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Relate

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Neighbours and the law

This issue of *Relate* covers some of the problems that may affect people who live in urban areas. These include boundary disputes, doing work on party structures, trees, noise and control of animals.

Many types of problems may arise between people living close to one another. In general, these problems are resolved by neighbours talking to each other, but sometimes this is not possible or does not lead to a satisfactory outcome.

Local authorities have various powers to make bye-laws for their areas and designated areas within their boundaries. This means that rules can vary both between local authorities and within local authorities.

Many of these issues are also relevant to rural environments but there can often be separate rules and legislation that may apply in rural environments, for example, legislation on agriculture and forestry.

Boundary disputes

Who owns a property boundary?

Common law rules presume that party walls, located on the boundary between two parcels of land, are owned jointly by the adjoining landowners. This is a presumption in the law and can be rebutted with strong evidence to show the structure is owned outright if that is the case. However, even where a structure or piece of land is owned by one individual, a neighbouring individual may have rights over that structure or land.

There are three other main types of boundary ownership:

- Outright ownership – where the boundary is owned outright by one landowner, for example, the wall between two parcels of land is located entirely within one parcel
- Divided ownership – a party structure may be divided longitudinally where each adjoining land owner owns their 50% share up to the central medial line. Each owner may do as they wish with their structure provided they do not damage or cause the collapse of the other owner's structure
- Divided ownership with mutual rights of support – this type of ownership is similar to divided ownership above, but each share is subject to a right of support owned by the other owner, known as a cross-easement

If you are uncertain as to where your precise boundary is, or how your party structure is owned, you should begin by carrying out an investigation of your title. Your title documents are the deeds and related papers that describe your land. Your property may be registered in the Land Registry, which is a computerised record of ownership and includes descriptions of parcels of land known as folios. A solicitor or a professional surveyor can assist you with these investigations.

You should approach any boundary dispute with caution. If you make a false or malicious statement regarding the ownership of land you may be accused of "slandering the title" of the other owner. Section 42 of the Defamation Act 2009 provides that a person can sue another for compensation if they have suffered a loss because of such slander.

You should try to resolve any boundary dispute directly with your neighbour first, or else through mediation. If your dispute cannot be resolved, the matter may be dealt with by either the Circuit Court or the High Court, depending on the rateable valuation of the land in question.

Work on party structures

There are various common law rules concerning the carrying out of works on or near shared boundaries or party structures. Chapter Three of the Land and Conveyancing Law Reform Act 2009 aims to clarify the rights of an owner who wants to carry out such works, as well as the rights of any adjoining owners.

Party structures

The 2009 Act contains a wide definition of a party structure. The term refers to any wall, arch, ceiling, floor, partition, ditch, fence, hedge, shrub, tree, or other structure that horizontally, vertically or in any other way:

- Divides adjoining (which is defined to include adjacent) and separately owned buildings, or
- Is situated at or on or so close to the boundary line between adjoining and separately owned buildings, or between such buildings and unbuilt-on lands, that it is impossible or not reasonably practical to carry out works to the structure without access to the adjoining building or unbuilt-on land

It includes any such structure that is situated entirely in or on one of the adjoining buildings or unbuilt-on lands, or straddles the boundary line between adjoining buildings or between such buildings and unbuilt-on lands and is either co-owned by their respective owners or subject to some division of ownership between them.

Right to carry out works to party structure

The works that you may carry out on a party structure include:

- Adjustment, alteration, cutting into or away, decoration, demolition, improvement, lowering, maintenance, raising, renewal, repair, replacement, strengthening or taking down
- Finding out the course of cables, drains, pipes, sewers, wires or other conduits and clearing, renewing, repairing or replacing them
- Cutting, treating or replacing any hedge, tree or shrub
- Clearing or filling in ditches
- Carrying out inspections, drawing up plans and performing other tasks required for, incidental to, or consequential on any of the works above

You are entitled to carry out works on a party structure in the following circumstances:

- Works that are required in order to comply with any statutory provision, for example, the requirements of the Building Regulations
- Exempted developments under the Planning Acts (developments for which planning permission is not needed), or developments for which you have planning permission or which are required in order to comply with the conditions of a planning permission
- Works required for the preservation of the party

structure or of any building or unbuilt-on land of which it forms a part
- Any other works that will not cause substantial damage or inconvenience to your neighbour, or that even if they will cause damage or inconvenience, it is nevertheless reasonable to carry them out

However, if you carry out works on or near your boundary without your neighbour's consent, you may be open to a claim of trespass as well as nuisance arising from any inconvenience caused by the works. You should always seek the fully informed consent of your neighbour before commencing any works. If agreement can be reached, this could be written down so the terms of the consent and the works are clear to both you and your neighbour. You should not go outside of what is permitted by such consent.

If your neighbour is refusing their consent you may obtain a works order (see below).

You must make good any damage or reimburse your neighbour if you cause any damage while carrying out the works. You are obliged under the Land and Conveyancing Act 2009 to pay your neighbour's reasonable costs for getting professional advice about the likely consequences of the work, for example, an architect's assessment, and reasonable compensation for any inconvenience caused by the works.

However, you are entitled to take proportionate account of your neighbour's use and enjoyment of the party structure when assessing the damages or costs and reduce the amount accordingly. In effect, your neighbour must meet the costs proportionate to the benefit received from the works.

If you fail within a reasonable time to make good any damage, the adjoining owner may apply to the District Court for an order requiring the damage to be made good or for you to reimburse or to pay any reasonable costs and expenses incurred in repairing the damage and compensation. The adjoining owner may recover such costs, expenses or compensation from you as a simple contract debt.

Works orders

If there is a dispute between you and your neighbour about party structure works you may apply to the District Court for a works order. A works order will allow you to carry out works, subject to whatever terms and conditions the court decides should be attached.

Among other things, a works order may:

- Authorise you, or people authorised by you, to enter your neighbour's building or land for any purpose connected with the works
- Require you to indemnify or give security to your neighbour for damages, costs and expenses caused by or arising from the works or likely to be caused or to arise

A works order will not authorise any permanent interference with, or loss of, any easement of light or other right relating to a party structure. An easement is a complex legal concept but, broadly speaking, it is a right that one landowner has over another's land. In this context, one important such right is the right of support, for example, the party wall may be supporting your neighbour's house or outbuildings so works on the party wall have to take that into account.

Any person affected by a works order may apply to the court to have the order discharged or modified.

Procedure

The procedure for getting a works order is set out in Order 93A of the District Court Rules (SI 162/2010). You must notify your neighbour of your intention to apply for a works order. The required form is available from the District Court clerk. There are also required forms available for an application to the District Court for damage to be made good and for applications to modify or discharge a works order. The other party must be notified in these cases as well.

Disputes between neighbours as to who is liable to pay the costs involved in party structure works are treated in the same way as any other civil dispute.

Trees and hedges

As with boundaries, a tree on a boundary will generally be assumed to be the property of both adjoining landowners. You do not have a right to cut down such a tree without the consent of your neighbour.

Overhanging trees or encroaching roots may be regarded as a nuisance and you are entitled to cut back the overhanging or encroaching branches or roots to the boundary line. You do not need the permission of the tree owner to do this provided you can do it without going on to the other owner's property. However, as with all such matters, it would be preferable to discuss and agree what action is required.

You do need to be careful to ensure that you do not leave the tree or, for example, a party wall in a dangerous condition as a result of your actions. If you need to enter the tree owner's property and cannot get agreement, you may apply for a works order as described above.

You should also ensure the tree is not the subject of a tree preservation order.

Any branches, fruit or roots that you remove should be returned to the owner of the tree.

Utility companies

Electricity and telecommunications companies have various rights to cut down or lop trees that are on private property that may obstruct wires, under the Electricity (Supply) Act 1927. They must give seven days' notice to the landowner of their intention to do this. You may choose to have the work done yourself; if you do, you must notify the company within seven days, and the utility provider must pay the costs involved.

Tree preservation orders

Under the Planning and Development Act 2000, the local authority may make tree preservation orders if it is in the interests of amenity or the environment. The local authority must state its reasons for making such an order.

Tree preservation orders may, among other things:

- Prohibit the cutting down, topping, lopping or destruction of a tree
- Require a tree owner (or occupier of the land on which the tree is planted) to make an agreement with the local authority for the proper management of any trees – the local authority may agree to help with the management including help with the costs involved

Before making such an order, the local authority must serve notice on the tree owner and give public notice. There must be a period of at least six weeks for observations on the proposed order. The local authority must maintain a register of tree preservation orders. The landowner or occupier may appeal any such order to An Bord Pleanála.

In general, if you carry out any action that is contrary to the conditions set in a tree preservation order, you may be prosecuted and fined. A preservation order does not prevent the cutting down, topping or lopping of a tree that is dead or dying or has become dangerous or where it is necessary for the prevention or abatement of a nuisance or hazard. You should consult the local authority before taking any such action.

Burning rubbish

It is illegal to burn household or garden waste at home or in your garden. Burning of such waste in low-temperature, uncontrolled fires, for example, domestic fires, creates toxic and dangerous by-products that are not destroyed by the fire but instead become airborne as soot particles. These can end up being inhaled or washed out of the air and deposited onto surrounding soil and vegetation, where they can enter the food chain.

Uncontrolled or "backyard burning" is prohibited as follows:

- Section 24(2) of the Air Pollution Act 1987 prohibits the discharge of emissions in such a manner as would be a nuisance
- Section 4(2)(c) of the Environmental Protection Agency Act 1992 defines "environmental pollution" as including the disposal of waste that would endanger human health or harm the environment
- Section 32 of the Waste Management Acts 1996 to 2011 states that a person must not cause or facilitate the abandonment, dumping or unauthorised management or treatment of waste, or hold, transport, recover or dispose of waste, or treat waste, in a manner that causes or is likely to cause environmental pollution

Rules

The Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009 strengthen the law against waste disposal by uncontrolled burning.

In general, burning household waste at home or in your garden is illegal. Burning household waste can incur a fine of up to €3,000 or 12 months in prison upon summary conviction in the District Court.

Examples of where you cannot burn household or garden waste are:

- In a barrel or exposed pile in the yard or garden
- On a bonfire
- On an open fire, range or other solid fuel appliance
- In a mini-incinerator

Waste burners and other devices such as mini or household incinerators, which may be located in buildings or gardens, are illegal even if they are attached to a stack or flue.

There is a limited exemption for the burning of uncontaminated waste generated by agricultural practices. However, under the Waste Management (Prohibition of

Waste Disposal by Burning) (Amendment) Regulations 2015, these exemptions will cease on 1 January 2018.

Noise

The Environmental Protection Agency Act 1992 (the EPA Act) defines environmental pollution as including noise that is a nuisance, or that would endanger human health or damage property or damage the environment. The EPA Act defines "noise as a nuisance" to be any noise that is so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person. The definition of noise includes vibrations.

The EPA Act and the Environmental Protection Agency Act 1992 (Noise) Regulations 1994 (SI 179/1994) provide for various actions to be taken to prevent or limit noise pollution.

Noise from commercial premises, processes or works

The EPA Act gives power to local authorities and the Environmental Protection Agency (EPA) to take steps to ensure compliance with the control of noise in relation to any premises, process or works. The local authority may serve a notice on the person in charge of, for example, pubs, discos, processes or works. This notice may require the person in charge to take whatever measures are set out in the notice in order to prevent or limit noise from their premises. The local authority may prosecute for failure to comply with the notice and may recover the cost of such an action. Alternatively, the local authority may take steps itself to ensure compliance and then recover the costs of these from the person in charge.

The EPA may grant licences for certain activities that, without such a licence, would be prohibited by the EPA Act, for example, a concert.

Making a complaint

The EPA Act allows any person, a local authority or the EPA to make a complaint to the District Court about noise levels that are a reasonable cause of annoyance. You may complain about a noise that is "so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place".

You can get a standard form for making the complaint from the District Court clerk and you must pay a fee. At least seven days before the date for the hearing of your case, you must serve notice on the person or business you are complaining about using the prescribed form. It is important to use this form of notice only and to complete it fully and accurately. If you intend to make a complaint, it is generally recommended that you keep a detailed diary of the noise including the times when it occurred, the duration and, if possible, the noise levels involved.

A person making noise in the course of trade or business may have a defence if it can be shown that all reasonable care was taken to prevent the noise, or that the noise is in accordance with a licence issued under the EPA Act. The court may make an order requiring the person or organisation making, causing or responsible for the noise to take measures to prevent or limit the noise.

Environmental Noise Regulations 2006

The Environmental Noise Regulations 2006 (SI 140/2006) give effect in Ireland to EU Directive 2002/49/EC on the assessment and management of environmental noise.

Environmental noise means unwanted or harmful outdoor sound created by human activities, including noise from transport, road traffic, rail traffic, air traffic, and from sites of industrial activity. The Directive applies to noise to which humans are exposed, particularly in built-up areas, public parks or other quiet areas within built-up areas, and in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise from domestic activities, noise created by neighbours, noise at workplaces or noise inside means of transport or due to military activities in military areas.

Under the Directive, local authorities are required to make action plans to reduce ambient noise. The EPA exercises general supervision over the functions and actions of the local authorities in this aspect of their work.

Vehicles and road noise

There are several EU directives dealing with sound level requirements and exhaust systems on new motor vehicles. Some of the requirements are technically detailed.

The Road Traffic (Construction, Equipment and Use of Vehicles) Regulations (SI 190/1963) require that vehicles should be fitted with a silencer or other device suitable for reducing to a reasonable level any noise caused by the escape of exhaust gases from the engine and prohibit use

of a vehicle that causes any excessive noise in a public place. The National Car Test includes an assessment of the effectiveness of the silencer in reducing exhaust-related noise.

Alarms

There are EU standards for the manufacturers of car alarms that set minimum and maximum time limits for the sounding of the alarm (25 seconds minimum and 30 seconds maximum).

Installers of alarm systems are required to have licences from the Private Security Authority. In order to get a licence, they have to adhere to certain standards, including maximum times for the sounding of external alarms – the maximum under the European Standard is 15 minutes. The local authority, the EPA or an individual may take action under the EPA Act to deal with breaches of these standards. These standards apply to alarms fitted since September 2003 only.

Car horns

The Road Traffic (Construction, Equipment and Use of Vehicles) Regulations (SI 190/1963) provide that a driver may use a horn only to warn other road users of oncoming danger, or to make them aware of the driver's presence for safety reasons when reasonably necessary. A horn may not be used in a built-up area between 11.30pm and 7am unless there is a traffic emergency. Complaints about breaches of these rules should be made to the Gardaí.

Building Regulations

Part E of the Building Regulations (Sound) sets out the legal requirements in relation to sound insulation in buildings, including dwellings and apartment blocks. The builder is generally responsible for compliance with the Building Regulations. If you consider that your dwelling is not built in accordance with these regulations, you may be able take a civil action against the builder. The local authority may also prosecute a builder for failure to comply.

Planning and Development Acts

When granting planning permission, the local authority has the power to provide that conditions in relation to noise prevention or reduction be included in the permission. These conditions may apply to the construction phase and/or to the subsequent use of the building. Appeals against any such requirements or the absence of them may be made to An Bord Pleanála. Any breach of planning permission (which is not trivial in nature) may be dealt with in line with the enforcement provisions under Part 8 of the Planning and Development Act 2000.

Noise and nuisance caused by pubs

Pubs are required to have licences to sell liquor. These licences are renewed annually by the courts. Anyone may object to the granting of a licence on various grounds, including that the activity of the premises was not being conducted in a peaceable and orderly manner. You may also complain under the EPA Act to the District Court.

Domestic noise

The Gardaí have the power to arrest a person for breach of the peace in a public place. They may ask a person to lower the noise coming from a dwelling but they do not have the power to enter a dwelling with the intention of simply requesting a person to lower the noise. If the noise is persistent, you may use the provisions of the EPA Act to complain to the District Court.

Rented houses

If the noise is coming from a rented dwelling and you do not get a satisfactory response from the tenants, you can complain to the landlord – whether it is a private landlord, a local authority or a housing association. Under the Residential Tenancies Acts 2004 to 2016, tenants of private rented dwellings are obliged not to engage in anti-social behaviour within the dwelling or in the vicinity of the dwelling, which includes persistent noise that interferes with the peaceful occupation of other dwellings.

A landlord of a dwelling has a duty to each person who could be potentially affected, to enforce the obligations of the tenant under the tenancy agreement. You may complain to the Residential Tenancies Board if a private landlord fails to enforce the tenant's obligations in respect of noise.

Under the Housing (Miscellaneous Provisions) Act 2009, tenants of local authority housing are obliged to avoid any nuisance (including noise) to the occupiers of any other dwelling. If the noise persists, the tenants are in breach of their tenancy agreement and the local authority can take steps to enforce the terms of the agreement.

Control of pets and other animals

Dogs

The main legislation in relation to dogs is the Control of Dogs Acts 1986 to 2014. Local authorities are responsible for the control of dogs in their area. They have the power to appoint dog wardens, provide dog shelters, seize dogs, impose on-the-spot fines and take court proceedings against dog owners. Local authority bye-laws may deal with a number of matters, including specifying areas in which dogs must be kept on a leash and areas in which dogs, other than guide dogs, are not allowed.

Dangerous dogs

If you are attacked and bitten by a dog in a public place, the dog owner is responsible for your injuries. If you go into a premises without an invitation and you are bitten by a dog, the situation is not quite as clear-cut. In general, you may be able to establish that the dog owner is responsible for your injuries if you can show that the owner knew that the dog was dangerous and liable to bite; in effect, you have to show that the dog has already attacked another person.

Certain breeds of dog are subject to specific controls under the Control of Dogs Regulations (SI 442/1998). This means that these dogs must be muzzled and kept on a secure chain or leash when in a public place and must be under the control of a person who is at least 16 years of age and is capable of controlling the dog. Guide dogs and dogs that are being used by the Gardaí or other law enforcement agencies are not subject to this requirement.

If you consider that a dog is dangerous and not being kept under proper control, you may complain initially to the local authority. If you are not satisfied with the local authority's response, you may complain to the District Court. There is a specific form available for this purpose, which you may get from the District Court clerk. You must serve notice on the dog owner of your intention to make a complaint. If your complaint is upheld, the court may make various orders, including an order that the dog be given over to the dog warden and destroyed. The owner may be required to pay the costs involved.

The Gardaí may get a search warrant to search for a dog that is thought to have injured a person or worried livestock.

Identification of dogs

Under the Control of Dogs Regulations 1998, dogs must wear a collar with the name and address of the owner attached to it. Under the Microchipping of Dogs Regulations 2015, all dogs over 12 weeks old are required to be microchipped. The chip number must be registered in a dog identification database with further information including the name and contact details of the owner. Failure to chip your dog is an offence punishable on summary conviction to a class A fine or up to six months' imprisonment, or both.

Barking dogs

You may complain to the District Court about excessive noise created by dogs barking. You must first serve notice on the dog owner of your intention to do this. Alternatively, you may ask the local authority to make the complaint. The court may make an order requiring the occupier of the premises in which the dog is kept to abate the nuisance by exercising due control over a dog. The court may limit the number of dogs that can be kept on a premises or may direct that a dog be delivered to a dog warden to be dealt with as unwanted.

Licences

Owners must have a licence for dogs aged four months or over. A dog licence costs €20 a year or you may pay €140 for a licence for the lifetime of the dog. You must be at least 16 years of age to get a dog licence. Stray dogs may be seized by a Garda or a dog warden.

Dog fouling

It is an offence under Section 22 of the Litter Pollution Act 1997 not to clean up after your dog if it deposits faeces in places such as public roads, land forming part of a retail shopping centre, a school ground, sports ground, playing field, recreational or leisure area, a beach or the grounds of a house where the occupier has not consented to the presence of a dog. This does not apply to guide dogs or certain working dogs, for example, farm dogs and dogs used by law enforcement agencies. You may get a fixed charge notice or on-the-spot fine of €150 from a litter warden for such an offence or you may be prosecuted.

The maximum fine is €3,000 and you will be guilty of a further offence for every day on which the contravention continues and for each such offence the maximum fine is €600.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Horses and livestock

The Animals Act 1985 provides that the Gardaí and the local authorities have various powers to impound animals, including horses and livestock, found wandering in a public place.

The main legislation dealing specifically with horses is the Control of Horses Act 1996 (donkeys and mules are also covered by the Act). This Act allows local authorities to introduce bye-laws designating certain areas as control areas for horses and sets out general rules about the control of horses.

Licensing of horses

If you own or keep a horse or similar animal, it must be microchipped and/or must have an official identification document, known as a horse passport. A person living in a designated control area also needs a licence in order to have a horse.

You may not get a licence to keep a horse in a control area if you:

- Are aged under 16
- Have been convicted of an offence under this legislation
- Are unfit to keep a horse, in the opinion of the local authority
- Fail to satisfy the local authority that the horse will be properly maintained and stabled

A licence normally lasts for a year but it may be revoked if you do not comply with its terms or you are convicted of an offence in relation to a horse.

Before you get your licence, the horse must be fitted with a microchip.

The local authority keeps a publicly available register of all licences issued.

Offences and disqualification

There are several offences specified in the legislation, including failing to remove a horse from a public place or a control area, and dangerous use of a horse. You may be arrested without warrant for most of these offences. If convicted, you may be fined or imprisoned, or both, and you may be disqualified from keeping a horse for a period. The court may seize the horse and dispose of it as it sees fit. The Gardaí or authorised local authority personnel may inspect a horse and it is an offence to obstruct them in doing so.

On-the-spot fines may be imposed for a number of offences, such as having a horse in a control area without a licence, not telling the local authority that you have disposed of a horse, and failing to comply with the bye-laws.

Stray horses

As well as unlicensed horses in control areas, stray or unidentifiable horses or horses causing a nuisance or posing a danger may be seized, detained or destroyed. A stray horse is a horse that is wandering at large, lost or unaccompanied by any person in charge of it in a public place or one that is on any premises without the consent of the owner or occupier.

Criminal liability for damage

The owner, keeper or person in charge of any horse may be criminally liable for damage caused by the horse if they wilfully or recklessly allows the horse to pose a danger or cause injury to a person or property.