

David Graham

Call: 2010 **Public Access**

Practice areas:

Planning, Major Infrastructure Projects, Highways, Commons and Open Spaces, Licensing, Environment, Public Law, Compulsory Purchase and Compensation, Local Government



Practice Profile

David practises across Chambers' specialisms, including public, planning and environmental law. He was called to the Bar in October 2010 and joined Chambers in January 2012.

Practice areas: Public and Administrative Law; Planning Law; Environmental and Regulatory Law; Infrastructure; Licensing Law; Highways, Commons and Prescriptive Rights; European Union Law; Torts; Equalities and Discrimination Law; Contract Law; Property Law.

Planning

David's practice takes in a variety of planning matters, for private clients, statutory consultees, local authorities and other public bodies.

David recently appeared in *R(Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404 and *R(Lee Valley regional Park Authority) v Broxbourne Borough Council* [2015] EWHC 185 (Admin) which have given authoritative guidance on the interpretation and application of Green Belt policy.

David's experience includes the following areas:

- Promotion of and opposition to local development plan documents at Examinations-in-public
- Appeals to the Secretary of State, including "enabling development", retail and housing provision, the Green Belt, and Gypsy/Traveller accommodation. Notable successes have included acting for a third party objector in relation to a golf course redevelopment
- Enforcement matters including public inquiries, injunctions and prosecutions for breach of enforcement notices
- Certificates of Lawfulness and Permitted Development Rights

- Advertising control
- Minerals and waste planning and projects.
- Community Infrastructure Levy (CIL)
- Judicial review
- Section 288 and 289 TCPA challenges (to grants of permission and to core strategies and planning policies)
- Tree Preservation Orders (and was involved in *Wilkinson Properties Ltd v Royal Borough of Kensington and Chelsea* [2011] J.P.L. 1083)
- Section 106 agreements and related litigation
- Marine spatial planning.
- River works licences.

David has particular experience in relation to Listed Buildings and heritage matters, including advising on redevelopment of heritage assets, and both prosecuting and defending offences of conducting unauthorized works to Listed Buildings.

David regularly acts as legal adviser to local authority development control committees and conducts training for councillors on planning law.

Major Infrastructure Projects

David is developing his infrastructure planning practice. He has advised or represented clients in relation to energy generation and transmission; district heating infrastructure; pipelines; energy from waste; solar energy; minerals and hydrocarbons projects; roads; airport expansion and public transport. In the summer and autumn of 2014, he represented First West Yorkshire Ltd at the inquiry into the proposed Leeds Trolley Vehicle System Order. David represented Network Rail in the judicial review into the acquisition of land for the Birmingham New Street station redevelopment (*R(Argos) v Birmingham City Council and Network Rail* [2011] EWHC 2639).

Chambers' infrastructure planning practice spans Transport and Works Act Orders; Nationally Significant Infrastructure Projects and Development Consent Orders (DCOs); harbour revision orders; compulsory purchase orders (CPOs) and parliamentary bills and petitions. David is available for instruction as part of a team with leading counsel in relation to large-scale infrastructure matters.

Highways, Commons and Open Spaces

David has substantial experience in relation to highway law and the law of commons. David has advised in relation to traffic regulation orders, parking restrictions and rights of way, as well as road maintenance liability and obstructions on the highway. He has represented a local authority in litigation concerning the closure of a bridge on grounds of safety. He regularly advises and represents clients in relation to footpaths, bridleways and Definitive Map Modification Orders.

David frequently advises developers, interested parties and commons registration authorities in relation to the law of commons, and represents clients at statutory and non-statutory town and village green inquiries. Most recently, David represented the applicant for registration of a town green at Berkeley,

Licensing

David is increasingly instructed in relation to licensing matters, including alcohol and entertainment under the Licensing Act 2003, sexual entertainment venues, and taxis and private hire vehicles under the Local Government (Miscellaneous Provisions) Act 1976. He has acted for well-known national restaurant and fast-food chains, as well as off-licences and independent venues. He represents operators, landowners or developers, responsible authorities and licensing authorities, as well as local residents. A selection of his recent work has included:

- Advice in relation to cumulative impact zone policies and policy reviews.
- Representing applicants for premises licences before local authority licensing committees and on appeal to the magistrates' and crown courts.
- Advising Tower Hamlets Borough Council in relation to the licensing of sexual entertainment venues.
- Defending an appeal against revocation of private hire vehicle driver's and operator's licences, on behalf of a local authority.
- Representing West Midlands Police in successfully obtaining closure orders under the Anti-Social Behaviour, Crime and Policing Act 2014.

David takes a pro-active and commercially sensitive approach to licensing cases.

Environment

David's environmental work is wide-ranging and has included:

- Aarhus Convention and the law on public participation in decision-making (e.g. *R(Corbett) v Cornwall Council* [2013] EWHC 3959 (Admin) on the meaning of "any other information in connection with an environmental statement under the EIA Regulations);
- Environmental impact assessment (e.g. *Brown v Carlisle City Council* [2014] EWHC 707 (Admin)),
- Strategic Environmental Assessment of plans and programmes (e.g. *Ashdown Forest Economic Development LLP v Wealden DC and SSCLG* [2014] EWHC 406 (Admin) and [2015] EWCA Civ 681);
- Appropriate Assessment of impacts upon protected sites (e.g. *Smyth v SSCLG* [2013] EWHC 3844 (Admin) and [2015] EWCA Civ 174);
- EU Habitats Directive, Birds Directive and domestic species protection law (including in relation to bats, wetland birds and fen orchids);
- Water quality legislation and shellfisheries;
- Claims relating to discharges to water and abstraction of groundwater, including tort claims and judicial review of permitting decisions;
- Claims relating to Town and Village Greens and other public open spaces;
- Statutory nuisance;
- Private nuisance and Rylands v Fletcher liability for escapes onto neighbouring land;
- Liability for flooding and claims relating to flood defences;
- Public nuisance.

David has acted in European Union litigation relating to the ban on animal testing, regulation of trade in cosmetic products and the application of the REACH regulation (*European Federation for Cosmetic Ingredients v Secretary of State for Business, Innovation and Skills* [2014] EWHC 4222 (admin)). Recent regulatory instructions have included advice relating to EU controls on the import of food and animal feed from third countries and the application of the 'precautionary principle'.

David undertakes criminal work relevant to his areas of practice. He has advised in relation to Health and Safety at Work and fraud prosecutions. He has prosecuted and defended in the Magistrates' Courts on charges including breaches of the Health Act 2006 and the HMO Regulations. David is a member of Chambers' Environmental Crime Group.

David is co-author (with Charles George KC) of "After Morge, Where Are We Now? The Meaning Of 'Disturbance' In The Habitats Directive." (Hart Publishing, 5 Nov 2012).

Public Law

David regularly undertakes work on public law matters including questions of vires, policy and decision-making, consultation, legitimate expectations, pre-determination and natural justice. He recently advised a local authority in relation to the regulations on 'political balance' and appointments to committees.

David formerly was seconded to Sevenoaks District Council where he advised on a wide range of local authority matters including planning, licensing, housing, environmental health, and council tax matters. He successfully defended the housing benefit decision of Cheshire West and Chester Borough Council in *Souter v Secretary of State for Work and Pensions and Cheshire West BC* [2014] UKUT 0036 (AAT).

His public law work has included subjects as diverse as local authority constitutions, airports, reservoirs, access to information, road traffic regulation and street parking, council tax and business rates, public procurement law, school admissions policy, and alleged unlawful detention of a mentally ill patient. He has advised on Human Rights matters, particularly Articles 5 and 8, and Article 1 of the First Protocol.

David has gained experience of education law encompassing school admissions, challenges to disciplinary action, and suits against universities for discrimination on grounds of race, sex and disability.

Compulsory Purchase and Compensation

Local Government

Other Areas

David's work has covered a wide variety of civil claims, including misrepresentation, breach of contract (especially agency contracts), debt claims, and negligence. He has represented both claimants and defendants in the County Courts.

David frequently advises on property matters. These have included easements, covenants, trusts, manorial rights and some landlord and tenant matters.

David has advised a chartered corporation in relation to an internal restructuring, revision of its charter and byelaws, and conduct of company meetings.

Qualifications and Awards

- Called to the Bar of England & Wales, October 2010 (Lincoln's Inn)
- Buchanan Prize, Lincoln's Inn
- Bar Vocational Course (Outstanding), BPP Law School
- Lord Denning Scholarship, Lincoln's Inn
- Graduate Diploma in Law (Distinction), City University London
- Lord Bowen Scholarship, Lincoln's Inn
- Hardwicke Entrance Award, Lincoln's Inn
- MA History (Double First), Trinity College, Cambridge
- Examination Prizes, Trinity College Cambridge, 2007 & 2008

Professional Memberships

- Administrative Law Bar Association
- Planning and Environment Bar Association
- UK Environmental Law Association
- Bar European Group
- Denning Society, Lincoln's Inn

Publications

- 'Calculating fines based on environmental harm', Lexis PSL, 13 May 2016
- 'Policies, rules and the law', Solicitors Journal (10 May 2016)
- Contributor to Strategic Environmental Assessment: a Plan for Success? (Hart Publishing, 2016 forthcoming).
- 'Discrimination in the Green Belt', Solicitors Journal (23 February 2015)
- 'Marine Spatial Planning' with Gregory Jones KC in Soyer and Tettenborn (eds), Offshore Contracts Liabilities (2015m Routledge). The EU Commission's proposal to introduce a maritime spatial planning directive is analysed and placed in the context of maritime environmental law and the

literature on maritime spatial planning practice

- 'After Morge, Where Are We Now? The Meaning Of 'Disturbance' In The Habitats Directive.' In Jones, ed., Habitats Directive: A Developer's Obstacle Course, (Hart Publishing, 5 Nov 2012)
- Fortune & Ors v Wiltshire Council & Anr (a case note), Rights of Way Law Review (September 2012)