

Richard Kimblin KC

Environmental Law

Year of Call: 1998 | Year of Silk: 2016

Email Clerks: palnning@no5.com



Richard Kimblin KC is described in the Legal 500 as a 'Tier 1' silk: "An exceptional talent with a formidable intellect." He has been hands-on and actively engaged in resolving legal and scientific issues in the environment for over thirty five years, starting with gold mines in Australia, a PhD in getting water to London and helping the European Union align environmental laws.

He has advised and appeared on behalf four government departments on environmental law as applied to energy and transport infrastructure, habitats and species conservation, water resources and environmental assessment. He regularly advises on these complex issues in the development and forward planning contexts. Necessarily, he is very experienced in applying retained European law to environmental problems, including waste, water resources, wastewater, air quality and habitats.

Richard has always undertaken regular appearances to prosecute and defend environmental offences. He has appeared in over a hundred trials and sentencing hearings. He has a detailed understanding of the application of the sentencing regime and was the author of the UKELA consultation response to the definitive Guideline. Richard was a Trustee of the United Kingdom Environmental Law Association for 10 years and was its Chair for two years.

HABITATS & SPECIES

Advisory, planning and litigation work in both England and Wales: Pesticides licensing and environmental effects; appeals against review of consents under the Habitats Regulations; very

significant nitrates/phosphates and eutrophication experience across England and Wales in terms of both advisory and court work.

ENVIRONMENTAL ASSESSMENT

Richard has appeared in many of the cases which frame the way in which environmental assessment is undertaken, whether as EIA, SEA or AA. He has a deep knowledge of the directives, the retained EU law, the guidance and the practical issues as they arise in both environmental and planning appeals.

CLIMATE, AIR AND ENERGY

Richard has been examining and cross-examining on these issues since before either 'net zero' or 'climate litigation' were coined as terms, in respect of renewable and non-renewable schemes, energy projects (coal, oil, fracking) and 'big five' industries such as cement. He successfully argued the first 'Scope 3' case on behalf of BEIS. He appeared in the Court of Appeal to clarify the scope of NPPF policy on air quality impacts.

WASTE

Advising waste authorities and waste operators of all sizes from the very largest plc to one-man (and on one occasion, one-woman) operators on permitting, exemptions, WRAP, and particularly on environmental enforcement by notice, prosecution and civil sanctions.

WATER RESOURCES AND WASTEWATER

Most of Richard's work in this area is for statutory undertakers in respect of water and wastewater issues, often in the enforcement context. He both prosecutes (typically trade effluent consent cases) and defends (typically EPR and SAFA offences).

STATUTORY NUISANCE

As a junior he was frequently instructed in noise and odour abatement cases and still takes on technically complex appeals.

ENVIRONMENTAL PROTEST

Richard is currently instructed in respect of 'persons unknown' injunctions for a cohort of appeals which seek to clarify the scope and approach to interim and final orders against persons unknown.

Recommendations

Ranked as a Tier 1 Silk in Planning and Environment.

Legal 500 2023 - Planning and Environment

"He's absolutely top-class and is one of the best planning silks, not just in terms of his advocacy but also case management and strategy." "He is a very clear thinker, gives sound advice and is a fantastic advocate."

Chambers UK 2022 - Planning

"He is an exceptional talent and he is in a league of his own. He always gets to the heart of a matter quickly and delivers concise reasoned opinions and advice." "In terms of a QC who I would want for any knotty areas of law, I would think of him immediately to unpick and explain them succinctly."

Chambers UK 2022 - Environment

"An extremely clever advocate with a very succinct academic style." "A thoughtful advocate."

Chambers UK 2021 - Planning

"He is a very focused advocate and very committed to his clients." "He is approachable and he really looks after the client and he takes time to understand them."

Chambers UK 2021 - Environment

"A well-rounded and commercially astute barrister."

Legal 500 2021 - Planning and Environment

"He is a go-to silk – absolutely first class." "His work in the courtroom is fantastic, but it is his work outside the courtroom that makes him one of the best – it is his attention to detail and the fact that he always keeps an eye on how to achieve the overall result."

Chambers UK 2020 - Environment

Notable Cases

Planning Policy and Decision Making

He has appeared in many of the leading cases which clarify and define important planning policy areas, and indeed the principal decision making framework. Some of those are:

Re York Potash Ltd [2018] EWHC 3114 (Ch)

Application under the Mines Working Facilities and Support Act 1966 - a novel application, securing subsurface rights in connection with the winning of potash

Maximum Networks Ltd v Secretary of State for Communities and Local Government [2018] EWHC 1933

What is a valid application and appeal, and what is the discretion which PINS enjoys in determining validity?

R (Holder) Gedling BC [2018] EWCA Civ 214

Onshore wind - the meaning of national policy on acceptability.

JS Bloor (Wilmslow) Ltd v Homes and Communities Agency [2017] UKSC 12; [2018] 1 All ER 817

R (oao) Watermead Parish Council v Aylesbury Vale DC [2017]

In which he appeared for the Claimant in a case dealing with flood risk policy and the presumption in favour of sustainable development.

Save Britain's Heritage v Liverpool CC and Neptune Developments [2016] EWCA Civ 806

World Heritage Sites; National Planning Practice Guidance; successfully appearing for the interested party, the developer.

BDW v Secretary of State for Communities and Local Government [2016]

An important Court of Appeal summary and explanation of the practical application of s38(6) Planning and Compulsory Purchase Act 2004

Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 1386; [2015] JPL 416

A key Court of Appeal judgment on Green Belt policy, particularly as to very special circumstances

Turner v Secretary of State for Communities and Local Government [2016]

Another key Court of Appeal judgment on Green Belt policy, particularly as to the definition and assessment of 'openness'

Timmins v Gedling BC [2015] EWCA Civ 10; [2015] 2 P and CR 12

A further key Court of Appeal judgment on the scope of exceptions to inappropriate development; a judgment which has now been acknowledged by amendment to the NPPF to add material changes of use of land to the list at §146.

Daventry District Council v Secretary of State for Communities and Local Government and Gladman Developments [2016]

In which he appeared for the interested party in a case on the weight to be given to policies for the supply of housing land; para 215 NPPF; paras 47 and 49 NPPF.

R(oao) Hampton Bishop Parish Council v Herefordshire Council and Bloor Homes Limited [2014] EWCA Civ 878

A leading case in the Court of Appeal on the application of Section 38(6) of the 2004 Act in which he appeared for the local authority.

Vicente v Secretary of State for Communities and Local Government [2014] EWCA Civ 1555

Local planning authorities; Local plans; Planning inspectors; Planning permission; Procedural irregularity; Unfair conduct

San Vicente v Secretary of State for Communities and Local Government [2012] EWHC 3585; [2013] EWHC 2713; [2013] EWCA Civ 817

Procedure in appeals by hearing; amendment of statements of case; civil procedure rules

Distinctive Properties v Secretary of State for Communities and Local Government [2016]

Tree Replacement Notices, meaning of 'tree' – in which he appeared for the Secretary of State at first instance and in the Court of Appeal

Infrastructure/DCOs

Richard Kimblin has long experience of major infrastructure schemes from canals to motorways, including significant DCO work and Parliamentary drafting: Power stations; Wind farms and related infrastructure (onshore and offshore); Gas storage; Minerals schemes including ROMPS, extensions. Eg: Whitby v Secretary of State for Transport [2016] EWCA Civ 444 – Northern Hub, Transport and Works Act Orders; Ordsall Chord between Manchester Stations; heritage effects; Mid-Wales - a 27 turbine scheme in the context of conjoined s36 Electricity Act inquiries in respect of 5 sites and related grid connection works. This was the largest and longest such inquiry for many years; R (oao) Gate v Secretary of State for Transport [2013] EWHC 2973 – the first JR re an NSIP consent; the M6-

Heysham link road: development consent orders; highways; nationally significant infrastructure; habitats; protected species; alternatives; MYG – a DCO in Wales, with a positive recommendation from the Inspector, refusal from the Secretary of State and subsequent judicial review on habitats regulations issues; Hemswell - the first scheme dismissed on the basis of the WMS on onshore wind; Dorset wind farm (Silton) - 4 turbines in the setting of an AONB; 4 week inquiry covering significant landscape, cultural heritage, noise and socio-economic evidence (APP/N1215/A/11/2160839); Dugeon grid connection - onshore 45 km cable route and substation inquiries for 560 MW of renewable energy (APP/Y2620/A/12/2170245) – see also Dudgeon Offshore Wind v Secretary of State for Energy and Climate Change and Secretary of State for Communities and Local Government (infrastructure; wind energy; alternatives) [2012] EWHC 861; FCC Environment v Secretary of State for Communities and Local Government [2014] EWHC 2035 (Admin) Error of fact; Local authorities; Planning inspectors; Planning permission; Wind turbines; R (oao) Holder v Gedling Borough Council [2014] EWCA Civ 599 - material considerations in energy proposals; Jarrett v Secretary of State for Communities and Local Government [2012] EWHC 3642 - onshore wind energy; development plan policies for renewable energy; R (oao) Webb v Herefordshire Council [2013] EWHC 1850 - onshore wind energy; protected species; EIA

Environmental Litigation

Richard has been instructed in more than 100 environmental and planning prosecutions. He advises on all aspects of litigation in planning, environmental and regulatory contexts. He is also called upon to advise in several niche areas: mines working facilities and support act matters; Part IIA EPA; WIA 1991 infrastructure issues for developers and undertakers. Prior to his call to the bar, Richard researched the use of groundwater storage for London (which is now an operational scheme and the basis of his PhD thesis), undertook EIA work on schemes such as the channel tunnel rail link and did comparative study of domestic European laws for the European Commission. Friends of the Earth v DEFRA [2015] – neonicotinoids; bees; Commission Regulations on plant protection products; Seiont etc Anglers v Natural Resources Wales [2015] – Environmental Liability Directive, waste water discharge; appeal to be heard on 25/26 May 2016 Ashdown Forest LLP v Secretary of State for Communities and Local Government and Wealden DC [2014] EWHC 406 (Admin) - lawfulness of development plans affected by SAC/SPA and the uncertainty in assessing those impacts; Abbottskerswell PC v Teignbrigg DC and SSCLG [2014] EWHC 4166 (Admin). Walker and Son (Hauliers) Ltd v Environment Agency Court of Appeal (Criminal Division) [2014] EWCA Crim 100 [2014] 4 All E.R. 825; [2014] P.T.S.R. 929; [2014] 1 Cr. App. R. 30; [2014] Env. L.R. 22; [2014] L.L.R. 625 Criminal law; Environment; Burden of proof; Environmental offences; Environmental permits; Knowledge; Sufficiency of evidence; R (oao) Gilbert v Secretary of State for Communities and Local Government [2014] EWHC 1952 (Admin) Environmental impact assessments; Noise; Precautionary principle; Screening directions; R (oao) Enstone Society v West Oxon District Council [2009] EWCA Civ 1555 (noise; motor sport; Court of Appeal) R (oao) Wye Valley Action Group ex p Herefordshire Council [2010] Env LR 18 (polytunnels EIA; Habitats Regulations) [2009]; Court of Appeal [2011] EWCA Civ 20

Planning Enforcement

Allsop v Derbyshire Dales DC [2013] EWHC 3562 Div Court (the first of only two cases on s215 notices) R (oao) Altunkaynak v Northamptonshire Justices [2012] EWHC 174 (A3 unrestricted permission; breach of EN; abuse of process) Staffordshire County Council v Challinor and Anr [2008] JPL, 392 (effect of certificate of lawful use in subsequent enforcement proceedings)

Memberships

PEBA

UKELA

Qualifications

BSc

PhD

Royal Society Western European Fellow

Publications

The Interpretation of Planning Policy after Tesco [2012], 9, 1045 – 1052, - Journal of Planning and Environmental Law (Richard Kimblin, Ian Dove QC, Kaitlin Davies)