GARDEN COURT CHAMBERS

Stephen Cottle

YEAR OF CALL: 1984

Chambers RANKED IN UK 2024 | The LEGAL 500 UNITED KINGDOM LEADING JUNIOR 2024 | Chambers RANKED IN UK 2023 | The LEGAL 500 UNITED KINGDOM LEADING JUNIOR 2023 | LEGAL AID LAWYER OF THE YEAR AWARDS FINALIST 2014

Stephen is an expert in social housing, planning and property law. He has an established practice in housing and landlord and tenant covering most areas, including equality and discrimination issues, homelessness, possession claims including mortgage repossession, and housing standards and disrepair.

Stephen was a finalist for the Legal Aid Barrister of the Year Award 2014. He is ranked in the Legal 500 and Chambers & Partners for his work in Social Housing. He is also ranked in the Legal 500 for his work in Civil Liberties and Human Rights.

"Stephen has gravitas to spare and is a great team player."

CHAMBERS UK, 2023

"Stephen is brilliant with clients and puts them at ease."

LEGAL 500, 2022 (CIVIL LIBERTIES AND HUMAN RIGHTS)

"Stephen is one of the foremost social housing lawyers at the Bar. He has argued some important and ground breaking housing possession, eviction and homelessness cases in the higher courts. Meticulous, knowledgeable and approachable."

LEGAL 500, 2022 (SOCIAL HOUSING)

"He is extremely bright, fiercely intelligent, and his reputation is superb."

CHAMBERS UK, 2021 (SOCIAL HOUSING)

"An excellent advocate who is intellectually strong, with commitment to the cause and a personable nature."

CHAMBERS UK, 2020 (SOCIAL HOUSING)

"He has enormous energy and great aptitude for turning cases around."

CHAMBERS UK, 2020 (SOCIAL HOUSING)

If you would like to get in touch with Stephen please contact the clerking team:

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You can also contact Stephen directly:

+44 (0)20 7993 7710

HOUSING LAW

Stephen is an expert in social housing law and has an established practice at Garden Court Chambers in housing and landlord and tenant covering most areas, including:

Equality and discrimination issues

Homelessness

Possession claims including mortgage repossession

Housing standards and disrepair

NOTABLE CASES

Past notable cases can be viewed below. Click here to see a list of recent notable cases.

~~*Dean vs Mitchell & Secretary of State for Levelling-up, Housing and Communities* [2023] EWHC 1479 (KB)~~

The High Court rejected the Government's argument that it was justified to deny security to those living in a mobile home on a protected site, and declared the Mobile Homes Act (MHA) 1983, as amended, to be incompatible with Article 8 of the ECHR, insofar as it required that result. The Court ruled that part of the MHA 1983, in so far as it excludes those whose agreements were entered into before the land became a protected site, is incompatible with Article 8 of the ECHR. The defendant, represented by Stephen, falls within a group that the court has decided are unjustifiably excluded from the security of tenure and other provisions of the Mobile Homes Act and that situation is incompatible with Article 8 of the ECHR.

~~*Brent LBC v Johnson*[2022] EWCA Civ 28 18 Jan 2022, Court of Appeal (Civil Division)~~

Summary: The fact that a property was held for charitable purposes did not necessarily mean that it was held on charitable trusts. Equity would impose a constructive trust on a person, irrespective of their intention, in appropriate circumstances, but where there was no suggestion of wrongdoing, and the arrangements alleged to have given rise to the trust were in writing, the question of whether a trust existed depended on the proper interpretation of the written arrangements. In the instant case, no charitable trusts had arisen where a local authority had made a financial grant to another local authority to assist it to perform its statutory functions, namely the operation of a community centre. Click here for further case analysis on Westlaw UK.

~~*Cooke v Northwood (Solihull) Ltd Northwood (Solihull) Ltd v Fearn Court* [2022] EWCA Civ 40~~

The Court of Appeal considered the formalities required (A) under the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 for a certificate under the Housing Act 2004 s.213 given by a landlord which was a limited company; & (B) under section 8 of the Housing Act 1988. The tenants appealed against a judge's decision that the landlord's notice seeking possession was valid. The landlord cross-appealed against a decision that its certificate to the tenants providing information about the deposit scheme was invalid. The primary legislation governing notice given under s.8 of the 1988 Act did not require a signature, it merely required service by the landlord of a notice in a particular form. On the face of it, a landlord would comply with s.8 if an agent served notice on his behalf, even if the agent signed the notice in the landlord’s name. In addition, the form prescribed by the relevant regulations explicitly allowed notice to be given and signed by an agent. In the instant case, the s.8 notice was signed by an authorised agent of the landlord. The Court also

found that a certificate signed by the landlord's property manager was valid.

***Southern Pacific Mortgages Ltd v Jacqueline Green* [2018] EWCA Civ 854**

Arrears; Disability discrimination; Interest-only mortgages; Mortgages; Reasonable adjustments. The Defendant had taken out a 20-year repayment mortgage. Arrears accrued as a result of disability. The DWP through its "Support for Mortgage Interest" scheme met the interest payments of a person in the Defendant's position. The Recorder found as a fact that the interest due on the principle sum, payable by the Defendant was lower than the rate met by the DWP.

She was therefore entitled to a payment that would meet the interest payment due, and more. Had the mortgage been changed to an interest-only mortgage, the Defendant would have been able to meet the interest payments and paid off the arrears over a relatively short period of time. The lender issued proceedings and refused the Defendant's requests to switch to an interest-only mortgage as its policy was not to provide such mortgages to existing repayment mortgagors.

The main issue concerned the nature of the service that was being provided and whether that policy made it impossible or unreasonably difficult for disabled persons to make use of the mortgage service or put the Defendant at a substantial disadvantage. The Court decided that an adjustment from capital repayment to interest-only would fundamentally alter the service and the lender had not discriminated unlawfully against the borrower on account of her disability or failed to make a reasonable adjustment for her under s.21(1) of the 1995 Act or s.20 of the 2010 Act. A stay was obtained pending the outcome of an application to the Supreme Court, which has been lodged.

***Uresha Adikari Mudiyanselage v The London Borough of Redbridge* - B2/2016/0287**

HHJ Saggerson at 1st instance in the County Court at Central London 14/12/15 accepted that the relevant considerations to deciding under section 191 of the Housing Act 1996 if the last settled accommodation was reasonable to continue to occupy, included the duty in section 11(2) of the Children Act 2004.

The matter went to the Court of Appeal over the content of that duty which it was submitted required the decision maker (i) to identify the principal needs of each child and then (ii) to establish which decision would be the one that promoted the welfare of the children and why and then (iii) on the basis of those facts and matters take the decision whether it is reasonable to continue to occupy having "due regard" to the need to promote the welfare of children.

Redbridge had not followed such an approach. The Single Judge in the Court of Appeal considering the matter on the papers, refused permission on the basis that a 2nd appeal was not required to establish that the

observations made in Nzolameso v Westminster CC [2015] UKSC 22; [2015] H.L.R. 22 @27 in relation to section 11(2) Children Act 2004 and suitability applied (distinguishing Mohamoud v Kensington & Chelsea RLBC [2015] HLR 38 @ 63-70 & Huzrat v Hounslow LBC.) equally to whether accommodation was reasonable to continue to occupy.

An underlying issue is the difference in approach between section 11(2) and compliance with Article 3 of the UNCRC, see the May 2013 UNCRC Committee Report and Article 12 of the UNCRC.

***Harrington v Wallace* B5/2016/0487**

Permission to appeal granted on the papers by Clarke LJ against decision of HHJ Godsmark QC sitting in the County Court in Nottingham concerning a case in which the Claimant sought to enforce a charging order under CPR 73.10. The Defendant, an elderly lady, appealed on the basis that the Learned Judge erred in deciding the promissory note (on the strength of which the charging order had been obtained) did not amount to an unconscionable bargain.

Lord Justice Christopher Clarke considered it appropriate for the full court to examine if the law of unconscionable bargain has been subsumed post Etridge or if unconscionable bargain is still operative and can be established where presumed undue influence can not.

***R (on the application of Moore & Coates) v Secretary of State for Communities and Local Government, Bromley LBC, Dartford BC and the Equality and Human Rights Commission* [2015] EWHC 44 (Admin); [2015] B.L.G.R. 405; [2015] J.P.L. 762; [2015] P.T.S.R. D14**

Judicial review of the secretary of state's practice of recovering planning appeals involving Traveller sites in the Green Belt for determination by himself. The Court granted the application because recovering all appeals relating to Travellers' pitches put ethnic Romany Gypsies and Irish Travellers at a disadvantage which constituted breach of Article 6 of the ECHR, amounted to unlawful indirect discrimination under section 19 of the Equality Act 2010 and the public sector equality duty had not been complied with.

***R (Regas) v Enfield LBC* [2015] H.L.R. 14; C1/2015 /0019**

Acting for the local housing authority on an appeal from HHJ McKenna sitting as a Deputy High Court Judge who decided that those living and working in adjoining parts of neighbouring local authorities, that is in Waltham Forest, Barnet, Haringey, Hertsmere Welwyn Hatfield and Broxbourne, should have been consulted in relation to the proposed additional licensing of non-exempt HMO's.

The duration of consultation for proposed selective licensing was also in issue. Lord Justice Elias granted permission to appeal on the papers. However, the Council then decided that even if it won the appeal in the

light of new Regulations different statutory considerations would apply.

Other reported decisions include the following:

Westminster City Council v Clarke **[1992] 2 AC 288**

Lease v licence.

Elitestone Limited v Morris **[1997] 1 WLR 687 HL**

Whether converted building was part of the realty or a removable fixture

Church Commissioners For England v Baines; Wellcome Trust Ltd v Hammad **[1998] 2 WLR 156**

Whether sub letting was protected tenancy

South Bucks DC v Porter **[2003] 2 AC 558** The role of the Court in s 187Bs.

Wrexham CBC v National Assembly of Wales & Michael Berry **[2003] EWCA Civ 835** Meaning of nomadic habit of life in the statutory definition

South Bucks DC v Porter **(No 2) [2004] 1 WLR 1953 (HL). Reasons**

F v Birmingham CC **[2007] HLR 18**

Culmination to a series of challenges to finding that appellant was intentionally homeless. This appeal concerned whether or not section 191(2) of the Housing Act 1996 applied to a failure to investigate HB position in relation to larger accommodation.

Rowley v Rugby BC **[2007] HLR 40**

Whether homelessness review decision contained a deficiency for the purposes of the applicable regulations.

Williams v Birmingham CC **[2008] HLR 4**

In which it was held that duty to make inquiries into suitability of offered accommodation did not extend to considering the feasibility of maintaining same school, since child could move schools.

Wychavon DC v Secretary of State for Communities and Local Government **[2008] EWCA Civ 692; [2009]**

Planning & Third Sector Law Reports 19: Green Belt case -meaning of very special circumstances .

(Baker & others) v Secretary of State & Bromley LBC **[2008] EWCA Civ 141** Race equality issues are a material consideration to a planning application

***O'Brien v South Cambridgeshire DC* [2008] EWCA Civ 835** Race equality issues are relevant to enforcement

***Brightlingsea Haven Limited v Morris & others* [2008] EWHC 1928 (QB)**

Concerning terms of tenancy, section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, constructive trust of a lease and seasonal use of mobile home park, application of section 50 of Senior Courts Act 1981 & Jaggard v Sawyer principles [2009] EWHC 3061 (QB)

***Defence Estates v JL* [2009] EWHC 1049 (Admin)**

Article 8 and public law defence to a possession claim, subsequently reported at enforcement stage [2012] EWHC 2216 (Admin)

***Kakoulli v Fryer* Ref 2011/027**

Before the Adjudicator to HM Land Registry. Restriction on register -whether restriction should be cancelled. Registered transfers multiple grounds of challenge, duress, undue influence, non est factum, unilateral mistake, unconscionable bargain, estoppel, licence /constructive trust.

***Delaney v SSCLG & Basildon BC* [2012] EWHC 1303 (Admin)** Whether breach of s 225 HA 2004 is a material consideration

***Royal Borough of Windsor & Maidenhead v Smith* [2012] EWCA Civ 997** Meaning of caravan in terms of an Injunction

***Collins v SSCLG & Fylde BC* [2013] EWCA Civ 1193** Scope and application of children's best interests

***O'Connor v SSCLG & BANES* [2012] EWHC 942 (Admin)**

Failure to give substantial weight to need in circumstances where new policy imminent

***Moore v SSCLG* [2013] EWCA Civ 1194**

Whether Inspector required to make a finding in relation to whether Romani Gypsy would have somewhere to move to if refused permission and whether refusal of a temporary permission in the Green Belt was irrational. The Court of Appeal said it was.

***Regina (Flynn and another) v Secretary of State for Communities and Local Government and another* [2014] 1 W.L.R. 3270**

A "licence" within the meaning of section 174(6) of the Town and Country Planning Act
1990 meant a permission to enter and occupy the land in question, and could be a contractual licence or a bare licence; that the existence of an implied licence could be inferred from all the relevant circumstances,

including the relationship between the parties involved and the circumstances in which the land was occupied; that, although the first claimant had no interest in the land, the planning inspectorate had erred in failing to consider whether or not she had an implied licence to occupy the land at the relevant times and so was a relevant occupier; and that, accordingly, the impugned decision would be quashed.

***Byrne v Solihull MBC,* Birmingham County Court, HHJ Worster BM30175A (March 2014)** On a statutory appeal brought under section 204 of the Housing Act 1996, the Court quashed a decision that offered accommodation which the Appellant had refused on account of fear of violence, was both suitable and reasonable to accept. It was held that the housing authority's assessment of risk was flawed and the decision was perverse.

***Eastwood v Surrey County Council,* Guilford County Court, HHJ Raeside, 2RH00537**
On appeal against a possession order obtained against trespassers, the possession order was set aside on account of the Council's failure to address the best interests of the child.

***R (on the application of Eastwood) v Windsor and Maidenhead RLBC* (2015) EWHC 151 (Admin)**
The Court dismissed a judicial review of the local planning authority's decision to use direct action under section 178 of the Town & Country Planning Act 1990 to clear land occupied by Romany Gypsies, notwithstanding the lack of any lawful site to move to. The Court disagreed with the submission that it was perverse not to examine alternative sites and to proceed with site clearance without addressing how much longer it would take to fulfil the Secretary of State's expectation that new site provision would be available, thus avoiding the site residents having nowhere else to go to. Permission to appeal has now been granted by the Court of Appeal.

***Begum v Birmingham City Council* (2015) 3 Costs L.O. 387 -Before: Jackson, Bean and Sales LJJ**
The court considered an appeal by a claimant against a costs order, which effectively wiped out the damages she had recovered in the litigation, where the claimant had succeeded in her claim for breach of statutory duty to notify her of defects prior to purchase under Part 5 of the Housing Act 1985, but failed in her claims for negligence and misrepresentation based upon substantially the same facts. The appeal was allowed. The proper way to reflect the claimant's lack of success on negligence and misrepresentation, having regard to the unusual facts of the case, was to make a discount of 15% from the claimant's costs. The claimant is to recover 85% of her costs. This case was distinguished from *Beoco Ltd v Alfa Laval Co Ltd* [1995] QB 137.

Regina (Moore and another) v Secretary of State for Communities and Local Government

(Equalities and Human Rights Commission intervening) [2015] EWHC 44 (Admin)

The court considered the approach of the Secretary of State for Communities and Local Government to the recovery and determination of planning appeals which related to the provision of Travellers' pitches within the green belt. The Court decided that the recoveries constituted indirect discrimination under the Equality Act 2010 s.19 and a breach of the public sector equality duty contrary to s.149 of the Act. The Secretary of State had not shown that the delays caused to the determination of the appeals were necessary or justified and they had not been determined within a reasonable time, such that they were in breach of art.6 of the Convention. The relief granted was limited to the quashing of the two recoveries.

APP/G5180/C/13/2201809 & 2201810 15 July 2015

Permanent planning permission for Green Belt Traveller site granted on appeal after two inquiries, two judicial reviews of the Secretary of State and one appeal to the Court of Appeal. The appellant first contacted solicitors in 2010 in connection with defending the local planning authority's application for an Injunction that she leaves the land.

PROPERTY DISPUTES

Stephen has extensive experience in the following areas:

- **Proprietary estoppel and constructive trusts**
- **Adverse possession.**
- **Law relating to mobile homes**

PLANNING LAW

Stephen's work in this area includes:

- **Challenging the grant of planning permission based on environmental impact**
- **Low impact development and community based sustainable land uses**
- **Defending enforcement proceedings**
- **Planning inquiries and High Court challenges under section 288 and 289**
- **Gypsy and Traveller rights cases**

NOTABLE CASES

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ENVIRONMENTAL LAW AND CLIMATE JUSTICE

***John Mussington and Jacklyn Frank v Development Control Authority and ors* [2024] UKPC 3**

In this case two Barbudans challenged by way of judicial review the Antiguan government's decision to grant planning permission for a new airport on the island on Barbuda. Their challenge was dismissed in the Caribbean court on grounds that they lacked standing to bring the claim. That decision was the subject of a successful appeal to the Privy Council. Stephen was a member of the legal team instructed in the case. Judgment was handed down on 27 February 2024 and can be read here. The Board decided that the appellants were entitled to standing and remitted the case back to the Caribbean courts where the case will now proceed to trial. When giving judgment the privy Council made the important pronouncement on standing in environmental cases:

'57. Where an application for judicial review involves issues of environmental concern it is not necessary that the applicant demonstrates an expertise in the subject matter. All that is required is that they demonstrate some knowledge or concern for the subject. So an amateur ornithologist or bird-watcher might raise a concern about the potential loss of a bird's habitat; or a fisherman about the effect of a hydro-electric scheme on fish; or a local historian about the effect on an archaeological or historical site; or a local resident on the loss of a local beauty spot frequented by the local community. In Walton Lord Hope in effect asked the rhetorical question, "Who speaks for the ospreys?". The answer is whoever can demonstrate a genuine interest in their fate.'

PUBLICATIONS

Using the Housing Act, (2004), Jordans, (co-author)

The Housing Law Handbook, (2009), Law Society (editor and contributor)

Gypsy and Traveller Law, 1st and 2nd Editions, Legal Action Group

Contributor to *Rewriting Children's Judgments From Academic Vision to New Practice*, Hart (2017)

'Gypsy and Traveller sites: the revised planning definition's impact on assessing accommodation needs', Equality & Human Rights Commission (2019)

The Housing Law Handbook, 2nd Edition (2020), Law Society (editor and contributor)

EDUCATION

BSc (Hons) Social Sciences
Diploma in Law

PROFESSIONAL MEMBERSHIP

Administrative Law Bar Association (ALBA)
Housing Law Practitioners' Association (HLPA)
Planning and Environment Bar Association (PEBA)
Property Bar Association

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