

# Legal Developments

## Online heritage information and Human Rights

It is a key plank of the government's Modernising Programme that at least 50 per cent of public documents should be delivered electronically by the end of 2005. Yet there has been a small, but vocal, minority of owners who have criticised English Heritage's attempts to put information about the built heritage online.

Take Images of England – a Lottery-funded millennium project to develop a website with a photograph of each listed building as at the turn of the millennium together with its list description. A wholly worthwhile and laudable project you might think. If so you reckoned without the Human Rights Act!

Some listed-building owners have objected to photographs of their property being put on the web – most citing security concerns. Such concerns, for house owners at least, have been overcome by the introduction of an exemption scheme allowing owners to opt not to have a photograph of their property on the web for 10 years, at the end of which, hopefully, the photograph will be so historic that security should no longer be a concern.

A few owners have raised concerns under the Human Rights Act 1998, which imported the European Convention on Human Rights into UK domestic law. Of particular relevance are Article 8 of the Convention, which provides for respect for private and family life, and Article 1 of the First Protocol, which provides protection for property.

The Convention seeks to balance the rights of the individual with the legitimate interests of the wider community – in this case in being able to enjoy the built heritage. Thus in examining whether Human Rights are infringed we must ask ourselves three questions:

- Is the relevant Article engaged?
- If so, is there interference in the individual's rights?
- To the extent that there is interference, is it justifiable? – ie in accordance with the law, in pursuance of a legitimate objective and proportionate?

Let us take these in turn.

**Is the Article engaged?** The answer in relation

to both Articles is probably 'yes', given that we are dealing with information about people's homes. The fact that photographs are taken from a public place does not affect the engagement of Article 8. In *Peck v UK* the broadcasting of CCTV footage of an incident in a public place was held to infringe Article 8 rights. In *Von Hannover v Germany*, intrusive press photography was held to infringe Article 8 notwithstanding that the photographs were taken in a public place.

**Is there interference?** Again, in relation to both Articles, probably 'yes'. There is no requirement that the complainant has to show he has suffered actual tangible harm. In *R v (1) Wakefield Metropolitan Council (2) Secretary Of State For The Home Department*, Ex Parte Brian Reid Beetson Robertson [2002] QB 1052, the complaint concerned the selling of the electoral register to direct-marketing companies leading to the complainant receiving junk mail. The complainant had suffered no loss as such. He just did not want the junk mail. The problem is that the meaning of 'respect' is not clear.

**Is the interference justifiable?** English Heritage has Counsel's opinion that it is. The interference is in accord with the law. The National Heritage Act 1983 forms a sound basis for English Heritage's actions. **Is it in pursuance of a legitimate objective?** The aim of educating the public about the historic environment coupled with the public's right to such education falls within the category of legitimate objective.

**Is the interference proportional?** Yes. The degree of intrusion is limited and the purpose is educational, not simply to satisfy public curiosity.

Thus we conclude that online publication of heritage information such as the Images of England project is Human Rights compliant. We can look forward to completing the project and leaving a lasting legacy for future generations of the state of the built heritage at the turn of the millennium.

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