

Forestry Appeals Committee

Chairperson's Report 2021



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 2021 is hereby submitted.

A handwritten signature in black ink, appearing to read 'Des R Johnson', is written over a light grey rectangular background.

Des R Johnson
Chairperson, Forestry Appeals Committee
04 March 2022

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Forestry Appeals Committee – Annual Report 2021

Purpose of this Report

This report fulfils the legal requirement of the Agriculture Appeals Act, 2001, which was amended by the Forestry (Miscellaneous Provisions) Act 2020 to include the insertion of section 14 (4) which requires the Chairperson of the Forestry Appeals Committee 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 this Act during that year.

Background

The Agriculture Appeals Act, 2001, was initially amended by the Forestry Act 2014 to include a new Section 14A which provided 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 Forestry Appeals Committee (FAC) in 2018. The FAC operates under a separate statutory basis to that of the Agricultural Appeals Office. However, the Agriculture Appeals Office provides the administrative and secretariat support to the FAC and, in addition to their agriculture appeal functions, Appeals Officers may be appointed as members of the FAC.

Up until October 2020, the FAC was operating as a committee of four, namely the Chairperson and three ordinary members, all appointed by the Minister. Hearings were held on two days each week. The Agriculture Appeals Act 2001 was amended by the Forestry (Miscellaneous Provisions) Act 2020 as commenced on 6th October 2020, and the new Act and associated Regulations came into force on that date. The amendments provided for (amongst other provisions referred to later in this report) the FAC to sit in Divisions. Six additional members of the FAC have been appointed, with four of these members being appointed as Deputy Chairpersons. These members bring extensive experience, particularly in the areas of regulatory procedures and relevant EU Directives. Following the appointment of the new members, induction training took place, which was organised and presented by the Chairperson and established staff of the FAC. A secretary was appointed to each Division to provide administrative support.

The hearing of appeals by four Divisions of the FAC commenced in November 2020 and throughout 2021 hearings were held on up to five days each week, with every fourth week left free of hearings to allow time for decision letters to be issued. Up to the imposition of Covid 19 restrictions, the FAC sat in person in Portlaoise and thereafter, electronically. This followed the publication of S.I. No. 411/2020 - Civil Law and Criminal Law (Designated Body - Agriculture) Order 2020.

Other significant amendments introduced through the Forestry (Miscellaneous Provisions) Act 2020 related to the introduction of fees for the making of appeals, the appointment of Deputy Chairpersons, and the amendment of the options available to the FAC in making decisions on appeals. The legislation clarifies that Oral Hearings are held at the discretion of the FAC, and provides for the Minister to issue general policy directives to the FAC.

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. Once the DAFM issues a decision on a forestry licence application, it is advertised on the Department's portal (www.gov.ie). At 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 independent FAC. From July 2021, S.I. No. 353 of 2021 amended this period to 14 days from the date of the Minister's decision. 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 when making an appeal and an appellant must provide the full grounds of appeal and any documentation on which they wish to rely. 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 the appellant are admitted or disputed, and submit any information and documents in the control of the Minister that are relevant to the appeal. From early 2021 the DAFM website has provided 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 has engaged 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.

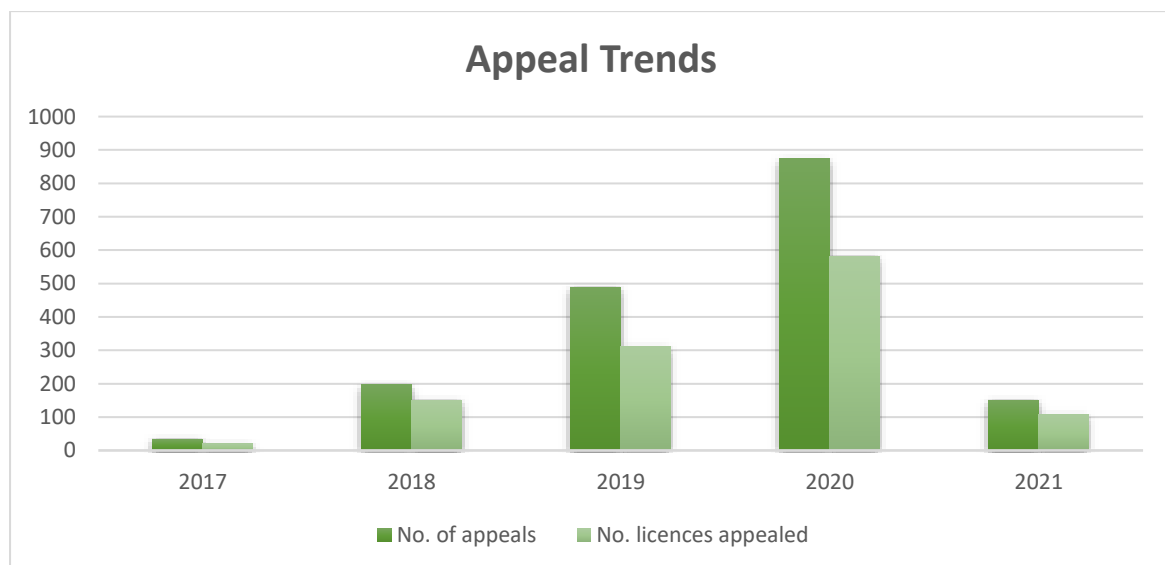
Decisions of the FAC are in writing and include the reasons for the decision and are issued to the parties promptly after being agreed by all sitting members. A decision of the FAC is final and conclusive and once issued the FAC has no further legal role in the appeal or licence decision, while a decision of the FAC may be challenged on procedural grounds through application for Judicial Review 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. The following table outlines the trend from 2018 to 2021: -

Appeals Trend

	2017	2018	2019	2020	2021	Total
*Appeals received	34	197	489	874	149	1,742
Licence decisions appealed	21	150	311	582	107	1,171

- *There can be more than one appeal against a licence decision of the Minister*



Committee Structure, Activities and Members

Up to 7 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. The appointment of four very experienced Deputy Chairpersons meant that, with the existing Chairperson, the Committee was able to operate in four Divisions hearing substantially more cases. Throughout 2021 the FAC also availed of the services of two additional external committee members

The on-going allocation of resources occurs in consultation with the Director of Agriculture Appeals. In that regard the Agriculture Appeals Office also provides administrative support to the FAC and the Appeals Officers appointed to the Agriculture Appeals Office may also be appointed as members of the FAC. There are thirteen Appeals Officers in the Agricultural Appeals Office, two of which were permanently assigned to the FAC throughout 2021, while other Agricultural Appeals Officers were rotated onto FAC, as necessary.

The following members served on the divisions of the FAC in 2021: -

Name	Status
Des Johnson	Chairperson
Donal Maguire	Deputy Chairperson
John Evans	Deputy Chairperson
Myles McDonagh	Deputy Chairperson
Seamus Neely	Ordinary Member/Deputy Chairperson (part year)
Derek Daly	Ordinary Member
Iain Douglas	Ordinary Member
Luke Sweetman	Ordinary Member
Vincent Upton	Ordinary Member
Dan Molloy	Ordinary Member (part year)
James Conway	Ordinary Member (part year)
Mary Lawlor	Ordinary Member (part year)
Pat Coman	Ordinary Member (part year)
Paula Lynch	Ordinary Member (part year)

The Agriculture Appeals Office's administrative support to the FAC was provided by one Higher Executive Office, three Executive Officers and two Clerical officers.

In addition, three qualified and independent consultants were contracted to assist the FAC in preparing documentation for the Divisions of the committee. The three appointees previously held senior technical positions within An Bord Pleanála.

Consultant	Date of Appointment
Mr Michael Walsh	15/10/2020
Mr Pdraic Thornton	24/01/2020
Ms Mary Cuneen	24/01/2020

Dr Alan Fielding, a consultant ornithologist, was also engaged to prepare a report for the FAC on specific ornithological matters raised in 13 individual appeals. The consultant ornithologist also attended the oral hearings of these appeals, held in November 2021.

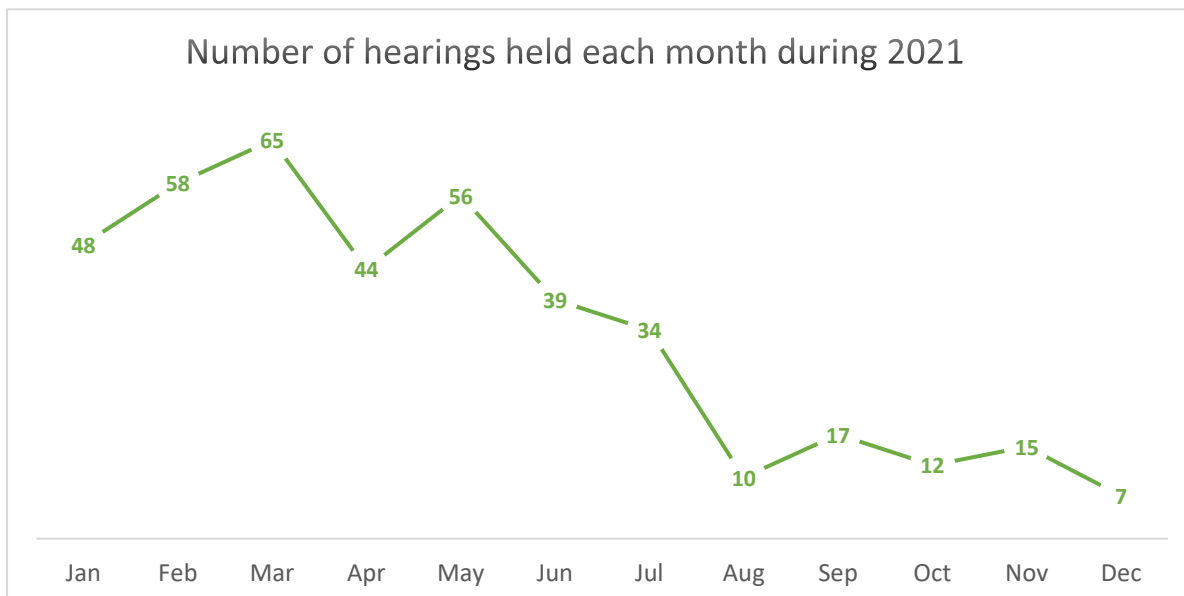
Independent Role of the FAC

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. All Chairpersons and ordinary members were informed of the independent role of the FAC on appointment and, before sitting at a hearing of any appeal, each Chairperson/Deputy Chairperson and Ordinary Members 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 he/she recuses himself/herself 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

The FAC hears both oral and non-oral hearing appeals as deemed necessary. Throughout 2021 hearings have been generally conducted remotely due to Covid-19 restrictions and guidelines and in line with legislation. However, there have been exceptions and, in these cases, Covid protocols have been strictly adhered to. Oral Hearings are scheduled to last a maximum of 1 hour and 15 minutes. Introductions and an agenda are circulated to all parties in advance. Once a decision is reached, 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 was also published.

During the period January 2021 to December 2021 the FAC heard appeals relating to 405 licences. Prior to the establishment of the additional Divisions following the provisions of the new legislation in October 2020, the FAC was hearing approximately 24 licences each month. In 2021, the FAC heard appeals against an average of 34 licences per month. During 2021, grounds of appeal submitted by appellants were noticeably more comprehensive and complex.



During 2021 hearings were conducted on average five days a week. Presently, one Division sits two days per week and the remaining three Divisions sit one day each per week. Other than cases involving multiple appellants, the average length of time for an Oral Hearing is 1hr 15mins. Each Division holds, on average, 4 Oral Hearings each sitting day.

The table below outlines the hearing format: -

Committee	Number of Days Sitting per Week during 2021	Number of Hearings per week
Committee 1	2	6
Committee 2	1	4
Committee 3	1	4
Committee 4	1	4
Totals	5	18

To enable multiple divisions of the FAC to sit, some members were allocated to sit on more than one Division per week. 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 forward into 2022 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 of the Agriculture Appeals Office is continually reviewing ways in which greater efficiency can be achieved across the Divisions of the FAC. In that regard the Chairperson and Deputy Chairpersons are considering ways in which the number of appeals

being heard, and decisions issued could be decided within a shorter timeframe, while maintaining fair procedures, consistency, and quality control. Obvious constraints to be considered include giving due consideration to the grounds of appeal, adhering to the provisions of relevant European Directives, drafting decision letters that are robust and legally sound, and the capacity of the administrative section to service the FAC Divisions. To pursue a high standard in the decision-making process and to ensure that an effective and efficient process is in place, the Chairperson and Deputy Chairpersons meet on a regular basis to discuss issues arising in the hearing of appeals and the discharge of appeal decisions

Format of Hearings

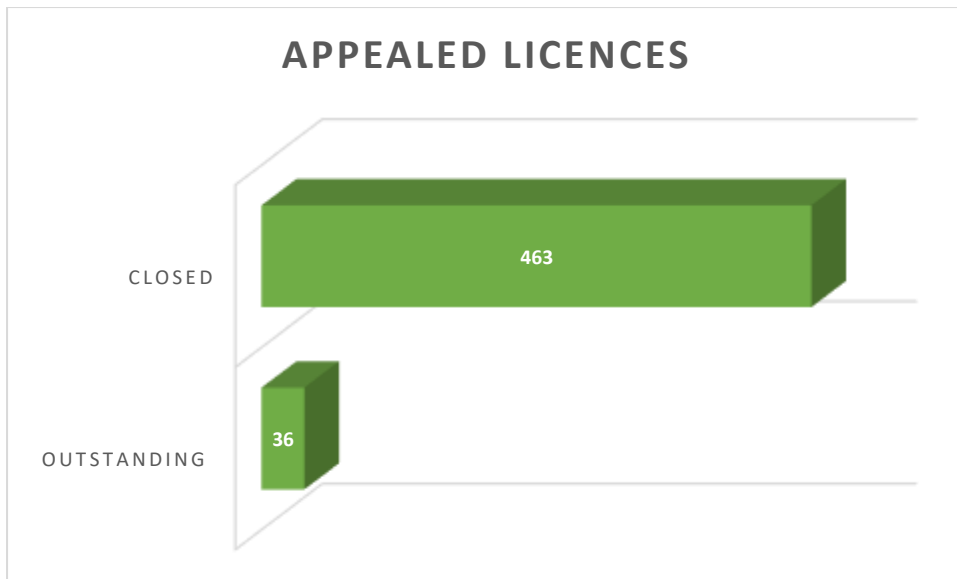
Legal advice sought and received by the FAC concerning oral hearings for cases submitted prior to the introduction of the Forestry (Miscellaneous Provisions) Act 2020, clarified that appeals received following the commencement of that legislation could be heard by the FAC without holding an oral hearing in circumstances where the FAC did not consider an oral hearing was required or necessary. Each appeal is considered by the FAC, on a case-by-case basis, to determine whether an oral hearing is necessary. Having regard to established practice, the FAC continued to hold Oral Hearings where they were requested on appeals received before the legislative changes. Under the new legislation, the holding of Oral Hearings is at the sole discretion of the FAC, whether or not an Oral Hearing has been requested. The FAC has held 19 oral hearings of appeals submitted after the legislative changes.

Statistics

The following statistics apply to the period 1 January 2021 to 31 December 2021 and provide an overview of the activity of the FAC.

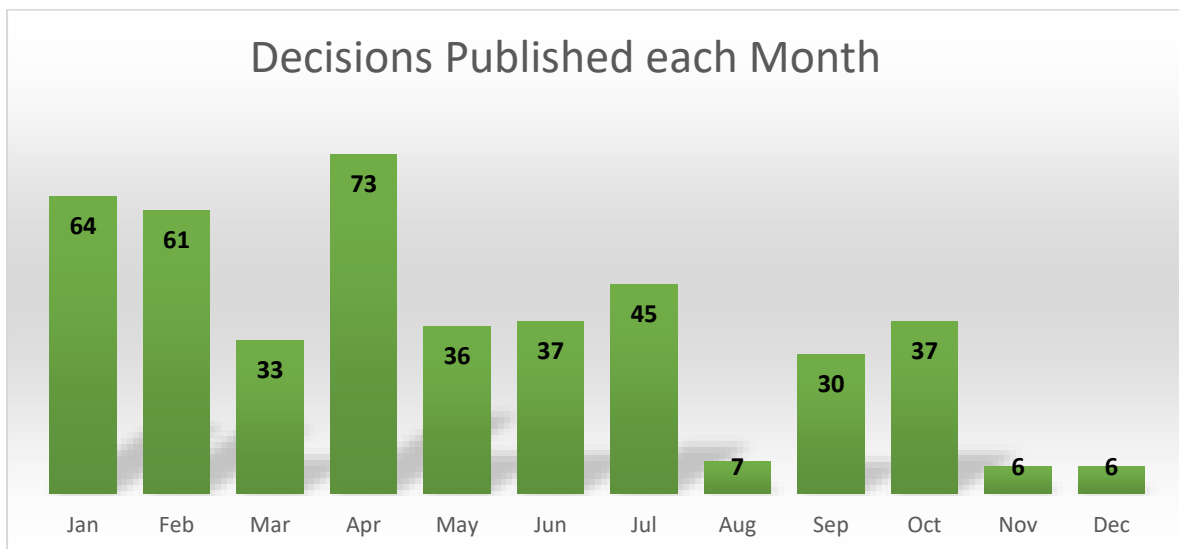
Overall Number of Appeals

In January 2021 there were 392 licences subject to appeal which were carried over from the previous years. An additional 107 licences were appealed throughout 2021. During 2021, 463 cases were closed, including outstanding licences that were under appeal from previous years. This has resulted in a clearing of all backlog appeals and allows for timelier determination of new appeals.



Decisions Published

Throughout 2021, 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. The website is updated on a week-by-week basis. There were 435 decisions published throughout 2021. The following table provides a monthly breakdown:



Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Decisions published	64	61	33	73	36	37	45	7	30	37	6	6	435

Time Taken to Determine Appeals

From the date an appeal is heard to the parties to the hearing receiving a decision takes on average 21 days. The period varies from case to case, depending on matters such as the nature and complexity of the grounds of appeal lodged.

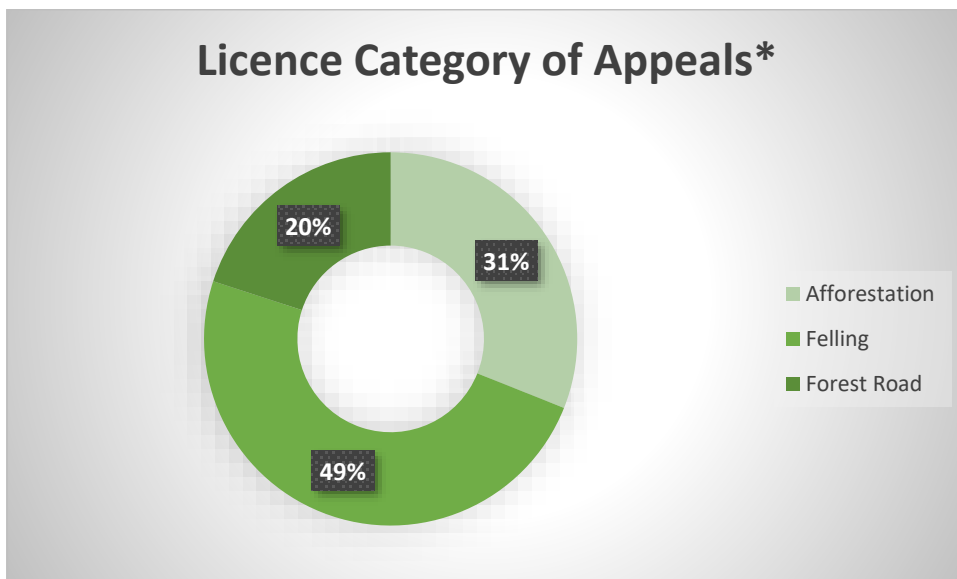
Category of Decisions

Forestry licences which may be appealed include the following categories:

- Felling
- Afforestation
- Forest Roads
- Aerial fertilisation

The categories of cases decided in 2021 are outlined in the table below: (Get figures)

Licence Type	Afforestation	Felling	Forest Road
Number of Decisions	135	213	87



- There were no appeals involving Aerial Fertilisation licence decisions

Outcome of Decisions

Up to 7 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;

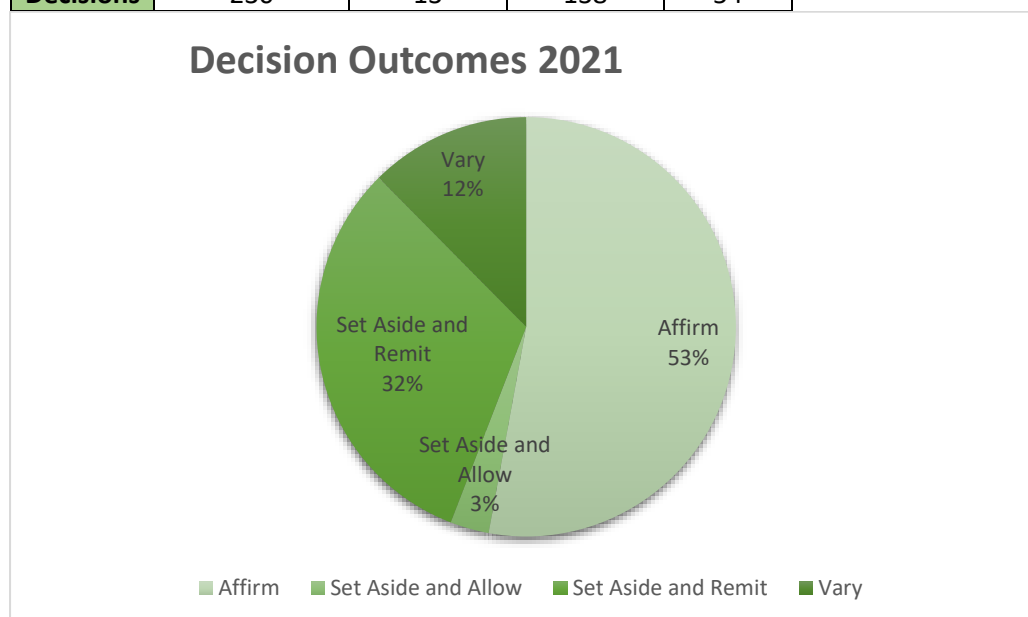
(ii) allow the appeal and set aside the decision;

(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.

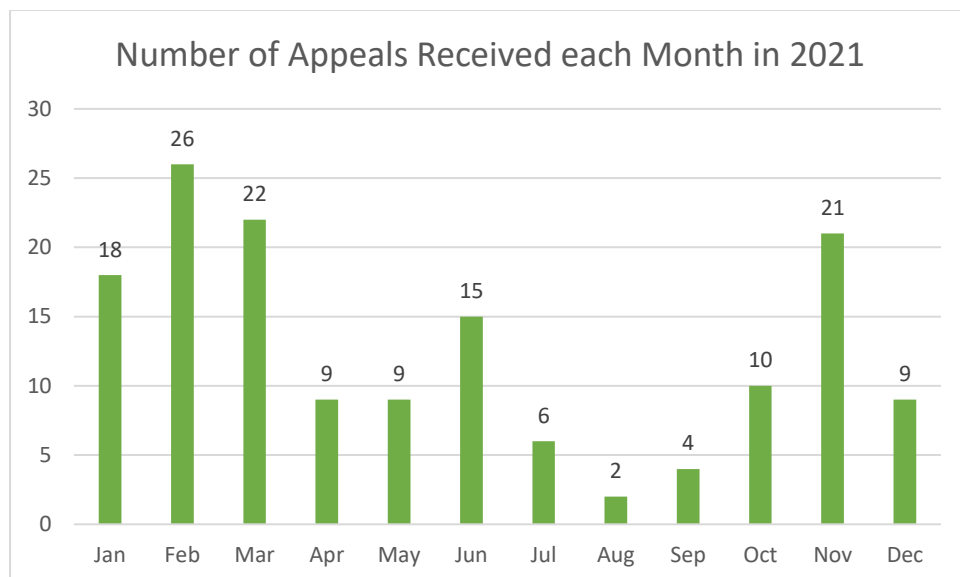
The following is a breakdown of the decision types in 2021: -

Decision	Affirm	Set Aside and Allow	Set Aside and Remit	Vary
No. of Decisions	230	13	138	54



Appeals Submitted and Fees

Another measure introduced under the amendments to the Agriculture Appeals Act 2001 by the Forestry (Miscellaneous Provisions) Act, 2020 was the introduction of a fee for the lodging of an appeal. The fee is currently set at €200 per individual appeal. In 2020, the FAC received on average 80 appeals each month. In 2021 the FAC has received on average 13 appeals per month.



This table below provides an overview of the category of valid appeals submitted during 2021: -

County	Afforestation	Felling	Forest Roads
Cavan	9		
Clare	1	3	1
Cork	2	2	1
Donegal		4	1
Galway	6	2	2
Kerry	2	4	1
Kilkenny		1	
Laois		2	
Leitrim	52	3	2
Limerick	4	3	3
Longford			1
Louth	1		
Mayo	7		
Offaly	1	1	
Roscommon	7	1	2
Sligo	8	2	
Tipperary	4	1	
Waterford		1	
Wicklow		1	
Totals	104	31	14

In 2021 the FAC received fees to the amount of €21,800 for 109 valid appeals.

Invalid and Withdrawn Appeals

Of the 149 appeals received in 2021, 5 appeals were withdrawn, 10 licences were withdrawn, and 27 appeals were invalidated by FAC administration:

- 15 were received late, they were received after the statutory deadline
- 4 had no fee accompanying the notice of appeal form
- 2 were duplicate appeals, already received
- 2 the notice of appeal form was incomplete
- 2 had no notice of appeal form
- 2 had insufficient grounds of appeal submitted

Access to Information on the Environment (AIE)

During 2021 the FAC received and closed 165 AIE requests, another 3 were brought forward from 2020. Of the 168 closed, a one-month extension was applied in 27 prior to a decision issuing, all others were decided within one month of receipt. The AIE decisions comprised 36 granted, 75 part-granted and 57 refused. Of the 168 decisions the requestors sought an internal review in 22 instances. The internal reviews resulted in 4 decisions being upheld, 14 were part upheld and 4 were revoked.

Litigation

Each decision of the FAC may be challenged to the High Court by way of application for a Judicial Review.

In 2021, there was one Judicial Review (JR) proceeding taken against the FAC. In addition, there were three such cases open from 2020, two of which related to the same FAC decision. During 2021 another case that had been initiated in 2020, brought primarily on fair procedure grounds, was subject to judgement during 2021 with the decision of the FAC being upheld and the JR Applicant being refused the relief sought.

Stakeholder Meetings

At the request of stakeholders, the Chairperson was due to hold a stakeholder meeting in late 2021 but this was postponed with the agreement of the stakeholder due to the ongoing Covid-19 restrictions and will be rescheduled in 2022. Further meetings may be held during the coming year at the request of stakeholders.

FAC Administrative Procedures

Under the provisions of the Forestry (Miscellaneous Provisions) Act 2020 amendments, the FAC has drafted guidelines on its operations and procedures for publication on its website once finalised. Throughout 2021 hearings have been generally conducted remotely due to Covid-19 restrictions and guidelines. Prior to this the FAC administration team provided paper files to the committee ahead of all hearings. In line with Covid-19 restrictions, the administration team developed a new procedure to allow the files to be shared electronically. Making the best use of available technology, this involves the use of an online cloud sharing system to securely share files, schedules, and information with all FAC members.

The FAC administration team for each Division 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. The new procedures put in place have proved to be very efficient and effective and have enabled the FAC to continue to hold their hearings during the Covid-19 restrictions.

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, and to the FAC rules and procedures (*being updated at the time of this report*). 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.

Commentary

Leading into 2022, the backlog of legacy appeals is cleared, and for this great credit is given to the Deputy Chairpersons, ordinary members, and the administrative section of the FAC. The past year presented unique difficulties in the hearing and processing of appeals, due to the restrictions imposed by the pandemic. In the trying circumstances presented, the cooperation of applicants, appellants, the DAFM and referral bodies, allowed appeals to be processed efficiently and decisions to issue in a timely manner. With the lifting of Covid restrictions and the use of electronic files, it is anticipated that further efficiencies can be achieved, and the average time taken to process appeals and issue decisions may be reduced further.