



Newsletter

Words from The Chair

Once again, it's not so much a question of what the Government has said, but what they will do, that matters.

For example, and as we report on page 8, just before Christmas a 'package of tough new measures' was announced to 'protect the nation's trees and curb the scourge of illegal felling'. If trees are felled without a licence, we are told 'unlimited' fines will now be the order of the day.

Needless to say, such action is not before time and very welcome. But as the Woodland Trust have pointed out, it needs to be 'backed by increased resources for the organisations that deal with the enforcement of illegal felling.'

Many will remember the Environment Agency being given increased powers to police the water companies, only for their funding to be reduced so that there is now an increased reliance on the companies policing themselves!

Also worth noting is that although our MP wrote to a number of our members to reassure them 'local plans will be given more weight' under the Government's Levelling Up Bill he, along with his colleagues, then went and voted against Amendment 78 to the Bill that would have ensured local plans took precedence over any National Development Plan Policy the Secretary of State might choose subsequently to impose.

There is more about that on page 2, while the importance of Neighbourhood Plans in protecting our communities from inappropriate development is illustrated only too dramatically on page 4 where, at the December meeting of the Development Management Committee, members were enabled to go against officer advice and refuse an application to build six houses in Kingsbridge.

Elsewhere in the Newsletter we report on the Society's attempts to protect trees both on this page and in East Portlemouth on page 3, the ongoing saga and drama of Butterford on page 8, and on our efforts to ensure officers properly

evaluate a major development in East Allington (page 5). You will also find reports and updates on a number of other planning applications.

Sadly we bid farewell on page 7 to Pippa Woods, CBE, a founding and much valued member of the Society, who died recently at the age of 96. She made an enormous contribution, both to the Society and to the wider community.

Although no further mention is made elsewhere in this Newsletter, we are still locally none the wiser as to what exactly was the 'clear economic rationale' provided to justify the boundary for the Plymouth & South Devon Freeport being drawn to encompass much of our AONB and the Dartmoor National Park. Nor have we been told whether the original budgets still hold good, or whether residents are now exposed to any increase in costs.

However indisputably the most significant contribution to this Newsletter has been made by Martin Fodder, our new Committee member and Environment Lead. Between pages 11 and 19 you can read his exhaustive analysis of who and what is or are responsible for polluting our streams, rivers, estuaries and the sea, and who is trying to do something about it. He concludes by asking what can we as individuals or as a Society do?

His is really an outstanding piece of work and, if you have any thoughts or ideas you would like to offer to Martin, please email him care of southhamsociety@gmail.com.

On page 6 Cathy Koo profiles and interviews Val Mercer, long associated with both the Society and the Slapton Field Centre. Now almost 90 she is, as Cathy says, still a force to be reckoned with.

Finally it only remains to report that on page 10 we offer our thanks to authors and journalists Andrew Wilson, Minette Marrin and Marcus Field, who addressed and entertained us back in October, and to wish you all a very happy and hopefully healthy, warm and prosperous New Year!

Protecting Trees



The impact of unauthorised felling in Dartmouth

On 11 January the Society's Trees Lead, accompanied by our Planning Lead, Environment Lead and Chair, are due to meet with SHDC officers at Follaton House to discuss various concerns.

Amongst the issues we intend to raise is the question of whether the Council has been sufficiently proactive in taking enforcement action and pursuing tree offenders through the courts.

We also want to know what steps the Council will take to ensure the effective protection of existing mature trees on development sites. Too often insufficient protection is provided to root systems, with recent activity at Lock's Hill being a case in point.

Similarly, where trees are felled without authorisation, what steps will SHDC take to ensure replacements (at least 5 metres high) are replanted? In instances where replanting has been conditioned, what proportion of landowners with a conditioned requirement of submitting a photographic image of the newly planted trees have failed to comply? And where there has been non-compliance, in what proportion of cases has action actually been taken?

We will also be asking the Council to let us know what steps can be taken to discourage the unauthorised pre-application clearance of trees. Would they, for example, consider introducing a policy stating that where such activity has occurred in the three years prior to the application being submitted, that activity will be a material consideration

weighing significantly against any subsequent approval of the application?

We would also like to ensure arboricultural assessments provided with planning and other tree related applications carry credence. One possible way to bring this about would be for the Council to insist that all such assessments are submitted by one of the recommended professional accredited arborists listed on the SHDC website.

Other issues include difficulties residents can sometimes face in reporting unlawful felling. Even when they can get to speak to someone, that person often has no knowledge of trees legislation.

The Society has also been concerned about changes made to tree office staffing at the Council. At the end of September the Council's Director of Strategy and Governance acknowledged that the Council's Tree Officer, as well as staff in other parts of the organisation managing tree work, had a large workload, being responsible not only for determining applications for work to tree, hedges and high hedge application, but also serving and reviewing Tree Preservation Orders and managing trees on Council Land.

As a result, he told us, the Council was in the process of looking at how it might be able to increase capacity as well as improve the coordination of this work across different service areas. We will be asking whether this process has now been completed and, if so, what has been the outcome? •

On 13 December the Levelling Up & Regeneration Bill returned to the House of Commons for its second reading, still containing the proposal to give the Secretary of State the power to impose a National Development Plan Policy (NDMP) at any time of his or her choosing.

It was an issue we had previously raised earlier in the year, at the end of May, during the meeting we held at Follaton House with MP Anthony Mangnall and a number of our District Councillors to discuss the first draft of the Bill.

At the time we made the point there was nothing to stop such a Policy being introduced after both Neighbourhood Development Plans and the Local Plan had been adopted. And, as we wrote in our July Newsletter:

In the event of any conflict, the National Development Management Policy is to take priority unless material considerations dictate otherwise.

Consequently, were this Bill to become law, local communities will find it very difficult to plan for the future with any confidence.

It also raises the question, what is a 'national development management policy'?

The answer is that it is a policy that the Secretary of State by direction designates as a national development management policy. In other words the Secretary of State will be able to make whatever changes he or she sees fit to planning policy at any time of his or her choosing, subject only to consultation with whoever he or she thinks appropriate has – or if nobody is thought appropriate has not, taken place.

Nor will National Development Management Policies be subject to Parliamentary scrutiny. As a result, many consider their introduction to represent a major, unacceptable power grab by the Secretary of State.

In our view the policy was profoundly undemocratic. And we were not alone. The CPRE also shared our view. So four days before the second reading was due to take place we emailed our members, urging them to contact their MP and express their concern.

A few days later, in the debate itself, the Shadow Minister for Housing and Planning Matthew Pennycook told the House:

“We believe that new subsection 5C in clause 83, in providing that anything covered by an NDMP will not only have legal status but will take precedence over

Gove takes back control

Meaning of “national development management policy”

After section 38 of PCPA 2004 insert—
“38ZA Meaning of “national development management policy”

(1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

(2) The Secretary of State may—

- (a) revoke a direction under subsection (1);
- (b) modify a national development management policy.

(3) Before making or revoking a direction under subsection (2), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place.”

83 Role of development plan and national policy in England

Changes to section 38 of the Planning and Compulsory Purchase Act 2004

The Bill proposes adding subsections (5A), (5B) and (5C)

(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (in the case may be).

(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—

- (a) the development plan, and
- (b) any national development management policies.

(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

(5C) If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.

Section 83 gives the Secretary of State control

local development plans in any instance where there is found to be a conflict between the two, represents a radical centralisation of planning decision-making that will fundamentally alter the status and remit of local planning in a way that could have a number of potentially damaging consequences.

“We know that there is significant anxiety across the House about the future implications of NDMPs, and rightly so,” he went on to say, “because legislating to ensure that they overrule local plans in the event of any conflict does represent a radical departure from the status quo. As we argued in Committee, what is proposed is a wholly different proposition from the current application of the NPPF, and our fear is that it will lead to the erosion of local control in a way that threatens to transform what is currently a local plan-led system into a national policy-led system.”

Consequently, in an attempt to prevent this from happening, Mr Pennycook introduced Amendment 78, seeking to change (5C) to read ‘But the development plan has precedence over any national development management policy in the event of any conflict between the two.’

Sadly, when put to the vote, only 171 Opposition Members were in

favour of the amendment, 320 were against. Amongst those voting against were our local MPs Sir Gary Streeter and Anthony Mangnall. Mr Mangnall has since replied to many of those who wrote to him as follows:

Thank you for contacting me about planning reform.

I appreciate that many people feel strongly about this issue and rightly so. At the heart of planning are the very homes we live in, the schools our children go to, the hospitals we visit and the roads that take us there. That is why reforming the way our outdated and bureaucratic planning system works is so important, because it is not currently delivering for the people that use it or the communities that want beautiful homes to live in.

The Levelling Up and Regeneration Bill will modernise the planning system for the 21st century and give residents a louder voice to ensure that development reflects community preferences. Under the reformed system, local plans will be given more weight and the plan making process will be sped up. Placing greater weight on local plans and national policy will not only give communities more certainty that the right homes will be built in the right places but will also give more assurance that areas of environmental importance will be respected in decisions on planning applications and appeals.

The legislation puts communities at its heart. It will introduce a requirement for local planning authorities to produce design codes for their areas, which will have full weight in planning decision making. Digitising the planning system will make it easier for communities to access the system and help groups typically underrepresented in planning decisions to make their voices heard in their area. This compliments ongoing pilots which are testing new digital initiatives, such as online 3D maps and QR code systems to enable residents to interact with the system in new ways.

A new Infrastructure Levy will also be introduced to ensure communities have the schools, GP surgeries and roads that they need. The levy will be set locally to allow local authorities to tailor it to local circumstances. I understand that the Government intends to consult on a number of aspects of the new levy, and I look forward to further details on this.

It is our neighbourhoods that feel the impact of planning most immediately. I am confident that these reforms will empower people from all backgrounds to get involved in decisions that shape their communities.

Thank you again for taking the time to contact me.

Noticeably he makes no reference to National Development Management Policies. Nor has he offered any explanation as to why he failed to support an amendment ensuring local development plans have precedence over any national development management policy. This is surprising. The Society has never before found him unwilling to explain his thinking, and previously he did much good work in Committee, helping to remove some of the other less desirable proposals in the Bill.

Some might also wonder why the Government was so keen to prevent the amendment from being adopted. But at least by blocking it, our MPs have made sure that any Secretary of State will be able to have the last word should he or she wish to overrule any local plan policy.

Perhaps that is what was meant by taking back control.

The Bill itself now returns to the House of Lords for its Second Reading on 17 January.

Here hopefully Peers will reinstate the amendment to (5C) before returning it to the Commons, at which point any MP who believes in the importance of planning decisions being taken locally might like to reconsider. ●

East Portlemouth trees in need of protection



The area bordered in blue in the plan below shows the location of the threatened trees in the Google Earth image above

On 9 November the Local Planning Authority received an application to carry out extensive tree works in East Portlemouth. Our letter of representation was submitted on 2 December. It reads as follows:

With any application to fell protected trees, a balancing exercise needs to be undertaken.

The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area.

In this case the extent of the proposed felling, thinning and coppicing will be detrimental to the character and appearance of the area and, for this reason, the South Hams Society wishes to object to this application.

The Society recognises that the applicant has a responsibility of managing ash trees that might pose a danger to the public, and the appointed agent Aspect Tree Consultancy has identified a number of trees which, in their opinion, require felling in order to comply with this responsibility.

Were the Council Tree Officer to approve the removal of these ash trees, the Society would wish to see appropriate succession replanting conditioned.

The Aspect Tree Consultancy Arboricultural Survey and Tree Risk Assessment Report states:

'where possible retention of ash trees will be advised, in accordance with Forestry Commission



advice, in the hope that resistant trees will develop'.

This statement conflicts with the submitted information that proposes the removal of all ash trees within Tree Groups W 78, W 89 & W 91.

Forestry Commission Guidance is clear that:

'some ash trees may have genetic tolerance to ash dieback, meaning they may survive and reproduce to create the next generation of ash trees. Therefore, it is important to retain ash trees where they stand out as being healthier than those around them and it is safe to do so. Retaining a portion of dead, dying or felled trees will provide dead wood habitat and be beneficial for biodiversity'.

Consequently the Society is of the opinion that the proposed removal of all ash trees within the three Tree Groups is excessive and contrary to the Forestry Commission Guidance.

We acknowledge that some of the trees with advanced ash dieback will need to be removed on public safety grounds but the trees that present negligible risk should be retained. These trees may not be considered exceptional specimens but their combined attributes are beneficial to both wildlife and the public visual amenity that the woodland provides in this Sylvan location.

The application also proposes the removal of squirrel damaged trees.

These trees are protected by a Woodland Order and, within a woodland setting, defects caused by squirrels such as torn bark and cavities are seen as niche ecological attributes to be retained while, ordinarily, trees would be felled in a different setting.

For more than 30 years British Forestry Commission research has revealed the statistically low

impact of squirrels on tree health and has shown that, in non commercial woodlands, the incidental damage caused by squirrels is beneficial ecologically. The damaged places become sites of development for many fungi and invertebrates that comprise the main food source for many species of wild birds.

More pertinently, the Arboricultural Assessment supplied by Aspect Tree Consultancy does not specifically quantify the extent and severity of squirrel damage that exists within the woodland.

The Society is of the belief that in order to fulfil the provisions and objectives of the Woodland Order, and maintain the ecological benefits as set out in the FC research, only those trees with the severest damage and resulting poor structure should be considered for removal. Thinning as proposed would reduce the amenity value of the woodland, adversely impacting the tree cover and Sylvan nature of the area.

A key factor in maintaining the integrity and purpose of the Woodland Order is the essential requirement of natural regeneration and the Society believes that the tree management proposals within the application fail to meet this requirement.

We respectfully requested the application should be refused. A decision is expected early in January. •

Try Acers for Ash

Ash dieback disease continues to take its toll and local authorities are concerned not to have potentially dangerous ash trees near roads so even healthy ash may be felled in the interests of safety.

Fortunately, ash is a resilient species and young plants continue to pop up out of the ground. Let us hope they have developed a resistance to this disease.

A little late for a Christmas present perhaps, but a tree makes a splendid gift, particularly for a young person who can take real pride in planting and watching 'their' tree grow.

Oak is often chosen as a gift but it is worth considering Acers, otherwise known as Maples. They are amongst the most colourful trees, particularly in autumn when the leaves turn colour which can range from yellow to bright scarlet. Even the bark can be attractive with some having a striped appearance called 'snake bark'.

One of the most attractive Acers is *Acer Davidii* named after the 19th century French missionary to China, Père Armand David. They have yellow flowers on stalks (racemes) in the Spring and these are followed by clusters of winged seeds and their autumn colour is splendid. They grow to around 12 metres and are hardy although they prefer shelter.

They make a gift that endures and gives continuous pleasure.



Acer colour!

We all need good neighbour(hood plan)s



Water runs down from the Applegate site and on to the track and then on to the lane (bottom left)

Caroline Waller is a Partner in the Planning and Environmental team in the Taunton office of solicitors Clarke Willmott.

To quote the firm's website, she specialises in all aspects of Town and Country Planning, regularly acting for appellants in connection with complex and often contentious planning appeals, including national-name housebuilders, to obtain planning permission for development on allocated sites outside the development boundary on the basis of five year housing land supply arguments.

On 14 December she addressed members of the Development Management Committee at Folaton House.

'What you are looking at is a single issue application,' she told them. 'If you accept the professional advice of your officers, then planning permission must be granted. If you are not minded to accept that advice, then the Council will be expected to be able to produce evidence to explain why that advice is not accepted. So you have to ask yourself, have you seen any of that advice presented, or evidence particularly, because failure to produce evidence substantiating reasons for refusal puts the Council at risk of a possible appeal.'

The only issue, she insisted, was drainage. All other matters, she stressed, had previously been dealt with by the planning inspector on appeal and were therefore of no relevance to this application.

Council officers were in agreement. The drainage proposals being put forward for the Denings site were now considered sufficient. Approval was being recommended.

Kingsbridge councillors and residents disagreed, with resident and South Hams Society member

Leslie Pengelly being the first to speak. Adding to many of the points the Society had raised in its objection (1386/22/FUL), Mr Pengelly pointed out the applicant had removed the central hedgerow from the two fields, without permission from the local planning authority, to make one larger field and stopped up the historical field entrances. He had then gone on to make a new entrance. Those changes, coupled with the presence of the Applegate Park development at the top of the hill above the site, said Mr Pengelly, had meant the risk of flooding elsewhere in the town had noticeably increased.

But before he was able to conclude his points he was interrupted. He needed to confine his comments to the application, he was told, and any problems with drainage were now confined to that part of the site lying outside the boundary of the application.

Despite this ruling both the Mayor of Kingsbridge Philip Cole and Kingsbridge District Councillor Denise O'Callaghan also complained at length about flooding, while both also raised the matter of the Kingsbridge Neighbourhood Plan, with Cllr O'Callaghan prefacing her remarks by saying:

'I would just like to quickly thank Ms Waller who sent me a letter urging me to take a professional approach, so hopefully I will do so.'

That raised some eyebrows and, before the debate began, Cllr Dan Thomas enquired whether the Neighbourhood Plan, due to be formally adopted at a full meeting of the Council the next day, was now a material consideration. Told it was, he asked:

'If we are to give weight to the Kingsbridge plan, then why is it, in the analysis in the report around housing mix there is no reference to the Kingsbridge local plan?'

According to the Neighbourhood Plan, the need in Kingsbridge is for affordable housing and houses in to which people can downsize, and not the large four and five bedroom homes Ms Waller's client wished to build.

This caused Cllr Rosemary Rowe to comment: 'I'm not sure it's the right houses for the site' while Cllr Julian Brazil went on to add that the proposed development:

'...in no way satisfied the housing mix need we have in Kingsbridge. They've spent years getting the neighbourhood plan, and their view as we've heard from the town council is that this type of application should not be accepted because it does not meet the housing needs in Kingsbridge.'

'I would not refuse on drainage grounds, because I don't think we've got the expertise for it. But I would refuse on housing mix grounds.'

So it's safe to assume, had Members been forced to decide this application purely on drainage grounds they would, whether they wished to or not, have felt obliged to give it approval.

But, thanks to the Neighbourhood Plan they were able to vote to refuse, with only Cllr Dan Brown being in favour. In doing so time has been gained for the District Council to consider the long term implications of development this site in the light of Devon County Council's recently published Jubilee Flood report for Kingsbridge.

When the application returns, as it no doubt will, but this time with a more appropriate housing mix, we can only hope the drainage ramifications will have been fully assessed and addressed.

For now though, the Neighbourhood Plan has helped to ensure Kingsbridge residents can keep their feet dry. •

In East Allington, seeing is believing

On 18 November the Council's Senior Specialist – Natural Environment (Landscape) submitted a further statement with respect to the outline application with some matters reserved for the development of up to 35 dwellings on land south of Dartmouth Road in East Allington. She wrote:

'Since my original comments, dated 4 October, were published an objection to the application has been received from the South Hams Society, which raises a number of concerns about the proposals, including in relation to Landscape Character. In light of this objection, it is appropriate to expand on my original Landscape comment, and to record that I have since undertaken a visit to the site on 1 November 2022, which included the identified viewpoints and surrounding area.'

Our objection, which we had submitted on 21 October, began by making the point that the cumulative effect of development in the village was not supported by the Joint Local Plan, adding:

This application is so large that it is an important decision for the village of East Allington. Consequently the Society is of the opinion that this statement, taken from the landscape specialist's submission, is completely unacceptable.

'Officer familiarity with the landscape in the locality of the application site means that a site visit has not been undertaken at this time.'

Instead, we explained, the Council's Senior Specialist had based her assessment on an examination of the planning file and the applicant's submitted plans, along with reference to G.I.S., OS Mapping and aerial imagery.

That desk research had led her to conclude that:

'There is insufficient detail to confirm whether the building design, site layout, Green Infrastructure proposals and mitigation will be appropriate, and will comply with the adopted policy DEV23, although the Landscape Proposals contained in section 5 of the LVA does provide an indication of the design approach that will be adopted if outline approval is granted, and is broadly acceptable.'

We had, we said in our objection, visited the location on frequent occasions recently and come to a different conclusion, namely that the design approach was unacceptable.

Including five photographs to support our contention we explained that, given the ridge line location of the proposed de-



Current settlement boundary in red, development shaded green

velopment, the level of harm to the St Andrews Church landmark setting within the open landscape would be severe and damaging.

We also noted the Council's Specialist had made no reference to the Devon Landscape Character Assessment strategies and guidelines for the protection, management and planning of this particular landscape. The development in this location would, we suggested, fail these guidelines, adding we found it hard to accept the District Council would ignore the County Council Landscape guidelines.

We also suggested the site would be in conflict with Policy DEV23

of the Joint local Plan and that the Council's Specialist had failed to spot some factual errors in the applicant's submitted Landscape & Visual Impact Assessment.

Responding to the points we had raised the Council's Specialist acknowledged in her further statement:

'I note that there are a few errors in the LVA report, which are unfortunate, although I do broadly concur with the LVA's findings that the site is capable of accommodating some form of development. However, it is a concern that the visual baseline fails to highlight the importance of the notable views across the landscape, and particularly of the local landmark

of the church tower from the site and adjacent PROWS, and it does not consider the settlement characteristics of the village as part of the character review. As a result, these important landscape issues are not considered in the report's recommendations, and consequently have not been considered in the design development of the proposals for this outline application.'

She concluded:

'After this more detailed Landscape evaluation of the application following a site visit, my opinion that the application site is capable of accommodating some form of residential development remains unchanged. I do not object to the principle of some form of residential development on this site.'

'If Officers are minded to recommend approval of this outline application, the indicative site layout should not be accepted as a basis to move forward to a Reserved Matters application. The supporting plans and documents do not adequately demonstrate that the development – if progressed as described in the application - will conserve and enhance landscape and townscape character and scenic and visual qualities, and will therefore fail to accord with adopted policy DEV23.'

A separate visit to the site was subsequently made by the Senior Planning Officer (Heritage) of the Council on 15 November. He noted that:

'The lack of a robust Heritage Impact Assessment represents somewhat of a failing of this current planning submission.'

He continued:

'St. Andrew's Church represents a highly graded listed building (GII*) and arguably the most important historic building within the village. Its prominence in the rural landscape offers a most positive contribution to its significance and therefore most careful consideration must be given to any development proposals that could lead to an erosion of that significance through an adverse impact on its setting.'

The Officer view is that further analysis is required in this regard prior to the site being developed.'

The application has yet to be determined. And our objection, a copy of which can be found here, raised many other issues. Hopefully those remaining issues will also be both acknowledged and fully addressed when the case officer comes to make her recommendation.

For many reasons, we believe the development to be both inappropriate and unsustainable. •



Will these views of the church be obscured by the development?



As a longstanding SHS member and at nearly 90 years of age, Val is still a force to be reckoned with. When Cathy Koo met up with her in August at the annual Celebrate Start Bay event, Val was still hard at work, selling raffle tickets to a packed crowd in aid of the Field Studies Council (FSC), at the same Slapton centre that she and her husband Ian first started in 1959.

Today the FSC is a well established and hugely respected provider of educational provision. Back in the 1950s it was still in its infancy.

As Val recalls, the Council was started by a couple of chaps who'd come down from Cambridge University before the second world war. Embryonic though adult education was it had to be put on hold during the war. But, after demob, they started out with Flatford Mill, which became the first ever Field Study Centre... and "they kitted it out with lovely refectory tables, Mappin and Webb tableware and other such luxuries" Val recalls.

Her interest in the environment began when she visited Flatford Mill as a schoolgirl to do a bird course. Then, after A levels, she was taken on as student help, spending the summer cleaning, peeling potatoes and standing at the back of the room, listening to the visiting lecturers, men who went on to become prominent leaders in their field.

During her time as a student at Birmingham University, where she gained a degree in geography and geology, Val met fellow geographer and future husband Ian Mercer. Following graduation, Ian was called up for National Service while Val got a job at FSC's Juniper Hall site in Boxhill, for £200 per annum, live in.

Back in 1956 when Val began her career teaching geography, geology, botany and all the environmental sciences, there was no gender or pay parity. Compensation for her 'meagre' salary was partly mitigated by a room in the rather splendid accommodation.

Upon marriage in 1957 Val 'lost' (sic) her job, which was promptly given to her husband. Recalling the unfairness Val is sanguine about it: "the reason given was that the FSC couldn't afford to pay two salaries.... They didn't have much money back then..... but they then promptly gave Ian the job and a salary increase of £100 pa – but we did get to live in a house rather than just a room".

In 1959, thanks to a generous gesture, the land at Slapton was

<https://www.facebook.com/SouthHamsSociety>

Celebrating Val Mercer



Val visits the Society as we Celebrated Start Bay this summer

offered to the FSC by the millionaire philanthropist Herbert Whitley. As a keen amateur naturalist Whitley had started Paignton Zoo in the grounds of his home in the 1920s. Even in those days, according to Val, Whitley understood the importance of education, and Paignton Zoo had an education officer from the start.

Whitley was keen that the land at Slapton be used for educational purposes and gave the Higher and Lower Ley, as well as France Wood, Slapton Wood and the beach, for use as a nature reserve with that intention.

So it was that in 1959 Val and Ian, along with a botanist and some other biologically trained staff, set about starting the FSC presence in Slapton. Then the site was rather different to today and unlike most of the other FSC sites, which are housed in grand country piles, the site at Slapton was based in the middle of the village in an old hotel called Whitegates, purchased by the FSC to house the students.

One of the first things that the new team of environmental scientists did was to put up posts to stop cars driving down on to the beach. It wasn't a popular move at the time among locals but the shingle was eroding badly and the posts stopped that happening. The coot shooting and pike fishing, which used to be popular pastimes on the Ley, and which had been the main attraction for the guests at the Royal Sands Hotel, stopped many years before the arrival of the FSC to Slapton.

By now, happily ensconced in the top flat in The Chantry in the village, Val and Ian set about their first season. "We were so

busy organising everything that we forgot all about the students arriving and we were down on the beach when we saw a gaggle of youngsters and a teacher wander down. It slowly dawned on us that those must be ours" laughs Val.

"That year we took in 25 students as well as some sixth formers, amateur naturalists, university researchers and artists. The 60's were a wonderful decade. There was a lot of civic-minded feeling everywhere. It was all very inspirational in those days, anything would go, it didn't matter if it was part of the National Curriculum, the students looked after themselves. It was all very free and open to ideas. There was a wonderful mix of people from different backgrounds. We took in students from big comprehensive schools and also girls from Roedean.

"We learned very quickly that we had to keep the students occupied so that they didn't upset the local residents. At the other FSC sites the students could run wild but it was different at Slapton because we were housing them right in the village centre. Once we caught some of the Roedean girls and some of the comprehensive pupils playing strip poker in one of the temporary buildings we used to use as labs," Val recalled, before adding "...It was all very innocent though..."

Slapton was, according to Val, very different in those days. The ruins of the Old Royal Sands Hotel still stood on the beach after the explosion that had blown it to bits, and there was ammunition everywhere, left behind after the D Day practices which had seen Slapton and the surrounding

area taken over for Allied training in preparation for D Day.

"We'd frequently take the students down to the beach and then have to return to the centre because another bomb had been discovered".

Val and Ian ran the Field Centre at Slapton with the help of up to 60 volunteers until 1969 before handing over to Bob Troake, who ran it for another ten year tenure. Since then there have been several incumbents who have guided and developed the site to its present status today. The Slapton site is now able to accommodate 160 students, thanks largely to the purchase of the former rectory and grounds in 1970.

Val and Ian had four sons, Jonathan, Ben Tom and Dan, but sadly the marriage didn't last. In 1969 Ian left for 'pastures new', going on to have a successful career and becoming National Park Officer for Dartmoor National Park then Director of the Countryside Council for Wales. "Ian was also instrumental in setting up the Woodland Trust with Ken Watkins and others", says Val.

Val continued to teach and raise her four sons in the village. She sat on the parish council for 30 years, and was the parish council representative for the AONB.

"I've seen lots of changes for good and bad, but the early 60s were a wonderful decade; the AONB started, along with the National Parks, and there was an environmental awakening. There was huge public access and a realisation that things had to be done on a slightly less haphazard manner. There was a lot of civic feeling everywhere which is why groups such as the SHS started. I used to attend SHS meetings in the beginning when they were held in the Kings Arms in Kingsbridge. Pippa Woods and her mother Lady Hendy were involved, as were Bob and Rowena Pim.

Val and her contemporaries leave behind them a huge legacy from which we all benefit today. Thanks to their early work the FSC is now firmly established on the local scene. As well as educating the next generation of scientists, the centre provides much needed local employment while offering numerous opportunities for interested volunteers. And there can be few local children who haven't had a residential school trip there to learn about this special and important place.

Thanks in no small part to Val and her contemporaries, long may it continue. ●

<https://SouthHamsSociety.org>

Slapton Ley is the largest natural lake in south-west England. Although only separated from the sea by a narrow shingle bar, it is entirely freshwater. It is surrounded by reedbeds, marshes and woodland habitats.

A Site of Special Scientific Interest (SSSI) it was declared a National Nature Reserve (NNR) in 1993. The nature reserve is open daily and there are no entrance fees.

Obituary: Pippa Woods, CBE

Pippa Woods, one of the Society's founder members, died recently at the age of 96 on her beloved farm at Osborne Newton, near Aveton Gifford, after a long and active life. The newspaper announcement of her passing describes her as a 'farmer and campaigner', and her tireless work on behalf of small family farms with the Small Farmers Association, and its later manifestation as the Family Farmers Association, has been recognised elsewhere. She was awarded the CBE in 2016 for her services to family farming and the rural community.

However she was also committed to the aims of the South Hams Society, and has been fighting its battles since she joined its committee during the formative years of the SHS in the early 1960s. It seems she was a committee member from the very beginning of the Society in 1961, being mentioned in reports and minutes from 1962 onwards, and she remained a constant presence. The minutes record her regular attendance at planning meetings of the Kingsbridge Rural and Urban District Councils, and her organisation of primrose planting and tree nursery activities.

She had wide interests in conservation and the countryside, taking part in regional as well as local discussions and correspondence. She was also a Churchstow parish councillor for many years, first joining the council in May 1964. It wasn't long before she took over the editorship of the



Pippa Woods – Photo: Farmers Guardian

SHS newsletter and wrote much of the content. Her articles in this and many other publications were always concise and purposeful, for instance in this first editorial piece for the newsletter.

"The greatest problem of amenity societies is communication. A means of publicising both the basic philosophical theory and the every day problems of preservation is one of our greatest needs. The forces of destruction and development are powerful financially. Public opinion is the only source of power available to those who seek to preserve the best of the past and guide the path of progress in the countryside along civilised tracks. On the rare occasion when public opinion can be brought to bear

in time, it can have considerable effect."

"To win public sympathy, we need the vast majority of ordinary people to think about these matters and understand them. And this needs a means of disseminating information in all directions to the public at large. It is easy to preach only to the converted, at meetings and in newsletters. Your committee gives constant consideration to means of reaching new audiences."

Even when she gave up editing the newsletter Pippa continued to contribute articles, often on farming issues, as in spring 2004, when she discussed the changes to the Common Agricultural Policy and the possible effect on

farmers and the consequences for the landscape.

She had to reduce her activities a little in later years, but still retained a keen interest in Society affairs. The minutes of the 2018 AGM note that Pippa was still on the list of committee members for 2017/18, and was the longest-serving member at the age of 93. It was proposed that she should be appointed as an Honorary Vice-President of the SHS without committee responsibilities and this was unanimously agreed, recognising nearly 60 years of active involvement in the Society.

Even then she still kept in touch, most recently turning out her old newsletters to be passed on for inclusion in the archives. This extract from an early editorial in the October 1965 newsletter reflects her attitude to the SHS over many years: "The task of composing a newsletter slap in the middle of the summer holidays, not to mention harvest, caused the editor to reflect that to some of the committee this is "Not So Much a Society, More a Way of Life".

It was indeed a way of life, with an enormous contribution to the conservation of our own South Hams. Your current committee is following in Pippa's footsteps to the best of its collective ability! – but we all acknowledge that she will be a very hard act to follow.

We will miss her. ●

GIFT AID

The Society is able to claim back 25% of the value of your membership subscription or donation from the government if we hold a Gift Aid declaration for you. For example, a subscription of £10 generates a Gift Aid claim of £2.50. Currently we make a claim once a year. Our claim for 2021 resulted in a payment from HMRC of £344.79, a sum which goes straight to our funds.

If you are a UK taxpayer and pay an amount of income tax at least equal to the amount that the Society can reclaim (25% of your subscription or donation), then you can sign a declaration.

Many members are already recorded as having signed a Gift Aid declaration. This information is held by our membership secretary. If you think you may not be signed up and would like to be, please complete the declaration below and send a scanned copy to membership@south-hamsociety.org, or send it by post to South Hams Society, c/o Shepherd's Corner, Galampton, Kingsbridge, Devon TQ7 3EU.

If you would like to know if you are already signed up, just ask our membership secretary on the same email address. You can cancel the declaration at any time.

Name

Signed: Date:

Defra toughens up tree protection

Two days before Christmas Defra and the Forestry Commission announced what they described as a 'Package of tough new measures (to) protect the nation's trees and curb the scourge of illegal felling'.

Changes to the Forestry Act 1967 include where trees are felled without a licence, and a licence was required, the court will be able to impose an 'unlimited' fine, as opposed to the current limit of £2,500 or twice the value of the trees felled.

Similarly failure to comply with a Forestry Commission Enforcement Notice and a subsequent court-ordered Restocking Order, requiring any trees felled to be replanted, will put offenders at risk of imprisonment, as well as an unlimited fine.

And Restocking Notices and Enforcement Notices are to be listed on the Local Land Charges Register, so making them visible to prospective buyers of the land and potentially reducing the land's value.

According to the announcement, the largest fine issued in recent years that followed a report of illegal tree felling to the Forestry Commission took place in Hailsham, East Sussex, in January 2020. Hastings Magistrates Court issued a fine of almost £15,000 for the felling of 12 oak trees, all approximately 150 years old.

To help better target any appropriate enforcement action, the Forestry Commission will also have powers to compel landowners to provide information regarding who else has an interest in the land, including leaseholders and tenants.

Commenting on the proposals, Abi Bunker, Director of Conservation and External Affairs, Woodland Trust, said: 'These changes should send a clear message that felling trees illegally, for example prior to submitting development proposals, will not be tolerated, and that the penalties reflect the value and many benefits trees bring to our towns and cities.'

But, she added, 'It is important that this is backed by increased resources for the organisations that deal with the enforcement of illegal felling.' •

Council says Butterford decision 'sound'



The track has been constructed immediately alongside and beneath the tree and hedge canopies

Some 16 weeks after the Council's Planning Business Manager told the Society she was 'seeking the opinion of the Council's Lawyers regarding the validity of the application', that opinion was finally received.

As far as the Council's solicitor was concerned the decision, that Prior Approval was not required for the proposed agricultural storage building, was 'sound'. The Council, she declared, 'does not intend to take any further action'.

Yet the decision had been based on information provided by the applicant's agent. And that information was incorrect.

'The site for the building', the agent had claimed, 'has been chosen to serve this 22 acre block of land as it is in a level corner of the field with an access track leading directly to it'.

In reality, and as the Council now accept, no such track existed.

And, despite a request from the Society, and the fact that the Council has a statutory duty to give reasons for decisions set out in Regs 7 and 8 of the Openness of Local Government Bodies Regulations 2014, the Council's solicitor failed to provide her reasoning.

Looked at logically, she could only arrive at her conclusion on the basis that the planning officer was not to know the information provided was incorrect. As a result, when evaluated against

the information as provided, the decision reached by the officer was 'sound'.

But, had the officer known the information was incorrect, it is hard to see how that would have been her decision. s327A of the Town & Country Planning Act 1990 states:

"1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—

(a) the form or manner in which the application must be made;

(b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement."

Consequently, unless the Council considers there is no need for the form or content of any document or other matter accompanying applications to be accurate, then any application containing incorrect information that could prove a material consideration in its determination should not be entertained.

The Society has since submitted a Freedom of Information request in an attempt to understand how the Council's solicitor arrived at her decision. In the meantime, and many months after a track 800 metres long and 3.5 metres wide was constructed without planning permission, a further application has been submitted,

'to regularise & retain an agricultural access track'.

That track, according to the applicant's agent, 'will provide a hard-surfaced access route from the gateway to the agricultural building which was approved under 3808/21/AGR and will provide a much safer and more accessible access across the Applicants land.'

In other words, were the agricultural building to not be constructed in the north-west corner of the site, but instead in the south-east corner, adjacent to the public highway, the track would not be necessary.

Arguably, significant ecological and environmental damage has already been caused by the construction of the track immediately alongside and under the canopies of both trees and hedgerows. Indeed, the applicant's own ecological assessment recommended that a two metre wide protection zone should have been, but was not, in place before construction began to protect hedgerows from accidental damage.

Should the Council approve this application, they will stand accused of damaging the integrity of the planning system, of failing to conserve and enhance the protected landscape, and condoning the provision by applicants of misinformation.

You can read the Society's objection to this application here. •

Please remember to gift us Gift Aid

Another application on Salcombe site

The Society objected to this application to build a two-storey house on land adjacent to Stonehanger Court in Salcombe. Previous applications to construct a house on this site when it was recorded as Lower Rockledge, namely 0201/19/FUL and 4159/19/FUL, had in the first instance been withdrawn and then refused, a decision upheld upon appeal.

In our objection we argued that the natural open space around houses on the hillside south of the main town centre, along with trees and vegetation, are an attractive feature of this part of Salcombe, and the proposed development would remove a significant area of green space to the detriment of the low density development character of the area and the wider view of the town, including from and across the estuary.

As with the previous applications, we said, this proposal for a new two storey dwelling would clearly neither conserve the location's special qualities nor its distinctive natural beauty.

Although the application has yet to be determined, the day before our objection was submitted, the Council's planning officer, Tree Officer and Landscape Officer all visited the site. Shortly afterwards the Tree Officer objected on arboricultural merit, concluding that the application was contrary to Policy Dev28 of the Plymouth & South West Devon Joint Local Plan 2014-2034 and/or BS5837: 2012 Trees in Relation to Design, Demolition & Construction.

Separately the Landscape Officer was of the view that the detrimental effects on the landscape and environment of the AONB should be given great weight in the planning balance, while the proposed development was also in conflict with Local Plan policies and the Salcombe Neighbourhood Development Plan. As a result, she wrote, 'by virtue of its location and design, this proposal is not considered to meet the tests and objectives of policies outlined above, and I'm therefore unable to support the application.'

It is to be hoped that when the Planning Officer comes to determine this application she will accept the recommendations of her colleagues and again recommend refusal. ●

Waterside: Officers lift objections



Waterside 'scheme does introduce fairly large levels of development'

The Society objected to what we considered would represent significant overdevelopment of a site lying within the AONB, the Undeveloped Coast and Heritage Coast, detrimentally impacting on this sensitive waterfront location.

We also believed the proposed removal of so many trees and the encroachment of a new built form on to an adjacent undeveloped green space was unacceptable and contrary to the provisions and objectives of policy within both the NPPF and JLP.

Unfortunately the planning officer disagreed.

By the time she wrote her report

both the Tree Officer and the AONB Estuaries Officer had lifted their original objections – the Tree Officer concluding that agreement was now found with the assessment of tree quality and the proposed protection methodologies for those trees of merit, while the Estuaries Officer now found the updated drainage proposals acceptable.

The Parish Council supported the application, noting that it was 'refreshing to see an application asking for all requirements upfront rather than enter into application amendment 'creep' at a later date.'

And the planning officer noted that a pre-application was carried out prior to the applicants submitting the current proposal. That had received received partial support from officers with the applicants since making such changes as officers felt necessary.

In recommending conditional approval the report accepted that 'whilst the scheme does introduce fairly large levels of development, this is considered acceptable in relation to the size of the plot.'

Ward member Cllr Julian Brazil confirmed he was happy to delegate approval. ●

Little Wotton change of use legal

The applicants were seeking a certificate of lawfulness for the mixed use of land for agriculture and the rearing/keeping of game birds.

To obtain that certificate it was necessary for them to demonstrate that their planning breach, namely not using their land for agricultural purposes, had been continual for at least 10 years.

But, and as we pointed out in our letter of representation, their own submission showed they were not in continual breach of the designated land use in either 2017 and 2018, when the land was being used for agriculture purposes.

In support we submitted a number of Google Earth images.

However in her report the case officer noted: 'that the South Hams Society have challenged

the applicant's statement on the basis that the aerial images on their own do not sufficiently demonstrate continuous use of the land as stated. Officers acknowledge these comments but would confirm that the range of other financial information provided with the application does confirm continuous use of the land as stated over the required ten year period. Due to its financial nature, this information was not publicly available and therefore the South Hams Society were not able to take this into account when formulating their representation.

'It is therefore concluded that sufficient evidence has been provided in this case to satisfactorily demonstrate the claimed occupancy of the dwelling and therefore a Certificate of Lawfulness should be granted on that basis.' ●

It's that time of year again and membership subs are due. We are keen to get as many members as possible to pay by standing order. Standing order payments save our team time - time which can be used more proactively.

If you don't already pay by standing order – and you can check with your bank to see if one is set up - please can we ask that you set one up for your 2023 payment. All you need to do is to ask your bank to arrange payment of your membership subscription (£10 for individuals; £15 for family) to South Hams Society, sort code 53-61-37, account number 08607397, payable now and on 1st January each year.

Salcombe Resort

At the end of July the Society submitted a letter of representation objecting to the application for a certificate of lawfulness to permit the number of static caravans being housed on this site to be increased from 34 to 52.

We pointed out that back in June 2020, Planning Inspector David Wyborn had dismissed an appeal by the applicants following the refusal of their application to add a further 23 static caravans to the 34 already on the site. The only obvious difference between that application and this was that the number of additional caravans had been reduced to 18. In all other material respects, the applications would appear identical.

Although the application had a target determination date of the end of August it still remains undecided. But since then, at the start of November, the National Trust have also submitted an objection, echoing our contention that an increase of 18 lodge type caravans in addition to the existing 34 would clearly represent a material change of use of the site, necessitating the need for planning permission.

Should the application for the certificate of lawfulness be refused, and a subsequent application to increase the number of caravans to once more be submitted, precedent suggests it too should be refused. •

Writers & Writing

On 27 October the Society had the pleasure of hosting local authors and journalists Andrew Wilson, Minette Marrin and Marcus Field at Totnes Civic Hall.

Before the interval each told us about their careers and work to date, interspersed with asides of a usually less than a slanderous nature. Unsurprisingly, as fluent wordsmiths, all spoke exceptionally well.

After the interval a group discussion followed, taking questions from the audience.

All who were there said how much they enjoyed the occasion, and it's the type of entertaining and informative event we hope to repeat in the future. We even signed up some new members!

As well as our three speakers, thanks must also go to the Society's Events Lead Cathy Koo and members Justin Haque and Katy Bowen, without whose hard work the event would never have taken place. •

Hard core on land north of Beadon Road



The south-east corner of the field north of Beadon Road not yet restored to its natural state

In the October issue of the Newsletter we reported that the owners of Sandnes, Beadon Road, Salcombe were rumoured to have appealed the Council's refusal to allow the field further up Beadon Lane to be used for storing building materials and parking machinery and vehicles associated with the Sandnes development.

The situation is now further complicated, we wrote, by the appearance of a document within the Sandnes application (0258/22/FUL). Under the title - Site Location Plan - there appears to be a proposal for the erection of three stables and ancillary storage on the same area of field that the Council have instructed must be restored to its natural state.

As we go to press, we added, no new application has as yet appeared on the Council's website.

That has since been rectified and application 2718/22/FUL, for

the erection of three stables and ancillary storage on the field in question, was submitted on 24 October.

In objecting to this latest application we quoted from the officer report for 0258/22/FUL that acknowledged:

'The works undertaken have had a significant impact on the undeveloped, unspoilt nature of the site. The levelling of the site, and building up of the land with hard core has replaced the undulating green field with an engineered, developed area of land which is highly visible from local footpaths due to its elevated position at the top of the valley.'

This latest application, 2718/22/FUL, we wrote, was now attempting to authorise that work by retaining the raised platform. We were also concerned the two openings created in the lane to serve fields previously accessed from Salcombe Bridleway No 17, and for which there was no planning history, were becoming

visually damaging.

In addition, we pointed out, the 'Moor to Sea' Ecology Ecological Appraisal submitted with this latest application was written in December 2021 and originally submitted with 0258/22/FUL with the following understanding:

'The site will be temporarily be used for the storage of building materials during the re-development of the client's house, Sandnes. The site is anticipated to be used for storage for approximately one year, will not be used at night and all hedge banks will be retained.'

As a consequence, we argued, the submitted Ecology Report was irrelevant to this planning application, as it was written for application 0258/22/FUL for the temporary use of the location, which itself was refused, and on the understanding that all the 'hard core' would be removed.

This latest application has a target determination date of 18 January. •

Legal precedent suggests Hendham not permitted development

On 12 August the Society received an email from the Council's Enforcement Team, thanking us for our 'communication reporting the Alleged Unauthorised Track Relating to 2385/22/AGR at Hendham View'. We were told the breach had now been allocated to an officer who would investigate.

Since then, and despite our again emailing the Enforcement Team on 21 September, nothing more has been heard. However some weeks earlier, on 8 September, the applicants' agent submitted a further application, namely 3184/22/PAA, a 'Prior Approval Application for provision of Agricultural tracks following application 2385/22/AGR'.

Given it appeared that work on the tracks had already begun we submitted an objection, arguing the Prior Approval Application route was no longer available to the applicant. The statement on the Government's planning portal Prior Approval information page is clear: 'Work must not commence on the development until the Local Planning Authority has issued its determination'.

We also referred officers to planning appeal APP/X1925/W/20/3256050 in the case of Millbury Farm, in which the inspector concluded that farm tracks were part of any 1,000 square metre limitation imposed by the General Permitted

Development Orders, and that therefore this proposal for tracks occupying an area of land comfortably in excess 1,000 square metres could not be permitted under Class A.

In support of this assertion, and thanks to some hard work on the part of a Society member, we could also furnish officers with the relevant legal authorities.

It is to be hoped that officers will now inform the applicant that prior approval for the tracks is no longer possible, and Enforcement Officers will require the applicant to restore the land in question to its former state within a reasonable time period. •

Advice from Enforcement awaited*The view of the platform from the public footpath*

Following an approach from a concerned member, on 14 November the Society emailed SHDC Enforcement Officers. We wrote:

The attached photograph shows a viewing platform and turreted wall that has been constructed in the garden of 2 Rickham Cottages, East Portlemouth, TQ8 8PQ.

Noticeably, in small type in the top left hand corner of the site plan that accompanies the recently submitted planning application 3145/22/HHO the location of the platform is disingenuously described as 'Stone Structure- unable to survey'.

The first of the two photographs was taken from the public footpath to Mill Bay. The second from the lane in Rickham.

As a member of the Society has informed us: 'the raised platform that has been built at some distance from the house, within the walled area, is a large and very visible structure. It is more than a large paved patio - rather it resembles a large stage elevated from the ground. And it is very visible

from all around.'

We have also been informed that the platform, on which two deckchairs are visible, overlooks neighbouring properties.

The development is within the AONB and is clearly visible from a number of public viewpoints. It also appears not to have received planning permission.

Consequently I would be grateful if you could advise me as to whether planning consent has or should have been given and, if it has not, whether retrospective consent will be required if the development is to remain.

That same day we were informed this breach will be now be allocated to an Officer who will investigate the allegation. The week before Christmas the Society was informed a site visit had taken place and that we would hear again once the matter had been discussed with colleagues.

It may be no more than a coincidence but, on 29 November, planning application 3145/22/HHO was withdrawn. •

The view of the platform from the lane**Our polluted waters**

Streams, Rivers, Estuaries and the Sea: sewage and other water pollutants in South Devon. Who does what and who is trying to doing something about it? What can you do about it?

*Let's all help the water
Right away*

*Do what we can and oughta
Let us start today*

So sang the Beach Boys¹ in 1971. It is now nearly 2023 and the water still needs helping, in fact it needs a lot more help.

I volunteered to become Environmental Lead for the Society, a newly created role. I decided to start with water and sewerage. I wanted to understand what lies behind the headlines and sound or text bites and to find out more about what the situation is both nationally and in South Devon. Having now spent some time trying to do that I thought I might as well inflict that understanding on others! In doing so I have tried to provide a guide to the more detailed information resources I have used (hence the large number of endnotes). I also hope to encourage others to come up with some focused ideas as to what might be done at a 'South Hams' level by the Society/its members. I look forward to being told what I have missed out or failed to appreciate. Probably quite a lot. – *Martin Fodder*

Some water and sewage statistics for South Devon

Water and waste water management works in terms of river catchment areas and the South Hams falls within South West Water's catchment areas of:

Tamar excluding Wider Plymouth,
Yealm-Erme,
Kingsbridge- South Devon
Dart

For each of those four area³ South West Water has a Draft Drainage and Wastewater Management Plan, and for each that plan provides 'asset, characteristic and performance data'. Data for the Tamar catchment area has been excluded from the following summary⁴ as only a small part of the area falls within the South Hams:-

Population in 2020: 72,596
Increase by influx of tourists in the summer 28.3%
Expected population in 2050, 83,269 (a 15% increase)
65km of watercourses of which 23.3 km are classified as "Main Rivers"
892km of Recorded Sewers
45 Sewage Pumping stations
91 Sewage Treatment Works
279 Overflows

River water quality in South Devon

Planet Patrol has just published a report 'What Lies Beneath', a Citizen Science investigation of UK water quality⁶. During the period May to July 2022 48 water sites across the UK were tested every two weeks by volunteers for the presence of nitrate, nitrite, phosphate, coliform bacteria and metals. PH range was also measured. The sites included the River Dart near Dittisham, which met the acceptable criteria for all five parameters tested⁷. So that was the good news. In fact the Dart was the only site in the UK that did meet all those criteria. But other available data presents a rather less encouraging picture for South Devon, including the Dart.

The Water Quality Inquiry Report⁸ was published by the Environmental Audit Committee of the House of Commons ('HC Committee') earlier this year. The HC Committee had received evidence⁹ in relation to the state of water bodies. However getting a complete overview of the health of rivers and the pollution affecting them was hampered, it said, by 'outdated, underfunded and inadequate monitoring regimes'. Monitoring is mainly focused on the levels of nutrients such as nitrogen, phosphorous and ammonia, even though other substance, metals, pesticides, pharmaceuticals, industrial chemicals, and plastics also contribute to poor water quality. Many of these are not routinely monitored.¹⁰

Throughout England only 14% of assessed rivers enjoy 'Good' ecological status, meaning there is (only) a 'slight change from natural state as a result of human impact'. This status/metric for assessing the health of the water environment is assigned using various water flow, habitat and biological quality tests. Failure to meet any one individual test means that the whole water body fails to achieve good ecological status.

Unfortunately the Government was not on track to meet the EU Water Framework Directive requirement, transposed into UK law – at least for the time being, for all rivers to reach good status by the end of 2027 (as long as this was 'technically feasible' and 'not disproportionately costly'). But those targets have just been downgraded considerably. Under the Environment Agency's new Objectives data for England, published on 22 December 2022, targets will now not be met completely until 2060 or 2063, while most of the 2027 targets are described as 'low confidence' anyway¹¹.

The latest available official detailed data for South Devon water-courses and other water bodies¹² presents a mixed picture of ecological ratings, with some classified as 'Moderate' ('Moderate change from natural state as a result of human impact') and some classified as 'Good'. The Erme, conversely, is classified as 'Poor' (which means a 'Major change from natural state as a result of human activity'). Whatever the available official data says we know that raw sewage is being spilled into South Devon rivers in considerable quantities (see below).

Who or what is to blame?

The 2021 Defra progress report states that nationally, after the physical modification of rivers (which is unavoidable in many urban environments), the main three drivers preventing water bodies achieving 'good' status were:

- Agricultural pollution, which was affecting 40% of water bodies;
- Sewage and wastewater, 36% of water bodies;
- Run-off from towns, cities and transport so called, 'urban diffuse pollution', 18% of water bodies.

As the HC Committee observed, these proportions were estimates for all inland waters in England and the balance of drivers would differ for each catchment and stretch of river. Sewage and urban diffuse pollution were likely to be the main pollutants in urban

areas. In rural stretches of river agricultural practice was likely to be the dominant form of pollution. Plainly most if not all of South Devon's rivers would be categorised as rural. Consequently the contribution of agriculture is likely to be more than 40% of the overall problem.

More precise estimates for the relative contribution of agricultural pollution and sewage pollution in South Devon water courses are available¹³. Those vary considerably from water course to water course, according to which if any agricultural activities are being carried on and the efficacy of any methods being used to minimise contamination¹⁴. As well as the impact of any pollution from agricultural activities (and for that matter human waste) anecdotal observation suggests that other contaminants apart from nitrogen and phosphorus compounds, in the form of plastics etc, are also likely to present but, as already noted, these are not routinely monitored¹⁵. Anecdotal observation also suggests that sewage may play a greater role in August at the height of the holiday season (see above), when sewage treatment works will be less able to cope with increased loads and asset failures have more substantial consequences.

Human wastewater, farm slurry and fertiliser run-off from farms are all sources of phosphorus and nitrogen (as nitrates or nitrites). Excessive concentrations of these nutrients can cause algal blooms in rivers: these consume oxygen from the water, undermining ecosystems within the river and their surrounding habitats.

Wastewater Management South Devon: deliberate sewage spills and CSOs

Sewer spills are not the only cause of sewage pollution – it can also be caused by asset failure. But deliberate sewage spills are of very considerable significance. As a consequence, and with the benefit of hindsight, drainage of surface water and the removal of wastewater/sewage from houses and factories should have been kept separate. Many (but not all) new sewer systems now have separate sewers for surface water and foul water.¹⁶ For the most part rainwater and waste water from toilets, bathrooms and kitchens are still carried in the same pipes to water/sewage treatment works. Should there be too much rain the capacity of those pipes and the treatment works at which they terminate will be exceeded. Without intervention this would result in whatever is in the pipes backing up in to people's houses and elsewhere.

Such intervention is usually provided by combined sewer overflows (CSOs), valves that open and are opened when backing up threatens. When that happens the mix of rainwater and untreated sewage in the pipes is spilled directly into the watercourse. Because of the circumstances in which such deliberate spillage takes place the contamination is usually (and hopefully) going to be fairly diluted.

These spills, euphemistically referred to as - "events", - and their duration, are now recorded. In our three catchment areas there are a total of 128 Event Duration Monitors, and South West Water's E(vent) D(uration) M(onitoring) data is available as from South West Water's website¹⁷. There it lists the results from all 1,400 EDMS operated by the company. This information is also presented on a map produced by the Rivers Trust¹⁸.

By way of example at Dittisham Waste Water Treatment works in 2021 there were 44 spills with a total duration of 164.15 hours. That does not sound like a lot. But Harberton seems to have had 166 spills. The total duration of those spills is said to be 2,635 hours, which is getting on for a third of the 8,760 hours in a year. Similarly, at Broadhempston, there were 303 spills with a total duration of 1,503 hours¹⁹.

According to the data 136 of South West Water's overflows ap-

pear to have operated for more than a thousand hours in 2021. However, if you had the misfortune to be next to the overflow at St Dennis Sewage Treatment works in Cornwall, it seems that you would have experienced 355 spills with a total duration of 7,486 hours. So Harberton residents should take comfort: things could be worse.

At the risk of stating the obvious the frequency with which a CSO will have to be operated will depend on the degree to which the sewage treatment works the CSO protects is able to meet the demands placed on it by the rainfall and wastewater it receives. Should the capacity be increased, or were the rainfall to be diverted away from the sewers (at least temporarily), the number of times the CSO will have to operate will be reduced. But this would, of course, cost a considerable sum of money.

Schedule 3 to the Flood and Water Management Act 2010 requires any development with drainage implications to have those drainage systems approved before construction can begin. The Act promotes the utilisation of sustainable drainage systems (SuDS), which provide a more natural approach to managing water close to its source, where it falls, and are able to reduce the impact of development by slowing runoff, encouraging infiltration, trapping pollutants, providing biodiversity and increasing amenity for residents through provision of open space. However Schedule 3 has never been brought into force. That may now happen according to a report in The Times of 8 December 2022. It says that whilst successive ministers have resisted the move, fearing it would hinder meeting targets for homes and end a builder's right to connect to existing sewers, planning, engineering and environment groups have written to the Prime Minister, urging him to implement Schedule 3. Defra says the government is reviewing the case.

Part 7 of the Levelling Up and Regeneration Bill would introduce powers to make further regulations in relation to 'nutrient pollution' (nitrogen and phosphorus compounds) from sewage treatment works.

Further good news, and a rather more tangible step, is that schemes to improve natural flood management will receive extra funding²¹.

Water and wastewater: ownership, duties and regulation

The water and sewage industry was privatised in 1989 when the functions of the former public water authorities to supply were transferred by the Water Act 1989, which was subsequently consolidated with other acts in the Water Industry Act 1991 ("WIA91"). In Devon South West Water Limited, which is 100% owned by Pennon Group plc ("Pennon"), is both the water undertaker and sewerage undertaker as the successor to the South West Water Authority. If a domestic consumer wants water and/or sewerage in the South West then they have to buy those services from South West Water Limited.

Under s 6 of WIA91 the appointment of a company to be the water undertaker or sewerage undertaker for any area has various effects. In particular it requires the company to perform any statutory duty imposed by or under any enactment. The general duty of a sewerage undertaker to provide a sewerage system to ensure that its area is 'effectually drained' and to make provision for effectually dealing with the contents of its sewers can be found in s. 94. (6)²². According to the High Court this means "to treat the sewage in such a way as to render it reasonably harmless and inoffensive."²³ Plainly untreated sewage dumped into rivers is neither harmless nor inoffensive. But taking legal action in relation to putting harmful and offensive sewage into rivers is problematic for the reasons that follow.

Environmental regulation and oversight of the water industry in

England is now done by the Environment Agency. But economic regulation, which is at least arguably more important than environmental regulation, is carried out by the Water Services Regulation Authority (known as "OfWat"), as successor to the Office of Water Services²⁴.

In very broad terms the Environment Agency has a duty to improve and maintain the quality of surface and ground waters, and as such is responsible for monitoring the quality of waters and discharges into them. Among other things it controls discharges from individual outfalls through a regime of permits. It has a variety of enforcement tools should discharges not be in compliance with permits, and it works with undertakers like South West Water to identify capital works that are required to effect improvements. Some of those works will be required to meet legislative requirements. But where there is no absolute legislative requirement this will involve balancing the benefits of schemes for improvement against their costs.

OfWat sets the price framework for the charges which undertakers can charge consumers. It undertakes periodic price reviews ('PR'), intended to ensure that undertakers can perform their functions, including necessary investment in infrastructure, without undue cost to their customers. OfWat set prices and funding priorities for new capital works in five year periods, based on Asset Management Plans ("AMPs"). This process can involve OfWat questioning schemes designed to deliver environmental improvements on the basis that costs outweigh the benefits, leading to further liaison between OfWat, the EA and the undertaker. At the end of the process OfWat issues a final determination setting the level of charges the undertaker can make. The last PR was in 2019 in relation to the AMP period 2020-2025 and the next PR will be in 2024 for the following five years.

To put some meat on the bones: South West Water's Draft Drainage and Wastewater Management Plan for the Dart25 goes into fairly granular detail as to the way the various assets are presently performing and the calculations as to which should, or could, be improved and how. The problems at Harberton (reference to spill totals and their duration were detailed earlier) are identified. Options to deal with those problems, including 'SWM4', which is separating surface water by constructing new surface water networks, are suggested.²⁶ But South West Water stresses these are "high level strategic planning proposals and do not represent a commitment" and they will "need to be assessed against other risks and against the wider South West Water programme for risk and affordability."²⁷

What is difficult to understand is the degree to which the regulators direct (let alone control) the sewerage undertakers as to which particular assets need improving or replacing and when²⁸.

Fundamentally the money for particular projects can only be raised by either increasing bills or by diverting resources from other projects. There is no subsidy from Government, i.e. from the taxpayer, or, for that matter, the water companies. Cathryn Ross, formerly CEO of OfWat and now Strategy and Regulatory Affairs Director for Thames Water, makes the following and, it seems to me, surely correct, set of observations:-

I have heard some people laying the blame for why we are where we are in terms of environmental stewardship or service resilience at the feet of investors. I've heard people saying that 'it isn't a surprise that investors don't want to spend more money than is absolutely necessary'.

To be clear, this is absolutely not the case. Investors don't fund stuff, customers and taxpayers fund stuff. Investors finance stuff. They provide cash upfront that enables stuff to be built and over time, as that stuff gets used for services people pay for, the investors get a return on the cash they put in. And as and when they sell up, they get their cash back possibly

with an additional return if the asset is now worth more. Investors, therefore, are very keen to put more cash up to build more stuff as long as they can see a return that compensates them for the risk they are taking. A lack of investor appetite really is not the problem.²⁹

Or, to put it another way, if the regulator, on behalf of the consumer/public, wants to approve enhancements to water supply and sewerage assets and is prepared to approve the price rises that will come with the cost of providing a return on those assets to the investors then the water companies will be delighted to raise funding for and then build those assets. The water companies are not spending their money, they are spending our money and their purpose in doing so is to make a profit. If they build more assets and can make more profit from those assets then that is fine, especially if the overall asset value increases. And so Professor Dieter Helm, an Oxford University academic who has written extensively on this subject, says

‘...there are elements of truth in the arguments of some water companies that environmental problems are the fault of regulators who have not allowed enough capital expenditure (CAPEX) in the periodic reviews’³⁰

But that extra CAPEX would have to be paid for which would mean water bills would have to go up. The National Audit Office report³¹ of 2015 found that the average bill for water and sewerage was £396, representing a 40% increase in real terms since privatisation in 1989. In those years, the water industry had spent £126 billion on building and maintaining water and sewerage. The general picture back in 2015 was that the quality of the UK’s drinking and bathing water had improved. Most of the increase in bills had happened in the period up to 1995 and in fact there was a 2.6% fall between in the five years up to 2015. And since then bills have remained fairly static. You get what you pay for, the water companies might say.

The next issue is whether this is an efficient way of paying for public good. The process by which OfWat works out what the water companies should be allowed to spend – and charge – does seem to be enormously complicated and fraught with opportunities for getting it wrong³². Overestimates of the estimated level of required spending could enable companies to earn substantial profits without any real improvements, while underestimates could harm the financial viability of well-performing companies. Current consumers may gain through lower prices if all efficiency gains are passed on, but this could dilute the incentive to increase efficiency in future. Costs may be higher or lower than OfWat assumed in setting price limits.

The National Audit Office said that the assumed return amounted to around one-third of the average household bill in 2014-15 (approximately £130). So OfWat’s approach to setting companies’ cost of capital had become more important, since financing efficiencies now represented a higher proportion of potential gains for companies. There has been trenchant criticism of the way OfWat has calculated the figures³³. The NAO estimated that companies made net gains of at least £800 million between 2010 and 2015 because of unexpected falls in borrowing costs and the corporation tax rate.

Apart from the supposed benefits of access to private capital another driver for privatisation was that the privatised companies would be able to choose better managers than their publicly owned predecessor authorities. Whether or not you think that this has turned out to be correct the managers that have been chosen do seem to be quite well remunerated. Pennon’s Directors’ remuneration report³⁴ states that in 2020/2021 Susan Davy, the CEO, received £456,000 in base salary, £29,000 in benefits and £80,000 in pension related benefits- a total of £565,000. She also received an annual bonus of £437,000 and £722,000 by

way of Long Term Incentive Plan. Her total remuneration was £1.724M. That is rather more than ten times what the Prime Minister could draw. But perhaps more relevantly Pennon is a FTSE 250 company. According to PWC average total pay for FTSE 250 CEO’s in 2020 was £1.3M (down from £1.6M the year before)³⁵. Actually many CEOs of water companies are paid even more than Susan Davy is.³⁶

What the regulators say about South West Water’s performance

It would in no way be fair to say South West Water is failing to do anything to deal with sewerage and pollution problems³⁷. It clearly is engaging with the issue. As I have explained, South West Water is constrained in the amounts that it is allowed to spend on improvement works. South West Water is a commercial company, not a charity. It works within a system that was introduced by Parliament and it is, at least in principle and theory, heavily regulated on behalf of the public.

It is generally accepted that very considerable investment was necessary to comply with the EU Directives in relation, in particular, to drinking water and bathing water. A great deal has been achieved towards meeting those requirements since 1989, although it has been suggested the measures taken were largely the low hanging fruit. There may be further steps that could be taken easily and relatively cheaply, such as making sure that all storm overflows have screens. But other measures are going to be more problematic and will certainly be expensive. They may also raise quandaries. One example is in relation to phosphorous. Water companies treat drinking water by adding phosphate to prevent metal dissolution from water pipework systems and lead poisoning in particular. The trouble is phosphates cause serious problems in the wider environment .

How well is South West Water actually discharging its existing responsibilities?

The Environment Agency’s report (up)dated³⁹ on 22 July 2022 and OfWat’s Water Company Performance Report 2021-22 published⁴⁰ on 8 December 2022 make depressing reading for those who live in South West Water’s area, though they are not exactly wonderful for those living in much of the rest of the country. The EA report feeds into the OfWat report so I will concentrate on the OfWat report.

OfWat says it is currently investigating all of the water and wastewater companies. It also already has live enforcement cases for six companies, including South West Water, for potential failures at sewage treatment works that may have led to sewage discharges into the environment. As OfWat stresses those cases are not yet completed.

However, using the data it already has, OfWat has grouped the water companies into three categories: ‘leading’, ‘average’ and ‘lagging behind’. Ofwat bases this on how the companies have performed against the performance commitment levels and expenditure allowance for 2021-22. OfWat states that even the leading companies have areas where real improvements need to be seen. Noticeably, South West Water is not a leading company: it is in OfWat’s so called ‘lagging behind’ category.

In relation to the performance commitment indicators that appear to relate to sewerage OfWat says as follows:-

Internal sewer flooding: Internal sewer flooding occurs when sewage enters a home due to a blockage or a lack of capacity in a sewer due to rainfall or asset failure. Here, to be fair, South West Water does relatively well, it was one of only four companies to achieve its internal sewer flooding performance commitment levels for 2021-22 and was one of two top

performers, it reported a reduction of 43%.

Pollution incidents (category 1-3): Pollution incidents are a discharge or escape of contaminants such as sewage or chemicals which affect the water environment. OfWat says that South West Water was one of the five companies (out of eleven in total) which failed to meet its pollution incidents performance commitment level. South West Water reported 86.58 incidents per 10,000 km of sewers against a performance commitment of 23.74 incidents. The top performer which was United Utilities where there were only 17.71 incidents against a 23.70 target. OfWat says this:-

Companies urgently need to improve their performance on this measure. There are cases of sustained poor performance over a number of years such as South West Water. Companies that lag behind need to set out the actions and investment they are undertaking to improve performance and demonstrate how they will achieve their performance commitment levels.

The reference to 'poor performance over a number of years' in the case of South West Water is worth exploring. For 2020 to 2021 South West Water's target was 24.51 incidents but there were actually 144.30 incidents⁴¹. In OfWat's report⁴² for the year before, 2019-2020 the regulator commented as follows:-

South West Water has two pollution incidents performance commitments. It has only achieved one of the ten associated performance commitment levels in the five years of the 2015-20 price control period. Along with Southern Water, South West Water demonstrates extremely poor performance relative to other companies. Both companies performed significantly worse than the pollution incidents target set for them by the Environment Agency

In relation to 2021/22 OfWat notes that companies that reported improvements attributed this to increased monitoring and digitisation of their sewer networks and that new technology emerging in this area is helping companies predict and identify issues as they arise, enabling them to prevent incidents from occurring and to respond more quickly if they do.

Treatment works compliance: Treatment works compliance measures companies' compliance with the discharge permit conditions set by the Environment Agency for wastewater and water treatment works.

OfWat reported that average treatment works compliance fell by 0.6% since last year, with eight companies failing to meet their performance commitment 'dead-band'. But South West Water reported the lowest compliance of the water companies in 2021-22.

If other companies can manage their assets to achieve 100% compliance then, it seems reasonable to ask, why cannot South West Water do the same?

Those then, are some of the hard performance targets and South West Water's reported performance in relation to them.

But what might be thought to be even more worrying is that OfWat also said that water and wastewater companies were falling behind on their investment plans, leaving promised service improvements behind schedule or undelivered.

Between 2020 and 2022 (the first two years of PR19) eight companies, including South West Water, had apparently underspent their budget for improving their wastewater network. South West Water had spent only 39% of its wastewater enhancement allowance. Only Yorkshire Water (which has spent only 20% of

its allowance) underspent by a greater margin. The main areas of underspend (for water companies generally) apparently included improvements to sewage treatment works, improvements to storm tank capacity and reducing spill frequency. David Black, OfWat's CEO said (of the sector's performance in this respect) that the lack of investment from companies was

'extremely disappointing, especially in light of the poor performance for customers and the environment. Failure to invest or delays to investments means that vital improvements are not being made or are late.'

Mr Black said he expected these companies 'to get a grip on their investment programme and make up for the shortfalls to deliver the associated improvements in service.

Investigating the Regulators

The passages quoted from OfWat's reports make it clear that the problems with South West Water and other companies have not come out of the blue. Back in March of 2018 Michael Gove, the then Secretary of State for the Environment, made an excoriating speech about the performance of the water companies⁴³. The current Minister for Water, Rebecca Pow, has written in similar terms. She says she is:

"particularly concerned about the unacceptable level of serious pollution incidents and a deterioration in overall compliance at sewage treatment works across the country."⁴⁴

This might be thought to suggest that the regulators may not have been doing a very good job of regulating. Indeed the new Office of Environmental Protection (OEP), created under the provisions of the Environment Act 2021, is now carrying an investigation into the respective roles of OfWat, the Environment Agency and the Defra Secretary of State, in regard to the regulation of combined sewer overflows in England. OEP will determine whether these authorities have failed to comply with their respective duties in relation to the regulation, including the monitoring and enforcement, of water companies' duties to manage sewage⁴⁵. The investigation will provide:

"clarity about the legal responsibilities of the different bodies involved to ensure measures to tackle the problems can be targeted and effective"

That clarity will be useful to have. The OEP says it is possible that its investigation could result in enforcement activity and/or broader actions to improve the legal and/or regulatory systems. In other words the OEP may take enforcement action to enforce the enforcing of enforcement.

The Government's Storm Overflows Discharge Reduction Plan

This Plan⁴⁶ sets, for the first time, clear and specific targets for water companies, regulators and the Government, to work towards the long-term ambition of eliminating the harm from storm overflows. The water companies will be required to meet the targets set out in this plan. OfWat and the Environment Agency will be expected to support and challenge water companies to meet the targets and, in the case of OfWat, to "enable appropriate investment for companies to meet these targets". The Environment Agency will place conditions on permits issued to water companies to achieve these results. Where necessary enforcement action will be taken.

You might think that late is better than never. But the plan has been the subject of strong criticism from various quarters for not being stringent enough. Indeed legal action has begun to require the Government to revise it.⁴⁷ The claimants say that the plan

fails to deal with the overflows that are causing the problem and sets targets which would allow water companies to continue dumping unacceptable amounts of raw sewage over a prolonged period, in some cases up to 2050.

Nationalisation?

Whatever one's views on whether privatisation of what are, almost inevitably monopolies, was a good idea there would seem to be little prospect of it being reversed by nationalisation given the cost of such an exercise⁴⁸.

Can you sue a water company for spilling sewage?

Can someone affected by storm overflows can take legal action themselves? The answer to this is not straightforward. In a case called *Marcic v Thames Water Utilities Ltd* the House of Lords (the predecessor to the Supreme Court) considered Mr Marcic's claim arising from the fact that in times of heavy rainfall, surface water caused a foul water sewer owned by Thames Water to become overloaded and cause (external) foul water flooding to Mr Marcic's property. He sued Thames for an injunction that would require Thames to improve the sewerage system.

He based his claim on the tort of nuisance ('nuisance' in legal terms corresponds broadly to nuisance in English). Marcic's claim failed. Thames was undoubtedly under a statutory duty to cause its area to be "effectually drained" But that duty was not directly enforceable by Mr Marcic. It was for the regulator to make an enforcement order against Thames Water. Although Mr Marcic had a common law claim for nuisance (the general obligation on a landowner to take reasonable steps to prevent hazards on its land from causing damage to its neighbour) Thames' obligations had to be considered against the statutory scheme under the WIA 1991 and the common law of nuisance should not impose on Thames obligations inconsistent with that scheme.

Mr Marcic's claim in nuisance was essentially "Thames ought to build more sewers". But the scheme of the legislation was that that individual householders should not be able to launch proceedings in respect of failure to build sufficient sewers. When flooding occurred, the regulator would consider whether to make an enforcement order; and the existence of a parallel common law right whereby individual householders who suffer sewer flooding might themselves bring court proceedings when no enforcement order had been made would set the statutory scheme at naught. Thus the failure of a sewerage authority to construct new sewers did not constitute an actionable nuisance.

Sewers do not just involve two neighbouring landowners: if one customer is given a certain level of services then others in the same circumstances should receive the same. Capital expenditure has to be financed, interest must be paid on borrowings and undertakers must earn a reasonable return, and the expenditure can only be met by charges on consumers. The Courts are not equipped to make decisions as to what should be provided by way of sewerage. That was up to the regulator – subject only to judicial review⁴⁹.

The Marcic case might appear to prevent any claim by a private individual that a sewerage company is in breach of its obligations. But that is not the case. In the *Dobson v Thames Water Utilities Ltd* already referred to the High Court held that there is a boundary which is 'difficult to draw' between duties which relate to 'policy' or 'capital expenditure' and matters or decisions as contrasted with 'operational' or "current expenditure" matters or decisions. If there is negligence in the performance to those 'operational' matters then a claim could succeed. So Ms Dobson's

claim that the huge Modgen Sewage Farm in West London was being operated in a way which was a breach of duty resulting in residents like her having obnoxious smells and infestation by mosquitos inflicted upon them could succeed.

Whether and to what extent any of the matters alleged give rise to a cause of action in nuisance involving the allegations of negligence will depend on the extent to which the allegation concerns policy matters or capital works such as building new or better facilities at Mogden STW rather than operational matters requiring current expenditure on matters such as maintenance. Causes of action based on the physical operation and/or operational management of the works are not likely to be precluded but that would depend on the facts.

So, to translate, if a complaint were made that South West Water should have built a better sewage treatment works at a particular location, or carried out work to improve the existing sewage works there that would have to be a matter for the regulator. But if the complaint were that South West Water was operating a particular sewage works in a negligent way so as to cause a nuisance then that could be actionable by a private individual. For the avoidance of doubt I do not suggest that South West Water have done or failed to do either of these things!

It does not take much more than a moment's thought to appreciate that working out which side of the line the particular (hypothetical) 'failure' lies may be very difficult (and expensive). Much less risky to leave it to the regulator. Assuming that the regulator can be persuaded to take action. As to which see above.

Campaigning Organisations

There are various regional and national pressure groups whose activities are relevant to improving water quality in South Devon. Here are some of them.

Friends of the River Dart⁵⁰ is a community group. They say they exist to act as an advocate for the River Dart. The group will work towards supporting the health of the river Dart ecosystem and ensuring the improvement of water quality, gaining clarity about what exact pollutants are entering the River Dart watercourse, from what source, explore how this can be resolved and support that resolution.

The West Country Rivers Trust⁵¹ has at its mission the restoration and protection of the rivers, lakes and estuaries of the West Country. I have signed up as a 'Citizen Scientist' to test the water in my local stream at two points every month using a kit they supply⁵². I will then log those findings. It is not very time consuming, I would guess at 15 to 30 minutes once you have completed the initial template. WRT's aims to create a network of catchment communities that are invested in their local environment. The product of the testing by citizen scientists for various water body locations can be viewed online⁵³. Not all watercourses are being tested yet and your local stream might be one that needs a volunteer.

Yealm Estuary to Moor (YEM) Wildlife Corridor⁵⁴ is a pilot project led by Yealm Community Energy in partnership with West Country Rivers Trust, and many stakeholders in the local community. The aim of the YEM project is stated to be to link fragmented habitats, such as wetlands, woodlands and species rich grassland, along the River Yealm from coastal estuary to moorland source, to create a continuous in-river and riparian wildlife corridor.

River Action⁵⁵ says it is on a mission to rescue Britain's rivers by raising awareness on river pollution and apply pressure on industrial and agricultural producers, water companies, and

other polluters. It wants them to take greater responsibility for remedying the adverse environmental impact their supply chains are having on the health of our rivers. Its primary focus seems to have been the River Wye, Windemere and the New Forest at the moment but it is turning itself into a more wide ranging organisation.

Surfers against Sewage is a 'national marine conservation and campaigning charity that inspires, unites and empowers communities to take action to protect oceans, beaches, waves and wildlife'⁵⁶.

Bathing water

A bathing water is defined as a coastal or inland water that attracts a large number of bathers in relation to any infrastructure or facilities that are provided, or other measures that are taken, to promote bathing at the site. A bathing water site attracts a special monitoring regime that also entails the imposition of more rigorous standards for CSOs that might affect the water at the site⁵⁷. There is no set limit for how many bathers are needed for a site to be identified as a bathing water. A bathing water could be a smaller site attracting a large number of bathers for its size⁵⁸. There are various sources of information about them.⁵⁹

In December 2020 the river Wharfe at Ilkley became the first designated bathing site river in the UK⁶⁰. This followed a campaign by the Ilkley Clean River Group. From 2021 the Environment Agency has been required to test the water regularly during the year to determine the level of faecal pollution. Scatter plots show the bacterial concentrations of intestinal enterococci and *Escherichia coli*. That information has to be provided to the public⁶¹. The South Hams does have bathing water sites⁶² but none of them are inland (unless you count Sugary Cove by Dartmouth Castle as such). Friends of the Dart say they are exploring the possibility of Bathing Water designation.

What could you do? What might the Society do?

If you have managed to get to the end of this article then congratulations to you!

Some concluding thoughts:-

There are clearly issues which can only be effectively campaigned about at a national level, by signing petitions, participating in consultations and writing to your MP. What you have read above will, hopefully, result in you doing these things. But there is much to be done at a local level in terms of acting, in effect, as shadow regulators.

It is tempting to try and organise another pressure group to cover the South Hams as a whole or to seek to develop our Society's work to cover active grass roots research and campaigning in relation to sewerage and water supply. I am far from convinced that that is a good idea. It can be seen that there are organisations that are already in the process of doing such research and compiling the necessary data. If this article has done nothing more than encourage one or more of you to join in their efforts then researching and writing it will have been worth it.

The key, it seems to me, is to work to develop what the West Country Rivers Trust calls a network of catchment communities to cover all of the watercourses and water bodies in the South Hams. Each such 'community' can access existing data sources, and, where there are gaps in the data it can fill those gaps.

The area covered by each of the catchment communities should be quite small, covering only the watercourses and sewerage assets which the participants can actually regularly monitor themselves. The participants can access the EDM data for sewerage assets and also scrutinise South West Water's proposals for improving or replacing those assets and lobby for the implementation of improvements.

If a pollution incident occurs then individuals who are on the spot should record it and try to get Environment Agency inspectors to come out and see what has happened. That has to be done quickly.

Getting a bathing water designation for inland water bodies in the South Hams is certainly worth exploring. But it is not going to be possible to get a more than a small number of such sites designated given the criteria that have to be satisfied. And again that is something that is probably best done through the network of catchment communities (and perhaps the Friends of the Dart).

The Society can and it seems to me should develop more of an awareness of the pressures on existing water and sewerage infrastructure and how any proposed developments might exacerbate those pressures. Armed with data the Society can seek to influence and encourage the imposition of planning conditions to reduce those pressures where permission is given. It can seek to persuade developers to adapt their plans to reduce those pressures.

Footnotes

- 1 "Don't go near the water" from the great and neglected album, "Surf's Up"
- Via southhamsociety@gmail.com
- 3 For the Dart it is <https://www.southwestwater.co.uk/siteassets/document-repository/business-plan-2020-2025/sww-draft-dwmp-12-dart-v1.0.pdf> Search sww-dwmp with the appropriate area to find the others.
- 4 The population of the South Hams 'proper' was, according to the census, 88,600 in 2021
- 5 Presumably not all at once. The seasonal increase by influx figure for Kingsbridge South Devon is apparently 54.3%
- 6 <https://planetpatrol.co/wp-content/uploads/2022/12/PP-What-Lies-Beneath.pdf>
- 7 The Dart is tidal at Dittisham. Nearly all of the other locations tested, be they rivers, brooks canals or lakes, would appear to be in non tidal water. Presumably this has some effect on tested pollution levels.
- 8 HC 74 Published on 13 January 2022 <https://committees.parliament.uk/publications/8460/documents/88412/default/>
- 9 <https://environment.data.gov.uk/catchment-planning/ManagementCatchment/3081> <https://www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence/state-of-the-water-environment-indicator-b3-supporting-evidence#surface-waters-ecological-and-chemical-classification>
- 10 Lack of data is a real problem. River Action (see below) says that Government agencies tasked with water quality and protection of the natural environment have had their funding slashed over the last decade. In England, each farm can expect to be inspected only once every 263 years as agricultural enforcement monitoring has been halved in the past decade. The total annual budget in 2019/20 to inspect the country's 120,000+ farms was just £0.32 million, equating to just 0.65 staff in each of the EA's 14 regions. So other organisations

have stepped in. I have already mentioned the work of Planet Patrol on the Dart. The efforts by West Country Rivers Trust to organise Citizen Scientists to fill the data gap in a more comprehensive way are referred to below.

11 For reaction so far see <https://www.wildlifetrusts.org/news/englands-poisoned-waterways>

12 Summary at <https://environment.data.gov.uk/catchment-planning/ManagementCatchment/3081/print> A map is available at <https://experience.arcgis.com/experience/73ed24b6d30441648f24f043e75ebed2/page/Classification/>

13 The RANGS (Reasons for Not Achieving Good Status) data is available for each water course.

14 George Monbiot's <https://rivercide.tv/> which is primarily focused on what is happening on the River Wye makes informative (if depressing) watching as to the effects of pollution on a rural river.

15 But there have been specific studies. See, in particular 'Acute riverine microplastic contamination due to avoidable releases of untreated wastewater, Woodward et al in "Nature Sustainability Vol 4 September 2021 793-802 which can be read via a link at <https://www.theguardian.com/environment/2021/may/13/water-firms-are-main-source-of-microplastics-in-uk-rivers-study-says>

16 Indeed one could go further and suggest that the use of (drinking quality) water as a conveyance for human waste is a little absurd. Other alternatives are available, see eg <https://clivusmultum.com/science-technology.php>. Grey water (i.e. water that has already been used for something) could be used instead.

17 <https://www.southwestwater.co.uk/siteassets/document-repository/business-plan-2020-2025/edm-return-south-west-water-annual-2021.xlsx>

18 <https://theriverstrust.org/sewage-map>

19 <https://www.gov.uk/government/publications/water-companies-environmental-permits-for-storm-overflows-and-emergency-overflows/water-companies-environmental-permits-for-storm-overflows-and-emergency-overflows#:~:text=Count%20spills%20using%20the%2012,one%20additional%20spill%20per%20block>. This explains that the method is to start counting when the first discharge occurs and any discharge or discharges in the first 12 hour block are recorded as one spill. Any discharge or discharges in the next and subsequent 24 hour blocks are each counted as an additional spill per block. Counting continues until there is a 24 hour block with no discharge..

20 <https://bills.parliament.uk/publications/49177/documents/2671>

21 <https://www.theguardian.com/environment/2022/dec/09/environment-agency-to-boost-natural-flood-management-after-pilots>

22 There are various other statutory legal duties too.

23 Mr Justice Ramsay at para 74 in *Dobson & Ors v Thames Water Utilities Ltd & Anor* <http://www.bailii.org/ew/cases/EWHC/TCC/2007/2021.html>. This was a claim against Thames Water by a group of local residents. More details below.

24 There is also a Drinking Water Inspectorate, which ensures the wholesomeness of water supplies and a Consumer Council for Water.

25 <https://www.southwestwater.co.uk/siteassets/document-repository/business-plan-2020-2025/sww-draft-dwmp-l2-dart-v1.0.pdf>.

26 Summarised at p 51.

27 See p 52.

28 I am not alone in finding this difficult to fathom and it is one of the issues which will be investigated by the Office of Environmental Protection as to which see below.

29 <https://www.thameswater.co.uk/about-us/newsroom/latest-news/2022/oct/beesley-lecture-beyond-pr24>. The lecture is well worth reading.

30 Professor Dieter Helm in *Water A new start* 18th October 2022. <http://www.dieterhelm.co.uk/natural-capital/water/water-a-new-start/>

31 <https://www.nao.org.uk/wp-content/uploads/2014/07/The-economic-regulation-of-the-water-sector.pdf>

32 See, eg, the National Audit Office report at p 29-30 from which I have drawn this summary.

33 For a particularly forthright expression of that criticism see <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Monopoly%20Money%20-%20How%20consumers%20overpaid%20by%20billions.pdf>

34 <https://annualreport.pennon-group.co.uk/2021/documents/Pennon-Group-plc-Annual-Report-2021---Directors%E2%80%99-remuneration-report.pdf>. See p 117 of the report for the details.

35 <https://www.pwc.co.uk/press-room/press-releases/executive-pay-at-FTSE-250-firms-down-pwc-analysis-shows.html>

36 <https://www.theguardian.com/business/2022/aug/15/drought-hits-water-company-chief-executives-paid> sets out the remuneration of other water company CEOs.

37 See <https://www.southwestwater.co.uk/environment/working-in-the-environment/upstream-thinking/>

38 <https://www.gov.uk/government/publications/phosphorus-challenges-for-the-water-environment> which has just been updated

39 <https://www.gov.uk/government/publications/water-and-sewerage-companies-in-england-environmental-performance-report-2021/water-and-sewerage-companies-in-england-environmental-performance-report-2021>

40 www.ofwat.gov.uk/wp-content/uploads/2022/12/WCPR_2021-22.pdf

41 www.ofwat.gov.uk/wp-content/uploads/2021/11/Service-Delivery-Report-2020-2021.pdf

42 www.ofwat.gov.uk/wp-content/uploads/2020/12/Service-delivery-2020-final-1-Dec.pdf

43 <https://www.gov.uk/government/speeches/a-water-industry-that-works-for-everyone>

44 <https://www.theargus.co.uk/news/23193630.water-minister-rebecca-pow-disappointed-southern-water/>

45 <https://www.theoep.org.uk/news/oep-launches-investigation-regulation-combined-sewer-overflows-csos>

46 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101686/Storm_Overflows_Discharge_Reduction_Plan.pdf. The Government has a statutory obligation to make such a plan under legislation introduced in 2021.

47 <https://goodlawproject.org/update/marine-conservation-society-joins-our-case-against-sewage-dumping/>

48 <https://utilityweek.co.uk/reeves-says-labour-will-not-nationalise-energy-or-water/> <https://www.smf.co.uk/water-nationalisation-cost-90-billion/#:~:text=Nationalising%20the%20water%20industry%20could,by%20the%20Social%20Market%20Foundation>.

49 In *Wild Justice v The Water Services Regulation Authority* <http://www.bailii.org/ew/cases/EWHC/Admin/2022/2608.html> the claimants sought judicial review contending that Ofwat was not properly carrying out its environmental regulatory duties in relation to the planned and unplanned discharge of untreated sewage into rivers and other water bodies by water and sewerage undertakers. The claim failed.

50 <https://www.facebook.com/groups/friendsoftheriverdart/>

51 <https://wrt.org.uk/> The umbrella organisation for rivers trusts in the UK and Ireland is <https://theriverstrust.org>

52 <https://wrt.org.uk/westcountry-csi/>

53 <https://wrt.maps.arcgis.com/apps/instant/attachmentviewer/index.html?appid=50d99c50c373473fa7af43c0eccb3fec>

54 <https://devonenvironment.org/grants/yealm-estuary-to-moor/>

55 <https://riveractionuk.com/about/> and see <https://riveractionuk.com/wp-content/uploads/2022/11/River-Action-Impact-Report-Jan-Sep2022-1.pdf>

56 <https://www.sas.org.uk/>

57 <https://www.gov.uk/government/publications/water-companies-environmental-permits-for-storm-overflows-and-emergency-overflows/water-companies-environmental-permits-for-storm-overflows-and-emergency-overflows>

58 <https://www.gov.uk/guidance/bathing-waters-apply-for-designation-or-de-designation>

59 See eg <https://www.outdoorswimmingsociety.com/designated-bathing-waters-explained/> and <https://www.sas.org.uk/wp-content/uploads/Bathing-Water-Application-Guidance-V1-5.pdf>

60 There is now another one, at Port Meadow on the Thames/Isis at Oxford. See <https://theriverstrust.org/about-us/news/press-release-uk-to-get-second-designated-river-bathing-site-at-oxford-port-meadow>

61 See <https://environment.data.gov.uk/bwq/profiles/profile.html?site=uke4100-08901> for the data.

62 <https://www.southhams.gov.uk/article/8172/Bathing-Water-Quality>

63 They can also request the disclosure of more data. See the work of the Windrush Against Sewage Pollution group in this connection at <https://www.windrushwasp.org/data-analysis>

64 A particularly striking part of George Monbiot's Riverside documentary concerned the attempts by local residents to get the Environment Agency inspector to come out to see apparent pollution in a stream. By the time inspection took place the evidence had, literally, been washed away. But the inspection system can work, see https://www.bbc.co.uk/news/uk-england-devon-63873254?fbclid=IwAR3D_MaQ8YgG-zD0-7akeuzvvrHFAuuTPukOjXjPT1md0kXro_3oB6OzMWk for a BBC report of a suspected pollution incident on the Yealm that was reported to the Environment Agency and investigated by their inspectors.