



Mark Westmoreland Smith

Year of call: October 2006 (Lincoln's Inn)



Practice Profile

Mark was recently recognised as one of the leading planning barristers under the age of 35 (Planning Magazine, 2009). His practice encompasses all areas of chambers' expertise and, in particular, planning, environmental law, administrative law, compulsory purchase, highways, licensing, education and the law of town and village greens.

Mark was called to the Bar in October 2006 and joined Francis Taylor Building in October 2007 on completion of his pupillage. His pupil masters were Timothy Comyn, Meyric Lewis and Douglas Edwards.

PLANNING

Mark undertakes work for developers, landowners, local planning authorities and third parties in relation to both plan making and development control matters.

He advises and represents his clients at all stages of the process from providing strategic advice at the inception of a scheme of development, including advising in relation to pre-application discussions, environmental impact assessments and the application itself, to appearing at planning inquiries as well as in applications to the High Court.

Some of Mark's recent inquiry work includes:

- Waste Management Facilities - Mark has a particular interest in and experience of waste planning matters. He is currently promoting (with Richard Phillips QC) an energy from waste facility at a major planning inquiry. Mark is also currently advising on a number of planning applications for waste management facilities (comprising both energy from waste and alternative technologies)
- Urban Extension, Daventry - call-in - appearing for a developer promoting a comprehensive mixed-use development of some 246 hectares including up to 4,000 houses (with Andrew Kelly QC)
- Housing - Mark appears at numerous planning inquiries in relation to housing acting for both developers and local planning authorities and in relation to schemes ranging from hundreds of houses to small in-fill developments
- Mixed Use Development, Oxford - appearing for a third party in relation to the development of the Jericho Boatyard. In addition Mark has appeared in a number of other inquiries into boatyard developments
- Hotel and Tourism Development, Cotswolds - planning inquiry - appearing for third party against the proposed development of an hotel and 200 holiday lodges in the Cotswold Water Park
- Golf Related Development, Oxfordshire - planning inquiry - appeared for the local planning authority resisting the extension of an hotel on a golf course
- Equestrian & Agricultural Development - Mark has appeared on many occasions at inquiries concerning both equestrian & agricultural developments
- Airfields - Monewden, Suffolk - enforcement notice appeal - appearing for a third party opposed to the expansion of the airfield
- Advertising - planning inquiries and enforcement matters - Mark has acted in many advertisement consent appeals as well as in prosecuting and defending for breaches of advertisement consents in the criminal courts

Mark regularly prosecutes and defends in relation to planning offences in both the Crown and Magistrates' Courts. Mark also has particular experience of injunction proceedings in both the High Court and County Courts under section 187B of the Town and Country Planning Act 1990.

Mark is also experienced and frequently takes instructions in the following areas: listed buildings, advertising and trees.

PUBLIC LAW

Mark's High Court practice is growing and he has a number of on going judicial and statutory review cases. His recent administrative court work includes:

- *Pye (Oxford) Ltd v Secretary of State for Communities and Local Government* (junior to Craig Howell Williams Q.C.): successful High Court challenge to the Secretary of State's adoption of the South East Plan in relation to the failure to carry out Strategic Environmental Assessment on behalf of a developer
- *Newbold v Secretary of State for the Communities and Local Government and North Warwickshire District Council* CO/10845/2008: successfully represented the claimant on an appeal under section 288 of the Town and Country Planning Act 1990
- *R (on the application of Cavanagh) v East Sussex County Council and Southern Water Services Limited* CO/602/2009: (junior to Robin Purchas Q.C.) successfully resisted the claimant's application to quash a grant of planning permission for a sewage treatment works on behalf of Southern Water at a renewed permission hearing
- *Charmack v Secretary of State for the Communities and Local Government and Brighton & Hove City Council* CO/3942/2008: successfully represented the claimant on an appeal under section 288 of the Town and Country Planning Act 1990
- *Abelthorpe Limited v Minister for the Environment, Sustainability and Housing, Welsh Assembly Government and Cardiff City Council* CO/2860/2008: (assisting Richard Phillips Q.C.) on an application under section 288 to quash the decision of a planning inspector to refuse permission for an amusement centre in Cardiff
- *R (on the application of Cathco Property Holdings Ltd) v Cygnor Gwynedd Council* [2008] EWHC 1462 (Admin): (assisting Gregory Jones at the permission stage) a judicial review of a Council's decision to grant planning permission for a major retail development on the outskirts of Bangor
- *Davey v Aylesbury Vale District Council* [2007] EWCA Civ 1166: (junior to Robert McCracken Q.C.) a case which sets out the principles by which a successful defendant to a claim for judicial review may recover his pre-permission costs.
- *High Peak Borough Council v Derbyshire County Council* (4 April 2007): (junior to Douglas Edwards) in which it was decided that, on an application under section 14 of the Commons Registration Act 1965, the court did not have power to remit the matter back to the registration authority
- *R (on the application of Evelyn Griffiths) v Lewisham College* [2007] EWHC 809 (Admin): (assisting Gregory Jones) a judicial review for an order to quash the decision of the Defendant to permanently exclude the Claimant from the College following a disciplinary appeal hearing

ENVIRONMENTAL LAW

Mark is particularly interested in environmental law. He has advised and acted in a wide range of cases including in relation to EIA development, the Habitats Directive, SEAs (on which basis Mark successfully challenged the South East Plan) and the Environmental Permitting Regulations 2007 as well as the plethora of legislation which those regulations replaced.

In addition to his practice in waste planning matters, Mark has particular experience in relation to waste in the context of environmental law, contaminated land and statutory nuisance. Mark is currently instructed by the Environment Agency in relation to a prosecution for the breach of an environmental permit governing a waste management facility and he assisted Robert McCracken Q.C. in relation to his case *OSS Group Limited v Environment Agency* [2007] EWCA Civ 611 which determined when waste ceases to be waste.

Mark also advises landowners on liability under the contaminated land regime and has regularly advised clients on drafting complaints as well as acting for both sides in appeals against abatement notices.

INFRASTRUCTURE

Mark has advised clients in relation to airports, water works and railways on a variety of matters including transport and works orders, environmental impact assessments, Water Resource Management Plans and matters arising from contract and agreements relating to land.

Mark has a particular interest in acting for utility companies having worked for a team specialising in utilities in his previous career as a corporate financier. Mark frequently advises electricity companies on liability arising out of fire damage.

LAND VALUATION

Mark advises on all land valuation matters. He has particular experience of advising on compensation arising from the compulsory purchase of land, on the application of the Crichel Down Rules, on Part IX of the Town and Country Planning Act 1990 and on wayleaves.

LICENSING

Mark regularly advises and represents corporate clients, individual applicants, local authorities and local residents in relation to liquor, entertainment and late night refreshment cases at licensing committee hearings and in the Magistrates' Court.

SPECIALIST AREAS

Highways

Mark advises clients in all aspects of Highways law and, in particular, in relation to disputes as to the extent of adopted Highway land.

Education

Mark has acted in a number of education cases, acting for the claimant in a contractual claim against his further education corporation and, as junior counsel, in a successful permission application for judicial review against another further education corporation.

Law of town and village greens

Mark has particular experience of this active area of the law. He recently assisted another member of chambers in *High Peak Borough Council v Derbyshire County Council* in which it was decided that, on an application under section 14 of the Commons Registration Act 1965, the court did not have power to remit the matter back to the registration authority.

Moorings, riparian rights and navigation

Mark advises on all aspects of the law in relation to inland and costal waterways.

Restrictive covenants

Mark takes instructions on all matters in relation to restrictive covenants.

Background

Prior to being called to the Bar, Mark worked in the City as a corporate financier.

Publications/Papers

- Current Law, Statutes Annotated, Planning Act 2008 (chapter 29), Sweet & Maxwell
- Editor, Planning Appeal Decisions, Sweet & Maxwell
- Contributor, Environmental Law in Property Transactions, Waite, Jewell, Jones and Fogleman, 3rd Edition, Tottal, 2009
- 'When it all goes wrong - a guide to procedure on appeal from a planning inquiry', Francis Taylor Building Planning Seminar, March 2008
- 'Legal Developments in Advertising Control', Co-author with Gregory Jones, Outdoor Advertising Control Seminar, November 2007
- 'Pitfalls in Planning Policy', Co-author with Craig Howell Williams, Francis Taylor Building Planning Seminar, March 2007
- 'The Use of International Conventions in Judicial Review', Co-author with Robert McCracken Q.C., Francis Taylor Building Judicial Review Seminar, January 2007

Qualifications and Appointments

- Date of Call - October 2006 (Lincoln's Inn)
- BPP, London, September 2005 - BVC, graduated in the top ten of year
- City University, London, September 2004 - CPE, Distinction
- University of Manchester, 1995-1998 - First Class Honours in History of Modern Art, graduated top of year
- Lincoln's Inn Lord Denning Scholarship, April 2005
- Lincoln's Inn Hardwicke Scholarship, Michaelmas 2004

Memberships

- Planning and Environment Bar Association (Assistant Secretary)
- United Kingdom Environmental Law Association
- Compulsory Purchase Association
- Constitutional & Administrative Law Bar Association
- Bar Pro Bono Unit

