pitmans
MAKING IT HUMANLY POSSIBLE

Developers Beware! A Recent Case on Rights to Light

The possibility of an infringement of rights to light are an important factor to be considered by all developers. The right to light of a building arises after twenty years uninterrupted enjoyment of light without the consent of a third party. If a right to light is infringed, an injunction can be granted or damages awarded.

The recent judgement of the High Court in ***HKRUK II (CHC) Ltd v Heaney [2010]*** EWHC 2245 stands as a clear warning to all developers. An injunction was granted against a developer who infringed a neighbour's right to light despite the fact the development was completed and the owner of the building claiming the infringement (the dominant property) failed to take action for 18 months.

The developer wanted to build a seven storey building, which was two storeys higher than the previous building on the development site. The developer knew that rights to light existed in favour of the dominant property and took steps to try and resolve the issue; however negotiations stalled. Once building works were completed the developer sought a declaration confirming the building was free from any rights to light which resulted in a counterclaim of an infringement of a right to light. The owner of the dominant property, Grade II Listed Victorian house, had spent in the region of £3 million restoring the building.

It was agreed the dominant property had a right to light which had been infringed and so a remedy was due. However the dispute lay in what would be an adequate remedy – damages or an injunction.

The judge looked at guidelines set out in an earlier case as to whether damages would be an adequate remedy. For damages to be adequate, the injury must not be significant; be capable of being estimated in money; a small sum of money must be an adequate compensation and it would be oppressive to the infringer to grant an injunction. The judge decided the injury to the defendant was not a small injury taking into account the money spent by the defendant in restoring the property and the fact that the infringement affected some of the most important rooms of the house. It was also ruled that it would not be oppressive to grant the injunction, as the interference was more than trivial; the developer knew about the infringement but was driven by a desire for profit, as it could have amended the building plans but chose not to. Therefore damages were not an adequate remedy.

The outcome of the case has meant that the developer now has to alter the building. It is estimated that the total cost for the alterations is between £1m and £2m in addition to the fees it has incurred. It is understood that the developer is seeking leave to appeal from the Court of Appeal.

As a result of the judgement in Heaney, developers now face a threat of an injunction if they infringe a right to light regardless of whether development has been completed. A claimant's failure to act within a reasonable amount of time will not prevent them from obtaining an injunction. Therefore a prudent developer should take steps to rectify any infringement of a right to light from the outset, whether by altering the plans or by coming to an agreement with the owner of the right to light.

Please note that the above is a summary only of the above case and its implications and is not intended to be fully comprehensive. Each matter will depend on its own particular circumstances and we therefore recommend that legal advice is sought on each occasion.

For further information relating to Real Estate Pensions, please visit the **Pitmans Real Estate** department website or contact our team direct.

Sally Sharp - Partner
ssharp@pitmans.com
+44 (0) 118 957 0362

Reading Offices:
47 Castle Street, Reading
Berkshire, RG1 7SR
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

The Anchorage
34 Bridge Street, Reading
Berkshire, RG1 2LU
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

London Office:
1 Crown Court
66 Cheapside
London, EC2V 6LR
T: +44 (0) 20 7634 4620
F: +44 (0) 20 7634 4621
DX 133108 Cheapside 2

www.pitmans.com