

Forestry Appeals Committee

Chairperson's Report 2022



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 2022 is hereby submitted.

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Chairperson, Forestry Appeals Committee
28 April 2023

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Contents

Forestry Appeals Committee – Annual Report 2022	4
Purpose of this Report	4
Background	4
Overview of the FAC Procedure	5
Appeal Trends	6
Committee Structure, Activities and Members	7
Independent Role of the FAC	7
FAC Hearings	8
Format of Hearings	9
Statistics	10
Overall Number of Appeals	10
Decisions Published	11
Time Taken to Determine Appeals	12
Category of Decisions	12
Outcome of Decisions	13
Appeals submitted and Fees	14
Invalid and Withdrawn Appeals	14
Appeals Received by Month and by County	15
Access to Information on the Environment	16
Litigation	16
Stakeholder Meetings	16
FAC Administrative Procedures	16
Website	17
Commentary	17

Forestry Appeals Committee – Annual Report 2022

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 Officers. 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 Act amendments 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 and the appointment of Deputy Chairpersons. Six additional members of the FAC were 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. A secretary is appointed to each Division to provide administrative support.

Other significant amendments introduced through the Forestry (Miscellaneous Provisions) Act 2020 related to the introduction of fees for the making of appeals, and the amendment of the options available to the FAC in making decisions on appeals. The fee to appeal against a decision of the Minister to the FAC is set at €200 and must accompany the appeal. 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. All hearings of appeals by the FAC in 2022 were conducted remotely.

My predecessor Mr Des Johnson brought his tenure as Chairperson of the FAC to an end in April 2022 and I wish him well for the future. I was appointed Chairperson of the FAC by the Minister for Agriculture, Food and the Marine during June 2022 thereby vacating my role as Deputy Chairperson.

The FAC currently comprises a Chairperson, three Deputy Chairpersons and two ordinary external members and two ordinary members who also work as Appeals Officers. The FAC continued to hear appeals during 2022 and as in 2021 the hearings were spread across four divisions of the FAC. Up to the imposition of Covid 19 restrictions, the FAC sat in person in Portlaoise and thereafter sat remotely via electronic means. This followed the publication of S.I. No. 411/2020 - Civil Law and Criminal Law (Designated Body - Agriculture) Order 2020.

Overview of the FAC Procedure

To date, most appeals have been submitted by third parties and concern mainly environmental matters, the implementation of the provisions of the European Union Environmental Impact Assessment (EIA), the Habitats and Birds, and the Water Framework Directives. Once the DAFM issues a decision on a forestry licence application, it is advertised on the DAFM's Forest Licence Viewer 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 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 14-day period, no forestry operations may be commenced. Once a licence decision is 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, to hear the appeal, and to issue its decision on the appeal. The FAC provides a notice of appeals form (FAC Notice of Appeal Form), which is available on our website or directly from the FAC administration. The FAC Notice of Appeal Form 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 to 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 on the Forestry Licence Viewer portal (FLV), 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 may 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 same 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.

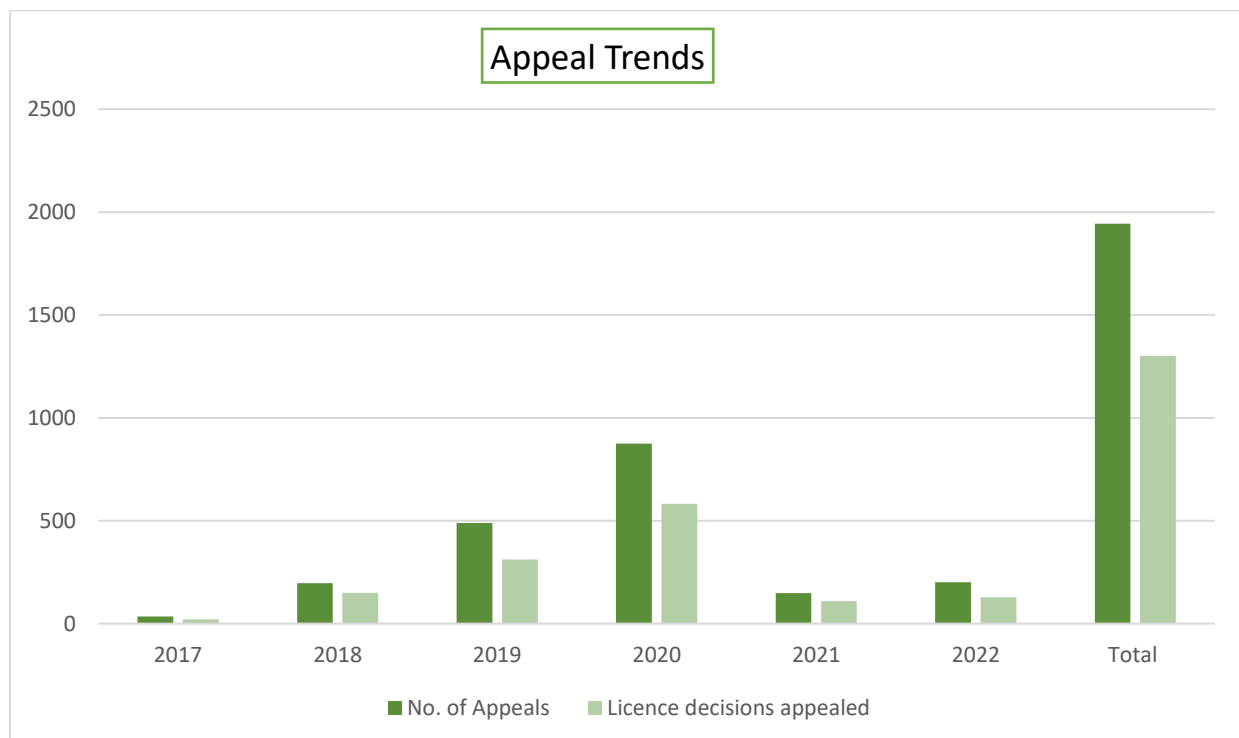
Decisions of the FAC are in writing and include the reasons for the decision and are issued to the parties promptly after being agreed by all sitting members. A decision of the FAC is final and conclusive and once issued the FAC has no further legal role in the appeal or licence decision, while a decision 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 had significantly increased year on year to 2020 and had significantly reduced during 2021 following the introduction of the legislative changes in October 2020, and while there was an increase of 33% in appeals received during 2022 over 2021 this was not considered significant numerically. The following table outlines the trend from 2018 to 2022:

Appeal Trends

	2017	2018	2019	2020	2021	2022	Total
*Appeals received	34	197	489	874	149	201	1944
Licence decisions appealed	21	150	311	582	109	128	1301

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



Committee Structure, Activities and Members

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. Currently the Committee is enabled to operate in four Divisions which adds substantial flexibility in hearing appeal cases.

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 assigned to the FAC throughout 2022. During 2022 these two Officers also heard agricultural appeals as Appeals Officers.

The following members served on the divisions of the FAC in 2022: -

Name	Status
Seamus Neely	Chairperson
Des Johnson	Chairperson (part year)
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

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

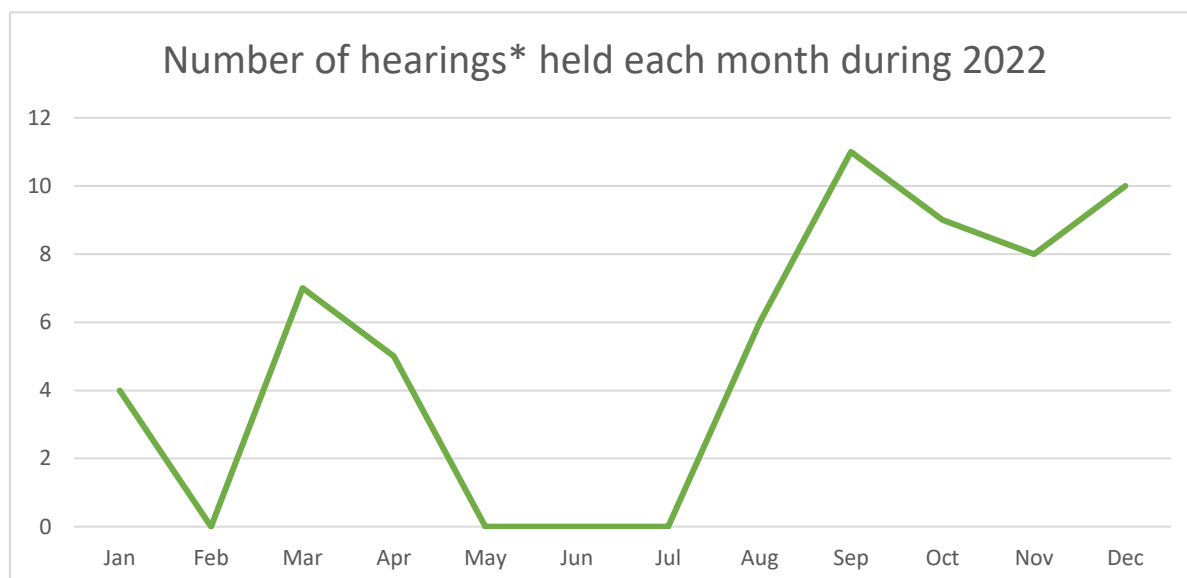
Independent Role of the FAC

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, Deputy 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 Member make an individual declaration in respect of any conflict of interest. In circumstances where a Chairperson/Deputy Chairperson or Ordinary 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 appeals both orally and non-orally as it deems necessary. Throughout 2022 hearings have been generally conducted remotely as provided for in the legislation. Oral Hearings are scheduled by the FAC administration and the time-period for the hearing is set by the Chairperson. Introductions and an agenda are circulated to all parties in advance. In the case of non-oral hearings all parties are circulated with the appeal, submissions, and responses, and are afforded an opportunity for response prior to the hearing. Following the hearing and once a decision is reached, all parties are notified in writing, 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.

During the period January 2022 to December 2022 the FAC heard appeals relating to 53 licence decisions. Similar to 2021, the grounds of appeal submitted by appellants during 2022 continued to be both comprehensive and complex.



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

During 2022 hearings were conducted on average one day a week. Due to reduced numbers of appeals available for scheduling of hearing there was a decline in the regularity of hearings being held in the later part of 2022, and currently two Divisions of the FAC sit one day per month each.

To enable multiple divisions of the FAC to sit, some members were allocated to sit on more than one Division per week. This approach also 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 in 2023 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, while maintaining fair procedures, consistency, and quality control. Matters to be considered include giving due consideration to the grounds of appeal, ensuring relevant submissions are addressed and afforded an opportunity of response where necessary, adhering to the provisions of relevant European Directives, drafting decision letters that are clear, robust and legally sound. The capacity of the administrative section to service the FAC Divisions is also a determining factor in the scheduling of hearings. 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 was sought and received by the FAC concerning the introduction of amendments to the Agriculture Appeals Act 2001 from the Forestry (Miscellaneous Provisions) Act 2020, this advice 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, this applied to one oral hearing held in 2022. Under the amended legislation, introduced by the Forestry (Miscellaneous Provisions) Act 2020, the holding of oral hearings is at the sole discretion of the FAC, whether or not an oral hearing has been requested. In 2022 the FAC held two oral hearings of appeals submitted after the legislative changes. In total there were fifty-three hearings held by the FAC in 2022 of which three were oral hearings, and as previously clarified a single hearing may involve more than one appeal.

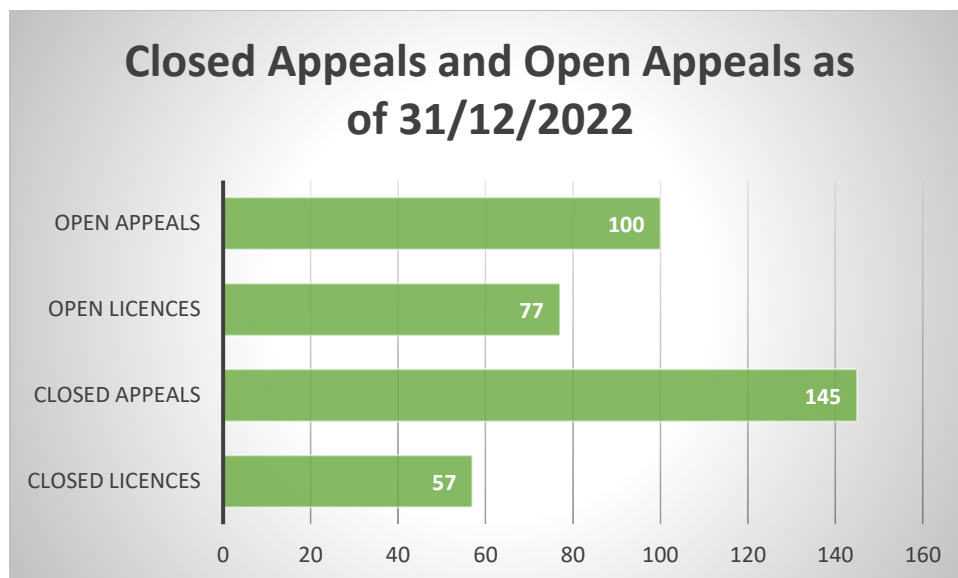
Statistics

The following statistics apply to the period 1 January 2022 to 31 December 2022 and provide an overview of the activity of the FAC.

Overall Number of Appeals

On 1st January 2022 there were 40 open appeals against 36 licence decisions on hand which were carried over from the previous year. An additional 201 appeals were received against 128 licence decisions during 2022. The FAC closed 145 appeals against 105 licence decisions during 2022, these included carried over appeals, appeals received during 2022, and invalid appeals in these cohorts. This has resulted in a clearing of all backlog appeals and allows for timely determination of new appeals.

Appeals Closed during 2022 and Appeals Open as of 31 December 2022



Decisions Published

Throughout 2022, 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 66 appeal decisions that concerned 57 licence decisions issued and published during 2022. The following table provides a monthly breakdown:

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Decisions by Licence appealed against	3	13	4	6	0	0	3	0	5	2	12	9	57
Decisions by Appeals	3	13	4	7	0	0	3	0	6	2	16	12	66



Time Taken to Determine Appeals

From the date an appeal is heard to the parties to the hearing receiving a decision takes on average 41 days. The period varies from case to case, depending on matters such as the nature and complexity of the grounds of appeal lodged. During 2021 and again in 2022, grounds of appeal submitted by appellants were in general noticeably more comprehensive and complex. This has led to the increased time taken to decide on each case.

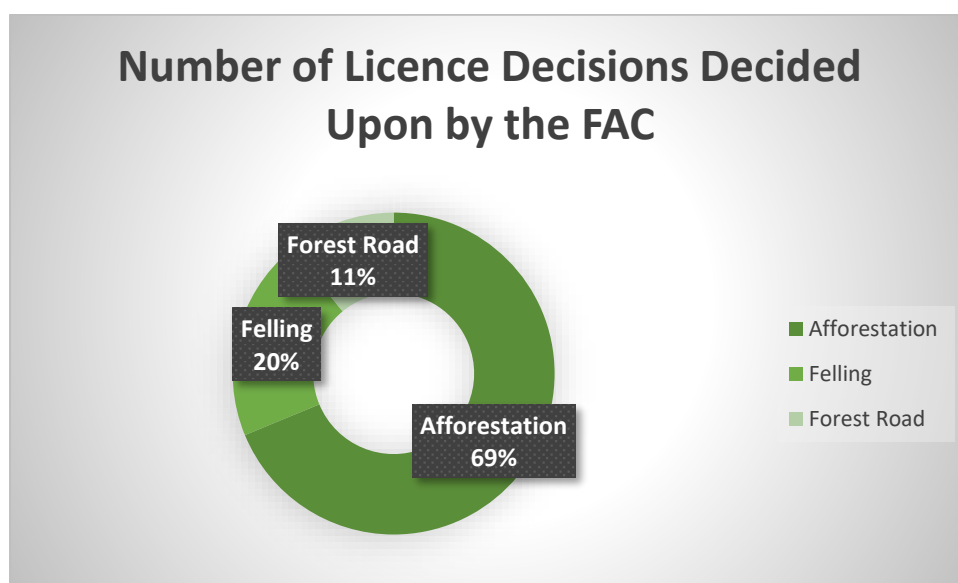
Category of Decisions

Forestry licences which may be appealed include the following categories:

- Felling
- Afforestation
- Forest Roads
- Aerial fertilisation

The categories of cases decided in 2022 are outlined in the table below:

Licence Type/Appeal Type	Afforestation	Felling	Forest Road	Aerial Fertilisation
Number of Licence Decisions	29	24	4	0
Number of Appeal Decisions	37	25	4	0



- There were no appeals involving Aerial Fertilisation licence decisions

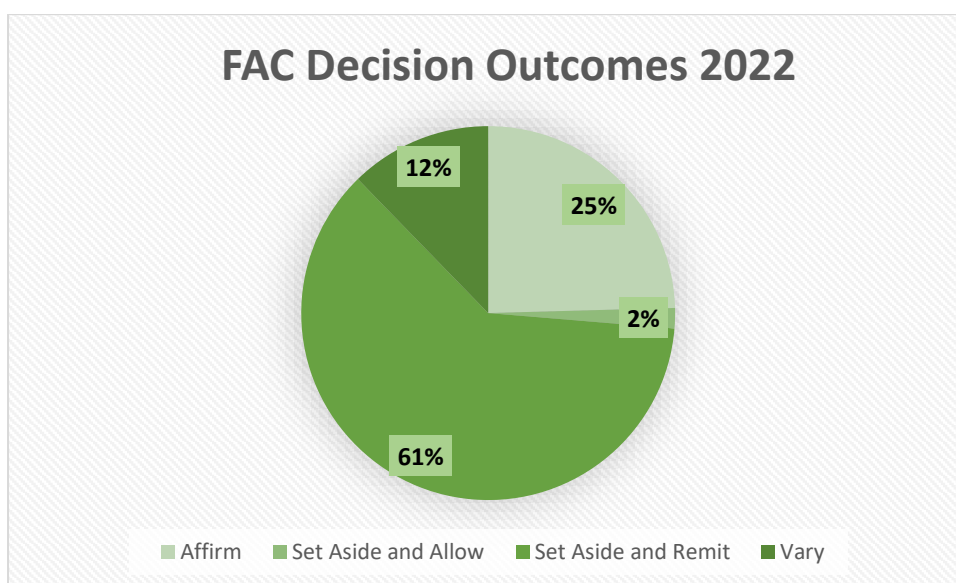
Outcome of Decisions

Up to 7 October 2020, the legislation governing the FAC provided three decision options when deciding an appeal. These options were to confirm, cancel or vary a decision. Following the introduction of amendments through the Forestry (Miscellaneous Provisions) Act, 2020, the FAC was subject to the following provisions 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 2022: -

Decision	Affirm	Set Aside and Allow	Set Aside and Remit	Vary
No. of Decisions by Licence at Appeal	14	1	35	7



Appeals Submitted and Fees

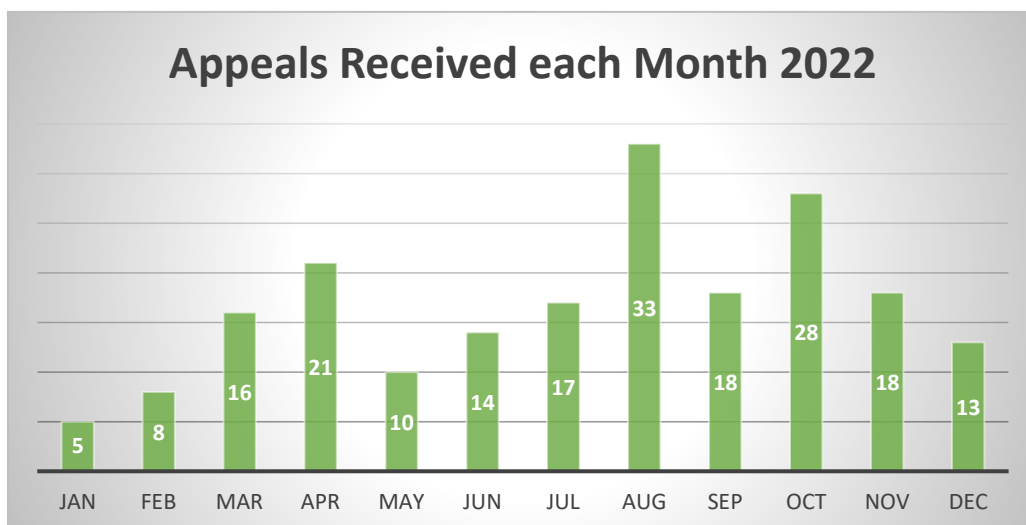
Another measure introduced under the amendments to the Agriculture Appeals Act 2001 by the Forestry (Miscellaneous Provisions) Act, 2020 was the introduction of a fee for the lodging of an appeal. The fee is currently set at €200 per individual appeal. In 2022 the FAC has received on average 17 appeals per month. The average figure for 2021 had been 13 appeals per month. In 2022 the FAC received fees to the amount of €26,200 for 131 valid appeals, in addition there were 70 invalid appeals received where no fee was accepted.

Invalid and Withdrawn Appeals

Of the 201 appeals received in 2022, 1 appeal was withdrawn, 26 were invalidated as the licence was withdrawn, and 43 appeals were invalidated by FAC administration for the following reasons:

- 15 were received late, they were received after the statutory deadline
- 3 had no fee accompanying the notice of appeal form
- 13 of the notice of appeal forms were incomplete
- 9 had no notice of appeal form
- 3 had no valid grounds of appeal submitted

Appeals Received by Month and by County (figures include invalid)



This table below provides an overview of the category of appeals submitted during 2022: -

County	Afforestation	Felling	Forest Roads
Carlow	2		
Cavan	4	4	2
Clare	17	0	1
Cork	10		
Donegal	2	3	
Dublin	2		
Galway	6	1	1
Kerry	7		
Leitrim	52	7	11
Limerick	7		
Longford			1
Mayo	15	15	
Meath	1		
Offaly			
Roscommon	12		3
Sligo	6		
Tipperary	4		
Waterford	2		
Westmeath	1		
Wexford	1		
Wicklow	1		
Totals	152	30	19

Access to Information on the Environment (AIE)

During 2022 the FAC received and closed twelve AIE requests. All decisions issued within the one-month timeframe. The AIE decisions comprised of four granted, five part-granted and three refused. Of the twelve decisions, the requestors sought an internal review in three instances. The internal reviews resulted in one decision being upheld and two were varied. There were two internal review decisions appealed to the Office of the Commissioner for Environmental Information, the decisions for both are still outstanding.

Litigation

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

In 2022, there were no judicial review proceedings taken against the FAC. However, two judicial review cases taken in 2021 were notified to the FAC in early 2022.

One judicial review from 2020 was closed during 2022 with a settled decision to quash to the decision of the FAC and to remit the appeal to the FAC for a new decision. Another case from 2020 was struck-out during 2022 on the consent of the judicial review applicant.

At the end of 2022, there remains one open judicial review initiated in 2020 and three initiated during 2021. Open judicial review cases are not commented further upon.

Stakeholder Meetings

The purpose of stakeholder meetings is to provide a forum for bodies to voice concerns and discuss general matters in respect of the working of the FAC and are conducted solely at the discretion of the Chairperson. No stakeholder meetings were requested or held during 2022.

FAC Administration Procedures

Throughout 2022 FAC hearings have been conducted remotely. The FAC administration team enable files to be accessed electronically by the FAC members, this is facilitated using an online cloud sharing system to securely share files, schedules, and information with the members of each Division or all FAC members as appropriate to the circumstances.

The FAC administration team for each Division schedule and host all hearings for the FAC via WebEx. 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. These administrative procedures have proved to be very efficient and effective and have enabled the FAC to conduct its functions in an efficient and effective manner.

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.

Commentary

Leading into 2022, the backlog of legacy appeals was cleared, and for this great credit is given to my predecessor, the Deputy Chairpersons, the Ordinary Members, and the administrative section of the FAC. During 2022, the cooperation of applicants, appellants, the DAFM and referral bodies, allowed appeals to be processed efficiently and decisions to issue in a timely manner. As advances in the use of electronic files and the availability and development of the Forest Licence Viewer evolves further, it is anticipated that further efficiencies can be achieved, so that the average time taken to process appeals and issue decisions may be reduced further. The administration team are currently engaged in developing an online appeal facility for the submission of appeals to the FAC and this is an exciting innovation which will further streamline the making of appeals and assist appellants.