Case No: G90MA404

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Before HHJ Sephton QC, sitting as a Judge of the High Court

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Between :

(1) Arthur Jones (2) Rhian Jones	Claimants
- and –	
Ministry of Defence	Defendant

Mr David Hart QC and Mr Alasdair Henderson instructed by Richard Buxton, Solicitors, for the Claimants

Mr David Elvin QC and Mr Admas Habteslasie instructed by the Government Legal Service for the Defendant

Judgment

Introduction

1. On the south shore of a reservoir that lies in the centre of Anglesey is the property owned by Mr and Mrs Jones, now known as Parc Cefni. Mr and Mrs Jones intended to develop the land to create a holiday and leisure park. About a mile to the west of Parc Cefni, just beyond the village of Bodffordd, lies Mona Airfield. Since about 1951, Mona Airfield has been used by the Royal Air Force as a relief landing ground for the nearby base at RAF Valley and as a runway where trainee pilots undertake circuit drills using fast jets and turbo prop aircraft.

2. In this case, Mr and Mrs Jones claim that an increase in the noise created by the operations in and around RAF Mona since 2007 has blighted their land. They contend that the noise constitutes an actionable nuisance; further or alternatively, they claim that their rights pursuant to Article 8 and pursuant to Article 1 of the First Protocol to the European Convention on Human Rights have been infringed. They seek a declaration defining where it is lawful for aircraft using RAF Mona to fly and/or damages.

The law

3. The essence of the allegation of nuisance in the present case is that the defendant's activities have caused an interference with the claimants' reasonable enjoyment of their land.

4. In *Lawrence v Fen Tigers Limited* [2014] UKSC 13, [4] Lord Neuberger PSC reminded us that

> "In *Sturges v Bridgman* (1879) 11 Ch D 852 , 865, Thesiger LJ, giving the judgment of the Court of Appeal, observed that whether something is a nuisance "is a question to be determined, not merely by an abstract consideration of the thing itself, but in reference to its circumstances", and "what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey". Accordingly, whether a particular activity causes a nuisance often depends on an assessment of the locality in which the activity concerned is carried out."

5. In *Cambridge Water Co v Eastern Counties Leather plc* [1994] 2 AC 264 , 299, Lord Goff of Chieveley observed that liability for nuisance is

> "kept under control by the principle of reasonable user—the principle of give and take as between neighbouring occupiers of land, under which 'those acts necessary for the common and ordinary use and occupation of land and houses may be done, if conveniently done, without subjecting those who do them to an action'."

6. In *Fearn v Board of Trustees of the Tate Gallery* [2020] EWCA Civ 104, at [40], Sir Terence Etherton MR identified the issues to be addressed if the defendant is to persuade a court that an activity which materially interferes with the claimant's use of his land is nevertheless no

nuisance: (a) is the activity necessary for the common and ordinary use of the defendant's land? and (b) is it done in a way that is reasonable, having regard to the neighbour's interests?

7. In *Lawrence*, the Supreme Court held that the question of reasonable user is to be determined objectively: see [5], [179].

8. Of particular importance in the present case is the principle of locality; that whether an interference with the amenity of land is wrongful in private nuisance depends upon the character of the locality in which the interference occurs.

9. In *Lawrence*, Lord Neuberger gave guidance about how the court should go about assessing the locality, and in particular, what part the defendant's activities should play in assessing the locality:

> "59. The assessment of the character of the locality for the purpose of assessing whether a defendant's activities constitute a nuisance is a classic issue of fact and judgment for the judge trying the case. Sometimes, it may be difficult to identify the precise extent of the locality for the purpose of the assessment, or the precise words to describe the character of the locality, but any attempt to give general guidance on such issues risks being unhelpful or worse.
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> 60. However, such questions can give rise to points of principle on which an appellate court can give guidance. Thus, the concept of "the character" of the locality may be too monolithic in some cases, and a better description may often be something like "the established pattern of uses" in the locality.
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> …
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> 63. It seems clear that the character of the locality must be assessed by reference to the position as it is as a matter of fact, save to the extent that any departure from reality, or artificial assumption, should be made as a matter of logic or legal requirement (the presumption of reality). Accordingly, in a nuisance claim, I accept that one starts, as it were, with the proposition that the defendant's activities are to be taken into account when assessing the character of the locality."

10. One of the important issues in *Lawrence* was the extent to which (if at all) the defendant's activities should be taken into account in assessing the character of the neighbourhood. Lord Neuberger thought that those activities that constituted a nuisance should be left out of account: see [65], [74]. Correspondingly, activities that do not amount to an actionable nuisance can be taken into account in assessing the character of the neighbourhood: see [75]. He continued at [76]:

> "… the fact that it is not open to a neighbouring claimant to object to the defendant's activities simply because they emit noise does not mean that the defendant is free to carry on those activities in any way he wishes. The claimant is entitled to expect the defendant to take all reasonable steps to ensure that the noise is kept to a reasonable minimum… "

11. I have difficulty with the proposition that the court is required to take into account some noise, but leave out of account that noise which amounts to a nuisance; it seems to me that this begs the very question posed, namely, whether the activity in question amounts to a nuisance. Lord Neuberger suggested (at [72]) that in some cases, the court should go through an iterative process when considering what noise levels are acceptable when assessing the character of the locality and assessing what constitutes a nuisance. Lord Carnwath JSC appeared to take a different and to my mind, more easily understood view. Having reviewed the authorities, he said (at [190]):

> "In none of these cases did the court find it necessary to undertake an "iterative process" as proposed by Lord Neuberger PSC: para 72. The judges proceeded on the basis that a change in the intensity or character of an existing activity may result in a nuisance, no less than the introduction of a new activity. It was a matter for the judge, as an issue of fact and degree, to establish the limits of the acceptable, and if appropriate to make an order by reference to the limits so defined."

12. The importance of locality in a noise nuisance claim is demonstrated by two decisions of Buckley J: *Gillingham BC v Medway (Chatham) Dock Co Limited* [1993] QB 343 and *Dennis v Ministry of Defence* [2003] EWHC 793.

13. In *Gillingham*, a huge increase in lorry traffic travelling to a dock gave rise to constant, intrusive noise:

> "Most houses in Bridge Road have sound insulation, as do some in Medway Road. Despite it, I am quite satisfied that their evenings, their sleep and their general comfort were greatly disturbed. Some of them had abandoned front rooms and virtually none opened front windows. I should have said that these houses are all close to the road, perhaps a few paces from the pavement. There were various other complaints including vibration, dust and fumes. The residents described feeling tired through lack of an undisturbed night's sleep."

The recorded noise from lorries was at least 80dB and may well have exceeded 100dB – the technology then available did not permit more detailed measurement. Buckley J held that the current character of the neighbourhood was such that the noise did not constitute a nuisance.[1]

[1] Buckley J held that the character of the neighbourhood had been changed because planning permission had been granted, the effect of which was to alter the character of the neighbourhood. The judge's reasoning about planning permission was overturned by a majority of the Justices in *Lawrence.* However, I note that Lord Neuberger took pains to state (at [99]) that he was not saying that the actual decision in *Gillingham* was incorrect. I take from this that the criticism of Buckley J's decision was not that he was wrong to conclude that the character of the locality meant that highly intrusive noise did not constitute a nuisance, but rather that he agreed that the character of the locality could be changed by a stroke of the planner's pen.

14. In *Dennis*, the issue was aircraft noise from Harrier aircraft flying from RAF Wittering near to a country estate. Buckley J held

> "Nor do I think that a consideration of the character of the neighbourhood tips the balance against finding the Harriers a nuisance. The area remains essentially rural, with villages and individual residences. As Mr Wood submitted it would be odd if a potential tortfeasor could itself so alter the character of the neighbourhood over the years as to create a nuisance with impunity."

15. Another important issue in the present case is the effect of a change of use of the land occupied by the claimant. In *Lawrence*, Lord Neuberger considered, *obiter*, this issue:

> "53. There is much more room for argument that a claimant who builds on, or changes the use of, her property, after the defendant has started the activity alleged to cause a nuisance by noise, or any other emission offensive to the senses, should not have the same rights to complain about that activity as she would have had if her building work or change of use had occurred before the defendant's activity had started. That raises a rather different point from the issue of coming to the nuisance, namely whether an alteration in the claimant's property after the activity in question has started can give rise to a claim in nuisance if the activity would not have been a nuisance had the alteration not occurred.
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> …
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> 55. It is unnecessary to decide this point on this appeal, but it may well be that it could and should normally be resolved by treating any pre-existing activity on the defendant's land, which was originally not a nuisance to the claimant's land, as part of the character of the neighbourhood—at least if it was otherwise lawful. After all, until the claimant built on her land or changed its use, the activity in question will, ex hypothesi, not have been a nuisance. This is consistent with the notion that nuisance claims should be considered by reference to what Lord Goff referred to as the "give and take as between neighbouring occupiers of land" quoted in para 5 above (and some indirect support for such a view may be found in *Sturges* , at pp 865–866).
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> 56. On this basis, where a claimant builds on, or changes the use of, her land, I would suggest that it may well be wrong to hold that a defendant's pre-existing activity gives rise to a nuisance provided that (i) it can only be said to be a nuisance because it affects the senses of those on the claimant's land, (ii) it was not a nuisance before the building or change of use of the claimant's land, (iii) it is and has been, a reasonable and otherwise lawful use of the defendant's land, (iv) it is carried out in a reasonable way, and (v) it causes no greater nuisance than when the claimant first carried out the building or changed the use. (This is not intended to imply that in any case where one or more of these requirements is not satisfied, a claim in nuisance would be bound to succeed.)"

The development of Parc Cefni

16. This case concerns land owned by Mr and Mrs Jones which they have called "Parc Cefni." In this judgment, I shall use "Parc Cefni" as a convenient way to refer to the land now owned by the Joneses, even though it was not previously known by this name.

17. Parc Cefni lies to the south of Cefni reservoir. The reservoir was built by the Anglesey Water Board in around 1958. Control subsequently passed from the Board to Welsh Water. Parc Cefni was owned by Welsh Water and was used together with the reservoir for the purposes of supplying water to the people of Anglesey. There was a former Welsh Water depot on Parc Cefni when Mr Jones bought it. I note that the Ordnance Survey map shows a property on the land called Bodffordd Farm. I was told that the farmhouse was demolished at some stage between 1958 and 2003. I am satisfied that between 1958 and 2003, Parc Cefni was used for the purpose of supplying water and was not used for any other commercial or residential purpose, whatever the designation the land may have had for planning purposes.

18. In 2003, Mr and Mrs Jones used their life savings to buy Parc Cefni for around £250,000. Mr Jones had long nurtured the ambition of creating a holiday and leisure park on the land. He intended to erect Canadian Cedar Post and Beam lodges to provide high quality accommodation for guests. To this end, he obtained planning consent (on 20 October 2004) to convert the outbuildings on the property into 3 holiday units and one dwelling and (on 27 June 2005) to erect 22 holiday units with the erection of a new restaurant and conversion of offices to a creche, leisure facility, café and children's play centre. Obtaining planning permission was necessary because Mr and Mrs Jones intended to change the use to which the land and buildings at Parc Cefni had previously been put.

19. Two lodges were erected in 2006. These were intended as show homes. Mr Jones says that there was a lot of interest shown by potential buyers, but no sale was made. Because they were unable to sell the lodges they had built (even at much lower prices than originally asked), the Joneses put on hold the plan to construct another 20 units. They also shelved the construction of a sewage plant (which would have been necessary to serve 22 units) and other infrastructure work on the site. I shall refer to the plans to erect lodges as "the leisure development". Because the lodges have not been sold, they have been let on an occasional basis and Mr and Mrs Jones have moved into one of the lodges.

20. On Parc Cefni there were buildings that had previously formed the water company's depot. The Joneses intended to rent out some of the buildings for purposes ancillary to the holiday development, for example health and beauty, hairdressing or fitness businesses and a restaurant. Some units were let and by 2007, the gross income from these lettings exceeded £50,000 a year. However, the number of tenants and the income from the lettings dwindled after 2007. I shall refer to the business of letting these properties as "the commercial development". One of the businesses that operated in the commercial development features

significantly in this case: there has been a children's nursery on the site for most of the time since the Joneses bought Parc Cefni.

21. When it became clear that their ambitions were not to be realised, the Joneses decided that they would sell Parc Cefni. They have been trying to sell the property since 2016. Mr and Mrs Jones allege that the reason that their dreams have turned into a nightmare is the intolerable noise from overflying aircraft using the nearby base at RAF Mona.

RAF Valley and RAF Mona

22. It is convenient at this stage to describe RAF Mona and to explain what aircraft were using it and how. I make the following findings:

23. Since the early nineteen fifties, student pilots have learned to fly fast jets at RAF Valley. RAF Valley is now the only base in the United Kingdom from which pilots are trained on fast jets. RAF Mona is an important adjunct to RAF Valley. It is primarily used for pilot training and as an emergency diversion airfield in case of emergency or poor weather.

24. BAe Hawk T Mark 1 ("Hawk T1") aircraft have been used at RAF Valley since 1976. They were gradually replaced by BAe Hawk T Mark 2 ("Hawk T2") aircraft in a rolling programme that commenced in 2009 and was completed in the Spring of 2016. There are significant differences in the avionics of a Hawk T2 compared with a Hawk T1 and the Hawk T2 is heavier, more powerful and noisier, but the flying technique adopted for the two aircraft is, for all material purposes, identical. The Hawk T2 is used by the RAF to teach pilots the skills necessary to fly the RAF's current multi-role aircraft, the Typhoon and the F35.

25. In 2019, the defendant closed its base at Linton-on-Ouse and relocated the training of pilots on Texan T1 aircraft to RAF Valley and RAF Mona. The Texan T1 is a turbo-prop aircraft which is slower and less powerful than the Hawk.

26. RAF Mona is used principally to train pilots on circuits: The pilots of Hawk aircraft are taught to take off (usually into the wind), accelerating to 190 knots until reaching 500 feet. They then perform a 60° banking turn to reach 1,000 feet and start the downwind leg. At the end of the downwind leg, the pilot makes a final call to the control tower and commences his final turn. The aircraft is manoeuvred into a 45° angle of bank and the aircraft turns and drops from 1,000 feet onto the runway with the aim of having wings level at 200 – 300 feet. Pilots are taught that the downwind spacing for a circuit should be judged visually with reference to the wing tip and the runway centreline. This method of judging when to turn has the advantages that it is transferable to any airfield (because the reference point is the runway itself, and not

any other ground feature) and it is transferable to the Typhoon and F35 aircraft which the trainee pilots will later fly. Circuits in a Texan T1 are performed in a similar fashion. Wing Commander Pote told me that the circuit is slightly narrower because the Texan is slower than a Hawk.

27. There are some variations on this theme. The pilot will need to alter his approach depending upon the weather conditions, particularly the wind. Pilots may occasionally fly low level circuits, in which, having reached 500 feet, they climb no further. Pilots are occasionally required to undertake a "flapless" circuit; that is, a circuit in which the pilot is not permitted to use his flaps – presumably to simulate the loss of use of flaps during operation. Such a circuit requires wider turns to be made. About 5% of the circuits flown are "flapless" circuits. Squadron Leader Stuchfield told me that RAF Mona is also used for practised forced landings; in this drill, pilots start at between 2,500 and 3,000 feet; they circle the aerodrome and are required to land their aircraft.

28. Circuit flying is a fundamental part of training pilots on fast jets. I take the following as an accurate description of the function of this type of training:

> "Circuit flying combines many of the essential flying skills required by pilots; the circuit is a formalised pattern that teaches a wide range of competencies, including those required to take-off, land and handle emergencies in flight and it is an excellent exercise for developing confidence, pilot ability and 'airmanship'. The circuit pattern is accepted universally as a precision exercise that is a most effective teaching method which allows the pilot to use spare mental capacity to do other tasks (e.g. look for other traffic, system management or essential checks). It also gives the instructor time to debrief the previous circuit and provide any coaching needed for the forthcoming pattern. This circuit pattern is the safest procedure to achieve the training aims, using the least power and making the least noise."

29. RAF Mona has a single runway which runs from south west to north east. Circuits are flown to the south of the runway in order to avoid overflying the village of Gwalchmai and to avoid interference from aircraft flying from RAF Valley. When the wind blows from the south west, as it does about 60% of the time, the runway is designated as runway 22. In these conditions, pilots take off and turn left. At the end of their downwind leg and into the finals turn, pilots fly in the vicinity of Parc Cefni. When the runway is used in the opposite direction, it is designated as Runway 04. In these conditions, pilots take off and turn right. During the upwind turn and the start of the downwind leg, pilots fly in the vicinity of Parc Cefni.

30. The Hawk and the Texan T1 aircraft are very noisy aircraft. The noise from these aircraft were the subject of complaints that Mr Jones made from 2010 onwards.

Complaints about noise and the Flying Orders

31. In a letter dated 29 October 2010, Mr Jones wrote to Group Captain Hedley,

> "… the nursery in particular accommodates about 35 children aged from 6 months to school age. It is open from 0700 hours to about 1800 hours. You can therefore imagine the shock and trauma suffered by those children when aircraft fly low and directly above their nursery. This happens regularly when aircraft fly at Mona. Sometimes I judge the height of the aircraft to be lower that 400 feet which when combined with a banking manoeuvre using more thrust makes a deafening noise directly above the nursery."

Group Captain Hedley commissioned an investigation into the issue. On 15 December 2010, Mr Jones wrote to Group Captain Hedley again:

> "children have had to endure increased aircraft activity with planes regularly passing directly overhead at an altitude of about 150 feet or less. Significantly they perform a banking movement directly overhead with what sounds like full throttle making the noise unbearable for adults let alone children. I wonder which final approach path requires this type of manoeuvre? I have kept notes of the times when aircraft pass low directly above the nursery."

32. At some stage in late 2010 or early 2011, as a result of Mr Jones's complaints, the Flying Order Book ("FOB") for pilots flying at RAF Valley and RAF Mona was changed. As its name suggests, the FOB contains a large number of orders with which pilots are required to comply. I was shown the relevant page of the FOB. There is a small map of the area around RAF Mona on which is marked a red segment and a green segment. The green segment represents the path that pilots were required to take on the upwind turn (i.e. immediately after taking off from runway 04). Text alongside the map is headed "Activity Centre and Nursery at Parc Cefni", and indicates that aircraft are required to be above 500 feet and to have crossed the B5109 before making the upwind turn. The red segment represents that path that pilots were required to take on the downwind turn (i.e. on approach to runway 22). Inside the red segment is a red circle. The red circle is centred upon the nursery on Parc Cefni. It denotes an area that pilots are required to avoid.

33. Mr Jones wrote again on 8 November 2011. He complained:

> "Aircraft have continuously passed directly over the children's nursery and yesterday 7 November it was particularly offensive. It is clear from the ground that the pilot's manoeuvre their aircraft into a position in order to pass directly over the buildings. They can be seen altering their approach flight path and height (to about 150 feet) in order to pass over the nursery and then immediately after passing they alter course increase altitude and then head off in a South Easterly direction…
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> I must conclude from their actions that they are intentional and intended to simply cause as much annoyance and misery as possible."

34. On 1 February 2012, Mr Jones renewed his allegation that his property was being specifically targeted. On 8 February, he repeated that he was being victimised and persecuted.

35. Wing Commander Wharmby and Squadron Leader Norton visited Parc Cefni on 15 February 2012. In a letter dated 21 February, Group Captain Hill explained that the area that pilots were required to avoid was the Nursery and Activity Centre and not the other buildings on the site. He stated that aircraft should not overfly the other buildings on the property on a routine basis, but that "due to the nature of training flights coupled with weather constraints, aircraft may occasionally overfly these outlying properties."

36. On 19 March 2012, Group Captain Hill responded to another complaint by Mr Jones. In relation to a specific complaint, he stated that onboard equipment demonstrated that a Hawk had not overflown the nursery as alleged and that "false perception was a key component here". More generally, he concluded that RAF Valley conducted a "well-considered approach to flying training and operational support whilst minimising disturbance to the local community". He suggested that Mr Jones direct his complaints to the Ministry of Defence. Mr Jones complained again on 19 April 2012. On 26 April 2012 Group Captain Hill stated,

> "On 19 March 2012… I informed you that I remain convinced that the manner in which RAF Valley conducts operations reflects a well-considered approach to flying training and operational support whilst minimising disturbance to the local community. The internal investigation has been closed and my position has not changed.
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> In view of your letter of complaint dated 19 April 2012, I believe we have now reached an impasse."

He repeated the advice to take the matter up with the Ministry of Defence.

37. In the FOB issued in April 2012, the map is supplemented with additional text as follows:

> "RLG Mona Local Sensitive Areas. Aircrew operating in the Mona circuit are to modify their circuit patterns to avoid overflight of the areas highlighted right. In particular, any overflight of the Activity Centre and Nursery at Parc Cefni, Bodffordd is to be avoided:
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> a. Runway 04. No 4 FTS aircraft climbing upwind from runway 04 are to have crossed the B-road before initiating the upwind turn; resultant flight path is shown in green. Breaks to runway 04 should be initiated NLT halfway along the runway or no earlier than abeam the reservoir.
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> b. Runway 22. No 4 FTS aircraft on downwind runway 22 should track no further north than the northern edge of the Cefni Reservoir causeway. The final turn should not be initiated before the 'diagonal' tip-in cue"

I take the rubric relating to runway 22 to mean that as pilots approach from the southwest, they should plot their course in a north-easterly direction (and "no further north than the

edge of the… causeway") until they reach the tip-in cue, when they should commence the final turn.

38. Mr Jones continued to complain. Eventually on 19 June 2013, Mr Jones wrote to the Ministry of Defence. He alleged that aircraft had been flying closer to Parc Cefni, that the situation worsened in 2011 and that he felt he was being punished because he had complained. He threatened legal action and eventually commenced these proceedings.

39. Subsequent issues of the FOB did not differ materially from that issued in 2012 until October 2016. The FOB issued on 10 October 2016 contained an identical map. However, the second sentence of the text now reads, "In particular, any over-flight of Parc Cefni, Bodffordd should be avoided". The FOB does not explain where Parc Cefni is; Group Captain Moon's evidence (which I accept) confirms my perception that any pilot reading the FOB would assume that the red circle marked on the plan is the area to avoid.

40. I note that during oral evidence Mr and Mrs Jones both persisted in the allegation that pilots had deliberately targeted Parc Cefni and had wilfully breached the rule in the FOB.

Findings about overflights

41. I turn to consider the allegation at the heart of the claimant's case, that in 2007 there was a significant change in flight patterns and an increase in the use of RAF Mona for RAF training purposes.

42. I deal first with the allegation that there was an increase in the use of RAF Mona. Mr Sebastian Richie provided me with a table compiled from official records that contained the number of sorties from RAF Mona in the period 2003 – 2011. Late in the trial, I was provided with a further table that provided the number of sorties from 2013 to date. The figures show a steady decrease from almost 40,000 sorties in 2003 to around 5,000 sorties in 2018. In 2019 and 2020, the figures increase to around 11,000 sorties. The principal reasons why the numbers decreased consistently for many years is that the RAF has drastically reduced its requirement for trainee pilots; further, pilots are now extensively trained using flight simulators rather than live flights. These factors substantially outweighed the factors relied upon by Mr Jones (namely, the inception of commercial flights from RAF Valley to Swansea and the training of foreign pilots). I regard these tables as highly reliable evidence. They demonstrate that the allegation that there was an increase in the use of RAF Mona is incorrect. I note that during his cross-examination, Mr Jones persisted in his assertion that the numbers had increased even when he knew that the RAF's official figures demonstrated that

this was not so. The fact that Mr Jones persisted in an allegation which was plainly incorrect gave me cause to doubt whether I could rely upon Mr Jones's evidence generally.

43. I now consider the allegation that there was a significant change in flight patterns in 2007.

44. I heard evidence from Mr and Mrs Jones, Mr Astbury, Mr Parry and Mr Gregson that they were familiar with the area and that in 2007 the flightpath of aircraft using RAF Mona changed so that they flew further west than previously and over Parc Cefni. Mr Jones claims that 85% of flights cross Parc Cefni. Mr Jones has produced a selection from a huge number of video recordings he has made which, he says, demonstrates that the aircraft are flying over Parc Cefni, some of them at very low altitude. The claimants also rely upon a diagram annexed to a report on noise surveys at RAF Valley and RAF Mona dated June 1994 ("the 1994 plan") which they submit is the "planned training circuit". The diagram shows an oval circuit where the downwind leg using runway 22 is some distance to the east of Parc Cefni. The tip-in point is not shown on the plan, but must be somewhere near the south end of the railway causeway crossing Cefni reservoir. Mr Hart QC submitted that the circuit as shown in the diagram kept well clear of Parc Cefni and must have been flown in this way from as far back as 1994.

45. The defendant's pleaded case was as follows:

(a) There was no change or increase in patterns at any time (paragraph 13(2) of the defence);

(b) The FOB directs that overflight of Parc Cefni should be avoided (paragraph 12);

(c) Consequently, no aircraft fly over Parc Cefni (paragraph 17);

(d) (Until I permitted the defendant to amend its defence) it was admitted that the planned circuit at RAF Mona was as illustrated on the 1994 plan (paragraph 17).

46. The evidence called by the defendant was to different effect.

47. Group Captain Moon pointed out that the FOB identified the area to be avoided on the map to which I referred earlier in this judgment (he referred to it as "the Avoid"); it relates to the Nursery and Activity Centre and not to Parc Cefni as a whole. He agreed that aircraft might fly over Parc Cefni, but they did not fly over the Avoid. He (and other witnesses) stated that it was highly unusual for a single enterprise such as Parc Cefni to be subject to an Avoid.

48. Squadron Leader Stuchfield told me that he had studied the electronic trace recordings for all flights around RAF Mona during a 6 week period in August and September 2020. He produced diagrams that illustrated the flight paths of the aircraft. The paths shown on the diagrams fell largely outside the boundaries of Parc Cefni. About 3% of the flights flew over Parc Cefni.

Squadron Leader Stuchfield told me that he concluded that some of the overflights of Parc Cefni were the result of pilots overflying at greater altitude when undertaking simulated forced landings; when he discovered this fact, he circulated the information that the Avoid was out of bounds even when undertaking this exercise.

49. Squadron Leader Stuchfield told me that he had been stationed at RAF Valley in 1994-1995, 1999-2002 and from 2013 to date. During that time he had been involved as a trainee, as a qualified flying instructor and in his current role in flying circuits in Hawk jets at RAF Mona. He told me that the flightpaths had not changed during that period. He told me that the 1994 plan did not represent the circuits flown at any time during his service at RAF Valley. He explained that circuits do not follow an identical ground path: the circuit is based not upon ground features, but upon the geometry of the flight about the runway. Conditions, particularly the wind, will differ widely and cause the ground path to vary. Insisting that pilots take a wider path to and from the runway exposed pilots to unwarranted hazard. Wing Commander Pote gave similar evidence in connection with Texan T1 aircraft. He added that the lowest altitude for flight was 500 feet; pilots only go below that altitude when taking off and after making the finals turn. Squadron Leader Stuchfield and Wing Commander Pote accepted that pilots did occasionally overfly the Activity Centre and Nursery; they pointed out that landing a fast jet is an extremely exacting operation; these were trainees and they could not be expected to perform perfectly from the outset; if a pilot did overfly an area to be avoided, the qualified flying instructor would likely debrief the pilot to ensure that there would be no recurrence.

50. I conclude that there was no significant change in the flight path in 2007. There was no single "flight path" because pilots do not follow a ground path, but have to move their aircraft in accordance with the geometry of the wing tip relative to the runway, and in doing this, varying conditions – particularly the wind – will affect the ground path actually followed. I find that flights generally avoid Parc Cefni, but a small number – probably less than 5% – overfly Parc Cefni. I reject the allegation that flights previously followed the path shown on the 1994 plan. I make these findings for the following reasons:

(a) I accept the evidence of Squadron Leader Stuchfield, whom I found to be a reliable and forthright witness. In particular, I accept his logic that Hawks were flown at RAF Mona before and after 2007, and there is no reason why the flightpaths would have changed. I also accept the evidence of Group Captain Moon and Wing Commander Pote. The fact

that the defence (before it was amended) does not correspond with their evidence does not persuade me that their evidence should be rejected.

(b) Although I accept generally that the witnesses who gave evidence for the claimants were doing their best to help the court, I bear in mind that when they were asked to make witness statements in the Spring of 2020, the events in question had occurred 13 or more years previously. I am not convinced that their evidence is reliable.

(c) I am not convinced by Mr Jones's evidence. It was a feature of his evidence that he minimised the effects of noise prior to 2007. He told me that the noise at Parc Cefni before 2007 was not of significant consequence. He claimed that the noise audible from Bodffordd was "a humming noise, not a noise you could take offence at." In the light of evidence from Mr Humphreys and from Ms Large (the claimants' noise expert) about the very significant noise perceived in Bodffordd, I regard Mr Jones's description as wholly implausible. This was another reason why I treat his evidence with caution.

(d) So far as the video recordings are concerned, I find it extremely difficult to judge precisely what they show. I accept the evidence of Squadron Leader Stuchfield that judging the path and altitude of the aircraft from these recordings is difficult. I agree with his point that such a judgment is made more difficult because it is not always possible to tell from where the recordings were made and because of the inconsistent use of the zoom feature on Mr Jones's camera. I accept, however, that the recordings show that some of the aircraft fly over Parc Cefni and all of them fly quite close to the property. I found nothing in the video evidence that is inconsistent with the findings I have made.

51. I reject the allegation made by Mr and Mrs Jones in correspondence and in evidence that pilots deliberately overflew Parc Cefni in order to intimidate them. I accept the evidence of Air Vice Marshal Hedley, Group Captain Moon, Wing Commander Pote, Wing Commander Wharmby and Squadron Leader Stuchfield that deliberate breach of a flying order would be investigated and visited with dire consequences. No such thing has happened. I accept the evidence that training flights are closely monitored by qualified flying instructors who would step in if there were any breach of the flying orders and debrief the pilot concerned. That Mr and Mrs Jones persisted in this implausible allegation gives me further cause to question the reliability of their evidence.

The noise at Parc Cefni

52. I now consider the noise at Parc Cefni.

53. I heard expert acoustic evidence from Ms Sarah Large and Mr Rupert Thornley-Taylor. Ms Sarah Large measured the noise at Parc Cefni in 2016 and in 2020. She found that the maximum noise levels from over-flying aircraft in 2020 (when there was probably more noise than in 2016) were in the range 93-113 dB $LA_{max,f}$. She measured peak noise levels of up to 130 dB LC_{peak}. Hourly average noise levels during such activity were in the region of 77-85 dB $LA_{eq,1\ hour}$ depending on the number of flights and maximum noise level of each flight. Ms Large and Mr Thornley-Taylor debated whether there were sufficient data to calculate the LA_{eq16} (which is currently the most widely-used measure of acoustic energy in assessing aircraft noise) and about whether the threshold established by the defendant for its noise amelioration scheme had been reached, amongst other things. I was not persuaded that measurements of acoustic pressure levels presented in various ways assisted me to determine whether there was a noise nuisance.

54. I found helpful the following evidence that emerged from the experts:

(a) The background noise around Parc Cefni is relatively quiet. There is a much more noticeable difference between the rural calm that prevails when no aircraft is passing and the noise of a military aircraft than there would be if there were a noisy background environment.

(b) The onset and subsequent departure of the noise is very fast in the case of the Hawk. The experts agreed that the Hawk T2 was heavier, more powerful and louder than the Hawk T1. They cannot say how much noisier the Hawk T2 is than the Hawk T1.

(c) By contrast, the slower Texan T1 emits noise of lower intensity but of longer duration. The noise from a Texan T1 includes low frequency tones.

(d) The noise levels detected at Parc Cefni do not exceed the first action level for the Control of Noise at Work Regulations 2005. The noise levels approach, and occasionally meet, the values highlighted by the World Health Organisation for protecting children against hearing damage.

(e) Noise from aircraft is distributed in a complex pattern. However, as a general rule, the noise reduces as the distance from the source increases.

55. The witnesses of fact provided me with an impression of the noise which I found much more illuminating than measurements of noise levels. I heard evidence that small children are sometimes frightened by the aircraft noise. Several witnesses explained that conversations,

even those conducted indoors, had to be interrupted when aircraft flew over. The volume of the television had to be increased. Mr Humphreys explained:

> "Working inside the building did sometimes reduce the noise but if the jets flew straight over, the noise was sudden and like thunder. At those times I found it impossible to hear or communicate clearly with clients and phone conversations were impossible without shouting."

In oral evidence. Mrs Jones described the noise of a Texan aircraft: It is, she said, "A whirling noise. The sound feels as if it is coming down towards you. It is an ongoing noise that lingers. The jet is louder but the other is lingering." Some of the witnesses commented that the noise of the Hawk T2 was louder than that of the Hawk T1, but provided no detailed description of the effect of the additional noise. I heard no convincing evidence that the noise disturbed sleep.

56. In his witness statement, Mr Jones suggests that his blood pressure has increased as a result of exposure to noise. He also suggests that the noise from the aircraft has impaired his hearing. There is no medical evidence to support these assertions. I am not convinced by this evidence that the noise has affected Mr Jones's physical health.

57. I conclude that the noise of aircraft flying close to, and occasionally over, Parc Cefni was and is very loud. It disrupts conversations and can frighten small children. It is necessary to increase the volume on the television if an aircraft passes by. A Hawk aircraft may startle the unwary owing to the sudden onset of very loud noise in an otherwise quiet environment. The Texan does not startle in the same way, but the noise lasts longer. The noise occurs on weekdays between 8am and 2am, but is intermittent and not regular.

58. As to the history of the noise, I have found that there was no increase in the number of flights and no material variation in flight paths in 2007. Between 2003 and 2010, the noise at Parc Cefni came principally from Hawk T1 jets. The number of noise incidents decreased steadily as the number of sorties from RAF Mona declined. From 2011 until 2018, the number of sorties continued to decline, but the noise each aircraft made was louder than previously because of the introduction of the Hawk T2. I have not heard convincing evidence that the noise of the Hawk T2 had any significant effect upon life at Parc Cefni and I find that, owing to the decrease in the number of sorties, the overall impact of the noise was no greater than before. In 2019, the number of sorties increased as Texan T1 aircraft began to use RAF Mona. However, I reject Mr Jones's evidence that the noise is significantly greater since the introduction of Texan T1 aircraft. The conclusion that the addition of Texan aircraft has not added to the overall noise burden is supported by a table at paragraph 6.10 of Ms Large's

report dated 25 June 2020, which gives a comparison between the noise she measured in 2016 and that she measured in 2019: the figures for 2019 (after the Texan was introduced) are generally lower than those for 2016 (before the Texan was introduced).

59. At present, the number of sorties is still significantly less than it was in 2003 (or 2007, for that matter), although the quality of sound is different because it comes either from the Hawk T2 (which is noisier than the T1) or from the Texan (which is less noisy but of longer duration). I find that taking into account the very significant decline in the number of sorties since 2003, and despite the introduction of the Hawk T2 and the Texan T1 aircraft, the overall interference with the use and enjoyment of the claimants' land has not materially increased.

60. It is plain that the noise of aircraft flying near to and over Parc Cefni is annoying and disruptive. It is very annoying to Mr and Mrs Jones in and around their home. It is likely that some holidaymakers and some tenants of commercial property have been and will be put off Parc Cefni because of the noise of passing military aircraft using RAF Mona. I have no doubt that the noise interferes with the current use and enjoyment of the land.

Is there a nuisance?

61. Parc Cefni lies almost at the geographical centre of Anglesey. The area is largely agricultural. Cefni reservoir lies to the north of Parc Cefni. The village of Bodffordd is nearby: it was described in evidence as "sleepy" – it has no convenience store and the local school was threatened with closure. However, the bucolic tranquillity of this part of Anglesey has been disturbed for many years by the sound of fast jets making circuits around, landing at and taking off from Mona airfield. Fast jets have been using RAF Mona since 1951 and Hawk aircraft have been using the airfield since 1976. The noise has been part of the environment for generations. Mr Mark Humphreys explained to me in evidence that he had lived in Bodffordd since his infancy, and the noise from the aircraft was, and still is, very loud indeed. In what struck me as a telling expression, he said that the noise "was part of everyday life" when he was growing up.

62. In my judgment, it is appropriate to characterise the locality around Bodffordd (and including Parc Cefni) as being largely agricultural, but one in which very loud noise from aircraft using RAF Mona is heard on frequent occasions. I reject the submission made in the claimants' written closing that I should not take into account the noise generated by the very activities alleged to constitute nuisance. The approach I take is consistent with the "presumption of reality" referred to at paragraph [57] of Lord Neuberger's judgment in *Lawrence*. I am required to form a judgment whether the noise created by the defendant's activities

constitutes a nuisance; that is an issue of fact and judgment [59] or fact and degree [190]. It would be artificial and unrealistic to exclude a feature of the locality that has been present for many years. I am fortified in my conclusion that extremely loud noise is capable of forming part of the locality by the decision to similar effect by Buckley J in *Gillingham.*

63. I accept the submission that there is a significant public interest in training fast jet pilots for the defence of the realm. There is also a public interest in fostering cordial relations and extending the influence of the United Kingdom by training pilots from allied nations. RAF Valley and RAF Mona are the only places in the United Kingdom where these activities can take place. If these activities did not take place at RAF Valley and RAF Mona, they would have to take place elsewhere. I bear in mind that I am not asked to deal with a situation in which it is proposed to site a new military aircraft base in the middle of the countryside; I am required to make a judgment upon an activity that has been conducted in this location for 70 years. With these considerations in mind, I reach the conclusion that the flying of military aircraft at RAF Mona in 2003 or 2021 is an ordinary use of the land at RAF Mona. I am conscious that I am reaching a different conclusion upon the evidence before me from that reached by Buckley J in *Dennis* upon the facts of that case.

64. The next question I must consider is whether the defendant has taken all reasonable steps to ensure that the noise is kept to a reasonable minimum. I consider that the defendant has done so, for the following reasons:

(a) The decision to fly circuits to the south east of RAF Mona (rather than the north west) was made for sound reasons, in particular to minimise the noise nuisance to the population of Gwalchmai and to avoid conflict with aircraft using RAF Valley.

(b) The evidence I have heard persuades me that Group Captain Hill was right when he wrote in 2012 that "the manner in which RAF Valley conducts operations reflects a well-considered approach to flying training and operational support whilst minimising disturbance to the local community."

(c) In my view, the officers at RAF Valley have taken all measures that they reasonably could to minimise the noise at Parc Cefni. Shortly after Mr Jones made his first complaint, Air Vice Marshal Hedley caused a change to be made to the FOB to address the only issue about which had been made aware, namely the nursery and activity centre at Parc Cefni. I accept the evidence that it was an exceptional measure to create an Avoid for the claimants' enterprise. Air Vice Marshal Hedley and Squadron Leader Stuchfield have made

it their business to remind trainee pilots of the flying order when it came to their notice that it may have been breached.

(d) I accept the evidence of Squadron Leader Stuchfield and Wing Commander Pote that the area to be avoided on Parc Cefni cannot be made larger without giving rise to unacceptable risks to the safety of pilots, their aircraft and people on the ground.

(e) I reject the allegation that pilots have deliberately flouted the order not to fly over the Nursery and Activity Centre.

(f) My attention was not drawn to any other steps that the defendant could reasonably take to mitigate the noise heard at Parc Cefni.

65. I conclude that the claimant has not established that the defendant has committed a nuisance. Of course, that is not to say that the defendant may significantly increase the noise pollution in the locality by making substantial increases in the number of flights or by introducing aircraft that are significantly more noisy than the Hawk T2 and the Texan T1. As Lord Carnwath pointed out in *Lawrence*, "a change in the intensity or character of an existing activity may result in a nuisance." For the avoidance of doubt, for the reasons stated earlier in this judgment, I do not consider that the introduction of the Hawk T2 or of the Texan T1 aircraft constituted a change in the intensity or character of the existing use of RAF Mona sufficient to amount to a nuisance.

66. I believe that it is significant that I have rejected the allegations that there was a change in flight patterns and an increase in the use of RAF Mona. I think that the fact that the claimants have pleaded and sought to prove that matters got worse in 2007 bespeaks a realistic recognition that there was no nuisance when they acquired the land in 2003 and that, absent any deterioration in the situation, there is no claim in nuisance.

67. If I am wrong about this, I need to consider the point that the Joneses have changed the use to which Parc Cefni was put.

68. Before the Joneses bought Parc Cefni, the land was used for purposes ancillary to the supply of water to the people of Anglesey. In my judgment, the flying of fast jets over this land, even in the much greater numbers that prevailed before 2003, did not create a material interference with the use to which the land was then put: There was scarcely ever anyone on the land capable of being bothered by the noise. I suspect, though I make no finding about this, that the sum paid by Mr and Mrs Jones when they bought Parc Cefni in 2003 reflected

the fact the land was undeveloped and lay close to the flight path of aircraft using RAF Mona. In my view, the activities undertaken by the defendant did not then constitute a nuisance.

69. Mr and Mrs Jones introduced to Parc Cefni activities that were sensitive to the noise created by the aircraft at RAF Mona. I reject the submission that there has not been a material change of use of the land. Such a submission fails to stand up to scrutiny in the face of a comparison between what activity was conducted on the land in, say 2002, and that in, say 2008.

70. Adopting the approach of Lord Neuberger at paragraphs [53] – [56] in *Lawrence*, I should treat the defendant's pre-existing activities as part of the character of the locality. On my findings, the defendant's activities:

    (a) can only be said to be a nuisance because they affect the senses of those on the claimants' land,

    (b) were not a nuisance before the change of use of the claimant's land,

    (c) were and are a reasonable and otherwise lawful use of the defendant's land,

    (d) are carried out in a reasonable way, and

    (e) cause no greater nuisance than when the claimant first carried out the building or changed the use.

    On the basis of the approach suggested by Lord Neuberger, the claim fails.

71. I do not think that such a result is unjust. If an occupier of land has conducted an activity in a reasonable manner for many years, I do not consider it fair that a new neighbour who wishes to start doing something that is sensitive to the occupier's activity can complain that the activity in question will disrupt the sensitive use of his land that the neighbour wishes to introduce.

Human Rights Act 1998

72. The claimants allege that the aircraft noise amounts to a past and continuing breach of the rights of the claimants under Article 8 and/or Article 1 of the First Protocol to the European Convention on Human Rights. I received only summary submissions on this issue.

73. Article 8 provides as follows:

> "Right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

74. It is submitted that the noise of overflying aircraft constitutes a failure by the defendant to respect the claimants' private and family life and their home.

75. I have found that the aircraft noise disturbs the Joneses' lives and their home. I consider that this interference with the claimants' home, private and family life is in accordance with the law and necessary in the interests of national security. I have found that the noise does not constitute an unlawful nuisance: the defendant's activity is, in my view, conducted in accordance with the law. I reject the submission that that the defendant's activities are unreasonable and disproportionate, for the reasons set out earlier in this judgment. I take it to be uncontroversial that training our air force pilots and promoting cordial relations with our allies engage the interests of national security.

76. The more difficult question is whether a proper balance has been struck between the competing requirements of national security and the claimants' human rights, such as to justify the conclusion that the interference is "necessary". I believe that the balance has been properly struck in this case because:

    (a) The defendant operates a noise amelioration scheme for householders affected by noise: The public purse affords relief to those most affected by noise. The reason that the claimants do not qualify for support under this scheme is that they have not established that the noise to which they are subjected is sufficiently loud.

    (b) The defendant has taken steps to minimise the noise of overflying jets: I refer to the exceptional order to pilots to avoid the most sensitive parts of the claimants' property.

    I conclude that adequate account has been taken of the claimants' Article 8 rights.

77. I reject the submission (if such is made) that if the interests of an individual are interfered with because of an overriding public interest, the individual is bound to be compensated. There are many examples of situations where the public interest trumps private rights without payment of compensation. A pertinent example is section 76 of the Civil Aviation Act 1982, which severely curtails without compensation the right of a member of the public of the right to sue in nuisance in respect of the flight of a civil aircraft over any property. There are countless

other examples where public services such as high speed railways, motorways and the like cause significant noise disturbance but the unfortunate victims remain uncompensated.

78. It follows that I have not found the alleged breach of Article 8 to have been made out.

79. Article 1 of the First Protocol provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

80. In my judgment, the adjective "peaceful" in the Protocol means "without interference"; it is to be construed in the same way as the quiet enjoyment to which a tenant is entitled. In this context, "peaceful" does not mean "without noise." The construction I propose is consistent with the French text («Toute personne physique ou morale a droit au respect de ses biens »).

81. It is submitted that the claimants' peaceful enjoyment of their possessions has been interfered with by aircraft noise. In order to give proper consideration to this submission, it is necessary to identify the "possessions" referred to. I analyse this issue in two ways:

82. The first approach is to consider what Mr and Mrs Jones purchased in 2003. They bought land which, on my findings, was subject to constant loud noise from overflying aircraft. At that stage, they would not have been able to bring an action to prevent the noise or to claim damages in lieu because (as I have found) there was no nuisance. The enjoyment of their land was therefore impaired by the fact there was loud aircraft noise and there was nothing they could have done to prevent it. The "possession" they acquired was the land whose use was thus limited. Nothing in the circumstances of this case leads me to conclude that Mr and Mrs Jones acquired any relevant new possession since they first bought Parc Cefni. It seems to me that their enjoyment of their possessions is as it was when Parc Cefni was bought; the enjoyment which they were entitled to expect has not been interfered with; the defendant has not deprived them of anything.

83. The alternative approach is to recognise that the land itself at Parc Cefni is unaffected by the noise of overflying aircraft; what have been affected are the businesses that Mr and Mrs Jones hoped to conduct on the land. But when Mr and Mrs Jones bought Parc Cefni, the noise which they complain prevents them from carrying out those businesses was already present (indeed, it was probably worse then than it is now); the businesses were not yet in existence. The

noise did not deprive the Joneses of what they already had; it has impeded them from developing something new. This case appears to me fall within the principle that Article 1 does not create a right to acquire property (see *Denisov v Ukraine* Application 76639/11) and does not apply to future income (see Ian *Edgar Limited v United Kingdom* 37683/97, *Wendenburg v Germany* 71630/01, *Levänen v Finland* 34600/03). Mr and Mrs Jones invested in their land with the hope of running future profitable businesses, but such a hope does not represent a possession capable of being protected by Article 1.

84. I therefore conclude that no breach of Article 1 is made out.

Quantum

85. In relation to the pecuniary loss which the claimants alleged that they had sustained, I heard expert evidence from Mr Hughes and Mr Bailey (concerning the leisure development) and from Mr Armstrong and Mr Francis (concerning the commercial development). In the light of my conclusions on liability, it is unnecessary for me to consider the quantum of damages. Out of deference to the witnesses I heard and to the parties' submissions, I set out in brief summary the principal conclusions I would have reached on the pecuniary losses:

(a) It seemed to me that Mr Hughes based his opinion upon an uncritical acceptance of what Mr and Mrs Jones told him. By way of example, Mr Hughes did not seek, and did not obtain, any evidence at all beyond what the Joneses told him about why potential purchasers had not bought the cabins on offer. I formed the view that Mr Hughes had not given careful consideration to the manner in which his figures were calculated and made up. For example, he was unable to explain to me what account he had taken of the infrastructure costs (in particular, the cost of a sewage plant) in coming to his valuation. I preferred the evidence of Mr Bailey. The experts agreed that the "non-blighted" value of the leisure development was £1,245,000. I would have found that the "blighted" value was £944,350.

(b) The commercial development enjoyed initial success. The Joneses let 9 units and enjoyed gross receipts of £52,442. Unfortunately, the commercial development became less successful. For the reasons set out earlier in this judgment, the reason for this was not an increase in noise from overflying jets. The more likely explanation, in my judgment, is that Parc Cefni was in a rural location, some distance from centres of population. It was commercially unattractive for this reason. The commercial development could not have been supported by the leisure development alone. In my opinion, Mr Armstrong's opinion relied too heavily upon the assumption that the leisure development would generate

sufficient business to support the commercial development. He was unduly influenced by the initial success of the development, which was unlikely, I find, to have been sustained, once the bloom of initial enthusiasm had been taken off. I preferred the evidence of Mr Francis. I would have found that the "unblighted" value was £247,500 and the "blighted" value was £198,000. I would have dealt with the claim for loss of profit accordingly.

Conclusion

86. The very loud noise of aircraft using RAF Mona has been part of everyday life in this part of Anglesey for about 70 years. Before Mr and Mrs Jones moved in to Parc Cefni, the noise there did not interfere with the enjoyment of the land, because the land was used for water supply and ancillary purposes. Unfortunately, the businesses that Mr and Mrs Jones started at Parc Cefni when they moved there were much more sensitive to noise. I have found that, contrary to the Joneses' allegation, the noise got no worse in 2007. It has not become materially more noisy since they moved in. Moreover, the officers at RAF Valley have taken all the steps they reasonably could to accommodate the Joneses' requirements. In consequence, I conclude that the Joneses have no claim in nuisance. Their claims pursuant to the Human Rights Act 1998 must also be dismissed.