



RICS professional guidance, UK

Rights of light

2nd edition, March 2016

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RICS guidance note, UK

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Acknowledgments

The RICS Boundaries and Party Walls Working Group (BPWWG) is a cross-professional group specialist panel of associate and chartered surveyors from the building, land surveying (geomatics) and rural areas of practice. It brings together some of the foremost and distinguished professional surveyors working in the arena of neighbour disputes. Its remit includes boundaries, party walls and certain easements, such as rights of way and rights of light. These issues lie at the core of RICS members' professional work.

The BPWWG also produces professional guidance and information, RICS public guides, RICS client guides, policy responses, journal articles and has been involved in the inception and ongoing operation of RICS Dispute Resolution Service (DRS) Neighbour Dispute Service. The BPWWG exists to promote understanding and best practice in the areas of land transfer, registration and administration, encroachments, cadastre and boundary issues, and/or to an improvement in the administration of the laws regarding them, in the UK and overseas.

Rights of light sub-panel

In order to produce this guidance the following sub-group was formed and their time and assistance is acknowledged:

John Lytton FRICS – John Lytton & Co Ltd **(BPWWG Chair)**

Rob Cooke – Clear Insurance Management Ltd

Dr Peter Defoe FRICS – calfordseaden LLP

Derry Long – MBS Survey Software Ltd

Andrew Maltby MRICS – Maltby Land Surveys Ltd

David Maltby – MBS Survey Software Ltd

Michael Ney FRICS – Schroeders Begg Ltd

Craig Robinson MRICS – Deloitte LLP

Howard Smith – Radcliffe Chambers

Andrew D Thompson FRICS – Savills (UK) Limited

Michael Zuckerman – Redress Solutions PLC

James Kavanagh MRICS – RICS

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BPWWG publications can be found at rics.org

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RICS professional guidance

International standards

RICS is at the forefront of developing international standards, working in coalitions with organisations around the world, acting in the public interest to raise standards and increase transparency within markets. International Property Measurement Standards (IPMS – www.ipmsc.org), International Construction Measurement Standards (ICMS), International Ethics Standards (IES) and others will be published and will be mandatory for RICS members. This guidance note links directly to these standards and underpins them. RICS members are advised to make themselves aware of the international standards (see www.rics.org) and the overarching principles with which this guidance note complies. Members of RICS are uniquely placed in the market by being trained, qualified and regulated by working to international standards and complying with this guidance note.

RICS guidance notes

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations that in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the guidance note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this guidance note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this guidance note, they should do so only for good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice.

Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In some cases there may be existing national standards that may take precedence over this guidance note. National standards can be defined as professional standards that are either prescribed in law or federal/local legislation, or developed in collaboration with other relevant bodies.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

Document status defined

RICS produces a range of professional standards, guidance and information documents. These have been defined in the table below. This document is a guidance note.

Type of document	Definition	Status
Standard		
International standard	An international high-level principle-based standard developed in collaboration with other relevant bodies.	Mandatory. RICS has adopted these and they apply to the profession.
Professional statement		
RICS professional statement [PS]	<p>A document that provides the profession with mandatory requirements in the form of technical requirements or conduct rules that members and firms are expected to adhere to. An RICS professional statement sets out the expectations of the profession. RICS-qualified professionals must comply with the professional statement applicable to their area of practice or be able to explain any departure from it. The relevant professional statement will be used by RICS and other legal and regulatory authorities in judging complaints and claims against RICS-qualified professionals.</p> <p>This category may include documents approved by RICS but created by another professional body/ stakeholder, such as industry codes of practice.</p>	<p>Mandatory on the basis of 'comply or explain'.</p> <p>Professional statements set out how the profession is expected to meet the requirements of the international standards.</p>
Guidance and information		
RICS guidance note [GN]	Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.	Recommended best practice but not deemed by RICS to be in category of 'mandatory' for all practitioners.
RICS protocol	Information and best practice framework, which stakeholders may sign up to and comply with, to assist the operation of the market in the public interest.	Information and/or recommended best practice.
RICS information paper [IP]	Practice-based information that provides users with the latest technical information, knowledge or common findings from regulatory reviews.	Information only.
RICS insights	Issues-based input that provides users with the latest information. This term encompasses Thought Leadership papers, market updates, topical items of interest, reports and news alerts.	Information only.
RICS economic/ market reports	A document usually based on a survey of members, or a document highlighting economic trends.	Information only.
RICS consumer guides	A document designed solely for use by consumers, providing some limited technical advice.	Information only.
Research	An independent peer-reviewed arm's-length research document designed to inform members, market professionals, end users and other stakeholders.	Information only.

1 Introduction

The chartered surveyor has an established role as an expert dealing with the enjoyment of natural light in the built environment. Issues can arise as a result of a development that may interfere with the amount of light received through an opening benefiting from a right of light. The physical extent of the proposed development can be strongly influenced by the constraints imposed by the impact of such rights, as determined by expert practitioners.

This guidance note deals solely with easements known as 'rights of light' and the approach to be adopted by surveyors practicing in this field. It is aimed principally towards the practitioner who may not be an experienced specialist in the field of rights of light, although it is hoped that all chartered surveyors will find it useful.

The issues associated with daylight and sunlight in the planning system are a separate area. For further information, see the Building Research Establishment (BRE) publication *Site layout planning for daylight and sunlight: a guide to good practice* (BR 209) (current edition) and the RICS guidance note *Daylighting and sunlight*, 1st edition (2011).

A right of light for the purpose of this guidance note is a private, legally enforceable easement or right to a minimum level of natural illumination. This is through a 'defined aperture', usually a window opening, whether conferred by express or implied grant or obtained at common law by a process of long, uninterrupted enjoyment known as 'prescription'. As with all easements, there is a dominant tenement that enjoys the rights and a servient tenement that is subject to and carries the burden of their existence.

The purpose of this guidance note is to assist the surveyor in:

- providing accurate and comprehensible information to clients with as little room for misunderstanding as practicable
- ensuring that, in the event of a dispute over the impact of rights of light the facts are set out in a manner that assists the parties and their legal advisers
- safeguarding the interests of owners, investors, insurance providers and others who rely on a chartered surveyor's report/evaluation of rights of light, whether assessing the viability of a potential development or the negative impacts of a development proposal by others.

The aim of the RICS Boundaries and Party Walls Working Group (BPWWG) and RICS Dispute Resolution Service (DRS) is to encourage private individuals, businesses and professional advisers (particularly in the legal profession) to select a suitably qualified chartered surveyor as an expert who can review a proposed scheme and advise on the potential implications of loss of light.

The present situation is that while some individuals and businesses are aware of the existence of professionals who specialise in rights of light, many are not. They may consequently seek advice from unqualified persons, often to the detriment of accurately identifying the problem and invariably leading to unnecessary loss or expense or, worse still, ill-founded litigation. Accurate information and assessment at an early stage can often assist in obtaining a prompt and cost-effective resolution.

1.1 The procedure

This guidance note considers natural light specifically in the legal context of the easement known as 'the right to light'. Light disputes can arise outside the scope of this guidance note and, as such, it is important for a member to have a clear understanding as to what constitutes a right to light dispute when reporting.

A right of light as an easement requires various factors to be in place in order to create or trigger the formation of the legal right. Due to the legal nature of rights of light, practitioners often work closely with specialist legal advisers.

Members should avoid exceeding the extent of their competence in reporting on legal rather than technical issues.

1.2 Brief summary of the law

This section aims to give some background on the law and legal issues relating to rights of light to help put the surveyor's role in context. Members should always recommend to clients that they seek project-specific legal advice from a qualified legal practitioner.

The first step of any instruction is to establish whether the legal basis to make a claim exists. A right of light is an easement. Easements can be acquired by express grant, reservation, implied grant (i.e. intended easements, easements under the rule in *Wheeldon v Burrows* (1875) or pursuant to section 62 of the *Law of Property Act 1925*), or by long use.

As to express grants or reservations, it is necessary to consider the deeds concerned and to interpret them. This will require research to ascertain whether any deeds, agreements or other title information exist that grant or prevent the acquisition of the easement. If both the dominant and servient properties are or were held by the same freehold owner then the concept of 'unity of ownership' may work to prevent the acquisition of the easement. However, if a property is let the tenant might have the potential to acquire a right against the landlord as owner of the servient land. Therefore, an assessment of the lease provisions will be required.

There are other complexities that may affect the enjoyment of rights, such as those brought about by the Custom of London and other legal principles.

A right of light will often be acquired by implied grant when the dominant and servient tenements are in common ownership, and when the common owner sells off the dominant tenement which includes a structure containing windows enjoying light from the servient tenement.

The nature of light makes the acquisition by long use the most common method. A right of light can be acquired by long use on the basis of:

- prescription at common law – user since time immemorial
- under the doctrine of lost modern grant
- by prescription under the *Prescription Act 1832*.

In order for a right of light to be acquired, a flow of light through a clearly defined aperture is required. Therefore, the right is not capable of benefiting land in general and cannot exist in favour of open garden areas. However, a specific glazed area, such as a greenhouse, can enjoy a right of light. In this guidance note the term ‘window’ will be used to refer to all apertures.

The demolition or redevelopment of a building on the dominant tenement may not extinguish an already established right of light. This means that when newly-built properties are encountered, a review of the window history is required. This is to assess whether the windows are wholly new and therefore have no independent rights, or whether they are situated in a historic position and therefore hold transferred rights.

Certain statutory bodies and the Crown may have rights that prevent or remove the imposition of an easement of light and such situations should be carefully researched.

The primary remedy for a significant light injury is an injunction, although the court may – if the context of the case justifies – depart from this and award compensation. However, a servient owner cannot assume that the court will order compensation and so allow the servient owner to purchase their way out of a right of light, as the conduct of the parties will be taken into account. While many factors must be considered, the following four tests (often referred to as the Shelfer tests from *Shelfer v City of London Electric Light Co* (1895)) are regarded important when establishing whether an injunction should be awarded:

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

In recent cases the courts had been willing to award an injunction unless it could be shown that all four of the Shelfer tests were satisfied. However, following *Lawrence v Fen Tigers Ltd* [2014] UKSC 13 [2014] AC 822, it is likely that a more flexible approach will be adopted in the future. The fact that all four Shelfer tests are not satisfied may not mean that an injunction should be granted.

Members should exercise extreme care when reporting to clients on the risk involved in pursuing any particular claim. Practitioners may be required by their clients to express an opinion on the technical merits of a case. In that event the surveyor's opinion must clearly state that the ultimate decision is that of the court and that the clients must seek specific advice from their legal advisers. Surveyors should also be wary of telling the court what the appropriate remedy is in any particular case.

2 Instructions

There are several circumstances in which surveyors may be asked to deal with rights of light matters. These may include:

- advising an adjoining owner who has concerns regarding a potential infringement to a right of light
- assisting a developer wishing to assess impacts of rights of light on a development scheme or wishing to determine the maximum size of a potential development
- determining the amount of compensation where the parties have agreed that this would be acceptable
- acting for one or more parties (or as a court appointed expert) where the extent of light injury and the rights that relate to it or them need to be quantified and evaluated, and
- assessing risk for funders, insurance companies, mortgagees or other interested parties.

2.1 Competence and experience

Any surveyor accepting a commission in relation to rights of light must ensure that they comply with the RICS requirements and Civil Procedure Rules in respect of competence, professional indemnity insurance (PII) and conflicts of interest. Members need also to be aware of the obligations of the Provision of Services Regulations 2009.

Although many cases do not involve formal litigation, litigation is always a possibility and surveyors need to assume that they may be called on to act as an expert witness. It is essential that members make themselves conversant with the RICS practice statement, client guide and guidance note *Surveyors acting as expert witnesses*, 4th edition (2014). This publication contains advice and information on the overriding duties of an expert witness, as well as the practical matters including arranging meetings with lawyers, assessing and agreeing fees, case management and the content of reports.

2.2 Establishing the brief

It is important that a client is made aware at the point of instruction of the technical and legal difference between natural light in the common law system and the separate methods of assessment used in planning and environmental evaluations. This will ensure that the correct study is provided and thus avoid the common misunderstanding that leads to mixing and confusing the differing methods of technically assessing light.

In rights of light cases it is not uncommon for clients to seek early advice. However, at the time of the first meeting the client may not hold all the necessary information on the proposed design and the consultant may not have had internal access to the surrounding properties. An initial

report may comprise guidance to the client as to what is required to take the matter forward. The limitations and reservations of this type of initial report must be agreed at the point of instruction as new business terms cannot be imposed after instruction.

It is essential to establish the requirements of the client and those of any professional advisers from the outset. While rights of light are often secondary to planning consent, etc. they seldom lend themselves to a simple solution. It is important that the client understands this together with the basis of accuracy and tolerances in the report.

2.3 Client's instructions

On instruction, the surveyor will need to carry out an investigation into whether there is likely to be a rights of light issue. In simple cases, this process might be quite elementary, possibly using no more than 2D drawings. In more complex cases, the construction of a detailed 3D model may be necessary and this will involve more detailed measurement by appropriately qualified surveyors.

If the designers have produced a 3D model as part of their design process, this may be usable to assess the effects on surrounding rights of light. It may, however, take some considerable time to produce a definitive report on the likelihood and extent of injuries and the client must be advised what this time scale is likely to be.

Not all software systems are identical and while some CAD information can be commonly shared, other data items may need recoding and conversion to be usable in a given system. The time and cost of this conversion needs to be explained to a client to prevent the false assumption that any existing model can be plugged into a rights of light (RoL) system and run in a technical analysis.

When using 3D models or context provided by another member of the team, the client must understand the specific technical need for the survey accuracy required in a RoL technical study. General visualisation models may not have been created to the survey standard accuracy that is required for a RoL technical study (see Appendix A and B). Should this general information be used potential errors and a loss of accuracy are potentially being built into the technical study.

Once the measurement and analysis approach has been decided, the surveyor will interpret the resulting information and present the client with guidance. The client may look to the surveyor for certainty in this guidance and where this may not be possible due to legal, survey or other constraints, it is important to make this clear. Should the study be based on assumed layout or non-surveyed data, this limitation should be clearly stated in the report so that third-party readers, such as funders and insurers, can identify the limitations in the scope of the technical study.

Where a development is likely to result in an actionable injury, then the potential to negotiate a settlement may be considered. If no initial settlement or agreement between the parties can be made, then litigation or Alternative Dispute Resolution (ADR) may be appropriate (see section 9). Here, the client must be kept advised as to the costs of each step in the process.

2.4 Considerations for the dominant owner

If the client intends to seek an interim injunction suspending the development until trial, the surveyor should advise that the court may require the client to give an undertaking in damages. This means that if the court awards an interim injunction and the trial judge subsequently decides that the interim injunction should not have been made, the client can be made liable for the servient owner's losses. This may include the cost of delay to the development.

If the client is still minded to litigate, then the surveyor will often act as expert witness. This role involves a change of emphasis in the surveyor's activities. While up to this point the surveyor has been able to act as an adviser helping to advance the client's case, once appointed as an expert the surveyor's primary obligation is to the court, not the instructing party and it is therefore important to remain impartial, truthful and dispassionate at all times.

Reports presented in evidence must include the positive and negative aspects and cannot exclude relevant matters that do not support the case. It is essential that the surveyor studies the RICS practice statement and guidance note, *Surveyors acting as expert witnesses*, 4th edition (2014) and draws the client's attention to the relevant parts.

The surveyor is only able to complete a comprehensive and accurate report if both the client and professional adviser openly disclose all known facts. All material including plans, documents and knowledge of any relevant incidents need to be disclosed in the expert's report – even if it may appear to be disadvantageous to the case. If the client has concealed information that might come to light in court, this may harm the credibility of both the client's and expert's evidence.

2.5 Considerations for the servient owner

This guidance note has so far covered advice to dominant owners likely to be affected by nearby developments. Where the client is a developer, some of the points given above are simply reversed. However, there are other aspects that need to be considered. A client will often consult a chartered surveyor with a proposed development and ask for confirmation such as 'no injuries to surrounding rights of light will be caused', or if there are, they are only subject to compensation and not 'injunctable'. Funders and others may well be relying on the response they receive.

As with acting for a dominant owner, it may be impossible to give an instant and unqualified answer. Clients frequently press for assurance that any injuries will only attract compensation. It is important that the surveyor should remind the client that the primary remedy for a significant injury to an easement of light is an injunction. Surveyors should therefore resist the temptation to give definitive advice to clients on what the court will decide.

2.6 Part 36 Offers under the Civil Procedure Rules

If the client indicates that he or she may accept monetary compensation, the surveyor will need to explore what might be attainable with them and what might be regarded as acceptable either in the context of private negotiation or in the context of a court ruling. Although the solicitors should advise the client of the risks, it is wise for the surveyor to also warn the client that if the other party makes an offer under Part 36 of the Civil Procedure Rules that the client rejects, and should the court eventually award less, then the client may have to pay both sides' legal costs, additional interest on costs and damages (from the date of the rejected Part 36 offer), and an additional sum of up to 10 per cent of damages. These amounts can be considerable. The surveyor should also warn the client that once they have openly indicated that a money payment would adequately compensate for the injury, the client cannot generally go back to seek an injunction. All the court will do is to assess the amount of the compensation payable.

2.7 Measurement

Developers are often reluctant to reveal the extent of their proposal at an early stage and the surveyor is requested to make an analysis with limited preliminary information. Where this is the case, only approximate assessments of the effects on surrounding properties can be made. The limitations of the analysis must be made clear so that the client does not assume the results are fully researched and refined.

Once the initial measurement has been made, matters may then progress to a far more detailed survey process, usually carried out by specialist measurement surveyors, either in house or commissioned especially for the purpose. This work will involve the use of more complex instrumentation such as:

- total station with reflectorless capability
- GPS receivers
- high-definition terrestrial laser scanner
- software for the manipulation of 'point cloud' data
- CAD software for model building
- analytical RoL software.

All measuring equipment should be issued with a calibration certificate to allow for traceability and prove

adherence to quoted technical specification. For more information on calibration, members can download the RICS Geomatics client guide *Reassuringly accurate – how controlling accuracy can affect your project* (available from rics.org/geomatics). The RICS guidance note *Measured Surveys of land, buildings and utilities*, 3rd edition (2014) is an invaluable best practice resource for all measurement and spatial surveying activity. The survey detail accuracy banding table from the 3rd edition is included in Appendix B.

It may be appropriate to hold a pre-inspection meeting with the instructing party and their professional advisers. In other circumstances a brief site visit and a follow up letter of suggestions may suffice. The circumstances of the appointment will usually determine the best approach.

It is often helpful to have roof level access to allow sight of surrounding facing windows. Members are reminded of the safety implications of working at height. All high level inspection should be undertaken with reference to the RICS guidance note *Surveying safely*, 1st edition (2011).

The amount of preparation required at this stage should be proportionate to the complexity of the case. It is important that the surveyor makes detailed and legible notes at inspections, meetings and interviews, as these may form a vital record. Similarly, it is advisable to take photographs at each stage of the investigation.

The choice of technology used will therefore be determined by the factors outlined above, and may consist of:

- digital camera
- binoculars
- measuring tapes, level and staff, and
- handheld laser measuring device.

2.8 Preliminary reports

Where advising clients, at an early point in the process, information gathering will normally commence with a site visit in order to make a preliminary assessment of the consequences of the design on the neighbouring environment.

Information gathering may also include reference to the large number of online resources currently available to view the existing conditions using; for example, both aerial and street based photogrammetric information. These resources are currently not available in real time and while offering a good overall understanding of the site it is important to investigate the date that the information was captured and consequently whether it represents the current situation.

Surveyors should undertake a physical site inspection, not least to confirm the above digital sources. Should data be gathered only from digital information then the report must clearly identify those areas and any other relevant sources of data.

2.9 Modelling and technical analysis

A 3D representation of the site is likely to be required at an early stage, which may be subject to later adjustment or adaptation. The rights of light consultant will have a good understanding of the site layout from preliminary stages of advice and should by now be in possession of all available data sources relevant to the project including the legal information referred to previously and relevant survey information, plans, elevations, sections, etc. This data is rarely complete and will often require considerable interpretation from supplementary data sources to enable the creation of a preliminary 3D model. In some instances it may, for example, be necessary to utilise commercially available 3D models to provide a more homogeneous dataset.

The sources of all data may need to be disclosed so that users of the resulting information are in no doubt as to its accuracy. Other supplementary data sources available include Ordnance Survey vector data, photogrammetric data and airborne light detection and ranging (LIDAR). All sources are available online and offer early stage cost benefits.

It may be more economical, in some cases, to commission a 'high definition laser scan' (Figure 1) in the preliminary stages of advice. This avoids wasteful adjustment or adaptation of incomplete data or when it is envisaged that a full measured survey may be required in any event.

Clients or designers may request the preparation of a design model envelope, sometimes referred to as a 'jelly mould or safe envelope', as a guide (albeit portraying strange geometrical shapes) to the limits of construction that would not cause a potentially actionable injury. This allows for the design to focus on particular areas of concern but the process of producing this envelope can be time consuming, as it may rely on several iterative computations.

The nature of the 3D model's accuracy will dictate whether it is sufficient for scheme planning only or whether it can be used for final assessment of compensation or for expert witness reports. As with all data utilised, the model and drawings should clearly identify all assumptions.

2.10 Analysis based on the full measured survey¹

This is considered to be the most accurate 3D model possible showing massing, adjacent window positions and room layouts. Where assumptions have to be made these will again need to be highlighted. This 3D model should ordinarily be suitable for assessing compensation payments, expert witness work, insurance purposes, etc.

The data required for this stage can be extensive and while more traditional methods may be used, on larger schemes

¹ See Appendix A

the data will generally be captured using a high definition terrestrial laser scanner. This type of equipment is mostly used by specialist geomatics surveyors who will be to advise on the levels of accuracy that can be attained (see the RICS client guide *Virtually real: terrestrial laser scanning* (2012)).

Unless full access to affected properties is permitted, room layouts can still only be assumed. Scan data can sometimes help in these assumptions as internal detail can be derived to give an indication of room extents and floor/ceiling levels. If room access is allowed then no assumptions need be made, as plan layouts will be measured. These plans will generally take the form of a semi-connected survey but on occasions may require a fully-connected survey. These types of survey are defined in the RICS guidance note *Measured surveys of land, buildings and utilities*, 3rd edition (2014) and specification.

Particular emphasis should be placed on the accurate measurement of windows and wall thicknesses as well as internal/external floor levels. It is prudent to connect all

survey information to the Ordnance Survey National Grid by use of global positioning techniques (see the RICS guidance note *Guidelines for the use of GNSS in land surveying and mapping*, 2nd edition (2010)). This results in the definitive geo-referencing of the project and allows for other proprietary data sources to be used in context without transformation. The Ordnance Survey benchmark system is no longer maintained and while offering a validation check, should not be relied on for height datum.

The Ordnance Survey Active GPS Network provides access to the definitive datum in the UK and will consequently require GPS observations local to the site. This can be supplemented with conventional traversing and spirit levelling where GPS observations are not practical. The height datum is particularly critical in the assessment of rights of light as just a few centimetres at room level can have significant implications on the results. Potential height issues should be discussed with the design team. For more information see RICS geomatics client guide, *Virtually level – transition from traditional benchmarks to height using GNSS* (rics.org/geomatics).

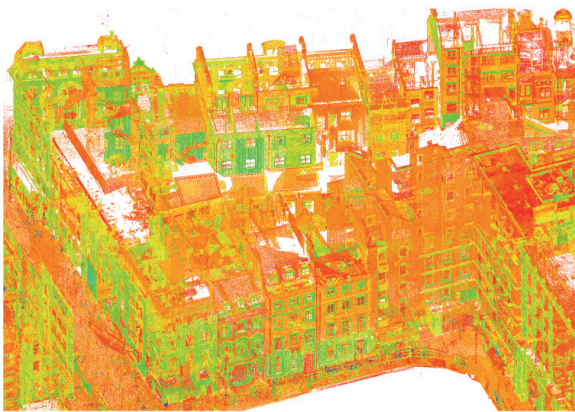


Figure 1.1: Scanned point cloud of development area

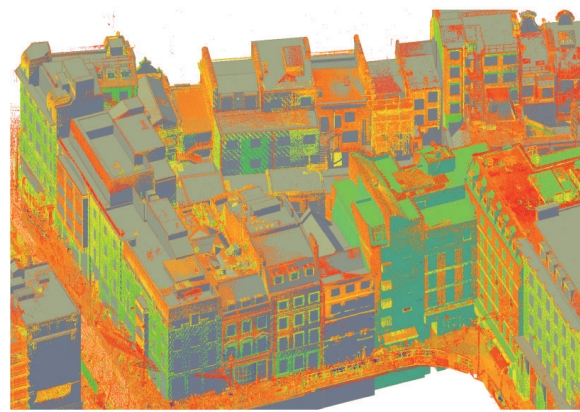


Figure 1.2: Scan and model

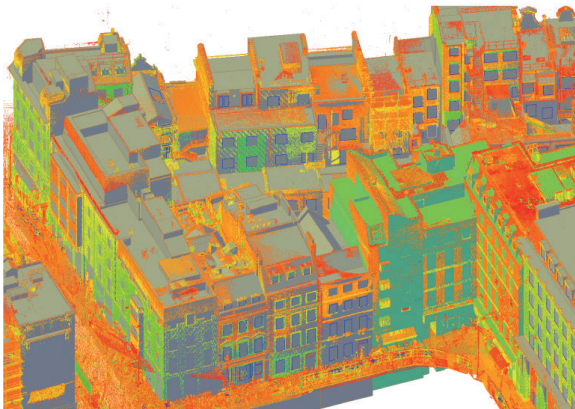


Figure 1.3: Scan model with windows

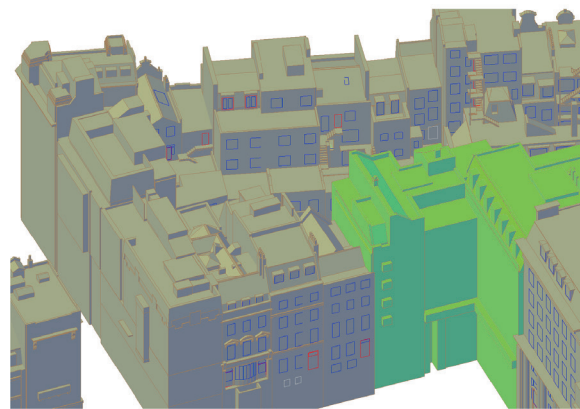


Figure 1.4: Model only

3 Research

3.1 Document search

It is generally a sensible idea to set the date for the actual site survey at some point after the initial site meeting or from receipt of documents, allowing time during which research can be undertaken or documents such as deeds and legal agreements can be obtained. Documents available can range from very few to a considerable bundle of drawings, plans, reports on title, etc.

When checking Land Registry title documents it is important to review those relating to both the dominant and servient owners' properties as it is not uncommon for key information to be only recorded on one title or the other.

Official copy Land Registry entries and title plan(s), where a property is registered, are obtainable via Land Registry Online or by post and are inexpensive. In addition, the Land Registry may be able to supply official copies of the conveyance(s) and supporting documents on which the first registration was based. These can give additional information that is not contained in the registry entries and should always be investigated as a matter of course. It should be remembered that rights acquired by long use will seldom be recorded at the Land Registry, but will bind the servient tenement.

Legal advice should always be sought with regard to the existence of rights and the interpretation of legal documents. Surveyors should be aware of their own professional limitations.

3.2 Historic aerial photography and data sources

There may be some advantage in studying historic aerial photographs and Ordnance Survey information covering the area in question – particularly if the age or position of windows is in dispute. Historic aerial imagery may be obtained from a number of commercially available sources such as:

- Ordnance Survey Mastermap imagery layer
- Bluesky aerial imagery
- Blom imagery
- Geoinformation group
- Google Maps
- Google Earth
- Bing Maps
- Getmapping
- Vortex modelling
- Z mapping.

Clients may also hold useful historic information, i.e. drawings, photographs, title information, etc. Surveyors need to be aware of the requirement to retain information for PII and other purposes. As such, all vital images gathered from internet sources need to be saved for record purposes in case an image sourced online is later moved, removed or updated. It is also important to state the accuracy of all information relied on when advising clients.

4 Method of assessment

Until Percy Waldram FRICS carried out his research in the 1900s and, together with his son, devised what is now known as the Waldram diagram, judges would view the premises and produce a subjective assessment as to whether there was enough light for them to read newsprint or not. This varied with the weather, the seasons and the judge's visual acuity. The idea that light could be assessed from a proportional view of the dome of the sky goes back much further – to Vitruvius, in fact (Book 6, Ch. 6 *Spatium puri caeli*) – but, thanks to Waldram's invention, the value of light from the hemispherical sky dome could now be represented on a flat piece of paper and the light values in a room could be calculated easily (if tediously).

The assumption employed was that an illuminance level of one foot-candle, the light given out by an ordinary candle one foot (approx. 305mm) away would provide adequate daylight if achieved over at least half the area of the room at worktop level and that this is represented by 0.2 per cent of the unobstructed sky value. This value equates to roughly 10 lux (the lux is 1 lumen/m²). Surveyors will be aware that normal minimum artificial light levels in offices are normally set at 350 lux with task lighting providing 500+ lux. This gives a comparative 'feel' for what 10 lux is like.

Modern research (Defoe, Frame et al 2005 to 2013) shows that 10 lux is less than half the minimum which most people actually require and a figure of around 25 lux is now presented by researchers as about the practical minimum. Although this figure has been widely mentioned in academic papers, the courts still work on the 1/500th (or 0.2 per cent sky factor) figure. Until a legal case sets a different standard or criterion, members should continue to assume that the 1/500th (or 0.2 per cent sky factor) figure will be applied by the courts. The method has a number

of inherent inaccuracies. One is that the method uses the Uniform Sky, which does not take into account the variance in sky brightness from the horizon to the zenith but regards all the sky as being uniformly bright. As a result, the Sky Factor (SF) is no longer a unit of light measurement recognised by the British Standards Institution (BSI) and its use is now limited to rights of light calculations.

Experts should be aware of other methods of measurement and may wish to put them forward as an alternative.

Normally, Waldram diagrams are prepared at each node of a 300mm grid both as existing and as proposed. An average room might require 260 diagrams for full coverage, before and after, hence the use of computer modelling. Each point of obstruction is measured for its horizontal angle, its height and its distance to give its vertical angle. (Tan = Opp/Adj for those who have forgotten the formula they learned in GCSE/O-Level maths.) The value of light from different angles of altitude is adjusted in the diagram.

The size of the grid will directly relate to the accuracy of the end contour diagram. In negotiations the grid size should be agreed between the parties' surveyors. It is not uncommon on large projects for the computer models to be set up at an early stage with a larger grid size to speed processing time. This is then reduced as the potential risk in the model is narrowed as necessary. If several rooms are involved, the numbers of calculations required rise rapidly.

By calculating the area of sky visible from each node on the grid, a contour diagram can be prepared showing the area of the room that has visibility of 1/500th of the sky or better.

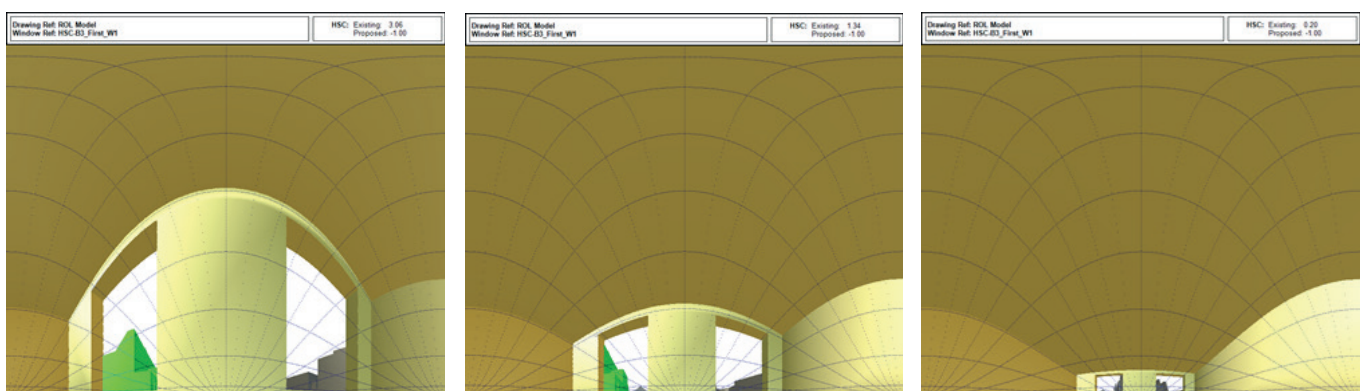


Figure 2: Waldram diagrams

4.1 What is meant by ‘adequately lit’?

The legal definition is that the premises should have through its existing windows ‘sufficient light for the ordinary purposes of inhabitancy of the tenement or use as business premises according to the ordinary notions of mankind’ (per Davey LJ in *Colls v Home & Colonial Stores* 1904).

In the previous section we mentioned that this was estimated, as best they could, by Judges carrying out a view of the premises. This lacked precision, however and it took Percy Waldram’s research to come up with a more objective and repeatable method of assessing adequacy by using the contour method set out above.

Although, as we have noted, the concept of one foot-candle results in a very poor level of light (readers are invited to try reading a pub or restaurant menu by the light only of the ubiquitous candle in a bottle on the table), this has become the accepted standard by which adequacy has historically been measured. Waldram’s research showed that the point at which the light level fell below this was the ‘grumble point’ at which the ordinary person would express dissatisfaction.

Waldram concluded that if over half the room had a light level of one foot-candle or better, then the room as a whole would be considered ‘adequately lit’ by the ordinary person.

The concept of half the room being lit to above this standard is commonly called the ‘50/50 test’. In 1967, Lord Denning held that the ‘50/50 test’ was never a rule of law and was, at most, only a helpful rule of thumb, also that standards were rising and what was acceptable in the past may no longer be so. He further held that the definition of adequacy is a matter for judicial discretion and not for expert determination. We can expect today that the level of adequacy may typically lie around 50 per cent to 55 per cent of a room’s area but ultimately the level is an issue for the court to decide.

Regardless of the area adequately lit before, if the ‘after’ proportion is less than 50 per cent of the room area, it is conventionally accepted that there is a likelihood of an actionable injury to the light. However, it should be noted that the grumble point, although conventionally used, is not a rule of law and the courts preside over its interpretation. Several judges in more recent cases than Lord Denning’s have emphasised his ruling that what area of adequately lit space remaining will constitute an actionable level is for the judge to decide and is not a matter for expert determination. Surveyors have been openly rebuked in court for suggesting what is or is not an actionable level of loss and members should refrain from using the term ‘actionable’ in reports to the court or suggesting that a particular level of reduction should be treated by the court as a legal injury or disregarded as only a ‘technical injury’.

If an obstruction reduces the adequately lit area to more than, say, 55 per cent of the room area, then, even if it was previously adequately lit to 100 per cent of its area, a court would be extremely unlikely to find this an actionable injury.

Where a room is already adequately lit to less than 50 per cent of its area, courts have ruled that such a room is already poorly lit, and any significant reduction of the adequately lit area is potentially actionable. Although it should be remembered that the term ‘significant’ has not been defined.

The next stage is to prepare a table that ranks the effects of the reductions to light, room by room. It is conventional to say that where the reduction in light leaves between 25 per cent and 50 per cent of the room adequately lit, this is ordinarily considered a serious and actionable loss. If the reduction leaves less than 25 per cent of the room adequately lit, then this is considered a very serious, actionable loss. If the loss lies in the zone between 50 per cent and 75 per cent, then this is less serious and may not be an actionable loss, while if the loss lies in the zone between 75 per cent and 100 per cent adequately lit, this would be considered even less serious and certainly not actionable of itself.

This raises the question of ‘parasitical losses’. In the past, courts have ruled that once one room becomes injured to an actionable degree, then the non-actionable areas of loss have to be taken into account as well since they represent a more generalised reduction in amenity. This is particularly germane to questions of compensation and these are more fully explored in the following chapter. It has also been stated that even those rooms whose windows have not existed for 20 years and thus have no independent right to light should also be considered in terms of parasitical loss.

While members should be careful not to be seen trying to direct the Court how to decide a matter, when advising clients, it is important to indicate to them what levels of injury are likely to be found actionable were the matter to proceed to litigation and how a court might react to the extent and gravity of the injury. Where matters are ‘on the cusp’ Members should remind clients that civil litigation is not a predictable process and there are many factors the Court might, in any particular instance, take into account in deciding that a particular obstruction will cause an actionable injury and whether that injury might result in an injunction or an award of compensation. This may mean working closely with the client’s legal advisors in providing the technical evidence which they can use to advise on the legal aspects and the litigation risks of the matter.

Alternatively, the client may decide to reduce the massing of the proposed building to avoid causing the level of injury that might be found actionable and this may require Members to work closely with the design team, perhaps carrying out several iterations of the calculations, in order to refine the proposals to a level that will not cause a possibly actionable level of injury.

The image below show a series of typical rooms with the contour of 1/500th or 0.2 per cent as existing shown in green and the proposed contour of the same value shown in red, with the yellow shading showing the area presently adequately-lit that will no longer be adequately-lit as proposed.

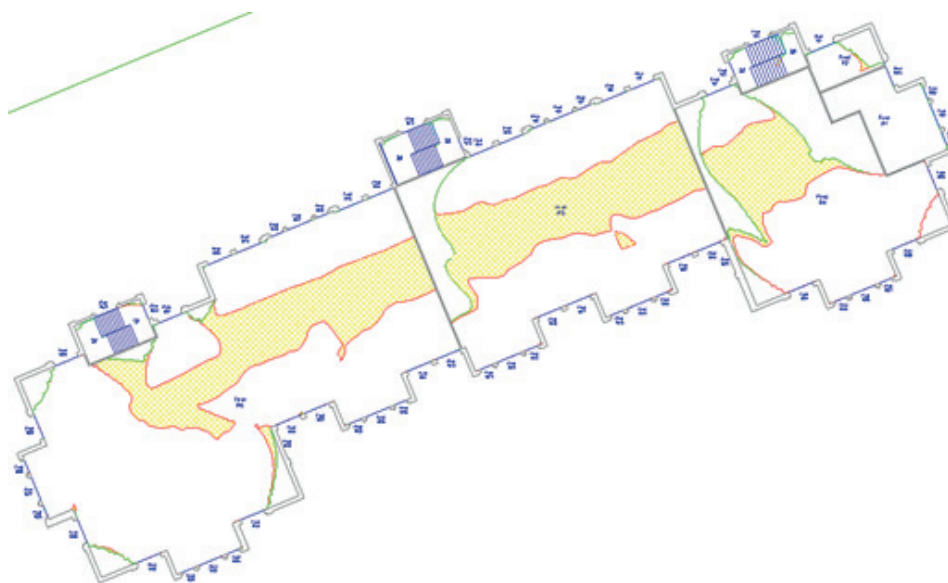


Figure 3: Example of a contour diagram

5 Compensation

Where it is deemed appropriate to pay compensation for an injury, various issues need to be considered. The valuation of compensation for loss of light is a very complex and potentially litigious matter that requires a high degree of expertise. While this section covers some of the issues for consideration it is not intended to be exhaustive.

On occasion, valuations will require a multi-disciplinary approach calling on the assistance of other advisers, such as quantity surveyors and valuation surveyors. Therefore, the obligation only to undertake roles in which members hold sufficient skill and experience should not be underplayed, nor should the need to ensure that all parties are appropriately skilled to advise in this area.

The compensation process principally concerns the valuation in the following three scenarios:

- 1 valuing the diminution in the dominant owner's property interest
- 2 valuing the servient owner's gain resulting from the infringement
- 3 valuing diminution according to statutory provision.

In terms of the first two of these situations there is no single accepted methodology for preparing a rights of light valuation. A detailed understanding of all appropriate valuation methods and surrounding technical and legal concerns is essential. Advice to clients may be based on 'amenity' (also known as 'book value') or other methods to value 'diminution' or it may include any number of widely used valuation techniques to measure any 'gain'. A variety of references to these methods can be found in various publications listed in the Bibliography.

Although the practitioner may arrive at a valuation based on the above or other methods, the courts refuse to be bound by any particular method or selection of valuation methods. This and the complexities in other aspects of analysis and valuation can make advice in this area particularly onerous.

The third valuation approach follows methods defined by statute for Compulsory Purchase – relying on the right to injunction being overridden by the application of section 237 of the *Town and Country Planning Act* 1990. Arguably, this should result in a more straightforward approach, however, this is still not without uncertainty and again a keen understanding is required together with a multi-disciplinary approach in most circumstances.

The four categories of loss are traditionally termed:

'Front zone loss' – the very serious loss below 25% of the room area

'First zone loss' – the 'actionable loss' between 25% and 50%

'Second zone loss' – the less serious and 'non-actionable' loss between 50% and 75%

'Makeweight loss' – the least serious class of loss.

In order to value the losses, the zones are weighted by a simple formula: Front Zone loss is multiplied by 1.5, First Zone loss by 1, Second Zone loss by 0.5 and the Makeweight loss by 0.25. This then totals the lost adequately lit area as a proportion of the First Zone or Equivalent First Zone (EFZ). A table of losses ('EFZ Table') is then compiled which shows a total of the losses for that building. Provided that there are some losses in either the front or first zones, an actionable loss is likely and then the 'parasitical losses' in the second and makeweight zones are included. If there are no losses in the front or first zones, then losses in the other two zones would not normally, of themselves, be claimable.

From the EFZ table, the total loss of adequately lit area is derived and it is then necessary to establish a value for the light element of that area and then to capitalise it.

A value for the light is then established and agreed between the rights of light surveyors. This value is known as the Light Standard Rent (LSR). RICS does not recognise any historic table or chart capping the LSR value to a given market rental figure. The agreement of the LSR figure is fully open to negotiation between the parties. The LSR rate is subject to the yield for the property in question. Once this is established and, ideally, agreed, the Single Rate Years Purchase (YP) for that yield is applied from Parry's Valuation and Investment Tables and the EFZ total is multiplied by the rental value and the YP to produce the book value of the total loss.

This book value (Bv) figure would represent the direct loss suffered in pure light terms. Negotiation custom has evolved such that in non CPO situations the strength of

the perception risk of an injunction is factored into the compensation and represents equitable losses. This is known as the Enhanced Book Value (EBv) and is taken from various multiplications of and can be between 2.5 and 6 times the base Bv figure.

Non-chartered valuation surveyors may need to seek specialist valuation advice from members working in the district to establish local rentals and the proportion attributable to light and the local rates of yield. If the matter is likely to end up in litigation, this advice will need to be properly researched. An estate agent's marketing estimate is not appropriate in the rights of light compensation context.

Room/ floor	Room use	Whole room area [sq. ft]	Existing >0.2% [sq. ft]	Proposed >0.2% [sq. ft]	Loss [sq. ft]	Front [sq. ft]	1st [sq. ft]	2nd [sq. ft]	MKWT [sq. ft]	EFZ [sq. ft]
Ground floor										
R1/50	L/K/D	333.4	136.0	121.1	14.9	0.0	14.9	0.0	0.0	14.9
R2/50	Bedroom	113.6	105.5	85.3	20.2	0.0	0.0	0.0	20.2	5.1
R3/50	Bedroom	108.6	102.1	76.4	25.7	0.0	0.0	0.0	25.7	6.4
R4/50	L/K/D	196.9	120.9	84.2	36.7	0.0	14.3	22.4	0.0	25.5
R5/50	Bedroom	144.9	98.2	54.7	43.5	0.0	17.7	25.7	0.0	30.6
R6/50	Bedroom	95.7	90.9	46.1	44.8	0.0	1.8	43.0	0.0	23.3
R7/50	L/K/D	326.5	135.7	75.4	60.3	6.2	54.1	0.0	0.0	63.4

Table 1: An example of an EFZ table

6 Rights of light agreements

It is important, when a rights of light issue is resolved, that the agreement between the parties is set out in the form of written release and recorded to ensure that the issue does not result in any future argument.

Depending on the form of agreement reached, the release can be relatively simple or more complex but in most cases should be subject to legal advice.

Plans contained in the release should be capable of being interpreted by anyone other than the parties to the agreement as this may need to be relied on in the future.

It is common for such agreements to include drawings showing the agreed massing profile and spot heights. Printed views from the computer model of the massing may be helpful in conveying the intended scope of release.

An example rights of light agreement can be found in Appendix G.

7 Loss of rights of light

Rights of Light can be reduced, lost or extinguished in various ways including unity of ownership, agreement, redevelopment, obstruction, notional obstruction and through instruments such as s. 237 of the *Town and Country Planning Act* 1990. Unity of ownership has been discussed earlier. The dominant and servient owners can agree to extinguish any rights of light. Agreement is often brought about as a result of compensation or perhaps a reciprocal release of rights, enabling both owners to develop within the confines of such an agreement. Landlords should be advised on the need to make express provision to reserve rights in order to prevent tenants acquiring rights against their landlord or nearby third parties.

The redevelopment of a site will often render the original apertures to the demolished building redundant, as walls and other obstructions, forming part of the new development, replace them. Care should be taken here as it may often be beneficial to the client to ensure that new windows overlap the original ones to ensure that rights are transferred to the new property. The production of overlay drawings to prove the intention of the transfer of a right at the time of a redevelopment should be considered. In due diligence purchasers of urban centre developments that may need to rely on this type right should make the necessary investigations at the time of purchase. Retrospective proof is now more complex as less historically important buildings may not be well documented thereby making the gathering of survey data on a long demolished property of 7 years plus old less straightforward. Archives are typically now only kept for 6–12 years.

A right by statutory prescription will not arise if the light is obstructed for a continuous period of one year. Notional obstructions take place where appropriate processes are followed to prevent the acquisition of a prescriptive right, under the *Rights of Light Act* 1959. Such processes ultimately involve the service and registration of a notice with the intent to act as a notional (fictional) obstruction. Again, this obstruction is normally required to remain in place without robust objection for a period of one year before it will have the desired effect.

The operation of a Light Obstruction Notice (LON) is creating an element of confusion in the market in part due to the now more common Party Wall Legislation Notices. While the non-response to a party wall notice results in a default objection under the Act this is not the logic of the *Rights of Light Act* 1959. In the LON context an owner with a right to object must either formally require the LON to be withdrawn and obtain a Certificate of Withdrawal or must commence court proceedings to stop the one year time period. The one year period is established in the Act and cannot be adjusted by agreement or the Court therefore delay in response can have serious consequences for an owner.

The duty to respond and deal with LON is a common obligation in a commercial property lease and members operating in the property management sector should have clear procedures in place to ensure that a LON is identified and reacted to when received.

Rebuttal requires the provision of evidence of historic transfer – see above.

Section 237 of the *Town and Country Planning Act* 1990 is used where land has been appropriated for ‘planning purposes’ by a local authority in order to facilitate development. This right under the Act can be carried forward and used by a follow on private sector developer. The worth of this right in land has a significant facilitation benefit. This benefit has the effect of enabling the intended development to proceed unencumbered by the threat of injunction. Properties however retain the right to claim compensation for the injury. The claim being based on the compulsory purchase method of compensation. Therefore project appraisals should still allow for the necessary compensation budgets and associated professional fees. Members must therefore not confuse the removal of the injunction threat with the removal of a properties owner’s legal right to receive compensation for the injury.

The above methods of extinguishment are complex and will often require the input of specialist legal advice.

8 Insurance

When discussing with clients the topic of a potential injunction or claim for damages from a third party it may be appropriate to raise the subject of insurance as a possible solution.

A small number of specialist title insurers have developed bespoke insurance products to meet the needs of clients/developers for whom surveyors have identified potential right of light risk.

Insurance policies have become more flexible and sophisticated in recent years as a result of the demands of developers and in many cases, their lenders.

Insurance wordings vary between providers but they are designed to cover the following liabilities:

- damages and compensation (including costs and expenses) awarded as a result of any enforcement action by a third party with a right of light claim
- the costs of any alteration or demolition of the development or part of it necessarily incurred to comply with such enforcement action
- any diminution in market value of the property/development as a result of the third party's claim
- any costs incurred prior to the injunction/action which are subsequently rendered abortive.

Where the client is the dominant owner seeking an injunction or damages against the developer, litigation funding may be available. The funder pays the client's own expenses for the litigation and, if the action fails will write off his investment. The funder will usually provide an indemnity against the award of costs to the developer if the case is lost. This is a required term of a funding agreement if the funder is a member of the Association of Litigation Funders in England and Wales. The client brings his case with no cash outlay and no risk of adverse costs. Where the action is successful, the funder charges a share of any award or uplift on the sums advanced or a combination of the two. Litigation funding is obviously a desirable option for a risk-averse claimant and its availability should be made known to the client.

Any party to litigation can seek to cover the risk of paying the opponent's costs if he loses a court action or an arbitration through an insurance product called After the Event insurance (ATE). ATE is usually obtained through the solicitors instructed on the case and can be extended to cover the client's own disbursements and even the costs of solicitors and counsel. Any client entering into litigation should be advised of the availability of ATE.

Available extensions

- Delay costs – where the scheme is 'delayed', e.g. by temporary injunction or by advice of legal counsel, the policy can be extended to cover contractual costs subsequently incurred such as additional interest charges and contractors penalties.
- Consequential losses – if due to enforced cut back and a reduction in the scheme, the developer suffers consequential losses i.e. loss of contracted rent or sales, cover can be considered by insurers.
- Previously right of light indemnity policies were predominantly written on a post planning basis, but insurers will now, in certain circumstances, consider offering cover pre-planning
- Whereas previously there was a strict exclusion in all policies regarding material discussions with 'injured neighbours', some insurers will consider cover on an agreed conduct basis. This allows the developer to proactively approach the neighbour in order to secure a deed of release aligned to a policy excess which will reflect the likely settlement figure plus an allowance for professional costs. Thus the policy will cover the costs of injunction (as above) or alternatively inflated release costs, over and above the excess, leveraged by the threat of injunction.

Such proactive strategies would need to be in consultation, and with the agreement of insurers.

Otherwise it should be noted that any confidentiality clauses within the policy must be strictly observed.

Rights of Light Indemnity policies are written 'in perpetuity', and cover automatically transfers to successors in title, so the policy can be a positive benefit to developers selling on.

If the client is interested in this form of insurance they should contact a specialist RICS member or a broker – details of whom are available from RICS. Members are reminded that RICS is a Designated Professional Body (DPB) and as such RICS members who satisfy the registration requirements may give insurance related advice. Members should check the RICS website for details (rics.org/pii).

Members should also bear in mind that residential clients may have legal expenses cover, for example, under household insurance policies, which could pay the costs of their bringing or defending a rights of light claim.

The insurances discussed here relates to protecting to the interests of the servient owner (i.e. those causing the injury), but in the event you are acting on behalf of the dominant (injured) owner, there may be legal expenses insurance available to support their claim for damages/injunction.

9 Alternative dispute resolution

9.1 DRS Neighbour Disputes Service

RICS operates a service where it will appoint a suitably qualified chartered surveyor who has undertaken specific training that leads to inclusion on the Neighbour Disputes Service register to advise the general public and/or professional advisers in respect of neighbour dispute issues. This training will include the practice and procedure of the Neighbour Disputes Service, and competence in the production of expert reports which comply with the Civil Procedure Rules (CPR) and their relationship to associated RICS practice statements and guidance notes.

Interested chartered surveyors can find out more information on the Neighbour Disputes Service training at www.rics.org/drs. Members interested in joining the scheme can download the DR12 Neighbour Disputes Specialist application form.

To initiate the service, one or more of the disputing parties may apply to RICS Dispute Resolution Service on a Neighbour Disputes application form (RICS website rics.org/drs).

The Neighbour Disputes Service is designed to resolve boundary and other neighbour disputes in order to reduce costs and where possible, avoid the need for trial. Where court proceedings are unavoidable, Neighbour Disputes Service is designed to assist the court in coming to a prompt and informed decision, so avoiding prolonged litigation and the potential for escalation to higher courts.

9.2 Mediation

Mediation as a form of ADR requires specific training. RICS provides opportunities for mediation training to members; further information is available from rics.org/drs. It may also be possible, depending on the issues, to use more informal forms of mediation.

If you are being instructed to act as a Mediator, it is essential that this role be established during initial client instructions, as this will have a direct bearing on how the case proceeds. The aim of mediation is to limit or eliminate matters in contention, to reduce conflict and tension and requires considerable tact and diplomacy to help bring opposing parties together to resolve a boundary problem without litigation. It is worth noting that the results of mediation do not become legally binding until the signing of a formal agreement between the parties. Courts will usually require the parties to attempt mediation in the hope that it will prevent a trial. However, in many cases parties return to court following an unsuccessful outcome from mediation.

The chartered surveyor acting as a mediator, either informally or formally, should be able to explain, objectively and impartially, the boundary situation to all parties in a dispute, usually in the absence of legal representatives. The chartered surveyor should be seen as an independent source of knowledge with the purchase to assist the parties to reach a mutually satisfactory resolution. Surveyors should refer to RICS guidance note *Mediation*, 1st edition (2014), a draft mediation agreement can be found at Appendix I.

Mediation can often involve highly emotional situations, and one needs to be prepared for this. Mediation that is unsuccessful often results in greater tension, protracted costs and longer timescales than the conventional adversarial approach.

It can be difficult to be accepted as a truly impartial mediator if the initial contact has come from one of the parties only. If one party only is to be responsible for your professional fees it is inevitable that the other party will see you as being partial and not a truly independent mediator. Therefore RICS advises chartered surveyors to seek joint appointment as a mediator by all parties to the action.

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- *Land Compensation Act* 1973
- *Law of Property Act* 1925
- *Planning Act* 2008
- *Prescription Act* 1832
- *Rights of Light Act* 1959
- *Town and Country Planning Act* 1990.

Useful online legal resources

Law Commission consultation and recommendations on rights to light at: www.lawcom.gov.uk/rights-to-light-making-the-law-more-transparent/

Civil Procedure Rules, together with associated practice directions, pre-action protocols and forms, available at: www.justice.gov.uk/civil/

Protocol for the Instruction of Experts to give Evidence in Civil Claims (issued by the Civil Justice Council (CJC), June 2005 (amended 2009), approved by the Master of the Rolls), available at: www.justice.gov.uk/courts/procedure-rules/civil/contents/form_section_images/practice_directions/pd35_pdf_eps/pd35_prot.pdf

RICS professional guidance

All RICS official guidance can be downloaded free of charge for RICS members from rics.org/guidance

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Guides for the client and other professional advisers are available to download from www.rics.org/uk/knowledge/more-services/guides-advice/rics-geomatics-client-guide-series/

Virtually real: terrestrial laser scanning – understanding an evolving survey technology.

Reassuringly accurate: controlling accuracy for better results.

Scale: avoid tripping up over step changes in scale.

Virtually level: transition from traditional benchmarks to heighting using GNSS.

Virtually right? – Networked GPS: A useful guide from RICS on aspects of cost effective networked GPS correction services

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Public guides – guides for Citizens Advice bodies

Rights of light, Party Walls, Subsidence, Boundaries, Compulsory Purchase Orders (CPOs)

All available to download from www.rics.org/uk/knowledge/consumer-guides/

Appendices A–J

Appendix A: Full measured survey

Client site

Measured survey information is required for the above-mentioned property and its surroundings for the purpose of a rights of light study which has been commissioned to assess the effect of development proposals on neighbouring properties.

Client site details	Client/lead consultant contact details
Client building no./name:	Client/lead consultant contact:
Street name:	
Town:	Direct line:
Postcode:	Mobile no.:
County:	Email address:

Purpose of survey

The measured survey information will form the basis of a 3D computer model, which will cover the details specified on the scoping plan (see Figure A1, page 25). The computer model will be used in the analysis of affected property apertures and form part of the assessment of any actionable injury to neighbouring properties. This information is generally captured early in the design process and is sensitive in nature. All information should therefore be treated with the strictest confidence throughout the assessment process and not be divulged to third parties.

Scope of survey

The scope of the survey is defined on the attached scoping plan (____.pdf /dwg/dgn) and is categorised according to the nature of the investigation. The scoping plan should be cross-referenced with an extract of the latest available Ordnance Survey digital map. The legend below gives an indication of the convention that can be used on scoping plans. This should be supplemented with additional written information in complex areas. Additionally, aerial imagery can be marked up with transparent shading to provide further clarity if required.

Description	Legend	Accuracy band	Included	✓	×
Study extents			✓		
Client's site		E	✓		
Massing and windows / apertures required [including set-backs]		E	✓		
Massing only [from survey]		F/G	✓		
Massing only [from national mapping]		H/I	✓		
Additional ground levels		E			
Spot heights		E	✓		
Trees modelled [generalised]		E/F	×		
Measured floor plans		D/E	×		

The accuracy band defined in the table refers to section 2 of the RICS professional guidance note *Measured surveys of land, buildings and utilities*, 3rd edition.

The scope of the survey should be developed by the appointing consultant and follow on from a detailed site inspection. Additional information, ideally in the form of photography, should be gathered to convey as clearly as possible any areas which are of particular interest to the study. Time spent at this stage can be invaluable. This will avoid costly re-visits when data is omitted from the survey as a consequence of a poor or misinterpreted scoping document.

Access and visibility

Responsibility for all access arrangements should be clearly defined by the instructing party.

All measured survey information should be collected, either from within the client's property demise or from publically accessible areas. Every effort should be made to capture remote information on neighbouring properties without physical access. This can generally be achieved by making observations from strategic roof vantage points or by utilising extendable tripods to allow for unhindered views of the adjacent properties. Data should only be collected from neighbouring properties where express permission has been arranged in advance of the survey.

Where access is not possible with survey instrumentation, positions and heights of apertures should be approximated if possible. This must be clearly annotated as being indicative either on the model or 2D drawings as appropriate.

The land surveyor is reminded of the safety implications of working at height and in public areas. All inspections and measured survey operations should be undertaken with reference to the current RICS guidance note *Surveying safely*, 1st edition.

Professional guidance

All measured survey work shall be carried out in accordance with RICS professional guidance note entitled *Measured surveys of land, buildings and utilities*, 3rd edition. Specific attention is drawn to the following sections which deal with horizontal and vertical coordinate systems.

Survey coordinate reference system		✓ x
An existing local grid for which there are existing survey control points		x
A site grid based on existing site features [e.g. a building grid]. Give details:		x
An arbitrary grid proposed by the surveyor and agreed with the client		x
The country's national grid. Give details:	O.S. National Grid [GNSS / OSTN02]	✓
Other [specify]		x

Vertical reference datum		✓ x
Surveyed heights [levels] quoted in metres above O.S. National Grid [GNSS / OSGM02]		✓
Surveyed heights [levels] quoted in metres above client-defined site datum		x
Surveyed heights [levels] quoted in metres above arbitrary datum [e.g. floor level]		x
Surveyed heights [levels] quoted in metres above* O.S. Benchmark [GNSS check only]		x

*Please note – Ordnance Survey Benchmarks are no longer maintained as a valid height reference.

3D computer model

The nature of survey is driven by many things including cost, size of the project as well as the specifics of the end deliverable which is generally a 3D computer model. In general, analytical software used in the assessment of rights of light uses a 3D computer model with all objects modelled as 3D solid geometry, although some do use a 3D wireframe with surfaces attached. The deliverables when capturing the data for the full measured rights of light survey are defined below as Deliverable 1 – Terrestrial Laser Scanning or Deliverable 2 – Conventional Land Survey. These deliverables can both be used to develop a 3D computer model suitable for assessing rights of light.

Deliverable 1 – Terrestrial laser scanning (3D survey)		✓ x
Plan of scan locations		
Scan registration report		
Web-enabled viewing of scan locations [intensity]		
Web-enabled viewing of scan locations [colour]		
Additional general digital photography		
Point cloud format [*.pts,*.ptx,*.pod,*.e57,*.pcg,*.rcs,*.rcp,*.other please specify]		
3D solid model of objects details defined within the 'scope of survey'		

2D CAD plans derived from the point cloud showing the following:		✓ x
	Building footprints [heights at base]	
	Boundary walls [heights at base and top]	
	Other structures [heights at base and top]	
	Additional ground levels [specify location / interval]	
	Hedges [heights at base and top]	
	Trees [heights at base and top]	
	Other [specify]	
CAD output 3D/2D *.dwg / *.dgn *.pdf		
CAD units: metres or millimetres – Coordinate system: either full grid or truncated [circle applicable]		

Deliverable 2 – Conventional land survey (2D surveys)		✓ x
Coordinate schedule of survey stations / witness sketches		
Traverse report		
General digital photography for site and surrounding buildings within scope.		
2D CAD plans derived from total station measurements showing the following:		✓ x
	Building footprints [heights at base]	
	Boundary walls [heights at base and top]	
	Other structures [heights at base and top]	
	Additional ground levels [specify location / interval]	
	Hedges [heights at base and top]	
	Trees inc. trunk dia, crown circum / height / species	
	Other [specify]	
2D CAD roof plans derived from total station measurements showing the following:		✓ x
	All roof areas detail as defined within scope	
	Ridges	
	Eaves	
	Plant rooms / screens	
	Changes in level	
	Other [specify]	
2D CAD elevations derived from total station measurements showing the following:		✓ x
	All elevations detail as defined within scope	
	Windows [structural opening]	
	Doors [structural opening]	
	Other apertures [structural opening]	
	Frames	
	Mullions	
	Glazing bars	
	Bricked-up / blocked or boarded apertures	
	Ridges	
	Eaves	
	Plant rooms / screens	
	Roof profiles	
	Chimney stacks	
	Gables	

	Parapets	
	Balconies	
	Walkways	
	Solid balustrades (opaque or glazed)	
	Projecting canopies	
	<i>Brise soleils</i>	
	Cornices	
	External staircases	
	Other [specify]	

General

Particular attention should be paid to apertures at basement/lower ground floor level as these are often the ones that suffer most injury and are sensitive in the assessment. When data is being captured by conventional survey techniques, sections will need to be included to show depths of overhangs with the position of the head of the aperture below. Additionally, where a building changes in profile further sections must be provided unless it is adequately described on the roof plan drawings.

Particular attention should be paid to the existence of pavement light-wells and also windows or apertures obscured behind walls or fences that can be easily missed. The surveyor's best efforts should be made to record their existence. If it is not possible to physically measure these apertures using conventional or laser scanning equipment, then annotated photography or suitable oblique aerial views should be used to inform those making the rights of light assessment of their existence.



Figure A1: An example scoping plan
© Crown copyright (2016) OS (licence number 100027820)

Appendix B: Survey detail accuracy banding table

Taken from the RICS guidance note *Measured surveys of land, buildings and utilities*, 3rd edition (2014).

Customised for the purposes of rights of light survey (bands E, F, G).

Band	2 sigma [X,Y]	Accuracy hard detail [Z]	Example survey types/ uses	Approx. legacy plot scale output required to achieve accuracy band	Min. size of feature shown true to scale (not symbolised)
C	+/- 10mm	+/- 5mm	Engineering surveying and setting out, high-accuracy measured building surveying, heritage recording	1:20	10mm
D	+/- 20mm	+/- 10mm	Engineering surveying and setting out, measured building surveys and floorplans, high accuracy topographic surveys	1:50	20mm
E	+/- 50mm	+/- 10mm	Right of light scanned surveys, measured building surveys, topographic surveys, net area surveys, valuation surveys, area registration	1:100	50mm
F	+/- 100mm	+/- 50 mm	Low-accuracy measured building surveys, topographic surveys, high accuracy utility tracing, tree modelling	1:200	100mm
G	+/- 200mm	+/- 50mm	Massing studies from survey, topographic surveys, low accuracy measured building surveys	1:500	200mm
H	+/- 500mm	+/- 125mm	Low-accuracy topographic surveys, massing studies based on national urban area mapping, tree surveys	1:1000	500mm

Appendix C: Insurance checklist

This example checklist suggests what could be used by surveyors advising clients of RoL insurance issues, in order to ensure all of the necessary information is put together.

- 1 Fully developed value of the site.
- 2 Limit of Indemnity required.
- 3 Copy of Rights of Light report.
- 4 Details of the development gain attributable to the cut back.
- 5 Confirmation that the revised scheme will cause no actionable injuries.
- 6 Copy of the planning permission if post planning.
- 7 Copies of any material letters of objection received during the planning process.
- 8 Do any rights of light exist other than by prescription.
- 9 Copy of the register titles to the dominant and servient properties.
- 10 Planning history if available.
- 11 Details of approaches made (if any) to the surrounding owners.
- 12 If it is the intention to approach certain parties to negotiate releases, please provide details.
- 13 Details of any past disputes with surrounding owners.
- 14 Are any PWAs, oversail or scaffolding agreements required with surrounding owners.
- 15 Please provide details of any other planned developments in the area which could potentially have a rights of light impact on properties affected by the proposed development.

Appendix D: Suggested checklist of documents relevant to a right of light dispute

For the client's property

- 1 Register entry and title plan. Title no.
Supplied by client ☐ or to be obtained by surveyor ☐
- 2 Title deeds (conveyances, transfers, deeds of grant, etc.) (To be supplied by client.)
- 3 Photographs from the property records or family photo album to date windows.
(To be supplied by client.)
- 4 Witness statements to date new openings.
(To be supplied by client's solicitor.)
- 5 Pre-purchase report or similar prepared by a chartered surveyor.

For the neighbour's property

- 6 Register entry and title plan. Title no.
Supplied by client ☐ or to be obtained by surveyor ☐
- 7 Title deeds referred to in register entry (available from Land Registry as official copies).
Supplied by client ☐ or to be obtained by surveyor ☐

Relevant to both properties/either property

- 8 Planning drawings (from local council planning department).
Supplied by client ☐ or to be obtained by surveyor ☐
- 9 Vertical aerial photographs.
Supplied by client ☐ or to be obtained by surveyor ☐
- 10 Oblique aerial photographs.
Supplied by client ☐ or to be obtained by surveyor ☐
- 11 Old survey plans from historic archive sources (research of incorporated rights).
Supplied by client ☐ or to be obtained by surveyor ☐
- 12 Have there ever been any light obstruction notices?
Supplied by client ☐ or to be obtained by surveyor ☐
- 13 Search of local land charges register.

Not all of these items will necessarily be relevant in every case.

Appendix E: Rights of light and trees

**Appendix E is for debate purposes only and does not share guidance status.
This section is included purely for information and to facilitate wider academic debate.**

Until recently there was no published authority on the consideration of trees in rights of light cases, but there was anecdotal evidence that both expert surveyors and lawyers have been asked to consider the issue and to prepare evidence that might ultimately reach a court for decision.

The law on semi-evergreen and evergreen trees planted in rows of two or more, creating a continuous barrier to light, is covered by Part 8 of the *Anti-Social Behaviour Act 2003*. These are easier to deal with in terms of assessing the extent to which they reduce light to a room, whereas deciduous trees require rather more analysis.

While there has not yet been a court case dealing specifically with trees as an obstruction under section 4 of the *Prescription Act 1832*, there is a general view that a right to light may be infringed where trees block light and that it is reasonable to expect that, if light is substantially reduced, the owner may be entitled to damages or an injunction or both, requiring the tree owner to reduce the shading and restrict further growth.

However, the right may be forfeited if the tree blocks the light for more than 12 months without an objection being raised and where the dominant owner can be said to have acquiesced in the obstruction.

From another perspective, that of the assessment of impact of a development where trees might contribute to existing obstructions, there is a commonly held view that if the trees were evergreen, and even if they were on the dominant owner's land, then they might be taken into account in assessing the amount of light to a room both before and after the development on the servient owner's land.

There is some difference of opinion when referring to deciduous trees in this situation. It is suggested that this arises more out of the difficulty of assessment than any strict interpretation of the law. Defoe (2014) has set out some of the arguments and suggests methodologies for the assessment of the effect that deciduous trees might have on the natural light to a room when considered as an existing obstruction prior to development.

An important aspect when considering the obstruction presented by a tree or trees is that only that part of the tree or trees that consistently obstruct the light for the whole of the preceding year can be considered. In other words, since the leaves are not present for the whole of the year these must be ignored. Equally, the tree will have grown during the preceding year and thus only those parts that existed before the commencement of the preceding year should be considered.

Modern survey techniques, such as laser scanning to create point clouds, are more than capable of producing a 3D model of the obstructing trees.

The difficulty will be in making the adjustments necessary to account for leaves and for tree growth but this is not insurmountable. For example, the BRE Report (BR 209) *Site layout planning for daylight and sunlight – a guide to good practice* appendix on trees and hedges could provide a useful tool in using transparency factors to determine the reduction in obstruction between summer and winter.



Figure E1: A tree in mid-summer and mid-winter

Since no two trees are the same it will be necessary to model the tree in 3D and then to reduce the crown size by applying the transparency factor. For example, where the stated transparency factor is 55 per cent in winter months, then the value of the obstruction will be 45 per cent of the crown size when viewed from the side. The calculation of daylight within the room will be modified to take account of that proportion of the reduced tree that is visible from any point.

Where there is more than one tree then the modelling will become more complex, but not insurmountable given current technology. However, any methodology will still have to be tested in court.

Reference

Defoe P. S. (2014) 'The Consideration of Trees in Rights of Light Cases', *Structural Survey*, Vol. 32 No. 3 pp.219-237.

Appendix F: Scope of service – developer

Stage 1: pre-purchase advice

Complete site visit attending with client as necessary.

Request relevant legal documents and consider all title issues/impact of pre-existing deeds or agreements that may affect the rights of light position (liaising with solicitors/counsel where necessary).

Desktop review of development scheme design and comment on areas of risk/opportunity in respect of the massing of the proposal in relation to rights of light.

Stage 2: preliminary inspection and report

Complete site visit attending with client as necessary. (If not completed at stage 1.)

Request relevant legal documents and consider all title issues/impact of pre-existing deeds or agreements that may affect the rights of light position (liaising with solicitors/counsel where necessary). (If not completed at stage 1.)

Desktop review of development scheme design and comment on areas of risk/opportunity in respect of the massing of the proposal in relation to rights of light.

Give indicative advice as to a rights of light injury under the proposals.

Advise as to likelihood of a potential compensation claim, potential to achieve an injunction, risk and strategies for managing rights of light issues.

Stage 3: rights of light computer analysis of proposal

3.1 Produce 3D model of architect's proposal and incorporate into test environment.

3.2 Produce Rights of Light contour plots for all affected rooms.

3.3 Produce site plans and window maps to fully understand the extent of the rights of light issues.

3.4 Provide advice on 'book value' compensation figures in respect of area of light loss to the affected property and to advice on any enhanced compensation values or profit share.

Stage 4:

4.1 To negotiate and agree Heads of terms for a Deed of Release.

Scope of service – objector

Stage 1: preliminary inspection and report

Complete site visit attending with client as necessary.

Request relevant legal documents and consider all title issues/impact of pre-existing deeds or agreements that may affect the rights of light position (liaising with solicitors/counsel where necessary).

Desktop review of development scheme design and comment on areas of risk/opportunity in respect of the massing of the proposal in relation to rights of light.

Give indicative advice as to a rights of light injury under the proposals.

Advise as to likelihood of a potential compensation claim, potential to achieve an injunction, risk and strategies for managing rights of light issues.

Stage 2: rights of light computer analysis of proposal

2.1 Produce 3D model of architect's proposal and incorporate into test environment.

2.2 Produce rights of light contour plots for all affected rooms.

2.3 Produce site plans and window maps to fully understand the extent of the rights of light issues.

2.4 Provide advice on 'book value' compensation figures in respect of area of light loss to the affected property and to advice on any enhanced compensation values or profit share.

Stage 3:

3.1 To negotiate and agree Heads of terms for a Deed of Release.

Appendix G: Rights of light form of release

[Party X]

and

[Party Y]

In consideration of the sum of £[Fee] plus costs the receipt of which is hereby acknowledged we, [Party X], consent to the erection of a building at the [address] by [Party Y] substantially in accordance with the attached drawings prepared by [Party Z] and undertake for ourselves only, but do not on behalf of anyone claiming interest through or under us, to raise no objection to such building on account of any interference with light without prejudice to our continuing rights to light so that the consent hereby given shall not operate to extinguish such rights further than expressly permitted. This release shall be duly registered under the *Land Registration Act 1925* against the respective Titles of [Party X] and [Party Y].

For and on behalf of:

Signed:

Date:

Signed:

Date:

Appendix H: Law Commission Consultation on Rights of Light [December 2014]

Rights to light are private property rights that benefit both residential and commercial buildings. They are not part of planning law.

Not all buildings have rights to light. They can be given by one neighbour to another. Or they can be acquired informally, over time (by 'prescription'). This can happen if light has come through a window uninterrupted for 20 years.

Issues can arise when a landowner wants to put up a building that may interfere with a neighbour's right to light. Under the current law there is no time limit for a neighbour to claim that their right to light would be infringed. Disputes can drag on for years, even until after a development has been built. In these circumstances, the courts can order a developer to halt construction, demolish the building or pay the landowner damages.

The Commission is recommending:

- a statutory notice procedure that would allow landowners to require their neighbours to tell them, within a specified time, if they intend to seek an injunction to protect their right to light, or to lose the potential for that remedy to be granted
- a statutory test to clarify when courts may order damages to be paid rather than halting development or ordering demolition
- an updated version of the procedure that allows landowners to prevent their neighbours from acquiring rights to light by prescription
- amendment of the law governing where an unused right to light is treated as abandoned, and
- a power for the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

Following concerns expressed by consultees, the Law Commission is not recommending the abolition of the informal acquisition of rights to light by prescription. The commission's 2011 recommendations for reform of the general law of prescription would simplify and clarify this area, making disputes less protracted and expensive for all parties.

Professor Elizabeth Cooke, the Law Commissioner leading the project, says:

'Rights to light are important, particularly for homeowners. The law must continue to protect them. But it is essential that the law provides an appropriate balance between the protection of light and the development of the modern, high-quality residential, office and commercial premises we need in our town and city centres.

Our reforms will clarify the legal relationships between the parties, bring transparency and certainty, and reduce the scope for disputes. Where disputes do happen, it will be easier and quicker for landowners, developers and the courts to resolve them.

This work builds on and, in some respects, depends on, the recommendations we made in 2011 for reforming the general law of easements. We look forward to a response from government to both these important reports.'

The report, *Rights to light*, is available on the Law Commission's website (lawcom.gov.uk).

Appendix I: RICS Model Mediation Settlement Agreement

Date

.....

Parties

.....

('Party A')

.....

('Party B')

.....

('Party C') [Add more as necessary]

(Jointly 'the Parties')

The Parties having agreed to settle 'the Dispute' which:

- is being litigated/arbitrated [court/arbitration reference] ('the Action')¹
- has been the subject of an RICS mediation procedure today ('the Mediation') on the following terms and conditions:

Terms

It is agreed as follows:

1 [.....] will deliver..... to at by not later than 4 o'clock on [.....]²

2 [.....] will pay £..... to by not later than 4 o'clock on (by direct bank transfer to bank sort code account number [.....]³

OR

[.....] will pay £ to per week/calendar month/ in (.....) tranches by cheque/cash/bank transfer commencing on or beforeand thereafter until finishing on or before [.....]

3 [In default of such payment (all outstanding sums shall fall due and payable forthwith/or]shall pay interest

on the balance outstanding at the rate of % above base rate for the time being to payment]⁴

4 [.....]⁵

5 The Action will be stayed and the parties will consent to an order in the terms of the attached Tomlin Order precedent [see attachment].

OR

The Action will be dismissed with no order as to costs.

6 This Agreement is in full and final settlement of any causes of action whatsoever which the Parties [and any subsidiaries of the Parties] have against each other.

7 This Agreement is the entire agreement between the Parties and supersedes all previous agreements between the parties

[in respect of matters the subject of the Mediation].⁶

8 If any dispute arises out of this Agreement, the Parties will attempt to settle it by mediation⁷ before resorting to any other means of dispute resolution. To institute any such Mediation a party must give notice to the mediator of the Mediation.

Insofar as possible the terms of the Mediation Agreement will apply to any such further mediation. If no legally binding settlement of this dispute is reached within [28] days from the date of the notice to the Mediator, either party may [institute court proceedings/refer the dispute to arbitration under the rules of ...⁸].

9 The Parties will keep confidential to themselves, their legal advisers [and by agreement] and not use for any collateral or ulterior purpose the terms of this Agreement [except insofar as is necessary to implement and enforce any of its terms].

10 This Agreement shall be governed by, construed and take effect in accordance with [English] law. The courts of [England and Wales] shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this agreement.⁹

Signed

.....
for and on behalf of¹⁰

for and on behalf of¹¹

Note: This Model Agreement and the attached precedent of a Tomlin (stay) Order is for guidance only. Any agreement based on it will need to be adapted to the particular circumstances and legal requirements of the settlement to which it relates. Wherever possible, any such agreement should be drafted/approved by each party's lawyer. Although the RICS Mediator is likely to be involved in helping the parties to draft acceptable terms, they are not responsible for the drafting of the agreement and do not need to be a party to it.

Attachment to Model Settlement Agreement

Tomlin (stay) Order Precedent

[Action heading]

Upon hearing from the solicitors to the parties in correspondence.....

And by consent

IT IS ORDERED that all further proceedings in this case be stayed upon the terms set out in the Settlement Agreement between Parties dated, an original of which is held by each of the Parties' solicitors except for the purpose of enforcing the terms of that Agreement as set out below.

AND IT IS FURTHER ORDERED that either Party/any of the Parties may apply to the Court to enforce the terms of the said Agreement [or to claim for breach of it] without the need to commence new proceedings.

[AND IT IS FURTHER ORDERED that [each Party bear its own costs].]

WE CONSENT to an order in these terms

.....
Claimant's Solicitors

.....
Defendant's Solicitors

Notes:

1 Omit this wording and paragraph 5 if there are no court proceedings.

2 Omit as necessary but otherwise be as specific as possible in respect of any act positively required to be performed, for example, how, by when, etc. or alternatively to be refrained from.

3 Or any other tranche of payments or currency agreed.

4 Optional. Many mediators dislike putting in any default provision.

5 Any additional positive or negative performance obligations.

6 Only necessary if there have been previous agreements.

7 Alternatively, negotiation at Chief Executive level, followed by mediation if negotiations do not result in settlement within a specified time.

8 Reference to the appropriate arbitration body.

9 Usually not necessary where parties are located in same country and subject matter of agreement relates to one country. If the Parties elect for their agreement to be governed by the laws of another jurisdiction they should take legal advice on the implications for enforcement.

10 Not necessary where the party signing is an individual.

11 Not necessary where the party signing is an individual.

Appendix J: Rights of Light Obstruction Notices (LONs)

It is possible to prevent rights to light being acquired by creating a continuous obstruction to the light for 12 months, starting before 19 years enjoyment of the light has accumulated. However there is obviously considerable risk to doing this.

Alternatively, Light Obstruction Notices (LON) can be registered under the *Rights of Light Act 1959*, even where no obstruction has actually been created yet. If the notice is not challenged within a year the notional infringement of the enjoyment of the light can be considered to have been accepted, the rights defeated, and the 20-year clock 'reset'.

Notice of LON's must be given to affected parties in a way determined by the Lands Tribunal and LONs must be registered with the local authority on the Local Land Charges Register. Applications for registration should include:

- an application form
- a plan showing the location of the property enjoying the light and the proposed obstruction; and
- a lands tribunal certificate confirming that appropriate notices have been given to affected parties.

If the LON remains valid for a year, then any accruing rights are defeated.

LONs can be challenged if an affected party can demonstrate that they have had enjoyment of the light for 20 years. They can either be challenged or negotiated directly with the applicant, or challenged through the courts, and this may result in cancelling or altering the notice.

LONs are a relatively inexpensive way of defeating rights, and can be used even if it is only suspected that there may be rights, simply to identify potential claims.

If the applicant can demonstrate to the Lands Tribunal that the application is urgent, an expedited process may be adopted, and a temporary certificate given, which is followed later by the definitive certificate.

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) (LANDS CHAMBER) RULES 2010 S.I. 2010 No. 2600 (L. 15)

PART 7

Applications under section 2 of the *Rights of Light Act 1959*

Interpretation

40.

In this Part 'section 2' means section 2 of the *Rights of Light Act 1959*.

Method of making application

41.

—(1) An application for a certificate of the Tribunal under section 2 is made by sending or delivering to the Tribunal an application which must be signed and dated and must state—

(a) the name and address of the applicant;

(b) the name and address of the applicant's representative (if any);

(c) whether the applicant is—

(i) the owner;

(ii) the tenant for a term of years certain and, if so, when the term will expire; or

(iii) the mortgagee in possession of the servient land;

(d) a description of the servient land;

(e) the name of the local authority that keeps the relevant register of local land charges;

(f) the names and addresses of all persons known by the applicant, after conducting all reasonable enquiries, to be occupying the dominant building or to have a proprietary interest in it; and

(g) if the application is for a temporary certificate, the grounds upon which it is claimed that the case is of exceptional urgency.

(2) The applicant must provide with an application under paragraph (1)—

(a) three copies of the application for the registration of a light obstruction notice under section 2 that the applicant proposes to make to the local authority in whose area the dominant building is situated and any attached plans; and

(b) the fee payable to the Tribunal.

Notices to be given

42.

—(1) Upon receipt of an application the Tribunal must send or deliver written directions to the applicant specifying—

(a) what notices are to be given to persons who appear to the Tribunal to be likely to be affected by the registration in the register of local land charges of a notice under section 2;

(b) the time by which such notices are to be given; and

(c) whether such notices should be given by advertisement or otherwise.

(2) The notices that the Tribunal directs shall be given under this rule must be given by the applicant who must—

(a) as soon as reasonably practicable notify the Tribunal in writing once this has been done; and

(b) set out full particulars of the steps taken.

Issue of temporary certificate

43.

—(1) If the Tribunal is satisfied that the case is one of exceptional urgency that requires the immediate registration of a temporary notice in the register of local land charges, the Tribunal shall issue a temporary certificate.

(2) A temporary certificate shall last no longer than 4 months.

Issue of definitive certificate of adequate notice

44.

The Tribunal shall issue a definitive certificate of adequate notice when it is satisfied that any notices which it has directed must be given under rule 42 (notices to be given) have been given.



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United Kingdom RICS HQ

Parliament Square, London
SW1P 3AD United Kingdom

t +44 (0)24 7686 8555
f +44 (0)20 7334 3811
contactrics@rics.org

Media enquiries

pressoffice@rics.org

Ireland

38 Merrion Square, Dublin 2,
Ireland

t +353 1 644 5500
f +353 1 661 1797
ricsireland@rics.org

Europe

[excluding UK and Ireland]

Rue Ducale 67,
1000 Brussels,
Belgium

t +32 2 733 10 19
f +32 2 742 97 48
ricseurope@rics.org

Middle East

Office G14, Block 3,
Knowledge Village,
Dubai, United Arab Emirates

t +971 4 446 2808
f +971 4 427 2498
ricsmenea@rics.org

Africa

PO Box 3400,
Witkoppen 2068,
South Africa

t +27 11 467 2857
f +27 86 514 0655
ricsafrica@rics.org

Americas

One Grand Central Place,
60 East 42nd Street, Suite 542,
New York 10165 – 2811, USA

t +1 212 847 7400
f +1 212 847 7401
ricsamericas@rics.org

South America

Rua Maranhão, 584 – cj 104,
São Paulo – SP, Brasil

t +55 11 2925 0068
ricsbrasil@rics.org

Oceania

Suite 1, Level 9,
1 Castlereagh Street,
Sydney NSW 2000, Australia

t +61 2 9216 2333
f +61 2 9232 5591
info@rics.org

North Asia

3707 Hopewell Centre,
183 Queen's Road East
Wanchai, Hong Kong

t +852 2537 7117
f +852 2537 2756
ricsasia@rics.org

ASEAN

10 Anson Road,
#06-22 International Plaza,
Singapore 079903

t +65 6635 4242
f +65 6635 4244
ricssingapore@rics.org

Japan

Level 14 Hibiya Central Building,
1-2-9 Nishi Shimbashi Minato-Ku,
Tokyo 105-0003, Japan

t +81 3 5532 8813
f +81 3 5532 8814
ricsjapan@rics.org

South Asia

48 & 49 Centrum Plaza,
Sector Road, Sector 53,
Gurgaon – 122002, India

t +91 124 459 5400
f +91 124 459 5402
ricsindia@rics.org