

Noise nuisance

Newham LBC v White

(Unreported Divisional Court)

Background and decision

The facts of the case were straightforward. Newham LBC (N) had served an abatement notice on the defendant (W) in terms ss79 and 80 of the Environmental Protection Act 1990 in relation to noise which was emanating from W's premises. The alleged noise in question consisted of shouting and amplified music. The enforcement officer had listened to the noise in question for 35 minutes before serving the notice. The magistrates acquitted W of an offence under s80. N appealed to the Divisional Court. The sole question which fell to be determined was whether in deciding if the noise in question ranked as a statutory nuisance, one should adopt either a subjective or objective approach. The Court held that the correct test to be applied was whether the noise in question, when assessed objectively, would rank as a statutory nuisance. In other words, the correct question which required to be answered was whether the average person, as opposed to W, would have regarded the noise in question a nuisance.

Comment

Essentially, the Court decided that the test as to whether a given state of affairs can rank as a statutory nuisance is the same as that which applies when one is deciding whether a nuisance exists at common law. As far as the law of Scotland is concerned, this point had already been decided in the Inner House case of *Robb v Dundee City Council* 2002 SC 301.

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