Disposal of Forestry Commission land: impact on public access and amenity

Research report for the Kennel Club

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1 EXECUTIVE SUMMARY

• This survey of 14 woods recently disposed of by the Forestry Commission found that in every case, to varying degrees, the previous levels of access and amenity were not protected – in theory or in practice – after the land was sold.

• While some changes to legal procedures, policy and practice could reduce such losses, by far the most certain way to maintain current levels of access and amenity is retention of the land in Forestry Commission ownership.

• If Forestry Commission land is to be disposed of in the future, loss of access and amenity could be minimised by:
  ➢ Meaningful liaison with local communities, access authorities and site users prior to sale;
  ➢ More extensive and robust dedication of existing access provision and least-restrictive management approaches;
  ➢ Additional support and grant aid for community buy-outs, and to private landowners, to help maintain pre-existing access management and amenity;
  ➢ Additional funding for local authorities to meet the increased costs of monitoring, promoting and protecting such access once land is sold by the Forestry Commission.
2 INTRODUCTION

2.1 Aims and objectives

This review was commissioned by the Kennel Club (KC) to assess the impact on public access and amenity when Forestry Commission (FC) land has been sold in the last 5 years.

While this study was primarily funded to investigate the impact on walkers with dogs, more general impacts have also been considered, as these affect all walkers whether they have a dog or not. Impacts on horse riders and cyclists were also considered and identified during site visits, and the findings shared with related access user organisations given the many common concerns and interests.

More specifically, the study’s objectives were to:

1. identify past FC sales and consequential impacts on access and amenity from a desktop research exercise;
2. undertake site visits to a sample of forests now in private ownership, to consistently identify and assess the impacts of their disposal on public access;
3. produce a summary report with recommendations to support the Kennel Club’s response to the Independent Panel on Forestry’s public consultation ending on 31 July 2011.

2.2 Project approach and constraints

Within the resources and time available, it was not possible, nor intended, to assess and document the impact on access and amenity for all recent FC land disposals.

Instead, the project aimed to identify the range of potential impacts from visiting a number of sites across England, using the same researcher to aid consistency. A targeted approach to site selection was used to assess those woodlands that were the most readily identifiable and accessible during the research period from April to July 2011.
3 METHOD

3.1 Desk based survey

In April 2011 several access organisations and social media sites that had expressed concerns about the potential future disposal of large areas of Forestry Commission land in England, were requested to highlight examples of the impact on access and amenity from FC sales in the recent past.

The bodies and organisations approached were:

- British Horse Society
- Cyclists’ Touring Club
- Readers of Your Dog magazine (May 2001 issue)
- Open Spaces Society

A request for such examples was also circulated to members Institute of Public Rights of Way and Access Management, and the Countryside Management Association. Members of both these bodies are professionally employed to manage access to the countryside and greenspaces around towns for local authorities, where most statutory duties in this regard are vested.

Online information from Hansard on past forestry sales was also examined. Detailed information on individual disposals was obtained online from the website of forestry specialists John Clegg & Company (www.johnclegg.co.uk), the chartered surveyors who have handled past sales on behalf of the FC.

Publicly-available data on past sales over the last 5 years was also obtained from the Forestry Commission; this was used to cross reference and validate disposals already identified by other sources, as there were insufficient resources to assess the full list of approximately 340 disposal sites.

3.2 Site visits

The data obtained from the desk-based study and enquiries identified approximately 30 sites that were accessible and relevant to this study. However, it was apparent that the variety of sources involved and the legal complexities of access legislation to the lay person, meant that identification of the actual impacts could not be reliably assessed without visiting all the sites first-hand.

Accordingly, the same researcher visited the following 14 sites:

- West Wood, near Hereford
- Park Wood and Halls Beck Wood, Bassenthwaite, Cumbria
- Rigg Wood, Coniston, Cumbria
These sites were chosen given their relative proximity to car journeys already being taken by the researcher to unconnected projects and meetings; this was done to reduce the otherwise substantial travel costs and time for visiting sites ranging from northern Cumbria to the Home Counties. This also introduced a significant degree of randomness (in relation to the woodland and disposal type) of site selection.

The researcher visited each site to qualitatively assess:

- Accessibility and connectivity for public recreation from nearby public roads, rights of way and other forms of public access;
- Apparentness that public access still existed after the sale – for example by signage;
- Loss of amenity that previously existed when in FC ownership – eg reduced car parking, removal of picnic benches, dogs on lead notices;
- Signs that access was less welcome than before – for example, “keep out” notices;
- Usage of the land from visitor observation and evidence such as footprints, hoof marks and tyre tracks;
- Changes in the number of access points or wider accessibility, for example, gateways being fenced across, locked or replaced with less accessible entrances (eg due to additional steps or uneven surfaces) making access more difficult for people with mobility impairments.

### 3.3 Follow-up information from Forestry Commission

Due to queries arising from the site visits and conflicting information on sales particulars, the FC’s Estates Division was approached for clarification on certain aspects of individual sales.

Questions asked of FC staff were intentionally limited to matters that would have been readily available through Freedom of Information requests, to avoid compromising the professionalism and integrity of staff.
4 RESULTS

Collectively, the survey found that at all 14 sites examined, the actual access and amenity was less well protected and usable, in both legal and practical terms, than when in FC ownership. Moreover, in none of the cases was the access and amenity improved after being sold.

More specific findings are as follows:

4.1 Overall retention of access and amenity

- In every case examined, access and amenity for the public was reduced when FC land was disposed of, even when access on foot had been dedicated under section 16 of the Countryside and Rights of Way Act 2000 (CROW Act).
- Loss of access and amenity ranged from a lack of signage to indicate the woodland still had public access on foot, to access points being fenced across, gated and locked precluding access by all types of user.
- None of the actions by the new landowners that prevented or reduced access and amenity was judged as unlawful in terms of the dedication of access under the CROW Act. Nor was it understood to be in contravention of any requirements imposed by the FC as part of the sale.
- In the one case, the involvement of the County Council and Local Access Forum (Cheriton Wood, Hampshire), meant that the loss of amenity was less severe than it could have been; even then, the number of access points and accessibility were still reduced.

Picture 1: Original entrance to Rigg Wood, Lake District National Park, Cumbria which was fenced across, gated and locked following its sale (left). The only practical access point now is an uneven, narrow gap in a dry-stone wall (right).
4.2 Accessibility for people with disabilities

In none of the cases was accessibility improved for people with mobility impairments after the sale. At four (50%) of the sites surveyed where access on foot was dedicated prior to disposal, access to the woodland for all walkers was made more difficult by the new owners, and in particular for people with mobility impairments. This was due to level and wide entrances into forests being replaced by routes that were:

a) narrower (Rigg Wood);

b) of a steeper gradient (Rigg Wood);

c) less accessible from the adjacent road due to fencing and locked gates (High Loft Wood, Cobden’s Copse); or

d) required visitors to step over a fence or rail which wasn’t there before (Cheriton Wood).

*Picture 2: Locked gates at the main entrance to Cheriton Wood now prevent or hinder access for people with mobility impairments, as entry can only be taken through the gap on the left, which has a horizontal rail to step over (detail inset).*
4.3 Access for walkers with dogs

In only one case was access and amenity specifically for walkers with dogs found to have been reduced since the disposal (Ashgrove South). This was due to misleading notices (seemingly erected by the landowner) requesting dogs be kept on leads, even though there is no general legal requirement for this on the public rights of way the signs were erected on.

*Picture 3: Year-round dogs on leads signs erected on public rights of way in Ashgrove Wood following FC disposal.*

The Forestry Commission in both its policy and practice does not use such generic, year-round restrictions. Instead, where restrictions are needed, the signage is specifically limited to the sensitive times and places, reflecting their least-restrictive approach to access management.
4.3.1 Vulnerability of access and amenity for walkers with dogs

While only one of the sites surveyed had any physical evidence of loss of access or amenity specifically for walkers with dogs, this does not detract from the overall vulnerability of pre-existing amenity for dog owners when FC land is sold.

The key issue is that of dogs being allowed off-lead. This is the single most important amenity for walkers with dogs¹ and hence why the FC has always sought to minimise requirements for lead use.

However, when access rights for walkers are currently dedicated by the FC under section 16 of the CROW Act, this is conditional on dogs being kept on short leads on all access land for 5 months of the year (1 March to 31 July). While this restriction was ostensibly for nature conservation purposes, it applies to all access land irrespective of its value for wildlife. For example, this significant limitation on access still applies within intensively managed coniferous plantations, which can actually be excellent areas for dogs to be exercised, relieving pressure on farmland and sensitive areas for ground nesting birds.

Consequently, off-lead use of access across former FC woodland for 5 months of the year is a concession by the new landowner which can be withdrawn at any time. Any dog owners not complying with this would become trespassers and could thus be removed from the wood.

Access rights are also conditional on dogs being on a short lead “in the vicinity” of livestock. Thus if new or more intensive grazing was introduced on former FC land, there would again be a major loss of amenity for dog owners, as far greater lead use would be required.

As off-lead access is so valuable to dog owners, if this was reduced on former FC land, the most likely outcome is that dog owners would exercise their pets elsewhere, which in many cases will mean other land in private ownership, such as farmland. This may well lead to needless and heightened conflict and concerns for other landowners.

While the access authority can relax such restrictions, it needs to be done with the consent of the landowner, and so cannot be used to ensure the landowner applies the FC’s less restrictive approach retrospectively.

While section 16(6)(b) of the CROW Act does allow the general restrictions on access rights (including lead use) to be relaxed at the time of dedication, this is not understood to have occurred for past dedications by the FC.

¹ Sport Industry Research Centre (2008) Assessment of perceptions, behaviours and understanding of walkers with dogs in the countryside. SIRC, Sheffield
4.4 Apparentness that access exists

When in FC ownership, signage indicating public access exists is routinely provided and maintained. Even when this does not state the nature of access available, the distinctive “Forestry Commission” signage in itself gives confidence to users that they are welcome visitors and at liberty to enter.

In only one case (Cheriton Wood) was signage maintained or provided after the disposal, to show that access still existed, even though the woodland was now privately owned.

*Picture 4: Park Wood, Bassenthwaite. While some original FC infrastructure remains, there is no signage illustrating, directly or indirectly, that public access still exists through the woodland.*

*Picture 5: Cheriton Wood was the only case where the new owner had retained or provided signage to indicate that public access still exists. Even then, an increased frequency of restrictions and closures is much more apparent.*
4.4.1 Dedication of access rights prior to disposal

While it is commonly held that the FC dedicated a right of public access on foot across all its land under section 16 of the Countryside and Rights of Way Act 2000, several disposals examined in this study highlight the limitations of this approach.

Section 16(2) the Act prevents the FC from dedicating access rights if there are objections by leasehold and other interests. This was illustrated at three of the sites surveyed where the dedication of public access did not take place due to objections from the sporting interests (Breaches Wood, Keeper’s Wood, Ashgrove South).

*Picture 6: While public access was – and is still – used across Keeper’s Wood, near Amersham, it could not be dedicated and protected in perpetuity as access land by the FC prior to disposal, as the consent of those with sporting rights was required.*
4.4.2 **Incomplete assessment of value for public recreation**

Breaches Wood, Buckinghamshire was not dedicated for public access on foot by the FC prior to sale because of the poor vehicular access to it, making timber extraction difficult; the access track has tight bends, limited widths and overgrowing vegetation.

However, for walkers, there is no difficulty getting to it, as the access track to – and abutting – it, is an ancient public bridleway, which also links the wood to the wider network of public rights of way. This also means it can be readily accessed by riders; when surveyed, there was ample evidence of recent use by horse riders including small, temporary jumps made from fallen timber.

Thus while this access is clearly valued by users and tolerated by the landowner, this access was not protected by dedication prior to sale. When this lack of dedication was queried with the FC, it was acknowledged that this case illustrated that procedures for assessing the relevance of woodland for public access were not always as good as they could be. In this case, an incorrect assumption had been made that poor access for timber extraction meant poor access for the public; in truth, these were two entirely different considerations.

*Picture 7: A well-used public bridleway (on left) abuts Breaches Wood (on the right) which is thus readily accessible by the public on foot, and when cycling and horse riding. However, although access is currently tolerated, access rights were not dedicated prior to sale due to access being poor for timber extraction.*
4.4.3 Dedication of higher rights

While cyclists and horse riders had used some of the former FC land prior to disposal, such amenity was not protected during the sale process.

Prior to disposal, West Wood, Herefordshire provided riders with a popular, well-surfaced route that offered a pleasant and safer alternative to the adjacent B4224, given its poor sightlines, lack of verges and high traffic volumes. While the route could have been dedicated by the FC as a public bridleway in perpetuity, this was not done prior to sale; now the new owner specifically and robustly prohibits such usage by signage.

There is no legal reason why specific existing or new routes for riders cannot be dedicated before FC land is sold; however, the FC has traditionally not been asked to do this by Government.

Picture 8: This well-surfaced and wide track in West Wood (left) was used by riders until prohibited by new owner (see sign inset). Riders are now forced to use the adjacent narrow and busy B4224 (right).
4.4.4 Dedication of isolated woodlands

Access to the FC’s former woodland, Cobden’s Copse in Hampshire, was by a 20 metre long private right of way, linking the woodland to the adjacent road and public footpaths. When in FC ownership, the public could use this right of way to access the wood, as – in effect – invitees of the FC.

Although this 22 acre (9 hectare) wood was dedicated as access land prior to sale, the public cannot now legally get to it, as they are still reliant on using the old private right of access; new owner is not obliged to invite the public to use it to get to the woodland beyond. Indeed, the lack of invitation for the public to use their access rights in the wood is illustrated by the road-side access gate now being locked.

While Hampshire County Council as access authority has powers to create rights of access to such technically isolated woodlands, no funding was provided to this end when the land was sold; moreover the County Council was not informed the sale was taking place.

![Locked gate on the 20 metre long private access track to Cobden’s Copse, preventing the public from using their right to walk in the woodland itself.](image-url)
4.5 Practical management issues affecting access and amenity on all sites

4.5.1 Frequency of closures on access land

While it was not observed at the sites surveyed, the CROW Act provides many ways that the right to walk across access land, particularly with a dog, can be restricted by the landowner, for periods ranging from a few hours to five years.

The FC’s least restrictive approach towards access management, traditionally meant that these options were rarely used, and only then as a last resort, usually to protect public safety when tree felling was taking place.

However, new owners are currently not obliged to adopt the same approach, and could quite lawfully start to suspend access rights for a variety of land management purposes, without any regard to the disruption caused to long-established access traditions.

4.5.2 Limited capacity of local residents to purchase woodland

With good community-based ownership and management, public access and amenity can be enhanced when FC land is sold; an excellent example is the Abriachan Forest Trust in the Highlands of Scotland (www.abriachan.org.uk).

However, capacity and enthusiasm in the local community are pre-requisites to sustain this, plus grant aid for ongoing management and, most crucially, for the woodland to be purchased at open market value in the first place. The latter is a key issue in England where land prices are especially high. None of the sites surveyed was in community management.

4.5.3 Limited capacity and involvement of access authority

Access authorities (national parks or county/unitary councils) are not generally involved in the disposal process, even though they are very well-placed to give advice and support at all stages of the disposal. Moreover, access authorities are not generally informed when a sale is completed, and thus remain unaware that they now need to take a more proactive approach to managing and protecting dedicated access within the woodland.

In the case of Cheriton Wood, Hampshire, the involvement of Hampshire County Council was very helpful in reducing loss of amenity for the public and giving free management advice to the new owner; however, this involvement came about as a result of actions by the new landowner, rather than any planned engagement around the time of sale. Approximate costs for officer time alone in this case are £825.00, not accounting for travel expenses and the unpaid time of Local Access Forum members.
4.5.4 Limited effectiveness of enforcement options

The opportunities for access authorities to take action against landowners who intentionally, or otherwise, reduce access and amenity (for example, by locking gates, removing seats, blocking-off entrances, erecting new fences without crossing points) is very limited. Unless landowners erect misleading signage that suggests access rights do not exist (a specific offence under section 14, CROW Act 2000), in practice there is little an access authority can do to prevent landowners making it harder for people use dedicated access land.

If the access authority believes access needs to be improved (for example, because the new landowner has obstructed / locked / blocked existing gateways) they can enter into an agreement with the landowner to do so. If the landowner will not agree (which seems very likely when gates have been deliberately locked) the access authority can serve notice to improve access without the landowner’s agreement. However, the process is little used, partly due to the cumbersome and tortuous nature of the legislation, and the already stretched resources of local councils and national parks, especially as they are required to compensate the landowner for any losses arising from the access being improved.

Thus in practical terms, once land ceases to be in FC ownership, there is little or no effective system in place for protecting the access and amenity that has been dedicated prior to disposal.

4.5.5 Restrictive covenants

The potential of restrictive or positive covenants to protect access and amenity which does not currently receive protection through dedication as access land was discussed with FC staff. Research has been undertaken on this issue in the past; a report already submitted to Defra is understood to conclude that covenants are not an effective way to protect public access and amenity during disposals.

4.5.6 Leasehold land

Across England, around 22% of the 250,000 hectares of land managed by the FC are leased, rather than owned as freehold. While, as such, leased land cannot be sold by the FC, nor the access managed as positively and flexibly for public access as with freehold, in practice FC management does informally result in greater levels of permissive public access in many cases, given the underlying ethos of the FC, combined with cooperation of the landowners.

While such permissive access has no legal protection, and may not be officially promoted, it nonetheless provides valuable, low key public access and amenity, particularly in the south east of England. The opportunities to retain some or all of the FC’s positive attitudes toward access as a leaseholder, could benefit from greater thought in the current debate about the future of the national forest estate.
5 CONCLUSIONS

5.1 Scope and applicability of survey

- The survey reliably highlights many ways that access and amenity have been routinely lost or reduced in recent disposals of Forestry Commission land, in particular due to deficiencies in the dedication of access under section 16 of the Countryside and Rights of Way Act 2000 and prevailing policies and practice.

- It accordingly identifies how procedures can be improved to minimise such losses; even then, the survey results show that even the best legal measures available will still not guarantee previously available amenity will be retained to the same degree.

- The study’s findings cannot be directly extrapolated to quantify losses from future sales, because all the sites surveyed were selected for disposal because they were held by the FC to be the least valuable for public access and amenity.

- Accordingly, future sales will inherently be of land with ever-increasing public value, and so the potential negative impacts on access and amenity will be even greater.

5.2 Current legislative processes fail to protect many aspects of existing public access and amenity when FC land is sold

- The veto tenants and other interests have on the dedication of access rights on foot under section 16 of the CROW Act 2000, prevents the FC from dedicating, and thus protecting, a right of public access on foot to some of its woodlands.

- Even where access rights are dedicated within a woodland, there is no legal requirement on new landowners to keep existing access points open.

- While legislative options for the dedication of access land are available to ensure the FC’s less restrictive approach to access management is continued by future owners, this has not been implemented. In practice, this means that once sold, access rights for walkers with dogs on all dedicated access land becomes conditional their pets being on-lead 5 months of the year.

- The FC could dedicate existing routes, or area access, for other types of user such as horse riders and cyclists. To date the policy focus dictated by Government has been on walkers only, even when this can force riders on to busy roads once sold. All told, amenity for cyclists and horse riders is at particular risk during disposals.

5.3 Current procedures and resources mean many aspects of existing access and amenity are not protected in the current disposal process

- While statutory Rights of Way Improvement Plans and other strategies are prepared by access authorities, the opportunity to see how the disposal process can complement these for the public good has generally not been taken.

- Insufficient resources and guidance are given to FC staff to enable the recreational value of each woodland to be fully assessed and protected prior to disposal.

- All told, while the FC has ample skill and experience within existing staff to minimise loss of public amenity when land is sold, the Government has failed to give sufficient guidance, resources and support to ensure this occurs.
5.4 **Access for people with disabilities is particularly vulnerable**

- Because access points, car parks and seating are not protected when FC land is sold, access and amenity for people with mobility impairments is more likely to be reduced or lost, compared to that for people without a disability. For example, while some people may be able to climb a recently locked gate to get to access land beyond, this can present a complete obstruction for people with mobility impairments, who previously could explore the paths and tracks beyond.

5.5 **Disposal of FC land adds to financial pressures on local authority budgets for access information, promotion and protection**

- When in FC ownership, access authorities (county councils, unitary authorities and national parks) have little or no need to become involved with the management or protection of access on FC land, as work by the Commission’s staff meets those needs.
- Once sold, the new owner is not required to provide any information to indicate access exists; moreover they can quite legally remove existing signage and reduce, remove or lock gateways.
- Thus, the responsibility to ensure access is kept open, secure and known about falls to the access authorities. However, no additional revenue funding is provided to the access authorities to reflect this additional burden arising from the disposal.
- In practice, this means that either the former FC land gets little or no attention from the access authority, or already limited resources have to be diverted from other access projects.
- Irrespective of funding issues, feedback from access authority staff indicates that their limited legislative powers to prevent existing access opportunities being reduced, are little used due to the complicated procedures and uncertain outcomes.
6 RECOMMENDATIONS

6.1 Retain the public forest estate within the Forestry Commission

- Retaining England’s national forests in Forestry Commission ownership and control is the most certain way of retaining existing access and amenity.
- Collectively, current legislation, management policy and funding streams to local authorities and private landowners mean that current access and amenity cannot be fully protected when FC land is sold.
- While changes to legislation, policies and procedures for disposal could reduce loss of amenity during sales, the effectiveness, cost and lead-in times for such changes are uncertain.
- Headline capital receipts from disposals do not take into account the increased costs incurred by access authorities in monitoring, managing and protecting such access once sold.

6.2 Measures to minimise loss of amenity and access on disposal

If Forestry Commission land is to be disposed of, implementing the following measures would to minimise loss of access and amenity.

- Pre-disposal assessment of existing access and amenity, including liaison with the access authority, local community and access users.
- Amending dedication legislation, policies and procedures to ensure the full range of existing access and amenity is protected in perpetuity.
- Increased capital and revenue funding for access authorities for monitoring, protecting, managing and promoting the access after disposal.
- Enhancing the availability of grants and support to new woodland owners for maintaining and enhancing existing access and amenity, when both freehold and leaseholds are sold.
- Ensuring that meeting all legal requirements towards access and amenity is integrated into cross-compliance for landowners in receipt of public funds from agri-environment schemes.
- Availability of sufficient grant aid to help community groups purchase and maintain local forests after disposal.
- Setting aside a sufficient proportion of the capital receipts from Forestry Commission disposals to fund the above.

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