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16th April 2020

Subject: Appeal FAC053/2019 against revocation of general felling licence GFL20650

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued and subsequently revoked by the Minister for Agriculture, Food and the Marine. 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.

Background

General felling licence, GFL20650, covering 13.1 ha at Silvergrove, Co. Cork was revoked on 20th February 2019.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on the 11th February 2020

In attendance at the hearing:

FAC Members:	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr Vincent Upton
Secretary to the FAC:	Ms. Ruth Kinehan
Appellant:	[REDACTED]
Appellant's Representatives:	[REDACTED]
DAFM Representative:	Mr. Frank Barrett, Mr. John Redmond & Mr. Brian Mahoney

Decision

Having regard to the evidence before it and, in particular, the considerations and reasoning set out below, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister of Agriculture, Food and the Marine regarding licence GFL20650.

A wide range of issues were included in the grounds of appeal and presented at the oral hearing. Issues that fall outside of the FAC's remit, as set down in the Agricultural Appeals Act 2001, as amended, will not be addressed in this decision, this includes the replanting order which was made under Section 26 of

the Forestry Act 2014. The FAC considers its remit to relate to an appeal against the decision of the Department of Agriculture, Food and the Marine (DAFM) to revoke felling licence GFL20650 on 20th February 2019 and the grounds and issues that relate directly to that decision. In the revocation letter the DAFM provided the following reasons,

On the basis of the investigation this Department has concluded that the tree felling within the area licenced for thinning under GFL20650 is not compliant with Section 49(1)(a) of the Forestry Act 1946.

The extent of tree removal that has occurred, while exercising this thinning licence, is excessive and not in accordance with the general practice of good forestry as stated in Section 49(1)(a) of the Forestry Act 1946 and which was specified in the licence GFL20650. Therefore, under Section 7(2)(b) of the Forestry Act 2014, this Department hereby revokes GFL20650.

In this decision, the FAC will address the primary grounds of appeal and, as previously stated, only those issues that fall within its remit. Therefore, the decision of the FAC is based on the submitted grounds and information that relate to the DAFM decision to revoke general felling licence GFL20650 under Section 7(2)(b) of the Forestry Act 2014 on the basis that the level of thinning was excessive and not in accordance with the general practice of good forestry and that the felling was not compliant with Section 49(1)(a) of the Forestry Act 1946.

A notice of appeal was received by the FAC on the 20th March 2019, the grounds of which were submitted by the Appellant and their Forester. In relation to the revoking of the licence these grounds include a desire to complete the felling and scrub clearance that had taken place for health and safety reasons, that the land was historically grazing fields and had not been managed previously, that DAFM Inspectors had advised them to remove scrub as it was reducing their eligible area, that storms had caused considerable damage to trees on the farm, that there are areas of sheet rock on site which results in crowding of trees in areas that require thinning, that a licence had been issued for the works that included a description of the work, that the selective thinning as undertaken is in line with good forestry and not excessive, that some of the trees were exempt from requiring a licence, that felled areas had been inspected previously and an existing suspension had been lifted, that the inventory methodology employed by the DAFM Forestry Inspectors to quantify the felling is flawed and does not reflect the operations on site.

The Appellant provided the following timeline subsequent to the issuing of the licence

- An inspection by a District Forestry Inspector on 13/10/17
- Inspection by two District Forestry Inspectors 14/09/18 with the licence suspended subsequently, this suspension was subsequently lifted.
- Inspection by two District Forestry Inspectors 09/01/19 resulting in the suspension of the licence pending review
- Inspection by two District Forestry Inspectors on 15/02/19 to collect data
- Licence revoked on 20/02/19

The DAFM stated that the licence was first suspended on 27th September 2018 and that this suspension was lifted on 10th October 2018. The licence was suspended for a second time on 9th January 2019 and revoked on 20th February 2019.

General Felling Licence GFL20650 covers a total area of 13.1 ha but as noted by all parties, part of this area covers sheet rock and other non-forest areas. The total forest area is divided by a public road that runs east-west and parties refer to works being undertaken to the north of this public road initially and, following the lifting of the first suspension in 2018, works moving to the south of this road.

The Appellant contended that the initial suspension of the licence and subsequent lifting suggests that the DAFM had "certified" the work undertaken prior to the suspension, which occurred to the north of the public road. While the FAC does not consider this to represent a certification as such, this issue raises a consideration as to what area of the forest and associated operations the revocation relates. If the work undertaken on the area to the north of the public road was considered to be in breach of the felling licence, the revocation should clearly have taken place following the first suspension. Instead this initial suspension was lifted and the licence reinstated, which would lead to the reasonable expectation on behalf of the Appellant that the DAFM did not consider works undertaken up to that point to be of a nature that would warrant revocation of licence GFL20650. Based on the statements from the DAFM Inspectors and the Appellant, all parties appear to agree that works to the north of the public road were completed by the time of the first suspension and subsequent lifting. Under these specific circumstances, the FAC considers that it is reasonable to consider the revocation of the licence based on operations undertaken to the south of the public road solely. For the avoidance of doubt, this area relates to the area of forest mapped in red by the DAFM and in which sample plot measurements were undertaken in 2019 as shown in Appendix 3 Map 4 of the statement to the FAC from one of the DAFM Forestry Inspectors. In line with Regulation 6 of SI 68 of 2018 the DAFM provided a statement to the FAC in the form of written statements from two District Forestry Inspectors and also provided its file related to the licence and subsequent suspension and revocation. This included a Freedom of Information request from the Appellant and the related content.

In the application for a general felling licence (DAFM stamped 01.02.17) submitted on behalf of the Appellant to the DAFM, the total forest area is described as comprising 13.1 ha of broadleaved trees 1-25 years old. Question 6 of the application relates to the area of scrub or cleared land not replanted after felling to which N/A is provided, suggesting no clearing of land will take place. For the purpose for which a general felling licence is required (Question 8) the response provided is "Woodland Rejuvenation". Two maps also accompanied the application outlining the area to be covered by the licence. A letter submitted by the Appellant's Forester to the DAFM dated 31/01/17 provides "additional information" on the application including the Objectives and Operations. This letter and information is also referred to in the grounds of appeal. While this letter does refer to scrub clearance this is qualified as referring to species not requiring a licence. In the Felling Licence Inspection Report (stamped 7th

March 2017), the Forestry Inspector indicated that there were no exempt trees under the Forestry Act 1946. General Felling Licence GFL20650 was granted on 7th April 2017 stating,

Pursuant to the powers vested in him by section 49 of the Forestry Act, 1946, the Minister for Agriculture, Food and the Marine hereby grants to the person (hereinafter referred to as the Licensee) specified in the First Schedule hereto a licence authorising:-

In accordance with paragraph (a) of sub-section (1) of the said section, the uprooting or cutting down of trees in the wood specified in the Second Schedule hereto on land owned by the Licensee, in the ordinary course of thinning, in accordance with the general practice of good forestry, that wood.

The Forestry Act 1946 offers no definition of thinning but Section 49 (1) does distinguish between activities under which a general felling licence can be granted:

(a) the uprooting or cutting down of trees in any specified wood on the land in the ordinary course of thinning, in accordance with the general practice of good forestry, that wood,

(b) the uprooting or cutting down of trees on a specified part of the land for the purpose of clearing that part with a view to replanting,

(c) the uprooting or cutting down of trees in any specified wood on the land in the ordinary course of thinning, in accordance with the general practice of good forestry, that wood, and the uprooting or cutting down of trees on a specified part of the land (other than the part on which that wood stands) for the purpose of clearing that specified part with a view to replanting,

Felling licence GFL20650 was applied for and granted under (a), thus it is evident that the clearing of land was not licensed.

Regarding the desire to remove felled trees and scrub, as the licence relates to the felling and uprooting of trees, the FAC does not consider there to be any restrictions on moving felled trees or scrub for health and safety reasons at present. The FAC does not consider the historic management status of the land to be relevant to the revocation of the licence in this case. The Appellant and the DAFM were clearly in agreement that a felling licence was required for the felling of trees on this land.

During the oral hearing a letter from the DAFM relating to eligible area for agriculture dated the 11th September 2018 was provided to the FAC. This includes the noting of problems relating to "Scrub" and "Scrub and Trees" respectively in two separate parcels. The location of these parcels was not identified to the FAC. The FAC does not consider this letter to contain an instruction to clear trees or provide for the felling of trees without replanting. The removal of scrub such as gorse (*Ulex sp.*) does not require a felling licence and is not relevant to the appeal. The issues identified in this letter could be created through existing shortcomings in the previous mapping of eligible areas. Irrespective of this letter and its date in relation to the licence application, the Appellant had not indicated that they wished to clearfell areas and not replant them as they could have in the application process if this was the objective of the operation.

The Appellant and their Representative provided photos of storm damaged trees in the forest. A number of powerful storms had occurred around the period of the granting of the licence and felling operations, and were noted for significant damage to trees and forests, particularly in the south west of the country. However, it was not suggested by any party that the extent of felling had occurred as a result of storm damage but rather that a number of mature trees had been windblown during this period. While this may provide an explanation for the removal of some mature trees it does not provide a reason for the degree of tree removal overall, which formed the basis for the revocation of the licence.

The Statement and documentation from the DAFM provide figures for the forest stocking level before and after the operation by counting the number of standing trees and cut stumps across 58 sampling plots, two sets of 29 plots, having stratified the area into forest and non-forest using satellite imagery. Initially 32 sampling points had been chosen with 3 being excluded in the field as they were found to be non-forest. The radii of the sampling points differed between those for the standing and felled trees. The species of the trees were also provided. These data and the analysis undertaken by the DAFM suggested that 87% of stems had been removed in the thinning and that the current stocking across the forest was 105 stems per ha. This is the only statistical data available to the FAC regarding the stocking rates. However, the quality of these data and the legitimacy of the methodology undertaken in collecting them were questioned by the Appellant.

Through a freedom of information request the Appellant was provided with an initial inventory undertaken by a DAFM District Inspector using a different sample plot size and methodology. The Appellant queried this at the oral hearing. The DAFM replied that it had undertaken a second more detailed inventory to ensure that the sampling strategy was statistically sound and that the results were representative of the area. Furthermore, the stratification of the area into forest and non-forest, the methodology employed in choosing the sample plots, a map identifying the sample plots and a table of the results were provided to the FAC and discussed during the oral hearing. The sampled area, to the south of the public road had been mapped into forest and non-forest, primarily sheet rock, areas prior to setting sampling points based on available satellite imagery. In the field, a number of sampling points were disregarded as they were found to fall within a non-forest area. The DAFM described the sampling methodology as being stratified with a random starting point and that a different size of sample plot had been employed for the felled and standing trees due to the differences in population sizes, there being more felled than standing trees, and for practical reasons. However, the DAFM stated that the same coordinates were employed as the centroid of both sets of plots. The reference provided by the Appellant's Forester to Forestry Commission Booklet 49 is not considered relevant as it relates to commercial inventories where only one set of plots are set down with a goal of capturing information on stocking, diameters, heights and volumes of a forest. The plot sizes employed by the DAFM are larger and more numerous than would be typically employed in a commercial inventory. The Appellant did not provide any convincing data to contradict the inventory results provided by the DAFM or to substantiate their claims concerning the accuracy of the related data or the practicalities of undertaking the inventory. The FAC considers it reasonable that the Appellant and/or their agent could have provided inventory data with their grounds of appeal.

The FAC considers the methodology employed by the DAFM to be statistically robust and that it provides an accurate reflection of the stocking levels before and after the operations, within the stated confidence intervals, for the area covered by the sampling procedure. Furthermore, and based on the evidence available to it, the FAC cannot identify shortcomings in the sampling procedure, its analysis, or the results that would lead it to consider the presented results as being unrepresentative. The FAC considers it unfortunate that the DAFM did not attempt to further facilitate the Appellant and their Forester to be present during the sampling works but that there is no evidence that this reduced the accuracy of the data.

The Appellant's Forester also claimed that the figure of 87% is "irrelevant to the Good Forestry Practice of Selective Thinning which requires PFC's to be freed of all competitors" and that Good Forestry Practice relates to the trees remaining rather than the number of stems felled. The acronym PFC is not defined in the submission but is assumed to relate to potential final crop as employed by Teagasc¹, who also employ the term potential crop trees (PCT) in a similar manner². It was also contended that the figure of 87% includes "the stumps of scrub species which was specifically applied for and granted in GFL20650" and includes willow, hazel and small birch that a DAFM Forestry Inspector had "instructed" the Appellant "to concentrate on". It is suggested that the figure of 87% is in stark contrast to the photographic evidence provided and available aerial imagery.

The FAC has photographs available to it that were submitted by the DAFM and the Appellant. Most of these photos relate to the forest after the operations have been undertaken and, aside from aerial imagery, only cover specific parts of the forests. Publicly available aerial imagery was submitted by the DAFM which had been sourced through Google Earth. This imagery suggests that an intensive level of tree removal had been undertaken in the area to the south of the public road generally and that some areas show the almost complete removal of trees. The photographs provided by the Appellant do show some areas of well-stocked trees after thinning but these are not considered to be representative of the area as a whole, while the inventory data provided by the DAFM was produced through a statistical sampling process.

In relation to the suggestion that the removal of scrub in the ground or shrub layer did not require a felling licence, species of hazel and willow grown for fruit or fibre are not defined as trees under the Forestry Act 1946 but the trees in the forest covered by GFL20650 came about through natural regeneration and clearly fall within the scope of the Forestry Act. The Act also provides for trees exempt from requiring a licence under Section 35 and 37, however the felled trees do not meet the conditions of exempted trees under those sections. The DAFM as indicated in the Inspection Report and described at the Oral Hearing also did not consider that the trees, the felling of which resulted in the revocation of the licence, were exempt. The FAC considers that, irrespective of any general advice offered by the

¹ <https://www.teagasc.ie/crops/forestry/advice/timber-harvesting/first-thinning-of-conifer-forests/>

² <https://www.teagasc.ie/crops/forestry/advice/timber-harvesting/tending-and-thinning-of-broadleaf-forests/>

DAFM Inspector to concentrate on certain species, such advice could not reasonably be interpreted as explaining the wholesale removal of trees or species from certain areas or the degree to which thinning was undertaken.

The Appellant's Forester suggested that trees felled in setbacks and along the extraction route should not have been counted and also contested the suggestion that the Forest Harvesting and the Environmental Guidelines have not been adhered to regarding the treatment of an aquatic buffer. In particular, they refer to the guidelines suggestion that trees should be removed from stream buffers with extreme care and contended that the entry of machinery into these buffers occurred as it was unavoidable. While the Guidelines state that machinery should not enter setbacks "unless unavoidable" it clearly states that these setbacks should not be used as extraction routes, "Machine routes and particularly ground haul extraction routes. Plan these so that they avoid all buffer and exclusion zones and, where possible, difficult terrain conditions"³. The Appellant's Forester accepted that the aquatic setback was used as an extraction route and that a forwarder had made multiple trips along this route. In the guidelines, the removal of trees from these setbacks is also qualified by reference to an absence of guidelines when they were planted. The licence under appeal relates to a naturally regenerated forest and not a commercially planted forest. Native tree species such as these can provide an important buffer and protection around water courses and the FAC considers their removal inappropriate and, likely, not in keeping with good forestry practice. The FAC notes the stream to the east of the site is a tributary of the Toon river in which a population of Freshwater Pearl Mussel is present according to data supplied by the EPA. Based on the information before it, the FAC considers this operation to not be in keeping with the harvesting guidelines and one which could have had the potential to have an impact on a species protected under the Habitats Directive. Furthermore, intense felling occurred across much of the site based on the inventory data collected by the DAFM and the FAC is of the opinion that the clearance of extraction routes or aquatic buffers, in combination with the other factors noted in the appeal, would not explain the overall extent of felling.

The letter of 31/01/17 stated that "Thinning intensity will be 30%" and the Appellant's Forester contended that the DAFM Inspectors were incorrect to assume that this related to the number of stems as this was a mixed aged, mixed species broadleaved woodland. Instead the Appellant's Forester contends that this related to crown cover and that felling was limited to trees in competition with final crop trees and was not excessive. In support of this, dockets were provided for 135 tons of sold timber. The Appellant's Forester provides a calculation of trees and volume felled per hectare based on the dockets provided documenting 6 loads removed from the site. However, elements of this calculation are unclear or unverifiable, including that the average volume per tree extracted was 0.12m³. It is also unclear how much felled timber remains on site as their presence was noted by all parties, which would need to be included in such calculations.

³ Forest Harvesting and the Environment Guidelines.

<https://www.agriculture.gov.ie/media/migration/forestry/publications/harvesting.pdf>. Page 3

The Appellant's Forester referred to the operation as a selective thinning with the removal of trees competing with final crop trees. It was suggested that this relates to the crown of final crop trees and that the figure of 30% thinning intensity in the additional information with the application referred to crown cover but also that there were no conditions placed on the licence. Crown thinning refers to the removal of trees competing with selected dominants, including other dominants of poor form⁴. Thinning of any form typically involves the removal of trees at intervals over the rotation of the forest crop thereby concentrating volume growth on the remaining better spaced, better quality stems⁵.

The operations in this case involved a significant removal of stems in a single intervention. Heavy crown or free growth thinning of broadleaves is a recognised, although unusual, form of thinning that involves the identification of a number of final crop trees, generally the best dominant or best form individuals, around which competing trees are removed over time allowing the selected trees to grow freely (Short, 2013). The submitted grounds refer to a journal article from Cameron⁶ (1996) regarding the intense level of first thinning of birch, the most common species present in the forest. However, this article also states "Further thinnings will be required at intervals of 5-7 years to maintain crown depth and to favour the best stems (straight, healthy, few branches on the lower half of the tree). The final thinning should leave around 300-500 stems ha⁻¹." The thinning under appeal reduced the stocking level to 105 stems per ha in one intervention, a level significantly below that achieved after the final thinning in the system proposed by Cameron. While such a stocking level may be employed in experimental silvicultural systems aimed at achieving free growth conditions in heavy crowned species, such as oak, (e.g. Kerr⁷, 1996), the thinning under appeal was undertaken in a mixed species forest composed primarily of birch, a light-crowned species. Irish research on free-growth systems suggest a target final stocking level of 200-250 stem per ha after multiple interventions (Short⁸, 2013).

Thinning of any form is typically carried out in a number of interventions over an extended period of time to ensure that the forest maintains productivity and to avoid potential disturbances, such as windblow, the risk of which can be exacerbated by inappropriate practices. Furthermore, the contention that the thinning undertaken was based on the removal of all competitors from final crop trees offers little explanation of the large-scale removal of holly and hazel, lower canopy species which would not compete in the upper crown but can be important for biodiversity. In the additional information provided by the Appellant's Forester with the licence application, holly was identified as a species that would be prioritised whereas the sampling data provided by the DAFM suggests its complete removal from parts of the forest. It is also worth noting that in the grounds of appeal and during the oral hearing, it was stated that the intervention would facilitate grazing throughout the forest. Livestock grazing, and

⁴ The Code of Best Forest Practice.

<https://www.agriculture.gov.ie/media/migration/forestry/publications/codeofbestforestpractice/Code%20of%20Best%20Forest%20Practice%20Part%201.pdf>

⁵ The Irish Thinning Protocol.

<https://www.agriculture.gov.ie/media/migration/forestry/otherusefullinformation/IrishThinningProtocol.pdf>

⁶ Cameron, A. D. 1996. Managing birch woodlands for the production of quality timber. *Forestry*, 69 (4).

⁷ Kerr, G., 1996. The effect of heavy or 'free growth' thinning on oak (*Quercus petraea* and *Q. robur*). *Forestry: An International Journal of Forest Research*, 69(4).

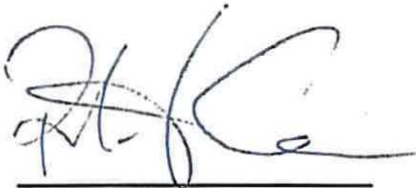
⁸ Short, I. 2013. The potential for using a free-growth system in the rehabilitation of poorly performing pole-stage broadleaf stands. *Irish Forestry* 70 (1&2).

grazing by deer and other wild animals, is well recognised as a threat to the natural regeneration of forests and to planted trees. Exposing the forest to further grazing coupled with the reduction of available seed from thinned trees and the removal of the lower canopy, including regenerating trees, appears to be in contrast with the stated objective of woodland rejuvenation.

As noted previously, the FAC recognises that the DAFM issued an initial suspension after the work to the north of the public road was apparently complete and subsequently lifted the suspension, thus reinstating the licence. The FAC considers it reasonable to interpret that series of decisions as meaning that a revocation of the licence was not warranted up to that point. Thus, the FAC considered the revocation based on the operations and information relating to the area to the south of the public road. This is also the area for which the most detailed information is available, including inventory data collected by the DAFM.

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM and their statement, the grounds of appeal and information submitted at the oral hearing, and submissions and observations received. Based on the information it has available to it in relation to operations to the south of the public road, the FAC concluded that the thinning operation undertaken was excessive and not in accordance with good forestry and that the felling was not compliant with Section 49(1)(a) of the Forestry Act 1946. The FAC has, therefore, confirmed the decision of the DAFM to revoke licence GFL20650.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Pat Coman', written over a horizontal line.

Pat Coman, on Behalf of the Forestry Appeals Committee

