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# Simon Adamyk

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*"Incredibly professional, polite, perceptive, highly intelligent and is able to untangle complex conundrums." "He is incredibly bright and an absolute go-to barrister for anything that is horrendously complicated."*

***Legal 500 UK Bar 2021***

*"Really difficult legal issues are massively in his comfort zone – he can easily churn through them."*

***Legal 500 UK Bar 2020***

*"The quality of his written work is outstanding, and he's meticulous in his attention to detail. He delivers clear advice and robust advocacy time and time again."*

***Chambers Global 2020***

## Practice Overview

Simon is an experienced litigator with an international practice.  He has attended court in The Bahamas, the Isle of Man and the BVI, has appeared in the Supreme Court in England, and has appeared twice in the Privy Council. He regularly deals with cases involving millions, and sometimes billions, of pounds.
Simon appeared (unled) in the multi-billion pound Equitable Life litigation (one of the most contentious cases of the decade) and acted in a stream of major high value disputes, including the huge BTA Bank litigation in the BVI and London (one of the largest cases of the year according to The Lawyer).
The value which he brings to clients is widely recognised: he is *"a mighty intellect and brings piercing analysis and meticulous attention to detail to his work"* (Legal 500), he *"enjoys a stellar practice"* (Chambers Global), *"his mastery of complex factual background is hugely impressive"* (Legal 500) and he is *"a major boost to any legal team"* (Chambers UK Bar).
*"He has an easy and persuasive advocacy style; solicitors wouldn't hesitate to recommend him."* - Commercial Litigation - Legal 500 2017
*"Very, very personable, extremely astute and highly intelligent."* - Commercial Dispute Resolution - Chambers UK Bar 2018
*"He is phenomenally bright, and thorough and detailed in his approach."* - Company - Chambers UK Bar 2020
*"... pleasant and responsive manner. He's good with clients in conferences and is able to explain complicated matters in language they understand."* - Chancery Commercial - Chambers UK Bar 2020.
*"Exceptionally well organised and completely on top of the detail. He really drills down into a case and is on top of every point."* - Commercial Chancery Dispute Resolution, Chambers Global 2020.
*"He has an exceptional ability to grasp and elucidate the principles at the heart of any issue"*  - Company, Legal 500 2020.

## Commercial Litigation

Commercial Chancery

Simon is an experienced commercial litigator with an international practice. He has attended court in The Bahamas, the Isle of Man and the BVI, and has appeared twice in the Privy Council. He has been called to the Bar of the Eastern Caribbean Supreme Court in the BVI.

He regularly deals with cases involving tens or hundreds of millions, and sometimes billions, of pounds. Simon appeared (unled) in the multi-billion pound Equitable Life litigation (one of the most contentious cases of the decade) and has acted in a stream of major high value disputes, including the huge BTA Bank litigation in the BVI and London (one of the largest cases of the year according to The Lawyer) and a number of high value and hotly contested disputes in Jersey.

He has wide experience of dealing with international issues and heavy cases.

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Directory acknowledgements include:

*"He is technically superb and the quality of his written work is excellent."*

**Chambers UK Bar & Chambers Global 2017** - Chancery Commercial

*"His legal analysis is of the highest quality and he is a pleasure to work with"*

**Legal 500 2016** - Commercial Litigation

*"He is extremely intelligent and takes a very thorough and cerebral approach. He is completely on top of the detail." "No question is too complex for him."*

**Chambers UK Bar 2016** - Commercial Dispute Resolution

## Company & Partnership

Simon is an experienced commercial litigator with an international practice. He has attended court in The Bahamas, the Isle of Man and the BVI, and has appeared twice in the Privy Council. He has been called to the Bar of the Eastern Caribbean Supreme Court in the BVI.

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He has wide experience of dealing with international issues and heavy cases.

The value which he brings to clients is widely recognised: he is *"a mighty intellect and brings piercing analysis and meticulous attention to detail to his work"* (Legal 500), he *"enjoys a stellar practice"* (Chambers Global), *"his mastery of complex factual background is hugely impressive"* (Legal 500) and he is *"a major boost to any legal team"* (Chambers UK Bar).

Directory acknowledgements include:

*"He has a keen analytical mind, is commercial and is very good at advising on tactics."*

**Chambers UK Bar 2017 -** Company

*"His legal analysis is of the highest quality and he turns work around in tight timeframes"*

**Legal 500 2016** - Company

## Insolvency

Simon is an experienced commercial litigator with an international practice. He has attended court in The Bahamas, the Isle of Man and the BVI, and has appeared twice in the Privy Council. He has been called to the Bar

of the Eastern Caribbean Supreme Court in the BVI.
He regularly deals with cases involving tens or hundreds of millions, and sometimes billions, of pounds. Simon appeared (unled) in the multi-billion pound Equitable Life litigation (one of the most contentious cases of the decade) and has acted in a stream of major high value disputes, including the huge BTA Bank litigation in the BVI and London (one of the largest cases of the year according to The Lawyer) and a number of high value and hotly contested disputes in Jersey.
He has wide experience of dealing with international issues and heavy cases.
The value which he brings to clients is widely recognised: he is *"a mighty intellect and brings piercing analysis and meticulous attention to detail to his work"* (Legal 500), he *"enjoys a stellar practice"* (Chambers Global), *"his mastery of complex factual background is hugely impressive"* (Legal 500) and he is *"a major boost to any legal team"* (Chambers UK Bar).

## Offshore

Simon is an experienced commercial litigator with an international practice. He has attended court in The Bahamas, the Isle of Man and the BVI, and has appeared twice in the Privy Council. He has been called to the Bar of the Eastern Caribbean Supreme Court in the BVI.
He regularly deals with cases involving tens or hundreds of millions, and sometimes billions, of pounds. Simon appeared (unled) in the multi-billion pound Equitable Life litigation (one of the most contentious cases of the decade) and has acted in a stream of major high value disputes, including the huge BTA Bank litigation in the BVI and London (one of the largest cases of the year according to The Lawyer) and a number of high value and hotly contested disputes in Jersey.
He has wide experience of dealing with international issues and heavy cases.
The value which he brings to clients is widely recognised: he is *"a mighty intellect andbrings piercing analysis and meticulous attention to detail to his work"* (Legal 500), he *"enjoys a stellar practice"* (Chambers Global), *"his mastery of complex factual background is hugely impressive"* (Legal 500) and he is *"a major boost to any legal team"* (Chambers UK Bar).

## Property

Simon is an experienced litigator. He has attended court in The Bahamas, the Isle of Man and the BVI, and has appeared twice in the Privy Council. He has been called to the Bar of the Eastern Caribbean Supreme Court in the BVI.
He regularly deals with cases involving millions, and sometimes billions, of pounds. Simon appeared (unled) in the multi-billion pound Equitable Life litigation (one of the most contentious cases of the decade) and has acted in a stream of major high value disputes, including the huge BTA Bank litigation in the BVI and London (one of the largest cases of the year according to The Lawyer) and a number of high value and hotly contested disputes in Jersey. He acted for the London Borough of Lambeth in relation to the applications to register the Undercroft on the Southbank in London as town or village green and as an asset of community value, which attracted widespread media attention.
The value which he brings to clients is widely recognised: he is *"a mighty intellect and brings piercing analysis and meticulous attention to detail to his work"* (Legal 500), *"enjoys a stellar practice"* (Chambers Global), *"his mastery of complex factual background is hugely impressive" (Legal 500) and he is "a major boost to any legal team"* (Chambers UK Bar).

## Additional Information

### Awards

Achieved a triple first at Cambridge
Awarded the highest mark in the University in each of the three years of his law degree, plus a 'starred first' in his first year
LL.M. (Harvard Law School)
Awarded a large number of University and College prizes and scholarships
Awarded Hardwicke, Mansfield and Denning scholarships by Lincoln's Inn

Awarded a Kennedy Scholarship for Harvard Law School

**Professional Appointments**
Former Treasurer of the Chancery Bar Association
Former member of the Chancery Division Court Users' Committee
One of the Chancery Bar Association's representatives in relation to H.M. Court Service's proposed "E-Working Project"

**Memberships**
Chancery Bar Association
Bar Pro Bono Unit

**Languages**
Good working knowledge of French

**Publications**
Contributor to *Lewin on Trusts* (19th edition)
Contributor to *Lewin on Trusts* (20th edition)
Contributor to *The Law of Freedom of Information* (3rd edition)
Contributor to *The Law of Freedom of Information* (4th edition)
Author of *Assets of Community Value: Law and Practice* (1st edition)
Author of various articles in the legal press and online

## Cases

### Court of Appeal delivers key judgment in the Blackbushe Airport case on the extent of the curtilage of a building

| | |
|---|---|
| **Reference:** | R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398 |
| **Date:** | 18 Mar 2021 |
| **Court:** | Court of Appeal |

**Introduction**
On 18 March 2021, the Court of Appeal provided welcome clarification of the meaning of the phrase "*the curtilage of a building*" in the Commons Act 2006. In *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2021] EWCA Civ 398, the Court of Appeal considered in detail the cases on this vexed term in a variety of statutory contexts. The Court upheld the decision of Holgate J ([2020] EWHC 959 (Admin)). The Court confirmed that the Inspector had adopted an incorrect approach in deciding whether the extensive operational area of a working airport fell within the curtilage of the terminal building and could therefore be de-registered as common land under the Commons Act 2006. The decision will be essential reading in relation to common land and also in any context in which the term "curtilage" needs to be interpreted and applied.

**Background**
Yateley Common in Hampshire is registered as common land on the register of common land maintained by the Claimant, Hampshire County Council (the "Council"), under the Commons Act 2006. Blackbushe Airport is a general civil airport which is operated by Blackbushe Airport Ltd ("BAL"). The major part of the operational area of the airport lies within the area of the common. BAL made an application to the Council under paragraph 6 of schedule 2 to the Commons Act 2006 to de-register the part of the airport which had been registered as common land. The application land comprised a large area (115 acres or 46.5 hectares) of operational land, including the runway, taxiways, fuel storage depot, the terminal building (including control tower), a café and car parking. The terminal building is a modest building with a footprint of about 360m$^2$ in the south-eastern corner of the site.<

The basis of BAL's application was that the entire operational area of the airport formed part of "the curtilage of a

building" (ie. the terminal building) and that it had done at all times since the land was provisionally registered as common land back in 1967. BAL therefore contended that the whole of the operational area of the airport fell to be de-registered under paragraph 6 of schedule 2 to the 2006 Act. At a public inquiry in 2019, an Inspector appointed by the Secretary of State agreed. The Council then applied to the High Court for judicial review of this decision. The case was designated as a significant planning case and the hearing was expedited. The High Court (Holgate J) upheld the challenge ([2020] EWHC 959 (Admin)) and quashed the Inspector's decision. BAL appealed.

**The judgment**

*Curtilage*

The Court of Appeal (Lady Justice King, Lady Justice Andrews and Lord Justice Nugee) considered in detail the leading authorities on the meaning of "curtilage" in various statutory contexts. The leading judgment was given by Andrews LJ, with whom Nugee LJ and King LJ agreed, with Nugee LJ adding some remarks of his own. The Court confirmed the "conspicuously thorough, considered and carefully reasoned judgment" of Holgate J ([18]). The Court considered in particular six key authorities: *Methuen-Campbell v Walters* [1979] QB 525; *Attorney-General ex rel Sutcliffe v Calderdale Borough Council* (1982) 46 P&CR 399; *Dyer v Dorset County Council* [1989] 1 QB 346; *Barwick and Barwick v Kent County Council* (1992) 24 HLR 341; *Skerritts of Nottingham Ltd v Secretary of State for Environment, Transport and the Regions* [2001] QB 59; and *Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government* [2019] EWHC 553 (Admin).

The Court of Appeal rejected BAL's contention that the overarching principle was that land was comprised within the curtilage of a building if the land was sufficiently closely related to the building such that together the land and the building formed part and parcel of an integral whole or single unit. That approach was incorrect. Instead, the Court held (at [124]) that Holgate J was right to hold that the phrase "the curtilage of a building" in the 2006 Act requires the land in question to form part and parcel of the *building* to which it is related. The correct question is whether the land falls within the curtilage of the *building*, not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, or whether the building forms part and parcel of some unit which includes that land. The land must form part and parcel *of* the building, not part and parcel *with* the building ([7] and [127]). The Court therefore confirmed that Holgate J had correctly concluded that the Inspector's decision had been fatally flawed by material errors of law, and that Holgate J was right to have quashed the decision.

The Court confirmed that there is only one meaning of the word "curtilage". Andrews LJ observed at [25] that, "The curtilage of a building is a single concept, and … does not have different meanings in different statutory contexts. There is in truth only one test, and that is the test articulated by Buckley LJ in *Methuen-Campbell*". This test is that "for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter" (*Methuen-Campbell* at pp. 543F–544G). This is "as good an expression of the concept of curtilage as one is likely to find" ([62]). In applying this definition to the facts of individual cases, it remains important to take account of the different statutory contexts in which the question may arise (*per* Nugee LJ at [135]).

*Ancillariness*

Furthermore, and independently of the above points, the Court of Appeal confirmed (as Holgate J had held at first instance) that the Inspector had also erred in relation to his treatment of ancillariness. As Andrews LJ observed at [118], the word "ancillary" means something which is subservient to, or subordinate to, or which provides essential support to the functioning of, something else. It was common ground that, even though this is not an essential requirement, nevertheless whether the land is indeed ancillary to the building is a relevant (and may be a highly relevant) consideration. If that factor is to be taken into account, it is important that the decision-maker should understand the concept correctly (*per* Andrews LJ at [118]). The Inspector had plainly fallen into error in treating the land and the terminal building as ancillary to each other (*per* Andrews LJ at [119]). If the correct question had been asked (namely, whether the Application Land was ancillary to the terminal *building*) the answer was plainly no; on the contrary the terminal building was ancillary to the functioning of the Application Land *(per* Andrews LJ at [119]).

**Judge:** Holgate J

**Practice Area:** Property

## High Court delivers landmark judgment in the Blackbushe Airport case on the extent of the curtilage of a building

**Reference:**
**Date:** 23 Apr 2020
**Court:**
**Judge:**
**Practice Area:**

## High Court delivers ground-breaking judgment on the extent of a highway and the meaning of "road to which the public has access"

**Reference:**
**Date:** 03 Apr 2020
**Court:**
**Judge:**
**Practice Area:**

## Supreme Court rules that NHS "public purposes" are no longer stymied by village green registration

**Reference:**
**Date:** 11 Dec 2019
**Court:**

**Supreme Court rules that NHS "public purposes" are no longer stymied by village green registration**

**Introduction**

On 11 December 2019, the Supreme Court ruled that use of land held for "good public purposes" cannot be "stymied" by registration as a town or village green. The Court ruled that the relevant land could not be registered.

The Supreme Court so held in the long-awaited conjoined appeals of *R (Lancashire CC) v Secretary of State for Environment, Food and Rural Affairs* and *R (NHS Property Services Ltd) v Surrey County Council and Jones* [2019] UKSC 58.

**The issues which are now being raised include questions as to the other public bodies and statutory purposes to which this broad principle will apply, and whether other potentially valuable land owned by public authorities that has previously been registered as a town or village green can now be removed from the register and reinstated and held for its original public purposes.**

**Background**

The NHS case concerned an area of undeveloped land owned by the NHS, adjoining Leatherhead Hospital in Surrey. After a public inquiry lasting 8 days, the land had been registered as a town or village green by Surrey County Council, rejecting the NHS's arguments that registration was not permitted because the land was held for future statutory clinical and healthcare purposes which were inconsistent with use of the land as a village green. The NHS successfully challenged the registration in the High Court but this was overturned by the Court of Appeal on an application by a local resident, Mr Jones, and the NHS appealed to the Supreme Court.

**The Judgment**

By a 3:2 majority (*per* Lord Carnwath, Lord Sales and Lady Black) the Supreme Court held that where there is "… incompatibility between the statutory purposes for which the land is held and use of that land as a town or village green … the provisions of the [Commons Act] 2006 are, as a matter of the construction of that Act, not applicable in relation to it" (para. 55).

This judgment substantially extends the principle of statutory incompatibility, initially identified by the Supreme Court in *R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] UKSC 7, to any situation in which the use by local inhabitants would conflict with the statutory purposes for which the land is held.

The Supreme Court (at para. 56) held that the test for statutory incompatibility is expressed in general terms: the test is not whether the land has been allocated by statute itself for particular statutory purposes, but whether it has been acquired for such purposes (compulsorily or by agreement) and is for the time being so held.

The majority did not find this surprising, saying (at para. 61) that, "It would be a strong thing to find that Parliament intended to allow use of land held by a public authority for good public purposes defined in statute to be stymied by the operation of a subsequent general statute such as the 2006 Act", and that "There is no indication in that Act, or its predecessor (the Commons Registration Act 1965) that it was intended to have such an effect".

There was statutory incompatibility in each of the appeals before the Court: the village green rights would conflict with the statutory healthcare purposes for which the land was held by the NHS (in the NHS case) or the statutory education purposes (in the Lancashire case). The land could therefore not be registered as a village green.

**Crucially, the majority held that it did not make any difference how the land actually happens to be used at any particular point in time. What matters is the general statutory purpose for which the land is held. On that key issue the minority strongly disagreed, with both Lady Arden and Lord Wilson giving reasoned dissenting judgments.**

The majority did not however disturb the observation of Lord Neuberger PSC in Newhaven at para. 101. Accordingly, it remains the case that the doctrine of statutory incompatibility will not apply where "… a public body might have statutory purposes to which it could in future appropriate the land (but has not yet done so) …" (para. 70).

George Laurence QC (New Square Chambers), Jonathan Clay (Cornerstone Barristers) and Simon Adamyk (New Square Chambers) appeared for the successful Appellant, NHS Property Services Ltd (instructed by Womble Bond Dickinson LLP).

Dr Ashley Bowes (Cornerstone Barristers) appeared for the Second Respondent, Mr Jones (instructed by Richard Buxton Solicitors).

**Judge:**

**Practice Area:**

**George Laurence QC and Simon Adamyk appear in the Supreme Court**

**Reference:**

**Date:** 18 Jul 2019

**Court:**

**Judge:**

**Practice Area:**

## Publications

| Date | Title | Contributors |
|---|---|---|
| 20 May 2020 | Diversion of public footpaths made easier (R (Open Spaces Society) v Secretary of State for Environment, Food and Rural Affairs) | George Laurence QC<br>Simon Adamyk |

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