



19th December 2022

Subject: Appeal FAC146/2022 against licence decision CN90102

Dear

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Hearing

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Appeal FAC146/2022 was considered by a division of the FAC at a remote hearing on 14th December 2022. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly, Mr. Iain Douglas & Mr. Vincent Upton
Secretary to the FAC: Mr. Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to refuse the licence CN90102. The reasons for this decision are set out hereunder.

Background

The decision pertains to a refusal of an afforestation licence for the planting of 2.5 hectares at Farnanefranklin, Co. Limerick. The lands are described as enclosed agricultural land with a neutral aspect and are not exposed. The land is currently in grass on a mineral soil. Planting would be of a native woodland comprised of pedunculate oak, birch and other broadleaves. The field is bounded to the east and south by hedgerow that would be retained and access is in place through an existing farmyard. The record includes a copy of the site notice dated 23rd December 2021 and the location of the site notice is

marked on the Biomap provided. The application includes a series of maps and environmental information.

The licence was refused on 26/09/2022.

I regret to inform you that the Forest Service cannot approve this application for the following reasons:

- *Outside scope of Scheme ,*
- *Vast majority of proposal recently afforested without prior written approval of the Minister, therefore, without such approval, ineligible for grant and premium payment under Afforestation Scheme.*

This refusal is to ensure good forestry practice, the protection of the environment, health and public safety. You are now required to remove your site notice immediately.

Appeal

There is one first party appeal against the decision and the Notice of Appeal and full grounds have been provided to the parties. In summary, the grounds submit that the reasons provided for the refusal relate to a grant aid scheme and should not be used for licencing decisions and there is no explanation as to why it is outside the scope of the scheme. It is submitted that there has been no decision as to whether the planting that has occurred should be removed and that this is unfair and a decision should have been made soon after the site visit. The description of the vast majority of the site being planted is challenged and it is submitted that approximately one third of the site or less than 1 hectare had been planted with a mixture of native tree species. It is submitted that the trees had been purchased in early December 2021 when the application was ready and that planting had occurred before the end of March 2022 as the trees would have gone to waste otherwise and the Appellant expected the application to have been processed more quickly. The grounds submit that an Inspector visited the lands in May 2022 and informed the Appellant that the planting should not have been undertaken but that they could not now remove the trees without a licence. It is submitted that the decision refers to good forestry practice, the protection of the environment and health and public safety but that no reasons related to these matters are provided. A map was provided with the appeal that showed the approximate area that was planted.

DAFM statement

The DAFM submitted a statement in response to the appeal and outlined the dates and procedure in processing the application. It is submitted that the application was received on 6th January 2022 and that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statement goes on to state that the District Inspector had inspected the lands on 18th May 2022 following prior notification. It is submitted that the vast majority of the lands had been planted and fencing was in place. It is submitted that while leaving the lands the Inspector met the Appellant and that the Appellant informed them that they had undertaken the planting themselves. The Inspector submits that they informed the Appellant that it was a long-standing condition of the Afforestation Scheme that no planting work can commence prior to approval from the Minister.

The statement was provided to the Appellant.

Considerations of FAC

The FAC was established under the Agriculture Appeals Act 2001 to hear and determine appeals from people dissatisfied with decisions of the Minister for Agriculture under Section 7 of the Forestry Act 2014, excluding grant aid, and the Forestry Regulations 2017. A decision in relation to the afforestation scheme is therefore outside the scope of its remit. However, as noted by the Appellant, the Minister in this case refused a licence for afforestation which falls within Section 7 of the Forestry Act 2014. The Minister is also required to provide reasons for their decision under the same section.

As noted in the appeal the reasons provided for the refusal relate to the Afforestation Scheme and do not provide any detail. The FAC is satisfied that refusing a licence on the basis that an application is “outside the scope” of a funding scheme or being ineligible for funding represents a serious and significant error in the making of a decision under Section 7 of the Forestry Act 2014 and the Forestry Regulations 2017 as they pertain to afforestation. While the letter also refers to good forestry practice, the protection of the environment, and health and public safety there is no reasons provided as to why these factors might be impacted. The Appellant has clearly been seriously disadvantaged in their capacity to challenge the decision or to understand the reasons behind the decision by the absence of valid reasons.

That being said, the Appellant accepts that they undertook the planting having applied for a licence but before any licence was granted. The Appellant was waiting some time to have their application processed and appears not to have heard from the DAFM until May when the inspection was undertaken. They also do not appear to have undertaken any further works when cautioned by the Inspector not to undertake works without a licence, while the obligation was clearly on the Appellant not to undertake the works without a licence in the first place. The works themselves involves the small-scale planting of native woodland on a portion of improved agricultural land. The Appellant submits that they planted to avoid the trees going to waste but they were still required to attain a licence for the activity.

The FAC considered that a refusal of an application on the basis of the works having commenced before the licence was issued would not, in general, be considered unreasonable, and did not have before it any new evidence that was not before the Minister. Under those circumstances, the FAC did not consider it appropriate that it might substitute a decision despite the errors identified. The FAC determined that the decision should be set aside and remitted to the Minister to make a new decision and provide reasons appropriate to the licence application before them under the Forestry Act 2014 and Forestry Regulations 2017.

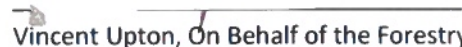
The FAC noted in considering the record that the procedure of the DAFM was incomplete and the FAC understands that this was due to the fact that the decision related to a refusal. In making a new decision, the Minister would have to ensure that should the decision change and that the licence was

granted that the procedures, including the screenings for Appropriate Assessment and EIA, were completed properly.

In relation to the question as to whether the trees are to be removed, the Minister does not appear to have made a decision on this matter. The FAC does not consider that this matter is likely to fall within its remit as provided under the Agriculture Appeals Act 2001 and would be unlikely to be able to make a determination one way or another, unless it pertained to an application and decision made under section 7 of the Forestry Act 2014. The FAC does appreciate the Appellant's concern to have this addressed as efficiently as possible.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that serious and significant errors were made in the making of the decision. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN90102 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to make a new decision on the application and to provide reasons.

Yours sincerely,


Vincent Upton, On Behalf of the Forestry Appeals Committee