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## CHARLES BANNER QC

Call: 2004 / Silk: 2019

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### Areas of Practice

- Commercial Dispute Resolution
- Competition, State Aid & EU Law
- Energy & Natural Resources
- Environmental Law
- Infrastructure & Utilities
- Planning
- Regulatory & Public Law and Human Rights
- Northern Ireland
- Tribunal Appointments

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### Practice Overview

*"One of the real all-round talents at the Bar, he is an adaptable practitioner with a very strong profile"*  
(Legal 500 UK Bar 2021)

Charles Banner QC was called to the Bar of England & Wales in 2004 and to the Bar of Northern Ireland in 2010. He was appointed Queen's Counsel in 2019 (at the age of 38, the youngest of the 2019 silks). He practices across both jurisdictions as well as internationally. He has rights of audience in the Dubai International Finance Centre Court (Part II Registered since 2015) and the Singapore International Commercial Court (Full Registered Foreign Lawyer since 2017). He sits judicially on a part-time basis as a Justice of the Astana International Finance Centre Court in Nur-Sultan, Kazakhstan.

He has a heavyweight domestic and international practice, principally focused on (i) planning & environmental regulation, (ii) public procurement, competition & state aid and (iii) commercial dispute resolution in the context of development, infrastructure and construction (particularly in the energy, transport, residential and tourism sectors). He also has considerable experience of public law, EU law and commercial dispute resolution more generally.

The breadth of his practice means he is unusually well placed to assist clients in the development & infrastructure sectors over the lifetime of their project, from environmental and planning consenting, to public procurement, regulatory and project finance issues, to commercial disputes arising during or after the construction of the project.

He is recommended as a leading QC in a total of 8 practice areas by Chambers & Partners and Legal 500. The commentary about him in those directories and Planning Magazine's

high profile Planning Legal Survey (in which he is ranked as one of country's Top 8 planning QCs after just one year in silk) include "very versatile", "an exceptional commercial barrister", "a match for any silk" and "one of the best court advocates I've seen".

His advocacy experience includes over 100 reported cases, including 16 appeals in the UK Supreme Court (according to a recent study, this makes him one of the top 10 currently practising barristers by number of appearances in the Supreme Court since its opening in 2009 and the most experienced Supreme Court advocate of his call or below). He has appeared in 13 cases before the EU Courts (Court of Justice and General Court), 9 cases before the UNECE Aarhus Convention Compliance Committee, 4 cases before the European Court of Human Rights as well as UK Parliamentary Select Committee hearings. He has also appeared in well over 100 planning and environmental inquiries/examinations.

From 2015 until taking silk in 2019, he was a member of the Attorney General's A Panel of Junior Counsel to the Crown, in which capacity he represented the UK Government in some of its most challenging and high profile cases in the domestic courts and internationally.

He also acts as a dispute resolver. In addition to his part-time judicial work, he accepts instructions as an Arbitrator (FCIArb & AHKIArb), Mediator (ADR Group Accredited) and Expert.

He is one of the presenters of the high profile cross-chambers planning themed weekly discussion show, 'Have We Got Planning News For You', which attracts over 2000 viewers weekly and guest appearances from some of the UK's most well known figures in planning, architecture and economics.

Alongside his private practice at the Bar, Charles has held the following non-executive board positions:

- Independent Member, Joint Nature Conservation Committee (the statutory UK nature conservation advisory body), 2017-present. Appointed by the Secretary of State for the Environment.
- Independent Member of the Global Standards and Regulation Board of the Royal Institution of Chartered Surveyors (the global professional self-regulatory body for over 110,000 chartered surveyors and 10,000 firms worldwide), 2020-present. Previously an Independent Member of RICS' UK and Ireland Regulatory Sub-Board, 2018-2020.
- UK Member, European Union Fundamental Rights Agency Management Board, 2017-2020. Appointed by the UK Secretary of State for Justice.

He has also been a Council Member and Trustee of the UK Environmental Law Association (2016-2020) and a College Lecturer in Law at the University of Oxford (2010-2015, holding weekend classes in EU law and administrative law at Lincoln, Oriel and Regent's Park Colleges). In 2005-06 he spent a year on secondment as Judicial Assistant to the Appellate Committee to the House of Lords (the predecessor to the UK Supreme Court) and the Judicial Committee of the Privy Council.

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## Recent Cases

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### Commercial Dispute Resolution (Including Construction)

Charles has considerable experience acting as advocate in, and advising on, disputes arising out of development agreements, contractual disputes in the energy, infrastructure and agriculture sectors, and commercial claims brought by or against government or other public authorities. He also has a substantial advisory and litigation practice in relation to economic sanctions.

He also acts as a resolver of commercial disputes. He sits judicially on a part-time basis as a Justice of the Astana International Finance Centre Court in Nur-Sultan, Kazakhstan. He also accepts appointments as an Arbitrator (FCIArb & AHKIArb), Mediator (ADR Group Accredited) and Expert.

Recent and ongoing cases include:

- A substantial and vigorously contested Chancery Division claim between the Arora Group (which has 6 hotels and substantial land interests at London Heathrow Airport) and Heathrow Airport Ltd (the operator of Heathrow Airport) concerning real estate, planning and competition issues regarding Arora's proposed 9 storey multi storey passenger car park at Heathrow. The trial is due to take place in 2021 but the case has already produced two reported judgments from contested interim applications: *Arora Management Services Ltd v. Heathrow Airport Ltd* [2019] 5 C.M.L.R. 24 and *Arora Management Services Ltd. Heathrow Airport Ltd* [2020] EWHC 79 (Ch).
- Advising on force majeure and frustration issues arising out of the COVID-19 crisis in relation to development funding and building contracts relating to large development projects that have stalled due to the pandemic (2020-ongoing).
- A substantial claim in the Bahamas Supreme Court arising out of a marine accident (2020-ongoing).
- Arbitration concerning a high value contractual dispute between a statutory water undertaker and a

high profile public body (2019-ongoing).

- Arbitration concerning the interpretation of a contract concerning the maintenance and repair of the tidal defence gates at a major UK harbour (2017-2019).
- Advising Her Majesty's Treasury on the application of the Libya (Financial Sanctions) Regulations 2016 to complex corporate structures (2019-ongoing).
- A £10m+ Commercial Court claim relating to alleged contamination in food supplied to one of the largest commercial pig farms in the UK (2018-2019, settled).
- Arbitration concerning the ownership of London's main roads (and in particular the valuable rights in relation to land above, below and adjacent to the road surface), which following an appeal under s.69 of the Arbitration Act 1996 proceeded to the UK Supreme Court: *Southwark LBC v. Transport for London* [2018] 3 W.L.R. 2059.
- Acting for a services provider in a £multi-million contractual dispute with a NHS regional clinical commissioning group over the interpretation of a contract for the provision of health services to NHS patients, in expert determination proceedings before a former Supreme Court Justice (2017-2019).
- A multi-jurisdictional dispute concerning contracts for the exploitation of mineral resources in China (2016-2019).
- Case T-715/14 NK Rosneft a.o. v. European Council ELCI:EU:T:2018:544 & Joined Cases T-735/14 & T-799/15 Gazprom Neft v. European Council ELCI:EU:T:2018:548 – proceedings before the EU General Court in which the Russian energy companies Rosneft and Gazprom sought the annulment of EU sanctions targeted at the Russian oil sector in the light of Russia's actions destabilising the situation in Ukraine (Council Decision 2014/659/CFSP as amended and Council Regulation (EU) 833/2014 as amended). Sole counsel for the United Kingdom, whose submissions were endorsed by the General Court. The issues included whether the sanctions were in breach of the EU's obligations under GATT and GATS.

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“He is extremely enthusiastic and proactive and has amassed considerable experience.”

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- Advising the UK Office of Financial Sanctions Implementation on issues relating to the financial sanctions imposed on the former President of Ukraine, Viktor Yanukovich (2017-2018).
- *R (Ezz) v. HM Treasury* [2016] EWHC 1470 (Admin) concerning the 'reasonable legal fees' exemption to the standard form of EU financial sanctions.
- *Minerva (Wandsworth) Ltd v. Greenland Ram (London) Ltd* [2017] EWHC 1457 (Ch) – acting for the Greenland Group in the 13-day Chancery Division trial of a £multi-million claim relating to overage provisions in a contract for the £135m purchase of the Ram Brewery development site in Wandsworth.
- *Manchester Ship Canal Company Ltd. v. Environment Agency* [2017] EWHC 1340 (QB) – a £13 million claim against the Environment Agency under a contract agreed in 1963 by the Manchester Ship Canal Company and the Mersey River Board (a predecessor of the EA) and subsequently confirmed in Schedule 2 of the Mersey River Board Act 1964. MSCC claimed damages under the contract in respect of flood damage caused to the Manchester Ship Canal during the high profile, extreme Boxing Day Floods of 2015. Acted for the EA in its successful application for summary judgment.

#### Competition, State Aid & EU Law

Charles has considerable experience of competition law under Arts.101-106 TFEU and the Competition Act 1998. This includes:

- *R (Heathrow Hub Ltd) v. Secretary of State for Transport* [2020] EWCA Civ 213, concerning

a claim that the Secretary of State's request that Heathrow Hub obtained a guarantee from Heathrow Airport Ltd that HAL would implement Hub's 'Extended Northern Runway' scheme for Heathrow expansion, if that scheme were selected ahead of HAL's 'North West Runway' scheme, meant that the subsequent Airports National Policy Statement, which endorsed the NWR scheme, was unlawful on competition law grounds. The issues included (i) whether the request for a guarantee breached Article 106 TFEU taken with Article 102 TFEU, on the basis that it was a 'state measure' with potential anti-competitive consequences, (ii) whether HAL had a dominant position in the relevant market (airport operation and associated services), and (iii) whether HAL had 'special or exclusive rights' so as to fall within the scope of Article 106.

- A substantial and vigorously contested Chancery Division claim between the Arora Group (which has 6 hotels and substantial land interests at London Heathrow Airport) and Heathrow Airport Ltd (the operator of Heathrow Airport) concerning real estate, planning and competition issues regarding Arora's proposed 9 storey multi storey passenger car park at Heathrow. The main issues are whether HAL is right to say that under Condition A85 of the planning permission for Heathrow Terminal 5, new passenger car parks at Heathrow Airport must be on specified HAL owned land or substituted land that HAL alone can notify to the London Borough of Hillingdon (the local planning authority) – and if so whether Condition A85 is a state measure with anti-competitive consequences contrary to Article 106 TFEU taken together with Article 4(3) TEU and/or Article 102 TFEU.
- *Arora Management Services Ltd v. Heathrow Airport Ltd* [2019] 5 C.M.L.R. 24 (Ch) – an interlocutory dispute in the above proceedings, concerning which division of the High Court is appropriate for determination of competition disputes between private parties.
- Advising the Secretary of State for Transport concerning competition issues relating to the provision of ground-handling services at a major UK airport.
- Regularly advising a well known firm in the automotive industry on competition law issues over a period of several years.
- Advising a sports professional on competition issues in the context of a dispute with his sporting association.
- Whilst on secondment as Judicial Assistant to the Law Lords, he worked on the seminal case of *Crehan v. Inntrepreneur Pub Co.* [2007] A.C. 333 regarding beer ties in pubs.

He also has considerable experience of advising both public and private sector clients on state aid issues. He has particular expertise on the provisions of the General Block Exemption Regulation relating to aid measures aimed at environmental protection and the Commission Guidelines on State Aid for the Environment, as well as state aid issues relating to the sale of land interests by public authorities to the private sector. He has recently advised on the state aid implications of the proposed financing of the redevelopment of a well known sports venue, of funding the remediation of a former mine, of central Government funding for a new relief road that will enable the development of a large scale urban extension, and of granting relief from the Community Infrastructure Levy to registered charities.

He has career-long experience of EU-derived law more generally, including 13 appearances in the EU Courts (CJEU and General Courts) on EU law issues as diverse as:

- Environmental Regulation (T-226/18 *Global Silicones Council v. European Commission*; Case C-528/16 *Confédération Paysanne v. Premier Ministre*; C-461/17 *Holohan v. An Bord Pleanála*);
- Economic Sanctions (T-715/14 *NK Rosneft a.o. v. European Council*; T-735/14 & T-799/15 *Gazprom Neft v. European Council*);
- Employees' rights (C-214/16 *King v. The Sash Window Workshop Ltd* [2018] 2 C.M.L.R. 10);
- Free Movement of Persons (C-507/12 *St Prix*; C-186/10 *Oguz*); and
- Refugee protection (C-490/16 *AS v. Republic of Slovenia*; C-150/15 *N*; C-542/13 *M'Bodj v. État Belge*; C-562/13 *Abdida*).

From 2017-2020 he was the UK Member of the EU Fundamental Rights Agency's Management Board (a Ministerial appointment by the Lord Chancellor and Secretary of State for Justice). He has published and lectured widely on EU law issues and was a College Lecturer in EU Law at Oxford University from 2010 to 2015, holding undergraduate classes at weekends (at Lincoln, Oriel and Regents Park Colleges).

He is recommended as a leading QC in EU law by Chambers & Partners UK Bar 2020 and Legal 500 UK Bar 2019 (having been recommended as a leading junior for many years previously). Comments in these directories include that he "has an incredibly detailed knowledge of EU law and shows real skill in applying it", is "extremely knowledgeable on EU law and equally

passionate about its application”, “is particularly adept at advising on cases involving questions of European law”, “his recent work has demonstrated his ability to handle cases involving the interpretation of European legislation and the subsequent impact in areas such as social security and benefit rights” and that “he has been active in a range of EU matters of late, including cases concerning fundamental rights and environment issues.”

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“Very versatile, an excellent planning practice and also a very good EU and public lawyer.”

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#### Energy & Natural Resources

Charles’ practice covers a wide range of issues affecting the energy and natural resources sector, both within the UK and internationally, including planning & environmental regulation of new energy infrastructure, energy markets regulation, contractual disputes, international trade & investment law (including the Energy Charter Treaty), project finance and public procurement. He is recommended as a leading QC in Energy-related work by Legal 500 UK Bar 2019 (having previously been recommended as a leading junior in four consecutive editions since 2015).

Significant work includes:

- Advising the UK Government on the EU energy law and international trade & investment law implications of Brexit for the All-Ireland Single Electricity Market (including in relation to GATT, GATS and the Energy Charter Treaty).
- Arbitration concerning a high value contractual dispute between a statutory water undertaker and a high profile public body (2019-ongoing).
- Case T-715/14 NK Rosneft a.o. v. European Council ELCI:EU:T:2018:544 & Joined Cases T-735/14 & T-799/15 Gazprom Neft v. European Council ELCI:EU:T:2018:548 – proceedings before the EU General Court in which the Russian energy companies Rosneft and Gazprom sought the annulment of EU sanctions targeted at the Russian oil sector in the light of Russia’s actions destabilising the situation in Ukraine. The issues included whether the sanctions were in breach of the EU’s obligations under GATT and GATS.
- A multi-jurisdictional dispute concerning contracts for the exploitation of mineral resources in China (2016-2019).
- Acting for the UK Government (leading a 3-counsel team) successfully defending a heavyweight commercial judicial review claim concerning changes to the rules relating to energy markets: R (Eider Reserve Power Ltd) v. Secretary of State for Business, Energy & Industrial Strategy (CO/393/2018).
- Promoting nationally significant energy infrastructure through the development consent process in England, including: the Keuper Gas Storage Project Development Consent Order (a joint venture between Ineos and the Solvay Group for a 19-cavity underground gas storage facility in Cheshire); the Norfolk Vanguard Development Consent Order (one of the UK’s largest offshore windfarms, with an approximate capacity of 1.8GW which would meet the electricity needs of 1.3m homes); Runcorn Energy From Waste for Ineos and Viridor.
- Arc 21 Energy From Waste, Co. Antrim, Northern Ireland – advising the Arc 21 consortium on constitutional, public procurement, environmental and planning law issues relating to its application for a £240m strategic Energy From Waste facility
- Acting for the Northern Ireland Department for Infrastructure for over 5 years (2013-present), including at a high profile public inquiry and in subsequent High Court proceedings, in connection with the North-South Ireland Electricity Interconnector, Northern Ireland Electricity’s proposed 400kv strategic interconnector between Tyrone in Northern Ireland and Cavan in the Republic of Ireland, regarded as Northern Ireland’s most significant energy infrastructure project to date.
- Proceedings before the UNECE Aarhus Convention Compliance Committee in Geneva relating to an open-cast coal mine in Merthyr Tydfil which is to extract several million tonnes of coal over c.15 years as

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“He has outstanding intellect and charm. He is very good with clients and easy to work with. He is a very good example of a 21st century member of the Bar and is an exceptional, commercial barrister.”

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### Environmental Law

Charles undertakes a wide range of environmental litigation and advisory work in the domestic, EU and international law spheres. He is recommended as leading QC in environmental law by the latest editions of both Chambers & Partners UK Bar and Legal 500 UK Bar (having previously been recommended as a leading junior in this field by both directories for many years). His environmental law practice is evenly split between commercial clients, private clients, environmental NGOs and public authorities including the Environment Agency and the Northern Ireland Department for Infrastructure.

He has acted in some of the most important environmental cases in the English High Court and appellate courts in the 2000s, including the first Supreme Court case to consider the application of the Aarhus Convention within the UK (Edwards), the Supreme Court’s landmark judgment on strategic environmental assessment and environmental impact assessment in the context of a Parliamentary development consent process (HS2 Action Alliance No. 1), important Court of Appeal judgments on climate change (Plan B Earth concerning Heathrow Expansion), the scope of the ‘project’ for the purposes of environmental impact assessment (Larkfleet) and the distinction in EU law between ‘waste recovery’ and ‘waste disposal’ (Tarmac) as well as most of the other principal authorities on strategic environmental assessment (Save Historic Newmarket, Ashdown Forest, HS2 Action Alliance No. 2 and Larkfleet Homes). He has also acted in one of the most significant cases in the Northern Ireland High Court regarding Environmental Impact Assessment and habitats (Newry Chamber of Commerce).

Internationally, he has appeared on multiple occasions before the UNECE Aarhus Convention Compliance Committee in Geneva, in a series of cases before the CJEU regarding EU environmental legislation (including most recently a challenge by the silicones industry to the high profile ban on ‘microbeads’ in wash-off cosmetic products, as well as the groundbreaking Holohan case on habitats protection) and in the European Court of Human Rights in App. No. 39714/15 Austin v. UK (2017) 65 E.H.R.R. SE16 (concerning the circumstances in which Article 8 ECHR applies in cases of alleged environmental pollution and whether protection against adverse costs orders is required to achieve compliance with the right to an effective remedy under Article 13 ECHR).

He is the Editor of *The Aarhus Convention – A Guide for UK Lawyers* (Hart Publishing, 2015), the first book to be published concerning the implementation of the Aarhus Convention in the UK, and co-author of the chapter on strategic environmental assessment in *Garner’s Environmental Law*.

In 2017, Charles was awarded ‘Environment and Planning Junior of the Year’ at the Chambers UK Bar Awards. In the same year, he was shortlisted for ‘Real Estate, Environment and Planning Junior of the Year’ at the Legal 500 UK Bar Awards.

From 2016 until 2020 he was a Trustee and Council Member of the UK Environmental Law Association. In 2017, he was appointed by the Secretary of State for Environment, Food and Rural Affairs as an independent member of the Joint Nature Conservation Committee, on which he continues to serve.

His most significant environmental cases include the following:

#### Aarhus Convention

- Nine cases before the UNECE Aarhus Convention Compliance Committee in Geneva. This includes an



ongoing communication (ACCC/C/2017/156 RSPB & others v. UK) raising the fundamental question of whether the application by the UK courts, in environmental judicial and statutory review proceedings of the Wednesbury standard of review is consistent with Article 9(2) of the Aarhus Convention in relation to the review of the substantive legality of certain environmental decisions, acts and omissions.

- Advising DEFRA, DECC and the Ministry of Justice on Aarhus Convention compliance in the light of recent Compliance Committee and CJEU findings about the costs regime in environmental judicial review proceedings in the UK.
- R (Edwards & Pallikaropoulos) v. Environment Agency [2011] Env. L.R. 13, concerning the approach to be taken in considering whether the costs of environmental litigation are “prohibitively expensive” contrary to Article 9(4) of the Aarhus Convention, as implemented into EU law by Article 10a of the EIA Directive.

#### Environmental Cases Before the EU courts

- Case T-226/18 Global Silicones Council & others v. European Commission (awaiting a hearing before the EU General Court): application to the General Court to annul Commission Regulation (EU) 2018/35 which introduces an EU-wide ban, effective 31st January 2020, on silicone ‘microbeads’ in wash-off cosmetic products, due to their polluting effect on river and marine ecosystems.
- Case C-528/16 Confédération Paysanne v. Premier Ministre ELCI:EU:C:2018:53 (CJEU Grand Chamber): a reference from the French Conseil d’État regarding the scope and interpretation of the provisions of EU environmental legislation regulating to genetically modified organisms.
- Case C-461/17 Holohan v. An Bord Pleanála ECLI:EU:C:2018:649 (CJEU), a reference from Ireland’s High Court concerning the required content of an appropriate assessment under the Habitats Directive and the consideration that an environmental statement under the EIA Directive needs to give to alternatives to the proposed development.

#### Climate Change

- R (Plan B Earth & Friends of the Earth) v. Secretary of State for Transport [2020] EWCA Civ 214, the high profile environmental law challenge to the Airports National Policy Statement endorsing the principle of a 3rd runway and associated infrastructure at London Heathrow Airport, in which the Court of Appeal held that the APNS was unlawful because the Secretary of State for Transport had not had regard to the Paris Agreement on climate change.

#### Strategic Environmental Assessment

- R (Plan B Earth and others) v. Secretary of State for Transport [2020] EWCA Civ 214: one of two counsel credited in the judgment as persuading the Court of Appeal that the Wednesbury standard of review is sufficient in relation to challenges to evaluative decisions in the context of strategic environmental assessment and sustainability appraisal.
- R (HS2 Action Alliance Ltd.) v. Secretary of State for Transport [2014] 1 W.L.R. 324 (Supreme Court), the high profile legal challenge to the Government’s White Paper HS2 – Decisions and Next Steps (Jan 2012) on the grounds (inter alia) that the White Paper should have been and was not subject to SEA pursuant to the Strategic Environmental Assessment Directive.
- The leading cases regarding the duty for the Environmental Report / Sustainability Appraisal accompanying a draft plan or programme to explain what reasonable alternatives to the proposed plan policies have been considered and why they were rejected: Save Historic Newmarket Ltd v. Forest Heath District Council [2011] J.P.L. 1233 and Ashdown Forest Economic Development LLP v. Wealden District Council [2016] Env. L.R. 2.
- Advising the Department for Communities and Local Government on SEA issues relating to the revocation of Regional Strategies in 2012/13.

#### Environmental Impact Assessment

- Case C-461/17 Holohan v. An Bord Pleanála [2019] P.T.S.R. 1045, a reference from Ireland’s High Court concerning the consideration that an environmental statement under the EIA Directive needs to give to alternatives to the proposed development.
- R (Larkfleet Limited) v. South Kesteven DC [2016] Env. L.R. 4 (Court of Appeal), a judicial review challenge to the grant of a relief road to enable a large-scale urban extension on the grounds that the road and the urban extension should have been assessed as a single ‘project’ under the EIA Directive or alternatively that the cumulative environmental effects of the road taken together with the urban extension were not assessed in accordance with the requirements of the Directive. One of the lead domestic authorities on the scope of the ‘project’ for the purposes of EIA and the approach to be taken to assessing in-combination

effects.

- R (Bucks CC & others) v. Secretary of State for Transport [2014] 1 W.L.R. 324 (Supreme Court), on whether the proposed Hybrid Bill procedure for obtaining development consent for HS2 from Parliament was incompatible with the requirements of the EIA Directive having regard to the conditional exemption under the Directive where development consent is to be granted by a legislature.

#### Habitats

- R (Plan B Earth and others) v. Secretary of State for Transport [2020] EWCA Civ 214: one of two counsel credited in the judgment as persuading the Court of Appeal that the Wednesbury standard of review is sufficient in relation to challenges to evaluative decisions in the context of the Habitats Regulations/Directive.
- Case C-461/17 Holohan v. An Bord Pleanála ECLI:EU:C:2018:649 (CJEU), a reference from Ireland's High Court concerning the required content of an appropriate assessment under the Habitats Directive.
- 3 week inquiry in April – June 2019 regarding a proposed 1210 dwelling urban extension at Newton Abbot, Devon, where the main issue was Natural England's objection concerning the alleged impact of the development on Greater Horseshoe Bats and the consequent impact on the South Hams Special Area of Conservation. Substantial ecology evidence was called and cross-examined.
- Two 3 week public inquiries concerning environmental permit applications for water abstraction, which had been refused by the Environment Agency on habitats grounds (commercial agricultural abstraction near Catfield Fen, Norfolk, and public water supply abstraction from the Rivers Test and Itchen).
- Newry Chamber of Commerce's Application for Judicial Review [2015] NIQB 65, concerning the assessment of cumulative effects under the Habitats Directive and Habitats Regulations and the Court's discretion not to quash in circumstances where even if there had been a technical breach of the Directive and Regulations there was no evidence that there was a real rather than hypothetical risk of harm to the designated habitat(s) which should have been considered. One of the leading Northern Ireland authorities on EIA.

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“Very bright, very clever, and good with both judges and clients.”

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#### Waste

- R (Tarmac Aggregates Ltd) v. (1) Secretary of State for Environment, Food and Rural Affairs and (2) Environment Agency [2016] Env. L.R. 15, concerning the approach to determining whether an activity is “waste recovery” under Article 3(15) of the Waste Framework Directive as opposed to “waste disposal”.
- Acting for the Environment Agency at public inquiries into appeals against the refusal of environmental permit applications relating to (1) a proposed landfill at Birks Quarry, Oldham, and (2) a proposed quarry restoration scheme involving the use of inert waste at Methley Quarry, Leeds.
- R (Residents Against Waste Site Ltd) v. Lancashire CC [2008] Env. L.R. 27, on the meaning and application of the “relevant objectives” under the Waste Framework Directive for considering proposals for the disposal or recovery of waste.

#### Access to Environmental Information

- Acted Heathrow West Ltd (an Arora Group Company) in Environmental Information Regulations proceedings concerning whether Heathrow Airport Ltd (the operator of London Heathrow Airport) is a ‘public authority’ subject to the Regulations’ information disclosure obligations (2019-2020).



Charles has considerable experience of providing advice and representation in relation to large-scale infrastructure projects in a range of legal contexts, both within the UK and internationally, including the development consent order ('DCO') process, environmental regulation and other regulatory issues, contractual disputes, project finance, public procurement. He has particular experience of infrastructure work in the transport, energy and natural resources sectors.

The breadth of his practice means he is unusually well placed to assist clients over the lifetime of their project, from environmental and planning consenting, to public procurement, regulatory and project finance issues, to commercial disputes arising during or after the construction of the project.

His experience includes being integrally involved in proceedings relating to arguably the three most significant infrastructure projects in the UK in recent years: High Speed 2 ('HS2'), the proposed 3rd runway and associated expansion at London Heathrow Airport, and the North-South Ireland Electricity Interconnector.

In Planning Magazine's Planning Law Survey 2020 he was ranked in the top 7 of all QCs at the Bar of England & Wales practising in the field of infrastructure (after just one year in silk).

He is a member of the UK National Infrastructure Planning Association.

Significant infrastructure work includes the following:

### Transport Infrastructure

- High Speed Two: acted for HS2 Action Alliance and affected landowners in the Parliamentary Select Committee proceedings established to consider objections to the proposed route and details of Phase 1 of HS2; prior to that, appeared in the high profile and long running litigation relating to HS2 including two Supreme Court proceedings and acting for HS2 Action Alliance in the Supreme Court in their challenge to the Government's strategy for HS2 (see *R (HS2 Action Alliance Ltd) v. Secretary of State for Transport and R (Heathrow Hub Ltd) v. Secretary of State for Transport* [2014] 1 W.L.R. 324) proceedings before the UNECE Aarhus Convention Compliance Committee in Geneva (Communication ACCC/C/2014/100).
- London Heathrow Airport 3rd Runway and associated expansion: acting since 2015 for the Arora Group, one of the principal landowners at and around Heathrow Airport and the promoter of the 'Heathrow West' proposal pursuant to which, as part of the North-West Runway scheme supported by the Airports National Policy Statement, it seeks to construct and operate a new terminal at Heathrow in competition with the existing terminals operated by Heathrow Airport Limited.
- London Heathrow Airport passenger car parking: a substantial and vigorously contested Chancery Division claim between the Arora Group (which has 6 hotels and substantial land interests at London Heathrow Airport) and Heathrow Airport Ltd (the operator of Heathrow Airport) concerning real estate, planning and competition issues regarding Arora's proposed 9 storey multi storey passenger car park at Heathrow. The trial is due to take place in 2021 but the case has already produced two reported judgments from contested interim applications: *Arora Management Services Ltd v. Heathrow Airport Ltd* [2019] 5 C.M.L.R. 24 and *Arora Management Services Ltd. Heathrow Airport Ltd* [2020] EWHC 79 (Ch).
- London Stansted Airport expansion: acted for the Secretary of State for Transport in defence of a judicial review brought by Stop Stansted Expansion contending that a proposal to construct additional infrastructure at London Stansted Airport and to raise the annual cap on passenger transport movements at the airport by 8million passengers per annum should have been subjected to the DCO regime under the Planning Act 2008 as a nationally significant infrastructure project, rather than being left to the local planning authority to determine pursuant to the conventional planning regime under the Town and Country Planning Act 1990. See *R (Ross & Sanders acting on behalf of Stop Stansted Expansion) v. Secretary of State for Transport* [2020] EWHC 226 (Admin).
- Bristol Airport expansion: providing extensive advice to North Somerset Council in relation to its consideration of an application for planning permission for significant expansion of Bristol Airport to enable a throughput of 12 million passengers per annum (2019-ongoing).
- London Southend Airport: long-standing advisory role for London Stansted Airport Limited, part of the Stobart Group, in relation to their plans for the future of London Southend Airport.
- Manston Airport DCO: advised the Secretary of State and the Planning Inspectorate on legal and procedural issues relating to the DCO application concerning the proposed development of Manston Airport into an airfreight hub with complimentary passenger and engineering services.
- A5036 Port of Liverpool Access Scheme: acted for Highways England in defence of a judicial review challenge to the decision on its decision on a preferred route for an improved road link to the Port of

Liverpool, following non statutory pre-DCO consultation: R (Sefton MBC) v. Highways England [2018] EWHC 3059 (Admin).

- Arbitration concerning the ownership of London's main roads (and in particular the valuable rights in relation to land above, below and adjacent to the road surface), which following an appeal under s.69 of the Arbitration Act 1996 proceeded to the UK Supreme Court: Southwark LBC v. Transport for London [2018] 3 W.L.R. 2059.
- Promoted one of four competing proposals for a new Motorway Service Area on the A1(M) in North Yorkshire at a three month 'beauty parade' public inquiry and in subsequent High Court proceedings (2010-2012).
- Defended the Secretary of State for Transport in the High Court against a judicial review challenge to his decision to grant c.£53 million of funding towards a new link road between Bexhill and Hastings.

#### Energy & Natural Resources Infrastructure

- Acting for the Northern Ireland Department for Infrastructure for over 5 years (2013-present), including at a high profile public inquiry and in subsequent High Court proceedings, in connection with the North-South Ireland Electricity Interconnector, Northern Ireland Electricity's proposed 400kv strategic interconnector between Tyrone in Northern Ireland and Cavan in the Republic of Ireland, regarded as Northern Ireland's most significant energy infrastructure project to date.
- Arc 21 Energy From Waste, Co. Antrim, Northern Ireland – advising the Arc 21 consortium on constitutional, public procurement, environmental and planning law issues relating to its application for a £240m strategic Energy From Waste facility.
- Keuper Gas Storage Project DCO: concerning a joint venture between Ineos and the Solvay Group for a 19-cavity underground gas storage facility in Cheshire. Sole counsel for the promoter.
- Norfolk Vanguard DCO – one of the UK's largest offshore windfarms, with an approximate capacity of 1.8GW which would meet the electricity needs of 1.3m homes. Sole counsel for the promoter.
- Runcorn Energy From Waste – 2 week public inquiry for Ineos and Viridor concerning their EfW plant which treats c.850,000 Tonnes of refuse derived fuel per year, generating c.130MW p.a.
- Advising the Northern Ireland Department for Infrastructure in relation to the Curraghinalt Gold Project, an underground gold mine estimated to produce approximately 1.36Moz of gold and 0.38Moz of silver over an initial mine life of 10.5 years.
- Shale gas 'fracking' and exploration: advising the UK Government on fracking regulation; advising Nottinghamshire County Council in connection with its determination in November 2016 of a high profile application by IGas Energy for consent to undertake shale gas exploration at Mission Springs; Europa Oil & Gas v. SSCLG [2014] J.P.L. 21 on whether exploration for hydrocarbons constitutes "extraction" for the purposes of national planning policy relating to development in the green belt.
- Proceedings before the UNECE Aarhus Convention Compliance Committee in Geneva relating to an open-cast coal mine in Merthyr Tydfil which is to extract several million tonnes of coal over c.15 years as part of the Ffos-y-Fran Land Reclamation Scheme (sole counsel for the operator).
- A multi-jurisdictional dispute concerning contracts for the exploitation of mineral resources in China,

#### Port and Harbour Infrastructure

- Arbitration concerning the interpretation of a contract concerning the maintenance and repair of the tidal defence gates at a major UK harbour (2017-2019).
- Acting as sole counsel for the Secretary of State in Grafton Group Ltd v. Secretary of State for Transport & Port of London Authority [2017] 1 W.L.R. 373, a challenge to the confirmation of a compulsory purchase order made by the Port of London Authority of Orchard Wharf on the River Thames in order to secure its reactivation for wharf use. This was the first case examining the PLA's powers of compulsory acquisition associated with its port and harbour functions.

#### Utilities Infrastructure

- Arbitration concerning a high value contractual dispute between a statutory water undertaker and a high profile public body (2019-ongoing).

- Acting for a consortium of affected landowners in opposition to Thames Water’s proposal for the 16-mile Thames Tunnel “Super Sewer”, including successfully achieving the narrowing of the safeguarding direction issued to protect the proposed route.

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“A real jewel in the planning Bar crown: very sharp intellect with a lot of common sense.”

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## Planning

Charles is ranked as one of the Top 8 Planning QCs overall in Planning Magazine’s Planning Law Survey 2020 (based upon a poll of several hundred development & infrastructure industry professionals), as well as one of the Top 5 QCs for residential development and one of the Top 7 QCs for infrastructure development. Prior to taking silk, he was unanimously rated as the No.1 junior in the planning sector in all three of the main UK directories: Legal 500 UK Bar (2017 & 2018), Chambers & Partners UK Bar (2018 & 2019) and Planning Magazine’s Planning Legal Survey (2018).

Commentary in the directories includes: “a real jewel in the planning Bar crown”, “tremendously respected”, “a match for any silk” and “one of the best court advocates I’ve seen”. He was awarded ‘UK Planning Barrister of the Year’ at the Lawyer Monthly Legal Awards in 2018 and ‘Environment and Planning Junior of the Year’ at the Chambers UK Bar Awards in 2017. He was also shortlisted for ‘Real Estate, Environment and Planning Junior of the Year’ at the Legal 500 UK Bar Awards in 2017.

Charles’ practice covers the full range of advisory, inquiry and High Court work in the planning field. He has acted in some of the most significant planning court cases and inquiries in recent years (examples are given below and in the ‘cases’ and ‘inquiries’ links). The majority of his work is for commercial clients, but he also undertakes regular work for local planning authorities and central government (particularly in cases of strategic importance) as well as private clients.

Regularly commended in the legal directories for his personable and approachable manner, he enjoys the team-work that forms a central part of planning practice. He is just at home cross-examining on complex technical issues at an inquiry as he is making submissions on novel legal issues in the High Court and appellate courts, or providing strategic advice as a part of a multi-disciplinary team.

He is one of the presenters of the high profile cross-chambers planning themed weekly discussion show, ‘Have We Got Planning News For You’, which attracts around 2000 viewers weekly and guest appearances from some of the UK’s most well known figures in planning, architecture and economics.

Listed below are examples of his most significant work arranged sector-by-sector in the following order: (1) Major London development; (2) residential; (3) care home and other specialist accommodation (4) commercial, industrial, retail and regeneration; (5) plan-making; (6) enforcement; (7) heritage assets; (8) Green Belt development; (9) Planning procedure and practice. See the separate Energy & Natural Resources and Infrastructure sections for his planning work in these fields..

### Major London Developments

- Promoted Prime London residential developments at Duke’s Lodge adjacent to Holland Park (for Christian Candy’s CPC Group), Chester Gate adjacent to Regent’s Park (also for the CPC Group), the former Harrods Depository at 60 Sloane Avenue, South Kensington (a complex land use swap involving the relocation of existing offices to new bespoke office development in Kensal Green), 1 Campden Hill & 69 Campden Hill Road (a substantial Grade II listed property near Kensington High Street), Fulham Riverside (463 waterfront dwellings near Hurlingham Park) and Sotheron Place off the New King’s Road (mixed commercial/residential scheme)
- Advising on planning strategy in relation to a 500,000 sqft mixed use scheme at 15-16 Minories & 62 Aldgate in the City of London,
- Tall buildings – successfully defending the London Borough of Southwark’s refusal of permission for a 12

storey tower at 6 Paris Garden & 20-21 Hatfields, Southwark, SE1 and acting for the successful objectors to a proposed tower on the site of Mildmay Hospital, Shoreditch. Also currently working on several tall buildings cases in Bristol for the developers/promoters (2018-2019, ongoing).

- Urban regeneration – acting for the SSCLG in the litigation concerning the compulsory purchase order for the intended to facilitate the multi-million pound makeover of Shepherds Bush Market (*Horada v. Secretary of State for Communities and Local Government* [2016] EWCA Civ 169); advising the Greater London Authority on strategic planning issues relating to the regeneration of Old Oak Common; successfully promoting a compulsory purchase order by Westminster City Council to deliver the comprehensive re-development of the Tollgate Gardens Estate in Kilburn in order to improve the quality and quantity of the Council's housing stock (a flagship project of the Council's Housing Renewal Strategy).

#### Residential

- Promoting numerous residential developments at planning appeals. In 2019-2020 this includes: 1210 dwellings at Wolborough Barton, Teignbridge District (for the landowner consortium); 300 dwellings at Heol-Y-Cefn, Blackwood, Caerphilly Borough (for Persimmon); 120 dwellings in Buxton, Peak District (for Persimmon); 44 dwellings in Droitwich, Wychavon District (for Beechcroft Land), 66 units at Ickford, Aylesbury Vale District (for CALA); 105 dwellings at Cullompton, Mid-Devon District (for Taylor Wimpey), 44 dwellings in Bagshot, Surrey Heath District (for CALA).
- Successfully defending East Riding of Yorkshire Council's 5 year housing land supply in three high profile appeals by Gladman in 2017 relating to proposed residential developments South Cave, Holm on Spalding Moor and Pocklington – the Council successfully resisted each of the appeals, the latter two with costs awards in their favour. Secured a 4th consecutive success for ERYC in a subsequent appeal by Williamsfield Developments Ltd relating to a proposed 67 dwelling residential development at Hutton Cranswick in 2019.
- Acting for the promoters/landowners of new settlements at Fawley Power Station (Fawley Waterside), Deenethorpe Airfield (Tresham Garden Village), West Tey and Dunsfold Aerodrome.
- Promoting major allocations through the local Plan EIP process including a 17,000-24,000 dwelling new settlement in North Essex, 5000 dwellings in Central Bedfordshire, 2000 dwellings East of Chippenham, 1800 dwellings in Waverley Borough, 700 dwellings in Hart District and 540 dwellings in Cherwell District.
- Devising a successful, JR-proof strategy to obtain planning permission from local planning authorities for two Crest Nicholson developments on Green Belt sites in Broxbourne District.
- Successfully defending High Court challenges to major residential planning permissions including (i) the latest, 1200 dwelling phase of Newcastle Great Park, jointly instructed by Taylor Wimpey and Persimmon, (ii) a 55 dwelling Taylor Wimpey development at Pool in Wharfedale Leeds; (iii) *Stroud BC v. SSCLG* [2017] EWHC Admin (LPA's challenge to an Inspector's decision to allow an appeal by Persimmon Homes relating to a 188 dwelling scheme in Berkeley); (iv) *Exeter City Council v. SSCLG* [2015] EWHC 1663 (Admin) (LPA's challenge to 120 dwellings near Exeter); (v) *R (Leicestershire Police and Crime Commissioner) v. Blaby DC* [2014] EWHC 1719 (Admin) (a challenge by Leicestershire Police to a 4,250 dwelling Lubbethorpe Urban Extension in Blaby District).
- Influential court cases on wide-reaching issues of law and policy affecting residential development including the reworded presumption in favour of sustainable development in para. 11 of 2018/2019 NPPF (*Monkhill Ltd. v. SSHCLG* [2020] P.T.S.R. 240), the NPPF definition of "Previously Developed Land" (*Dartford BC v. SSCLG* [2017] P.T.S.R. 737, the 'second homes ban' in the *St Ives Neighbourhood Plan* (*R (RLT Built Environment Ltd) v. Cornwall Council* [2017] J.P.L. 378); whether student accommodation can be included in a LPA's 5 year housing land supply (*Exeter City Council v. SSCLG* [2015] EWHC 1663 (Admin)) and whether neighbourhood plans can allocate sites for residential development (*R (Larkfleet Homes Ltd) v. Rutland County Council* [2015] P.T.S.R. 1369).

#### Care Home and Other Specialist Accommodation

- 4 day inquiry in January 2019 relating to Churchill Retirement Living's proposal for 43 retirement apartments in Hythe, New Forest District (for the local planning authority).
- Obtained permission on appeal for a 60 bed residential care home, 47 assisted living apartments and 55 age restricted dwellings at Exeter Road, Topsham for Waddeton Park Ltd following a 2 week appeal in 2016 (together with an award of costs); acted for the same client at a further inquiry in December 2018 relating to a proposed 64-bedroom residential care home and 155 market housing units (decision awaited).
- Successfully acted for Henley Healthcare Ltd at a 5 day inquiry in 2014 regarding its proposal for a

community mental hospital at its residential care home premises at Apple Hill, nr Maidenhead, and in an associated appeal against the enforcement of a condition restricting the age of occupants of the care home to “the elderly”.

#### Commercial, Industrial, Retail and Regeneration

- Advising the promoters of Thames Enterprise Park (a joint venture between Greenergy and iSec, part of the Marcol Group), which would be the UK’s first truly multi-modal superhub, creating c. 4,500 jobs (2019-2020, ongoing).
- Promoting a concrete batching plant and associated development at Waterside Way industrial estate, Wimbledon (for Express Concrete); advising London Concrete & Aggregate Industries on planning issues relating to another London concrete batching plant (both 2019).
- Acting for Whitstable Oyster Company in an enforcement appeal relating to alleged breaches of planning control associated with trestles on Whitstable Beach which it uses for commercial oyster farming (2018-2020, ongoing; 3 week inquiry scheduled for September & October 2020).
- Securing a favourable planning policy framework for Jaguar Land Rover’s long-term business plans in the UK.
- Successfully promoting Porsche Cars (Great Britain) Ltd’s proposals for the remodelling and extension of the flagship Porsche Sales Centre on the A4 in Chiswick.
- Several High Court planning challenges to planning permissions and compulsory purchase orders for retail and commercial development including R (Sainsbury’s Supermarkets Ltd.) v. Wolverhampton City Council [2011] 1 A.C. 437 (for Sainsbury’s in its successful Supreme Court challenge to the grant of a CPO to facilitate a large Tesco store in Wolverhampton on the basis that the Council took into account immaterial considerations), R (Midlands Co-Operative) v. Birmingham City Council [2012] B.L.G.R. 393 (successfully defending Birmingham City Council’s decision to make a CPO to facilitate proposals by Tesco for the retail-led regeneration of Stirchley), Newry Chamber of Commerce’s Application for Judicial Review [2015] NIQB 65 (appearing for the developers of a 80,000sqft convenience goods scheme in Newry, Northern Ireland, successfully resisting a JR challenge by rival retailers), Re Ellen Doyle’s Application for Leave to Apply for Judicial Review [2014] NIQB 82 (for the Northern Ireland Planning Appeals Commission successfully defending the grant of permission to the University of Ulster for a key element of a £300m mixed use regeneration scheme described in the decision as “the most important regeneration in North Belfast over the next 5-10 years”), Horada v. Secretary of State for Communities and Local Government [2016] EWCA Civ 169 (appearing for the SSCLG in a challenge to the CPO made by the London Borough of Hammersmith and Fulham to facilitate the multi-million pound makeover of Shepherds Bush Market),

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“An exceptionally talented lawyer with very good cross-examination and presentation skills, he really knows how to get projects through the planning process.”

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#### Plan-making

- Appeared for site promoters at the Examinations in Public of the North Essex Authorities Part 1 Local Plan (2020), the Cherwell Local Plan Review (2018-2020), Hart Local Plan (2018), the Coventry Local Plan (2017), the Warwick Local Plan (2017), the Stratford upon Avon Core Strategy (2015), the Central Bedfordshire Development Strategy (2015), the Chippenham Site Allocations Plan DPD (2015) and the Rutland Site Allocations DPD (2013).
- High profile High Court cases in 2020 concerning statutory review challenges to the Wycombe District Local Plan and the Leeds Site Allocations Plan.
- R (RLT Built Environment Ltd) v. Cornwall Council [2017] J.P.L. 378, the high profile challenge



to the St Ives Neighbourhood Plan which imposed a 'ban' on new second homes in St Ives.

#### Enforcement

- Acting for Whitstable Oyster Company in an enforcement appeal relating to alleged breaches of planning control associated with trestles on Whitstable Beach which it uses for commercial oyster farming (2018-2020, ongoing; 3 week inquiry scheduled for September & October 2020).
- *Ioannou v. SSCLG* [2015] 1 P.& C.R. 10, the leading authority on the scope of the powers on an appeal against an enforcement notice to grant permission for a different or modified development to that enforced against, and on the scope of the deemed planning permission in cases of under-enforcement under s.173(11) of the Town and Country Planning Act 1990.
- *Bowring v. SSCLG* [2013] J.P.L. 1417, concerning the scope of requirements that can lawfully be contained in an enforcement notice against an unauthorised change of use.

#### Heritage Assets

- Obtained planning permission on appeal for Persimmon / Charles Church for a 188 dwelling scheme in Berkeley in close proximity to the Grade I listed Berkeley Castle and several other listed buildings, and partially within the Berkeley Conservation Area – despite forceful objections from Heritage England and the owner of Berkeley Castle. Two week public inquiry in 2016; successfully defended a High Court challenge in 2017.
- Dozens of other planning appeals in which one of the main issues was alleged impact on one or more heritage assets.
- *Mordue v. Secretary of State for Communities and Local Government* [2015] EWHC 539 (Admin), concerning the burden of proof in planning claims alleging that the decision-maker has failed to comply with the duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the preservation and enhancement of listed buildings and their settings.

#### Green Belt Development

- Acted in a series of influential High Court cases over many years concerning the interpretation of Green Belt policy: *R (Heath & Hampstead Society) v. Camden LBC* [2008] All E.R. 80 (interpretation of PPG2 para 3.6 on replacement dwellings), *West Lancashire BC. v. SSCLG* [2010] J.P.L. 810 (interpretation of PPG2 para. 3.12 regarding material changes of use in the Green Belt), *Knight v. SSCLG* [2009] EWHC 3808 (Admin) (application of PPG2 in relation to previously developed land in the Green Belt), *Hayden-Cook v SSCLG* [2011] J.P.L. 90 (relevance of alternative, more acceptable forms of development in considering the 'very special circumstances' test), *Europa Oil & Gas Ltd. v. SSCLG* [2014] 1 P. & C.R. 3 (whether exploration for oil and gas constitutes "mineral extraction" under NPPF para. 90 and is thus capable of being appropriate development in the Green Belt), *R (Privett) v. Gravesham BC* [2016] EWHC 1276 (Admin) (regarding NPPF para. 89 on redevelopment of previously developed sites in the Green Belt) and *Aireborough Development Forum v. Leeds City Council* [2020] EWHC 1461 (concerning the 'exceptional circumstances' test for Green Belt release in Local Plans, and the standard of reasons required by Local Plan Inspectors in this context).

#### Planning Procedure and Practice

- *R (Plan B Earth) v. Secretary of State for Transport* [2020] EWCA Civ 214 concerning the relevance of the Paris Agreement on climate change to National Policy Statements under the Planning Act 2008.
- *R (Gleeson Homes Ltd) v. SSCLG* [2014] P.T.S.R. 1226 concerning the time when a recovery direction takes effect and whether the Secretary of State has implied powers under the Town and Country Planning Act 1990 to correct obvious errors in appeal decisions (with Jonathan Swift QC).
- *Garlick v. Secretary of State for Communities and Local Government* [2013] EWHC 1126 (Admin) on the requirements of procedural fairness in the context of planning appeals under the written representations procedure.
- Various proceedings relating to the enforcement, modification and discharge of planning obligations, including the leading case of *R (Renaissance Habitat Ltd) v. West Berkshire DC* [2011] J.P.L. 1209 on the interpretation of the requirement under s.106A of the Town and Country Planning Act 1990 that in order for a planning obligation to be discharged the applicant must show that it "no longer serves a useful purpose".



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“He is massively personable and a pleasure to work with. He has a very good eye for spotting key details in a case, he is strong on analysis of complex facts to produce a coherent narrative and he is very clear in how to structure the case to bring out its strongest points.””

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### Public Procurement

Charles has substantial experience of both advisory and contentious public procurement work in both England & Wales and Northern Ireland. He is recommended as a leading QC in public procurement by Legal 500 UK Bar 2019 (having been recommended in a succession of previous editions as a leading junior), which comments that he is “very good at sorting the wheat from the chaff” and has “amassed considerable experience” in this field. His clients have included contracting authorities, contractors and potential challengers. He is an active member of the Procurement Lawyers’ Association.

Much of his public procurement work has been in the context of regeneration projects and development agreements. This has included the two leading cases on the circumstances in which such agreements trigger the need for procurement: most recently, he acted for the successful appellant in the ground-breaking case of *R (Faraday Development Limited) v. West Berkshire Council* [2019] P.T.S.R. 1346 in which, in addition to holding that a development agreement structured around an option to purchase the land in question was a public works contract requiring procurement, the Court of Appeal made the first ever declaration of ineffectiveness by an English court as well as imposing a civil financial penalty; prior to that, he acted for the successful defendant authority in *R (Midlands Co-Operative) v. Birmingham City Council* [2012] Eu L.R. 640 (defending a challenge to a development agreement for a retail-led regeneration scheme in Stirchley). He has advised on similar issues in the contexts of (amongst other things) the expansion of a world famous football stadium, the relocation of a municipal sports facility, retail-led regeneration proposals, and the construction of extensions to a well known London Underground station (project costs in excess of £100m). He has also lectured and published extensively on this subject, including an influential article cited in Prof. Sue Arrowsmith’s leading book *Law of Public and Utilities Procurement*.

His practice also includes procurement issues more broadly. His experience includes:

- Advising the Cabinet Office on public procurement issues relating to the outsourced administration of civil service pensions (2019-2020, ongoing).
- Litigation in the High Court of Northern Ireland in which the applicant contended that the award of Northern Ireland’s most significant waste disposal contract was in breach of public procurement law (2019, settled).
- *R (Wylde) v. Waverley Borough Council* [2017] P.T.S.R. 1245 – on the extent to which persons other than ‘economic operators’ as defined in the Public Contracts Regulations have standing to bring a judicial claim alleging that a contracting authority has breached the Regulations.
- Advising a local authority in relation to the procurement of management services for its entire leisure and culture portfolio.
- Advising the Skills Funding Agency on procurement issues relating to services contracts awarded by it to skills training organisations.
- A dispute relating to the applicability of the Public Contracts Regulations to the Government’s Start-Up Loans scheme set up to boost youth enterprise.
- Advising a housing association on procurement of housing stock from developers with planning permission for affordable housing.

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“An exceptional barrister – fantastically bright, hardworking and accessible. Can handle anything you or the other side can throw at him.”

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#### Regulatory & Public Law and Human Rights

Charles is recommended as a leading QC in administrative & public law in the latest editions of both Legal 500 UK Bar and Chambers & Partners UK Bar (having been ranked as a leading junior in both directories for many years previously). He is also recommended as a leading QC in local government law in Chambers & Partners UK Bar (2020). He has considerable experience across the whole spectrum of public law, including all aspects of central and local government, constitutional issues, freedom of information, immigration, community care, healthcare, mental health, prisons, public procurement, regulation, social security and transport.

He has worked on numerous cases before the Administrative Court in England & Wales and before the Judicial Review Court in Northern Ireland. His well-known appellate practice includes some of the leading public law appeals of the 2000s before the Supreme Court (where he has appeared 16 times) concerning issues such as the territorial application of UK Acts of Parliament (Al-Skeini), the circumstances in which the High Court’s judicial review jurisdiction can be restricted by legislation or judicial policy (Cart) and the Court’s jurisdiction to review the Parliamentary procedure for Hybrid Bills for compatibility with EU law (HS2).

Prior to taking silk, he was a member of the Attorney General’s A Panel of Junior Counsel to the Crown. He was also member of the Treasury Solicitor’s Freedom of Information Panel until its incorporation within the Attorney General’s main panels. For many years he was a contributor to the Administrative Court Digest and on the editorial team of the ‘International Developments’ section of the journal Public Law. He has published and spoken widely on court systems and the judiciary, and has given expert evidence on the issue to the House of Lords Constitution Committee.

His recent leading public law cases include:

- Appeared for the UK Government before the UNECE Aarhus Convention Compliance Committee in RSPB, Friends of the Earth and Leigh Day v. United Kingdom (ACCC/C/2017/156, heard on 5th November 2019) in which it is alleged that the Wednesbury standard of review of administrative decisions is insufficiently effective to secure compliance with the provisions of Article 9 of the Aarhus Convention regarding access to justice in relation to environmental decision making.
- R (Plan B Earth and others) v. Secretary of State for Transport [2020] EWCA Civ 214, multiple judicial review challenges to the Airports National Policy Statement which endorsed the principle of expansion of London Heathrow Airport including a 3rd runway and 6th terminal.
- A series of high profile cases concerning the lawfulness of restrictions on access to social security benefits by economically inactive EU migrants: Patmalniece v. Secretary of State for Work and Pensions [2011] 1 W.L.R. 783, St Prix v. Secretary of State for Work and Pensions [2013] 1 All E.R. 752, Mirga v. Secretary of State for Work and Pensions [2016] 1 W.L.R. 481, R (HC) v. Secretary of State for Work and Pensions [2017] 3 W.L.R. 1486.
- R (Fratila & Tanase) v. Secretary of State for the Home Department [2020] EWHC 998 (Admin), concerning the legality of the UK Regulations that, post-Brexit, disentitle EU citizens with Pre-Settled Status from access to means tested benefits.
- Two of the principal domestic cases on the duty under s.123 of the Local Government Act 1972 to obtain best consideration for the disposal of land interests and associated state aid issues: R (Faraday Development Ltd) v. West Berkshire Council [2016] EWHC 2166 (Admin) & [2018] EWCA Civ 2532 and R (Midlands Co-Operative) v. Birmingham City Council [2012] B.L.G.R. 393.
- A high profile challenge to Ofcom’s decision not to uphold a complaint that Channel 4 had

breached broadcasting standards in relation to the TV programmes My Big Fat Gypsy Wedding and Thelma's Gypsy Girls, a case raising important issues about the legality of Ofcom's procedures for determining complaints: R (Traveller Movement) v. Office of Communications [2015] EWHC 406 (Admin).

- Two of the most significant recent cases on standing to bring a judicial review claim in England & Wales (R (Wylde v. Waverley Borough Council [2017] P.T.S.R. 125) and Northern Ireland (Doyle's application for judicial review [2014] NIQB 82).

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“He has a very clear way of communicating and an excellent professional approach. He is sharp and clearly has an excellent grasp of the legal matters at hand.”

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Charles is also recommended as a leading QC in Civil Liberties & Human in Legal 500 UK (having been recommended as a leading junior in four consecutive editions previously). Much of his public law work involves issues under the Human Rights Act 1998 and/or the ECHR. He has experience of applications for declarations of incompatibility under s.4 of the Human Rights Act, judicial review of public authority acts on human rights grounds, damages claims under s.8 of the Human Rights Act and proceedings before the European Court of Human Rights. From 2017-2020 he was the UK Member of the EU Fundamental Rights Agency's Management Board (a Ministerial appointment by the Lord Chancellor and Secretary of State for Justice). Recent human rights cases include:

- Case C-542/13 M'Bodj v. État Belge [2015] C.M.L.R. 16 and Case C-562/13 Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v. Abdida [2015] 2 C.M.L.R. 15, two references from the Belgian Cour Constitutionnelle concerning the scope of humanitarian protection under the EU Charter of Fundamental Rights for non-EU citizens suffering from serious illness whose removal to their country of origin would amount to inhuman or degrading treatment.
- AM (Zimbabwe) v. Secretary of State for the Home Department [2020] UKSC 17, concerning the circumstances in which the expulsion of a seriously ill foreign national who did not have leave to remain in the UK would amount to inhuman/degrading treatment contrary to Article 3 ECHR, having regard to the recent judgment of the Grand Chamber of the European Court of Human Rights on this issue in Paposhvili v. Belgium.
- Fair trial rights: acting for the Secretary of State for Justice in R (Bates) v. Independent Adjudicator [2011] EWHC 3236 (Admin), a challenge to a prison disciplinary adjudication alleging that the procedure was contrary to Article 6 ECHR.
- Acting for the United Kingdom in App. No. 39714/15 Austin v. United Kingdom (2017) 65 E.H.R.R. SE16 concerning the circumstances in which Article 8 ECHR applies in cases of environmental pollution;
- Case T-715/14 NK Rosneft a.o. v. European Council ELCI:EU:T:2018:544 & Joined Cases T-735/14 & T-799/15 Gazprom Neft v. European Council ELCI:EU:T:2018:548 – proceedings before the EU General Court in which the Russian energy companies Rosneft and Gazprom sought the annulment of EU sanctions targeted at the Russian oil sector in the light of Russia's actions destabilising the situation in Ukraine, including on fundamental rights grounds relating to alleged infringement of Article 17 of the Charter of Fundamental Rights (right to property).

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“His ability to get on top of complex cases is very, very impressive and he has an attractive style of

## Northern Ireland

Charles was called to the Bar of Northern Ireland in 2010 and regularly provides advice and representation on matters within or relating to Northern Ireland, particularly in relation to planning and public procurement.

His most significant work in Northern Ireland includes the following:

### High Court Cases

- River Ridge Recycling (Portadown) Ltd v. Arc 21 (settled), a claim under the Public Contracts Regulations 2015 alleging that the award of Northern Ireland’s most significant waste disposal contract was in breach of public procurement law.
- Safe Electricity Armagh and Tyrone Ltd’s application for Judicial Review [2018] NIQB: challenge to the Department for Infrastructure’s grant of planning permission for the Northern Ireland element of the North-South Ireland Electricity Interconnector, the most substantial energy infrastructure project in Northern Ireland in the modern era. The grounds include alleged breaches of EU environmental law and that the Department’s Permanent Secretary did not have vires to issue the decision whilst there remained no ministers in Northern Ireland due to the collapse of the power sharing government. The latter point is of profound constitutional and practical importance in Northern Ireland.
- Buttercrane Centre Limited’s Application for Judicial Review [2017] NIQB: challenge to planning permission for the extension of The Quays retail centre in Newry, concerning the compatibility with Article 6 ECHR of the ‘promptness’ requirement for JR.
- Kelvin Properties Limited’s Application for Judicial Review [2016] NIQB: challenge to the Planning Appeal Commission’s refusal of planning permission for a retail development in Coleraine (settled following leave hearing).
- Darren Crowe’s Application for Judicial Review [2016] NIQB: challenge to the Planning Appeal Commission’s refusal of planning permission for an onshore wind turbine development on the grounds of potential impact on species protected under the EU Habitats Directive (settled following leave hearing).
- Newry Chamber of Commerce’s Application for Judicial Review [2015] NIQB 65: challenge to planning permission for a large scale retail-led redevelopment, raising issues under the Habitats Directive, EIA Directive and the Northern Ireland Act 1998.
- Doyle’s Application for Judicial Review [2014] NIQB 82: challenge to the Planning Appeal Commission’s grant of permission for a key element of the University of Ulster’s £300m regeneration scheme in North Belfast, concerning standing for JR in the planning context.
- Department of Environment’s Application for Judicial Review [2014] NIQB 4: challenge to Planning Appeal Commission’s grant of permission for a large-scale airport car-park in the countryside, concerning the relationship between the different applicable Planning Policy Statements.

### Planning Inquiries and Planning Appeal Hearings

- Appearing for the Department for Infrastructure at the two-stage public inquiry into the Northern Ireland element of the proposed North-South Ireland Electricity Interconnector, Northern Ireland’s largest infrastructure project in recent years.
- Acting for Derry and Strabane District Council at an inquiry into a proposed 1,400 dwelling urban extension on the edge of Derry City.
- Several planning appeal hearings concerning appeals against enforcement notices served on operators of unauthorised airport car parks in the open countryside near Belfast International airport.

### Advisory Work

- Advising the Arc 21 consortium on constitutional and planning law issues relating to the redetermination of its application for a strategic Energy From Waste facility the permission for which was quashed by the Northern Ireland Court of Appeal in Buick’s Application for Judicial Review [2018] NICA 26 on the basis that it had been outside the powers of the Permanent

Secretary of the Department for Infrastructure to issue the permission in the absence of Ministerial Government.

- Advising the UK Government on the EU law and international trade law implications of Brexit for the all-Ireland Single Electricity Market.
- Advising the Department of Culture, Arts and Leisure on proposed restrictions to salmon fishing in the River Foyle on EU habitats grounds.
- Advising local planning authorities on planning applications for onshore wind turbine developments.

### Tribunal Appointments

Charles has a growing practice as a dispute resolver. He is a Fellow of the Chartered Institute of Arbitrators with an Advanced Certificate in International Arbitration, and an Associate Member of the Hong Kong Institute of Arbitrators. He is an ADR Group Accredited Mediator.

Appointments include:

- Justice of the Astana International Finance Centre Court in Nur-Sultan, Kazakhstan (appointed by decree of the President of the Republic of Kazakhstan in July 2019). In July 2020 he sat as the Judge in the first ever hearing to take place before the AIFC Court (done remotely using video conferencing), in Aliyev v. Propportunity Management Company Ltd (Case No. 2 of 2020). Within one month of the claim being issued, two procedural orders were made, the hearing was held and the judgement was delivered. In October 2020, permission to appeal was refused by Lord Faulks QC on the basis that an appeal had no real prospects of success.
- Arbitrator in a high value dispute concerning s.106 planning obligations relating to contributions towards local infrastructure to meet the impacts of a major development.
- Expert in dispute relating to the provision of funding pursuant to a development aid agreement between the EU and a third country.

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### Selected Reported Cases

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- AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17
- R (Fratila & Tanase) v Secretary of State for Work and Pensions [2020] EWHC 998 (Admin)
- R (Heathrow Hub Ltd) v. Secretary of State for Transport [2020] EWCA Civ 213
- R (Plan B Earth, Friends of the Earth, London Borough of Hillingdon & others) v. Secretary of State for Transport [2020] EWCA Civ 214
- R (Ross & Sanders acting on behalf of Stop Stansted Expansion) v. Secretary of State for Transport [2020] EWHC 226 (Admin)
- Arora Management Services Ltd. Heathrow Airport Ltd [2020] EWHC 79 (Ch)
- Patel & Shah v. Secretary of State for the Home Department [2020] 1 W.L.R. 228 (SC)
- RSPB, Friends of the Earth and Leigh Day v. United Kingdom (ACCC/C/2017/156)
- Arora Management Services Ltd v Heathrow Airport Ltd & Hillingdon LBC [2019] 5 C.M.L.R. 24 (ChD)
- Monkhill Ltd. v. Secretary of State for Housing, Communities and Local Government [2020] P.T.S.R. 240
- Leeds City Council v. Secretary of State for Communities and Local Government [2019] EWHC 682 (Admin)
- Southwark LBC v. Transport for London [2018] 3 W.L.R. 2059 (SC)
- Anixter Ltd. v. Secretary of State for Transport [2019] 1 P.&C.R. 16
- Faraday Development Ltd. v. West Berkshire Council [2019] P.T.S.R. 1346
- C-461/17 Holohan v. An Bord Pleanála [2019] P.T.S.R. 1045
- Thornhill Estates v. Secretary of State for Communities and Local Government [2018] EWHC 3663 (Admin)
- Case T-715/14 NK Rosneft a.o. v. Council ELCI:EU:T:2018:544 and Joined Cases T-735/14 & T-799/14 Gazprom Neft v. Council ELCI:EU:T:2018:548
- C-528/16 Confédération Paysanne v Premier Ministre ELCI:EU:C:2018:583

- Case C-214/16 King v Sash Window Company [2018] 2 C.M.L.R. 10
- R (HC) v Secretary of State for Work and Pensions [2017] 3 W.L.R. 1486
- App. 39714/15 Austin v United Kingdom (2017) 65 E.H.R.R. SE16
- Southwark LBC v Transport for London [2018] P.T.S.R. 333
- London Borough of Southwark & City of London v. Transport for London [2017] EWCA Civ 1220
- Case C-490/16 AS v. Slovenia [2018] 1 W.L.R. 852 & Case C-466/16 Jafari [2018] 1 WLR 774
- Minerva (Wandsworth) Ltd v Greenland Ram (London) Ltd [2017] EWHC 1457 (Ch)
- Stroud District Council v SSCLG [2017] EWHC Admin
- Manchester Ship Canal Company Ltd v Environment Agency [2017] EWHC 1340 (QB)
- Dartford Borough Council v. Secretary of State for Communities and Local Government [2017] P.T.S.R. 737
- R (Wylde) v. Waverley BC [2017] EWHC 466 (Admin)
- R (RLT Built Environment Ltd) v Cornwall Council [2017] J.P.L. 378
- R (Faraday Development Ltd) v West Berkshire Council & Anor [2016] EWHC 2166 (Admin)
- R (Faraday Development Limited) v. West Berkshire Council [2016] Con. L.R. 131.
- R (Ezz) v HM Treasury [2016] EWHC 1470 (Admin)
- Grafton Group (UK) Plc v. Secretary of State for Transport [2017] 1 W.L.R. 373
- Horada v Secretary of State for Communities and Local Government [2016] P.T.S.R. 1271
- R (Privett) v Gravesham BC [2016] EWHC 1276 (Admin)
- ACCC/C/2014/100&101 HS2 Action Alliance v (1) United Kingdom (2) European Union
- Mirga v Secretary of State for Work and Pensions, Samin v Westminster City Council [2016] 1 W.L.R. 481
- Dartford BC v Secretary of State for Communities and Local Government [2016] EWHC 635 (Admin)
- Gallagher Properties Ltd v Secretary of State for Communities and Local Government [2016] EWHC 674 (Admin)
- R (Tarmac Aggregates Ltd) v Secretary of State for Environment, Food and Rural Affairs [2016] Env. L.R. 15
- R (Larkfleet Ltd) v. South Kesteven District Council [2016] Env L.R. 4
- De Souza v. Secretary of State for Communities and Local Government [2016] J.P.L. 85
- Ashdown Forest Economic Development LLP v Wealden District Council [2016] Env. L.R. 2
- R (Cornwall Council) v. Secretary of State for Health [2016] A.C. 137

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## Education & Professional Career

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Keating Chambers	2020
Landmark Chambers	2004 - 2020
Justice of the Astana IFC Court (part-time)	2019
Appointed Queen's Counsel	2019
Full Registered Foreign Lawyer, Singapore International Commercial Court	2017
Associate Member, Hong Kong Institute of Arbitrators	2016
Member, Chartered Institute of Arbitrators	2016
CIArb Advanced Certificate in International Arbitration	2016
Part II Registered Lawyer, Dubai IFC Court	2015
ADR Group Accredited Mediator	2015
Called to the Bar of Northern Ireland	2010
Pegasus Scholarship in Hong Kong (seconded to Mayer Brown JSM's)	2008



planning, environment, real estate and construction team)	
Called to the Bar of England & Wales	2004
Postgraduate Diploma in EC Law, King's College London	2004
Postgraduate Diploma in Law, City University London	2003
BA(Hons) & MA(Oxon) Literae Humaniores, Oxford University	2002

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## Memberships

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Administrative Law Bar Association  
Bar European Group  
Chancery Bar Association  
COMBAR  
Planning and Environment Bar Association  
Procurement Lawyers' Association  
UK Environmental Law Association (Trustee & Council Member, 2016-2020)  
UK National Infrastructure Planning Association  
UK State Aid Law Association

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## Languages

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French (intermediate)  
Russian (intermediate)

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## Additional Information

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As well as spending time with his young family, Charles enjoys running, travel, theatre, contemporary art and rock music. He has run 9 London Marathons and has climbed two of the Seven Summits (parenthood then got in the way of the rest). He skis badly but enthusiastically, much like his guitar playing.