

THE LEGAL CHALLENGE

The background

Ever since Brian Wilson's indication at the opening of the Parc Cynog wind installation on December 10th 2001 that he was 'minded to approve' RDC's application for Cefn Croes, the Cefn Croes Action Group feared that Patricia Hewitt, the Secretary of State (SoS) at the DTI, and his superior, would exercise her discretion to approve the application without holding a public inquiry. On a subsequent occasion, January 24th 2002, when interviewed on the BBC Wales television programme 'Dragon's Eye', Mr Wilson had expressed frustration at the way public inquiries delay the decision-making process. The Cefn Croes Action Group felt that such an attitude was hardly democratic. The Action Group also felt, and continues to feel, that only a public inquiry could extract and examine all the facts and dubious procedures surrounding the whole sorry story of Cefn Croes and the application for an enormous land-based wind power station, which would be one of the largest in Europe and certainly the largest in Great Britain.

The legal basis for the Secretary of State's position was the fact that RDC's application was made under Section 36 of the Electricity Act 1989, because the proposal was for a power station exceeding 50 MW capacity (that this was its theoretical maximum rather than its practical generating capacity of 17 MW made no difference – a convenient technicality to assist the SoS).

Section 36 (1) of that Act reads:

'...a generating station shall not be constructed extended or operated except in accordance with a consent granted by the Secretary of State'.

Accordingly the SoS had the discretion whether or not to consent to RDC's application. As will be seen shortly, the Action Group's uphill task was to attempt to demonstrate and to convince a judge that the discretion was not properly exercised, so that he would order that a public inquiry should be held.

It has already been explained how the Planning Committee of the Ceredigion County Council voted by an overwhelming majority, but in very dubious circumstances, not to object to the proposal. (See Ceredigion County Council chapter.) Had they objected then the Secretary of State would have been compelled by law to call for a public inquiry, and might indeed have paid more regard to the views of the objectors in the locality and from further afield.

It should be noted that the National Assembly could have called for a public inquiry but for reasons best known to itself it did not do so. Hardly a shining example of democracy in action - (ref. National Assembly for Wales chapter) – and a lost opportunity for it to make an impact upon an important national issue.

In view of this, the Secretary of State's decision was awaited with some apprehension in the spring of 2002. The Action Group had already established a good relationship with the Consents Team at the DTI but gained the impression that the application was inexorably proceeding to a consent - Brian Wilson's influence was felt increasingly strongly. He had shown his impatience with opponents of wind power on previous occasions by denigrating them as 'NIMBYs' in statements to the BWEA and in public.

On May 23rd 2002, the blow fell. The Secretary of State consented to the application. There was to be no public inquiry. This decision was hardly unexpected given Mr Wilson's pronouncement and the indications received by the Action Group. It was nevertheless a most considerable disappointment. It represented the defeat of all the Action Group's efforts during the preceding three years and of all those others who had lobbied and written so persuasively and persistently to all the national and local bodies which might have been involved in the decision-making process. The DTI Consents Team had communicated that the quality of these representations had been of the highest order.

It therefore became urgently necessary to try to take some sort of action to overturn the decision or delay its implementation. The Action Group was immensely heartened by the Campaign for the Protection of Rural Wales (CPRW) taking up the cudgels: its Chief Executive Merfyn Williams was quoted in the 'Observer' of the June 2nd 2002 as demonstrating a determined intention to fight the decision. He is quoted as saying; '*Legal action would constitute a declaration of war against the inadequacies of the system.*' Geoff Sinclair, CPRW's consultant was 'confident' of a winnable case.

This followed the very strong representations against the Cefn Croes development that CPRW had already made. In particular, the Chairman of CPRW, Morlais Owens in his letter to the Secretary of State dated January 26th 2002 eloquently set out the considered view that the whole consultation process on Cefn Croes had been at all stages flawed and ultimately defective. He referred to anomalies with the responses of the Countryside Council for Wales and the National Assembly for Wales' Steel and Energy Branch, which latter had gone as far as it possibly could towards asking for a public inquiry without actually making a formal request. Indeed there was some question that it might actually have done so within the constraining politeness of official conventions.

It should be added that Mr Owens was also a signatory to a very powerful letter to the Secretary of State dated January 25th 2002 pointing out the salient facts and calling for a public inquiry. The other eminent signatories were: Richard Cuthbertson MBE Chairman, National Trust (Wales); Sir Richard Lloyd Jones KCB, President, Ramblers Association (Wales); Geoff Pedley, Chairman, Wildlife Trusts (Wales); Professor Ron Edwards CBE, Vice President, Council for National Parks; Cedric Milner, Chairman, Snowdonia Society.

CPRW had already taken legal action in respect of other proposed developments and had achieved a significant degree of success, and their Supplementary Objection, produced by their technical consultant and which ran to some 40 pages had been attached as Appendix 1 to the Report of the Director of Environmental Services and Housing of the July 11th 2001. Their commitment seemed solid.

An executive meeting of CPRW took place May 30th 2002 at Welshpool, to which David Morgan Jones had been invited. He is a retired solicitor with strong local connections having been brought up in Aberystwyth, who had recently joined the Action Group and CPRW and was a vigorous opponent of the Cefn Croes application and any wind power developments in the Welsh mountains. The meeting was chaired by Morlais Owens. Merfyn Williams its chief executive, John Edwards, treasurer, Mrs Ann West, a council member and Geoffrey Sinclair its wind power expert, were also present: Philip Blakesley of Messrs Gamlens solicitors Llandudno joined the meeting later.

The discussion centred around what legal action could be taken to contest the decision. It was clear that the only course was to seek a judicial review of the Secretary of State's decision. Mr Morgan Jones and Mr Blakesley explained the procedure for applying for a judicial review, the essential factor being that the application should be lodged in the court without delay. There was considerable discussion as to the costs of such an application and of the relevant grounds upon which it could be made. The question of Human Rights was considered but it was felt that much could be made of the perverse nature of the Ceredigion County Council's decision on July 11th 2001 when the councillors decided not to object to RDC's proposal and of the Secretary of State's failure to take into account the very many objections, not least CPRW's very persuasive objection of 26th January 2002, as already mentioned.

However no decision was taken at that meeting, the Chairman considering that further deliberations were necessary; in any case the Annual General Meeting of CPRW was due to take place on June 22nd at Carno, when it was expected that the decision to proceed with an application for judicial review would be made. That date left very little time for the formal application to be lodged.

The procedure

Readers unfamiliar with the arcane features of civil litigation may wish to know the legal rules governing judicial review. The main factor is that such an application must be made without delay; the judge has an overriding discretion to dismiss any dilatory application and there are 'long stop' dates – three months, and where there is a matter involving the Town and Country Planning Acts, six weeks. The time limit runs from the date of the event complained of namely May 23rd, the date of the Secretary of State's decision. Because that decision involved not only consent under section 36 of the Electricity Act 1989 but also Section 90 of the Town and Country Planning Act the time limit was six weeks. This was confirmed by the DTI.

The objectors had to move fast!

This was a source of great concern to the Action Group as it was by no means clear that CPRW would take the decision to apply for judicial review. Telephone conversations subsequent to the Welshpool meeting revealed a lack of determination to do so and the AGM on the June 22nd left dangerously little time for mounting a legal challenge.

The Rules of the Supreme Court require that such an application should state the grounds on which it is being made, and should be supported by the evidence upon which it is based: easy to state, but rather more difficult to put into effect.

An application for judicial review must be lodged in the High Court in London, where a judge would give his preliminary consent as to whether in his opinion an application had sufficient merit to justify a full hearing in open court. This point will be considered more fully later in this chapter.

The application

The morning meeting of the Executive at CPRW's AGM at Carno on the June 22nd 2002 was inconclusive and was reconvened in the afternoon. Still there was no decision – only a decision to have a further meeting the following week – that is to say, very near to the expiry of the time limit for applying for a judicial review. There was in any case precious little time to proceed even if the application had been sanctioned at Carno: it was surmised that Messrs. Gamlens (who were not regular solicitors of CPRW but had been introduced to them by the Environment Law Foundation) would find it very difficult to assemble the necessary papers, witness statements and settle the grounds within the time period, and in any case, Mr Blakesley had already indicated that he was extremely busy with other legal work.

After the AGM had finished, Dr Little, Elizabeth Morley and David Morgan Jones effectively held a 'council of war' of the Cefn Croes Action Group. Their view was that even if CPRW decided to mount a legal challenge from a practical point of view they would run out of time, and in any case CPRW's enthusiasm for such a course of action was by this time notable by its absence: postponement of decisions is an indication of irresolution.

They therefore decided that the Action Group should make the application without further delay. This decision was not made lightly; after all, a small group of private individuals, without the backing of influential bodies and with minimal financial resources was proposing to sue the Government. Yet so desperate was the situation and so imperative was it to try to save Cefn Croes that the decision in the event was not difficult; it was unavoidable.

At that stage it was contemplated that four or five principal members of the Group would be named as applicants. This would render each applicant vulnerable to pay costs should the application prove unsuccessful. This could be ruinous as in English law, the unsuccessful litigant has to pay not only his or her own costs, but also the opposing side's costs as well. Like the Ritz Hotel, the court is open to everyone, but a deep purse is essential.

Understandably, some felt that such a possibility could not be borne. In the event, Dr Little very courageously volunteered to front the action: the case would go forward on her personal application – 'Dr H K Little for and on behalf of the Cefn Croes Action Group'; she was a litigant in person. The defendant would be of course the Secretary of State The Right Honourable Patricia Hewitt.

Mr Morgan Jones was responsible for preparing the legal application, a not inconsiderable task, particularly as it was essential to 'get it right' first time and to avoid any procedural mistakes that could lead to its being rejected at the outset. The appropriate application forms were obtained from the Internet. That was easy. Compiling the grounds less so. The grounds were the legal reason stating why the judge should decide the case in Dr Little's favour. These grounds had to set out in detail the legal justifications for setting aside the Secretary of State's decision and ordering a public inquiry. And the grounds had to be supported by witness statements in support of the application, and providing the proof of truthfulness of what the applicant was stating. The preparation of the case could not have been completed without the enthusiastic assistance of Peggy Liford and Elizabeth Morley.

The overall aim of the application was to persuade the judge to order a public inquiry into the Cefn Croes proposals; this would of necessity involve the setting aside of the SoS's decision, and this too was pleaded in the application. The difficulty all along was to show that the SoS had exercised her discretion capriciously, without taking into account all the points that had been raised in the matter, whether by the developers or the objectors.

The grounds therefore had to be widely drawn; a contributory factor was that the very tight time schedule left no time to pick and choose. The grounds therefore had to attempt to cover all angles as well as taking into account the relevant recent court cases. (English law depends upon precedent, even as to the interpretation of statutes, so that each case builds upon its predecessor, according to the status of the court: the Court of Appeal is superior to the judge, and the House of Lords [in its judicial capacity] is superior to the Court of Appeal.)

The grounds ran to 34 pages. The summary read as follows:-

- 1 The Claimant (Dr Little) seeks a judicial review of the decision of the Secretary of State dated 23rd May 2002 not to convene a public inquiry into the Cefn Croes application for a wind power station of more than 50 MW output by the Renewable Development Company Limited which ignored requests from the Action Group and numerous individual objectors for such a public inquiry. The Claimant will seek to argue that the decision was:-
 - i. An improper exercise of the Secretary of State's discretion in that this application is a matter of national importance as far as Wales is concerned.
 - ii. The procedures whereby the Ceredigion County Council approved the application were rather less than transparent.
 - iii. Classification of Cefn Croes as a Special Landscape Area within the Cambrian Mountains Environmentally Sensitive Area were ignored, as were the provisions of the Dyfed County Structure Plan.
 - iv. The objections of the local district councils (Blaenrheidol Community Council, and Devil's Bridge Community Council) were ignored; the objection by Powys County Council was not even mentioned.
 - v. The objectors of the hundreds of written objections sent to the DTI were ignored.
 - vi. Such a decision breaches Article 10 of the European Convention on Human Rights and Fundamental Freedom (1953) (Cm1 8969) as incorporated in the Human Rights Act 1989 (ECHR).
 - vii. Further the Action Groups fundamental rights under Articles 6,10 and Article 1 of the European Convention on Human Rights are engaged and any review by this Honourable Court not to have a public inquiry must adopt an intensive review more akin to an investigation of the merits.
 - viii. Further and or alternatively the decision contravened the legitimate expectation of the Claimant and members of the Action Group that such a public inquiry would be held.
 - ix. Section 36 of the Electricity Act 1989 is incompatible with the provisions of the Transport Works Act 1992 and of the Highways Act 1980 in so far as they permit public inquiries to be held at the behest of objectors.
 - x. Section 36 of the Electricity Act 1989 is incompatible with the provisions of Article 6 (1) of the European Convention on Human Rights as

considered in the recent decision of the House of Lords in *Alconbury* on 9th May 2000.

- xi. The Secretary of State's decision was made under S 36 of the Electricity Act. The considerations as to the landscape's sensitivity and the various classifications were essentially planning matters which normally would be determined by the Secretary of State for the Environment, whose staff would be experienced in such matters; the DTI's staff would not and accordingly insufficient weight was attached to the landscape's beauty and remoteness.
 - xii. The Secretary of State's decision letter of 23 May 2002 contains certain oversimplifications which render the consent unsafe in law.
2. **The failure to call a public inquiry means that very large industrial developments can be constructed in the Cambrian Mountains without any public discussion, participation by the public and without the opportunity to cross-examine the proponents of such a scheme and to test their evidence.** [Editor's emphasis].

This was just the summary!

Particular reference must be made to the *Alconbury* case. It is beyond the remit of this book to provide a detailed study of that case, fascinating though it is. It suffices here to indicate that in this application, the case and other relevant cases had exhaustively to be discussed. Reference should also be made to the considerable reliance placed upon Geoff Sinclair's comments upon the SoS's decision letter, which proved invaluable in analysing certain of the assertions made in that letter. He stressed that the Secretary of State's decision relied upon the opinions of a small number of county councillors who ignored their planning officer's report on insupportable grounds; she ignored the advice of the Countryside Council for Wales and given the DTI's role in promoting energy policy, was giving the impression of being partisan. The decision ignored the acknowledged fact that the actual generating capacity of the power station would be only 30% of rated capacity – i.e. well below the 50MW threshold for Section 36 of the Electricity Act 1989. Further, neither the SoS nor her ministers visited the site and there was disregard for the very real fear that wind power stations damage tourism. Finally, objectors should not be castigated as 'emotional'.

In addition to the grounds, witness statements had to be provided – by Dr Little, Peggy Liford, Elizabeth Morley, David Morgan Jones, Dr Meredydd Evans, Dr John Etherington, David Mervyn Birch, to begin with. The documents referred to in such witness statements had to be attached as evidence: reports, original letters, cuttings and formal documents had to be extracted from various files and then collated. The statements had to be typed and then signed personally by each witness – not an easy task. All pages of the application were paginated and cross-referenced. The complete application totalled 393 pages, and was

contained in three A4 folder volumes. At least six sets, or 'bundles', of the application had to be provided, a not inconsiderable copying task.

All this work was started and completed between June 22nd 2002, the Carno 'Council of War' and June 28th, when the application was lodged in the High Court in London. Typewriter keys and telephone lines were red-hot!

On Friday 28th June 2002, Kaye Little met David Morgan Jones in the Royal Courts of Justice in The Strand, London. Final assembly of the application bundles took place in an alcove off the cathedral-like main hall, care being taken that the final statements were inserted in the right place, all the while being surrounded by the hubbub of Friday morning activity at court – barristers in their wigs and gowns, anxious-looking clients, clerks scurrying hither and thither, the whole redolent of something Dickensian and strange. Mr Morgan Jones was struggling with the large heavy suitcase containing four bundles of three volumes each – two for the court, one for the Secretary of State, one for himself so as to include any necessary amendments. Eventually they located the correct court office via labyrinthine passages and corridors – and ahead of a very long, late arriving queue of asylum-seeker applicants for judicial review. The court clerk was visibly impressed by the high quality of the application. The filing fee was duly paid (£30 to the Paymaster General involving another search for a tiny office through dusty corridors) and the documents stamped with the official court stamp. That completed the lodging of the application.

All that remained was to serve the application to the DTI.

So the triumphant duo, Kaye Little and David Morgan Jones, taxied across London to the Department of Trade and Industry in Victoria. Dr Little wanted to confront Mrs Patricia Hewitt personally, but she was 'unavailable'. However, the application was successfully served on a very grumpy minion who had been having her lunch – or perhaps she was upset by the anti-globalisation demonstration taking place outside.

It still remained to serve the application on RDC – this was accomplished by David Morgan Jones personally at their office outside Mold in Flintshire. Immediately afterwards he realised that RDC's registered office was in Edinburgh, as it was a Scottish company (despite RDC's claim to be a Welsh company), so yet a further bundle of documents had to be sent there.

In one way, that ended the legal work: the application had been successfully lodged, and apart from one additional witness statement from Kaye Little, required no further amendment. In another way it only started the legal work, which continued almost without interruption until the final hearing on the November 19th 2002.

Originally it had been intended that because Kaye Little was an applicant in person, she would address the court at the hearing, having been suitably briefed by David Morgan Jones. However, thanks to the good offices of CPRW, Lord Carlile of Berriew QC and Mr Neville Thomas QC volunteered their services free of charge, an offer that was impossible to refuse. This however necessitated the appointment of solicitors; court rules require that a barrister be instructed by solicitors, and also that junior counsel (i.e. not a Queen's Counsel) be appointed. This meant that all the documentation had to be copied to the two barristers, and to Mr Wyn Lloyd-Jones of Chester, the junior whom Lord Carlile had selected. In addition the barristers had to be briefed as to the factual background of the case, which involved the preparation of many hundreds more pages of documentation. It should be added that at all stages the Action Group had received every assistance and support from Mr John Campbell QC, a Scottish silk much involved in opposing wind power installations in Scotland. He provided much useful advice and encouragement to the group throughout this case.

In the meantime, the summary grounds on behalf of the Secretary of State resisting the claim and settled by Mr Richard Drabble QC were received from the Treasury Solicitor and from Messrs. Bond Pearce, solicitors on behalf of RDC (Mr Daniel Kolinsky). It was contended that the decision not to hold a public inquiry was in conformity with the statutory provisions of the Electricity Act 1989, because Ceredigion County Council as the relevant planning authority had decided not to object; the Secretary of State had consciously addressed the requirement of the statutory scheme, so that her decision could only be attacked if it was contrary to the Human Rights Act or was irrational (the *Wednesbury* case). Mr Kolinsky contested each ground individually and there was much reference by both QCs to the *Adlard* and *Ecogen* cases (see *Ministry of Defence* chapter). There was also much discussion of the specific statutory status of local landscape designations.

It may be observed that a detailed legal analysis of these arguments, both for and against at the preliminary stage, at the actual hearing of the case, and in the honourable judge's judgment could result in a considerable legal tome – and no doubt will do so in due course, for the elucidation and entertainment of law students everywhere – but falls rather outside the ambit of this chapter. The original papers are to be lodged in the Ceredigion County archives in Aberystwyth where they will be available for examination.

Messrs. Bond Pearce also asked for clarification of the exact nature of the Cefn Croes Action Group, to which the Applicants' solicitors, Messrs. Hawkins and Co of Dudley, responded, thus demonstrating what a very 'David and Goliath' contest it was: 'a few persons suing the Government'. Yet those few had the utmost unflinching moral certainty that they were doing the right thing in opposing the barbaric industrial despoliation of the Cefn Croes mountain wilderness, strengthened by a deep sense of injustice.

On August 28th 2002 a barristers' conference took place at Glansevern Hall, Berriew, the residence of Neville Thomas QC. Lord Carlile of Berriew QC, Mr Wyn Lloyd Jones, Dr Little, David Morgan Jones and Geoffrey Sinclair were present. The issues involved, the strengths and weaknesses were analysed in depth and the barristers advised that the Human Rights aspect of the application was unsustainable and it was decided to drop these. Wyn Lloyd Jones was requested to prepare the skeleton argument, which had to be submitted to the court before the hearing; he agreed to do so and promised to consult the QCs before finalising it. Certain additional information was requested which involved David Morgan Jones going to the County offices of Ceredigion at Aberaeron to clarify its policies involving wind energy and the Ceredigion Local Plan. It will be recalled that the latter had been substantially weakened as the result of representations by the BWEA (see Ceredigion County Council chapter).

The application advanced slowly through the court procedures. The Vacations judge responsible for adjudicating whether there was a sufficient case for the application to proceed to judicial review held (i.e. decided) that this should be heard in open court; no doubt he took one look at the three volumes of the Application and thought 'It's political, complicated – and Welsh – someone else can deal with it!' In fact, the application was put before him on two occasions and he came to the same decision both times; the second time he sounded a trifle testy.

The Action Group was buoyed up by an indication of financial assistance from the CPRW and on September 3rd 2002, Hawkins and Co, Mr Morgan Jones's old firm, which had by then become the solicitors on the court record representing the Claimant, requested of the Treasury Solicitor copies of all documents upon which the Secretary of State had relied in coming to her decision. This request was eventually refused on the basis that state papers must remain confidential. This was regarded as less than satisfactory because the Claimant had reason to believe that the officials in the DTI were more sympathetic to the opponents than Brian Wilson and the Secretary of State herself.

Owing to difficulties with the availability of the DTI's barrister, and latterly as a result of Lord Carlile's acting in a very high profile case, the hearing of the application was not scheduled until November 19th 2002 – in the High Court in London; half a day was set aside for the hearing so as to give all parties sufficient time to argue the issue, rather than half an hour which would be the usual time allocation.

The parties all assembled at 10 am on the November 19th, anxious for an early start. Dr Little was there, Peggy Liford, Elizabeth Morley, the QCs Neville Thomas and Lord Carlile, the latter fresh from his triumph on behalf of Paul Burrell, Wyn Lloyd Jones, D Holgate QC, Mr T Morshead and Ms C Patry for the Treasury Solicitor, Mr C Katkowski QC and Mr D Koliinsky for RDC, Mr West, John Edwards and Geoff Sinclair from CPRW, Gary Mohammed and

Walter Gusmag from the DTI Power Station Consents Office, Bob Proud and associate from the DTI Overhead Lines Consent Office, John Howes, the Treasury Solicitor, Geraint Jewson and Steve Salt of RDC, Michael Rolt from the Elan Valley Trust, two civil servants from the National Assembly for Wales, Ceredigion's Deputy Director of Planning Tim Ball, various press and TV, and, of course, all solicitors and clerks in attendance including David Morgan Jones. A frustrating wasted morning was followed by a truly Kafka-esque situation. The dramatis personae were all there expectantly awaiting the opening of proceedings when a bevy of young Chinese girls came in to learn all about English justice – fortunately for them, and for their impression of English justice, they were turned away as there was standing room only.

Mr Neville Thomas QC made the opening submission for the Claimant. Mr Holgate QC answered for the DTI, followed by Mr Katkowski QC for RDC; by that time there was little for him to add as Alconbury, Adlard and Ecogen had been exhaustively discussed. The somewhat unreal atmosphere in the court was increased by a growing realisation amongst the lawyers that the judge (Mr Justice Stanley Burnton) had not had an opportunity to read all the papers. Not surprisingly he reserved judgment to Friday 22nd November. The writer cannot forbear from commenting that after all the hard work involved in preparation of the application on the part of so many different people, it was more than somewhat disappointing that the judge seemed less than familiar with the contents of the documentation: justice must not only be done...it must be seen to be done.

Mr Thomas QC submitted that the SoS was obliged just to balance the exigencies of national energy requirements as against the impact of the development upon the Cefn Croes site and second to scrutinise the conduct of the application to develop through its earliest stages, namely the decision of Ceredigion County Council on July 11th not to oppose the development. Mr Holgate QC and Mr Katkowski QC argued that the SoS was under a duty to examine the conduct of the application: the decision of the Court of Appeal in *R (Adlard) v SoS for the Environment, Transport and the Regions* (2002 IWLR 2515) supported this view: it is a matter for the court to decide whether overall the procedures were compliant and fair – but that if they were not, the challenge (i.e. an application for a judicial review) should be the local authority's decision, not the Secretary of State's. Lord Carlile QC made the closing submission on behalf of the Applicant.

The hearing on the November 22nd was necessarily somewhat low key. None of the QCs was present. Only Mr Wyn Lloyd Jones and David Morgan Jones for the Claimant, and two young barristers, John Howes the Treasury Solicitor and Gary Mohammed for the DTI, and a solitary press man. The judge delivered his judgment at break-neck speed ('Justice must not only....!') and at some length. His conclusion was not unexpected: the SoS had exercised her discretion correctly and not in a perverse manner; her decision was not unfair nor irrational and she had properly weighed up the pros and cons, so that it was not necessary to call a

public inquiry. It was somewhat disconcerting that the judge was clearly not familiar with the Welsh mountains and made no attempt at correct pronunciation of place names. One interesting dictum emerged: he said that an application for a judicial review could have been made in respect of Ceredigion County Council's decision of July 11th 2001 not to oppose the Cefn Croes development – but by then it was too late. The judge did however make it clear that his decision should not be taken as an endorsement of the SoS's decision not to visit the site or to grant the consent; the court's review is limited to the rationality and lawfulness of the decisions being made by the SoS. (Despite the judge's haste – it was Friday after all – the written judgment was not available until the end of January 2003.) The only crumb of comfort was that neither the Treasury solicitor nor Bond Pearce pursued a claim for costs. This was very sporting of them, as their cumulative bills, including the barristers' fees would have come to several tens of thousands of pounds.

After the case, Mr Morgan Jones was interviewed on behalf of one of the Welsh TV channels - *'a sad day for Wales' 'Cefn Croes Calafia Cymru'*.... But alas, it was never broadcast. There seems little public interest in preserving our wild places; rampant philistinism and commercial pressures are very difficult to halt or delay.

The whole saga has been a very sad and disappointing outcome for everyone in the Cefn Croes Action Group. Their hard work and commitment deserved a better outcome.

*Cefn Croes Wales' Calvary.