

## **Manor Trading Estate Reference Committee – RN 24/18-19**

Meeting held at The Place, Pitsea Leisure Centre, Meeting Room 1

### **The Reference Committee**

██████████, Chair  
██████████ Member 1  
██████████ Member 2

### **For the Objector**

██████████ Principal Director (Smartplanning)  
██████████, Senior Planning Consultant (Smartplanning)  
██████████, Director G&K Groundworks Ltd  
██████████,

### **For Forest Services**

██████████, Regulations Team Manager  
██████████, Field Manager  
██████████, Regulations Manager (Observing)

### **Committee Support and notes**

██████████, Secretary to the Reference Committee

### **Site Visit**

1. The site visit was conducted by the Reference Committee with the Objectors and Forest Services representatives present. The group assembled in the offices of G&K Groundworks Ltd before proceeding to the site via the entrance to the north west. The group proceeded through 'the triangle' (the area bordered by the restocking area, the neighbouring scrapyard, and the rear of G&K Groundworks' building) across the restocking area, where the Objector showed the committee the boundaries of the site. The Objector showed some of the boundaries to the West of the site where disputes with neighbours involving moved fences and tree removal had occurred. The Objector also showed the Committee the southern boundary of the site where some wooded areas remained.

### **Meeting at Pitsea Leisure Centre, Room 1**

2. The Reference Committee, Objector and Forest Services representatives met for the purpose of hearing the Objector's and Forest Services' cases. The Chair thanked all present for the site visit and asked all present to introduce themselves. The Chair explained the role of the Committee as making a report to the Minister rather than deciding on the case, and explained that the Reference Committee could only consider matters relevant to the felling, where other matters lay beyond the remit of the Committee.
3. Before either side presented their case, The Objector's Representative stated that he considered the length of time to prepare for the meeting was unfair. He noted that this was disproportionate to the time the Forestry Commission had to prepare its submission, and explained that the process of being ready for the day's meeting had been especially difficult for him due to personal circumstances also requiring his attention during the 7 working days

available between receiving Forest Services' submission and the meeting. He compared this to the approximately 1100 days since the Restocking Notice was issued in 2018 and this time being available for Forest Services to prepare. He further noted that Forest Services was 'belligerent' at the time of issuing the restocking notice. The Chair acknowledged The Objector's Representative's discontent, but noted that the process would be focused on the illegal felling and Restocking Notice.

4. The Chair set out the order of the day to begin with Forest Services presenting their case uninterrupted, with time for factual clarification questions afterwards. Following this the Objector was to present their case in similar fashion, with similar opportunity for questions afterwards. Once both sides had presented their cases, further discussion could continue as necessary.
5. The Regulations Team Manager expressed concern that Forest Services presenting first, as well as permitting the Objector to submit additional information at the late stage the Committee had allowed, was irregular. The Objector's Representative responded in protest claiming that should the Objector go first this would prejudice the process in favour of Forest Services. The Chair stated that it would be helpful for the Committee for Forest Services to go first, as this would set out the events and circumstances which led to the issuing of the Restocking Notice in question.

#### **Forest Services**

6. The Regulations Team Manager proceeded to present Forest Services' case, and stated she would cover the key facts rather than provide a blow-by-blow account of Forest Services' submission and business process.
7. The Regulations Team Manager explained that the Forestry Act (1967) and amendments sets out the requirements for a felling licence in order to fell trees in England. This act was also explained to provide the Forestry Commission the authority to enforce against unlicensed felling by way of issuing Restocking Notices or pursuing criminal investigations.
8. In this case, The Regulations Team Manager stated that the Forestry Commission was satisfied that 35m<sup>3</sup> of timber had been felled, where no exemption for the requirement for a felling licence applied. Given this felling, Forest Services determined that issuing a Restocking Notice was a proportionate response to the illegal felling.
9. The Regulations Team Manager referred to the Objector's initial submission, referencing Forest Services' argument that the sites inclusion in the Local Plan does not provide the exception to the requirement for a felling licence. Local Plans do not provide consents or permissions in themselves. The Regulations Team Manager clarified that whether the Local Plan refers to the area as grassland or woodland, this remains immaterial to the requirement for a felling licence. While full planning consent may exempt a landowner from the requirement for a felling licence, desk assessments conducted by Forest Services showed that no planning consents had been granted at the time of felling. Planning drafts, or the intention to apply for planning permission was noted not to equate to planning consent.

10. The Regulations Team Manager proceeded to explain that case law in *Grundy* (2006) establishes that in court the burden of proof that an exemption to the requirement for a felling licence applies rests with the landowner and not with the Forestry Commission when they issue a Restocking Notice.
11. The Regulations Team Manager noted that when the illegal felling occurred, the Objector provided no evidence to show that an exemption to requiring a felling licence applied, giving examples of the kinds of evidence that would do so (timber measurements, photos, maps or evidence of dead trees).
12. With reference to the Officer report mentioned in the Objector's initial submission, The Regulations Team Manager noted that a report from a refused 2006 planning application remains immaterial to the facts of trees having been felled without a licence. Likewise, The Regulations Team Manager noted that the Tree Report in the Objector's submission was compiled after the clearance and so was an unreliable source of information regarding the trees on site that had been felled. Reference in these reports to the land being classified as grassland, whether in the Local Plan or not, had no bearing on whether the felling was exempt from the requirement for a felling licence. The requirement for a felling licence applies to 'growing trees' and is not contingent upon those trees being located in a woodland.
13. The Regulations Team Manager added that while the Forestry Commission is committed to increase and protect woodlands and canopy cover, it is by no means *de facto* against development. The Forestry Commission has a statutory duty to regulate all tree felling in England, which it does (amongst others) by providing licences to carry out felling and enforcing against unlicensed felling.
14. The Regulations Team Manager noted that the Objector, when considering felling the trees on this site, could have either applied for a felling licence with the Forestry Commission or waited until full planning permission had been granted by the local authority before undertaking the clearance and felling works. But because they did not have a felling licence and no planning consents were in place to exempt the requirement for a felling licence, the felling of over 35m<sup>3</sup> of timber was an act of illegal felling.
15. The Regulations Team Manager further added that a planning application for the area had been submitted in 2021 but rejected on 10 May 2022. The Regulations Team Manager explained that even if that planning consent had been granted, that would not exempt the requirement for a licence to fell the trees at the time they were felled. Planning consent, noted The Regulations Team Manager, cannot retrospectively justify unlicensed tree felling. Likewise, The Regulations Team Manager noted that adjacent development or changes to the classification of the land as Green Belt or not remains immaterial to the requirement for a felling licence as set out in the Forestry Act.
16. The Regulations Team Manager concluded by summarising that a felling licence was required for the felling works conducted, that there was neither a felling licence in place for the site nor did an exemption to requiring one apply, and therefore that the issuing of a Restocking Notice was a reasonable and proportionate enforcement action taken by Forest Services as in line with standard business and enforcement practices.

## Questions for Forest Services

17. The Chair thanked The Regulations Team Manager and offered the Committee the chance to ask questions of Forest Services.
18. The Reference Committee Member 2 asked about FC9 (Forester Aerial Photo date evidence – 2014). The Regulations Team Manager explained that was from the Forestry Commission's mapping software, and was included to evidence that the aerial photo at FC8 was from 2014.
19. Some discussion was held around the inclusion of other maps in Forest Services' submission, such as the National Forest Inventory and Priority Habitat maps. The Regulations Team Manager explained that these maps corroborated the assessment that the area in question was woodland, although further explained that identifying the land as woodland only provides Forest Services with some context and is not a deciding factor in establish whether felling requires a licence or not. The Regulations Team Manager emphasised that the requirement for a felling licence applied to all trees irrespective of whether the land upon which they stand is designated woodland or not.
20. The Chair accepted this and clarified that the point of whether the land was woodland or not was immaterial to the question of whether a licence was required to fell the trees or not.
21. The Reference Committee Member 1 asked about Forest Services' assessment of timber volume, with reference to page 10 of their Principal Submission and the measurements at FC17. The Reference Committee Member 1 noted that 20 trees are measured at FC17, and asked whether other trees were also measured or if any other trees had been left on site.
22. The Field Manager explained that the site as seen in the morning's site visit was very different to the site at the time the felling was reported and assessed. The Field Manager recounted how the felled trees were scattered among piles of brash, and only 20 trees were accessible for measurement. However, The Field Manager and the other accompanying Woodland Officer were able to count 41 additional trees within the felled material. Access to measure the additional material was made impossible by various factors, including the state in which the digger on the site had left the land.
23. The Reference Committee Member 1 asked about where on site The Field Manager had been to measure the felled trees that had been measured. With reference to a sketch provided at FC1, The Field Manager explained that to her best recollection the majority of the felled timber measured had been in areas numbered 4 and 5 on the sketch (with FS clarifying that the numbers referred to the site visit photo numbers at FC12, and the arrows on the sketch showing the direction faced in these photos).
24. The Reference Committee Member 1 asked further about the methodology of arriving at the final timber volume calculation if not all of felled timber was accessible for measurement.
25. The Field Manager explained that she followed the standard practice for such cases by measuring remaining standing trees, measuring the distribution of licensable trees in

remaining wooded area that she believed to be comparable, and then comparing the on-site assessment with aerial photography, all to inform an estimate of the distribution of licensable stems across the site. Using this estimate, the final timber volume felled had been estimated.

26. The Reference Committee Member 1 asked for clarification of which area was used as the reference area of woodland to aid The Field Manager's estimate of distribution.
27. The Field Manager stated that to her best recollection it was the area pointed to by the arrow no. 5 on the sketch (FC1) (i.e. to the southern boundary of the site).
28. The Chair asked about photo no 7 from FC12 regarding the remains of a still standing tree looking towards the centre of the site.
29. The Objector interjected noting that photo 13 from FC12 did not appear right, as it looked like the woodland in front of Heston Lodge.
30. The Chair clarified that photo 13 was a licensable tree, and its distance from other licensable stems was used by FS to get the estimate distribution of licensable trees in the area.
31. The Regulations Team Manager noted that the stocking density in the Restocking Notice is higher than the estimated distribution of stems used to calculate illegally felled timber, because the new planting would be expected to comply with United Kingdom Forestry Standards to ensure the health and reestablishment of the canopy cover, the purpose to which Restocking Notices are geared. The Regulations Team Manager explained that after the 10 year maintenance period, some of the planting might fail, and eventually once the planting had established, a felling licence could be obtained to conduct thinning activity and bring the woodland into management. This would result in a lower stocking density over time.
32. The Chair asked for clarification on how the extrapolation to 35m<sup>3</sup> of felled timber was achieved.
33. The Regulations Team Manager explained that the 6.1m<sup>3</sup> of measured felled timber was already over the 5m<sup>3</sup> limit (under which the felling would have been exempt from the requirement for a licence). The Regulations Team Manager further emphasised that the Forestry Commission was not required to prove that 5m<sup>3</sup> had been felled, as case law established in *Grundy* (2006) places the burden of proof on the Objector to prove that the material was under 5m<sup>3</sup>.
34. The Objector asked where evidence of the timber measurements were in the submission from Forest Services, referring to the spreadsheet at FC17. The Objector's Representative stated that the total there, being under 5m<sup>3</sup>, meant that the Forestry Commission did not measure more than 5m<sup>3</sup>.
35. The Regulations Team Manager replied saying that the full methodology and mensuration were not included in Forest Services' submission because the Objector's initial appeal did

not object to the measurement of the timber. However an overview has been provided within the Principal Submission and timber volume spreadsheet at document FC17.

36. The Chair asked if this evidence of the mensuration can be provided to the Committee, including how the figures of 6.1m<sup>3</sup> and 35m<sup>3</sup> had been calculated.
37. The Objector's Representative asked why Forest Services referred to the clearance of the site as blatant disregard for planning law. The Regulations Team Manager explained that the clearance had been done in advance of the submission of a planning proposal, thereby appearing to either circumvent the requirement for a felling licence or an attempt to remove a question for the planning authority of whether the site consisted of licensable trees requiring removal for the sake of development.
38. The Chair emphasised that it is was not a question of planning overriding the Forestry Commission or not, and that planning law was not the focus of this Committee. The Chair stated that the Committee only wanted evidence of the volume of timber felled.
39. The Objector's Representative stated that in clearing the scrub on site, some licensable trees may have been felled by 'over-exuberant' operatives, but that the intention in clearing the site was to remove the scrub and restore the grassland.
40. The Objector's Representative stated that the Objector remained respectful of the need for regulations and controls, but The Objector's Representative considered the processes of the Forestry Commission overly bureaucratic.
41. The Objector asked why Forest Services provided evidence only for the measurement of 21 trees, rather than the total timber felled. He further asked why no photographs from Forest Services' first site visit had been taken.
42. The Regulations Team Manager responded by saying that Forest Services only provides evidence pertinent to the appeal submission as it is first submitted. She noted that the Objectors' initial appeal did not question Forest Services' mensuration.
43. The Objector's Representative stated that he visited the site in October 2017 and that the comparison woodland used by Forest Services to establish stump distribution was not representative of the site before the felling. The Objector's Representative referred to a Statement of Common Ground in 2008 which classified the land as grassland.
44. The Objector's Representative went on to discuss the inclusion of the newspaper article in Forest Services' submission, which refers to 'public outrage' regarding the felling. The Objector's Representative argued that this was not relevant to the case and that he and the Objectors took it to be an attempt to discredit their credibility as professionals. The Objector's Representative noted that he and the Objectors had been cooperative and engaging in several public fora, including consulting with the neighbouring school and day centre. He noted that several tests had been conducted on the site, including contamination tests and acoustic tests. He further noted that there were complex relationships and histories with the community and neighbours (including court cases where neighbours had

been shown to be wrongful in attempts to extend their boundaries into the site, as well as an ongoing court case with the neighbouring scrap yard).

45. The Objector stated that he considered the submission from Forest Services to paint an unduly negative picture of himself and the site. The Objector referred to the noise complaints mentioned in Forest Services' submission, stating that scientific evidence proves treelines to reduce noise only by 1-2%.
46. The Objector's Representative further stated that the machine operator had been told by The Field Manager that stems smaller in diameter than a can of Coke would not be licensable. The Objector's Representative then demonstrated that a can of Coke was smaller than 8cm in diameter (the licensable stem diameter at breast height). The Objector's Representative asked why a Coke can was used as a reference when it was not 8cm in diameter.
47. The Regulations Team Manager explained that the use of analogies by the Forestry Commission was a common practice to bridge the gap between the specialist terminology of forestry and those whose expertise may lie elsewhere. Using a drinks can or tin of food is common practice to give non-foresters a concrete reference when considering whether a stem is licensable or not. The Regulations Team Manager further stated that machine operators would normally be expected to follow professional instructions and standards.
48. The Chair noted that the Committee was obliged to consider only facts, not intentions. She acknowledged that although this was a heated case, allegations to the character of people involved were not a matter for the Committee to consider. While the Chair noted that she understood the Objector was displeased with various circumstances surrounding the case, these had been taken up in a separate complaint with the Forestry Commission, and the Reference Committee had no locus to comment on any matters outside the objection to the Restocking Notice itself.
49. The Chair asked if the Objector had evidence from the time of felling that showed the stems were unlicensable or that the timber volume was less than 5m<sup>3</sup>.
50. The Objector's Representative responded by stating he would provide a photo taken from a site visit in 2017, noting that he only had one photo due to the visit not being a formal photographic assessment of the site.
51. The Reference Committee Member 1 asked the Objector how they decided why the trees remaining on the site had been retained. The Objector replied they were retained because of their size.
52. The Objector's Representative noted that after the scrub had been cleared, the shredder on site was unable to process stems larger than 7.5cm in diameter. Thus the remaining material consisted what could have been felled, and no licensable stems would have been destroyed before Forest Services inspected the site.

53. The Reference Committee Member 1 asked whether trees had been marked during the clearance operation to indicate that they should not be felled. The Objector stated that they were not.
54. The Objector stated that the additional submission from the Objector would show overlapping maps obtained from Historic England which confirm that the more mature trees were retained on the site.
55. The Regulations Team Manager noted that the intent of the Objector to retain trees or not remained immaterial to the fact of unlicensed felling having taken place. The Regulations Team Manager noted that *mens rea* was not applicable to cases of illegal felling; that is that felling trees without a licence remains illegal unless an exemption applies.
56. The Objector's Representative referred to Forest Services' submission at FC5 (Priority Habitat Map), which shows that the area is classified as deciduous woodland. The Objector's Representative asked for clarification as to why this had been included.
57. The Regulations Team Manager explained that this was a designation as a priority habitat in line with designations set out in the Natural Environment and Rural Communities Act (2006). The Objector's Representative argued that this remained at odds with the professional advice and ecological report the Objector had undertaken on the site. The Regulations Team Manager replied that the designation was the remit of Natural England, and if the Objector disputes its accuracy, that should be taken up with them.
58. The Chair noted that the designation of the site was a red herring, as the status of it being woodland or not was immaterial to the requirement for a felling licence.
59. The Objector asked why the map had been included, if this was the case. The Regulations Team Manager responded by stating it was a response to the initial submission from the Objector.
60. The Objector's Representative then referred to FC6 and FC7, which show maps showing the National Forest Inventory (NFI) from 2019 and 2018 respectively. The Objector's Representative questioned the accuracy of the maps, as FC6 (NFI 2019) showed the area along the southern borders of the site to be felled when the area is currently wooded. The Regulations Team Manager explained that the data comprising these maps is maintained by Forest Research, and so could not speak to the reasons they show what they do.
61. The Objector's Representative asked why FC6 and FC7 had been included, to which The Regulations Team Manager replied as being in response to the Objector's initial submission. The Regulations Team Manager re-emphasised that Forest Services was only required to show that trees had been felled in order to establish illegal felling, not to account for the accuracy of maps. The Objector's Representative asked whether The Regulations Team Manager accepted the map as inaccurate, to which The Regulations Team Manager responded that if it might not be up to date that would be an issue to take up with Forest Research.



62. The Chair asked whether these maps influence the Restocking Notice map, which it was established that they did not. The Objector noted that some trees remain where the map indicates the land is empty. The Chair noted that because the map was not directly pertinent to the Restocking Notice or restocking area, it would not be material to the Committee's consideration of the case.
63. The Objector argued that inaccuracies in the map are important, because they appear to be prejudiced in favour of Forest Services. The Objector further asked whether the map at FC7 showed the site to be coppice, and asked why this is the case when it was described elsewhere as mixed broadleaves and conifers. The Objector's Representative further asked for the date of the map. Finally, The Objector's Representative asked why these maps had been included in Forest Service's submission.
64. The Regulations Team Manager explained that the designation as coppice, conifer, or deciduous did not affect the legal requirement for a felling licence provided by the Forestry Commission to fell growing trees in England, however the maps do illustrate a dense canopy cover, and that trees were located on the land. The map's date, she explained, could be provided by Natural England.
65. The inclusion of the map was explained by The Regulations Team Manager as for the sake of providing a response to the Objection. The Regulations Team Manager explained that the Forest Services is satisfied that an offence was committed and that a Restocking Notice was appropriate. Restocking Notices allow those upon whom they are served to object to them by submitting the required form 6a to the appropriate Minister, who then refers the matter to a Committee. The submission sent to the Committee by Forest Services is a response to this initial submission, which in this case made several arguments that the area was not a woodland.
66. The Chair clarified again that Forest Services' submission is not an exhaustive account of the reasons for issuing a Restocking Notice, but consists of a response to the initial submission appealing the Restocking Notice under consideration.
67. The Objector's Representative made reference to the complaint lodged with the Forestry Commission at the time of the initial inspection. He stated that at the time, he requested information regarding the mensuration and justification for why the felling had been classed as illegal felling. The Objector's Representative stated that this request was not responded to.
68. The Objector's Representative continued to argue that establishing the area as woodland served the purpose of justifying a disproportionate response to felling activity. He argued that the distribution of trees required by the Restocking Notice was not replacing the 60 trees felled, but required a significant number more.
69. The Regulations Team Manager responded by explaining that calculations with respect to restocking are made based on restoring canopy cover, not merely number of stems. The stocking density of 1100 stems per hectare is industry standard for restocking with broadleaves, and is commonly used in felling licence conditions.

70. The Objector's Representative went on to argue that the operation was a clearance operation under the advice of an ecological specialist and report to restore the area to grassland. The Objector's Representative quoted some passages from the ecological report to be included the Objector's second draft submission. The Objector's Representative argued that this report shows that deciduous woodland is not superior to grassland habitat. The Objector's Representative stated that the Objector would be prepared to accept that 20 trees may have been felled in an 'over-exuberant' felling operation, but that this amounted to less than 5m<sup>3</sup>.
71. The Chair noted that it would be helpful to the Committee to have clarity on how an amount greater than 5m<sup>3</sup> of timber had been arrived at by Forest Services.
72. The Regulations Team Manager noted that the methodology used by Forest Services to arrive at the timber measurements was set out on pages 9 and 10 of the Principal Submission. The Regulations Team Manager re-emphasised that the burden of proof for the timber volume being under 5m<sup>3</sup> rested with the Objector (if the Committee were to consider following the precedent set out in *Grundy* (2006)).
73. The Chair noted that the Committee is asking for information that shows how a volume of greater than 5m<sup>3</sup> had been arrived at. This was noted by the Chair as information material to the Committee's consideration of the matter regarding both whether there should be a Restocking Notice and the proportionality of the Restocking Notice.
74. The Objector stated that he found the current process frustrating, and expressed a preference for a court setting which would allow greater scope for considering matters beyond the initial submissions. The Objector expressed frustration with Forest Services' approach, and claimed it did not make an adequate attempt to identify and rectify what he considered to be the problem. The Objector noted that he would be able to provide significant photo and video evidence of the site before the felling if he were provided the chance.
75. The Chair noted that if there were no further questions seeking factual clarity on the case from Forest Services, then a lunch break would be necessary. The group then took a half hour lunch break.

### **Lunch Break**

76. After lunch, before the Objector presented their case, the Chair asked the Objector to provide The Secretary to the Reference Committee with their final submission by the 27<sup>th</sup> of May, and requested that Forest Services provide the additional information requested by the Committee about the calculation of the volume of timber felled by the same date. Both parties agreed that they would do so by this date.

### **Objector**

77. The Objector's Representative referred to a complaint lodged with the Forest Services' East and East Midlands Area Team, in which he claimed that the Area Director omitted key

information in their exchanges as to why a felling licence was necessary for the operations undertaken on the site.

78. The Objector's Representative stated he had known the site since the 1980s, and had been acting as the planning consultant for The Objector since 2004. The Objector's Representative explained that both he and The Objector were professionals, and that they felt the way in which the Forestry Commission had engaged with them during the initial felling did not adequately recognise them as such.
79. The Objector's Representative referred to the initial site inspection carried out by Forest Services, and the subsequent formal complaint to the Forestry Commission, stating that the issues of the Woodland Officer not producing identification at the time or complying with the health and safety requirements of G&K Groundworks remained unsatisfactory. The Objector's Representative expressed dissatisfaction with the complaints process, stating that the Area Director did not engage with his complaints to The Objector's Representative's satisfaction.
80. The Objector's Representative referred to a quote attributed to Albert Einstein, that 'unthinking respect for authority is the greatest enemy of truth', saying that Forest Services had not adequately responded to any of the challenges to their authority. The Objector's Representative referred to the Reference Committee as being a 'breath of fresh air.'
81. The Objector's Representative explained that the baseline studies from 2008 are pertinent to the case because they state that unmanaged grassland is superior to species-poor scrub woodland. He further described the site as consisting of mostly hawthorn and blackthorn, with no significant oak trees growing on the site.
82. The Objector's Representative reiterated that increased canopy would not produce more species diversity and that grassland was superior to woodland in that regard.
83. The Objector's Representative referred to a 2009 assessment of the site which classified the restocking area as grassland. The Objector's Representative referred also to the arboriculturists report included in their initial submission at SOC3, which although having taken place after the felling, The Objector's Representative claimed nevertheless established the site as grassland.
84. The Objector's Representative recounted a visit he undertook at the site with a landscape architect in October 2017. During this visit, The Objector's Representative noted that the scrubland was not significantly developed, describing it as a 'handful' of hawthorn and other scrub. The Objector's Representative referred the Committee to a photograph taken on the site at the time at SOC10, which showed from eye level some self-setting oak and hawthorn scrub. The Objector's Representative described the location of this photo as looking broadly west towards the buildings north of the watercourse. The Chair asked for clarity regarding the buildings visible in the picture, to which the Objector replied it was the scrapyard offices.
85. The Objector's Representative stated that hindsight made it easy to say a licence was required for the felling. He noted that while some trees had come out during the clearing

operation, some trees were also left. These trees were left, claimed The Objector's Representative, because the Objector knew that they had to leave them there.

86. The Objector's Representative noted that some trees on the site had been removed by third parties, including Benfleet Scrap (with whom the Objectors have an ongoing court case) and other neighbours (who have had court rulings made against them following these incidents). The Objector's Representative noted that in these cases, the tree felling undertaken by neighbours was reported to the local council by the Objector, but the Forestry Commission did not become involved.
87. The Objector's Representative referred to the aerial photography included at SOC12, which show a series of aerial photos of the site spanning 1995 to 2003 from Historic England, and other aerial photos from Google spanning 2003 to 2017. With reference to the Historic England photos, The Objector's Representative noted that the grain of the scrubland is more even when compared to the nearby woodland, which displays greater shadowing and texture. The Objector's Representative described the northern areas as having been more successfully established as unmanaged grassland.
88. The Objector's Representative referred to the site as consisting of a very light spread of oak, while the rest was scrub.
89. The Objector's Representative referred to the inclusion of other matters in Forest Services' submission, describing them as emotive. This included reference to noise complaints and press releases. The Objector's Representative noted that the Objector had been engaged and cooperative with relevant members of the community, and that the inclusion of these matters in the submission was not helpful; describing it as a 'dramatization to discredit' the Objector.
90. The Objector's Representative described the clearance works as beginning in February 2018, and noted that none of the material was removed until May of that year. The Objector's Representative explained that the latter end of the process included shredding, and the larger logs were given to the local community to use as firewood. The Objector's Representative stated that all of the felled material was visible at the time of the investigation.
91. The Objector's Representative stated that the Objector accepts that around 20 trees may have been removed, but rejects the 41 additional trees had been removed. The Objector's Representative noted his surprise that the submission from Forest Services did not show these additional trees.
92. The Objector's Representative noted that he did not believe the felled material exceed 5m<sup>3</sup>. He stated that if it does exceed this, then he does not accept the proportionality of the Restocking Notice.
93. The Objector's Representative questioned the use of the nearby patch of woodland on the northern boundary of Heston Lodge as a fair reference point to describe the density of the trees on the cleared site. The Objector's Representative stated that the density of trees was

not consistent across the site, with this area being more densely wooded than the areas north of it which were cleared.

94. The Objector referred to photos included in the SOC12 (and included in the Objector's submission on 05 May), which show part of the site nearby the concrete post fence along the north-eastern boundary of the site. The Objector noted that these photos show the contents of the field as largely devoid of trees. The dates of the photographs were ineligible in printed form, but The Objector assured the committee that inspecting the digital copies submitted to them would confirm that the photos showed the site before the felling.
95. The Objector's Representative continued to make reference to other reports which describe the contents of the site as mostly hawthorn, as well as describing their distribution as widely spread. The Objector's Representative stated that any Restocking Notice should reflect the density and nature of the site prior to the felling.
96. The Objector's Representative stated that restoring the species-rich grassland was a superior environmental objective than creating a woodland on the site. He further described the Forestry Commission's approach as taking a 'technical high-ground' at the expense of the Objector's well intended approach to manage the site according to specialist advice received.
97. The Regulations Team Manager stated that the Forestry Commission was of the opinion that the claims of grassland restoration were some what at odds with the application for planning consent for the erection of residential and commercial units some six months after the unlicensed felling had occurred.
98. The Chair thanked The Objector's Representative and the Objector for stating their case, and noted that the site visit had helped them to better understand the site.
99. The Objector added that the final submission from the Objector would show overlayed photos from Historic England that would confirm that the site became overgrown with scrub over time, and that the larger trees had been retained.
100. The Chair invited Forest Services to respond to the Objector.

#### **Response to the Objector's Presentation**

101. The Regulations Team Manager noted that the issuing of a Restocking Notice is considered a proportionate response to illegal felling, as is described in S17A of the Forestry Act. The Regulations Team Manager noted that the content of a Restocking Notice can be discussed with the Forestry Commission, but the act of issuing a Restocking Notice is considered a proportionate response.
102. The Regulations Team Manager reiterated that *mens rea* does not apply to acts of illegal felling, and that therefore the intention of the Objector to fell licensable trees or not was immaterial to whether an offence had been committed.

103. The Regulations Team Manager questioned why the Objector was placing emphasis on the ecological importance of restoring the site to grassland when the intention to apply for planning consent to develop the site was clear, given the refused planning applications on the site. The Regulations Team Manager also asked the Committee to consider the accuracy of the ecological reports provided by the objector given they were dated approximately some ten years in advance of the unlicensed felling.
104. The Objector's Representative responded by saying that the Officer Report refusing the planning application was a long one, and discusses more issues than raised by Forest Services. He acknowledged that while planning consent had not been granted, the matter of developing the site was a separate issue to the Reference Committee meeting.
105. The Objector's Representative stated that the clearance was not done specifically to develop the site, but to restore the grassland.
106. The Objector noted that in the refusal of the 2008 planning application for the 'triangle', the Objector offered to give the rest of the land away to the local authority for the sake of the then intended green link included in the Local Plan. The offer was rejected due to concerns around the Green Belt.
107. The Objector's Representative further noted that following public enquiry 2 years later, the land was proposed to change in the local plan to use for employment and housing.
108. The Chair asked if this was related to the recent application.
109. The Objector's Representative clarified that the master plan is included in Forest Services' submission, and that the master plan includes tree planting. The Objector's Representative continued to state that developing the site would be beneficial to bring investment to what he noted as the largely neglected Manor Trading Estate, to renew the roads and improve the area.
110. The Chair at this point noted that these planning concerns and matters were not within scope of the Reference Committee as there were no consents in place that permitted the felling. The Chair reiterated that final supporting documents would be sent to The Secretary to the Reference Committee by 27 May, including mensuration information from Forest Services.
111. The Objector's Representative reiterated that the Area Director for Forest Services' East and East Midlands Area Team did not answer his complaint to his satisfaction, and that the process of objecting to a Restocking Notice needs to be changed. The Objector's Representative described the notion that if an issue is not raised in the initial objection that it be a 'technical knock-out' and not be considered by the Reference Committee if it is relevant to the case. The Objector's Representative emphasised that the objection process did not create a 'level playing field', and that it was prejudiced in favour of Forest Services from the outset. The Objector's Representative described the process as unlike any other he had undergone as a planning professional in his various engagements with other regulating authorities.

112. The Chair acknowledged The Objector's Representative's concerns and noted that if no further information relevant to the Committee was to be raised that the meeting could be concluded.
113. The Objector's Representative stated that Forest Services did not provide sufficient evidence that more than 5m<sup>3</sup> had been felled, and questioned whether the information they provided was auditable.
114. The Regulations Team Manager responded saying that Forest Services retains much more information than was provided in the submission, and that the entire process of serving a Restocking Notice was subject to a well established business process, careful record keeping and peer review. The Regulations Team Manager confirmed to the Committee that the entire process undertaken by Forest Services is auditable and in alignment with the Hampton Principals of good regulation.
115. The Chair concluded the meeting and thanked all in attendance for their time.