



Andrew Byass

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Expertise

Planning, Public, Environment, Public Procurement, European Union Law

Overview

Andrew is a planning and public law specialist, whose experience includes general planning law, environmental law, compulsory purchase, EU law, rating and general public law matters. He has a broad inquiry, court and advisory practice, which spans all areas of his expertise and includes experience at every level of court and tribunal.

Having qualified as a barrister and solicitor in Australia in 1997, Andrew returned to the bar in 2010. He has worked in various legal roles in both the private and public sector in Australia, the United States and the UK. Immediately prior to returning to the bar, Andrew worked as a senior solicitor in central Government undertaking public law litigation.

Andrew has a wide client base, which includes major developers and landowners, central Government, NHS trusts and CCGs,

local authorities, NGOs, and individuals.

Andrew is a member of the Attorney-General's "B" panel of counsel.

Planning and Environment

Andrew is a top-rated planning junior in the 2020 Planning Law Survey and is ranked in Legal 500 (tier 3) and Chambers & Partners (band 5) for planning. His practice covers all areas of planning and environmental law. He acts for major developers, landowners, individuals and local authorities in a range of matters involving infrastructure, retail, residential, energy, waste, student accommodation, neighbourhood planning, public rights of way, highways, green belt, habitats, EIA and other environmental law matters.

Andrew is acting for government across a range of infrastructure policy matters, including advising the Department for Transport on the Airports National Policy Statement, and acting in challenges seeking review of the Energy and National Networks National Policy Statements, and in the challenge to the Road Investment Strategy 2 (which sets out the proposed £27.4 billion investment over the next five years in the strategic road network). He has in these areas advised on the interpretation and application of the Planning Act 2008 at both the NPS and DCO stages, as well as matters including SEA, habitats, compulsory purchase and blight, noise regulation and mitigation, air quality, climate change, and consultation processes.

Other recent experience includes:

- Appearing as junior counsel in the various challenges to the Airports NPS (Heathrow third runway).
- Promoting tall buildings in appeals against refusal or non-determination of planning applications.
- Advising housebuilders and others on representations in response to calls for sites and forthcoming examinations in public of new development plans.
- Advising on strategic urban expansions, including for residential and associated uses.
- Providing advice to developers, local planning authorities and statutory undertakers on various matters including infrastructure, retail schemes, s. 106 contributions, CIL, and housing.
- Advising on the preparation of detailed appeal documentation to appeal a decision to refuse permission for a residential led mixed-use scheme comprising 305 units and associated development.
- Representing a developer in quashing the called-in decision of the Secretary of State to refuse permission for a mixed-use residential and community (church) scheme in Purley.

Legal 500 states: *"He is trusted by the best QCs to assist them with Inquiry and High Court work. Andrew is pro-active and innovative when trying to find solutions for clients. He is calm under pressure and always delivers."*

Chambers and Partners describes him as, *"Well versed in handling planning and public law matters on behalf of government bodies at the High Court, Court of Appeal and Supreme Court, and at inquiry"* and that *"His grasp of the detail stands out. He's very good at constructing arguments and he focuses on the points that matter."*

Environmental

Andrew's experience covers SEA, EIA, habitats, contaminated land, environmental permitting, air quality, climate change, noise and water. Recent experience includes:

- Defending the government's approach to habitats (selection of alternatives), air quality and climate change in the Airports NPS.
 - Defending the challenge to the Road Investment Strategy 2, raising matters relating to climate change, legitimate expectation, air quality, and application of SEA.
 - Advising on the preparation of appeal documentation challenging refusal of permission due to air quality impacts.
 - Successfully resisting development due to the risk of breach of a discharge consent at a waste water treatment works.
 - Advising on the failure to properly regulate an environmental permit, having the effect of causing excess pollution and stopping residential development coming forward.
 - Advising on the discharge of an environmental permit to facilitate the remediation of contaminated land and prospective housing development.
 - Advising on the provision of further environmental information in support of an appeal against refusal of development.
 - Acting in respect of a noise abatement notice issued in respect of the operation of steel works.
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Heritage

Andrew has advised on or acted in a wide range of matters with heritage considerations, on behalf of both local planning authorities and developers. His experience spans developments affecting designated and non-designated heritage assets, the Kew World Heritage Site, registered parks and gardens, and all grades of listed buildings, as well as developments requiring listed building consent.

Andrew's recent experience includes:

- Successfully appearing on behalf of a developer in an inquiry in which the Inspector accepted arguments about heritage benefits outweighing heritage harms to produce no net heritage harm (Beckington).
- Appearing in an inquiry involving proposed student accommodation in Oxford within the setting of multiple listed heritage assets (on all sides of the proposed development), as well as an adjacent non-designated heritage asset (Manor Place).
- Resisting leave to appeal against a decision to uphold enforcement action following failure to obtain listed building consent for non-consented works to a listed building.
- Successfully quashing a decision of the Secretary of State following a call-in for misdirecting himself on heritage impacts (contrary to the Inspector), including the balancing of harm and benefit and the level of harm required to arise to equate to substantial harm (Mosaic Place).
- Appearing in or advising on numerous other applications involving designated heritage assets, and the impacts of development on the significance of those assets, including developments involving tall buildings, protected views, or those within or adjacent to conservation areas.

Housing and Student Accommodation

Andrew's housing work has involved promoting both small and large residential schemes for landowners and developers, as well as acting for local authorities in resisting such schemes. His experience involves appearing at inquiries as well as advising housebuilders and others on site selection, and representations in response to calls for sites and forthcoming examinations in public of new development plans.

Through both his inquiry and advisory experience, Andrew has advised on a host of housing-related matters, including housing land supply issues, highways impacts, tall buildings, waste water impacts, air quality, heritage impacts, landscape, flood risk and drainage, green belt and green wedge development, amenity impacts, noise and other environmental and planning issues.

Andrew's recent experience includes:

- Appearing on behalf of Galliard Homes at an inquiry against the refusal of permission for a residential led mixed used scheme involving a tall building in Mile End, London.
- Advising Redrow Homes in respect of the submission of an appeal against the refusal of planning permission for a residential led mixed-use scheme comprising 305 units and associated development.
- Successfully obtaining approval for a large residential scheme for Redrow Homes from the Welsh Ministers, following a successful appeal against the refusal by Caerphilly Borough Council of outline consent for 260 dwellings.
- Advising Herefordshire Council in respect of the interpretation and application of its development plan policies and the appropriate levels of contributions to be secured in s. 106 agreements.
- Advising Welsh Water as to the securing of financial contributions through s. 106 obligations, for the improvement of waste water treatment plants.
- Successfully quashing the called-in decision of the Secretary of State to refuse permission for a tall building comprising housing in Purley.
- Advising on the merits of prospective or ongoing residential schemes, including appearing at inquiries and hearings.

Infrastructure

Andrew is acting for government across a range of infrastructure policy matters, including advising the Department for Transport on the Airports National Policy Statement, and acting in challenges seeking review of the Energy and National Networks National Policy Statements, and in the challenge to the Road Investment Strategy 2 (which sets out the proposed £27.4 billion investment over the next five years in the strategic road network).

Over the course of his involvement with these matters, Andrew has advised on the interpretation and application of the Planning Act 2008 at both the NPS and DCO stages, as well as matters including SEA, habitats, compulsory purchase and blight, noise regulation and mitigation, air quality, climate change, and consultation processes.

Andrew's other recent experience includes:

- Acting in *Sawkill v Highways England*, concerning a challenge to the use by Highways England of powers of survey under s. 172 of the Housing and Planning Act 2016.
 - Acting in an appeal on a case stated against a decision of the Magistrates Court to issue a warrant to a private company (Bradwell Powe Generation Company Limited), authorising entry on to land in order to undertake surveys said to be required in respect of the Bradwell B nuclear power station development.
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Planning enforcement

Andrew has appeared for both landowners and local planning authorities at inquiries appealing enforcement action taken in respect of unlawful development, and regularly advises on such matters. Andrew's recent experience includes acting for a landowner in respect of the unlawful development of a car wrecking yard (grounds a, f and g), and acting for or advising local planning authorities on a range of enforcement matters.

Andrew has also appeared in the Magistrates and Crown Courts in respect of criminal prosecutions and was recently successful in having a sentence rescinded under s. 142 of the Magistrates Court Act 1980 which was imposed upon a mentally ill landowner who was unaware of enforcement proceedings.

Regeneration and Compulsory Purchase

Andrew's has experience in the compulsory purchase aspects of large regeneration and infrastructure schemes. This includes successfully achieving the confirmation of compulsory purchase orders and acting in references to the Upper Tribunal (Lands Chamber) in respect of compensation claims.

- Acting for the London Borough of Hounslow and Brentford Football Club ("BFC") in an appeal against a certificate of alternative development and reference seeking compensation relating to the compulsory purchase of land to facilitate the provision of a new community stadium for BFC.
 - Acting for the London Borough of Hounslow in the inquiry relating to the confirmation of the compulsory purchase order to facilitate the new BFC community stadium.
 - Acting for the London Borough of Haringey in the inquiry relating to the confirmation of the compulsory purchase order to facilitate the redevelopment of land at Seven Sisters station, including the re-provision of a market, other commercial development, and residential units.
 - Acting for TfL in respect of a reference seeking compensation for land acquired to facilitate the development of Crossrail.
 - Advising on the compensation elements of land acquired for Crossrail and the London 2012 Olympics.
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Retail

Andrew regularly advises on or appears in retail matters. His experience includes acting for landowners and developers on a range of retail schemes, including appearing (for the landowner developer) at the inquiry into the major mixed-use scheme to provide 30,000 sqm of additional retail and leisure floorspace at Tollgate Village in Colchester.

Andrew's recent experience includes:

- Acting in a successful appeal against the refusal to provide two food and drink units within a town centre location in Stockwell.
 - Advising on the discharge, scope and variation of floorspace, use and access conditions to provide retail and leisure floorspace in Tollgate.
 - Appearing in a claim challenging the provision of consent to a large retail and leisure scheme at the Northern Gateway, Colchester, for failure to properly apply the sequential test.
 - Appearing at an appeal against refusal of permission for 10 A1, A3/A5 units in the Kingswood Retail Park, refused on sequential and retail impact grounds.
 - Appearing at an appeal to successfully secure permission to redevelop a retail park and vary conditions, in a town centre location in Swansea.
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Section 106 and CIL

Andrew frequently advises on the negotiation and legal effect of section 106 agreements and on matters relating to CIL.

Andrew's recent experience includes:

- Advising on section 106 agreements and undertakings in the context of inquiries and other appeals, including when the terms of the agreements or undertakings are contested.
 - Advising on the use of section 106 agreements to secure payments to third party statutory undertakers.
 - Appearing at inquiries involving the variation or discharge of s. 106 agreements.
 - Successfully bringing proceedings in the High Court to compel the payment of contributions required under a s. 106 agreement, involving disputes about interpretation.
 - Advising on the Mayor of London's Affordable Housing SPG and emerging policy in the London Plan addressing the nature and type of obligations required, including in respect of review mechanisms.
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Public

Andrew has a broad public law practice, built upon his experience as a senior public law solicitor in central government (a role he worked in before switching to the bar in 2010). Andrew's public law work now includes NHS related matters, immigration, human rights, planning, information law, national security matters and EU law.

Andrew is a member of the Attorney General's "B" panel of counsel.

Andrew's recent experience includes:

- Advising on a range of matters relating to healthcare law, including the vires and legality of actions of NHS bodies, NHS Continuing care, primary care contracts, reconfiguration procedures and procurement and contracting issues.
 - Acting on behalf of both appellants and the Secretary of State in immigration matters in the First-Tier Tribunal, Upper Tribunal, High Court, Court of Appeal, and Supreme Court with a particular specialism in Article 8 and appeal rights claims.
 - Acting in appeals before the Special Immigration Appeals Commission, in matters involving national security issues.
 - Acting on behalf of claimants and defendants in judicial review proceedings concerning planning and compulsory purchase matters, including in respect of challenge to the Airports NPS (which involved, among other matters, parliamentary privilege, pre-determination, consultation, statutory interpretation, EU law and standards of review in judicial review proceedings).
 - Advising on access to information and data protection issues, including in respect of challenges in the Investigatory Powers Tribunal.
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Compulsory Purchase

Andrew has advised on or been instructed in a range of compulsory purchase matters, including:

- Appearing for Haringey Borough Council at the three-week inquiry held in July 2017, in relation to the proposed confirmation of the London Borough of Haringey (Wards Corner Regeneration Project) Compulsory Purchase Order 2016.
 - Appearing for Hounslow Borough Council in respect of the inquiry into the compulsory purchase order to facilitate the development of a 20,000 seat football stadium for Brentford Football Club, and enabling housing.
 - Acting for Transport for London in respect of a rule 2 and 6 claim arising under Crossrail.
 - Appearing on behalf of FCC Environment (UK) Ltd in respect of the challenge to the award of compulsory purchase powers with the Rookery South development consent order.
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Rating

Andrew has experience in advising on rating matters. It is an area he is keen to develop.

Property

Andrew has also appeared in or advised on a range of property matters. This has predominantly been in the context of matters dealing only with property disputes, but has also concerned areas of cross-over with planning, including in respect of s. 106 agreements and variation disputes.

Qualifications

Andrew graduated with an LLB from the University of Western Australia in 1996. In 2003, he completed a Master's in law (LLM) at the University of Melbourne, Australia.

Andrew qualified as a barrister and solicitor in Australia in 1997, as a solicitor in England and Wales in 2004, and as a barrister in England and Wales in 2010. Prior to switching to the bar, he worked as a senior public law solicitor at the Treasury Solicitor's Department and, before that, worked for the US law firm Paul Hastings LLP both in London and in the U.S.

Andrew is a member of the Administrative Law Bar Association, the Planning and Environment Bar Association, the National Infrastructure Planning Association and the United Kingdom Environmental Law Association.

He is calm under pressure and always delivers

Legal 500

Cases

20 Apr 2020	R (on the application of Mohamed) v Waltham Forest LBC [2020] 1 W.L.R. 2929
03 Apr 2020	Sawkill v Highways England Co Ltd [2020] 1 W.L.R. 3661
13 Feb 2020	Sainsbury's Supermarkets Ltd v Secretary of State for Housing, Communities and Local Government [2020] EWHC 270 (Admin)
17 Oct 2019	Heathrow expansion judicial review hearings to begin in the Court of Appeal
10 Oct 2019	Burgos & Amayo v Secretary of State for Housing, Communities and Local Government (Wards Corner Regeneration Project CPO)
11 Jun 2019	Pro Investments Ltd v Hounslow LBC [2019] UKUT 319 (LC)
12 Apr 2019	Secretary of State for the Home Department v AB (Jamaica), AO (Nigeria) [2019] EWCA Civ 661 (Court of Appeal)
11 Apr 2019	EYF (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 592; [2019] 4 WLUK 171 (Court of Appeal)
14 Nov 2018	Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58; [2018] 1 W.L.R. 5536; [2019] 1 All E.R. 1007; [2018] 11 WLUK 173; [2019] H.R.L.R. 4 (Supreme Court)
24 Oct 2018	KO (Nigeria) v Secretary of State for the Home Department Supreme Court [2018] UKSC 53; [2018] 1 W.L.R. 5273; [2019] 1 All E.R. 675; [2018] 10 WLUK 380; [2019] H.R.L.R. 1; [2019] I.N.L.R. 41 (Supreme Court)

14 Jun 2018	R (on the application of Nesiama) v Secretary of State for the Home Department [2018] EWCA Civ 1369; [2019] 1 W.L.R. 463; [2018] 6 WLUK 256; [2018] Imm. A.R. 1330; [2018] I.N.L.R. 792 (Court of Appeal)
09 May 2018	R (on the application of Ahmad) v Secretary of State for the Home Department [2018] EWHC 1082 (Admin); [2018] 4 W.L.R. 85; [2018] 5 WLUK 147 (High Court)
31 Jan 2018	Herrera v Secretary of State for the Home Department [2018] EWCA Civ 412; [2018] 1 WLUK 547; [2018] Imm. A.R. 1033 (Court of Appeal)
19 Dec 2017	Fenwicks Ltd v (1) Secretary of State for Communities and Local Government and (2) The Tollgate Partnership (High Court)
08 Sep 2017	Airports NPS Update
22 Mar 2017	AM (Pakistan) v Secretary of State for the Home Department [2017] EWCA Civ 180
30 Jan 2017	[2017] EWHC 121 (Admin): Airports judicial review struck out
30 Jan 2017	Hillingdon LBC v Secretary of State for Transport [2017] EWHC 121 (Admin)
02 Aug 2016	Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803
07 Jul 2016	R (on the application of MA (Pakistan)) v Upper Tribunal (Immigration and Asylum Chamber) [2016] EWCA Civ 705
26 May 2016	R (on the application of Plant) v Somerset CC [2016] EWHC 1245 (Admin); [2016] H.L.R. 24; [2016] A.C.D. 76
17 May 2016	R (on the application of MG) v First-tier Tribunal (Immigration and Asylum Chamber) ('fresh claim'; para 353: no appeal) (IJR) [2016] UKUT 283
12 May 2016	SB (India) v Secretary of State for the Home Department [2016] EWCA Civ 451; [2016] 4 W.L.R. 103; [2016] 2 F.C.R. 221; Times, May 25, 2016
16 Nov 2015	R (on the application of Muzariri) v Secretary of State for the Home Department [2015] EWHC 4137 (Admin)
22 Apr 2015	R (on the application of Kaur) v Secretary of State for the Home Department [2015] EWHC 1061 (Admin)
22 Apr 2015	Rapose v Wandsworth LBC [2015] UKUT 172 (LC)
25 Mar 2015	R (on the application of Waqar) v Secretary of State for the Home Department (IJR) [2015] UKUT 169
12 Mar 2015	R (on the application of K (Malawi)) v Secretary of State for the Home Department [2015] EWHC 542 (Admin)
05 Dec 2014	Mohamed v Secretary of State for Communities and Local Government [2014] EWHC 4045 (Admin)
14 Nov 2014	R (on the application of Isaac Kimondo) v Secretary of State for the Home Department (IJR) [2014] UKUT 565
23 Jul 2014	R (on the application of Azmat Rauf Khan) v The Secretary of State for the Home Department [2014] EWHC 2494 (Admin)
01 Jul 2014	R (on the application of Hampton Bishop Parish Council) v Herefordshire Council [2014] EWCA Civ 878
10 Jun 2014	Barking and Dagenham LBC v Secretary of State for Communities and Local Government [2014] EWHC 1954 (Admin)

06 Feb 2014	R (on the application of FCC Environment (UK) Limited) v the Secretary of State for Energy and Climate Change [2014]
16 Dec 2013	R (on the application of Hampton Bishop Parish Council) v Herefordshire Council [2013] EWHC 3947 (Admin)

Inquiries

27 Aug 2020	Black Cap, Camden
13 Jul 2020	Land north of Ledbury Viaduct
03 Dec 2019	Mosaic Place
19 Jul 2019	Land in Victoria
15 Jan 2019	562 Mile End Road
09 Oct 2018	104 Tollington Park
19 Jun 2018	Bath Road, Beckington
23 Jan 2018	Former British Sugar Site, York
09 Jan 2018	Mosaic Place, Purley
21 Nov 2017	Kingswood Retail Park, Hull
21 Jul 2017	Chadwell Street, London
11 Jul 2017	Wards Corner
13 Jun 2017	Manor Place, Oxford
21 Mar 2017	Hendrendenny, Caerphilly
10 Jan 2017	Tollgate Village, Colchester
25 Oct 2016	Butt Lane, North West Leicestershire
18 Oct 2016	Hollybush Lane, Rushmoor
13 Sep 2016	Madley Road, Clehonger, Herefordshire
07 Jun 2016	Cheyne Gardens, London
10 May 2016	Land at Longworth Lane, Bartestree, Herefordshire
08 Mar 2016	Former Car Park, AIWA Technology Park, Newbridge
16 Feb 2016	Land North of Birchen Lane, Haywards Heath
19 Jan 2016	Land at Rosemary Lane, Leintwardine, Herefordshire
01 Dec 2015	315 - 349 Mill Road, Cambridge

08 Sep 2015	Brentford Community Football Stadium CPO Inquiry
08 Sep 2015	London Borough of Hounslow (Lionel Road South)
13 Jul 2015	Redrow Homes - Churchlands, North East Cardiff
24 Jun 2015	Hammerson Plc - Parc Tawe Retail Park, Swansea
01 May 2015	Herefordshire Council - Land at Aylestone Hill, Hereford
03 Feb 2015	London Borough of Hackney - Bethune Road
21 Oct 2014	Penland Farm, Haywards Heath
16 Sep 2014	Pease Pottage Golf Course, Pease Pottage
15 Jul 2014	8-10 Dorking Road, Epsom
18 Mar 2014	Standgrove field, Ardingly
11 Mar 2014	Butcher's field, Ardingly
08 Oct 2013	Kingsland Laines
24 Sep 2013	Land to the south of Handcross Primary School
11 Dec 2012	Tickhill Lane
16 Aug 2012	Scotforth Road Lancaster

Publications

11 Mar 2021	Planning Law Update for Local Authorities: Technical Issues for Planning Authorities
16 Nov 2020	Is climate change the new weapon of choice in planning and environmental JR? Plan B and its aftermath Part 1
16 Nov 2020	Planning High Court Challenges Annual Conference, Part 1 - webinar
30 Sep 2020	Permitted Development Rights: prior approval - article 2
11 May 2020	Current Issues in Environmental Law Part 2: Public Participation, SEA and SSSIs - Webinar
11 May 2020	SEA: Scope Of Application And Standard Of Review - An Update
20 Jan 2020	Round Up Of Recent Changes To The Regulations
04 Nov 2019	Air Quality As A Ground Of Challenge In Planning Cases - And Something On Climate Change
13 Jun 2018	Brexit and Patients: How will Brexit affect the rights of EU based patients to use the NHS and the right of UK patients to access medical treatment in the EU?
05 Mar 2018	Air quality issues affecting development plans following Wealden v SSCLG
06 Nov 2017	Recent developments in air quality law

30 Jan 2017	Environmental Information and Viability Assessments
21 May 2015	FOIA/EIR and Viability Assessments
06 Feb 2014	EIA case law update
17 Apr 2013	Possession actions against commercial tenants
