A guide to neighbour disputes

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The different forms of neighbour disputes

- With everyone spending more time at home than ever before, it is inevitable that friction between neighbours will arise. This can take many forms, but the most common are:
  - Noise nuisance
  - Disrepair
  - Harassment
  - Boundary disputes
  - Rights of way

Noise nuisance

- Nuisance in this context requires the interference with a neighbour's quiet enjoyment of their land, such interference:
  - Must be substantial or unreasonable
  - It can arise from a single incident or "state of affairs"
  - It can be caused by inaction or omission as well as some positive activity
- The broad unifying principle is reasonableness between neighbours.
- The interference must be reasonably foreseeable
- A classic example from a case Oliver dealt with a few years ago was a teenager shouting and swearing while playing computer games late at night.

Noise nuisance- what is reasonable?

- To decide whether there has been nuisance, the court will have to consider what is 'reasonable' in the circumstances. This will depend on how an individual court weighs up all the factors, but they will consider:
  - The location (in a large block of flats next to a major road more noise will be expected than a semi-detached house in the suburbs)
  - The time the nuisance is occurring (night likely to be worse than the day)
  - The frequency and intensity of the noise (the more of each, the most likely to be a nuisance)
  - How it would impact a reasonable claimant (unusual levels of sensitivity will not help with a claim)
  - Is there any suggestion the act is malicious? The court is more likely to find nuisance if the act is malicious, so how a potential defendant reacts to a complaint will be important

Noise nuisance- evidence

- Collecting evidence:
  - Noise nuisance claims will usually involve ongoing or repeated issues
  - With mobile phones, it will often be possible to record the noise, at least to provide some examples
  - In addition, a diary recording times, duration and impact upon your household is likely to be the best evidence because it is likely to be more comprehensive and contemporaneously record the issues created
  - Reporting to the local authority or land owner (where appropriate) can be another way of generating evidence
  - You may have to look at expert evidence, such as recording the noise and commenting on recommended limits

- Options beyond court proceedings:
  - Local authorities may be willing to take action where the issue is particularly acute (statutory nuisance)
  - It is usually the occupier of the land who is liable for the nuisance, so complaints directly to landlords are unlikely to bear fruit, except where: 1) they have authorised it, in which case the landlord will also be liable (this is a complicated area of law), 2) the claimant is also a tenant and protected by covenants in their lease

Noise nuisance- remedies

- The principle remedy will be an injunction to prevent re-occurrence
- It is possible to seek an interim injunction, we will deal with the potential pitfalls of these later on
- Damages are often difficult where the interference has ceased by way of an injunction. The court will consider the diminution in value of the property if the nuisance may affect its potential sale value.
- The court can make an award for distress and loss of amenity, but it is unlikely to be a large sum as they will be about the diminution in value of the right to occupy the property rather than for personal distress and inconvenience as such

Disrepair

- This can cover a wide range of issues, such as a poorly maintained roof leading to leaks in an adjoining property, work being done that impacts the party wall or a garden left overgrown
- Where you have an ongoing problem caused by a general failure to maintain (such as an overgrown garden causing weeds to constantly seed in the neighbouring garden) then this is likely to be an encroachment claim
  - Note that a new occupier adopts the nuisance if they, with knowledge or presumed knowledge of its existence, fail to take reasonable steps to bring it to an end having had reasonable time to do so
  - A key point here is knowledge and reasonable time to remedy- the first step should be to notify the property owner and given them time to remedy the issue

Disrepair

- Where work done has caused damage, such as a bodged roof repair causing leaks in a neighbouring property or work done in one property causing damage to party walls, then this is likely to be again a nuisance claim but for direct physical injury to the property
- In this case, damages may be more relevant than an injunction
- There is likely to be some overlap with negligence, in that an occupier of land owes a general duty of care to a neighbouring occupier and the standard of care is what is required of them in the particular circumstances
  - Again the concept of reasonableness is paramount
  - Notification is again important, it is far more reasonable to be required to remedy an issue that you are notified of and the impact detailed than otherwise

A note on Harassment

- A civil claim for harassment can be brought under s.1 and 3 Protection Harassment Act 1997
- You will need to prove that:
  - the Defendant pursued a course of conduct which amounted to harassment of another and which they knew or ought to have known amounted to harassment
- This can be brought as a 'sweep up' head of claim to deal with all the other unpleasant things that a neighbour has done, or an alternative to nuisance
- However, were most of the actions are relatively petty (if they are more significant then complaints to the police should be considered) it is unlikely that you will get substantial recovery and there is a real risk that pursuing this cause of action alone with result in costs disproportionate to the recovery

Rights of way

- Relatively minor issues over rights of way can often take centre stage in neighbour disputes, whether over the ability to park somewhere or the route to take bins out
- However, they can also have significant impact on the 'liveability' and hence resale value of a property
- The starting point will always be to look at the terms of the grant
- If the dispute relates to the route, it is likely to be helpful to go back as far as you can and see how it has been mapped in successive transactions

Rights of way- interpretation as to use

- *Cannon v Villars* (1878) sets out the general rule in relation to interpreting the types of traffic permissible under a right of way:
  - "Prima facie, the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intending to be used; and both circumstances may be legitimately called in aid in determining whether it is a general right, or a right of way restricted to foot passengers…"
- The court will have to consider what the intention of the parties was when the grant was made, taking into account:
  - The words of the grant
  - The surrounding circumstances at the time, including the physical features of the land over which the right was granted

Rights of way- interpretation as to use

- What was the purpose of the grant?
  - If the grant provided the only way to a property, then it would be likely that would include a right of access by vehicles
  - If the grant provided a secondary route of access, for example to a garden without going through a house, it is likely that was intended to provide a route to transport materials that you would not want to bring through the house
- Physical features of the route
  - Does the route itself provide limitations as to the type of use- is it wide enough for trucks?
  - Are there constrictions like gates, narrow points etc that limit usage?

Rights of way- claiming for interference

- The leading statement on what amounts to actionable interference is that of LJ Mummary in *West v Sharp*, approved in *B&Q plc v Liverpool Properties Ltd* (2001) 81 P&CR 20:
  - "Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. **There is no actionable interference if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction**. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him"

Rights of way- claiming for interference

- As such, placing some restriction, such as a gate or the like will not necessarily involve interference with the right of way
  - It will come down to a question of interference- is the type of usage allowed under the right of way and does the restriction on it amount to substantial interference?
  - For example, a gate that can be opened by fob and does not substantially narrow access is unlikely to be an interference, a manual opening gate that narrows the access such as to restrict the user is likely to be
- Again, the most likely remedy will be an injunction, damages are likely to be limited

Boundary disputes

- An obvious point but the first place to look to try and ascertain what the boundary is should be the deeds. Again, it will be worth going back though as may versions as exist as if there is more than one plan, that may assist in ascertaining the correct boundary
- The deeds set out a contract, and where that is sufficiently clear then no extrinsic evidence will be permitted in order to interpret what is set out
- The deeds are likely to involve a written description as well as the plan, you are likely to need to consider a combination of the two

Boundary disputes

- Lord Hoffman in *Alan Wibberly Building Ltd v Insley* [1999] UKHL 15 is the leading judgement on the construction of boundaries:
  - The starting point in any boundary dispute is the deeds
  - If the plan is said to be "for the purposes of identification only" then it cannot be relied on as delineating the precise boundaries
  - If the scale on the plan is small and the line thick, then it may be useless for any other purpose than general identification
  - If you need to establish an exact boundary then the deeds will almost certainly have to be supplemented by drawing inferences from topographical features that existed at the time the deed was executed, or from other evidence
  - Certain topographical features, like hedges and ditches are likely result in a presumption that they follow the boundary

Boundary disputes- evidence

- The primary source of evidence is likely to be from an expert. The court is likely to require a single joint expert and instructing a single joint expert at an early stage is likely to assist settlement
  - The caveat being that once they are instructed and have reported, it will be extremely difficult to challenge their conclusions
- However, there may be other sources of useful evidence:
  - Witness statements about how previous occupiers treated the boundary
  - Photographs showing the location of temporary boundary marking features like fences
  - Planning applications, estate agents particulars and old maps may also assist

Interim injunctions

- Most claims in this area are about stopping the neighbour from doing something rather than recovering damages
- The American Cyanamid criteria:
  - Whether there is a serious question to be tried
  - Whether damages would be an adequate remedy
  - The balance of convenience of the parties
  - Any special factors (can its scope clearly be defined and would the order be enforceable)
- Applications for an interim injunction are governed by CPR PD25A

Interim injunctions- troubleshooting

- Have you considered alternative approaches, such as asking the other side to stop/agree to an undertaking?
- If the application is made without notice, the applicant and solicitors have a duty of *full and frank disclosure*
  - It cannot be emphasised how important this is- I had a case fall apart when the Claimant failed to disclose a key email
  - There **will be costs consequences** if the court grants an order and it turns out there has not been proper disclosure and it is likely the injunction will be discharged
- The Claimant's exposure is not just costs, but the court is also likely to require an undertaking to pay damages if the injunction has been wrongly granted
- The draft order must set out terms which are specific and enforceable, and include the penal notice
- Drafting a full witness statement in support is good practice (remember the duty of disclosure). If the application has been made without notice, it needs to explain why

Contact Details

- Any Questions?
- THANK YOU

You've been listening to Oliver Newman and Ian Cain

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