

# Landmark Chambers

## Barrister CV

Kimberley Ziya



### Contact us

[clerks@landmarkchambers.co.uk](mailto:clerks@landmarkchambers.co.uk)

+44 (0) 20 7430 1221



# Kimberley Ziya

Call: 2018

kziya@landmarkchambers.co.uk

Kim is building a practice across all three of Chambers main practice areas with a focus on property, planning and environmental law.

## Expertise

Planning, Property, Environment, Public and Administrative



## Contact Practice Managers

### Richard Bolton

020 7421 1392

rbolton@landmarkchambers.co.uk

### Charlotte Hockney

020 7421 1303

chockney@landmarkchambers.co.uk

## Practice Summary

Kim has a particular interest in areas of overlap between planning and property law including rights to light, restrictive covenants and permitted development rights.

Her notable work includes:

- ***FirstPort Property Services Limited v Settlers Court RTM Company Ltd & Ors*** [2019] UKUT 0243 (LC): instructed in the first “leapfrog” appeal from the Upper Tribunal (Property Chamber) to the Supreme Court in a case concerning the operation of the statutory Right to Manage regime. The Supreme Court has granted permission to appeal and the appeal is to be heard in November 2021. Led by Simon Allison.
- ***AEW UK REIT Plc v Sportsdirect.com Retail Ltd***: instructed for Sports Direct in proceedings to determine whether rent was payable under the terms of its Lease for periods in which the leased premises were forced to close in compliance with government restrictions imposed in response to the coronavirus pandemic. Led by Katharine Holland KC.
- ***Jarvis v Evans*** [2021] 1 W.L.R. 24: acted for the landlord (supported by the National Residential Landlords’ Association) in an appeal concerning the licencing regime for landlords in Wales under the Housing (Wales) Act 2014. Led by Justin Bates.

- ***R (on the application of Zins) v East Suffolk Council***: acted for the claimant in the judicial review of a planning permission granted to PGL Travel Ltd for the creation of a new activity lake within a countryside estate used as a children's outdoor activity centre. Led by David Forsdick KC.
- Acting for the successful developer at a public inquiry concerning the proposed redevelopment of 70 "Airey" houses near Leeds (APP/N4720/W/20/3250249). Led by Sasha White KC.
- Advising on questions of noise nuisance, rights to light, restrictive covenants and rights of way arising following the grant of planning permission.
- Appearing for tenants and landlords before the County Court and First-tier Tribunal in cases concerning rent and service charge arrears, possession, forfeiture and tenancy deposits.

Kim accepts instructions on a direct access and pro bono basis in appropriate cases. She is a member of the Attorney-General's baby junior scheme and part of the editorial team for the Planning Encyclopedia.

Prior to joining Chambers, Kim was a Research Assistant in the Law Commission's Property, Family and Trusts team, where she worked on projects relating to Charity Law, Easements, Covenants and Profits, and Leasehold Enfranchisement. Before that Kim spent nine months at a boutique litigation firm in Los Angeles where she assisted with all aspects of cases covering civil fraud, employment, tort, probate and public law.

## Planning

Kim practises across the spectrum of planning law: regularly appearing at public inquiries on behalf of both developers and local planning authorities; representing both claimants and defendants in judicial review and s.288 appeal proceedings; and advising on a wide range of planning related issues. Kim also practises in property law and is developing a particular specialism in the areas of overlap between the two disciplines such as land options, restrictive covenants and compulsory purchase.

### **Inquiry work**

In her first three years of practice, Kim has appeared in ten successful planning appeals. These included: acting for the developer of a student housing scheme in Bristol faced with a flooding objection from the Environment Agency (led by John Litton KC); for Uttlesford District Council in opposing a housing appeal in the countryside on landscape and heritage grounds (led by Paul Brown KC); and for the developer of a housing regeneration scheme in Leeds where the issues included an alleged breach of the public sector equality duty (led by Sasha White KC).

Kim has also appeared as sole counsel at planning enforcement inquiries (for both the local planning authority and appellants) and is currently instructed to attend a hearing for a major provider of older persons accommodation.

### **Court Work**

Kim is instructed (led by Alex Goodman KC) in the appeal against the Court of Appeal's decision in *R (Day) v Shropshire Council* [2020] EWCA Civ 1751, which will be heard by the Supreme Court in December 2022. The appeal concerns the grant of planning permission for housing development on part of a recreation ground disposed of by a town council without complying

with the statutory requirements for disposals of public open space.

Kim has appeared in a number of planning judicial reviews in the High Court including challenges to: a planning permission granted by a local authority for development at a children's outdoor activity centre on noise grounds (led by David Forsdick KC); a consent granted by a local authority to fell a protected oak tree, which included an application for interim relief; and the City of London's grant of planning permission for the Fleet Street redevelopment (led by Charles Banner KC and Richard Harwood KC).

### Advisory Work

Kim regularly advises on the full spectrum of planning and environmental law matters. This includes advising on the lawfulness of: a release of pine martens in the Forest of Dean; draft Neighbourhood Plan policies setting high sustainability standards for new developments; and disposals of public open space by local authorities. This is in addition to advising on the prospects of success of planning appeals and judicial reviews as part of her inquiry and court work.

Her property expertise makes her particularly qualified to advise on cross-over areas such as restrictive covenants, rights to light, options agreements, compulsory purchase and other land acquisition and management issues.

## Property

Kim is building a practice across the full range of property disputes including landlord and tenant, issues of adverse possession, restrictive covenants, land registration and easements. Kim has been involved in a number of significant property cases, including:

- **FirstPort Property Services Limited v Settlers Court RTM Company Ltd & Ors** [2019] UKUT 0243 (LC): Appeal concerning the proper operation of the Right to Manage scheme where a single block on an estate acquires RTM. Considered whether the Court of Appeal's decision in **Gala Unity v Ariadne Road** was decided per incuriam and concluded that, as it was not, the appeal would be dismissed. Permission was subsequently granted by the Upper Tribunal for the 'leapfrog' procedure to be used. In November 2020, the Supreme Court granted permission to appeal; appeal to be heard November 2021. Led by Simon Allison.
- **AEW UK REIT Plc v Sportsdirect.com Retail Ltd**: instructed for Sports Direct in proceedings to determine whether rent was payable under the terms of its Lease for periods in which the leased premises were forced to close in compliance with government restrictions imposed in response to the coronavirus pandemic. Led by Katharine Holland KC.
- **1 West India Quay (Residential) Ltd v East Tower Apartments Ltd** [2020] UKUT 163 (LC): instructed by the landlord in a case concerning the application of the service charge provisions in the Landlord and Tenant Act 1985 to a large mixed-use development with a complex utility metering system. The Court of Appeal has granted permission to appeal on two grounds: (1) the proper interpretation of s.20B (including whether **Skelton v DBS Homes (Kings Hill) Ltd** [2017] EWCA Civ 1139 is properly decided); and (2) the construction of various commonly found costs clauses in residential long leases (including whether a landlord can waive its right to forfeit for breach of a covenant before such a breach has been determined by the Tribunal). The appeal is being heard in April 2021. Led by Justin Bates.

- **Northern Powergrid (Yorkshire) Plc v Leatham Estates Ltd** (Ref/2019/0649): instructed by the registered proprietor to defend an application to alter the register of title for an electricity sub-station site in Doncaster. Leatham Estates are seeking permission to appeal to the Upper Tribunal. Led by Katharine Holland KC.
- **Jarvis v Evans** [2021] 1 W.L.R. 24: acted for the landlord (supported by the National Residential Landlords' Association) in an appeal concerning the licencing regime for landlords in Wales under the Housing (Wales) Act 2014. Led by Justin Bates.
- **Piechnik v Oxford City Council** [2020] EWHC 960 (QB): acted for Oxford City Council in a High Court appeal concerning the rights of access of local authority landlords to carry out fire safety works in flats where the tenant has exercised their right to buy. Led by Justin Bates.
- **Avon Grounds Rents Ltd v Cowley** [2019] EWCA Civ 1827: acted for the landlord in an appeal regarding the application of the reasonableness test at s.19(2) of the Landlord and Tenant Act 1985 to on account service charges. Led by Justin Bates.
- **York House (Chelsea) Limited v Thompson** [2019] EWHC 2203: acted for the long leaseholders in a four-day High Court trial regarding tenants' rights of first refusal under the Landlord and Tenant Act 1987. Led by Thomas Jefferies.

Kim's notable unled work has included:

- Appearing for landlords and tenants in the County Court and First Tier Tribunal on a range of matters such as residential possession, service charge disputes, rent reviews and lease extension claims. Kim has also advised and acted in a professional negligence claim concerning a rent review.
- Providing advice and drafting pleadings on a broad spectrum of property law matters such as nuisance, mortgages, easements, adverse possession, restrictive covenants, unlawful eviction, land registration, service charges and 1954 Act claims.

## Environment

Kim has a particular interest in environmental law and recent work includes:

- Advising and drafting letters before action in a potential claim for judicial review against the Forestry Commission and Natural England regarding the proposed re-introduction of pine martens in parts of the South West of England.
- Advising a local resident as to a possible claim for judicial review on environmental grounds against the grant of planning permission for the development of a new dwelling in her neighbour's garden.
- Advising a Parish Council on the lawfulness of its draft Neighbourhood Plan policies setting high sustainability standards for new developments and assisting with the drafting of a "model policy" for other Parish Councils to adopt where appropriate.

## Public and Administrative

Kim is a member of the Attorney General's 'Junior Junior' scheme and has accepted instructions via the scheme in a number of high profile public law cases:

- Assisting Samantha Broadfoot KC who acted for Highways England's in the inquest into a death on a motorway.
- ***Dolan v Secretary of State for Health & Social Care***: application for judicial review of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and the Prime Minister's decision to direct the closure of all schools and other educational establishments on 20<sup>th</sup> March 2020. With Jacqueline Lean.
- Assisting Julia Smyth in advising on the form of assessment required under the Mental Health Act 1983 and whether these could be carried out remotely during the coronavirus pandemic.
- Advising the Home Office regarding the lawfulness of a Regulation 33 certification decision. With David Blundell KC and Julia Smyth.

Kim has separately advised on the merits of an unlawful detention and likely quantum of damages. Led by Samantha Broadfoot KC.

## Qualifications

- University of Oxford (Lady Margaret Hall) – BA Law with French Law
- University of Law, London – BPTC

## Recommendations

"Kim has a real eye for detail and leaves no stone unturned, which clearly shows when observing her written work and advocacy. She has worked on matters well beyond her year of call and is a junior in high demand."

**Property Litigation, Legal 500, 2023**

## Cases and inquiries

30 11 23          Planning permission granted for up to 144 homes in the Green Belt

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01 03 23          Appeal allowed by the Supreme Court in R (Day) v Shropshire

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