



31st October 2024

**Subject: Appeals FAC010/2024, FAC018/2024 & FAC019/2024 in relation to afforestation licence
CN92278**

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence decision issued by the Minister for Agriculture, Food, and the Marine (the Minister). The FAC, established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Hearing & Decision

Having regard to the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine your appeal. Appeal references FAC010/2024, FAC018/2024 & FAC019/2024 were considered during a sitting of the FAC held remotely on the 19th September 2024, which was attended by the following participants:

FAC Members – Mr. Seamus Neely (Chairperson), Mr. Derek Daly & Mr. Luke Sweetman.

FAC Administration – Ms. Aedín Doran

The record of the Minister's decision was made available to the FAC by way of the Forestry Licence Viewer¹ (FLV). The FAC considered all of the evidence before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM), the grounds of appeal, the DAFM's Statement of Fact (SoF), and all other submissions, before deciding to set aside and remit the Minister's decision to issue CN92278, for the reasons outlined hereunder.

Background

The decision under appeal was issued by the DAFM on 26th January 2024 and relates to a proposal for 17.34ha of non-grant-aided Afforestation in Mullagh More, Co. Galway. The proposed species mix is 10.35ha of Sitka spruce with the remaining c.7ha composed of Bio (1.19ha) and various broadleaf species (5.8ha). The licence was issued with conditions including in relation to retention of existing trees and hedgerows, adherence to specified standards/requirements, maintenance of hedgerows within sightlines, a Revised Species Map, timing of operations, fencing, and Archaeology.

Site Details

The Site Details Report on the FLV indicates the site is currently enclosed agricultural land underlain by both mineral and peat soils, has a northerly aspect, and is not exposed. The current vegetation type is Grass/Rush and site access is "adequate".

The proposal is in the Kilcrow_030 River Sub-Basin. Information available on www.Catchments.ie shows the Kilcrow_030 River Waterbody currently has 'Moderate' status (assessed by monitoring – "High

¹ <https://flv.apps.services.agriculture.gov.ie/>

confidence”) for the 2016-2021 period and is “At Risk” from Nutrients with Agriculture listed as the significant pressure. The proposal is underlain by the Tynagh Ground Waterbody which has “Good” status and is “Not at Risk”. A watercourse (Lisheenahevnia, Order 1) runs along the southern boundary of the proposal from west to east.

DAFM Processing of the application

Assessment to Determine Environmental Impact Assessment (EIA) Requirement

The DAFM’s SoF states that the application was field inspected on the 4th January 2023 and the 3rd November 2023 as well as being desk-assessed. The DAFM’s “Assessment for EIA Requirement”, which has a certification date of the 24th January 2024, considered the proposal’s potential impact on the environment across a range of criteria which included the following questions and answers:

Under “Project Location” it is stated,

- *Based on the extent of forestry as outlined above, is there a likely significant cumulative impact on the environment from this project, when considered in conjunction with the impact of other existing and/or approved afforestation projects? No*
- *Is the amount and type of forest cover in this locality known to be a significant issue? No*

The following question states “Regarding the answers to Qs. 2.11 and 2.12 above, provide reasons that led to these decisions” and the answer states “local knowledge! Submissions received guided some changes and conditions on approval recommendation.”

Under “Natural Resources: Soil and Wetlands” it is stated,

- *Does any part(s) of the site contain soil type(s) other than the following eligible soil types: (i) mineral soil; (ii) organo-mineral soil with a peat depth of less than or equal to 30 cm; and (iii) modified fen or modified cutaway raised bog that meets the requirements of the native woodland Forest Type and possible to progress without drainage? No*
- *Has the area containing other soil type(s) been excluded, either through: (i) project redesign (i.e. revised Certified Species Map and Species Table, etc.); conditions to be attached to the afforestation licence (if issued); or (ii) refusal of the entire project area (if all of the site contains other soil type(s))? N/A*

Under “Natural Resources: Archaeology and Built Heritage” it is stated,

- *Does the project area contain or adjoin a listed archaeological site or monument? Yes*
- *Is the project area adjacent to (i.e. within 200 metres of) a listed archaeological site or monument? Yes*
- *If 'YES' to any of the above, has this sensitivity(-ies) been addressed by the Archaeology and Built Heritage Section and any resulting recommendation(s) enacted through conditions to be attached to the afforestation licence (if issued), or refusal? Yes*

Under “Natural Resources: Landscape, Amenity and Recreation” it is stated,

- *Is there potential for the project to impact negatively on any adjoining or nearby dwelling(s), public road(s), infrastructure and / or densely populated area(s)? Yes*

- Has any potential impact of these sensitivities been offset, through: project redesign; conditions to be attached to any licence issued (including adherence to landscape measures set out in the Environmental Requirements for Afforestation); or refusal? Yes

Under "Natural Resources: Referral Responses and Submissions" it is stated,

- Provide a short summary of the issues raised within the referral responses (from Consultation Bodies) and submissions (from the general public and NGOs) received, and how these issues have or will be addressed.

These were reviewed, changes in design were requested, resulting in additional broadleaf planting and confirmation of setbacks. New Scheme Rules also resulted in more open space and broadleaf planting. A specific condition was recommend on approval to avoid any traffic issue with national School across the road.

The EIA assessment concluded 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.

Further Information Request (FIR)

There were two FIRs in relation to this application. Following review of the application, the DAFM wrote to the applicant on the 10th January 2023 stating (emphasis added):

*...An area of 0.8 ha existing scrub Woodland needs to be mapped and excluded. Southern area (2 fields) contains 2-3 hectares of peat soil over moderately reactive subsoil. These areas are generally unsuitable for coniferous tree growth but may be suitable for certain broadleaf species. **These areas should be mapped and given a separate Plot. Provided soil test data should be analysed in an interpretative report to justify any proposed broadleaved species. Please note that Frost risk is very high due to flat nature of the Southern fields, and Native broadleaved species should be considered for this entire section. All maps to be adjusted accordingly...***

The DAFM issued an FIR reminder on the 8th March 2023 warning that the application would be deactivated if the FIR was not actioned. The DAFM issued a second FIR on 11th April 2023 stating that (emphasis added):

*...Further information was requested on this file in January 2023 as follows: ...
A revised Species map was provided on 15/03/23, excluding the Woodland area. **The other requested information had not yet been provided.** Please also note that due to some observations received from the public, it is again requested that the Broadleaf component of the afforestation project be increased, incorporating an additional broadleaf Plot adjacent the dwelling House/Public road setback. Further consideration should be given to revising the species choice and all maps adjusted accordingly...*

The DAFM issued an FIR reminder on the 7th June 2023 warning that the application would be deactivated if the second FIR was not actioned. There are several Revised Species Maps on the FLV. The most recent one is dated the 27th November 2023 and appears to include the silvicultural requirements of the 2nd FIR.

Site Inspection Report

There is a Site Inspection Report for this application. It was produced by the District Inspector on the 7th November 2023 and was published on the FLV as "Other" on the 26th January 2024. The purpose of the report is stated to be "Peat and Habitat assessment, new Scheme rules, in relation to the southern portion of the site where peat soils occur, the balance of the site being wet and freely draining mineral soils." The report includes a sample point map and a map showing "Indicative Species selection based on peat depth, surface water and high pH subsoil." The Report recommends the addition of a Bio wetland plot, and a high pH plot be planted with FT2, Scenario 5 Birch. The Report states that "There is no need to refer this application to DAFM Ecology based on my review of habitat and vegetation on site."

Appropriate Assessment (AA)

The AA Screening Report (AASR) for this application was certified on the 24th January 2024 and published on the FLV on the 26th January 2024. The DAFM screened the following six European sites for AA – all of which are within 15km of the proposal:

- Ardgraique Bog SAC
- Barroughter Bog SAC
- Glenloughaun Esker SAC
- Lough Rea SAC
- Lough Rea SPA
- Slieve Aughty Mountains SPA

All six sites were screened out for Stage 2 AA for the same reason:

due to the following findings: - Other factors, This proposed Afforestation Project is screened out in relation to this Natura site on the basis of distance using DAFM Bird and Habitat tables and taking account of revised maps and design and cogniscance (sic) of an in combination report provided by DAFM, dated 12/1/24.

In-Combination Report

On file is a document titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92278". This report considers the potential for the proposal to contribute to an in-combination impact on European sites and consulted various online planning systems and datasets (including the DAFM's FLV) on the 16th January 2024 in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Kilcrow_030.

The report consulted the websites of Galway Co. Council (GCC), An Bord Pleanála, the EPA, and the Objectives relating to Natura 2000 sites set out within Galway County Development Plan (CDP) 2015-2021. The In-Combination Report noted that the proposal lies in a rural landscape in the townland(s) of Mullagh More, Galway and is within the River Sub-Basin Kilcrow_030, approximately 1% of which is under forest cover, which is less than the national average of 11%. The report concluded that:

...there is no likelihood of the proposed Afforestation project CN92278, 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.

Submissions & Referrals

There were no statutory referrals in this case. There were two third-party submissions on this application. One came from a neighbouring landowner and the other from the Board of Management Mullagh National School, both of whom subsequently submitted appeals. The issues raised in these submissions reflect those in the grounds of appeal.

Grounds of Appeal

There are three third-party appeals against CN92278. The grounds of appeal have been considered in full by the FAC and are summarised below:

FAC010/2024

1. Proposal comes "right up to our boundary". Galway CDP Chapter 4 Rural Living and Development, Section 4.11 F6 – "The development of afforestation shall not take place within 100m of residential units."
2. Plot 1 is 80% Spruce and will block light to planned solar panels, impact Broadband/satellite/TV/Mobile coverage, and inhibit ability for Appellant's land to dry. Damage to outbuildings due to roots and fallen trees also a concern.
3. Overhead power lines to Appellant's house pass through Plot 1. Risk of damage to lines and chimney of house from fallen trees.
4. Future planning permission for potential site on land to west of Appellant's home will be impacted by proximity to Plot 1 and Plot 2.
5. Mound drains in Plot 3 will bring water to Plots 1 & 2 – closer to Appellant's house and land causing saturation of soil.
6. Inspector's Certification Report – Recommendations/Conditions do not show the full details and sentences are incomplete.
7. Climate change, increased risk of forest fires, risk to house/land/local school. Queries if action plan in place and who is responsible for damage? Alleges possibility of increased home and school insurance costs and devaluation of property.

FAC018/2024

1. The proposal is described as bordering the Appellant's land and submits that Appellant is a full-time farmer. The grounds submit that the proposal will impact light, temperature, and ability to produce silage.
2. Heavy machinery will distress cattle in fields from late June onwards.
3. Mound drains on the most southernly plot directed onto the Appellant's field. Drainage already an issue. Land will become saturated and not suitable for livestock.
4. Domestic dwelling to north of proposal is within 100m. Refers to Chapter 4 of Galway CDP.
5. Fencing condition is too vague and should be clarified.

FAC019/2024

- i) Noise pollution from heavy machinery, including timber removal – represents a threat to the learning environment within St. Brendan’s National School, especially for children with sensory issues.
- ii) St. Brendan’s National School has been granted funding for 16 solar panels on the school’s roof. Overgrown trees in the vicinity could reduce efficiency by 20-30%.

Detailed further information for both points above was included by the Appellant with their NOAF.

DAFM Response

The DAFM appear to have provided the same response to all three appeals. The DAFM’s response does not address the specific grounds of appeal and instead outlines the processing of the file and consideration of the site factors/silvicultural issues e.g., soil types, suitable species and the mapping of changes made via FIRs. The DAFM’s SoF in each case included the information summarised hereafter. The Administrative comments were that “the decision was issued in accordance with our procedures, S.I. 191/2017 and the Forestry Act.” The statement from the District Inspector outlined the timeline of the processing of the file and associated correspondence. The District Inspector indicated that the file was put on effective hold at one stage, pending the instatement of a new Scheme, and that when the new Afforestation Scheme was announced, the Applicant opted-in to the new Scheme rules.

The District Inspector submitted that the AA Screening and file review was completed on the 17th January 2024 and approval recommended, following consideration of submissions by two of the Appellants and incorporating specific conditions to address these. The Inspector also indicated that AA Screening was completed following consideration of the In-Combination Report. The Inspector stated that:

Approval recommended on basis of revised map, increased broadleaves and open space, as determined by site inspection and presence of areas of peat soil greater than 30cm depth in southern part of site, acceptable for BL planting without drainage under revised Scheme rules...

The District Inspector also stated that the DAFM Archaeologists had reviewed the file and reverted with a report before the licence was approved with conditions on 23rd January 2024.

Findings of the FAC

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister for Agriculture, Food, and the Marine, and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures.

AA & EIA Screening

In the first instance, the FAC had regard to the DAFM’s processing of the licence application in light of the requirements of the Habitats Directive and the EIA Directive. The FAC noted that the DAFM completed an “Assessment for EIA Requirement” which records the DAFM’s consideration of the proposal’s potential impact on the environment across a range of criteria before concluding 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 EIA is not required. The FAC noted that both the EIA assessment, and the Site Inspection Report were completed following a field inspection of the proposal site by the District Inspector. The FAC also noted that the EIA assessment records the DAFM’s consideration of the submissions on the licence application. In this regard the District Inspector stated in the EIA assessment

document that the submissions were reviewed, and this resulted in changes to the design with additional broadleaf planting and confirmation of setbacks. Additionally, a specific condition was applied to the licence to “avoid any traffic issue with national School across the road.”

The FAC noted that the DAFM completed an AA screening for the proposal on the 24th January 2024 and screened out all six European sites within 15km of the proposed project site. These six sites were screened out as it was determined that the project itself (i.e., individually) would not have a significant effect based on distance using DAFM Bird and Habitat tables and taking account of revised maps and design and having regard to the findings of an in-combination report “provided by DAFM, dated 12/1/24.” The FAC understood this to be a reference to the document titled “Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92278” which was completed on the 16th January 2024 and published on the FLV on the 26th January 2024. This report considers the potential for the proposal to contribute to an in-combination impact on European sites and consulted various online planning systems and datasets (including the DAFM’s FLV) in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Kilcrow_030. The FAC found that the In-Combination Report states that “The current Galway County Development Plan was examined” and “Objectives relating to Natura 2000 sites set out within Galway County Development Plan 2015-2021 were consulted”. The FAC noted that the *Galway County Development Plan 2022-2028* was adopted by the Elected Members of Galway County Council at the conclusion of the Special Meeting on the 9th May 2022 and came into effect on the 20th June 2022. The FAC found the DAFM’s consideration of an outdated CDP to be a significant error, particularly in the circumstances of this case where the contents of the relevant CDP form part of the grounds of appeal. The FAC’s findings in this regard will be discussed later in this letter. The In-Combination Report states that:

...there is no likelihood of the proposed Afforestation project CN92278, 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.

Based on the wording above, it appears that the In-Combination Report relies on the contents of the DAFM’s AASR, however, this document was not completed until the 24th January 2024 which post-dates the In-Combination Report. The above wording also refers the likelihood of “residual effects.” Based on this wording, the FAC considered that it is not clear that the In-Combination Report 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 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 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 AA titled *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 these circumstances, the FAC considered that the wording of the In-Combination Report contains significant errors and finds that the AA screening should be undertaken again. In this context, the FAC considers that the DAFM should correct the wording to avoid the introduction of any unnecessary confusion. In addition, the FAC considered that the reliance in the In-Combination Report on an *Appropriate Assessment Screening Report* which postdated it represents a further significant error in the processing of the application in this case.

Dwelling Setback

The FAC had regard to the grounds of appeal as submitted by the Appellants. In relation to the proximity of the proposal to the dwelling adjoining the northern boundary, the FAC found that the Revised Species Map published 26th January 2024 and dated 27th November 2023, appears to show that the introduction of Plot 2 (Bio) resulted in a separation distance of c.60m between Plot 3 (Oak and additional broadleaves) and the nearest residential unit, albeit the separation distance is not recorded on the map itself. The FAC noted that the licence conditions require adherence to the Environmental Requirements for Afforestation (although the relevant version is not cited) and that these requirements include a minimum 60m setback distance from the outer wall of a dwelling house unless agreed in writing with the neighbouring dweller at Form 1 Stage. The FAC considered the requirements of the Galway CDP 2022-2028, wherein it is stated in Chapter 4, under *F6 Afforestation*, that “the development of afforestation shall not take place within 100m of residential units.” The FAC noted that this is a new requirement compared to the previous iteration of the Galway CDP. While the FAC understands that the DAFM are not bound by the CDP in the same way the Local Authority is when assessing any development proposal, the FAC concluded that, in the particular circumstances of this case where the record of the decision indicates that the DAFM had regard to the incorrect version of the Galway CDP, the DAFM should have recorded their consideration of the dwelling setback requirements in the relevant Galway CDP and provided a rationale for the position taken by it in deciding to issue the licence CN92278. The FAC also considered that any relevant setback distances should be clearly recorded on the relevant maps comprising the record of the application.

Impact of Sitka spruce

The FAC considered the grounds relating to the impact of Sitka spruce on light, temperature, solar panels, telecommunications coverage, damage to outbuildings, and power lines. As submitted by the Appellant in FAC010/2024. In this regard the FAC noted that the licence conditions require adherence to the Environmental Requirements for Afforestation and the Forestry Standards Manual. These documents prescribe minimum setbacks, including unplanted corridors beneath power lines where necessary. The Revised Species Map dated 27th November 2023 indicates that the outbuildings associated with the dwelling to the north of the proposal will be bordered by an unplanted Bio plot and the FAC did not consider the risk of damage to these by tree roots/fallen trees to be significant. Notwithstanding the findings of the FAC outlined previously regarding the DAFM’s consideration of a potentially extended dwelling setback as required by the Galway CDP, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposal as it related to these grounds of appeal.

Drainage

Two Appellants submitted grounds contending that the drainage infrastructure associated with the proposal will have negative impacts on their lands. Neither appellant adduced any evidence to support these grounds e.g., a drainage report. The FAC found that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposal as it related to these grounds of appeal.

Noise Pollution

The FAC considered the grounds submitted by Appellants FAC018/2024 and FAC019/2024 that noise pollution from heavy machinery, including timber removal, represents a threat to the learning environment within the nearby National School and would distress cattle in the adjacent fields from late June onwards. In the first instance the FAC noted that the proposal is for the afforestation (as opposed to felling) of a site which currently appears to be subject to agricultural activity. The FAC would understand that, in most parts of the country, the planting season could be considered to be limited to between November to March/April. The FAC would also understand that the machinery involved in forest establishment operations (e.g., low-loader, excavator etc.) would be typical of the machinery used to carry out commonplace agricultural activities. Furthermore, the licence conditions indicate that the DAFM considered the submission regarding potential impacts on the learning environment within the school and restrictions are applied as to the timing of operations. Consultation with the school's Board of Management is also required in relation to a traffic management plan and agreement for parking and site deliveries. The FAC is not satisfied that the DAFM erred in the processing of the application for this licence as it relates to these grounds of appeal.

Solar Panels

Appellant FAC019/2024 submitted grounds relating to the potential impact of the proposal on a solar installation for which the local National School has been granted funding. This Appellant states that "overgrown trees in the vicinity could diminish the efficiency of the solar panels by as much as 20 to 30 percent." The Appellant also included what appears to be a research paper from researchers in the University of Jenderal Achmad Yani, Cimahi, Indonesia, titled "Study and Analysis of Shading Effects on Photovoltaic System." The Appellant did not submit any commentary as to how the findings of this research paper relate to the proposal under appeal. There is also a lack of clarity as to what could be considered "overgrown trees in the vicinity" of the school's solar installation. Based on the available evidence before the FAC, the distance between the southern outer wall of the National School and the first row of planted trees (Plot 3 - Oak and additional broadleaves) is approximately 90m. There are also a number of mature broadleaf trees in the hedgerows surrounding the proposed Plot 3 which would be less than 90m from the National School. In these circumstances, the FAC found that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant CN92278 with regard to these grounds of appeal.

Other Grounds of Appeal

The FAC considered the contention by Appellant FAC010/2024 that the proposal will negatively impact future planning permission for a potential site to the west of the Appellant's home. As referenced previously, the FAC considers that standard minimum setbacks from dwellings apply to this proposal and concluded that the DAFM did not err in the approval of this licence in relation to this ground of appeal.

In relation to the grounds in appeal FAC 018/2024 contending an increased risk of forest fires, the FAC noted that the proposal is situated between 70-90m elevation and is bordered by, and within a wider landscape of fields which appear to be subject to agricultural activity. These fields are interspersed with residential units and other buildings, e.g., the National School. The FAC considered that there is no convincing evidence before it to indicate that the vicinity of the proposal is at an elevated risk of forest

fires. The FAC also noted the setbacks required by the licence conditions from the adjacent buildings. Based on the information before it, the FAC found that no significant or serious error was made in the making of the decision by the Minister to grant CN92278 regarding this ground of appeal.

The FAC considered the grounds in appeal FAC010/2024 regarding the "Inspector's Certification Report". The FAC noted that the text in the areas titled "Other Comments/Field Notes" and "Inspector's Recommendations" appears to be cut short. Although the Inspector's comments are included in the "Submission Details" section of this document and include that the Inspector "reviewed the submissions received, noting that the species change to broadleaves adjacent public road/dwelling setbacks and added a specific condition into approval to alleviate any concerns of Mullagh School management Board, and additional Bio area and broadleaf planting in southern portion of site." Notwithstanding this, the FAC concluded that the incomplete nature of this document represents an error on the record of the decision and, in the event of a new decision being made regarding CN92278, the FAC considered that a whole and correct "Inspector's Certification Report" should be published as part of the record of that decision.

The FAC considered the ground of appeal in FAC 018/2024 that the fencing condition on the licence is too vague and should be clarified. The FAC noted that the application documents included a fencing map, published on the FLV on the 8th December 2022, and this map indicates that almost the entire perimeter of the site will be fenced with Stock/Sheep fencing (2,560m). The licence approval letter indicates in the table on the first page that 2,560m of fencing has been approved but the licence conditions state that "Plantation must be adequately fenced and protected. Fence only to be erected where necessary." The FAC also noted that Appendix A of the approval letter represents the "Operational Proposals that have been approved and must be implemented in full as conditions of both the Afforestation Licence and the Non Grant Aided Technical Approval for the Afforestation Scheme." However, the schedule in Appendix A as contained in the approval letter relating to licence CN92278 records a "Not Entered" commentary for all of the operational proposal details. In these circumstances, the FAC considered that confusion arises as to what exact length of fencing has been approved and, indeed, what exact operational proposals have been approved for any of the actions listed in Appendix A. The FAC found that, in the event that any future licence approval was to issue regarding this application, it should include clear and precise licence conditions, and the correct information should be recorded in Appendix A.

Based on the evidence before it, as outlined above, the FAC is satisfied that a series of significant or serious errors was made in the making of the decision to issue CN92278. The FAC is thus, setting aside the decision and remitting same to the Minister in accordance with Section 14B of the Agriculture Appeals Act 2001 as amended, to carry out an AA screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, and to address the other issues identified previously in this letter before a new decision is made on the application.

Yours sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee