

**PLANNING
SUSTAINABLE CITIES
IN MALAYSIA**

Issues and Challenges



MARIANA MOHAMED OSMAN
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CHAPTER 9

RIGHTS AND OBLIGATIONS OF NEIGHBOURING LANDOWNERS IN DEVELOPMENT PLANNING

Azila Ahmad Sarkawi

INTRODUCTION

Reconciliation between ‘rights’ and ‘obligations’ can further be understood in the words of Yapp (1989:52); “basically, you have a right wherever someone else has a duty towards you [...] if the duty has not been discharged [...] you have a right to recompense or to an injunction enforcing the person who owes you the duty to carry out that duty”. Inherent in the preceding statement is the law of neighbouring that is closely related to the law of property as Singer (2000:35) claims that “property law is about entitlements and obligations which shape the contours of social relations and what the title holder gets is not a bundle of absolute rights but a bundle of entitlements”. Thus, property rights are inherently shared rather than unitary. Some limits on property rights must be imposed where the owners are generally not free to use their property to harm others because they also have obligations instead of rights only (Stevens and Pearce, 2000).

- i. Privileges (or liberties) are rights to do something on or with your property. They confer the freedom to act.
- ii. Rights (or claims) describe entitlements to control the behaviour of others by preventing them from interfering with the specific legally protected interests of the owner.
- iii. Immunities are rights to be secure from having others take property without the owner’s consent.
- iv. Powers involve the freedom to transfer ownership rights or alter entitlements in oneself or others.
- v. Liabilities are the condition of being actually or potentially subject to an obligation (Words and Phrases Legally Defined, 1989)

When property rights exist on both sides of a dispute, four approaches might be adopted either, one might grant owners complete freedom of action to do what they like on their land as long as they do not physically invade their neighbours’ property; or one might adopt the opposite principle that owners have no lawful right to harm their neighbours’ property interest; or a historical approach that grants the right to the party whose use was established first; or to allow land uses that commit harm as long as they are reasonable (Alsagoff, 2004; Norchaya, 2003; Heuston and Buckley, 1996). Another approach is generally taken by the law of nuisance i.e. the basic common law doctrine that addresses land use conflicts.