I'm Sorry Miller v Jackson, I am for Real: Can Village Cricket be a Nuisance?

"*In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch.*" [1]

Colehill Cricket Club, established in 1905, has been a longstanding sporting feature of Wimborne in Dorset. Last month, the club gained national notoriety when threatened with the termination of adult cricket following complaints of flying balls falling into gardens and causing damage to the roofing of neighbouring properties. With assistance from a national crowd-funder and some celebrity support, the club has been allowed to resume play with the benefit of safety netting. This story, and the steadfast presence of 'NIMBY-ism', provides an opportunity to revisit the law on nuisance and some key factors to consider for developers and operators of sites that could be deemed a nuisance.

"In the village of Lintz in County Durham they have their own ground, where they have played these last 70 years. Yet now after these 70 years, a judge of the High Court has ordered that they must not play there any more."

A nuisance is caused when a party interferes with another's reasonable use and enjoyment of land. Whilst for many developers of brownfield sites a frequent nuisance claim is that of rights of light, nuisance claims arise across the sector for several other reasons. Notable examples include noise emanating from Night & Day Café in Manchester, the putrid smells of Shropshire chicken farms and glaring lights and smells of waste caused by landfill sites in Newcastle.

"He has done it at the instance of a newcomer who is no lover of cricket. This newcomer has built, or has had built for him, a house on the edge of the cricket ground which four years ago was a field where cattle grazed. The newcomer bought one of the houses on the edge of the cricket ground. No doubt the open space was a selling point."

Following Lord Denning's emotive (yet dissenting) judgement in *Miller v Jackson* [1977], quoted in this article, which dealt with facts strikingly similar to those occurring recently in Wimborne, the leading judgment on nuisance in this context was handed down by the Supreme Court in *Coventry v Lawrence* [2014]. In that case, a neighbour sought and was granted an injunction against the noise emissions of a local motorsports stadium. In

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deciphering its judgement, the Supreme Court laid down some principles which, in light of Colehill CC, are worthy of reminder.

Prescriptive rights to commit a nuisance

The right to commit a nuisance can be acquired by prescription, meaning that if a certain activity (which constitutes the nuisance) occurs for at least 20 years without interruption, claims cannot be made to prevent its occurrence.

Coming to the nuisance

The act of coming to the nuisance is no defence to a claim. Just because a party moved into a property near to a nuisance, after it had begun, does not automatically prevent them from making a claim.

The effect of planning permission

A grant of planning permission authorising a particular use of land cannot be used, in isolation, as a defence to a nuisance claim. However, if the detail of such permission permits a level of noise, odour or light pollution, then this may affect a neighbour's ability to claim for the existence of a nuisance if such activity occurs in line with the permission granted.

Where a nuisance is found what will the remedy be?

The historical standard remedy for a nuisance is an injunction – an order to stop the activity (and thus the nuisance) from occurring. The *Coventry* case saw a shift in the court's approach, encouraging awards of damages where the continuation of the nuisance is, among other factors, in the public interest.

"Now he complains that when a batsman hits a six the ball has been known to land in his garden or on or near his house. And the judge, much against his will, has felt that he must order the cricket to be stopped: with the consequence, I suppose, that the Lintz Cricket Club will disappear."

However, developers should be aware of the suggestion in *Coventry* that the level of damages in nuisance claims should be based on the benefit derived by the defendant for the continued activity, rather than the industry standard of the diminution in value caused to the claimant. This highlights that though the activity/development may be able to continue, the price paid is unlikely to be insignificant.

"The cricket ground will be turned to some other use. The young men will turn to other things instead of cricket. The whole village will be much the poorer. And all this because of a newcomer who has just bought a house there next to the cricket ground."

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Whilst the above case refers to noise nuisance specifically, it serves as a positive reminder to developers of the court's flexibility when dealing with development schemes which may infringe on rights to light, cause excess noise or more generally interrupt the quiet enjoyment of neighbouring residences. Rather than preventing the development, the courts may be more likely to order damages in circumstances where a grant of planning permission is found.

[1] Quotes from Lord Denning in *Miller v Jackson* (1977), Court of Appeal

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