

environmental and planning law



The Team

Thirty Nine Essex Street has one of the Bar's leading teams in this field. Winner of the Chambers & Partners Environment and Planning Set of the Year in 2007 and 2008, it is commended for its "approachable, client-friendly attitude, prompt advice and firm grasp of environment law," and described as "one of the standout sets at the Bar" by Chambers & Partners 2009.

The Environmental and Planning team at Thirty Nine Essex Street consists of leading practitioners who are widely regarded as combining a strong academic background with pragmatism and versatility and who are easy to work with.

The team draws on the strength of chambers in public, energy, commercial and common law, including local government probity issues, to provide comprehensive advice in all areas of environmental and planning law. Other relevant experience includes EC, international, tax and criminal law.

Members of the team regularly appear in leading cases in the Supreme Court, Court of Appeal, and High Court as well as undertaking Public Inquiry, Crown Court and Magistrates' Court work. Other appearances include before the European Court of Justice; European Court of First Instance; the Privy Council and the Hong Kong Court of Final Appeal and Courts in the Caribbean.

Clients include: government departments; regulatory authorities; local authorities; major companies and utilities; trade associations; interest groups and private individuals.

Members of the team come from a wide range of backgrounds including city law firms; local government; academia, architecture and parliamentary advisors.

The team is responsible for a number of leading publications in the field. These include books on Contaminated Land; Environmental Impact Assessment; Highways; the Planning and Compulsory Purchase Act; Nuclear Law; the Environmental Acts and several books on Environmental Law in general.

Editorial appointments include the Sweet and Maxwell Encyclopaedia of Environmental Law; the Journal of Planning and Environmental Law; Water Law; Energy Law Review; the Journal of Environmental Law and Property; Planning & Compensation Reports.

Environmental and Planning Chambers of the Year

Chambers Bar Awards 2007 and 2008

Areas of Work

For ease of reference these have been listed in alphabetical order

Climate Change

- Members of chambers have been involved in the earliest UK litigation on climate change
- R (Cemex UK Cement Limited) v Department for Environment, Food & Rural Affairs [2007] Env LR 21 First judicial scrutiny of carbon allocation under the EU emissions trading regime
- Alphasteel Ltd first appeal under the Greenhouse Gas Emissions Trading Scheme Regulations against a civil penalty notice
- R (Day) v Environment Agency [2007] EWHC 2809 Carbon dioxide and climate change consideration in PPC permit

Compulsory Purchase and Compensation

Members of the team have advised and acted in a number of important projects and cases. These include:

- Olympics and Legacy CPO
- Bennett v Secretary of State for Communities & Local Government [2007] JPL 1633 Housing clearance CPO
- Brighthouse CPO
- Gloucester Blackfriars CPO
- Dartford BC (Lowfield Street) CPO
- Barnsley MBC (Barnsley Markets) CPO
- Sole v (1) Secretary of State for Trade & Industry (2) London Development Agency [2007] EWHC 1527 Statutory challenge to the Olympics CPO brought by residents of a housing estate displaced to make way for the Olympic Village
- CAAD appeals and Lands Tribunal appearances

Contaminated Land

- Members of the team work closely with the construction and commercial groups in chambers to provide advice and representation in relation to contaminated land
- Working with public authorities in relation to drawing up and issuing remediation notices and identifying appropriate persons
- Advising companies and developers on liability and apportionment for clean up
- Advice in the context of corporate transactions and the allocation of liabilities
- Advising on the first test of lender liability and knowing permitter liability under Part IIA
- Acted for the Environment Agency in R (Transco) v Environment Agency (House of Lords) [2007] 3 A11 ER 877 Liability of statutory successors

“an extremely modern and knowledgeable team”

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Environmental Impact Assessment/ Strategic Environmental Assessment

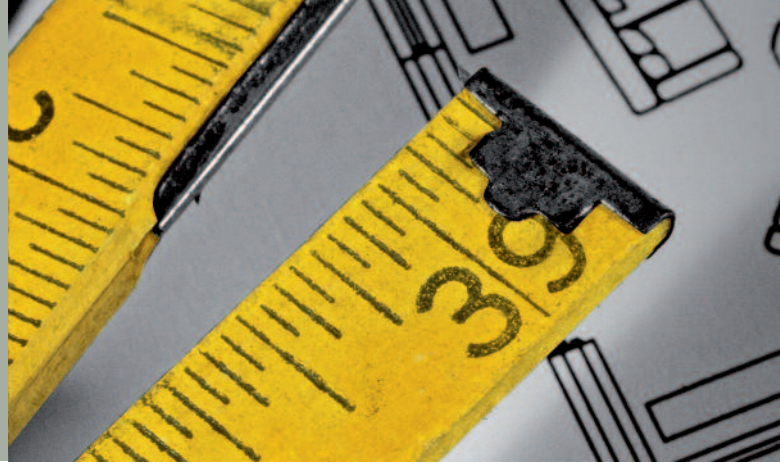
Chambers has been involved in a significant proportion of the major case law in this complex and litigious area.

- R (Save Britain's Heritage) v Secretary of State for Communities and Local Government [2011] EWCA Civ 334 demolition and EIA
- R (Mellor) v Secretary of State for Communities and Local Government C-75/08 [2010] Env. L.R. 2 ECJ on reasons in EIA cases
- R (Miller) v North Yorkshire County Council and Tarmac [2010] JPL 103 33 hectare sand and gravel extension
- R (Howsmoor development) v South Gloucester District Council [2008] EWHC 262 (Admin) First look at Strategic Environmental Assessment by the English Courts
- R (Edwards/Pallikaropoulos) v Environment Agency (House of Lords) [2008] UKHL 22 Application of EIA to changes of fuel
- R (Horner) v Lancashire County Council (Court of Appeal) [2008] 1 P&CR 74 Screening and thresholds
- Shiu Wing Steel v Director of Environmental Protection and Hong Kong Airport Authority (Hong Kong Court of Final Appeal) [2006] Fuel storage and hot steel mill
- R (Candlish) v Hastings Borough Council [2006] JPL 22 Thresholds
- Humber Sea Terminal Limited v Secretary of State for Transport [2005] EWHC 1289 Harbour revision order
- BACONGO v Department of Environment (Privy Council (Belize)) (2004) Env LR 38 Dam construction
- R (Lebus) v South Cambridgeshire District Council [2003] JPL 466 Screening

Energy and Energy Projects

Advice to numerous energy companies on matters such as Large Combustion Plant Directive, Habitats Directive, planning permission, Electricity Act, utilisation of ash and other waste management issues.

- R (Friends of Hethel) v South Norfolk Council and Ecotricity [2011] JPL 192 Wind farm at Lotus factory
- Saltfleetby underground gas storage Inquiry (2009-2010)
- R (Hulme) v Secretary of State for Communities & Local Government (2008 and 2010) wind farm
- Enertrag (UK) Ltd v Secretary of State for Communities & Local Government [2009] EWHC 679 (Admin) wind farm
- R (Redcar & Cleveland Borough Council) v Secretary of State for Business, Enterprise and Regulatory Reform and EDF Energy [2008] EWHC 1847 (Admin) Teesside Offshore wind farm
- Clyde Wind Farm Inquiry (2008) 152 wind turbine scheme
- R (Cemex UK Cement Ltd) v Department for Environment, Food & Rural Affairs [2006] EWHC 3207 First case on application of EU Emissions Trading Scheme
- Advocacy and advice on Wind Farms at Inquiry and in the High Court including R (Merricks) v Secretary of State for Trade & Industry and nPower Renewables Ltd [2006] EWHC 2698 and the Guestwick (Norfolk), Greenock, Ray and Isle of Lewis (Scotland) windfarms
- Star Energy [2006] Underground gas storage appeal in Welton, Lincolnshire



Energy - Nuclear

- Advising the Nuclear Decommissioning Authority and Nirex on various issues
- Advising various energy, engineering and insurance companies on nuclear law
- R (Greenpeace Ltd) v Secretary of State for Trade & Industry [2007] EWHC 311 Consultation on new nuclear build
- Commission of the European Communities v UK (ECJ) (the JASON and GIBPUBSAFE cases) On non-application of EURATOM Treaty and Basic Safety Standards Directive to military activities

Flooding

- Advising English Nature on managed retreat and coastal protection
- Advising affected owners on managed retreat
- Acting for the Environmental Agency in Planning Inquiries where a flooding objection is pursued
- R (Environment Agency) v Tonbridge & Malling Borough Council [2006] 2 P&CR 633 Proper approach to sequential test for development on sites at risk of flooding

Highways, Footpaths and Rights of Way

Members of the team regularly act for and against highways and registration authorities at inquiries and in the full range of courts.

Advisory and advocacy work undertaken includes confirmation of stopping up orders and road traffic regulation orders, definitive map modification orders, and proceedings to effect the removal of obstructions from the highway.

Examples of reported cases in this context are:

- Beckley Parish Council v Secretary of State for Transport [2010] EWHC 606 (Admin) stopping up order
- Powell and Irani v Secretary Of State for the Environment, Food & Rural Affairs (2) Doncaster Metropolitan Borough Council [2009] EWHC 643 (Admin) fairness of definitive map modification inquiry
- R (A S Property Limited) v London Borough of Hounslow [2008] EWHC 1631 (Admin) parking permits and car free development

International

- Motto and others v Trafigura Class action in respect of waste disposal in the Ivory Coast (ongoing)
- Objection to development of two aluminium smelter plants in Trinidad and Tobago
- Planning and EIA regimes in Hong Kong
- Drafting the planning and environmental ordinance for St Helena
- Compulsory purchase in Hong Kong and Montserrat
- Environmental due diligence on multinationals
- Advice to leading UK bank on risk issues of lending to nuclear industry in various European jurisdictions
- Advice to regulators on transnational movement of hazardous substances

“enjoys an almost unparalleled reputation”

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Minerals

Chambers deal with planning and environmental controls on minerals development.

- R (Miller) v North Yorkshire County Council and Tarmac [2010] JPL 103 hectare sand and gravel extension
- Crowle Moor Peat Discontinuance Inquiry (2004-2007)
- Celcon new block making factory, Kent (2007)
- Planning Appeal by Brett Aggregated Ltd re Land At Allens Bank, Dennes Lane, Lydd, Kent (2004)
- Successful challenge to expansion of minerals workings near the Thornborough Henges scheduled ancient monument in North Yorkshire
- Promoting the Surrey Minerals Development Scheme

Nature Conservation

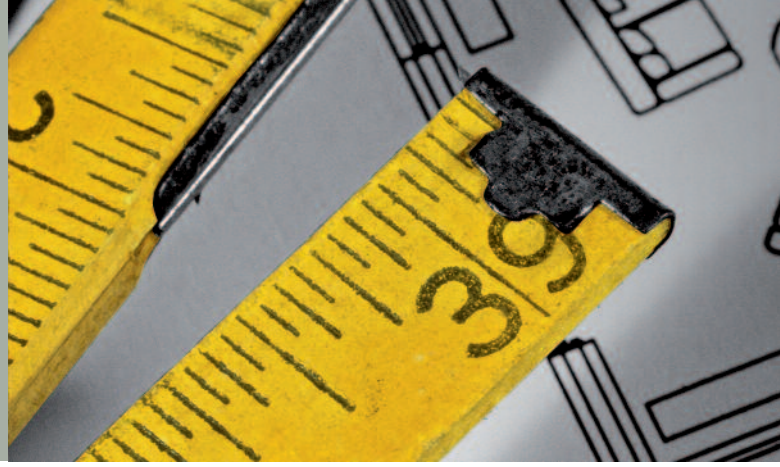
Members of the team regularly have to address the impact of the Habitats Regulations and other statutory protection.

- R (Woolley) v Cheshire East Borough Council [2010] JPL 36 Habitats Directive and bats
- R (Akester on behalf of the Lymington River Association) v Department for Environment, Food and Rural Affairs [2010] EWHC 232 (Admin) application of Habitats Directive to new ferries
- Secretary Of State for Environment, Food and Rural Affairs v Georgina Downs [2009] EWCA Civ 664; [2009] ACD 71 pesticides and crop spraying
- R (Lewis) v Redcar & Cleveland Borough Council [2007] EWHC 3166 (Admin) (appropriate assessment procedures)
- Surrey Waste Plan (appropriate assessment issues)
- R (Merricks) v Secretary of State for Trade & Industry and nPower Renewables Ltd [2006] EWHC 2698 Appropriate assessment

Nuisance

Members of the team advise on both statutory and common law nuisance. Examples of recent cases in these contexts are:

- Elvington Park Ltd v City of York Council [2010] Env LR 10 (abatement notice on motor sports uses)
- Morgan and Baker v Hinton Organics (Wessex) Ltd [2009] 2 P&CR 30 costs in civil environmental proceedings
- Motto v Trafigura [2009] 30,000 claimant class action seeking damages for alleged environmental contamination in the Ivory Coast
- Network Rail Infrastructure Ltd v Morris (Court of Appeal) [2004] EWCA Civ 172 Issues of abnormal sensitivity, foreseeability and statutory authority in nuisance
- Hounslow London Borough Council v Thames Water Utilities Ltd [2003] Application of statutory nuisance to odours from sewage works
- Morgan & Baker v Hinton Organics Ltd Odour nuisance proceedings in the High Court
- Network Rail Infrastructure Ltd v Morris (Court of Appeal) [2004] EWCA Civ 172 Issues of abnormal sensitivity, foreseeability and statutory authority in nuisance



Parliamentary and Public Affairs

- Representation and advice in relation to Public and Private Bills, special Parliamentary Procedure and Transport and Works Orders
- Appearances before select committees on private and hybrid bills and order
- Appearing at inquiries into Transport and Works Act Orders
- Public Bills include
 - The Planning Bill
 - The Human Rights Act 1998
 - Planning and Compulsory Purchase Act 2004
 - The Countryside and Rights of Way Act 2000
 - Land Use (Gardens Protection etc) Bill 2007
- Hybrid and Private Bills and Orders include:
 - Crossrail Act
 - Channel Tunnel Rail Link Act
 - Thameslink 2000 Order
 - Docklands Light Railway (City Airport) Order
 - East London Line Extension Order

Pollution Prevention and Control/Environmental Permitting

Chambers has been involved in the majority of judicial reviews to date on pollution prevention and control.

- R (Edwards/Pallikaropoulos) v Environment Agency (House of Lords) [2008] UKHL 22 PPC and discretion
- R (Day) v Environment Agency [2007] PPC, EIA, waste incinerator
- R (Rockware Glass) v Chester City Council (Court of Appeal) [2006] LAPPC permit

Planning and Environmental Inquiries

Members of the team regularly appear at public inquiries and hearings for developers, local authorities and third party objectors.

- Lancaster Centros Inquiry (2009)
- Recent appearances at major planning inquiries include Franklands Drive, Addelstone (2006), Celcon new factory (2007)
- Clyde Wind Farm Inquiry (2006) Section 36 public inquiry into an application to build the largest onshore wind farm in Europe
- Major Housing inquiries at Bognor Regis (2005), Cwm Coking Works (2006)
- Major Heritage appeals, including Greenside and Easington
- Promoting and appearing for interested persons in the new development plan process

Environmental inquiries and hearings include test cases on urban water requirements for United Utilities, a contested application for a new sea outfall for Northumbrian Water, landfill and other waste management licensing appeals, and PPC appeals on hazardous waste management.

“a breath of fresh air in terms of its transparency and commercial understanding”

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Planning High Court Challenges

Chambers members are often involved with both statutory challenges and judicial review claims. General planning cases include:

- R (Copeland) v London Borough of Tower Hamlets [2011] JPL 40 relevance of healthy eating policies
- R (on the application of Corus UK Ltd t/a Orb Electrical Steels) v Newport City Council [2010] JPL 1358 gypsy site
- Ashton v Secretary of State for Communities and Local Government and another [2010] JPL 1645 Doon Street tower, standing in proceedings
- R (on the application of Prudential Assurance Co Ltd) v Sunderland City Council [2011] JPL 322 types of goods restrictions and planning agreements
- Ryedale District Council v Secretary of State for Communities & Local Government [2010] EWHC 2140 (Admin) PPS7 and residential development
- R (Bard Campaign) v Secretary of State for Communities and Local Government [2009] JPL 964 the eco-towns litigation
- Bedford Borough Council v Secretary Of State for Communities & Local Government [2008] EWHC 2304 (Admin) implementation of planning permission
- R (Guiney) v London Borough of Greenwich [2008] EWHC 2012 (Admin) consultation
- Chandler v Secretary of State for the Communities & Local Government [2007] EWHC 1000 Conservation area policies
- Sumption v (1) Greenwich London Borough Council (2) Rokos [2007] EWHC 2776 (proceedings brought against the grant of a certificate of lawfulness)

Planning and Environmental Prosecutions

Members of chambers regularly act for and against prosecuting authorities in the contexts of planning enforcement and environmental prosecutions.

Examples of such work include prosecutions:

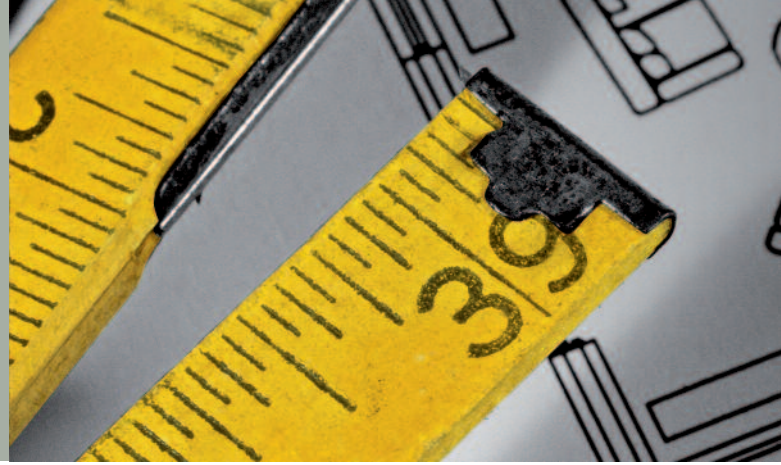
- under sections 33 and 34 of the Environmental Protection Act 1990 (waste offences)
- section 80 of the Water Resources Act 1980 (water pollution offences)
- arising out of planning enforcement (brought under s179 of the Town and Country Planning Act 1990)
- s80 of the Environmental Protection Act (statutory nuisance)
- under the Packaging Waste regime

Members of chambers have prosecuted and defended such cases before Lay Magistrates and District Judges in the Magistrates Courts and before Judges and Juries in the Crown Court.

Probity Issues

- R (Lewis) v Persimmon Homes Teesside Ltd [2009] 1 WLR 83
- Bovis Homes v New Forest District Council [2002] EWHC 483 (Admin)

Members of Chambers have carried out numerous investigations for Council monitoring officers.



Tax and VAT

- Michael Fleming (t/a Bodycraft) v Customs & Excise Commissioners [2008] UKHL 2 [2008] 1 WLR 195, House of Lords, representing the Government in a case dealing with national legislation and transitional arrangements necessary under European law in relation to the limitation period
- Shell UK Ltd v Revenue & Customs Commissioners (2008) STC (SCD) 91 dealing with petroleum revenue tax on gas sold and the Oil Taxation Act 1975
- Advising on land remediation tax relief
- Advice to Entrust on various landfill tax credit issues
- Rating - including Council Tax and Non-domestic rating

Transport Projects

- High Speed 2
- Crossrail
- Channel Tunnel Rail Link Act
- Thameslink 2000 Order
- Docklands Light Railway (City Airport) Order
- East London Line Extension Order
- R (Hillingdon) v Secretary of State for Transport (Heathrow 3rd runway)

Village Greens and Commons

Members of chambers act for local resident groups and registration authorities in the areas of village greens and commons. e.g. Wexham Village Green Inquiry, Slough.

Waste, Landfill and Waste Projects

- Regular advice and representation in a regulatory and corporate context including waste management licensing, definition of waste; various PPC/landfill permit appeals; planning policy; planning applications and appeals
- Twizell v Entrust [2010] STC 37 landfill tax credits
- Capel Parish Council v Surrey County Council [2009] JPL 1302 waste development plan and energy from waste
- R (Newport City Council) v Welsh Ministers [2009] EWHC 3149 landfill allowances
- R (DOVE 2000) v East Sussex County Council [2009] Env LR 11 Newhaven energy from waste, planning and earlier PPC permit proceedings
- R (OSS) v Environment Agency (Court of Appeal) [2007] Waste derived fuel
- Advising on transfrontier shipment of waste in various cases
- R (Horner) v Lancashire County Council (Court of Appeal) [2008] 1 P&CR 74 Animal waste derived fuel
- Blackland Park Exploration Ltd v Environment Agency (Court of Appeal) [2003] Definition of "landfill"
- Environment Agency v Biffa Waste [2006] EWHC 1102 Water pollution
- 3C Waste Ltd v Mersey Waste Holdings [2006] EWHC 2598 Requirements of Landfill Directive on charges for disposal
- Advice and representation in relation to waste projects including incinerators, energy from waste, gasification, pyrolysis and other thermal treatment projects
- Advice and interpretation of waste PFI contracts
- Conduct of waste development plan document examinations for local authorities and others, including promoting the Surrey Waste Plan
- Representation in prosecutions for waste offences



Water and Utilities

- Acting for a major utility company in test case appeals against sewage discharge consents in the riverine and marine environments.
- Advising in the context of regulation by Ofwat and the Environment Agency
- Advice and representation at public inquiries into Drought Orders
- Advice to water companies on regulatory issues after cryptosporidium outbreaks
- Advice on water abstraction and water management agreements
- Prosecutions for water pollution offence

Other Services

Alternative Dispute Resolution

We know that clients are usually looking for a cost efficient, commercially attractive and speedy resolution of their disputes. Our aim is to understand the client's commercial objectives from the beginning and to identify a strategy to achieve those objectives in an economic and expeditious manner. Our experience covers all forms of ADR including arbitration, adjudication, dispute resolution boards, expert determination, early neutral evaluations and mediation.

Members of Chambers include accredited CEDR mediators and act as arbitrators and Expert Assessors in planning and environmental disputes.

- Expert determination of an environmental indemnity claim
- Advice on mediation of major indemnity claims
- Arbitration in disputes concerning waste deposit contracts

Training and Seminars

Members of Chambers frequently speak at conferences and at academic institutions including:

- the University of Cambridge and its Centre for Public Law
- Nottingham Law School
- the Institute of Advanced Legal Studies
- University College London

The Environmental and Planning team provides a wide variety of in house training, including mock inquiries, for, amongst others:

- Law firms
- Local Authorities
- Planning Consultants
- The Environment Agency

“Friendliness and quality of service”

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Thirty Nine Essex Street Environmental and Planning Law

Chambers

The members of Thirty Nine Essex Street possess a wide range of expertise, both as advocates and advisers. Our diverse client base includes government departments and agencies, utilities, NGOs, insurance companies, professional indemnity insurers, local authorities, trade unions, public and private companies, educational bodies, health authorities and trusts, and individual litigants. Members also undertake pro bono work and act for public interest organisations. Instructions are accepted through direct professional access from recognised organisations and overseas lawyers.

For more information please contact

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Thirty Nine Essex Street LLP is a governance and holding entity and a limited liability partnership registered in England and Wales (registered number OC360005) with its registered office at 39 Essex Street, London WC2R 3AT.

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We are committed to upholding the Bar Councils Equal Opportunities Policy, with regard to service provision and apply its principles rigorously to the recruitment of members, pupils and staff.