



Paul Wilmshurst

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"Meticulous, thoughtful and with an open mind to new legal angles."

Legal 500 UK Bar 2021

"Provides clear advice and an exceptional knowledge of the law of commons. "

Legal 500 UK Bar 2020

"He is able to articulate the complexities of the case with ease."

Legal 500 UK Bar 2019

Practice Overview

Paul Wilmshurst is ranked in the legal directories as a leading barrister who is *"meticulous, thoughtful and with an open mind to new legal angles"* and able to *"articulate the complexities of the case with ease."* (Legal 500) His practice embraces all aspects of land law including disputes between individuals and businesses but also those which concern challenges against public authorities, the public use of land (highways, public rights of way, commons and village greens), negligence, the environment and regulatory, public law or criminal matters connected to the above practice areas.

Paul is a *"a respected junior..."* who *"is persistent in his cross-examination while maintaining a polite and friendly approach."* (Chambers & Partners). He is an experienced trial advocate and has also appeared at over 27 public inquiries. Notable cases include: *Stanning v Baldwin* [2019] EWHC 1350 (Ch) [rights of way, drainage rights and boundaries]; *R (St. John's College, Cambridge) v Cambridgeshire County Council* [2017] WLR 469 [procedural issues relating to village greens] and *London Borough of Newham v Iqbal* [2016] EWHC 720 (Admin) [Health Act 2006 offences]; Public inquiry (18 days) into village green application concerning Whitstable Beach.

Paul is experienced in the full range of land & property law disputes including:

- Easements, boundaries, profits à prendre, covenants, manorial rights and nuisance (e.g smoke, noise, gases, dust, light, water, flooding and insects).
- Commercial landlord and tenant.
- Negligence relating to property including that of property professionals (e.g surveyors and architects).
- Negligent or fraudulent misstatements / misrepresentations about property: see for example recent success [reported in national newspapers](#).

□ Disputes over the ownership of property, trusts of land (TLATA disputes), unjust enrichment and proprietary estoppel. Paul is now also developing a practice in and contentious probate.

In the sphere of cases concerned with public authorities, public law, regulatory or criminal law Paul deals with:

- Village greens (applications to register and de-register).
- Common land
- Public rights of way (e.g modification orders, footpaths, bridleways, RUPPS and vehicular roads)
- Highway law (including related criminal offences)
- Statutory nuisance
- Decisions on the sale or use of publicly owned land.
- Prosecutions relating to Tree Preservation Orders.
- Prosecutions under the Health Act 2006 matters connected to the use of premises.

Paul is the author of the Village Green and Commons chapters of the Encyclopaedia of Forms & Precedents.

Property

Boundaries and Easements

Paul has found that early advice and drafting clear statements of case can often make the difference in boundary and easement cases. In respect of easements, he is able to deploy his extensive experience of village green and public rights of way cases where, for example, the issue of user "as of right" arises. Recent representative work includes:

- *Stanning v Baldwin* [2019] EWHC 1350 (Ch); [2019] 5 WLUK 544 (5 day High Court trial concerning private rights of way, drainage rights and a boundary dispute over a common). Reported in the [Evening Standard](#) and [The Daily Mail](#).
- 5 day boundary dispute at the County Court at Birmingham.
- 4 day boundary dispute at the County Court at Bristol.
- 3 day boundary dispute (combined with a claim under the Party Wall etc Act 1996) at the Mayors & City County Court.
- 7 day boundary dispute trial at Mayors & City County Court (combined with a harassment claim) where submissions were successfully made that the court should not follow the view of either expert surveyor, both of whom had advised there was a trespass. Reported in: [The Sun](#); [The Times](#); [The Express](#); [The Daily Mail](#)
- 4 day boundary dispute in the County Court at Brighton.
- 4 day boundary dispute in the High Court
- A 3 day rights dispute about an easement in the Property Chamber (1st Tier Tribunal)
- Appearing in the High Court to oppose an interim injunction sought in connection with a private right of way that had been compulsorily acquired.

Nuisance

Paul regularly deals with cases involving nuisance and is presently involved in a number of matters coming on for trial involving for example nuisance concerning water damage occasioned by major alterations to topography of neighbouring land and building works. Paul also represented Bournemouth Borough Council in proceedings concerning an alleged statutory nuisance relating to flies emanating from a water purification plant.

Other rights over land

Paul deal with shooting rights and other profits.

Town/Village Greens

Paul has a wealth of experience representing both objecting landowners and applicants at public inquiries concerning new town / village green applications. He is also regularly appointed to sit as an Inspector by numerous registration authorities. Altogether he has acted in some 27 public inquiries (of which 12 have involved leading counsel).

Paul has been involved in a number of court cases concerning village greens

- ▣ ***St John's College, Cambridge v Cambridge County Council*** [2017] EWHC 1753 (Admin) (known as "Meadow Triangle") Paul successfully represented Cambridge County Council, against leading counsel, in this High Court challenge. The judgment of Sir Ross Cranston concerns issues inter alia of when an application can be adjudged to be duly made and establishes that a registration authority is entitled to give an applicant more than one opportunity to correct a defective application.
- ▣ ***R (Fellows) v Powys County Council*** (2014) – refusal to appoint Inspector to preside over non-statutory village green inquiry.
- ▣ ***R (Burrows) v The Royal Borough of Windsor and Maidenhead & Anor***[2014] EWHC 389 (Admin) (21 February 2014) – challenge on legal test for contentious user after 9 day village green inquiry.
- ▣ ***R (Newhaven Port & Properties) v The Secretary State for the Environment***– submission in support of permission to appeal made to Supreme Court on behalf of Intervenor on "retrospective" application of s.15(7)(b) of the Commons Act 2006.

- ▣ ***R (Halliday Properties Ltd) v Portsmouth City Council*** (2012) – involved (as led junior) in drafting of a challenge under s.14 of the Commons Registration Act 1965 based on res judicata and "lack of spread."

Examples of previous and ongoing work includes: "The Downs at Herne Bay" (ongoing) (2018); "The Community Green" at the Vandyke Gardens Estate, Leighton Buzzard (3 days) (2018); "Rokeby Playing Fields" (4 days) 2017); "Land in Somerset (as Inspector) (7 days) (2017); "Whitstable Beach", Kent (18 days) (ongoing); Westward Ho!, Devon (as Inspector) (4 days) (2017); "Fletton Field", Northamptonshire (5 days) (2016-17); "Top Field", Hampshire (6 days) (2016); "Withy Bed", Bath and North East Somerset (2016); Land south of Oxford Meadow, Essex (2015) (3 days); Maes Glas, Cardigan, Wales (2014) (1 day); "Woodcraze", Wokingham (2014) (7 days); The Knowle, Devon (as Inspector) (2014); Land at Cae Prior, Wales (2014); The Green, Tytherington, South Gloucestershire (2014); Land at Frenchay, South Gloucestershire (as Inspector) (2014); Land to the West of Friern Barnet Library (1 day) (2014); Falmouth Avenue, Gloucestershire; Shephall View Rec, Stevenage (2014); The Glades and Italianate Gardens, Bromley (as Inspector – 3 days) (2013); Land at Coulby Newham, Middlesbrough (2013); Brewery Field, Somerset (as Inspector – 1 days) (2013); Herts & Essex School Playing Field (7 days) (2013); Catshill, Worcestershire (1 day) (2012); Land at Oaktree Avenue, South Gloucestershire (2012); Ash Hill Woods, Devon (as Inspector – 3 days) (2012); Thamesfield, Wraysbury (9 days) (2012); Port Solent, Portsmouth (3 days) (2012); St. George's Field, Headstone, Harrow (4 days) (2012); The Kayles, Old Ferry Drive, Windsor, Wraysbury (4 days) (2011); The Triangle, Tichbourne Way, Gosport, Hampshire (5 days) (2010)

Commons

Paul is the author of the Village Green and Commons chapters of the Encyclopaedia of Forms & Precedents. Commons issues covered include de-registration & exchange, landowner rights, commoner's rights, permitted works and enforcement. This work includes dealing with Metropolitan Commons or those covered by applicable schemes). Recent work includes submission to South Gloucestershire Council on behalf of a landowner who had submitted an application to de-register and exchange.

Public rights of way

Paul is experienced in appearing before at public inquiries held by the Planning Inspectorate into matter relating to public rights of way (including footpaths and bridleways). See for example the includes his successful defence of a farmer at a 5-day public inquiry against the compulsory creation of a bridleway under s.53 of the Wildlife and

Countryside Act 1981: see (Public Bridleway No. 47, Parish of Wooburn) Public Path Creation Order 2014 [FPS/P0430/6/1 Decision dated 30 December 2016](#).

Paul has regularly advised local action groups, landowners and public authorities on the existence of public rights of way together with issues relating to them. He is an Associate Member of the Institute of Public Rights of Way also contributes to "Waymark" magazine.

Landlord & Tenant (Business and Agricultural)

Paul is regularly advising and appearing in relation to all aspect of business tenancies, including contested forfeiture and renewal. Representative work includes:

- A 2 day trial in the County Court at Central London seeking forfeiture of a business tenancy and defending a Counterclaim brought by the tenant.
- A 5-day trial in the County Court at Central London in which a claim of unjust enrichment was successfully pursued in connection to a void business lease in circumstances where substantial amounts of work had been carried out on an Curry House in Brick Lane before the landlord forcibly took back possession relying on a supposed breach of agreement.
- A complex case concerning a business tenancy, listed for a 12 day trial, which was settled after mediation and further negotiation.

Paul is very willing to take on cases (often on a CFA or similar basis) concerning residential and/or social tenancies in which there is an important point of law at stake or which are particularly deserving.

Mediation

Paul regularly represents clients at mediations and has co-written 'Preparing to "Win" the Mediation', Sharpening the Sword II: Tactics and Strategies for Lock n' Load Litigation (OBA 2008), with Thomas Heintzman QC. Paul is willing to sit or act as an Arbitrator in appropriate disputes in much the same way that he has regularly acted as an Inspector at non-statutory public inquiries. Paul is also willing to give early neutral evaluations to assist parties resolve disputes.

Direct Public Access

The vast majority of Paul's work is by referral from a solicitor. However, in suitable cases he accepts instructions directly from members of the public, businesses and other organisations.

Initial specialist advice and analysis can normally be given. In some cases Paul will be able to continue deal with matters by himself but in others and where in the best interests of the client he is able to advise on bringing in suitable solicitors, paralegals, experts and other professionals in order to build a team to progress the case. Recent successful Direct Access proceedings that Paul has been involved in for example have involved property issues such as boundary disputes and rights of way.

Trusts, Wills & Estates

Disputes over ownership

Paul regularly advises and appears in proceedings concerning the ownership of property in which concern for example common intention constructive trusts or proprietary estoppel including:

- Claims under TLATA
- Co-habitation disputes arising after the breakdown of a relationship
- Those arising in a business context

Representative work in this field is a 5-day trial in the Central London County Court concerning an alleged constructive trust and proprietary estoppel.

Charities

Paul has advised and appeared in proceedings concerning charities, including those where interim relief is

sought or where there are serious allegations of impropriety.

Additional Information

Awards

A Middle Temple Benefactor's Scholar, upon being called to the Bar Paul was awarded the Harold G Fox Scholarship and spent a year working at McCarthy Tétrault LLP, Toronto, Canada. He then spent a further year as a Parliamentary Assistant in the European Parliament, Brussels before commencing his pupillage on the Western Circuit.

Professional Appointments

Paul is regularly appointed as Inspector by commons registration authorities to hold public inquiries into village green applications under the Commons Act 2006.

Qualifications / Education

- **History BA(hons), Durham University**
- **Nottingham Law School GDL**
- **BPP Law School BVC**

Publications

- Commons and Village Greens: Encyclopaedia of Forms and Precedents (EF&P) (2018)
- Preparing to "Win" the Mediation', *Sharpening the Sword II: Tactics and Strategies for Lock n' Load Litigation* (2008)
- Boundary agreements – don't forget about them if you are involved in a boundary dispute!
- Registration of greens—the significance of signs (R (on the application of Cotham School) v Bristol City Council) Lexis PSL (May 2018)
- Procedural error in determining TVG application without public inquiry (April 2016)
- Case Note on Goodman, *Waymark Magazine* (Autumn 2015).
- Case Note on Newhaven Port and Properties, *Waymark Magazine* (Spring 2015).
- Vehicular access routes over commons, *L.G.L.* 2015, Mar 13
- User "as of right" when the definitive map and statement is wrong, *L.G.L.* 2015, Feb 27
- Boundaries: trees on Westlaw "Insight" (2014)
- Supreme Court clarifies when property can be registered as village green (May 2014)
- Town and village greens – a practical handbook, 2 edn (with Vivian Chapman QC)
- 'The Newhaven village green case – access to beaches', *Local Government Lawyer*, (April 2013)
- 'Registering town and village greens: the biggest cases of 2012', *Local Government Lawyer* (March 2013)
- 'The Paddico case in the High Court', *Rights of Way Law Review*, 2011, Oct(15.3), 195-201
- 'Diggers at dawn' with William Webster, *Solicitors Journal*, 2011, 155(36), 10-11.
- 'Competitive Threat?' with William Webster, *Local Government Lawyer* (March 2011) [repayment of VAT on local authority off-street parking]
- 'Common Ground' with William Webster', *Solicitors Journal* 2011, 155(8), 11
- 'The shifting sands of town village green law', *The Barrister* (October 2010)
- 'Not easy being Green' with William Webster, *Solicitors Journal*. 2010, 154(12), 6
- 'A piece of the action', *Solicitors Journal*, 2009, 153(27).[article concerning UK class actions under CPR 19.6]
- 'Class actions, the regulatory state and the duty of the court to justice', *The Barrister*, 2010, (43), 28-29

Memberships

- Chancery Bar Association,
- Property Bar Association,
- Associate Member of The Institute of Public Rights of Way and Access Management.
- Middle Temple
- Lincoln's Inn ("ad eundem") Associate Member of The Institute of Public Rights of Way and Access Management.

Public Access

Yes

ADR

Yes

Articles

Date	Title	Contributors
01 Feb 2021	Legal issues relating to trees Published in	Paul Wilmshurst

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