

Noise Nuisance

Peires v Bickerton's Aerodromes Ltd [2016] EWHC 560

Background and decision

The claimant, P lived in the vicinity of an aerodrome which was operated by B. P claimed that she was adversely affected by the noise of helicopters which were carrying out training operations at a spot which was close to the aerodrome boundary, which was 58 metres (at the closest point) from P's property. The relevant operation involved the helicopters carrying take-off and landing on a sloped piece of ground. P made no complaint about other activities which were carried on at the aerodrome, namely the landing and taking off of light aircraft, and helicopters and noise from hangers when helicopters and/or aircraft were tested or repaired. P raised an action in nuisance against B.

In ascertaining whether the noise which was the subject matter of the action amounted to an actionable nuisance Peter Smith J reviewed the leading cases, including the leading case on noise nuisance, namely, *Lawrence v Fen Tigers* [2014] AC 822 (see (2014) 163 SPEL 64). In order to establish that the noise in question was a nuisance, one of the factors which a court requires to take into account is the nature of the locality. In short, if the state of affairs (eg noise, smell) which is complained of emanates from activities which are typical of the locality, the state of affairs is less likely to be castigated a nuisance. Therefore, noise from a factory which is situated in an industrial area is less likely to rank as a nuisance than noise from a factory in a rural locality. However, his Lordship emphasised that the character of any locality may not conform to a single homogenous identity, but rather, may consist of a varied pattern of uses, all of which need to coexist in a modern society. Furthermore, due account required to be taken of the process by means of which the pattern of uses has developed. The development of planning control, which included the preparation of development plans, as well as planning permission for individual planning applications, had played a major part in ensuring an appropriate balance between developers and the public. However, other forms of regulatory control had a part to play in ensuring the acceptability of developments. The established pattern of uses generally represented society's view of the appropriate balance of uses in a particular area and of the maintenance of an acceptable environment for its occupants. The common law of nuisance was there to provide a residual control to ensure that new, or intensified activities, lead to conditions which, within that pattern, go beyond what a normal person should be expected to put up with.

Peter Smith J then had to address the issue as to whether the activity (here the aerodrome) which was the subject matter of the action, could be taken into account when determining the nature of the relevant locality. His Lordship answered this question in the affirmative.

In the last analysis, the right of P to the undisturbed enjoyment of her property required to be balanced against the right of the defendant to use its property for its own lawful enjoyment. In determining whether the noise in question was unreasonably loud, his Lordship regarded as vital, the fact that the noise which was complained of, was markedly different in nature from the noise from take-off and landing and other activities which were carried on at the airport. Indeed, Peter Smith observed that during his site visit he had found the noise which was complained of excruciating. His Lordship concluded by deciding that the noise complained of did rank as a nuisance

at common law. An injunction was granted to P. The terms of the injunction were to be fixed at a later date.

Comment

While the decision does not take the law of nuisance further forward, it is of interest in so far as its discussion of one should ascertain the nature of the relevant locality. Peter Smith J was prepared to accord some importance to the processes (both regulatory processes and others) by means of which development had come about, in shaping the character of the relevant land. In *Lawrence* the Supreme Court decided that, whereas the grant of planning permission could not *per se* change the character of land for the purposes of the law of nuisance, it should be accorded some importance in determining whether noise ranks as a nuisance. However, this area of law remains rather nebulous. The Scottish courts have never been required to decide whether planning permission has any relevance to a common law action in nuisance. In the absence of such authority, it is the view of the author that it has no relevance.

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