



# OVERLOOKED BY THE TATE MODERN

MAY 2019

## NEO BANKSIDE V TATE MODERN

Following completion of a new 360° viewing platform at the Tate Modern, the residents of the luxury NEO Bankside development began to have the same feeling that Rockwell sang of in his 1984 hit.

### Background

Located on the South Bank of the River Thames, a short stroll from The London Eye and The Royal Festival Hall, is NEO Bankside – a behemoth of a development – completed in 2013, the development comprises of over 200 luxury apartments and penthouses, all boasting floor to ceiling views of the City's skyline. Adjacent is the Tate Modern, home to a vast collection of contemporary art.

In 2016, the Tate Modern opened a 360° viewing platform on the tenth floor. The platform offers museum goers the chance to share with Neo Bankside a panoramic view of the city: unfortunately for some of the residents of NEO Bankside, this places their living spaces right in the eye-line of the visitors.

Since then, many residents have reported "*near-constant surveillance*" from visitors to the Tate's platform. The feeling of being watched was exacerbated in November 2018 when, as part of an unauthorised art installation, 10 pairs of binoculars were attached to the platform providing visitors with an even better view of the apartments.

In a bid to curb this lack of privacy, the residents of the development brought legal action against the Tate.

### The Issues

The case reached the High Court earlier this year where five residents brought a claim in the law of nuisance. The claimants sought an injunction preventing the public from observing the apartments by screening off the relevant section of the platform.

Traditionally the law regards the homes of individuals as a zone of privacy, worthy of special protection. The Human Rights Act 1998 reinforces this, granting individuals the right to privacy in their homes. Where necessary, the Courts are obliged to give effect to the 'Right to Privacy' under the Human Rights Act by extending the law of nuisance to protect it.

The decision in *Hunter v Canary Wharf Ltd* [1997] illustrates that there are three kinds of private nuisance:

1. encroachment on a neighbour's land;
2. direct destruction of a neighbour's land; and

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3. interference with quiet enjoyment of the land.

The claimants argued that the viewing platform was encroaching on their right to privacy by preventing the quiet use and enjoyment of their properties. Lord Neuberger in *Lawrence v Fen Tiger Ltd* [2014] commented that a claim in nuisance may also arise where the reasonable enjoyment of a claimant's land is threatened.

## The Decision

The case was ultimately decided in favour of the Tate.

The ruling Judge considered that although the intrusion was greater than the normal level of overlooking on windows, the purpose of the platform was not principally to overlook the claimants' apartments.

Following the decision in *Lawrence v Fen Tiger Ltd* [2014] it was decided that it was in the character of the locality to have a significant amount of tourists and that occupiers in these spaces should expect less privacy than rural areas. Ultimately the benefits of floor to ceiling views came with what was termed a "privacy price" and that the Tate's use of its land was not unreasonable. In the Court's opinion there was no actionable claim in nuisance and helpfully suggested that residents should consider installing some net curtains.

After spending in excess of £4m on their luxury apartments, it is hardly surprising that the residents did not appreciate the Court's proposed solution and are presently considering an appeal.

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