

## Noise Nuisance

*Thomas v Merthyr Tydfil Car Auction Ltd* [2013] Env LR 12

### Background and decision

The facts of the case were simple. The claimants (T) moved into their house in 1989. The defendant (M) operated a car auction business nearby. The business had been established some years before that date but, in 1995, it expanded to a lower yard which was close to T's home. T brought proceedings against M, claiming that M had conducted his activities in such a way as to cause a nuisance. In the main, T claimed that the activities were noisy and also, from time to time, created harmful fumes. M, in turn, denied that its activities constituted a nuisance, mainly on the basis that its business was conducted wholly in conformity with planning permission which had been granted conditionally in 1997.

At first instance, Wyn Williams J stated that the relevant legal principles were to be found in *Barr v Biffa Waste Services Ltd*. [2012] 3 WLR 795. That case established that there was no absolute standard by means of which one could ascertain whether any given adverse state of affairs constituted a nuisance in law. There required to be real interference with the comfort or convenience of living of the claimant. His Lordship held that it was very doubtful that the noise from the use of reversing beepers on the vehicles on the premises constituted a nuisance. His Lordship drew attention to the fact that reversing beepers were a significant safety feature. Therefore, their use could not constitute an unreasonable use of M's premises. However, other forms of noise from the vehicles on M's premises did constitute a nuisance, notwithstanding the fact that the noise was not continuous in nature. His Lordship went on to hold that the fumes from the vehicles on M's premises did not constitute a nuisance.

Finally, His Lordship held that the grant of planning permission to M and its implementation had not altered the character of the locality in terms of the law of nuisance. Essentially, the character of the locality was the same at present as it was in 1997.

### Comment

This case does not take the law any further. However, its interest lies in the fact that it illustrates that it is now well-settled in English law that the implementation of planning permission can, in certain circumstances, alter the character of the relevant land for the purpose of the law of nuisance. However, in the author's opinion, and in the absence of authority, this does not represent the law of Scotland. The author, therefore, eagerly awaits the decision of the Supreme Court on the appeal from the Court of Appeal in *Coventry v Lawrence* where it was held that planning permission can alter the character of land for the purposes of the law of nuisance.