

Seeff v Ho (24 February 2011).

**The Message:** You need to love but not trust your neighbour.

**The Case:** The Court of Appeal has made clear how the Courts should treat informal agreements between neighbours

Mr & Mrs Seeff live at 316 Whitchurch Lane, Edgware and Mr & Mrs Ho live next door at 314. Between their houses are their respective garages. The roof of the garage at 314 was fixed to the side wall of the Seeffs' garage at 316.

In 2006, Mr & Mrs Ho decided to convert their garage into a study and they claimed that, following a conversation over the garden fence, an agreement had been reached with the Seeffs for the conversion works and the heightening of the garage roof.

Planning Permission was then sought for the proposed works and the Seeffs raised no objection to the plans save that Mr Seeff made it clear that he wanted to ensure that the external wall of the garage at 314 did not become a party wall. The Planning Permission subsequently granted made clear that Mr & Mrs Ho were to follow the procedure under the Party Wall Act 1996 in connection with carrying out any building works on the boundary or to a shared wall. However, no actual steps were ever taken by them in this respect.

Despite objections raised by the Seeffs when works commenced in August 2007, Mr & Mrs Ho proceeded with the works which included cutting and drilling into the garage wall of the Seeffs to install brackets to hold the joists for their new roof and fixing timbers and lead flashing as well as bonding together their new wall to connect to the Seeff's wall.

The Seeffs then brought proceedings for trespass because of the encroachment onto their land and the failure to follow the provisions of the Party Wall Act 1996. They sought an Injunction requiring Mr & Mrs Ho to dismantle the work that had been carried out and, alternatively, they claimed damages of some £20,000. Mr & Mrs Ho offered £500 plus Court fees in settlement of the claim but this was rejected by the Seeffs who pointed out that they had already incurred £3,000 in costs.

At trial, the Judge held that Mr Seeff had previously consented to most of the works and that none of the works had actually caused any damage to the Seeff's property. The Seeffs were awarded £200 for damages and ordered to pay most of the costs of the proceedings.

The Court of Appeal first considered the effect of the conversation over the garden fence. It was not disputed that Mr Seeff had raised no objection to the raising of the roof but the Seeffs claimed that it had been wrong for the Judge to infer that they had given permission for any particular works that affected their property or agreed that there was no necessity to follow the proper procedures in relation to the undertaking of any works.

Whilst appreciating that informal conversations between neighbours were highly desirable, the Court made it clear that such discussions could not be taken as an absolute consent to proceed with the works unconditionally. Any neighbour would expect that, if Planning Permission was required or consent under the Party Wall Act was needed, the proper procedures would be followed before works were undertaken. It would be implicit in any agreement that any works would be lawfully carried out and the Court stressed the importance of observing proper formalities in recording any agreement to avoid the constant disputes that arise between neighbours.

Because of the failure of Mr & Mrs Ho to not only comply with the Party Wall Act but also with the terms of the Planning Permission (they built a different form of roof), the Court held that no consent had been given by the Seeffs for the particular works undertaken and, accordingly, Mr & Mrs Ho were liable for trespass.

The Court then considered what the appropriate remedy should be? They did not think an Injunction requiring the dismantling of the roof would be appropriate as the Seeffs had not minded the roof being raised and no loss of value had resulted from the works. The Court simply increased the damages to £500 to take account of the full extent of the trespass.

On the question of costs, the Court noted that the Seeffs had offered to mediate at an early stage and that the offer put forward by Mr & Mrs Ho of £500 did not include any sum in connection with the legal costs that the Seeffs had incurred in relation to the matter up to that time. In all the circumstances, particularly as the Seeffs had failed to obtain an Injunction or substantial damages, the Court thought the correct order was for the parties to each bear their own costs.

The clear lesson to be learnt is to properly document any agreement.