

Air pollution on trial

Sheffield, 2 December 2011



An introduction to ClientEarth

We are activist lawyers
committed to securing
a healthy planet

Offices in London,
Brussels and Warsaw

Forests
Fisheries
Air Quality
Biodiversity
Toxic Chemicals
Climate & Energy



Our Clean Air Programme

Aim: full compliance with air quality limits in London in time for the Olympic games in 2012



London, 22 April 2011

Judicial Review

“The legal procedure for challenging a decision, action or failure to act by a public body”



The Queen (on the application of ClientEarth) v Secretary of State for Environment, Food and Rural Affairs



v



Grounds for judicial review

1. Failure to consult on the amendment to the PM₁₀ plan for London
2. Failure to produce plans which achieve compliance with NO₂ limits by 2015

12th October 2011:

Defra concede
defeat on Ground 1






Green walls – Upper Thames Street, London

The Air Quality Directive

- Sets limits on levels of air pollution
- Deadlines:
 - 2005 (PM₁₀)
 - 2010 (NO₂)
- Member states must monitor air quality
- Must draw up “air quality plans”
- Time extensions



Hourly limit
breached within 1st
3 weeks of 2010

Marylebone Road
London

NO₂ over triple legal limits

Brixton Road
London





40

air quality
zones breach
NO₂ limits



17

air quality plans will not
achieve compliance with
NO₂ limits until
after 2015

17 zones which will not achieve limits until after 2015

- London
- Manchester
- Liverpool
- Teeside
- Hull
- Southampton
- Glasgow
- Belfast
- South Wales
- West Midlands
- Eastern England
- South East England
- East Midlands
- The Potteries
- Yorkshire and Humberside
- West Midlands
- North East England

Chronology

9 June	Defra publish NO2 plans for consultation
22 June	ClientEarth issue “letter before action”
27 July	ClientEarth file claim for judicial review
16 September	Court grants permission to proceed
September	Defra send plans to the European Commission
12 October	Defra agree to hold PM ₁₀ consultation
13 December	Trial date

Remedies

1. Declaration that the UK is in breach of EU law
2. Declaration that the 17 plans do not comply with EU law
3. Court order requiring Defra to draw up new plans which will achieve limit values by 2015

Defra's case

- Time extensions **only** for those zones where plans project compliance by 2015
- Reliance on Article 23:
“...shall set out appropriate measures so that the exceedance period can be kept as short as possible”

ClientEarth's case

- “As short as possible” means no later than 2015
- Compliance by 2015 is possible
- The Mayor's air quality strategy



Royal Courts of Justice, London

A glowing crystal ball on a dark stand. The crystal ball is illuminated from within, creating a bright blue and white glow. The text 'Win? Lose? Draw?' is centered inside the crystal ball. The background is dark blue.

Win?

Lose?

Draw?

Conclusion

- Law can be a powerful tool
- But it has its limitations
- Costly, uncertain, lack of remedies
- Should be last resort
- No substitute for campaigns, education, political pressure

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