

Give us better access to environmental justice

The public and charities need to be able to challenge the onslaught of unsympathetic development, writes **Helen McDade**

On 4 October, Holyrood Magazine, in conjunction with the University of Edinburgh's Department of Social Responsibility and Sustainability, is hosting a conference under the title Securing Access to Environmental Justice.

It comes at a time when the Scottish planning system is under scrutiny as never before. No longer do people let developers do as they please in the name of economic growth.

Environmental protection is important for people as well as nature, with growing evidence of the link between the quality of the environment and the health and wellbeing of the people who live there.

But do communities and environmental groups get a fair say in decisions that affect their lives? For the government, the main priorities are to simplify and speed up the planning process, to enable development to take place. But among the wider public, there is considerable dissatisfaction regarding planning process, often concerning environmental damage from poorly planned development.

Community empowerment is a key government priority. But if local people are to have meaningful power, they must surely be given free and fair access to the planning process.

The UK is a signatory to the United Nations Aarhus Convention, which has three strands: 1) Access to environmental information; 2) Public participation in environmental decision-making; 3) Access to justice. Scots law incorporates these principles into legislation and planning policies. However, that framework will only deliver the desired result if applied properly, or if decisions can be reasonably challenged by members of the public or relevant organisations.

The John Muir Trust was recently forced, reluctantly, to take out a judicial review against the Scottish Government over a major industrial development at Stronelaig in the Monadhliath Mountains, an area of special natural landscape. Despite its monumental scale, the public were given no opportunity to participate in the planning process, because there was no Public Local Inquiry. We believed that the Scottish ministers responsible for the decision

did not follow proper process. The Trust applied for what's called a Protective Expenses Order (PEO). This is a mechanism to ensure that an individual or organisation taking an environmental case in the public interest should have capped liability, in the event the case is lost.

A PEO is given if the costs are considered by the court to be "prohibitively expensive". Otherwise, Scots law works on the basis that the loser is liable for all or most of the winner's costs. But in two separate rounds of court action, we were refused PEOs based on our financial situation. The whole process of seeking this protection added a further four days in court, which meant even more liability.

We did, however, raise sufficient funds from our supporters to allow us to continue the case, and won the first legal battle in the Court of Session. Unfortunately that decision was overturned following an appeal by the Scottish Government and Scottish and Southern Energy. The cost of the process, including Scottish Government and SSE's legal bills, could be as much as £300,000 – a huge sum of a money for a small Pitlochry-based charity.

Yet we had no other way of challenging what we believe is a serious flaw in the planning process. If the decision had gone against the developer, they would have had an automatic right to appeal through the planning system. But those who oppose development have no such right. Nor is legal aid generally available for charitable organisations seeking to defend the public good on environmental matters.

It is these kinds of anomalies and injustices in the planning system that will be discussed at the Holyrood conference on 4 October. Hopefully that will be just the start of a wide-ranging debate across Scotland over the principles and the practice of environmental justice.

Helen McDade, Head of Policy, John Muir Trust, www.johnmuirtrust.org



We need to be sure



Returning a big cat unseen for hundreds of years to our countryside shouldn't be done in haste, writes **Adam Smith**

The choice by the Lynx (UK) Trust of Kielder Forest, Northumberland, as its preferred site for a trial introduction of the Eurasian Lynx has once again brought the rewilding debate back into focus. As yet no formal application has been made for a trial. There has been no official consultation by Natural England – or for that matter Scottish Natural Heritage, as the range of any adult lynx would bring it across the border. The Lynx (UK) Trust has staged its own meeting at Kielder, which at 250 square miles is England's largest forest, to gauge opinion on what such a reintroduction might entail, sell the benefits, and hear what other interested parties, not least the farming community, have to say.

At August's BBC Countryfile Live rewilding debate, environmental activist George Monbiot said hundreds of farmers managing land for hundreds of years had caused huge damage to the British countryside, the uplands being "comprehensively sheep wrecked". To him, rewilding means "mass restoration of ecosystems and the reintroduction of missing species". Lynx are well at the forefront of that movement.

A crucial factor is whether the countryside is to be a place for the production of food, a workplace, a managed landscape – or whether we should allow nature, underpinned by management, to reinvigorate where the conditions are right and to unravel centuries of man's influence. Indeed, much of the countryside must today bear scant resemblance to that of 1,000 years ago. Farming, forestry, population, depopulation, land

management, technology, climate change and renewable energy have all impacted. It would always be contentious to suggest winding back the clock and reintroducing a species that died out in the UK before the Norman Conquest.

The Eurasian Lynx is a stunning animal, found across much of Europe – an alpha predator. A major argument proposed for its reintroduction is its appetite for deer and that it would act as a natural control against an increasing roe deer population. It has also been argued that a reintroduction would bring economic benefits to release areas.

The Game & Wildlife Conservation Trust sees that there is room to accommodate multiple management objectives across the landscape, and species reintroductions and rewilding can certainly be part of that picture. But, rewilding isn't simply a case of walking away and leaving nature to take its course; it requires heavy human intervention and a thorough, effective, workable management plan. And when it comes specifically to the proposal to reintroduce lynx, we do feel that a huge body of research is required before any release and, for such an animal, multiple trials over a long period. We need to be sure about the impact on existing conservation projects, conservation of other species and on existing land use. People need to be convinced.

The lynx is an animal of the woodland and the woodland fringe – an ambush predator that attacks from cover. Work by the Norwegian Institute for Nature Research has shown that the risk to sheep is negligible



when grazed in fenced fields or on the open hill. However, where sheep have access to woodland and the roe deer density is low, a high proportion of the diet of the lynx would be sheep.

As ever there are pros and cons. What is good for red squirrel is not necessarily good for black grouse, and when it comes to promoting arguments in favour of food and farming versus conservation we must tread carefully. Increased conservation through farming is a vital element of what we espouse, striking the balance, with food production and wildlife in harmony. Subsidy plays a part in this, and how that will

number of trees killed stands somewhere between 25 and 75 million.

All too often history repeats itself. We need to learn lessons from the Dutch elm disease epidemic and we need to learn them fast. Since the 1970s we have had an ever-growing number of tree pests and diseases arriving on our shores. Dutch elm disease arrived on infected timber at south coast ports. Trade was vital in creating the problem as it brought distinct strains of the disease into contact for the first time and these crossed to produce a new and highly aggressive form.

Should we shut down trade to protect our trees? No. We can't ignore globalisation if we value shared prosperity. We do need to reduce risks as much as possible, be vigilant and adopt strategies of forest and tree

of the lynx effect

be delivered post 2021 is once again cast in uncertainty, but we will be pushing hard for continuing conservation measures that allow farmers to farm while also promoting habitat for game and wildlife.

As for lynx, claims that there is significant economic benefit to be gained from an animal that is mainly nocturnal with an extensive range and that will never, if ever, be seen by the public need to be supported. The possibility of reducing crop and forestry damage by deer is not sufficient justification.

Monitoring of a long-absent predator species will be a challenge and

must include the monitoring of other key species that may be affected, positively or negatively. There must be a clear exit strategy laid down at the outset. Realism must prevail over romance. Prevarication is not an option, and the animal's status in law must be absolutely clear.

Rewilding is a long process. It is not a case of flicking a switch. Right now for the lynx, the stakes – for vulnerable species, for stakeholders, and indeed for the welfare of the lynx – may simply be rather high.

Adam Smith, Director Scotland, Game & Wildlife Conservation Trust, www.gwct.org.uk

↑ The return of the lynx might have economic and conservation advantages – or it could prove to be a disaster



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