



17th December 2024

Subject: Appeal FAC 052/2024 against licence decision CN92277

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and Marine. The FAC established in accordance with Section 14 A (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.

Hearing and Decision

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. A hearing of appeal FAC 052/2024 was held remotely by the FAC on 11/12/2024. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly, and Mr. Vincent Upton.
Secretary to the FAC: Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN92277. The reasons for this decision are set out hereunder.

Background

The decision under appeal relates to the granting of an Afforestation licence at Monambraher and Crummagh, Co Galway. The application is recorded in the DAFM Statement of Facts (SOF) as having been submitted on 29/11/2022. The application included operational and environmental information and maps outlining the licence area and operational and environmental features.

Appropriate Assessment Pre-Screening Report dated 18/10/2022

The applicant submitted a document entitled Appropriate Assessment Pre-Screening Report which is dated 18/10/2022. This report which is marked as being for afforestation project CN92277 located at Monambraher and Crummagh, Co. Galway, describes the site, hydrology, and operations in further detail and screens the proposal for potential significant effects on European sites. It records the site as having an area of 27.33 ha. In relation to hydrology the project site is said to be located within the Suck_SC_080 sub-catchment in the DERRYMULLAN STREAM_010 WFD sub basin and drains to the DERRYMULLAN

STREAM_010 which is said to be of moderate status. There is said to be a flood risk 0.1 to 1% fluvial indicative to 30-200mm along the banks of this stream on IFORIS flood layers, though given past drainage works, the stream banks are said to be very deep. It indicates that following site visit, it does not appear that the site floods anymore. The surrounding landscape is said to host conifer plantations WD4 to north with wet grassland GS4 and improved agricultural grassland GA1 to the south, east and west. There is said to be an access roadway BL3 to the east. Nine sites are examined in the pre-screening report and seven of these are screened in for stage 2 Appropriate Assessment. Some of the content in the pre-screening report is hidden / redacted in the report as is available to the FAC through the forestry licence viewer (FLV), although the Minister does not appear to have relied on this document.

Natura Impact Statement (NIS) 26/01/2023

The applicant also submitted a NIS for afforestation project CN92277 located at Monambraher and Crummagh, Co. Galway. This NIS at page 5 describes the site area as being 26.81 ha. The names and qualifications of those involved in the preparation of the NIS are set out in Section 1 at pages 2 and 3. The NIS sets out that the project is part of a larger estate which is currently undergoing Appropriate Assessment for an adjoining experimental planting of broadleaves over shell marl CN91756 with shared access. Both sites are said to have a combined area of 49.12 ha. The project area is stated to be located within the Galway CDP 2015-2021 for low landscape sensitivity and for low landscape value. The NIS examines the following screened in sites:

- E004097 River Suck Callows SPA,
- 000216 River Shannon Callows SAC,
- 002241 Lough Derg, North-east Shore SAC,
- 002165 Lower River Shannon SAC,
- 004096 Middle Shannon Callows SPA,
- 004058 Lough Derg (Shannon) SPA, and
- 004077 River Shannon and River Fergus Estuaries SPA.

A small amount of the content of the NIS is hidden / redacted in the NIS as is available to the FAC on the forestry licence viewer (FLV) but the record indicates that the Minister did not rely on this document. It relates to 002165 Lower River Shannon SAC at page 27. Section 5 of the NIS sets out the collated mitigation measures proposed for the project which include in relation to water setbacks, silt and nutrient control, hedgerows and field boundaries, preparation, storage and use of potentially hazardous material, fertilizer use herbicide application, control of invasive species and monitoring of the proposed works.

DAFM Appropriate Assessment Screening Report (AASR)

An AASR is to be found on file as prepared by a Forestry Inspector, Department of Agriculture, Food and the Marine on behalf of the Minister. It bears the date 08/05/2024 and is marked as inspection certified on 03/05/2024. The screening refers to 26.5 hectares of afforestation. It is stated the predominant soil type in the project area is brown podzolics in nature and the site is described as having a predominantly flat to moderate (<15%) slope. The project area is said to be crossed by / adjoins an aquatic zone(s) and

the site is said to have a predominantly grass and rush vegetation. The screening examines three sites (Glenloughaun Esker SAC 002213, Lough Corrib SAC 000297 and River Suck Callows SPA 004097) and all three are screened out. The report concludes an overall conclusion of no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required.

DAFM In Combination Report

There is an In-combination report for the proposed afforestation project on file marked as 'Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92277'. This report is itself undated. It quotes that objectives relating to Natura 2000 sites set out within Galway County Development Plan 2015-2021 were consulted.

It includes the following statement: 'It is concluded that there is no likelihood of the proposed Afforestation project CN92277, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions.'

Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment'.

Assessment to Determine EIA Requirement

The DAFM carried out an Assessment to Determine EIA Requirement based on an inspection certified on 03/05/2024 which was in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including location, existing landuse, cumulative effect, soil and wetlands, water and freshwater pearl mussel, water, birds and special protection areas, designated areas, HNVf, landscape, amenity and recreation, designated habitats, transfrontier, and non-designated habitats. The screening form relating to EIA requirements references that a second application for an adjoining piece of land has been assessed and has been referred to ecology as it contains a significant amount of wetland and does not meet scheme eligibility. It is also stated that it is envisaged that '*only a proportion of this, <20ha can eventually be approved, cumulatively less than 50 hectares*'. In relation to a determination as to whether the project CN92277 was required to undergo EIA the screening form records an N/A answer.

County Council referral

The application was referred to Galway County Council on 16/12/2022. There is no record of a response on file from the Local Authority.

An Taisce referral

The application was referred to An Taisce on 13/12/2022. A response was made on 12/01/2023 which raised as main concerns sub-threshold Development and Water Quality and High Status Sites. It also raised badgers and their setts stating that same are protected under the Wildlife Act 1976 and the Wildlife (Amendment) Act 2000 and that it is an offence to intentionally kill or injure a protected species, or to wilfully interfere with or destroy the breeding site or resting place of a protected wild animal. The submission states that according to the Biodiversity Ireland map, the grid M7332 (within which the concerned proposed plots are said to be located) has recorded occurrences of Eurasian badgers. The potential, it states, for disturbance to this badger social group and their habitat as a result of afforestation should be assessed prior to granting permission for this application. The submission makes suggestions for conditions to be attached to any licence that might issue.

Further Information Sought by DAFM and responses

The DAFM in a letter dated 29/05/2023 sought by way of further information an 'Archaeological Impact Assessment (AIA) (as per the terms of the Framework and Principles for the Protection of the Archaeological Heritage) for the consideration of the Forest Service, DAFM, and the National Monuments Service, DHLGH. It went on to set out what the AIA should include. A reminder dated 25/07/2023 was issued as no reply had been received at that time. This request arose from a DAFM archaeological report on file which inter-alia included that in the compilation of the Archaeological Assessment, both application CN92277 and the concurrent application (CN91756) for the adjacent lands should be assessed together in a single report.

An Archaeological Impact Assessment as prepared by Dominic Delany & Associates, Creganna, Oranmore, Co. Galway for SWS Forestry, Gate Lodge, West Cork Technology Park, Clonakilty, Co. Cork, which is dated August 2023 is on file. This report in its introduction sets out that it is an archaeological impact assessment of a proposed afforestation site at Monambraher and Crummagh, Co. Galway, which is located approximately 650m north of Kilconnell Friary, a national monument (National Monument No. 47) consisting of the impressive ruins of the 15th century Franciscan friary. It states that there are no recorded monuments within the afforestation site but there are three monuments within its immediate vicinity. These are GA073-136 (Religious house) and GA073-137 (House 18th/19th century) to the south, and GA073-040 (Ringfort) to the north

It states that GA073-137 is the site of a vernacular building, most likely of early 19th century date, located adjacent to 'Monambraher Friary'. GA073-040 is a bivallate ringfort located immediately north of the proposed afforestation site, and surrounded by existing forestry to the north, east and west. It states that the report assesses the potential direct (physical) and indirect (visual) impact of the proposed afforestation on the archaeology of the site and its environs. A further request for information issued in a letter dated 27/03/2024. This among other matters sought an adjustment of maps, the creation of

unplanted bio plots, and an indication of an area to be excluded. Revised maps addressing the request for alterations to the maps are on file and dated 04/04/2024.

The Licence

The licence was issued with conditions dated 08/05/2024 including in relation to 'mitigation measures' relating to archaeology and referenced an archaeological report as being attached for further details.

Appeal

One third party appeal was made against the decision to grant the licence. The Notice of Appeal and grounds were provided to the parties. In summary, the grounds make submissions in relation to:

- Project Splitting to avoid the need for an EIA,
- Undue Process and errors,
- Setbacks / Area for Biodiversity Enhancement,
- Hedgerow Setbacks,
- Licence Condition No 2 not clearly identifying the correct reference material,
- Licence conditions not being consistent with the reason for the conditions,
- DAFM procedures not being consistent with the requirements for providing a General System of protection commensurate with Article 5 of the Birds Directive,
- Appropriate Assessment being flawed,
- EIA Screening.

It indicated that it would like to request an oral hearing of this case.

Ministers Statement (SOF)

The Minister provided a statement responding to the appeal which was provided to the parties. It sets out the relevant dates relating to the processing of the licence application and states that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. The District Inspector sets out in the SOF a summary of his input into the processing of the licence application. In relation to EIA it states that the small technical error outlined by the District Inspector in the SOF has been addressed with a system change post approval of this licence and that the question set was reported incorrectly by the system and the system output "NA" for questions that were not answerable by the District Inspector in respect of this certification.

Post appeal Submission

The appellant made a submission on the 09/10/2024 following the circulation of the Ministers SOF. This submission raised matters relating to the SOF including that it had not addressed all grounds of appeal. This appellant submission was sent to DAFM on 10/10/2024 affording the opportunity to make an observation / further submission as it relates to the appellant submission. A number of requests to extend the time for making a response were received by the FAC from the DAFM. The most recent extension was granted up to the 02/12/2024 by which time no response / further submission had been made. A further request for extension of time to make a response was received by the FAC on 05/12/2024 and has not been acceded to.

Considerations of the Forestry Appeals Committee

The FAC, in the first instance considered the appellants request for an oral hearing of this appeal. Having regard to the 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.

The FAC considered the grounds of appeal relating to EIA and considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA Directive. Regarding Environmental Impact Assessment (EIA) and related matters, the EU EIA Directive sets out in Annex I a list of projects for which 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. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA 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 parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal as described, is quoted in the licence as issued, as being for the afforestation of 26.5 ha and is for an area that is sub-threshold for the mandatory submission of an EIA report.

The FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including location, existing landuse, cumulative effect, soil and wetlands, water and freshwater pearl mussel, water, birds and special protection areas, designated areas, HNVf, landscape, amenity and recreation, designated habitats, transfrontier, and non-designated habitats. In relation to whether or not the project was required to undergo the EIA process the FAC notes that the answer entered in the screening form is N/A.

The FAC considered the response of the DAFM in this connection in the SOF wherein it stated: *'Regarding EIA Screening. The small technical error outlined by the DI has been addressed with a system change post approval of this licence. The question set was reported incorrectly by the system and the system output "NA" for questions that were not answerable by the DI in respect of this certification. Questions are asked on the system based on previous answers in the process, only the questions asked of the DI should be displayed. This has now been resolved so that questions relevant to the certification are displayed only'*, and further wherein the SOF states;

'I then reviewed information presented to the public on the FLV for CN92277 today, as FLV 1. "Assessment to determine EIA Requirement" and FLV2. "Inspectors Certification Report", both dated 8/05/24. These documents contain numerous N/A answers to many questions and do not reflect the specific answers to these questions as I completed on the certification screen as per Certification date of 15/04/2024, under the 4 respective TABS, as detailed above. Please note again that there is no option to answer N/A on any of these questions within the 4 subject TABS in question on the Inspectors Certification screen. I am unable to clarify why the reports as published on the FLV in this case do not accurately reflect the questions/answers as fully completed by me on 15/04/2024 as part of the final recommendation process'.

Notwithstanding the response to this ground of appeal as is set out by the DAFM and the reference to a subsequent fix to the DAFM system for recording such answers, the FAC considers that the recording of an N/A answer on the screening form in relation to whether the project, on the basis of the examination of the application, be subject to the EIA process, as has been made available to the FAC and as is on the public record, is a serious error in the processing of the application in this case as it relates to EIA. The FAC also notes that a number of other questions on the screening form also record an N/A answer in circumstances where a yes or no is more appropriate to the completion of such a screening form. The FAC further notes that a commentary box is included in the screening form for Inspector comments and that no entry is recorded there.

The FAC also notes that while the project itself is clearly sub-threshold for the mandatory submission of an EIA report that the project area when combined with the reported area of project CN91756 is also sub threshold in so far as area is concerned. The FAC is, therefore, not satisfied that the submission of application CN92277 separately from CN91756 represents project splitting or a serious error in the making of the application as if the applications were submitted jointly they would still not require the mandatory submission of an EIA and would be screened by the Minister. The appeal grounds and the NIS suggest that the applications differ in the nature of the proposed afforestation. The Minister is required to have regard to potential cumulative effects with other existing and approved projects and, in the context of Appropriate Assessment, significant effects in combination with other plans and projects. As outlined further in this letter the FAC considered that serious errors were made in those processes. The FAC further notes that the SOF does not address the contention in the grounds that the 'No' answer to the statement *'it has been 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'* is an indication that an EIA is required for the project. The FAC, on the date of the hearing of appeal FAC 052/2024, finds no record on the FLV of the second project (CN91756), as referenced in the grounds of appeal, the NIS, the archaeology report and the SOF.

The FAC is satisfied that a number of serious errors occurred in the undertaking and recording of the Assessment to Determine EIA Requirement.

In relation to Appropriate Assessment the FAC finds that the applicant submitted a Pre-Screening Report dated 18/10/2022 and a Natura Impact Assessment dated 26/01/2023. These documents examine nine Natura 2000 sites and screen in seven for stage 2 Appropriate Assessment. The NIS sets out that the project is part of a larger estate which is currently undergoing Appropriate Assessment for an adjoining experimental planting of broadleaves over shell marl CN91756 with shared access. Both sites are said to have a combined area of 49.12 ha. The project area is stated to be located within the Galway CDP 2015-2021 for low landscape sensitivity and low landscape value. The NIS examines the following screened in sites and prescribed mitigation measures where it considered necessary.

- E004097 River Suck Callows SPA,
- 000216 River Shannon Callows SAC,

- 002241 Lough Derg, North-east Shore SAC,
- 002165 Lower River Shannon SAC,
- 004096 Middle Shannon Callows SPA,
- 004058 Lough Derg (Shannon) SPA, and
- 004077 River Shannon and River Fergus Estuaries SPA.

The FAC notes that some content in both the Pre-Screening report and the NIS is redacted on the version of the documents as is available to the FAC through the FLV. However, the FAC noted that these documents were not relied upon by the Minister.

The FAC also finds that the DAFM carried out a screening of the project as is documented in the (DAFM) Appropriate Assessment Screening Report (AASR) on file. This report as prepared by a Forestry Inspector, Department of Agriculture, Food and the Marine on behalf of the Minister bears the date 08/05/2024 and relates to 26.5 hectares of afforestation. This screening examines three sites (Glenloughaun Esker SAC 002213, Lough Corrib SAC 000297 and River Suck Callows SPA 004097) and all three European Sites are screened out. The FAC finds that the report concludes an overall conclusion of no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required.

Each site is screened out on the basis of distance using the “DAFM Bird and Habitat Table” but no distance is stated except in one instance nor is a clear reference to the DAFM Bird and Habitat Table provided such that the public might clearly understand the reasons provided for the screening conclusion. The screening makes no reference to the pre-screening report, nor the Nature Impact Statement submitted by the Applicant. While the Minister is the competent authority to undertake the screening, the FAC would anticipate that, where the Applicant has determined that significant effects are likely to occur, the screening would acknowledge the different conclusions. Furthermore, the FAC would consider that the reasons provided for the screening conclusion should be sufficiently clear so as to explain why the Minister made the conclusion they did. The FAC is satisfied that serious errors were made in recording the reasons for the screening conclusion.

The FAC finds a DAFM In Combination Report on file for the proposed afforestation project marked as ‘*Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92277*’. This report is itself undated and quotes that objectives relating to Natura 2000 sites set out within Galway County Development Plan 2015-2021 were consulted. It includes the following statement: *‘It is concluded that there is no likelihood of the proposed Afforestation project CN92277, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions.*

Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment’.

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. It appears to the FAC that it is not clear that the wording in the In-combination statement relating to the screened out sites demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of ‘*residual effect(s)*’ that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC’s view, the reference to ‘*residual effects*’ in the In-Combination report / assessment on file creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being ‘*residual*’. The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term ‘*residual effects*’ is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

‘If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions’.

In the context of undertaking the screening again the FAC considers that the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The FAC considered the grounds of appeal relating to undue process and errors wherein it is submitted that the reduction in site size from application to approval stage (circa 0.31 ha) should have been readvertised and that the revised bio map of 04/04/2024 should have been subjected to public consultation. In considering these grounds the FAC concluded that the reduction in the approved area in the circumstances of this case in itself did not represent a material change in the proposal (from an area perspective) such that a fresh public consultation was required. The FAC did however conclude that the

revision of the project proposal and plot make up as set out in the revised bio map of 04/04/2024 is a material change in the circumstances of this application. Furthermore, the DAFM record concerns regarding potential impacts on a number of significant recorded monuments in the wider landscape such that an Archaeological Impact Assessment (AIA) was submitted. The FAC would understand that the Minister has discretion to extend the period for public consultation where new information is available and/or material changes are made to an application. In the context of the specific circumstances of this case, the FAC considered that the AIA and the revised site layout should have been readvertised for an additional period of public consultation and that the failure to provide for this represents a further error in the processing of the application.

The FAC finds that both the applicants NIS and the DAFM In-Combination Report records that these reports had regard to an outdated County Development Plan (Galway County Development Plan 2015-2021) at a time when a new County Development Plan had been adopted. The FAC found that the new Galway County Plan 2022-2028 was adopted by the Elected Members of Galway County Council on the 09/05/2022 and came into effect on the 20/06/2022. The FAC considers that this represents a further error in the processing of the application in this case.

Notwithstanding the other errors made in the processing of this application as it relates to Appropriate Assessment, as previously noted, the applicant documentation on file as completed by an ecologist screens in the project for stage 2 Appropriate Assessment and that the screening exercise carried out by the DAFM screens out the project. The FAC considers that it is a serious error to proceed to approve the application in this case without rationalising this apparent difference in the screening of the project for Appropriate Assessment as between the position of the applicant's documentation and the position adopted by the DAFM.

In relation to the ground of appeal submitting that licence conditions are not consistent with the reason for the conditions, the FAC noted that while raising this matter the appellant has not substantiated this assertion nor has a specific instance of this been highlighted. The FAC agrees that the reasons included in a licence, for conditions being attached to same, should be clear and relevant where quoted. In the circumstance of this licence (CN92277) and being the subject of this appeal, the FAC concluded that the DAFM has not erred in its processing of the application as it relates to this ground of appeal.

In relation to the ground of appeal submitting that licence condition No 2 does not clearly identify the correct reference material, the FAC finds that the wording of the condition is as follows;

2. The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars).

[Note: These documents may be found on the Department's website, alongside the amending or updating Circulars, which are arranged by year.]

In this instance the FAC finds that the condition indicates the reference material concerned, indicates that same can be subject to update and advises where it can be located. The FAC concluded that the DAFM has not erred in its processing of the application as it relates to this ground of appeal.

In relation to the contentions in the grounds that there are deficiencies in Irish legislation, the FAC understands its remit not to extend to the making of a determination as it relates to these grounds as submitted. In relation to the contention that DAFM procedures are not consistent with the requirements for providing a general system of protection commensurate with Article 5 of the Birds Directive, the FAC considers that the granting of an afforestation licence does not exempt the holder from meeting any legal requirements set out in any other statute. The Minister is required to consider whether an afforestation licence application should be subject to an Environmental Impact Assessment and an Appropriate Assessment (AA), and both include a consideration of potential effects on biodiversity, including birds, within the specific context of the location of a proposal and its nature and scale and, in the context of AA, specific European sites and their conservation objectives. As previously noted, the FAC concluded that serious errors occurred in both processes such that the Minister should undertake a new consideration of the application.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including post appeal documentation. The FAC is satisfied that a number of serious errors were made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN92277 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, to carry out a new screening of the project as it relates to the requirement for an EIA, and to address other matters raised in this letter, before a new decision is made.

Yours sincerely,

Seamus Neely, On Behalf of the Forestry Appeals Committee

