

Jonathan Clay



called: 1990

clerk: Elliot Langdorf

Jonathan Clay is widely recognised as a leader in his field (see Legal 500, 2010, 2011 and 2012) of planning and environment law. His case work includes court and public inquiry advocacy at the highest levels.

Known for his relaxed style, his ability to lead large teams and to take a strategic approach has proved invaluable in some of the ground breaking cases in which he has been involved.

His practice covers all aspects of the enforcement of planning and environmental control, renewable energy, large scale infrastructure projects and village greens, as well as housing, commercial and retail development schemes. He works for both applicants/appellants and authorities.

Major infrastructure inquiries include motorways, waste, power generation and railway infrastructure projects. In 2010, he was asked to train Commissioners for the Infrastructure Planning Commission who deal with applications for major new infrastructure, including power stations, windfarms, airports and highways. Jonathan has represented both local planning authorities and objectors in series of public inquiries concerning the large on-shore wind farms; successfully persuading the Secretary of State to refuse permission. His High Court experience includes successful judicial review and statutory challenges at all levels, including the appellate courts. His Court practice at all levels reads as a list of some of the seminal cases: *Fidler v. SSETR* [2004] EWCA 1295; *Catt v Brighton* [2007] EWCA Civ. 298; *Westminster City Council v Cordiani* [2013] EWHC 23 (Admin).

He represented Brighton and Hove Albion Football Club in the long running Amex Community Stadium

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inquiry successfully resulting in the grant of permission for the celebrated new stadium on the edge of the Sussex Downs National Park, His recent workload has included major airport parking enforcement inquiry at Gatwick Airport (for the successful appellant), housing development for 850 homes in the Green Belt at Bromley (for the successful appellant), a host of windfarm and energy related appeals and the first ever appeal under the Water Resources Act 1991 concerning unauthorized development in a river flood plain (for the successful appellant).

Planning

Member: Planning and Environment Bar Association (PEBA); UK Environmental Lawyers Association (UKELA).

Jonathan's experience includes all aspects of planning and environmental law, including major infrastructure projects. These range from large scale wind-farms, major waste management facilities and telecommunications schemes to motorways and trunk road schemes. On the basis of this experience he was invited in 2010 to provide training for Commissioners at the Infrastructure Planning Commission, that deal with large scale infrastructure projects including energy, transport and other major infrastructure projects. Jonathan has also provided recent training to Welsh local authorities and planning professionals on renewable energy development.

Recent High Court work has included successfully representing a County Highway Authority in respect of the meaning and application of section 278 agreement, successful challenges to enforcement notice and section 78 appeal decisions. He has both prosecuted and defended in Crown and Magistrates Courts in relation to planning, listed buildings and other enforcement actions. His Court experience includes extensive experience of judicial review and section 288 challenges at all levels, including the appellate courts. He also has particular experience in planning enforcement appeals and section 289 appeals to the High Court.

Recent examples of his work include:

Infrastructure and Waste

- Grange Farm Wind Farm, Lincolnshire. Jonathan Clay acted for South Holland District Council. Major windfarm application in undesignated Fenland site. Section 78 appeal. Principal issues; landscape, historic buildings, need for renewable energy development, residential amenity. Appeal allowed.
- Blockade Services Perrylands Lane, Surrey. Section 174 Enforcement Appeal against Surrey County Council. Jonathan acted for the appellant. Substantial waste development in the Green Belt. Raised important points relating to abandonment of previous use. Appeal allowed.
- Trewern Argae: The first ever Ministerial appeal under the Water Resources Act 1991 concerning flood defence development in a river flood plain in October 2008. Jonathan represented appellant. Appeal allowed and full award of costs against Environment Agency.
- Crowholt Windfarm, Notts. In January and February 2007, Jonathan represented the local planning authority in a public inquiry concerning the largest on-shore wind farm in England, successfully persuading the Secretary of State to refuse permission

Enforcement

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- R. v. OAO East Sussex County Council v SSCLG & Robins [2010] EWHC 4841 Reported Case summaries JPL [2010] 89. Judicial Review. Jonathan Clay acted for Second Defendant. Sec of State not represented. Permission hearing treated as final hearing by Judge. Important case on powers to correct enforcement notices and duties of respective authorities in mixed use cases involving both County and District matters. On Jonathan's submission, Enforcement Notice had been quashed by Inspector and costs awarded against ESCC. ESCC challenged by JR. SS did not appear at permission hearing. ESCC Application dismissed.
- Cophall Farm, Surrey: A major airport parking enforcement inquiry at Gatwick Airport in summer 2008. Jonathan represented the appellant. Successfully challenged Inspector's decision in High Court.

Major development

- HMS Ganges, Nr Ipswich, Suffolk. July 2010. Jonathan acted for Babergh District Council against Timothy Mould Q.C. Section 78 reserved matters appeal involving major scheme for redevelopment of former historic Royal Naval Training School including several historic buildings and ancient monuments. Case involved novel points on Environmental Impact Assessment of reserved matters application. Appeal dismissed. section 288 appeal pending on relevance of RSS.
- Brownhills Business Park, Walsall, March 2010 and 2011. Jonathan acted for Walsall Metropolitan Borough Council, against Martin Kingston Q.C. Section 78 Appeal for redevelopment of major active Business Park for housing. Case turned on conflict of policies for protection of employment land in Unitary Plan and Regional Strategy. Appeal allowed, but challenged under section 288, High Court quashed the decision with costs and remitted it to the Secretary of State. Appeal withdrawn with costs in 2011.
- Blue Circle - Bromley Common. Jonathan acted for the appellant obtaining permission on appeal in the dramatic Blue Circle appeal in London Borough of Bromley (July 2007) where his clients obtained approval on appeal for 850 homes on unallocated Green Belt land in Bromley.
- Brighton and Hove Albion Stadium, Falmer. In 2006-7, acting on behalf of his client Brighton & Hove Albion Football Club, Jonathan celebrated victory for them in a long-standing battle to gain planning permission for a 22,500 seat stadium at Falmer, situated on the outskirts of Brighton. Jonathan was instructed by Tony Allen of DMH Stallard in Brighton.

Jonathan is recognised as a leading junior in **Legal 500** 2012 and as an expert in his field of practice in "Legal Experts 2012"

Cases

Local landscape protection policies trump lack of housing land supply in historic parkland housing appeal

Suffolk Coastal District Council have welcomed the decision on appeal to refuse planning permission for 25 houses in locally designated historic parkland on the outskirts of Yoxford in Suffolk, despite the absence of a 5 year housing land supply.

Relying on the decision in *William Davis v SoSCLG* (2013), Inspector Tim Wood dismissed an appeal by

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Hopkins Homes Ltd following a 4 day public inquiry, finding that the development would not constitute sustainable development within the meaning of the NPPF. Having regard to the judgement in Davis wherein it was held that paragraph 14 of the Framework only applies to development which has been found to be sustainable, The Inspector found that the conflict of the proposal with up to date Local Plan policies that protect the non-designated heritage asset and the special landscape character, were not outweighed by the benefits of the scheme.

The Inspector was clearly concerned that this proposal, which would have meant suburban development outside the clear built limits of the historic village of Yoxford and within one of the three historic parks which provide its exceptional setting would be unacceptable in principle.

The Inspector also dismissed the appellant's application for costs, finding no unreasonable behaviour on the part of the Council had been demonstrated.

To read the decision letter, please click here: [Appeal Decision](#)

[Jonathan Clay](#) acted for Suffolk City Council.

Ref: APP/J3530/A/13/2204639

Land at Old High Road, Yoxford, Suffolk Decision Dated 15 July 2014.

Corbett 2013 EWHC 3958

For full judgement please [click here](#).

Truro City Council v Cornwall Council [2013] EWHC 2525

The Administrative Court (Frances Patterson QC, sitting as a Deputy High Court Judge) rejected a wide-ranging challenge by Truro CC against the grant of planning permission by Cornwall Council in relation to the construction of 'Truro Eastern District Centre', a mixed-use development consisting of inter alia housing, a food centre, house waste and recycling facility and a park and ride.

The Claimant sought judicial review on six grounds: i) whether the grant of planning permission accorded with section 38(6) of the PCPA 2004; (ii) whether adequate reasons had been given; (iii) whether there has been a material change of circumstances between committee resolution and issue of decision; (iv) whether there had been a failure to consider relevant considerations; (v) whether the decision maker had properly understood and applied policy; and (vi) whether the decision was premature.

Although necessarily fact-specific, the judgment provides a useful examination, in particular, of the decision making process a local planning authority must adopt pursuant to section 38(6) and the adequacy of reasons they must provide for their decision. It also highlights the extent to which challenges to LPA's decisions to

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grant planning permission (and defences to those challenges) rely on the quality or otherwise of the Officer's report.

[Jonathan Clay](#) of Cornerstone Barristers acted for Cornwall Council

See full text of case at: [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2013/2525.htm&query=title+\(+Truro+\)+and+title+\(+City+\)+and+title+\(+Council+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2013/2525.htm&query=title+(+Truro+)+and+title+(+City+)+and+title+(+Council+)&method=boolean)

Westminster v Cordiani [2013] EWHC 23 (Admin)

See full text of case at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/23.html>

Land East of Semere Green Road (forming part of Upper Vaunces Farm), Pulham Market and Dickleburgh, Norfolk [2012]

[Land East of Semere Green Road \(forming part of Upper Vaunces Farm\), Pulham Market and Dickleburgh, Norfolk Appeal decision](#) and [costs decision](#) (APP/L2630/A/10/2143349)

Fern Road, St Leonards [2012]

Jonathan Clay recently successfully acted for a Sussex housing developer objecting to a village green registration on a site at Fern Road, St Leonards, that already had planning permission for housing development. In a decision issued in July 2012, the inspector rejected the application on the basis that there was no identified neighbourhood or locality and that the evidence of use of the land, primarily for dog walking was more akin to use as a footpath and therefore the applicant had failed to demonstrate that there had been use for lawful sports and pastimes throughout the qualifying period to satisfy the statutory test.

[Decision letter](#)

MOD Chelsfield, Shacklands Road, Badgers Mount, Shoreham [2012]

[Site at Mod Chelsfield Ammunition Storage Depot Inspector's decision](#) and [costs determination](#) (APP/G2245/X/11/2156354)

[Site at Shacklands Road Inspector's decision](#) and [costs determination](#) (APP/G2245/X/11/2164774)

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R. (on the application of Fidler) v Secretary of State for Communities and Local Government [2011] EWCA Civ 1159

R. v. OAO East Sussex County Council v SSCLG & Robins [2010] EWHC 4841

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Cophall Farm Parking Ltd, R (on the application of) v Secretary of State for Communities & Local Government [2009] EWHC 270 (Admin)

See full text of case at: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/270.html>

Associations

- Planning and Environmental Bar Association (PEBA)
- UK Environmental Lawyers Association (UKELA)
- Pro Bono Unit
- 1990 - 1992 - Lecturer in Constitutional and Administrative Law. University of Westminster.