

IN THE CROWN COURT AT STOKE-ON-TRENT

Ref. A20040143

Bethesda Street
Hanley
Stoke-on-Trent

21st July 2005

Before

HIS HONOUR JUDGE EVERARD
(Sitting with Justices)

BETWEEN:

TUSSAUDS THEME PARKS LIMITED (Appellants)

AND

STEPHEN ROPER AND SUZANNE ROPER (Respondents)

MR CAPLAN QC appeared on behalf of the Appellants

MR HOCKMAN QC appeared on behalf of the Respondents

JUDGE'S RULING UPON APPEAL

Transcript by MARGARET WORT & CO
(Official Court Reporters)
Edial Farm, Edial, Burntwood, Staffordshire, WS7 0HZ

RULING

A JUDGE EVERARD: This is an appeal from the decision of Deputy District Judge
Gascoigne who, on the 2nd August 2004, found that there existed a statutory
B nuisance perpetrated by Alton Towers under Section 82 of the Environmental
Protection Act 1990 on the complaint of the now respondents to this appeal,
Mr and Mrs Roper. The period of time which he was considering, and which we
C are now considering, covers the seasons of 2003 and 2004 up to the
commencement of that hearing which started on 8th July last year.

The complainants, as I have said, are Mr and Mrs Roper, now the
D respondents to this appeal. The appellants are Tussauds Theme Parks Limited, the
owners of Alton Towers, and I will refer to them from now on as Alton Towers.

The form of statutory nuisance relied on by the respondents is noise emitted
E from premises under Section 79(1)(g) of that Act. I refer now to that section:

“Subject to subsections 1(a) and to 6(a) below...” which do not concern
us in this case “...the following matters constitute statutory nuisances for
F the purposes of this part of the Act. That is to say...” – and then under the
sub-subparagraph (g) – “...noise emitted from premises so as to be
G prejudicial to health or a nuisance...” and it is agreed that the word “or” is
disjunctive.

The test for a statutory nuisance is the common law test for nuisance. That is
H agreed by both parties following two particular decisions, *Murdoch v. Glacier*

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Metal Company Limited [1998] ELR732, a Court of Appeal decision, and *Godfrey v. Conwy County Borough Council* [2001] ELR38, a decision of the Divisional Court.

A common law nuisance is an unreasonable interference with the use of and/or enjoyment of land, and I refer also, in considering and setting out the law as it is agreed to be, to a case which Mr Caplan has helpfully referred to in his closing submissions, and it's important, I think, that I refer to it at this stage, the case of *Wyvernhoe Port v. Colchester Borough Council* [1985] decision, where it is said:

“To be within the spirit of this Act a nuisance, to be a statutory nuisance, has to be one interfering materially with the personal comfort of the residents, in the sense that it materially affected their wellbeing although it might not be prejudicial to health.”

Of course we accept – and later refer to two much older cases but the law is still the same – that the test is objective. I should perhaps add to that, helpfully set out in the written part of the closing submissions of Mr Caplan, a passage from “Statutory Nuisance Law and Practice, Oxford University Press” written, I assume, by Messrs Malcolm and Pointing:

“Whereas to the lay person anything that annoys him is a nuisance, the legal test for noise/nuisance is objective. The noise must be both excessive and unreasonable.”

As to the chronology of this particular case it is set out at the end of the case summary prepared at the beginning of the case on behalf of the respondents.

