

Development: Looking beyond planning permission

The High Court decision in *Richard Dennis and others v Anthony Davies* serves as a stark reminder of the importance of checking whether potential development land is affected by any title issues, such as restrictive covenants, even if planning permission has already been obtained.

Mr Davies had obtained planning permission to construct a three storey extension to his property, which is located on an estate next to the River Thames. The estate had been designed so as to provide residents with views of the Thames and had been marketed with its riverside location and views as its unique selling point. Several of Mr Davies' neighbours objected to the proposed extension on the grounds that it would wholly or partially obscure their views of the Thames.

It is a well established legal principle that there is no right to a view at common law and that such a right cannot be obtained through prescription. However, the neighbours relied instead on the restrictive covenant affecting Mr Davies' property, which required him not "*to do...anything...which may be or become a nuisance or annoyance to the owners or occupiers for the time being of the Estate or the neighbourhood*".

The court concluded that "annoyance" is a wider term than "nuisance" and that the legal test for whether the extension amounted to an annoyance was an objective one that had to be judged by robust and common sense standards; namely "*would reasonable people, having regard to the ordinary use of the Claimants' houses for pleasurable enjoyment, be annoyed and aggrieved by the extension?*" On the particular circumstances of this case the court concluded that due to the significant loss of view from three of the Claimants' houses, the extension would constitute an annoyance within the meaning of the covenant. Mr Davies was therefore prevented from continuing with construction.

The fact that Mr Davies had obtained planning permission for the extension posed no obstacle to his neighbours' claim. The planning system only aims to protect the public interest. The private interests of one person against the activities of another, such as the right to a view claimed by Mr Davies' neighbours, are not a principal consideration in planning decisions and continue to be regulated through common law and contract law.

The case emphasises the need for developers (including householders) to be alert to the importance of carrying out a careful review of all title matters affecting land whether it be the garden of an existing dwelling or a potential development site when considering any form of development.

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