

Scottish Parliament Region: South of Scotland

Cases 200601037, 200602206 and 200602601: Scottish Borders Council and Forestry Commission (Scotland)

Summary of Investigation

Categories

Local government: Planning; handling of planning applications (opponent)

Scottish Government and Devolved administration: Executive Agency; policy and administration

Overview

The complainants (Mr and Mrs C) formerly lived in a detached house in the country adjacent to a Forestry Commission operation centre (the Depot). Mr C complained about a number of planning proposals submitted by the Forestry Commission and the handling of those applications by Scottish Borders Council (the Council) and what he considered to be breaches of development control. Together, Mr and Mrs C raised a number of concerns regarding the operation of the Depot and public access and matters concerning the operation of a café and bicycle hire business (the Business).

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council, as planning authority, failed properly to exercise their powers of development control and enforcement both with regard to the general planning situation at the Depot and with regard to temporary planning consents for the Business (*not upheld*);
- (b) the Forestry Commission, as developers, allowed activities to commence ahead of obtaining planning consent and made errors in their proposals to the detriment of Mr and Mrs C (*partially upheld to the extent that some activities began before planning consents were granted*); and
- (c) the Forestry Commission, as owners of the Depot and landlords of the Business, failed to act with diligence in dealing with issues of indecency, noise, wind blown dust and disturbance to Mr and Mrs C at anti-social hours (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complainant (Mr C) was a former long serving Forestry Commission employee. Mr C and Mrs C lived, from 1980 until January 2008, in a detached house adjacent to the open yard of a Forestry Commission operation centre (the Depot), which they purchased from the Forestry Commission before Mr C's retirement in 1995. Mr C's complaints against Scottish Borders Council (the Council) (200601037) and the Forestry Commission (200602206) related to the Council's function as planning authority and the Forestry Commission's role as promoter of development in and around the Depot. Mr and Mrs C's joint complaint against the Forestry Commission (200602601) concerned the Forestry Commission's role as owners of the Depot and as landlords of a bicycle hire and café operation (the Business).

2. The complaints from Mr C (and Mrs C) which I have investigated are that:
- (a) the Council, as planning authority, failed properly to exercise their powers of development control and enforcement both with regard to the general planning situation at the Depot and with regard to temporary planning consents for the Business;
 - (b) the Forestry Commission, as developers, allowed activities to commence ahead of obtaining planning consent and made errors in their proposals to the detriment of Mr and Mrs C; and
 - (c) the Forestry Commission, as owners of the Depot and landlords of the Business, failed to act with diligence in dealing with issues of indecency, noise, wind blown dust and disturbance to Mr and Mrs C at anti-social hours.

Investigation

3. Mr and Mrs C provided me with their extensive files on their correspondence with the Council and the Forestry Commission from 2002. Prior to making a decision to investigate their complaint I visited them at their former home on 15 May 2007. I made enquiry of the Council and the Forestry Commission. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C, the Council, and the Forestry Commission were given an opportunity to comment on a draft of this report.

(a) The Council, as planning authority, failed properly to exercise their powers of development control and enforcement both with regard to the general planning situation at the Depot and with regard to temporary planning consents for the Business; and (b) The Forestry Commission, as developers, allowed activities to commence ahead of obtaining planning consent and made errors in their proposals to the detriment of Mr and Mrs C

4. In January 2002, Forest Enterprise, the property holding arm of the Forestry Commission, applied to the Council for full planning consent for the erection of two portacabins with decking and canopy for temporary use as a bicycle hire outlet and café (the Business). Mr and Mrs C received neighbour notification of this application (Application 1) on 18 January 2002. They did not visit the Council offices to view the plans. However, the then Planning and Environment Manager (Officer 1) of Forest Enterprise visited them together with the two women who intended to run the Business. In light of undertakings given at that meeting, Mr and Mrs C did not object. Temporary planning consent was granted by the Council's planning case officer (Officer 2) under delegated decision powers on 25 February 2002 for a three year period ending on 25 February 2005. The consent itself contained no constraint on hours of operation or limitations on the use of the premises.

5. The development also required a building warrant and in the course of considering the relevant Building Standards Regulations, it was considered necessary to change the position of the portacabins to enable an additional toilet portacabin to be erected. Other changes were required to a canopy and for a disabled ramp. When these changes were effected, Mr C wrote to the Council's Area Development Control Officer (Officer 3) on 11 April 2002 asking various questions including whether there should have been re-notification in respect of Application 1 and also about a bicycle washing facility and advertising signs for the café. On 16 April 2002, the Forestry Commission's then local Forest District Manager (Officer 4) explained in a letter to Mr C why the changes had been necessary.

6. Officer 3 visited the site, noted that the toilet portacabin facilities had not been erected in accordance with the approved drawings and that the disabled ramp had not been included in the original planning application. Officer 3 informed Mr C by letter of 3 May 2002 that she considered the bicycle washing facility to be ancillary to the main use of the site and did not require planning consent and that she had seen no signs outside the site advertising the café.

She informed Mr C that to regularise the situation she intended to invite a fresh application. In a further letter of 20 May 2002, The Council's Head of Development Control (Officer 5) explained to Mr C why an application for amended consent was being sought rather than an application for retrospective consent. This explanation was repeated in a further letter to Mr C from Officer 3 of 11 July 2002.

7. Forest Enterprise served a neighbour notification on 28 May 2002 in respect of the application for amendment of the previous consent (Application 2). Mr C had issues about the description of the proposal since he believed it should have been an application in retrospect for what was then a completed toilet portacabin and ramp. Mr C submitted representations about the siting of the toilet portacabin in letters of 23 June 2002 and 9, 14 and 19 July 2002. Application 2 received temporary conditional consent under delegated decision of the Chairman of the Council's Planning Committee (the Committee Chairman) on 4 October 2002 for a three year period ending on 4 October 2005.

8. In early 2003 Mr C suggested to the Committee Chairman that the Business be moved 100 metres further away from his home. He also queried whether the 2002 applications should have been referred to Scottish Ministers since the Council were in partnership with Forest Enterprise in a nearby development proposal (and might, therefore, have a conflict of interest).

9. A third application (Application 3) was received by the Council on 5 March 2003 for the formation of a car parking area, but was continued by the local Area Committee at their meeting on 23 June 2003. Conditional consent for Application 3 was not issued until 16 January 2004. Application 3 was linked with a fourth application (Application 4) for a viewing link for birds of prey which was opened on 3 June 2003. Application 4 by the Forestry Commission, for change of use of a barn (the Barn) for sales storage and bird of prey viewing centre, was received by the Council on 10 June 2003, albeit the bird of prey viewing link had opened seven days earlier. Mr and Mrs C pointed out that the use for bicycle hire had commenced in early July 2003 and they made representations in letters of 8, 15 and 21 July 2003 about hours of operation and the close proximity of the Barn (25 metres) to their home. They corresponded with the Leader of the Council and with a local councillor about signs on the nearby main road referring to the bird of prey viewing centre. Conditional consent for Application 4 was granted by the Committee Chairman

as a delegated decision on 16 January 2004 for a three year temporary period ending on 16 January 2007.

10. A fifth application (Application 5) was submitted for the erection of two portaloos with timber decking in the compound area at the Depot and was received by the Council on 22 October 2004. The portaloos were commissioned following complaints made by Mr and Mrs C about mountain bikers urinating in public. Application 5 was approved subject to conditions as a delegated decision on 4 February 2005.

11. On 6 July 2005, the Council received an application (Application 6) from Forest Enterprise for the erection of a lean-to and the siting of a storage container at the Barn operated by the Business. Mr C made representations about the proposal in a letter of 29 July 2005. Application 6 was granted temporary approval as a delegated decision on 9 August 2005 with an expiry date of 16 January 2007. At interview on 15 May 2007, Mr C informed me that he believed Application 6 had not been implemented.

12. On 4 October 2005, Forest Enterprise submitted a further application (Application 7) to the Council for an extension of the temporary consent for erection of portacabins for bicycle hire outlet and café. Mr and Mrs C received neighbour notification and expressed concern to the Chief Executive of the Council in a letter of 7 October 2005 that Application 7 had been received on the same day as Application 2 expired. In a letter of 8 October 2005, Mr C maintained that it was incorrect effectively to add six months to the original consent and that, as the three year period had expired, the only application that should be made was to upgrade to permanent standard. Mr C requested that Application 7 be put on hold.

13. At this time, in inspecting the plans in respect of Application 7, Mr C noted that the boundary shown for the site of the café for the Business was incorrect. He brought the discrepancy to the attention of the Council's Senior Development Control Officer (Officer 6). He also contacted an officer of the Forestry Commission who agreed to supply a revised location plan. In a letter of 19 October 2005 Officer 5, now redesignated Head of Planning and Building Standards, informed Mr C that Application 7 had been received before Application 2 expired and was a valid submission.

14. On 21 October 2005, the Council's Director of Planning and Economic Development (the Director) responded to Mr C on behalf of the Chief Executive regarding the retrospective nature of Forest Enterprise's proposals. He stated that Forest Enterprise had been urged to discuss future proposals with the Council's Planning and Economic Development service in a timely fashion to ensure that works might progress in an orderly fashion and also conform with legislative requirements.

15. Mr C submitted further representations regarding Application 7 in a letter of 22 October 2005 which was acknowledged on 24 October 2005. Mrs C also submitted representations on Application 7.

16. After obtaining a copy of plans and other documents as a result of an information request, Mr C wrote to the Director on 29 October 2005 alleging that the actual siting of the café building of the Business bore little relationship to the area as indicated on the location map relating to Application 1, and that this error had led to deterioration in the quality of his family life. He maintained that had the building been in the correct position this would have kept the consequences further away from his house.

17. When, by 19 March 2006, Mr C had heard nothing further in respect of the matter of the positioning of the Business's café building, he wrote to Development and Environmental Planning on 19 March 2006. He asked a number of questions regarding the plans on Application 1 and why he had not received neighbour notification of revised plans submitted on 1 February 2002.

18. That letter was responded to by Officer 6 on 26 April 2006 with an apology for the delay in reply. He answered the queries raised and stated that he accepted that the original plans may not have been wholly accurate at the time the applications were considered. However, accurate plans had since been prepared by the Forestry Commission and had been submitted as part of Application 7. The amended plans showing the correct siting would regularise any anomaly should consent be granted for a further extension. Officer 6 disagreed with Mr C's allegation of procedural irregularities with Applications 1 and 2 and he maintained that these had been processed in the correct manner and assessed against the various relevant local and national policies.

19. On 19 May 2006, Officer 5 wrote to Mrs C to advise her that Application 7 had been approved for three years from 19 May 2006 in consultation with the Committee Chairman and local councillor under delegated powers.

20. After the Forestry Commission admitted to Mr C that the portacabins for the Business had indeed been built outside the approved area, Mr C wrote to the Chief Executive of the Council making a formal complaint. Mr C argued that as the building had been built in the wrong place it should not have received an extension in time.

21. The Council's Chief Executive responded in a letter of 21 September 2006. He stated that on a number of occasions the Forestry Commission had undertaken development without first obtaining consent. Retrospective applications had been sought and they had been urged to follow the correct procedures. The Chief Executive confirmed that the site had again been checked by planning officials who had been unable to identify any material deviation from the approved plans and there were no grounds for pursuing further action.

22. On 21 November 2006 Mr C complained to the Ombudsman's office about the actions of the Council. He maintained that the Council had approved location plans where the structures on the ground did not agree with the coloured location areas.

23. In the meantime, a further application (Application 8) was submitted to the Council by Forest Enterprise for change of use of a large nearby country house to form a visitor centre, staff accommodation block, erection of café and bicycle hire facilities and formation of associated car parking. This application was validated by the Council on 27 September 2006. Mr C submitted representations. Following discussions with the Council's Roads Service on traffic management and the Scottish Environmental Protection Agency in respect of sustainable drainage, Application 8 was approved by the local Area Committee at its meeting on 23 July 2007. Also, on 23 November 2006 an application (Application 9) for change of use of the Barn for sales storage and bird of prey viewing centre (extension to previous temporary consents in respect of Applications 3 and 4) was registered by the Council. Mr C objected in a letter of 14 December 2006. Application 9 was approved, subject to conditions, in a decision delegated to the Committee Chairman and the decision notice was

issued on 23 March 2007. Mr C did not, however, complain to this office about the handling of either Application 8 or Application 9.

24. In late 2007, Mr and Mrs C decided to place their home on the open market for sale. They were made an offer by Forest Enterprise which they accepted and moved in January 2008 to a house in a nearby town.

The Council's response to complaint (a)

25. The Council informed me that they did not consider that there was evidence to support a complaint that the Council had acted unreasonably, improperly or inconsistently in this case. They confirmed that the site plan forming part of the permission granted on 25 February 2002 indicated that the portacabin building for the Business would be located at the base of an embankment in front of the roadway access to Mr and Mrs C's house. The exact location of the building was not shown on the plan which was of a 1:2500 scale. Mr C's letter of 11 April 2002 indicated that he had negotiated with Forest Enterprise to minimise the impact on his property. Since the identified site area was not large, the potential for it being significantly out of position was not great. With the changes to the originally permitted scheme, the Council required a new application (Application 2). The assessment of Application 2 was based on a building already in place whose impact on the amenity of surrounding premises could be readily assessed. Temporary consent was granted for a period of three years, unless a further period of permission was applied for. Application for renewal of the temporary consent (Application 7) was made in October 2005 (paragraph 12). In the course of the Council's consideration of Application 7, Mr C had raised concerns about the siting of the Business building. The Council informed me that a site survey was then undertaken by their enforcement staff. They had concluded that the building was actually 2 metres further away from the gable of Mr C's property than had been indicated in the October 2002 consent for Application 2. The Council informed me that given the topography of the site, a distance of 2 metres was probably unnoticeable without the benefit of survey measurements. The Council stated that any variation was slight and would have been marginally to Mr C's advantage.

26. With regard to the Council's extensions of the temporary consent, the Council stated that it did not follow that merely because the first permission was temporary, no further permission would be forthcoming. The potential for extension was clear from the wording of the relevant condition on Application 2.

Indeed, in order to be able to refuse permission to extend the period of temporary consent, the Council would have needed to demonstrate that there had been a change of circumstances or that the building and use had resulted in greater impact on its surroundings than had originally been anticipated. Relevant guidance was given in Scottish Office Development Department Circular No 4/1998. In considering a subsequent renewal, the Council should normally consider the grant of a permanent permission, but it is nevertheless consistent with good practice to time limit further permissions if there is the potential for the building to deteriorate over time. In this particular case, the planning officer had been content that the building did not have an adverse impact on the amenity of the area and of nearby residential properties and was minded to grant the further extension.

27. The Council did not accept the implication made by Mr C (paragraph 8) that because they were involved with the Forestry Commission in tourism initiatives in their area, they were less firm than they might have been when the Forestry Commission applied for planning consent insufficiently far in advance of development being implemented (for example Applications 3 and 4). The Council informed me that they could find no evidence to support Mr C's contentions in this regard. The Council's Planning Service was required to operate independently of the Council's other functions. The application process in the case of the applications submitted on behalf of the Forestry Commission was robust. Council officers' reports in relation to each application clearly set out the rationale for each decision. Generally speaking, the Council had policies that seek to support tourist facilities, in line with national policy on the subject and proposals were consistent with development plan policy. Mr C's concerns were fully taken into account during the consideration of the applications. The timing of the applications was a matter for the Forestry Commission. When received, the Council was obliged to consider them.

(a) Conclusion

28. Mr and Mrs C had enjoyed a quiet rural idyll for many years in a home close to where Mr C had spent a sizeable proportion of his working life. Following the opening up of the countryside after the foot and mouth outbreak, the forest in which the Depot is located became very popular. The owners of the Business saw an opportunity and the Forestry Commission made a series of applications to the Council for planning consent.

29. The proposals were consistent with the Council's development plan policies and as such, there was a presumption in favour of looking at them favourably, subject to suitable conditions. I see no evidence of maladministration or shortcoming by the Council who appear to me to have considered each Application on its individual merit. I consider that any technical differences between the siting of the portacabins on the ground and the approved plans was regularised by the consent for Application 7 in October 2005. The Council had no control over the Forestry Commission's timing of applications and in my view exercised their powers of development control appropriately. I do not uphold the complaint against the Council.

The Forestry Commission's response to complaint (b)

30. The Forestry Commission informed me that they understood that Mr and Mrs C had not visited the Council to view the planning documents relation to Application 1 nor had they raised objection in principle to the buildings for the Business. The Forestry Commission had, at Mr C's request, adjusted the location eastwards and had agreed to pay for a screening fence, to reduce the visual impact from his home. At a site meeting with Officer 4 on 3 April 2002, Mr C had raised issues relating to design and appearance, and had made suggestions to improve the external appearance, which they took on board.

31. The Forestry Commission stated that unfortunately, the siting of the building as shown on the plan that Forest Enterprise enclosed with Application 1, was positioned further away from Mr and Mrs C's house than the actual position on the ground seen by Mr C. The siting on the ground was, however, the intended location of the building and the plan was incorrectly drawn. This was not a deliberate error but a mistake for which an apology was subsequently made. Mr C only raised a concern three years later, on seeing the original plan when it was reproduced to support Application 7 for an extension to the temporary consent for Application 2. The Council had granted consent to Application 7, with a corrected plan, with the building remaining in position.

32. The Forestry Commission accepted that the toilet portacabins and disabled ramp were not placed on site at the location shown in the approved plans for Application 1. The relocation of the toilet portacabins and the addition of the disabled ramp during construction were as a result of advice received to improve the café for visitors. When revised drawings were submitted to the Council's Planning Department, Officer 3, after visiting the site, decided a fresh

application would be required. Mr C had contended, subsequently, that the entrance to the toilet portacabins was not in accordance with Building Standards. The Council's Building Service, however, had not indicated to the Forestry Commission that there was a problem in this respect.

33. The Forestry Commission stated that initial landscaping in respect of Application 3 was done after the consent was received on 16 January 2004 but the planting of trees and shrubs which should have been done in advance of the opening of the car park had had to await improved ground conditions. This was accepted by the Council without the need for enforcement of the condition. The bird of prey viewing link and the bicycle hire/repair operations were underway before the related application (Application 4) was received on 16 January 2004. The Forestry Commission stated, however, that the operations were in full accordance with the planning application, and the eventual consent. They accepted that the operations should not have started before the consent was obtained. In mitigation, they say that relocation of the bicycle hire, repairs and power wash away from a position immediately in front of Mr and Mrs C's home helped to reduce that source of disturbance which they were experiencing. It served also to improve the service available to customers and to develop the facilities available to the owners of the Business.

34. The Forestry Commission accepted that local officers were inexperienced in relation to planning legislation in 2002 and 2003. The Forestry Commission had subsequently given assurances to the Council that every effort would be made to adhere to procedures more carefully in future.

(b) Conclusion

35. There were shortcomings on the part of the Forestry Commission, which they have accepted and for which they have apologised. They say that they intend to adhere to procedures more carefully in the future. The difference in the siting on the ground of the portacabins associated with the Business and the approved plans for Application 2 was not substantial. It would, however, have brought the activities of the Business marginally closer to Mr and Mrs C's former home. The main effect would have been to increase any noise emanating from the premises. This is dealt with under complaint (c). The planning position was regularised with the approval of Application 7 on 19 May 2006. The Council were satisfied that the actual siting of the Business's premises did not require to be adjusted.

36. The commencement of operations in advance of the approval of planning consent is a not uncommon feature of development in this country. It is unusual for such a complaint to be made against a publicly funded body as applicant or developer. I accept that the complaint might stem from a lack of experience of relevant local officers. It does not amount to a pervasive and systematic error. I partially uphold the complaint to the extent that some activities began before consents were granted.

(c) The Forestry Commission, as owners of the Depot and landlords of the Business, failed to act with diligence in dealing with issues of indecency, noise, wind blown dust and disturbance to Mr and Mrs C at anti-social hours

37. Mr and Mrs C's joint complaint concerned operational problems relating to the Business's café and bicycle hire facilities in close proximity to their home and also the actions of members of the public encouraged to visit the area for mountain biking and other attractions, following the opening up of the countryside after the restrictions imposed during the foot and mouth outbreak in 2001.

38. The Business commenced its operations soon after obtaining temporary planning consent on 25 February 2002. The commencement of the Business's activities coincided with numerous complaints being made by Mr and Mrs C. Some of these related to the operation of the Business, but other complaints were a direct consequence of the increasing numbers of people visiting the area for mountain biking and other leisure pursuits.

39. Early problems in 2002 related to mountain bikers changing in public, occasionally urinating in full view of Mr and Mrs C's home, visitors using the bicycle trails at night causing light and noise disturbance, and indiscriminate parking in the vicinity of the Depot. Mr and Mrs C experienced problems with noisy bicycle washing facilities and with early morning delivery of supplies for the café. At Christmas 2002, Mr and Mrs C reported problems with the sale of Christmas trees from the Barn at the Depot which was subsequently the subject of a planning change of use application for the relocation of the bicycle hire facility (Application 4).

40. Mr and Mrs C's complaints about those matters continued in 2003 and 2004. New problems arose in the form of wind blown dust from the car park and the opening and closing times for the car park adjacent to the Business. It

had been agreed with the local office of the Forestry Commission that the car park would be closed at a set time each evening with a lockable barrier. On occasions, this proved not to be possible because a mountain biker may not have returned to their car in time. On occasion, to facilitate their early morning deliveries, the owners or staff of the Business who had been asked to lock the gate, did not do so. In 2004, Mr and Mrs C complained to the local Forest District Office about the standard and extent of grass cutting, about refuse left out by the Business and about music from the open windows of the kitchen of the café.

41. Mr and Mrs C informed me that the various problems they were experiencing had a profound effect on their quality of life and they felt compelled to relocate the main living quarters in their home from the south to the north and rear. In May 2004, Mr and Mrs C made a proposition to the Forestry Commission that they buy them out. (The Forestry Commission gave serious consideration to this proposal, but their Head of Estates confirmed in a letter of 29 September 2005, after they had secured the purchase of a large nearby house, that they were not prepared to purchase back Mr and Mrs C's home at that time.)

42. New toilets and changing facilities at the Depot were provided by Forest Enterprise in 2004/05. In 2005, the problems reported included indiscriminate parking, dust clouds particularly from the car park serving the bird of prey viewing centre, the opening and shutting of the barrier to the car park, and indecent exposure of both males and females.

43. Following on a series of faxes from Mr C in August 2005, the new Forest District Manager (Officer 7) replied to him on 18 August 2005 identifying and responding to nine specific issues. On 20 August 2005, Mrs C made an official complaint to the Director of the Forestry Commission and Mr C wrote to the Chairman of the Forestry Commission. The Director of the Forestry Commission responded on 26 August 2005 empathising with the disturbance Mrs C had experienced. He referred the matter to Officer 7 who subsequently responded to Mrs C on 9 September 2005. The Chairman of the Forestry Commission responded to Mr C on 12 September 2005, commenting that it was open to Mr C to complain to the Ombudsman if he felt that the Forestry Commission were treating him unreasonably.

44. In 2006, the main problems reported by Mr and Mrs C were the opening and closing of the barrier to the car park, music from the café of the Business particularly when kitchen windows were opened on hot summer days, and disturbance from early morning deliveries. A period of prolonged dry weather in the summer of 2006 increased the problem of dust from the car park. Steps were taken to minimise this by hosing the area rather than the previous use of a water bowser but this was less effective and the surface soon dried out. When Mr and Mrs C reported dog fouling on 1 June 2006, they were informed by reply of 12 June 2006 that a dog litter bin would be erected.

45. By the summer of 2006, following consultation with residents, the Forestry Commission's proposals for a new permanent facility centred on a nearby property were well advanced and Application 8 was eventually submitted and registered on 27 September 2006 (paragraph 23). On 17 August 2006, Mr and Mrs C clarified the extent of their complaints to the Forestry Commission. That complaint was responded to on 9 October 2006 by an officer (Officer 8) in the Forestry Commission Secretariat.

The Forestry Commission's response to complaint (c)

46. Officer 8 informed me that while a great deal of time was spent by the Forestry Commission on dealing with four main complaints of noise from the café, control of the lockable car barrier, disturbance by out-of-hours deliveries and dust, some 20 other distinct matters and requests for information were raised by Mr and Mrs C with them since 2005 and that appropriate responses were sent.

47. On the issue of noise from the café, over 40 complaints were made after 2005. A major problem in Forestry Commission officers' ability to respond was that they could not confirm that noise disturbance was coming from the Business's café/bicycle shop. In 2007 local staff made 54 checks on noise levels at the café but on no occasion did they consider that music in the serving area was too loud. In the same year they had had to speak to members of the public on 12 occasions about loud music being played from cars. The issue of noise was raised with café staff on several occasions. A suggestion had been made that the noise be monitored by Environmental Health but that offer was not taken up by Mr and Mrs C.

48. The Forestry Commission stated that their records showed that Mr and Mrs C made around 65 complaints about the lockable car park barrier being left

open. In April 2007 the matter was resolved when it was decided, after appropriate advance information to users, to lock the barrier each evening. Prior to that, it had been considered that people being locked in would cause more disturbance. Improved signage had been tried, and flow plates had been considered. An issue of staff of the Business opening the car park barrier too early on Sunday mornings had been raised with the Business staff. The Forestry Commission said that while the response of the Business initially had been erratic, the situation with closing the lockable barrier eventually improved. The solution of locking the barrier each evening required the Forestry Commission in funding additional staff/contractor time for undertaking this task.

49. Forestry Commission records showed nearly 20 complaints since 2005 from Mr and Mrs C about disturbance from out-of-hours deliveries. The Forestry Commission stated that the disturbance was repeatedly discussed with staff of the Business who initially did not recognise the level of disturbance caused but details of timings and lorry descriptions helped identify the suppliers involved. The Forestry Commission stated that some of the disturbances were caused by early morning activity associated with access to a deer larder.

50. I was informed that since 2005 Mr and Mrs C made over 40 complaints about dust from the car park in dry, windy weather. Resurfacing the car park with tarmac was not considered a reasonable and cost effective solution, given that by the Autumn of 2005 it was intended to move to a new centre. A decision was made to use whin stones. It was not considered justifiable to use mains supply water for the dampening down process more than once a day. While the whin used in 2006 increased the water holding capacity in summer, it led to excessive rutting in winter. In the summer of 2007, the car park was resurfaced with road planings at a cost of around £7000. The Forestry Commission informed me that no complaints were received after the resurfacing with road planings was carried out.

(c) Conclusion

51. While Mr and Mrs C were probably accustomed to the Forestry Commission operations which were part and parcel of Mr C's daily working life, I am informed that the forest area in the hinterland of the Depot is now visited by an average of 5000 people a week for recreational purposes during the year. This is a level which surpassed the Forestry Commission's early expectations.

52. I consider that the Business provides important services for the public but it has also proved to be the focus of Mr and Mrs C disappointment and consternation that they could not continue to enjoy their sylvan tranquillity. I consider that the Forestry Commission have been receptive and not dismissive of Mr and Mrs C's concerns. This has been demonstrated in that part of the Business was relocated elsewhere in the Depot, and the car park was resurfaced to eradicate dust, a solution was found to the lockable barrier, and attempts were made to identify and reduce the scale of early morning deliveries. My review of the documents supplied by Mr and Mrs C satisfied me that all of the correspondence, both by letter and by email was acknowledged. In addition, a number of visits were paid by senior officers and office holders of the Forestry Commission and Forest Enterprise at area, regional and national level. Where appropriate, points were addressed with the owners of the Business. Alterations were also made to signs and notices.

53. It might have been the case that had Application 8 received earlier consent that the general relocation of activities would have occurred earlier and Mr and Mrs C would have been less disturbed. I note that in late 2007 Mr and Mrs C decided that they would move home. That was their decision. I do not consider that it was necessitated as a result of maladministration or service failure by the Forestry Commission. I do not uphold the complaint.

Explanation of abbreviations used

Mr C	The complainant on all three complaints
Mrs C	The joint complainant (Mr C's wife) on complaint 200602601
The Depot	A Forestry Commission operation centre
The Council	Scottish Borders Council
The Business	A café and bicycle hire business operated originally from portacabins adjacent to Mr and Mrs C's home
Forest Enterprise	The property and development arm of the Forestry Commission
Applications 1 to 9	Nine applications made by Forest Enterprise regarding development at the Depot
Officer 1	Forest Enterprise Planning and Environment Manager
Officer 2	The Council's planning case officer for Application 1
Officer 3	The Council's Area Development Control Officer
Officer 4	The Forestry Commission's former Forest District Manager

Officer 5	The Council's Head of Development Control; and subsequent Head of Planning and Building Standards
The Committee Chairman	The Chairman of the Council's Planning Committee
The Barn	A building in the Depot, 25 m from Mr and Mrs C's home
Officer 6	The Council's Senior Development Control Officer
The Director	The Council's Director of Planning and Economic Development
Officer 7	The current Forestry Commission Forest District Manager
Officer 8	An officer in the Forestry Commission's secretariat