

**Forestry meeting with FAC Chairperson & Director of Agriculture Appeals Office
1st October, 2019, Agriculture House**

Attendees: DAFM – Seamus Dunne, Kevin Collins, Emmet Byrnes, Inspectorate; Ann Cunningham, Forestry Division
FAC/AAO – Des Johnson, Chair FAC; Angela Robinson, Director, Pat Coman, AAO

AGENDA

- 1. Revised Appropriate Procedure – presentation by Kevin Collins**
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- 2. Outstanding cases, particularly those relating to certain ECJ rulings:**
 - a. Those decided on ‘old’ Appropriate Assessment Procedure – should these be heard, or should the decisions be rescinded by DAFM in order that new process can be applied?
 - b. Grouping of cases – this is allowed under 5 of SI 68 of 2018 FAC Regulations but clarity on how it could operate to be discussed:
Joinder of actions
5. The Forestry Appeals Committee may, at its discretion, treat two or more appeals as a single appeal.
 - c. Those cases not on ECJ grounds – can some or all of these be progressed immediately?
- 3. Reforms to the Appeal Process**
 - a. Introduction of fees (DAFM intend to introduce fees for submissions; corresponding fees for appeals need to be introduced otherwise risk of increased number of appeals if no fee in place).
 - b. Link between appeals and submissions – An Bord Pleanála will not accept an appeal unless a submission has first been made at approval stage, with certain exceptions.
 - c. Right to an oral hearing – is this appropriate/necessary in all cases?
- 4. AOB**

Notes

Agenda 1

Kevin Collin (KC) gave a presentation on the Department’s Appropriate Assessment (AA) procedures, used for all forestry licence applications. All applications are screened for AA. These changes have been on foot of recent Court of Justice of the European Union (CJEU) cases. The changes have been enabled in IFORIS and inspectors have received training. Some training elements are on-going, with clarification being provided on issues raised.

Des Johnson (DJ) queried if there was a time limit on responding to further information requests (FIR). KC noted that generally not, although some cases had a time limit of 12 months. Pat Coman (PC) asked about “local knowledge” that it was subjective, to which KC felt that this would be a bonus on the information provided in the application. DJ asked when the ecologist came on board. KC replied that the ecologist was required when drafting a request for a Natura Impact Statement (NIS), to review the NIS when received and if there was anything the inspector was unsure of.

The notion of “no effect” was raised by PC. This was in reference to cases appearing before the FAC, for instance, where road licence was sought. PC knew that there would likely be felling in the future and while the road had no impact, the felling could be very impactful. Emmet Byrnes (EB) and DJ both agreed that the felling would require consent at which point, the in combination effect would be assessed. KC added that while a road may be applied for, it may not go ahead or the land may be

sold. If however, the application for the road and felling licences were received together, they would be assessed together, taking into consideration all the likely effects.

DJ commented that professional, scientific opinions were required, that “local knowledge” was subjective. DJ mentioned the [Waddenzee](#) case. KC undertook to look at that language and reiterated that local knowledge would be in addition to a scientific assessment.

To wrap up, Angela Robinson (AR) asked what was new to the previous procedures. KC clarified that a narrative on the in combination effect was included and the buffer has extended from three to 15kms.

Agenda 2

Seamus Dunne (SD) reiterated that the current procedures were more robust than previously. There followed some discussion on how to deal with existing cases. DJ noted that if there was an inadequacy in procedures it must be addressed, but how? A suggestion was made that the FAC could ask for further information, at which time the application could be reviewed under the new procedures and the assessment provided. SD felt this would be positive. DJ was unsure, but it could be an answer. SD gave an undertaking to prioritise and to have new assessments back within a month.

AR noted the FAC/AAO were meeting with the Attorney General’s Office (AGO) on 2nd October as they required clarification on some legal points. There would be a question here for the AGO on assessing after a decision was given. If AA was completed a year ago, would a new AA be carried out contemporaneously? SD confirmed it would.

Another option would be to revoke existing decisions, issue a fresh decision and advertise. There are issues for the applicant around this step. DJ said that the appellant would have to be notified. He also noted that a particular appellant is apt to pick a case and take it to the CJEU, without appealing it first. DJ went on to consider the possibility of the Department issuing a new licence. PC noted that if a decision was cancelled, therein ended the input of the FAC.

With regard to joining cases, AR explained that every case must be weighed up on its own merits and may not necessarily apply to all. There followed a discussion on papers only appeals. AR also raised the issue of *de novo* decisions and were the FAC becoming a consent authority. Again, this may be a query raised with the AGO. No answers to the question of joining appeals was arrived at during the discussions.

The existing appeal cases that were not based on CJEU decisions... [Not sure if there was any decision on how to handle these. Ann]

Agenda 3

Ann Cunningham (AC) addressed the consideration being given by the Department to the matter of fees. The Department is conscious of course that any submission fees being introduced could result in potential submitters bypassing this stage and going straight to appeal. AR agreed. There is the possibility of introducing a link between submissions and appeals, which DJ is familiar with and gave the exceptions in the planning process. AC suggested amending the Agriculture Appeals Act. AR pointed out it was up to the Minister to make legislation. AC asked if the AAO would be minded to propose an amendment. The discussion moved to oral hearings. The Department felt they should be the last to be asked to attend a hearing, that if the applicant and appellant chose not to attend, then the Department would not be required, unless there was some particular defence. The FAC agreed with this approach.

AOB

AR thanked the Department for training previously provided on IFORIS and mentioned how good the system was. She asked if training could be provided on the new AA procedures. SD undertook to provide this.

There being nothing further to discuss, the meeting ended.

Ann Cunningham

3rd October, 2019.