Case No: G20CL071

IN THE COUNTY COURT AT CENTRAL LONDON
TCC LIST

Royal Courts of Justice
Thomas More Building
Date: 28/04/2021

Before :

HHJ PARFITT

- -

Between :

TIMOTHY RICHARD NUTT	**Claimant**
- and -	
VEDA ROAD LIMITED (1)	**Defendants**
GEORGE PODGER (2)	

- -
- -

Aaron Walder (instructed by **Naylor Solicitors LLP**) for the **Claimant**
Ben Leb instructed through direct access for the **Defendants**

Hearing dates: 15 & 16 April 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ PARFITT

HHJ Parfitt :

Introduction

1. The Claimant owns and lives with his family at 45 Veda Road. Veda Road is a red brick residential London terrace built in the 1930s which rises up a hill in Ladywell in South London towards Hilly Fields. The Claimant's property is towards the top of the hill and next to it is 47 Veda Road which is the end of the terrace. In the Summer of 2020, the First Defendant purchased 47 Veda Road as a development project. The First Defendant is the corporate vehicle of the Second Defendant. The Second Defendant told me that 47 Veda Road was his first development but he has experience as a builder.

2. It is common ground (and was always obvious) that at least some of the works at Veda Road, in particular those included in the plan to remove the existing roof and replace it with a hip to gable roof extension supported on and attached to the party wall and/or a structure raising that party wall, were notifiable works under the Party Wall etc. Act 1996 ("the 1996 Act"). The Defendants ignored the 1996 Act and if they had followed its procedures there is every chance that this litigation need not have happened.

3. In the event, the development of 47 Veda Road has been a bad tempered affair which has led to these proceedings. In the parties' witness statements there is a degree of mudslinging none of which touched on the actual issues in the parties' pleaded cases. Counsel limited cross examination and submissions to the relevant matters and that allows me to identify the following issues as arising for decision:

   i) Did the Second Defendant and the Claimant agree around 20 June 2020 (the precise date does not matter) that the Claimant was content for the works to be carried out without regard to the 1996 Act ("the Consent Issue").

   ii) If not, then what are the consequences in this particular case ("the 1996 Act Remedies Issue").

   iii) Are either the First Defendant or the Second Defendant (or both) liable to the Claimant in nuisance arising out of the following allegations: (a) a fire in the rear garden of 47 Veda Road on 17 June 2020 (b) debris falling from the development works into 45 Veda Road and (c) unreasonable noise from the development works, in particular on Saturday afternoons, and if so what is the appropriate quantum ("the Nuisance Issues").

4. In this judgment I make some general comments about the evidence, set out a brief but sufficient chronological narrative and then address those issues in turn.

The Evidence

5. I heard evidence from the Claimant and two other residents of Veda Street: Peter Koukoulis and Warren Innis. These all gave their evidence well and with balance and care. It was clear that the Second Defendant was not a popular figure on Veda Road and so all witnesses had a potential predisposition to be critical of him but even taking

this into account I am confident in giving weight to the evidence from these witnesses.

6. The same cannot be said for the Second Defendant, who was the only witness called by the Defendants. The Second Defendant appeared to have only a guarded recollection of anything in issue and when addressing controversial matters his evidence consisted of equivocal conditional statements ("I might have…" or "I would have…") or referred to him not being sure or having relied on what others had said to him ("I was a bit confused but had a reasonable idea"; "I think someone advised me what I needed to do"; "I think I took advice on notifiable works from someone"). None of this is satisfactory from a witness of fact.

7. Mr Walder, for the Claimant, rightly criticised the Second Defendant for not having given full and proper disclosure in this case. This was a good criticism and it is a striking feature that in a dispute about works done to a party wall the Defendants have not been able to produce any works drawings) beyond the high level general plans submitted for planning permission (by way of potential example only any of building plans, load calculations, structural drawings, electrical drawings, plumbing drawings as built plans and so on). I realise that in this small scale project doing up an end of terrace residential building there would not be the type of extensive documentation associated with more major works but the Defendants produced nothing beyond the planning documents. In evidence the Second Defendant referred variously to emails or WhatsApp messages evidencing when labour was on site (relevant to the Saturday afternoon working nuisance allegations), health and safety documentation (relevant to all the nuisance allegations) and other plans. None of which appeared in his list of documents.

8. The parties have had the benefit of a single joint expert report prepared by Mr Morris of GIA and dated 10 March 2021 and responses to questions asked by the Claimant dated 17 March 2021. With one exception which I mention below, Mr Morris' relevant conclusions have not been challenged before me. I can briefly summarise those as follows:

    i) In at least six separate respects (Mr Morris' answers to questions seem to add another) the works carried out to the loft extension to 47 Veda Road were notifiable works under section 2 of the 1996 Act, these range from removing the roof tiles, cutting into and exposing the party wall, inserting 3 steel beams into the party wall, fixing timbers into the party wall and raising the same.

    ii) There has been some minor damage to 45 Veda Road attributable to the works which Mr Morris estimates as having a repair cost of no more than £450.

    iii) The party wall has been raised in timber which while unusual is something which on balance Mr Morris thinks he would have signed off on had he been appointed as a party wall surveyor under the 1996 Act (which is a convenient way of saying that of itself Mr Morris did not consider it inappropriate).

    iv) Mr Morris was far more concerned about the photographs and evidence regarding the insertion of the steel beams into the party wall. Mr Morris' view was that there was no evidence that these had been placed so as to dissipate their load away from the existing brick wall by for example, padstones (which

Mr Morris said would be conventional) or engineering bricks (another possible solution). Mr Morris regards this as unacceptable and a potential source of future problems to both properties ("the Steel Beam Support Problem").

9. When Mr Leb addressed the Steel Beam Support Problem in closing, he referred me to a brief report prepared by a Mr Watson which was included in the correspondence section of the bundle but was not otherwise evidence in the case. Mr Watson was asked by the Second Claimant to advise on whether notifiable works had taken place. His conclusion on 29 July 2020 was that they had and in describing the loft works Mr Watson referred to "the steel beams have been inserted into the Party Wall on 300mm long bearing plates". I do not know the factual basis for this conclusion. It was not until the closing submissions that it was suggested on behalf of the Defendants either that such plates were present or that if so they were relevant to the Steel Beam Support Problem. It is noticeable that Mr Morris' suggested conventional solutions to the Steel Beam Support Problem did not include reference to steel bearing plates. The Defendants did not ask questions of Mr Morris. I am not persuaded on this limited material that Mr Watson's passing reference to 300 mm bearing plates should undermine the conclusions I draw from Mr Morris report.

10. In addition to the issue about the loft, the Claimant's case included an assertion that the works carried out to the basement were also notifiable under the Act. For some reason the scope of Mr Morris' report as ordered did not include the basement issue. In passing Mr Morris said that those works may well have been notifiable but given the scope of his instructions he did not express a view (and had not I think inspected the relevant works). Understandably, Mr Walder did not raise in his closing the basement allegations and there was little cross examination about it (one question of the Second Defendant). In those circumstances I cannot be satisfied on a balance of probabilities that the basement works were notifiable and I will say no more about them.

Brief Chronological Narrative

11. The Claimant and his family moved into 45 Veda Road in March 2012. At that time and until the start of the events with which this judgment is concerned, 47 Veda Road was owned and occupied by a couple who shared the property with a lodger, who the Claimant says had lived at 47 Veda Road for about 21 years.

12. The Second Defendant has family connections with the building trade. I cannot be sure, because the Second Defendant's evidence was always a little light on detail, but whether through a business with the trading style "buildmydesign" or otherwise, the Second Defendant told the court that he had prior building experience. In relevant summary of that experience, the Second Defendant said in evidence that he had always been told what to do. By early 2020, pre the Covid crises in the UK, the Second Defendant was interested in 47 Veda Road as a potential first development project on his own account, when he would have the responsibility to make decisions.

13. The First Defendant was incorporated on 8 April 2020 and was to be the vehicle through which the Second Defendant would acquire 47 Veda Road. Contracts were exchanged on 21 May 2020 and completion took place on 22 June 2020. However, works began on or around 15 June 2020.

14. The Claimant says that he had a discussion with the Second Defendant on either 15 or 16 June 2020 while the Second Defendant was putting waste into a skip outside 47 Veda Road. The Defendants' statement of case says this happened on 17 June 2020 but in evidence the Second Defendant said he could not be sure of the date. It does not matter. It is this conversation which the Defendants rely on as meaning that the Claimant agreed that the works could proceed without regard to the 1996 Act.

15. On 17 June 2020 the Second Defendant started a bonfire in the back garden of 47 Veda Road. This caused some consternation on a message group used by local residents and the local authority came to tell the Second Defendant to put out the fire. Some hours later, the Second Defendant was still tending the fire, he told the Claimant (and the court) it was necessary to keep burning material to ensure that the fire could be put out safely. The Second Defendant says that he put the fire out before leaving the site at about 5pm or so. By about 10.30 to 11.00 that night tall trees at the bottom of the garden were alight and the fire could be seen from miles around (the bundle includes a photograph someone posted on twitter).

16. The Claimant woke up the lodger next door, who was sleeping and did not appear to the Claimant to be aware of the fire. The Claimant raised other neighbours who might be effected and called the fire brigade. The fire brigade attended and put out the fire.

17. On 19 and 20 June 2020 the Second Defendant changed the locks and (according to the Claimant) refused to let the lodger back into the property despite being asked to do so by the police and local authority. The Second Defendant agreed to let the Claimant in to remove the lodger's belongings and put them outside on the pavement. In oral evidence the Second Defendant said that he was doing this to help the owners of 47 Veda Road because the lodger was not paying his rent. In his written statement the Second Defendant blamed this incident for the hostility between himself and the Claimant.

18. There are no issues that I need to decide which are impacted by the way in which the Second Defendant treated the lodger. So far as the hostility is concerned, I have looked at the messages on the message group exhibited to the Claimant's statement and it is clear that the local hostility to the Second Defendant and his development had begun before the lodger was thrown out of 47 Veda Road.

19. With the lodger gone, the First Defendant was able to complete on the purchase of 47 Veda Road on 22 June 2020 and the works continued.

20. There is quite a lot of evidence about the noise and nuisance created by the building works. Apart from the details in the Claimant's witnesses' evidence, this includes the message group, photographs taken by the Claimant and others, a list of complaints to the local authority about Saturday after-hours working between June 2020 and October 2020, a noise diary kept by the Claimant and a schedule to the Claimant's witness statement which gives a narrative description of the many photos and videos taken by the Claimant during Summer / Autumn 2020.

21. It is obvious from the message forum that the Claimant was concerned about how the works were being carried out and it was of particular concern to him that there was no party wall process being followed (this in itself is undermining of the Defendant's case on some form of agreement but for the reasons I give below when dealing with

the allegation that is not the least of the evidential problems with the Defendants' contention).

22. The Claimant says that he spoke to the Second Claimant on 24 June 2020 and raised the issue of the 1996 Act. The conversation was witnessed by Mr Koukoulis, who the Claimant asked to be present. Mr Koukoulis supports the Claimant's account of the Claimant complaining that the 1996 Act was not being followed and the Second Defendant trying to explain this away but not saying anything about the Claimant having agreed that the 1996 Act should not apply or otherwise raising consent. This is consistent with the message board evidence. The works continued, as did the Claimant's concerns.

23. On 8 July 2020 a solicitor's letter from the Claimant was sent to the Second Defendant raising the 1996 Act issues.

24. On 9 July 2020 the Second Defendant replied by email. For present purposes the email accepted that notifiable works had taken place ("the notifiable work…cutting into the party wall…") and said "there is some history in relation to consent and whether the adjoining owner requires a party wall agreement" and then said that the notifiable works were all finished but if there was damage it would be rectified.

25. There is reasonably good evidence from the Clamant that notifiable works continued thereafter but for the purposes of the issues in this judgment the timing of works does not matter.

26. On 14 July 2020, the Claimant obtained an injunction stopping further works in contravention of the 1996 Act. This was continued on the return date and a claim form in these proceedings was issued. Following various directions, the parties exchanged amended particulars of claim and an amended defence and the issues summarised above are contained within those documents.

27. Finally, a confusion has arisen because the injunction application named Mr Podger as the First Defendant and Veda Road Limited as the Second Defendant whereas the claim form named them the other way around. I have taken the claim form as definitive and have so identified the parties in this judgment.

The Consent Issue

28. The Defendants' case on the consent issue is hopeless for a number of distinct but interrelated reasons. I address each briefly below.

29. The most detailed account by the Defendants of the conversation said to have brought the alleged consent into existence is in the defence. However, in looking at that narrative it does not assert that the Claimant said anything (i.e. "I agree you do not need to serve a party wall notice") or did anything (i.e. nodded or shook hands) from which it would be reasonable to conclude that agreement had been reached or from which a reasonable person would infer that the Claimant had agreed to waive or give up rights that he would otherwise have. There is no magic formula for what words or conduct might be sufficient to amount to agreement but the basic requirement must be something from which it would be reasonable to conclude that compliance with the 1996 Act was not necessary.

30. The only relevant allegation against the Claimant is that when talking about whatever historic works were done to the basement of 47 Veda Road, the Second Defendant put to him that in relation to those works "you didn't get a party wall agreement" to which the Claimant is alleged to have responded "I never bothered". That is it. It is fanciful to think, even if the evidence bore this out, that from that alleged discussion about the historic basement a reasonable inference might be taken that the Claimant was agreeing that the new works that the Defendants wanted to carry out in 2020 could be carried out without regard to the statutory requirements of the 1996 Act.

31. In any event, I reject this account of the conversation. It was not made good by the Second Claimant's oral evidence which came to little more than he could not remember now whether what he said was true but thought that he would have remembered better when writing his witness statement dated 24 August 2020. The 24 August 2020 statement only referred out to the defence and contained no details. In evidence the Second Defendant accepted that the relevant conversation was only a general chat between neighbours and did not involve any explanation about the details of the work which the Defendants intended to carry out. In practical terms it can be anticipated that such details would be a likely minimum requirement before a person might agree to works being carried out to a party wall regardless of the requirements of the 1996 Act (assuming that such a person had some general awareness of the 1996 Act).

32. The Claimant says no such conversation took place as pleaded in the Defence or otherwise addressing consent to works without 1996 Act compliance and I accept the Claimant's evidence for the following reasons: the Claimant's evidence was clear and persuasive; the Claimant's messaging shows an increasing concern about the Defendant's works and the Defendant ignoring the 1996 Act which are inconsistent with him not being bothered about it; I accept the Claimant's evidence that the original basement works were done before he moved in and so he would not have said that he did not bother with a party wall agreement because it would not have arisen; the Claimant's complaining to the Second Defendant about the lack of a party wall notice / award is supported by Mr Koukoulis; the Claimant's subsequent conduct in engaging solicitors and seeking an injunction was inconsistent with someone who was "not bothered". In short, with the sole exception of the conversation alleged by the Second Defendant, the objective and verifiable conduct of the Claimant shows him wanting to assert the requirements on the First Defendant arising out of the 1996 Act.

33. The contemporaneous evidence from the Defendants' side is the 9 July 2020 email which does not assert that the Claimant agreed to waive his rights and/or consent to the works. On the contrary, it makes the vaguest of references to "some history in relation to consent and <u>whether</u> the adjoining owner requires a party wall agreement" (my emphasis). At its absolute highest that email is saying there was doubt about the Claimant's position. There is no assertion in that email that the Defendant believed that he could start or continue without regard to the 1996 Act.

34. There is also an assumption in the email of 9 July 2020 that the need to have a party wall notice and a consequent award (if no consent is given to the notified works) is not a legal requirement binding on the First Defendant (which it is, the 1996 Act says before exercising the right to carry out section 2 works, the building owner "shall serve" a notice) but rather is a formality that might be insisted upon by an unhelpful adjoining owner. This is a false assumption.

35. Finally, given that the 1996 Act says that for there to be an agreement to relevant works under section 2 without following the 1996 Act procedures any agreement must be in writing (see section 3(3)), I would expect a reasonably high level of certainty about the basis for any estoppel or waiver by which the protections and benefits of the 1996 Act might be given up. No such certainty exists in the present case[1]. On the contrary, the Defendants assertion of consent is hopeless.

36. I find that no consent was given by the Claimant and that nothing done or said by the Claimant during the conversation around 20 June 2020 or otherwise amounted to a waiver or acquiescence or gave rise to an estoppel. The conversation was nothing more than a general chat between neighbours and was not intended to nor did it have any legal consequence.

The 1996 Act Remedies Issue

(1) The Present and Future

37. In the course of the hearing I indicated to the parties that I was minded to address the potential issues arising out of the Steel Beam Support Problem and more generally the failure of the Defendants to recognise and meet the First Defendant's obligations as building owner under the 1996 Act, by providing for a period of time during which the parties could appoint surveyors to obtain a retrospective award (or if the parties were able to, the Claimant give written consent to the existing works).

38. This should leave the parties and the properties in a position where the works to the loft become authorised under the 1996 Act and so put right the present position which is those works to the party wall should not have taken place because the First Defendant had no right to carry out section 2 works without a party wall award or written consent. I consider that this will put right what has been done wrong and provide clarity for subsequent purchasers of the Property. I did not understand either Counsel to disagree with this approach, if I was against the Defendants on the consent issue.

39. It seems to me that two months is probably sufficient time for this to take place but certainly no more than three. Assuming no unreasonable conduct on the part of the Claimant or the Claimant's appointed surveyor, then the costs of that exercise should be born by the First Defendant (that being the usual practice for 1996 Act surveyor's costs (see paragraphs 10-06 and 10-07 of The Law and Practice of Party Walls).

40. If, following that period, an award has not been made or written consent not given then I would restore the case for a further hearing. The options available to the court would include requiring the section 2 works to be removed and the party wall restored to its pre-works condition or a further financial payment to the Claimant. I recognise that it will be an unusual case in which a mandatory injunction to remove unlawful works would be appropriate but the uncertainty surrounding the Steel Beam Support Problem means that I cannot know now if this is such a case. The benefit of my proposed solution is that a retrospective obtaining of an award / consent will enable

[1] There has been no argument before me that "contracting out" (in the loosest sense) of the 1996 Act might be impermissible and so I have not considered it (see the discussion, for example, at paragraphs 2.21 – 2.27 of Party Walls Law and Practice, 4th ed, Bickford Smith, Nicholls & Smith and paragraph 4-12 of The Law and Practice of Party Walls, 2nd ed, Isaac QC)

the parties' surveyors to determine the nature and extent of any problem and, if required, solve it.

(2) The Past (i) actual damage (ii) negotiating damages.

41. The evidence of actual damage caused by the works is the £450 or so estimated by Mr Morris and I will give judgment for those against both Defendants jointly (these are within the nuisance damages referred to in Louis v Sadiq (1997) 74 P&CR 325). I regard these as nuisance damages at common law arising from the works. In this respect the works have been carried out unlawfully and in a manner which deprives the Claimant of the compensation remedy under the 1996 Act. On my findings it was the Second Defendant's choice to proceed without 1996 Act compliance and so he caused the common law tort to be committed. In so far as there is also a claim for the same loss arising out of a breach of statutory duty then only the First Defendant would be liable but the First Defendant is also liable at common law.

42. Mr Walder said that the £450 might be greater if the Claimant chooses to have two workmen carry out the respective repairs rather than the one assumed by Mr Morris. I see no reason why two builders would be reasonable and so I accept Mr Morris' assessment of the cost of repair and will assume that is a sensible proxy for the damage.

43. In addition, Mr Walder seeks "negotiating damages" for the wrongful taking away from the Claimant of his rights under the 1996 Act (or perhaps his opportunity to trade consent for payment). Mr Walder refers to me to the general discussion about such damages in One Step (Support) Ltd v Morris-Garner [2019] AC 649 and both Counsel referred me to Eaton Mansions (Westminster) Ltd v Stinger Compania de Inversion SA [2013] EWCA Civ 1308, where "licence fee" damages of £6,000 covered the period for a temporary trespass for some years and the claimant's argument for a higher figure because the temporary nature of the trespass would not have been known about at the date of breach was rejected.

44. As in *Eaton Mansions* (see paragraph 20), the starting point for the court is to identify the wrong for which compensation is being assessed. Here it is the carrying out of 1996 Act works without an award or written consent and so getting that benefit until such time as it is rectified under the procedure I have suggested above (I am calculating damages on the premise that such rectification will take place). Once the retrospective award is in place then the wrongful use of the party wall will be over.

45. In the skeleton argument, Mr Walder suggests that damages can be assessed as a proportion of that which the Defendants gained by not using the 1996 Act procedures, so a sum which a developer might pay to save the costs of and delay caused by having to follow the 1996 Act. This is estimated at a percentage of £5,000 and Mr Morris' answers provide evidence for a sum of about £1,000 and I understand the approach Mr Morris takes given his assumptions about surveyor fees and borrowing costs.

46. My operating assumption is that an award or written consent will be obtained by say the end of June 2021. The works will have been in place for little under a year. In my view some limited compensation is appropriate because the Claimant has been wrongfully deprived of the protections of the 1996 Act for a period of 12 months and there has been use made of the party wall which should not have otherwise been done

and at least to some limited extent there has been trespass over the Claimant's half of that wall (without statutory authority). In the light of the evidence relevant to this issue I assess negotiating damages at £750. However, if the retrospective award / written consent process I have suggested does not make good the failings under the 1996 Act then I will consider increasing that figure / making a separate award as damages in lieu of an injunction (which is a different loss to the one I have assessed here).

47. I find that the remedies suitable for the failure to comply with the 1996 Act are:

i) Damages of £450 for the actual damage against both Defendants;

ii) Damages of £750 for the "negotiating" loss arising out of the breach of statutory duty against the First Defendant;

iii) A period of time of no more than 3 months to allow the parties to obtain retrospective compliance with the 1996 Act but if that does not occur then permission to apply for an injunction to remove the 2020 works to the party wall and/or additional damages in lieu of such an injunction.

The Nuisance Issues

48. I will take these briefly because although the Defendants should not have taken such a cavalier attitude to the running of the building site at 47 Veda Road, fortunately the actual consequences of the nuisance to the Claimant is relatively limited.

(1) Fire

49. The main factual issue under this head is the cause of the fire. It is common ground that there was a fire in the afternoon of 17 June 2020. The Claimant says that it is a reasonable inference, sufficient to meet the burden of proof, that the more substantial fire later than night was because the Second Defendant failed to put out the afternoon fire. The Second Defendant says that since he did put out the afternoon fire then the later fire must have arisen from a new cause. The Second Defendant posits it might have been the lodger.

50. Mr Leb placed some reliance on one of the message board messages. This said "I think it's stopped for now" and was posted at 16.45 which was about the time that the Second Defendant said he had put out the fire before leaving. However, all I get from this is that the smoke which had been bothering the residents was no longer visible to that particular resident. This is consistent with either parties' case: the fire was not put out well enough or the fire was and then re-started by a new cause.

51. On the balance of probabilities, it is more likely than not that the Second Defendant failed to put out the afternoon fire properly. I find this a more likely scenario than that a third party decided to start a fire after the Second Defendant left the site. I am supported in this conclusion by the Second Defendant's evidence that he thought the right way to put out the fire (having been told by the local authority to do so) was to spend about 3 hours burning further material. It is obvious that a better approach would have been to remove such material from the site and/or the vicinity of the existing fire.

52. I mentioned during the hearing that of itself a fire might or might not be a nuisance. Like most lawful conduct which nevertheless impacts neighbours, it is all a question of fact and degree.

53. Having read the messages for the earlier period and the statement of the Claimant regarding the impact on him and his family of the afternoon fire and hearing what the Claimant had to say about it during his oral evidence, I consider that the fire generally was a nuisance to the Claimant both in its afternoon manifestation and the far larger blaze in the evening. I find that it was not reasonably necessary for the Second Defendant to light a fire at all – this is a built up residential area and any substantial clearing of waste should be done by removing it from site not by burning it on site and so causing smoke nuisance to the Claimant and his family.

54. It was fortunate that the fire was not more damaging but while it must have been upsetting to the Claimant to be confronted with the risk of far greater damage to his home and family, I do not consider this sounds in nuisance damages (it would be damages for a nuisance that might occur rather than that which did occur). I will award £500 under this head.

(2) Noise

55. The Claimant provides evidence of noise and disturbance occurring after 1pm on Saturdays. The Claimant, rightly, accepted in his evidence that building works create noise. He recognised that it was only if that noise went over and above that which might be reasonable in the circumstances that a wrong would be committed. The Claimant's focus on noise after 1pm on Saturdays, which is contrary to the guidance given by the local authority, is the manner in which his case balances the reasonable and unreasonable. I agree.

56. The Defendants say that no noisy works were allowed to occur after 1pm on Saturday but if that did happen then the nature and extent of the nuisance should be limited to the days on which the local authority has a record of complaints.

57. As Mr Walder submitted, I regard the Defendants' argument about complaints to Lewisham as defining and limiting the noise nuisance as hopeless. On the contrary, the number of complaints that were made suggests that the actual problem was likely far greater. As either Mr Innis or Mr Koukoulis said in evidence when you have complained and found that the noise carries on you don't necessarily make the effort to complain again.

58. Indeed the unsuccessful and escalating attempts made by the local authority to limit the noise nuisance (warnings through to abatement notices) are themselves evidence in favour of the Claimant about the general prevalence of noise.

59. I accept the Claimant's evidence in his witness statement and oral evidence supported by his schedules and by the evidence of Mr Innis and Mr Koukoulis that the noise nuisance was a regular and disturbing feature of the Claimant's Saturday afternoons from June 2020 until October 2020.

60. Mr Leb also argued that the sum in this respect should not include any claim that might be made by the Claimant's partner or that would compensate him in respect of

his children. The Claimant in a nuisance case has to have some interest in the land (**Clerk & Lindsell**, 23rd ed at 19-24) and that right in the present case extends to the Claimant wanting to have a suitable home for his family – that is the very thing that has been unreasonably interfered with. I do not think Mr Leb's point goes anywhere in the context of this case.

61. On the basis of the type of disturbance that the Claimant describes, its nature and frequency over the period and the lack of any justification for those works taking place on Saturday afternoon rather than during normal working hours, I will award £2,000 damages.

(3) Debris

62. The Claimant has photographs which show that on a few occasions what looks like broken tile pieces or similar fell from the works site into the garden of 45 Veda Road and once a tape measure also fell. These are actionable (either as trespass or nuisance) but the damages are small. Again it was fortunate that not more damage occurred. I will award £250.

(4) Which Defendant?

63. The Claimant has evidence in relation to the fire and noise nuisance that it was the Second Defendant who committed these nuisances. I find that the Second Defendant committed those nuisances and so is liable for them. It is more difficult to identify who might be responsible for the alleged debris nuisance and I think it better to attribute that nuisance to the First Defendant.

Conclusion

64. The Claimant's claims succeed. I invite counsel to draw and agree an appropriate draft order.