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10th Anniversary David Hall Memorial Lecture
Tuesday 9th June 2009

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Changes To Environmental Legislation Reflect ELF's Concerns

By Debbie Tripley

It is a measure of how serious politicians believe the consequences of climate change will be for future civil society that all the main political parties came together to drive through one of the most significant pieces of legislation of recent times - the Climate Change Act 2008.

A cross-party political consensus around the need to take urgent steps to combat climate change was again demonstrated by politicians at the Green Alliance's recent event to launch its 2012 strategy 'Opportunity: the future of environmental politics'. All

panel members agreed that moves towards a low carbon economy over the next 5 years are essential. However, consensus rapidly broke down when it came to how this might be achieved, or the right fiscal measures to bring about such a society. There is no doubt that finding a solution that is both attractive to the electorate and delivers the type of carbon savings set out in the Climate Change Act is a great challenge.

The Climate Change Act 2008 (CCA) received royal assent on 26th November and imposes a duty on

the Secretary of State to ensure that carbon dioxide emissions are at least 80% below the 1990 baseline level by 2050. As mentioned during the Green Alliance debate the CCA represents a significant intervention within a free market economy. Politicians envisage interventions of this type being increasingly employed as a way to deal with future environmental concerns.

One such intervention to be imposed on business from April 2010 is the Carbon Reduction Commitment (CRC). As set out in Allen & Overy's useful 'Guide for Significant Users

The 10th Anniversary Professor David Hall Memorial Lecture

The Climate Change Challenge: Will Civil Society Cope?

Tuesday 9th June 2009, at the Kohn Centre, Royal Society, 6-9 Carlton House Terrace, London SW1Y 5AG at 6 pm. Chaired by Lord Justice Sullivan, and featuring a panel of the following speakers:

Professor Robert Watson is Chief Scientific Advisor to the UK Department of Environment, Food and Rural Affairs. His previous positions have included research scientist at the California Institute of Technology, US Federal Government program manager at NASA, advisor to the US Office of Science and Technology Policy, Chief Scientist at the World Bank, Chair of Environmental Sciences at the University of East Anglia and Director for Strategic Direction for the Tyndall centre. He has chaired and directed international assessments of stratospheric ozone depletion, biodiversity/ecosystems, climate change and agricultural science and technology for development.

Dr Mary Archer has been Chairman of Cambridge University Hospitals NHS Foundation Trust since 2002. She is President of both The National Energy Foundation and The UK Solar Energy Society. Mary has had a long-standing interest in renewable energy, and was previously a member of the Department of Trade & Industry Energy Advisory Panel,

(1993 to 1998) and Visiting Professor at Imperial College Centre for Energy Policy and Technology (2000 to 2003). She taught chemistry at the University of Cambridge for ten years (1976-1986) before developing a wider portfolio of interests in business and public life.

Patrick Holden is Director of the Soil Association. He studied biodynamic agriculture at Emerson College in 1972 and started a community farm in West Wales in 1973. The holding is now the longest established organic dairy farm in Wales. He has worked for the Soil Association since 1988 and as Director since 1995. During that period, income has risen from £200,000 to £10 million and sales of organic food from £50 million to £2 billion. He was awarded the CBE for services to organic farming in January 2005.

Price: £15, £10 members, £6 students/unwaged

To book your place phone ELF on **020 7404 1030** or email ELF at **info@elflaw.org**

of Electricity' the CRC will affect any organisation that consumes a significant amount of electricity - some 6,000 MWh hours or more of electricity through half-hourly electricity meters. According to the Guide, from April 2010 all significant users will have to register to buy carbon allowances to cover their energy use, which will then be taxed at a fixed price of £12 per tonne of CO₂. From April 2013 a scheme requiring the bidding for allowances and demonstration of year-on-year energy reductions will kick into place with each company's performance published on a Performance League Table (PLT).

Some politicians have expressed an optimistic vision that current levels of consumption need not necessarily change if sufficient finance is found for the inevitable technological fixes that will be needed to achieve a low carbon economy. Certainly, the government has finally woken up to the need to fund greater research into the development of carbon capture and storage (CCS) if it is to have the slightest chance of convincing the public that it has a credible energy policy. This edition of ELFline contains a particularly interesting article on government policy and CCS by Professor Stuart Haszeldine, who is leading the UK research in this area.

Arguably another fiscal intervention into the free market economy is brought about by the new measures contained within the Environmental Damage (Prevention and Remediation) Regulations 2009 (the Regulations). The Regulations came into force on 1st March and implement the EU

Environmental Liability Directive (ELD). As yet, the full implications of the Regulations appear little understood by businesses and lawyers alike. Whilst the implications of the polluter pays measures introduced by the ELD may not be as strict as industry first thought, there is nevertheless great concern surrounding exposure to potential financial liabilities.

For this reason, ELF is holding a series of training sessions on the new Regulations, the first of which took place on the 4 March and was very well attended. A further two training events are to take place in Manchester on 24th June and Cardiff on 30th June (further details can be found on our website).

Finally, this quarter's journal tells of the police restrictions imposed on the personal liberties of peaceful protesters campaigning against the government's energy policies. The Environmental Law Foundation is particularly concerned about any use by the police of Anti Terrorism laws against peaceful protesters - a use that was roundly denied by government when these laws first came into force.

ELF's work continues to expand with the launch of the Sustainable Communities Project and a more focused approach developing towards in house litigation. We are now working on the strategy for this future funded work and would be interested in any ideas members may wish to contribute to this process.

Debbie Tripley is ELF's CEO

"Whilst the implications of the polluter pays measures introduced by the Environmental Liability Directive may not be as strict as industry first thought, there is nevertheless great concern surrounding exposure to potential financial liabilities."

Events diary

JUNE TO SEPTEMBER 2009

9th June London

**Professor David Hall Lecture
"Climate Change Challenge - Will
Civic Society Cope"**

Contact: ELF Office
020 7404 1030

24th June Manchester

**Environmental Liability Directive
Training Event**

Contact: ELF Office
020 7404 1030

30th June Cardiff University

**Environmental Liability Directive
Training Event**

Contact: ELF Office
020 7404 1030

July 3rd - 5th Durham University

**UK Environmental Law
Association annual conference
Legacies and Challenges:
Underground and Overground.**

To book visit www.ukela.org

September 25th - 27th Somerset

**Wild Law Camp, Magdalen
Project, Somerset**

To book visit www.ukela.org.

Dates to be confirmed

June 2009, London

**Second Sustainable Communities
Training Event for Volunteers at
the ELF offices**

September 2009

**all day conference on
contaminated land**

For more information about ELF events, please see www.elflaw.org, or telephone 020 7404 1030

ask the expert

What are the implications of the bail conditions placed on the 114 alleged environmental activists recently arrested in Nottingham?

Timothy Greene of Birds Solicitors replies

The 120 people arrested last April in Nottingham found themselves bailed to return to the police station in July, when they will learn if they are going to face criminal charges. In the meantime they were made subject to bail conditions which restrict who they can talk to, where they can go and prevent them attending on any lawful protest. Not one of them has yet been charged with any offence, let alone convicted.

The imposition of bail conditions on so many people at one time, who have not been charged with any offence, may

be unprecedented but it is the logical culmination of a process that began 25 years ago during the miners strike. When the Bail Act was passed in 1976 the power was given to courts to impose bail conditions. The laudable idea was that courts could release on bail with conditions people who would otherwise be remanded in custody. In reality, that is not what happened. Just as many people were remanded in custody, but the ones who had bail anyway were given the conditions.

During the miners strike bail conditions were used for the first time as a form of policing. Courts collaborated with the police to rubber stamp the imposition of identical conditions on large numbers of defendants regardless of their personal circumstances. Therefore they would effectively be removed from the picket lines simply because they had been arrested and charged.

The idea of letting the police impose bail conditions on people who had not even been

charged was initially introduced many years after the miners strike to allow conditions to be imposed while the Crown Prosecution Service was making up its mind whether to charge or not. From there it was an apparently small step to give the police the power to impose bail conditions whenever they bailed someone to come back to a police station even if, as in the Nottingham case, that was to be months later. That power has only been available since April 2007.

It is quite possible that few if any of the 120 will be charged with any criminal offence when they return but that will not mean the arrests were a failure for the police. In effect the police used their power to impose bail conditions to give an ASBO to 120 people for several months without the bother of having to go anywhere near a court or produce anything resembling evidence.

Timothy Greene is a consultant with Birds Solicitors

ELF's Sustainable Communities Project Growing Throughout the UK

By Emma Montlake

Since the launch of our Sustainable Communities (SC) project in November 2008, ELF has been busy recruiting volunteers who will be the life blood of the project. The intention is that ELF will create a network of regional volunteers who will help empower local communities to participate in delivering proposals under the Sustainable Communities Act 2007 and provide general guidance on community governance. We have an almost complete network in place to date, but we still need more volunteers, especially in the Midlands and the North. ELF's SC project will deliver regional events focusing particularly upon under-represented groups and hope that its membership of advisers and technical consultants will help us to deliver regional workshops on community governance issues. In particular, we hope to generate ideas that can be put forward as SC proposals. Such proposals will deal with the social inequalities suffered by the poorest in local communities as a result of environmental decision making and the quality of their local environment. In addition, ELF sees its role as monitoring local authorities

and advising on good practice in the adoption of the SCA process and the setting up of citizen's panels.

ELF will be holding a series of training events for our volunteers. The first of these was held on 7th May 2009. These training days will deal with the SC project's aims and targets, how these will be delivered and what it means to be an ELF volunteer.

Whilst ELF has been busy internally on the SC project, last month we were asked by the Civic Trust to participate in their "Paving the Way" events, aimed at their Civic Society membership. ELF was asked to speak about its work, its SC Project and to run a workshop at each of the events on the Sustainable Communities Act. It afforded ELF an opportunity to speak publicly about the SC project following its launch last year.

Emma Montlake is ELF's Advice and Referral Co-ordinator

ELF And Cambrian Mountains Society Protect Bridleways from Motorised Vehicles

By Ann West

The Cambrian Mountains are a wild and beautiful uplands area, covering parts of Powys, Ceredigion and Carmarthenshire. It is one of Britain's outstanding landscape areas, precious for its natural assets and above all, tranquility. The Cambrian Mountains Society was formed in 2005 to promote measures which will sustain or enhance the landscape. In the 1970s a National Park was proposed for this part of mid-Wales. Although it was rejected, the designation of an Area of Outstanding Natural Beauty for the region has been the aim of the Society.

"We contacted ELF, who advised us that a Strategic Environmental Assessment (SEA) should be carried out by the Council."

Last year a report was commissioned and administered by Ceredigion Council to extend the network of routes for motor vehicles. There are a number of off-road routes which have been used by motorised vehicles over many years. This has caused large areas of ground erosion. Traffic Regulation Orders have had to be placed on several of them. Representatives from some of the key interested organisations formed a stakeholder working group. Public meetings were held but the question of tranquility was not considered to be part of the brief.

Bridleways and footpaths were included in the proposed network expansion, in an attempt to join up small stretches of existing lawful routes. Over 200 objections were received by the Local Authority from organisations and individuals concerned about the destruction of archaeological sites, ancient monuments and wildlife habitats.

In March 2008 we wrote to the consultants who were carrying out the study for the Council, asking for the EC Habitats Directive legislation to be included in their assessment. We received no response. We contacted The Environmental Law Foundation, who advised us that a Strategic Environmental Assessment (SEA) should be carried out by the Council. ELF's Tom Brenan wrote to Ceredigion County Council who have now accepted that this must be done with wide public consultation, and further meetings are being arranged. As yet we have not heard how the SEA is to be achieved. At present we are accepting that Motorised Recreational Vehicles (MRVs) have existing rights which could continue generally but that no extensions to the road network should be considered.

Ann West is the Chairman of the Cambrian Mountains Society



Credit: Cambrian Mountain Society

Saving Coatham Common

ELF Referral Leads to New Case Law on Bias and Village Greens

By Andrew Lockley

Just before Christmas 2004 I took a call from one of ELF's volunteer advisors. The Friends of Coatham Common in Redcar wanted advice about how to protect a piece of open space which lies behind a wide sweep of beach. Redcar and Cleveland Council owns the green space which has been used by local people for many decades for horse-riding, dog walking, ball games, sledging and other pursuits. For a period in the 20th century a part of the Common became the 1st and 18th holes of the Cleveland Golf Club and its clubhouse was also located there.

The need for legal advice stemmed from the fact that Council had agreed with Persimmon Homes (Teeside) Limited that a massive housing development would be built on the 35 acres of the Common, with the sale price intended to fund regeneration of Redcar's leisure attractions.

The Friends – a well supported group of local residents – had already applied to register the Common as a town or village green (TVG). The Council as registration authority had appointed an Inspector to conduct an enquiry as to whether the statutory conditions for a TVG (at least 20 years open and peaceful continuous use of the land as of right by those in the locality for lawful sports and pastimes) were met.

The Inspector (Vivian Chapman QC) found that the conditions for registration were not quite satisfied, for two reasons. The first was that certain notices had been erected during the 20 year period, which meant that use of the land was not 'as of right'. The Council duly refused to register the land and Persimmon proceeded with its planning application. At a special meeting held within the purdah period shortly before the May 2007 local elections, the ruling Lib-Dem coalition granted planning permission. The Council then signed a development agreement with Persimmon two days before the election, in which the Coalition lost control to Labour. The Coatham development was one of the main issues in the election campaign. Strong and respectable arguments were put forward on both sides. As is often the case, proposals for regeneration themselves generate disagreement. The Friends had promoted a Labour proposal for a leisure-led

"Although the Friends did not like this decision, it provided a useful adjustment to case law about bias. ...the position, so far as it relates to local government planning decision-making, now seems to be clear."

redevelopment which preserves some green space, while the recent permission had been for a housing-led redevelopment which was seen as too intensive for the space, and as carrying too high a flood risk.

In the meantime, Redcar beach in front of the Common had been used as the location for the Dunkirk evacuation scenes in the film *Atonement*, while local residents had suggested that the Common be dedicated to the memory of their popular former MP Mo Mowlam, and had gained the support for this project of Alan Titchmarsh. The temptation to link the stars of *Atonement*, (Keira Knightley and James McAvoy) Mo Mowlam and Alan Titchmarsh proved irresistible for some breathless PR folk.



Ethany Alton and council fence at rear of her house adjoining Coatham Common, 2007

The Council's taking of a politically controversial planning decision during the purdah period was challenged by the Friends in a judicial review. We argued that previously published statements by members of the Coalition vitiated the decision because of the appearance of bias and/or predetermination, particularly in the context of the pre-election period. Jackson J (as he then was) in the High Court agreed with this [2007 EWHC 3166 Admin] but his decision was overturned in a Court of Appeal presided over by Pill LJ [2008 EWCA Civ 746]. Jackson J's decision had caused consternation in local government circles, on the basis that local authorities are entitled to promote politically controversial major development projects, which should not be put at risk by an appearance of bias or predetermination if members of the planning committee have previously commented on them. Local democratic accountability would be lost. The Court of Appeal agreed, though not in such alarmist language. Councillors are not in a "quasi-judicial" capacity when taking planning decisions and, unlike Judges, are not expected to cast aside personal or political views when deciding applications.

Although the Friends did not like this decision, it provided a useful



Iraq vet Jimmy Willis' protest camp on Coatham Common, 2007

adjustment to case law about bias. There had been conflicting lines of authority following the leading case of *Porter v Magill* in the House of Lords in 2001 but the position, so far as it relates to local government planning decision-making, now seems to be clear.

There was a subsidiary issue at stake. Just off the beach at Redcar is the Teemouth and Cleveland Coast SPA (special protection area) which is a habitat of European importance for winter birds and birds of passage. We challenged what we said was the Council's failure to make an "appropriate assessment" of possible damage to the SPA as a result of the development, but neither the High Court nor the Court of Appeal found in our favour.

In the meantime however, the dogged Friends of Coatham Common had seized upon the passing of the Commons Act 2006 to make a fresh application for registration of the Common as a TVG. The previous Inspector was again asked to advise the Council as registration authority, although without holding a public enquiry, and again the Council rejected the application. A second judicial review ensued. The 2006 Act had removed one of the grounds on which the Inspector had found that the criteria for registration had not been satisfied and in the High Court, *Sullivan J* (as he then was) found that warning notices posted on the Common had not been an obstacle to interrupt the 20 year user requirement [2008 EWHC 1813 Admin]. The Judge would not overturn the Inspector on the second issue on which he had decided that the application for registration must fail, however. This was that while engaged in lawful sports and pastimes, residents had "deferred" to the golfers during the period when the golf course was part of the Common. The Court of Appeal upheld the Judge on this point [2009 EWCA Civ 3] and at the time of writing, the Friends are awaiting a decision on their application for an extension of public funding to enable a petition

to be lodged with the House of Lords. The Funding Code of the Legal Services Commission allows a claimant who satisfies the means test to receive public funding in these circumstances, provided the remainder of the community group make a suitable financial contribution.

Three times in the last decade, the House of Lords have overturned the Court of Appeal on TVG related matters. The issue raised in this case (ie whether an application for registration as a TVG can be defeated by co-terminous use of the land for golfing, or indeed other activities permitted by the landowner) has not previously been considered by the House of Lords other than in one obiter and inconclusive passage of Lord Hoffmann in the *Oxfordshire Trap Grounds* case in 2006.

The Redcar campaigners are seeking long term protection for the Common, from what they see as unsuitable development. They have been the first to litigate on Section 15 of the Commons Act 2006 which provides that a cessation of use of a TVG within the previous 5 years does not, of itself, prevent local residents accruing their 20 years user. This had been fatal to some earlier applications for registration, because landowners had erected notices preventing residents claiming their use was 'as of right'. For any readers wanting to learn more about TVGs, the Open Spaces Society (www.oss.org.uk) publishes a useful booklet.

As is often the case with ELF referrals, the initial phone call is no guide to the potential interest of the case and the issues which may subsequently need to be considered and fought. The Coatham Common litigation has clarified two areas of law and may not yet be at an end. And of course, so far, the land remains green space.

Andrew Lockley is Head of Public Law at Irwin Mitchell

Carbon Capture and Storage: Its Role in a Low-Carbon Future

By Professor Stuart Haszeldine



It is certainly unusual, and possibly unique, to find NGOs and trans-national corporations such as Greenpeace and E.ON both welcoming a UK Government change of direction. But that is what happened on 23rd April when the Department of Energy and Climate Change (DECC) announced a UK ambition to build and fund four industrial-scale demonstrations of Carbon Capture and Storage (CCS), to be operating by 2014. This is significant in several ways. It is a dramatic U-turn on the idea that 'the market' will provide and build the equipment necessary to take the UK into a cleaner future. It makes the UK the first nation in the world to mandate CCS on new-build coal-fuelled power plant. And, it starts to deliver a new type of cleaner power industry, but at the expense of increased CO₂ emissions in a transitional period of unknown duration: this is because the UK mandate currently extends only to 25% of the new power plant. Capturing 90% of those emissions (if CCS can be made to work) still releases 72.5%. The hope, hype, and reasoned expectation is that CCS will advance around the world rapidly enough for this transitional stage of increased emissions to swiftly draw to a close from 2020 onwards.

What issues does this raise for environmental legalities? Starting at the overview perspective, it will be essential that information from the first large demonstration trials worldwide is shared widely within the industries, to enable rapid learning cycles of technical improvement – both in cost and in performance. This will apply to both the surface equipment for capture (large, expensive, and highly visible), and also to the subsurface injection for long term storage (impossible to see, difficult to measure, essential to performance). That is not normal behaviour for many of the power companies involved, particularly when competitive innovation and public grants in the hundreds of millions are involved. The Global CCS Institute in Australia has such sharing as one of its ambitions. Is there a public global interest in enforcing such sharing?

At the local level, CCS will need construction of capture equipment, sometimes similar in size to the existing power

plant, or construction of an entire new plant. This will entail solvent use, and complex chemical plant, regulated by existing statutes. A CCS plant will also need to be linked, via a CO₂ pipeline, to a collection network, leading to offshore storage sites. Local residents may object. But where does the balance lie? It was innovatively argued at Kingsnorth (ELFline Autumn 08) that the greater environment has priority over local concerns. Is it then right that a resident could block a pipeline which could eliminate 2 million tonnes of CO₂ emissions per year? That's a lot of tree planting they'll need to do instead.

Lastly, the subsurface storage is a black box to most citizens. The concept is to adapt hydrocarbon technologies to assess, inject, and monitor the CO₂. There are many natural occurrences where CO₂ has been stored for millions of years. Ultimately a site will perform only as well as the initial site selection, licensing, and compulsory monitoring enforce. For the UK that is unlikely to be a problem, with informed regulators experienced in dealing with hydrocarbon businesses. It would be helpful, though, to ensure that enough information is made public, so that independent confirmation can be made. But for CCS in developing economies, the regulatory structures may be less developed. International standards may emerge from the EU, and these would need confirmation before incentives such as Clean Development Mechanism credits could be awarded for CCS. A final legal hazard remains the London Convention, where CO₂ is not yet a permitted waste substance to be transported across national boundaries. Until, or unless this is altered, many EU states will need to propose CO₂ storage onshore, something which the residents of Barendrecht in Netherlands decided to refuse in March 2009.

CCS offers a hope for transition out of a very dirty fossil fuel economy, buying literal breathing space to develop low-carbon energies, efficiency, and behaviour change. But even this escape route is not as clean, or as easy, a break as initially hoped, along with slow nuclear build, unsolved waste problems, and under-performing wind farms. The next 5 years will tell us if CCS actually prolongs business as usual, or if CCS is as magic as claimed.

Further technical information about CCS can be discovered at www.geos.ed.ac.uk/sccs.

Prof. Stuart Haszeldine is Professor of Geology at the University of Edinburgh, and leads the UK's largest university research group for CO₂ storage

Sustainable Communities Act Creates New Opportunities For Local Democracy

By Joyce Thomson

The Sustainable Communities Act 2007 (SCA) has been described as the key that finally unlocks real local potential. With so much new legislation on local government in recent years, why have some people become so excited about this particular Act?

Over the last 10 years, the intention of local government reform has been to turn local authorities from deliverers of services into managers of local communities. One important initiative was the introduction of the wellbeing power in the Local Government Act 2000 (LGA). This allowed local authorities to take any legal action to improve local wellbeing. Communities were encouraged to become involved in policy development and in improving services through consultation. Unfortunately the wellbeing power has not been widely used. In addition, local people became disillusioned with the consultation process, believing that all the time and effort they invested in consultation had little influence on decisions. Disengagement from the democratic process was described in the influential Power Report in 2006, which recommended that citizens were given the right to initiate legislative processes.

Concerned at the democratic deficit, the government's Local Government and Public Involvement in Health Act 2007 (LGPIH) introduced the 'duty to involve' in April 2009, to engage the community more deeply in decision-making processes. Also, the new 'Councillor Call for Action' gave councillors the power to take decisions in their own wards and to ask a council's scrutiny committee to sort out issues. However, sometimes the ability of local government to respond to local need is blocked by existing laws or policy, or lack of power. It is for these situations that the SCA was introduced.

The Sustainable Communities Act is a process whereby the community can put forward proposals for change to legislation and policy, and as to how public services are organised. Any proposal must contribute to the economic, social or environmental wellbeing of the community. Improving local democracy is specifically included by section 1(3) of the Act. The schedule which is attached to the SCA is a non-exhaustive list of things that can contribute to sustainable development, such as measures to conserve energy or re-use waste materials.

Proposals under the SCA can come from individuals, community groups, within a council or anywhere else. To be successful, a proposal must have community support and requires central government to take some action. The Environmental Law Foundation has established a sustainable communities project and is also considering putting forward its own sustainable proposals under the SCA to Camden Borough Council in due course.

The Act does not specify how community support should be sought, but section 5 places a duty on local authorities to include under-represented groups, both in their discussions and on a panel of representatives of local persons. Section 5 also requires a local authority to seek agreement of the community, by way of its representative panel, on which particular proposals go forward.

ELF has been carrying out research with local authorities on their response to the SCA. It is clear that various approaches are being taken to ensure that proposals have community backing. An interim analysis of our research indicates that 47% of local authorities are using Local Strategic Partnerships to fulfil this requirement, whilst 37% are using citizens' panels. About 21% are setting up new panels and some are using more than one type.

Once proposals are adopted by a local authority, the authority should pass them to the Secretary of State for consideration for adoption. Section 3(1) of the SCA says the government should appoint a 'selector' to help it determine which proposals shall be adopted and the Local Government Association has been appointed to this role. All proposals must be submitted to the Local Government Association by the end of July 2009.

There are several unusual aspects to this Act which set it apart from other similar legislation. First, it requires actual participation by under-represented groups in the decision-making process, rather than just mere consultation with these groups. Second, section 4 of the Act requires the Secretary of State to establish an Action Plan and to explain its reasons for adopting certain proposals and rejecting others.

Also, the SCA is the product of a private members bill emanating from years of campaigning by an alliance of community groups, under the banner of LocalWorks. The considerable overlap with government-led initiatives, such as the 'duty to involve' introduced by the LGPIH, means it fits well with other new legislation. Despite the SCA having the backing of all parties, MPs and individuals of all political persuasions, only 112 local authorities are intending to put forward proposals as invited to by the Secretary of State, under section 2(1) of the Act. The SCA has clearly generated considerable public interest, as ELF found during its recent attendance at events around the country held by the Civic Trusts Society. However, there is also a great deal of cynicism being expressed that local authorities will continue to adopt the proposals that best suit their own means, rather than truly reflect the interests of those under-represented groups who are most meant to benefit from the SCA.

Joyce Thomson is an ELF volunteer

VOLUNTEER PROFILE



Environmental scientist turned law student **Nina Pindham** discusses her experience at ELF

"I have no doubt that Landmark Chambers' offer was a result of the experience I gained at ELF."

My childhood in rural Nova Scotia instilled such a devotion to the environment that a career dedicated to its protection is only natural. I gained a BSc Environmental Science degree from Acadia University, then proceeded to choose a career in law. While I was working as Richard Buxton's paralegal, ELF called with a fascinating

case. I soon began an internship with ELF, and learned that ELF has helped thousands of people address significant environmental concerns. Being in daily contact with ELF's inspiring clients and network of advisers gave me a breadth of knowledge of environmental law and the legal industry that no other internship could offer. I worked on

planning cases that hinged on technical points of law, village greens, and large-scale developments in London as well as in AONBs and World Heritage Sites. I also researched EU and UK legislation regarding GMOs, animal conservation and protection and the Water Framework Directive. It was such a brilliant experience that I extended my planned time at ELF. I would most likely still be there, had I not received an offer to work as a mini-pupil for three months at Landmark Chambers' Centre for Environmental Law. I believe this is by far the best mini-pupillage available for those interested in environmental law. So far, it has involved attending at the Stansted Inquiry, a challenge in the High Court regarding the transposition of the WEEE Directive and a wind farm inquiry in Northumberland. I have no doubt that Landmark Chambers' offer was a result of the experience I gained at ELF. Now there is just the small matter of acquiring a pupillage!

Pathways to Environmental Justice

By Tom Brennan

The third annual Public Interest Environmental Law (PIEL) UK conference took place on 17th March in London and featured a number of talks and workshops by prominent environmental campaigners and lawyers. This year's central theme of "Pathways to Environmental Justice" was explored from a variety of angles ranging from direct action to judicial review.

Many of the barriers to environmental justice were highlighted. Carol Hatton, solicitor for WWF-UK, talked about the work of the Coalition for Access to Justice for the Environment (CAJE), of which ELF is a member. Carol referred to a number of recent cases including that of *Morgan v Hinton Organics* (2009), in which CAJE had intervened as an interested party. This was an action in private nuisance for smells

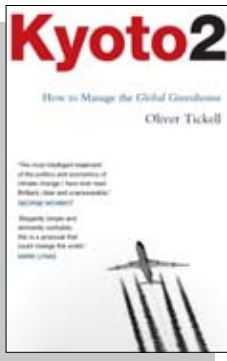
from a recycling plant. An injunction was obtained against the plant but this was discharged, and the claimant faced a large costs award. CAJE argued that this breached the Aarhus Convention requirement for access to justice not to be prohibitively expensive. However, the Court of Appeal declined to comment, preferring to leave the question to the Jackson Review of Civil Costs, which is due to report in December.

A more radical approach to protecting the environment was put forward by barrister and campaigner Polly Higgins. She inspired attendees when she argued that we need an urgent shift in consciousness to recognise the duty of care that humans owe to the planet. Polly has set up a campaign "Trees Have Rights Too" and formally presented her proposal for a Universal Declaration of Planetary Rights to the United Nations

(UN) at the UN Climate Conference in Belfast last November. She likens this to the UN Declaration of Human Rights which provides the initial foundation to introduce rights into national legislation but which could also be relied on without the need for new domestic laws. It would introduce universal rights for ecosystems which could be protected in any court in the world.

This may seem an extreme idea but the recognition of the rights of ecosystems is not unprecedented. In September 2008, the people of Ecuador voted for a new constitution which recognises the legally enforceable rights of nature. Of course, how those rights are enforced will be key but nevertheless these ideas are clearly taking hold around the world.

Tom Brennan is the ELF Plus Project Solicitor



Kyoto2:
How to Manage the Global Greenhouse
by Oliver Tickell

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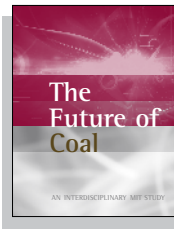
The central tenet of Tickell's book is that the Kyoto Protocol is fundamentally flawed and has already failed in many ways. Since its inception, global carbon emissions have actually accelerated, and projects under the Protocol have given way

to human rights abuses and environmental destruction. Reasons for its failure include a lack of global greenhouse gas (GHG) reduction targets for developing countries, the exemption of shipping and aviation, and the lack of incentives to encourage investments in low-carbon energy infrastructure.

Tickell's principal criticism of the Kyoto Protocol is that it is exclusively a market mechanism. In *Kyoto2*, Tickell proposes that we develop an entirely new mechanism, combining economic and non-economic solutions. Economic solutions include defining a global cap for greenhouse emissions, requiring companies to surrender emission permits, crediting permits when GHGs are destroyed or sequestered into long-term storage, and creating a Climate Change Fund to tackle both the causes and consequences of climate change. Non-economic solutions include direct regulations to constrain GHG emissions, demanding efficiency standards for cars, appliances, lighting, and other energy-intensive goods, and ending coal-burning power plants.

Kyoto2 sheds a convincing light on the many failures of the Kyoto Protocol and makes evident the urgent need to reconsider the market mechanism that has been put in place. The solutions proposed by Tickell may be the way forward in achieving global GHG reduction.

Natalie Smith was an ELF volunteer



The Future of Coal:
An Interdisciplinary MIT Study

This study is one of a series by Massachusetts Institute of Technology (MIT) faculty focused on meeting global energy demand without

increasing carbon-dioxide emissions. The study states 'our conviction that the MIT community is well equipped to carry out interdisciplinary studies of this nature'. Bear in mind, however, that the Carbon Capture and Sequestration (CCS) Technologies Program at MIT has a vested interest in promoting further research.

Coal will remain an important energy source, the study concludes, and so it is a priority to reduce (relative to the energy produced) associated CO₂. CCS is identified as the key enabling technology. The scale of the challenge is daunting. The US produces about 1.5 billion tons of CO₂ per year from coal-burning power plants. If this were to be transported for sequestration, it would be equivalent to one-third of the annual volume of natural gas transported by the U.S. gas pipeline system.

Alongside emission control policies, massive investment in CCS research is recommended. The study cautions that the concept of 'CCS ready' is flawed: plants designed to operate initially without CCS are unlikely to be economically viable. Moreover, even if CCS in general proves viable, it is decades away from deployment at the required scale.

The Future of Coal is available as a free download in full and as a summary report <http://web.mit.edu/coal/>

Kelvin Mason is a Distance Learning Tutor at the Graduate School of the Environment, Centre for Alternative Technology

ELF Interview: David Egan, ELF Solicitor

Who, or what, inspired you to get involved in environmental law?

I was first inspired to become involved in environmental law through my involvement with an environmental water pollution case many years ago. I realised that each water pollution incident can cause significant damage to aquatic life and plants. My interest has deepened over the past 10 years as I have become involved in many more cases. I am also fortunate to have 2 beautiful young children and believe passionately that we should not pass on an environment to future generations which is damaged and compromised through pollution and climate change. Irwin Mitchell is one of the founding members of the Legal Sector Alliance on Climate Change. As a firm we strive to achieve good environmental

performance and it is also a key part of our wider Social Responsibility Policy.

What do you feel the corporate legal sector can do to be more effective at protecting the environment?

The legal sector can continue to communicate with clients on environmental issues and advise on the business advantages of adopting good environmental practices. There is always room for improvement in the efforts the legal sector can make.

Have you seen any notable changes in the type of cases you deal with?

Most companies are now stipulating environmental performance as a key business aim as it makes good business sense and lowers running costs.

If you could draft one law to improve the environment, what would it be?

I would like to see a statute which lays down strict time limits for the enforcement of potential regulatory and environmental offences. This would assist everyone involved in enforcement issues - including companies - to ensure that cases do not continue for several years.

What book would you consider your 'environmental bible', and why?

Environmental Law by Stuart Bell and Donald McGillivray.

"Most Companies are now stipulating environmental performance as a key business aim as it makes good business sense and lowers running costs."

Chairman's Report



I am delighted to report that over this past quarter the Foundation has made considerable improvements and goes from strength to strength. With sufficient funding in place for both our advisory work and community outreach projects we believe we can sustain ourselves through the worst of the current financial downturn.

May I extend my sincere gratitude to all those members who recently made generous donations to ELF. I am also extremely pleased to report that

the Foundation was one of 21 organisations picked by the Department for Communities and Local Government (CLG) to receive significant funding from its Empowerment Fund. This funding will enable us to fulfil one of our prime objectives: to help economically and socially disadvantaged communities influence local decision making to improve their local environments and quality of life. Our Sustainable Communities Project helps build on the work we are already doing with our volunteers and community groups through our longstanding outreach programme, and falls within our stated aim of being a facilitating organisation.

Climate change remains an important issue for the Foundation and is the subject of this year's 10th Anniversary Professor David Hall Memorial Lecture. Full details of the event and how to book tickets are listed on the front and inside cover of this edition of ELFline. It should prove to be both an interesting and prestigious occasion. We hope to see you there.

Pamela Castle OBE is ELF's Chairman

Support us

There are lots of ways to support the vital work that we do. You can join as a Friend of ELF and keep in touch with our news and events. Alternatively you might have some time to spare and you would be interested in volunteering with us.

If you are a legal practitioner or technical consultant, you may wish to join our network of Advisers and use your expertise to assist individuals and community groups with their environmental concerns on a local level.

We are also grateful for any donations which can support our work. ELF is a very small charity and funding continues to be a challenge. While we keep costs and overheads to a bare minimum, the ongoing search for funding absorbs a great

deal of valuable energy and resources.

You can support ELF and become a member by contacting us.

telephone: 020 7404 1030
(Lines open from 9.30am to 5pm, Mondays to Fridays)

email: info@elflaw.org

post:
Environmental Law Foundation
Suite 309, 16 Baldwins Gardens
London EC1N 7RJ

fax: 020 7404 1032

ELF's purposes and aims

The Environmental Law Foundation is the national UK charity founded in 1992 that helps people use the law to protect and improve their local environment and quality of life. Through our network of specialist lawyers and consultants across the UK, we provide free guidance and continuing support to those in need of assistance.

ELF's purpose is to secure access to environmental justice and so social justice for all with the aim of:

- Helping communities and individuals to be aware of their environmental rights and how to use those rights;
- Empowering people to have a voice in decisions that affect their environment and quality of life;
- Enabling communities and individuals to use the law to protect and improve their environment;
- Sharing and developing expertise in law and practice to improve access to information, public participation in decision-making and access to justice in environmental matters.

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