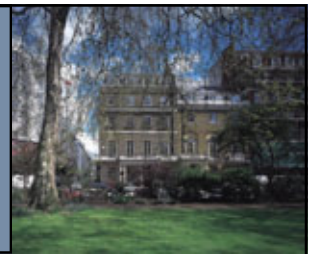




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RIGHTS OF LIGHT, SUNLIGHT & DAYLIGHT

By Michael Ney FRICS

Director

Pressure on development today increasingly means that buildings are built closer to one another than in the past. This pressure means that people are becoming more sensitive about the actual or perceived adverse effects proposed developments will have on their light. There are widespread misunderstandings about what is and is not protected and how that protection might be provided.



DAYLIGHT & SUNLIGHT

Most planning authorities have policies in their development plans that relate to daylight and sunlight.

Most Councils apply these policies to the habitable rooms of residential properties. In almost all cases, the policies refer to the BRE publication "Site Layout Planning for Daylight and Sunlight – a Guide to Good Practice" published in 1991.



What this does is to look at proposed developments from a public policy point of view and asks "Is this building a good neighbour, does it only take its fair share of the light?"

From the daylight point of view, it looks to see whether the windows of surrounding buildings can still see a reasonable proportion of the dome of the sky to give a satisfactory potential for good internal daylighting. If there are to be reductions, are they of a reasonable nature and not excessive? Where windows face within 90° of South, the Guide calls upon the impact on sunlight to be assessed to ensure that a basic minimum of sunlight penetration is provided and that where reductions are proposed, they are, again, not excessive.

Many Councils now require an analysis to be carried out in all cases or in cases where they believe there is a prospect of a problem. This then enables them to balance up the advantages and disadvantages of the scheme, including its effects on the amenities of daylight and sunlight to surrounding properties.

There is concern that some new developments are cramped and will not provide adequate standards of daylighting. Normally councils ask for a study to be provided to show that the 'Average Daylight Factors' within the new buildings will be adequate. Without such a study, they may not even validate the application.

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RIGHTS OF LIGHT



Rights of light are entirely different and are not a subject that the planning authority will, or is even permitted to, take into account. Where a building has benefited from a flow of light over someone else's land without permission, stealth or violence for a period of 20 years, the building generally acquires an 'easement of light' over that adjoining land. Once an easement has been acquired, if the owner of the land over which the light flows seeks to obstruct that light flow, he may cause sufficient loss of light to form the basis of an action at law.

There are several extremely important steps that have to be overcome in dealing with such a claim;

Firstly, the right is not to an unlimited amount of light but only to sufficient light for the ordinary purposes of inhabitancy.

Secondly, the right is only to diffuse light from the sky and there is no right to sunshine or to a view.

Thirdly, the lands have to be in separate ownership and the claimant has to have acquired the easement either by grant or by 20 years' use.

Fourthly, in order to protect his or her rights, an owner has to be prepared to take action but where claims are unfounded, they can be the target of a counterclaim by the developer that might be ruinously expensive.

Where residential property is affected, the remedy is usually an injunction to prevent the developer building the obstruction. In commercial cases, the remedy is usually financial compensation.

We are experienced in dealing with both daylight, sunlight and rights of light cases, and can help steer clients through the potential minefields involved, whether as developers or objectors. Our Director, **Michael Ney**, acted in and won the only two cases to have gone to the Court of Appeal in the last 25 years. We are pleased to offer this specialised area of service right through from early advice in the design stage to taking a claim through litigation.



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