

# Forestry Appeal Committee

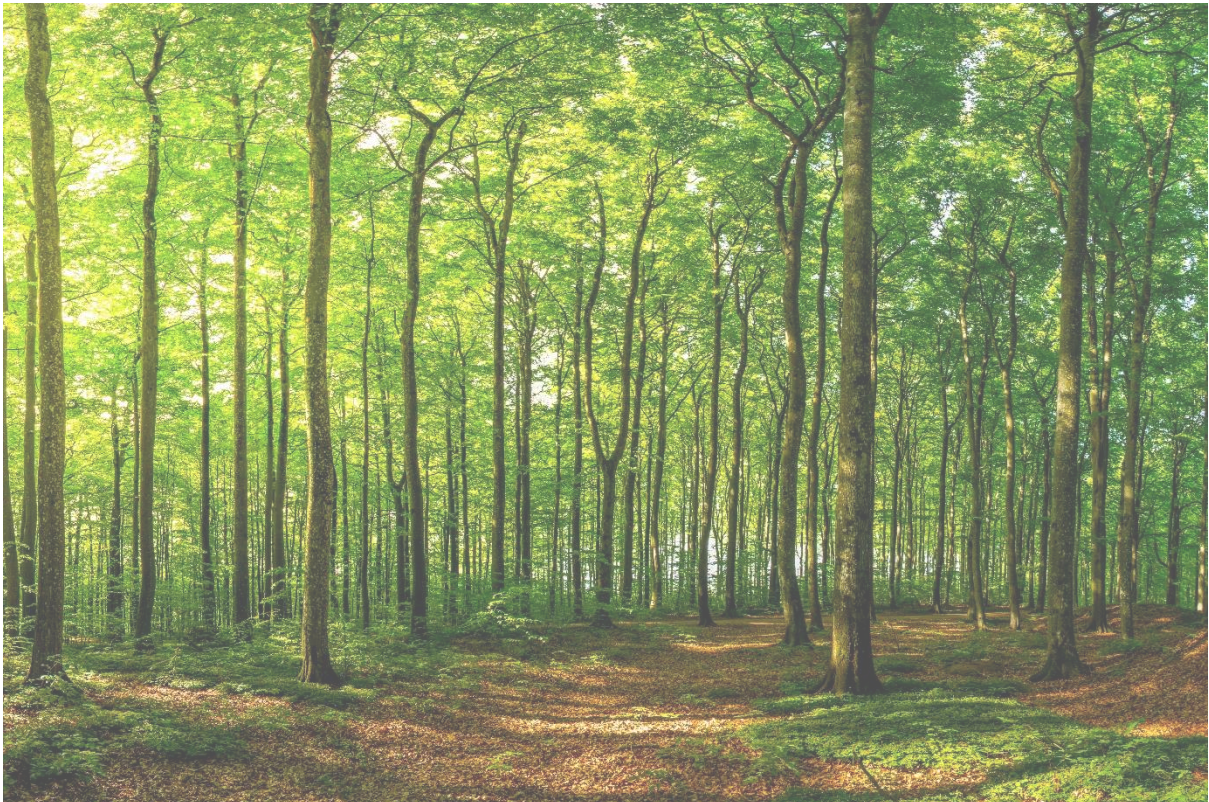
## Chairperson's Report 2020



**An Coiste um Achomhairc**

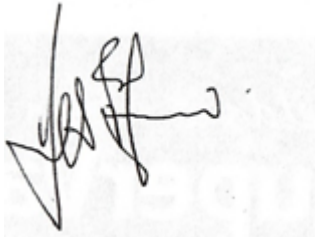
**Foraoiseachta**

Forestry Appeals Committee



**To the Minister for Agriculture, Food, and the Marine**

In accordance with the provisions of Section 14(4) of the Agriculture Appeals Act, 2001, as amended, the report of the Chairperson of the Forestry Appeals Committee for 2020 is hereby submitted.

A handwritten signature in black ink, appearing to read 'Des R Johnson', is written over a light grey rectangular background.

Des R Johnson  
Chairperson, Forestry Appeals Committee  
4<sup>th</sup> May 2021

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# Forestry Appeal Committee – Annual Report 2020

## Purpose of this Report

This report fulfils the legal requirement of the Agriculture Appeals Act, 2001, which was amended by the Forestry Act 2014 to include the insertion of section 14 (4) which requires the Chairperson of the Forestry Appeals Committee to submit a report to the Minister for Agriculture, Food and the Marine (the Minister) of his/her activities, and of the activities of the Committee, under this Act during that year.

## Background

The Agriculture Appeals Act, 2001, was amended by the Forestry Act 2014 to include a new Section 14A which provides for a new appeals service against decisions on forestry licence applications made by the Minister for Agriculture, Food and the Marine (DAFM). Decisions on Forestry licensing applications include felling, afforestation, forest roads and aerial fertilisation. The legislation led to the establishment by the Minister, of the Forestry Appeals Committee (FAC) in 2018. The FAC operates under a separate statutory basis to that of the Agriculture Appeals Office functions. However, the Agriculture Appeals Office provides the administrative and secretariat support to the FAC and, in addition to their agriculture appeal functions, Appeals Officers may be appointed as members of the FAC.

On 1<sup>st</sup> January, the FAC was operating as a Committee of four, namely the Chairperson and four members, all appointed by the Minister. Oral Hearings and other hearings were held on two days each week. The Forestry (Miscellaneous Provisions) Act 2020 (the Act) was enacted on 6<sup>th</sup> October, and the Act and associated Regulations came into force on that date. The Act provided for (amongst other provisions referred to later in this report) the FAC to sit in Divisions. Three independent and experienced Deputy Chairpersons were appointed along with other independent members, and induction training took place, organised and presented by the Chairperson and established staff of the FAC. A secretary was appointed to each Division to provide administrative support and keep the record of the hearings.

The hearing of appeals by four Divisions of the FAC commenced in November and was held five days each week, with every fourth week left free of hearings and to allow time for decision letters to be

issued. Up to the imposition of Covid 19 restrictions, the FAC sat in person in Portlaoise and thereafter, electronically.

Other significant provisions introduced through the Forestry (Miscellaneous Provisions) Act 2020 related to the introduction of fees for the making of appeals, the appointment of Deputy Chairpersons, and amendment of the options available to the FAC is making decisions on appeals. The legislation clarifies that Oral Hearings are held at the discretion of the FAC (with no automatic right to an Oral Hearing), and provides for the Minister to issue general policy directives to the FAC.

### Overview of the FAC Procedure

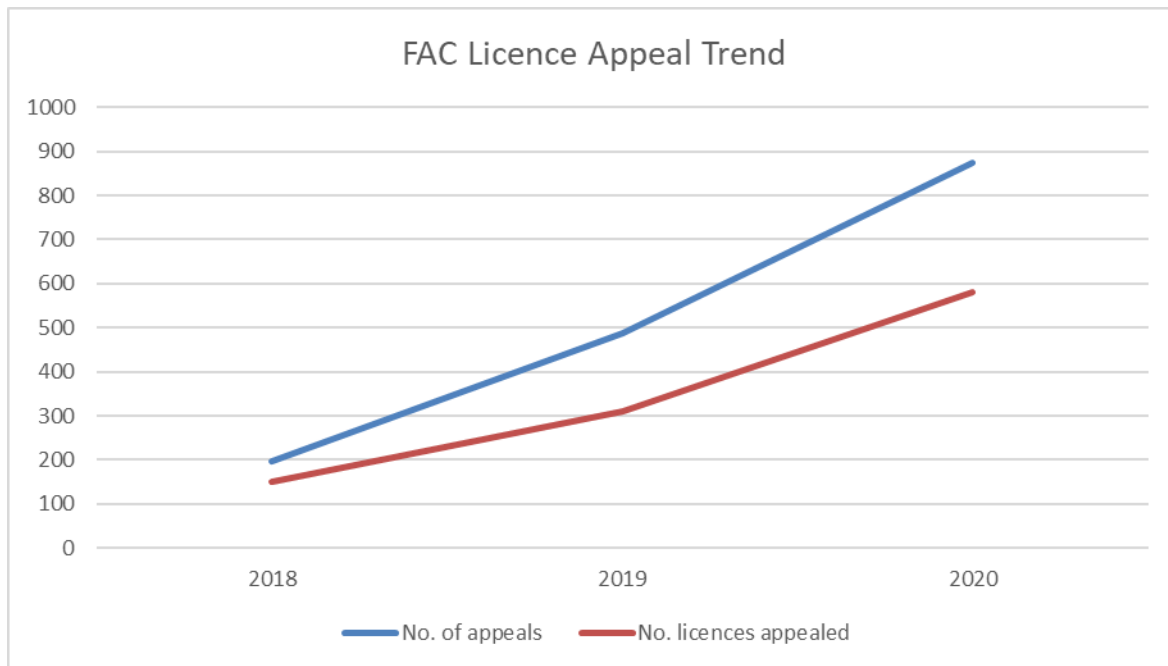
Most appeals are by third parties and concern mainly environmental matters and the implementation of the provisions of the European Environmental Impact Assessment (EIA), Habitats and Birds Directives. Once a decision by the DAFM on forestry licence application issues, it is advertised on the Department's Portal ([www.gov.ie](http://www.gov.ie)). It undergoes a 28-day public consultation phase during which the applicant or any other interested party may appeal the decision to the independent FAC. During this 28-day period, no forestry operations may commence.

A licence may be subject to one or more appeals. It is a matter for the FAC to decide on the validity of the appeal, to schedule any hearing, to hear the appeal, and to issue a decision on the appeal. An appeal against a decision is notified to officials of the DAFM by the FAC and the licence is suspended. DAFM officials prepare the file documentation and forward it to the FAC.

Since the FAC was established, the number of appeals has significantly increased year on year. The following table outlines the trend from 2018 to 2020: -

### Appeal Trend

FAC Licence Appeal Status	2018	2019	2020	Total
No. of appeals	197	489	874	1,560
No. licences appealed	150	311	582	1,043



### Committee Structure and Activities

Up to 7 October 2020, the legislation governing the FAC provided for only one committee to hear appeals. In 2020 that committee of four members had an independent Chairperson, full-time forester and two members assigned from the Agricultural Appeals Office. This was the only committee to hear appeals between January and November 2020. The introduction of the Forestry (Miscellaneous Provisions) Act, 2020 made provision for the establishment of additional Divisions of the FAC to deal with appeals in a more expeditious manner. Following the introduction of this legislation, resources were provided to the Agriculture Appeals Office on 9 November 2020 to deal with the backlog of appeals. Additional committee members were appointed to the FAC to serve as Deputy Chairpersons and ordinary members. The appointment of three very experienced Deputy Chairpersons meant that, with the existing Chairperson and two additional ordinary committee members, the Committee is now able to operate in four Divisions hearing substantially more cases than was previously possible.

The on-going allocation of resources, including administration support for the FAC, occurs in consultation with the Director of Appeals. In that regard the Agriculture Appeals Office also provides administrative support to the FAC and the Appeals Officers appointed to the Agriculture Appeals Office are also appointed as members of the FAC. There are thirteen Appeals Officers in the Agricultural Appeals Office, four of which are permanently assigned to FAC, while the remaining Officers carry out Agriculture Appeal duties and are rotated onto FAC, as necessary.

The following members served on the divisions in 2020: -

Name	Status
Des Johnson	Chairperson
Donal Maguire	Deputy Chairperson
John Evans	Deputy Chairperson
Myles MacDonagh	Deputy Chairperson
Derek Daly	Ordinary Member
Seamus Neely	Ordinary Member
Bernadette Murphy	Ordinary Member
Claire Kennedy	Ordinary Member
James Conway	Ordinary Member
Jim Byrne	Ordinary Member
Jim Gallagher	Ordinary Member
Luke Sweetman	Ordinary Member
Mary Lawlor	Ordinary Member
Pat Coman	Ordinary Member
Paula Lynch	Ordinary Member
Vincent Upton	Ordinary Member

The Agriculture Appeals Offices administrative support to the FAC is provided by one Higher Executive Office, four Executive Officers and four Clerical officers. This represents a 50% increase in support staff since 9 November 2020.

In addition, three qualified and independent consultants were contracted to assist the FAC in preparing documentation for the Divisions of the committee. The three appointees previously held senior technical positions within An Bord Pleanála.

Consultant	Date of Appointment
Michael Walsh	15/10/2020
Padraic Thornton	24/01/2020
Mary Cuneen	24/01/2020

## Independent Role of the FAC

The Chairperson, Deputy Chairpersons and Members of the FAC are appointed by the Minister. Legislation requires that the Forestry Appeals Committee must be independent in the performance of its functions. All Chairpersons and ordinary members were informed of the independent role of the Committee on appointment and, before sitting at a hearing of any appeal, each Chairperson/Deputy Chairperson and Members make an individual declaration in respect of any conflict of interest. In circumstances where a Chairperson/Deputy Chairperson or member considers that there could be any possible conflict of interest he/she recuses themselves from the hearing and deliberation of the appeal. A note of the declarations in respect of conflict of interest/no conflict of interest are kept on the relevant file.

## FAC Hearings

The FAC hears both oral and non-oral hearing appeals. Since March 2020 hearings have been generally conducted remotely due to Covid-19 restrictions and guidelines. Oral Hearings are scheduled to last 1 hour and 15 minutes, and introductions and an agenda are circulated to all parties in advance. Once a decision is reached, all parties are notified, and decisions are published on the FAC's website ([agriappeals.gov.ie](http://agriappeals.gov.ie)). Prior to the introduction of the new legislation, in some instances, the FAC undertook its own assessments in accordance with the provisions of the EIA and Habitats Directives, and these were published with the decisions on the website. In addition, where a consultant's report had been prepared for the Committee, this was also published.

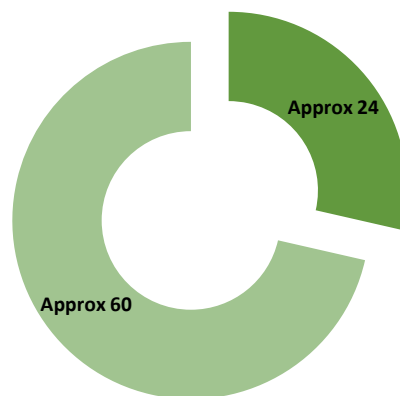


During the period January 2020 to 4 November 2020 the FAC heard 216 licences. Following the establishment of the additional committees, 144 licences were heard between 9 November 2020 and 31 December 2020.

Prior to the establishment of the additional Divisions following the provisions of the new legislation in October 2020, the FAC was hearing approximately 24 licences each month. Since the establishment of the 4 Divisions the FAC is now hearing appeals on an average of 60 licences per month.

## No. of Appeal Hearings Monthly

■ No of Appeal Hearings pre November      ■ No. of Appeal Hearings post November



Since November, hearings were conducted on average five days a week. Presently, one Division sits two days per week and the remaining three Divisions sit one day each per week. Other than cases involving multiple appellants, the average length of time for an Oral Hearing is 1hr 15mins. Each Division holds, on average, 4 Oral Hearings each sitting day.

The table below outlines the hearing format: -

<b>Committee</b>	<b>Number of Days Sitting Per Week</b>	<b>Number of Hearings per Week</b>
Committee 1	2	8
Committee 2	1	4
Committee 3	1	4
Committee 4	1	4
<b>Total</b>	<b>5</b>	<b>20</b>

As a significant number of new committee members were appointed to the FAC over a very short period, and to allow for multiple divisions to sit, some members were allocated to sit on more than one Division per week. This approach ensured that all Divisions operated to the same high standard with the aim of reaching a consistent outcome across the various Divisions of the FAC, to the benefit of all parties involved and the public good. Going forward into 2021 some members of the Divisions will be rotated from time to time to ensure consistency and quality control in decision making.

The option of running two Divisions on the same day was considered, however it is curtailed by the fact that the parties to a significant number of the appeals being considered are the same. If the FAC scheduled oral hearing appeals to run concurrently on multiple days per week this could negatively impact the first and third parties and the DAFM, in that they may not be able to attend all oral hearings and with potential implications for fair procedures. For example, of the total number of appeals submitted to the FAC in 2020, 67% were submitted by two individual appellants with the breakdown as follows:

<b>Appellant</b>	<b>No of Appeals</b>	<b>Afforestation Appeals</b>	<b>Felling Appeals</b>	<b>Forest Roads Appeals</b>	<b>% Appeals Received</b>
Appellant 1	322	78	186	58	37%
Appellant 2	264	12	196	56	30%

The Chairperson in consultation with the Director of the Agriculture Appeals Office is continually reviewing ways in which greater efficiency can be achieved across the four Divisions of the FAC. In that regard the Chairperson and Deputy Chairs are considering ways in which the number of appeals being

heard decided, and decisions issued could possibly be increased, while maintaining fair procedures, consistency, and quality control. Obvious constraints to be considered include giving due consideration to the grounds of appeal, the ability to draft decision letters that are legally robust and the capacity of the administrative section to service the Divisions. To pursue –a high standard in the decision making process and to ensure that that an effective and efficient process is in place, the Chairperson and Deputy Chairpersons meet on a regular basis to discuss issues arising in the hearings and the discharge of appeal decisions

This report illustrates that the establishment of three additional Divisions of the FAC has resulted in a 150% increase in appeals being heard. Given the increase in output, the FAC must be cognisant of maintaining a high standard of process and procedure.

### Format of Hearings

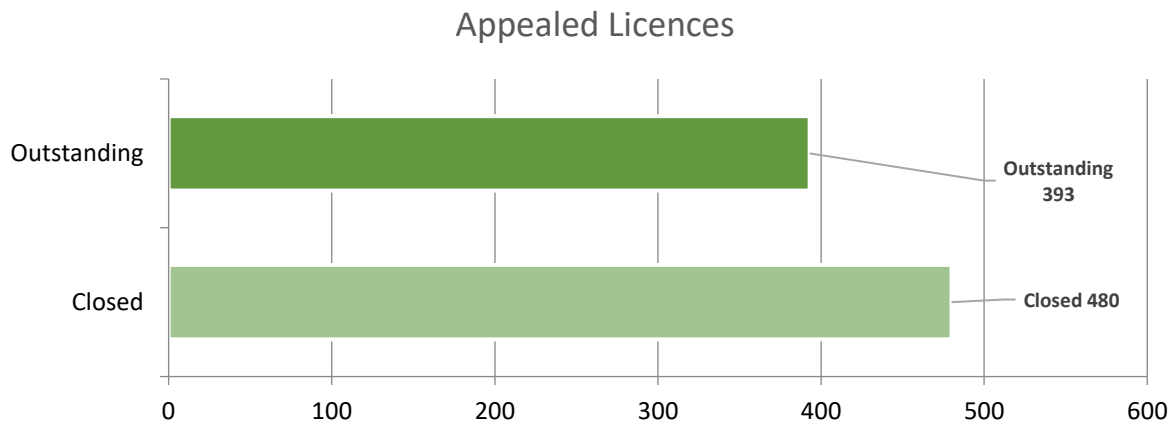
Legal advice recently received by the FAC concerning oral hearings for cases submitted prior to the introduction of the 2020 Forestry (Miscellaneous Provisions) Act is currently being considered by the FAC. The legal advice received states that it is provided for under the new legislation that existing appeals can be heard by the FAC without holding an oral hearing where the FAC does not consider an oral hearing is required or necessary in a particular case. Each appeal must be considered by the FAC on a case-by-case basis, to determine whether an oral hearing should be granted. Having regard to established practice up to October 2020, the FAC continued to hold Oral Hearings where they were requested on backlog appeals. Under the new legislation, the holding of Oral Hearings is at the sole discretion of the FAC, whether or not an Oral Hearing has been requested.

### Statistics

The following statistics apply to the period 1 January 2020 to 31 December 2020 and provide an overview of the activity of the FAC.

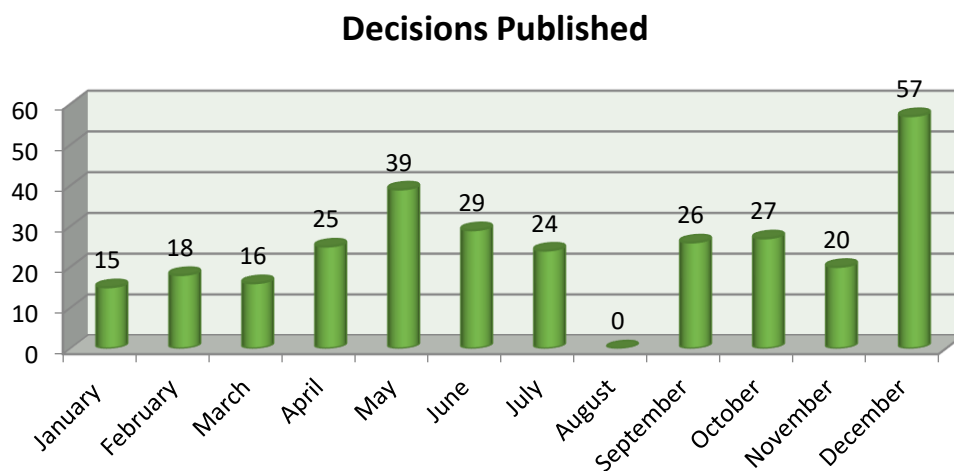
## Overall Number of Appeals

In January 2020 there were 291 licences subject to appeal which were carried over from the previous years. An additional 582 appeals were received throughout the year. During 2020, 480 cases were closed, including appeals outstanding from previous years.



## Decisions Published

Since the 4<sup>th</sup> February 2020, decisions made by the FAC are published on the FAC website ([agriappeals.gov.ie](http://agriappeals.gov.ie)). Assessments carried out by the FAC to inform its decision, and any consultants reports considered, are also posted on the website. The website is updated on a week by week basis. There were 296 decisions published throughout the year apart from August which relates to a period of annual leave for the Committee members. The annual leave of the Chairperson and members was coordinated to cause minimal disruption to the hearing of appeals. The following table provides a monthly breakdown:



## Time Taken to Determine Appeals

From the date an appeal case is heard to the parties to the hearing receiving a decision takes on average 25 days, depending on the complexity of the case.

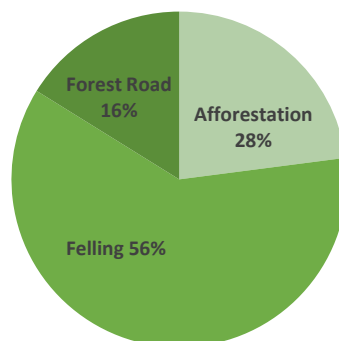
## Category of Decisions

Forestry licences which may be appealed include the following categories:

- Felling
- Afforestation
- Forest Roads
- Aerial fertilisation

The categories of cases decided in 2020 are outlined in the table below:

Decisions by Category



## Outcome of Decisions

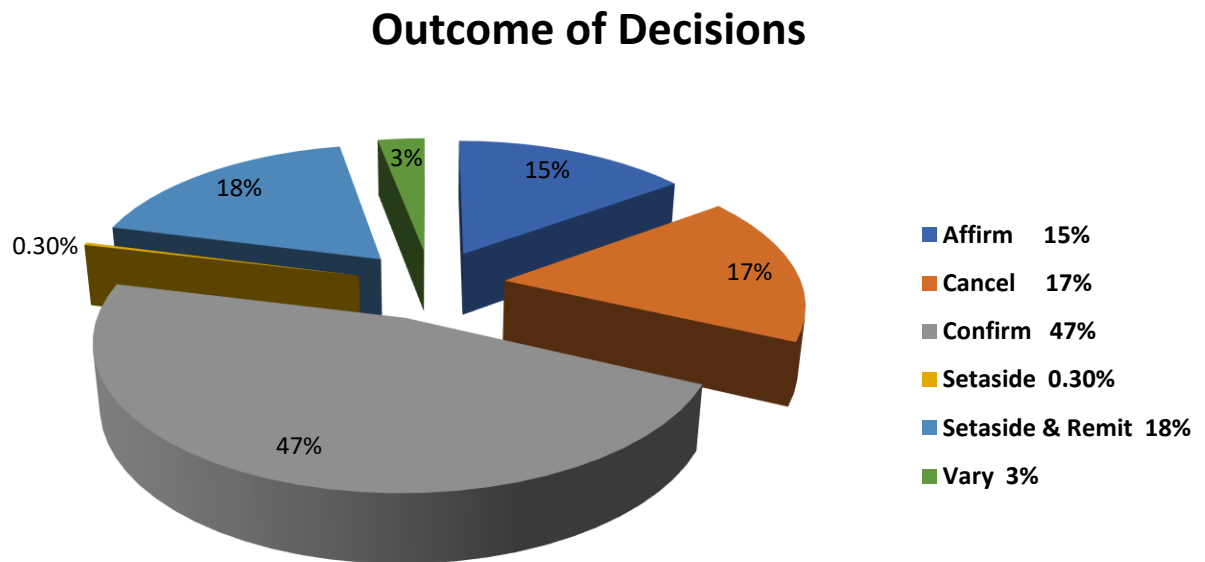
Up to 7 October 2020, the legislation governing the FAC provided three decision options when deciding an appeal. The options available were to confirm, cancel or vary a decision. Following the introduction of the Forestry (Miscellaneous Provisions) Act, 2020 the FAC were provided with several options and the FAC can do the following:

(a) affirm the decision, or

(b) where it is satisfied that a serious or significant error or a series of errors was made in making the decision the subject of the appeal or that the decision was made without complying with fair procedure: -

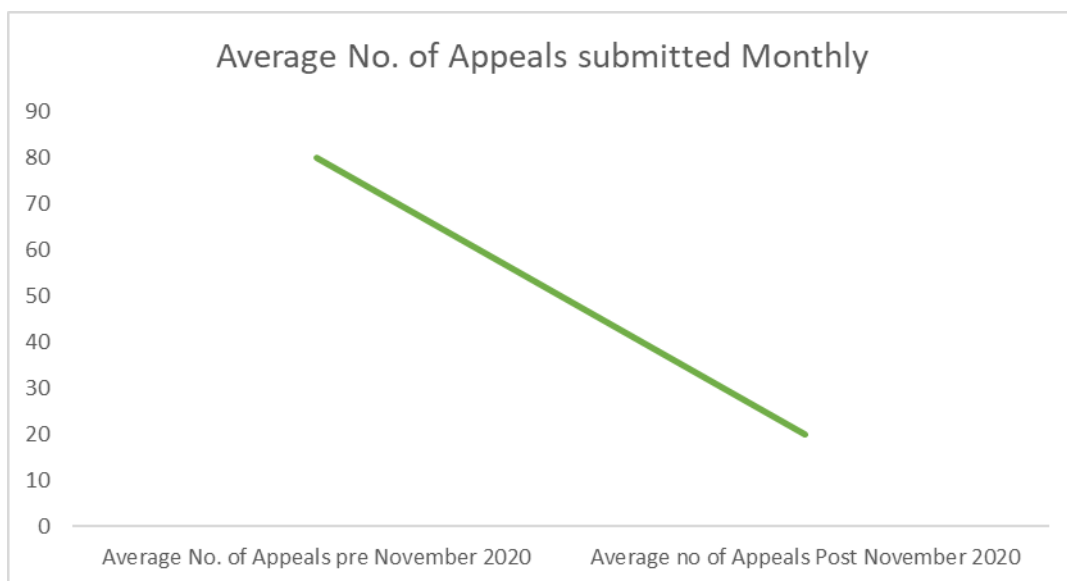
- (i) vary the decision;
- (ii) allow the appeal and set aside the decision;
- (iii) set aside the decision and remit it, for stated reasons, to the Minister; or
- (iv) where the Committee considers it appropriate to do so, by reference to submissions, documents, or evidence before it which were not considered by the Minister or for other good reason, substitute its decision for the decision of the Minister.

The following is a breakdown of the decision types in 2020: -



### Cases submitted since the New Legislation

Another measure introduced under the Forestry (Miscellaneous Provisions) Act, 2020 was the introduction of fees for appeals which is set at €200 per individual appeal. The introduction of fees has led to a decrease in the submission of appeals. In 2020, the FAC received on average 80 appeals each month. Since the introduction of the legislation and up to the 31<sup>st</sup> of December 2020, 68 licences have been appealed of which 42 were accepted as valid.



This table below provides an overview of the category of valid appeals submitted since the introduction of the new legislation, up to the 31<sup>st</sup> of December 2020: -

County	Afforestation	Felling	Forest Roads
Cork		1	
Donegal	1		
Galway		6	
Kerry		1	1
Kilkenny		1	
Laois		9	
Leitrim	9	1	
Limerick		3	
Mayo	2		
Meath	1		
Monaghan			1
Offaly		1	
Sligo	1		
Tipperary	2		
Wicklow	1		
<b>Totals</b>	<b>17</b>	<b>23</b>	<b>2</b>

## Litigation

The Forestry Regulations provide that any person dissatisfied with a decision of the Forestry Appeals Committee may appeal that decision to the High Court on any question of law. In 2020, there were five Judicial Review (JR) proceedings taken against the FAC. One case was decided and conceded on the advice of Senior Counsel and this case has been remitted to the FAC for re-hearing.

## Consultants

Three consultants were contracted to report to the committee on some of the more complex cases involving EIA and AA. The reports are in a format prepared by the committee.

## Stakeholder Meetings

The Chairman and a member of the committee engaged in six stakeholder meetings in 2020 at the request of stakeholders.

## FAC Input into the new legislation

The FAC actively engaged in the drafting of the new legislation insofar as it relates to the functioning of the FAC and its operations. In accordance with the provisions of the new legislation, the FAC will prepare advice notes and guidelines on its operations and procedures for publication on its website.

## Remote Working

Since March 2020 hearings have been generally conducted remotely due to Covid-19 restrictions and guidelines. Prior to this the FAC administration team provided paper files to the committee ahead of all hearings. In line with Covid-19 restrictions, the administration team developed a new procedure to allow the files to be shared electronically. Making the best use of available technology, this involves the use of an online cloud sharing system to securely share files, schedules, and information with all FAC members.



The FAC administration team for each division schedule and host all hearings for the FAC via WebEx. The WebEx system allows all parties to join the hearing by web link, via the WebEx application or by telephone. The new procedures put in place have proved to be very efficient and effective and have enabled the FAC to continue to hold their hearings during the Covid-19 restrictions.

## Commentary

Prior to the introduction of the new legislation in October 2020, the FAC was hearing an average of 24 licences per month. Since the sub-divisions of the FAC were established the FAC is now hearing an average of 60 licences per month representing an increase of 150 percent. This, of course, is dependent on the number of appellants. In that regard, where a licence is appealed by a significant number of appellants, a greater amount of time must be allocated to allow all participants sufficient time to present their case to the committee. Consequently, a committee may hear fewer appeals on such occasions.

Depending on the format of the hearings i.e., oral, or non-oral, and the number of appellants it is estimated that the back log of cases may be cleared by the end of the summer.