grant and premium schemes. The Agriculture Appeals Act was amended through the Forestry Act 2014 to establish the independent FAC comprising a chairperson and other members (not being less than two) to hear and determine appeals against decisions made by the Minister or an officer of the Minister in respect of licences for afforestation, felling, aerial fertilisation, and forest roads. The FAC is legally separate and distinct from the functions of Appeal Officers and the Director of Agriculture Appeals under the Act and is a separate legal entity.

The Act was further amended by the Forestry (Miscellaneous Provisions) Act 2020 to allow, amongst other amendments, for the appointment of deputy chairpersons and for the FAC to sit in divisions of itself. To date the Minister has appointed current Appeals Officers to the FAC, in their standing as officials of the Minister and not as Appeals Officers under the Agriculture Appeals Act 2001 (as amended). The Minister has also appointed ordinary members and deputy chairpersons who are not officers of the Agriculture Appeals Office or of the DAFM.

Since the establishment of the FAC there has been a total of 1873 appeals received against decisions on 1251 licences. A significant backlog of appeals had developed prior to the commencement of the amendments from the Forestry (Miscellaneous Provisions) Act 2020, and these were successfully worked through by the FAC throughout 2021 and the first quarter of 2022. The following table sets out the number of appeals received in each calendar year from the commencement of the FAC legislation in May 2017 and the number of licences that these appeals related to.

	2017	2018	2019	2020	2021	2022	Total
*Appeals received	34	197	489	874	149	130	1873
Licence decisions appealed	21	150	311	582	107	80	1251

**There can be more than one appeal against a licence decision of the Minister*

Of the above there are 1778 appeals closed relating to 1187 licence decisions, and the remaining 95 appeals which relate to 64 licence decisions remain open. Of these one has a FAC decision pending, also there are hearings scheduled or recently held for twenty licence decisions and the remainder are due for scheduling when information requests have been satisfied.

Deputy Chairpersons and Members of the FAC

While all Appeals Officers are also appointed as members of the FAC, not all sat as members during 2022. The following members served on the divisions of the FAC in 2022: -

Name	Status
Seamus Neely	Chairperson part year from end of June to present (<i>served as a Deputy Chairperson part year to end of June</i>)
Des Johnson	Chairperson part year to end of April
Donal Maguire	Deputy Chairperson
John Evans	Deputy Chairperson
Myles McDonagh	Deputy Chairperson
Iain Douglas	Ordinary Member
Derek Daly	Ordinary Member
Luke Sweetman*	Ordinary Member
Vincent Upton*	Ordinary Member

**Appointed as Agriculture Appeals Officers and appointed as members of the FAC*

Divisions

Under the legislation the FAC may sit in divisions of itself which may be chaired by the chairperson or by a deputy chairperson. The primary legislation sets out that a quorum of the FAC must comprise of at least two persons being the chairperson or deputy chairperson and one other member of the FAC. Where a division of the FAC is composed of two persons, and the Committee cannot reach a unanimous determination of an appeal, the appeal is then required to be reconsidered by a division composed of three other persons. Also, where a division of the FAC includes the chairperson and one

or more than one deputy chairperson, a deputy chairperson is considered to be a member of the Committee.

Through 2021 and into 2022 the FAC has sat generally in four divisions of itself, a division would typically comprise three or four depending on the content of the appeal being heard. Hearings are normally held each week, depending on available workload and workload management.

Introduction of Fees

The amendments through the Forestry (Miscellaneous Provisions) Act 2020 allowed for the charging of a fee to appeal to the FAC. The fee prescribed under the Forestry Appeals Committee Regulations 2020 (S.I. 418 of 2020) is €200 and must be lodged with each appeal to the administration section of the FAC. Currently the fee is only payable by bank draft, cheque or postal order as the FAC is not enabled to receive electronic payments. The €200 fee was first required to accompany each appeal from October 2020 and is since applicable.

As regards the rate of the fee applied, the typical costs associated with a FAC hearing comprising the Chairperson and two ordinary members, which varies for oral hearing or a desk-based hearing, equates to between five and six times the fee for the appeal. The fee of €200 to lodge an appeal is therefore currently set at a nominal rate relative to the cost of processing an appeal. I consider the rate as set to be fair.

2022 Appeals

To date in 2022 130 appeals have been received against 80 licences. Considering that there have been approximately 3200 licences issued in the same period this equates to an appeal rate of c 2.4% of licence decisions made. The approximate trend through 2021 and 2022 has been 1.5 appeals per licence appealed against.

It should be noted that appeals against felling licence decisions comprise c 17% of the licences appealed against whereas felling represents c 70% of all licences issued to date in 2022 by DAFM. It would be expected that an increase in afforestation and forest roads licence decisions especially would give rise to a pro-rata increase in the number of licence decisions being appealed against.

FAC Sitting Days During 2022

To date in 2022 the FAC has sat to hear appeals on 8 days, it should be noted that there was no sitting during the period from end of April to mid-August due to the fact that there was no chairperson in place from end of April until late June and a period of 7 weeks was then afforded for scheduling of hearings following my appointment as Chairperson.

The number of hearing dates per member in 2022 were as follows (there may have been more than one appeal heard on each sitting day, this is shown in the fact that the FAC sat on 8 days during 2022 to date, and on one of those days two divisions of the FAC sat).

Name	Sitting Days
Seamus Neely	2
Des Johnson	1
Donal Maguire	1
John Evans	3
Myles McDonagh	3
Iain Douglas	7
Derek Daly	5
Luke Sweetman	2
Vincent Upton	4

The basis for the construct of the FAC Divisions

As Chairperson I am very conscious of the spread of expertise and experience required in dealing with appeals to the FAC and each division is constructed with this in mind. The legislation under which the members are appointed does not specify a particular expertise. Members are appointed by the Minister with the functions of the FAC in mind. I am satisfied that a broad range of experience exists among the current FAC membership that includes experience of:

- statutory appeals,
- appeal processing,
- affording fair procedures,
- understanding and deciphering what are often complex and detailed issues, and
- relevant EU Directives and the National requirements.

The FAC membership currently in place have a broad spread of technical knowledge including in relation to land use planning and in forestry, as well as an experience of administering and managing consenting processes generally and particularly in the areas of land use planning / forestry.

The continued assignment of two Agriculture Appeals Officers as appointed members of the FAC is in my view essential to the efficient and effective operation of the FAC and provides a resilience such that FAC work can be scheduled to meet the demands that arise over the course of time.

Other workload for members

Both members who also work as Appeals Officers conduct a first screen of each new appeal following initial validity checks by the FAC administration team, these checks can include a check of the grounds, any accompanying submissions/documents, and matters found at issue may be raised with the Chairperson. These validity checks are highly valued and can safeguard against invalid appeals as well as ensuring appellants are correctly identified and that appeal grounds are clearly stated prior to any communication of the appeal to the DAFM.

Judicial Reviews

There are currently seven open judicial review cases against decisions of the FAC, each has involved a number of interactions of the members of the divisions that decided the appeal and with legal counsel.

In each case the FAC is required to provide the file documents as exhibits and this work is undertaken by the administrative section in agreement with the Chairperson and members. The Chairperson and members are also responsible to provide instruction to legal counsel on matters arising, and to respond to the affidavit(s) and grounds provided by the judicial review applicants. With the support of the FAC administration the FAC agrees the response and the content of any affidavit.

The work of ordinary members / deputy chairpersons on judicial reviews is not currently compensated for and members have given of their own time to accommodate this element. This may need to be revisited in due course and in that context, I will monitor the extent of work arising over the next three months or so to inform whether I need to make a recommendation regarding the need for such remuneration. A provision has been made for the payment of a gratuity to the Chairperson for non-hearing related work arising during the time of appointment as Chairperson.

Meetings with Stakeholders

Since its inception in 2018 the FAC has met with a number of stakeholders at their request on issues not relating to individual appeals. These have included matters such as processes, workload and time periods. Stakeholders met to date have included representatives from DAFM, IBEC, IFA, forestry companies, Coillte Teoranta, as well as with an appellant. There have been no stakeholder meetings to date in 2022 and currently none are scheduled. The Chairperson and members are available to engage in such meetings where required.

The plan for the remainder of 2022

Based on forecast numbers of appeals the remainder of 2022 should give rise to c 40 appeals against 25 licences or thereabouts, these added to the body of work on hand pending hearings (appeals against 54 licences) will approximate to appeals against 79 licences by year end. This body of work converts to 26 hearing days (considering 3 hearings per day).

Currently the schedule is to hear 9 non oral hearings and 1 oral hearing in October. The FAC has three other licences that it can schedule a hearing for, and it is hoped that they will also be heard in October. The FAC is currently unable to schedule any more hearings as it is waiting on the Forest Service, DAFM to forward 39 DAFM licence files and 54 statements. Once these documents and statements are received the FAC would be in a position to hold another 32 hearings by the end 2022, at the rate of eight licence decisions per FAC division for November and December.

The Road Ahead

As Chairperson, I want to ensure the efficient, fair and timely resolution of appeals and I want the FAC to be efficient and effective in its construct of divisions in achieving this.

The manner of remuneration afforded the members gives rise to no member or deputy-chairperson costs to the Minister other than when an appeal is being heard. This is considered an efficient remuneration system for the hearing of appeals but fails to compensate members for their additional involvement in judicial review cases.

As alluded to earlier there are currently two members with a depth of forestry experience who also work as Appeals Officers making determinations of agricultural appeals under the Agriculture Appeals Act 2001. All through 2022 these two members have provided significant back up to the administration team and lead in assessing new appeals as well as providing support in the judicial review cases. Their work regards judicial reviews involves disseminating grounds, legal advice and researching court decisions.

The FAC has a requirement for expertise in assessing grounds and evidence. While the FAC members have a broad spread of knowledge and expertise, especially regards the EIA Directive requirements and forestry, the FAC must have available to it, expertise regarding the criteria that is subject to the EU Directives especially relating to the Birds and Habitats Directives and the Water Framework Directive. The FAC has availed of outside expertise in respect of the Birds and Habitats Directives during 2021 and into 2022 and may again require access to such expertise. Agreement needs to be in place for the FAC to seek this expertise in an unincumbered manner as it sees fit and any reports arising would of course be published with the decision(s) that gave rise to its engagement.

The FAC wishes to move to the full publishing of all appeal documentation and the submissions from all parties to each appeal, this will support transparency and should also reduce the incidence of AIE requests.

In relation to training it is important that bespoke training is available to members in the areas of the EU Directives, interpreting the latest court decisions and their applicability to the work of the FAC.

Envisaged Changes to the FAC Structure

It is likely that some changes may be required to the FAC structure relating to the number of divisions in place in the near term (3 to 6 months) having regard to the emerging trends relating to rate (and number) of appeals lodged. This is to ensure a proportionality in the sitting days of ordinary members and the other FAC members such that there isn't an overreliance (and over burdening) of some FAC members in particular. In this context I plan to monitor the evolving situation regarding appeal numbers arising and will revisit the number of established divisions of FAC in place so that any new arrangements required can be implemented from early in 2023.

I am of the view that the FAC currently has a membership which possesses the requisite range of expertise and experience to deal adequately with the appeals arising. I will keep this matter under review and should a circumstance arise where I form a view that additional expertise / experience is required across the FAC membership I shall recommend accordingly.

Submission

I hereby submit this report to the Minister for Agriculture Food and the Marine on this date being within three months of my appointment as chairperson of the Forestry Appeals Committee

Mr Seamus Neely

Chairperson of the Forestry Appeals Committee