



David Forsdick QC

Call: 1993 Silk: 2014

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Expertise

Planning, Public, Environment, Rating and Valuation, Public Procurement, European Union Law

Overview

David was appointed Queen's Counsel in 2014 and specialises in environmental and planning law, local authority law and associated public law. His practice is approximately evenly split between cases in the High Court and above, inquiries and advisory work and his clients include major players in his area of expertise including numerous central government departments, large local authorities, a number of the main environmental NGOs and commercial landowners and developers.

To give a flavour of his practice, recent work includes acting for the RSPB in a challenge concerning protection of a rare species

on grouse moors in SPAs; for the government in judicial reviews concerning withdrawal of funding from failed waste PFIs; for owners of tall buildings in securing injunctions and contempt findings in respect of urban exploring; for a London borough in securing £multi-million unpaid affordable housing contributions; for landowner in £multi-million compensation claims following CPO; a major developer in a dispute on affordable housing and viability; for the government in securing permission for a new school in Gloucester, for a County in resisting permission for a huge and controversial mineral site and for a local authority successfully restricting the spread of airport related car-parking across its area.

Consistently highly rated in the key directories, recent recommendations have described him as “hugely impressive”; “a fantastic talent”; “thorough, detailed, bright and pleasant to deal with”; “really frighteningly astute”; and “so focussed, intelligent, sharp and responsive and very practical”.

He was shortlisted for the 2016 Chambers UK Environment and Planning Silk of the Year.

Environment

David’s practice covers the full range of environmental law issues, often raising novel and important legal points and requiring detailed consideration of complex scientific material.

Recommendations: **C&P 2018** – “sought out by government departments and key environmental NGOs and regulators...extensive experience in appearing before the Court of Appeal. He has encyclopaedic knowledge of the legislation around nature protection.” C&P 2017 – “hugely impressive... presented the case really forcefully and clearly to the Court. He really focused on the key issues”; C&P 2015 – “thorough, detailed, bright and pleasant to deal with”; C&P 2014 – “he as a strong reputation amongst his peers at the Bar who note his abilities as a cross-examiner and his excellent command of detail.” Who’s Who 2017: “a definite inclusion in any list”. Who’s Who 2015: “a fantastic talent”.

Recent important cases include: *R (RSPB) v Natural England* (pending) – concerning conflict between hen harrier protection and grouse shooting; *R (Defra) v Greater Manchester/ Lancashire* (JR of withdrawal of funding for huge waste PFIs); *R (Holiday Extra) v Crawley BC* [2016] EWHC 3247 (Admin) (SEA of airport parking at Gatwick); *R (Birchall Gardens) v. Hertfordshire County Council* [2016] EWHC 2794 (Admin) (EIA screening opinions and reasons for major waste facility); *R (Seoint Anglers) v. Natural Resources Wales* [2017] Env LR 2 (concerning meaning of “environmental damage” under Environmental Damage Regulations); *Re: Envirogreen* [2016] NICA 32 (Court of Appeal in Northern Ireland on environmental permitting and relevance of previous conduct of licence holder); and *R (RSPB) v. SoS* [2015] Env LR 24 (for RSPB in challenge to legality of a cull of a protected species). He acted for a consortium of local authorities and NGOs in the last challenge to a third runway at Heathrow – *Hillingdon v. Secretary of State* [2010] JPL 976 on air quality, noise and climate change grounds.

Planning

David regularly appears in planning related challenges in the Courts, and has a wide-ranging planning practice covering infrastructure and housing.

Recommendations: C&P 2018 – “has taken on a number of eye-catching planning cases in recent years, engaging with both housing and infrastructure matters of national importance and novel construction. Instructing solicitors praise his comprehensive analysis and his ability to solve complex problems.” “Very thorough and has a great deal of experience.” “He is a very worthy opponent, being very robust and tenacious. He is happy to run difficult points and has the strength of character to stand by them and often to win through.” C&P 2017 – “really frighteningly astute barrister”; “Absolutely first rate from a legal analysis point of view”; C&P 2016 – “produces fantastic written work and is really focussed”; C&P 2014 – “he is very quick wading through a mountain of material and then presenting it in written form succinctly. He is so focussed, intelligent, sharp and responsive and is very practical”

Recent Inquiries: for Department of Education in securing permission for a new school in Gloucester (Dec 2018); for Crawley Council in several enforcement cases concerning off airport parking (Nov 2018); for County Council in resisting mineral extraction at Ware Park in Hertford (Oct 2018).

Recent important cases include *West Berkshire v. Secretary of State* [2016] 1 WLR 3923 (affordable housing policy consistency with statutory scheme); *Smech v. Runnymede Borough Council* [2016] JPL 677 (housing requirements and discretion); *Gerber v. Wiltshire* [2016] 1 WLR 2593 (leading case on delay in JR and discretion) *St Albans City v. SoS* [2015] EWHC 655 (Admin) – challenge to a grant of consent for a strategic rail freight interchange and *R(Smith) v. Warwickshire County Council* [2016] – policy for location of emergency stopping places for gypsies and travellers.

David acted for Bath and North East Somerset in its Core Strategy examination (housing land supply) and the subsequent PMP.

He acted for the RSPB in the Able Humber Port DCO and in all the earlier port inquiries.

David is advising a number of authorities and developers in respect of major urban extensions and in particular CIL and S.106 requirements/conditions. He acted for Milton Keynes in respect of an attempt to challenge permission for a major urban extension raising equalisation issues and for Trafford in respect of the conditions on a 3000 house scheme at Trafford Water and for a landowner in respect of a £multi-million disputed s.106 obligation.

Local Authority

David acts for many of the major local authorities (City Councils, County Council and London authorities). His practice involves advising on, and appearing in cases concerning, local government powers, decision making, landholdings, revenue maximisation and reorganisation.

Recommendations: C&P 2018 – “renowned local government silk with extensive expertise across a plethora of public and environmental law issues.... routinely acts as lead counsel for public authorities in high stakes vires disputes”; C&P 2016 – “really good at seeing the bigger picture”; C&P 2015 – “he does very high quality cases and he does them well.” “He turns work round quickly and is very reliable”

Recent Work: in addition to the local government- related cases listed above, David’s recent work includes: *R (Morell) v Taunton Dean Borough Council* [2016] – pending JR of proposals to merge the Council with adjoining council; *R(Lancashire CC) v DEFRA* pending JR of withdrawal of £multi-million waste infrastructure credit from major PFI project; advising a London Borough on the legality of call ins of major planning application by the Mayor of London; legality of article 4 direction by a city council restricting PD rights; and the correct approach to appropriation of land and rights to light. He acted for claimants in the challenge to the Garden Bridge.

Other Public Law

David’s public law practice is focussed on environmental, planning and local government challenges. In addition to those core areas:

- He has appeared regularly in cases concerning the right to protest: for Sheffield City Council in the injunction claims concerning tree felling; for the City of London in *City of London v. Samede* – the St Paul’s occupy protest; for the Mayor of London in the Parliament Square protest camp case and *Orchard* – protest camp at Magna Carta.
- He has acted in several cases concerning the compatibility of legislation with the Human Rights Act – including *Newhaven* and *Leeds* on A1P1 and commons registration; and
- He is acting for claimants in judicial review claims challenging the legality of imposition of retrospective taxation using the state error principle;
- He has acted for the Government in *R (Harrow Community Support) v. Ministry of Defence* [2012] EWHC 1921 (Admin) (Olympic security – “missiles on the roof” – article 8); and
- He Has acted for claimants in various art 14 discrimination relating to benefit entitlements.

Recommendations: C&P 2015 – “He is very good... Very tenacious”; C&P 2014 – “He is excellent”, “he’s thorough clear and helpful” He “did extremely well in the High Court looking at the occupation by the camp outside St Paul’s,” and is also “very good at handling clients and meeting their expectations.” C&P 2012 – “wins acclaim for his work in the successful challenge to the government’s decision to support a third runway at Heathrow. He remains a favourite pick as counsel for judicial reviews concerning planning, the environment and local authorities”.

CPO and Compensation

David regularly advises and acts in relation to CPOs and has a particular specialism in substantial compensation claims and valuation issues having acted in a number of £multi-million claims in the last three years.

He acted for landowners objecting to the proposed CPO in relation to the Newport M4 Corridor; for a supermarket operator objecting to a highways CPO; and for a City Council in respect of implementation of a CPO. He advised objectors to the Ponders End and Brent X CPOs and appeared for Sainsbury’s in the Croydon CPO. He acted for the landowner in the challenge to the Swindon CPO and for the SoS in the defence of the Margate regeneration CPO: *Margate Town Centre Regeneration Ltd v. Secretary of State* [2013] EWCA Civ 1178.

Rating and Valuation

In recent years, David has acted for the HMRC and ratepayers on a number of high value and significant rating cases. He was advocate to the Supreme Court in the leading case of the identification of the hereditament (*Woolway v. Mazars* [2015]) and is acting for a wide range of affected ratepayers in addressing the consequences of that decision. In 2016, he acted for the HMRC in two cases challenging the use of the contractor's basis in the oil industry (*Mainline* and *Total*); is currently acting for Exeter City Council in the VO's appeal relating to the correct valuation method for museums. He has advised various farmers on agricultural exemptions and the owners of a large building in London on applicable exemptions. He is advising several authorities on maximising income from rates and acted for a ratepayer in liability order proceedings arising from empty property provisions.

Qualifications

A Panel of Junior Counsel to the Crown – appointed 2005 (B Panel – 2002 and C Panel – 1999)

Appointed as Secretary of State decision maker in statutory appeals – 2008/9

Appointed as legal assessor by Secretary of State and by mediators in various contexts

Chair of the Free Representation Unit 1993-94

Chair of Governors of Federation of Primary Schools in Islington (since 2001)

Main Recent Inquiries and Examinations

St Albans Local Plan Examination (January 2020)

Strategic rail freight interchange, allocation of site for Garden Village, duty to co-operate, strategic priorities, housing land supply and alternatives.

St Albans sought to allocate land in the green belt which had secured permission from the SoS for a SRFI to serve London for a garden village the effect of which would have been to defeat the permission and prevent the delivery of an SRFI to meet the needs of London. St Albans had fought a very long battle to prevent the SRFI getting permission and being implemented, David acted for Helioslough who had the benefit of the permission in seeking to show that the local plan was fundamentally flawed in principle because it was predicated on failing to meet a national need for the SRFI, there was nowhere else for it to go, and the housing need could be met elsewhere. Extensive technical submissions and representations made on behalf of Helioslough. After just three days of hearing on these matters, the Examination has been put on hold because of the Inspectors' serious concerns about legality and soundness of the local plan.

David previously acted for developers in securing permission and successfully defending St Alban's challenge to the permission.

University of Chester Faculty of Science and Engineering – Thornton Science Park (November 2019-March 2020)

Major hazards, consultation zones, protection concept, risk assessment

For HSE in first major challenge to its setting of consultation zones for major hazard installations since the Oval and Ramm cases 10 years ago in which David also acted for HSE. The University had established a faculty in the inner zone of an oil refinery and contended through expert evidence that the HSE methodology for setting zones was wrong, the modelling of the representative event was wrong and the zones far too wide and that students were indistinguishable from employees. This amounted to a fundamental attack on the approach of the HSE to zone setting. During highly technical cross-examination by David, the University's main witness withdrew much of his modelling and the rest was shown to be "misleading". The Inspector upheld the methodology of the HSE to setting zones, and the use of the representative event here. The HSE approach to sensitivity of students was upheld. Wholly exceptionally full costs were awarded to the HSE.

David has previously acted for HSE in all its test cases on its methodology and the scientific logic.

Retirement Village, Bolney, East Sussex October – (October to December 2019)

AONB, major development, C2 vs C3, HLS

Permission was sought for a large retirement village in a woodland setting in the AONB arguing that there was C2 need and C3 HLS shortfall. David acted for LPA in successfully resisting appeal. Appeal concerned the meaning of “major development in AONB”, the impacts on the AONB, trees, and listed buildings; the policy approach to development beyond but on edge of settlement boundaries. Significant issue on whether units were C2 or C3 – and extent of care provided. HLS analysis – 5 year HLS established. Approach to C2 provision and C2 pipeline.

Brecknock Road, Camden (October to December 2019)

Use of former public house as a shop. A3/A4; permitted development; whether shop use had commenced within the PD rights window, community use and benefit of pub, alternative facilities

For successful Appellant, appealing against enforcement re: change of use. Case concerned the steps taken to implement PD rights within the statutory window, the extent of community use; the viability of the pub use and the impacts of loss of pub.

Kerswell Close, Haringay (August to December 2019)

Affordable Housing – 100% one bed one person 20% discount market sale housing. Policy compliance; weight to be attached to non-compliant 100% AH.

For successful LPA, in resisting appeal by Pocket Housing for a 100% AH 1b1p scheme all at 20% discount market sale. Test case. Even though 100% AH, policy breach because tenure and size mix inconsistent with policy requirements. Demonstrated that the 100% AH offer was in fact less valuable in AH terms and did not meet the needs to the same extent as policy compliant scheme.

David has previously acted for multiple London authorities on AH requirements including successfully enforcing s.106 AH obligations for Camden (£3.5m unpaid recovered); on AH requirements in major schemes at Greenwich Peninsula and Docklands and for Islington.

Ware Park - 2018

Mineral Extraction, Green Belt, Air Quality, Noise. Landscape and Need

For successful LPA in resisting huge mineral extraction. Issues on need and supply, impacts on landscape and green belt, alternatives, noise and mitigation and air quality.

Crawley Airport Parking - 2018

Airport parking, need, sustainability, location, competition, impacts

For LPA in several successful inquiries concerning airport related car parking planning appeals and enforcement. – policy; need; shortfall; competition

Gloucester Schools 2019 and 2018

For County Council in securing s.106 obligation for a new school as part of development

For County Council in securing permission on appeal for a new school on public open space.

Major Earlier Inquiries

- 2014 Humber Port – DCO
- 2013 Lydd Airport Expansion (for RSPB)
- 2012 South Cambridge – Clay Farm – urban extension – affordable housing and viability
- 2011 West of Stevenage Urban Expansion
- 2010 Radlett Strategic Rail Freight Interchange
- 2007 Thames Gateway and Bathside Bay Port Inquiry

Hardworking, tenacious and thorough

Legal 500

Cases

22 Jun 2020	Government refused permission to appeal in landmark case on rating of public buildings
31 Oct 2017	Sheffield Tree Protesters in Contempt Proceedings - Sheffield City Council v Teal and Payne [2017] EWHC 2692 (QB)
15 Aug 2017	Sheffield City Council v Fairhall and others [2017] EWHC 2121 (QB)
23 Dec 2016	Gibson v Waverley Borough Council [2015] EWHC 3784 (Admin)
29 Jul 2016	R (Seoint Anglers) v Natural Resources Wales [2016] EWCA Civ 797
18 Jul 2016	RSPB v Scottish Ministers [2016] CSOH 106
12 Jul 2016	R (Smith) v Warwickshire [2016] EWHC 1534 (Admin)
14 Jun 2016	Re: Envirogreen [2016] NICA 32
11 May 2016	West Berkshire v Secretary of State [2016] EWCA Civ 441
01 Mar 2016	Affordable Housing Contributions: West Berks in the Court of Appeal
23 Feb 2016	R (on the application of Gerber) v Wiltshire Council [2016] EWCA Civ 84
23 Feb 2016	Gerber v Wiltshire [2016] EWCA Civ 84; [2016] 1 WLR 2593
03 Feb 2016	Smech v Runnymede Borough Council [2016] EWCA Civ 42; [2016] JPL 677
29 Jan 2016	R (Menston) v Bradford [2016] JPL 689
18 Dec 2015	High Court considers Environmental Liability Directive for the first time
25 Jul 2015	R (Save) v Secretary of State [2014] Env LR 9
22 Jul 2015	R (Sainsbury's) v Hillingdon [2015] EWHC 2571
18 Mar 2015	R (RSPB) v SoS [2015] EWCA Civ 227; [2015] Env LR 24
13 Mar 2015	St Albans City v SoS [2015] EWHC 655 (Admin)
27 Feb 2015	Ecotricity v SoS [2015] EWHC 801 (Admin)
16 Oct 2013	Royal Mutual v SoS [2014] JPL 458
22 Feb 2013	R (Evans) v Secretary of State [2013] EWCA Civ 115; [2013] JPL 1027
01 Jan 2013	Northern Ireland Environment Agency v Planning Appeal Commission [2013]
20 Sep 2012	R (Gray) v Southwark LBC [2012] EWHC 2653

26 Mar 2010	Hillingdon v Secretary of State [2010] JPL 976
17 Sep 2009	English Heritage, Westminster CC and Ashton v Secretary of State for Communities & Local Government
11 Aug 2009	Sainsbury's Supermarkets Ltd v Wolverhampton City Council and Tesco Stores Limited [2009] EWCA Civ 734
19 Feb 2008	R (Howsmoor) v South Gloucestershire District Council
01 Jan 2008	R(South Yorkshire Passenger Transport Executive) v Leeds City Council
01 Jan 2008	R(West Yorkshire Passenger Transport Executive) v. Leeds City Council
01 Jan 2008	Somerfield Stores v. South Oxfordshire District Council - Lands Tribunal
01 Jan 2008	R(Dinedor Action Group) v. Herefordshire County Council (pending)
01 Jan 2008	R(McKeown) v. Oxford City Council
01 Jan 2008	R(New Forest National Park Authority) v. Christchurch Borough Council (pending)
30 Jul 2007	R(Merrick) v Secretary of State for Trade and Industry
25 May 2007	R (Kings Cross Railway Lands Group) v Camden LBC [2007] EWHC 1515 (Admin)
09 Feb 2007	R(Greenpeace) v. Secretary of State for Trade and Industry
09 Dec 2006	Hoare v Secretary of State for Trade and Industry
01 Jan 2002	UK Renderers Association v Secretary of State

Publications

27 Jul 2020	Executing the land acquisition strategy: the landowners/occupiers perspective
27 Jul 2020	Delivering Major Infrastructure: Part 3 - Executing the land acquisition strategy - Webinar
24 Jul 2020	Rating of public buildings post-RAMM
24 Jul 2020	Rating of public buildings not occupied for profit: implications of RAMM - Webinar
23 Jun 2020	Getting an injunction against unlawful traveller encampments: what the law now requires
21 May 2020	Injunctions etc against protesters and travellers - Webinar
04 Nov 2019	Climate Change As A Ground Of Challenge In Planning Cases
25 Apr 2018	Charitable Relief Update
06 Nov 2017	Environmental Case Law Update
05 Jun 2017	Mayor of London's Affordable Housing SPG
26 Apr 2017	Issues in Collection and Enforcement (paper)

26 Apr 2017	Issues in Collection and Enforcement
14 Sep 2015	Housing Policy: Legality and Weight Following West Berks v. SoS
21 May 2015	Project Funding – Risks and Options
19 Nov 2014	A Year in Judicial Review: Key cases and trends
17 Nov 2014	Green Belt Development: The legal issues
02 Apr 2014	Identifying the hereditament – The Contrary View
06 Feb 2014	Green belt development: The legal issues
30 Nov 2012	Protest, Trespassers and Human Rights: The aftermath of St Paul’s and the Occupy protests
26 Jul 2012	Interim Relief In Judicial Review
27 Oct 2010	Costs in Environmental & Planning Cases after Garner – Applications for PCO’s after Garner
06 Mar 2009	Climate Change and the Law – Renewable Energy proposal hurdles to delivery in the future
01 Jan 2009	Renewable Energy Proposals: Hurdles to Delivery in the Future
