

### The differences between licences and tenancies and the relative advantages of each have been well rehearsed.

In particular, it is well known that granting a licence is a useful method of avoiding granting an interest in a property and providing greater control to the landowner to deal with their land. However, what the implications of this arrangement may be upon the landowner if its licensee causes a nuisance is often underappreciated.

The Court of Appeal has provided clarity, and perhaps caused some surprise, in the recent case of *Cocking v Waring* [2016] EWCA Civ 140 by holding a landowner liable in nuisance to its neighbour where the nuisance emanated from her daughter who resided at the property under a pure licence.

In this instance, the landowner was held liable for the period in which she knew of the nuisance, but did nothing to abate it within a reasonable time, notwithstanding the fact that, in line with the fact that she was a licensor, she was in complete control of the property, albeit not residing there.

Whilst it is common knowledge that landlords are only liable for a tenant's nuisance where they directly participate in or authorise the nuisance, this is on the basis that they have neither control nor possession of the property. The same cannot be said for a licensor; a licensor is deemed to be in control of the property, notwithstanding the existence of a licence.

It is also worth noting that Arden LJ provided a reminder that a licence and a tenancy are not watertight concepts and a different set of facts could lead to a different result. She provided an example of a landlord who has agreed to inspect and clean the drains on the demised property and a nuisance is caused by the tenant's use of the drains and the landlord's failure to perform its covenant, which she believed may make the landlord liable for the tenant's nuisance.

Consequently, it is worth thinking again whether a licence is the most advantageous arrangement as there are clearly wider (and costly) potential consequences for the licensor if their licensee causes a nuisance. Unlike with a tenancy which, subject to any specific obligations upon the landlord, a property owner can usually put out of their mind once let, a licensor will need to keep a close eye on its licensee!

If you would like to discuss any issues relating to nuisance, the use of licences, or otherwise, please do not hesitate to contact a member of our Real Estate Litigation team.

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