



Smelly Neighbours

The Message:

The character of a property's locality is important in deciding whether the property's odours are a nuisance.

The Case:

The case of Hirose Electrical UK Limited v Peak Ingredients Limited [11 August 2011] sheds light on when odours emanating from a property constitute a nuisance in law for neighbouring properties.

Hirose, a manufacturer of parts for mobile phones, had a lease of a unit at an industrial estate expiring in 2014. A neighbouring unit was occupied by Peak, a manufacturer of food additives. The two units were separated by a porous breeze block party wall, which had insufficiently sealed gaps in it.

From 2002, Hirose complained of strong and pervasive smells variously described as spicy or like curry or garlic wafting intermittently from Peak's premises and allegedly causing harm to the health of Hirose's employees and a nuisance to its premises. In 2008, Hirose vacated its unit. In 2009, Hirose began proceedings against Peak for nuisance, seeking an injunction and damages based on the escape of noxious odours from Peak's premises. Hirose complained that the smell badly affected the well-being of some of its staff and inflicted resulting financial loss, including the cost of leasing alternative accommodation. The High Court decided in Peak's favour.

A smell that causes discomfort to the ordinary enjoyment of property may be a private nuisance actionable by the occupier affected. In determining whether there is a nuisance, the court applies an objective standard set according to the circumstances and locality of the neighbouring properties. The controlling principles, which are the reasonable use of property and reciprocal regard for neighbours' interests, reinforce an altruistic process of give and take.

The High Court noted that the character of the neighbourhood was that of a light industrial estate. The occupier of a unit on such an estate must expect the possibility of disagreeable smells. The discomfort caused in that context to people working on weekdays in the daytime, is not as great as in a residential context. The Court rejected Hirose's assessment of the estate as a "high class genteel business park". The evidence did not support Hirose's expectations of the estate's

character – it was a light industrial estate. The smell continued for a very long period before Hirose decided to take any legal action.

Taking account of the evidence as to frequency, intensity and effect, the odours reaching Hirose's unit did not amount to a nuisance. The degree of interference with its business and its employees' comfort was immaterial and insufficient, having regard to the estate's character. There was also nothing unreasonable in Peak's use of its unit for normal operations, which were not out of place on a light industrial estate. Peak's use was permitted on both planning grounds and by its lease and there was no objection by the relevant authorities on environmental or health and safety grounds.

The root of the difficulties between Hirose and Peak was the inadequate protection and insulation afforded by the party wall between their units, for which Peak was not responsible. Lack of co-operation between the parties meant the insulation work was not done. The Court rejected Hirose's argument that since Peak caused the discomfort, it should take the necessary steps to alleviate it or cease production. The risk was inherent in leasing premises of this kind and it was for Hirose to do whatever was necessary to look after its employees. A reasonable use by an occupier of premises on an industrial estate does not become a nuisance because of inadequacies in the party wall for which it is not responsible.

The Court of Appeal dismissed Hirose's appeal against the decision of the High Court judge, who had made no misdirection or misapplication of law and his findings of fact were open to him on the evidence. The parties were reminded that the total costs of the litigation, which achieved nothing useful for them, must have been greater than the cost of a constructive solution to the smell problem by insulation works to the party wall.