

## **CIEH South East Regional Forum Meeting**

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### **Planning, the Infrastructure Commission and Nuisance**

#### **Different Regimes**

1. *R v Kennet DC ex parte Somerfield Stores* [1999] JPL 361 – planning can restrict noise which is not a nuisance.
2. Planning Policy Guidance 24 (PPG24) guides local authorities in England on the use of their planning powers to minimise the adverse impact of noise. It outlines the considerations to be taken into account in determining planning applications both for noise-sensitive developments and for those activities which generate noise. Published on 3 October 1994 but dated September 1994.

#### **Impact of Planning Permissions on Nuisance**

3. *Gillingham BC v Medway (Chatham) Dock Co* [1993] QB 343 – licence to cause nuisance? *Wheeler v JJ Sanders Ltd* [1996] Ch 19 - pp can affect character of the area.
4. *Roper v Tussards Theme Park* [2007] EWQHC 624; [2007] ENV LR 31- pp relevant in support of finding that level set above level at nuisance likely to cause annoyance was not nuisance because of character of the area but does not mean activity carried out with pp will not cause nuisance see e.g *Watson v Croft Promo-Sport Ltd* [2009] EWCA Civ 15.

#### **Statutory Authority: The Planning Infrastructure Commission.**

5. There will be a defence to private nuisance if it can be shown that the activities complained of by the claimant were authorised (expressly or impliedly) by a statute (Lord Dunedin in *Manchester Corporation v Farnworth* [1930] AC 171). A good

example is: *Allen v Gulf Oil* [1981] 1 All ER 353 - Parliament intended a refinery to be constructed. There was a statutory immunity in respect of any nuisance which was an inevitable result.

“Nuisance: statutory authority

(1) This subsection confers statutory authority for—

(a) carrying out development for which consent is granted by an order granting development consent;

(b) doing anything else authorised by an order granting development consent.

(2) Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.

(3) Subsections (1) and (2) are subject to any contrary provision made in any particular case by an order granting development consent.”

6. This section provides a defence of statutory authority in proceedings for nuisance if a person carries out development for which consent is granted by an order granting development consent. Such a defence is available in respect of anything else authorised by an order granting development consent.
7. A development consent order can also confer “Statutory authority’ for carrying out development, a defence against claims for nuisance. Such similar powers already exist for railway-related development. However, those whose land is affected by a project retain existing rights to claim compensation.
8. See also the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 in respect of section 82 statutory nuisance proceedings (by an individual) (sch 1 para 7).

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