

Forestry Appeals Committee

Chairperson's Report 2023



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

To the Minister for Agriculture, Food, and the Marine

In accordance with the provisions of Section 14(4) of the Agriculture Appeals Act, 2001, as amended, the report of the Chairperson of the Forestry Appeals Committee for 2023 is hereby submitted.

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Chairperson, Forestry Appeals Committee
21 May 2024

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Forestry Appeals Committee – Annual Report 2023

Purpose of this Report

This report fulfils the legal requirement at Section 14 (4) of the Agriculture Appeals Act, 2001, as amended by the Forestry (Miscellaneous Provisions) Act 2020, which requires the Chairperson of the Forestry Appeals Committee (FAC) to submit a report to the Minister for Agriculture, Food and the Marine (the Minister) of his/her activities, and of the activities of the Committee, under the Act during that year.

Background

The Agriculture Appeals Act, 2001, (the Act) was initially amended by the Forestry Act 2014 to include a new Section 14A to provide for a new appeals service against decisions made by the Minister for Agriculture, Food and the Marine (DAFM) on forestry licence applications. Decisions on Forestry licensing applications include felling, afforestation, forest roads and aerial fertilisation. The legislation led to the establishment, by the Minister, of the FAC in 2018. The FAC carries out its functions under separate statutory provisions to those of the Agricultural Appeals Officers. However, the Agriculture Appeals Office provides the administrative and secretariat support to the FAC and, separate from their agriculture appeal functions, Appeals Officers may otherwise be appointed as members of the FAC.

Up until October 2020, the FAC was operating as a committee of four, comprising the Chairperson and three ordinary members. The Agriculture Appeals Act 2001 was amended by the Forestry (Miscellaneous Provisions) Act 2020 which was commenced on 6th October 2020. The amendments provided for, amongst other provisions, the FAC to sit in Divisions. Six additional members of the FAC were appointed, with four of these members being appointed as Deputy Chairpersons. These members brought extensive experience, particularly in the areas of regulatory procedures and relevant EU Directives. Each Division of the FAC was assigned a secretary from the FAC administrative support. Following the resignation of Mr Des Johnson, the then Chairperson, in April 2022, Mr Seamus Neely was appointed Chairperson by the Minister during June 2022. Mr Neely had served as a Deputy Chairperson just prior, and this position has not been the subject of a new appointment since that time.

Throughout 2023 four divisions of the FAC heard appeals, hearings were generally conducted electronically by remote means. The FAC can decide to hold an oral hearing with the parties to the appeal present where it considers this is necessary to properly determine an appeal. During 2023 there were 104 appeals heard against 74 licences and of these there were two where the FAC deemed an oral hearing was necessary and both oral hearings were held by remote means.

Overview of the FAC Procedure

To date, most appeals have been submitted by third parties and concern mainly environmental matters and the implementation of the provisions of the European Union Environmental Impact Assessment (EIA), Habitats and Birds, and Water Framework Directives. During 2023 when the DAFM issued a decision on a forestry licence application, that decision was published on the Department's portal (www.gov.ie) and in tandem on the Forest Licence Viewer (FLV) portal. From the end of 2023 all licence decisions are published only on the FLV (<https://flv.apps.services.agriculture.gov.ie>).

From the start of 2021 relevant forestry licence decisions underwent a 28-day period during which the applicant or any other party who was dissatisfied with the decision could appeal the decision to the FAC. From July 2021, S.I. No. 353 of 2021 amended this period to 14 days from the date of the Minister's decision. However, from September 2023 this period has been further amended to 14 working days through the Agriculture Appeals Act 2001 (Section 14A) Regulations S.I. 423 of 2023. The 14 working days period for appeal can never exceed 28 calendar days and the first day of the period is the day the licence decision is made and/or published, whichever is later. During this period, no forestry operations may be commenced on foot of the appealed licence. Once appealed, the licence is put in abeyance pending the outcome of the appeal.

A licence may be subject to one or more appeals. It is a matter for the FAC to decide on the validity of the appeal, to schedule the hearing and hear the appeal, and to issue its decision on the appeal. The FAC provides a notice of appeals form which must be completed in accordance with the rules set out therein when making an appeal and an appellant must provide the full grounds of appeal and any documentation on which they wish to rely. Only one person (natural or legal) may make a single appeal, where more than one person (natural or legal) wish to appeal each must make a separate appeal, and each appeal must be accompanied by the appeal fee (€200). Any further submissions are considered at the discretion of the FAC. An appeal against a decision is notified to officials of the DAFM by the FAC. The DAFM publishes a list of forestry appeals on its website. On behalf of the Minister, DAFM officials may prepare a statement showing the extent to which the facts and contentions advanced by an appellant are admitted or disputed and submit any information and documents in the control of the Minister that are relevant to the appeal. The DAFM FLV facility provides public access to licence documentation as new applications arise, and the FAC makes each party aware of this information during the appeals process. In the case of third-party appeals, the licence applicant is also informed of the appeal and may submit statements and documentation to the FAC in responding to the appeal. The FAC may request further information from the parties to the appeal or other persons or bodies, including State bodies, as it considers appropriate. To facilitate the efficiency of the appeals process, or in cases involving highly specialised matters, the FAC can engage external consultants to provide reports. Where such external reports are included in the appeal decision process, they are noted in the decision and are published alongside the FAC decision on the FAC website.

Where the FAC considers that an oral hearing is necessary it will schedule one and inform the parties to the appeal. The FAC may also inform and/or request the attendance of other parties and referral bodies at the oral hearing, including State bodies. The Chairperson of the Division hearing the appeal has discretion regarding the conduct of an oral hearing as provided for in legislation and may issue directions to parties during an oral hearing.

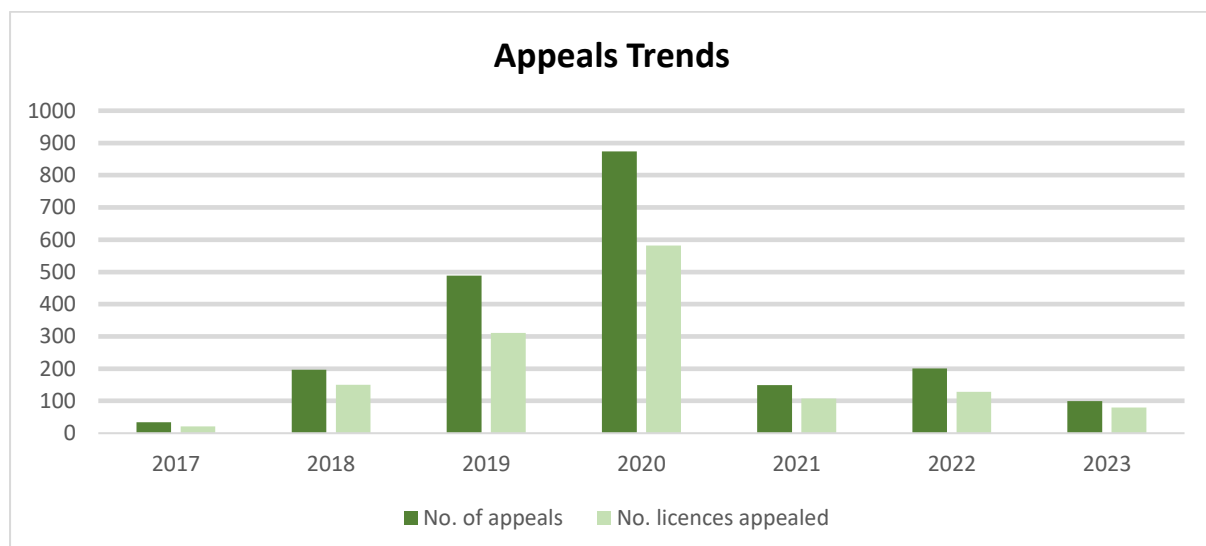
Decisions of the FAC are in writing and include the reasons for the decision and are issued to the parties promptly after being agreed by all sitting members. A decision of the FAC is final and conclusive and once the decision is issued the FAC has no further legal role in the appeal or licence decision. At all times a decision of the FAC may be challenged on procedural grounds through application for Judicial Review by the High Court, the provisions for taking a judicial review are those applied by the High Court.

Since the FAC was established, the number of appeals significantly increased year on year to 2020 and significantly reduced during 2021 following the introduction of the legislative changes in October 2020. In 2023 the introduction by the DAFM of the new Forestry programme was delayed pending adoption by the European Commission which occurred in September 2023, it is likely this impacted on the volume of licences issued and consequently on the volume of appeals received by the FAC during 2023. The following table outlines the trend in appeals received from 2018 to 2023 (inclusive): -

Appeals Trend

	2017	2018	2019	2020	2021	2022	2023	Total
*Appeals received	34	197	489	874	149	201	99	2,043
Licence decisions appealed	21	150	311	582	107	128	80	1,379

**There can be more than one appeal against a licence decision of the Minister, not all appeals received were valid, further breakdown of appeals received is detailed on page 14*



Committee Structure, Activities and Members

Up to 7th October 2020, the legislation governing the FAC provided for only one committee to hear appeals. The amendments introduced by the Forestry (Miscellaneous Provisions) Act, 2020 made provision for the establishment of additional Divisions of the FAC to deal with appeals in a more expeditious manner. Following the introduction of this legislation, additional committee members were appointed to the FAC to serve as deputy chairpersons and ordinary members. Throughout 2023 the FAC sat in four Divisions, availing of the chairperson and the deputy chairpersons as required.

The on-going allocation of resources occurs in consultation with the Director of Agriculture Appeals. The Agriculture Appeals Office provides the administrative support to the FAC and during 2023 there were a Higher Executive Officer, two Executive Officers and one Clerical Officer assigned full time. Depending on workload these staff resources were also available to the Agriculture Appeals Office for other non-FAC related duties. Also, during 2023 two Appeals Officers with the Agriculture Appeals Office also worked as members of the FAC, as appointed by the Minister.

The following members served on the divisions of the FAC in 2023: -

Name	Status
Seamus Neely	Chairperson
Donal Maguire	Deputy Chairperson
John Evans	Deputy Chairperson
Myles McDonagh	Deputy Chairperson
Derek Daly	Ordinary Member
Iain Douglas	Ordinary Member
Luke Sweetman*	Ordinary Member
Vincent Upton*	Ordinary Member

*Also worked as Agriculture Appeals Officers

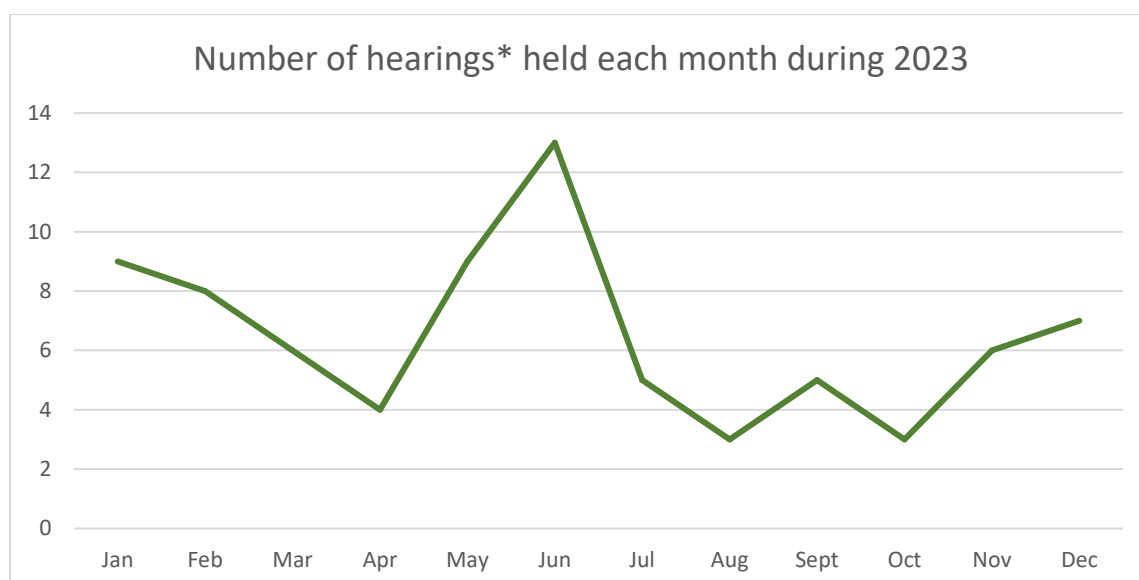
Independent Role of the FAC

The Chairperson, Deputy Chairpersons and Members of the FAC are appointed by the Minister. Legislation requires that the FAC be independent in the performance of its functions. The Chairperson, the Deputy Chairpersons, and the ordinary members of the FAC were informed of the independent role of the committee on appointment and, before sitting at a hearing of any appeal, each of the Chairperson/Deputy Chairperson and Ordinary Members sitting therein make an individual declaration in respect of any conflict of interest. In circumstances where a Chairperson/Deputy Chairperson or member considers that there could be any possible conflict of interest the member recuses themselves from the hearing and deliberation of the appeal. A note of the declarations in respect of conflict of interest/no conflict of interest are kept on the relevant file.

FAC Hearings

FAC hearings are at first instance non-oral hearings of appeals and are based on the records before the FAC, however the FAC will conduct an oral hearing where it deems an oral hearing is necessary to properly determine an appeal(s). Throughout 2023 hearings and oral hearings have been conducted remotely and in line with legislation. Where oral hearings are conducted, introductions and an agenda are circulated to all parties in advance. Once a decision is reached on an appeal by the FAC, all parties are notified, and decisions are published on the FAC’s website (www.agriappeals.gov.ie). In addition, where a consultant’s report had been prepared for the Committee, this is also published with the decision.

During the period January 2023 to December 2023 the FAC heard 104 appeals relating to 74 licences. During 2023, the grounds of appeal submitted by appellants were in the main comprehensive and complex, across a wide range of topics raised.



**A hearing can include more than one appeal concerning the same licence decision*

To enable multiple divisions of the FAC to sit, some members were allocated to sit on more than one Division per month. This approach ensured that all Divisions operated to the same high standard with the aim of reaching consistent high-quality outcomes across the various Divisions of the FAC, to the benefit of all parties involved and the public good. Going into 2024 some members of the Divisions will again be rotated from time to time to ensure consistency and quality control in decision making. The option of running two or more Divisions on the same day is available where oral hearings are not deemed necessary. However, the FAC will generally not schedule oral hearing appeals to run concurrently by Divisions as this could negatively impact the first and third parties and the DAFM, in that they may not be able to attend all oral hearings, with potential implications for fair procedures.

The Chairperson, in consultation with the Director and Deputy Director of the Agriculture Appeals Office, is continually reviewing ways in which greater efficiency can be achieved across the Divisions of the FAC.

Format of Hearings

Appeals received following the commencement of the Forestry (Miscellaneous Provisions) Act 2020, can be heard by the FAC without holding an oral hearing unless, having regard to the circumstances of the appeal, the FAC considers that it is necessary to conduct an oral hearing. Each appeal is considered by the FAC, on a case-by-case basis, to determine whether an oral hearing is necessary. The FAC has held 24 oral hearings of appeals submitted after the legislative changes from October 2020.

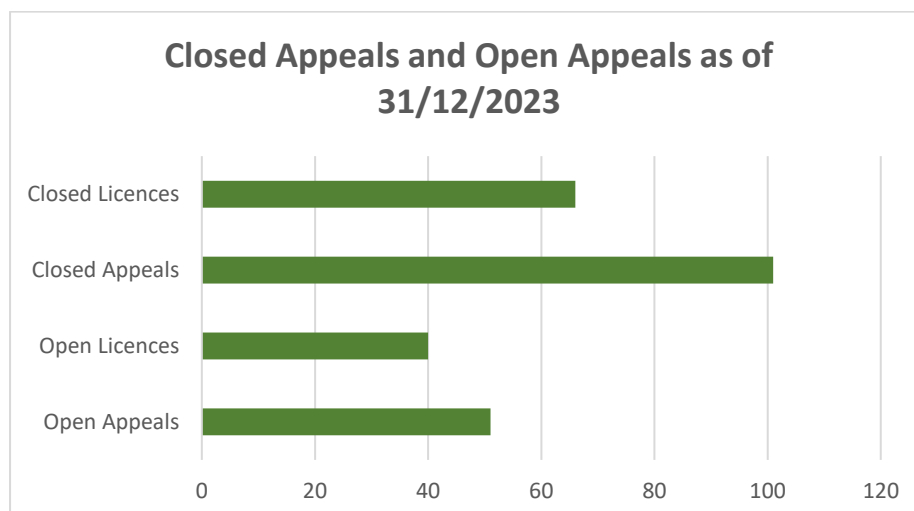
Statistics

The following statistics apply to the period 1 January 2023 to 31 December 2023 and provide an overview of the activity of the FAC.

Overall Number of Appeals

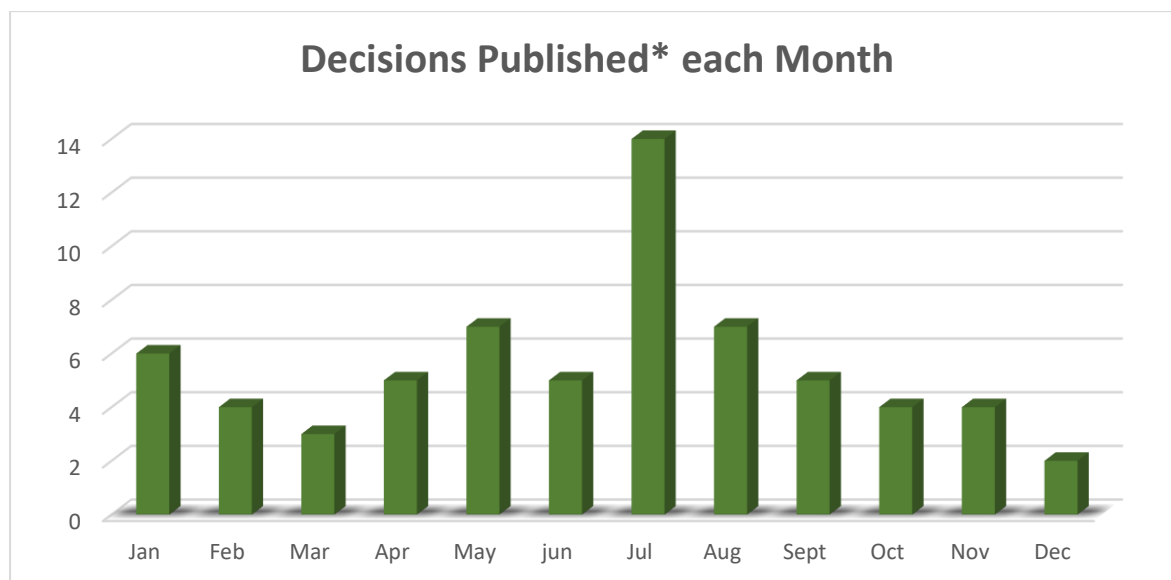
On 1st of January 2023 there were 100 appeals on hand that concerned 77 licence decisions, all of which were carried over from the previous years. During 2023 there were 99 appeals received against 80 licence decisions and of these 56 appeals were invalidated, leaving 43 valid appeals received against 41 licence decisions. During 2023, there were 101 appeals closed against 66 licence decisions including outstanding licences that were under appeal from previous years.

Appeals Closed during 2023 and Appeals open as of 31st December 2023



Decisions Published

Throughout 2023, decisions made by the FAC have been published on the FAC website (www.agriappeals.gov.ie). Assessments carried out by the FAC to inform its decision, and any consultants reports considered, are also posted on the website where they occur. The website is updated on a week-by-week basis. There were 101 decisions published relating to 66 licence decisions throughout 2023. The following table provides a monthly breakdown:



Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Decisions published*	6	4	3	5	7	5	14	7	5	4	4	2	66

**Numbers published are based on licence decisions appealed against. There were 101 appeal decisions against 66 licences.*

Time Taken to Determine Appeals

From the date an appeal is heard to the date parties to the appeal received a decision took on average 55 days during 2023. The period has varied from case to case, depending on matters such as the nature and complexity of the grounds of appeal lodged.

Category of Decisions

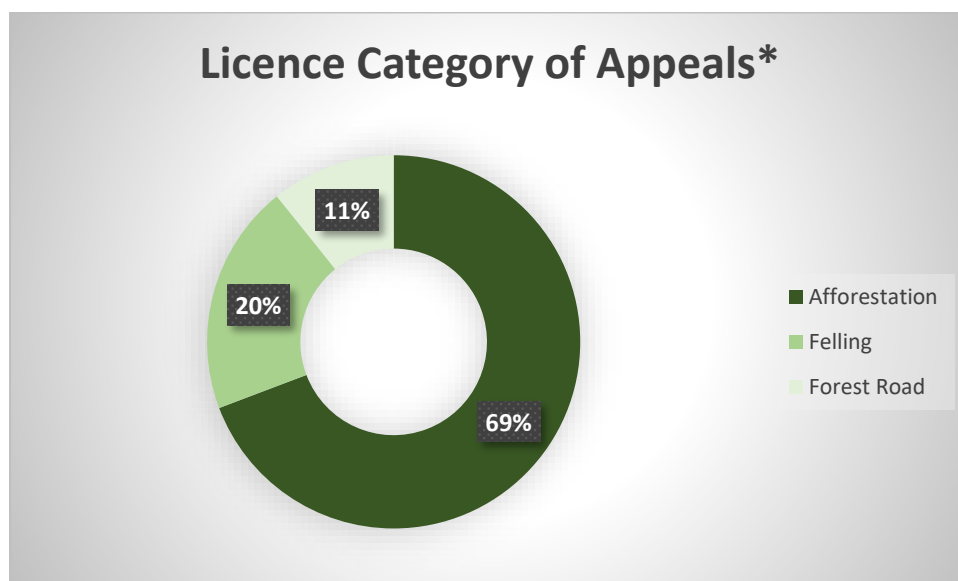
Forestry licences which may be appealed include the following categories:

- Felling
- Afforestation
- Forest Roads
- Aerial fertilisation

The categories of cases decided in 2023 are outlined in the table below:

Licence Type	Afforestation	Felling	Forest Road	Aerial Fertilisation
Number of Licence Decisions appealed*	46	13	7	0

*Numbers are based on licence decisions appealed against, there can be more than one appeal against a licence decision. There were 101 appeal decisions against 66 licences.



*There were no appeals involving Aerial Fertilisation licence decisions

Outcome of Decisions

Up to 7th October 2020, the legislation governing the FAC provided three decision options when deciding an appeal. The options available were to confirm, cancel or vary a decision. Following the introduction of amendments through the Forestry (Miscellaneous Provisions) Act, 2020 the FAC was provided with the following options in deciding appeals:

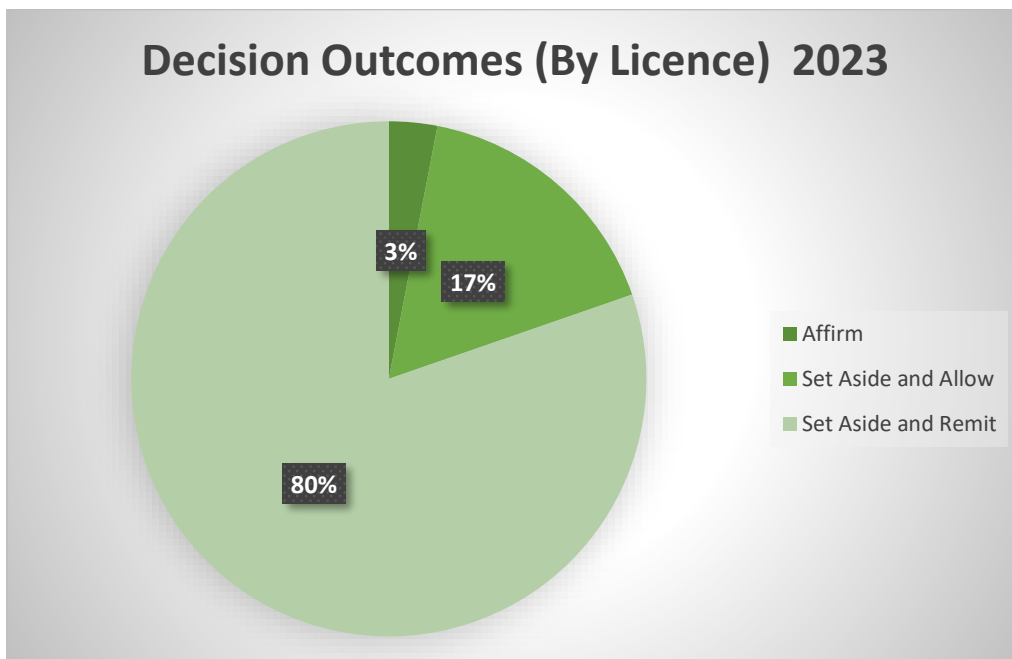
- (a) affirm the decision, or
- (b) where it is satisfied that a serious or significant error or a series of errors was made in making the decision the subject of the appeal or that the decision was made without complying with fair procedure: -
 - (i) vary the decision;
 - (ii) allow the appeal and set aside the decision;
 - (iii) set aside the decision and remit it, for stated reasons, to the Minister; or

(iv) where the Committee considers it appropriate to do so, by reference to submissions, documents, or evidence before it which were not considered by the Minister or for other good reason, substitute its decision for the decision of the Minister.

The following is a breakdown of the decision types in 2023, by licence decision at appeal:

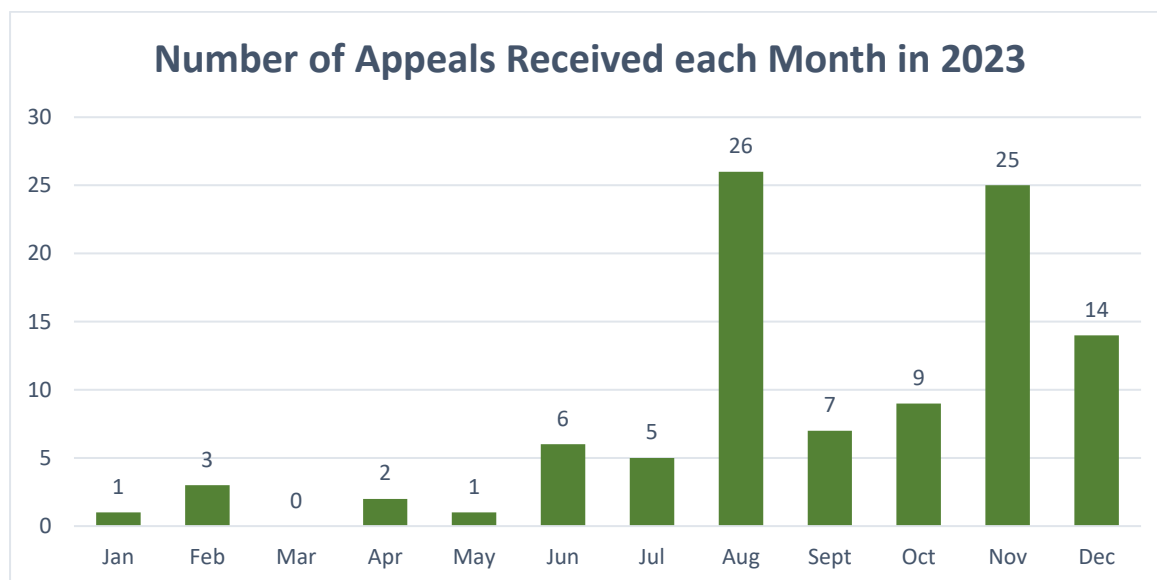
Decision	Affirm	Set Aside and Allow	Set Aside and Remit	Vary
No. of licence decisions subject to a FAC appeal decision*	2	11	53	0

*Decisions are based on licence decisions appealed against, there can be more than one appeal against a licence decision. There were 101 appeal decisions issued on 66 licence decisions.



Appeals Submitted and Fees

The fee required to accompany each appeal is €200, as provided for in the 2020 Forestry Appeals Committee Regulations (S.I. 418 of 2020). In 2023 the FAC received fees to the amount of €8,600 for 43 valid appeals.



This table below provides an overview of the category and county of the 43 licence decisions that a valid appeal was received for during 2023:-

County	Afforestation	Felling	Forest Roads
Carlow			
Clare	2		
Cork	1	4	
Dublin		4	
Galway		1	
Kerry		1	
Laois		13	
Leitrim	3	4	
Limerick	2	1	1
Longford	2		
Mayo			1
Roscommon			
Tipperary		2	
Waterford		1	
Totals	10	31	2

Invalid and Withdrawn Appeals

Of the 99 appeals received in 2023, 2 appeals were withdrawn by the appellant and 6 appeals were invalidated after 4 licence applications, the subject of those appeals, were informed to the FAC as withdrawn, and 48 appeals were invalidated for the following reasons:

- 4 were received late, they were received after the statutory deadline
- 3 had no fee accompanying the notice of appeal form
- 1 was a duplicate appeal, already received
- 38 were invalidated as the notice of appeal form was incomplete
- 1 had no notice of appeal form
- 1 had insufficient grounds of appeal submitted

Access to Information on the Environment (AIE)

During 2023 the FAC received 17 AIE requests. There were 3 other requests brought forward from 2022 of which two were part granted and one was refused, an internal AIE review was not sought on any of these decisions.

Decisions issued during 2023 for 14 of the 17 AIE requests received in 2023, a one-month extension was applied in one instance prior to a decision issuing, all others were decided within one month of receipt. The AIE decisions comprised 7 granted, 4 part-granted and 3 refused. Of the 14 decisions the requestors sought an internal review in 6 instances. The internal reviews resulted in 4 decisions being upheld, and 2 decisions being varied. There were four internal review decisions appealed to the Office of the Commissioner for Environmental Information, the decisions for the appeals are outstanding.

Litigation

Each decision of the FAC may be challenged to the High Court by way of application for a Judicial Review. In 2023, there was no judicial review proceeding notified as being taken against decisions of the FAC. There were four judicial review proceedings against decisions of the FAC ongoing from 2022 (two of which related to the same FAC decision) and two of these JR proceedings were closed during 2023.

Stakeholder Meetings

Since its inception in 2018 the FAC has met with a number of stakeholders at their request on issues not relating to individual appeals. These have included matters such as processes, workload and time periods. Stakeholders met to date have included representatives from DAFM, IBEC, IFA, forestry companies, Coillte, as well as with appellants. In 2023 the FAC had one stakeholder meeting with the DAFM, held on 20th June, this concerned projected workload and updating on the progress of the new forestry programme to enable FAC resource planning. The Chairperson and members are available to engage in such meetings where required.

FAC Administrative Procedures

During 2023 the FAC administration secured approval to enable electronic appeals through a dedicated portal that will also enable online payment of the appeal fee. It is anticipated that the system will be available for use during 2024. The system will consist of a FAC appeals portal and will provide for the upload of documents as well as all appeal details.

Throughout 2023 hearings were conducted remotely, this was aided by the administration team enabling the files to be shared electronically in a secure manner. Making the best use of available technology, this involves the use of an online cloud sharing system to securely enable access to files, schedules, and information by FAC members.

The FAC administration team schedule and host all hearings for the FAC via WebEx. The WebEx system allows all parties to join the hearing by web link, via the WebEx application or by telephone. The FAC administration team also populate the cloud sharing system with all appeal related materials from the appeal file prior to the holding of hearings.

Website

The FAC website address is www.agriappeals.gov.ie/forestryappealscommittee/ and provides online access to each decision of the FAC and an explanation of the decision terminology. There is also access to the Notice of Appeals form as well as information concerning requests under the AIE provisions, along with a link to legislation and publications. Decisions of the FAC are published and filed weekly on the site, there is also an excel spreadsheet updated weekly on the website with a full complement of the decisions, which can be easily searched.

In accordance with the provisions of Regulation 7(4) of the 2020 Forestry Appeals Committee Regulations (S.I. 418 of 2020), the DAFM publishes each appeal on the FLV portal for the licence at appeal.

Commentary

The majority of Decisions of the FAC in 2023 (97%) were to set aside licence decisions and allow an appeal (17%) or to set aside licence decisions and remit the application back to the Minister (80%) for processing based on significant/serious errors or series of errors that are identified in the decision letters issued by the FAC.

Matters that led to these decisions cover a broad range but may include errors in applications made for licences such as mapping, errors or omissions in screening for EIA requirement, errors or omissions in screening for Appropriate Assessment or in the carrying out of Appropriate Assessment of proposals under Article 6(3) and 6(4) of the Habitats Directive. Some of these errors can be technical in nature such as the quoting of incorrect addresses for proposal locations or similar.

The FAC sets out the reasons for decisions made by it in each decision letter and this is intended to clearly point out the errors that have been identified, where that arises, that gave rise to the decision reached.

Leading into 2024, it would seem that the makeup and skillsets of FAC membership is appropriate to address the volume and complexity of appeals being made. Nonetheless the makeup of FAC membership will be monitored on an ongoing basis to ensure that the capacity of FAC remains adequate to address the appeals being made. It is important that the pipeline of responses from the DAFM, on behalf of the Minister, by way of statements to the FAC relating to appeals, are submitted to the FAC in a timely manner so that appeal hearings can be scheduled at the earliest opportunity.

I wish to record the appreciation of the FAC for the cooperation of applicants, appellants, the DAFM and referral bodies during 2023 which facilitated appeals to be processed efficiently and decisions to issue in a timely manner. I also wish to add the FAC's appreciation for the ongoing support work provided to it by the FAC Administrative team. It remains a key focus of the FAC to schedule and determine appeals in a timely manner and to reduce the average time taken to process appeals and issue decisions. It is hoped that the introduction of a means to enable electronic appeals through a dedicated portal, that will also enable electronic appeal fee payment, can be made operational during 2024 and this will be a welcome and significant development which will enable the provision of an improved service.