Nuisance

***Anslow v Norton Aluminium Ltd* [2012] EWHC 2610**

Background and decision

The defendant, Norton Aluminium Ltd. owned an aluminium foundry which was situated on the boundary of a large village, Norton Canes, which comprised a mix of residential, industrial and commercial premises. The foundry had been in existence since 1952, prior to which the site operated as a large coal mine. With the advent of the Environmental Protection Act 1990 the foundry became regulated under the permitting regime which was introduced by that Act. Subsequently, the foundry became regulated by the permitting regime which was introduced under the Pollution Prevention and Control Act 1999.

The claimants claimed who lived in the vicinity of the foundry claimed that the operation of the foundry had created a nuisance by virtue of the emissions of phenolic and sulphurous odours, noise, smoke and fumes, particulate matter and dust. The claimants sought an injunction and/or damages in respect of the alleged nuisance which they alleged had come into existence since February 2002.

Prior to examining the factual evidence which had been placed before the court, McKenna J surveyed the relevant caselaw on the law of nuisance. The leading and, indeed, most recent case where the substantive which related to the facts of the case was discussed was the Court of Appeal case of *Barr v Biffa Waste Ltd.* 2012 EWCA Civ 312 (see (2012) 152 SPEL 88). In *Barr* the Court held, *inter alia*, that there was no absolute standard by means of which one could ascertain that a given state of affairs ranked as a nuisance in law. Rather, it was a question of degree. In *Barr* the Court also decided that the development of common law nuisance was unaffected by the development of the relevant permitting regime which has been mentioned above. In reversing the decision of the judge at first instance, the Court decided that there was no need for the common law to 'march in -step' with statutory law.

In the instant case, McKenna J went on to discuss whether the adverse circumstances which were the subject matter of the action ranked as a nuisance in law. In His Lordship's opinion the noise which was complained of did not rank as a nuisance in law, since, in the last analysis, the noise levels in question did not exceed levels which one would anticipate as the occasional and inevitable consequences of living near to an active foundry which was situated in the area. For similar reasons, His Lordship held that neither the dust nor or the smoke which emanated from the foundry constituted a nuisance. However, as far as the complaints which concerned phenolic and sulphurous odours, the vast majority of claimants had established that there had been unreasonable interference with their properties between 2003 and 2010 by such odours. The court therefore awarded damages to the claimants for the past inconvenience which the claimants had suffered.

Comment

This case does not take the law further forward. However, *Anslow* does emphasise that, whereas the relevant substantive law which governs the law of nuisance is well-settled, the outcome of a particular case is often fact sensitive and therefore, difficult to predict.

Francis McManus **February 2013**