

# Landmark Chambers

## Barrister CV

Ben Fullbrook



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# Ben Fullbrook

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Ben specialises in planning, environmental and public law.



## Expertise

Planning, Environment, Public and Administrative

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## Practice Summary

Ben is frequently instructed to appear in the High Court and at planning and infrastructure inquiries. Ben has also appeared both led and unled in the Court of Appeal and has also acted on cases in the Supreme Court.

His clients have included individual claimants and defendants, developers, environmental groups, local authorities and government departments. Ben is appointed to the Attorney General's C Panel of Junior Counsel.

### Ben's notable recent cases include:

- ***R (Widdington Parish Council) v Uttlesford District Council*** [2023] EWHC 1709 (Admin) - a claim relating to *inter alia* the treatment of "fall back" development as a material consideration in planning decisions. Ben acted for the successful claimant.
- ***R (Cabinet Office) v Chair of UK Covid-19 Inquiry*** [2023] EWHC 1702 (Admin) - a high profile challenge by the Cabinet Office to the decision of the Covid-19 Inquiry to require the former Prime Minister and others to provide unreacted WhatsApp messages to the Inquiry.
- ***R (FMA) v Secretary of State for the Home Department*** [2023] EWHC 1579 (Admin) - a challenge raising issues of importance relating to Home Office immigration guidance and Article 6 ECHR.
- ***R (Friends of West Oxfordshire Cotswolds) v West Oxfordshire District Council*** [2023] EWHC 901 (Admin) - A claim relating to the discharge of conditions attached to a planning permission. Ben acted for the successful claimant.

- ***R (Humane League UK) v Secretary of State for Environment Food and Rural Affairs*** [2023] EWHC 1243 (Admin) - a challenge relating to the keeping of meat chickens in the UK. Ben acted as junior counsel to the successful Defendant.
- ***R (Ibrar) v Secretary of State for Levelling Up Housing and Communities*** [2022] EWHC 3425 (Admin) - a leading case on the procedure for challenging planning enforcement appeal decisions.
- ***R (ALO) v Secretary of State for the Home Department*** [2022] ACD 120 - a claim relating to the refusal of entry clearance for an Afghan translator on national security grounds.
- ***Warwick DC v Secretary of State for Levelling Up Housing and Communities*** [2022] EWHC 3425 (Admin) - a leading case on the interpretation of NPPF Green Belt Policy.
- ***R (Swire) v Canterbury City Council*** [2022] JPL 1026 (Admin) a one of the most significant Planning Court cases of 2022 relating to the meaning of the words “*in accordance with*” in planning permissions. Ben was led by Dan Kolinsky KC.
- ***R (Elan-Cane) v Secretary of State for the Home Department*** [2022] 2 WLR 133 (SC) - Ben was instructed by Fair Play for Women to apply to intervene in the Supreme Court’s hearing SSHD’s refusal to include a non-gendered marker on a passport, as an alternative to male and female.
- ***R (Cross) v Cornwall Council*** [2021] EWHC 1323 (Admin) - a high profile challenge to the grant of planning permission for a large dwelling in the Cornwall AONB on the grounds of failure to give reasons. Ben acted on behalf of the successful claimant.
- ***R (Fraser) v Shropshire Council*** [2021] EWHC 31 (Admin) - a challenge to a grant of planning permission for Extra Care accommodation. The claim raised issues relating to age and disability discrimination and the application of the public sector equality duty.
- ***Finney v Welsh Ministers*** [2020] 1 All ER 1034 (CA) - a challenge to the interpretation of s.73 of the Town and Country Planning Act 1990 and one of the most significant planning judgments of 2019. Ben successfully represented the Appellant as sole counsel. Ben also successfully resisted an application for permission to appeal to the Supreme Court.
- ***Dulgheriu v Ealing LBC*** [2020] 1 WLR 609 (CA) - a challenge to an order by the local council excluding protestors from the vicinity of an abortion clinic. Ben acted for the Claimant (led by Philip Havers KC). The claim raised significant issues in relation to Articles 9, 10 and 11 ECHR.
- ***R (Langton) v SSEFRA*** [2019] 4 WLR 151 (CA) - a challenge to the Secretary of State’s policy on badger culling, raising important points about the Conservation of Species and Habitats Regulations (led by Richard Turney).

Ben also has extensive experience in public inquiries having acted as junior counsel to the Independent Inquiry into Child Sexual Abuse (IICSA) in 2018-2022 and for individuals involved with the COVID-19 Inquiry.

Prior to joining Landmark, Ben worked for five years as a civil service fast streamer at the Ministry of Defence. His work spanned various aspects of defence and security policy and included liaison with foreign governments, dealing with public law challenges, and the application of international human rights law. Ben was also involved with the government’s effort to plan for the 2012 London Olympics.

## Planning

Ben has an extensive planning practice, with particular expertise in High Court challenges and inquiries. Ben regularly advises and represents clients on a wide range of planning matters, in addition to the specialisms listed on the right of the page, Ben is also regularly instructed on:

- Permitted development rights
- Habitats Regulations
- EIA Regulations
- Public Sector Equality Duty
- Air quality issues
- Interpretation of the planning policy, including the NPPF
- Ports and infrastructure projects
- Community Infrastructure Levy
- Section 106 agreements.

Ben is the author of *An Introduction to the General Permitted Development Order*, published in June 2021.

Ben's notable Planning Court cases include:

- ***R (Widdington Parish Council) v Uttlesford District Council*** [2023] EWHC 1709 (Admin) - a claim relating to *inter alia* the treatment of "fall back" development as a material consideration in planning decisions. Ben acted for the successful claimant.
- ***R (Friends of West Oxfordshire Cotswolds) v West Oxfordshire District Council*** [2023] EWHC 901 (Admin) - a claim relating to the discharge of conditions attached to a planning permission. Ben acted for the successful claimant.
- ***R (Ibrar) v Secretary of State for Levelling Up Housing and Communities*** [2022] EWHC 3425(Admin) - a leading case on the procedure for challenging planning enforcement appeal decisions.
- ***Warwick DC v Secretary of State for Levelling Up Housing and Communities*** [2022] EWHC 3425 (Admin) - a leading case on the interpretation of NPPF Green Belt Policy.
- ***R (Friends of the West Oxfordshire Cotswolds) v West Oxfordshire District Council*** (2023) - an ongoing challenge to the discharge of conditions attached to a large residential planning permission. Ben acts for the claimant. Permission to proceed to a substantive hearing has been granted.
- ***R (Swire) v Canterbury City Council*** (2022) - a challenge to the grant of planning permission for a veterinary practice. The claim raised issues relating to the extent that local planning authorities were obliged to have regard to the possibility of changes of use within Class E when granting permission. Ben acted for the claimant. The permission was quashed by consent.

- ***R (Failey) v East Riding of Yorkshire Council*** (2022) - a challenge to the grant of planning permission for works to a listed building. Ben acted for the claimant. The permission was quashed by consent.
- ***R (Collins) v Welsh Ministers*** (2022) - a challenge to the decision of an inspector to allow a validation appeal. This was one of the first claims to address the new Class C use classes which are applicable in Wales. Ben acted for the claimant. The decision was quashed by consent.
- ***R (Phelan) v Ealing LBC*** (2022) - a claim for judicial review of the decision of the Council to grant itself planning permission to redevelop its offices at Perceval House. Among other things the claim raises issues about the interpretation of Policy D9 of the London Plan 2021 (tall buildings), the approach to the assessment of heritage impacts and reg.64 of the EIA Regulations. Ben represented the Claimant.
- ***R (Swire) v Canterbury City Council*** [2022] EWHC 390 (Admin) - a judicial review of the approval of a masterplan pursuant to an outline planning permission for a large development in Canterbury. The claim raised an important issue about the interpretation of the words “*in accordance with*” when linked to plans approved by an outline condition. Ben acted for the Claimant, led by Daniel Kolinsky KC.
- ***Chichester District Council v SSHCLG*** (2021) - a successful s.288 challenge to the decision of an inspector to allow an appeal against the Council's refusal to grant prior approval. Ben acted on behalf of the claimant.
- ***R (Cross) v Cornwall Council*** [2021] EWHC 1323 (Admin) - a high profile challenge to the grant of planning permission for a large dwelling in the Cornwall AONB on the grounds of failure to give reasons. Ben acted on behalf of the successful claimant. The case has received extensive [press coverage](#).
- ***R (Fraser) v Shropshire Council*** [2021] EWHC 31 (Admin) - a challenge to a grant of planning permission for Extra Care accommodation. The claim raised issues relating to age and disability discrimination and the application of the public sector equality duty
- ***R (Collins) v Conwy Council*** [2021]. A successful judicial review of the variation of a condition pursuant to s.73 of the Town and Country Planning Act 1990. The claim alleged a failure to have regard to material considerations. Ben acted for the claimant.
- ***Finney v Welsh Ministers*** [2020] 1 All ER 1034 (CA) - a challenge to the interpretation of s.73 of the Town and Country Planning Act 1990 and one of the most significant planning judgments of 2019. Ben successfully represented the Appellant as sole counsel. Ben also successfully resisted an application for permission to appeal to the Supreme Court.
- ***R (Newman) v Braintree District Council*** - Ben represents the Claimant who was recently granted permission to bring a judicial review of the grant of prior approval by Braintree District Council for development purporting to fall within Class A of Sch. 2, Pt. 6 of the GPDO (agricultural and forestry). The claim raises issues regarding the extent to which a local planning authority is now obliged (following ***Westminster City Council v SSHCLG*** [2019] EWCA Civ 2250) to consider whether development falls within the definitional scope of the particular class of permitted development relied upon before it can determine the question of prior approval.

A list of Ben's notable inquiries is available on his '[Planning Appeals, Inquiries and Hearing](#)' page.

Planning Appeals, Inquiries and Hearings

### **Ben's notable inquiry appearances include:**

- *17 and 17 Holly Road South, Cheshire* - an inquiry related to a proposal for 34 units of retirement accommodation. Ben acted on behalf of the developer.
- *Land to the south of Twin Oaks, Finchampstead* - an enforcement and s.78 inquiry relating to a caravan site in rural Wokingham. Ben acted for the successful local planning authority and obtained an award of costs against the appellant.
- *Land to the West of Thorpe Lea Road, Egham* - an appeal related to an application for outline permission for 144 residential buildings. Ben acted as sole counsel for the local planning authority.
- *Land of Cornells Lane, Widdington* - an appeal relating to four residential units in rural Essex. The appeal raised issues relating to the impact of the development on heritage assets and fall back development. Ben acted for the successful Parish Council.
- *Land off the Green, Aldridge* - an inquiry related to a proposal for 49 units of retirement accommodation. Ben acted on behalf of the developer.
- *Chandlers Garage, Arun* - a four day inquiry relating to a proposal for a 33 units of retirement accommodation. Key issues included the effect of the development on heritage assets and parking. Ben acted for the successful local planning authority.
- *Land at Market Square, Basildon* - an eight day inquiry relating to a proposal for a mixed use development in Basildon town centre, comprising 492 apartments in three blocks of up to 17 storeys. Ben acted for the successful appellant, led by Scott Lyness KC.
- *Cattle Market, Honiton* - a 6 day inquiry relating to the construction of 57 dwellings for older peoples' accommodation in the setting of a listed building. Ben appears as a junior to Sasha White KC.
- *Land North East of Eagles Farm, Sevenoaks* - a four-day planning inquiry which considered an application to construct a gypsy/traveller site in the greenbelt. Ben acted as sole counsel for the Rule 6 party.
- *St Peters' Church, Norwich* - a planning hearing into a proposed housing development in Norwich City Centre. Ben appeared on behalf of interested parties to make submissions in respect of viability and the application of the NPPF.
- *21 Buckle Street* - Ben appeared as a junior to Christopher Katkowski KC (on behalf the appellant) at a planning inquiry relating to the construction of a multi-storey apart-hotel in Tower Hamlets.
- *80 Dunsmure Road* - Ben appeared as sole counsel for the appellants in a successful planning appeal against an enforcement notice.
- *1 Sydenham Park* - Ben appeared as sole counsel on behalf of a local planning authority at a planning hearing relating to a large urban development.

## **Environment**

Ben has experience in a wide range of environmental law matters. He regularly advises clients on the application of the Habitats and Environmental Impact Assessment Regulations. Ben has also represented clients in the Magistrates Court in claims brought

under the Environmental Protection Act. Ben has also been instructed in environmental permitting appeals.

**Notable court appearances include:**

- ***R (Humane League UK) v Secretary of State for Environment Food and Rural Affairs*** [2023] EWHC 1243 (Admin) - a challenge relating to the keeping of meat chickens in the UK. Ben acted as junior counsel to the successful Defendant.
- ***R (Langton) v SSEFRA*** [2019] EWCA Civ 1562 - a claim which raised a number of important matters relating to the application of the Habitats Regulations. This was the first case to consider the effect of the CJEU judgment in *People Over Wind*. This case is pending an application for permission to appeal to the Supreme Court.
- ***R (Langton) v Natural England*** [2019] EWHC 597 (Admin) - the first case which discussed how to interpret SSSI citations and the extent of statutory undertakers' duties under the Wildlife and Countryside Act 1981.
- ***R (Client Earth) v Environment Agency*** [2019] unreported - a claim relating to the application of the Industrial Emissions Directive and Best Available Techniques at the Humber Refinery. Ben was instructed on behalf of the Environment Agency and led by Tim Buley KC. They were successful in getting permission to bring a judicial review refused.

Ben is a contributor to Garner's Environmental Law, for which he writes the chapter on the management and shipment of waste.

## Public and Administrative

Ben accepts instructions across a range of public law matters. He regularly acts in cases related to education, human rights and civil liberties, Immigration, National security, highways and public rights of access and more information on these can be seen under each link on the right of this page. Ben has also represented clients in a range of public inquiries and inquests and judicial reviews.

Ben is appointed to the Attorney General's C Panel of Junior Counsel.

Ben has also advised clients in response to claims under the GDPR and claims for breach of confidence/misuse of private information. He is currently instructed for the claimant in ***R (Child B) v College of Policing***, which is a claim seeking to quash the College of Policing's guidance on the recording of "non-crime hate incidents", particularly relating to children. The case has received significant media coverage [here](#), [here](#) and [here](#).

### Education

Ben accepts instructions in all areas of education law and regularly appears on behalf of appellants and local authorities in EHCP appeals in the First-tier Tribunal. Ben has also acted in several High Court challenges which touch upon education matters. He was recently instructed to represent the Secretary of State (led by Galina Ward KC) in response to an unsuccessful challenge by a local academy against a decision by a nearby school to open a sixth form centre: ***R (John Kyrle High School) v Secretary of State for Education*** [2019], Unreported. He also was also granted permission to bring a claim on behalf of a large academy trust against Ofsted (although the matter has subsequently been settled).

Ben is a governor at a local state primary school.

## Human Rights and Civil Liberties

### Civil Liberties and Human Rights

Ben has a keen interest in cases touching on civil liberties and human rights, particularly those relating to religious freedom.

Ben's notable cases in this field include:

- ***R (Child B) v College of Policing*** - this claim involved a challenge to the College of Policing's guidance on the recording of "non-crime hate incidents", particularly relating to children. The claim was concluded in 2023 following extensive changes to the guidance. The case has received significant media coverage [here](#), [here](#) and [here](#) (£).
- ***R (Philimore) v Wiltshire Police*** - this claim involved a challenge to Wiltshire Police's decision to record non-crime hate incidents relating to the claimant. In 2023 Wiltshire Police conceded the claim and agreed to delete the records.
- ***R (Elan-Cane) v Secretary of State for the Home Department*** [2022] 2 WLR 133 (SC) - Ben was instructed by Fair Play for Women to apply to intervene in the Supreme Court's hearing SSHD's refusal to include a non-gendered marker on a passport, as an alternative to male and female.
- ***Dulgheriu v Ealing LBC*** [2020] 1 WLR 609 - This case concerned the implementation by Ealing Council of a Public Spaces Protection Order ("buffer zone") under s.59 of the Crime Policing and Anti-Social Behaviour Act 2014. The Order prevents people from expressing views relating to abortion in the vicinity of an abortion clinic in Ealing. The case raises important issues relating to the use of these controversial anti-social behaviour measures and articles 8 (right to private and family life), 9 (freedom of religion), 10 (freedom of expression) and 11 (freedom of assembly) of the ECHR. This case was recently considered by the Court of Appeal. For press coverage, see [here](#) and [here](#).

### Equality Act

Ben has recently been instructed by several direct and indirect discrimination claims raising issues under the Equality Act, including claims touching on complex but current issues relating to transgender rights.

### Free Speech and Protest

Ben appeared on behalf of the claimants (led by Philip Havers KC) in ***Dulgheriu v Ealing LBC*** [2020] 1 WLR 609. This concerned the implementation by Ealing Council of a Public Spaces Protection Order ("buffer zone") under s.59 of the Crime Policing and Anti-Social Behaviour Act 2014. The Order prevents people from expressing views relating to abortion in the vicinity of an abortion clinic in Ealing. The case raises important issues relating to the use of these controversial anti-social behaviour measures and articles 8 (right to private and family life), 9 (freedom of religion), 10 (freedom of expression) and 11 (freedom of assembly) of the ECHR. This case was recently considered by the Court of Appeal. For press coverage, see [here](#) and [here](#). This is now proceeding to the European Court of Human Rights.

Ben is also instructed on behalf of an individual seeking to challenge a similar order which was recently imposed by the London Borough of Richmond upon Thames. For press coverage, see [here](#).

Ben was also asked to speak to members of the Irish Parliament in relation to the human rights implications of proposals to introduce nation-wide "buffer zones" outside abortion clinics in the wake of the referendum.



## Immigration

Ben has appeared in both the High Court and Upper Tribunal in immigration judicial review proceedings. Ben also regularly appears before the First-tier and Upper Tribunals (Immigration) for bail applications and for appeals covering all areas of immigration law.

Ben appeared for the successful appellant in **MY (Suicide risk after Paposhvili)** [2021] UKUT 232 (IAC) which established the test to be applied to Article 3 claims made by individuals who are at risk of suicide if returned to their home country.

Ben is currently instructed as part of a team of counsel to represent the Home Office in respect of a number of Afghan interpreters who have been refused leave to enter the UK on national security grounds.

Ben acted as sole counsel for the claimant in **R (Hussein) v SSHD** [2018] EWHC 2320 (Admin) – an unlawful detention claim which explored the application of the SSHD's Adults at Risk Policy and the Hardial Singh principles.

## Public Inquiries and Inquests

Ben has extensive experience of public inquiries and acted as junior counsel to the Independent Inquiry into Child Sexual Abuse (IICSA) in 2018-2022. Since that time he has acted as junior counsel to the investigation into the Anglican Church (led by [Fiona Scolding KC](#)). For press coverage, see [here](#) and [here](#). He is currently instructed as junior counsel to the Inquiry's investigations into Effective Leadership in Child Protection and Child Sexual Abuse by Organised Networks.

Ben has also been instructed by individuals involved in the UK Covid-19 Inquiry. Ben recently appeared unled in **R (Cabinet Office) v Chair of UK Covid-19 Inquiry** [2023] EWHC 1702 (Admin) - high profile challenge by the Cabinet Office to the decision of the Covid-19 Inquiry to require the former Prime Minister and others to provide unreacted WhatsApp messages to the Inquiry. This is a leading case on s.21 of the Inquiries Act 2005.

## National Security

Ben acts in a range of cases which raise matters relating to national security. He is familiar with closed material proceedings in the High Court and in SIAC. Recent cases include:

- **R (FMA) v Secretary of State for the Home Department** [2023] EWHC 1579 (Admin) - a challenge raising issues of importance relating to Home Office immigration guidance and Article 6 ECHR.
- **R (ALO) v Secretary of State for the Home Department** [2022] ACD 120 - a claim relating to the refusal of entry clearance for an Afghan translator on national security grounds.

## Qualifications

- BPP University, Bar Professional Training Course (Outstanding) (2016)
- BPP University, Graduate Diploma in Law (Distinction) (2015)

- University of Oxford (Hertford College), M.St in History (Distinction) (2010)
- Durham University (St Aidan's College), BA History (First Class) (2009)

## Recommendations

"A modern barrister, he has the sensible, pragmatic approach to work. He is really well prepared and very comprehensive in his handling of the law and legal procedural issues."

**Planning, Chambers and Partners, 2024**

"Ben is effective on his feet, pragmatic, commercial and a pleasure to deal with. A tough opponent but at the same time decent and reasonable."

**Planning, Legal 500, 2024**

"He also does fantastic work. The client and I were really impressed with his advocacy skills. He provides reliable advice on planning matters, which means you don't waste time on cases that are non-starters or don't have as strong a point as clients might think"

**Research for UK Chambers Bar, 2022**

"During the case, he came up against a developer on the other side who was all QC'd up. He was sole counsel and unled, and he was fantastic. I think he is very much a planning lawyer with a public law element. I was incredibly impressed with Ben."

**Research for UK Chambers Bar, 2022**

"An absolute star, he is very young but brilliant, and I would sing his praises. His written work goes the extra mile. We go to him for various issues, and he always comes back intelligently and efficiently. I don't know about his advocacy, but others speak positively of him."

**Research for Chambers UK Bar, 2022**

"Both Ben Fullbrook and [a solicitor] were very well versed in the technicalities of the issues involved. I was particularly impressed with their abilities to advise a non-expert like myself on the issues involved, and their willingness to work with me out of hours to meet tight deadlines when both were also at times under severe work pressure."

**Research for Chambers UK Bar, 2022**

"The advice I was given was measured and realistic, and it was made quite clear that if I proceeded, the chance of success was no better than 50:50. As it should be, the decision was left for me to make on the basis of the evidence presented to me. At no point did I feel they were pushing me to go ahead just so they would get the business. I felt they were considering me as a person and not as a potential paying client."

**Research for Chambers UK Bar, 2022**

"I was fully informed beforehand of the likely costs that would be involved in the event of my losing the case. I was also advised well with respect to Aarhus protection. I did not detect any weaknesses."

**Research for Chambers UK Bar, 2022**

## Cases and inquiries

25 02 22            R (Swire) v Canterbury City Council [2022] EWHC 390 (Admin)

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03 08 21            R (Langton) v SSEFRA [2019] 4 WLR 151 (CA)

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21 05 21            R (Cross) v Cornwall Council [2021] EWHC 1323 (Admin)

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11 01 21            R (Fraser) v Shropshire Council [2021] EWHC 31 (Admin)

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01 01 20            Finney v Welsh Ministers [2020] 1 All ER 1034 (CA)

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01 01 20            Dulgheriu v Ealing LBC [2020] 1 WLR 609

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## Publications

Author of *An Introduction to the General Permitted Development Order* published in June 2021.

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'GP Practice Management' Lock and Gibbs, *NHS Law and Practice* (LAG, 2018), co-authored with Hannah Gibbs.

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*Judicial Remedies for Human Rights Act Breaches: Secretary of State for Work and Pensions v Carmichael* [2018] EWCA Civ 548', *Judicial Review* 2018.

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'At what point does what's mine become yours? A critical analysis of the current law on common intention constructive trusts and cohabitation', *Institute of Advanced Legal Studies, Student Law Review* (2016), vol. 4, issue 1

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'Monkey see, monkey do something about this law: a proposal to reform the Communications Act 2003? (winner, best GDL entry in the Bar Council Law Reform Essay Competition, 2014).

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