



Francis Taylor Building

FTB Kingsland Cup and Prize Moot **Public Law Mooting Competition**

Guide for participants – 2020/2021



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Front cover image: The Kingsland Cup

The Kingsland Cup is a vintage solid sterling silver trophy cup made in Birmingham, England in 1925 by the famous silversmiths, The Usher Manufacturing Company, founded by Charles Usher at their Vittoria Street workshops. It weighs 335.4 grams. It stands 9" tall (11 1/4" on its Bakelite base), is 3 3/4" diameter at the rim and is 6 1/8" across the handles.

1. Foreword

“An eminent barrister with strong academic credentials who developed expertise in the field of international economics” (Times, 14 July 2009) - Lord Kingsland QC was one of very few able to maintain high profile careers at the modern bar and in politics. Christopher was the MEP for Shropshire and Stafford from 1979 to 1994 during which he came to lead the British contingent of Conservative MEPs. He was elevated to the House of Lords and became Shadow Lord Chancellor. In 2008 he became the opposition spokesman on legal affairs, a post he held at his death in 2009. Had he not died it was widely expected that he would have played an important part in government, as he had while his party was in opposition.

Christopher also served as vice-chairman of Justice, the all-party group set up to promote the rule of law and to assist the fair administration of legal process. As an advocate he appeared before the European Court of Justice in some of the leading cases of the day including acting for the whistle-blower, Stanley Adams, against the European Commission in the 1980s and, in the 1990s, in high profile competition and free trade cases. Later he became a leading member of the environmental law bar with particular expertise in the field of waste. He was an engaging and companionable member of Chambers.

The topics of the Kingsland Moot, European, administrative and environmental law, reflect Christopher’s own practice at the Bar. Christopher prided himself in speaking without notes in the House of Lords on even the most complex legislative areas. The Kingsland Moot aims to encourage and reward the virtues he possessed – intellectual rigor, clarity and fluency of expression and unfailing courtesy. These are qualities which are the essential tools of any advocate. FTB has a strong commitment



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to academic excellence and of promoting access to the Bar – including through our academic panel of university lecturers and our sponsorship of university prizes.

2. About FTB

FTB has a longstanding reputation for excellence. FTB was awarded Real Estate, Environment and Planning Set of the Year at the 2014 Legal 500 UK awards, and is consistently featured as a leading set in the legal directories for its expertise and leading role in planning, land valuation, infrastructure, environmental, public, licensing and regulatory law.

Members of Chambers undertake specialist advisory work and regularly appear in courts at all levels in this country and abroad, including specialist tribunals and public inquiries. Chambers owes its long-standing reputation for excellence to its wide range of clients, the major projects it handles and the quality of its practitioners at all levels. Members of Chambers are also supported by a highly motivated and professional clerking team, recognised by Chambers being named the Client Service Set of the Year by Chambers and Partners at the 2015 Bar Awards.

Each year FTB seeks to recruit up to two exceptionally able individuals to undertake a twelve-month pupillage in Chambers. Competition for places is fierce, but the rewards for those selected are substantial. Pupils at FTB are provided with first class training in all aspects of practice at the Bar from some of the leading practitioners in their fields, together with a pupillage award of not less than £65,000 (including £10,000 guaranteed earnings and an option to draw-down up to £25,000 in the year before commencement of pupillage) and the opportunity to obtain tenancy in Chambers at the end of their pupillage.

Chambers is not a member of the Pupillage Gateway and applications for pupillage usually open in each New Year. More information is available on our website at:

<https://www.ftbchambers.co.uk/recruitment/twelve-month-pupillage>



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FTB also offers mini-pupillages on a rolling basis throughout the year, with more information available on our website at:

<https://www.ftbchambers.co.uk/recruitment/mini-pupillage>

FTB supports equal opportunities for all and will select candidates solely on merit irrespective of race, sex, disability, age, sexual orientation, religion or belief.

3. Eligibility and entry

The FTB Kingsland Cup Mooting competition is open to all UK undergraduates, postgraduates, GDL and BPTC and LPC students. It is free to enter.

Teams must comprise two students satisfying the above criteria. There is no restriction on the number of teams that can enter from any one institution, and teams may comprise students from different institutions.

Teams will be deemed to have entered the competition when they send to the contact email address (kingslandcup@ftbchambers.co.uk) the following by the deadline:

- a completed entry and scoring form (candidates should complete the “Candidate Entrance Details” section only); and
- electronic copies of both skeleton arguments (see below).

As a result of practitioner and judge commitments, dates for the second and third rounds have not yet been confirmed, though an indicative timetable is provided in Section 5 of this Guide. At any stage of the competition, in the event that one or both members of a team are unable to compete in that round, they will forfeit their place in the competition and their place will be offered to the team who scored the next highest mark (*the ranking principle*). Places will be offered in accordance with the ranking principle until a team who is able to compete accepts a place.

Any decisions made by or on behalf of FTB in relation to entrance to the competition and/or in relation to any of the rounds and their determination are final. There shall be no appeal on any grounds from the decision of a judge or upon the conduct of the moot itself in any round.

Any complaints about the conduct of any of the teams during a round must be made by email (kingslandcup@ftbchambers.co.uk). The Moot Coordinator may then investigate and resolve the problem as he or she thinks in the best interests of the competition.

FTB has the discretion to disqualify at any stage and without compensation any team that fails to comply with these rules or with the spirit of the competition.

4. Competition format and timetable

First Round: Skeleton Arguments

The First Round problem can be found later in this Guide along with instructions. Each team is required to produce two skeleton arguments: one on behalf of the Claimant, and one on behalf of the Defendant. Teams not submitting two skeleton arguments complying with the requirements set out in the instructions below will be disqualified.

The closing time and date for First Round entries is **16:00, Wednesday 23 December 2020**. Entries received after that time will not be considered whatever the circumstances, so please ensure that you leave plenty of time.

Teams will be notified of whether or not they have progressed to the Second Round (the Semi Final) in the New Year.

Second Round (Semi Finals): Moot

There are two Semi Finals. The four teams participating in the Semi Finals will be assigned a competitor team and told in advance whether they are mooting on behalf of the Appellant or the Respondent. The moot problem will be the same as for the First Round. No amendments to skeleton arguments are permitted.

The Semi Finals are usually held in Chambers and teams participating should dress appropriately for court. Robes will be provided, subject to availability. Full details of the arrangements will be provided closer to the time.

Timings are at the discretion of the judge, but each team can expect to be given 30 minutes on their feet to be shared between team members. Judges may award extra time if there have been judicial interventions. It is crucial that teams remember that, as in court, they are responsible for managing their own time keeping.

The opportunity for the team representing the Appellant to give a short (less than five minutes) reply following the Respondents' submissions will be at the judge's discretion. Time for a reply will be additional to the 30 minutes given for submissions.

After both teams have made their submissions, the judge will give feedback.

The names of the teams going through to the Final will be announced once both moots have been completed.

Round Three (Final): Skeleton Arguments and Moot

Two teams will take part in the Final. The Final will involve a different moot problem to the first two rounds, and each team participating will be required to submit two skeleton arguments (again addressing the problem from the perspective of both sides). The moot usually takes place outside of chambers and before a senior member of the Judiciary.

The procedure on the day reflects that in place for the Semi Finals and full details will be provided to participating teams near the time.

The winning team will be presented with the Kingsland Cup;¹ any other prizes will be announced nearer the time. The 2019/2020 competition included cash prizes for the winning team, and book prizes and mini-pupillages at FTB for all finalists.

¹ The winning team will be photographed with the Kingsland Cup, but the Cup will remain the property of and in possession of Francis Taylor Building.

Timetable

The FTB Kingsland Cup will adhere to the following timetable as closely as possible. Entrants will be advised of any finalised dates or unavoidable changes by email and the same information will also appear on the FTB website.

Round 1 – Skeleton Arguments

Opens: 23 November 2020 **Closing date for entries:** 16:00, 23 December 2020

Teams notified of results by: end of January 2021

Round 2 – Semi Final – Moot

To take place by: 30 April 2021

Teams notified of results by: on the day

Round 3 – Final – Moot

Moot problem available: by 31 May 2021 **To take place by:** 30 June 2021

Teams notified of results by: on the day

5. Judges and judging criteria

Judges

The judging panel will vary between the First, Second (Semi Final) and Third (Final) Rounds of the competition.

The First Round, where entrants are judged upon the quality of their skeleton arguments, will be judged by a panel of current Members of Chambers. Members are barristers currently practising in the fields of Public, European and Environmental law, and many of them are leaders in those fields.

The Second Round (Semi Final), where entrants are judged upon their advocacy skills in the Moot, is to be judged by the judges of that Round (usually High Court or Tribunal judges and/or senior current Members of Chambers). The 2019/20 competition Semi Finals were judged by the Rt. Hon. Lord Justice Lindblom (member of the Court of Appeal) and Mr Justice Lane (President of the Immigration and Asylum Chamber of the Upper Tribunal).

The Third Round (Final), where entrants will be judged on both the quality of their skeleton arguments and their advocacy skills, is usually judged by a senior member of the judiciary. The 2019/20 Final was judged by Lord Kerr of Tonaghmore, a recently retired former Justice of the Supreme Court.

Judging criteria and scoring

The judging criteria will vary slightly between the three rounds. This is because of the different nature of each.

The First Round will see entrants judged on the quality of their skeleton arguments alone. A total of 100 marks will be available to each team (50 per skeleton argument), with marks being awarded in each of the following categories:

- Understanding of the law;
- Coherence of arguments;
- Clarity of expression;
- Compliance with competition requirements on length of arguments and use of authorities; and
- Presentation (including accuracy of spelling and grammar).

The four highest-scoring teams will be invited to the Second Round (Semi Final).

In the event of a tie (two or more teams scoring equally), the four semi-finalists will be selected on a 'first-come, first-served' basis (ie those whose entries were received earliest (by date and time of email) will go through), proving a further incentive to submit your entries in good time.

In the Second Round (Semi Final), entrants will be judged solely on their performance during the moot by the judge of their moot. The judges will have regard to the following criteria:

- Content of oral argument;

- Response to questioning;
- Structure/strategy employed;
- Style; and
- Courtroom etiquette (including timing).

The top performing team from each moot will go through to the Final.

In the Third Round (the Final), entrants will be judged on a combination of the quality of their skeleton arguments and their performance during the moot. The criteria employed in First and Second Rounds will continue to apply, and will be applied by the judge(s) of the Final.

6. First and second round problem

The following pages contain the problem scenario for the First and Second Rounds of the competition, along with instructions to Counsel that must be followed. For the First Round, each team is required to submit **two** skeleton arguments; one for the Claimant and one for the Defendant. More detail is provided in the instructions.

CO/1111/2020

**IN THE HIGH COURT OF JUSTICE
KINGSLAND MOOT DIVISION
[2020] EWHC 5001 (Admin)**

**R (on the application of
METROPOLIS CITY COUNCIL)**

Claimant

and

**SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT**

Defendant

and

BRITPLEX LIMITED

Interested Party

PERMISSION JUDGMENT

Judgment of Fellini J:

Introduction

1. This is an application for permission to bring a statutory review challenge under s.288 of the Town and Country Planning Act 1990 (“the 1990 Act”) to the decision of 3 August 2020 (“the Decision”), by a Planning Inspector (“the Inspector”) appointed by

the Defendant, overturning the Claimant's decision to refuse the Interested Party's application for a lawful development certificate ("LDC") under s.191(1)(a) of the 1990 Act in relation to 15 Nickelodeon Way, Metropolis MX10 1AB ("the Site"). The LDC as granted by the Inspector confirms that the Site has a "nil" use in planning terms, i.e. that it has no lawful use.

2. The Claimant claims that s.191(1)(a) cannot be used to confirm that a Site has a "nil" use; and that in any case the Site did have a lawful use as a cinema under Class D2 of the Use Classes Order 1987, on the date that the application was made. Permission was refused on the papers on 30 October 2020 by Marlene Dietrich QC sitting as a judge of the High Court; the case subsequently came before me on a renewed oral application for permission.
3. The Claimant is the local planning authority for the area in which the Site is located; the Interested Party is the owner of the Site. The Interested Party operates a chain of large multiplex cinemas across the country, and is the manager of BritPlex Metropolis, a cinema complex located a few streets away from the Site.

Factual background

4. The Site is the location of the former Wings of Desire cinema, which was a small independent cinema showing foreign language art house movies. As a matter of principle, these movies were shown on film reels in their original language, without overdubbing or subtitles. While the cinema drew a rather niche clientele from the general public, it was very popular with domestic home and international students from the University of Metropolis, one of the most highly rated universities in the country and in Europe for modern foreign languages and film studies, as well as having one of the largest Erasmus student exchange programmes in the country. By an arrangement reached between the cinema and the University of Metropolis, the University paid for

students on the prestigious European Cinema and Language course to attend monthly cinema screenings at Wings of Desire.

5. The Interested Party established BritPlex Metropolis in 2005. There was never any real competition between the BritPlex Metropolis and Wings of Desire: BritPlex only screens current releases of English and US films, and its prices are generally too high for the student population of Metropolis.
6. In the last few years, Wings of Desire had begun to notice a gradual decrease in its clientele, due to the declining interest of students in foreign language studies and fewer students coming over from mainland Europe to undertake studies at the University of Metropolis following the outcome of the EU referendum on 23 June 2016. In 2017 the University of Metropolis announced that it would no longer be running the European Cinema and Language course as of the 2019-2020 academic year. While Wings of Desire valiantly attempted to continue its full programme of films notwithstanding its reduced customer base, the national lockdown announced on 23 March 2020 was too much for Wings of Desire, which had already had to dig deep into its reserves to make ends meet in the preceding year. It announced on 30 March 2020 that it would be closing its doors for good. The Site, including the cinema and all its equipment and furniture, was purchased by the Interested Party in April 2020.
7. In the first week of May 2020 the Interested Party removed all cinema equipment, screens and the original cinema benches from the Site, some of which it has installed in the café in BritPlex Metropolis as part of its “Golden Age of Hollywood” theme. It wishes to convert the Site into a boutique fried chicken restaurant and takeaway, which will operate under the same name as the former cinema.
8. Due to concerns around the loss of grassroots music, leisure and entertainment venues, the Metropolis Local Plan 2015-2030 provides at Policy L5 that “planning permission will be resisted for changes of use from Use Class D2 (use as a cinema, concert hall,

bingo hall or casino, a dance hall, a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms) to any other use, unless it has been demonstrated as a result of a 2 year marketing exercise that the retention of the D2 use is not feasible”.

9. This is likely to be why, on 1 June 2020, the Interested Party made an application to the Claimant for a LDC confirming that the Site had a “nil” planning use, on the basis that the previous use as a cinema had been abandoned (thus avoiding the need to carry out a 2 year marketing exercise).. The Claimant refused to determine the application on the basis that it is not lawfully possible to grant an LDC for a “nil” use. This refusal was appealed pursuant to s.195(1)(b) of the 1990 Act, and came before Inspector Kieslowski at a hearing which took place on 27 July 2020.
10. At the hearing Inspector Kieslowski accepted the Interested Party’s argument that, as a matter of law, the phrase “*any existing use of buildings*” (emphasis added) in s.191(1)(a) of the 1990 Act is capable of extending to a “nil” use of a particular Site. The 1990 Act provides a comprehensive code of planning enforcement (*Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132), there is no other statutory mechanism for confirming that a particular site has a nil use and abandonment is a well-established concept in planning law.
11. He went on to find that the use had in fact been abandoned. Applying the factors identified in *The Trustees of the Castell-y-Mynach Estate v The Secretary of State for Wales* [1985] JPL 40, namely (a) the physical condition of the building; (b) the period of non-use; (c) whether there had been any other use; and (d) evidence regarding the owner's intentions, the Inspector concluded that the use of the Site as a cinema had been abandoned, on the basis that all cinema equipment had been removed from the Site and partly installed elsewhere and from the clear intention of BritPlex (as demonstrated by evidence presented at the appeal hearing) to convert the Site into a takeaway and restaurant. While he recognised that there had been a limited period of non-use, he

considered that in the circumstances – where the Wings of Desire cinema had had to close and there was no possibility that it would reopen – “the reasonable man” would consider the use to have been abandoned.

Ground 1

12. By its Ground 1 the Claimant submits that the Inspector erred in law in finding that an LDC could be granted for a “nil” use. I am not aware of any decisions in which this issue has been considered by the courts. In my view it is arguable that the words “*any existing use*” in s.191(1)(a) mean that only an actual use, and not the absence of a use, can be certified under that section. While it is correct to say that the 1990 Act is intended to be a complete code, and the doctrine of abandonment is a recognised and well-established concept in planning law, this cannot of itself override the meaning of the statute, properly interpreted. The absence of a mechanism for establishing a “nil” use in the statute may be explained by the fact that no enforcement action could be taken against a “nil” use in any event, and so there is no need to establish its lawfulness under s.191.

Ground 2

13. By its Ground 2 the Claimant submits that it was unlawful and irrational for the Inspector to conclude that the use had been abandoned, particularly given the fact that the Site had only been out of use as a cinema for some two months. In doing so the Inspector unlawfully elevated the importance of the stated intentions of the Interested Party above other factors referred to in *Castell-y-Mynach*, and failed to apply an objective test pursuant to *Hughes v Secretary of State for the Environment, Transport and the Regions* (2000) 80 P & CR 397. I consider that this ground is also at least arguable, given the very short period of time in which the abandonment relied on is said to have occurred.

Conclusion

14. I therefore consider that each ground is at least arguable and, as such, I grant permission to the Claimant to bring this judicial review on both grounds.

15. The two grounds can be summarised as follows:

- (1) Ground 1: whether the Decision was unlawful on the basis that there was no power to grant an LDC under s.191(1)(a) of the 1990 Act for a “nil” use.
- (2) Ground 2: whether the Inspector erred in law in concluding that the use had been abandoned.

Claim no: CO/1111/2020

IN THE HIGH COURT OF JUSTICE

KINGSLAND MOOT DIVISION

[2020] EWHC 5001 (Admin)

BETWEEN:

**R (on the application of
METROPOLIS CITY COUNCIL)**

Claimant

and

**SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT**

Defendant

and

BRITPLEX LIMITED

Interested Party

INSTRUCTIONS TO COUNSEL

1. You are instructed to appear on behalf of either the Claimant or Defendant, either as Lead or Junior Counsel, in the substantive hearing of this judicial review claim. At the hearing, Lead Counsel is to present oral submissions on Ground 1 and Junior Counsel on Ground 2.

2. In advance of the hearing of this matter, each legal team is instructed to produce two skeleton arguments: one addressing the grounds of claim from the perspective of the Claimant and another from the Defendant's perspective.
3. The High Court has made directions requiring that those skeleton arguments must:
 - (1) be no more than 6 A4 pages in length;
 - (2) be in Times New Roman, size 12;
 - (3) have 1.5 spacing between paragraphs; and
 - (4) include no more than 6 authorities (to include any referred to in the permission judgment of the High Court) and no more than 2 academic writings, if used. There is no restriction on reference to legislative provisions
4. Each legal team should ensure that their skeleton arguments are served by 16:00 on Wednesday 23 December 2020 by email to kingslandcup@ftbchambers.co.uk. Skeleton arguments must be accompanied by a scoring sheet with the details of the legal team completed.
5. If Counsel has any queries, they should be sent to the same email address.

A & Co Solicitors LLP

Mooting resources

Electronic resources

There are a wide range of resources relating to mooting available on the internet. You may find the following sites useful:

- <http://learnmore.lawbore.net/index.php/Category:Mooting> – a useful site containing short and readily digestible hints and tips, and practical examples.
- <http://podcasts.sweetandmaxwell.co.uk/mp3/PopeHill.mp3> - a useful and thorough podcast produced by David Pope, Barrister and Director of Advocacy at SNR Denton, and Daniel Hill, Solicitor and Head of Practice for Dispute Resolution at the College of Law, London.

Printed resources

The following books may also be of assistance:

- *Mooting and Advocacy Skills* by David Pope and Dan Hill
- *How to Moot: A Student Guide to Mooting* by John Snape and Gary Watt

Please note that the above resources are not exhaustive and FTB and its Members cannot be responsible for the content of external websites or publications.

7. Frequently asked questions

Below is a selection of frequently asked questions that you should consult before contacting us with your query.

I am a student, but I am not studying law; can I enter?

Yes; although the vast majority of entries are from law students, non-law students are welcome to enter the competition. The only requirement is that you are a current student.

I am not currently studying / I will be starting my course next year / my course has just finished, can I enter?

Unfortunately not; the competition rules require you to be a current student (that is, currently enrolled) at the time of entry to the competition.

I am a masters / PhD / part-time student, can I enter?

Yes; so long as you are studying at undergraduate level or above you are welcome to enter.

Do the two members of a team need to be at the same institution / on the same course?

No; so long as each team member is eligible in their own right, there is no requirement for the two team members to be at the same institution, on the same course or at the same level of study.

Is there a limit on the number of teams that can apply from one institution?

No; there is no limit on how many teams may apply from one institution.

Is the requirement that the skeleton arguments be no more than six pages long each, or together?

Each skeleton argument can be no more than six pages long, so entries should consist of two skeleton arguments up to six pages in length each.

Do we have to refer to the authorities listed in the moot problem as part of our six authorities?

No; there is no requirement to use the authorities given in the moot problem as part of your allocation, but we would recommend that you think carefully about not including them as they have been included in the problem due to their relevance.

Do treaties count as legislative authorities?

Yes; treaties are counted as legislative authorities and so there is no limit on how many you may refer to.

Do both skeleton arguments have to address both grounds of review?

Yes; each skeleton argument must address both grounds of review.

If we quote from a case, and that quote refers to another case, is that taken as referring to one or two authorities?

If you quote a passage from a case (Case A) and that passage contains a reference to another case (Case B), then that counts as a reference to the first case (Case A) only.

Can the two skeletons refer to different authorities?

Yes; each skeleton argument may refer to up to six authorities (to include those referred to in the moot problem) – there is no requirement to refer to the same authorities in each skeleton.

Can you give more accurate dates for the semi-finals / final?

Unfortunately not; while we try to arrange dates as soon as possible, dates are subject to the availability of judges and facilities and can often not be confirmed early. Dates will be posted on our website and emailed to successful entrants as soon as they are available.

I cannot make the date set for the semi-final / final, can it be changed?

Unfortunately not; in arranging the semi-final and final we try and avoid likely exam dates and holidays, but this is not always possible. If you have any dates you would like us to try and avoid for good reasons (ie exams), please let us know when entering and we will try to accommodate. At any stage of the competition, in the event that one or both members of a team are unable to compete in that round, they will forfeit their place in the competition and their place will be offered to the team who scored the next highest mark (*the ranking principle*). Places will be offered in accordance with the ranking principle until a team who is able to compete accepts a place.

8. Contacts

For all enquiries relating to the FTB Kingsland Cup mooting competition, please contact us at the following email:

kingslandcup@ftbchambers.co.uk

We will endeavour to reply to correspondence containing queries within 2 working days of receipt, though this may not always be possible as correspondence will be dealt with by one of our practising Members.

We regret that the Clerking team available on our central telephone number will not be able to deal with enquiries relating to the moot, and callers will be redirected to the above email.