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Rights to Light - light at the end of the tunnel?

Kathryn Graham, commercial underwriter in the commercial real estate group at First Title, discusses the potential impact of the Law Commission's recent report on rights to light.

The story so far

The realm of rights to light law has always been an active topic for discussion, but with the landmark 2014 Supreme Court decision in Coventry v Lawrence[1] and the long-awaited Law Commission report[2] published at the end of 2014, the issue is very much at the forefront of commercial and residential development debates.

Rights to light budgeting invariably causes consternation when it is included in any developers' development appraisal. This is largely because the negotiation process and the settlement of rights of light disputes, in the course of a time sensitive development, are routinely hampered by delay, unpredictability and expense.

Mindful of the haphazard nature of the current law and ever evolving case law decisions, the Law Commission sought to balance the competing interests of the landowner and the developer in its Right to Light report. The Commission acknowledges that "Law reform cannot bring to an end the potential for disputes about rights to light, but it can be designed for clarity and efficiency, and in a way that facilitates settlement".

Reform proposals

Key recommendations from the report include:

- a statutory notice procedure which 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
- a power for the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light

Notably, the first recommendation tries to alleviate time sensitivities by suggesting a statutory notice period – a Notice of Proposed Obstruction. As mentioned, a developer's detailed cost planning matrix is often left open to the potential uncertainties surrounding injured parties and their rights for an injunction. The decision in Heaney exemplifies such concerns, where effectively landowners with a right to light could apparently ignore efforts to discuss the impact of a proposed development and to negotiate, yet still obtain an injunction.

Pressures from the construction programme, pre-lets and funding structures could be eased with the introduction of a cut-off point for claimants seeking injunctions. The proposed procedure will put a neighbour on notice, requiring the neighbouring landowner to claim an injunction within a timeframe or lose the right to claim an injunction. This will lead to greater transparency for the development, with negotiation being encouraged from the outset and a balance struck between the respective parties.

What happens next?

Although the Law Commission states in its report that it anticipates an interim response from the Department for Communities and Local Government by June 2015, the forthcoming general election is likely to derail any prospect of a rights of light bill being read before Parliament. It is difficult to predict if and when it may become law. If it does, in its current format, it advocates an "approach" method, which might be seen as a double-edged sword, either provoking litigation or a damages discussion, or removing the injunction threat altogether.

[1][2014] UKSC 13
[2]Rights to Light (Law Com No 356)

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