



9th September 2025

Subject: Appeal FAC130/2024 in relation to the decision to grant tree felling licence WW04-FL0146

Dear

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 FAC130/2024 was held remotely on the 26th August 2025.

In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas & Mr. Vincent Upton.

FAC Administration: Mr. Radoslaw Wojtczak

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, the Statement of Fact (SOF) from the Department of Agriculture, Food, and the Marine (DAFM) and submissions received, the FAC has decided to set aside and remit the decision of the Minister to grant tree felling licence WW04-FL0146 for the reasons set out hereunder.

Background

The appeal relates to the decision of the Minister to issue a tree felling licence on 10.41 hectares at Lugduff, Co. Wicklow. The licence was granted on 5th November 2024 subject to conditions.

The tree felling licence application was dated 26th March 2024 and submitted by the forest owner. The application included details of the lands and the forest and including a series of maps. Environmental

features are identified on the maps along with relevant watercourses, forest roads and other features. An existing forest road adjoins the southern boundary of the plot and a Special Area of Conservation and Special Protection Area lie to the north. The area to be felled is comprised of a number of sub-plots containing mature Sitka spruce with a small area of Corsican pine noted.

The Applicant also submitted an "Appropriate Assessment Pre-Screening Report" dated 5th July 2024 for "Clearfell and Reforestation project WW04-FL0146, located at Lugduff, Co. Wicklow". This document provides further details of the proposal and the lands. It identifies European sites within 15km of the proposal and whether a pathway might exist with European sites outside of this distance. Six European sites are identified specifically and potential significant effects on their interests are considered. The proposal lands are recorded to have a very small overlap with Wicklow Mountains SPA and bound Wicklow Mountains SAC and the proposal is screened in for Appropriate Assessment in relation to both European site.

The Applicant submitted a Natura Impact Statement dated 5th July 2024 "for Clearfell and Reforestation project WW04-FL0145, WW04-FL0146 and WW04-FL0147, located in the vicinity of Lugduff, Co. Wicklow". This document identifies the interests and associated objectives of each of the "screened in" sites, specifies likely effects and the proposed measures to address the likely effects. Other plans and projects considered in-combination with the proposal are also identified. The document concludes,

It is objectively concluded, beyond reasonable scientific doubt, in light of the above objective scientific information, that, when the above mitigation measures are implemented, the project, individually or in combination with other plans and projects, will not have any residual adverse effects on the integrity of any of the European Sites, in view of their conservation objectives and in view of best scientific knowledge.

The application was referred to the Local Authority, the National Parks and Wildlife Service and Inland Fisheries Ireland but no response is recorded from any of these authorities.

The DAFM conducted a screening for Appropriate Assessment, dated 29th July 2024, and identified six European sites within 15km of the proposed tree felling. Wicklow Mountains SAC IE0002122 and Wicklow Mountains SPA IE0004040 bound the site to the north. The other sites are Vale of Clara (Rathdrum Wood) SAC IE0000733, Slaney River Valley SAC IE0000781, Poulaphouca Reservoir SPA IE0004063 and Deputy's Pass Nature Reserve SAC IE0000717. The proximity to each site is stated and mapped and each site is considered in turn with its conservation interests and objectives and reasons are provided for the screening conclusions. It was determined that that the proposal should proceed to Appropriate Assessment in relation to Wicklow Mountains SAC IE0002122 and Wicklow Mountains SPA IE0004040 due to proximity. The DAFM also recorded other plans and projects considered in combination with the proposal.

The DAFM produced an Appropriate Assessment Determination dated 4th September 2024. This outlined the assessment process and specified the measures required and concluded,

In combination effects were assessed prior to meeting this determination. 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. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site.

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.

Grounds of Appeal

There is one third party appeal against the granting of the licence and the notice of appeal and full grounds were provided to the parties. In brief summary the grounds submit that,

The licence is in abeyance due to condition 10 limiting the commencement of operations to a period linked to the replanting of another licenced area, WW04-FL0123, that was “subsequently cancelled”. It is submitted that by the time works might be able to occur the assessments will be outdated and that the licence should be cancelled until the matters related to WW04-FL0123 have been resolved.,

That the licence conditions contain no protection for users, children and the local community who use the roads and trails in the area. That a trail is marked on the maps but there has been no assessment of impacts on an important recreational area.,

That the assessment under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected areas concerned. That an Appropriate Assessment Determination is listed as an AA Report and that the Minister did not undertake an assessment. The Applicant submitted a Natura Impact Statement but the measures in the determination differ from that of the NIS and that the measures in the determination are generic.,

That there has been inadequate and ineffective public notice in contravention of Article 6(2) of the Aarhus Convention. It is submitted that publication on the DAFM’s website does not meet the requirements of the Aarhus Convention.,

It is submitted that the Harvest Plan is not to the requisite standard. That the mapping scale does not meet the required standard, that stacking and service areas are located outside of the project area and have not been assessed and that no haulage route is identified and is likely through the national park, SAC and SPA and on roads not owned by the licensee.,

That the developer has not demonstrated that they have access to the project area.

Statement of Fact from Minister

A statement responding to the appeal was submitted to the FAC and provided to the parties. The statement contests the appeal and provides an overview of the processing of the application and a response to the grounds. In brief summary it was submitted,

That the licence was subject to condition 10 which is related to the replanting of area WW04-FL0123 but that this not an impediment to the issuing of the licence.,

That commercial forests remain undisturbed throughout the majority of their rotations but that due to the nature of forestry, the use of large machinery is necessary during periods of operations. It is submitted that the forest owner, Coillte, has an open forest policy which means people can visit the forest but must be aware of signage and forestry operations.,

In relation to appropriate assessment, the statement disputes the contention of the appellant and outlined the screening and assessment process adopted by the DAFM. It is submitted that the assessment can rely on a Natura Impact Statement or an Appropriate Assessment Report prepared by the DAFM, which are subject to public consultation. It is submitted that the reference to an "AA Report" was incorrect but had no material impact on the assessment and the assessment measures are briefly described.,

The DAFM provided an overview of the public consultation process and submits that its procedures meet any obligations that might arise from the Aarhus Convention.,

In relation to harvest plans, it was submitted that the DAFM uses examples of 1:5,000 scale maps but that it does not reject other scales as long as the information is clear and that applicants also provide digitised versions, shapefiles, which can be used to generate a range of maps. It is submitted that the applications were assessed by foresters and ecologists when making the decision. There are conditions in relation to the protection of water quality and limits on stacking areas.,

In relation to access it is submitted that there is no reason to consider that the information provided with the application was deficient.,

The DAFM position is that the clear-felling and replanting of an established plantation forest is not a category of activity that is subject to the requirements of the EIA directive.

Further submissions

The licence applicant made a submission outlining some of the details of the lands and submitting that the mapping convention is a guideline only and that the scale will vary depending on the size of the project area and in relation to roading. It is submitted that the haulage route is identified as the forest road adjacent to the project area which in turn leads to the county road. It is further submitted, that there is no justification for a requirement to confirm use of a right of way.

The Appellant made a further submission contending that the DAFM's response are largely generic and don't address the grounds of appeal. It is further submitted that the response is not signed by the forestry

inspector nor the ecologist and is signed by someone who was not involved in the awarding of the licence. The submission restates a number of concerns expressed in the grounds of appeal.

Considerations of the FAC

The FAC considered in the first instance the grounds that relate to the appropriate assessment undertaken by the Minister in relation to likely significant effects on European sites. Part 8 of the Forestry Regulations 2017 provides that where the Minister receives an application for a tree felling licence,

...which is not directly connected with or necessary to the management of a European site, the Minister shall carry out a screening for appropriate assessment of the development, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site.

The Regulations further provide for the Minister to require the provision of a Natura Impact Statement within a specified period and for the Minister to rely on other sources of information to facilitate an appropriate assessment.

In this instance the applicant had provided a pre-screening report and a Natura Impact Statement (NIS). The Minister had undertaken a screening for appropriate assessment and an Appropriate Assessment Determination that referred to the NIS and other sources of information. As noted in the grounds a number of measures specified as required in the AAD differed from those in the NIS. The AAD includes the following,

Any differences between DAFM and NIS mitigations are necessary to improve alignment with DAFM's Standards for Felling & Reforestation and the current Environmental Requirements for Afforestation (as these refer to reforestation) published by the Department.

While the FAC would consider that it is for the Minister to assess the measures required to ensure that a project does not impact on the integrity of a European site, or to proceed as envisaged in Article 6 of the EU Habitats Directive, and that this might differ from those proposed by the applicant, such differences should be explained and assessed as required. Where a material difference arose such that the assessment itself was different it would be expected that the Minister might request the applicant to address the requirements through the submission of a new or adapted NIS or through the production of an Appropriate Assessment Report by the Minister. The FAC does not consider that aligning the assessed measures with general standards or requirements of the DAFM is an acceptable reason for altering the specified measures save where such changes might be of a general or clarifying nature that did not change the material effect of the measure.

Of most significance in this instance, the Applicant's NIS suggests that likely significant effects might arise on the peregrine falcon (*Falco peregrinus*), a conservation interest of the Wicklow Mountains SPA, in the absence of mitigation measures such that temporal restrictions should be imposed on the felling

operations in the absence of an ornithological study. The NIS contains the following under the section headed Mitigation measures specific to project area WW04-FL0146;

Peregrine specific mitigations: Timing of Operations:

- *No felling or other associated forestry operations will take place during the period 1st March to 31st August inclusive, unless an appropriate pre-felling survey by a suitably qualified bird surveyor indicates that this timing restriction is not required.*
- *Retain and protect existing the habitat/biodiversity feature during operations, to maximise opportunities for prey species.*
- *Plant 2 rows of broadleaves adjoining the relevant watercourse setback to maximise opportunities for prey species.*
- *Plant 2 rows of broadleaves adjoining retained habitat, to maximise opportunities for prey species.*

The Minister's appropriate assessment screening determined that the proposal should proceed to AA in relation to this SPA but does not identify the significant effects that are considered likely to occur on specific species or habitats. Furthermore, the AA Determination does not include the proposed measures in relation to the peregrine falcon or address or assess their absence. The FAC is satisfied that this represents a serious and significant error in the appropriate assessment process and the making of the decision such that the decision should be set aside and remitted to the Minister to undertake a new screening for appropriate assessment of the development, in view of the conservation objectives of the European site, to assess if the development, either individually or in combination with other plans or projects, is likely to have a significant effect on the European site and an appropriate assessment of such effects as required.

The FAC further noted the licence specified the requirement to comply with the appropriate assessment measures in the following manner,

10) 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. The language employed in specifying this condition could be interpreted as allowing the licence holder to choose which of the conditions they adhere with based on their own 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 and the decision is being set aside and remitted 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 contend that there was no consideration of in-combination effects but both the screening by the DAFM and the NIS identify other plans and projects considered in-combination with the proposal.

In relation to the contention of that the licence is in abeyance due to condition 10 that is linked to the replanting of another forest plot, as submitted in the Minister's statement the felling licence is valid for a set stated period. Forestry legislation also provides for the Minister to extend the period of a licence and to suspend a licence and amend licence conditions as required. The licence holder has not raised a concern in relation to this matter. The approach of requiring adjoining felling sites to be re-established for a period and to "green-up" is reflected in both the Standards for Felling and Reforestation (DAFM, 2019) and the Felling and Reforestation Policy (DAFM, 2017). The grounds are generic and suggest that environmental assessments might be out of date but provide no basis for this contention in relation to the specific decision under appeal. The FAC is not satisfied that a serious or significant error was made in relation to the making of the decision with reference to this ground.

The grounds contend that the licence contains no protections for users, children and the local community utilising the recreational paths and trails in the area, however, the licence conditions include a requirement to adhere with the Standards for Felling & Reforestation. These standards include the following provisions,

Where felling operations adjoin public roads, appropriate safety signs should be in place to alert the public, including road users. Close off the forest (or parts of, if large) to users, if utilised for recreation. See the Health & Safety Authority's (HSA) Code of Practice for Managing Safety & Health in Forestry Operations, available at https://www.hsa.ie/eng/Publications_and_Forms/Publications/Agriculture_and_Forestry/Code_of_Practice_Forestry.pdf

While it is recognised that the area contains popular recreational paths, the lands are working forests managed for timber production and the forest owner has applied for tree felling licence under the Forestry Act 2014.

In relation to access, forest roads are marked on the mapping submitted and the application documentation includes a description of access. The following is recorded in the applicants pre-screening document,

The project area is accessible via the existing forestry road WW04R0072, which runs along the southern boundary of the project area and connects to the regional road R-757-0 to the north east, via a series of forestry roads.

Disputes regarding the existence, nature and use of rights of way would be considered civil matters that would not fall within the remit of the FAC to resolve. In any case, the appellant in this instance has not provided any evidence or details of any contested access or rights of way. The FAC would understand that the granting of the tree felling licence does not confer any title or additional rights to any party in relation to a right of way. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to this ground.

The grounds suggest that the decision does not meet the requirements of the Aarhus Convention with specific reference to Article 6 (2). The FAC understands the “Aarhus Convention” 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). The 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 the 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 or any change or extension to an existing project. The operations are of a standard nature in the context of ongoing forest management of a commercial plantation in Ireland. 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 the Wicklow Mountains SAC and SPA 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. The grounds are generally of a generic nature and contend that the decision is in breach of international law but an appeal to the FAC is clearly not the correct forum in which to challenge Ireland's and, indeed, the EU's transposition or implementation of a convention of the UNECE.

As previously noted, the FAC is satisfied that the appropriate assessment undertaken by the Minister contained serious and significant errors.

In relation to mapping scales, the application was accompanied by a number of maps generated at a range of scales. As noted in the grounds, the Felling and Reforestation Standards make reference to mapping standards in the Forestry Standards Manual. However, the specific requirement to generate maps at a scale of 1:5,000 is stated in relation to identified maps submitted as part of applications for afforestation and forest road works which are separate licencing processes to a felling licence.

In considering the appeals, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions made. The FAC is satisfied that serious errors were made in the making of the decision. The FAC concluded that the decision in relation to licence WW04-FL0146 should be set aside and remitted to the Minister in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new screening for Appropriate Assessment and Appropriate Assessment, as required, in keeping with the requirements of the Forestry regulations 2017 and Article 6(3) of the EU Habitats Directive.

Yours sincerely,

Vincent Upton on behalf of the Forestry Appeals Committee

