



JAMES BURTON

Year called 2001

james.burton@39essex.com



“He is very impressive, very good on his feet, easy to work with and very personable; he has got everything.”

Chambers & Partners

Environmental & Planning Junior of the Year 2015, Chambers UK Bar Awards



James specialises in environmental and planning law and civil liability, along with related areas (such as CPO, Part I Land Compensation Act 1973, energy and aviation). His work often involves the overlap between his practice areas, such as nuisance, Part I claims, and EIA/Habitats.

James' work is both domestic and international. Internationally, he has specific expertise in large scale toxic torts and the differing tort regimes across Europe in particular.

He appears regularly in the High Court and Court of Appeal and at public inquiry. He is equally comfortable working alone or as part of a large team in heavier disputes. In addition to major planning and CPO matters, James was part of the legal teams in the Abidjan Group Litigation, the Accident Group Litigation and the criminal proceedings into the Hatfield Rail Disaster).

James's administrative law experience includes appointments as an investigating officer in respect of matters relating to allegations of misconduct in public office.

He has considerable Parliamentary experience, having appeared on numerous occasions for various petitioners before both the Commons and Lords' Select Committees for the High Speed 2 Bill.

BARRISTERS · ARBITRATORS · MEDIATORS

PRACTICE AREAS

- Planning & Environmental
 - Civil Liability & Toxic Torts
-

SECTORS

- Aviation
 - Energy
-

PRACTICE AREAS

PLANNING & ENVIRONMENTAL CASES, INQUIRIES AND HEARINGS PLANNING

General Planning Court work

James has appeared in numerous Planning Court challenges, on both sides of the argument. Recent cases of note include *R (Bent) v Cambridgeshire County Council* [2017] EWHC (challenge to a minerals planning permission on noise grounds, successfully resisted); *R (Hill) v Stroud District Council* [2016] EWHC (challenge to a major residential development on heritage grounds – misapplication of NPPF [14] tilted balance – successfully quashed); *R (Harvey) v Mendip District Council* [2016] EWHC (challenge to grant of residential planning permission for private and affordable homes, successfully resisted – though presently on appeal); *R (Palmer) v Herefordshire* [2016] EWCA (important case re impacts on setting of designated heritage asset and the correct approach to officers' reports).

Earlier cases include *R (Macrae) v Herefordshire* [2012] EWCA (LPAs' statutory duty to give reasons for a grant of permission and 'paperchase'); *R (Godfrey) v Southwark* [2012] EWCA (substantive legitimate expectation); *R (Street) v Cardiff City Council* [2010] EWCA (successful challenge to grant of permission for a large balloon to be stationed by Cardiff Bay).

Inquiries

James' inquiry experience ranges from residential to industrial to energy. Inquiries include: major residential development in central London – *Corbridge Crescent* (two alternative schemes for 100+ homes within a conservation area successfully resisted for the LPA – 2016); appeal against enforcement notice regarding woodyard and residential use in York Green Belt – *Holtby Woodyard* (partial success on appeal – 2016); major polo facility in Green Belt and AONB – *Barfold Farm* (40 loose boxes, six tack rooms, yard, menage and change of use agricultural to equestrian, permission successfully secured – 2015); major aggregates and concrete batching facility on London safeguarded wharf – *Orchard Wharf* (scheme successfully resisted for landowner – 2014);

“Wightlink” ferries – *Lymington saltmarshes* (successful appearance for Natural England at significant inquiry that marked watershed for the concept of adaptive management as part of lawful mitigation within Art.6(3) Habitats Directive appropriate assessment – 2011). Earlier inquiries include those involving onshore wind energy (when it was still encouraged by Government policy): *Truthan Barton* and *Dover*.

Development plans and policies

James has appeared at EIP, advised on various neighbourhood plans and appeared (successfully) for the Claimant in *R (RWE Npower Renewables Ltd) v. Milton Keynes Council* [2013] EWHC 751 (Admin), for some time the leading case on the meaning and extent of “Local Development Documents”, “Development Plan Documents/Local Plans” and “Supplementary Planning Documents” (see also *R (Miller Homes) v Leeds City Council* [2014] EWHC 82 (Admin)).

Heritage

In addition to *R (Palmer) v Herefordshire* [2016] EWCA and *R (Hill) v Stroud* [2016] EWHC, see also *R (Miller) v North Yorkshire County Council and Tarmac* [2009] EWHC 2172 (Admin).

Energy

In addition to inquiries into wind energy developments (*Truthan Barton* and *North Dover*), and *R (RWE Npower Renewables Ltd) v. Milton Keynes Council* (noted above, re separation distances), see also *Tegni Cymru Cyf v Welsh Ministers* [2010] EWCA (challenge to a decision to refuse planning permission for a wind farm on noise grounds, an important re scope of ETSU R-97).

ENVIRONMENTAL

James’ environmental works spans common law nuisance, statutory nuisance, claims under Part I of the Land Compensation Act 1973, challenges to decisions under the EIA (Agriculture) Regulations, permitting, environmental crime and waste. This is in addition to the ‘environmental’ aspects of his planning work.

Nuisance and Part I Land Compensation Act 1973

James has appeared in most if not all of the recent reported cases and successfully guided others to favourable settlement. Recent cases include *Mann & ors v Transport for London* [2016] UKUT 0126 (LC) (successful appearance for claimants in claims arising out of Coulsden bypass – all 12 contested claims won at trial); *Johnston & ors v TAG Farnborough Airport* [2015] UKUT 534 (LC) [ongoing] (200+ claimants seek compensation in claims arising out of works to expand and upgrade nearby Farnborough Airport); *Barber & ors v Highways England* (2017) successful settlement for all claimants in contested proceedings arising out of improvements to Dockspur roundabout, Felixstowe.

James’ common law nuisance and statutory nuisance practice includes physical discharge, odour and noise.

EIA (Agriculture) Regulations

This is an increasingly litigious area and cases are starting to reach the Administrative Court. James appeared (successfully) for Natural England in one of the first: *R (Chanter) v Natural England* [2015] EWHC 1221 (Admin).

AREAS RELATED TO PLANNING & ENVIRONMENT

CPO

James appears (at inquiry, in the courts on challenges and in tribunal in relation to compensation) and advises on a range of CPO matters. His most notable case is *Grafton Group v Secretary of State for Transport and Port of London Authority* [2016] EWCA, where he appeared, with Peter Village QC, for the landowner and succeeded in quashing the CPO of Orchard Wharf in Tower Hamlets.

In relation to claims for compensation decided in the Upper Tribunal, James is presently instructed in relation to the Ipswich Chord CPO and Woodberry Down CPO.

Rating

James' most notable case is *Tunneltech v Reeves (valuation officer)* [2015] EWCA (concerning the agricultural exemption, which the Government has announced will lead to legislative change).

Highways cases and traffic orders

Notable cases include a successful claim for public nuisance brought against Cornwall County Council for closure of the highway under a purportedly lawful traffic order (2016). Recent work includes advice on challenges to traffic orders in Putney, Newcastle-upon-Tyne and Wimbledon.

CIVIL LIABILITY & TOXIC TORTS

James has a long-established civil liability practice, in which he is regularly instructed to deal with cases of significant value and complexity. His work includes professional negligence and general matters.

General

James has a particular specialism in international personal injury work, catastrophic injury, claims arising out of alleged breach of public authorities' statutory duties and claims with an environmental element. Recent notable cases include *Oliva v (1) Mahmoud (2) Liverpool Victoria* [2014] (catastrophic brain injury suffered by a young Brazilian woman whilst working in London. The first known example of a periodical payments order tied to a foreign index (the index being a basket of Brazilian healthcare products and services, an approximation of ASHE 6115) (settled) and *Metcalf v Audley Travel* (2017) (fatal accident whilst on package tour in Brazil) (settled). James also dealt with all matters up to trial for the (successful) Claimant in *Turska v Compensa* [2016] EWHC.

Group litigation

Secretary of State for Trade and Industry v Stuntbrand Line and others (2011) (heavy litigation between the Secretary of State and the shipping lines/P&I Clubs that stood behind them, arising out of the Rice and Thompson asbestos litigation).

Motto & Ors v Trafigura (2009) (a 30,000 claimant class action seeking damages for alleged environmental contamination in the Ivory Coast).

The Accident Group Litigation (2007) (professional negligence action on a grand scale. Brought by insurers to The Accident Group ("TAG"), against TAG Panel Solicitors

R v Balfour Beatty and Railtrack (2005) (prosecutions arising out of the Hatfield rail crash).

SECTORS

AVIATION

James is developing a sub-specialism here.

In addition to *Johnston & ors v TAG Farnborough Airport* [2015] (above), see also *R (Plane Justice Ltd) v CAA* (challenge to CAA's decision to approve an implemented RNAV-1 SID – ongoing).

North Dover windfarm inquiry also turned on aviation issues.

ENERGY

In addition to the planning cases and inquiries noted above, see also *R (Homesun, Solar Century, Friends of the Earth) v Secretary of State* [2012] EWCA (the much publicised solar feed-in tariff litigation, where James appeared successfully alongside the Claimants on behalf of two Interested Parties).

RECOMMENDATIONS

Environmental & Planning Junior of the Year 2015, Chambers & Partners Bar Awards

Ranked 3rd amongst junior planning barristers under 35 nationwide in the Planning Magazine Guide to Planning Lawyers 2012-13.

http://www.planningresource.co.uk/go/planning_lawyers2012/%20

Ranked in Chambers and Partners as a leading junior in Planning Law and Environmental Law and in Legal 500 as a leading junior in Planning Law.

Quotes

"I am impressed by his breadth of knowledge, efficiency and thoroughness. He is extremely committed and hard-working, as well as personable, always approachable and patient in explaining complex matters to clients."

Chambers & Partners 2017

"An excellent planning barrister, with strength in associated areas, who is a good all-rounder." Chambers & Partners 2017

"He is very personable and puts a lot of time and effort into cases." Chambers & Partners 2017

"Very thorough and intellectually bright," "he demonstrates meticulous preparation and has a keen eye for detail."

Chambers & Partners 2017

"Produces work of impeccable quality." Legal 500 2016

"Highly motivated, and has an excellent sense of strategy and tactics." Legal 500 2015

"He is very impressive, very good on his feet, easy to work with and very personable; he has got everything."

Chambers and Partners 2014

"He is a brilliant planning junior and one to watch." Chambers and Partners 2014

"He is always very clear and decisive." Chambers and Partners 2014

MEMBERSHIPS

UKELA (Council Member since 2012)

PEBA

PIBA

QUALIFICATIONS

BVC Sunley scholarship Lincoln's Inn

BVC: Very Competent: 2001 (Inns of Court School of Law)

CPE scholarship Lincoln's Inn

CPE: Commendation: 2000 (City University)

Double-first, BA Joint Honours Ancient and Modern History, University of Oxford (New College) 1998

Scholar of New College, Oxford

Secondary Education: St. Ignatius, Enfield

ADDITIONAL INFORMATION

PUBLICATIONS

Encyclopedia of Environmental Law (Contributor) Sweet & Maxwell

Environmental Impact Assessment; Tromans – 2nd ed. (Contributor)

Shackleton on the Law and Practice of Meetings (currently at 13th Edition) (Sweet & Maxwell)

Accidents Abroad Sweet & Maxwell (Co-author) 24 October 2009

LANGUAGES

James speaks South American Spanish semi-fluently and has basic Italian.

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