



2nd October 2023

Subject: Appeal FAC013/2023 against licence decision TFL00730621

Dear ¹

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence refused by the Minister for Agriculture, Food and Marine (Minister). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 ("The Act"), 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. A hearing of appeal FAC013/2023 was held remotely by the FAC on 21st September 2023. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Iain Douglas & Mr. Vincent Upton
Secretary to the FAC: Ms. Vanessa Healy

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 affirm the decision of the Minister for Agriculture, Food and the Marine to refuse licence TFL00730621. The reasons for this decision are set out hereunder.

Background

The decision relates to an application for a felling licence at Rathkenny, Co. Tipperary. The application included a harvest plan and operational details and maps. The forest is comprised of two plots. Plot one is described as being comprised of 10.8ha of Sitka spruce that had been thinned previously and a fourth thinning in 2025 and clearfell in 2029 was planned. Plot 2 is described as a being comprised of 1.2ha of Sycamore to be clearfelled in 2022. The harvest plan states that Plot 2 has performed very poorly, and the landowner is planning to clearfell and change species. Both plots would be replanted following clearfell and replanting details are provided.

An archaeological report was prepared by the DAFM which recommended no additional conditions. The application was referred to the County Council and the NPWS but no response is on file.

The application was refused on 6th June 2023 with the following reasons provided,

The application is materially incomplete per section 20(2) of the 2017 Forestry Regulations.

- A Field Inspection of the Application has determined that Plot 2 - 1.2ha made of Sycamore has been recently clear felled without Felling Licence. Site harvested manually and timber stacked on the adjoining field. A felling licence cannot be issued for trees that no longer exist.

Appeal

There is one first party appeal against the decision and the full grounds of appeal have been provided to the other party. The grounds submit that the owner had felled the trees in error as they did not know the difference between the species as the trees had not been in leaf. The grounds submit that the owner has consulted a Forester and that trees will be replaced when plants are available and as a matter of urgency. The Appellant submits that they apologise and will ensure that it will not happen again and that they will seek advice in future.

Minister's statement

A response to the appeal was provided by the DAFM which described the processing of the application and submits that the decision was made in compliance with DAFM procedures and the Forestry Act 2014 and Forestry Regulations 2017. It is submitted that a Forestry Inspector undertook a field inspection on 17/10/22 and found that the sycamore in plot 2 had been recently felled and so the felling licence could not be processed.

Considerations of the FAC

The FAC understood the grounds to contain an acceptance by the Appellant that the trees in Plot 2 had been felled without a licence and that this was done in error. The grounds refer to confusion regarding the species contained in the plot, but the FAC was not satisfied that this would have avoided the requirement to attain a felling licence. Furthermore, the FAC did not consider that there was any evidence before it that the trees might be considered exempted trees under the Forestry Act 2014, and this was not claimed in the appeal. In any case the Appellant had applied for a felling licence for both Plots 1 and 2 and had clearly outlined the harvesting plans for both plots in the licence application. The FAC would understand this to represent an acceptance on behalf of the Appellant that a licence was required to undertake the felling.

The FAC noted that the trees had not thrived following planting and that the Appellant had hoped to replace them with species that might be more productive on the site. The Appellant submits that they made a mistake and would engage a Forester in the future. The FAC accepted the Appellant's submission on these matters. The FAC further noted that the Appellant does not appear to have undertaken any works in Plot 1, the larger plot.

The DAFM submitted that the land was subject to an inspection by a Forestry Inspector who discovered that the trees in Plot 2 had been felled. The grounds do not contest this. The Minister refused the licence

on the basis that the application was incomplete and the trees in one plot had already been felled. The FAC considered that the grounds accept that the application was not accurate in that it included an application to fell the existing trees in Plot 2 which were felled before the Minister had made a decision on the application.

In order not to affirm a decision of the Minister, the FAC must be satisfied that a serious or significant error or a series of errors had been made in the making of the decision or that the decision was made without complying with fair procedures. In this case the FAC considered that there was no evidence that an error was made in the making of the decision by the Minister. The grounds request that the application be granted but under the circumstances the FAC was not satisfied that it could facilitate this. Should the Appellant wish to have an application for a felling licence for Plot 1 considered, the FAC was of the view that a new application for this area made to the Minister would be the most appropriate process to follow.

For these reasons the FAC is affirming the decision of the Minister to refuse licence application TFL00730621. The DAFM will be notified of this decision.

Yours sincerely,


Vincent Upton,
On Behalf of the Forestry Appeals Committee

