



26th November 2024

Subject: Appeal FAC061/2024 in relation to the refusal of a Felling Licence under TFL01016524

Dear

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

Hearing

A hearing of appeal reference FAC061/2024 was held remotely on the 20th November 2024. In attendance:

FAC Members:	Mr. Seamus Neely (Chairperson), Mr. Derek Daly & Mr. Luke Sweetman.
FAC Administration:	Ms. Aedín Doran

Having regard to the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

Decision

Having regard to the information before it, including the record of the decision on the Forestry Licence Viewer (FLV), the notice of appeal, the Department of Agriculture, Food, and the Marine (DAFM) Statement of Fact (SoF), and all additional submissions, the FAC has decided to affirm the decision of the Minister to refuse felling licence TFL01016524 for the reasons set out hereunder.

Background

The decision under appeal was issued by the DAFM on the 6th June 2024 and relates to an application for the felling of 0.8ha of Ash in Ballyogue, Co. Tipperary. The refusal letter states:

Under Section 7(3) a of the Forestry Act 2014, this Felling Licence has not been granted for the following reason(s):

The proposed deforestation is in excess of the 0.5ha threshold currently tolerated for deforestation under current legislation and the proposal to deforest cannot be accommodated on this basis.

DAFM Processing of the application

In considering the record of the decision, the FAC found on file a document titled *Felling Licence Application* which is undated but was posted on the FLV on the 31st January 2024. This document contains "Part 3" of a felling licence application which details the trees proposed to be felled, "Part 4", which is

meant to outline the proposed replanting details, is left blank, and "Part 5", which details the conversion of forest to another land-use, where the Appellant proposes to convert the forest "back to grassland." Also on file is a *Revised Application* document which is an updated version of page two of the felling licence application. This updated version includes an indication of the volume of the trees to be felled.

Based on the information before it, the FAC understands that the DAFM did not complete an environmental assessment of the proposal. The application was referred to the Tipperary South County Council on the 31st January 2024, but no response is recorded as having been received.

The DAFM issued a Further Information Request (FIR) dated the 27th February 2024 which stated:

Following a review of the above Felling application, the following further information is required. It appears from the correspondence on file from the applicant dated 12/01/24, that this is a deforestation proposal with no replanting or alternative site proposed. This does not reconcile with Forest service policy and obligations under the Forestry Act 2014. Please provide restock proposal for application.

The DAFM followed-up with an FIR reminder letter dated the 14th May 2024. The Appellant responded to this letter on the 20th May 2024 and advised that they had responded previously in writing and had also contacted the DAFM by telephone, leaving a message for the relevant Forestry Inspector. The FIR response stated that no forest premium payment had been drawn down and that the Appellant was willing to pay back the forest establishment grant received. The FIR response stated, *inter alia*, that the Appellant did not wish to replant this area and had no alternative site to plant. As noted previously, the DAFM proceeded to refuse the felling licence application in a decision letter issued on the 6th June 2024.

Grounds of Appeal and DAFM Response

There is one first-party appeal against the decision to refuse TFL01016524. The grounds of appeal have been considered in full by the FAC and are summarised below:

- There is no alternative site available to replant.
- The area to be felled is quite small (0.8ha) and the required replanting area would be even smaller considering the required public road setbacks at reforestation stage.
- This proposal was discussed with a Forester who was not interested as the proposal was too small.
- No forestry premium has been drawn down and the establishment grant can be repaid.
- The Appellant highlighted their age and submitted that they are unable to cope with the mental toll associated with the licencing/appeal process.

The DAFM' SoF contains administrative comments, and a statement from the Forestry Inspector. The administrative comments state that the decision was issued "in accordance with our procedures", S.I. 191/2017, and the Forestry Act 2014. The SoF also noted that the Co. Council referral letter dated 31st January 2024 wasn't made public until the 30th August 2024 due to a clerical error. The FAC noted that the SoF states the area of the proposal is 1.31ha, as opposed to the 0.8ha claimed by the Appellant. In summary, the statement from the Forestry Inspector submits that:

- This is a deforestation proposal with no replanting or alternative site proposed. This does not reconcile with Forest Service policy and obligations under the Forestry Act 2014.
- Deforestation is defined in the Forestry Act 2014 as "the conversion of a forest into land that is not a forest."

- Deforestation should be avoided for economic and social considerations and environmental reasons including carbon sequestration, and landscape and amenity benefits.
- Deforestation would counteract the benefits of Ireland's afforestation programme and associated substantial public expenditure.
- The application was reviewed by the Regional Forestry Inspector who stated that, "The proposed deforestation is in excess of the .5ha threshold currently tolerated for deforestation under current legislation and the proposal to deforest cannot be accommodated on this basis." Refusal was recommended on this basis.
- Under Section 5.4, Commercial Development, Felling and Reforestation Policy, "Landowners who have afforested their holdings are permitted to deforest an area less than or equal to 0.5 ha, for the purpose of building a home for him- / herself or for an immediate family member (i.e. husband, wife, son, daughter, parents, brother or sister). However, the refunding of grant and premium payments is required – see Table 5. Note, any subsequent deforestation greater than 0.5 ha in area and within 30 metres of the original fell area, will need to be offset by afforestation of an equivalent area at an alternative site."

Additional Information

Following the FAC's circulation of the DAFM's SoF there were a number of submissions and responses from the Appellant and the DAFM. These focussed on a disagreement on the correct area of the proposal (between 0.8ha – 1.31ha). Although the FAC had regard to the content of these submissions, in the particular circumstances of this case, the FAC did not consider this to be a substantive issue.

Findings of the FAC

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister for Agriculture, Food, and the Marine, and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures. In considering the appeal, the FAC had regard to the DAFM's *Felling and Reforestation Policy*¹ and considered the following excerpts to be particularly relevant:

1.3.3 Deforestation

Deforestation is defined in the Forestry Act 2014 as "the conversion of a forest into land that is not a forest." There is obvious need to avoid deforestation in relation to economic and social considerations and environmental considerations such as carbon, landscape and amenity. Reforestation after felling is essential to prevent deforestation, which would otherwise counteract the benefits of Ireland's afforestation programme and associated public expenditure on afforestation, which to date represents a substantial State and European Union investment. Notwithstanding this policy to maintain forest cover, there are circumstances where deforestation can occur and will be permitted...

¹<https://www.gov.ie/pdf/?file=https://assets.gov.ie/96814/4830fc08-0227-4504-83fa-2fd90a7942f2.pdf#page=null>

5.5 Conversion to agricultural land

The Forest Service may consider conversion to agricultural land in limited instances, having regard to the scale and character of the area proposed for deforestation. The conversion of forest land to agricultural land is considered deforestation, and the owner must first obtain a felling licence. The afforestation of alternative land and the refunding of grant and premium payments are required – see Table 5 and Section 5.7 for details.

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Table 5 Scenarios where the permanent removal of forests may be considered, and requirements regarding the need for a Felling Licence application, alternative afforestation, and the refunding of grant and premiums.

The FAC noted that Table 5 includes Scenario 4, “Conversion to agricultural land” and that the associated note states, “the Forest Service may consider conversion to agricultural land in limited instances, having regard to the scale and character of the area proposed for deforestation.” The Appellant stated in Part 5 of the felling licence application that the forest land to be felled will be converted “back to grassland.” The FAC understood this to be in the context of planned agricultural activity.

Table 5 lists the requirements for the removal of forest in this scenario which includes applying for a felling licence, the refunding of grants & premiums, and afforestation of alternative land. The FAC noted the Appellant’s statement that they are willing to repay the forestry grants received at the establishment of the plantation and that no forestry premium had been drawn down. However, the FAC found that the afforestation of alternative land is a requirement for the permanent removal of forest and conversion to agricultural land under the DAFM’s Felling and Reforestation Policy.

The FAC had regard to the personal nature of the Appellant’s grounds of appeal and acknowledges the stress the Appellant has experienced arising from the refusal of their felling application. However, based on the information before it, and for the reasons outlined above, the FAC found that the DAFM did not make a serious or significant error, or series of errors, in making their decision to refuse a felling licence under TFL01016524, and the decision was made in compliance with fair procedures. Therefore, the FAC decided to disallow appeal FAC061/2024 and to affirm the Minister’s decision to refuse a Felling Licence under TFL01016524.

Yours sincerely,

Luke Sweetman on behalf of the Forestry Appeals Committee