



9th September 2025.

Subject: Appeal References: FAC 058/2024, 059/2024 & 060/2024 regarding CN91128.

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and 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 the parties to the appeal.

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, materials on file as displayed on the Forestry Licence Viewer (FLV), the notice and grounds of appeal and post-appeal submissions and the considerations set out below the FAC has decided to set aside and remit the decision of the Minister regarding licence CN91128.

THE LICENCE.

Licence application CN91128 is for the planting of 16.3 Ha. of Native Forest comprising of Pendunculate Oak, Birch and other Additional Broadleaved species in 7 Plots located in the townland of at Ballynastockagh, Claremorris, Co. Mayo.

The application was published on the DAFM Forest Licence Viewer (FLV) on 19/08/2022. A decision approving the licence was issued on 24/05/2024 with conditions including: Standard tree planting licence conditions, compliance with mitigation measures in DAFM Appropriate Assessment Determination (AAD), an unplanted public road setback of a minimum width of 10 metres accompanied by a 10 metre wide strip of low growing shrub species, shall be installed in all conifer plots adjoining a public road, to contact Inland Fisheries Ireland (IFI) to design and implement the planting to maximise aquatic habitat benefits and compliance with the measures in the DAFM Archaeology Report.

FORESTRY APPEALS COMMITTEE.

A hearing was held remotely at a sitting of the FAC held on the 26/08/2025 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on 24/05/2024.

The FAC members present were: Mr. Donal McGuire (Deputy Chairperson), Mr. Vincent Upton and Mr. Iain Douglas.

Secretary to the FAC: Mr. Radosław Wojtczak.

BACKGROUND.

The habitats on-site are described as Wet Grassland (GS4), Semi-Improved Acid Grassland (GSi3), with Earth Banks (BL2) and Hedgerows(WL1) being present throughout the site. The Dalgan River, (a Depositing/Lowland River -FW2) borders the eastern boundary of Plot 1 and there are Drainage Ditches (FW4) present throughout Plot 1 and bordering the western and northern boundaries of Plot 6. The dominant vegetation on-site consists of grass and rush.

The soil types on the site are stated to be Basin Peats, Blanket Peats (some)(29%) & Grey Brown Podzolics, Brown Earths(medium-high base status)(52%) & Lithosols, Peats(1%) & Surface water Gleys, Ground water Gleys(10%) & Variable(8%). The slope of the site is described as being moderate (15% or less). The Dalgan River is identified as an aquatic zone and the drains on the site are identified as relevant watercourses.

The site lies in the Water Framework Directive (WFD) Corrib (30) Catchment and the Clare[Galway]_SC_010 sub-catchment. The site is located in the Dalgan_30 Sub-Basin. The River Waterbody Dalgan_030 (EPA Name Dalgan River) forms eastern boundary of Plots 1 & 7 and provides hydrological connectivity with Lough Corrib SAC (Site Code 000297) some 2km downstream of the site. The Dalgan River was of Good Status in the 2016-2021 monitoring period and is Not at Risk in the 3rd cycle and Forestry is not identified as a pressure on this river. The underlying Groundwater body is the Clare-Corrib IE_WE_G_0020 which was of Good Status in the period 2016-2021 and is Not at Risk in the 3rd cycle.

The application documents before the FAC included Inet an Pre Approval Submission Report and Fencing map uploaded to the FLV 19/08/2022, a Site Notice dated 19/08/2022 and a Natura Impact Statement (NIS) dated 12/08/2022, Bio Diversity/Operational Map dated 12/07/2022, Flood Report 30/11/2020, Flood Extents Map 30/11/2020. Following a Request for Further Information dated 26/03/2024 the applicant submitted a Drainage Survey and Flood Risk Assessment Map dated 30/11/2020.

The licence application was referred to IFI on 19/04/2024 which replied on 16/05/2024 confirming that the stretch of the Dalgan River adjoining the proposed planting contains suitable spawning habitat for salmon and is utilised for salmon spawning and requesting four additional measures in addition to the requirements of the Forestry and Water Quality Guidelines in the event of the licence being granted.

On the DAFM file there is an Inspector's Certification Report, a Site Details Report, an Assessment to Determine EIA Requirement, a Site Plots Report all dated 24/05/2024, an Appropriate Assessment Determination (AAD) dated 20/05/2024, the IFI Report dated 16/05/2024, an AAD In-combination Report dated 03/04/2024, the Request for Further Information dated 26/03/2024, a Breeding Wader Recording Report dated 15/02/2024, an Archaeology Report dated 20/04/2023, a High Nature Value farmland Assessment (HNVf) Report dated 17/11/2023 and an Appropriate Assessment Screening Report and Determination (AASRD) dated 06/10/2022. On the DAFM file there are also a number of undated documents; a Habitat Map, an aerial photograph retaining Plot 7 as BIO, Site Photographs, a Site Photograph showing all plots as FT1 and plot 7 as Bio and a response to issues raised in the submissions on the licence application.

The applicant's NIS assessed the potential impacts of the proposed planting on Lough Corrib SAC and concluded that

It is objectively concluded, in light of the above objective scientific information, that, when the above mitigation measure(s) is / are implemented, the project, individually or in combination with other plans and projects, will not have an adverse effect on

the integrity of any of the European Sites listed in Section 2 above, in view of their conservation objectives and in view of best scientific knowledge.

The DAFM AASRD identified 11 Natura 2000 within 15 km of the site and screened out 10 of them on the basis of distance and lack of hydrological connectivity. The AASRD required Lough Corrib SAC to proceed to Appropriate Assessment Stage 2.

The DAFM carried out an Appropriate Assessment of the project using a significant number of sources of information including the applicant's NIS, responses from consultation bodies and submissions from 3rd parties, the DAFM AASRD, assessments concerning Breeding Waders and High Nature Value Farmland (HNVF), Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for Lough Corrib SAC.

The DAFM AAD was carried out by a consultant ecologist on behalf of the DAFM which concluded that the proposed planting, subject to a number of mitigation measures, *"individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives"*.

Submissions.

There were four third-party submissions on this licence application.

THE APPEAL.

There are three third-party appeals against the decision to approve licence application CN91128.

The grounds of appeals are summarised as follows:

FAC 058/2024

- Area is identified as an area for Breeding Farmland Wading birds
- Double standards are being applied when forestry can be planted on lands for Breeding Farmland Wading birds, but farmers cannot get grant aid to plant boundary hedges under the Agri-Climate Rural Environmental Scheme (ACRES).
- The Meadow Pipit (Red listed), Snipe (Amber listed) and Sky Lark (Amber listed) are recorded as being present on the site in large numbers, but the environmental report does not recommend the area being left in its current condition.
- Plot 7 is to be omitted from planting, but the Meadow Pipit, Snipe and Sky Lark do not conform to lines on a map.
- The environmental report states that adjacent fields are suitable for breeding & nesting of the Meadow Pipit, Snipe and Sky Lark but does not refer to Plots 1,2 or 6.
- Previous submissions are still valid.
- The planting will result in 20% of Ballynastockagh being taken out of farming use and the area has always been farmed
- The access road setback is inadequate; in time the trees will reduce accessibility.
- The appeal fee for a previous appeal which was withdrawn should be returned.

FAC 059/2024

- The planting will result in 20% of Ballynastockagh being taken out of farming use and the area has always been farmed.
- What measures have been taken to prevent the Oak Processionary Moth being introduced to Ireland?
- Adverse impact on scenic landscape
- Leaf litter from Plot 5 will cause pollution and block drains & watercourses and endanger pedestrians.

- Area is within a Birdwatch Ireland Breeding Wader Hot-spot map where DAFM ecologist noted Meadow Pipit (Red listed), Snipe (Amber listed) and Sky Lark (Amber listed) are recorded as being present on the site as well as Kestrel (Red listed), Kingfisher (Amber listed) and Buzzard. Forestry would destroy nesting sites.
- Current land use more eco-friendly.
- The appeal fee for a previous appeal CN83087 should be returned.
- Oral Hearing requested.

FAC 060/2024

- The appeal fee for a previous appeal CN83087 should be returned.
- Proposed forestry will impact the village of Ballynastockagh.
- House enclosed by trees main road not visible
- Plots 2 & 6 remain to be planted and access to the main road in the event of a fire will still be blocked.
- Fire hazard, only one access to the main road 200m away.
- Devaluation of property, direct sunlight to house affected
- Spring well between Plots 2 & 6 will be closed in.
- Oral Hearing requested.

Post-Appeal Submissions.

The appellants made post-appeal submissions in response to the DAFM Statement of Fact (SoF), these were circulated to the other parties. The DAFM indicated it would not be responding to the submission, the applicant did not respond.

In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submissions the FAC deemed the matters raised to be an elaboration or clarification of points raised by the third-party in his grounds of appeal proper.

CONSIDERATION BY THE FAC.

At its sitting on the 26th of June 2025, the FAC had before it the DAFM record of the decision as made available on the FLV, the notice and grounds of appeal, the Statement of Fact (SoF) provided by the DAFM, post-appeal submissions and all materials on file. Having reviewed all the documentation and submissions, including those of the appellants, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing. The FAC noted that all three appeals referred to a previous decision of the FAC on licence reference CN83087, in the interest of clarity and for the avoidance of doubt this sitting of the FAC considered appeal refs. FAC 058/2024, FAC 059/2024 and FAC060/2024 only in relation to licence CN91128 issued on 24/05/2024.

DAFM STATEMENT OF FACT

A SoF dated 26/03/2025 was provided by the DAFM for each of the appeals. The SoF confirmed the administrative details of the licence application, and states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The SoFs contain specific responses to the grounds of appeal.

GROUND OFS OF APPEAL.

In the interest of expediency, a number of grounds of appeal are dealt with in common as they related to two or more of the appeals, the other grounds are dealt with individually under each appeal reference.

Common Grounds

Breeding Farmland Wading Birds.

This ground of appeal is common to FAC 058/2024 and FAC 059/2024 and contends that the area is within a Birdwatch Ireland Breeding Wader Hot-spot map where Meadow Pipit (*Anthus pratensis*) (Red listed), Snipe (*Gallinago gallinago*) (Amber listed) and Sky Lark (*Alauda arvensis*) (Amber listed) are recorded as being present on the site as well as Kestrel (*Falco tinnunculus*) (Red listed), Kingfisher (*Alcedo atthis*) (Amber listed) and Buzzard (*Buteo buteo*) and that the proposed planting would impact on those bird species. The FAC noted the response to this ground of appeal marked as ground 1 of the DAFM SoF for FAC 058/2024 and ground 2 of the DAFM SoF for FAC 059/2024 both dated 26/03/2025. The FAC further noted that DAFM had prepared a report (Breeding Wader Recording Form) which identified that the site is sub-optimal habitat for Breeding Snipe and that Plot 7 and the adjoining field to the north (which is not part of the licence application site) is suitable breeding and nesting habitat for Meadow Pipit and Sky Lark. The FAC noted that the Operational Proposals set out in Appendix A of the licence indicates that Plot 7 is to remain unplanted. It is clear from the record that the site was inspected, its characteristics with regard to bird species recorded and measures identified to protect the breeding and nesting habitat of the red and amber species found on the site. No evidence was adduced to demonstrate these measures would result in an adverse impact on these bird species and the FAC is not satisfied that the DAFM evaluation of this particular site contained a serious error.

Forest Cover in the Townland

This ground of appeal is common to all three appeals and contends that the proposed planting will increase the area under forestry in the townland of Ballynastockagh to 20%. The FAC noted the response to this ground of appeal marked as ground 3 of the DAFM SoF for FAC 058/2024, ground 1 of the DAFM SoF for FAC 059/2024 and ground 1 of the DAFM SoF for FAC 060/2024 all dated 26/03/2025. The extent of forest cover is addressed in a series of questions relating to the cumulative effect and extent of project contained in the section titled "*Project Location*" of DAFM Assessment to Determine EIA dated 24/05/2024. The FAC noted that it is stated in that document that forest cover within 5km of the site is at present is approximately 9.85% of the land cover having increased by 0.34% over the last 5 years and has increased by 1.71% over the last 5 years to approximately 5.1% in the river sub-basin and are currently both below the national average of 11%. The FAC noted the concluding question in the section titled "*Project Location*" is "*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?*" and the response given is "*No*" and a commentary and reasons for that conclusion area given in the final box of that section. In light of the data and explanation for the Inspector's conclusion the FAC is not satisfied that the DAFM evaluation of this particular matter contained a serious error.

Access Road Setback

This ground of appeal is common to FAC 058/2024 and FAC 060/2024 and contends that the setback from the access road is insufficient and that in time the trees would impede access and that this access road is the only access to the village of Ballynastockagh in the event of fire. The FAC noted the response to this ground of appeal marked as ground 3 of the DAFM SoF for FAC 058/2024, and ground 2 of the DAFM SoF for FAC 060/2024 both dated 26/03/2025. The FAC noted that Plot 6 which fronts the house of appellant FAC 060/2024, and the access road has a dwelling set back of 60 metres which will be free of planting and that the remainder of the access road has an unplanted public road setback of 10m with a further 10m strip of low growing shrub species. The FAC noted tat the licence condition specifying the road set back and shrub planting refers to "*all conifer plots adjoining a public road*" since the licence is for the planting of Native Forest and Additional Broadleaved species the FAC takes this to be typographical error. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Appeal Fee

This ground of appeal is common to all three appeals and request a return of the €200/- fee paid for a previous appeal on this site (CN83087) which was set aside. The FAC noted the response to this ground of appeal marked as ground 4 of the DAFM SoF for FAC 058/2024, ground 3 of the DAFM SoF for FAC 059/2024 and ground 5 of the DAFM SoF for FAC 060/2024 all dated 26/03/2025. The FAC finds that where a person wishes to make an appeal under the Agriculture Appeals Act 2001 (as amended) in respect of forestry licencing a €200 appeal fee is payable. The FAC further finds that the said fee is prescribed in Article 10 of the Forestry Appeals Committee Regulations 2020 and is a matter for the Minister to determine and is outside the remit of the FAC.

FAC 059/2024

Invasive Species

This ground of appeal refers to the possibility of the introduction of the Oak Processionary Moth, an invasive species, in the light of the proposed planting of Pendunculate Oak. The FAC noted the response to this ground of appeal marked as ground 1 of the DAFM SoF for FAC 059/2024 dated 26/03/2025. The FAC noted that the Forest Standards Manual 2024 sets out the origins/provenances of seed for broadleaf species acceptable to the DAFM and that condition 2 of the licence requires compliance with the Forest Standards Manual. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Impact on the landscape

This ground of appeal contends that the proposed planting will have an adverse impact on the landscape of a scenic area. The FAC noted that in the Mayo County Development Plan 2022-2028 the landscape in which it is proposed to plant is characterised as *"Policy Area 4 Drumlin & Inland Lowland"* where forestry is deemed to have a *"low potential to create adverse impacts on the existing landscape character"*. Taken together with the measures outlined in the response to this ground of appeal marked as ground 1 of the DAFM SoF for FAC 059/2024 dated 26/03/2025, the mitigation measures set out in the DAFM AAD and conditions of the licence, the FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Leaf Litter

This ground of appeal contends that leaf litter from Plot 5 will cause pollution and block drains & watercourses and endanger pedestrians. The FAC noted the distance from Plot 5 to the nearest relevant watercourse and the fact that there are mature hedgerows between the two to intercept leaf litter, the FAC also noted the distance between Plot 5 and the Dalgan River. Taken together with the response to this ground of appeal marked as ground 1 of the DAFM SoF for FAC 059/2024 dated 26/03/2025, the FAC does not consider that the DAFM erred as it relates to this ground of appeal.

FAC 060/2024

Impact on Residential Amenity, Views & Daylight.

This ground of appeal contends that the appellant's dwelling will be surrounded by trees and that his view to the main road will be blocked and that direct sunlight to the appellant's dwelling will be affected. The FAC noted the response to this ground of appeal marked as ground 3 of the DAFM SoF for FAC 059/2024 dated 26/03/2025. The FAC noted that the site was inspected on the ground and that publicly available aerial photography shows existing broadleaved trees to the north and west of the dwelling and on the southern boundary of the house site. The FAC further noted that that the biomap submitted with the licence application shows the nearest planting south of the dwelling to be ca. 100m from the dwelling exceeding the standard dwelling set back of 60m as set out in the Forestry Standards Manual 2024. The FAC is not satisfied that an error was made on this matter.

Spring well between Plots 2 & 6 will be closed in.

This ground of appeal contends that a natural spring well will be closed in by the proposed planting. The FAC noted the response to this ground of appeal marked as ground 4 of the DAFM SoF for FAC 059/2024 dated 26/03/2025. The FAC noted condition 4 of the DAFM Archaeology report dated 20/03/2023 and that the conditions of the Archaeology Report are incorporated into the licence conditions. The proposal is for the establishment of native woodland on agricultural land. The FAC is not satisfied that an error was made on this matter.

APPLICATION DOCUMENTATION.

Natura Impact Statement.

In reviewing the NIS dated 12/08/2022 the FAC noted that in Section 2: *Screened-in European sites – Potential Impacts & Proposed Mitigation (if possible)* the name and conservation objectives for one species and the name of another species have been redacted and it is not clear from the table whether mitigation measures are being applied to those species or not. 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 redaction and lack of clarity in Section 2 of the NIS undermines the complete, precise, and definitive requirement of such an assessment and that this represents a serious error in the making of the decision.

Mitigation Measure in the NIS & AAD.

In reviewing the NIS as submitted by the applicant the FAC noted that Section 5 of the NIS *Collated Mitigation Measures* deals with mitigation measures to avoid adverse effects of the proposed project on the Qualifying Interests (Qis) and Conservation Objectives of the Lough Corrib SAC. The FAC further noted that section 4 the DAFM AAD *Appropriate Assessment Determination* also set out mitigation measures to avoid adverse effects of the proposed project on the Qualifying Interests (Qis) and Conservation Objectives of the Lough Corrib SAC and that there are significant, material differences in the mitigation measures between the two documents. This includes the specification of setback areas which are larger in the NIS than those conditioned by the Minister.

From the procedure adopted in relation to the processing of this application it appears that the NIS was prepared but no Appropriate Assessment Report was prepared by the DAFM before the AAD was undertaken by the Minister. Having regard to the Forestry Regulations 2017, the FAC considers that this may be acceptable in practice where there is a clear consistency in the reasoning in the assessment undertaken by the Minister with that in the NIS, or that any significant inconsistencies are explained and where the assessment and conclusions are clear, definitive and complete.

In relation to the AAD, the measures specified by the DAFM are significantly different from that contained in the NIS and there is no explanation as to how the measures came to be specified or how they address the requirement to ensure that no impacts on the integrity of the site arise where a licence is granted at the stage that it was. The FAC considers that the overall assessment contains significant lacunae and lacks clarity and precision and that this represents a serious error in the making of the decision.

DAFM In-combination assessment.

In reviewing the AASRD for this project the FAC noted that in screening out the various Natura 2000 sites the DAFM made the following determination:

“For the purpose of compliance with Section 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), as the project will not have any significant effect, alone or in combination with other plans and projects, on the

European Sites listed above, DAFM also determines that the project will not adversely affect the integrity of these European Sites."

The FAC further noted that the AASRD was not accompanied by an In-combination assessment of other plans and projects which substantiates this determination. The FAC considers this to be a serious error as it suggests that the screening undertaken did not consider effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site. The FAC considers that the decision should be set-aside and remitted for a new screening for Appropriate Assessment to be undertaken, and Appropriate Assessment as required, before a new decision is made. The screening should consider the potential for significant effects to arise from the felling and replanting application itself and in-combination with other plans and projects.

In reviewing the AAD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91128) of 03/04/2024 the report relies on Mayo County Development Plan 2014-2020 and further noted that the current Mayo County Development Plan 2022-2028 was adopted on 29/06/2022 and therefore the In-combination Reports refer to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

Environmental Impact Assessment

The DAFM's Environmental Impact 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. 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. The FAC considered the failure to consider potential significant effects arising from potential cumulation of effects with non-forestry projects to constitute an error.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoF submitted by the DAFM, and the post-appeal submissions from the parties. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that series of significant or serious errors was made in the making and processing of the application in relation to licence CN91128. The FAC is, thus, setting aside and remitting the decision of the Minister to undertake a new Appropriate Assessment of the proposal itself and in combination with other plans or projects keeping with the requirements of Article 6(3) of the EU Habitats Directive and the Forestry Regulations 2017 prior to the making of a new decision.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee