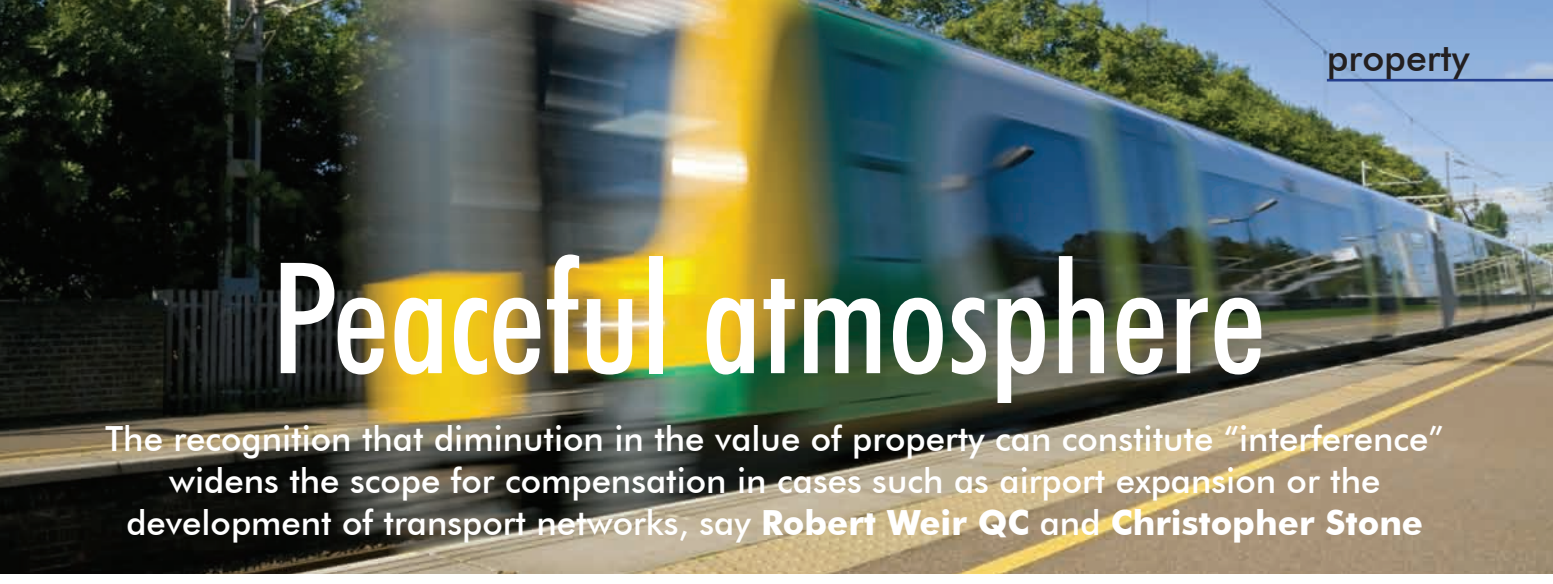

Peaceful atmosphere

The recognition that diminution in the value of property can constitute "interference" widens the scope for compensation in cases such as airport expansion or the development of transport networks, say Robert Weir QC and Christopher Stone

The provisions on the protection of property in article 1 of protocol 1 to the European Convention on Human Rights contains three distinct but connected rules, regarding: 1) peaceful enjoyment of possessions; 2) deprivation of possessions; and 3) the control of use of property (see *Sporrong and Lönnroth v Sweden* (1983) 5 EHRR 35). Significant case law exists on the definition of possessions, as well as the second and third rules, which has left the first rule as a catch-all provision, without a principled underpinning. The Court of Appeal's judgment in *Thomas and Ors v Bridgend County Borough Council* [2011] EWCA Civ 862 is a significant development in the jurisprudence on the first rule, especially in defining what constitutes an interference with the peaceful enjoyment of possessions.

The decision confirms for the first time that a diminution in the value of a person's possessions is sufficient to constitute an interference. It will be of importance in any case where the actions of a public authority have reduced the value of a claimant's property, but not sufficiently to amount to a deprivation of possessions. In particular, this will potentially have an impact on planning decisions, such as the development of the road network, expansion of airports and the building of the HS2 rail line.

Thomas concerned the building of a new road. Part 1 of the Land Compensation Act 1973 gives home owners a right to compensation for the diminution in the value of their homes caused by the use of "public works", including roads. Under section 19(3) of the Act, no claim for compensation can be made if a road has not been adopted by the relevant highway authority as a road maintainable at public expense within three years of it being opened to public traffic. The claimants argued that this left a lacuna in the Act through which deserving claims could fall, was inconsistent with their A1P1 rights and was open to abuse as it enabled Highway Authorities/developers to avoid liability if adoption was delayed beyond three years.

The claimants contended that use of the Hendre Relief Road, for which the defendant was the highway authority, had caused a diminution in the value of their properties, and interfered with their right to peaceful enjoyment of their properties. The defendant argued that diminution in value of property was not sufficient to constitute an interference with protocol rights and that something more was required (either unlawful or "direct and serious" interference). The court rejected these arguments, holding that the authorities relied upon by the defendant (*Rayner v UK* (1987) 9 EHRR 375; *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66) did not establish that such additional requirements were necessary.

PROTECTION OF PROPERTY

"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."

Article 1, Protocol 1 ECHR

A key distinction for any practitioner seeking to bring a claim under article 1 of the protocol in reliance on this judgment is between loss of amenity (e.g. a complaint about the noise itself) and diminution in value (see paragraph 38). The former cannot found a claim under article 1, although it may give rise to a private life claim under article 8 ECHR (see for example *Hatton v UK* (2005) 37 EHHR 28). Previous claims regarding the expansion or use of airports failed under the protocol because the claimants were not able to establish that noise caused by flights had affected property prices or made homes less easy to sell (see for instance: *Rayner*, above, and *Ashworth v UK*, application 39561/98). If a diminution in value can be proved, there is no reason why a claim that noise resulting from airports or other public works should not establish a prima facie case of interference with protocol rights.

Provided the interference is lawful, a court will go on to determine whether the interference is proportionate, that is, whether it strikes a fair balance between the general interests of the public and individual claimants (see for example *Bugajny v Poland* [2007] ECHR 891 para 67). Where the operation of a statute excludes a class of people, the court will look to see whether the exclusion is "so anomalous as to render the legislation unacceptable" (*J A Pye (Oxford) Ltd v UK* (2008) 46 EHRR 45).

The court in *Thomas* held that the operation of section 19(3) was "truly bizarre" as it rewarded inefficient road-builders who could avoid liability.

The result was "so absurd", the court said, that it undermined the fair balance that Parliament had intended the LCA 1973 to achieve (see paragraph 56).

Regarding remedy, the court has a wide power under section 3 of the Human Rights Act 1998 to interpret the wording of a statute to be consistent with protocol rights provided the interpretation "goes with the grain" of the legislative scheme (*Ghaidan v Godin-Mendoza* [2004] UKHL 30, per Lord Nicholls, paragraph 62).

Robert Weir QC (pictured) and Christopher Stone practise from Devereux Chambers. They appeared for the claimants in *Thomas v Bridgend County Borough Council*.