
WHAT IS A RIGHT TO LIGHT?

Right to Light is a form of easement that gives a long-standing owner of a building a right to maintain a certain level of natural light received through specified apertures of a building.

Right to Light is based on the Ancient Lights Law and is usually acquired under the Prescription Act 1832, occurring once light has been appreciated for at least 20 years continued use. To determine what is considered 'sufficient' light, experts use a method initiated by Percy Waldram in the 1920s, which suggests that a person requires a certain level of illuminance (0.2% sky factor), the same figure which is applied by the courts.

It is advised that a developer should seek specialist advice in the event their new development has the potential to impair the light being received by a neighbouring property. Whilst small loss of light may only result in monetary compensation, a significant infringement may give the neighbouring property owner the right to seek an injunction to have the development reduced in size or even partly demolished post completion.

Whilst the cost of financial compensation can be significant, the consequences of an injunction will in most cases be even more costly. Some of the cases mentioned below highlight the legal system's increased willingness to award injunctions against developer's, rather than simply awarding compensation to the injured parties.

KEY CASES

Forsyth-Grant v Allen (2008)

The court refused to award any part of the development profit, due to the claimant's refusal to negotiate. Instead, the Judge hearing the case awarded a nominal amount of compensation for the light loss that had been suffered.

Regan v Paul Properties DPF No 1 Ltd (2007)

The court felt it would be more oppressive to the claimant to deny him his right of light than it would be to grant an injunction against the developer. The court therefore ordered the developer to amend their building.

HKRUK II (CHC) Limited v Heaney (2010)

This case confirmed that developers cannot force affected parties to accept compensation in lieu of an injunction. The defendant was forced to take down their two-storey extension to an office building in Leeds.

Tamara Ltd v Fairpoint Properties Ltd (2006)

Based upon the expert valuation evidence, the judge awarded one third of the developer's profit (£58,166) to be paid by way of damages, even though the actual loss in value to the Defendant's building was estimated at only £3,030.

Ottercroft Ltd v Scandia Care Ltd (2015)

This case concerned a relatively minor right of light infringement and although the loss of light compensation was estimated at less than £1,000, the judge chose to award an injunction, ordering the removal of the new works.

Pauline Forster v SSCLG (2016)

The grant of planning permission for a three-storey building was quashed after it was agreed that the new mixed-use development would almost entirely deprive an adjacent public house of sunlight.

HOW CAN YOU PROTECT YOUR POSITION?

The key advice for developers is to consider Right to Light issues at an early stage, which will include obtaining appropriate surveying and legal advice. In addition, Right to Light indemnity insurance policies are available to protect you from the risk of potential future claims.

These insurance policies can help enable developments to proceed without possible delays. They also protect developers by reducing various potential costs and diminution in value associated with a legal claim and any consequences of its outcome.

Every scheme is unique in its own rights and each policy is tailored accordingly. In order to obtain cover, we require a copy of your Right to Light survey report, details of any neighbourly matters, copies of any objection letters, a site plan and a specified sum insured.

WHAT'S COVERED?

We will work with you to create a unique policy, tailored to satisfy your individual requirements. We can include:

- ▶ Legal fees
- ▶ Financial settlement (damages)
- ▶ Delay costs
- ▶ Loss in land or asset value
- ▶ Loss of gross profit
- ▶ Loss of rental income
- ▶ Limit of indemnity with an indexation
- ▶ Neighbourly matters
- ▶ Specified perimeters

HOW WE ADD VALUE



Competitive rates

We have access to all of the UK's RTL insurers and always aim to obtain the most cost effective terms.



Expert advice

We are specialists in this field and we always provide expert advice, which is tailored around your specific requirements.



Bespoke solutions

Whilst we can obtain standard cover, we can work with you to source extensions to meet your requirements.



Unrivalled customer service

As a business, we pride ourselves on our customer service and we aim to achieve all of your expectations.



Claims management

In the unfortunate event of a claim, we are here to help and will work with you and the insurers to get the claim resolved as soon as possible.



Insurance cohesion

Many insurance products overlap and if we manage all of your insurances, we can make certain that there are no gaps in cover.

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