

Briefing Note

Rights to Light



HKRUK II (CHC) Ltd v Heaney [2010] EWHC 2245 (Ch)

The recent case of *HKRUK II (CHC) Ltd v Heaney* [2010] EWHC 2245 (Ch) has placed in doubt the long accepted view that it is difficult to obtain an injunction requiring the removal of works built in breach of another party's property rights, in this case rights to light.

The ordinary rule in respect of rights to light is that a landowner who is being deprived of light by the wrongful act of another is entitled to apply to Court for an injunction against that person. However, the Courts often consider that damages are a more appropriate remedy.

Some developers have therefore assumed that they can build in breach of neighbouring rights and effectively buy them out later through a claim damages or by agreement following completion. This case challenges this assumption and will be a major consideration for all developers before they proceed in a manner which may infringe another's rights to light.

The basic rule

In English law a right to light exists as a form of easement. It allows that after a period of twenty years an owner of a building has the right to maintain the levels of light. This right is acquired under the Prescription Act 1932. However, it is also possible to obtain a right to light by express agreement.

Someone infringes a right to light by causing a reduction in the level of that light, which can be measured by specialist equipment. If there is an actionable loss an application can be made to the Court for an injunction. The Court then has discretion and can either grant an injunction or award damages to compensate for the loss.

Recent guidance

In this case C owned a building which overlooked the D's office. C proposed to redevelop his building by adding two floors. Before commencing the works he sought advice from a rights to light surveyor who advised that this would cause an actionable loss to D. He suggested that C should negotiate with D and offer compensation and/or seek an agreement that he would not bring a claim. C corresponded with D but they did not reach an agreement. D threatened to bring an injunction if C proceeded with the works.

The redevelopment works were completed and C applied to the court for a declaration that it did not have any liability to D. D counterclaimed for an injunction and damages. It was agreed between the parties that the easement of the right to light existed and had been breached by C. It was also agreed that D was entitled to a remedy but it was left to the Court to decide on the remedy.

The judgment

The Court chose to award an injunction ordering C to remove the works that infringed on D's rights to light. The exact terms of the injunction are still to be decided. The Court considered the leading cases of *Shelfer v City of London Electric Lighting Company* [1985] 1 Ch 287 and *Regan v Paul Properties Ltd and Others* [2006] EWCA Civ 1319 in reaching its decision.

In doing so the Court emphasised that judicial process could not be used by wrongdoers to act as a method of buying out inconvenient neighbouring rights by means of a damages claim and that instead wrongdoers could expect to be ordered to make good their wrongful act, even if that meant removing or destroying completed works.

The Court decided that there were situations where damages would be more appropriate than awarding an injunction and there were a number of factors which should be taken into account in deciding whether damages or injunctive relief was more appropriate. These factors included the extent of the infringement, whether a value could be placed on the loss, if the injured party would be satisfied with a remedy of damages, the impact on the injured party, the conduct of the parties and any other relevant circumstances.

The Judgment in this case serves as a warning to developers not to proceed with a development without first resolving any dispute over rights to light with neighbouring properties.

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This note does not constitute legal advice but is intended as general guidance only. It is based on the law in force on 13 October 2010.

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