

Rights to Light



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What are Rights to Light?

How are they acquired?

Why are they a potential headache?

What light through yonder window breaks? (except the other way round)

A right to light is a right to receive natural light across someone else's land into a window or other opening in a building. It should not be confused with a 'right to a view' (which generally doesn't exist under English law) or planning policies relating to light.

A right to light can only exist in respect of 'defined apertures'. These are most commonly windows – but could include skylights or even glass doors.

If a window overlooking a potential development site has a right to light then development may be restricted. The developer may be prevented from building as high as they want (or at all) because that would block or reduce the light passing to the window.

Let there be light!

A window can acquire a right to light in several ways:-

- By an actual or 'express' grant: for example, in a deed between owners of adjoining buildings.
- By an implied grant: for example, if a landowner sells a part of their land for a specified development it will generally be implied that that development, once built, will have a right to light over the seller's remaining land.
- And, most commonly, by prescription: basically, this means that if a window has enjoyed light passing across a neighbour's property for a long period of time it will end up acquiring a right to that light. The most common form of prescription is when light has been enjoyed for a period of 20 continuous years without the consent of the neighbouring landowner.

Darkness cannot drive out darkness; only light can do that

If you've bought a site to develop, and it transpires that an adjoining owner has a right to light over it, you may have difficulties. If your development interferes with their right then there are potentially two remedies your neighbour can seek against you:-

- The most draconian is an injunction. In the worst cases of infringement your neighbour can ask a Court to order you to stop your development. In extreme cases the Court can not only order you to stop - but also order you to take down any part of your development that you have already constructed.
- A more common remedy is compensation. You will be permitted to continue with your development but the Court will order you to pay compensation to your neighbour.
- If you are unlucky (or have behaved badly) you may find you are on the receiving end of both an injunction and an order to pay compensation.

Darkness stirs and wakes imagination

Imagine your neighbour builds a new building next door to your site. They have a window overlooking an open area on your land that you think might be ripe for development in the future. Go on, shut your eyes and picture it. If you do nothing you may find that in 20 years time their window has acquired a legally binding right to light over your land – and the potential development becomes impossible.

So how do you stop that happening? The acquisition of a right to light by prescription can be prevented in a number of ways:

By agreement: You might be able to agree with your neighbour that, however long their window is there, it will never acquire a right to light. You'd want such an agreement to be by deed and you'd want to make sure it was registered at the Land Registry.

By physical interruption of the light: such as the erection of a building or other structure on the development site which blocks the light passing to the window for 12 months.

By a Light Obstruction Notice: Building a very tall brick wall just to stop your neighbour from acquiring a right is a bit extreme – not to mention the expense. So you can effectively build an imaginary wall by registering what is known by those in the know as a LON. You apply to register a LON with the Local Authority and you need to serve notice on the adjoining owner to do that. If your neighbour doesn't come up with a valid objection within a year (e.g. that their window has already been there for more than 20

years and already has a right to light) then your LON will take effect. It is treated as a theoretical interruption in the light – so the prescription clock is broken.

Ghost buildings – a really scary story

Once upon a time there was a Victorian block of flats overlooking a bare piece of land. The land had been bare since it was bombed in the war. It was used as a car park. One dark and stormy day in November the block of flats was demolished.

On a crisp December morning a bright young land buyer on the lookout for opportunity and fortune (not necessarily in that order) stumbles across the car park. It's perfect. Planning will be a certainty and there are no other buildings close by. They can build the tall tower block they'd always dreamed of. They buy the land quickly before anyone else snaps it up.

The scary part? Just because the Victorian block is no longer there doesn't mean the land on which it stood doesn't still retain the potential rights to light. If the Victorian site is developed before the year is up – any windows that are in the same position as the Victorian windows will immediately have rights to light.

If you only remember 5 things, remember these 5 things

1. Rights to light can be a disaster.
2. There is no guarantee that their existence will show up on the title register at the Land Registry.
3. Before acquiring a site you should carefully inspect what buildings exist on adjoining land and consider whether they might have acquired rights to light by prescription. If in any doubt, consult a specialist.
4. There are such things as ghost buildings – so don't just look at what is built on adjoining land now – try out find out if anything has been demolished in the last year.
5. If you think there might be a problem, consider taking out insurance before you speak to the neighbours. Once you've spoken to them, insurance may not be an option.

Vaguely relevant fact

Light travels at quite a fast pace. Two hundred and ninety nine million seven hundred and ninety two thousand four hundred and fifty eight metres per second to be precise.

...little bits of law

This is one in a series of leaflets published by Lewis Silkin LLP, providing information on a range of legal issues that face our developer clients. Other topics discussed range from boundaries to wildlife.

Professional advice should be obtained before applying the information in this client guide to particular circumstances.

For a full list of available leaflets please visit our website or contact patrick.brown@lewisilkin.com.

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Patrick Brown at
patrick.brown@lewisilkin.com

Brian Kilcoyne at
brian.kilcoyne@lewisilkin.com



Patrick Brown
patrick.brown@lewisilkin.com



Brian Kilcoyne
brian.kilcoyne@lewisilkin.com



Albert Einstein
albert.einstein@lewisilkin.com