



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8th August 2025

Subject: Appeal FAC085/2024 CN93945 in relation to a decision to grant an afforestation licence under CN93945

Dear Nature Partners CLG,

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 FAC085/2024 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 set aside and remit the decision of the Minister to grant afforestation licence CN93945 for the reasons set out hereunder.

Background

The appeal relates to the decision of the Minister for Agriculture to grant an afforestation licence on 6.51 hectares at Treanagry, Cloonshaghan, Roscommon. The decision to grant the licence subject to conditions was made on 21st August 2024.

As the parties were advised, the FAC relied on the documentation made available to it by the Minister on the publicly available Forestry Licence Viewer.

The file includes a copy of a site notice dated 12th January 2024 and application documentation including a number of maps. The application as made was for an area of 653 across four plots, each of which would be planted with native woodland. Plots 1,3 and 4 would be comprised of pedunculate oak, downy birch, hazel and other broadleaved species. Plot 2 would contain common alder, downy birch, pedunculate oak and other broadleaved species. The site is currently in grass on a mineral, peat soil with a south, neutral aspect. Adequate access is said to be in place and the area is transected by a public road at which the site notices are marked on the mapping.

The application includes a habitat map that outlines the habitats on site which are mainly improved and acid grasslands. The lands are crossed by an aquatic zone and a 10 metre setback forms part of the application. Relevant watercourses also cross the lands and a 5 metre setback is proposed. Setbacks are also mapped in relation to the public road and electricity cables that cross the land and an area of scrub to the north would be retained. The application includes a number of declarations in relation to potential effects on the environment and concludes that there are no likely significant effects expected.

There was one submission on the application from a member of the public who objected to the proposal as it was submitted that curlew had started to nest in the lower fields and they had to stop cutting grass in those fields.

The documentation includes a screening for Appropriate Assessment in which nine European sites were considered. These were Annaghmore Lough (Roscommon) SAC 001626, Bellanagare Bog SAC 000592, Bellanagare Bog SPA 004105, Bricklieve Mountains and Keishcorran SAC 001656, Callow Bog SAC 000595, Cloonshanville Bog SAC 000614, Lough Arrow SAC 001673, Lough Arrow SPA 004050, and Lough Gara SPA 004048. Each is considered individually, and reasons are given for each screening conclusion. A consideration of other plans and projects in-combination with the proposal was also recorded.

Grounds of Appeal

There is one third party appeal against the granting of the licence from the individual who made a submission on the application. The full grounds of appeal have been provided to all parties. In summary, the appeal notes that a submission was made on the application and that, as stated in the submission, curlew are nesting in the lower fields and that the appellant had to stop cutting and topping the grass and rush in order to preserve the protected bird species. The Appellant contends that no proper investigation was carried out and queries whether the land was inspected and how many times. It is suggested that the decision was based on a colour coded map and that this was not appropriate. The Appellant requests that the granting of the licence be rejected so that a proper and detailed examination of the lands be undertaken.

Statement of Fact from Minister

The DAFM provided a statement in response to the appeal which outlined the DAFM's view on the protection of curlew and other species under the Forestry Programme. The status of the species is outlined along with the potential impacts of forestry. It is submitted that the DAFM employ a strict 1.5km buffer around all current nesting sites and that new nesting sites are added when recorded. It is submitted that the NPWS provides information on nesting sites and that the procedures was adopted in consultation with the NPWS. It is submitted that the proposal is not within or in close proximity to a Current Curlew Territory. It is submitted that the procedure is robust and that curlew was considered in line with the current procedure and was not an issue of concern.

The DAFM had submitted an initial statement which they subsequently withdrew and replaced and of which the parties were notified.

Further Information Request by FAC

The FAC wrote to the appellant on 16th July 2025 seeking further information in relation to the grounds of appeal. No response to this request was provided.

Considerations of the FAC

The DAFM contested the grounds of the appellant and outlined their policy in relation to the protection of curlew. This is further described in the document Environmental Requirements for Afforestation (DAFM),

Under the Forestry Programme 2023-2027, and in keeping with State Aid conditions, DAFM policy is that afforestation within 1.5 km from a Curlew breeding site is not appropriate. This restriction is in light of the rapid decline of the native Curlew breeding population, and intended to prevent disturbance and to ensure that new forests do not provide habitat for predators close to the breeding site. NPWS provides DAFM with information on Curlew breeding sites. Due to its sensitive nature, this information, together with the 1.5 km buffer, is kept confidential. iNET undertakes a spatial check and if the entire project area lies within a 1.5 km Curlew breeding buffer, this is indicated. In such cases, the project area is not eligible for afforestation.

The decision records that the lands are not within a curlew buffer. The appellant provided no evidence to substantiate their claim that curlew are present on the site or that they were required to change their agricultural practices in their submitted grounds of appeal or subsequently when provided with an opportunity to do so by the FAC. The FAC does not consider that there is any evidence before it that curlew are nesting on the site or that the assessment by the DAFM was deficient in this regard and the FAC was not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds of appeal.

The DAFM's assessment of an application is recorded and summarised mainly through the document "Assessment for EIA Requirement". The Forestry Regulations 2017 do not appear to provide for a threshold below which screening for EIA is not required. It would appear that the Minister for Agriculture must undertake a screening for EIA in relation to all afforestation applications. It is a

requirement that in reaching a screening conclusion that no EIA is required the competent authority must provide reasons. The DAFM employ a checklist system to record its screening conclusion, an approach that has been suggested in guidance from the European Commission (Environmental Impact Assessment of Projects Guidance on Screening, 2017). However, even with a checklist approach a narrative explanation may be required as described in that guidance document. The approach adopted by the DAFM does provide for the inclusion of narrative explanation but only limited comments were made in this instance.

The FAC noted the section *Natural Resources: Water and Freshwater Pearl Mussel (FPM)* and the following questions,

- Is the project area within or immediately upstream of the sub-basin(s) of a lake waterbody deemed to be 'At Risk' or subject to review under the current River Basin Management Plan? No

- Is the project area within or immediately upstream of the sub-basin(s) of a lake waterbody, the status of which is 'Bad' or 'Moderate' under the current River Basin Management Plan? No

In this instance, the land is located within the Clogher Roscommon 10 subbasin that drains into the Cavetown lake which is located at the centre of the sub-basin. The Cavetown lake has been classified as of Moderate status and at risk in relation to the objectives of the Water Framework Directive for the second and third assessment cycles. In addition, this section includes a number of factual statements but no details or explanation of the likelihood of significant effects arising. The FAC considered these to constitute errors.

The FAC further noted that in relation to the consideration of potential cumulative effects, the responses recorded only related to forestry projects. The FAC would understand that it is a requirement that the likely significant effects of other relevant plans and projects must be considered and not just those of the same type of project that is the subject of the screening. There is a short comment that refers to an in-combination report “uploaded to contacts” but no explanation as to what was considered such that an interested member of the public might understand the decision. This would appear to relate to the DAFM’s record of the consideration of other plans and projects in combination with the proposal for the purposes of screening for Appropriate Assessment in relation to potential significant effects on European Sites. However, that screening serves a specific and limited purpose in relation to certain protected species and habitats and it is unclear what was considered as part of the EIA screening. The FAC considered the failure to consider potential significant effects arising from potential cumulation of effects with non-forestry projects to constitute an error.

The following is also recorded,

Is the project area partially within a SPA? Yes

While this appears to be a typographical error and the details of the relative location of the proposal to a European site is recorded elsewhere, this is not a correct statement.

The FAC further reviewed the screening for Appropriate Assessment as recorded by the DAFM. The FAC noted that the screening document does not identify the interests of the Special Area of Conservation and Special Protection Areas (SPA) that are considered and that this would constitute an error. Furthermore, the FAC noted the following conclusion was recorded,

It is concluded that there is no likelihood of the proposed Afforestation project CN93945, 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 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.

The FAC was satisfied that this would constitute a further error.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a series of errors was 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 CN93945 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 and to also undertake a new EIA screening, in keeping with the requirements of the EU EIA Directive and the Forestry Regulations 2017 prior to the making of a new decision.

Yours sincerely,

A redacted signature consisting of a solid black oval followed by a horizontal line with a small vertical tick at the end.

Vincent Upton on behalf of the Forestry Appeals Committee