

**Name:** Jubilee Wood

**Group:** Friends of Jubilee Wood

**Place:** Peebles

**Headline:** How a well-established and urban community woodland can achieve and yet succumb to multiple threats

**Keywords:** local authority; litigation; insurance; development; climate change; sustainability; urban

### **What is the context?**

Jubilee Wood was well used but neglected; it had passed between private and local authority ownership several times, and some people in the local community wanted to take care of the wood and make it safe and attractive for local people. At the time access was not obligatory as this was 10 years before the Land Reform Act of 2003.

### **What was the initial aim?**

The aims of the group were constant and enshrined in the Constitution: (i) To ensure the continuity of a valued amenity; (ii) To preserve public access to Jubilee Wood; (iii) To involve the community in the important task of maintaining an urban green area; (iv) To enhance the value of the Wood for nature conservation.

### **What actually happened and what has been achieved?**

Jubilee Wood is/was a community woodland established for 17 years. It consists of about 1 ha of urban and mature woodland. At its height there were 80 members paying £2 annual subscription; in the final year there were only about a dozen members, the core members recognising the end was near. This included the Convenor, and 4-5 other local residents, the manager of the volunteers, and a representative of Borders Forest Trust.

Diseased and dangerous trees were identified and felled, and new trees planted. Income was derived almost entirely from grants, which were sought according to need and availability. In the early years of FoJW, grants were more easily won, in the period of Millennium Forest for Scotland which provided financial support to BFT to enable it to support community woodlands. Early grants helped to manage the flooding problem, and to fell dangerous trees (SNH, Shell Better Britain); later Scottish Forestry Grant Scheme money was awarded to plant broadleaves, and Awards for All grants were used to improve the pathways through the wood.

A number of highly successful community days were held, including a sculpture day, moth days and bat days (led by a committee member who was an ecologist). Drainage problems were resolved by ditch digging and clearing. Paths were created through the wood, such that use of the wood increased to 20 000 per year assessed by path counters purchased and laid by Friends of Jubilee Wood.

However the greater part of the Jubilee Wood experience was an unexpected burden of paperwork, challenges to planning, and eventually litigation.

Regular inspection and maintenance for insurance provided an initial challenge. Group members approached the district council, Tweeddale District Council [no longer in existence]: 'we were a group of inexpert civilians, totally unused to this; we didn't really know who to ask about insurance - the one or two enquiries we did ask, really scared us' because insurance companies were unused to such inquiries for public liability insurance from small scale woodlands and provided unfeasibly high quotations (e.g. £1,500 annually). The District Council agreed to act as insurers for the wood. So a three-way arrangement was set up with the community council leasing the wood, FoJW managing it, and the District Council insuring it. An agreement was drawn-up by a lawyer to formalise this.

When district councils were eliminated, the new Scottish Borders Council (SBC) did not take on responsibility for insuring the wood; this was only discovered when a tree fell on a car. SBC absorbed

the costs but a new solution had to be found. By the late 1990s the group was handling the insurance themselves, feeling more confident. A key decision was to affiliate with the Borders Forest Trust which was forming at about the same time as FoJW. BFT provided low cost insurance and their staff did the paperwork, which was perceived as a considerable benefit for FoJW. With the support of BFT, the group gained confidence and enjoyed a reputation as a well-run, well-funded community woodland group, for about a decade where things were rosy.

#### Events leading to eventual closure

Three areas of housing development affected the wood, which is long and thin, bounded on one short side by a road, and at the opposite end by a tree lined path from the wood continuing out of the town. These three components combined to ultimately lead to closure.

1. A factor that was ultimately significant but not immediately was the building on the remaining 20% of one side, with back small/medium back gardens adjacent to the ash-lined boundary. Once constructed the group paid for an immediate overhaul over all these trees and they were subject to particular attention at inspections. The significance of these houses emerged over a decade later.
2. The group engaged strenuously with SBC concerning the adjacent open field that expected to be developed eventually. We regularly wrote letters to SBC on the strategy for developing the field, repeated as submissions to all local plans, and in response to all relevant planning applications. None of these communications over 15 years prompted any response from SBC whatsoever. 'In their local plan, they have words about encouraging local woods, when it comes to doing things on the ground, they just didn't want to know.'
3. Houses were built beyond the wood, requiring an access road to be built through the tree lined path beyond a wood which acted as a shelter belt for Jubilee wood.

After the new access road was built, we started having to do heavier tree surgery at that end of Jubilee wood as it was no longer protected. One night, a storm blew an ash tree down onto the fences of the houses with the back gardens adjoining the wood (see (1) above). It damaged the fence and some sheds. The group demonstrated that they had not been negligent through protocols of inspection, reports and work done. Nevertheless, the owner of the fence sued for £1,000 to restore the damage and adopted a hostile attitude to group members and volunteers, which was experience as 18 months of harassment in perusal of reports and raising red herring questions. BFT membership proved its worth when a Sherriff's Court Summons was issued. BFT took on the court representation using the group's documentation. The neighbour dropped the case but it had created considerable stress for the group members.

Subsequently a healthy immature oak was blown down in a record-breaking May gale, narrowly avoiding damage. It was clear that the wood had been seriously compromised by the breaking of the shelter belt. The group feared for the safety of the wood with a predicted increase in the regularity and strength of such storms through climate change.

Meanwhile SBC had issued development briefs on the open field. Briefings described in (2) were ignored and the group were excluded as consultees despite their explicit requests. Woodland management plans were handed down in one application, including one that appeared to have new trees planted at ~ 2m intervals in a healthy mature woodland. Planners at SBC decided on the impact of the wood in a rush (as their input was late), with reference only to the applicant's survey of Jubilee wood (made without our knowledge) with no reference to our own surveys or correspondence history. Misleading briefings made by council employees caused considerable upset to the group, and no apology has been received.

Following refusal of the application for housing next to the wood there was a planning enquiry. The Convener and some group members took part in this. The Reporter's conclusion vindicated the

group's position and blocked developments that would threaten the wood. The field is now zoned as open space – it could be a good amenity!

Whilst we enjoyed good membership due to our regular local newsletters we did not have enough active support, and the work of the committee was not being shared. Given the stressful events taking place, the lack of renewal of volunteers on the committee was discouraging. Finance was not an immediate issue, but the available SFGS/SRDP for mature woods was inadequate for managing a safety policy in and around a town. The group was aware of this as a strategic issue but at the time of closure existing funds allowed time to manage this issue. On closure, funds were transferred indirectly via the Community Council to another community woodland.

#### Summary of issues.

##### *Development & Local Council*

- Lack of consultation by council ignoring their own policies.
- Council listening only to developers and ignoring case histories.
- Planning decisions (felling) beyond wood threaten sustainability of wood.
- Planning enquiry success by woodland group.

##### *Insurance and Litigation*

- Diseased tree (regularly inspected) causes relatively minor damage.
- Insurance deems damage not due to negligence.
- Litigation citing statements that are known to be untrue.
- Harassment and pursuit to the point of first appearance at Sherriff's court when allegations rapidly withdrawn.

##### *Sustainability and Climate Change*

- Recruitment ultimately a problem despite routine use of wood by 20,000+ p.a. (assessed by counters) and regular local newsletters – even though the group had achieved substantial renewals of personnel in the past.
- Record summer gales demonstrating the potential risks from climate change.

##### *Finance and Closure*

- Decision to close despite no immediate financial concern

#### **Evidence of outcomes**

The wood continues to be well-used (20,000 visitors p.a.) mainly as a pleasant through route between housing estates and/or access route out of the town. Frequently used as a safe amenity for dog walking. The results of improvements can be clearly seen, as can the severe pollarding of trees on the periphery. The Convener documented the experiences of the group in detailed records for the AGM, providing a valuable insight into the process.

#### **What factors contributed to those outcomes?**

##### Factors contributing to success

1. Affiliation with BFT (and BFT's support for community woodlands)
2. Scottish Forestry Grant Scheme
3. Committed committee willing to carry responsibilities.

##### Factors contributing to closure

1. Regulatory requirements unsuited to small-scale community efforts:
2. Planning processes; the planning department did not communicate effectively with the tree team in Scottish Borders Council, and officers were insensitive to local concerns.

3. Adversarial approach to boundary issues
4. Doublespeak by planners on need for wooded areas in urban landscape and not doing what is needed for planning to enable their maintenance.
5. Resulting high stress levels particularly for the Convener
6. Change in support from umbrella organisations.
7. Finances – related to regulatory requirements and lack of support for mature woodlands in and around towns. In the years after initial improvement works, funding support became scarce and less suited to the needs of the group; like many other groups they found it challenging to raise funds for maintenance and routine management rather than for new work. Committee members felt disappointed that the FCS Woods in and Around Towns scheme focused more on initiation than on maintenance of projects, for example. Overall, the running costs (such as annual tree safety inspections) exceeded income towards the end of the group's time, and this was a factor in deciding to fold up the group.

#### **What might have been done differently with the benefit of hindsight?**

1. Some of the circumstances have changed: the Land Reform Act of 2003 permits access and this was one of the initial motivating factors.
2. [Strategic] A greater awareness of Scottish Borders Council policy on community woodlands, and to have used more explicitly their stated (but poorly observed) policies on them. One possible answer would be to have a community woodlands officer in the planning department, responsible for being aware of their status and positions, especially when any planning process may influence them and who can communicate with the groups.
3. [Strategic] Seeking out a trained lawyer interested in woodlands willing to give time pro bono and/or become involved. In the course of the litigation a solicitor did spend ½ hour explaining the process to one of us – it became clear that even our post-event precautionary actions were perhaps not legally optimal! It was also advised that legal guidance would have clarified agreements which had mostly been informally drawn. In this case there was no problem from this, but in other cases with other actors this may have become the subject of bitter dispute.
4. [Strategic] Greater pressure on the design of FC woodland challenges (e.g. Woods In and Around Towns) to provide some assistance for mature woods with mature biodiversity.
5. [Strategic] New estates should have access roads and verges next to woods, although this is not hindsight, it was always argued by the group.
6. [Strategic] Legal cover in insurance premiums is money well spent.

#### **How replicable is this experience; what is its potential as an element of a better approach to forestry?**

The issues around small scale urban woods (particularly mature woods), competing land use, burden (responsibility and risk averse interpretations) of insurance, adversarial processes and actors around planning and tree safety from councils to courts, all appear to be widely applicable to urban community woodlands.

#### **Key messages**

Failure of a community woodland can come from risk exhaustion, even when risks have been pro-actively managed – it is not simply finance.