Ross Crail

Called: 1986

"Ross is exceptionally thorough with a forensic touch and exceptional grasp of the subject matter. She has an inordinate ability to conflate a wealth of information in an exceptionally clear and concise manner." - Chambers UK Bar 2021

"She is an outstanding black-letter lawyer who brings interest and enthusiasm to her work." - Legal 500 2021

+44 (0) 20 7419 8000

clerks@newsquarechambers.co.uk

Practice Overview

Ross appears regularly in both the Chancery Division and the Administrative Court. She has considerable experience of public inquiries, judicial reviews and statutory appeals.
Directory acknowledgements include:
"She is very intellectual and practical and provides high-class advice."
Legal 500 2016 - Administratitive & Public Law
"She has a well-deserved reputation as a specialist in public rights of way and town and village greens." "She has a thorough understanding of highway law, and is able to provide clear and understandable advice."
Chambers UK Bar 2016 - Agriculture & Rural Affairs
"She's academically excellent and definitely someone you want on your side"
Chambers UK Bar 2015 - Real Estate Litigation
"A clever barrister, with a well-deserved reputation as a specialist in the public law elements of property"
Legal 500 2014 - Property Litigation
Her practice is now primarily focused on real property disputes, many concerned with claims to public rights. Ross has contributed numerous articles to *The Rights of Way Law Review* and is an associate editor of *The Law of Freedom of Information,* published by Oxford University Press.

Property

Property/Public Law/ TVG's
Ross is well known for her expertise in the law of highways, common land, town and village greens, and other kinds of public access rights *"top of the pile when it comes to rights of way and village greens work"* - Chambers UK Bar.
She has acquired an understanding of the issues from all viewpoints, having acted for local authorities, landowners, developers, members of the public, and interested organisations such as The Ramblers' Association. Conducting public inquiries into town or village green registration applications as an inspector has given her an additional perspective.
Her litigation experience in these fields has been divided between private law actions commenced in the Chancery Division and public law claims launched in the Administrative Court. Seminal cases in which she has been involved include *Oxfordshire County Council v Oxford City Council* and *R (Lewis) v Redcar* and *Cleveland*

Borough Council (on the criteria for registrability as a green) *and Paddico (267) Ltd v Kirklees Metropolitan Council and others* (on the conditions for deregistration).
More general Property Litigation/Rights of Way
Ross's practice also encompasses all aspects of real property law, such as restrictive covenants and boundary disputes "*She is an extremely intellectually able person, who has a good grasp of the more rarefied aspects of land law and rights of way*" Chambers UK Bar.
Ross has appeared in the first cases to reach the courts regarding various legislative innovations: mass extinguishment of public rights to drive mechanically propelled vehicles on minor highways *R Warden and Fellows of Winchester College and another v Hampshire County Council*; stopping up highways for crime prevention purposes *R Manchester City Council v Secretary of State for Environment, Food and Rural Affairs*; and alley gating *The Ramblers' Association v Coventry City Council*.
In *R Godmanchester Town Council and Drain v Secretary of State for Environment, Food and Rural Affairs*, Ross assisted The Ramblers' Association to identify and pursue suitable test cases for challenging a recent line of authority that made it very easy for landowners to rebut the statutory presumption of dedication as a highway. The challenge ultimately succeeded in the House of Lords, which preferred the approach taken by Denning LJ in a 1956 decision.

Cases

Name: Whitstable Beach Campaign v Whitstable Oyster Fishery Co

Reference: The case is ongoing

Date: 13th October 2016

Court: Town & Village Green Public Local Inquiry

Facts:
Assisting the Whitstable Beach Campaign (with George Laurence QC) in relation to the public local inquiry into their application for registration of beach at Whitstable as a town or village green

Judge: The Inspector for the Registration Authority is Ross Crail

Comment:
Instructions from: Kent Law Clinic

Practice Area: Property

Name: Paddico (267) Limited v Kirklees Metropolitan Council and others

Reference: [2012] EWCA Civ 262; [2012] LGR 617; [2014] UKSC 7; [2014] 2 WLR 300

Date: 20th February 2014

Court: Court of Appeal

Comment:
George Laurence QC and Ross Crail instructed by DLA Piper UK LLP (Leeds Office) appeared for the successful claimant in connection with a claim to rectify the register of town and village greens. Vos J held that

previous authority (including Oxfordshire County Council [2006] and Ex parte Sunningwell [2000] - both cases in the House of Lords in which Mr Laurence QC appeared) compelled him to allow the claim. The Court of Appeal agreed, but allowed the appeal on the grounds of the justice of rectifying where, as here, there had been delay in seeking relief under section 14 of the Commons Registration Act 1965.

Practice Area: Property

Name: R (on the application of Malpass) v County Council of Durham

Reference: [2012] EWHC 1934 (Admin)

Date: 25th July 2012

Court: High Court

Comment:
The claimant, a local resident, sought judicial review of the defendant council's rejection of an application to register land at Consett as a new town or village green under section 15 of the Commons Act 2006 on the basis that it had not been used by local inhabitants for lawful sports and pastimes "as of right", having been held by the council for the purposes of public recreation. The decision was quashed, and the matter remitted for redetermination, on the ground that reference to dicta of Lord Scott in *R(Beresford) v Sunderland City Council* [2004] 1 AC 889 had led to a flaw in the council's reasoning.

Practice Area: Property

Name: R (on the application of Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council

Reference: [2010] LGR 631

Date: 23rd March 2010

Court: High Court

Comment:
The claimant applied for judicial review of the defendant authority's decision to grant the first interested party's application for registration of Warneford Meadow in Oxford as a new town or village green. The grounds of the claim were (i) that "no public right of way" notices erected on the meadow by the claimant had rendered use of the whole for lawful sports and pastimes contentious, and so not "as of right"; (ii) that section 22(1A) of the Commons Registration Act 1965 did not permit registration unless recreational use of the land had been predominantly by the inhabitants of the relevant locality or neighbourhood. The claim was dismissed.

Practice Area: Property

Name: R (on the application of Lewis) v Redcar and Cleveland Borough Council

Reference: [2010] UKSC 11; [2010] 2 AC 70

Date: 3rd March 2010

Court: Supreme Court

Comment:
In this case, the Supreme Court considered what bearing concurrent user of land by the landowner has on the question whether use by members of the public is "as of right" for the purpose of a town or village green claim.

Practice Area: Property

Name: Herrick v Kidner

Reference: [2010] EWHC 269 (Admin); [2010] PTSR 1804

Date: 17th February 2010

Court: High Court

Comment:
This case concerned the proper interpretation and application of the provisions in sections 130A-130D of the Highways Act 1980, introduced by the Countryside and Rights of Way Act 2000 to enable members of the public to compel performance of highway authorities' statutory duty to prevent obstruction of highways in their respective areas. Mr Kidner sought an order requiring Somerset County Council to secure removal of gates erected by Mr and Mrs Herrick across a public footpath on their land. Cranston J upheld the decision of the Crown Court at Taunton to order the taking of steps to remove all such parts of the structure as impinged on the highway, notwithstanding that there was ample room for people to walk between the pillars if the gates were kept open, on the basis that any structure which prevented the public from using and enjoying the whole of a highway "significantly interfered with the exercise of public rights of way over that way" for the purposes of the legislation.

Practice Area: Property

Name: Ernstbrunner v Manchester City Council

Reference: [2009] EWHC 3293 (Admin); [2010] PTSR CS15

Date: 16th December 2009

Court: High Court

Comment:
Dr Ernstbrunner, a local representative of the Ramblers' Association, applied for an order under section 130B of the Highways Act 1980 requiring the defendant council to secure removal of a gate which, he contended, obstructed a public footpath where it crossed a farm. The magistrates' court and the Crown Court dismissed his application on the ground that the gate in question was not on the line of the footpath. On his appeal by way of case stated, the High Court held that the Crown Court had not been precluded as a matter of law from finding that the route of the footpath as shown on the definitive map maintained by the council under Part III of the Wildlife and Countryside Act 1981 bypassed the private road on which the gate was erected even though the definitive statement made no reference to such divergence.

Practice Area: Property

Name: R (on the application of Warden & Fellows of Winchester College and another) v Hampshire County Council

Reference: [2008] EWCA Civ 431; [2009] 1 WLR 138

Date: 29th April 2008

Court: Court of Appeal

Comment:
The authoritative ruling on the scope of the exception from automatic extinguishment of public vehicular rights of way under section 67 of the Natural Environment and Rural Communities Act 2006 in cases where there were pre-existing applications to show them on the definitive map.

Practice Area: Property

Name: The Ramblers' Association v Coventry City Council

Reference: [2009] 1 All ER 130; [2008] EWHC 796 (Admin)

Date: 17th April 2008

Court: High Court

Comment:
The first case on the recently introduced legislation for gating alleyways for crime prevention purposes.

Practice Area: Property

Name: R (Manchester City Council) v Secretary of State for Environment, Food and Rural Affairs

Reference: [2007] EWHC 3167 (Admin)

Date: 14th December 2007

Court: High Court

Comment:
The first case in which issues of interpretation and application of the provisions for stopping up highways to prevent crime have come before the courts.

Practice Area: Property

Name: R (on the application of Godmanchester Town Council and Drain) v Secretary of State for Environment, Food and Rural Affairs

Reference: [2008] AC 221

Date: 20th June 2007

Court: House of Lords

Comment:
These consolidated appeals concerned the interpretation and application of section 31 of the Highways Act 1980, which provides for dedication of a highway to be deemed to have occurred following a 20-year period of public use satisfying certain conditions, subject to the closing words of section 31(1) "unless there is sufficient evidence that there was no intention during that period to dedicate it" (known as "the proviso").
The appellants had applied by way of judicial review claims for the quashing of two decisions by an inspector appointed by the respondent under schedule 15 to the Wildlife and Countryside Act 1981. In each case, the inspector had refused to confirm an order made on the appellant's application under section 53 of that Act to modify the definitive map and statement of public rights of way by adding a footpath. The basis of both refusals was that there had been sufficient public user of the requisite quality and duration, but the proviso to section 31(1) had been satisfied. The piece of evidence held to suffice for that purpose in Godmanchester Town Council's case was a letter written by the landowner's land agents to the local planning authority referring to concerns about pedestrian trespass on the claimed footpath. In Dr Drain's case, the evidence consisted of a clause in an agricultural tenancy agreement affecting the land crossed by the claimed footpath which required the tenant to "warn and keep off all unauthorised persons from trespassing and not to allow any footpaths to be created."
The principal ground of challenge to the decisions was that the letter and tenancy agreement were private documents, of which users of the respective paths had no knowledge. The appellants contended that on its proper construction, the proviso could only be satisfied by evidence of acts by the landowner evincing no intention to dedicate which came to the attention of users. They appealed to the House of Lords following the rejection of that contention by the Divisional Court and the Court of Appeal and the dismissal of their judicial review claims.

Held:
Allowing the appeal, that on the proper construction of the provision to section 31 (1) for there to be "sufficient evidence that there was no intention during that period to dedicate" to rebut the presumption of dedication arising from 20 years' uninterrupted as of right public user, there must be evidence that during the 20 year period the landowner took advantage of the specific methods of negativing intention to dedicate prescribed in section 31(3), (5), and (6), or did other acts demonstrating to users of the way that he had no such intention. "Intention" meant what users of the way would reasonably have understood the landowner's intention to be. The inspector's decisions were quashed.
In this decision on the construction of section 31 of the Highways Act 1980 (deemed dedication of highways), in particular the proviso to section 31(1) ("sufficient evidence that there was no intention during that period to dedicate"), the House of Lords preferred the approach taken in obiter dicta by Lord Denning MR in *Fairey v Southampton County Council* [1956] 2 QB 439 to that adopted in *R v Secretary of State for the Environment, ex p Billson* [1999] QB 374 and *R v Secretary of State for the Environment, Transport and the Regions, ex p Dorset County Council* [2000] JPL 396. The landowner must communicate to the public that he has no intention to dedicate if the proviso is to be satisfied

Practice Area: Property

Name: Ford-Camber Limited v Deanminster Limited and another

Reference: [2007] EWCA Civ 458, LTL 24 May 2007

Date: 24th May 2007

Court: Court of Appeal

Comment:
The claimant had a right of way over a service road. The defendants asserted that they were entitled to obstruct the service road and prevent the exercise of the claimant's right of way, by virtue of paragraph 7 of schedule 20 to the Local Government, Planning and Land Act 1980. That provision authorises the carrying out of building or other works on land which has "been acquired by" the Land Authority for Wales under section 104 of that Act, notwithstanding that they would interfere with an easement, so long as the works are done "in accordance with planning permission".
The claimant brought proceedings in 2005 for an injunction restraining the threatened obstruction of its right of way, disputing that the proposed works would be "in accordance with planning permission." In its grounds of claim as originally drafted, the claimant accepted that there had in 1995 been an acquisition of the relevant land by the Land Authority for Wales under section 104 of the 1980 Act. However, in the course of those proceedings, documents were disclosed which led the claimant to seek the court's permission to amend its grounds of claim to withdraw that concession and allege instead that there had been no (or no valid) acquisition by the Land Authority for Wales within the meaning of the statute. Permission was refused at first instance. The claimant appealed to the Court of Appeal.

Held:
The appeal was dismissed. As a matter of statutory construction, the particular transactions which had taken place in 1995 did amount to an acquisition and disposal of the relevant land by the Land Authority for Wales within the meaning of sections 103 and 104 of the 1980 Act. Had that not been so, the claimant would not have been prevented from raising these arguments by the lapse of time since the transactions took place; whether the transactions had amounted to an acquisition was a question which could properly be raised in a private law action commenced before or after obstruction of the service road by a party claiming entitlement to rely on paragraph 7 of schedule 20 to the 1980 Act. However, other points which the claimant sought permission to take (that the transactions were not properly authorised by the Board of the Land Authority for Wales, or were vitiated by its taking a fee for participating) would have to have been raised promptly, by way of judicial review, if they were to be raised at all, even though the claimant had not until recently known the full facts.
Consideration was given by the Court of Appeal to the construction of the particular statutory provisions in the Local Government, Planning and Land Act 1980 relating to the acquisition and disposal powers of the Land Authority for Wales, and also to wider questions of the interface between public law and private law and the circumstances in which it may be an abuse of process to raise in other civil proceedings points which could have been taken earlier in judicial review proceedings.

Practice Area: Property

Name: R (on the application of The Ramblers' Association) v Secretary of State for Defence

Reference: [2007] EWHC 1398 (Admin), LTL 21 May 2007

Date: 21st May 2007

Comment:
The Secretary of State had decided that a public footpath crossing land in Ministry of Defence ownership around the RAF base at Mildenhall in Suffolk should be stopped up for reasons of national security, relying on the power

conferred by section 16 of the Defence Act 1842. However, no provision was made for the creation of a new footpath in its place, although according to section 17 of that Act, "…whenever any footpath or bridle-road shall be stopped up as aforesaid, another path or road shall be provided and made in lieu thereof…" The notice of decision published by the Secretary of State directed members of the public to use existing highways instead.

Held:
When a public footpath is stopped up under section 16 of the Defence Act 1842, section 17 of that Act imposes a duty on the Secretary of State to provide and make a replacement path, which cannot be complied with simply by directing the public to use existing highways. The stopping up of this footpath was declared to be unlawful and the Secretary of State's decision was quashed
This is the first known case in which the court has been called on to consider the powers of stopping up and diverting footpaths and bridleways for defence purposes conferred by sections 16 and 17 of the Defence Act 1842.

Practice Area: Property

Name: Oxfordshire County Council v Oxford City Council and another

Reference: [2006] 2 AC 674

Date: 24th May 2006

Court: House of Lords

Comment:
In 2002, an application was made by Miss Catherine Mary Robinson to Oxfordshire County Council (as registration authority for the purposes of the Commons Registration Act 1965) for the registration as a new town or village green of an area of land in north Oxford known as the Trap Grounds. The landowner, Oxford City Council, objected. A non-statutory public inquiry was held, and the inspector recommended registration. The City Council challenged some of the grounds on which the recommendation was based, and the County Council took a second counsel's opinion on legal issues which differed in material respects from the inspector's report. The County Council, with the agreement of Miss Robinson and the City Council, commenced proceedings in which it sought guidance from the High Court on a number of legal questions to assist it to determine Miss Robinson's application.
Among the issues arising were whether the registration authority had power to allow Miss Robinson to amend her application by withdrawing some of the land, as she had sought to do; whether (without any such amendment) it had power to register part only of the application site, as the inspector had recommended it should; and whether the inspector had approached the matter correctly by considering only the evidence of use during the 20 year period immediately preceding the date of her application, although she had specified 1 August 1990 as the date when the land "became a green". There was disagreement as to whether he should have considered the application by reference to the original definition of "town or village green" or the definition as amended in 2001; and whether the amended definition required qualifying use to continue after the date of application up to the date of registration.
The Judge made declarations in response to the questions, some of which were reversed by the Court of Appeal.

Held:
On the proper construction of the Commons Registration Act 1965 and the Commons Registration (New Land) Regulations 1969:

1.applications for registration of land as a new town or village green made after 30 January 2001 had to be determined applying the amended definition of "town or village green" introduced by section 98 of the Countryside and Rights of Way Act 2000 on that date;
2.for the purposes of that definition, the date up to which the requisite use had to continue was the date of the application for registration;

3.registration of land as a town or village green gives rise to rights for the relevant local inhabitants to indulge in lawful sports and pastimes on it, and brings it within the scope of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876;
4.the registration authority has broad powers to allow amendment of applications for registration of town or village greens, and (without any such amendment) to register part only of the land included in an application.
This case presented the House of Lords with an opportunity to address a number of unresolved issues regarding the registration of new town or village greens under the Commons Registration Act 1965, including such fundamental questions as whether newly registered greens are subject to recreational rights for the benefit of local inhabitants, and to the provisions for the protection of town and village greens in Victorian legislation. Questions about the applicability and interpretation of the amended definition of "town or village green" introduced by the Countryside and Rights of Way Act 2000 were also definitively answered.

Practice Area: Property

Name: R (on the application of Spice and others) v Leeds City Council

Reference: [2006] EWHC 661 (Admin), LTL 27 February 2006

Date: 27th February 2006

Court: High Court

Comment:
The claimants owned and occupied three of twelve houses in a cul-de-sac in Leeds known as The Laurels, which was an adopted highway. They requested the defendant, in its capacity as highway authority, to apply to the magistrates for an order stopping up part of the highway under section 116 of the Highways Act 1980, on the basis that it was unnecessary as a highway. The part in question (of which they owned the sub-soil) lay between the made-up road and the rear boundary fence of another property. It was covered with a dense growth of laurel shrubs and had never been maintained by the defendant. The defendant refused to make such an application. The claimants challenged its refusal by way of judicial review. Before trial, the defendant accepted that its decision not to accede to the request was legally flawed, in that (among other things) it had failed to give proper consideration to whether the strip in question was needed for public passage; and that the decision should be quashed. However, the matter proceeded to trial so that the court could also adjudicate on the continuing dispute between the parties about the proper approach for the defendant to adopt on reconsidering the claimants' request.

Held:
A highway authority has a broad discretion in deciding whether to accede to a request under section 117 of the Highways Act 1980 to apply to the magistrates for an order under section 116 of that Act stopping up a highway, and is not confined to considering whether the relevant highway is necessary for public passage. It should consider all the factors which would in due course be relevant to the magistrates' consideration. In deciding whether a highway is 'unnecessary', the starting point is whether it is used for public passage, but it is also necessary to consider whether it is performing any other highway function, relating (for example) to safety, amenity, or access for third parties.

This case provides guidance for highway authorities considering how to respond to requests made under section 117 of the Highways Act 1980 to apply to the magistrates for orders under section 116 of that Act stopping up (and, by analogy, diverting)highways; and also alerts persons proposing to make such a request to the range of issues which may have to be addressed.

Practice Area: Property

Name: R (on the application of Alan Douglas Kind) v Secretary of State for Environment, Food and Rural Affairs

Reference: [2006] QB 113

Date: 27th June 2005

Court: High Court

Comment:

A highway in Wiltshire had originally been shown on the definitive map for the county as a road used as a public path. It was reclassified as a bridleway under paragraph 9 of schedule 3 to the Countryside Act 1968 by the County Council, acting on the suggestion of the Parish Meeting which had reported that it was not used by vehicular traffic and its surface was unsuitable for such use. In 2003 the County Council, having discovered strong historical evidence of the existence of vehicular rights over the way, made an order modifying the definitive map to show it as a byway open to all traffic under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. The defendant's inspector refused to confirm the order, on the basis that the reclassification had extinguished the pre-existing public vehicular rights over the route. That proposition of law was challenged by the claimant in this judicial review action.

Held:
The claim succeeded. The reclassification as a bridleway pursuant to schedule 3 to the Countryside Act 1968 of a way shown on the definitive map as a road used as a public path did not have the effect of extinguishing any public vehicular right of way existing over the way at the date of reclassification.
This decision confirmed as correct the understanding (generally shared prior to Defra's circulation in spring 2004 of advice to the contrary effect) that any public vehicular right over a way shown on the definitive map as a road used as a public path would have survived its reclassification as a bridleway under schedule 3 to the Countryside Act 1968.

Practice Area: Property

Name: R (on the application of Norfolk County Council) v Secretary of State for Environment, Food and Rural Affairs

Reference: [2006] 1 WLR 1103

Date: 10th February 2005

Court: High Court

Comment:

The claimant was the surveying authority with responsibility under section 53 of the Wildlife and Countryside Act 1981 for maintaining, and modifying as appropriate, the definitive map and statement of public rights of way for the County of Norfolk. It came to the claimant's attention that there was a discrepancy between the line of a public footpath in the parish of Pentney as it was verbally described in the statement (starting from the Narborough Road by a field gate between two specified buildings), and as it was depicted on the map (joining the road at a point some 30 metres to the west of that position). After investigating the matter and obtaining further evidence, the claimant concluded that a mistake had occurred in drawing the map and made an order modifying the map to conform with the statement. Objections were received and the order was submitted for confirmation to the Secretary of State. The Secretary of State's inspector refused to confirm it, and the claimant applied for judicial review of her decision.

Held:
Treating the map and statement as irreconcilable (which had been common ground at the inquiry), the inspector had erred in her approach by applying an evidential presumption in favour of the map, and her decision accordingly fell to be quashed. While section 56 of the Wildlife and Countryside Act 1981 on its proper construction accords precedence to the map in the event of an irreconcilable conflict pending any modification, in considering whether a modification is requisite there is no presumption in favour of either map or statement. The question is what on the balance of probability is the correct route in the light of all the relevant evidence, including the terms of the map and statement.
The central issue for decision in this case was the correct approach to be adopted where there is an irreconcilable conflict between a definitive map of public rights of way maintained under Part III of the Wildlife and Countryside Act 1981 and its accompanying statement as regards the route of a particular highway. The judgment also addresses the related question of when a map and statement are to be read as irreconcilable.

Practice Area: Property

Articles

Date	Title	Contributors
1st August 2014	Case Notes on Waymark 2014 Published In *Waymark*	Ross Crail
7th February 2014	When is it just to rectify the register of town or village greens under section 14 of the Commons Registration Act 1965? Published In *New Square Chambers*	George Laurence QC
15th January 2011	Betterment Properties (Weymouth) Limited v Dorset County Council No.2 (case note) Published In *Rights of Way Law Review*	Ross Crail

Date	Title	Contributors
31st July 2008	Closure for crime prevention Published In *Rights of Way Law Review*	Ross Crail
31st May 2008	The Winchester case: CA Published In *Rights of Way Law Review*	Ross Crail
31st March 2008	Betterment Properties (Weymouth) Limited v Dorset County Council in the Court of Appeal (case note) Published In *Rights of Way Law Review*	Ross Crail

Publications

Date	Title	Contributors
14th April 2016	Macdonald on the Law of Freedom of Information Third Edition Oxford University Press	John Macdonald QC Ross Crail Edwin Simpson Simon Adamyk Adrian Pay Charlotte Ford

Date	Title	Contributors
30th May 2009	The Law of Freedom of Information 2009 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay Charlotte Ford
20th March 2003	The Law of Freedom of Information 2003 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay