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An Extension can be a nuisance

A Restrictive Covenant Prevents an Extension in Dennis and Other –V-Davies [2008]

The High Court has held that the construction of a house extension breached a restrictive covenant against nuisance and annoyance. This will be of particular interest not only to developers, but also to home owners looking to extend their property.

The case related to houses on an estate near to the River Thames. The owner of a house subject to the covenant wanted to put up a three storey side extension which would have the effect of obscuring some of the other residents' view of the river.

Despite the fact that the owner had obtained planning permission for the extension the Court ruled that the loss of view would be significant and that the extension would "trouble the mind" of an ordinary person and therefore constitute a "nuisance and annoyance" within the meaning of the covenant. As a result, the extension could not go ahead.

The decision is perhaps surprising and it may be that the case will be appealed and overruled, but until it is, similar covenants will provide further hurdles for those wishing to extend existing buildings or develop land.

Whilst the Court reached its decision based on the precise wording of the covenant and advice should be sought before applying this decision to other circumstances, it highlights the importance of investigating the existence of restrictive covenants or other title matters before considering development of land.

For further information please contact:

Rachael Beaumont
Solicitor
020 8394 6459
Rachael.Beaumont@russell-cooke.co.uk

May 2009