Bang! bang! goes the neighbourhood

How far do private law rights go in protecting residents from noisy building works?

RESIDENTIAL VIEW

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The constant noise, dust and vibrations caused by other people's building works can seriously interfere with the enjoyment of property. With the current fashion for roof developments and basement excavations, what rights do neighbours have if life becomes intolerable or their business is jeopardised by the works?

Planning controls, of course, are primarily concerned with the acceptability of the development in principle rather than the control of the process of construction. However, can private rights come to the rescue?

The art of quiet enjoyment

Last year's case of *Timothy Taylor Ltd* v *Mayfair House Corporation and Another* [2016] EWHC 1075 (Ch); [2016] PLSCS 136 concerned a high-class modern art gallery in Mayfair. The gallery occupied the ground floor and basement premises in the building and was held on a 20-year lease at a high rent. The lease reserved to the landlord a wide and untrammelled right to build and, from 2013, the landlord embarked on an extensive programme of works to virtually rebuild the interior of the building from the first floor upwards so as to create a number of new apartments. In order to carry out the works, the landlord wrapped the whole building in scaffolding, making the gallery appear to be part of the building site. From outside it looked as though the gallery was closed. Not only was visibility significantly reduced, the noise levels created by the works were so intolerable that members of staff were forced to wear headphones, work offsite and, on a number of occasions, the gallery had to be closed altogether.

The tenant accepted the landlord was entitled to carry out the redevelopment works but complained that the landlord had not taken all reasonable steps to minimise the inevitable disturbance. The landlord retorted that it had acted perfectly reasonably in the way it had carried out the works – it said you "cannot hammer a nail in without creating a noise". There was clearly a conflict between the landlord's express right to build and the tenant's covenant for quiet enjoyment. The court identified the issue to be determined as being not whether the works that were being carried out would constitute an actionable nuisance, as they might well do, but whether the landlord had been exercising its right to build unreasonably.

The High Court found that even though the lease expressly permitted the landlord to erect scaffolding, the method in which it had done so paid no or little regard to the interests of the tenant. In relation to the noise, the court found that, in planning an operation of this magnitude, which would inevitably affect the tenant's business, it was incumbent on the landlord to sit down with the tenant and explain exactly what was proposed and how it was to be carried out. The parties could then seek to agree a method whereby the work could be carried out with the minimum of disturbance. In failing to do so, the landlord had acted unreasonably. Damages for breach of the tenant's covenant for quiet enjoyment were assessed on the basis of the loss to the tenant's use and enjoyment of the premises. In the circumstances of that case, a rent rebate of 20% was awarded.

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Reasonable repairs

The Timothy Taylor case involved works wholly for the landlord's own benefit. The same principle, though, applies to repair works. In *Goldmile Properties Ltd* v *Lechouritis* [2003] EWCA Civ 49; [2003] PLSCS 66, the Court of Appeal found that the landlord's rights and obligations with regard to repairs were neither to ride roughshod over the lessee's rights nor be unreasonably impeded by those rights. The landlord may well be under an obligation to carry out the works but in doing so it must take all reasonable steps to minimise the potential risk of disturbing the tenant. Where, however, it is necessary for the landlord to carry out the works, this will be a factor in determining the question of reasonableness.

Nuisance neighbours

The covenant of quiet enjoyment implied into every lease may, therefore, be a useful right if the parties are in a landlord and tenant relationship. However, if the disturbed neighbour has no such relationship with the developer, he will have to resort to the private law of nuisance. A claim in nuisance can be brought if someone interferes with a property owner's use and enjoyment of their land, but how does this square with the fact that planning permission has been granted for the offending activity? This was the dilemma addressed in *Lawrence and another* v *Coventry (t/a RDC Promotions) and others* [2014] UKSC 13; [2014] 1 EGLR 147, where residents complained about the noise caused by a motor sports stadium and adjoining track which had planning permission for use for motor sports. The Supreme Court recognised that planning controls and the law of nuisance may pull in opposite directions. It decided that the fact that planning permission has been granted cannot, in itself, authorise a nuisance, however it will be a factor in determining the reasonableness of the activity. Noise and dust caused by building works will not be actionable if the works are carried out in a reasonable manner and all proper steps are taken to ensure that no undue inconvenience is caused to neighbours. Any damages awarded will only be in respect of loss caused by the acts of the developer which are in excess of what is permissible.

Unfortunately for the long-suffering neighbours, their rights are therefore very limited. While they should be consulted on the methodology to be adopted by a developer, the private law is of little assistance to prevent the disturbance caused by building works if those works are carried out in as a reasonable a way as possible.

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