

Mark Westmoreland Smith



clerks@ftbchambers.co.uk 020 7643 5000

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Call: 2006 [Public Access](#)

Practice areas:

Planning, Major Infrastructure Projects, Environment, Public Law, Compulsory Purchase and Compensation, Licensing, Local Government, Rating



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Practice Profile

Mark's practice covers all aspects of chamber's expertise and, in particular, planning and environmental law, major infrastructure projects, compulsory purchase and judicial review and statutory challenge.

Mark acts on behalf of the developers, the Government, local planning authorities and third parties. He advises and represents his clients at all stages of the process from strategic advice at the inception of a project to appearing at planning inquiries and in the High Court or Court of Appeal.

Mark has particular expertise and experience in dealing with nationally significant infrastructure projects and other major strategic developments such as waste management facilities, electricity generation stations and grid infrastructure, sustainable urban extensions, large housing schemes and transport projects.

Mark has consistently been ranked as a top planning junior by Planning magazine's annual survey of barristers.

Mark is appointed to the Attorney General's A Panel of Junior Counsel to the Crown.

He is also a member of the Planning and Environment Bar Association, the National Infrastructure Planning Association and the Compulsory Purchase Association.

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

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 the higher courts.

Waste management facilities: Mark has particular interest and experience in waste planning matters and has promoted a number of waste management facilities at major planning inquiries as well as providing strategic advice on a number of successful planning applications for such facilities.

- **Oil exploration:** Mark recently promoted an exploration well for hydrocarbons in the Surrey Hills Area of Outstanding Beauty.
- **Broadmoor Hospital Redevelopment:** Mark advised the West London Mental Health Trust in gaining planning permission for its redevelopment of Broadmoor hospital including the relocation of the hospital within the Broadmoor Estate and reuse of the listed original hospital
- **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: Mark has significant experience in promoting such schemes, by way of example, he appeared for a developer promoting part of an urban extension to Daventry which comprised a comprehensive mixed-use development of some 246 hectares including up to 4,000 houses (with Andrew Kelly Q.C.).
- Hotel and Tourism Development: Mark appeared for a third party against the proposed development of an hotel and 200 holiday lodges in the Cotswold Water Park and a 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
- Advertising: 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 has also acted in contempt of court proceedings in the High Court in relation to planning injunctions.

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

Major Infrastructure Projects

Mark is one of the most experienced infrastructure and compulsory purchase juniors at the bar. He has successfully promoted five DCOs through examination unled as well as numerous others assisting Queen's Counsel. He is currently promoting the Keadby 3 Carbon Capture Power Station and the M27 J8 Improvement Scheme CPO.

Mark has in depth expertise in relation to nationally significant infrastructure projects and other major strategic developments such as electricity generation stations (including renewables and nuclear), grid infrastructure, airports, roads, and railways all of which include powers of compulsory purchase.

Mark has particular experience in waste and minerals planning.

Mark has recently been at the forefront of the climate change/ net zero litigation, in particular, in his promotion of the Drax scheme and defending the resulting DCO in the High Court and Court of Appeal, the Cory Riverside litigation as well as advising the Government (particularly BEIS and DOT) in relation to climate change on a number of large DCOs, the Manston Airport, Southampton airport and Bristol airport litigation.

Mark has broad experience in relation to highways schemes from the promotion of road schemes (for example, the A14 Improvement Scheme and the upcoming inquiry into the M27 J8 scheme as well as the Carlisle South Bypass Scheme) to the consideration of highways issues, in particular, in relation to waste management sites which often raise highways safety and capacity issues and in relation to the management of abnormal loads for construction (e.g. turbines).

Recent infrastructure projects have included:

- Acting for the Government in Bristol airport litigation;
- Acting for the Government in East Anglia ONE and TWO litigation;
- Acting for Southampton Airport defending the grant of planning permission for the extension to the runway;
- Acting for SSE Thermal promoting the Keadby 3 Carbon Capture Power Station DCO;
- Acting for the Government in Aquind litigation;
- Acting for EfW Group Ltd, part of Wheelabrator, in relation to the Kemsley 3 and Kemsley North litigation which raised fundamental questions as to the proper application of sections 104 and 105 of the Planning Act 2008 and the scope of the Energy NPSs (*R (oao EFW Group Ltd) v SSBEIS*);
- Advising J Mould (Reading) Ltd in relation to its planning application for a 40MWth Combined Heat and Power (CHP) Energy Recovery Centre (ERC) and adjacent data centre;
- Advising the Government in relation to the determination of the Hornsea Three Offshore Windfarm;
- Acting for the Government in on-going Swansea Tidal Bay litigation (*Swansea Bay (Tidal Lagoon) PLC v SSBEIS and Welsh Ministers*) now at Court of Appeal Stage;
- Advising the Government in relation to the Manston Airport DCO litigation (*R (oao Dawes) v SST*);
- Advising the Government in relation to the determination of the Wylfa Newydd DCO;
- Acting for Cory Riverside Energy in *R (oao Mayor of London) v SSBEIS and Cory Environmental Holdings Limited*;
- Promoting the Drax Repower Project (consent granted October 2019) (Mark continued to act for Drax in successfully defending the recent legal challenge to the grant of consent in the High Court and Court of Appeal (*R (oao) ClientEarth v SSBEIS and Drax Power Ltd* [2020] EWHC 1303 (Admin) and [2021] EWCA Civ 43));
- Promoting the North Shropshire Reinforcement Project for SP Manweb (an overhead electric line) (consented March 2020);
- Advising Eggborough Power UK Limited in relation to the South Humber Energy Centre (a proposed energy from waste facility) and its connection to the South Humber CCGT;
- Advising Eggborough Power UK Limited in relation to a proposed Black Start facility at its Langage Power Station, Plymouth;
- Advising Wheelabrator in relation to a proposed energy from waste facility in Hampshire;
- Promoting the International Advanced Manufacturing Park adjacent to the Nissan plant in Sunderland (pre-application stage) (Mark also defended a judicial review of Sunderland City Council's adoption of planning policy supporting the development, which document which removed the site from the Green Belt);
- Objecting to the Northamptonshire Gateway DCO (with Hereward Philpott KC), a rail freight interchange, on behalf of the competitor rail freight interchange, the Rail Central Strategic Rail Freight Interchange DCO;
- Advising (with Hereward Philpott KC) in relation the Rail Central Strategic Rail Freight Interchange DCO (pre-application);
- Promoting the Third Runway at Heathrow (acting with a team of barristers) (pre-application stage);
- Promoting the Second Phase (2A) of HS2 (acting with a team of barristers) (hybrid bill);
- Promoting Eggborough CCGT Project (consent granted September 2018);
- Promoted the North London Heat and Power Project (an energy from waste facility) (consent granted February 2017) (with Michael Humphries KC);
- Promoting the FAB Link Limited (Budleigh Salterton to Broadclyst) Compulsory Purchase Order 2016;
- Promoted the North Wales Wind Farms Connection (an overhead electric line) (consent

granted July 2016) – Mark successfully defended a challenge to this decision in *R (oao Jones) v Secretary of State for Business, Energy and Industrial Strategy and SP Manweb* [2017] EWHC 1111 (Admin);

- Promoted the A14 Cambridge to Huntingdon Improvement Scheme (consented granted May 2016) (with Andrew Tait KC);
- Promoted the Progress Power Gas Fired Power Station, Suffolk (consent granted in July 2015) (with Michael Humphries KC);
- Objected to the Able Marine Energy Park (a port) at the Special Parliamentary Procedure stage (with Andrew Newcombe KC); and
- Objected to the A19/A1058 Coast Road Junction Improvement (on behalf of a landowner in the context of negotiations about land acquisition).

As a result of his work in this area, he has built up significant experience of advising clients on: land assembly and compulsory acquisition (including in relation to linear schemes), building a case for compulsory purchase, routing, optioneering, complex transport engineering and modeling issues, environmental impact assessments including air quality, Climate Change and Net Zero, Green Belt, AONB, habitats regulations assessments, retaining flexibility with regards to detailed design, consultation, and human rights.

Major infrastructure clients have included: National Highways, Associated British Ports, Scottish Power, SSE, EDF, Drax, Eggborough Power, North London Waste Authority, Cory, Wheelabrator, Covanta, Suez, Biffa, Balfour Beatty Urbaser, HS2 Ltd and Heathrow Airport Ltd and the Government.

Environment

Mark has a wide ranging environmental law practice. Mark is frequently asked to advise in relation to Environmental Impact Assessments, the Habitats Directive, SEAs (on which basis Mark successfully challenged the South East Plan) and the Environmental Permitting Regulations 2007. He has recently advised Rentokil Initial in relation to its system of waste transfer notes for its pest control business.

Mark has particular experience in advising in relation to waste planning and legislation as well as renewable energy projects. Mark has promoted and advised on numerous waste management facilities for clients including Suez Environment/ SITA, FCC (Fomento de Construcciones y Contratas SA)/ Mercia Waste Management, ACS (Actividades de Construccion y Servicios SA)/ Urbaser, Biffa, Grundon Waste Management, Covanta Energy, MVV Umwelt/ MVV Environment and Cory Environment/ Wheelabrator Technologies.

Projects have included 10 energy from waste facilities (six promoted through major inquiries; four were granted planning permission by the local planning authority - Mark provided strategic advice on the applications and EIA), landfill and incinerator bottom ash processing sites.

These projects have given Mark a particular experience in relation to renewable energy.

Mark also advises landowners on liability under the contaminated land regime and has regularly advised clients in relation to nuisance and abatement notices.

Public Law

Mark's was recently appointed to the Treasury Solicitor's C Panel. His recent notable administrative court work includes:

- *Europa Oil & Gas Limited v Secretary of State for Communities and Local Government and Surrey County Council*: an on going case on the application of green belt policy contained in the National Planning Policy Framework to minerals development (with Andrew Newcombe KC).
- *University of Bristol v North Somerset Council* [2013] EWHC 231 (Admin): a case which determines that the duty to co-operate on local planning authorities applies to the preparation of a local plan (with Suzanne Ornsby KC).
- *Cornwall Waste Forum v Secretary of State for Communities and Local Government and SITA* [2012] EWCA Civ 379: legitimate expectation, overlapping consent regimes, the Habitats Directive and the question of when a reference to the ECJ is appropriate. Acted for SITA in both the Court of Appeal (with Richard Phillips KC) and the High Court.
- *R (oao Hayden) v Plymouth City Council and MVV Environment* [2012] EWHC 2022 (Admin): the meaning of the term recycling under European law and the construction of planning conditions.
- *The Trop (WSM) Ltd v Secretary of State for Communities and Local Government and North Somerset Council*: successful challenge to a consent to demolish a building in a conservation area.
- *R (oao Wortley) v Gloucestershire County Council and Grundon Waste Management*: successfully resisted an application to quash a planning permission for a hazardous landfill (with Richard Phillips KC). The case dealt with the proper approach to considering un-restored minerals sites in planning decisions.
- *R (oao Legal and General Assurance Society Limited) v Milton Keynes Council and Inter MK Limited* - successfully revisited a challenge to the grant of planning permission. The case involved enabling development and the EIA directive (with Richard Phillips KC).
- *Pye (Oxford) Ltd v Secretary of State for Communities and Local Government*: 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 (with Craig Howell Williams KC).
- *Newbold v Secretary of State for the Communities and Local Government and North Warwickshire District Council*: successfully represented the claimant on an appeal under section 288 of the Town and Country Planning Act 1990
- *R (oao Cavanagh) v East Sussex County Council and Southern Water Services Limited*: 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 (with Robin Purchas KC).
- *Davey v Aylesbury Vale District Council* [2007] EWCA Civ 1166: (a case which sets out the principles by which a successful defendant to a claim for judicial review may recover his pre-permission costs (with Robert McCracken Q.C.)
- *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 (with to Douglas Edwards KC).
- *R (oao Evelyn Griffiths) v Lewisham College* [2007] EWHC 809 (Admin): 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 (with Gregory Jones KC).

Compulsory Purchase and Compensation

All of Mark's Infrastructure work has involved the promotion of compulsory purchase powers, advice on land assembly and compensation.

In addition, Mark has a separate compulsory purchase and land valuation practice which includes advising on and promotion of compulsory purchase orders as well as compensation claims in the Upper Tribunal (Lands Chamber) and wayleaves.

Recent or notable work in this area includes:

- Currently promoting the M27 J8 compulsory purchase order on behalf of National Highways (going to inquiry in November 2021);
- Successfully promoted the Cumbria County Council (Carlisle Southern Link Road) Compulsory Purchase Order (Inquiry completed in June 2021);
- Acting for landowner in the context of the compulsory purchase powers under the Northumberland Line Transport and Works Act Order;
- Advising the Sandwell and West Birmingham Hospitals Trusts as Acquiring Authority on a number of compensation claims following the making of a CPO for the new Midland Metropolitan University Hospital (on going);
- Currently acting for a landowner in a compensation claim against Northumbria County Council following the Morpeth Bypass CPO (on going);
- Currently advising the London Borough of Wandsworth and promoting the York and Winstanley Estates Compulsory Purchase Order as well as the Alton Compulsory Purchase Order;
- Mark is currently acting for HS2 as acquiring authority on a number of compensation claims;
- Acted for HS2 in the Upper Tribunal (with Andrew Tait KC) in *Canfield v Secretary of State for Transport* a £35m compensation claim in the Upper Tribunal (settled during Trial, March 2020);
- Acting for the landowner in relation to The Cheshire West and Chester Council (Chester Northgate) Compulsory Purchase Order 2017 - a large regeneration scheme in Chester);
- Promoting the FAB Link Limited (Budleigh Salterton to Broadclyst) Compulsory Purchase Order 2016;
- Advising NWLA on land valuation in relation to the negotiated purchase of land in advance of a Development Consent Order;
- Acting for Moto Limited (a motorway service area company) on its reference to the Lands Tribunal for compensation in relation to a National Highways scheme to improve the M6; Acting for private clients on references to the Lands Tribunal for compensation in relation to local authority compulsory purchase schemes.

Mark also acts for the Government in compulsory purchase and compensation matters and for HMRC in relation to rating.

Mark also has experience in compulsory purchase compensation mediations.

Mark advises clients in relation to claims under Part 1 of the Land Compensation Act 1973 (claims for compensation for depreciation caused by public works). In particular, he has advised

HS2 and Heathrow Airport Ltd, in relation to the proposed expansion, in relation to potential Part 1 claims and schemes for compensation under that Part. He has also provided advice to National Highways in relation to Part 1 compensation.

Licensing

Mark regularly advises and represents corporate clients, including McDonalds and Mecure Hotels, individual applicants, local authorities and local residents in relation to all licensing matters. He has particular experience in premises and sexual entertainment venue licences, casinos/ gambling and taxi and private hire vehicle licensing. Mark regularly appears in front of licensing committee hearings and in the Magistrates' Court and High Court in relation to appellate work. His recent High Court work includes:

- *Nikolas Shaw Limited v Scarborough Borough Council* - an appeal against the grant of a stage one casino licence (with Gerald Gouriet KC).
- *R (oao Thompson) v Oxford City Council* - judicial review of a decision not to renew a sexual entertainment venue licence (with Gerald Gouriet KC).
- *R (oao Essence Bars (London) Limited) v Royal Borough of Kingston upon Thames and The Commissioner of Metropolitan Police* - judicial review of a decision to suspend a premises licence pending full review (with Gerald Gouriet KC).

Prior to coming to the bar, Mark acted on a number of significant pub transactions as a corporate financier including the £1.6bn acquisition of the entire Whitbread Pubs and Bars division by a private equity firm through a vehicle called the Laurel Pub Company.

Local Government

Rating

Other 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.

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.

Publications

- Contributor, Gadsden on Commons and Greens, Cousins and Honey, Sweet & Maxwell, 2012
 - Contributor, The Law of Regulatory Enforcement and Sanctions, Oxford University Press, 2011
 - Contributor, Environmental Law in Property Transactions, Waite, Jewell, Jones and Fogleman, 3rd Edition, Tottel, 2009
 - Current Law, Statues Annotated, Planning Act 2008 (chapter 29), Sweet & Maxwell, 2008.
 - Editor, Planning Appeal Decisions, Sweet & Maxwell, 2007 - present.
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Qualifications & 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
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Memberships

- Planning and Environment Bar Association (Assistant Secretary)
- National Infrastructure Planning Association
- United Kingdom Environmental Law Association
- Compulsory Purchase Association
- Constitutional & Administrative Law Bar Association

Privacy Notice

Quotes

"He is a real rising star who I rate very highly."

Chambers and Partners, 2023

"He is an excellent junior who is an expert in DCOs and Examination hearings. He gives practical advice and is down to earth."

Chambers and Partners, 2023

"He is very effective, very calm, and gives straightforward advice."

Chambers and Partners, 2023

"He's an excellent junior who is very accommodating and gives very good commercial advice.

Acting unled is also not a problem for him."

Chambers and Partners, 2018

"Mark has a great depth of knowledge on DCOs and is a safe pair of hands. He is very client friendly and provides sound and authoritative advice. He does not over-complicate matters and is always pragmatic. Mark's amenable and calm manner goes down particularly well with examiners, and indeed clients. He is always responsive and supportive of team members."

The Legal 500, 2023

"He is thorough and has an excellent ability to put across the facts of a case in a sound and coherent manner."

Chambers and Partners, 2022

"Mark is very adept at cutting through the vast detail and helping shape strategic direction of case. He provides a sensible way forward."

Chambers and Partners 2022

"He is very analytical, very capable, has a very clear thought process and gives you a considerable amount of confidence." "He is experienced on DCO matters and has an approachable manner."

Chambers and Partners, 2020

"Very good at getting his head around complex issues."

The Legal 500, 2020

"He is very helpful, very commercial and understands clients' commercial aims, and how to achieve them and unearth issues."

Chambers and Partners, 2019

"He's got a natural ability to focus quickly on the real issues, and is very pragmatic and sensible about how to deal with them."

Chambers and Partners, 2017

"He's got a natural ability to focus quickly on the real issues, and is very pragmatic and sensible about how to deal with them."

Chambers and Partners, 2017

"He's easy to work with and very effective"

Chambers and Partners, 2017

"building up an impressive record."

Chambers and Partners, 2016

"approachable, highly competent and knowledgeable, and gives a good strategic lead."
Chambers and Partners, 2016

"Very sharp, and excellent on his feet."
Chambers and Partners, 2015

"resourceful, commercial and client-friendly."
Chambers and Partners, 2014

"rapidly scaling the ranks" and "particularly well regarded" with "a bright future."
Chambers and Partners, 2013
