UNDERGRADUATE LAWS BLOG

The Tort of Nuisance: the locality principle

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Hello I'm Vera Bermingham a teaching fellow on the Undergraduate Laws Programme. In this blog I'm going to talk about the locality principle in the Tort of nuisance.

Where an interference causes personal discomfort and inconvenience (loss of amenity) the court undertakes a balancing exercise to determine if it amounts to an actionable private nuisance. One of the considerations relevant to this exercise is the nature of the locality in which the defendant's activity is carried out; a person may have to tolerate a greater level of interference from smell or noise in an industrial area than what would have to be tolerated in a rural area. This was explained by Thesiger LJ in *Sturges v Bridgman* (1879) in the following way: 'What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey.'

An important qualification to the nature of the locality rule was established in *St Helen's Smelting Co v Tipping* (1865) in which a distinction is made between a neighbour's activities which cause physical damage and those which merely affect the use or enjoyment of land. Where the interference causes physical damage the locality rule does not apply.

In *St Helen's Smelting Co v Tipping* the plaintiff purchased a valuable estate in an area where industrial smelting was a well-established activity. The defendant had acquired neighbouring land for the purposes of engaging in copper works and this activity commenced soon after the plaintiff purchased his property. The plaintiff brought an action in nuisance in respect of the large quantities of noxious substances emitted from the defendant's smelting works which damaged the trees, shrubs, and crops on his land and prevented him from having a beneficial and healthy use of his estate.

The defendant contended that the whole neighbourhood was devoted to similar manufacturing purposes and that smoke from one manufacturing process was as injurious as the smoke from the other. He claimed that the smoke sometimes united so it was impossible to say to which of the smelting processes caused a particular harm. The defendant further argued that in industrialised areas claims in nuisance should take account of public interest and the law must not allow persons to bring actions in respect of every matter of annoyance.

The House of Lords upheld an injunction to restrain the defendants from creating the nuisance caused by the smelting works: where there is there is physical damage to the property the nature of the locality is irrelevant - property damage must not be inflicted wherever the defendant is carrying on the activity.

The nature of the locality may change over time: change can be incremental, or it may be development of the locality brought about by planning permission. Where planning

permission is granted for a large-scale strategic development which changes the character of the locality, the question of whether an interference arising from the activity on the land amounts to a nuisance will be decided with reference to its present use (with the development) and not the previous nature of the locality.

For example, in *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* (1993) the local residents were unable to succeed in nuisance for the disturbance created by a commercial dock development because the granting of planning permission was held to have changed the character of the neighbourhood. The permission in this case was 'not merely permissive' it was granted specifically to enable the operation of a commercial port. The nuisance was foreseen by the local residents who objected and petitioned at the time planning permission was under consideration.

Nevertheless, the nature of the locality was assessed in the context of a locality containing a commercial port and in these circumstances the noise from the lorries was not excessive. Buckley J. reasoned (at least in part) that the public interest in a particular development of land may outweighing the private interest(s).

However, in *Coventry v Lawrence* (2014) the Supreme Court firmly rejected the reasoning that planning permission can play a role in determining the character of the locality. The appellants in this case bought a house in a predominantly rural area and sought an injunction to restrain the alleged noise nuisance arising from a nearby speedway racing stadium and a motocross track. Planning permissions covering the activities complained of had been granted and the question for the court was the extent to which planning permission might change the character of the neighbourhood.

In overturning the Court of Appeal decision that the grant of planning permission had by itself changed the nature of the locality, the Supreme Court clarified that planning permission could not authorise a nuisance. It would seem wrong in principle that, through the grant of a 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, when there is no provision in the planning legislation which suggests such a possibility'. According to Lord Neuberger:

> A planning authority has to consider the effect of a proposed development on occupiers of neighbouring land, but that is merely one of the factors which has to be taken into account. The planning authority can be expected to balance various competing interests, which will often be multifarious in nature, as best it can in the overall public interest, bearing in mind relevant planning guidelines. Some of those factors, such as many political and economic considerations which properly may play a part in the thinking of the members of a planning authority, would play no part in the assessment of whether a particular activity constitutes a nuisance—unless the law of nuisance is to be changed fairly radically. Quite apart from this, when granting planning permission for a change of use, a planning authority would be entitled to assume that a neighbour whose private rights might be infringed by that use could enforce those rights in a nuisance action; it could not be expected to take on itself the role of deciding a neighbour's common law rights.

We have seen in the topics covered so far in this module that public interest plays an important role in developing the tort of negligence. The tort of nuisance has been less inclined to cut back private rights on the ground of public interest but the cases considered above show that considerations around collective (or public) interests and individual interests do arise in nuisance. Lee[1] points out that the basic proposition that 'public benefit' is no defence to the tort of private nuisance is far from saying that collective interests play no role in defining the parties' rights. Although the defendant's argument that planning permission precluded liability was rejected in *Coventry* she notes that: "the phrase "public interest" saturates the speeches, but there is no real discussion of the nature of the public interests at stake, beyond an assumption that the public interest is articulated through the planning system".
Lee notes that whilst the cases provide some insight into ways in which collective interests find their way into tort cases, they tell us relatively little about how to identify and discriminate between contested public interests. In these circumstances, she says that we need to articulate a way of identifying and assessing collective interests.

More recently, collective interests and the extent to which the locality principle of private nuisance is justified was examined by Steel[2]. His analysis refers to Lord Neuberger's suggestion that "political and economic" questions are irrelevant to "the assessment of whether a particular activity constitutes a nuisance". He identifies a tension in this reasoning and argues that the 'locality principle' in nuisance which requires individuals to bear substantial burdens that they would not have to bear if such interests were set aside is difficult to justify. I shall conclude this blog by noting Steel's view on the issue:

> "If the reason why planning permission cannot authorise a nuisance is that the claimant's rights should not be cut back without compensation unless there is statutory authority, surely the defendant's private law rights should not be cut back without compensation either".

Note: the authors of your tort module textbook (p655) ask: "If public benefit cannot directly convert the defendant's conduct from being a nuisance into a lawful activity, might it have an effect on the remedy to which the claimant is entitled?" Lunney, Nolan and Oliphant, *Tort law: text and materials*. (Oxford: Oxford University Press, 2017).

[1] Lee, M., The public interest in private nuisance: collectives and communities in tort *Cambridge Law Journal* Volume 74, Issue 2 July 2015 pp 329-358

[2] Steel, S., The locality principle in private nuisance *Cambridge Law Journal* Volume 76, Issue 1, March 2017, pp 145-167.