



Eamon Flynn

21/11/2025

Subject: Appeal FAC055/2024 in relation to afforestation licence CN90471

Dear Mr. Flynn,

I refer 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 FAC055/2024 during a sitting of the FAC on the 11/09/2025. In attendance:
FAC Members – Mr. Myles Mac Doncadha (Deputy Chairperson), Mr. Luke Sweetman & Mr. Derek Daly
FAC Secretary – 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. 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 CN90471.

Background

The afforestation which is subject of the appeal is for 2.31 hectares of native woodland of pedunculate oak, downy birch, hazel and other Broadleaves in one contiguous plot at Farrannabrack, Co. Kerry. This development was previously the subject of appeal FAC197/2022 which was upheld and remitted to undertake new screening for Appropriate Assessment, and Appropriate Assessment as required, and screening for Environmental Impact Assessment before a new decision was made. The approval currently under appeal was issued by the DAFM on 21/05/2024.

Site Details

The *Pre-approval submission report* on the FLV states the soils are mineral, the site is “exposed” but with a mostly flat aspect and a low elevation. The proposal is on enclosed land, has existing vegetation cover of wet grassland and road access is provided.

Operational Details

Site preparation would be through inverted mounding with slit planting and without additional drainage or the use of fertiliser or chemical weed control. The application as submitted included operational and

environmental information and a number of maps. The biomap marks access to the site at the northern edge where the lands meet the public road and an existing track leads into and adjoins the plot. The biomap also records the location of a site notice and the documents include photos of a site notice at a roadside. The biomap shows an electrical line crossing the site and an associated setback and a dwelling setback to the northwest. The biomap marks a hedgerow and relevant watercourse bordering the plot and marks a 60 metres setback from dwellings to the west of the northwestern corner of the site.

DAFM AA Process

Following the remittal of the original application to the DAFM a number of documents were replaced. The FLV now contains a new AA Screening Report & Determination (AASRD), dated 7/2/2024, prepared by a DAFM appointed ecologist. The proposed project is described, and the soils on-site are noted as consisting entirely of surface water and ground water gleys. The average slope is moderate (1%) and the project area adjoins an aquatic zone. The vegetation types within the project area are said to be 90% Wet Grassland (GS4) with hedgerows and ditches comprising the remainder.

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 Lower River Shannon SAC IE0002165, Ballyseedy Wood SAC IE0002112, Slieve Mish Mountains SAC IE0002185, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161, Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC IE0000365. As in the AASRD for the original application, Castlemaine Harbour SAC IE0000343 was screened-in to advance to the appropriate assessment stage. The rationale was given that the project is within the same catchment as the European site and while 11.9 km distant, may have an effect on its Qualifying Interests. The DAFM completed an in-combination report at screening stage which relates to the screened-out European sites. This document is labelled "incombination screening stage" and was published on the FLV on the 09/02/2024. The document itself is titled "Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN90471" and it states that:

the potential for the proposed Afforestation project CN90471 to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM). Various online resources, datasets and DAFM's own databases were consulted on the 02- FEB-2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin MAINE_020

In considering the DAFM's AA screening, the FAC noted that the in-combination report states that:

It is concluded that there is no likelihood of the proposed Afforestation project CN90471, 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 considered that, in referring to "residual effects" at AA screening stage, it is not clear that the 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.

The FAC also noted that the in-combination report states that “Objectives relating to Natura 2000 sites set out within Kerry County Development Plan 2015- 2021 were consulted”. The FAC found the DAFM’s consideration of an outdated County Development Plan to be a significant error in their processing of the application. In these circumstances, the FAC considered that the in-combination report contains significant errors and finds that the AA screening should be undertaken again.

The DAFM completed an Appropriate Assessment Report, dated 7/2/2024, which lists mitigations for six of the qualifying interests of the Castlemaine Harbour SAC IE0000343 and concludes that the project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site and the Appropriate Assessment Determination, dated 16/5/2024, and includes a new in-combination assessment (of the same date) which supports this conclusion.

DAFM Assessment to Determine EIA Requirement

The DAFM also completed a new Assessment to Determine EIA Requirement, dated 21/5/2024, 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 now includes a value of zero (rather than a blank entry as previously) for the past level of forest cover in the townland.

Referrals

The original application was referred to the NPWS, Kerry County Council and Shannon Regional Fisheries Board (IFI). Only a response from the County Council is recorded which notes that there are no recorded monuments on the lands but that an archaeological impact assessment is recommended.

Submissions

Seven submissions were received during 2022 with respect to the original application and covered similar topics to those raised during this appeal. The FAC notes an additional three submissions received during 2025, include a response to the DAFM Statement of Fact.

Licence

The approval letter was issued on the on 21/5/2024 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) Adherence to the mitigation measures set out in the attached Appropriate Assessment Determination dated 16/05/2024

Grounds of Appeal

There is one appeal against the licence (FAC055/2024). The grounds of appeal were considered in full by the FAC and the following is a summary of the issues raised:

Ground 1 – The planting of trees will adversely affect the home life of the appellant and neighbours.

Ground 2 – Negative impact on water quality

Ground 3 – Vermin numbers will increase

Ground 4 – The general biodiversity value of the field will be negatively impacted. Reference is made to negative impacts on the Hen Harrier in an attachment by the appellant to the appeal.

Ground 5 – Access to this site from a cul-de-sac off a National Primary Route is not safe

DAFM Response

The DAFM provided a written response dated 12/03/2025 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:

Ground 1 : The licenced area of 2.31 ha will be consisting of Native Woodland. No Sitka spruce is proposed to be planted. Concerns in relation to being surrounded by forestry were taken into account and the forest is designed to incorporate additional open space areas with broadleaf planting (see Biodiversity Map). The design of the afforestation project will include the implementation of a 60 m setback unplanted area from the adjacent dwellings. The grey circled area on the biodiversity map will be left unplanted. A further setback area for the overhead ESB Powerline will also be left unplanted.

Ground 2: The afforestation licence will be planted in accordance with the Environmental Requirements for Afforestation as a condition of this approval. A mandatory Aquatic Zone (AZ) setback area will be included to exclude tree planting near all watercourses and aquatic features on site. This application was also referred to the Shannon Region Fisheries Board on the 19/10/2022 and no concerns were raised.

Ground 3: Whilst concern was raised regarding the potential of this afforestation to cause an increase in vermin was considered, it was not deemed to require a specific condition of approval.

Ground 4: The land use change by turning grassland pastures into forested land will provide a new future for many species. These species have a role to play in our ecosystems, which we depend heavily on. Forests can be safe havens for wild mushrooms, dandelions, and animals such as the hedgehogs, red fox, stoat, squirrels, and badgers plus many more. Regarding the Hen Harrier, to which DAFM responded by describing the framework of legal protection afforded the species and its habitats and how any potential impact on the Hen Harrier was considered during the in-depth Appropriate Assessment Screening Report & Determination for the specific site in question. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161, includes special conservation interests for *Circus cyaneus* (Hen Harrier, both permanent [breeding & wintering]). However, the site is outside the core foraging range for Hen Harrier. The project site does not provide any suitable foraging or breeding habitat as it is adjacent to housing and a busy road and junction. An Assessment of Additional Constraints Report for Hen Harrier dated 11/10/2023 (Advertised on the Forest Licence Viewer February 9th 2024 - AAP Assessment Form) concluded the proposed project will not result in significant negative effects on the Hen Harrier.

Ground 5: The application was referred to the Planning Department of Kerry County Council on the 19/10/2022 and no concerns were raised. Public roads are the responsibility of the Local Authority, who maintain and expand the county road network as required, to take account of emerging uses. Currently, the existing state of the public road is deemed sufficient for the type of machinery required for afforestation. The Forestry Manual clearly states under Section 5: General Site Requirements, Sub-section 5.2.2 Adequate access - "In a situation where there are no proposals for a forest road, the land should be accessible from the public road by forwarders and other terrain vehicles. Adequate access is deemed

relevant for afforestation purposes once the proposed lands are adjoining a public road". The project is serviced by an access road leading directly to the public road and was deemed sufficiently accessible by this department.

Additional Submissions

In addition to the appeal itself, submissions received from the appellant and the applicant were considered by the FAC. Most of these issues raised were contained in the appeal itself. The submission topics included insufficient drainage, the poor suitability of local roads for heavy machinery, insufficient setbacks and the general impact of tree planting on the appellants household.

FAC Considerations

Ground 1 – The planting of trees will adversely affect the home life of the appellant and neighbours.

The ground of appeal is noted by the FAC as a genuine cause of concern for the appellant and family. The application describes planting of native trees, the use of significant setbacks and how submissions were considered. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

Ground 2 – Negative impact on water quality

The application was subject to the full process of species and habitat protection measures. Extensive mitigations (listed in Section 4 of Appropriate Assessment Determination) are provided as a condition to the approval. The Assessment to Determine EIA Requirement assessed the proposal from a variety of potential environmental receptors, including water, and concluded that no further assessment was needed. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

Ground 3 –Vermin numbers will increase.

The FAC is of the view that planting of native trees is not generally linked with an increase of vermin but rather, may increase the potential prey of native bird and other species. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

Ground 4 – The general biodiversity value of the field will be negatively impacted

The application was subject to the full process of species and habitat protection measures. Extensive mitigations (listed in Section 4 of Appropriate Assessment Determination) are provided as a condition to the approval. The FAC consider that the conversion of grassland to native forest, together with setbacks for dwellings, transmission lines and watercourses, is likely to improve the biodiversity status of the field rather than diminish it. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

Ground 5 – Access to this site from a cul-de-sac off a National Primary Route is not safe.

For the purposes of afforestation the road adjoining the site is considered by the FAC as suitable access. 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 CN90471 and notes that the weaknesses identified in the processing of the previous application for this site were addressed. The points raised in submissions were already encompassed in DAFM's appraisal of the project, including in its Assessment for the requirement for an EIA. The FAC notes that in processing the original application DAFM decided not to request an archaeological impact assessment as the site was greater than 200m from any known monument.

In considering the licence under appeal, the FAC noted that the operational proposals set out in Appendix A of the approval letter, except for 340m of stock fencing, are described as "Not Entered". The FAC considered that there are circumstances where the application documents on the record of a decision may record the operational details in such a way as to be satisfactory, meaning that the lack of Operational Details being transposed into a licence approval letter may be considered an insignificant clerical error. In this case, the "Operation details" are set out in Section 2 of the AASRD. The proposed details in this section are in line with the establishment of native woodland e.g., invert mounding, no fertiliser application, manual vegetation control. However, the FAC noted that the 680m of stock fencing included in this description is double the amount that is approved in the licenced proposals. In the circumstances that this decision is being remitted for significant errors made in the AA screening process, the FAC considered that, in the event of any future approval decision, the DAFM should ensure that Appendix A of the approval letter contains complete and accurate details of the approved operational activities.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the Statement of Fact submitted by the DAFM, and all further submissions. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that significant errors were made in the making of the decision in the DAFM's screening for AA as outlined previously in this letter. In these circumstances, the FAC decided to set aside and remit the decision to the Minister to undertake a new screening for AA, before making a new decision in relation to the application for CN90471.

Yours sincerely,

Myles Mac Doncadha on Behalf of the Forestry Appeals Committee