

Rights of Light



What is a right of light?

A right of light is what is known as an 'easement', which is a right of use of one property over the property of another. Rights of light also belong to a category of easement known as a "negative easement", which means it does not relate to one owner undertaking an activity on another's land (such as access), but prevents the owner of neighbouring land 'A' from doing something that may affect a neighbouring interest 'B' for example. When new construction takes place, it has the potential to negatively affect the rights of neighbouring interests.

How do rights of light come into existence?

It is an easement which can come into existence by express grant, be implied by sale of land, or most frequently, through long use. The Prescription Act 1832 states that when 20 years of continuous and uninterrupted use is enjoyed by a defined aperture (generally a window) then an indefeasible right to receive light through the aperture comes into existence. A right of light cannot be obtained in relation to a garden, for example, where no defined aperture exists.

Can it impose restrictions on development?

The legal power of rights of light is well established. Usually a certain amount of light can be removed, but this cannot be assumed. Simply proceeding with the development could lead to a mandatory injunction being granted to have the offending mass removed (see *HKRUJ II Ltd-v-Heaney 2010*) or a prohibitive injunction to prevent the mass being constructed. In some cases it may be appropriate to pay compensation, but it is important to recognise that it is for the court to decide what the appropriate remedy is. Therefore it should not be assumed that one can buy one's way out of a rights of light problem.

How to test the effects of new construction

The site and surrounding buildings will need to be surveyed, from which we will construct a model to allow us to test the effect the new mass will have on neighbouring windows and their respective rooms. We will then compare the results to establish to what extent light has been affected within neighbouring rooms, and

whether it has been reduced to a level which has traditionally been regarded as an actionable nuisance.

What if we have planning permission?

The grant of planning permission does not provide protection against a right of light nuisance claim. Although the local authority may have considered light, it is important to recognise that the tests are entirely different and therefore do not take into account potential common law nuisance issues related to legal easements.

CPMC and rights of light

We are experienced in surveying, modelling, assessing, valuing and providing right of light advice to developers, housing associations, government, planning consultants and architects. We also provide over-shadowing and BRE compliant Daylight and Sunlight reports and advise on post planning access and construction matters such as The Party Wall Act 1996 and access agreement requirements.

Useful Facts

- In certain circumstances, insurance can be obtained for rights of light injuries.
- When a neighbouring owner has complained about rights of light issues, it would be a mistake to be seen to "steal a march" by accelerating construction (also see *Jaggard-v-Sawyer [1995]*, *Pugh-v-Howells [1984]* & *Colls-v-Home and Colonial Stores [1904]*).
- If you feel your right of light is being infringed, you should not stand by and allow it to happen or it may be deemed that you have acquiesced to the obstruction.
- A 'bricked up' window may not be deemed to be 'abandoned' and therefore may still have a right to light that needs to be respected.
- Following the decision in *Lawrence-v-Fen Tigers (2014)*, where it was held that 'public interest' was a potential consideration, this has given weight to the same previously rejected argument in *Shelfer-v-City of London Electric Lighting (1895)*.
- Compensation may be based on common law damages or (the usually higher) equitable damages approach, whereby a percentage of the scheme profit may be more relevant.

Please note that this document is intended to be a brief information sheet and not a detailed guide to rights of light