Planning Permission and the Law of Nuisance:

_Coventry t/a RDC Promotions v. Lawrence_ [2012] EWCA Civ 26

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Introduction

From time to time litigants have sought interdict or injunction against popular public activities on the ground of nuisance. One thinks of Mrs Webster and her action for interdict against the Edinburgh Military Tattoo,\(^1\) or the attempt by the plaintiffs in _Miller v. Jackson_ to stop that most English of past times, village cricket (said by Lord Denning M.R. to be “the delight of everyone”).\(^2\) _Coventry t/a RDC Promotions v. Lawrence_ follows in that tradition, for it concerns a successful appeal against the granting of an injunction on the ground of nuisance against the operators of a much loved motorsport stadium. In allowing the appeal, the Court of Appeal helpfully summarised and reaffirmed the law on the potential for the grant of planning permission to change the character of a locality, and how planning permission affects the application of the law of nuisance.

The motorsport in question was not the glamorous spectacle that is Formula 1, but the rather less exotic world of banger racing and speedway. For those who are unfamiliar with the various forms of motorsport, Jackson LJ, in giving the leading judgement of the Court, provides helpful definitions, noting _inter alia_ that banger racing involves “older and less roadworthy vehicles” and that motorcross involves racing motorcycles on an “undulating track.”\(^3\)

The action

The claimants raised an action for an injunction after they bought a house next to a motorsport stadium in 2006. The stadium was constructed in 1975. The action was based on nuisance at common law, and it was the noise from the various forms of racing undertaken at the stadium, aside from greyhound racing, that was said to constitute a nuisance. Motorsport was seemingly popular in the area, Jackson LJ observing that the speedway team’s victory in

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3. Paragraph 3.
the British league was “a cause for local celebration” and had even led to certificates of congratulation being awarded by the local council.

The problem for the claimants was that certificates of congratulation were not all the local council issued. Planning permission was granted in 1975 for the construction of the stadium. In 1992 planning permission for use of the land at the back of the stadium for motorcross was given, first of all on a temporary basis and then finally on a permanent basis in 2002. And in 1997 a certificate of lawful use was issued in respect of stock car racing and banger racing on not more than 20 days per year.

Notwithstanding the planning history of the stadium, HHJ Seymour QC, sitting as a Deputy High Court Judge, held that the noise did constitute a nuisance. Injunctive relief was granted.4

**Nuisance**

For present purposes there is no material difference between the law of Scotland and England in relation to nuisance. The classic statement of what constitutes nuisance in the law of Scotland is stated by Bell:

> “Whatever obstructs the public means of commerce and intercourse whether in highways or navigable rivers; whatever is noxious, or unsafe, or renders life uncomfortable to the public generally or to the neighbourhood; whatever is intolerably offensive to individuals in their dwelling-houses, or inconsistent with the comfort of life, whether by stench, by noise or by indecency is a nuisance.”5

Nuisance is a matter of degree, and the question is always whether the results of the conduct objected to exceed such inconvenience as must reasonably be tolerated. In order to answer that question, regard must be had *inter alia* to the character of the locality.6

**The Court of Appeal**

The simple question for the Court of Appeal was whether the noise from the stadium constituted a nuisance. The critical issue for the Court was the effect, if any, that the grant of planning permission and the certificate of lawful use had on the character of the locality. The

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4 [2011] 4 All ER 1191 (note).
5 Bell’s Principles, paragraph 974.
6 Burn-Murdoch, Interdict in the Law of Scotland, paragraph 222.
argument of the appellants was that HHJ Seymour had failed to take account of the planning permissions that had been granted, and their subsequent effect on the locality.

After reviewing the authorities, Jackson LJ helpfully summarised the law as follows:

i. The grant of planning permission cannot authorise a nuisance.

ii. The implementation of the grant of planning permission may change the character of a locality.

iii. Whether implementation has changed the locality is a question of fact.

iv. If the character of the locality has been changed, the question of whether the activity constitutes a nuisance must be decided by against the background of that change in character.

v. One consequence of the change in character of the locality is that otherwise offensive activities may cease to constitute a nuisance.7

His Lordship noted that the effect of the various planning permissions granted was that for thirteen years various forms of motorsport had taken place at the stadium, on numerous occasions throughout the year. In those circumstances the racing and accompanying noise, although regarded as an unwelcome disturbance by some, was an established and dominant feature of the locality. Accordingly the Judge at first instance had erred in taking account of the difference in noise levels in the locality when there was racing and when there was not in assessing whether or not the noise constituted a nuisance. The increase in noise levels on race days was a part of the locality.8 For those reasons the Court held that the Judge had reached the wrong decision. There could be no nuisance because of the change in the locality brought about by the grant of planning permission.

The Court left open the possibility of establishing a nuisance if the terms of the planning permissions in relation to noise levels had not been adhered to, however that was not the case in Coventry so the matter did not arise for determination.9

There is one final point worthy of comment. Whilst stopping short of approving of Lord Denning’s minority view in Miller v. Jackson that the plaintiffs in that case were essentially the authors of their own misfortune for choosing to buy a house adjacent to a longstanding

7 Paragraph 65.
8 Paragraphs 69-74.
9 Paragraph 75.
cricket ground, Jackson LJ was clearly sceptical about the claimant’s assertions that they were unaware of the existence of the stadium when they moved into the area. His Lordship noted that planning permission is a matter of public record, and that those buying property in rural areas would be well advised to check the local authority’s register before doing so. That is clearly sound advice, and may well have served to avoid the need for protracted litigation in the first place.