

RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

19B Victoria Street
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

www.richardbuxton.co.uk

law@richardbuxton.co.uk

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Hampshire SO41 9ZG

Attn: Julian Mutlow

Our ref: MCF1-001/LF

26 July 2012

Dear Sirs

R.M. Buxton
MA (Cantab) MES (Yale) Solicitor - Advocate

Susan Ring
LLM Env (London) Solicitor - Advocate

Paul Stookes
PhD MSc LLB Solicitor - Advocate

Associate: **Andrew Kelton**
BA (Cantab) MA (UBC Canada)

Associate: **Adrienne Copithorne**
BA (Cantab) MA (UC Berkeley) Solicitor - Advocate

Latchmore Brook Restoration Project (High Level Stewardship ref AG0030016)

We refer to (i) Steve Avery's email to Dai Morgan of 5 July 2012 (4.20pm); (ii) your response to our clients' previous advisors dated 14 June 2012.

It is apparent that the New Forest National Park Authority has not received a planning application for the proposed works to Latchmore Brook. We cannot see how the proposed works to Latchmore Brook can lawfully be carried out without planning permission. They plainly amount to development for the purposes of s 55 Town and Country Planning Act 1990, and we cannot see how they are authorised by the Town and Country Planning (General Permitted Development) Order 1995.

It appears likely that the Forestry Commission intend to proceed with the works (in addition to the preparatory tree-felling and ordnance survey work which we are instructed has commenced) without planning permission. It therefore falls on the National Park Authority as planning authority to consider taking enforcement action, including if necessary seeking an injunction to prevent works from being carried out.

Given the significant environmental impacts of the works, which have not been the subject of any proper environmental impact assessment, we would submit that it would be irrational for the National Park Authority not to take enforcement action.

Further, the development is Schedule 2 development pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and to permit the development by "a positive decision not to take enforcement action or by mere inaction" would amount to a breach of the UK's obligations under the EIA Directive (see *Ardagh Glass Ltd v Chester City Council* [2009] Env LR 34 at [110]).

SSSI Unit 28 Works

It also appears that the proposed works which include raising the stream bed within Unit 28 are not included as proposed works in the 2011 or 2012 SSSI Restoration Plans and therefore it would appear that these works have not been approved by Natural England. This is of particular concern because the unit information held by Natural England classifies this unit as being favourable condition and therefore there has been no assessment of the adverse impacts this work could have on this Unit.

To that end, please confirm as a matter of urgency, and in any event by 3 August 2012, (i) that you agree that planning permission is required for the works; (ii) that you will require the Forestry Commission to seek planning permission prior to carrying out such works; (iii) if the

Forestry Commission refuse to do so, you will seek an injunction preventing the works from being carried out.

Yours faithfully

A handwritten signature in black ink that reads "Richard Buxton". The signature is written in a cursive, slightly slanted style.

Richard Buxton

cc. Forestry Commission c/o Eversheds (Attn: Mark Rhys-Jones)
Natural England (Attn: Julie Hunt)
Environment Agency (Attn: Christopher Hayball)
Verderers of the New Forest (Attn: Dominic May)