



25/08/2025

**Subject:** Appeal FAC097/2023 in relation to afforestation licence CN91382

Dear !

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

#### **Hearing & Decision**

The FAC considered appeal FAC097/2024 during a sitting of the FAC on the 12/06/2025. In attendance:  
**FAC Members** – Mr. Myles Mac Donncadha (Deputy Chairperson), Mr. Vincent Upton & Mr. Derek Daly  
**FAC Secretary** – Ms. Aedín Doran

The FAC considered all of the documentation on the file, including application details, processing of the application by the Department of Agriculture, Food, and the Marine (DAFM), the grounds of appeal, and all other submissions, before deciding to set aside and remit the decision of the Minister regarding licence CN91382.

#### **Background**

The approval under appeal was issued by the DAFM on 07/12/2023, subject to conditions, and is for the afforestation of 7.05ha in Moneygaff east, Co. Cork. The proposed development consists of three plots: both Plot 1 (0.69ha) and Plot 2 (5.82ha) are for the planting of Sitka spruce (80%) and additional broadleaves (20%). Plot 3 (0.54ha) is to be left unplanted. A *Habitat Map* on the DAFM's Forestry Licence Viewer (FLV) dated 17/08/2022 indicates areas of Wet Grassland and, Wet Heath corresponding to Plots 2 and 3, respectively.

#### **Site Details**

The *Site Details Report* on the FLV states the soils on-site are a mixture of Peat and "Other" and the site is "moderately exposed" with a northerly aspect. Ordnance Survey Ireland's Geohive Map Viewer indicates the elevation is c.180m. The proposal is on enclosed land, has existing vegetation cover of grass, grass/rush, bracken, mollinia, calluna, furze and there is "adequate site access". As reflected in the original *Site Details Report*, Plot 3 is wholly contained within Plot 2 and reduces the net area of plot 2 in the application to 5.28 ha, rather than the 5.82 in the licence approval.

The proposal is in the Lee[Cork]\_SC\_050 Sub-Catchment and the Bride (Lee)\_010 River Sub-Basin. The Bride (Lee)\_010 according to the 2016-2021 assessment has a 'Good' water quality status and is deemed to be

'Not at Risk' under the WFD Cycle 3 assessment. As per the Bio Map, the Bride runs along the northeastern boundary of Plot 1 and joins the Lee about 30kms away in Ballincollig.

#### **Operational Details**

Appendix A of the Approval Letter lists the operational details, which is in the main recorded as "not entered", except for the information that 1,200m of fencing will be installed. However, the application documentation and Appropriate Assessment (AA) Screening Report provides additional information that, as per standard practice, mounding and drainage will be required and fertiliser and herbicide will be used in year 0 and year 2.

#### **DAFM AA Process**

The FLV contains an AA Screening Report & Determination (AASRD), dated 30/11/2023, prepared by a DAFM appointed ecologist. The proposed project is described, and the soils on-site are noted as a mixture of acid brown earth, brown podzolics, gleys, peaty gleys with blanket peat forming 42% of the area. The map in this document shows plots that are slightly different to that of the application itself, in that plot 3 adjoins the stream bank in the AASRD. The slope is predominantly flat to moderate (<15%) and the project area adjoins an aquatic zone. The vegetation types within the project area are said to be dominated by Wet Grassland (GS4) at 70% and scrub at 10%.

Appendix A of this report is an in-combination assessment that was run on 30/11/2023. In-combination assessments that pre-date this document are also on file in the FLV that are dated 17/01/2023 and 22/09/2023. The AASRD concludes that the project does not need to advance to the Appropriate Assessment stage because there is no likelihood of the project having any significant effect, either individually or in combination with other plans or projects, on the European sites of The Gearagh SAC IE0000108, The Gearagh SPA IE0004109, or Bandon River SAC IE0002171.

#### **DAFM Assessment to Determine EIA Requirement**

The DAFM completed an Assessment to Determine EIA Requirement, dated 07/12/2023, which considered the proposal's potential impact on the environment across a range of criteria before concluding that the application should not be subject to the EIA process. The assessment acknowledges that the site contains areas of soil type that are ineligible for afforestation but that the design has been changed to reflect this.

#### **Referrals**

The DAFM referred the application to the Cork County Council and An Taisce on 24/10/2022, receiving one reply from the latter on 22/11/2022 stating its concerns across a number of topics, namely Water Quality, High Status Sites, and Setback from watercourses; Fertiliser; Badgers; Molinia Meadows; Cumulative Impacts; and High Nature Value Farming and Broadleaf Species.

The application was also considered by a DAFM Archaeologist who prepared a report and recommended specific conditions which were subsequently included in the licence.

#### **Licence**

The approval letter was issued on the on 07/12/2022 and conditions 1-4 are relatively standard.

Condition 5 requires compliance with the following;

- i) All existing trees and hedgerows within the site shall be retained,
- ii) Adherence to the Environmental Requirements for Afforestation and the Forestry Standards Manual,
- iii) Observe all recommendations and specific conditions in the archaeological report (dated 29/11/2022) and listed as a condition.
- iv) Exclude blue area on the attached peat survey map.

#### **Grounds of Appeal**

There is one appeal against the licence (FAC097/2023). The grounds of appeal were considered in full by the FAC and the following is a summary of the issues raised:

1. Annex 1 Habitat/Molinia meadows: An Taisce's proposal that an ecological assessment be carried out prior to granting any approval was ignored and that the presence of Annex 1 habitat "Molinia Meadows" would be confirmed by site visit.
2. High Nature Value farmland (HNVf) issues including birds: the site supports a long list of both Red status species that are breeding at the site, and Amber species that frequent it. Despite its small size, the site has significant ecological value and its loss would create an outside deleterious effect, given that it may be the last such habitat on the Bride River. The An Taisce submission calls attention to the potential for this area to be classed as High Nature Value farmland and calls on an ecological assessment to determine the situation.
3. Cumulative Impacts: more consideration needs to be taken of the cumulative impact of afforestation, even of small plots, and of the tree species used.
4. Invasive species: why has no assessment been made of the risk of invasive plant species?
5. Flooding: the site is inherently prone to flooding or water absorption; if planted, there could be downstream effects that have not been assessed.

#### **DAFM Response**

The DAFM provided a written response dated 10/02/2025 to the grounds of appeal in the form of a Statement of Facts (SoF) to the FAC. The DAFM Administration response states that "the decision was issued in accordance with our procedures, S.I 191/2017 and the 2014 Forestry Act." and responded to the numbered grounds of appeal as follows:

1. The area of wet heath was identified by the applicant's ecologist and this area was excluded from the application as a result of that assessment. The Department conducted a field inspection on the 2nd of February 2023 and accepted the vegetation assessments carried out. The Department found no evidence of other Annex 1 habitats or Molinia meadows on site.
2. The area does not fall within the HNVf layer that requires the Department to carry out a specific HNVf assessment as part of the application. An ecologist carried out a vegetation assessment on site and an area was excluded as a result of wet heath found on site. There are no records on file for any of the protected species outlined by the appellant. To note, the Appropriate Assessment Determination dated 30th November 2023 specifically notes that all of the submission around species/habitats were considered by them. If there had been any concerns the Department would be obliged to carry out further due diligence to ascertain if any negative impacts could arise as a result of this proposal. This was not deemed necessary in this case.
3. The Department carried out a detail sub-threshold EIA screening for this project. As part of this it was identified that approximately 10% of the River Sub-Basin BRIDE (LEE)\_010 is covered in forests. This figure is generally in line with the national forest cover figure for Ireland. The Department conducted an in-combination assessment and found that this tree planting project alone or in-combination with other forest and non forest projects would not have a significant impact on the environment. As part of the conditions of approval, the applicant must adhere to strict conditions including those outlined in the Environmental Requirements for Afforestation & the Forest Standards Manual.
4. No invasive species were found on site during the Department's inspection. The appellants have not provided any evidence that there are invasive species on site.
5. The Department conducted a field inspection and utilised OPW flood risk data to assess the risk of flooding within this planting proposal. The Department found no evidence from either the field inspection or the OPW flood risk mapping to suggest that this areas floods.

#### **Submission**

There are two submissions, both from the appellant, and both of which were shared with all parties as per FAC procedures. One was received on 04/11/2022 (before the approval) and a second was received on 31/03/2025 in response to the Statement from Inspectorate (dated 10/02/2025). The initial submission suggests that approval will increase flood risk downstream as it will remove the buffering capacity of the

existing marsh to absorb and attenuate flood waters; that approval, in combination with approval for a neighbouring windfarm, will raise the risk of fire in the locality; that approval will reduce the ecological value of the environment within the zone of impact of a proposed nearby windfarm and thereby improve the chance of the windfarm being approved; and that scenic views will be obscured. The second submission largely reflects the grounds of appeal, including the presence of high conservation value bird species breeding on the site; the poor justification that the site is not High Nature Value farmland; the negative impact on Annex 1 Molinia meadow; that one of the few remaining semi-intact wetlands left on the entire Bride river will be destroyed to make way for Sitka spruce forestry. The FAC was of the view that the latter submission did not contain enough new material to warrant circulation to all parties.

## **FAC Considerations**

***Annex 1 Habitat/Molinia meadows:*** An Taisce's submission that an ecological assessment be carried out prior to granting any approval was not addressed by DAFM while determining the requirement for EIA.

While the application notes the presence of Molinia on site, this is one species and does not necessarily mean that the habitat of "Molinia meadows" is present. The application included a habitat map and the site was subject to a site inspection by DAFM personnel who confirmed the details of the application. While it would be preferable for the DAFM to record the details of the site visit as a standalone document, the site visit and the details of the species encountered are recorded in the AASRD.

***HNVf issues including birds:*** As stated in the SoF, the area does not fall within the HNVf layer that requires the Department to carry out a specific HNVf assessment as part of the application. In fact, the area of wet heath which is valued from a biodiversity point of view caused the proposal to be screened out of consideration as HNVf, rather than being screened in. The application excludes planting in plot 3 where wet heath was identified and the DAFM have excluded significant areas of the application, including the area surrounding plot 3, through the finding of areas of deep peat on the site. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds while errors were found as described elsewhere in this letter.

***Cumulative Impacts:*** the FAC finds that the level of forest cover in this area remains relatively low and consequently this ground of appeal is not upheld.

***Invasive species:*** No invasive species were found on site during the Department's inspection. The appellants have not provided any evidence that there are invasive species on site and as a result, the FAC finds no basis to uphold this ground of appeal.

***Flooding:*** the FAC finds that, the exclusion areas identified in the peat survey map constitute the principal areas of potential flooding. The application and conditions also include setbacks from the watercourse. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

## ***DAFM Processing of Application***

The FAC considered the DAFM's processing of the application prior to the DAFM decision to issue afforestation licence CN91382. In making a determination for the requirement for EIA, DAFM relied on the submission of a habitat map that was without any narrative description and was not clear as to what exact area was being assessed. The AASRD later referred to a habitat map but used plot mapping (particularly for plot 3 to reflect the heath area) that differed from both the habitat map and the plot mapping on the FLV. The record would suggest that the plots that were screened for appropriate assessment differed from those that were the subject of the application and licence. There was a lack of clarity on the source, date or supporting information for the habitat map (and what map was used at each stage of the approval process) is regarded by the FAC as a serious error in the processing of this application.

While reference is made in the to the exclusion of areas with ineligible soil types in the *Assessment to Determine EIA Requirement* stored on the FLV, no narrative justification is provided in the box labelled "Inspectors Comments". In the section "Natural Resources: Referral Responses and Submissions" the question "Provide a short summary of the issues raised... ..and how these issues have or will be addressed" is limited to a listing of headings from the An Taisce submission without any account as to how they were addressed. The FAC further noted that the following responses in bold were provided to these questions;

- *Does the project contain an area listed in the Wetland Survey of Ireland? **Yes***
- *Has this sensitivity been addressed by the Ecology Section and any resulting recommendation(s) enacted, either through project redesign, conditions to be attached to the afforestation licence (if issued), or refusal? **No***

The lack of any narrative or evidence of engagement with these issues by the inspector is regarded by the FAC as a serious error in the processing of this application.

The DAFM's recorded a screening for appropriate assessment in which the "in-combination" section of the screening report makes the following conclusion,

*It is concluded that there is no possibility that the Afforestation project CN91382, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report.*

The FAC would understand that this is not the correct test to employ at the screening stage and is, instead, a test to be employed in undertaking an appropriate assessment having established that significant effects might occur on a European site. The FAC considered this to be a serious error.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, additional submissions and the Statement of Fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a series of significant or serious errors was made in the making of the decision in relation to licence CN91382. The FAC is thus setting aside and remitting the decision of the Minister in relation to licence CN91382 to ensure that before a new decision is made, the Inspector's Certification and Assessment to Determine EIA Requirement is updated and a new screening for appropriate assessment is undertaken to address the errors identified by the FAC earlier in this letter.

Yours sincerely,

Myles Mac Donncadha on Behalf of the Forestry Appeals Committee

