

The Common Law Right to Light

We are very experienced Right to Light Chartered Surveyors and have put this document together to assist our clients with regard some of the issues surrounding the common law Right to Light. It's important to note that this leaflet should not replace a site specific evaluation and advice as this can be a complex area, however we hope it will be useful to provide you with some broad information with regard some of the key issues.

Firstly it is important to be aware that Right to Light technical calculations are not a rigid rule of law, however they are a very useful guide and in practice the Courts traditionally use these calculations to make informed decisions on Right to Light issues. Therefore we use these technical calculations to help determine if an actionable injury has been incurred and very importantly to what extent.

It is also important to be aware that the 'legal' Right to Light is a 'private, legally enforceable easement or right to a minimum level of natural illumination through a defined aperture, usually a window opening, when conferred by express or implied grant or obtained at common law by a process of long, uninterrupted enjoyment known as prescription'.¹

The acquisition by long use is the most common way of gaining a Right of Light and this is normally by prescription under the *Prescription Act 1832*. This period of 'long use' is normally regarded as 20 years. Therefore if you have a window opening that is more than 20 years old and it has continually enjoyed uninterrupted light it will normally benefit from a legal Right of Light.

This is therefore not the same as the planning Daylighting/Sunlight criteria which is a separate area altogether and therefore planning approval does not give protection from a 'legal' Right of Light claim. This can lead to great confusion amongst developers and neighbours alike and therefore please contact us for further information on the Daylighting and Sunlight tests used in the planning process if required.

The main remedy for a common law light injury is an injunction although a Court will sometimes depart from this and under certain circumstances award compensation.

A developer has to be very careful here as it shouldn't be assumed that one can purchase oneself out of causing an actionable injury and the conduct of the parties is often taken into account when deciding on a suitable remedy. Therefore starting building work with the thought that the Court will only require a compensation payment to be made because the building is already there is very dangerous territory. It's very important to resolve a Right to Light issue as early in the development process as possible.

The ultimate decision on injunction or compensation lies with the Courts. Our calculations and advice are always given in good faith however we would recommend this is in association with specialist legal advice.

It should also be noted that although Right to Light issues often arise through large commercial developments a relatively small domestic extension can also lead to an actionable injury on a neighbouring property. The consequence of this type of small scale project can therefore be the same as that of a large development.

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Method of assessment:

The traditional method of assessing a light injury was by using what is known as a Waldram diagram to determine the amount of 'adequate' light at a notional working plane. A more accurate way of assessing this now is through specialist 3D computer simulation modelling, which is what we use.

The method of assessment is known as the '50:50 rule'², which is generally accepted by the Courts and practising right to light consultants as the way of determining light injury.

We are able to measure the interior daylight illumination in a room as a percentage of the total illumination simultaneously outside from a dome of a completely unobstructed sky. This is known as the 'sky factor'.

Therefore the sky factor on the roof of a building (with no obstructions) is effectively 100% and the sky factor at the back of a room where no sky is visible is 0%. The maximum sky factor from a single window is therefore 50%. In practice the sky factor is significantly less than the theoretical maximum.

Waldram suggested that the threshold of adequate light "for ordinary purposes, comparable with clerical work" is represented by the sky factor value of 0.2% (or what is known also as the "grumble point"). This is measured at the working plane of 838mm above the floor.

We produce two models, one pre-development and the other post-development. From this we can work out where the 'grumble line' appears in both scenarios providing a graphical picture of how daylight has been affected in the subject property.

The 50:50 rule says that if a new obstruction means that a room is left with less than 50% of its working plane having 'adequate' light then this could be regarded as an actionable injury. Subsequent Court cases have indicated that 55% is more appropriate for residential property.

Compensation or Injunction?

As previously mentioned it is important to be aware that the main remedy for an actionable light injury is an injunction although a Court will sometimes depart from this and under certain circumstances award compensation.

Many factors are considered by the Courts when determining whether an injunction or compensation is more appropriate and four tests are regarded as important (*Shelfer v City of London Electric Light Co* (1895)):

- Is the injury small?
- Is the matter capable of being estimated in money?
- Is it one which can be adequately compensated by a small money payment? and
- Is it a case in which it would be oppressive to the defendant to grant an injunction?

It is possible to place a value on the amount of light that has been lost. This is a complex valuation process and is known as the Light Standard Rent. It is influenced by such factors as the position of the loss of light in the particular room as well as the type, specification and location of the property. As a general rule the availability of daylight is assumed to contribute a greater proportion of total value as the level of specification decreases and the distance from prime locations increases.

In certain circumstances a Court may also award compensation on the basis of a percentage of development profit and therefore this can potentially be a considerable sum.

If you would like further advice on a Right to Light issue please don't hesitate to speak to either Alex, James or Gilly to discuss your project in more detail.