

# *Friends of Latchmore*

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Postbox Cottage  
Blissford  
Fordingbridge  
Hants SP6 2HY

To: Mr M. Seddon, Deputy Surveyor, Forestry Commission  
Cc: List appended

5 February 2013

## **Latchmore Brook: tree-felling, explosion of ordnance, and damselflies**

Dear Mike,

Thank you for your letter of 17 January 2013 with the results of your investigation into the tree-felling outside the Licensed Areas. We assume that this completes your responses to the issues raised in our letter to you of 8 November 2012 for the time being. We are therefore now in a position to respond to your letter and that of 3 December 2012. There are three main areas where we need to ask for further clarification and state our position:

### **1) Tree-felling outside the licensed areas**

1.1 We note that you accept our detailed survey results showing that significant tree-felling has taken place outside the approved, licensed areas. However we do not accept that it was just willow, birch and Scots pine. The attached photo shows an example of a mature oak of about one metre diameter which was felled in the early stages of the operation. The complete removal of all trees in the 200 metre section between SU 19051265 and SU 19231268 has seriously damaged the natural habitat in the area, removing all woodland habitat and shade trees around the stream and thus also warming the water.



1.2 We note that felling without a valid licence in a SSSI/SAC is an offence. If there is no licence or other valid permission, or if the wrong trees are felled, all parties involved can be prosecuted. Whether or not a prosecution takes place, the Forestry Commission can serve a Restocking Notice to re-stock

the land concerned. The Forestry Commission may also issue an Enforcement Notice demanding action to meet the conditions imposed.

1.3 Government policy is that all public bodies must operate within the law as it applies to others, and thus appropriate action should now be taken by the Forestry Commission. If no such action is taken we reserve the right to take this issue to a higher authority.

## 2) Explosions of ordnance during the bird nesting season

2.1 Further to your response of 3 December 2012, we have now received further information from Jane Smith (dated 10 December 2012) via a Freedom of Information request from Margaret Bunyard.

2.2 Unfortunately this does not answer our specific questions as to why this work was allowed to take place in May 2012, during the peak of the bird-nesting season. We refer to the Annex to our letter:

“The explosion occurred in May 2012, at the height of the bird nesting season, and resulted in many birds being severely disturbed, including nesting wheatears, which did not return. We understand that a bomb was also found during the 2011 survey. This was removed from the site and detonated at sea.

Unless and until we are provided with a detailed explanation of the reasons for the difference in the actions taken, we consider that this is evidence of continuing insensitivity of those working on the HLS restoration programme, regarding the environment in which they are operating.

- Why was the ordnance survey re- scheduled to take place during the bird-nesting season? ;
- What plans were made to deal with the possible need to explode a “device” in the vicinity ; and
- What provision can be made to ensure that similar inappropriate (and potentially illegal) actions are not taken in future?

Similar considerations will of course apply to any future operational activity (eg. disturbance of birds, fish, and invertebrates by work on the project) and need to be addressed in the proposed application for planning permission.”

2.3 We consider this to be a serious occurrence and a significant illustration of the carelessness and disregard by your staff and contractors for the Wildlife and Countryside Act to which all of us, including public bodies like yours are subject.

2.4 Ms. Smith gives reasons why these events took place in May, which we find unconvincing and unacceptable because they ignore the statutory limitations on working during the bird-nesting season.

2.4.1 On 26 March 2012, Kevin Penfold provided us with a provisional revised timetable for the works. Based on the statements in his note, there was clearly a conscious reassessment of the programme in order that the works could be completed within one year rather than two, which resulted in serious disregard for the environment and the law.

2.4.2 The information included “Ordnance excavation and safe disposal – *May 2012* (estimated 1 – 2 weeks duration)” (our emphasis).

2.5 Ms. Smith also mentions, as part of the justification for not completing the ordnance survey in February, the Forestry Commission’s “condition of contract” for contractors, including the provision of excavators. The copies of contracts with which we were provided by the Forestry Commission under the “Proposed Claim for Judicial Review” clearly state regarding “Environmental Law” that the obligations include compliance with “all applicable European, national and local laws or regulations.....”. We contend that the relevant legislation has not been complied with in this case,

most notably in relation to the Wildlife & Countryside Act where the impacts of the works during the bird-nesting season had not been addressed.

2.6 Moreover, we contend, from our measurements of rainfall during 2012, that January and February were exceptionally dry, and that there was very little rain until 4 March (25mm) and then not again until the Easter weekend (9 April, 12mm). That was the beginning of the really wet weather (134mm in total in April alone), which continued through the summer. These observations indicate that conditions in May were already too wet to avoid damage to the environment with the use of excavators. The Verderers Court minutes of 18 July 2012 support this: “The Forestry Commission announced last week the postponement of the stream restoration at Latchmore due to the continuing poor weather conditions we are experiencing this summer. We are currently half way through a 20 week forest wide programme but have already lost over 5 weeks due to wet weather.”

2.7 We are therefore led to believe either that no risk assessment was undertaken for this change in the programme, and its potential effect on the environment, or that if it was it was ignored, leading to the violation of relevant legislation referred to above.

### **3) Protection of Damselflies**

Your response on this topic is also unsatisfactory.

3.1 The Verderers Court minutes of 18 July 2012 state that: “The Verderers also stipulated that the legislation governing the protection of fish, birds and Odonata must also be complied with in full. The Forestry Commission confirmed that this will be done.”

3.2 Since sending our letter of 8 November, we arranged for Naomi Ewald, Freshwater Research Manager, of Pond Conservation to visit Latchmore on 28 November 2012, to assess the “Pumilio Pond”. She verified the importance of this Pond, supported by the spoil heaps adjacent to Latchmore Brook, about 200 metres east of Latchmore Shade. Her conclusion was that further observation throughout the year is likely to result in this Pond being classified as a “Priority Pond”.

3.3 This helps to confirm the information given in the redacted e-mails from 2009, disclosed under the claim for Judicial Review, and other information received, which all concluded that these spoil heaps should be “left well alone”.

3.4 We conclude that the importance of this pond was not taken into account in the Restoration Plans 2011 and 2012, which stated that all spoil heaps would be used as part of the infill to the stream. This would thus destroy a valuable habitat which is used by SAC species damselflies amongst other invertebrates.

3.5 Once again, the environment has been ignored at the expense of other objectives of the Works. Only by completing a comprehensive environmental impact assessment can these issues be dealt with adequately in any Planning Application.

3.6 In addition, our legal advice indicates that in order to ascertain the validity of the “expert opinions” used in relation to odonata within the mires and water courses feeding into Latchmore, it is necessary to disclose the sources and the detailed survey information. Without this disclosure ahead of any Planning Application, under a non-disclosure agreement if necessary, we shall have to resort to the Information Commissioner for action.

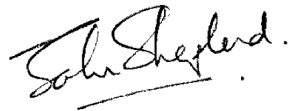
4. We would appreciate your attention to the points raised above. Unless you are able to demonstrate that we are significantly mistaken on these matters, we intend to use this evidence to support the case

for a thorough environmental impact assessment of the project, as part of the Planning process, and elsewhere.

5. We regret that the Forestry Commission acting on behalf of the New Forest HLS Scheme has so far acted as though it is above the law and does not need to take account of the detrimental impacts of its actions on the environment in which it operates, as described above. Assurances that have been given in relation to protection of the environment and compliance with the law have proved to be worthless.

6. As stated in our letter of 8 November, there are a significant number of other issues that we have already identified which would benefit from serious consideration and further clarification, in order that we can maintain the useful dialogue that we have achieved since you returned to your post. We would appreciate your views on how we can progress these issues, and we hope that we can continue to co-operate in a constructive way in the future.

Yours sincerely,

A handwritten signature in black ink, reading "John Shepherd". The signature is written in a cursive style with a horizontal line underneath the name.

Professor John Shepherd CBE FRS (Co-chair: the Friends of Latchmore)

CC

Mr. D May (Verderers)  
Mr. S Avery (NF NPA)  
Mr. A Wood (Natural England)  
Rt Hon D Swayne, MP  
Chair & Parish Clerk, Hyde Parish Council  
Ms. L. Foster, Richard Buxton Solicitors