

“A Modern Nuisance”

02 February 2023  Robert Clarke

In an unexpected result, residents of luxury flats overlooked by Tate Modern have won their appeal to the Supreme Court by majority of 3-2.

The Court ruled Tate Modern’s use of a viewing gallery, which has upwards of 500,000 annual visitors, gives rise to liability under the common law of nuisance. Whilst acknowledging merely looking at what is happening on neighbouring land is not an actionable nuisance, the Court found that the particular use by Tate Modern constituted a substantial interference with the ordinary use and enjoyment of the flats. The use involved near constant observation, with visitors waving and posting photographs on social media.

The decision establishes that constant visual intrusion *may* give rise to liability for nuisance. However, far from opening the floodgates to nuisance claims, the Court distinguishes “overlooking” in its ordinary sense with the unique facts of this case, and it is not yet clear to what extent the courts will entertain visual nuisance claims.

Time will reveal the full impact of the decision. The precedent is still fresh, and an interpretation is yet to be applied in another case. For now, developers may wish to act cautiously when considering the visual impact of their developments.

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