



e-law

Better law for the environment

November/December 2020 | Issue 121



Welcome to the November/December edition of e-law. The focus of this issue is energy efficiency and buildings.

We are very grateful to Elspeth Duemmer-Wrigley for contributing the themed piece for this edition: [Energy efficiency, net-zero emissions and the planning system](#). The piece provides an excellent summary and analysis of the aspects of the government's White

Paper 'Planning for the Future' which relate to our theme.

Following on from last edition's theme of diversity and inclusion in environmental law, Helena Craig, Chair of Black2Nature has written: [Diversity is not something that will fall into your lap](#). This article gives some suggestions and insight on how steps might be taken to make environmental law more ethnically diverse, from Helena and her daughter, Mya-Rose (AKA BirdGirl), President and founder of Black2Nature.

This edition we also have the benefit of a non-themed piece from Dr Bahram Ghiasee, [The Need to Enhance the Environmental Provisions of the Treaty on the Prohibition of Nuclear Weapons \(TPNW\)](#). The piece is timely in light of the imminent entry into force of the TPNW on 22 January 2021 and provides a superb critique of the Treaty, recommending the amendment of the Treaty or the adoption of a protocol or annex, to incorporate specific environmental and ecological protection provisions.

We also have the benefit of a book review from Stephanie Bruce-Smith (and reviewed by Liz Fisher of the University of Oxford): [Dina Lupin Townsend: Human Dignity and the Adjudication of Environmental Rights](#). I'm sure you will find this a very interesting read.

This edition sees a change in our editorial assistants, with Laura Hildt and Violet O'Gorman taking over the reigns from Ben Christman and Cecily Kingston. Welcome Laura and Violet!

I would like to take this opportunity to express my deepest thanks to both Ben and Cecily for all their hard work during their time as editorial assistants. Ben has done a stellar job sourcing and editing the themed articles for the past five years proving to be an invaluable member of the team, while Cecily has been doing a fantastic job managing the e-law inbox and helping put the e-law drafts together for almost two years. Thanks very much both and best wishes for the future from all of us at e-law.

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I hope you all have a lovely Christmas break and a happy new year.
Best wishes,

Sophie Wilkinson

Sophie Wilkinson
E-law Editor

E-law editorial team

Sophie Wilkinson, Editor – Sophie is an environmental law specialist at LexisPSL with 13 years' experience, including 11 years' experience in private practice. She moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP.

Laura Hildt is an Associate Policy Officer for Biodiversity and EU Affairs at the



European Environmental Bureau in Brussels. She has a Law degree from the University of Cambridge and an LLM in Public International Law with a specialisation in environmental law from Utrecht University.

Violet O'Gorman previously worked as an editor at LexisNexis,



and is currently undertaking the Post Graduate Diploma in Law (PGDL).

Words from the Chair



As we approach the winter solstice and the year draws to a close, a time of deep reflection falls upon us. The natural cycle of the seasons is one of my favourite things about living in a country where their distinctions are so pronounced; noticing the changes in birdsong in Spring, the

brightness and colour that bursts into our lives in Summer, the curling and crackling of the leaves in Autumn, and the crisp and cold days of Winter. By the time we have ushered in the New Year and look ahead to the arrival of next Spring we will have been living through the global COVID-19 pandemic for a full year, most of which so many of us have spent in some form of lockdown or another, experiencing the seasons changing from a rather different perspective to what we have been accustomed.

For the first lockdown and through Spring and Summer I was fortunate enough to have had access to open space, fields, and woodlands, and really appreciate a different pace of life, quite distinct from the urban hustle and bustle I have been used to. The ability to really connect with the natural world and more closely experience the seasons changing helped ground me in the present and remind me of the cyclical nature of life. Reflecting on the more stressful and challenging times of the year I recognise just how valuable it was to take the time to step outside and remind myself of the wisdom of Heraclitus, that “the only thing that is constant is change.”

During a year of so much flux and change, of unprecedented amounts of disruption to daily life, I was often seeking out that which I could know and understand to be permanent, to find some comfort in the predictable. I recently attended an event (online) with the author Carlo Rovelli sharing his reflections on the pandemic, and his views on the deeper impacts it has had – and will continue to have – on humanity. During the talk he spoke about the impermanence of life distinguishing between a flower and a stone. The stone relative to the flower does seem more permanent to us, but – he stated rather poetically – “if I am a star, then nothing is permanent, not even a stone.” Being reminded that permanence is only relative to our perspective; and remembering that change is a natural part of life has helped me to embrace the unpredictable and impermanent more openly.

Rovelli’s latest book (which I am yet to read) *There Are Places in the World Where Rules Are Less Important Than Kindness* is a voyage of curiosity through science, history, philosophy, and politics; but with a focus on

our need, desire, and ability to be kind. As I further reflect on the year, and think about the learnings and lessons that I will take forward with me into 2021, I will of course think about permanence in a new light, but also the beautiful lesson about the importance of kindness; and how throughout the challenging and difficult times our capacity to be kind and show kindness has acted like a torch of hope shining the light into the dark corners, brightening up our days.

This year you have all embraced the changes to how you interact with UKELA admirably – attending the first ever online Annual Conference and subsequent events via zoom. I know it doesn’t make up for the networking you are usually able to do when we meet in person, but I am so pleased with how many of you have stayed connected virtually and continued to engage with the interesting and wide-ranging events programme. The UKELA staff team, and all of you who have helped organise and arrange these events are to be highly commended for your creativity and ability to adapt.

As for other cycles drawing to a close, I am entering into the final phase of my tenure as UKELA Chair. It has been eighteen months since I took on the role, and what a different world we live in to the one when I started in the position! As you might recall, succession planning has been an important component of the governance of UKELA and I am delighted to let you know that Ned Westaway, who has been Vice-Chair for over three years now, has been approved by Council as Chair Elect. From January Ned and I will be working on the transition so that come June he will be in a great position to jump into the role of UKELA Chair. Congratulations Ned and I am really looking forward to working with you to ensure the transition is a seamless one.

At the most recent Council meeting at the end of November we signed off the UKELA Five Year Strategy, which you will be receiving via UKELA’s newsletter before the end of the year. I am really pleased with all the hard work the UKELA staff team and Council has put into developing the strategy and finalising it on top of impressive COVID-19 crisis management efforts! Thank you also to all of you whom we consulted with for sharing your feedback and views on early drafts ensuring that the final version reflected the ideas of the wider membership also. You will notice when you read the strategy that we have separated out the ‘strategic’ from the ‘operational’ elements recognising that the former is of much more interest to our membership (and others) as it lays out the overall and high level vision of the charity. I do hope that you enjoy reading it when it is published!

Finally, I am really pleased to say that we are in a much stronger financial position at year end than we anticipated we might be when the pandemic hit. Thanks to your continued generosity and support we are ending the year in a strong budget position. As I mentioned at the AGM in the summer (as budget forecasts were projecting) the likelihood of having to dip in reserves was high. We have indeed had to dip into our reserves to see us through to the end of the year, but not as much as we had initially forecast and thanks to Nick Whittaker our Treasurer and the Executive Committee and staff, we will start 2021 in a healthy position. Thank you in advance for renewing your membership in good time so that we continue to perform well despite the challenging financial circumstances we have faced.

It is my dearest and sincerest hope that you all do manage to spend some time over the holiday season resting, staying warm and cosy with loved ones, and looking forward to brighter times ahead. I look forward to reconnecting with you in the New Year and starting a new cycle afresh and renewed.

With best and kind wishes,

Kirsty Schneeberger

Kirsty Schneeberger MBE
UKELA Chair

UKELA news

Christmas Closure

The UKELA office will be closed from Monday 21 December to Friday 1 January 2021. The staff team would like to wish everyone a safe and peaceful Christmas break. We look forward to working with you all in the new year.

Membership renewals

Thank you for being a member and for your continued support of UKELA in 2020. The trustees have confirmed that subscriptions will be frozen at 2020 prices for next year, in recognition of your support and to say thank you. Please look out for your membership renewal reminder email, which will be sent out at the beginning of December. We would be grateful if you could arrange payment of your subscription as soon as possible, and by the end of February at the latest. If you require a copy of your membership renewal invoice this is available by logging in to your account. If you have any questions regarding your membership please contact UKELA Senior Administrator, [Elly-Mae Gadsby](#).

Members survey

Please look out for a short survey coming your way soon. We want to know your views on the events and other online content that we have offered during this year, and seek your thoughts on what should be on our agenda for next year. We will also be asking you to complete a confidential (and voluntary) data survey, to help us understand and know our membership demographic better. Thank you for your help with both of these – all completed surveys will go into a draw for a free ticket to our annual conference in June next year (subject to terms and conditions).

Looking back

Can't remember what we've provided this year? There has been a lot of content delivered. We hope you enjoyed our roundup of the year showing how much content we – from our webinars, to our 'In Conversation With' series, to the online annual conference. You can access all of this content on our website in the Members' Only area. Once you have logged in, go to Reading Room/Members' Only and you will see all the different choices in the drop-down menu.

UKELA working party news

Working party and Governance and Devolution Group (GDG) updates

UKELA's working parties and GDG have continued to be busy as summer has turned to autumn. Whilst the continuing Covid-19 restrictions have limited the role of conventional seminars and activities, the developing use of online facilities has meant that UKELA has continued to offer an impressive range of events. These have included the Annual Scottish Conference (24 September 2020) organised by the Scottish working party covering updates on environmental governance, climate change and marine conservation, waste law after Brexit (29 September 2020) hosted by the waste working party and an introduction to wildlife law (16-20 November 2020), organised by the nature conservation working party. Moreover, there have been submissions to the Environment Agency's consultation on river basin planning of 23 September 2020 led by the water working party. There have also been detailed responses to the call for evidence by the Government's Independent Review of Administrative Law (IRAL) led by the environmental litigation working party with input from GDG members, and submissions on the planning White Paper led by the planning & sustainable development working party; again with input from GDG members. The next working party conveners' quarterly meeting is on 9 December 2020. Activities for the agenda include preparing for possible EIA reforms, including the option for setting up a temporary EIA working party (perhaps for a limited 12 month period), as well the need to review the implications of the Agriculture Act 2020.

Members will be aware that UKELA's GDG was brought into effect to follow on from the Brexit Task Force and to help develop understanding of environmental governance and devolution matters as they unfold from 1 January 2021. In particular there is a need to ensure that the environmental standards in law and policy that have been overseen for the last 50 years by the European Commission will continue. Members may be aware that the Environment Bill 2019-2021, which provides for environmental governance in England, returned to Commons debate on 3 November 2020 with a number of amendments, although it is understood that the Bill is unlikely to be brought into effect until early summer 2021. Similarly, the Welsh Parliament has put on hold substantive development and progress on governance until after the Parliamentary elections in May 2021; while the Scottish Parliament will refer governance matters to a new body called Environmental Standards Scotland. Northern Ireland is, at present, to rely upon the OEP based in England. The GDG will next meet in January

2021 with some sense of a new chapter in environmental law – which is quite exciting in many ways.

Students news

UKELA student members' Facebook group

Want to link up with fellow UKELA student members to share your views and have discussions during this time of social distancing? If so, please join our [UKELA Student members' Facebook group](#)!

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to [Sophie Tremlin](#) or [Beatrice Petrescu](#), our student advisors. If selected, the Editorial Board will aim to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. The theme of the next issue is the energy transition and the edition will be published in February 2020.

UKELA events

Wales working party seminar – environmental governance in Wales: 14 January 2021

Join us for a topical update.

The Wales working party has held various events in the past few years considering the arrangement in Wales for environmental governance post EU exit. Now that EU exit is imminent, this webinar will provide an important update to members in Wales and other interested parties on the interim arrangements and future plans for environmental governance in Wales.

We have two expert speakers in Professor Robert Lee and Dr Victoria Jenkins; please [book](#) your place now.

Careers advice session – becoming a lawyer: 20 January 2021

Join us for our next careers advice session; this month it focuses on training and working as a barrister or a claimant solicitor in the field of environmental law.

The event will be a Zoom meeting for an informal session. Once our advisers have spoken there will be plenty of opportunity to ask any questions, so please do come prepared.

[Registration](#) is required; spaces are free but limited to 25, so book now! The sessions will be recorded and made available on the website so please don't worry if you are unable to join a particular event.

Greening the built environment: 4 February 2021

Join us for an informative and entertaining seminar. [Bookings](#) opening soon.

The e-law 60 second interview



Elspeth Duemmer-Wrigley

Elspeth is a planning and environmental lawyer with a background in Ecological Economics. Prior to the law she worked at Mott MacDonald as an environmental consultant. After a period in Brussels, she undertook pupillage at 1 Crown Office Row and subsequently cross-qualified to join Eversheds as a planning solicitor, before moving to the planning team at Rollits. Her work covers all aspects of planning, with a particular focus on the overlap between planning and environmental law. She is a convenor of the UKELA planning and sustainable development working party.

What is your current role?

Planning solicitor at Rollits LLP in York.

How did you get into environmental law?

An MSc in Ecological Economics. After that it was either going to be the law or academia, and the law won.

What are the main challenges in your work?

I undertake quite a bit of objector work in planning, which can be difficult as there remains a relatively small role for objectors to influence planning decisions, and very few opportunities to appeal bad decisions. However, whilst objectors often have a bad reputation (as NIMBYs), considered objections can be crucial to shaping good planning decisions.

What environmental issue keeps you awake at night?

Biodiversity loss and habitat degradation. Or to put it in more late-night prose: the fact that we have inherited a world still breathtakingly beautiful in its diversity, but which we risk running roughshod over, before we realise what we've lost. It will be a shame if that happens.

What's the biggest single thing that would make a difference to environmental protection and well-being?

I should say 'better land use planning', but in fact I think it would be if more people were given the opportunity to experience and love the natural world. We don't protect what we don't care about.

What's your UKELA working party of choice and why?

Planning and sustainable development, because land use planning is the unsung hero of environmental protection. Good planning can set in place infrastructure that will positively affect the way we live for generations. Unfortunately, the reverse is also true.

What's the biggest benefit to you of UKELA membership?

The opportunity to engage with and learn from some of the best experts in the field, both within the legal profession and (more importantly) more widely across the environmental professions.

Environmental law headlines

A selection of recent environmental law news and updates prepared by the teams at [Lexis®PSL Environment](#) and [Practical Law Environment](#).

Environment Bill 2019-21: government lays amendments on OEP enforcement and species and protected sites strategies

[Practical Law Environment](#)

On 20 October 2020, the government laid amendments to the Environment Bill 2019-21 in relation to:

- **Enforcement powers of the Office for Environmental Protection (OEP).** The proposed amendments will protect the OEP's ability to consistently focus its attention and resources on the most serious cases, where it can deliver the greatest benefit. They include a power for the Secretary of State to issue guidance (not directions) to the OEP regarding its enforcement policy.
- **Species and protected sites strategies for nature conservation in England.** The proposed amendments will place a new duty on local planning authorities to co-operate with Natural England and other public bodies in establishing and operating species and protected sites strategies.

The Bill has been severely delayed due to disruption to the Parliamentary timetable caused by the COVID-19 pandemic and the need to pass legislation relating to the end of the Brexit transition period. The Bill is now due to have its report stage and third reading on a date to be announced.

For more information, see [Legal update, Environment Bill 2019-21: government lays amendments on OEP enforcement and species and protected sites strategies](#).

The Agriculture Act 2020

[Lexis®PSL Environment](#)

On 11 November 2020, the Agriculture Bill received Royal Assent as the Agriculture Act 2020 (AA 2020). The AA 2020 provides for the creation of the Environmental Land Management (ELM) scheme, a new system for providing payments to farmers following the UK's departure from the EU and the EU's Common Agricultural Policy (CAP).

The ELM is centred on the principle of rewarding farmers for the provision of 'public goods', including better air and water quality, thriving plants and wildlife, better soil health, and protection from environmental hazards such as flooding. It is set to be fully rolled out by 2024.

The ELM will replace direct subsidy payments for farmers derived from the EU CAP, including the Basic Payment Scheme (BPS) in England. The BPS is still operational in England but will be phased out over the agricultural transition period, defined in the AA 2020 as a seven-year period starting in 2021. Further details on plans to support farmers and land managers over the agricultural transition period are expected to be published later in November.

AA 2020 came into force partly on 11 November 2020 and comes into force fully on appointment by the Secretary of State and the Welsh Minister.

For more information, see: [Agriculture Act 2020, LNB News 12/11/2020 61](#) and [News Analysis: The impact of the Agriculture Act 2020](#).

UK government's TCFD taskforce publishes interim report and roadmap on mandatory climate-related disclosures

[Practical Law Environment](#)

On 9 November 2020, the government announced that it intends to make it mandatory for large companies and financial institutions across the UK economy to make climate-related disclosures aligned with the recommendations of the Task force on Climate-related Financial Disclosures (TCFD), by 2025.

The UK TCFD taskforce published an interim report and roadmap setting out an indicative path over the next five years towards mandatory climate-related disclosures. It anticipates that a significant part of the mandatory requirements will be in place by 2023.

The roadmap sets out a strategy for seven categories of organisation: listed commercial companies; UK-registered companies; banks and building societies; insurance companies; asset managers; life insurers and FCA-regulated pension schemes; and occupational pension schemes.

Consultations on requirements for TCFD-aligned disclosures have already been published for some areas. The report and roadmap confirm timings for implementation for these organisations.

In addition, key announcements on mandatory TCFD-aligned disclosures include:

- Consultation on new requirements in the Companies Act 2006 in early 2021, with regulations coming into force in 2022.
- Consultation in the first half of 2021 on potential TCFD-aligned disclosure rules directed at clients and end-investors (rather than shareholders) for UK-authorized asset managers, life insurers and FCA-regulated pension providers.

For more information, see [Legal update, UK government's TCFD taskforce publishes interim report and roadmap on mandatory climate-related disclosures](#).

Government response to CCC progress report

[Lexis®PSL Environment](#)

On 15 October 2020, BEIS published the [government's response](#) to the Climate Change Committee's (CCC) [2020 Progress report to Parliament](#), as required under Section 37(1) of the Climate Change Act 2008.

In the response document, the government outlines the progress that has been made towards meeting UK carbon budgets, its plans for further policy action to meet commitments in the Clean Growth Strategy (including 'building back greener', which sets out the UK's approach to ensuring a green recovery from COVID-19), as well as its response to the recommendations set out in the CCC's report on reducing emissions.

In the report's sector-specific section on buildings, the government details its significant investments towards its net zero buildings by the 2050 target and the actions that have been implemented such as setting up the Green Homes Grant, the public sector decarbonisation scheme, insulating existing homes and developing its Energy Saving Products Policy.

The government also confirmed that it will bring together its plans to tackle climate change in an overarching Net Zero Strategy ahead of COP26. The stated aim of the strategy is to raise ambition and to set out the government's vision for transitioning to a net zero economy by 2050.

For more information, see: [Government issues response to Committee on Climate Change's 2020 progress report](#), [LNB News 16/10/2020 19](#).

Summary of responses to 2018 call for evidence on EPCs

[Lexis®PSL Environment](#)

On 26 July 2018, the Department for Business, Energy and Industrial Strategy (BEIS) launched [a call for evidence on Energy Performance Certificates \(EPCs\) for Buildings](#). Following the publication of the government's [Clean Growth Strategy](#) in 2017, which set a goal of improving energy efficiency by at least 20% by 2030, BEIS sought information from a range of stakeholders on the effectiveness and suitability of the current EPC system, and to obtain feedback on suggestions for improvement.

On 30 September 2020, the [summary of responses](#) was published, alongside an [action plan](#) setting out how BEIS intends to deliver:

- An EPC system that produces accurate, reliable and trusted EPCs.
- An EPC that engages consumers and supports policies to drive action.
- A data infrastructure fit for the future of EPCs.

A target date is set for each action.

The action plan also announces that a consultation on the Energy Performance of Buildings (England and Wales) Regulations 2012 is forthcoming, the responses to which will be used to inform future domestic policy after the end of the Brexit transition period, and to consider what flexibilities and improvements may be available given the UK is no longer bound by EU Directives.

For more information, see: [Department publishes summary of responses for EPC in buildings call for evidence](#), [LNB News 30/09/2020 100](#).

Building renovation: European Commission publishes Renovation Wave Strategy to improve energy performance of buildings

[Practical Law Environment](#)

On 14 October 2020, the European Commission published its Renovation Wave Strategy to improve the energy performance of buildings. The objectives of the Strategy are to at least double the annual energy renovation rate of residential and non-residential buildings by 2030. The Commission calculates that this will result in 35 million building units renovated by 2030.

The Strategy identifies three key areas as priorities for policy and financing, namely tackling energy poverty and the worst performing buildings, renovating public buildings and decarbonising heat. It includes the

following measures that the Commission will develop as part of its forthcoming 2021 revisions of the Energy Efficiency Directive (2012/27/EU) (EED 2012) and the Energy Performance of Buildings Directive (2010/31/EU) (EPBD 2010):

- Updating the energy performance certificates (EPC) framework, including taking into account emerging energy performance metering technologies.
- Considering extending energy audit requirements to larger and more complex non-residential buildings, such as hospitals, schools or offices.
- Introducing phased mandatory minimum energy performance standards for existing buildings.
- Extending building renovation requirements for the public sector to all public administration levels and increasing the annual renovation rate.

The Commission also published a recommendation on energy poverty and a report on implementation of the EED 2012 and certain requirements of the EPBD 2010.

For more formation, see [Legal update, Building renovation: European Commission publishes Renovation Wave Strategy to improve energy performance of buildings](#).

European Commission publishes strategies for methane and sustainable chemicals, and adopts roadmaps for forest and soil strategies

[Practical Law Environment](#)

In October 2020, the European Commission published its strategy to reduce methane emissions and its chemicals strategy for sustainability.

The Methane Strategy sets out measures to cut anthropogenic methane emissions in Europe and internationally and lays out legislative and non-legislative actions, particularly for the energy, agriculture and waste sectors. See [Legal update, European Commission publishes Methane Strategy](#).

The Chemicals Sustainability Strategy aims to make chemicals more sustainable and to increase the protection of human health and the environment against hazardous chemicals. See [Legal update, European Commission publishes Chemicals Sustainability Strategy](#).

Furthermore, in October and November 2020, the European Commission adopted roadmaps for a new:

- **Forest Strategy.** This will build on the EU Biodiversity Strategy for 2030 and set the policy framework for EU forests in the future. See [Legal update, European Commission adopts roadmap on new Forest Strategy](#).

- **Soil Strategy.** This will provide a framework for objectives that include protecting soil fertility, reducing soil erosion, restoring carbon-rich ecosystems, enhancing soil biodiversity, reducing the rate of land take to no net land take by 2050, remediating contaminated sites and achieving land degradation neutrality by 2030. See [Legal update, European Commission adopts roadmap on new EU Soil Strategy](#).

New guidance on contaminated land risk assessment

[Lexis®PSL Environment](#)

On 8 October 2020, the Environment Agency (EA) published the following [guidance documents](#) detailing how to assess and manage the risks posed by land contamination in England:

- 1 [LCRM: Before you start](#): an overview of land contamination risk management (LCRM) and how to use these new LCRM guides.
- 2 [LCRM: Stage 1 risk assessment](#): a guide to carrying out a land contamination risk assessment.
- 3 [LCRM: Stage 2 options appraisal](#): a guide to completing an options appraisal and
- 4 [LCRM: Stage 3 remediation and verification](#): a guide to developing, implementing and verifying the success of a remediation strategy.

These publications replace the 'Land contamination: risk management' and 'Model procedures for land contamination-CLR11' guidance documents, following feedback received by the EA.

The EA expects this guidance to be followed when managing the risks from land contamination, alongside the statutory guidance on the contaminated land regime published by [Defra](#) or the [Welsh government](#), as appropriate.

Those using the guidance outside of England are advised to check with the relevant regulator about its suitability.

For more information, see: [New guidance on land contamination risk management published, LNB News 08/10/2020 55](#).

Final report from NCC

[Lexis®PSL Environment](#)

On 3 November 2020, the Department for Environment, Food and Rural Affairs (Defra) published the [final report](#) from the Natural Capital Committee (NCC), an independent advisory committee set up in 2012 to advise the government on the sustainable use of natural capital, defined as the UK's 'natural assets including forests, rivers, land, minerals and oceans'.

The NCC advice influenced the government's environmental policy and the final report records all the work the NCC conducted over its two terms (2012–2015, 2016–2020).

Commenting on the close of the NCC, its Chairman Professor Dieter Helm praised the achievements of the committee, including transforming the nation's understanding of the importance of natural capital for economic prosperity and human wellbeing and helping to fully entrench natural capital principles into government policy.

Notably, in 2018 the government launched the [25 Year Environment Plan](#) based on the NCC's recommendation for a long-term plan to protect and improve the natural environment.

For more information, see: [Defra publishes final report from Natural Capital Committee, LNB News 03/11/2020 93](#).

Energy efficiency, net-zero emissions and the planning system



Elspeth Duemmer-Wrigley, Rollits LLP, convenor of the UKELA planning and sustainability working party

At a glance

- Energy efficiency is an important element in achieving the government's ambitious target of net-zero greenhouse gas emissions by 2050.
- While energy efficiency measures generally fall into a regime adjacent to the planning system, the new planning White Paper highlights their connection to planning and the role they have to play in reducing greenhouse gas emissions.
- The White Paper also identifies climate change as an important issue to which the planning system needs to be able to respond.
- However, despite being wide-ranging, the White Paper lacks concrete proposals as to how the new system will reduce greenhouse gas emissions.
- In addition, by prioritising speed and efficiency and in signalling the removal of environmental assessment, the proposals risk heralding development that will cause greater environmental damage (including a rise in greenhouse gas emissions) than under the current system.

Background

On 6 August 2020, the UK Government published a White Paper 'Planning for the Future'¹ (the White Paper). The plans are intentionally radical and propose a shake up across the board of the English land-use planning system², from digitalisation through to a 'fast-track for beauty'.

In summarising the proposals, the White Paper states one of the government's intentions is a focus on design and sustainability. This is intended to '*facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.*'³

The commitment to net-zero referred to here is the legally binding target to reduce greenhouse gases, set out in the Climate Change Act 2008⁴.

Although the EU 2030 Climate and Energy Framework includes a target to improve energy efficiency by 27% by 2030⁵, the UK currently has no committed targets with regard to energy efficiency.

Energy efficiency within the White Paper

Energy efficiency is not dealt with directly in the planning system, but is managed under the related Building Regulations regime⁶. This specifies a variety of technical standards which buildings must meet, including those relating to energy.

Energy efficiency does, however, still receive attention within the White Paper in Proposal 18. This begins with the intent that: '*To complement our planning reforms, we will facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.*'

As a step towards net-zero homes: '*From 2025, we expect new homes to produce 75-80 per cent lower CO2 emissions compared to current levels. These homes will be 'zero carbon ready', with the ability to become fully zero carbon homes over time as the electricity grid decarbonises, without the need for further costly retrofitting work.*'⁷

Furthermore, there is the ambition that: '*[...] homes built under our new planning system will not need retrofitting in the future. To work towards ensuring that all new homes are fit for a zero carbon future we will also explore options for the future of energy efficiency standards, beyond 2025.*'⁸

The proposal concludes with a recognition of the importance of ensuring compliance with the new standards: '*We will also want to ensure that high standards for the design, environmental performance and safety of new and refurbished buildings are monitored and enforced [...]*'⁹

Such bold ambitions are laudable. However there is little detail in the White Paper as to how these are to be achieved within the relevant design codes, or at what cost.

It is hoped that more detail will be set out in the imminent Future Homes Standard consultation¹⁰, regarding changes to the Building Regulations.

Climate change beyond energy efficiency

Emissions reductions on the scale required to meet the government's commitment cannot be achieved through efficiency drives alone. However, the wider planning system can also make a significant contribution towards this goal, both by driving change towards more sustainable infrastructure (especially in energy and transport) as well as building environmental resilience and carbon sinks (for example tree planting).

The White Paper recognises this potential:

In line with the ambitions in our 25 Year Environment Plan, we want the reformed [planning] system to play a proactive role in promoting environmental recovery and long-term sustainability. In doing so, it needs to play a strong part in our efforts to mitigate and adapt to climate change and reduce pollution as well as making our towns and cities more liveable through enabling more and better green spaces and tree cover.¹¹

The White Paper goes on to describe several emerging initiatives connected to the current planning system, including the Environment Bill 2019-2021¹² (which will require a mandatory biodiversity net-gain as a planning condition of most new development) and Local Nature Recovery Strategies (intended to identify opportunities to secure enhancement via development schemes and contributions). The White Paper also mentions some specific policy commitments, for example, making all new streets tree-lined.

Turning specifically to the new system proposed, the White Paper then highlights that local authorities will be responsible for identifying categories of land, and sub-areas in the new Local Plans, which can effectively support climate change mitigation and adaptation¹³. The example given is that when selecting land to be included within Growth areas¹⁴ important considerations for local authorities will include the ability to maximise walking, cycling and public transport opportunities¹⁵. However, it is unclear how this will add anything to existing policy requirements, either within the National Planning Policy Framework (June 2019) or current Local Plans.

In short, the White Paper is bold in its statements of ambition and aspiration. It also correctly identifies emerging initiatives with the potential to help reduce greenhouse gas emissions. However, beyond this, it is notable for a deficit of concrete policies to enable the planning system to prioritise climate change.

This, however, is not the only risk within the proposals. There is an additional reason to believe that, if implemented, the White Paper may lead to a planning

system that neither lowers greenhouse gas emissions, nor contributes toward sustainable development. This is because of the apparent intention to significantly reduce (and possibly eliminate) any meaningful environmental assessment.

Removal of environmental assessment

Under the new system proposed in the White Paper 'Local Plans should be subject to a single statutory "sustainable development" test, and unnecessary assessments and requirements that cause delay and challenge in the current system should be abolished [...]'¹⁶

The White Paper does not provide clarity on exactly what is proposed. However, in the absence of any assurances to the contrary, the intention appears to be to exclude the comprehensive assessment of environmental impacts. This will be true of both the new Local Plans and of the individual developments that will come forward within them. Instead the entire regime will be replaced by a single consideration of whether the Local Plan complies with a new legislative definition of 'Sustainable Development'. This is intended to: 'ensure plans strike the right balance between environmental, social and economic objectives.'¹⁷

How this balance will be struck is not expanded upon.

However, the abandonment of any meaningful environmental assessment will risk significantly greater environmental harm (including in terms of potential greenhouse gas emissions), than any benefits gained by tweaking energy efficiency standards or lining new streets with trees. This is because, when undertaken properly, both Strategic Environmental Assessment (which covers plans and projects) and Environmental Impact Assessment (which covers individual developments), are an extremely important part of the planning process. It is these assessments that equip developers and decision-makers with the data and evaluations necessary to understand the full spectrum of impacts which a development (or collection of developments) will have on the environment.

Without meaningful environmental assessment at any stage of the planning process, there will be no mechanism to identify or mitigate adverse environmental impacts. This risks decisions being made which will result in severe damage to environment assets, as well as risking the exacerbation of existing problems including climate change. Furthermore, without environmental assessment, developments are likely not only to be unsustainable, but also in some cases uninhabitable (due to climate exacerbated flooding, for example).

Conclusion

The White Paper is bold in stating the government's ambitions for the English planning system:

[...] improving the process of planning is only the starting point – we want to ensure that we have a system in place that enables the creation of beautiful places that will stand the test of time, protects and enhances our precious environment, and supports our efforts to combat climate change and bring greenhouse gas emissions to net-zero by 2050.¹⁸

The fact that the White Paper values such goals is to be celebrated. However, whether these aims are to be achieved will depend on how committed the government remains to prioritising development that genuinely reduces greenhouse gas emissions and ensures environmental protection.

A meaningful increase in the energy efficiency of buildings (which takes account of the greenhouse gas emissions over the building's lifetime) is an important step towards combatting climate change. However, it can only ever play a supporting role. The planning system as a whole must also engage with its responsibilities: ensuring that the development that comes forward is both fully assessed for the environmental impact, and structured to minimise greenhouse gas emissions.

The White Paper speaks of the need for radical change to improve the planning system in England. If so, then this is surely the point to harness the full power of the system to work towards both genuine sustainable development and the 2050 goal of net-zero.

Elsbeth Duemmer-Wrigley is a Planning Solicitor with Rollits LLP, York and a convener of the planning and sustainability working party of UKELA. The planning and sustainability working party has submitted a consultation response to the Planning White Paper on behalf of UKELA, available [here](#):

Endnotes

- 1 Ministry of Housing, Communities and Local Government *Planning For the Future* (August 2020)
- 2 All references in this article are to the English planning system, to which the White Paper solely applies
- 3 *Idib.* para. 1.18
- 4 The target in The Climate Change Act 2008 originally required the UK to achieve an 80% reduction in greenhouse gas levels (below 1990 levels) by 2050. However, in June 2019, The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI 2019/1056, revised this target up to 100%, in order to achieve what is described as a net zero reduction in greenhouse gas levels by 2050.
- 5 2030 Climate and Energy Policy Framework (2030 Framework). Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 55 ILM 740 art 4(1)–(2).
- 6 Set in place by The Building Act 1984 and The Building Regulations 2010, S.I. 2000/2531
- 7 Ministry of Housing, Communities and Local Government *Planning For the Future* (August 2020) para. 3.32
- 8 *Idib.* para 3.33
- 9 *Idib.* para 3.35
- 10 *Idib.* para. 3.33. Due this autumn, but not published as of November 2020.
- 11 *Idib.* 3.23
- 12 At the Committee stage: House of Commons as of 17 November 2020
- 13 Ministry of Housing, Communities and Local Government *Planning For the Future* (August 2020) para. 3.24
- 14 Areas where outline planning permission will effectively be automatically granted, see *idib.* 1.16 & 2.8
- 15 *Idib.* para 3.24
- 16 *Idib.* para. 1.16, bullet point 4
- 17 *Idib.* para 2.7
- 18 *Idib.* para. 3.1

Matters in practice

Diversity is not something that will fall into your lap

Helena Craig, Chair of Black2Nature

There are no easy solutions to making environmental law ethnically diverse. Combining the hurdles within the legal sector generally in terms of lack of ethnic diversity with the fact that only 0.6 % of environmental professionals are Visible Minority Ethnic (VME) gives us an issue that is not going to resolve itself with a few tweaks, or as our youngest daughter, Mya-Rose Craig recently stated, 'Diversity is not something that will fall into your lap but something you have to work hard for'. Mya-Rose is currently in the Arctic with Greenpeace, bearing witness to climate change and environmental degradation, and so I have agreed to provide some words for UKELA as Chair of Black2Nature and as a former legal practitioner myself.

I retired from being a partner and head of Injury Claims at Burroughs Day Solicitors ten years ago, to give me time to spend birding abroad and volunteering in conservation. I am British Bangladeshi and came into law through an alternative route, with a baby in tow, which gave me a different perspective to the partners around me. I joined the firm when its partners were very much made up of older men from privileged families, whose traditional ethos trickled down through the firm. However, through a fairer, more open-minded recruitment process, I made my growing department 30% VME. I set up a 'focussed training contract' allowing my departments' paralegals to apply, after two years, for a compressed training contract where they spent half their time in injury claims. Our commercial departments kept on a number of our trainees impressed by their ability to understand the needs of their clients, extensive experience and a lot of common sense learnt from coping and managing sometimes challenging home lives.

It is important to acknowledge that most people working in law are from similar backgrounds and that this has a detrimental impact as organisations are unable to blossom without diversity of thought. This is something negatively impacting the environmental sector as a whole, which ultimately will stop us becoming sustainable. Since retirement we have visited eco-lodges and projects learning a lot about conservation from indigenous peoples. This gave Mya-Rose, now age 18 years old, opportunities to understand how our actions in the West impact those trying to conserve the planet. We also saw that people in places like Ghana and Bangladesh were passionate about conservation. This made us wonder why that



passion was not translating to those who, although now living in the UK, were descended from those same people and places, but who did not appear to have the same interest. We therefore concluded that the reasons for VME communities not going out into nature or campaigning to save the environment had to stem from the racism prevalent in the UK.

Mya-Rose blogs as Birdgirl and has had almost 5 million views. She has been writing about conservation and environmental issues since she was 11 years old and has an in-depth knowledge and understanding of the environment. She started running weekend camps for VME teenagers when she was 13 years old, providing varied and immersive nature weekends, which have been successful in connecting every participant with nature. We hear from participants about the racism they face in school and how having no way of raising issues makes them feel angry and powerless. Even Mya-Rose has suffered terrible racism at her school just outside Bristol, where most of the staff and pupils were white.

If as a sector you are to make genuine change, you need to start at a young age. What pro bono work do you do? Could you help at grass roots level to empower children facing racism in school, leaving a lasting positive mark? Come and volunteer at our camps and get your message through. Go into schools, but do not allow them to choose who you will mentor and support as those seen as 'trouble makers' will be excluded from your projects: I would say that it is the pupils who are bright and therefore refuse to stay silent that you should be targeting. They will add the most value to your enterprises.

Make sure your diversity statistics are broken down by ethnicity and ensure that you have representation

across the board and across different types of schools. For example, there is a huge disparity between the achievement of women of Indian East African descent and men of African Caribbean, Bangladeshi or Pakistani descent. Do not allow your statistics to mask the real position at your firm on diversity.

A few years ago, I attended a talk organised by the UWE Law department. I was surprised to meet two female South Asian environmental law lecturers. When I asked them how they became interested in the subject they said that they had only become interested after talking to their colleagues and realising that it was an area with huge social impact in the Global South and so something really important to them.

Mya-Rose has given talks at science and geography teachers' conferences explaining how it is their responsibility to engage their students with environmentalism and they can only do that by making nature and the environment relevant. You can do this by talking to VME teenagers and communities and making environmental issues relevant to them; talking about the four million climate refugees in Dhaka alone; the droughts and flooding in Somalia; the hurricanes in the Caribbean; air pollution in our inner cities; the list is endless.

Just realising and acknowledging the work that you need to do to make your sector ethnically diverse is a good place to start.



Helena Craig has been interested in race equality, diversity and inclusion since a teenager. Since retiring, she has been involved in conservation, supporting her 18-year-old daughter Mya-Rose Craig (AKA Birdgirl <http://birdgirluk.blogspot.co.uk>) with her nature camps, Race Equality in Nature Conferences and campaigning. She is Chair of Black2Nature, aiming to make nature ethnically diverse.

Mya-Rose Craig is an 18-year-old British-Bangladeshi naturalist, passionate about birds, conservation and saving our planet whilst respecting Indigenous Peoples and highlighting global climate justice. She writes a blog, has spoken alongside Greta Thunberg and Chris Packham and appears on TV and radio. As President of Black2Nature, which she set up when she was 14, she is the youngest to be awarded an honorary Doctorate of Science for fighting for equal access to nature. Please like Mya-Rose's [Birdgirl Blog](#), [Birdgirl Facebook Page](#), follow her on [Birdgirl Twitter](#), [Birdgirl Instagram](#) and [Birdgirl LinkedIn](#).

The Need to Enhance the Environmental Provisions of the Treaty on the Prohibition of Nuclear Weapons (TPNW)



Dr Bahram Ghiassee, UKELA Member

At a glance

- This Article provides an assessment of the environmental provisions of the Treaty on the Prohibition of Nuclear Weapons which will enter into force in January 2021.
- It finds that the environmental provisions of the Treaty are limited and that the notion of environmental protection, or protection of ecological systems, is absent from its scope.
- To offset the strong anthropocentric stance of the Treaty, it recommends the amendment of the Treaty or the adoption of a protocol or annex, to incorporate specific environmental and ecological protection provisions.

The international Community has welcomed the ratification of the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) by [Honduras](#), the 50th State to do so, on 24 October 2020. As a result, the TPNW will enter into force on 22 January 2021, creating [international legal obligations](#) for the States Parties not to 'develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices'.

The Treaty aims to address and redress the increasing dissatisfaction of the international community with the failure of the five nuclear-weapon States (China, France, Russia, the UK and the US) in meeting their international legal obligations on 'nuclear disarmament', as required by Article VI of the Nuclear Non-Proliferation Treaty (NPT).

Being modelled on previous '[humanitarian disarmament treaties](#)', the TPNW is, however, highly anthropocentric in its scope, focusing on the protection of humans from harmful effects of testing and use of nuclear weapons. As a result, it contains limited provisions on the protection of the environment or of ecological systems.

This article briefly assesses the limited environmental provisions of the TPNW and, to offset the strong anthropocentric stance of the Treaty, recommends that the Treaty is amended, or an 'additional protocol' or 'annex' adopted, with a view to incorporating specific environmental protection provisions.

It is noteworthy that, unlike conventional weapons

and their remnants, the environmental, ecological, and humanitarian impacts of nuclear weapons and nuclear testing transcend geographical boundaries. In addition to generating destructive shockwaves (blasts) and incinerating heat, they release ionising radiation and radioactive fallout, resulting in extensive radioactive contamination of urban and natural habitats, thus posing significant risks to human and non-human species for centuries to come. Parts of the Republic of Marshall Islands, where US nuclear tests were conducted some seven decades ago, are still uninhabitable due to terrestrial and aquatic contamination. The International Atomic Energy Agency (IAEA) has, indeed, recommended that the '[Bikini Island should not be permanently resettled under the present radiological conditions](#)'.

The limited environmental provisions of the TPNW address 'Victim assistance and environmental remediation' (Article 6) and 'International cooperation and assistance', including regarding victim assistance and environmental remediation' (Article 7). The provisions are narrow in scope and are concerned with the rehabilitation of the human environment and the implementation of measures which minimise human exposure to ionising radiation (radioactivity). Thus, the anthropocentric approach adopted fails to fully address the environmental and ecological risks associated with nuclear weapons and nuclear testing. A more holistic and integrated approach, i.e. the [ecosystem approach](#), ought to have been adopted to ensure adequate protection of both human and non-human species (fauna and flora), and to sustain the intricate and dynamic interaction of biota and their physical environment.

The TPNW, in this respect, fails to follow the '[Greening of International Law](#)', according to which international law has progressively moved towards the adoption of the ecosystem approach over the past three decades or so. The [ecosystem](#), as defined by the Convention on Biological Diversity (Article 2), constitutes 'a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit'. In this context, it is noteworthy that the [2010 Radioactive Substances Strategy](#) of the OSPAR Convention (the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic) has adopted the ecosystem approach in protecting human and

non-human species against ionising radiation, defining this approach as ‘the comprehensive integrated management of human activities based on the best available scientific knowledge about the [ecosystem and its dynamics](#)’.

The amendment of the TPNW, in line with Article 10 of the Treaty, could be one avenue to mitigate the environmental and ecological risks. Alternatively, and more practically, an ‘additional protocol’ may be adopted, pursuant to Article 8(1)(b). Equally, States Parties could consider the adoption of an annex to the Treaty. To facilitate the approval and implementation at national level, the scope of a proposed annex or protocol may be limited to scientific, technical and procedural matters.

The additional protocol or annex could contain the internationally agreed definitions for, *inter alia*, the [precautionary principle](#), the [polluter pays principle](#), the environment, environmental protection, and the ecosystem (eco-centric) approach. This would assist in the interpretation of the provisions of the TPNW, as well as in the resolution of disputes. Moreover, the text of such an annex or protocol may make reference to the scientific findings of the [United Nations Scientific Committee on Effects of Atomic Radiation](#) (UNSCEAR), the work of the [International Union of Radioecology](#) (IUR), the [Recommendations of the International Commission on Radiological Protection](#) (ICRP) and the [International Atomic Energy Agency](#) (IAEA) Standards, Conventions and Treaties.

Furthermore, to enhance the scope of the TPNW and to strengthen the provisions of Articles 6 and 7, States Parties should consider the environmental contamination associated with nuclear weapons at every stage of their life cycle, such as the generation of Highly Enriched Uranium (HEU) and Plutonium (Pu), the production of warheads, underground testing, transport, storage, dismantling, decommissioning, and disposal. In this context, ‘Environmental Security’ provisions of Article 6 of the [2006 Central Asia Nuclear-Weapon-Free Zone \(Semipalantinsk\) Treaty](#) may be noted, which stipulates that ‘Each Party undertakes to assist any efforts toward the environmental rehabilitation of territories contaminated as a result of past activities related to the development, production or storage of nuclear weapons or other nuclear explosive devices, in particular uranium tailings, storage sites and nuclear test sites.’

Notwithstanding the environmental shortcomings of the TPNW noted above, the entry into force of the Treaty in January 2021 is a welcome development, as it addresses the significant risks posed by the production and testing of nuclear weapons, as well as the catastrophic humanitarian consequences of their use. Indeed, the 2017 Nobel Peace Prize was awarded

to the [International Campaign to Abolish Nuclear Weapons](#) (ICAN) for drawing attention to these issues, and for the campaign’s relentless efforts to achieve the adoption of the Treaty. Civil society and, in particular, [ICAN with its 547 Partner Organisations in 103 countries](#), could play a pivotal role in promoting the enhancement of the environmental provisions of the TPNW.

Humanity cannot be sustained, unless a holistic and integrated approach is adopted in protecting all species - human and non-human - and in sustaining the intricate balance of ecological systems across the globe.

Dr Bahram Ghassees specialises in the International Nuclear Non-Proliferation Regime and Nuclear Disarmament. He is a Nuclear Consultant, based in London, and lectures on the MSc Programmes in ‘Radiation & Environmental Protection’ and ‘Nuclear Science & Applications’ at University of Surrey, Physics Department. Bahram is, inter alia, a member of the International Nuclear Law Association (Brussels), UK Environmental Law Association, and the UK Nuclear Institute. He holds dual qualifications in Nuclear Science & Technology (PhD, Imperial College) and International Law (LLB & LLM, University of London).

Book review

Dina Lupin Townsend: Human Dignity and the Adjudication of Environmental Rights

Stephanie Bruce-Smith, reviewed by Liz Fisher University of Oxford

Adopting a human rights framework to protect the environment can be problematic. First, as the name indicates, 'human' rights are inherently anthropocentric. Second, the individual lies at the centre of human rights regimes, providing little scope for consideration of either environmental issues or how they may affect a community. Third, as such regimes are 'temporally limited', they may fail to adequately consider future harm. However, in *Human Dignity and the Adjudication of Environmental Rights*, Dina Lupin Townsend challenges these three objections, refuting the claim that human rights law is necessarily un- or anti-environmental.¹

Instead of rejecting human rights, Townsend rejects the 'unnecessarily restrictive' interpretation of 'dignity' in environmental disputes.² For Townsend, 'dignity' is a concept capable of diverse meanings and judicial development, including developments that would recognise the essence of our humanity as constituted by not only our relationship with others, but also by our relationship with the environment around us.³ Townsend argues that this relational approach to dignity would better encompass the 'various ways in which the environment matters to us', since environmental degradation not only causes physical, external harm, but 'may also have significant implications for our sense of self'.⁴ This understanding of dignity would widen the law's 'limited recognition of environmental harms' beyond its present focus on 'imminent threat[s] to health or life, or threats to property'.⁵ [Moreover, treating claims to an environmental identity as a matter of human dignity would also provide a better frame through which indigenous peoples can bring their claims, as opposed to shoe-horning their 'complex and familial relationships to their territories into the language of property, the language of colonisation'.⁶

The book begins by tracing the judicial approach to dignity in Western thought and contrasts this with the approach to dignity found in the sub-Saharan African concept of *uBuntu* and the Andean philosophy of *Samak Kawsay* (Chapter 2). Next, Townsend explores the meaning and application of human dignity in judicial reasoning, arguing that the concept is not only multifaceted and evolving but also 'contrapuntal':⁷ like independent, harmonious melodies, each judicial interpretation of dignity has its own coherence and application, which together contribute to our understanding of the whole (Chapter 3). The core

thesis of the book is developed in Chapter 4 and its potential applications are explored in chapters 5 and 6. In Chapter 4, Townsend builds on her idea of dignity as multifaceted and evolving, arguing that it could embrace a 'topographical' understanding of dignity that sees humans as environmentally constituted, our identities in part shaped by, and bound up with, our environment.⁸ She then considers the relationship between dignity and identity, arguing that a claim to an environmental identity ought to be seen as a matter of human dignity, as this better reflects the language used by indigenous peoples (Chapter 5). Chapter 6 then draws on existing dignity jurisprudence to demonstrate how the concept could play a role in addressing the problem of intergenerational justice.

From this overview, it is clear that this book is not a handbook for UK environmental lawyers. Nevertheless, Chapter 4 has much to offer those seeking to accommodate environmental claims within our current human rights framework. In this chapter, Townsend explores the idea that all humans have dignity which can be conceptualised by reference to our environment. Instead of rejecting dignity as an inherently anthropocentric concept used to differentiate humans from nature, Townsend argues that the concept of dignity would be improved were it to encompass not only how we are shaped by others, but also how we are shaped by our environment and our relationship to it. A 'relational' conception of dignity is one that already exists in human rights law, for example in cases which view our dignity as bound up with the idea of social recognition.⁹ Townsend argues that such an approach also demands greater nuance from courts in their assessment of social and individual interests in environmental cases.¹⁰ Rather than a simple dichotomy of individual vs public interest, a relational conception emphasises that there is 'a spectrum of interests',¹¹ many of which overlap: individual harm may also equate to harm to the public or community interest.¹² Drawing on Jeff Malpas's place-based account of humanness,¹³ Townsend proceeds to argue that dignity could be further extended to 'consider the ways in which [our relationships with others] are spatially embedded, and the ways in which our identities are tied up with the environment'.¹⁴ Since previous cases have already established that human dignity is constituted through relationships with others,¹⁵ it follows that recognising dignity as constituted in relation to ourselves, others

and our environment, would not be a radical shift.¹⁶

Townsend highlights two practical outcomes of an environmental, spatially embedded understanding of dignity. First, when courts are called on to adjudicate environmental issues, they can consider the effects environmental degradation may have on dignity, rather than being restricted to effects on property interests or health. Second, courts can consider the environment in cases where the focus is on protecting the dignity of the parties, bringing 'environmental concerns into cases where they might otherwise have been overlooked'.¹⁷ Such an understanding would therefore displace the assumption that 'we do not suffer when the environment around us suffers'.¹⁸ More broadly, an environmentally constituted dignity would be beneficial to the extent that it 'complicates' environmental adjudication, 'revealing the interconnected nature of public and private interests; demanding deeper inquiries into the claims of parties and greater scrutiny of the nature and implications of administrative and judicial decision-making'.¹⁹

Townsend's thesis offers a novel way in which human rights can be utilised by claimants seeking to prevent or remedy environmental harm. For Townsend, the problem is not with human rights' focus on the human, but rather with the way in which we have been conceptualising human dignity without regard to our relationship with the environment. Human Dignity also serves as a refreshing reminder of the diverse understandings, evolving nature and malleability of concepts such as dignity, providing valuable insight from other jurisdictions and philosophies. Ultimately, Human Dignity embraces complexity, precision and a broader understanding of the various interests at play in environmental adjudication; coupling the multifaceted nature of environmental problems with a multi-layered understanding of dignity.

Stephanie Bruce-Smith recently graduated from Merton College, Oxford with first-class honours, where she took environmental law and human rights law as final year subjects.

Endnotes

- 1 Dina Lupin Townsend, *Human Dignity and the Adjudication of Environmental Rights* (Edward Elgar 2020) 11
- 2 *ibid* 162
- 3 *ibid* 133, 134, 156-158
- 4 *ibid* 158
- 5 *ibid*
- 6 *ibid* 187
- 7 *ibid* 118-122
- 8 *ibid* 139-145
- 9 *ibid* 150, 145-152, referring *inter alia* to *Port Elizabeth Municipality v Various Occupiers* [2004] (1) SA 217 (CC) [18] (Justice Sachs); *R v Keegstra* (1990) 3 SCR 679, 746-7.
- 10 *ibid* 155
- 11 *ibid* 156
- 12 *ibid* 155
- 13 *ibid* 139-144, 170
- 14 *ibid* 156
- 15 *ibid* (n 9)
- 16 *ibid* 145, 169
- 17 *ibid* 158
- 18 *ibid* 162
- 19 *ibid* 277

Adverts, jobs and tender opportunities

Book reviews

The e-law editors are regularly sent book lists by various publishing houses which may appeal to UKELA members keen to write a review. If you are interested in contributing a book review to a future edition of e-law, but would first like some guidance or suggestions, please drop [us](#) a line.

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The editorial team is looking for quality articles, news and views for the next edition due out in February 2021. If you would like to make a contribution, please email elaw@ukela.org by 20 January 2021.

Letters to the editor will be published, space permitting.

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