

Rights To light – A Crucial Liability For Developers To Be Aware Of

In a country with substantial amounts of old housing stock and archaic rights to light laws, a critical liability is presented to property developers, particularly with our ever increasing housing targets.

Unfortunately for property developers in the UK, planning and development regulations are plentiful, however near the top of the list of potential liabilities, should be a neighbours Right to Light. This right is an easement over developing land which if blocked allows the injured party to seek an injunction through the Courts, and has potential to significantly impact the development. The recent 2020 case of *Beaumont Business Centres Ltc v Floral Properties Ltd* shows that the Courts are still willing to grant an injunction for Right to Light infringements.

Ben Salvage, Director of Blackacre Building Surveyors commented: “Developers must be aware of Right to Light laws in this country which are still based on an archaic means of assessment and can have significant financial implications. It is crucial to tackle them head-on so a decision can be made early and risks can be mitigated”.

Below Ben provides five important considerations for developers when approaching Rights to Light:

- **Identify them early:** It’s important for developers to identify their Right to Light liabilities early so that they can make decisions and not hold up development. Some larger schemes in Central London have been known to take years to release neighbouring rights. Other options might include redesign of the scheme to avoid any infringements being caused by development. Alternatively, getting an appropriate Right to Light insurance policy in place can be hugely beneficial.
- **Accuracy is key:** When preparing a right of light assessment, the root data used should be as accurate as possible so that you are fully aware of the extent of the liability. Full 3D laser scanning should be used where possible however in some instances, aerial photogrammetry modelling with elevation surveys can also be used. This will provide confidence going forward when either negotiating or gaining insurance. If compensation budgets are calculated on inaccurate data there is potential for overpayment of damages.
- **Get legal advice:** The majority of Rights to Light easements through apertures are acquired following a ‘Prescriptive Period’ of uninterrupted light over 20 years. However, there are other ways these rights can be obtained, as well as various means of excluding a Right to Light. A good solicitor familiar with the subject matter should always provide advice on neighbouring buildings and their rights.
- **Don’t be afraid to negotiate with your neighbours:** A professional Right to Light surveyor will provide a recommended strategy going forward and consider the various risks involved with each case. If negotiations are necessary, they don’t need to be a scary prospect and insurance products are available that can provide a safety net should talks break down.
- **Be a good developer:** The current legal environment surrounding Right to Light could be described as ‘murkey’. Infringements can only be weighed on risk and there is no set formula for determining an injunctive risk. However, understanding old and recent case law, one thing is clear, it is significantly beneficial for a developer to be open and honest with any injured neighbours. Developments that have pushed ahead whilst ignoring infringements have been negatively viewed in the Courts and the conduct of the developer is a major consideration to the ruling.