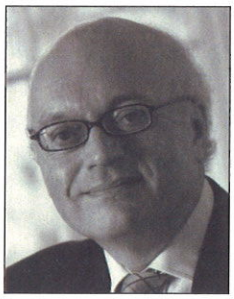
Questions and answers

In the first of a series of articles, Andrew Francis provides answers to some common questions



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'Rights of light are not the same as daylight and sunlight assessment for planning purposes, so rights of light need to be assessed even before any planning assessment, let alone any planning application, is made.'

Question 1
What is a right of light?

Answer
If established, a right of light is an easement, ie a legal interest in land that allows the dominant owner to claim an easement that the servient owner of land will be subject to. The easement of light gives the dominant owner the right to assert the benefit of light, usually for the benefit of the buildings on their land. The servient owner who is subject to the right of light is usually restricted on what they can do on their land because they must not break the right actionably. If they do so they may face a civil claim, invariably for an injunction to prevent or remove the breach.

Rights of light can be created or acquired as with any other easement. Thus rights of light can be created by express grant, or reservation, or by implied grant (s62 Law of Property Act 1925) or under the doctrine of non-derogation from grant. Rights of light are usually claimed as having been acquired by prescription (usually showing 20 years' continuous enjoyment), either under s3 of the Prescription Act 1832 or under lost modern grant (a claim based on a lost or destroyed fictional grant of light made at some time since 1189). Highly technical rules govern both methods of acquisition. One notable rule under s3 is that unlike other easements which can be acquired by long enjoyment, and subject to the terms of their lease, tenants can acquire a right of light under s3, not only against third parties but also against their landlord, if owner of the servient land. There are also rules about whether the right of light has been lost by abandonment, or by other means. Specialist legal advice must be taken at all times when asking whether a right of light has been acquired, or lost.

Question 2
Why are rights of light important?

Answer
Recent decisions such as *Regan v Paul Properties Ltd* [2006] and *HKRUK II (CHC) Ltd v Heaney* [2010], coupled with a revival in development of land in cities, have brought the issue of rights of light to the fore as part of the developer's brief, as well as the neighbour's list of concerns. Rights of light are not the same as daylight and sunlight assessment for planning purposes, so rights of light need to be assessed even before any planning assessment, let alone any planning application, is made. To fail to do that will court the disaster of an injunction preventing, or removing, the offending development at huge cost to the developer, as happened in *Regan* and in *Heaney*. *Coventry v Lawrence* [2014] does not alter this warning. Where residential users claiming light may be affected the court will be particularly astute to protect those users.

Question 3
How do I know whether my client has a right of light or is subject to one?

Coventry & ors v Lawrence & anor [2014] UKSC 13
HKRUK II (CHC) Ltd v Heaney [2010] EWHC 2245 (Ch)
RHJ Ltd v FT Patten (Holdings) Ltd & anor [2008] EWCA Civ 151
Regan v Paul Properties Ltd & ors [2006] EWCA Civ 1391

Answer
It is unusual to find documents on the title which deal with light, either by grant or reservation, or where they seek to prevent prescriptive claims. The difficulty lies in the fact that most rights of light arise by prescription, and are usually claimed under s3. So titles are invariably silent as to those rights. This means detective work, eg looking at the buildings on both dominant and servient land, and at local records to see whether light can be claimed by long enjoyment, and over what land or buildings, for the relevant period.

Question 4
What documents are key when advising on rights of light?

Answer
All documents of title can be relevant. Express grants or reservations will have to be construed. The history of dominant and servient titles may reveal former unity of ownership so that an implied grant of light may arise on severance. Unity of titles may lead to extinguishment of light. Covenants and clauses permitting development, or allowing enjoyment of light by consent, may exclude prescriptive claims and need to be construed carefully to see whether, for example, they have full effect and bind or benefit successors to the original parties; see *RHJ Ltd v FT Patten (Holdings) Ltd* [2008]. Where dominant or servient land is let, the leases must be examined to see what claim to light can be made or defended by tenants or their landlords. The local land charges register must be searched to see if any light obstruction notices have been registered against the dominant land under the Rights of Light Act 1959. Finally the planning register and local planning authority records must be examined to see if any acquisition or appropriation exists which could trigger rights of light being overridden under s237 Town & Country Planning Act 1990.

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Next time...

- How is light measured?
- How is an actionable interference with light established?
- When will an injunction be awarded?
- If damages are awarded how are they measured? ■