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Via email only

23/10/2024

Your Reference: 2024/60/92779/E
My Reference: AIF 012/16/23-24

Dear Ms. Bearcroft,

Re: 2024/60/92779/E – Outline application for residential development

The Forestry Commission is the forestry regulator in England and the government department responsible for protecting, expanding and promoting the sustainable management of woodlands. We are the enforcing body for activities governed by the Forestry Act 1967 and the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999. In response to this public consultation, we are providing the Council with information about the presence of legal obligations relating to the land within the above referenced planning application.

As a Non-Ministerial Government Department, the Forestry Commission provide no opinion either supporting or objecting to an application. The below simply sets out the Forestry Commission's position in relation to conditional felling licences, Restocking and/or Enforcement Notices made under the Forestry Act 1967.

We would like to draw to the council's attention that there were trees growing on the land pertinent to this application. Our records show that there was no current felling licence in place for these trees. Therefore a breach of the Forestry Act 1967 may have occurred. We are currently investigating this breach as an alleged illegal felling under section 17 of the Act, which may lead to a prosecution.

The council may wish to take this into consideration. In addition to our investigation, the Forestry Commission may also serve a Restocking Notice (under section 17A of the Act). Such a Notice will compel the person served to restock the land with trees and maintain those trees for 10 years.

Failing to comply with a Restocking Notice may result in the Commission serving an Enforcement Notice under section 24 of the Act. This provides further time for the person served to restock the land with trees.

Non-compliance with an Enforcement Notice is an offence. Prosecution may lead to the court imposing an unlimited fine set at its discretion. Additionally, in respect of any Enforcement Notice served after 1st January 2023, the court may, in addition or instead of imposing a fine, make a Restocking Order.

A Restocking Order will again require the individual concerned to restock the land with trees. Non-compliance with the Order may be held to be in contempt of court. Non-compliance with any such Order may therefore result in a custodial sentence.

In addition to any penalty set out above, such convictions may result in an application under the Proceeds of Crime Act 2002 for the confiscation of all profits made as a result of the illegal activity. The Forestry Commission would reasonably expect this to include all profit made in connection to any development of the site that would otherwise not have been possible had the original Notice been complied with.

If the local planning authority is minded to grant planning permission on land where a Notice is in force, they may wish to consider requesting that the applicant remove the land subject to the Notice from any planning permission granted for a wider area. Failing that, we would ask the Council to include an informative on the planning permission decision that makes clear that the granting of that planning permission does not override or nullify any Notice served by the Forestry Commission.

The presence of a Notice may be considered by the local planning authority to be a material consideration in decision making.

Local planning authorities may also wish to consider land subject to a Notice to be woodland, or existing trees, as the presence of the Notice ensures that the land will be restocked with trees and maintained for a period of 10 years from the date of the trees being planted. This is particularly pertinent in relation to ancient woodland sites and the application of the National Planning Policy Framework in relation to those sites, as well as Biodiversity Net Gain.

We would also add that Restocking and Enforcement Notices served from 1st January 2023 are local land charges. This means that once they have been served, they will appear on the local land charges register. This register is routinely checked by conveyancers as part of the buying and selling of land. As such, the land being listed on the register will alert any prospective purchaser to any liabilities that they may be taking on should they purchase the land.

Environmental Impact Assessments

Under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended, some proposals involving afforestation, deforestation, forest roads or forestry quarries may require 'stage 2' Consent from the Forestry Commission before they can be carried out. For these project types the applicant should determine if their proposal needs Consent (referring to [guidance](#) as necessary), or approach the Forestry Commission for a 'stage 1' opinion as to whether or not Consent is required.

For instance, afforestation that is a condition to a planning permission where the area of afforestation has not been explicitly specified within the planning permission. For these proposals you should advise the applicant to consult [gov.uk https://www.gov.uk/guidance/environmental-impact-assessments-for-woodland](https://www.gov.uk/guidance/environmental-impact-assessments-for-woodland) as to whether they need to approach the Forestry Commission for Consent.

We hope these comments are helpful to you. If you have any further queries, please do not hesitate to contact me on the email address provided above.

Yours sincerely,

Caroline Gooch
Regulations Manager
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Further Guidance

[The UK Forestry Standard](#)

Page 23: "Areas of woodland are material considerations in the planning process and may be protected in local authority Area Plans. These plans pay particular attention to woods listed on the Ancient Woodland Inventory and areas identified as Sites of Local Nature Conservation Importance (SLNCIs)".

[Felling Licences](#) - Under the Forestry Act (1967) a Felling Licence is required for felling more than 5 cubic metres per calendar quarter. Failure to obtain a Licence may lead to prosecution and the serving of a restocking notice.

[Environmental Impact Assessment](#) - Under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended, afforestation or deforestation which is likely to have a significant impact on the environment may also require formal consent from the Forestry Commission.