

Dr Craig Shuttleworth
27 Tan Y Bwlch
Mynydd Llandygai
Bangor
Gwynedd
LL57 4DX

Rt. Hon. Rhodri Morgan AM
First Minister for Wales
Welsh Assembly Government
5th Floor
Ty Hywel
Cardiff Bay
CF99 1NA

11th July 2009
[by email]

Dear Sir

Complaint relating to infringement of rights enshrined in the Aarhus Convention

Further to my letter 11th June 2009, *Newborough Forest Design Plan - Community Concerns*, I received a written response sent by DM Westlake FCW/FCW Liaison Officer, and dated 6th July 2009 (Ref AT/03066/09). I would like to respond to this letter.

In relation to the partnership developing the Newborough Forest FDP, Forestry Commission Wales website clearly states that,

“Through local people and organisations such as Anglesey County Council, the Countryside Council for Wales and the Forestry Commission, this partnership aims to improve the design, management and use of the Newborough Forest and Warren Area, to enhance its environmental, social and economic value in the long term, by working together as one unit.”

The precise role of NGOs and community stakeholders in the Newborough Forest Liaison Partnership was clarified By CCW/FCW on 8th Nov 2004 with a written response,

“We would like involvement to mean more than just consultation – so we want to work with interested people in actually working up options and evaluating them, rather than just consulting them on a proposal.”

The Newborough Forest & Warren Conclusions & Recommendations Document (December 2006) then clearly states a commitment that the community would *“be consulted as the detail of proposals and the Forest Design Plan are developed.”*

However, the response (6th July 2009) sent to me on behalf of WAG states that,

“FCW... will continue to seek the views of the NFLP when the plan is prepared and presented to the relevant Welsh Assembly Government department at some point in September.” This is

clearly not what was agreed with community bodies, and contradicts what is within the Dec 06 document.

In my letter of 11th June 2009, serious concerns were presented relating to the lack of transparency in the decision making process, documents and crucially data being withheld from the public during, and since, the three year consultation 2004-2006, and repeated misrepresentation of the actual current EU position on infraction proceedings. Neither the response to my letter, nor the recent *Abermenai SAC WAG Position Statement* addresses any of these issues. **I would like to ask again that the matters I raised in the 11th June letter are considered, and a response provided on each point.**

There has been a similar failure to respond to specific evidence and information that has been communicated to CCW & WAG officials (by email and letters from the public) relating to the assessment, condition, and factors affecting the Abermenai SAC features. No formal response from CCW has ever been forwarded. And there are now serious concerns about agency statements & opinion presented in relation to 'favourable status' of Annex I habitats particularly with reference to the data contained in (SAC: UK0020021). Again, community groups on Anglesey **expect full responses to the important questions posed.**

In that regard I would ask you to remind Civil Servants of the Code of discharge of the obligations of public authorities under the Environmental Info Regulations 2004 (SI 2004, No. 3391). This document plainly sets out that,

'All communications to a public authority, including those not in writing...including electronic... potentially amount to a request for information within the meaning of EIR'

The Countryside Council for Wales is the competent national authority in Wales with respect to (92/43/EEC). Article 6(3) requires that the component national authorities can "...agree to a plan or project only *after having ascertained that it will not adversely affect the integrity of the site concerned...*" CCW have a duty to carry out this and other legal obligations, and crucially to do so in respect of the Århus Convention, a legal framework within which EU Directives must be delivered.

The Århus Convention is not only an environmental agreement; it is also a Convention about Government accountability, transparency and responsiveness. In delivering their legal responsibilities under Articles 6(1) and 6(3) of (92/43/EEC), **CCW have systematically denied the public their rights enshrined within the Århus Convention: including Article 6 & Article 7, and also within 2003/4/EEC Directive.** The failure to disclose the scientific evidence *underpinning* the 11/1/208 *CCW TSG Report* at an early stage is a clear example of this.

Of very serious and grave concern relates to WAG apparently seemingly being unable to facilitate Access to Justice, the third pillar of the Århus Convention. On 4th May, I asked the Welsh Assembly by letter:

'The Århus Convention provides EU Citizens with a number of rights, what compliance mechanism is place in Wales? And have WAG put in place the means by which EU Citizens can have access to legal justice when their rights under the Convention are breached or denied?'

The letter was acknowledged in May, with a statement that WAG was consulting legal departments. However since then no response has been received. Similarly on 29th May 2009, I

wrote to DEFRA CCU regarding the Århus Convention, an enquiry which they passed to WAG and to which again I have had no response. Access to Justice is a right under Århus.

I would like this letter addressed, and treated in accordance as, **a formal complaint** about the conduct of the Countryside Council for Wales: **I believe that CCW have systematically denied the public their rights enshrined within the Århus Convention: including Article 6 & Article 7, and also within 2003/4/EEC Directive.**

I would also ask that, in the light of my complaint, WAG consider carefully how their agencies continue with the development of plans for Newborough forest, in particular with respect to the Århus Convention. And that WAG ensures that Citizens legal rights are fully respected in order to facilitate full public confidence in environmental decision making. The consultation process to date is now flawed.

I should add that I also believe that there has been an infringement of EU Community Directives with respect Abermenai SAC and the actions of Countryside Council for Wales. A formal complaint has been submitted to the relevant EU body.

Yours sincerely

Dr Craig Shuttleworth

Convention on access to information, public participation in decision-making and access to justice in Environmental Matters

Aarhus, Denmark, 25 June 1998

WIDE ACCLAIM

“The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations”

Kofi Annan, Secretary General, United Nations

“Today is a landmark for the environment. The Convention gives us a golden opportunity to pursue environmental endeavors from the right approach”.

Klaus Topfer, Executive Director, UN Environment Programme.

“It is clear that the Convention is an important instrument which does as much for human rights as it does for creating a framework for achieving sustainable development. It deserves our strong support..... The real challenge though is to avoid a gap between the words of the Convention and the day-to-day practice on the ground”

Michael Meacher, Minister of State for the Environment, United Kingdom.

THE THREE PILLARS:

Pillar 1 Access to environmental information.

Our Freedom of Information Act does not implement the first pillar of the Aarhus Convention and new Regulations on access to information will be in place in the UK in summer 2002.

This will be accompanied by new guidance and a publicity campaign to ensure citizens are aware of their rights under Aarhus.

Pillar 2 Public Participation

This pillar has 3 parts and is dependant on the other two access to information (Pillar 1) and access to justice (Pillar 3)

Article 6. Participation by the public that may be affected or is otherwise interested in decision making on a **specific activity**. Specific activities are listed in Annex 1 of the convention and in essence include all the things that would require an Environmental Assessment.

- Article 7 Participation by the public in the development of **plans, programmes and policies** relating to the environment
- Article 8 Participation in the preparation of **laws, rules and legally binding norms.**

Pillar 3 Access to Justice

This pillar enforces the provision of the Convention into domestic environmental law so that it conveys the rights onto members of the public. This pillar will ensure that participation happens in reality not on paper.

NOTES ON PILLAR 2

Article 6 Specific activities

1. Provisions shall apply to
 - Annex 1 projects
 - Proposed activities not listed in Annex 1 which may have a significant effect on the environment
2. The public must be informed early in the environmental decision-making procedure – in an adequate, timely and effective manner on:
 - The proposed activity
 - The nature of possible decisions,
 - The public authority responsible
 - The envisaged procedure.
3. Participation procedures must include reasonable time frames for the public to be informed, to prepare and participate effectively.
4. Public participation must take place early when all options are open and effective participation can take place.
5. Applicants should identify stakeholders, enter discussions and provide information about the application before applying for consent
6. Stakeholders must have access to relevant information including:
 - A description of the project
 - A description of the effects on the environment
 - A description of the measures necessary to avoid the effects
 - A non technical summary
 - An outline of the main alternatives studied by the applicants
 - Public shall be informed this information is available

7. Procedures for public participation must allow the public to submit comments, information, analyses or opinions
8. The decision must take due account of the outcome of public participation
9. When the decision is taken the public should be promptly informed and the text of the decision made accessible
10. When a public authority reconsiders or up dates its operating conditions the principles 2-9 apply where appropriate
11. The provisions shall apply to decisions on GMO's

Article 7 Plans, Programmes and Policies

Appropriate practical provisions must be made within a transparent and fair framework for the public to participate during the preparation of plans and programmes and policies relating to the environment. Provisions under Article 6, paras 3, 4 and 8 apply.

Article 8 Executive regulation and legally binding normative instruments

Effective public participation must be promoted at an early stage and whilst options are still open. Sufficient time frames should be fixed; draft rules published; and the public given the opportunity to comment directly or through representative bodies. The result shall be taken into account as far as possible.

The Aarhus Convention

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of Principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of 'environmental democracy' so far undertaken under the auspices of the United Nations."

—Kofi A. Annan, Secretary-General of the United Nations

The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters — known as the Aarhus Convention, named after the Danish city, came into force October 31, 2001.

It seeks to strengthen the role of members of the public and environmental organizations in protecting and improving the environment for the benefit of future generations.

While the Convention is an instrument to protect the environment, it may also be seen as an instrument promoting democracy. Specifically, it aims to:

- Allow members of the public greater access to environmental information held by public authorities, thereby increasing the transparency and accountability of government;
- Provide an opportunity for people to express their opinions and concerns on environmental matters, and ensure that decision makers take due account of these;
- Provide the public with access to review procedures, when their rights to information and participation have been breached, and, in some cases, to challenge more general violations of environmental law.