

Landmark Chambers

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Dr Ashley Bowes

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Dr Ashley Bowes specialises in all aspects of the development and use of land, including planning, property, licensing and local government law.



Expertise

Planning, Environment, Property, Public and Administrative

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Practice Summary

Ashley has particular expertise in resolving public access to land disputes, involving the sub-specialisms of rights of way, village greens, commons and highways law. He is a member of the Attorney General's B Panel of Junior Counsel to the Crown, in which capacity he represents the UK Government in his areas of specialism and was shortlisted by Chambers and Partners as Environment/Planning Junior of the Year 2018.

Ashley provides legal and strategic advice at every stage of the development consent process: from navigating local plan examinations, handling access and restrictive covenant issues, through to contested planning applications and appeals and onto litigation in the courts.

Ashley is the General Editor of Sweet & Maxwell's *Journal of Planning & Environment Law* and the author of Oxford University Press's textbook, *A Practical Approach to Planning Law*, as well as being a contributor to *Butterworths Planning Law Service*, *the Routledge Handbook of Comparative Planning Law* and to *Cornerstone on the Planning Court (2nd Ed)*.

In 2021, Ashley contributed to the Landscape Institute's Technical Guidance Note 02/21 Assessing Landscape Value Outside National Designations.

In 2019, Ashley was co-opted to the Planning and Environment Bar Association Committee. In 2020 he coordinated PEBA's response to the Government's Independent Review of Administrative Law.

Ashley brings his diverse industry experience as a local authority member, running a planning consultancy and lecturing in property law to provide:

- Early advice on likelihood of obtaining permissions or licenses
- Tailored consultations on design and content of applications
- Responding to local authority and resident objections
- Advice on conducting public consultations
- Promoting applications at hearings and public inquiries
- Challenging adverse decisions through the courts
- Amending permissions or licenses
- Tailored in-house advisory work (for example, assisting a local authority prepare a local plan, or undertake a SHMAA)
- Specialist in-house training (for example, public inquiry training)
- Conference case law updates (for example to the RTPI annual conference).

Planning

Ashley acts for developers, local authorities, landowners and residents' groups from the planning application stage, through public inquiries and on to litigation in the courts.

His recent work this last year has seen a particular focus on the issues arising from residential schemes such as: determining housing land supply, residential development on the Green Belt, promoting sites through local plan examination and the application of the presumption in favour of sustainable development:

Supreme Court

- Successfully resisting permission to appeal in ***East Bergholt Parish Council v Babergh District Council*** [2019] EWCA Civ 2200 (with Michael Bedford KC), which concerned whether the planning authority lawfully took into account the risk of costs at appeal when settling its five-year land supply
- Appearing in the co-joined appeals of ***NHS Property Services Ltd v Jones & Lancashire County Council v Secretary of State for the Environment, Food & Rural Affairs*** [2019] UKSC 58, [2020] 2 WLR 1, which determined the twin issues of whether public authorities holding land for their statutory purposes are exempt from registration as a town or village green under the Commons Act 2006, and whether toleration by such a public authority amounts to permission to use the land.
- Appearing in the first case before the Court to consider the National Planning Policy Framework (NPPF) and its "presumption in favour of sustainable development" ***Suffolk Coastal DC v Hopkins Homes Ltd & Richborough Estates Partnership***

LLP v Cheshire East BC [2017] UKSC 37, [2017] 1 WLR 1865, [2017] 4 All ER 938, [2017] PTSR 623. Ashley and Jonathan Clay were successful in persuading the Court to adopt the “narrow” approach to paragraph 49 NPPF, contrary to approach of the High Court, Court of Appeal and the Secretary of State himself, although the appeals were dismissed on their individual facts.

Court of Appeal

- Appearing successfully in a test case on the meaning of “curtilage” under the Commons Act 2006. The Court reviewed the case law (including under planning and listed buildings legislation) and found the term “curtilage” meant the same in all contexts: **Hampshire CC v Secretary of State for Environment, Food and Rural Affairs** [2021] EWCA Civ 398.
- Appearing in a case testing the meaning of the phrase “in accordance with the development plan” as it appears at s.38(6) Planning & Compulsory Purchase Act 2004: **Cornwall Council v Corbett** [2020] EWCA Civ 508.
- Appearing in a test case on the scope of a decision-maker’s powers to grant retrospective planning permission: **Hook v Secretary of State for Housing, Communities & Local Government** [2020] EWCA Civ 486.
- Appearing successfully in the first case before the Court of Appeal to consider how air quality should be considered in the planning system: **Gladman Developments Ltd v Secretary of State for & Local Government** [2019] EWCA Civ 1543.
- Appearing successfully in the Court of Appeal in test case concerning whether land held by public authorities and the NHS was exempt from registration as new village green. The Court’s decision preserved an open space in Surrey for local people to use: **Jones v NHS Property Services Ltd** [2018] EWCA Civ. 721; [2018] 2 P. & C.R. 15.
- Appearing in the Court of Appeal on the meaning of “new isolated homes in the countryside” as it appears at paragraph 55 NPPF: **Braintree DC v SSHCLG** [2018] EWCA Civ. 610; [2018] 2 P & CR 9; [2018] J.P.L. 1036.
- Appearing in the Court of Appeal in a case concerning the meaning of “previously developed land” (otherwise known as “brownfield” land) within the NPPF: **Dartford Borough Council v SSCLG** [2017] EWCA Civ. 141, [2017] PTSR 737; [2017] 2 P & CR 9.
- Appearing in the Court of Appeal in the first legal challenge to the Secretary of State’s decision to grant planning permission for high-volume hydraulic fracturing (otherwise known as “fracking”) (with David Wolfe KC) **Preston New Road Action Group & Frackman v SSCLG** [2018] EWCA Civ. 9; [2018] Env. L.R. 18; [2018] J.P.L. 807.
- Appearing in the Court of Appeal (with Jonathan Clay) in the co-joined appeals concerning the meaning of “policies for the supply of housing” at paragraph 49 NPPF and, in essence, the effect of a lack of a five-year supply of housing: **Suffolk Coastal DC v Hopkins Homes Ltd & Richborough Estates Partnership LLP v Cheshire East BC** [2016] EWCA Civ 168; [2017] 1 All E.R. 1011; [2016] P.T.S.R. 1315; [2016] 2 P. & C.R. 1; [2016] J.P.L. 890.

High Court

- Appearing for the claimant to the new Sizewell C nuclear power station in Suffolk: **R(TASC Ltd) v Secretary of State for Business, Innovation & Skills** (CO/3147/2022).
- Appearing for the developer in a test case challenging whether, post Brexit, habitats assessment is required at the reserved matters and discharge of conditions stage: **C J Fry & Sons Ltd v SSHCLG** (CO/12/2023).

- Appearing for the NHS in a case concerning to what extent developments should fund NHS trusts: ***R(University Hospitals of Leicester NHS Trust) v Harborough District Council*** [2023] EWHC 263 (Admin).
- Appearing for the claimant in a challenge to the extension of Southampton Airport runway: ***R(GOESA Ltd) v Eastleigh Borough Council*** [2022] EWHC 1221 (Admin).
- Appearing for the claimant in a challenge to the approval of preliminary works for the new Sizewell C nuclear power station: ***R(Girling) v East Suffolk Council*** [2020] EWHC 2579 (Admin).
- Appearing successfully for the defendant to resist a challenge to a refusal to extend time to comply with an enforcement notice. The case establishes there is no general principle that a person is entitled to a merits appeal before an enforcement notice comes into effect: ***R(Kpogho) v London Borough of Brent*** [2020] EWHC 1905 (Admin).
- Appearing for the defendant in a challenge to the adequacy of environmental information before the Secretary of State prior to the redevelopment of a site previously used to dispose of BSE-infected cattle: ***R(Swire) v Secretary of State for Housing, Communities & Local Government*** [2020] EWHC 1298 (Admin).
- Appearing successfully for the commoners to quash a decision to de-register 115 acres of Yateley Common. The case is now the leading authority on the meaning of “curtilage” in the Commons Act 2006: ***Hampshire County Council v Secretary of State for the Environment, Food and Rural Affairs*** [2020] EWHC 959 (Admin).
- Appearing successfully for the developer that there is no power in the GPDO to extend time to determine a prior approval application under Part 3: ***Warren Farm (Wokingham) Limited v Wokingham Borough Council*** [2019] EWHC 2007 (Admin).
- Appearing successfully for the council to argue that where a material change in use is alleged, and inspector must consider that even if it is not alleged on the enforcement notice: ***Brent LBC v Secretary of State for Housing, Communities and Local Government*** [2019] EWHC 1399 (Admin). Appearing for the claimant in ***Barlow v Secretary of State for Housing, Communities & Local Government*** [2019] EWHC 146, which establishes the standard of procedural fairness required for a third party to a planning appeal inquiry.
- Appearing for the claimant in ***R. (on the application of KP JR Management Co Ltd) v Richmond upon Thames LBC*** [2018] EWHC 84 (Admin) 24 which establishes that use of houseboats on the River Thames for residential purposes require planning permission.

Development Plans and other planning policy

Promoting and resisting sites in the following Local Plan Examinations:

- Bracknell Forest
- Tonbridge & Malling
- Wealden
- Rugby
- Arun
- Basingstoke & Deane

- Horsham.

Infrastructure

Advising parties in relation to the following major infrastructure projects:

- Sizewell C new twin reactor nuclear power station
- Southampton Airport runway extension
- Exploratory hydraulic fracturing in Preston.

Planning Appeals, Inquiries and Hearings

Ashley acts for developers, local authorities and local interest groups. His recent work includes:

- Acting successfully for Helena Romanes School to secure permission for 200 new dwellings at Parsonage Downs, Great Dunmow, Essex to fund the construction of a new all-through school (APP/C1570/W/22/3296064).
- Acting successfully for Fairfax Acquisitions Ltd to secure permission for 86 new dwellings at Nolands Farm, Station Road, Plumpton, East Sussex, (APP/P1425/W/22/3300691).
- Appearing successfully for Lindsey Street Limited to secure permission for 10 new dwellings on Lindsey Street, Epping, Essex (APP/J1535/W/22/3302594).
- Acting successfully for Southern & Regional Developments Ltd to secure permission for 45 dwellings at Mill Road, Henham, Essex (APP/C1570/W/21/3272403).
- Acting successfully for Elmbridge Borough Council to resist the development of 318 homes, a 150 bedroom hotel and racecourse enhancements on the Surrey Green Belt at Sandown Park , Portsmouth Road, Esher (APP/K3605/W/20/3249790).
- Acting for Star Oyster Ltd to promote 267 student rooms, a nightclub, restaurant and offices in a 10- storey building in Guildford in Surrey (APP/Y3615/W/20/3260509).
- Acting for Quanta Homes Ltd to promote 67 homes and 380 sqm of commercial floor space in Eltham, south London (APP/E5330/W/20/3250670).
- Acting for the developer to promote 23,838sqm of employment, industrial and storage space: Land East of Carnival Way, Castle Donington (APP/G2435/W/20/3246990) (to be heard Autumn 2020) Acting successfully for the developer to demonstrate a housing scheme could not viably deliver an affordable housing contribution: 134-136 Broadway, West Ealing W13 0TL (APP/A5270/W/19/3227828).
- Acting for Elmbridge Borough Council to successfully resist 1,024 new residential units together with a community hub, primary school, medical centre, dentist, pharmacy, local supermarket, pub/restaurant, offices and associated parking at Drake Park, Fieldcommon Lane, Molesey, within the Surrey Green Belt (APP/K3605/W/17/3172429).

Environment

Ashley has extensive experience in advising on and litigating cases concerning EIA, SEA and Habitats. He has appeared in the High Court and Court of Appeal in environmental challenges. Notable work includes:

- ***R(TASC Ltd) v Secretary of State for Energy Security and Net Zero*** [2023] EWHC 1526 (Admin) (Habitats assessment for a new nuclear power station).
- ***C J Fry & Sons Ltd v Secretary of State for Levelling up, Housing and Communities*** [2023] EWHC 1662 (Admin) (interpretation of the Habitats Regulations post-Brexit).
- ***R(GOESA Ltd) v Eastleigh Borough Council*** [2022] EWHC 1221 (Admin) (Climate Change Act 2008 and carbon budget analysis for aviation in the context of a runway extension)
- ***R(Swire) v Secretary of State for Housing, Communities & Local Government*** [2020] EWHC 1298 (Admin) (EIA screening assessment for a site formerly used for the disposal of BSE infected cattle)
- ***Preston New Road Action Group & Frackman v SSCLG*** [2018] EWCA Civ. 9; [2018] Env. L.R. 18; [2018] J.P.L. 807 (EIA and exploratory hydraulic fracturing).

Property

Ashley has expertise on private property issues which arise out of the development and use of land.

Ashley has experience across a wide range of property litigation matters, appearing before the High Court and County Court as well as various specialist tribunals and inquiries in the following matters:

- Restrictive covenants
- Easements
- Adverse possession
- Land option agreements
- Boundary disputes
- Rights of way (easements)
- Possession of land.

His recent work includes:

- Representing a developer seeking to enforce a 'non-object' covenant against a neighbouring landowner

- Representing a management company seeking damages for a breach of a covenant requiring their permission prior to implementation of a planning permission
- Successfully securing a possession order over a 200-acre site to enable a 1,000 unit strategic residential scheme at Peter's Village, Medway, Kent to proceed
- Advising on use of restrictive covenants to resist implementation of planning permission for housing schemes
- Advising on the scope of a right of way needed to implement the conversion of an agricultural stable to residential units
- Advising a London authority on obtaining possession of land, and resisting an adverse possession application
- Advising a developer on access issues to land by utilising implied easements and easements created by prescription.

Restrictive Covenants

As part of his development practice, Ashley frequently advises upon contractual or tortious issues arising out of the development of land. His recent work includes:

- Representing a management company seeking rectification of a development license on the grounds of unilateral mistake.
- Representing a developer seeking damages for breach of a covenant not to object to a planning application.
- Representing a neighbouring landowner seeking an injunction and damages for breach of a restrictive covenant.

Village Greens, Commons and Manorial Rights

Ashley has particular expertise on the cross-over between public and private rights over land. He is experienced advising and representing parties in court (including in the Court of Appeal and Supreme Court) in the following fields:

- Village green applications
- Common land de-registrations
- Public rights of way (DMMO) applications
- Highway law

He has appeared for promoters and objectors alike. He has been classified by barrister inspectors as “**an expert in this area of the law**” (Village Green Inquiry Report, Leach Grove Woods, 2015 para.12).

His recent work includes:

- Acting successfully for Oxted Residential Ltd, to resist the recording of three new footpaths criss- crossing a potential housing site in Surrey.
- Appearing successfully in the Court of Appeal, in a test case on the meaning of “curtilage” under the Commons Act 2006. The Court reviewed the case law (including under planning and listed buildings legislation) and found the term “curtilage” meant the same in all contexts: *Hampshire CC v Secretary of State for Environment, Food and Rural Affairs* [2021] EWCA Civ 398.

- Appearing in the Supreme Court, in the co-joined appeals of ***NHS Property Services Ltd v Jones & Lancashire County Council v Secretary of State for the Environment, Food & Rural Affairs*** [2019] UKSC 58, [2020] 2 WLR 1, which determined the twin issues of whether public authorities holding land for their statutory purposes are exempt from registration as a town or village green under the Commons Act 2006, and whether toleration by such a public authority amounts to permission to use the land.
- Appearing successfully in the High Court to challenge the registration of school playing fields, contrary to an Inspector's recommendation, in Bristol (with Richard Ground KC) – ***R(Coatham School) v Bristol City Council*** [2018] EWHC 1022 (Admin.).
- Appearing in the High Court to challenge the de-registration of common land in Surrey: ***R(Tadworth & Walton Residents' Association) v SSEFRA*** [2015] EWHC 972 (Admin.). Mr Justice Holgate observed: at [98]: "... I do not think that [the Claimants'] interests could have been better advanced than by the untiring efforts of Dr Bowes."
- Appearing in a test case on the meaning of implied permission (***Naylor v Essex CC*** – [2014] EWHC 2560 (Admin.).[2015] JPL 217).
- Successfully appearing for a residents' group in Leatherhead to register Leach Grove Woods a new village green following a contested public inquiry.
- Successfully acting for a local inhabitant to secure the removal of roping excluding him and others from engaging in lawful sports and pastimes over a registered village green.
- Successfully appearing for a residents' group in Buckinghamshire to register Bryant's Bottom Fields as a new village green following a contested public inquiry.
- Advising a local authority on appropriating land to "planning purposes" in to override the Victorian legislation protecting village greens so as to enable the construction of a new cricket pavillion.
- Acting for a landowner in a rare claim for private nuisance arising out of landowner's obstruction of inhabitants' rights of recreation over a village green.

Public and Administrative

Ashley is well versed in the law and practice of public law challenges and has advised and represented all sides in numerous judicial reviews, statutory reviews and statutory appeals, including under the specialist regimes of the Town and Country Planning Act 1990, Road Traffic Regulation Act 1984 and Wildlife and Countryside Act 1981. His experience ranges from the High Court, Court of Appeal up to the Supreme Court. Notable work includes:

- ***NHS Property Services Ltd v Jones & Lancashire County Council v Secretary of State for the Environment, Food & Rural Affairs*** [2019] UKSC 58, [2020] 2 WLR 1 (judicial review in the Supreme Court concerning a decision not to register land as a village green).
- ***Hampshire CC v Secretary of State for Environment, Food and Rural Affairs*** [2021] EWCA Civ 398 (judicial review in the Court of Appeal concerning a decision to de-register common land).

- **Hook v Secretary of State for Housing, Communities & Local Government** [2020] EWCA Civ 486 (statutory review in the Court of Appeal of an inspector's decision to refuse planning permission).
- **Bennett v Secretary of State for Environment Food and Rural Affairs** [2023] EWHC 2542 (judicial review in the High Court of a decision not to confirm a footpath diversion order under the Highways Act 1980).
- **R(TASC Ltd) v Secretary of State for Energy Security and Net Zero** [2023] EWHC 1526 (Admin) (judicial review in the High Court under the Planning Act 2008 concerning a new nuclear power station at Sizewell, Suffolk).

Recommendations

"A trusted pair of hands for planning work, Ashley has an encyclopedic knowledge of planning law and is able to quickly identify the issues at hand and thus is very persuasive when conducting advocacy."

Chambers and Partners, 2024

"Ashley has case law at his fingertips and can apply it in most amazing ways. He is very clear in his representations, and he explains complex legal issues in a clear and concise manner. He is truly a talented lawyer."

Planning, Legal 500, 2024

"Ashley is a focused junior who remains unfazed under pressure, and his arguments are compelling."

Agriculture, Legal 500, 2024

Cases and inquiries

14 06 23 CG Fry & Sons Ltd v SSLuHC (CO/12/2023)

23 05 22 R(GOESA Ltd) v Eastleigh Borough Council [2022] EWHC 1221 (Admin)

30 11 21 Planning permission granted for 45 units in Henham, Essex

18 03 21 Court of Appeal hands down Test Case on Curtilage

Publications

Routledge Handbook of Comparative Planning Law (contributing author) – January 2023

A Practical Approach to Planning Law – July 2019

“As of Right” where are we now? – January 2016

The Localism Act 2011 and the General Power of Competence (co-authored with Dr John Stanton) – January 2014

The Registration of Town or Village Greens and the Res Judicata Myth – January 2012

The Rise of Neighbourhood Triffids – January 2011

Revocation of Regional Strategies, a State Frontier Rolled Back too Soon? – January 2011

Acquiring Public Rights over Land Held for Statutory Purposes (co-author with George Laurence KC and Simon Adarnyk) – July 2005

Is land in public ownership in a special category? A consideration of the law post R(Lancashire CC) v Secretary of State for the Environment, Food and Rural Affairs’ – July 2005

Are all considerations equal? A muse on materiality – July 2005
