



31/01/2025

**Subject:** Appeal FAC023/2024 in relation to felling licence TFL00904523

Dear

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

#### **Hearing & Decision**

The FAC considered appeal FAC023/2024 during a sitting of the FAC on the 15/11/2024. In attendance:  
**FAC Members** – Mr. Myles Mac Donnadh (Deputy Chairperson), Mr. Vincent Upton & Mr. Iain Douglas  
**FAC Secretary** – Ms. Aedín Doran

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence TFL00904523.

#### **Site Details**

The aerial imagery included in the *Harvest Site Plan Map* on the DAFM's Forestry Licence Viewer (FLV) indicates that these are enclosed lands in a single narrow, rectangular plot with light broadleaf tree cover close to the centre of Oughterard village with apparently adequate site access. Various dwelling houses are situated along the SW-NE axis of the plot, close to the southeastern plot boundary.

#### **Background**

According to the submissions, on 24/02/2022 Gardai visited the site and found that tree felling had commenced on 21/02/2022 without a felling licence in place. Following a DAFM inspection on 01/03/2022 it was found that an area of 0.24 ha had been felled without an appropriate licence pursuant to Section 7(1) of the Forestry Act 2014. A Draft Replanting Order (reference AIF 20/2022) was served on the landowner on 04/12/2023 which provided an opportunity for the landowner to submit an alternative replanting proposal by 08/01/2024, if desired. Correspondence was received from the landowner on 21/12/2023. A Confirmed Replanting Order (RO 18/24) was issued to the landowner on 26/11/2024 which stated that the content of the 21/12/2023 correspondence was not accepted because; 1) trees had been felled prior to the application for a licence; 2) the opportunity was given to propose alternatives to the draft replanting order (such as the use of a smaller number of larger trees) which was not taken up; 3) different tree species were proposed to those which had been felled because Ash is no longer planted, as a matter of policy; 4) there is no exemption

in the Forestry Act in relation to trees on or adjoining any Right of Way; 5) felled trees within 30m of a dwelling or associated building were not counted in the assessment of illegal felling; and 6) Health and Safety concerns do not negate the legal requirements under the Forestry Act, 2014.

### **Operational Details**

The licence under appeal was for thinning on 1.54 ha at Cregg, Oughterard, Co. Galway and was submitted to DAFM on 09/02/2023. DAFM administrative procedures routed the application for archaeological review and DAFM requested that the applicant furnish proof of ownership of the land, a *Harvest Site Plan* and *Harvest Site Plan Map* to make the application complete. It appears that only when the file was passed to the DAFM Inspector for review on 01/11/2023 that the inspector entered on the file that the lands were subject to an investigation of Alleged Illegal Felling and that the licence could not progress until the investigation concluded. During an inspection on 21/01/2024 the DAFM inspector found that no replanting had taken place and recommended refusal pending replanting under the Ministerial Replanting Order dated 04/12/2023. No further processing of the file was undertaken by DAFM so there is no Screening for Appropriate Assessment, Assessment to determine EIA requirement or in-combination assessment on file, nor were any referrals made to statutory consultees. The felling licence was refused on 09/02/24 and the reason provided referred to replanting areas that were felled without a licence. For clarity, it is the refusal decision in relation to the felling licence application that is before the FAC.

### **Grounds of Appeal**

There is one appeal against the licence (FAC023/2024). The grounds of appeal were considered in full by the FAC and the following is a summary of the issues raised:

1. The order to replant will block the intended extraction route as marked on the Harvest Site Plan Map. If a felling licence is subsequently granted this will cause the applicant unnecessary expense as the newly planted trees will simply be uprooted.
2. When the decision was made to refuse the licence a replanting order was not in place and the decision to refuse the application was incorrect.
3. Lack of response by DAFM to previous correspondence.
4. Replanting the areas near the dwellings would contravene the 60m setback contained within the DAFM "Standards for Felling & Reforestation" (2019) and expose the landowner to additional liabilities.

### **DAFM Response**

The DAFM provided a written response dated 01/07/2024 to the grounds of appeal in the form of a Statement of Facts to the FAC. The DAFM Administration response states that "the decision was issued in accordance with our procedures, S.I 191/2017 and the 2014 Forestry Act." The District Inspector outlines how the felling licence application was submitted on 09/02/2023 but only reached his work list on 01/11/2023 after referral for an Archaeology report and various requests by DAFM for further information from the applicant. At this point the inspector advised that the licence could not proceed as the site was the subject of an investigation into alleged illegal felling.

During a site inspection on 25/01/2024 the inspector noted that no replanting had taken place and recommended refusal pending replanting under the Ministerial Replanting Order on the site, dated 04/12/23.

### **Submission**

The DAFM statement was provided to the Appellant and the Appellant made a further submission on 09/11/2024 which again outlined the grounds that no replanting order had been received and outlined the correspondence with the DAFM. The DAFM confirmed that a finalised replanting order was not in place.

### **FAC Considerations**

The FAC considered the DAFM's processing of the application prior to the DAFM decision to refuse felling licence TFL00904523. Over twenty-one months passed between inspection of the alleged illegal felling and the issuance of a draft replanting order on 04/12/2023. During this time the landowner applied for felling licence TFL00904523 which was processed administratively to assemble all relevant information, including requests for further information from the applicant. It was only when the licence application was passed to the District Inspector for determination that further processing was halted due to the allegation of illegal felling. Almost 12 months also elapsed between the issuance of the draft and confirmed replanting orders. The FAC is of the view that such delays are regrettable and engaging the landowner in the refinement of a felling licence application on a site which could not proceed due to such an allegation has the potential to be misleading and wasteful of time and resources. However, the FAC is of the view that these shortcomings do not constitute a serious error in the processing of the licence application for the purposes of section 7 of the Forestry Act 2014 or Forestry Regulations 2017 to which the FAC has regard.

### **FAC Consideration of the Grounds of Appeal**

The FAC has no jurisdiction regarding alleged illegal felling and the circumstances of this site are only described here for the purposes of clarity and due to the fact that the licence has been refused with reference to a replanting order. Similarly, the FAC cannot adjudicate on the merits or content of any replanting order. As such, the only ground of appeal which may be addressed by the FAC is ground #2: that a replanting order was not in place at the time of the decision to refuse the licence. The FAC finds that at the time of the decision there was only a draft replanting order in place and the inspector had no basis upon which to expect replanting to have taken place on the site visit of 25/01/2024. A significant error was made in basing the decision to refuse the licence on the lack of compliance with a replanting order which was not confirmed at the time the decision was made.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the Statement of Fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a significant error was made in the making of the decision. The FAC is thus setting aside and remitting the decision of the Minister to refuse licence TFL00904523 to ensure that the status of the alleged illegal felling and replanting order is correctly reflected in any decision made. In making a new decision on the felling licence application, the Minister should provide reasons that are clear and are in keeping with the Forestry Act 2014 and the Forestry Regulations 2017.

Yours sincerely,

Myles Mac Donncadha on Behalf of the Forestry Appeals Committee



**An Coiste um Acmhairc**

**Foraibeartha**

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