



22nd July 2024

Subject: Appeal FAC15/2023 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 FAC15/2023 was considered by a division of the FAC at a remote hearing on 3rd July 2024. In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. Donal Maguire, Mr. Luke Sweetman
Secretary to the FAC: Ms. Aedín Doran

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 6th January 2022 and the location of the site notice is marked on the Biomap provided. The application includes a series of maps and environmental information. No submissions were received.

The licence was refused on 10/07/2023 with the following explanation:

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

- Planted without a valid licence and refused in accordance with findings of FAC 46/2022. This refusal is to ensure good forestry practice, the protection of the environment, health and public safety. This refusal is issued under the Forestry Regulations 2017 (S.I No. 191 of 2017). 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. The grounds submit that DAFM have failed to provide any reasons as to why the refusal ensures good forestry practice, the protection of the environment, health and public safety. The grounds also submit that DAFM has not communicated any decision regarding the trees already planted, other than informing the Appellant during a field inspection that a licence would be needed to remove them.

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 inspected the lands on 18th May 2022 following prior notification. It is submitted that a significant percentage 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 inspector also submits that forestry in Ireland operates within a legal and regulatory framework stating and that since the Forest Act 2014 and the Forestry Regulations 2017 (SI No 191 of 2017) came into force on 24th May 2017, it is an offence to undertake afforestation where the area involved is greater than 0.10 hectares unless a license is first obtained from the Department.

The statement was provided to the Appellant.

Considerations of FAC

The Minister in this case refused a licence for afforestation which falls within Section 7.3 of the Forestry Act 2014:

- (3) Where the Minister, following an application as referred to in subsection (1)—*
- (a) refuses to grant, give or make it, as appropriate,*
 - (b) specifies conditions under subsection (1), or*
 - (c) takes any of the actions specified in subsection (2)(a) or (b),*
- he or she shall provide reasons and inform the applicant of the procedure for appealing the decision.*

The decision in FAC46/2022 set aside and remitted the original DAFM license refusal for afforestation on this site. The basis for remitting (rather than affirming) the refusal decision was for DAFM to provide reasons (as per section 7.3 above) why the refusal was made in the interest of ensuring “good forestry practice, the protection of the environment, health and public safety”. In appeal FAC15/2023 the same criteria are again cited in the DAFM refusal. Despite the explicit request to address it in the FAC decision for FAC46/2022, DAFM have failed to provide the reasons as to why the refusal would “ensure good forestry practice, the protection of the environment, health and public safety”. If the reason for refusal is simply that planting has taken place on part or all of the site prior to a licence being issued then this should be stated without recourse to the criteria “good forestry practice, the protection of the environment, health and public safety”. If the grounds of refusal relate to all or part of the site area, this should be made clear.

The Appellant accepts that they undertook planting of a significant part of the site having applied for a licence but before any licence was granted. They 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 involve 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. Over 2 years have now elapsed since the Inspector’s field visit revealed planting which was undertaken without a licence and contrary to section 22.7 of the Forestry Act 2014. 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 Appellant has volunteered to remove them but has been informed that this requires a felling licence, which the Appellant has not applied for. 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 the licence to remove the trees pertains to an application and decision made under section 7 of the Forestry Act 2014.

The FAC considered that a refusal of an application on the basis of the works having commenced before the licence was issued was reasonable, at least in relation to the portion of lands planted without a licence, and did not have before it any new evidence that was not before the Minister. However, having cited the

criteria of "good forestry practice, the protection of the environment, health and public safety" without specifying any reasons, and not being specific as to the refusal relating to the planted area or unplanted areas or both, the FAC does not consider it appropriate to affirm the decision of DAFM. 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 licence granted, that the procedures, including the screenings for Appropriate Assessment and EIA, were completed properly.

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,

Myles Mac Donncadha, On Behalf of the Forestry Appeals Committee