



# RIGHTS OF LIGHT AND HOW THEY COULD AFFECT YOUR DEVELOPMENT PLANS

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**M**any property investors will be familiar with the term “rights of light” but far fewer will be able to honestly say that they have given the matter any thought when assessing the development viability for a new build or refurbishment scheme.

The existence of rights to light can influence the massing of the development that a site can accommodate, or have an impact on the layout and development of buildings. You should bear in mind that if you are considering acquiring a site with planning permission, it is possible to have satisfied the local planning authority that there are no significant concerns in terms of daylight and sunlight amenity, but still have a potential right to light issue that could prevent the development proceeding.

Rights to light can impact all types of developments, so whether you are considering an extension, adding additional storeys or constructing a new building, you may have specific issues that must be addressed. Generally, where works are to undertaken in close proximity to neighbouring properties, then the effects of the scheme should be considered before site works commence.

Increasingly, neighbouring owners are raising the issue of the development’s effect on their light as a concern at the planning stage or claiming a right to the light. Indeed, you may have noticed the phrase becoming more regularly used in planning objection letters.

## SO, WHAT ARE RIGHTS TO LIGHT?

A right to light is a right to receive uninterrupted light, passing across neighbouring land, into a window. If an owner has a right to light and the path of light is obstructed, then that is likely to be actionable through the Courts. As a consequence, you may have to alter your plans so as to accommodate the neighbours right to light.

The right to light may be expressly included on the title deeds to a property or may have been obtained via the Prescription Act in that the light has been enjoyed for an uninterrupted 20-year period.

Bear in mind that the light being referred to here is daylight provided by the sky. Therefore sunlight, artificial lighting, reflected light internally or externally are not considered in a right to light analysis. It is generally accepted that an adequate amount

of light is the equivalent of the amount of light available one foot away from a candle. If the amount of adequate light in the room is reduced below 50-55% of the room area because of the development, then the loss of light is considered actionable in Court.

The law applies not only to residential properties, but also any commercial properties where there is a reasonable expectation of daylight. This includes schools, hospitals, hotels and the like. Given the requirement that there needs to be a reasonable expectation of daylight, it is considered that windows to bathrooms, stores, communal areas and garages need not be considered. A right to light can only be held in respect of light through a window and therefore construction on a neighbouring property which blocks light to a garden or car park cannot, by definition, obstruct a right to light.

Many people consider that older properties are more likely to have rights to light given that these rights can be obtained following more than 20 years’ uninterrupted enjoyment. This is often true, however bear in mind that windows may have been moved over time, or temporarily covered over or a light obstruction notice may have been registered with the local authority. All of these things may defeat a claim that a right to light exists.

## WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

Most rights to light matters are resolved via commercial negotiation between the parties. This normally means that a payment is made by the developer in return for the neighbour to surrender their rights to light. Clearly not all cases are capable of successful negotiation and therefore some end up in front of the Courts. The Court has the ability to grant damages by way of a financial penalty, and in more extreme cases, can order the removal of any part of the building which is interfering with the neighbour’s rights.

If you are concerned that a project you are considering could have right to light issues, then I urge you to obtain some specialist advice at the earliest opportunity to hopefully avoid the costs of redesigning your scheme or having to make costly compensation payments.

**As always I am happy to assist readers of YPN and can be contacted on 01843 583000 or [graham@grahamkinnear.com](mailto:graham@grahamkinnear.com)**

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