

FORESTRY APPEALS COMMITTEE



A Review and Report on the Operation of the Forestry Appeals Committee

Mr Seamus Neely, Chairperson

30th October 2025

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 the appointed Chairperson of the FAC and having regard to the terms of my appointment, and having completed a two year and four month period in the role following my initial one year term, I am required to deliver the following review report and relevant recommendations to the Minister on the operation of the FAC.

Background

The Forestry Appeals Committee (FAC) was established under the Agriculture Appeals Act, 2001 as amended, to deal with appeals from persons dissatisfied with decisions of the Minister for Agriculture, Food and the Marine in relation to Section 7 of the Forestry Act 2014, excluding grants arising under the schemes mentioned in Schedule 1 of the Agriculture Appeals Act 2001, and the Forestry Regulations 2017 (S.I. No. 191 of 2017) insofar as they relate to:

- 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 separate and distinct from the functions of Appeal Officers and the Director of Agriculture Appeals under the Act and is independent in its function.

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 and in addition to my own appointment, the Minister has appointed to the FAC a number of appeals officers from the Agriculture Appeals Office, they being officers of the Minister, as well as ordinary members and deputy chairpersons who are not officers of the Minister.

My Role as Chairperson

As chairperson I must ensure the functions of the FAC are performed as efficiently and as promptly as may be consistent with fairness and with natural justice. As chairperson I must constitute such and so many divisions of the FAC as is necessary having regard to the workload of the committee and the availability of members, direct the assignment of committee members and appeals to each division so constituted (while having regard to any directive from the Minister under section 14D of the Act), and ensure that sufficient hearings are held to meet demand, with a consistency of approach across hearings.

In addition to the foregoing, I have been involved with the FAC's administrative staff in respect of the FAC fulfilling its publication obligations and ensuring the service provided by the FAC is of a high standard and meets the needs of all stakeholders within the parameters of the legislation under which the FAC functions. I have also ensured the availability of FAC members to liaise with the administration on the acceptability or otherwise of submitted appeals/grounds of appeal. During the period from 27th June 2023 to date there has been a considerable workload arising from the judicial review challenges previously made which required the preparation and agreeing of responses to grounds, consulting with Counsel, and taking final responsibility for FAC instruction to Counsel. I have also completed an interim report in September 2022, a report in June 2023 under my appointment as chairperson and have agreed and finalised the FAC annual report for 2023 and 2024 since that time. I have conducted three stakeholder meetings during the period since June 2023, one with IBEC industry representatives and two with DAFM officials.

The resources available to me to fulfil my role include the administrative services provided by the Agriculture Appeals Office where a dedicated staff administer the receipt of appeals and appeal fee payments, all correspondences to and for the FAC, all notices of hearing schedules, the provision of access for the FAC to all appeal related documents using cloud based systems, the hosting of the online non oral and oral hearings and the processing of AIE and FOI requests.

Judicial Reviews, Court proceedings and Legal Advice

During the period since 27th June 2023 the FAC was respondent in four open judicial review proceedings with the High Court. Three of these have been closed off and the fourth, which was conceded, is awaiting the final order to issue. The FAC in February 2025 appealed a decision of the Office of the Commissioner for Environmental Information (OCEI) to the High Court. This case remains open.

The work of ordinary members / deputy chairpersons on judicial reviews, or in stakeholder engagement, is not currently compensated for and members have in the past given of their own time to accommodate this element. In my previous reports, I undertook to monitor the

extent of work arising, and in the 28 months period of this review there was a further reduced requirement for engagement with legal counsel on JRs generally than during the previous period.

While no new Judicial Review proceedings have been taken against FAC decisions on appeals in the period since 27th June 2023 it is important to note that there have been requests for instruction by the CSSO (our solicitors) to the FAC in relation to open JR cases and these have been proactively dealt with. It is imperative that the FAC keep abreast of ongoing developments in the Courts, both national and European on matters relating to the Directives and access to training modules were put in place for FAC members to assist them in their deliberations on appeals being considered.

Workload

Since the establishment of the FAC (to 26th September 2025) there has been a total of 2,283 appeals received against decisions on 1,579 licences. A significant backlog of appeals had developed prior to the commencement of the amendments from the Forestry (Miscellaneous Provisions) Act 2020 and were successfully worked through by the FAC throughout 2021 and early 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 to September 2025 and the number of licence decisions that these appeals relate to.

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | Total** |
|-----------------------------------|------|------|------|------|------|------|------|------|------|---------|
| *Appeals received | 34 | 197 | 489 | 874 | 149 | 201 | 99 | 146 | 94 | 2283 |
| Licence decisions appealed | 21 | 150 | 311 | 582 | 107 | 128 | 80 | 115 | 85 | 1579 |

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

*** The 2025 data and Total numbers are up to September 2025*

Of the above there are 2,130 appeals closed relating to 1,452 licence decisions, and the remaining 153 appeals which relate to 129 licence decisions remain open as at 26th September 2025. I understand that licence decision making was reduced during 2023 which may have impacted on appeal numbers. During 2024 and 2025, the provision of statements and documentation by the DAFM in response to an appeal, a statutory requirement, took a considerable time which resulted in extended periods arising between the making of an appeal and the determination of an appeal by the FAC. A significant number of such Statements have been received in recent weeks which now enables the schedule of hearings.

Fees for Appeals to the FAC

The amendments through the Forestry (Miscellaneous Provisions) Act 2020 allowed for the Minister to set a fee to appeal to the FAC. The fee prescribed under the Forestry Appeals Committee Regulations 2020 (S.I. 418 of 2020) is €200, which is set at a nominal rate, and must be lodged with each appeal to the administration section of the FAC. Currently the FAC is not enabled to receive fees by way of electronic payments directly and while an IT proposal to enable the making of online appeals including the online submission of the appeal fee is being progressed it has not yet become operational. This facility when operational will enable the streamlining of the appeals process, will improve efficiency and should also improve the appellant experience when lodging an appeal. Overall, it will greatly improve the exercise of the making of an appeal and further support the delivery of timely appeals to the FAC.

Deputy Chairpersons and Members of the FAC

The following members served as FAC members during the review period: -

| <i>Name</i> | <i>Status</i> |
|--------------------|----------------------|
| Seamus Neely | Chairperson |
| 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 |

* Mr John Evans has resigned his position as member and Deputy Chairperson effective 17th September 2025.

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

Divisions

Under the Agriculture Appeals Act 2001, as amended, 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 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.

Throughout the review period the FAC has sat in divisions of itself as required by the available workload. Divisions have typically comprised three or four depending on availability and the content of the appeal being heard. Hearings are scheduled once all information is received from the parties to the appeal and having regard to available workload and workload management. The FAC determines if an oral hearing is necessary and in the review period to 26th September 2025, the FAC held two oral hearings. In the twenty seven months to the 26th September 2025 the FAC has sat to hear appeals on 41 days.

The Construct of the FAC Divisions

As Chairperson I am conscious of the spread of expertise and experience required in dealing with appeals to the FAC and each division of the FAC is constructed with this in mind. The legislation under which the members are appointed does not, at present, specify a requirement for particular expertise and the Minister for Agriculture is responsible for the appointment of individuals to the FAC. 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 with forestry experience 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.

Appeals Content – Increased Complexity

The complex nature of appeals has an impact on several performance indicators for the FAC. In addition, the FAC's experience in dealing with judicial review cases requires a comprehensive approach to every appeal and especially regarding the EU Directives and associated requirements, even where these are not raised in the grounds of appeal. Many appeals received in the review period were complex and included numerous grounds and often involving complex considerations. The FAC makes every effort to address all valid grounds submitted and clearly sets out the reasons for its decisions in the decision letters for

each appeal. On occasion some of the grounds of appeal submitted are considered by the FAC not to fall within its scope and where this occurs it is set out in the decision letter concerned.

FAC Membership

At the commencement of the FAC in February 2018 all in house appeals officers were appointed as members and served under the first and second chairpersons, under SI 68/2018 the maximum period of appointment for a member was set at 3 years but members could be reappointed. As chairperson my appointment has been renewed and extends to 31st October 2025. The current membership of the FAC comprises;

| | |
|----------------|---|
| Seamus Neely | Chairperson (term ends 31/10/2025) |
| Donal Maguire | Deputy Chairperson (term ends 19/10/2026) |
| Myles McDonagh | Deputy Chairperson (term ends 19/10/2026) |
| Iain Douglas | Ordinary Member (term ends 31/01/2027) |
| Derek Daly | Ordinary Member (term ends 27/10/2026) |
| Luke Sweetman* | Ordinary Member (term ends 30/11/2026) |
| Vincent Upton* | Ordinary Member (term ends 30/11/2026) |

There is an immediate need for a replacement Chairperson and Deputy Chairperson following the resignation of Mr. John Evans. There is also a need to appoint a number of new ordinary members to afford some parallel working with existing FAC members before their terms expire. While recognising that the appointment of individuals to the FAC is a matter for the Minister, I would suggest that individuals to be appointed to the FAC would benefit, in particular, from experience and expertise in forestry, ecology and other environmental sciences, planning, and environmental and administrative law.

Rates of remuneration

As chairperson the remuneration for the three year term to 26th June 2025 included a flat rate payment of €6,000 per annum for the ancillary duties associated with the role. The sitting rates per appeal for the chairperson are as follows.

Oral hearing: €450

Papers only appeal: €400

Postponement – day of hearing: €300

It is my view that the annual flat rate payment for the ancillary duties associated with the role for the new Chairperson appointed should be increased substantially to reflect the increased amount and complexity of such work.

For deputy chairpersons and for ordinary members there is currently no annual flat rate payment, and this is something that I will revisit in the recommendations section of this review and report.

The sitting rates per appeal for deputy chairperson are as follows.

Oral hearing: €420

Papers only appeal: €380

Postponement – day of hearing: €280

The sitting rates per appeal for an ordinary member are as follows.

Oral hearing: €350

Papers only appeal: €350

Postponement – day of hearing: €280

Please note that even though the sitting rate is set out per appeal it is the case that the sitting rate includes all related preparatory and post Committee meeting work required to be undertaken regarding an appeal and covers an appeal against a single application/Department decision regardless of the number of appellants.

The sitting rates have been fixed since the 2020 appointments and have had no adjustment for inflation or provision for review in respect of cost increases incurred by members for their time and commitments since then. Inflation levels have been quite high for long periods since then, and this is a disincentive for the availability of members. In addition the complexity of appeals has necessitated a substantially increased time requirement for FAC members in dealing with individual appeals. The time now required by FAC members to address appeals has in my experience at least doubled since 2020. Accordingly, I consider that sitting rates for FAC members should increase by a minimum of 50% from current levels.

The Future

A new Chairperson will want to ensure the efficient, fair and timely resolution of appeals and will want the FAC to be both efficient and effective in its construct of divisions in achieving this, and to have available to it the best fit of expertise and resources to make legally sound decisions that will not be exposed to legal challenge.

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 any ancillary work arising. 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 (as amended).

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 also 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. To support this, the FAC made arrangements during summer 2023 for members to avail of training on matters of environmental law in order to keep abreast of developments arising from Court decisions.

Changes to the FAC Structure

The FAC as currently constructed is meeting the needs of the appeals service it provides, however issues can arise around the availability of members due to other work commitments, and while these don't often occur it does signal a need for a wider pool of members to be appointed. I am also conscious that there should not emerge an overreliance (and over burdening) of some FAC members in particular, and the availability of a wider pool of members would also serve to allay these concerns.

I am of the view that while the current FAC membership possesses the requisite range of expertise and experience to deal adequately with the appeals arising, a broadening of the membership would be desirable. I am also of the view that gender balance is addressed where possible in future appointments to the FAC.

Recommendations to the Minister

- In addition to a new chairperson, a further four additional FAC members are recommended to be appointed, and that such appointments have regard to gender balance. At least one of the members should be appointed as a Deputy Chairperson.
 - Reason: To ensure continued effectiveness and efficiency in the operations of the FAC, to facilitate succession planning and to add to the skillset of the wider FAC membership.
- While there exists a provision for the payment of an annual payment to a Chairperson for non-hearing related work arising during the time of appointment as Chairperson, I recommend that this annual payment is increased significantly for future Chairpersons appointed and also that there be a similar proportional payment for the deputy

chairpersons to take account of their expertise and experience, and to incentivise their remaining available to the FAC.

- Reason: To ensure a proper compensation for the workload that often goes beyond the significant content of the appeals before the FAC, and to ensure the members involved in decisions of the FAC are fully available on related matters such as legal challenges.
- I recommend that sitting rates for FAC members should be increased by at least 50% from current levels as have applied since 2020.
 - Reason due to the long period since sitting rates were fixed and to reflect a very significant additional workload arising from the increased complexity of appeals.
- The FAC needs available to it an online appeals and fees payments system as a matter of urgency.
 - Reason: To further support the making of timely appeals where the current window is 14 working days from the issuing of the licence decision by the Minister to the receipt of an appeal by the FAC and to reduce the administrative burden arising.
- That bespoke training and updates be made available to members as a matter of course, specifically in relation to matters that are core to the decisions under appeal, such as the EU Directives on Habitats, Birds, Water and EIA.
 - Reason: To Ensure that decisions reflect the correct interpretation of the appropriate legislation and Directives and the latest relevant court decisions

Submission

I hereby submit this review and report to Michael Healy-Rae T.D., Minister of State at the Department of Agriculture, Food and the Marine.

Mr Seamus Neely

Chairperson of the Forestry Appeals Committee

30th October 2025