

Nuisance by overlooking?

March 2019



Published by
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In a much-anticipated case involving the Tate Modern gallery and several high-value neighbouring apartments in Southwark, the High Court has given its view on whether an invasion of privacy can cause a common law nuisance.

The Neo Bankside development stands a little over 30m from a viewing terrace wrapping around the top floor of the Tate's Blavatnik Building, which offers visitors "awe-inspiring 360° views of the London skyline". Access to the viewing terrace is free to the public, 7 days a week.

The apartments in the Neo Bankside development offer their own impressive views, designed with striking wall-to-wall and floor-to-ceiling windows. As Mr Justice Mann commented in his judgment, however, the advantage of enjoying such views "comes at a price in terms of privacy".

On the southern side of the Blavatnik Building, the terrace allows visitors an uninterrupted view directly into a number of the apartments in Neo Bankside. In practice, a significant number of visitors to the terrace display "more than a fleeting or passing interest" in the interiors of the apartments in question.

Owners of four of the apartments most exposed to the viewing terrace brought a claim against the Tate in nuisance, seeking an injunction preventing public access to the terrace, and alleging that the views into the apartments constituted a serious and actionable invasion of privacy. The owners of the apartments gave evidence of the "relentless" intrusion into their homes, including by visitors to the Tate taking photographs of the apartments, and even using binoculars.

Common law nuisance

Nuisance is characterised by one person on their own land doing some act which causes either physical damage to, or significant interference with another's use of, neighbouring property. The test is whether such interference would be substantial or unreasonable, as perceived by a reasonable person. The principal remedies available are damages to reflect harm to, or diminution in value of, the property, or an injunction to prevent the offending activity.

Decision

The court decided in favour of the Tate, that there was no actionable nuisance, and the claim was dismissed.

Mr Justice Mann emphasised that, whilst it is clear visitors to the terrace have a largely complete view of the living accommodation of the apartments, the Neo Bankside apartments have a particular sensitivity because of the wall-to-wall and floor-to-ceiling windows. The apartments could have been designed to be less exposed to overlooking, or the owners could have taken their own steps by closing sun blinds or curtains. If such steps were taken, there would be a reduced level of intrusion that would not constitute a nuisance.

Furthermore, the use of the viewing terrace is not unreasonable, given the character of the location and that the terrace's purpose was not designed to afford visitors a view into the apartments. The Tate had itself taken steps to limit the impact by agreeing to restrict the hours of public access to the viewing terrace.

All of these considerations are relevant to whether there is an expectation of privacy. In this case, the owners of the apartments had "submitted themselves to a sensitivity to privacy".

Significantly, however, the High Court indicated that the law of nuisance can, in appropriate circumstances, protect a neighbour's privacy. Nuisance cases will always be highly fact-specific and given the unusual facts here, it is unlikely that this cause of action will arise other than in similarly unusual circumstances. It will be very interesting to see whether the Courts address and develop this area, either in future cases or if the residents are granted leave to appeal this case.

Fearn & Others v The Board of Trustees of the Tate Gallery [2019] EWHC 246 (Ch).

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