



## LEGAL BRIEFING

### *Birmingham Development Co Ltd v Michael Jacob Tyler*

24 July 2008, Court of Appeal, Sir Andrew Morritt (Chancellor), Rix LJ, Rimer LJ,

#### ***The Facts***

Birmingham Development Co Ltd (“Birmingham”) was a property developer. Birmingham developed a site next to land owned by Michael Jacob Tyler (“Tyler”). Tyler had a factory on his land. During the development, demolition of the gable wall of the building on Birmingham’s site exposed part of the flank wall of the factory. Birmingham believed that different areas of the brickwork of the flank wall presented either an imminent danger or an apparent danger respectively to its development works because of defects in the brickwork. Therefore Birmingham alleged that these brickwork defects were a danger to its enjoyment of its property.

Because of these defects, Birmingham claimed that it had to suspend its demolition works in the area of the flank wall and this resulted in disruption to the development programme. Birmingham claimed that the defects in the factory wall caused consequential delay to the works on its site and issued proceedings in nuisance and negligence requiring Tyler to carry out remedial works and damages. Birmingham obtained an interim injunction for the remedial works to be carried out. Therefore the trial was concerned solely with the liability to pay for these remedial works.

The trial Judge dismissed Birmingham’s claim. Birmingham appealed.

#### ***The Issue***

Were the defects in the factory wall such that they represented an imminent danger to the Birmingham’s operations?

#### ***Held***

The trial judge found that demolition work had continued (with machinery and by hand) until Phase 1 of the demolition contract was signed off as complete. The court held that it was not enough for a claimant to assert that his neighbour’s property or activities are dangerous merely to prove that he is frightened of them. What was required was that the proof be well-founded i.e. that the property is actually dangerous. Birmingham was unable to do this as the expert evidence was that the wall was not in danger of falling down.

#### ***Comments***

Nuisance from activities or things in an adjoining property is difficult to prove. This is relevant to building sites where the building activities may impact on owners of adjoining properties to the building site. In this case, the court found that nuisance could not be made out unless the adjoining owner’s activities or property could be proven to be actually dangerous rather than just being merely thought to be dangerous.