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## Mark Westmoreland Smith

### Practice Profile



Year of call 2006

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 waste management facilities, electricity generation stations and grid infrastructure, sustainable urban extensions, large housing schemes and transport projects.

Mark was ranked 5th rated junior planning barrister in the latest annual Planning magazine survey of lawyers (2016).

Mark is appointed to the Attorney General's B 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.

## Testimonials

*"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*

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*"Very good at getting his head around complex issues." Legal 500 2020*

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*"He is very helpful, very commercial and understands clients' commercial aims, and how to achieve them and unearth issues." Chambers and Partners 2019*

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*"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*

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*"Well organised and unflappable. He's highly professional, very easy to deal with and a very pleasant individual with a good sense of humour." Chambers and Partners 2017*

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*"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*

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*"He's easy to work with and very effective" Chambers and Partners 2017*

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*"building up an impressive record" Chambers and Partners, 2016*

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

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

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

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

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## **Experience**

### **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.

### **Environmental law**

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 QC).
- *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 QC).
  - *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 QC) 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 QC). 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 QC).
  - *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 QC).
  - *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 QC).
  - *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 QC).
  - *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 QC).

## Infrastructure

Mark has particular experience and expertise in relation to 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.

Recent infrastructure projects have included:

- Promoting the A14 Cambridge to Huntingdon Improvement Scheme with Andrew Tait QC (consented granted May 2016);
- Promoting the Progress Power Gas Fired Power Station, Suffolk, with Michael Humphries QC (consent granted in July 2015);
- Promoting the North London Heat and Power Project (an energy from waste facility) (currently under examination) (again, with Michael Humphries QC);
- Promoting the North Wales Wind Farms Connection (an overhead electric line) (examination closed January 2016);
- Promoting the Mid Wales Wind Farms Connection (an overhead electric line) (pre-application);
- Promoting Sizewell C (nuclear power station) (pre-application) (with Hereward Phillpot QC);
- Objecting to the Able Marine Energy Park (a port) at the Special Parliamentary Procedure stage (with Andrew Newcombe QC); and
- Objecting to the A19/A1058 Coast Road Junction Improvement (on behalf of a land owner in the context of negotiations about land acquisition).

Mark has promoted Nationally Significant Infrastructure Projects both in his own right and with Queen's Counsel.

As a result of his work in this area, he has built up significant experience of advising clients on: retaining flexibility with regards to detailed design, land assembly and acquisition (which in the case of linear schemes (such as the A14) was large scale and complex), environmental impact assessments, habitats regulations assessments, consultation and complex highways engineering and modeling issues.

Major infrastructure clients have included: Highways England, Associated British Ports, Scottish Power, EDF, North London Waste Authority, Covanta, Suez Environment, Biffa, Balfour Beatty and Urbaser.

### **Compulsory Purchase and Land Valuation**

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 making claims for compensation in the Upper Tribunal (Lands Chamber).

Recent or notable work in this area includes:

- The successful promotion of a compulsory purchase order for the London Borough of Newham;
- 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 Highways England scheme to improve the M6;
- Acting for a number of 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.

## **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 QC).
- *R (oao Thompson) v Oxford City Council* - judicial review of a decision not to renew a sexual entertainment venue licence (with Gerald Gouriet QC).
- *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 QC).

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.

## **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.

## **Background**

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

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## **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, Statutes 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

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