

Access to Neighbouring Land – even if your property is “Super Prime”

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By Ros Cullis

The High Court case of Prime London Holdings 11 Limited v Thurloe Lodge Limited involves eye watering expensive “super prime” properties, one of which used to be the home of Margot Fonteyn, and a relatively straightforward piece of legislation, the Access to Neighbouring Land Act 1992 (“ANLA”).

ANLA provides a building owner with a right of access to an adjoining owner’s land to carry out works in certain circumstances. The court will make an order if it is satisfied that the works are “reasonably necessary” for the preservation of the whole or any part of the land, and that they cannot be carried out, or would be substantially more difficult to carry out, without access to the adjoining property. However, no order will be made if use or enjoyment of the adjoining property would be disturbed or the owner would suffer hardship as a result. Preservation works include maintenance/repair/renewal, clearance of or repairs to drains, and works to shrubs, all of which are outlined in the relevant section of ANLA. The court can also order payment of compensation for any loss/damage or for substantial loss of privacy or other substantial inconvenience.

In this case, both properties were being extensively redeveloped. This was not the first time the parties had gone to court to have issues arising from those works resolved, in what has become an extremely bitter dispute. On this occasion, Prime London applied for an access order under section 1 of ANLA, to erect scaffolding to re-render and repaint a wall. Thurloe Lodge refused access, on the ground that the proposed works would interrupt its own programme of works.

The judgment sets out useful guidance on the legal test the court will apply when considering whether to grant an access order and the judge commented that he hoped the detailed analysis would help future potential litigants to resolve their differences without going to court. Notably, it confirmed that:

- works which are undertaken for primarily aesthetic purposes can be regarded as reasonably necessary
- the fact that works do not have to be done immediately does not prevent them from being reasonably necessary
- interference with use and enjoyment includes the impact on a contractor carrying out development, as well as the property owner and
- the extent of interference/hardship must be considered in the light of the detriment to the applicant if the judge refuses to make the order

As to compensation, the judge confirmed that this could be awarded on a forward-looking basis, ordering payment of a specific sum/sum calculated on a specific basis; a backward looking basis, permitting a claim for loss or damage actually incurred; or a combination of the two approaches.

The case is noteworthy because this is the first time ANLA has been considered by the High Court. As the judge commented "*The fact that it has not been necessary to bring this matter to the High Court before is a testament to the sound principles on which the Act has been drafted, and perhaps also to the common-sense and neighbourliness of most landowners*"