26 February 2014

PRESS SUMMARY

Coventry and others (Respondents) v Lawrence and another (Appellants) [2014] UKSC 13
On appeal from [2012] EWCA Civ 26

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Clarke, Lord Sumption and Lord Carnwath

BACKGROUND TO THE APPEALS

This appeal raises a number of points in connection with the law of private nuisance, a common law tort. A nuisance is an act (or a failure to act) on the part of a defendant, which is not otherwise authorised and which causes an interference with the claimant's reasonable enjoyment of her land.

In February 1975 planning permission was granted for the construction of a stadium ("the Stadium") in the Suffolk countryside. The planning permission permitted the Stadium to be used for "speedway racing and associated facilities" for a period of 10 years, and it was subsequently renewed on a permanent basis in 1985. Stock car and banger racing started at the Stadium in 1984, and after ten years of such use Mr Waters successfully applied for a Certificate of Lawfulness of Existing Use or Development. To the rear of the Stadium is a motocross track ("the Track"), which was used pursuant to a temporary personal planning permission, which was subsequently renewed on a permanent basis.

In January 2006, Katherine Lawrence and Raymond Shields ("the appellants") moved into Fenland, a residential property close to the Stadium and Track. In 2008 they issued proceedings against the operators of the Stadium and the Track ("the respondents") for an injunction prohibiting their activities, on the ground that they gave rise to a nuisance by noise. At first instance the appellants were successful in that the judge made an order limiting the level of noise emitted by those activities, but he stayed the order until the appellants' house had been rebuilt as it had been severely damaged by fire, and granted the parties the right to apply to him. The Court of Appeal allowed the respondents' appeal, holding that the appellants had failed to establish that the activities constituted a nuisance. Jackson LJ, who gave the main judgment, held that the judge was wrong to hold that the actual use of the Stadium and the Track with planning permission could not be taken into account when assessing the character of the locality for the purpose of determining whether the activities constituted a nuisance.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Neuberger, with whom the rest of the court substantially agrees, gives the main judgment. The respondents' activities at the Stadium and the Track constitute a nuisance and, as the respondents fail to establish a prescriptive right to carry out these activities, the injunction granted by the judge is restored, although it remains stayed because the appellants' house has not yet been rebuilt.

REASONS FOR THE JUDGMENT

The issues raised in relation to a claim for nuisance by noise are as follows [**6**]:

- The extent, if any, to which it is open to a defendant to contend that he has established a prescriptive right to commit what would otherwise be a nuisance by noise;
- The extent, if any, to which a defendant can rely on the fact that the claimant "came to the nuisance";
- The extent, if any, to which it is open to a defendant to invoke the actual use complained of by the claimant, when assessing the character of the locality;
- The extent, if any, to which the grant of planning permission for a particular use can affect the question whether (i) that use is a nuisance or (ii) any other use in the locality can be taken into account when considering the character of the locality;

- The approach to be adopted by a court when deciding whether to grant an injunction or whether to award damages instead, and the relevance of planning permission to that issue.

Acquiring a right to commit what would otherwise be a nuisance by noise
In light of the relevant principles, practical considerations and judicial dicta, it is possible to obtain by prescription (a form of deemed grant that arises as a result of long use) a right to commit what would otherwise be a nuisance by noise [**28**]-[**46**]. What has to be established is that the relevant activity has created a nuisance for over 20 years "without interruption" [**143**].

"Coming to the nuisance"
It is not a defence to a claim in nuisance to show that the claimant acquired or moved into her property after the nuisance had started. However it may be a defence, at least in some circumstances, that it is only because the claimant has changed the use of her land that the defendant's pre-existing activity is claimed to have become a nuisance [**47**]-[**58**].

Reliance on the defendant's own activities in defending a nuisance claim
A defendant, faced with a contention that her activities give rise to a nuisance, can rely on those activities as constituting part of the character of the locality, but only to the extent that those activities do not constitute a nuisance [**74**]. In many cases it is fairly clear once the facts are established whether a defendant's activities constitute a nuisance, albeit in some cases the court may have to go through an iterative process when considering what noise levels are acceptable when assessing i) the character of the locality and ii) what constitutes a nuisance [**71**]-[**72**]. The same principle applies to the defendant's ability to rely on other uses as forming part of the character of the locality [**75**].

The effect of planning permission on an allegation of nuisance
It is wrong in principle that, through the grant of planning permission, a planning authority should be able to deprive a property-owner of a right to object to what would otherwise be a nuisance, without providing her with compensation [**90**]. A planning authority can be expected to balance competing interests as best it can in the overall public interest and some of those interests play no part in the assessment of whether a particular activity constitutes a nuisance [**95**]. Nevertheless, there will be occasions when the terms of a planning permission could be of some relevance in a nuisance case: the fact that the planning authority takes the view that noisy activity is acceptable after 8.30am in a particular locality may, for example, be a real value as a starting point in a case where the claimant contends that the activity gives rise to a nuisance if its starts before 9.30am [**96**].

The award of damages instead of an injunction
Where a claimant has established that the defendant's activities constitute a nuisance, *prima facie* the remedy to which she is entitled (in addition to damages for past nuisance) is an injunction to restrain the defendant from committing such nuisance in the future. The *prima facie* position is that an injunction should be granted, so the legal burden is on the defendant to show why it should not [**121**]. The existence of a planning permission which expressly or inherently authorises carrying on an activity in such a way as to cause a nuisance can be a factor in favour of refusing an injunction and compensating the claimant in damages [**125**]. In a number of recent cases judges have been too ready to grant injunctions without considering whether to award damages instead.

Lord Neuberger concludes that the respondents' activities at the Stadium and on the Track do constitute a nuisance and that, as the respondents had not established that their activities amounted to a nuisance during a period of at least 20 years, they fail to establish a prescriptive right to carry out these activities. Consequently, the appeal is allowed and the injunction granted by the judge restored [**133**]-[**153**]. However, when and if the matter goes back before the judge, he should be entitled to consider whether to discharge the injunction and award damages instead.

Lord Mance, Lord Clarke, Lord Sumption and Lord Carnwath all give judgments concurring with the outcome reached by Lord Neuberger.

References in square brackets are to paragraphs in the judgment

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://www.supremecourt.uk/decided-cases/index.shtml.