



### The Supreme Court makes fundamental changes to the law of nuisance

#### Summary

The law of nuisance has developed through case law over the last two centuries. Although, in a time where industrial activities are increasingly regulated under different regulatory regimes, the recent Court of Appeal case of *Barr v Biffa [2012] EWCA Civ 312* illustrated the continuing relevance and commercial importance of this area of law.

The Supreme Court has just reviewed the law of nuisance in the case of *Coventry v Lawrence [2014] UKSC 13*. It has made fundamental

changes to long-established principles of the law of nuisance.

This case is of significant importance to those carrying out activities that create noise (or other impacts such as odour and other emissions) and those who are affected by such activities, as well as local authorities and developers.

The key facts are set out in the table below.

Date	Event
1975	Terence Waters granted planning permission to construct stadium for 'Speedway racing and associated facilities' for period of ten years.
1984	Stadium starts to be used for stock car and banger racing (not permitted under planning permission).
1985	Original planning permission renewed on permanent basis.
1992	Motocross track constructed at stadium.
1992	Personal planning permission, in respect of motocross events, granted for a year in favour of Terence Waters and subsequently renewed.
1997	Certificate of Lawfulness of Existing Use or Development ('CLEUD') issued in respect of stock car and banger racing.
2002	Permanent permission granted for motocross events, limiting use to certain days, prescribed hours and specified noise levels.
2006	Claimants purchase and move into house near the Stadium and Track.
2006	Claimants complain to local council about noise from Track. Noise Abatement notices served requiring works to mitigate noise (carried out 2009).
2011	Claimants granted injunction in the High Court preventing activities that produce noise above specific levels.
2012	The Court of Appeal reverse the decision holding that the activities at the Stadium and Track did not constitute a nuisance.

#### Issues

The Supreme Court had to consider a number of legal issues in respect of private nuisance:

1. the extent to which a defendant can argue that he has established a prescriptive right to commit a noise nuisance;
2. the extent to which a defendant to a nuisance claim can rely on the fact that the claimant "came to the nuisance";
3. the extent to which it is open to a defendant to a nuisance claim to invoke the actual use of his premises when assessing

the character of the locality;

4. the extent to which the grant of planning permission can be taken into account when considering the character of the locality; and
5. the approach to be adopted by a court when deciding whether to grant an injunction or whether to award damages instead.

The Supreme Court's findings are summarised below.

## Prescription

The court acknowledged that the right to commit a nuisance by noise can be acquired by prescription (ie long use).

It was held that the noise nuisance through holding motocross events more than 20 times a year for a period of 20 years could give rise to a right to continue such activity by prescription. However, on the facts, the 20 year period had not been satisfied as the first complaints had been lodged only 16 years prior to the case.

### ‘Coming to a nuisance’

The court held that, provided a claimant in nuisance uses his or her property for essentially the same purpose as his predecessors before the nuisance started, the defendant cannot rely on the defence that the claimant ‘came to the nuisance’.

However, where a claimant builds on his or her property or changes the use of the property after the defendant had initially commenced the activity then the claimant’s claim for nuisance could fail.

## The defendant’s own activities and the “locality”

The court clarified the law in relation to assessing the character of the locality.

The court should start from the proposition that the defendant’s activities are taken into account when making such assessment. However, such activities should only be considered to the extent to which they would not cause a nuisance to the claimant.

Therefore, if the activities cannot be carried out without creating a nuisance, such activities will have to be entirely discounted when assessing the character of the locality.

Also, if the activities are in breach of planning permission they will not be taken into account when assessing the character of the locality.

## Relevance of planning permission

The Supreme Court considered whether a defendant can rely on the grant, terms or conditions of a planning permission.

In the High Court, the planning permission had been dismissed as irrelevant when deciding whether the activity constituted a nuisance. The Supreme Court dismissed such reasons as unsupportable.

It was held by the Supreme Court that the fact that planning permission has been granted does not mean that the relevant activity is lawful, and is therefore of no assistance to the defendant. The issue of common law nuisance is reserved to the court rather than the relevant planning authority.

However, where planning permission stipulates limits as to the frequency and intensity of noise then such conditions within a planning permission may be relevant in assisting the claimant’s action.

## Injunction or damages?

The Supreme Court recognised that, where a claimant has established a nuisance, the claimant is entitled to an injunction to restrain the defendant from continuing the nuisance in the future (in addition to damages for past nuisance). The legal burden is on the defendant to satisfy the court as to why an injunction should not be granted.

However, the court may choose not to award an injunction and award the claimant damages for future damages instead. Such damages are conventionally based on the reduction in value of the claimant’s property as a result of the continuation of the nuisance.

In exercising its discretion as to whether the court should grant an injunction or award damages, the court is to consider AL Smith LJ’s four tests from the case of *Shelfer v City of London Electric Lighting Co [1895]*, being that damages should be awarded:

1. where the injury to the claimant’s legal rights is small;
2. where the injury to the claimant is capable of being estimated in money;
3. where the injury to the claimant can be adequately compensated by a small money payment; and
4. where the case is one in which it would be oppressive to the defendant to grant an injunction.

However, the Supreme Court further held that the application of the four tests must not be a fetter on the exercise of the court’s discretion. It would normally be right to refuse an injunction if the four tests were satisfied and there were no additional relevant circumstances pointing the other way. However, the fact that those tests are not all satisfied does not mean that an injunction has to be granted.

Furthermore, the public interest may be a relevant consideration (such as the employees of the defendant losing their jobs if an injunction is granted or whether other neighbours in addition to the claimant are badly affected by the nuisance).

Also, where the nuisance complained of has previously been authorised in a planning permission this may influence the court to conclude that it is in the public benefit that the claimant is awarded damages rather than an injunction.

## Conclusion

The Supreme Court has taken an opportunity to clarify some important points in relation to the law of nuisance and, in particular, areas where practitioners and commentators thought that the area of law had not kept pace with industrial development.

This is a key moment in the development of the law of nuisance.

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