Has the recent Supreme Court decision in *Fearn & Others v Board of Trustees of the Tate Gallery* opened the floodgates for claims in nuisance based on overlooking?

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Springwatch starts next week. I cannot wait. Storylines set in the British countryside, from the dramatic to the mundane, caught on camera. Brilliant telly but at what cost?! Surely it's visual intrusion into the lives of unwitting participants at an extreme level! If Mrs Blue Tit, raising a family of ten in front of an average daily audience of three million, could read Lord Leggatt's judgment in *Fearn v Tate*, she'd rightly scoff at what the residents of Neo Bankside deemed to be an "intolerable interference" with their freedom to use and enjoy their property.

Many of us, from Mann J to the chap with binoculars standing on the Blavatnik balcony, were indignant when a group of wealthy leaseholders complained about Tate visitors peering into what were effectively self-inflicted zoo enclosures. Viewing galleries are to be found in cities all over the world. They are of public interest and anyway, the leaseholders chose to live in the flats!

But we were missing the point. Whether you live in a city-centre glass box or an underground bunker, it is socially unacceptable to establish a ticketed viewing gallery for people to goggle at your everyday life. When the Appellants bought their flats, they accepted that pedestrians gazing up might see them eating breakfast; art lovers momentarily distracted from Damien Hirst's Shark might catch them putting the washing out; that's all part and parcel of high density urban living. The Supreme Court rightly drew a distinction between those fleeting glimpses into strangers' lives and the deviation from a building's common use to deliberately encourage unsolicited gawping.

So, while Mrs Blue Tit would probably have a case against the BBC under privacy law, as far as overlooking goes, a deluge of *Fearn* inspired litigation is unlikely.

Firstly, the decision only dealt with liability, not remedy and any prospective litigants' motivation will be dictated by what the High Court decides on legal redress. Secondly, as Leggatt acknowledged, occupiers of flats must accept that a degree of visual intrusion is inevitable and a *Fearn* cause of action in nuisance does not necessarily follow.

But I think the most important reason that the floodgates will remain closed is that similar incidences of landowners deviating from a property's common use are rare because to do so departs from long established societal norms. John le Leche, the medieval fishmonger referenced by Lord Leggatt, was ordered to remove the watch-tower he had erected to spy on his neighbour as it was deemed a substantial interference with the ordinary use and enjoyment of the neighbour's land. That decision laid the foundations for the socio-legal "rule of reciprocity" set out in *Bamford v Turnley*: give, take, live and let live. And *that's* the point, *Fearn* is the product of millennia of close-quarters human habitation. Overlooking is inevitable but homelife is sacred and landowners know (as Tate ought to have known) that exceeding the boundaries of normal use to breach that inner sanctum will not be tolerated at law.