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NOISE NUISANCE FROM CONSTRUCTION SITES

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1. INTRODUCTION

There is no hard and fast and definition of nuisance which is based on the principles and judgements established by the court. A nuisance has been described as "an inconvenience materially interfering with ordinary comfort "[1].

Although it is a question of degree in every case as to whether a material interference from noise exists the court has identified several factors which need to be considered including the severity of the intrusion, the locality, the nature of the disturbance, the manner in which the disturbance occurs and its duration. This generality is exemplified by the ruling given in Bamford v Turnley [2] that:

> "That may be a nuisance in Grovesnor Square which would be none in Smithfield Market, that may be a nuisance at midday which would not be so at midnight, that may be a nuisance which is permanent and continual which would be no nuisance of temporary or occasional only".

Unlike continual forms of nuisance, the law recognises that substantial interference from building works must be accepted as part of development in so far as the works are carried out with reasonable care and skill. This point was established in Harrison v Southwark and Vauxhall Water Company [3] that:

> "It frequently happens that the owners or occupiers of land cause in the course of lawful works in the ordinary user of land, a considerable amount of temporary annoyance to their neighbours; but they are not unlawful nuisance. The business of life could not be carried on if it were so. For instance, a man who pulls down his house for the purpose of building a new one no doubt causes considerable inconvenience to his next door neighbours during the process of demolition; but he is not responsible as for a nuisance if he uses all reasonable skill and care to avoid annoyance to his neighbour by the works of demolition. Nor is he liable to an action, even though the noise and dust and the consequent annoyance be such as would constitute a nuisance if the same, instead of being created for the purpose of demolition of the house, had been created in sheer wantoness, or in the execution of works for a purpose involving a permanent continuance of the noise and dust. [3]

This principle has been criticised when building works have occurred over a long period of time where it is agreed that the condition of temporaries should not be determinative. In order to evaluate this argument a more detailed examination is required of the law of nuisance regarding building works.

2. NUISANCE LAW CONCERNING CONSTRUCTION OPERATIONS

The court has been mostly concerned with what works ought to be considered as being unreasonable and, in particular, noisy works being carried out at unreasonable hours.

In De Keyser's Royal Hotel, Ltd v Spicer Brothers Ltd and Minter [4] the court restrained piling taking place at night and in Boynton v Helena Rubenstein and Hall, Beddall & Co [5] the contractors were prevented from using a hoist outside the hours of 9 a.m. and 6 p.m. Nuisance for structural damage to an old building caused by piling was found in Hoare and Company v Mc Alpine [6] in which it was held that:

> "Even if, as the defendants alleged, the plaintiffs' house was in an abnormally unstable condition, the defendants were responsible for all damage caused by the escape of vibration".

Damages were awarded in Emms v Polya [7] for "noise of hammering, banging, drilling, falling plaster and rubble, thumping, shouting and swearing by the workmen" which occurred for over a year, sometimes at the weekends and in the evenings, as a result of conversion of a Victorian House into maisonetts: after Mr Justice Plowman found that the owner, who arranged the works himself, "took no precautions whatever to mitigate the effect of his operations".

The case of Matania v The National Provincial Bank and the Elevenist Syndicate [8] involved refurbishment works which were carried out below music teaching rooms, causing intrusion by way of noise and dust rendering the rooms 'uninhabitable' for fourteen weeks or more. It was found by Slesser that the escape of dust could have been avoided by means of sheeting and that there was no 'reason to suppose that some arrangement could not have been made whereby the noise, which the learned judge has found to be intolerable of Mr Matania at least to this extent, that for some hours of the day, while he was carrying on his business, these persons should have suspended operations or done their work on some day, as was suggested with regard to Friday, when he was not conducting his work'. This judgement overturned the earlier decision that sufficient and proper precautions were taken and shows that when substantial interference has occurred, the principle of using all reasonable skill and care is likely to be interpreted as a very stringent rule. The case is also interesting as it offers some guidance as to whose responsibility it is for causing the nuisance. It was argued on behalf of the Elevenist Syndicate that they could not be held liable for the nuisance because the works were carried out by an independent contractor. On this point, it was found that the Elevenist Syndicate did not take proper precautions to prevent injury and it was held that:

> "Although the Elevenist Syndicate had employed independent contractors, they were liable in damages for nuisance since the work to be done in its very nature involved a risk of damage being done to the plaintiff." [9]

A leading case which deserves special attention is that of Andreae v Selfridge & Company Ltd [10].

3. ANDREAE V SELFRIDGE

This was an appeal from a judgment delivered by Bennett in which he held, inter alia, that building works, innovative for that time, were not an ordinary use and occupation of land. Having regarded the works as abnormal he attributed damages in respect of all of the building operations.

The case involved construction of a new building on a large site close to a hotel, which was carried out over distinct phases as and when the company was able to aquire various existing premises which occupied the site. The action was taken in respect of noise and dust arising mainly from two different operations. The first operation involved demolition of several houses, between December 1931 and February 1932, and subsequent excavation to a depth of 60 foot and erection of a steel frame. The construction works appear to have been mainly carried out during the first half of 1932. In respect of this operation it was found that noisy works were carried out at night and on this matter Greene had this to say:

> "If persons for their own convenience choose to work [cranes] overtime, and create a disturbance from 7 a.m to 10 p.m, that is a matter which may, in some cases be very seriously regarded." He adds that "I certainly protest against the idea that if persons, for their own profit and convenience, choose to destroy one night's rest of their neighbours, they are doing something which is excusable". [11]

The second operation involved demolition works which occurred between July 1935 and September 1935. The complaint of this operation mainly concerned large quantities of dust and grit which was 'serious' and 'insufferable'. This operation was found to have been carried out hurriedly and without due care and attention to confine the dust.

It can be seen from this that the works spanned several years but the periods of intrusion upon which the complaint was based lasted somewhere between six months and a year.

As part of the appeal, Counsel for the respondent argued that 'operations on so large a scale, and lasting so long', do not come within the principle laid down in Harrison's case (cited earlier that temporary works must be lawful). It was held by Greene that:

> "(a) In considering whether the development of property is abnormal, the methods of building must not be taken as stabilised, but the development of the day must be regarded; but the operations of demolition, excavation or building must be carried out with reasonable care and skill, which may require (inter alia) restricted hours of work, limitation of amount of a particular class of work done simultaneously in a particular area, and the use of proper scientific means of avoiding inconvenience.
>
> (b) In estimating damage done to a business by such operations, damage caused by the lawful operations of the defendant must be carefully excluded, and the plaintiff could only recover for loss caused by acts which were abnormal or not carried out with proper care and skill. The loss due to a change in the general amenities of the neighbourhood

> resulting from demolition, building or rebuilding operations could not be recovered". [12].

Clearly, then, this firmly rejects any notion that action could be taken in respect of works carried out in a reasonable manner, even though the works were of such a large scale and 'lasted for so long'. Nevertheless, the duration of the works are likely to be determinative of the level of skill and care required. Where works last for an unusual length of time one would expect a higher degree of care even if this would add to the cost of the development.

On the point of costs of control measures, Greene considered that it would not be reasonable to expect that the cost of minimising the nuisance should be such that the work would have to be carried out " so slowly or so expensively for the purpose of preventing a transient inconvenience, that it would make it a prohibitive operation".[13]

4 GILLINGHAM V MEDWAY

Another important case which needs to be considered is that of Gillingham Borough Council v Medway (Chatham) Dock Co Ltd and others [14] in which Buckley held that:

> "Where planning consent was given for a development or change of use, the question of whether a particular user amounted to a public nuisance thereafter fell to be decided by reference to the neighbourhood as it was with that development or change of use and not as it was previously".

This decision has been severely criticised by Penner [15] who has argued that " it represents a significant departure from the traditional neighbourhood standard rule in the law of nuisance". She also argues that the law of nuisance controlling construction works is substantially weakened.

Whereas, this may be true for continual forms of nuisance, in my view the decision given in the Gillingham case does not substantially weaken or alter the principles established in Andreae v Selfridge because, although as part of the planning process the social costs of the construction phase of the development may have been considered (this is a specific requirement of the Environmental Effects Regulations), it is inconceivable that this would ever encompass works not carried out with reasonable skill and care.

Although substantial social costs can result from the construction phase of a development, earlier consideration of the law of nuisance surrounding building works has shown that it is unlikely that nuisance action would allow compensation for works carried out in a reasonable manner. Consequently, if people are to be compensated for substantial disruptions from building works it is essential that a framework for compensation is determined as part of the planning process.

One of the difficulties here, however is the determination of, prior to commencement of work, to what extent damages ought to be awarded. Little guidance exists on this matter, but a set of guidelines developed by the Greater London Council (GLC) in the interpretation of the terms ', seriously affected' for a 'substantial period of time', contained within the Noise Insulation Regulations, provides a useful reference against which standards could be developed. The criterion level was set at an L_{eq} of 75 dB(A) for the period from 0700 to 1900 hours and a substantial period of time was interpreted as a consecutive period of ten working days.

5 CONCLUSIONS

Nuisance from building works would normally be considered as being lawful in so far as the works are carried out with all reasonable 'skill and care'.

Damages would only be awarded in respect of those works carried out without proper skill and care, and lawful operations excluded. Unless the principle established in Andreae v Selfridge is successfully challenged, nuisance action is unlikely to provide sufficient compensation to people suffering considerable harm from works carried out with proper precautions. Consequently it is considered that a framework for determining levels of compensation to be agreed as part of the planning process would be most useful.

The guidance criterion of an $L_{eq,\ 12\ hour}$ of 75 dB(A) over ten consecutive days provides a useful basis on which to develop standards.

6. REFERENCES

[1] Walter v Selfridge (1851) 4 De G and Sm 315
[2] Bamford v Turnley (1862) 3 B & S 66, at p.79
[3] Harrison v Southwark & Vauxhall Water Co, [1891] 2 CH 409
[4] (1914), 36 TLR 257
[5] (1960), 176 EG 443
[6] Hoare and Company v McAlpine (1923) 1 CH p 167
[7] EMMS v Polya (1973), 227 E G 1659
[8] Matania v The National Provincial Bank, Ltd and the Elevenist Syndicate Ltd (1936) 2 All ER p 633
[9] Ibid at 634
[10] Andreae v Selfridge & Company Ltd (1937) All E.R.Vol 3, p 255
[11] Ibid at p 261
[12] Ibid at p 255
[13] Ibid at p 267
[14] (1992) 3 All ER, 923
[15] J E Penner 'Nuisance and the character of the neighbourhood'. Journal of Environment Law Vol 5 No 1