

Cain Ormondroyd

Year of call: October 2007



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Cain accepts instructions in all areas of Chambers' expertise (and more broadly in public law). He is listed by Planning Magazine as a 'top rated' barrister under the age of 35. He is a member of the Attorney General's Panel of Counsel, and often appears in the High Court on behalf of the Secretary of State for Communities and Local Government and the Secretary of State for the Home Department. He is frequently instructed by HMRC. He has a record of successfully appearing against much more senior and experienced opponents. He works with Friends of the Earth, the Environmental Law Foundation and other public interest groups and is prepared to consider acting on a reduced fee or pro bono basis in appropriate cases.

Recent Highlights

- Representing the Valuation Office Agency in a series of hearings relating to the valuation for the purpose of non-domestic rating of complex and unusual properties (a cross country pipeline, a telecommunications network, an oil refinery) against leading QCs;
- Resisting a development of 150 houses on the outskirts of Stow on the Wold for Cotswold District Council, against Anthony Crean QC;
- Successfully resisting a challenge to a Secretary of State's decision letter brought by Saira Sheikh QC (*Westminster v SSCLG* [2014] EWHC 1248 (Admin)).

Practice Profile

Cain accepts instructions in all areas of Chambers' expertise (and more broadly in public law). Brief details of individual areas are set out below:

Public Law

Cain frequently acts both for and against public authorities in judicial review cases. Clients include public interest groups, private clients, local authorities and central government departments. As a member of the Attorney General's Panel of Counsel Cain is frequently instructed by the Treasury Solicitor's department and HMRC to advise and act in High Court proceedings.

Cases include:

- *Westminster v SSCLG* [2014] EWHC 1248 (Admin) – successfully resisting a challenge to a Secretary of State's decision letter concerning the definitions of 'hotel' and 'hostel' in planning law.
- *Fordent Holdings Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2844 (Admin) – leading case on the interpretation of provisions in the National Planning Policy Framework on the meaning of inappropriate development in the Green Belt.
- *Bayliss v Secretary of State for Communities and Local Government* [2014] EWCA Civ 347 (with Douglas Edwards QC). Challenging a decision to grant permission for a wind farm on the grounds of impact on an Area of Outstanding Natural Beauty.
- *Public Safety Charitable Trust v Milton Keynes* [2013] EWHC 1237 (Admin) : case on the correct interpretation of the provisions in the Local Government Finance Act 1988 on charitable relief from rates – successfully represented a consortium of local authorities.
- *R (Malpass) v Durham County Council* [2012] EWHC 1934 (Admin) : successful challenge to failure to register land as a town or village green. Attended oral permission hearing and secured permission to bring the challenge plus a Protective Costs Order with no reciprocal cap. Led in the final hearing by Charles George QC.
- *Dartford Borough Council v Secretary of State for Local Government* [2012] EWHC 634 (Admin) (for DCLG) : defending inspector's decision to grant planning permission for development on garden land wrongly characterised as a "windfall" site.
- *R (Barkas) v North Yorkshire County Council* [2011] EWHC 3653 (Admin): challenge to decision not to register land as a Town or Village Green. Submissions described by Langstaff J as "an argument of subtlety and care".
- *Collins v Secretary of State for Communities and Local Government* CO/1934/2011 (for DCLG): successfully defended inspector's decision to uphold an enforcement notice which had relied upon treating a floating houseboat as a 'building'.
- *Grace (Listing Officer) v Brickwood* (2011) (for HMRC): advised on and drafted challenge to decision of the Valuation Tribunal for England in a council tax matter. Challenge withdrawn following tribunal's agreement to review its decision.
- *Ibrar v Secretary of State for Communities and Local Government* (2011) (for DCLG): successfully defended inspector's decision to uphold an enforcement notice.

- *Simpson v Secretary of State for Communities and Local Government* [2011] EWHC 283 (Admin): challenge to enforcement notice appeal decision in respect of mooring of boats, considering the correct approach to the 'fall back' position in planning law.
- *R (Redland Minerals Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2010] EWHC 913 (Admin); [2011] Env.L.R. 2 (with Gregory Jones QC): challenge to remediation notices issued under s78E of the Environmental Protection Act 1990. The first case to come to court following a public inquiry under the contaminated land regime.
- *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11, [2010] 2 A.C. 70 (with Charles George QC and Jeremy Pike): landmark Supreme Court case in the law of town and village greens, abolishing the concept of 'deference'.
- *R (Wiltshire Council) v Cotswold District Council* [2009] EWHC 3702 (Admin) (with Craig Howell Williams QC): challenge to a certificate of lawful development authorising use of land for 'general aviation purposes'.
- *R (St Andrews Owlesbury) v Church Commissioners* (with Gregory Jones QC): successfully defended challenge to reorganisation of parishes by the Church of England.
- *R (O'Dwyer) v City of Westminster* [2008] EWHC 2358 (Admin) (with Robert McCracken QC): successful challenge to planning permission for residential development near to a bar because of likelihood of noise complaints.
- *R (High Peak Spar Limited) v Secretary of State for Communities and Local Government, Peak District National Park Authority* [2009] EWHC 3719 (Admin) (with Robert McCracken QC): a case on the meaning of a planning permission for mining operations.

Planning

This key area of practice for Chambers is one that Cain enjoys and deals in frequently. He regularly appears for local planning authorities in longer and more complex inquiries, dealing with heritage, nature conservation and landscape issues, housing policy and town centre development. Cain is also very experienced in conducting short enforcement notice/certificate of lawfulness appeal inquiries both for and against local councils and in appearing in the Magistrates' Court and Crown Court in enforcement notice prosecutions and s215 notice appeals. He advises on injunctions and appears in applications for injunctive relief.

Inquiries include:

- *Griffin Close (2014)*: resisting a development of 150 houses on the outskirts of Stow on the Wold for Cotswold District Council, against Anthony Crean QC
- *Hatfield Student Accommodation (2012)*: for the developer in a five day case on a proposal to construct several blocks of student housing. Case raised complicated factual and policy issues in relation to old mine workings, and complex legal points about the capacity of s106 agreement to bind the site where the ownership of parts were unknown.
- *Manor Farm (2011)*: four day enforcement case on multiple breaches of planning control at a farm complex, including unauthorised buildings, uses and the tipping of waste. Successfully defeated an argument that the notice was invalid and defended the notices on the merits. Against Clive Newberry QC.
- *Smugley Farm, Goudhurst (2011)*: four day inquiry relating to a large replacement dwelling in the AONB, raising landscape and policy issues against Michael Druce.
- *Land at Todenham Road, Moreton-in-Marsh (2010)*: successfully opposed a proposal by the developer, Cala Homes, to build 300 new homes on the outskirts of Moreton-in-Marsh. Four day case dealing with issues including adequacy of housing supply under PPS3 against Jeremy Cahill QC.
- *10 Bathgate Road, Wimbledon (2010)*: proposal to demolish the façade of a house in a conservation area against James Pereira.
- *Coln Manor, Gloucestershire (2010)*: nine day appeal hearing into a proposed new country house raising heritage, ecology and transport issues. Successfully upheld the local planning authority's refusal of permission.
- *The Pear Tree, Hockley (2010)*: gypsy caravan appeal, recovered for determination by the Secretary of State. Successfully upheld the local planning authority's grant of temporary as opposed to permanent permission.
- *Ware Park Mill, Hertford (2009)*: four day inquiry into proposal to 'recreate' a historic mill building as flats, raising heritage, ecology and green belt issues. Successfully upheld the refusal of the local planning authority, and secured a partial award of costs.
- Numerous enforcement notice and certificate of lawfulness appeals, both for and against local authorities.

Court work includes:

- *Westminster v SCLG* [2014] EWHC 1248 (Admin) – successfully resisting a challenge to a Secretary of State's decision letter concerning the definitions of 'hotel' and 'hostel' in planning law.
- *Fordent Holdings Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2844 (Admin) – leading case on the interpretation of provisions in the National Planning Policy Framework on the meaning of inappropriate development in the Green Belt.
- *Bayliss v Secretary of State for Communities and Local Government* [2014] EWCA Civ 347 (with Douglas Edwards QC). Challenging a decision to grant permission for a wind farm on the grounds of impact on an Area of Outstanding Natural Beauty.
- *Dartford Borough Council v Secretary of State for Local Government* [2012] EWHC 634 (Admin) (for DCLG) : defending inspector's decision to grant planning permission for development on garden land wrongly characterised as a "windfall" site.
- *Collins v Secretary of State for Communities and Local Government* CO/1934/2011 (for DCLG): successfully defended inspector's decision to uphold an enforcement notice which had relied upon treating a floating houseboat as a 'building'.
- *Canterbury City Council v Barratt* (2011): successfully applied for an injunction granted originally against a litigant in person to be varied in order to protect his established use rights.
- *Ibrar v Secretary of State for Communities and Local Government* (2011) (for DCLG): successfully defended inspector's decision to uphold an enforcement notice.
- *Simpson v Secretary of State for Communities and Local Government* [2011] EWHC 283 (Admin): challenge to enforcement notice appeal decision in respect of mooring of boats, considering the correct approach to the 'fall back' position in planning law.
- *Rutland County Council v Hinch* (2010): successfully opposed application for an injunction to remove a dwelling required to be destroyed under the terms of a s106 agreement on the basis that the local authority did not come with 'clean hands'.
- *R (Wiltshire Council) v Cotswold District Council* [2009] EWHC 3702 (Admin) (with Craig Howell Williams QC): challenge to a certificate of lawful development authorising use of land for 'general aviation purposes'.
- *R (O'Dwyer) v City of Westminster* [2008] EWHC 2358 (Admin) (with Robert McCracken QC): successful challenge to planning permission for residential development near to a bar because of likelihood of noise complaints.
- *R (High Peak Spar Limited) v Secretary of State for Communities and Local Government, Peak District National Park Authority* [2009] EWHC 3719 (Admin) (with Robert McCracken QC): a case on the meaning of a planning permission for mining operations.

Highways, Commons and Village Greens

Cain has a particular interest in these related fields of law. He regularly advises local authorities on highway points and appears at rights of way inquiries. He frequently represents local people in their efforts to register land as a town or village green and occasionally represents landowners resisting registration also. He is a member of the Open Spaces Society and works with them and others to promote and defend public rights of way and access to land for recreation.

Experience includes:

- *Roswell Pits, Ely* (2008, 2014): representing local people at a four day inquiry to register land as a town or village green. On the application being dismissed, successfully representing the same group at a second four day inquiry and arguing that *res judicata* did not apply to prevent their application being considered.
- *Land at Hob Hill, Saltburn* (2011, 2014): appearing for the local authority landowner to resist the registration of land said to be held as public open space. Successfully resisting two successive applications.
- *Seaton Meadow, Kent* (2013): appearing for the applicant for registration of a pasture meadow as a village green.
- *Bell Street, Henley-on-Thames* (2012): appearing for the developer in a three day stopping-up order inquiry raising issues of safety and complicated legal points about the extent of pedestrian and other rights under the proposed 'shared surface' scheme. Result awaited.
- *Coombe Woods, Thundersley* (2011): appearance for the applicant for registration of a wooded area as a green.
- Advice to Kent County Council and Medway Council about traffic regulation orders and their validity where markings were unclear or obscured.
- *Belle Vue Park, Consett* (2010): representing the Consett Green Spaces Group at a four day inquiry to secure the registration as a green of playing fields proposed to be fenced so as to exclude the public. Detailed consideration of the question of whether use was 'as of right' with reference to the statutory powers under which the land may have been held.
- *Church of St Mary the Virgin* (2010): advising Highway Authority on the interaction between highway and ecclesiastical law where a footpath across a church yard was said to have been recorded erroneously.
- *R (Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11, [2010] 2 A.C. 70 (with Charles George QC and Jeremy Pike): landmark Supreme Court case in the law of town and village greens, abolishing the concept of 'deference'.
- *Dickens Yard, Ealing* (2008): a two day inquiry against a leading QC, opposing the stopping up of a public right of way.

Environmental/Regulatory

Cain has a keen interest in the environment and in the loose collection of areas known as 'environmental' law (e.g. water, waste, contaminated land, Environmental Impact Assessment). He is the author, jointly with Robert McCracken QC, of the chapter in Civil Appeals on 'environmental appeals', and he frequently gives talks and training sessions on various aspects of environmental law (most recently, on developments in waste law). He is a member of the Environmental Law Foundation, the UK Environmental Law Association and the Planning and Environment Bar Association. He has spent several months on secondment with the Environment Agency.

Experience includes:

- *EA ONE offshore wind farm* (2014): appearing for the Joint Nature Conservation Committee at a DCO hearing in respect of impacts on sea birds from proposed offshore windfarm.
- *R (Redland Minerals Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2010] EWHC 913 (Admin); [2011] Env.L.R. 2 (with Gregory Jones QC): challenge to remediation notices issued under s78E of the Environmental Protection Act 1990. The first case to come to court following a public inquiry under the contaminated land regime.
- Advice on the application of the definition of waste in the context of planning enforcement and the construction of large 'bunds' on agricultural land.
- Prosecution and defence work in relation to environmental offences (fly tipping, food hygiene, waste disposal).
- Advice to public authorities on securing continued remediation of a landfill site where the owner/operator had become insolvent.
- Advice on availability of Transport and Works Act 1992 procedures in the context of a discharge pipe permitted by the River Humber Act 1986.

Rating/council tax

Cain regularly advises and appears in court to deal with matters relating to rating and the council tax, for both tax payers and public authorities. He is a member of the IRRV and frequently gives talks and presentations on rating law. As a member of the Attorney General's Panel of Counsel Cain is regularly instructed by HMRC to appear in the VTE and Upper Tribunal. He is very frequently instructed by tax payers and billing authorities. Recent experience includes:

- *Cable & Wireless v Subacchi* (2014): four day valuation tribunal hearing on the valuation of a network of fibre optic cables. Against Richard Glover QC.
- *Mainline Pipeline v Subacchi* (2014): four day valuation tribunal hearing on the valuation of a pipeline on the contractor's basis. Against Richard Glover QC.
- *British Car Auctions v Hazel* (2014): Lands Tribunal hearing on the valuation of an airfield on the contractor's basis. Against Richard Glover QC.
- *Takeley's Farm* (2013): leading case in the VTE on the correct identification of 'domestic' property based on identifying the curtilage of a house.
- *West London Aero Club v Hazel* (2013): acting for the ratepayer, successfully argued before the President of the VTE that the Valuation Officer should not be allowed to alter a list entry where there had been a previous un-appealed decision of the tribunal.
- *Public Safety Charitable Trust v Milton Keynes* [2013] EWHC 1237 (Admin) : case on the correct interpretation of the provisions in the Local Government Finance Act 1988 on charitable relief from rates – successfully represented a consortium of local authorities in various magistrates' courts and subsequently on appeal in the High Court.
- *CBRE Brittanica St Helens v Grace* (2012, VTE): successfully established before the Valuation Tribunal for England that freehold restrictive covenants are not "essential to the hereditament" for valuation purposes. For HMRC.
- *Grace (Listing Officer) v Brickwood* (2011) (for HMRC): advised on and drafted challenge to decision of the Valuation Tribunal for England in a council tax matter. Challenge withdrawn following tribunal's agreement to review its decision.
- *Makro Self Service Wholesalers Ltd v Nuneaton and Bedworth Borough Council* (2011) (with Richard Glover QC): appearing for the rate payer in the Magistrates' Court in one of the first cases to consider the application of the definition of 'occupation' in the context of the exemptions for empty rates.
- *Wermuth v London Borough of Hackney* (2011): appearing for the council tax payer in a challenge to various demand notices brought on the basis that they have been served late and are therefore invalid.

Licensing

Cain frequently appears at licensing committee hearings and, on appeal, in the Magistrates' Court. He has acted frequently for McDonald's, enjoying a near 100% success rate in obtaining licence variations.

Ecclesiastical law

Cain is a communicant member of the Church of England and practices in the specialist field of ecclesiastical law. He has written on the topic (with Gregory Jones, a deputy Chancellor) and has appeared in the Consistory Court of Canterbury.

Recent Publications

- Civil Appeals chapter on 'Environment Appeals' (with Robert McCracken)
- Contributing author to *The Law of Regulatory Enforcement and Sanctions*, Norris and Phillips.
- *Alternative Sites in Planning Law* [2010] JPL 852 (with Robert McCracken).
- *Security for Costs and (Un)Incorporated Claimants* [2010] JR 92.
- Equalities and Human Rights booklet for Environmental Law Foundation (with Robert McCracken).
- Recent Solicitor's Journal updates on Environmental Law, Ecclesiastical Law.

Awards, Scholarships and Qualification

- Magdalen College, University of Oxford - B.A. (Hons) in Modern History (First class).
- UWE, Bristol - CPE (Distinction), BVC (Outstanding, top mark in year).
- Western Circuit Advocacy Prize, for best advocacy on BVC.
- Lord Bowen, Walter Wigglesworth and Hardwicke scholarships from Lincoln's Inn.