



Neighbourly Matters



Don't make light of it

By Robert White

As the built environment becomes more densely populated, with developers maximising site value by building up to their boundaries, it is little wonder that the neighbourly effects including environmental, planning and legal issues, become increasingly important.

The recent case of *Jones v Ruth* where the Judge awarded damages for nuisance, harassment, personal injury and repairs is a salutary reminder on how important it is to "get on with your neighbours".

Developers and neighbours should be aware of the key neighbourly issues both before and during any development.

Sunlight and Daylight

Sunlight, daylight and rights to light are often confused.

A right to light is a legal right for an aperture to receive light over a neighbour's land, whereas, sunlight and daylight can be a condition in planning permission and many Planning Authorities now require sunlight, daylight and overshadowing assessments to be submitted as part of a planning application.

Rights to Light

Windows to a building have a right to receive an adequate amount of light. If a new development reduces the light to a neighbouring building to an inadequate level, this will cause a nuisance and the aggrieved neighbour is able to claim an injunction and/or damages.

Advice to the developer is essential on the extent of light lost and amount of

compensation that might be paid or the risk of an injunction, either stopping development or requiring it to be cut back.

Equally a neighbour requires their rights to be properly protected.

The case of *HKRUK II (CHC) Ltd v Heaney* has recently been heard in the Court of Appeal. Even though the claimant had rejected several offers of compensation and allowed the development to complete, it was successful in obtaining an injunction requiring two completed floors to be cut back.

This news will be most unwelcome to developers who are now faced with increased uncertainty and potential extra costs.

It is therefore more important for rights of light issues to be dealt with effectively before starting building works. It can no longer be assumed that a compensation payment will be sufficient or that the Courts will order damages in lieu of an injunction.

However, perhaps with *CIP Property (AIPT) Ltd v Transport for London and Others (2012)*, the balance of case law is now beginning to shift back in favour of Developers. In this case, as TfL would not undertake the works and there was no immediate threat from the likely

developer, the Judge refused to grant CIP an injunction.

To add a further level of complexity, the Custom of London applies to buildings lying within the boundary of the City of London.

The Custom allows new developments to build on "ancient foundations" to any height without regard to the effect on the neighbouring properties of the loss of light. However a neighbour can still claim for a right to light under the Prescription Act 1832.

Developers should also be aware of the benefits of Section 237 of the Town and Country Planning Act 1990, which with careful and astute planning with the Local Authority, means it may be possible to override any rights to light affecting the land and essentially "de risk" the development, allowing it to be built without fear of injunction.

The Law Commission will soon begin an investigation into the current law on rights of light and a consultation paper is to be published in early 2013. It will investigate if the law in which rights of light are acquired and enforced provides an appropriate balance between the interests of neighbours and the development of land.





Party Walls

The Party Wall Etc Act 1996 applies to England and Wales from 1 July 1997. Prior to this party wall matters just applied to Inner London under the London Building Acts.

The Act is designed to assist developers to develop by giving them rights. However, before implementing these rights, the developer must communicate their intentions formally. This formal communication is achieved by a system of Notices served on the neighbours holding legal interests in the surrounding properties. The neighbours may appoint surveyors to assess the likely effect of the works and to record matters in a Party Wall Award.

Subterranean Development Bill

In view of ongoing concern relating to basement excavations, the Government is looking to introduce the new Subterranean Development Bill. If enacted, it will expand the provisions of the Party Wall Act and place additional requirements on the developer which should provide adjoining neighbours with a greater degree of protection.

Access Agreements

A common misconception is that the Party Wall Act provides access onto and over the neighbour's land to facilitate the development works.

In fact the Party Wall Act only provides access for the party wall works and if a developer requires greater access, for example crane oversailing, then they must ask. A neighbour is not obliged to grant such access and without an agreement a trespass would occur.

Other Neighbourly Matters

- + Schedules of condition
- + Access to Neighbouring Land Act 1992
- + Construction noise, dust and vibration
- + Rights of Way and Escape
- + Boundary Disputes



strategically manage these to achieve the best commercial and practical outcome.

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Robert is a member of the Pyramus & Thisbe Club (the organisation for Party Wall Surveyors) and presented for the RICS at their Party Wall Roadshow and at the RIBA. He is also listed in Sweet & Maxwell and RICS Expert Witness Directories.

He recently provided expert evidence for the court on neighbourly matters relating to a dispute in Mayfair. He is currently advising and protecting a neighbour relating to the construction of a hotel in Leicester Square and two landmark London attractions.

Devonshire Partnership

Devonshire Partnership are a team of multi-skilled commercial Chartered Surveyors providing personal, independent and experienced professional advice that delivers solutions to meet clients' business needs.

We advise both developers and neighbours on neighbourly issues, highlight the risks, assess their strengths and weaknesses and

