



18<sup>th</sup> January 2023

**Subject:** Appeal FAC 147/2022 against licence decision TFL00828822

Dear Sir,

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. A hearing of appeal FAC 147/2022 was held remotely by the FAC on 11<sup>th</sup> January 2023. In attendance:

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

#### **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 grant the licence TFL00828822. The reasons for this decision are set out hereunder.

#### **Background**

The licence decision in this case relates to an application for the clearfell of 3.09 ha of forestry at Ardmeenán, Co. Leitrim. The clearfell proposed is set out in the application as being planned for autumn 2022. The forest planting year is indicated in the application documentation to be 2004 and up to 50% of the trees are said to have suffered wind damage. The forest is currently comprised of Sitka spruce and replanting is set out in the schedule to the licence as being a mixture of Birch, Pedunculate oak, Red oak, Scots pine and Additional Broadleaves. The land is described as having a topography that leads to low risks arising. The application includes a harvest plan which shows the proposed felling and reforestation methods, social and environmental features, and the proposed methods of protection for these. The application is accompanied by a site location and site map / ortho map.

The application was submitted on the 10<sup>th</sup> June 2022 and was desk assessed. The application was referred to Leitrim County Council who responded on the 2<sup>nd</sup> August 2022 and while raising no specific objection to the proposal set out some conditions for inclusion in the licence including for a requirement to agree the haul route for the timber. There is a report from a DAFM Archaeologist dated 15<sup>th</sup> July 2022 which set out a requirement for adherence to the terms of the Forestry and Archaeology Guidelines and the Interim Standards for Felling and Reforestation. While the DAFM statement indicates that an Appropriate Assessment screening was undertaken no evidence of same was displayed on the Forestry Licence Viewer (FLV). The record includes other plans and projects considered in combination with the proposal. The decision to approve the licence application was issued on the 22<sup>nd</sup> September 2022 with conditions and was advertised on the 23<sup>rd</sup> September 2022.

### **Appeal**

There is one first party appeal against the granting of the licence and the full grounds of appeal and the response from the DAFM have been provided to the parties. The grounds of appeal in summary submit that the issue of a licence with a 2 year duration provides no consideration to the reality of market fluctuations in timber prices and that the licence should have been for a period of 10 years to accommodate this. The FAC notes that a correspondence dated 19/04/16 from *Good Woodland Services* and addressed to the Appeals office is to be found on file. Notwithstanding the date of this correspondence, it is stamped as having been received 2<sup>nd</sup> December 2022, makes reference to the appeal lodged and has with it copies of emails showing the prices being offered to the licensee for the timber in this case. A copy of this correspondence was made available to the DAFM.

### **DAFM Statement**

A response was provided to the FAC on behalf of the Minister for Agriculture, Food and the Marine in relation to this appeal. This response outlines the procedure adopted by the DAFM in processing the application and the related processing dates and the date of the issue of the licence. It is submitted that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statement further submits that the licence application in this case proposed clearfelling and reforestation of three plots in 2022, that a felling licence with a duration of 10 years was not sought, that a cover letter accompanied the licence application stating that the clearfelling licence has been sought due to windthrow damage which had occurred during the course of the year, and that the letter stressed that the licence be issued with urgency so operations could be completed before the coming autumn to avoid further damage. The statement sets out that the licence issued on the 22<sup>nd</sup> of September 2022 for a period of 2 years and that Part 4 Section 17 (3) (b) of the Forestry Act 2014 (provides that) the Minister may extend the duration of the licence for a period not exceeding 5 years. It also sets out that the Department of Agriculture Food and the Marine feel there is no merit in the appeal and other methods of recourse should have been sought first.

### **Considerations**

The FAC considered the Appellant's contention that the issue of a licence with a 2 year duration provides no consideration to the reality of market fluctuations in timber prices and that the licence should have been for a period of 10 years to accommodate this. The FAC noted that the application made in this case,

and which resulted in the issue of licence TFL00828822, set out that felling was scheduled to occur in 2022. The FAC also noted the content of a correspondence submitted by 'Good Woodland Services' on behalf of the applicants which sought a '*positive speedy response with utmost urgency in favour*' of the application in order to achieve and complete the felling operation before autumn 2022 to avoid further damage. The FAC also noted the content of the statement to it from the DAFM wherein it set out that;

*'licence application proposed clearfelling and reforestation of three plots in 2022. A felling licence with a duration of 10 years was not sought.*

*A cover letter accompanied the licence application stated that the clearfelling licence has been sought due to windthrow damage which was incurred during the course of the year. The letter stressed that the licence be issued with urgency so operations could be completed before this coming autumn to avoid further damage.*

*Licence issued on the 22nd of September 2022 for a period of 2 years.*

*Part 4 Section 17 (3) (b) of the Forestry Act 2014 the Minister may extend the duration of the licence for a period not exceeding 5 years.*

*The Department of Agriculture Food and the Marine feel there is no merit in this appeal and other methods of recourse should have been sought first.'*

In considering the statement from the DAFM, the FAC noted that the application form submitted and provided to the FAC does not appear to provide for an application for a specified time period or range to be made other than through the identification of a single proposed felling year. As the licence relates to an operational decision in a managed forest, the FAC considered that a strict period of two years might be considered to be unreasonable, all else being equal, given the nature of market forces, the potential seasonality of some works and the availability of contractors, and the period in which an application might be processed. However, in this instance the application stated that the forest was subject to wind damage and that the works were planned in the same year. The application was received by the DAFM in June 2022 and a licence issued in September 2022. Furthermore, as noted in the statement from the DAFM the Minister may extend the duration of a licence and the Appellant does not appear to have sought, or been denied, such an extension. Article 17 of the Forestry Act 2014 provides that a licence is valid for the period that the Minister decides but not exceeding ten years.

The FAC having considered the contention in the grounds of appeal in relation to the period for which licence TFL00828822 would remain effective, in the context of the specific decision and the legislative provisions, concluded that the Appellant had not provided to it convincing evidence that the DAFM had erred in the processing of that application as it relates to the grounds advanced in the appeal.

The FAC noted that the statement made to it by the DAFM in relation to TFL00828822 indicated that an Appropriate Assessment screening of the application had been undertaken relating to two Natura sites described as '1 & 2' and that (there was) no likelihood of a significant effect on any European site. The FAC finds that a copy of an Appropriate Assessment screening relating to this application is not to be found on the Departments FLV and was not made available to the FAC.

The FAC also finds that the DAFM record includes other plans and projects considered in combination with the proposal and that an In-Combination report / statement, which is recorded as having been completed 15/09/2022, includes the following passage;

*'It is concluded that there is no likelihood of the proposed felling and reforestation project TFL00828822 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.'*

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site. The FAC considers the conclusion stated above to be an error as it suggests that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but which in-combination with other plans and projects could result in a significant effect on a European site. The FAC would also understand that after concluding that the project itself would not have a significant effect on a European site, the DAFM should also consider other plans and projects and determine whether the project in-combination with other plans could have a significant effect.

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 a serious error was made in making the decision in this case. The FAC is, thus, setting aside and remitting the decision to the Minister regarding licence TFL00828822 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to carry out a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

Seamus Neely, On Behalf of the Forestry Appeals Committee