



Rights of Light – some frequently asked questions

“What is a right of light?”

A right of light is the right to receive light over another person’s land to particular windows in a building. It is not a right to prevent a neighbour from reducing in any way the amount of the light reaching the windows in question. It is a right merely to preserve light to the room served by the window such light to the room served by the window as is sufficient for its “comfortable or beneficial use”. What would be considered to be sufficient in this context may vary depending on whether the affected property is used for commercial or for domestic purposes. As a broad rule, it is generally accepted that a right of action will arise if the result of the obstruction is that it will leave less than 50% of the affected room adequately lit. For these purposes, adequate lighting is considered to be one lumen at table height which is equivalent to 0.2% of the light available from the whole dome of the sky.

Have I acquired a right of light?

A right of light is one of those rights known to lawyers as easements. It can be acquired by prescription, i.e., by twenty years enjoyment of the right or by express grant. It may also arise by implication, e.g., under section 62 of the Law of Property Act 1925 or under what is known as the rule in *Wheeldon v. Burrows*. In practice, prescription is the most common means by which rights of light come into being.

“Do rights of light attach to gardens?”

Rights of light attach only to buildings and no action can lie on rights of light in respect of open land. There is no reason in principle, however, why rights of light should not attach to a greenhouse and gardens could therefore benefit to that limited extent.

“How can I stop my neighbour from acquiring rights of light over my land?”

You can prevent a right of light coming into existence by prescription by registering a light obstruction notice against your neighbour’s land. The effect of a light obstruction notice is to act as a notional obstruction to your neighbour’s windows which will prevent your neighbour from claiming twenty years enjoyment of the light to their windows. If the windows have not existed for twenty years at the date of registration of the notice, its effect will be to prevent the right from arising by prescription. Alternatively, if it is feasible, a similar effect can be obtained by erecting a physical obstruction.

“How can I know if my rights of light have been infringed?”

Except in the most obvious cases, a lawyer will be unable to advise you whether an obstruction will cause an actionable reduction to your light and you will need to obtain advice from a rights of light surveyor. Contact The Pyramus & Thisbe Club at www.partywalls.org.uk or The Royal Institution of Chartered Surveyors at www.rics.org.

“What are the remedies for infringement of rights of light?”

If an interference takes place which is actionable, the primary remedy is an injunction, either to prevent the obstruction from being formed or requiring its removal or modification. The decision whether to grant an injunction, however, is in the discretion of the judge hearing the

case and, if he is satisfied that various criteria are met, he may decide instead to make an order for damages in lieu of an injunction. Those criteria are that:

- i. the injury to the claimant's legal rights is small;
- ii. is one which is capable of being estimated in money;
- iii. is one which can adequately be compensated by a small money payment; and
- iv. the case is one in which it would be oppressive to the defendant to grant an injunction.

Each case will be considered on its own merits.

“Can I be compelled to accept damages in lieu of an injunction?”

As mentioned above, the primary remedy is an injunction. The court should only make an order for damages in lieu of an injunction if the parties agree to this or if the defendant can demonstrate that each of the above criteria are satisfied.

“If the court awards damages in lieu of an injunction, how will those damages be calculated?”

There are a number of different ways of calculating such damages, one of which is to calculate the extent to which the value of the affected land is diminished as a result of the reduction in light. Frequently, however, a calculation on that basis would produce an unjust result and the court will therefore consider an alternative measure of damages. In this event, the court may award damages equal to the notional fee which the parties would have negotiated in return for the right to erect a building in breach of the claimant's rights of light. What that notional fee might be in any given case will depend on the circumstances and a detailed examination of the evidence will generally be required in order to arrive at an appropriate figure.

“What should I do if I receive a light obstruction notice?”

If you have already acquired a right of light which is affected by the notice, you will need to bring proceedings for the variation or cancellation of the notice within twelve months of the date that the notice was registered. Otherwise, your right of light will be lost.

“If a development has been given planning permission, does this mean that I would be unable to object on rights of light grounds?”

When deciding whether or not to grant planning permission for a development, the planning authority will have consideration to their own guidelines in respect of the effect that the development would have on the sunlight and daylight reaching adjoining properties. This is a matter of public law, however, and has no effect on the private civil law rights of the property owner. The grant of planning permission does not, therefore, affect a person’s entitlement to bring proceedings for infringement of their rights of light. Indeed, most cases involving infringements of rights of light relate to developments for which planning permission has been given.

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