



Legal update — April 2017

Real estate litigation Rights of Light – what's the story?

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If you are planning a development, or works have already started, and your site is between a 1920s housing estate and a newly built office block, do you need to be concerned about rights of light?

The short answer is yes. Any neighbouring property (with windows) could, potentially, have the benefit of a right of light.

The freeholder owner and, potentially, the leaseholders of the housing estate (depending on the terms of their leases), might well have acquired the right to receive light across the development site through prescription (this being the enjoyment of light for 20 years or more).

The office block, whilst newly built, may have windows in the same location or overlapping with those in the previous building on the site in which case the owner could argue that rights of light have transferred to all (or part) of the new windows.

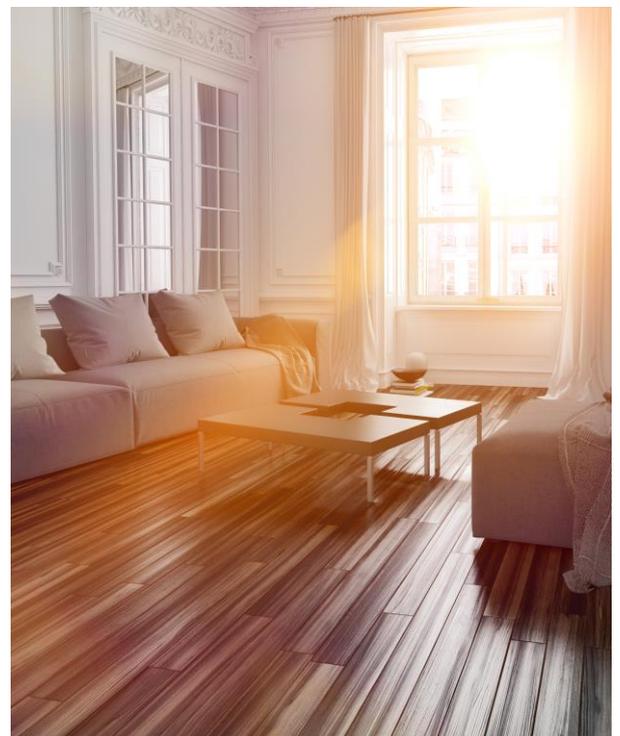
What is a right to light?

A right to light is a right to receive "sufficient light" which is commonly interpreted to mean that 50% or more of the room should be "well lit" by natural light. This assessment requires a rights of light surveyor who will establish how far a development reduces the light to any particular room and whether, as a result, any rooms are left without sufficient light. If less than 50% of the room will be left well lit as a result of the development, then this is likely to be an actionable interference with rights of light giving rise to a claim against the developer. For residential property, the threshold for an actionable interference might be lower, as the amenity value of light is often greater in the home. The key consideration in any case is the amount of light that is left following the development, not the amount light enjoyed prior to the development.

First things first

The first step is to obtain a rights of light report and establish the likely interference with rights of light to the flats on the estate and the office block as well as any other surrounding properties. This will often be

prepared on the basis of assumed layouts. This report should be considered alongside legal advice on the existence of rights to light, the historic ownership of the affected properties and any consents recorded on the registered titles. There may be a glimmer of hope if the development site and neighbouring land has been in common ownership within the last 20 years as this would defeat a claim to rights of light acquired via prescription. Similarly, a historic deed entered into either following a period of common ownership or with a neighbour granting mutual rights to build within an agreed envelope may be sufficient to permit part or all of the development. Such deeds require careful consideration but can sometimes provide a trump card in a rapidly escalating dispute.



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What could the neighbours do?

Assuming legal advice has shown that the neighbouring properties have the benefit of rights of light, and the surveyors' report reveals significant interference with those rights, the primary remedy for interference

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remains an injunction. An affected party may be able to apply to court for an injunction preventing works from being undertaken which interfere with its rights of light and, at its most draconian, an injunction requiring any part of the development that has already been built which causes an interference to be taken down.



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Thankfully for developers, the court somewhat rebalanced the scales in the case of *Coventry v Lawrence* [2015] when it held it is a question of discretion whether an injunction is granted or whether damages should be awarded instead. The decision will depend on the specific facts or circumstances of a particular case but some relevant aspects include the importance of the developer's conduct; the court will not look favourably on a developer that ignores rights of light and brazenly continues to build or believes the rights can be bought out late in the day. Other factors include the use of the affected property (whether commercial or residential) and the use of the affected rooms; the proposed use of the development site; (possibly) whether planning had been obtained and the likely impact of granting an injunction. For instance, an injunction is less attractive if it would result in the loss of jobs or the loss of the proposed development where, for example, social housing is being delivered or a much-needed community asset. A neighbour's conduct is also relevant; a neighbour who watches and waits whilst the development is progressed and then objects as the walls reach maximum height is less likely to be successful in obtaining an injunction.

In practice, the great majority of rights to light matters are resolved by negotiation between rights to light surveyors.

Protecting your position

The likelihood of whether an injunction will be awarded or damages in lieu must be considered on a case by case basis. But developers can protect their position. They should consider rights of light at the outset of a development; take specialist advice from a rights of light surveyor; investigate the legal position to identify

whether there is a basis to challenge the existence of rights of light; and consider insurance before approaching any affected parties. Insurance is a flexible tool which, in some cases, can provide a safety net for a developer to approach affected parties and seek to negotiate compensation for the interference with their rights of light in the knowledge that, if a settlement cannot be agreed, there is ultimately protection for the worst case scenario.

Through early engagement with affected parties, a developer can address rights of light head-on and explore opportunities to negotiate compensation in return for a release of the affected rights. This strategy, perhaps coupled with insurance, can reduce the risk of an injunction which could, at best, have considerable cost and time implications for a development. At worst, it could result in the development being significantly cutback to prevent infringement to neighbouring rights. The key message is that rights of light cannot be ignored.

In the property litigation team at Trowers, we advise on the full spectrum of rights of light matters from initial title investigations, providing strategic advice to developers, reviewing insurance policies, advising insurers on claims work and representing owners of affected properties.

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