

Your ref/ letter 13Feb 2023  
Our ref/gw,gm.gp 24/02/23

Forestry commission  
National Office  
620 Bristol Business Park  
Cold Harbour Lane  
Bristol BS16 1EJ

Messrs Smith  
C/O 115 Oakfield Road  
South Benfleet  
Essex. SS7 5MW

Date: 24<sup>th</sup> February 2023  
Sent by E-mail & 1<sup>st</sup> Class Mail (signed & tracked)  
[James.murdoch@forestrycommission.gov.uk](mailto:James.murdoch@forestrycommission.gov.uk)

F T A O

Mr James Murdoch (*head of Woodland Regulation & Implementation*)

**Restocking Notice RN10/22-23 File Ref: AIF/017/14/17-18**

Dear Mr Murdoch

I write in the first instance to acknowledge receipt of the above restocking notice received individually by GM, GW & GP Smith (family) GM rec 15<sup>th</sup> with GW & GP rec 16<sup>th</sup> Feb, incidentally none were signed for, and our agent Smart Planning has not been directly informed to date.

Your colleagues are undoubtedly aware of the significant background and allegations surrounding the original restocking notice RN24/18-19. The inference and direct accusation by FC officers was that we had purposely "felled a woodland" and that we done this *maliciously and without consideration*. This was categorically not the case, and the regenerate grassland was first inspected, and scrub cleared under advice. At present, I will not go into detail regarding the initial time on-site nor the inordinate attitude of FC Officers; that was covered in our detailed evidenced based presentation as requested by the referencing committee. However, owing to the belligerent attitude of the FC Officer initial attendance, I had the presence of mind to record the conversation that took place at their unannounced visit on Monday 19<sup>th</sup> March 2018.

The matter was appealed on 29 January 2019, albeit it took over three years to go through the FC processes. It culminated in both parties presenting evidence both verbal and documentary evidence in a face-to-face hearing before the three appointed members "The Referencing Committee" on 17<sup>th</sup> May 2022. The conclusion of that meeting was that due to glaring anomalies in FC Officers evidence gathering, the Committee wanted more detailed submissions by 30<sup>th</sup> May from both parties to fully understand consider the matter and strength of allegation. We complied and amongst other things, provided thorough technical surveys of the sample scrubland as identified by FC Officers, as the basis of measuring tree density. We understand that FC officers did not present any further information, the inference being that they had none. That is despite their being a specific request to see the investigating officers site notes. I believe that is perhaps supported in the referencing Committee's Report, where it transpired the Committee had a second meeting on 15<sup>th</sup> June 2022 with Messrs Kourie & Barker (I will refer to the Committee report later in this letter and appendices)

After the meeting of 17<sup>th</sup> May 2022, we had no contact from anyone until 25<sup>th</sup> October 2022 when Mr Kourie's emailed our planning agent Mr Forde which was relayed to me that day. That email had a covering letter culminating with this "***brings the objection process to a close***". The same email contained a revised notice (184 trees) along with a crude poorly drawn restocking map. In that same email Mr Kourie informed that "*I have arranged for hard copies of the attached to be sent to Mr Smith*" (singular) via the address we have on file. I can only surmise he was referring to me Mr G.P Smith as it was me who attended the referencing committee meeting on 17<sup>th</sup> May 2022. There are in fact four owners but in fact, it was sent to none of them including myself.

Cont'



The notice attached to Mr Kourie's email was clearly marked as "DRAFT" and was not signed. It is for this reason I did not respond to the draft document. After discussion with solicitors the advice was, we should await the signed original for review before formulating any response. The considered opinion was that the new notice after referencing committee involvements had significantly reduced the replanting requirement from 2,200 down to 184 trees. Thus, we all expected a signed and dated notice along with some supporting evidence of the rationale that derived a colossal 91.65% reduction in trees. No such evidence was forthcoming. (See later reference to Referencing Committee Annex 4 Report)

It was only on 15 February 2023 that I was confronted with a document produced by Hutchinsons Planning, a consultant acting for the Local Planning Authority in appeal proceedings relating to a refusal of planning permission being heard at a Public Inquiry commencing 28 February 2023. It transpires that this consultant was in possession of the notice before it was issued to us the landowners, or their agent. Indeed, that consultant had that document if not on the day of issue (13<sup>th</sup> February) then at least on the morning of the 14<sup>th</sup> Certainly with enough time for that consultant to have crudely overlaid that "notice plan" in breach of copyright onto our professionally produced masterplan. The crude overlay was sent to our planning consultant after hours at 17.55 hrs on 14 February 2023.

The restocking notice plan is best described as containing four roughly hand drawn areas. The imprecision of these areas is quite shocking and rather unprofessionally misleading. Regrettably, this is the standard of work that we have come to recognise as characterising the Forestry Commission's investigative abilities in this case. With reference to paragraph 21 to Annex 4 of the Reference Committee Report states that 183 trees planted evenly at a normal 3 metre spacing (i.e., 1100 stems/ha) "**would amount to 1647 sq.m**".

The unauthorised overlay produced by Hutchinsons significantly exceeds the area identified by the Reference Committee (1647 sq.m.) Of course, the Restocking Notice Plan, is the original plan in which the error occurs, but Hutchinsons replicate this (with variation) without any finesse or consideration of the Committee's stated requirement.

We have undertaken the same process, though with greater precision and observing all information licensing and copyright provisions. The conclusion of this information mapping process is that the four restocking areas have been significantly exaggerated. We calculate that overlaid Restocking Notice plan suggests a total restocking area of **3,003 sq.m.** which clearly exceeds the Reference Committee's requirement of **1,647 sq.m.**

It is important to recognise at this point, that our earliest receipt of any supporting information regarding the number of stems and indeed those stems total cumulative M2 area (4 locations) was first in our possession via an email from Mr Kourie at 12.03 hrs on 21 February 2023. That is only after our planning agent (and agent for the Restocking Notice appeal) sent an email to Mr Kourie about being astonished to only find out about these matters via Hutchinsons. Mr Forde's "astonished" email was sent on 17<sup>th</sup> Feb at 10.26 hrs, four days earlier.

Again, of note, and this is highly significant: had Mr Forde not sent that email it is quite apparent we, that is my team and family, would have never seen the supporting documents that Mr Kourie sent. Indeed, the documents I suggested in my paragraph 5 above, that should have been sent with the draft notice issued 25<sup>th</sup> October 2022 over four months ago.

It is fact that the areas that Hutchinsons have overlaid on our Master Plan are exaggerated, by in the region of 82%. We are unclear about the processes by which the Local Planning Authority, Hutchinsons, and the Forestry Commission has exchanged information, and been privileged to share that information, before, or at a greater level of privilege than my family (the appellants). We hope that this was not the case, but it has created a situation where the parties have colluded in the creation of ambiguous information, with an exaggerated Notice Plan and Master Plan overlay, thereby distorting reality and possibly with the intention to blight our planning appeal. Had correct administrative processes, been observed within the Restocking Notice Appeal; had the correct level of privilege been observed, and had all information been shared with the appellant, prior to a decision being made, then this might have been avoided, and perhaps a different outcome in the Restocking Notice Appeal.

Cont'



It remains of significant concern to us that the Local Planning Authority/Hutchinsons had significant information, albeit they have misinterpreted/misused that information before those named on the face of the notice had received it. Moreover, the information leading to that decision did not exist in the investigation of the Field Officers and does not exist today; and that the appellant's conducted the same fact based investigation on themselves and reached a considerably different conclusion as to the extent of felling; finally that meetings took place after the appellants had been dismissed from the 17 May Hearing, which considered information to which the appellants were not privy.

These are matters which we say render the Restocking Notice Appeal process legally unsound. It is something that needs to be scrutinised and investigated. Implicit in these processes is procedural unfairness, as well as clear and obvious errors in the facts of the investigation. We have taken legal advice and understand avenues of redress are available through appropriate legal challenge. Based upon statutory timetables, any such legal challenge needs to be made within three months of the issue of Restocking Notice (13 February if you take the date on the Notice, rather than any receipt date). This would not expire until 12 May 2023.

Notwithstanding the notes and comments above, it is true to say the notice received is not mirrored in the documents relayed by Mr Kourie just 3 days ago. For your information, listed below are documents that accompanied that email, ref (redacted Minister Decision – RN24.18-19 Manor Trading Estate along with anomalies noted against issued notice.

The attached annexes include all relevant information from the Reference Committee for the Minister's decision.

Annex 1A – Restocking Notice	OK Matches
Annex 1B – Restocking Map	OK Matches
Annex 2 – Initial Objection --	File mis named – it was initial appeal submission. But OK
Annex 3 – Record of Meeting with Objector	OK Matches
Annex 4 – Reference Committee Report	Note 1 <sup>st</sup> time relayed to us 21 <sup>st</sup> Feb (4 days ago.) although this was report indicates the 1 <sup>st</sup> meeting 17/05/22 (we attended) a 2 <sup>nd</sup> meeting via teams 2 <sup>nd</sup> June 22, was evidently in Mr Kourie's possession as early 6 <sup>th</sup> October 22 was finalised 21 <sup>st</sup> October -- YET wasn't sent to us in the draft notice of 25 <sup>th</sup> October 2022
Annex 5A – Amended Restocking Notice	1 <sup>st</sup> Schedule says 30/06/2020, indicates a different Nr of trees it follows on with 4 other sections --- whereas the issued by post has correct date but with 6 scheduled items.
Annex 5B – Amended Restocking Map	different map, issued same O/A large area, different colour referenced, both referenced RN10/22-23 One was hand drawn & one an attempt at computer out line & shade, One noted blue one red, Same drawing nr two different authors one dated 21/06/22 the other 05/01/23, One is numbered 1 through'4 area the other is not. Both indicate a scale, neither areas scale to reflect the annex 4 committee report" of 1647 M2. which they must have been in possession of at the times of drawing.
Annex 6 – Draft Letter to Objector	Draft letter not dated, draft received no date, draft sent to GP Smith only Draft, indicated Keswick Road this latest posted address is Church Road Thundersly, as was the original restocking notice of October 2018



Lastly and before we go onto what we consider to be advantageous outcome for all parties, we copy below Section 6 off the Reference Committee report (Annex 4).

***“6. The Committee considered the Objector’s complaints regarding the process for the appeal. The Committee agreed that it was clear the Objector was inadequately informed of how the appeal process and submission works, and that this should be clearly available from the moment a Restocking Notice is issued. This specifically includes informing potential Objectors that an appeal against a Restocking Notice contains the full arguments for the appeal in the initial submission, and that Forest Services will respond to these accordingly when the appeal is referred to the Reference Committee. A lack of understanding of the process was acknowledged by the Committee to have likely exacerbated the highly charged nature of this appeal.”***

Despite this recognition, the Forestry Commission has continued to proceed in a manner that denied the appellants access to the process and information relating to how that should operate with fairness and objectivity. It would also appear that perhaps the suggestion regarding engagement and information being relayed to and with the appellants is yet to be considered.

#### **Our Olive Branch**

Despite the above, we would like to amicably through engagement resolve and/or negotiate this matter to the satisfaction of all parties. We would respectfully remind you that has always been our stated position as was relayed to the Forestry Commission and the Reference Committee on 17<sup>th</sup> May 2022.

To that end are drawings (appendices) developed since Mr Kourie’s three-day old 21 February 2023 email and attachments. As you might understand it has put an enormous strain on my family to find resources to analyse, digest and formulate a positive response in the attachments below.

I therefore submit Drawings as Appendices 1 through 4 for ease of chronology and understanding I describe the Appendices and import relevant drawings directly below the Appendix description.

#### **Conclusion.**

We respectfully ask that the Forestry Commission review and consider the offer contained in this letter and its Appendices.

As you might be aware our overall development proposal is in the latter stages of the appeal process which concludes this coming Friday 3<sup>rd</sup> March 2023, with Planning Inspectorate decision expected in April. In the light that the Planning Inspector will be aware of this late notice (delayed restocking notice) he will obviously need to take a view of the notice, its position relative to our planning appeal proposal along with understanding who the enforcing authority relative to the Restocking Notice is. We understand that the Forestry Commission is the enforcing authority.

For clarity we would appreciate your earliest response thus hope this matter can be resolved to the satisfaction and benefit of all parties, thus prevent another costly and exhausting legal challenge to this matter. In this regard we hope for an early response.

Yours Sincerely

Mr G.P Smith for and on behalf of Smith Family -

Cc RF (SP); MH (H&H); ED (CS)



## Appendix 1

### 01 Restocking Notice Areas Plan 16.3839-M011

Professionally produced drawing correctly identifying the overdrawn area on the notice plan which identified **3003 sq.m.** over the 4 areas, whereas the referencing committee report clearly indicates **1,647 sq.m.**

Of note Area2 is in an area which is severely contaminated, as confirmed by two geologists instructed by HM court relative our neighbour's transgression onto our property. Documents and Laboratory Reports are available and for openness we can forward these, as presented to the court if required.

Nb:- lower right of drawing has area schedule,





note:  
 this drawing is provided for planning application purposes only and should not be used or relied upon for Building Regulations applications or in the use of Construction. If dimensions should be checked on site before the commencement of any works or ordering of materials. Any discrepancies should be reported to Smart Planning Ltd.

0m 50m 100m

No. Date Amendment Initials

© THIS DRAWING IS THE COPYRIGHT OF SMARTPLANNING. This document must not be reproduced in whole or in part without prior permission of Smart Planning Ltd. Registered in England No. 04369649. OS Licence Number 100642413



## Appendix 2

### Adjusted Restocking Notice Area Plan 16.3839-M013

Drawing correctly identifying the actual size of the four areas required in the notice plan, thus equating to **1,647 sq.m.** noted by the Reference Committee Annex 4 document.

Of note and for ease of comparison the outline of the exaggerated notice plan area identified in Appendix 1) Restocking Notice Areas Plan 16.3839-M011 are depicted by the Black broken line. Similarly identifies the severely contaminated land within our title as it relates to Area 2





Note:  
 This drawing is provided for planning application purposes only and should not be used or relied upon for Building Regulations applications or the use of Construction. All dimensions should be checked on site before the commencement of any works or ordering of materials. Any discrepancies should be reported to Smart Planning Ltd.

0m 50m 100m

No. Date Amendment Initials

© THIS DRAWING IS THE COPYRIGHT OF SMARTPLANNING. This document must not be reproduced in whole or in part without prior permission of SmartPlanning Ltd. Registered in England No. 04369649. OS Licence Number 100042413

smartplanning

Head Office  
 100 Church House, Redbridge  
 Thurston, Essex, SS17 7SS  
 Email: [info@smartplanning.co.uk](mailto:info@smartplanning.co.uk)  
 Website: [www.smartplanning.co.uk](http://www.smartplanning.co.uk)  
 Phone: 01302 055 6481



## Appendix 3

### Reposition of Contaminated Patch 16.3839-M012

Drawing correctly identifying the cumulative restocking area but with Area2 (contaminated) being amalgamated with Area3 to the NW.

Thus identifies three rather than four locations but still equating to the overall **1,647 sq.m.** noted by the Reference Committee Annex 4 document. Contaminated area 2 is encircled Red with Red to Green shift to amalgamate with Area3

There is an area schedule for each designated area at the bottom right of the drawing.





Patch Number	Area on Restocking Notice Plan	Adjusted Area to Agreed Total
	Area/sq.m	Area/sq.m
1	675.17	371
2	564.86	310
3	821.53	450
4	941.78	516
<b>Total</b>	<b>3003.34</b>	<b>1647</b>
<b>Reference Committee Agreed Total</b>	<b>1647</b>	<b>1647</b>
<b>Difference</b>	<b>1356.34</b>	<b>0</b>



## Appendix 4

### Open Areas Plan 16.3839-M010A

Drawing correctly identifying the available areas that we can proffer, that can and will accommodate the accumulative 1,647 sq.m. identified by the Reference Committee "Annex 4 document".

The plan identifies seven areas A through G which can accommodate a cumulative 6,692.29 sq.m.

Our preference is locations B through G which provide the most balanced approach as area "A" is outside the restocking notice general area.

Deducting "A's" area achieves an overall available area of 4,390.05 sq.m. Thus, a net gain of 2,743.05 sq.m. over and above the required 1,647 sq.m.

The conclusion and a sensible approach, if we reduce the extra proffered areas B through G by 50% we still achieve a net gain of 1,371.52 sq.m.

This translates to planting 153 additional trees thus delivering 336 trees.

Conclusion – of this plan proposal is beneficial to all parties.

1. Forestry Commission achieve the minimum requirement noted in the order without protracted problems.
2. Forestry Commission by agreement through this offer facilitate increased biodiversity.
3. We gain an improved and more attractive visual external amenity whilst delivering increased biodiversity.
4. There is net increase in matters to which the public interest is invested. Tree planting, habitat creation and biodiversity.



Client Name : Mr Glenn Smith		
Project Title : Land East of Manor Trading Estate		
Drawing Name : Open Area Plan		
Scale : 1:1000 @ A2	Checked/Drawn: JRF/ZA	Status: Application
Date : 02 March 2022	Plot Date : 24 February 2023 17:06:36	Dwg No: 16.3839/M010

