Check out the vicinity

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A landowner will owe many obligations to owners of neighbouring properties. Easements and restrictive covenants will often specify that the benefit or burden of a particular right is limited to "neighbouring" owners. Various statutory obligations also curb the free use of land in order to benefit "neighbouring" land.

Developers and their advisers will have access to a wealth of knowledge about the nature of obligations owed to neighbouring owners in any particular case. Yet, although, in general, it is relatively easy to determine the legal applicability of a particular right, it may be more difficult to ascertain its physical scope, even though that will be of equal, if not greater, importance.

Property lawyers must therefore have in place a method of determining who is and is not a "neighbour" when a right or duty is limited to that class of person. In such situations, the lawyer has to consider which owners and occupiers need to be considered and how close a neighbouring property needs to be in order to be considered "neighbouring".

Defining terms

There is no statutory definition of "neighbour", even under statutes, such as the Access to Neighbouring Land Act 1992 and the Anti-social Behaviour Act 2003, that seek to regulate rights between neighbours.
Judicial definitions of "neighbouring", meanwhile, have focused on the related, but not necessarily identical, notion of the "neighbourhood". (One can imagine, using the natural and ordinary meaning of the respective words - saying that a person lives in one's neighbourhood without considering them to be a neighbour).

In Russell v Archdale [1964] Ch 38, a restrictive covenant was stated to be for the benefit of the vender's "adjoining and neighbouring land". Buckley J treated the covenant as benefiting all the land "in the neighbourhood" of the property in question. The only use that can be made of this is to define "neighbourhood" further.

A neighbour is someone who owns or occupies land that is sufficiently physically proximate as to be adversely affected by a particular act of unneighbourliness.

In Shellcove Gardens Pty Ltd v. North Sydney Municipal Council [1960] NSWR 237, Sugerman J said: "What constitutes 'the neighbourhood' in any given case is related to the nature of the proposed development, its potential consequences and the area over which they may extend, and the particular aspect of amenity which is liable to be affected thereby."

This is the key: a neighbour is someone who owns or occupies land that is sufficiently physically proximate as to be adversely affected by a particular act of unneighbourliness.

Authority for this approach can be found in the Court of Appeal decision in Lee v Roundwood Colliery Co [1897] 1 Ch 373. In that case, a landlord of a colliery had a power of distress over its tenant's goods, both on the colliery that was let to the tenant and also over goods on any "adjoining or neighbouring collieries". Lindley LJ said:

The words "neighbouring colliery" are large enough to apply to collieries in the neighbourhood not worked with the seam of coal demised. I am, however, of opinion that to construe those words in that wide sense would be unreasonable and extravagant. The power of distress must, in my opinion, be construed to apply to those neighbouring mines only which, though not actually adjoining the seam of coal demised, might be or become connected with it by underground workings.

Extent and effects

The result of this is that a property owner that is bound by a restriction in favour of "neighbouring property" would be obliged to consider a wide variety of factors.

The developers would therefore need to take into account the precise extent of the proposed development and the actual effect that this would have upon the occupiers of all properties that could be defined as "neighbouring".

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