

## Scottish Parliament Region: Highlands and Islands

### Case 200501177: Forest Enterprise Scotland

#### Summary of Investigation

##### **Category**

Scottish Government and Devolved Administration: Policy/Administration

##### **Overview**

The complainant (Mr C) raised a number of concerns regarding Forest Enterprise Scotland (FES)'s proposals for a development to remove timber by sea from the local area as this would allegedly impact on Mr C's quality of life.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the consultation carried out by FES was inadequate (*not upheld*);
- (a) FES did not follow their policy 'The People's Forest' when considering the development (*not upheld*); and
- (b) FES failed to carry out an Environmental Impact Assessment when considering the development (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 2 August 2005, the complainant (Mr C) brought a complaint to the Ombudsman's office regarding a proposed development for timber shipping by Forest Enterprise Scotland (FES). Mr C felt that the proposed plans would be detrimental to his quality of life as the proposed development, which was a temporary loading dock for extracting timber by sea, was in close proximity to his home. Mr C also argued that FES had acted inappropriately when conducting the consultation exercise regarding the proposed development.

1. The complaints from Mr C which I have investigated are that:
  - (a) the consultation carried out by FES was inadequate;
  - (b) FES did not follow their policy 'The People's Forest' when considering the development; and
  - (c) FES failed to carry out an Environmental Impact Assessment (EIA) when considering the development.

### **Investigation**

2. In conducting my investigation I obtained copies of the relevant complaints correspondence and the relevant papers regarding the development, including documentation relating to the consultation process. Additionally, I also reviewed audio records of a meeting, held on 7 April 2004, between Mr C and fellow members of a local community group who opposed the proposed development and senior staff members of FES, including the Chief Executive.

3. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and FES were given an opportunity to comment on a draft of this report.

4. Prior to outlining my investigation and findings of the separate heads of complaint, I believe it will be of benefit to the reader if a general background to the complaint is provided at this stage.

### *Background*

5. Mr C resides in a rural area (Area X) which he feels is of natural beauty and Mr C states that the tranquillity of Area X is of significant value to his lifestyle. Area X has a small and scattered community. FES manage approximately 784 hectares of land adjacent to Area X, of which 587 hectares is

forested. The woodlands owned by FES in this region comprise mainly of commercial conifer planting, although management of the area has increased, and should increase, other tree types and open spaces within the forest. During the 1990s, significant quantities of timber were hauled by road from Area X along a 'B road' and then via a main road. However, Argyll and Bute Council, the relevant roads authority in this case, imposed a 12 tonne restriction on the B road due to the condition of the road. The impact of the restriction was that the transportation of heavy timber by road was not feasible.

6. In an attempt to continue effective management of the forest and timber transportation, FES proposed a project which would allow harvesting and timber extraction to continue. The proposal was to carry out planned harvesting of identified areas of forest over an intensive six month period within a rolling five year programme. Effectively, this meant that, under the proposed project, there would be six months of timber shipping from Area X every five years. The proposed work would have resulted in some levelling work localised to the shipping site and, according to FES, would have been of minimal impact.

7. FES held a local public meeting on 12 October 2003 where the general view of the members of the public attending appeared to have been against the proposed development. A further public meeting was also held on 14 October 2003 at which the local Councillor and Community Councillor were present. FES also attended the Community Council meeting of 19 November 2003 to clarify their proposals. Evidence shows that reactions from those present at these meetings were mixed with both support and criticism shown for the proposed works. The evidence shows that Mr C and/or members of the local residents group of which Mr C was a member, attended the meetings of 12 October and 14 October 2003.

8. In early 2004, FES received a number of letters of opposition to the proposals and representations were made by the local MSP. One of the main issues raised in the complaints correspondence related to a perception that Area X would be damaged as a result of the proposed works. In April 2004, the Chief Executive, along with other FES staff members, met with the residents group (including Mr C) to discuss the concerns raised. During the meeting FES provided an assurance that they would examine alternative proposals for timber extraction from Area X as proposed by the local community. A further assurance was given that FES would make a submission to Forestry

Commission Scotland (FCS) to determine whether or not an EIA would be required, in line with statutory requirements, prior to any operation taking place.

9. FES have confirmed that consideration was given to three alternative possibilities which included building and sharing a road over the local estate holding. FES have argued that each option considered had both advantages and disadvantages when compared to the original proposal. After considering the alternative proposals for timber extraction, FES decided that the original proposal was the most appropriate given the circumstances.

10. FES have stated in the evidence that they believe they have carried out a wide consultation with the local community regarding the proposed works. FES have cited the fact the local Community Council supported the proposal and they also presented a petition of support from members of the public in support of the proposal as evidence of their extensive consultation. Mr C has argued, however, that the views of the residents group of which he is a member, were not adequately represented by the local Community Council.

**(a) The consultation carried out by FES was inadequate**

11. Mr C complained that FES misled the public during the consultation process and that they also ignored their own guidelines relating to community involvement in their document 'The People's Forest'. This document stated, among other things, that:

'FES are committed to working in partnership by:

- *Welcoming involvement.* We welcome and encourage the involvement of local communities and forest user groups.
- *Being inclusive.* We aim to be inclusive in all that we do, engaging with all sectors of the local community.
- *Promoting active citizenship.* We promote active citizenship through involving people in local woods.
- *Keeping you up-to-date.* We will provide up-to-date information about national forests, and any special opportunities or news.
- *Advertising locally.* We will advertise jobs and contracts locally.
- *Being a good neighbour.* We will be a good neighbour and a responsible land manager.
- *Working for wider woodland benefits.* We will work with people from forestry, and from other sectors such as education, health and tourism, to make the most of the range of benefits from woods.

- *Taking advice.* We have established regional and national Forestry Forums to advise us on the development and implementation of the Scottish Forestry Strategy.
- *Working together to make a difference.* We will play our part in Community Planning Partnerships, and any other partnerships and forums where we can make a real contribution.'

12. The response by FES during the ongoing complaint was that they felt they had consulted adequately and had put forward, in their professional opinion, a viable option for extracting timber. FES have stated in the evidence, and I have verified, that the consultation process which they conducted included:

- A public meeting held on 14 October 2003, with the local Councillor and local Community Councillor present to outline the proposal.
- FES attended the Community Council meeting on 19 November 2003 to explain the proposals.
- The Chief Executive of FES met with Mr C and fellow members of the local residents group during April 2004 (I have listened to an audio recording of this meeting).
- An agreement that, following the meeting with the Chief Executive and the residents group, FES would give consideration to alternative sites for carrying out timber extraction. The evidence shows that this did subsequently happen.

13. Mr C argued that FES failed to consider alternative shipping sites and present them as options during the consultation process. Mr C also claimed that by not providing alternative options for timber extraction, FES misled the public to believe that the proposed site was the only available means of timber extraction. The evidence does show that FES stated that shipping was the only viable option for timber extraction, however, the evidence does not show that FES stated the proposed development was the only way timber extraction could be facilitated.

14. The evidence confirms that FES initially considered the proposed works on the grounds that it was the most feasible way to transport timber by sea using land which they owned. During the meeting in April 2004, the Chief Executive of FES suggested that consideration would be given to working with a neighbouring private landlord to try to extract timber through the privately owned land.

15. Mr C also complained that there was no provision within FES's complaints procedure for arbitration or an independent assessment of the development. It is not for this office to say whether or not arbitration should be considered in future similar cases. It is noted, however, that in certain circumstances, individuals who are opposed to proposed works have the right of appeal to the responsible Minister in the Scottish Parliament. Mr C has confirmed, however, that this procedure caused significant frustration when pursuing his complaint. Mr C has argued that the fact that the right of appeal to the responsible Minister is an appeal to the Minister charged with overseeing the operation of FES, means that the appeal process does not provide, in Mr C's view, an independent and impartial review.

*(a) Conclusion*

16. In considering this case, I have considered the actions taken by FES to consult with the community and whether or not the consultation carried out was reasonable. I fully appreciate why Mr C felt strongly regarding the proposed works. There is no doubt that his amenity would be impacted upon by the proposed works, particularly given that he lived in close proximity to the proposed development site. Furthermore, I understand why Mr C feels that FES should have considered alternative sites, including co-operating with private landowners, prior to undertaking the consultation period. It was for FES to decide, however, whether or not to seriously consider alternative sites prior to undertaking the consultation process. This was a discretionary decision which FES had the authority to take and, given I consider that it was taken without administrative error, one which I am not in a position to question. I have also taken account of the purpose of the consultation period and the fact that FES have discretion to decide which development proposals to pursue.

17. I note that, as a result of consulting with the local residents group, FES undertook further work to review alternative development sites. It may have been prudent to have done this prior to undertaking the consultation process, however, FES have the discretion to determine what work they wish to take forward. The evidence leads me to conclude that FES conducted a detailed and adequate consultation. The Chief Executive meeting with the local residents group underlines the fact that FES took the views of the group members seriously. I commend FES for this course of action. To conclude, I do not uphold this aspect of complaint.

**(b) FES did not follow their policy 'The People's Forest' when considering the development**

18. A significant issue, among others, raised by Mr C regarding the consideration of the development relates to the consultation process. Mr C complained that FES considered representations from the wider community regarding the proposed development. This proved contentious for Mr C as it appears that a significant proportion of the 'wider community' supported the development and FES used this to argue that there was substantial local support for the development. Throughout the consultation documentation, the community to be consulted with is described as 'the local community'. Mr C argued that FES consulted with a number of individuals whom he believed should not be classed as 'local' given that they lived some distance from the proposed development and as such would not be directly affected by the proposed works.

*(b) Conclusion*

19. I understand Mr C's point in respect of the consultation carried out, however, consideration must also be given to the fact that the development represented work which would affect not only those living in close proximity to the development site, but also the community at large given the potential for economic impact in the area as a whole. Taking account of the relevant evidence, including the aims outlined in 'The People's Forest' document, I have assessed the reasonableness of FES's actions in considering the development.

20. I have considered whether or not, taking account of the provisions of 'The People's Forest' document, the actions taken by FES, when considering and consulting on the proposed development, were reasonable. Given that significant consultation was conducted (it should be noted that the consultation may have provided significant local opposition which FES would have to have responded to) and during the consultation process FES considered alternative sites to the one proposed, I conclude that FES acted reasonably in considering the development. Therefore, I do not uphold this complaint.

**(c) FES failed to carry out an EIA when considering the development**

21. Mr C complained that FES failed to carry out an EIA under the statutory provisions of The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999. This legislation requires the developer (in this case FES) to make a submission to FCS who will determine whether or not an EIA is required. The evidence shows that FES submitted a request for an opinion as

to whether or not an EIA was required. The opinion from FCS was that an EIA was not required.

*(c) Conclusion*

22. Having considered the relevant evidence, I am satisfied that FES acted appropriately in requesting an opinion from FCS as to whether or not an EIA was required. As a result, I do not uphold this complaint.



**Explanation of abbreviations used**

Mr C	The complainant
FES	Forest Enterprise Scotland
EIA	Environmental Impact Assessment
Area X	The rural area where Mr C resides
FCS	Forestry Commission Scotland

**List of legislation and policies considered**

Scottish Statutory Instrument 1999 No. 43

The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999

FES guidance entitled The People's Forest