

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

Post-Meeting Committee Discussion held at The Place, Pitsea Leisure Centre, Meeting Room 1, 17 May 2022

Additional Reference Committee discussion held over MS Teams, 15 June 2022

The Reference Committee

██████████ Chair

██████████, Member 1

██████████, Member 2

Committee Support and notes

Mark Kourie (Meeting 1 and 2)

██████████ (Meeting 2)

1. Following the meeting with the Objector, the Committee discussed the issues raised during the meeting and in the submissions from the Objector and Forest Services. The Committee's decision to allow the Objector additional time to for a supplementary submission was discussed. It was therefore decided to schedule a second meeting on 15 June 2022 to consider any new matters raised in the supplementary submission. These notes reflect a combination of what was discussed during both meetings.
2. The Committee considered the matter of the land's designation as woodland or not. Despite the arguments from both Forest Services and the Objector on this issue, the Committee agreed that any designation assigned to the land in question was immaterial to the question of whether and what trees had been felled without a felling licence, and therefore immaterial to the question under consideration by the committee. The Committee agreed that determining the extent and nature of the felling required an assessment of the trees and the site itself, independent of the views and designation of it as grassland, woodland, or anything else.
3. The Committee acknowledged that the Objectors argument of restoring the land to grassland, and claims to the environmental benefit thereof, were immaterial to the question of whether unlicensed felling had taken place. The argument that the biodiversity of grassland was superior to woodland was similarly considered immaterial to the matter at hand.
4. The Committee discussed the Objector's reference to the Local Plan. The Committee acknowledged that the site had significant development potential and a complex history of planning applications. The Committee agreed that this was also immaterial to the matter under the Committee's consideration, given that only full planning permission having been granted prior to the felling is a sufficient exemption from the requirement for a felling licence. No claim had been made that this was the case, and therefore further reference to matters of the Local Plan and/or planning consents remained immaterial to the Committee's concerns.
5. The Committee acknowledged that there were several matters raised by the Objector that remained unrelated to the appeal against the Restocking Notice in question. These related

to issues related to the Forestry Commission's powers of entry, and complaints regarding health and safety compliance of Forestry Commission officials around the time of the investigation. Further matters related to complaints and correspondence between the Objector and Forestry Commission officials was similarly considered outside the remit of the Committee to consider.

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.
7. The Committee considered the Objector's claims and demonstration regarding the diameter of licensable stems. The Committee accepted that the Objector was unable to have destroyed evidence of licensable stems prior to the measurements taken by Forest Services due to their woodchipper not processing stems over 7cm in diameter. Therefore the Committee accepted that it was unlikely that additional felled material existed that Forest Services were unable to take into account when making their estimations of felled timber volumes.
8. The Committee summarised the Objection arguing that the Reference Committee adopt one of two positions: either that the Restocking Notice was not valid, or that it was valid but not proportional.
9. To establish whether the Restocking Notice was justified, the Committee considered whether there was sufficient justification that an act of illegal felling had taken place. The Committee agreed that the following criteria define this: a) that felling had taken place, b) the felling was of licensable stems, c) the total timber volume of the felling exceeded 5m³, d) there was no felling licence in place, e) and no exemption applied.
10. Beyond the matters immaterial to the questions considered by the Committee, the exemptions that the Objector argued applied were that the stems were not licensable because the felling was a scrub-clearing operation. A second argument was also presented in the notes by Mr Smith that the felling occurred over two calendar quarters, and therefore that it could have been that the 5m³ threshold had not been exceeded.
11. The Committee agreed that Forest Services had provided sufficient evidence that the 5m³ threshold had been exceeded, and that because the measurements made by the Woodland Officers were taken in March, this confirmed that the material had to have been felled within one calendar quarter. The Committee was further content that the timber measurements provided by Forest Services were accurate insofar as they calculated at least 6.1m³ had been felled, by way of measuring 20 stems of licensable size and counting an additional 41 stems of similar size.

12. Therefore the Committee agreed that an act of illegal felling had occurred, and that a Restocking Notice was an appropriate response to this. The matter of the extent and proportionality of the Restocking Notice was, however, not considered obvious by the Reference Committee.
13. The Committee discussed the adequacy of the approach taken by Forest Services in arguing that the felling took place evenly across the site and therefore totalled an excess of 33m³. While the Committee agreed that in principle it was acceptable practice to extrapolate stem distribution across a site from a sample plot, the character of the site in question made this matter more complicated.
14. The Committee reviewed the aerial photography provided by both Forest Services and the Objector. The Committee agreed that the cover shown by the photographs was not sufficiently clear to evidence an evenly distributed canopy across the entire site. The Committee further considered historical aerial photographs which suggested that the opposite was true, with the southern section of the site being more densely wooded, while the northern and central areas much more sparsely so, if at all.
15. The Committee recognised that Forest Services argued that aerial photography showed the presence of wild pear trees across the site, which would be more likely to be of licensable size and volume than the scrub-like hawthorn and blackthorn claimed to have been cleared by the Objector. However, it was also noted that hawthorn in bloom can easily be mistaken for wild pear in aerial photographs.
16. The Committee further reviewed the maps showing retained trees on the site and discussed how this was reflected in the site visit. Given what was witnessed during the site visit, the historical aerial photographs, and the retained trees, the Committee agreed that it was more likely that the Objector had exceeded the 5m³ threshold by clearing scrub than by having felled a significant number of wild pear or mature oak.
17. The second matter of whether the contents of the Restocking Notice was proportionate was discussed. The initial Restocking Notice and map requires that an area of 2Ha be restocked at a density of 1100 stems per hectare, with a species mix of 35% oak, 25% hornbeam, 10% field maple, 15% birch, 10% Scots pine, and 5% crab apple.
18. The Committee agreed that on the balance of the evidence they had received and reviewed, the conditions of the Restocking Notice was disproportionate to the extent of the illegal felling that had taken place. The Committee agreed that the area allocated for restocking exceeded the likely true area in which illegal felling had taken place.
19. Given this, the Committee agreed that a modified restocking area is recommended, confining restocking to those sections on the site where more dense and mature woodland is evident from historical photographs. The Committee further expressed concerns regarding the species mix specified by the Restocking Notice, and recommend that an alternative species mix based on the original site be offered. The question of 1100 stems per hectare was also discussed, and the Committee recommended that alternatives be considered.

20. The Committee discussed the purpose of the Restocking Notice as a restorative measure, rather than a tool for Woodland Creation. Given the extent of the felling and the character of the site, the Committee considered the creation of a woodland across the whole site to be disproportionate to the extent of the felling. The Committee agreed that reducing the number of trees required by the Restocking Notice was a more proportionate restorative measure.

Conclusions

21. The Reference Committee considered the requirement of planting 1100 stems per hectare (as set out in the Restocking Notice) inappropriate, given the character of the site and the extent of the felling undertaken. The Reference Committee acknowledged that Forest Services followed UKFS guidelines, and that a stocking density of 1100 stems/ha is the minimum stocking density generally required for restocking a woodland that has been clear felled. However the Reference Committee considered this policy unsuitable for this specific case given the disparate spread of licensable trees felled across the 2ha site, and the fact that a number of trees and shrubs still remain on the site. Therefore the committee concluded that a Restocking Notice modified to align with the following conclusions would be more appropriate.
22. As such, the Reference Committee preferred an approach based on individual tree replacement. While Forest Services guidance on individual tree replacement generally suggests using a 5 to 1 ratio, the Reference Committee agreed that a 3 to 1 ratio is more appropriate in this case due to the nature of the site. From this the Reference Committee concluded that a modified restocking notice should be issued based on the trees explicitly identified (61 in total) at the ratio of 3 to 1. This means that at least 183 trees should be planted, evenly spaced at normal 3 metre spacing (ie 1100 stems /ha). This would amount to an area of 1647 sq metres.
23. The Committee's view was that the aerial photographs over time gave an indication of the areas where the trees were most advanced and where, on the balance of probability, the most trees of licensable size were growing and the restocking should take place. These have been mapped and agreed by the Committee as the areas recommended to be restocked in the modified restocking notice.
24. The Committee also took the view that the vast majority of the licensable trees were likely to have been oak and it would be appropriate for the restocking to be 50% oak, and up to 50%, other species such as hawthorn, wild pear, crab apple, field maple. Natural regeneration, should it occur, should not be considered as a substitute for restocking as it would, most likely, be coppice regrowth (of oak) or other species.