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8th August 2025

**Subject: Appeal FAC062/24 in relation to the decision to grant a tree felling licence under
TFL00966923**

Dear Sir/Madam,

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

A hearing of appeal reference FAC062/2024 was held remotely on the 15th July 2025.

In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Iain Douglas & Mr. Vincent Upton.

FAC Administration: Ms. Aedín Doran

In 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 the appeal.

Decision

Having regard to the information before it, including the record of the decision on the Forestry Licence Viewer (FLV), the notice of appeal, and the Statement of Fact (SOF) from the Department of Agriculture, Food, and the Marine (DAFM), the FAC has decided to allow the appeal and set aside the decision of the Minister to grant tree felling licence TFL00966923 for the reasons set out hereunder.

Background

The appeal relates to the decision of the Minister for Agriculture, Food and the Marine to grant a felling licence at Darkvalley, Socks, Co. Leitrim. The application was for a ten-year licence on an area of 24.18 hectares, covering nine plots comprised primarily of Sitka spruce with a smaller portion of Japanese larch in plots 8 and 9. Felling would take place in 2025 and 2033. The forest would be replanted with a mixture of Sitka spruce and broadleaf species with an area of open space maintained in each plot.

The application included operational and environmental information, including a harvest plan, and a number of maps. Access to the lands is marked at the southern boundary and a forest road is marked along which timber stacking and refuelling areas would be located.

The lands are bounded by a river to the north, River Bonet, and a number of relevant watercourses cross the land and temporary crossings are marked. A number of dwellings are located along the public road to the south. A number of archaeological features are mapped in the application. The application notes that Lough Gill SAC is located to the north of the lands.

The application was referred to the NPWS and the County Council. The County Council submitted that the lands do not fall within any designated Area of Outstanding Natural Beauty (AONB) or Area of High Visual Amenity (AHVA) as identified in the Leitrim County Development Plan 2023-2029 but that the County Council has concerns regarding the capacity of the area to accommodate forestry and that the replanting schedule should incorporate more diverse species. The Council submit that they have no objection but request a number of conditions be attached. A further submission outlines concerns regarding the development of a forest road and the details of sightlines amongst other roading matters which should be agreed with the Council.

The DAFM prepared an Appropriate Assessment screening. The screening identifies eight European sites, seven of which are within 15km of the proposal and one that lies outside of 15km but is described as being hydrologically connected. The identified sites are Lough Gill SAC IE0001976, Boleybrack Mountain SAC IE0002032, Ben Bulbin, Gleniff and Glenade Complex SAC IE0000623, Arroo Mountain SAC IE0001403, Glenade Lough SAC IE0001919, Sligo/Leitrim Uplands SPA IE0004187, Unshin River SAC IE0001898, Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC IE0000627. The screening determined that the proposal should proceed to Appropriate Assessment in relation to Lough Gill SAC due to direct connectivity with the felling site. Other sites were screened out and reasons were provided.

The DAFM prepared an Appropriate Assessment Report (AAR) which describes the potential significant effects and mitigation measures required. It was concluded that significant effects on the terrestrial habitats would not arise. In relation to aquatic species and habitats it was included that effects could arise due to impacts on water quality and habitats and mitigation measures to avoid and reduce the effects are specified. The AAR was subject to a period of public consultation before an Appropriate Assessment Determination was made which concluded,

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The DAFM prepared an Archaeological Report that specified that operations must be excluded from two recorded monuments, ringfort and enclosure on site and specified setbacks. Restrictions are also placed

on operations in relation to the historic railway crossing the site and field boundaries. The file made available to the FAC includes an email in which the measures were sent to the National Monuments Service which expressed agreement.

A decision to grant the felling licence was made on 13th June 2024 subject to conditions including adherence with the Appropriate Assessment Determination mitigation measures and the measures stated in the archaeological report.

Grounds of Appeal

There is one third party appeal against the granting of the licence. The Notice of Appeal was sent to all parties and included the full grounds of appeal. In brief summary the grounds submit,

- That there was inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus convention,
- That there was a failure of due process in relation to the archaeological report,
- That licence conditions (f) and (g) are not conditions,
- That there is insufficient evidence that the access road is to Standard and was constructed in accordance with the law. That a right of way exists but there is no detail of the nature of the rights or standard and that the right of way is within 20 metres of a dwelling,
- That the archaeology consideration was deficient and the application identifies a different location for monuments,
- That the Assessment under Article 6(3) of the Habitats Directive was deficient and is not bespoke and a number of measures and the content of the assessment are challenged,
- That DAFM procedures are not consistent with the requirement for providing a general system of protection in relation to Article 5 of the Birds Directive and that the Wildlife Act gives an exemption to forestry.
- That the EIA screening is not adequately reasoned in relation to local impacts,
- That the Harvest Plan and Reforestation Plan are deficient in relation to hedgerows and the historic railway line and the absence of a haulage route,
- That there is no evidence that the original afforestation was in full compliance with the law in relation to the Birds and Habitats and EIA Directive and that an AA would have been required in relation to Lough Gill SAC,
- That the decision did not have regard to the Leitrim County Development Plan 2023-2029
- The grounds also make a number of statements in relation to the appeals process.

Statement of Fact from Minister

The DAFM prepared a statement in response to the appeal and contested the grounds, the statement in full was provided to the parties. In brief summary the statement submitted,

- That the assertion in relation to the Aarhus convention falls outside of the licencing process and an appeal to the FAC but that Ireland, including the DAFM, are in full compliance with the

convention in relation to forestry licences. The statement goes on to outline the DAFM procedures in relation to public notice,

- That the archaeological report was not required to be published prior to the making of the decision and was published with the licence. The DAFM provided a response from the Archaeologist in relation to monitoring and referrals. This submitted that in addition to their being no requirement to make reports available prior to the final decision that the reports are considered draft internal reports until the public consultation process on the application has been completed and at that stage the report might be revised. It is submitted that the reports meet the requirements of the Forestry Regulations 2017 in relation to the provision of reasons and a description of measures to address adverse effects. The statement further submits that the inclusion of monitoring at felling stage was not required and would not be in keeping with criteria of the Office of the Planning Regulator in relation to attaching conditions on similar licencing processes. The statements also sets out that the application and report were referred to the National Monuments Service and a reply was received, that the route along the forest road is identified on the applicant's harvest plan, that a setback from the townland boundary was included in the conditions which would exclude stacking in the area, that the exclusion of operational activities would not preclude access and that historic aerial photography shows a substantial gap in the townland boundary.
- That the conditions (f) and (g) have been moved in more recent licences but that their insertion has no material effect,
- That it is not required to have a forest road in place when submitting a felling application,
- That the DAFM disagrees with the contention that the mitigation is not precise enough for the particular site. The statement provides an overview of the screening and assessment process and addresses a number of specific measures.
- The statement contends that the appellant has not raised any concerns regarding specific adverse effects but the DAFM disagrees with the suggestion that its procedures are inconsistent with Article 5 of the Birds Directive and that the granting of a felling licence does not exempt the holder from meeting other legal requirements and that there are measures in the licence that would benefit birds.
- The DAFM submit that the activity does not include a class of development that falls within the Annexes of the EIA Directive.
- It is submitted that inspectors have access to orthophotography and can identify hedgerows and that including every feature on a map is not possible and would make the map unreadable, that public roads are the responsibility of the Local Authority and that the existing state of the road is deemed sufficient, that the old railway line and relevant watercourse run parallel to each other and that the extraction direction in plot 3 could not be given due to the size and scale of the map.
- In relation to the original afforestation, it is submitted that it is not clear what specific environmental issues are being referred to and that the grounds do not identify any significant effects on the environment since the planting nor a basis for assuming the original planting was

regulatorily deficient. The DAFM submit that the grounds of appeal should be limited to the felling licence decision,

- In relation to the County Development Plan, the DAFM provides an overview of forest policy matters and submits that the report referred to the local authority relates to the capacity of landscapes to accommodate further commercial forestry.
- The statement provides a response in relation to the matters raised concerning the appeals process.

Considerations of the FAC

The FAC considered, in the first instance, the grounds that alleged deficiencies in the application documentation, including in the mapping of environmental features. The DAFM responded suggesting that the mapping was sufficient and that all features could not reasonably be expected to be mapped given the scale. The Applicant did not make a submission on the appeal.

The submitted maps mark the boundary of the Lough Gill SAC as lying on the northern bank of the River Bonet. However, the maps contained in the DAFM appropriate assessment show the boundary line to extend to the southern bank and directly connect and overlap with the site boundary. The FAC confirmed that the boundary identified in the DAFM documentation reflects the boundary mapped in S.I. No. 330/2023. The DAFM provides for a public consultation process as part of the felling licence application process and has provided standards for the production of harvesting plans and maps. The FAC considered that the inclusion of inaccurate details in the application in relation to proximity to a European site could interfere in that process and represented a serious error.

The FAC further noted that the location of monuments in the application did not accord with those in the archaeological report. In relation to hedgerows, the application documentation noted the presence of hedgerows, but none were marked on the map. While the DAFM position is that including all features is not practical given the scale of the map the FAC does not consider that this is reflected in the Standards for Felling and Reforestation and the nature or importance of the features have not been identified or described by the Applicant nor by the DAFM in responding to the appeal. Multiple maps can be generated, and maps can be produced in different scales if they were required. In making a decision on an application the Minister is required to have regard to standards of good practice.

The FAC was satisfied that the application mapping contained serious errors and that the appeal should be allowed and the decision set aside.

The grounds suggest that the decision does not meet the requirements of the Aarhus Convention, which the FAC understands to be a reference to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The FAC understands the Aarhus Convention to be a convention under the UNECE and that it does not form part of domestic legislation as such. The Aarhus Convention has been transposed through a number of pieces of EU legislation, including the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). EU EIA Directive sets out in Annex I, a list of projects for which Environmental Impact Assessment (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. Neither afforestation nor deforestation, or a class of development related to the proposal under appeal, are referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II) and “Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.” (Class 13 (a) of Annex II).

The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process 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 threshold where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to a felling of trees in a commercial plantation which would be replanted and does not constitute afforestation or deforestation for the purposes of land use change. The FAC does not consider that there was a requirement to undertake a screening for Environmental Impact Assessment or an Environmental Impact Assessment in processing the application.

Regulation 10 of the Forestry Regulations 2017 provide for the Minister for Agriculture to publish notice of the application in a manner determined by the Minister. The decision was subject to Appropriate Assessment in relation to Lough Gill SAC and the Forestry Regulations 2017 provide for the Minister to undertake an Appropriate Assessment. SI 477/2011 also provides for Appropriate Assessments by public authorities and includes a requirement to undertake a period of public consultation and to publish a notice in a manner to be determined by the public authority. In this instance, the Minister provided for two periods of public consultation, at application stage and in relation to the Appropriate Assessment Report. The DAFM website states that the procedure for public consultation includes the publishing of documentation on the Forestry Licence Viewer, which was undertaken in this case.

The grounds refer to the application only being available on the DAFM website. However, the Forestry Licence Viewer is a standalone website providing a map based and searchable listing and archive of forestry licence applications and related documents.

These grounds are generally of a generic nature and relate primarily to policy matters. It is noted that there is a dwelling in the vicinity of the access point but the appellant does not claim to be the owner of the property or to have an interest in it. The FAC is not satisfied that the Minister erred in making a decision under section 7 of the Forestry Act 2014 or the Forestry Regulations 2017 in relation to these grounds of appeal.

While the FAC considers that a screening for Environmental Impact Assessment was not required in this case, the DAFM undertook a screening as part of its consideration and processing of the application. The FAC noted that this does not consider non-forestry related projects in relation to potential cumulative effects and considered that this would constitute a serious error.

In relation to the Archaeological Report, this is a DAFM document generated as part of the licencing decision. It was not submitted by the Applicant and does not form part of the application for the felling licence. As the DAFM note, the report forms part of the considerations and reasons of the Minister in the making of the licence decision. The FAC does not consider that there was a requirement for the DAFM Archaeological Report to form part of the public consultation process in this instance.

The grounds raise a question in relation to the inclusion of monitoring as part of replanting activities while monitoring is not required during felling operations but do not provide a basis for their inclusion. The nature of the activities are clearly different as noted by the DAFM and the FAC does not consider that the appeal provides a basis for concluding that the inclusion of monitoring might have been required.

The grounds allege that the archaeological conditions make the licence inoperable. The DAFM submitted that the conditions do not preclude crossing exclusion zones if required. The FAC considered that the conditions as specified specifically allow for the crossing of the specified setback in relation to the historic railway line and allow for the use of the existing road.

The grounds allege that the project was not referred to the National Monuments Service (NMS). The DAFM claim that the referral did occur and a copy of the communication is contained in the documentation made available. The FAC accepted the evidence of the DAFM that the NMS was notified of the measures and did not raise any concerns.

A number of grounds relate to the details of the application and a suggested conflict with the licence conditions. It is well established and understood that a licence holder would have to comply with conditions attached to the licence and that the conditions would take precedence over the application details. That being said, the FAC noted the text employed in condition numbered as (9),

9. The applicant must adhere to the mitigation measures specified in the attached Appropriate Assessment Determination document (AAD). With regard to the licence itself and the AAD, conditions affording the greatest protection to water quality and the environment take precedence Reason: In the interest of sustainable forest management and protection of the environment.

The FAC would understand that an appropriate assessment carried out for the purposes of Article 6(3) of the EU Habitats Directive must contain complete, precise, and definitive findings and conclusions. The FAC considers that the manner in which the AAD measures have been conditioned in the licence undermines the complete, precise, and definitive requirement of such an assessment. This language might be interpreted as essentially allowing the licence holder to choose which of the conditions they adhere with based on their assessment of which afford the greatest protection to water quality and the environment. The purpose of the AA is to determine whether the development would impact on the integrity of a European site, which are designated for specific habitats and/or species, having regard to

the conservation objectives of the site rather than the protection of water quality or the environment more generally. The language employed in the condition might allow the licence holder to avoid implementing specified measures that were considered necessary to reach a conclusion that a development would not impact on the integrity of a European site where a conflicting condition was considered to provide greater protection to water quality and the environment. In the current case, the FAC does not consider that there is any real reason to consider that the language poses such a risk but the FAC considers that the manner in which this condition was specified could constitute an error if the decision was not being set aside.

The grounds allege that licence conditions (f) and (g) are not conditions and are instead explanations regarding legal duties of the licensee and are unenforceable and should be removed. The DAFM in responding to the appeal submitted that this text has been moved from the conditions section in subsequent licences. The FAC is also of the view that these conditions appear to be more of an advisory nature and that it is unclear as to how they might be enforced as part of a tree felling licence. However, the grounds do not provide a basis by which their inclusion might be considered a serious or significant error or how their inclusion is of any real consequence. The FAC is not satisfied that the Minister erred in making a decision under section 7 of the Forestry Act 2014 or the Forestry Regulations 2017 in relation to these grounds of appeal.

The grounds allege that there is insufficient evidence in relation to the nature of the right of way to the lands. The FAC would understand that making a determination on such a matter would be a civil matter and not for the FAC to determine. The application identifies the access to the lands and the Appellant has submitted that a right of way exists. Forest road works are subject to a separate licence application process where a landowner intends to undertake such works. The grounds reference to standards that relate to afforestation and forest road works. The decision which is the subject of this appeal relates to a tree felling licence.

The grounds raise concerns in relation to individual measures but fail to engage with the overall assessment, stated measures and conclusion. The DAFM has identified effects that might arise and specified measures to address these. It is clear from the DAFM's assessment that the primary concerns are with the protection of water quality and the Ecologist has specified measures in relation to the avoidance of impacts on water quality and habitats and reached a conclusion that the proposal with specified measures would not impact on the integrity of a European site. The Appropriate Assessment Determination (page 9) notes,

The above conditions in combination, along with adherence to the guidance cited, will eliminate pathways of impact of significance to European sites. ...

The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects.

The Appellant has not claimed to have any have any scientific or environmental qualifications and has not engaged such a person. The grounds are of a general nature and do not provide a basis for concluding that the determination of the DAFM was incorrect.

However, the FAC did consider that a number of errors were made in the making of the decision. As noted in the grounds, in considering other plans and projects in-combination with the DAFM considered the incorrect County Development Plan. The FAC also noted that in screening for Appropriate Assessment the DAFM concluded that the proposal would not give rise to any residual effects. 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 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 any case, the decision is being set aside in relation to issues with the application as previously noted.

The grounds allege that there is no evidence that the original afforestation was in full compliance with the law. However, the grounds do not provide a basis for concluding that the forest has had a significant effect on the environment, or the components of the environment, such that its planting might be considered to be regulatorily deficient. The grounds allege that an Appropriate Assessment would have been required in relation to Lough Gill SAC at the point of afforestation but provide no basis for this claim.

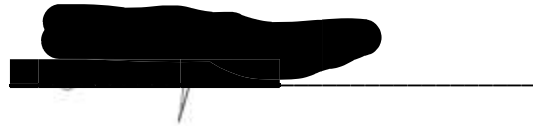
The grounds allege that DAFM procedures are not consistent with the requirements of Article 5 of the Birds Directive. The claim is a general one regarding the policy and procedures of the DAFM and does not provide any basis to conclude that the proposal would have an impact on bird species. The proposal is for the felling of a commercial plantation which would not generally be considered to be a rare or particularly valuable habitat. As noted by the DAFM the granting of the licence does not exempt the licence holder from meeting any other legal requirements. While the grounds allege legal deficiencies in the Wildlife Acts such a determination does not fall within the jurisdiction of the FAC to make.

The grounds make a number of claims that the land should not be replanted but this is not proposed by the landowner. The appeal makes a number of claims in relation to the appeals process itself which are not for the FAC to address.

In considering the appeals, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions made. The FAC considered that the application contained serious errors as

previously noted and that, as a result, the FAC was satisfied that serious errors were made in the making of the decision. The FAC concluded that the appeal should be allowed and the decision in relation to licence TFL00966923 should be set aside in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,

A redacted signature and name, consisting of a large blacked-out area above a horizontal line, with a small mark below the line.

Vincent Upton on behalf of the Forestry Appeals Committee