



Francis Taylor Building
Inner Temple
London EC4Y 7BY

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DX: 402 LDE

T: 020 7353 8415 F: 020 7353 7622
E: clerks@ftbchambers.co.uk W: www.ftbchambers.co.uk

Emyr Jones



Year of call 1999

Emyr was called in 1999 and practised in Cardiff until joining FTB in 2018. Before coming to the Bar he took a first in PPE at Jesus College, Oxford and was a lecturer at Keble College whilst undertaking research in political philosophy. He has been recommended for planning and chancery work in Chambers and Partners and the Legal 500 for many years. Appointed to the Welsh Government's panel in 2013 he has a thorough knowledge of Welsh planning law and policy, and of Welsh law in general, and is the current editor of the Wales section of the Green Book. He has great experience of promoting roads in England and Wales at inquiries held under the Highways Act 1980.

His main areas of interest are:

- ? Infrastructure
- ? Planning
- ? Compulsory Purchase and Compensation
- ? Property and Chancery Litigation
- ? Local Government
- ? Public Law

Testimonials

"He has a sound grasp of property." Chambers and Partners 2021

"He is a great asset. He is very clever, very thorough and definitely the sort of person you want on your side." Chambers and Partners 2018

"He is very easy to work with and a confident advocate", Chambers and Partners 2017

"He is good on his feet and an effective advocate", Chambers and Partners 2017

"Highly experienced in construction and planning disputes. He has an impressive intellect", Legal 500 2016

"He's obviously a very clever stick and his advocacy was fantastic. He handles judges very well: he has the first-hand knowledge of what they think, what they're looking for, what will keep them happy and what will annoy them, and I value that", Chambers and Partners 2015

Experience

Infrastructure

Emyr has a thorough knowledge of the legal, technical and procedural aspects of promoting infrastructure, in particular roads, and relishes getting to grips with and cross examining the expert evidence. Significant cases include:

- M2 Junction 5. Emyr was instructed by Highways England to promote its case for a new grade separated junction partly located in the Kent AONB (cost £92 million). A virtual inquiry was held over three weeks in November and December 2020. (Orders made/confirmed)
- Woodville to Swadlincote Regeneration Route. Emyr acted for Derbyshire County Council in promoting a new road to facilitate the development of former open cast mining land (cost £11 million). One week inquiry in January 2020 (Orders confirmed).
- A2 Bean and Ebbsfleet junction improvements (Ebbsfleet Garden City). Instructed

by Highways England to promote its case for the enlargement of two junctions required to enable the development of the Ebbsfleet Garden City (cost £117 million). Two week inquiry in October 2019. (Orders made/confirmed)

- Wylfa Newydd DCO (nuclear power station). Emyr, led by Tim Corner QC, represented the Welsh Government in the examination into the application to develop a new nuclear power station on Anglesey between October 2018 and March 2019.(Application withdrawn January 2021).
- A465, sections 5 and 6. Emyr acted alone for the Welsh Government in promoting the dualling of some 18 km of the Heads of the Valleys road at a cost of £550 million. The 6 week public inquiry took place in April- May 2018. (Orders made/confirmed).
- M4 corridor around Newport. Between July 2015 and March 2018 Emyr was instructed as a junior to Morag Ellis QC as part of the Welsh Government team promoting 24km of new motorway around Newport. The public inquiry sat for 83 days. Emyr led and cross examined most of the evidence relating to economics, traffic, carbon, air quality, noise, water quality, flooding and agriculture. (Joint inspectors recommended that the orders be made but First Minister decided not to proceed on financial and environmental grounds).
- A40 Robeston Wathen bypass. Emyr was junior counsel, with Winston Roddick QC, for Pembrokeshire CC in the first special assembly procedure proceedings to reach the National Assembly of Wales in 2008. Pembrokeshire challenged Welsh Government's decision to promote a 2 + 1 road configuration for the A40 Robeston Wathen bypass on the grounds that a full dual carriageway was safer and provided better value for money. He Led and cross examined all the economic and traffic evidence.

Planning

Emyr has regularly represented local planning authorities in inquiries relating to wind farms and residential development. He appeared in the first solar farm appeal in Wales and advised objectors to the solar farm recently granted consent at Blaenhiraeth Farm, Llangennech.

He has undertaken sundry enforcement appeals for local planning authorities and landowners and has advised national housebuilders and local authorities on the construction of section 106 agreements.

Emyr regularly carries out judicial review and statutory challenge work relating to planning decisions and those relating to listed buildings and minerals e.g.

- *Swansea Bay Tidal Lagoon Plc v S/S for Business, Energy and Industrial Strategy, Welsh Ministers and Swansea Council*. Emyr advises Welsh Ministers in a claim for a declaration as to whether the Swansea Bay Tidal Lagoon DCO is extant or whether it has lapsed. The issue is whether the provisions in the DCO requiring commencement within 5 years of the DCO coming into effect modify the default provisions in sections 154 and 155 of the Planning Act 2008 as to commencement. The claim is to be heard over 2 days in the autumn of 2021.
- *McGaw v Welsh Ministers & Swansea County Council* [2021] EWCA Civ 976. Emyr

acted for a home owner who applied for a lawful development certificate for a garden room on the basis that it would constitute permitted development. The building was to be built into a sloping garden which had already been excavated. On a statutory review of the inspector's decision to refuse the appeal against the LPA's refusal the High Court quashed the inspector's decision and mandated the Welsh Ministers to grant an LDC. The court's decision that height restrictions are to be assessed against finished ground levels rather than pre-construction ground levels has wide ranging implications for PD rights. The Court of Appeal upheld the High Court's decision: it was acceptable to assess the height by reference to land outside the curtilage and which was separated from the building by a boundary wall.

- *Persimmon Homes v Welsh Ministers*. Emyr acted for Welsh Ministers in respect of Persimmon's statutory planning review of a decision to refuse its appeal for outline planning permission for 300 residential units. Claim conceded July 2021.
- *Celtic Energy Ltd v Welsh Ministers, the Coal Authority*. Emyr acted for Welsh Ministers in defending Celtic Energy's judicial review of its decision not to approve a coal licence under section 26A of the Coal Industry Act 1994 for the Nant Helen open cast site. Claim was discontinued in early 2021.
- *R (on the application of Freemont (Denbigh) Ltd) v Welsh Ministers* [2016] EWHC 482 (Admin). Emyr acted for Welsh Government in response to a challenge to its confirmation of a CPO and of an earlier section 55 notice for the reimbursement of urgent works regarding the Grade II* listed Asylum in Denbigh; case dealt with allegations of fraud and the relevance or otherwise of a bank bond.
- *Payne v Caerphilly CBC* [2009] RVR 66. Emyr acted for the local authority in a claim for compensation for compliance with a stop notice re an old colliery waste tip when enforcement notice later quashed; determined that the meaning of a planning permission was subject to res judicata and that no entitlement to compensation.

Compulsory Purchase and Compensation

Emyr has acted for landowners impacted by the compulsory purchase of land, especially regarding new roads, at the acquisition stage and at the compensation stage as well as acting for acquiring authorities.

In promoting the M4 corridor around Newport and sections 5 and 6 of the A465 Emyr advised the Welsh Government in respect of a large number of compulsory acquisition and compensation matters and gave advice regarding a similarly wide range of issues when acting for Highways England on the A2Bean and M2 junction 5 projects.

Recent examples of compensation work include:

- *Oaklion Properties Ltd v Denbighshire County Council* [2021] UKUT 0049 (LC). Emyr acted for the acquiring authority in respect of the value of a building fire damaged some 20 years prior to acquisition and which had formerly been used as an amusement arcade with residential use on the upper floors. The case turned on the appropriate valuation method ? residual valuation versus comparable method, factual questions as to the condition of the property and whether it would have been demolished or refurbished in the no scheme world.
- *Gliddon & Sons Ltd v Somerset County Council*. Emyr acts for the landowner

whose commercial, retail and car parking land was required for the Taunton Northern Inner Distributor road scheme. The compensation claim, commenced in 2019, is stayed pending the resolution of the CAAD appeal as to the extent of residential flat development which would have been acceptable.

- *Mintblue Properties Ltd, Re Upper Tribunal (Lands Chamber)* [2016] UKUT 172. Emyr acted successfully for the landowner in its CAAD appeal for residential development without affordable housing. The compensation claim is on-going and includes a 'holding costs' claim for additional debt interest paid attributable to the CPO. 4 day trial listed in the Upper Tribunal in March 2022.

Property and Chancery Litigation

Emyr has been recognised as a leading property, commercial and chancery practitioner on the Wales and Chester Circuit for over 10 years. He has advised on and appeared in cases dealing with:

contractual disputes in the commercial and TCC lists of the Business and Property Courts;

- rights of way;
- flooding;
- subsidence;
- trespass;
- restrictive covenants;
- TPOs;
- tenancies;
- constructive and resulting trusts;
- proprietary estoppel;
- disputed wills;
- construction of wills and trust instruments;
- Inheritance Act 1975.

He has successfully pursued and resisted applications for interim remedies such as property preservation orders, freezing orders and search orders and is tactically adept at their deployment.

Cases of interest include:

- *Jones v Laugharne Corporation*. Emyr acted for the Laugharne Corporation in a 4 day trial involving the boundary between neighbouring rural land and riparian rights to a stream located in the vicinity of the boundary. Trial in August 2021 with judgment awaited.
- *Pullman & BFS v Welsh Ministers* [2020] EWHC 2588 (Admin). Emyr acted for the Welsh Ministers in a claim against its tenants for the recovery of £1.4 million for the costs of remediating land contaminated with asbestos. The full sum was recovered following a 6 day trial involving the cross examination of experts on causation and remediation. The case is cited in Emmett at 26.530 for the scope of a tenant's repairing covenants and involved other complicated legal issues regarding the implied terms of various licences and the extent of the duty to mitigate under indemnity clauses contained in those licences.

- *Re Ellen Jones*. Case under the Inheritance Act where Emyr acted for a mature stepson with serious health difficulties in respect of the estate of his step mother. The principal issue was whether the claimant qualified as someone treated as a child of the family given that he was an adult when his father met the deceased. Judgment for the claimant November 2020.
- *Deraven v Liberty FE (Trade) DMCC* (2015 - 2016). Emyr acted for the Mechel group in successfully obtaining summary judgment for £4.5 million against the Dubai based guarantor re the sale of Newport steelworks; Emyr obtained a post judgment freezing order which facilitated enforcement of the judgment.
- *Re Glasdir estate* (2015 ? 2017). Emyr advised and represented Welsh Government regarding a £2 million compensation claim arising out of the flooding of some 120 homes at a new housing estate in Ruthin. There were 6 defendants and complicated issues of causation regarding the flood itself, conflicting expert evidence re flood risk and flood modelling. Case settled following a 2 day mediation.
- *Thomas v Jones, Palmer Tompkinson and Elliott* (April 2016). Trial concerning an alleged vehicular right of way over SSSI and common on the Gower peninsula based on lost modern grant. Case complicated by the fact that the dispute was between other dominant owners and the claimant and not between the landowner and claimant.
- *Vatsaloo v Vale of Glamorgan* (2015). Case concerning the adverse possession of woodland owned partly for landscape and visual amenity purposes and the nature of possessory acts required in that context.
- *McLennan Architects Ltd v Jones* [2014] EWHC 2604 (TCC). TCC claim with disputed applications for security for costs and for an interim remedy for inspection of the other side's computer database
- *Pagliari v Thomas* [2008] WTLR 1417. A trusts claim in which the issue was whether interest payable to a fund held for a life tenant and remaindermen was to be characterised as income or a mix of capital and income and whether the trustees had the power to apportion between life-tenant and remaindermen.

Local Government

Emyr has considerable experience of town and village green work having been appointed to act as inspector by numerous Commons Registration Authorities as well as appearing as an advocate for applicants and objector landowners.

Emyr has undertaken a wide range of work relating to commons including:

- conducting private law litigation in the county court and the Property Chamber, First-tier Tribunal in respect of adverse possession claims to common land, claims in trespass/nuisance and claims relating to unauthorised development and fencing;
- advising the Welsh Government in respect of applications to deregister common required to facilitate major developments e.g. *Circuit of Wales* motor racing project, *Mynydd y Gwair* windfarm;
- advising the Welsh Government and local authorities in respect of the acquisition of common land required to enable the construction of highways.

Emyr has advised and represented local authorities on various planning matters, judicial reviews and property related litigation including whether exclusivity rights granted to

tenants offend the Competition Act 1998.

He has conducted a great deal of highways and public rights of way work for local planning authorities and landowners such as:

- appearing as an advocate in inquiries into modifications of the Definitive Map;
- advocacy work in Magistrates and Crown Courts relating to matters such as the maintenance of highways, the stopping up and/or diversion of highways and obstruction of highways;
- advisory work with regard to Traffic Road Orders;
- judicial review work relating to highways e.g. *Trail Riders Fellowship v Powys CC* [2013] EWHC 3144 (Admin) (challenge to the legality of temporary traffic regulation orders TTROs made against the background of section 56 proceedings in the Crown Court)

Public Law

As well conducting public law work in the fields of planning and highways Emyr has experience of judicial review work in fields such as education and health. Cases of interest include:

- *R(on the application of Lewis) v The Welsh Ministers & Velindre University NHS Trust*. Emyr acts for Velindre NHS Trust as interested party in a judicial review challenge to WG's decision to approve its outline business case to build the new Velindre Cancer Centre in Whitchurch. June 2021 on-going.
- *R (on the application of Welsh Language Commissioner) v National Savings and Investments* [2014] EWHC 488 (Admin). A claim that the reduction in the Welsh language provision of NS & I was unlawful; the hearing before the Divisional Court was heard partly in Welsh.
- *R (on the application of Llewellyn) v Cardiff and Vale University Health Board* [2013] EWHC 4099 (Admin). A challenge to Health Board's decision to refuse to reimburse a patient for elective surgery undertaken in Germany
- *Vale of Glamorgan Council v Lord Chancellor* [2011] EWHC 1532 (Admin). Emyr, led by Winston Roddick QC, acted for the local authority in its judicial review challenge to the Lord Chancellor's decision to close Barry Magistrates' Court.

Professional Associations

Emyr is a member of the following professional bodies:

- Planning and Environmental Bar Association (PEBA)
 - Chancery Bar Association (ChBA)
 - Wales and Chester Circuit
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Languages

Emyr is a fluent Welsh speaker who is happy to undertake advocacy in the courts and at inquiries in the Welsh language.

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