

Ned Westaway



Francis Taylor Building

clerks@ftbchambers.co.uk 020 7643 5000

Ned Westaway

Call: 2009 [Public Access](#)

Practice areas:

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



ftbchambers.co.uk

Practice Profile

Ned is a highly regarded lawyer who accepts instructions in a wide variety of work, in particular across all areas of planning, environmental and highways law.

He is consistently rated as a leading barrister by Chambers and the Legal 500 in three categories: planning law, environmental law and agricultural & rural affairs. He won Planning and Environmental Junior of the Year at the Chambers UK Bar Awards 2022.

Ned regularly appears in the High Court and the Court of Appeal and has appeared in the Supreme Court on four occasions – twice as advocate (for the appellant in *CPRE Kent v SSCLG* [2021] UKSC 36; [2021] 1 WLR 4168 and for the second respondent in *R (Lancashire CC) v SSEFRA* [2019] UKSC 58; [2021] AC 194).

Ned is on the Attorney General's A Panel of counsel and is the current Chair of the UK Environmental Law Association (UKELA). Ned is standing counsel for the Campaign for National Parks. He regularly undertakes work pro bono and is accredited to take work on a direct public access basis. Ned is also a trustee of the Organic Research Centre and a member of PEBA and ALBA.

Planning

Ned has extensive and practical knowledge of planning law from high profile development proposals to technical enforcement work. He has acted for applicants, local authorities and third party objectors in many different contexts. Ned is consistently ranked as a leading planning junior by Chambers UK, Legal 500 and Who's Who Legal.

Recent inquiry work includes for Tower Hamlets Council successfully resisting an appeal relating to a proposed tall building within Millwall Inner Dock, and for Amber Valley Borough Council on an appeal against a major (50MW) onshore solar farm at Alfreton, Derbyshire. Chambers UK comments that Ned's "method of questioning and cross-examining is impressive, he's firm but fair".

Recent statutory challenges include *Brent LBC v SSHCLG* [2022] EWHC 1875 (Admin) (on enforcement notices/CLEUDs), *R (Whitley Parish Council) v North Yorkshire CC* [2022] EWHC 238 (Admin) (on Green Belt protection and environmental policy – recently heard on appeal) and *Greenwood v SSHCLG* [2021] EWHC 2975 (Admin) (on planning conditions).

Ned has considerable experience of housing cases under the NPPF and local plan policies, including the Wisley Airfield inquiry into proposals for more than 2,000 homes in the Surrey Green Belt. He was counsel for the appellant in *CPRE Surrey v Waverley BC* [2019] EWCA Civ 1826, a case considering objectively assessed need and housing market areas. He has acted at numerous planning appeals and statutory challenges relating to housing development including a recent High Court challenge by Bovis and Miller Homes of the refusal to grant permission for 650 homes in Cheltenham (*Bovis Homes Ltd and Miller Homes v SSCLG* [2016] EWHC 2952 (Admin)). Ned has given advice on starter homes and the application of government policy to a number of clients, including the Ebbsfleet Development Corporation.

Ned has wide experience of lawful development certificate, planning enforcement, prosecution

and committal proceedings. Notably, he obtained permission for the retrospective demolition of dwellings in a conservation area on appeal – a decision upheld in the High Court (*Tower Hamlets LBC v SSHCLG* [2019] EWHC 2219 (Admin)). Other cases in these areas include *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784 (on the scope and nature of the ‘Murfitt principle’), *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin), *Pathfield Estates Ltd v Haringey LBC* [2013] EWHC 2053 (Admin) and *Oxfordshire CC v Wyatt Brothers (Oxford) Ltd* [2012] EWCA Civ 1921.

In addition to those cases noted above, Ned has acted in numerous planning judicial reviews and statutory challenges, including *R (Liverpool Open and Green Spaces CIC) v Liverpool CC* [2020] EWCA Civ 861; [2021] 1 P & CR 10, *Tingey v SSHCLG* [2020] EWHC 3373 (Admin), *Hook v SSHCLG* [2020] EWCA Civ 486, *R (Becker) v Hertfordshire CC* [2018] EWHC 1974 (Admin), *R (Usher) v Forest Heath DC* [2017] EWHC 2511 (Admin), *Akhtar v SSCLG* [2017] EWHC 1840 (Admin), *New Dawn Homes Ltd v SSCLG* [2016] EWHC 3314 (Admin), *Forster v SSCLG* [2016] EWCA Civ 609, *Doncaster MBC v SSCLG* [2016] EWHC 2876 (Admin), *R (Harper) v South Oxfordshire DC* [2014] EWHC 1331 (Admin), *R (Evans) v Basingstoke and Deane BC* [2013] EWCA Civ 1635, *R (Feeney) v SST* [2013] EWHC 1238 (Admin) and *R (U & Partners (East Anglia) Ltd) v Broads Authority* [2011] EWHC 1824 (Admin).

Other cases of note include:

- Successfully acting for claimants in a challenge against redevelopment proposals for the Cressingham Gardens estate in south London, on heritage grounds
- Acting for Islington Council at an inquiry into hotel/office development on Farringdon Road in London ([2018] PAD 24)
- Acting for East Devon District Council at an inquiry into proposed redevelopment of their offices in Sidmouth for the provision of extra care
- Acting for CPRE Kent in an important case on costs in planning cases in the Court of Appeal and the Supreme Court (*CPRE – Kent Branch v SSCLG* [2019] EWCA Civ 1230; [2020] 1 WLR 352; *CPRE Kent v SSCLG* [2021] UKSC 36; [2021] 1 WLR 4168)
- Acting for Barnet Council in committal proceedings for breach of an injunction under s.187B of the Town and Country Planning Act 1990
- Acting for Islington Council at the Chadwell Street Car Park inquiry, involving substantial basement development ([2017] PAD 22)
- Acting with Andrew Tait KC for the Garden Bridge Trust (twice) successfully resisting judicial review challenges (the latest of which was determined in October 2016: *R (O'Neill) v London Borough of Lambeth* [2016] EWHC 2551 (Admin))
- Appeared with Morag Ellis KC for Camden in *Athlone House Ltd v SSCLG* [2015] EWHC 3524 (Admin), a challenge to the refusal of an appeal for controversial redevelopment proposals on Metropolitan Open Land
- Acting for the promoter of a large inland marina at Ratcliffe-on-Soar on appeal against Nottinghamshire County Council's non-determination of the application
- Appeared for a local action group opposing wind development that would have had an impact on Southwell Minster in Nottinghamshire
- Resisted a contested appeal against Kings Lynn and West Norfolk BC's refusal to issue a certificate of lawful use (reported at JPL 2012 (7) 858-876)
- Appeared with Keith Lindblom KC (as he then was) for the Friends of St Katharine Docks in their successful third party objection to major redevelopment proposals
- Made representations to the Examination in Public of the latest version of the London Plan, England's only surviving Regional Strategy
- Successfully acted for the appellant in a planning enforcement appeal regarding

Environment

Ned is one of the most highly regarded junior barristers for environment law.

He has considerable expertise and experience across the field, including in nature conservation, nuisance, water, waste and contaminated land. He has acted for Defra, the Environment Agency, the Marine Management Organisation and Natural England and has a thorough understanding of pollution control, marine and habitats law. He has also advised clients on a number of matters concerning the Environment Act 2021, including the Office for Environmental Protection.

Ned regularly advises on environmental impact assessment (EIA) and habitats assessment. Ned was counsel to CPRE in its successful challenge of planning permission granted to major residential development in the Kent Downs AONB about the standard of reasons for EIA development in sensitive areas (*R (Campaign to Protect Rural England) v Dover DC* [2016] EWCA Civ 936 – upheld in the Supreme Court in December 2017: [2017] UKSC 79). Ned also acted for the claimant in *Pearce v SSBEIS* [2021] EWHC 326 (Admin); [2022] Env LR 4 – a successful judicial review of the consent to a major offshore wind project on cumulative impact/EIA grounds.

He acted for the claimant in the challenge to the Oxford-Cambridge Expressway routing decision on EIA and HRA grounds (*R (Berks Bucks and Oxon Wildlife Trust) v SST* [2019] EWHC 1783 (Admin)). He was junior to Robert McCracken KC in *R (Evans) v Basingstoke and Deane BC* [2013] EWCA Civ 1635, a case that considered the compatibility of planning enforcement time limits with EIA law. He was instructed by Friends of the Earth in its Supreme Court intervention on the appeal of the Northern Ireland Court of Appeal's decision in *Central Craigavon Ltd's Application for Judicial Review* [2011] NICA 17. Ned also acted for Natural England resisting a challenge to a condition designed to protect EU habitats in *R (Feeney) v SST* [2013] EWHC 1238 (Admin).

Ned has a particular strength in the law concerning habitats, protected species and animals.

Recent work in this area includes defending the Heather and Grass etc. Burning (England) Regulations 2021, representing Natural England in challenges to the introduction of fish passes in the Norfolk Broads and defending a judicial review brought by Water UK of the implementation of the Farming Rules for Water.

Ned has advised both acted in and advised on cases concerning the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). He has also acted in cases concerning animal health (most notably Geronimo the alpaca – *MacDonald v APHA* [2021] EWHC 2325 and *R (MacDonald) v SSEFRA* [2019] EWHC 1783 (Admin); [2019] ACD 97), zoo licensing and the licensing of dangerous dogs (*R (Stronge) v Commissioner of Police of the Metropolis* [2021] EWHC 766 (Admin); [2021] 4 WLR 78 and *Webb v Chief Constable of Avon and Somerset* [2017] EWHC 3311 (Admin); [2018] 1 WLR 5001).

Recent advice includes on biodiversity net gain, the regulation of neonicotinoids and the application of basic payment rules to conservation land.

Ned has developed a particular expertise on climate change law. Notable cases in this field

include:

- The judicial review of the Net Zero Strategy – *R (Friends of the Earth Ltd) v SSBEIS* [2022] EWHC 1841 (Admin); [2022] HRLR 18 – where Ned acted for the Secretary of State
- *R (Plan B Earth) v Prime Minister* [2021] EWHC 3469 (Admin): a challenge to alleged inaction by Government on climate change mitigation and adaptation on humans rights grounds
- The hearing in the Court of Appeal of the challenge to the UK emissions trading scheme – *R (Elliott-Smith) v SSBEIS* [2021] EWCA Civ 2064
- Representing the Secretary of State with Andrew Tait KC resisting a challenge to the Drax Power (Generating Stations) Order 2019 – *R (ClientEarth) v SSBEIS* [2021] EWCA Civ 43; [2021] PTSR 1400

On waste, Ned has given advice on technical matters and criminal enforcement, including the correct application of waste classification codes and exemptions from environmental permitting. Ned has also acted for the Environment Agency at an inquiry into a waste enforcement notice and, more recently, in the High Court work in an important case on the distinction between waste disposal and waste recovery in the context of proposed transfrontier shipments to Norway – *R (New Earth Solutions (West) Ltd) v Environment Agency* [2022] EWHC 1883 (Admin).

On water, Ned is currently acting for the Secretary of State on the judicial reviews of the Government's Storm Overflow Discharge Reduction Plan. Ned is recognised by Chambers & Partners as “particularly good” on flooding and he regularly advises on the public, civil and criminal aspects of flood liability. He has acted both for public authorities resisting claims and for individual and insured parties bringing them. He has also appeared at a planning inquiry where the main issue raised was the accuracy of flood modelling. Ned has acted, and is currently acting, for the Environment Agency in claims concerning the extent of riparian rights and obligations (see *Fearon v EA* [2019] UKUT 97 (LC); [2019] RVR 274).

Other cases of note include:

- Acting pro bono for the Sussex Wildlife Trust challenging the decision to grant consent for flood defences at Cuckmere Haven on EIA, habitats and marine conservation grounds
- Acting for local residents challenging decision to build homes on open space/parkland in Liverpool on heritage and policy grounds (*R (Liverpool Open and Green Spaces Community Interest Co) v Liverpool CC* [2019] EWHC 55 (Admin) – upheld on appeal [2020] EWCA Civ 861; [2021] 1 P & CR 10
- Acting for South Gloucestershire CC resisting a judicial review to the grant of a hazardous substances consent for the storage of liquefied petroleum gas adjacent to the Severnside Enterprise Area
- Acting with Douglas Edwards KC for Wandsworth LBC in the challenge to the decision to use Battersea Park for Formula E electric racing
- Acting with Craig Howell Williams KC for BAE Systems at the inquiry into and subsequent challenge to bird cull proposals at the Ribble and Alt Estuary Special Protection Area in Lancashire (*RSPB v SSEFRA* [2015] EWCA Civ 227)
- Appeared for Natural England at the inquiry into the called-in application for a 67 hectare solar array at Wroughton Airfield near Swindon
- Successfully challenged the grant of permission for the redevelopment of Hartley's Brewery in Ulverston due to inadequate consideration given to heritage protection (*R (Hughes) v South Lakeland DC* [2014] EWHC 3979 (Admin)
- Acting with Robert McCracken KC for INEOS ChlorVinyls at the inquiry into monitoring

conditions for the waste incinerator at its Runcorn chemical plant

- Acting with Gregory Jones KC for the claimant in *R (U & Partners (East Anglia) Ltd) v Broads Authority* [2011] EWHC 1824 (Admin), a challenge to the Environment Agency's flood control works in Norfolk, which confirmed that the requirement of "promptitude" does not apply to judicial reviews under the EIA Directive

In respect of criminal work, Ned acts both for prosecutors and defendants. He represented the Wisely Golf Club in its prosecution by the Environment Agency for various alleged offences under the Thames Region Land Drainage Byelaws and the Wyatt brothers in their appeal against committal for contempt for breaching planning enforcement notices in the Court of Appeal.

Chambers UK comments that Ned is "*one of the best juniors in this area*". He regularly speaks talks and writes on environmental law and has an LLM (environmental laws) from UCL, where he is a member of the Centre for Law and Environment.

Highways, Commons and Open Spaces

Ned has very considerable experience of the law of rights of way, common land and village greens. He is co-author of *Highway Law* (6th edition, 2022) with Stephen Sauvain KC and Ruth Stockley. Ned regularly acts for Government and highway authorities as well as landowners and has acted for all the major amenity groups, including the Ramblers, Open Spaces Society, British Horse Society, Cycling UK, Trail Riders Fellowship and Green Lanes Association. He has appeared at numerous inquiries under the Commons Act 2006, Wildlife and Countryside Act 1981 and Highways Act 1980.

Ned has a detailed understanding of commons and village green law. Ned appeared in the Supreme Court for the applicant for village green registration in the important case of *R (Lancashire CC) v SSEFRA* [2019] UKSC 58; [2020] 2 WLR 1, on the concept of "statutory incompatibility". He recently appeared in the first High Court case considering s.38 of the Commons Act 2006 (relating to works on common land) – *Open Spaces Society v SSEFRA* [2022] EWHC 3044 (Admin). Other recent work in this area includes the Open Spaces Society's challenge to the decision to deregister common land at Blackbushe Airfield (*Hampshire CC v SSEFRA* [2020] EWHC 959 (Admin); [2021] QB 89).

In addition to Lancashire, he acted for Long Live Southbank in their challenge to Lambeth Council's interpretation of 'trigger events' to preclude a village green application for the 'Undercroft' skate park beneath Queen Elizabeth Hall. He also represented local inhabitants in two cases on the de-registration of town and village greens under section 14 of the Commons Registration Act 1965 in the Supreme Court: *Taylor v Betterment Properties (Weymouth) Ltd and Paddico (267) Ltd v Adamson*: [2014] UKSC 7. He has appeared at several village green inquiries both for landowners and local inhabitants.

On public rights of way, Ned has advised and acted in numerous cases. He recently acted for a landowner in Oxfordshire successfully supporting the decision not to make a definitive map modification order on appeal. He acted for the Secretary of State in *Garland v SSEFRA* [2021] EWCA Civ 1098; [2021] PTSR 1884 (on nuisance and public rights of way), *Open Spaces Society v SSEFRA* [2021] EWCA Civ 241; [2021] PTSR 1295 (on the legal test for footpath diversion) and *Slough BC v SSEFRA* [2018] EWHC 1963 (Admin) (on common law dedication and s.67 of the

Natural Environment and Rural Communities Act 2006).

Ned also has considerable experience of traffic regulation orders – permanent, temporary and experimental. Notably, he acted for the Lake District National Park Authority resisting a challenge to its highly publicised decision not to regulate the use of certain byways to prevent motorcycles and four-wheeled vehicles (*Stubbs v LDNPA* [2020] EWHC 2293 (Admin); [2021] PTSR 261). He has also advised on special event orders and acted in numerous other cases concerning the status and extent of highway land and the lawfulness of limitations on the exercise of highway rights.

Ned has a good understanding of the statutory regime relating to the England Coast Path. He acted for Natural England at the first inquiry into an objection to a proposal for the England Coast Path under the Marine and Coastal Access Act 2009, inland of the Fleet in Dorset. He also acted for the challengers in the first successful judicial review of the confirmation of a stretch of the England Coast Path, in October 2022.

Other cases of note include:

- Advising Cycling UK and British Horse Society on the provision of long-distance routes under s.52 of the National Park and Access to the Countryside Act 1949.
- Acting for landowners in a challenge to a definitive map modification order on the grounds of interruption due to foot and mouth disease in 2001.
- Advising the Lake District National Park on the implications of river erosion for the rights of way network.
- Acting for Open Spaces Society successfully challenging a decision to stop up land in Knowle, Solihull under s.247 of the Town and Country Planning Act 1990
- Acting for Ealing London Borough Council in its successful application to deregister part of Haven Green in order to facilitate the retention of an award-winning cycle hub
- Successfully resisted a challenge to the refusal to register land as a village green (*Forbes v Wokingham BC* [2018] EWHC 1963 (Admin))
- Represented Kent County Council at the inquiry into its making of concurrent stopping up and creation orders along Faversham Creek, which were consented in March 2018
- Acting for Havering Council at an inquiry into a stopping up and diversion order under s.259 of the Town and Country Planning Act 1990
- Acting for Kent County Council at the inquiry into a network of footpaths and bridleways proposed by modification order in Aylesford and Burham
- Acting for Ashfield District Council and Muse Developments Ltd in relation to the proposed diversion of a footpath at Hucknall to facilitate redevelopment of the Rolls Royce site
- Acting for Save Chaucer Fields at the inquiry to register the slopes to the south of the university in Canterbury as a village green, the case involved the determination of a preliminary issue about the retrospective effect of s.15(7)(b) of the Commons Act 2006
- Acting for East Sussex County Council and successfully upholding its objection to a definitive map modification order that sought to downgrade a restricted byway to a footpath in the parishes of Heathfield and Warbleton
- Successfully resisted the confirmation of a definitive map modification order to upgrade a footpath across the Squerryes Estate in Kent to a bridleway based on evidence from 1957-1977
- Acting for Linden Homes in its successful objection to an application to register the 'Public Square' outside of Willesden Green Library Centre as a town or village green
- Acting for Islington Council in its successful objection to an application to register housing estate land at Marie Lloyd Gardens as a town or village green

- Acting for the successful landowner in the Rydens Way case (junior counsel to Douglas Edwards KC), the case was heard as a non-statutory inquiry on the legal point only and established that the doctrine of res judicata applies to prevent repeat village green applications in relation to the same area of land (reported at JPL 2012 (4) 497-520)
- Represented the Epping Forest Riders Association in their objection to Essex County Council's introduction of cattle grids to the Epping Forest
- Appeared for Shipbourne Parish Council in their successful opposition to the controversial proposed diversion of a footpath in the Kent Downs AONB
- Ned regularly writes on highways issues and has carried out training for the Planning Inspectorate on rights of way and commons matters. Chambers UK commented in 2018 that "his written work in complex cases puts him on a par with many QCs".

Major Infrastructure Projects

Ned has a good overview of major infrastructure cases under the Planning Act 2008 and Transport and Works Act 1992.

With regard to the Planning Act 2008, Ned acted for the Secretary of State in the significant case of *EFW Group Ltd v SSBEIS* [2021] EWHC 2697 (Admin) that concerned the correct legal basis for determining the Wheelabrator Kemsley K3 Generating Station Order 2021. He has also acted in challenges concerning the Drax Power (Generating Stations) Order 2019 and the Riverside Energy Park Order 2020.

Ned has appeared at examinations into the A303 Stonehenge tunnel, Navitus Bay Wind Farm (where he presented the successful objection on behalf of Natural England), Thames Tideway Tunnel and Able Marine Energy Park on the Humber Estuary. He has also advised in connection with Manston Airport and Tilbury 2.

Ned was junior (to Gregory Jones KC) in *R (Dowley) v SSCLG* [2016] EWHC 2618 (Admin), a case that addressed the relationship between compensation provisions and the right of access onto land under s.53 of the Planning Act 2008.

With regard to the Transport and Works Act 1992, Ned acted for Buckinghamshire CC in its representations on the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order, for the MMO on the Northern Line Extension Transport and Works Act Order and for Natural England at the resumed inquiry into the Transport and Works Act Order for Chiltern Railway's Oxford-Bicester line upgrade.

Other more recent work in this area includes advice on biodiversity impacts and the London Array wind farm, the designation of marine protection areas and advice on new onshore oil/shale gas consents. Ned advised the Greater London Authority on proposed airport development in the Thames Estuary and acted for Hale Parish Council on the Liverpool John Lennon Airport.

Public Law

Ned has wider and more general experience of a range of areas of public law including

