

## 1. Background

- 1.1. **Negative Impact of blanket woodland Order** : Guidance issued by the Forestry Commission shows that the blanket woodland Order will have a detrimental effect on the Site's biodiversity and resilience to global warming which will lead to the Site's inevitable decline.

The Site is predominantly stocked with a very small variety of trees and has only seven native tree species as compared to the sixty native varieties in the UK.

The logical consequence of the blanket woodland Order would be for the Oaks (*Quercus robur*) to dominate the Site and outcompete all other species. However, evidence over the last ten years shows that sixteen Oaks within the Site have died because the conditions have not been suitable for them.

The over reliance on Oak trees which are susceptible to diseases such as water mould (*Phytophthora ramorum*) and Chronic Oak Decline could mean that the remaining eighty Oaks are all dead within the next fifty years.

Due to the geology on the Site being low lying wetland bog with clay subsoil, species such as Alder, Downy Birch and Willow are more suitable but these will not be able to become established if the blanket woodland Order only allows for the existing trees on the Site to continually regenerate where conditions are not suitable for their long term survival.

### 1.2. Existing Trees

- 1.2.1. Beech (23)
- 1.2.2. Hazel (52)
- 1.2.3. Holly (52)
- 1.2.4. Oak (80)
- 1.2.5. Rowan (4)
- 1.2.6. Silver Birch (14)
- 1.2.7. Yew (2)

- 1.3. **Contrary to current planning policy:** paragraph 170 of the National Planning Policy Framework states that policy should "encourage net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures". It is my belief that the restocking of the Site from the current narrow genetic base would reduce the amenity value of the Site. Broadhurst et al 2008 believes that to maintain and increase genetic diversity in small scale forestry systems, natural regeneration could be supplemented by planting and sowing using genetically diverse reproductive material. Furthermore, the practice of transferring seeds or seedlings from different provenance regions may broaden the evolutionary potential to adapt to future environmental changes. This view and the of the approach of the National Planning Policy Framework, is contrary to the logical effect of the blanket woodland Order which would only encourage seedlings from the trees on the site, limiting its evolutionary potential and resilience to future pressures.

- 1.4. **Delay in removing danger to the Public:** Application TPO/21/0001 was accepted by the Council on 5 January 2021. Under the standard procedure, the Council require an eight week consultation process before issuing a decision on whether to grant permission to remove the tree. The tree is a 30 metre dead oak overhanging a public footpath and poses a significant risk to life. As at the 15<sup>th</sup> March 2021, the Council

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have not granted permission to remove the tree and I am very concerned that the delay will result in the death of a member of the public.

- 1.5. **Turning a blind eye to minor infringements:** At 9.30am on 10 September 2020 the Senior Tree Officer for the Council attended the Site to inspect the works carried out on the removal of the Rhododendron and Laurel. At the meeting, the Senior Tree Officer said that the Council would turn a blind eye to minor infringements of the blanket woodland Order as it would not be in the public interest to pursue prosecutions. I took this to mean that as long as mature trees were not removed without consent from the Council, then it would be possible to remove smaller trees without the risk of prosecution. It is my contention that this undermines the basis of imposing a blanket woodland Order.
- 1.6. **Greater biodiversity achieved by diversification of species:** I have created a simple spreadsheet of native trees and included the birds, mammals and insects that rely on them. The spreadsheet is incomplete and is only for illustrative purposes. It is clear to see that whilst the English Oak is very valuable food source for many animals, the other native trees play a vital role in supporting some of our rarest birds and insects and should therefore be encouraged.

## 2. Definitions

"Article 1"	Article 1 of the First Protocol of the Human Rights Act (Protection of Property)
"Article 8"	Article 8 of the Human Rights act (Respect for Private and Family Life)
"CAVAT"	Capital Asset Valuation of Amenity Trees
"Core Strategy"	The New Forest District Council Core Strategy
"Council"	The New Forest District Council
"DCLG Guidance"	Tree Preservation Orders: A Guide to the Law and Good Practice - as published for the Department for Communities and Local Government
"DEFRA Guidance"	Countryside Stewardship: Higher Tier Manual – Annex 5 - as published by the Department for Environment Food & Rural Affairs
"FMU"	Forest Management Unit as defined by The UK Forestry Standard
"Forestry Commission Access Licence"	Licence granted under section 18 of the New Forest Act 1949.
"National Park"	New Forest National Park
"NPPF"	National Planning Policy Framework
"Order"	Tree Preservation Order TPO/0002/21
"Section 9"	Section 9 Part 2 of the Wildlife and Countryside Act 1981
"Section 14(2)"	Section 14(2) of the Wildlife and Countryside Act 1981
"Section 198"	Section 198 of the Town and Country Planning Act 1990
"Site"	Blackwell Forest, Chapel Lane, Blackfield, Southampton, SO45 1YX as registered at HM Land Registry under title number HP716554
"SSSI"	Site of Special Scientific Interest
"TPO"	Tree Preservation Order
"Tree Strategy"	New Forest District Council Tree Strategy 2020 - 2025
"UKFS"	The UK Forestry Standard published by the Forestry Commission on 21 December 2017
"Wildlife Act"	Wildlife and Countryside Act 1981

### 3. Introduction

- 3.1. **Amenity:-** The Council have the power under Section 198 to make an Order if it is "*expedient in the interests of amenity*". There is no definition of "amenity" in the legislation and the Council have offered no assessment or calculation of the Site's amenity value. It is my contention that the amenity value of the site is low, a blanket woodland Order is not justifiable, and it would potentially further reduce the amenity value of the Site in the short, medium and long term.
- 3.2. **Expediency:-** Although a tree may merit protection on amenity grounds it may not be expedient to make it subject of an Order where the tree is under good arboricultural management. It is my assertion that there is no evidence or grounds for the imposition of a blanket woodland Order because no trees with any amenity value have been removed. The Council have not deemed it necessary to impose a TPO on other trees in the local community with a high amenity value and I have attached a plan marked "TPO1" which shows the areas marked with black hatching where TPO's would be beneficial to the public.
- 3.3. **Good Forestry Practice:-** Paragraph 3.2 of the DFLG Guidance states that an Order "*should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public*". It is my contention that any work carried out on the Site has been carried out in line with principles of good forestry practice and in accordance with the Invasive Non-Native Species Framework Strategy for Great Britain (2015) and on the instruction of trained arboriculturists and ecologists. Any work carried out on the Site will only make it safer, benefit the local environment and its enjoyment by the public. Therefore, a blanket woodland Order is unnecessary. The removal of the trees on the Site would not have a significant impact on the local environment and the enjoyment by the public.
- 3.4. **Woodland Management Plan:-** Paragraph 3.15 of the DCLG Guidance confirms "*a woodland TPO should not be used as a means of hindering beneficial management work, which may include regular felling and thinning.*" It goes on to recommend that "*applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity should be encouraged*". It is my contention that the blanket woodland Order has hindered urgent work required on the Site to protect the trees under the current woodland management plan. As a result, I have lost several trees in the winter storms that would have been protected if the restrictions imposed by the blanket woodland Order had not been in place.
- 3.5. **Compliance with Legislation:-** under Section 14(2) there is a legal requirement to prevent rhododendron ponticum growing on the Site and spreading onto the adjoining SSSI.
- 3.6. **Errors in the Order:-** There are errors in the order in respect of the trees which are supposed to be protected by it. Therefore, the requirements of the Town and Country Planning Act 1990 have not been complied with in relation to the Order.
- 3.7. **Compensation:-** The Council may have to pay compensation for their future refusal to any consent under the Order. I believe I would be entitled to a high level of compensation. Whilst I would welcome this compensation, I think it is more sensible if the Council did not intentionally expose themselves to a large liability for compensation when their limited resources could be better spent elsewhere.

- 3.8. **Human Rights Act:-** the NPPF's main focus is on the planning policy around development and the Council apply the NPPF when deciding on planning applications. The Human Rights Act's overarching principles require states apply legislation in a way which refrains from breaching individual rights. I believe the creation of a blanket woodland Order deprives me of the use of the trees, the severity of the blanket woodland Order does not strike a fair balance and will be disproportionate and contravene the rights under Article 1. Please see the ruling in R (Mott) v Environment Agency [2018] UKSC 10 (14 February 2018) where the Environmental Agency imposed strict restrictions on the individual's rights to use his property which were found to be disproportionate.

## 4. Amenity

- 4.1. Paragraph 3.2 and 3.3 of the DCLG Guidance requires the Council to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria: visibility, individual impact and wider impact
- 4.2. **Visibility:-** The extent to which the trees or woodlands can be seen by the general public will inform the Council's assessment of whether its impact on the local environment is significant.
- 4.2.1. **Location:-** The Site is located at the end of Chapel Lane which is owned by The Secretary of State for Environment Food and Rural Affairs. The part of Chapel Lane which abuts the Site is only permitted for use by pedestrians or by residents with a Forestry Commission Access Licence. It is my belief that there is no through traffic that passes the Site and only a very small amount of the public that use the footpath that can see the Site as they walk past. The western boundary of the Site abuts Blackwell Common which is only accessible by pedestrians and again, there is only a very small amount of the public use this footpath and are able to see the Site as they walk past. The site is predominantly low lying and situated in a river valley which is not visible from the nearest road to the west (Exbury Road) which is approximately 300 metres away and flanked by trees and shrubs. The extent to which the Site is visible and therefore its impact, is low and does not justify the blanket woodland Order
- 4.3. **Individual Impact:-** the mere fact that a tree is publicly visible will not itself be sufficient to warrant an Order. The Council should also assess the tree's particular importance by reference to its size and form, its future potential as an amenity. In relation to a woodland, an assessment should be made of its collective impact.
- 4.3.1. **Tree Survey:-** I have attached a plan of the Site which plots the majority of the tree species and their location. I have also attached a tree survey which assesses each tree's size, age and health. Some of the trees on the Site are visible when looking in from the public open space, but these are mostly within five metres of the boundary and represent a small proportion of the trees on the Site. There is a large dead hedge around the boundary of the Site preventing the public from being able to see many of the trees within the Site.
- 4.3.2. **Biodiversity:-** The Site is predominantly made up of non-native species. These include prunus laurocerasus and rhododendron ponticum which both originate from Asia; as well as cupressus leylandii from the USA. These non-native invasive species have very limited amenity value and have a detrimental impact

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on the native species ability to regenerate. Therefore, I believe that a blanket woodland Order would serve to gradually reduce the amenity value of the Site as it would hinder the removal of any non-native species which is having a limiting effect on the biodiversity of the Site. In addition, under Section 14(2) it is an offence to allow *rhododendron ponticum* to grow in the wild. At section 9 of the Tree Strategy, the NFDC confirms that "*actions to protect and improve our environment will be at the heart of all decisions*" therefore, it would not be expedient to impose the blanket woodland Order as it could reduce biodiversity. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its 25 Year Environment Plan. A blanket woodland Order would not achieve this requirement as it will reduce potential future gains in biodiversity.

4.3.3. **Limited Species:-** The size of the Site is 0.7 hectares and contains approximately seven species of trees that are native to the United Kingdom. However, in total there are sixty species of trees that are native to the United Kingdom and it was my intention to restock the Site with as many additional native species of tree as possible, once the non-native species had been removed. However, if a blanket woodland Order is made on the site, I will not be able to restock the Site with the wide variety of native trees that are not already present because they will be outcompeted by any new seedlings from the mature trees on the Site which are automatically protected. It is my belief that in its current condition, the Site has a low amenity value and is in danger from diseases such as Acute Oak Decline. If this disease spread around the New Forest now, it could decimate my woodland because oak make up approximately 90% of the mature tree species within it. The disease is already present in south east England and predictive modelling shows that my woodland is in the high risk category.

4.4. **Wider Impact:-** the significance of the trees in their local surroundings should also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity.

4.4.1. **Forest Setting:-** The Site is approximately one mile from Fawley Refinery which processes around 270,000.00 barrels of crude oil a day and provides 20 per cent of the UK's refinery capacity. It is possible to see the refinery from Blackwell Common which adjoins the Site and is part of the National Park. There are several large plantations within one mile of the Site which contain thousands of trees. The adjoining land to the south and north also contain trees but it has not been considered expedient in the interests of amenity to grant a blanket woodland Order on those. It is my belief that the Site is not unique and contains a minute fraction of the trees that are available to be seen by the public in the surrounding area. The significance of the trees in their local surrounding is therefore minimal.

4.4.2. **Particular Setting:-** The Site is located in the bottom of a river valley and owing to a layer of clay approximately one metre under the surface of the topsoil, there are several natural springs that feed a central drainage ditch running through the Site. The level of the water table is too high to maintain any large trees within five metres of the natural spring or the central drainage ditch. In the last ten years, seven mature trees have fallen over due to the wet conditions. It

is my belief that the Site should be divided into different habitats and trees planted in accordance with their suitability to the conditions in those habitats. Many of the trees are not suitable to their setting due to the particular conditions of low lying wetland bog with clay subsoil.

- 4.4.3. **Public Access:-** It had been the intention to open the site to the public and encourage schools, scouts and woodland enthusiasts to use the Site for learning and recreation. However, as every seedling on Site would be covered by the blanket woodland Order, any public access would be severely restricted because it would risk damaging any trees.

## 5. Good Forestry Practice

- 5.1. The public may believe the work completed to date is putting the native trees at risk of being damaged. I would like to take this opportunity to reassure the public that I have been removing the rhododendron ponticum as required by Section 14(2).
- 5.2. The New Forest Land Advice Service have completed a site inspection and confirm that they support the work that has been done and verify and that it accords with good forestry practice.
- 5.3. The Woodland Trust recommends removing non-native conifers as they cast heavy shade and acidify the soil disturbing the delicate ecological balance. I have adopted this approach in my forest management plan.
- 5.4. The Site has been a managed hazel coppice for a considerable length of time. As part of a standard ten-year cycle, it is necessary to coppice the hazel to prevent oversized limbs from collapsing under their own weight and causing damage to the root system. It is therefore necessary to continue to manage the coppicing cycle to preserve the mature hazel that is present on the Site.
- 5.5. There are several oak trees which need to be managed. The majority are within the Site, however there are two that have damaged limbs hanging over the public footpath on Chapel Lane which need to be removed as soon as possible without any delay caused by an application for consent under the terms of the blanket woodland Order. An application was made to remove the dead oak tree (O002) that is leaning over the public footpath on 5<sup>th</sup> January 2021. The decision to allow the removal of the dead oak tree took two months to grant.
- 5.6. The trees on the Site have been grown for timber production and it is part of the ongoing viability of the Site for there to be periodic thinning of the trees. There is 450 metres of boundary fencing to maintain on the Site. The timber grown on Site is planned to be used to replace approximately 300 fence posts every ten years. Without the use of the timber grown on Site, it will need to be imported which has a larger cost and carbon footprint than using the locally grown timber.
- 5.7. Chapter 6.2 (page 58) of the UKFS confirms "*Sustainable forest management, including the transfer of carbon stored in the forest to wood products, will maintain woodlands as a net carbon sink*". Therefore, it is considered necessary to use the timber from the trees and convert them to wood products to store the carbon locked in the wood and prevent it from being released through decomposition.

- 5.8. Chapter 175 (d) of the National Planning Policy Framework confirms that development whose primary objective is to conserve or enhance biodiversity should be supported. It is my belief that the woodland management plan does not deteriorate irreplaceable habitats and woodland and the approach that I am taking, to improve biodiversity, should be supported by the Council.
- 5.9. Permission to carry out works under the blanket woodland Order can only last for two years. The Site has over 50 Hazel trees which I am planning on coppicing every seven years. The Site also has 250 Osier Willow trees which I am planning on coppicing every year. It is not possible to run a coppicing business and plan for the future when there is no guarantee that consent will be granted to coppice the trees in the future.

## 6. Forest Management Plan

6.1. The forest management plan is the reference document for the monitoring and assessment of forest holdings and forest practice. It is also used for communicating proposals and engaging with interested parties. The plan itself should be proportionate to the scale, sensitivity and complexity of the Site. There are two current mechanisms for regulating forestry and approving of forest and woodland management proposals:

- 6.1.1. Felling licences
- 6.1.2. Forest management plans.

6.2. **Countryside Stewardship Grant:-** The forestry authorities also provide incentives to encourage the creation of new woodlands and the management of existing woodlands. I am in the process of preparing an application which I hope to be able to submit before the closure deadline of 1 May 2021. The payment of grants is conditional on meeting UKFS Requirements. This is a government scheme under the Countryside Stewardship initiative with the aim of doing the following:

- 6.2.1. Enhancing priority habitats
- 6.2.2. Enhancing priority species
- 6.2.3. Restoring plantations on ancient woodland Sites
- 6.2.4. Improve resilience to climate change throughout continuous cover forestry

6.3. The forest management plan provides a more comprehensive basis for assessment that extends beyond the discrete operational area. This area is defined as the forest management unit (FMU). Forest management plans set proposals in a broader context, both in the area covered and over time. They also provide a clear statement of intention and allow proposals to be communicated to others. Forest management plans will be assessed for approval, monitored and periodically updated and their approval renewed. All publicly owned forests are managed using woodland management plans which are available for public comment. The level of assurance provided by a forest management plan will therefore extend to all the UKFS elements of sustainable forest management applicable to the FMU.

6.4. I am eligible to apply for the scheme as the Site is over 0.5 hectares, at least 20 metres wide, has trees over 5 metres and crown cover of more than 20% of the ground. It is my belief that being a participant in the Countryside Stewardship Scheme would be a more effective way of managing the Site than imposing a blanket woodland Order.



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- 6.5. Section 5 of the UKFS confirms that The Forestry Act 1967 conveys wide powers to control felling and provide assistance to promote the interests of forestry, the development of afforestation, and the production and supply of timber in Great Britain. The Forestry Act was amended by the Wildlife and Countryside (Amendment) Act 1985 to take account of wider environmental considerations and to incorporate the concept of 'a reasonable balance' between the interests of forestry and the environment. There are also powers to regulate felling. The Town and Country Planning Acts do not apply to forestry activities themselves, as they are not defined as 'development'. The exception is where development, for example housing, is proposed on a woodland site, in which case the planning procedures apply. It is my belief that in relation to this Site, there is sufficient protection for the trees under the legislation without the need to apply a blanket woodland Order.
- 6.6. The case of Palm Developments Ltd v The Secretary of State for Communities and Local Government can be distinguished because the motivation of Palm Developments Ltd was to develop the woodland. There is no intention to develop the Site therefore, there is no requirement for a blanket woodland Order.
- 6.7. The specific works that are currently under consideration would not reduce the amenity of the Site because the amount of work required would all be done by hand without any risk of causing harm to anything remaining.
- 6.8. In a publication entitled Tree Preservation Orders: A guide to Good Practice (2000). Paragraph 2.2 states the ambit of protection of a blanket woodland Order is as follows:
- "Trees which are planted or grow naturally within the woodland area after the TPO is made are also protected by the TPO. This is because the purpose of the TPO is to safeguard the woodland unit as a whole, which depends on regeneration or new planting. But as far as the TPO is concerned, only the cutting down, destruction or carrying out of work on trees within the woodland area is prohibited; whether or not seedling, for example, are "trees" for the purposes of the Act would be a matter for the Courts to decide in the circumstances of the particular case"*
- 6.9. A blanket woodland Order would create a situation where every tree, no matter what species or size, would be protected. The following legal precedents support this assumption:
- 6.9.1. "Tree" is not defined in the Town and Country Planning Act 1990 (TCPA 1990). The High Court has held that a tree is anything which would ordinarily be regarded as a tree (Bullock v Secretary of State for the Environment (1980) 40 P&CR 246).
- 6.9.2. There is no minimum size exemption. In Distinctive Properties (Ascot) Ltd v Secretary of State for Communities and Local Government and another [2015] EWCA Civ 1250, the Court of Appeal considered whether seedlings and saplings were "trees" under the TCPA 1990. The court held that a tree is a "tree" at all stages of its life, save for when it is a mere seed,
- 6.10. Chapter 6 of the UKFS (page 62) states: *"Anticipatory (or proactive) adaptation: takes place before impacts of climate change are observed. For the long timescales of forestry, anticipatory adaptation involves risks because climatic change projections are uncertain. However, it offers the highest potential gains for ensuring forests, and the benefits they provide, are maintained in the future"*. Section 198 came into force in 1990. The European Commission adopted the EU Forest Strategy in 2013 and the current version of the UKFS was published in 2017. In the last 30 years the

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understanding of how best to protect trees and woodlands has evolved and I would request that the Council do not impose a blanket woodland Order on the Site and instead take the more modern approach of the UKFS.

6.11. Chapter 6 of the UKFS (page 67) recommends that: "*forests should be planned and managed to enhance their resilience and mitigate the risks posed to their sustainability by the effects of climate change or attack by pests and diseases*". It is my belief that the prevalence of oak, beech and holly mean the Site is very susceptible to climate change, pests and disease. The blanket woodland Order would perpetuate the susceptibility and go against the UKFS guidance. Instead, the Site design, structure and composition needs to be resilient to the effects of a changing climate and extreme weather events. The Site has seen the loss of many mature trees in the last 10 years and further deterioration of the Site needs to be stopped.

6.12. Broadhurst et al 2008 believes that to maintain and increase genetic diversity in small scale forestry systems, natural regeneration could be supplemented by planting and sowing using genetically diverse reproductive material. Furthermore, the practice of transferring seeds or seedlings from different provenance regions may broaden the evolutionary potential to adapt to future environmental changes. This view is contrary to the effect of the blanket woodland Order which would only encourage seedlings from the trees on the site, limiting its evolutionary potential.

6.13. The minimum diversity recommended by UKFS (page 76) is:

6.13.1.1. 10% Open Ground managed for the conservation and enhancement of biodiversity as the primary objective;

6.13.1.2. 10% other species; and

6.13.1.3. 5% native broadleaved trees or shrubs.

It would therefore accord with the current guidance if the Site did go through a restoration to preserve its biodiversity and resilience to climate change into the future.

6.14. Whilst there are benefits for the regeneration of the Site from the seedlings of the trees that currently grow there, current guidance at paragraph 170 of the National Planning Policy Framework states that policy should "*encourage net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures*". It is my belief that the restocking of the Site from the current narrow genetic base would reduce the amenity value of the Site. It would be better to stock the Site with trees that will survive a climate that changes over the next 100 years. There is evidence from the Royal Horticultural Society to suggest that hotter drier summers and wetter warmer winters will stress trees that are not suited. These include Beech which appears throughout the Site. Therefore, a blanket woodland Order which intentionally restocks the site with trees that will be ill suited for future climate change will result in a long term reduction in amenity value. It may be more appropriate for the forest management plan to allow for thinning of some trees on the condition that a biodiverse range of trees which are resilient to predicted climate change are planted in their place.

6.15. Section 6.11 of the Tree Strategy recognises that "*several issues can affect [oak trees], including Acute Oak Decline and the oak processionary moth*" it goes on to state that "*over reliance on a single species is problematic due to the threat of pests and disease with a changing climate along with the other factors which could significantly impact upon the tree population*".

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6.16. The NFDC Core Strategy objectives which are related to trees do not support the effects that a blanket woodland Order would have on the short, medium and long term. I have set out the relevant objective below:

6.16.1. Promote and safeguard biodiversity, protection and enhancement of wildlife and landscape quality.

6.16.2. Promote public education and understanding of the care and quiet enjoyment of the natural environment.

6.16.3. measures will be taken, working with other partners to secure the enhancement, restoration and creation of biodiversity, including measures to adapt to the consequence of climate change.

6.16.4. Encouraging land management practices that restore or enhance sites of biodiversity value and which create new sites.

6.16.5. Retaining and enhancing the green infrastructure networks within settlements.

6.17. I believe that the intention of the Town and Country Planning Act 1990 was to control development. Therefore, section 197 of the Town and Country Planning Act 1990 is drafted in such a way as to require the Council preserve trees when granting planning permission. The legislation then goes on to explain that Section 198 is the tool that the Council can use to protect trees when it appears to the Council that it is necessary in connection with planning permission for development. It is my belief that the Section 198 was not intended to be used where no development is planned. In relation to the Site, the most appropriate method of protecting the trees is not Section 198, but the UKFS. The Forestry Commission was created for the sole purpose of managing trees and they have the expertise, legislative framework and resources to enable them to do this and I believe they are the most appropriate authority to monitor the Site and the forestry work that goes on there.

## 7. Compliance with Legislation

7.1. The Forestry Commission NFI Preliminary Report on the presence and extent of rhododendron in British Woodlands published in 2016, estimates that 98.7 thousand hectares of rhododendron is growing within woodlands in Britain. This represents 3.3% of the total woodland area.

7.2. The Forestry Commission practice guide to managing and controlling invasive rhododendron states that it is an aggressive coloniser that reduces the biodiversity value of a site. It obstructs the regeneration of woodlands and once established, is difficult and costly to eradicate. A mature rhododendron flowers in May and June and can produce up to one million seeds per year. The seeds ripen in December and it is for this reason that any Order imposed on the Site will delay the removal of the Rhododendron, enabling the site to be re-colonised.

7.3. Stewardship Grants are currently being offered for the removal of Rhododendron as it is current Government advice that Rhododendron reduces the biodiversity value of a Site, hindering woodland regeneration and, once established, is difficult and costly to eradicate. Rhododendron can also be a host for the fungus-like pathogen *Phytophthora ramorum*, which affects larch and oak. If a blanket woodland Order was made, it would prevent the removal of the Rhododendron. As the Site shares a

boundary with the New Forest National Park, it could lead to the Rhododendron spreading to the National Park thereby exacerbating the issue and hindering the control of the invasive species. It is my opinion that a blanket woodland Order would not apply to many of the trees on the site because it would be overruled by other legislation, thereby making it an inappropriate tool in the current circumstances.

- 7.4. In the Tree Strategy, the Council seeks to remove 10% of rhododendron from their land each year. My approach to the Site is to remove 100% of the rhododendron in the first year of acquiring the Site to enable work to begin the second year of improving biodiversity.

## 8. Errors in the Order - TPO/0002/21 (the "Order")

- 8.1. I would like to raise an objection due to the errors in the blanket woodland Order and uncertainties in respect of the trees which are supposed to be protected by it:

8.1.1. **Description of the Site:** the Site is described in the blanket woodland Order as: "*Land adjacent to The Ruffs, Chapel Lane, Langley*". However, that description is inaccurate and the Site name was changed by Sally Dobson in the Address Management Section of the NFDC on 17 March 2020. It is also registered at HM Land Registry and is known as: "*Blackwell Forest, Chapel Lane, Blackfield, Southampton, SO45 1YX*"

8.1.2. **Form of Tree Preservation Order:-** The First Schedule of the The Town and Country Planning (Tree Preservation)(England) Regulations 2012 (the "Act") dictates the form of the Tree Preservation Order. There are the following deficiencies in the form of the Order:

8.1.2.1. The date of the Order does not appear in the title

8.1.2.2. The wording of the Order misses out the word "the" between the words: "trees protected by" and "TPO"

8.1.2.3. In the wording of the Order, the letters "TPO" are not defined.

8.1.2.4. In the wording of the Order, the word "Authority" is used with a capital A. However, in the definitions section at clause 2(1), the authority is defined without a capital A.

8.1.2.5. In the wording of the Order, at clause 3(a) the word "Cut" uses a capital C, which is not used in the form of the Order as prescribed in the Act.

8.1.2.6. In the wording of the Order, at clause 3(b) the word "uprooting" is used. However, this is not used in the form of the Order as prescribed in the Act.

8.1.2.7. The plan attached to the Order is inaccurately drawn and does not show the boundaries of the Site. The plan as it is drawn, includes Forestry Commission Land and can only be approved in its current form with consent of the Forestry Commission. The plan also does not include a large section of the western boundary of the Site which contains the trees that are visible to the public.

## Appendix 3 - Objector's Representations

8.2. **Clarity on the trees that are protected**:- the blanket woodland Order describes the trees that are protected as "*all trees of whatever species*" but this is too vague to be any use on a day to day basis. Seeking clarification from the Council as part of an application for authorisation under the blanket woodland Order will take eight weeks. If a blanket woodland Order is made, I would be grateful if clarification could be included with the blanket woodland Order on the following matters:

8.2.1. Is *prunus laurocerasus* (cherry laurel) a tree?

8.2.2. Is *rhododendron ponticum* (rhododendron) a tree?

8.2.3. Is *cupressus x leylandii* (leylandii) a tree?

8.2.4. Is *corylus avellana* (hazel) a tree?

8.2.5. When is *crataegus monogyna* (hawthorn) a tree, when is it a bush and when is it a hedge?

8.2.6. When is *ilex aquifolium* (holly) a tree, when is it a bush and when is it a hedge?

8.2.7. When is *prunus spinosa* (blackthorn) a tree, when is it a bush and when is it a hedge?

8.2.8. If a *taxus baccata* (yew) is currently a tree but I want it to be part of a hedge and therefore cut it to the desired size, is this an offence under the blanket woodland Order?

8.2.9. At what stage does a seed turn into a tree? Is it when the tap root descends into the topsoil, when the tap root anchors the seed to the soil, when the first shoot starts to grow out of the soil, when the first leaf appears on the first shoot, or when the first set of leaves appear on the first shoot?

8.2.10. If *quercus robur* (oak) or *fagus sylvatica* (beech) set seed in a location designated to be a future hedge row, are they automatically protected under the blanket woodland Order as trees? Or, will they be classified as a hedge because of their location?

8.2.11. If a *salix caprea* (goat willow) has half its trunk and its root system within the area designated as protected by the blanket Order, but the top half of its trunk and the majority of its branches are on neighboring land, will my neighbor be breaching the blanket Order by cutting branches that are on his side of the boundary?

8.2.12. Would it be permitted to remove trees from the access tracks that run through the Site.

8.3. **The Scope of the Order**:- The scope of the blanket woodland Order and its desire to offer protection for every tree on the Site makes it unenforceable.

8.3.1. The Council do not have the resources necessary to monitor the entire lifecycle of every tree on the 1.8 acre Site.

8.3.2. If the Council are planning, as part of their Tree Strategy, to impose blanket woodland TPO's on all the privately owned woodlands within their jurisdiction,

they will not have the resources to monitor the lifecycle of every tree that they are looking to protect.

8.3.3. The Senior Tree Officer said that the Council would turn a blind eye to minor infringements of the blanket woodland Order because it would not be in the public interest to take enforcement action. This undermines the basis of the decision as to why the Council have decided a blanket woodland Order is required.

8.3.4. The Council rarely respond to correspondence, delay issuing decisions and do not return phone calls. It is very difficult to run a business in these circumstances that is dependent on continuous input from the Council that do not appear to have the resources to meet their own commitments.

## 9. Human Rights Act

9.1. **Article 1:-**The fair balance test required under Article 1 requires the Council to take into consideration factors relevant in determining whether a fair balance has been struck. This includes the manner and duration of the interference with peaceful enjoyment (Sporrong and Lönnroth). It is my opinion that the indefinite duration, the inclusion of all tree species and the blanket coverage of the blanket woodland Order does not strike a fair balance.

9.1.1. The public being served by the blanket woodland Order is very small. On average it takes three minutes to walk past the Site and approximately fifty people a day walk past the Site. The total minutes the site serves the public on a daily basis is approximately 2.5 hours. I use the Site for more than 2.5 hours a day, thus a fair balance is not being struck if the public walking past the Site take precedence over my use of the Site.

9.2. **Article 8:-** the right to respect for private and family life can be interfered with for the protection of the rights and freedoms of others. In *Chapman v United Kingdom* (2001) 33 EHRR 18, the European Court of Human Rights found that the occupation of a caravan by a member of the GTC was an integral part of their ethnic identity and removal interfered with their Article 8 rights on the basis that it interfered with their home and their ability to maintain their identity. I would draw parallels with my use of the Site as it represents more than just a woodland to me. Myself and my family are Commoners of the New Forest and follow a long line of Commoners who have rights over the New Forest since the Charter of the Forest in 1217. My family have lived in the New Forest for many generations and the blanket woodland Order would interfere with my family's identity as Commoners of the New Forest. The unrestricted use of the Site is an integral part of our identity as Commoners and would prevent the Site being used in the following ways:

9.2.1. Making Hazel hurdles because of restrictions on coppicing the Hazel;

9.2.2. Making Oak fence posts because of the restrictions on felling the Oaks;

9.2.3. Running green wood working classes because of the risk of them damaging the trees;

9.2.4. Keeping of pigs, cows and ponies because of the risk of them damaging the trees;

9.2.5. Running a woodland school because of the risk of children damaging the trees;

9.2.6. Creating biodiverse habitats within the Site because of the need to damage some of the trees.

## 10. Conclusion

- 10.1. The Tree Strategy and Core Strategy both seek to promote biodiversity and recognise the impact of climate change and invasive species. I therefore hope that the Council will agree with me that a blanket woodland Order on the site is not the appropriate method of control and that it should instead be supervised by the Forestry Commission by reference to the UKFS.
- 10.2. The blanket woodland Order will not achieve the aims that the Council aspire to achieve because it does not contain enough detail to be able to deal with such a complex Site. It would be more suitable if the Site was brought into the Countryside Stewardship scheme and has a forest management plan.
- 10.3. There is an overreliance of pedunculate oak on the Site with a very limited genetic diversity. Current research suggests that climate change will have an impact on the Site and it would be appropriate to introduce species such as sessile oak which are more resilient to drought. Therefore, restocking the whole Site from the seedlings that are produced by the pedunculate oak (which is the natural consequence of a blanket woodland Order) is likely to reduce the amenity value of the Site in the long term.
- 10.4. A larger variety of tree species as shown in the attached spreadsheet will attract a larger variety of wildlife which is the aim of the National Planning Policy Framework. The logical consequence of the blanket woodland Order is to reduce the rate of potential improvement in biodiversity on the Site and put it at risk from decimation should Acute Oak Decline arrive in the New Forest.