



Esther Drabkin-Reiter

Call: 2017

Practice areas:

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



Practice Profile

Esther is a busy and sought-after junior practitioner with a broad practice across all of Chambers' areas of specialism. She is ranked as a Leading Junior for Planning in the Legal 500 and has been recognised as a top-rated junior under 35 in the Planning Law Survey since 2022. She is a Commissioning Editor of FTB's .

Esther read Jurisprudence at Merton College, Oxford, and has a master's degree in EU Law from the European University Institute, Florence. Prior to coming to the Bar she spent a year as Judicial Assistant to Lord Justice Lloyd Jones (as he then was) at the Court of Appeal, working on cases involving issues of public and EU law.

Recent and current work includes:

- Acting for an interested party in the examination into the proposed DCO to relocate the Cambridge Waste Water Treatment Plant, including making submissions at DCO hearings.
- Acting for the Open Spaces Society (led by Richard Honey KC and Ned Westaway) intervening in *Darwall v Dartmoor National Park Authority [2023] EWCA Civ 927* in support of the successful Appellant. The Court of Appeal accepted the Intervenor's and the Appellant's argument that the right to access common land for open-air recreation included a right to "wild camp" on that land.
- Acting for the Green Lane Association in a five-day inquiry into whether a Definitive Map Modification Order made by Kirklees Council should be confirmed, which raised complex legal issues concerning the "discovery of evidence" under s.53 of the Wildlife and Countryside Act 1981, whether use was "by right" or "as of right" and the impact of settlement of land on the ability to imply dedication of a right of way.
- Acting for Dacorum Borough Council (led by Simon Bird KC) in a five-week inquiry recovered by the Secretary of State in an appeal against a refusal of planning permission for a new urban extension to Tring comprising up to 1,400 dwellings, a new local centre and sports/community hub, primary school, secondary school and public open space, on a site located in the Metropolitan Green Belt.

Esther has undertaken cases for Advocate and the Environmental Law Foundation and is happy to work on a pro bono basis in appropriate cases.

Planning

Esther regularly advises and represents local planning authorities, residents, developers and planning authorities on all aspects of planning law and in all forums. She has considerable experience as an inquiry advocate, both in her own right and as a junior, including lengthy, high-profile, called-in and recovered appeals. Recent experience includes representing Dacorum Borough Council in a five-week inquiry into an appeal recovered by the Secretary of State relating to a refusal of planning permission for an urban extension on a Green Belt site (led by Simon Bird KC), representing the Ministry of Defence (led by Mark Westmoreland Smith) in an inquiry into a proposed Gypsy and Traveller site in Lincolnshire and acting for a rule 6 party in an inquiry considering a refusal of planning permission for warehouses on grounds of landscape impact. Esther has a particularly strong track record of acting unled for rule 6 parties in planning inquiries, including local residents, organisations and Parish Councils, and has successfully defended the refusal of planning permission in all cases where she has been instructed, including on additional grounds beyond the reasons for refusal.

Esther also regularly acts for local planning authorities, objectors and applicants in legal proceedings involving planning matters. Recent and current work includes successfully defending a judicial review challenge to a decision of the London Borough of Camden not to take enforcement action and a claim seeking an injunction to enforce obligations in a s.106 agreement (led by Meyric Lewis KC).

Esther's experience and ability in planning is recognised in her ranking as a Leading Junior in the Legal 500. She has also been recognised as one of the top-rated planning barristers under 35 in the Planning Law Survey for the last two years.

Esther is a contributor to Butterworths' Planning Service, responsible for Division C "Obtaining planning permission". Esther was previously seconded to the Legal Department at the London Borough of Tower Hamlets, where she advised on a broad range of legal issues involving planning, regeneration and local government law, as well as gaining a close insight into the workings of a local planning authority.

Compulsory Purchase and Compensation

Esther regularly advises and represents clients on all issues to do with compulsory acquisition, including powers of compulsory purchase, the compensation code and limitation provisions. Esther represented HS2 (led by Andrew Tait KC) in its successful appeal against a CAAD certificate granted by Ealing Borough Council (*Secretary of State for Transport v Bleep UK Plc [2022] UKUT 331 (LC), [2002] RVR 108*). She has recently advised an acquiring authority on the procedure and merits of promoting a CPO as well as advising landowners on the relationship between the DCO regime and compulsory acquisition.

Major Infrastructure Projects

Esther is currently instructed by an interested party representing local residents in the ongoing examination into the proposed DCO to relocate the Cambridge Waste Water Treatment Plant onto a Green Belt site. She has provided advice at all stages of the process and has made submissions at DCO hearings, in particular on the applicable legal and policy framework and the need for the relocation.

Esther has attended and assisted on a number of infrastructure inquiries, including inquiries into development consent orders for new rail and road links as well as orders under the Transport and Works Act. She provided initial advice to the Claimant in *Pearce v SSBEIS [2021] EWHC 326 (Admin)*, the first challenge under s.118 of the Planning Act 2008 that was successful after oral argument.

Esther was previously seconded to the Department for Transport, where she undertook advisory work for the Roads Team on public law matters relating to major infrastructure projects, including the public sector equality duty, special development orders and the delegation and contracting out of functions.

Environment

Esther is regularly instructed to advise and act in cases involving environmental law issues, both in the planning context and more broadly. She is a member of UKELA and the Environmental Law Foundation and was invited to speak at the 2023 UKELA Annual Conference. She is also the co-Commissioning Editor of and a regular contributor to FTB's Environmental Law Blog. Esther is regularly called on to speak and provide training on environmental law matters.

Esther acts for a range of environmental organisations, individuals, public authorities and private companies in environmental matters. Recent work includes advising on the definition of “*environmental information*” in the Environmental Information Regulations 2004, advising and making submissions on environmental aspects of the marine licensing regime and protection of marine habitats, and challenging the lawfulness of a grant of planning permission on the basis of failure to comply with the law on environmental impact assessments. Esther is well-versed in the costs capping regime for Aarhus Convention claims. She has also advised on environmental issues in the private law context, including liability for private nuisance in the context of flooding and subsidence.

Esther's in-depth knowledge of EU law gained during her LL.M. at the European University Institute is a particular asset in this field, and has enabled her swiftly to develop a strong grasp of the legal framework governing assimilated EU law post-Brexit, of which the vast majority is environmental law. During pupillage, Esther provided research assistance for the 4th Edition of McCracken, Jones and Pereira on Statutory Nuisance.

Public Law

Esther has a keen interest in public law, and regularly acts for and advises clients on a range of public law issues which arise in conjunction with public authority decision-making in all areas of specialism within Chambers. For example, she has successfully challenged and defended public authority decision-

making in legal proceedings concerning the adequacy of consultation the duty to give reasons, the public sector equality duty and procedural fairness more generally. Esther is often instructed to advise on and draft requests for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. She has also advised on matters relating to devolution and the devolved nations, such as the Welsh Language (Wales) Measure 2011 and planning policy in Wales. Her work for local authorities in the planning context often requires consideration of issues under the Human Rights Act 1998.

Under the Attorney General's Junior Counsel scheme, Esther has advised the Department for Levelling-up, Housing and Regeneration and the Department for Transport on matters engaging various public law issues including the Human Rights Act 1998 and the European Convention on Human Rights, the public sector equality duty, the liability of public authorities for tortious acts and the UK-EU Trade and Co-operation Agreement. She has also drafted Summary Grounds of Defence on behalf of the Secretary of State for the Home Department in immigration matters, which have led to the refusal of permission to apply for judicial review

Highways, Commons and Open Spaces

Esther is developing a busy rights of way and highways practice, and is regularly instructed in cases in both England and Wales relating to (among other things) Traffic Regulation Orders, the duty to maintain and repair the highway under s.56 of the Highways Act 1980 and Definitive Map Modification Orders. She often acts for user and amenity groups and has secured the quashing of a number of Traffic Regulation Orders following issue of proceedings where the traffic authority has conceded the unlawfulness of its decision without the need for a hearing. She has been similarly successful in s.56 repair cases where the authority has accepted liability to repair and agreed to an order requiring it to carry out repairs. Esther was recently instructed in a five-day inquiry into whether to confirm a Definitive Map Modification Order made by Kirklees Council raising complex issues relating to the discovery of evidence and the effect of settled land on the dedication of rights of way. Esther was also part of the Counsel team which appeared on behalf of the intervening Open Spaces Society in *Darwall v Dartmoor National Park Authority [2023] EWCA Civ 927* which was successful in overturning the High Court's decision and establishing that the right to access commons for open-air recreation set out in the Dartmoor Commons Act 1985 does extend to wild camping. She has also advised local authorities on the effect of the extinguishment provisions in the Natural Environment and Rural Communities Act 2006.

Local Government

Esther regularly acts for, advises and provides training for local authorities across England and Wales in all areas of Chambers' specialism. Recent work includes representing local authorities in relation to judicial review challenges to planning decisions relating to enforcement and s.70C of the Town and Country Planning Act and advising local authorities on issues ranging from Ombudsman investigations to the extinguishment of historic rights of way.

Qualifications

- City Law School, Bar Professional Training Course (Outstanding) (2015–2016)
- European University Institute, LLM in Comparative, European and International Laws (2014–2015)
- Merton College, University of Oxford, MA in Jurisprudence with European Legal Studies (German Law) (2.i) (2008–2012)

Professional Memberships

- UK Environmental Law Association
- Administrative Law Bar Association
- National Infrastructure Planning Association
- Planning and Environmental Bar Association
- Bar European Group

Scholarships and Awards

Bar Awards & Scholarships

- Buchanan Prize (Lincoln's Inn) (2016)
- Lord Denning Scholarship (Lincoln's Inn) (2015–2016)
- Hardwicke Award (Lincoln's Inn) (2014)

University Scholarships & Prizes

- Academic Scholarship (Merton College) (2009–2012)
- Norton Rose Prize (Merton College) (2009)

Previous Experience

Before coming to the Bar, Esther spent two years working as a Research Assistant at the Law Commission on a project to reform electoral laws across the UK. She was subsequently Judicial Assistant to Lord Justice Lloyd Jones in the Court of Appeal. Immediately prior to commencing pupillage, Esther spent a year as Planning Caseworker at Southwark Law Centre, advising and assisting local residents and businesses on how to engage with planning applications for major developments, the local plan process and other planning-related matters.

Esther has undertaken pro bono work on immigration and social security claims for Oxford Legal

Assistance and the Free Representation Unit, and worked as an Advice and Information Volunteer at Liberty advising on a broad range of human rights issues.

Publications

(with Jeremy Phillips KC). Solicitors Journal, April 2020

Languages

Esther is fluent in German.

Quotes

One of the top-rated planning barristers under the age of 35
Planning magazine, Planning Law Survey 2022

"Esther is sharp, informed, and very able. She is a genuine team player who is open, honest, and generous with her time."
The Legal 500, 2023