

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

Forestry Commission
Queens House, Lyndhurst
Hampshire SO43 7NH
(Attn Kevin Penfold)
(Your ref: RHYSJOM/033727-002196)

Environment Agency
Manley House
Kestrel Way
Exeter EX2 7LQ
(Attn: Christopher Hayball)
(Your ref: NH/CJH/ADA/4763/2)

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington Hampshire SO41 9ZG
(Attn: Julie Mutlow)
(Your ref: AG0030016)

Natural England
Hercules House
Hercules Road
London SE1 7DU
(Attn: Julie Hunt)
(Your ref JAL/LEG01-012-011)

Our ref: MCF1-001/LF

9 August 2012

Dear Sirs

Latchmore Brook Restoration Project (High Level Stewardship ref AG0030016)

We refer to the exchange of correspondence between the parties. The Forestry Commission (FC) has agreed that no further works will be undertaken at Latchmore Brook and that it will apply for permission from the New Forest National Park Authority (NFNPA) for the works at issue. We note that the only work to be done before the FC obtains consent is to tidy up previously cut timber. Our clients welcome this agreement and on this basis will not proceed to challenge the EA consent, which is the only (insufficient) authorisation given thus far for the works. Their decision not to proceed with legal proceedings now is in order to avoid costs to all parties. We view this as consistent with the Aarhus requirements that environmental matters should not be prohibitively expensive.

The decision not to proceed against the EA at this point is without prejudice to our clients' position that the EA response in its letter of 6 August 2012 fails to address the legal principal issues, and in particular is wrong in law on the issue as to whether the EA should have screened the application for EIA purposes. The reference to the Edwards case has no relevance whatsoever to the facts here unless the EA's position is that the works are not a project for EIA screening purposes in which case that position is also wholly untenable in law.

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If the FC reneges from the position in its letter of 3 August and fails to apply and/or obtain permission from the NFNPA (or the NFNPA decides that consent is not required) and FC proceeds with the works, our instructions are to lodge an urgent application for judicial review and seek interim relief. In short our clients are content in the circumstances to permit the 3-month deadline to challenge the EA consent issued 16 May 2012 to pass without bringing a protective claim because the environmental impacts of the proposal should be the subject of proper consideration in the context of the planning application. However they will, if necessary, apply for an extension of time to bring proceedings and refer to the correspondence including FC's letter of 3 August 2012 and this letter as justification for the court to extend the time to challenge the EA consent proceeds as unlawful if necessary.

Habitats Regulation Assessment

In relation to Natural England's (NE) letter of 3 August 2012 and its advice on Habitats Directive issues to the other parties in relation to the anticipated FC application, our letter of 26 July 2012 raised very specific factual questions that go to the basis as to why NE's position is wrong. NE's response fails to deal with our points. Until we have a satisfactory response, should the anticipated application proceed on the basis of NE's current position we anticipate that our clients will instruct us to challenge NE's position.

Other matters

You are aware from our letter of 26 July 2012 that our clients reported significant tree-felling occurring outside the scope of the felling licence. We are seeking an explanation from the FC as to how this occurred and an undertaking to replant the trees wrongly felled.

Unexploded Ordnance

On 17 May 2012 a WW II training device was exploded within the Latchmore Brook area without, we understand, the appropriate license from NE. A crime report has been made under reference Crime n. 569 and the investigation is pending. We require an explanation why this method of disposal was adopted rather than the precautionary approach of removing the device before detonation. As reported the explosion caused a serious disturbance of the local nesting bird population, as subsequently observed by the abandonment of nests by Wheatears, Redstarts and Curlews. Can we have the FC's assurance that it will in future deal with ordnance by removal rather than in situ detonation and NE's assurance that it will properly investigate the 17 May 2012 event, and at the conclusion that NE send us a copy of its report and recommendations for the future handling of ordnance by both its officers and the FC.

We also ask that the Forestry Commission notifies us when they have submitted their application for planning permission.

We look forward to your further responses by 28 August 2012.

Yours faithfully

Richard Buxton

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cc. Verderers of the New Forest (Attn: Dominic May)