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*Real Estate Land Use,
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Light at the End of the Tunnel - Consultation on Reform of Rights to Light in England and Wales

By Sebastian Charles & Steven Cox

The private right to light is an arcane area of law and which many developers would agree is long overdue for reform. Development schemes can be thwarted by private landowners even after the proposal has passed through the planning system and been found acceptable.

The basis of the rights are founded on the historic need for natural light to undertake basic craft tasks and bear little relationship to today's modern screen-based activities nor even the availability of electric lighting.

Rights of light have become an opportunistic tool for extracting value from development by others, or preserving value that might be adversely affected by neighbouring development schemes. The evolution of the current law and practice means that developers incur potentially significant costs and delay seeking to ascertain who may possess such rights and whether the extent of the rights would entitle the owner to an injunction that would enable them to halt development or merely an entitlement to damages proportional to the light lost. The distinction is crucial because the right to an injunction would allow the beneficiary to ransom the development, whereas the value in damages for impaired rights is often of a different order of magnitude and much less favourable to the beneficiary. The Courts are the final arbiter of the question whether an infringement is injunctable or not. Assessing the technical impacts of a scheme is the preserve of specialist rights to light surveyors. Second guessing the judgment of the court is risky, and because of the uncertainty of outcome negotiations can be fraught and protracted. There is some potential for insurance.

The Law Commission is consulting on possible changes to the law and seeks evidence of the problems arising in practice from the operation of the current law and the view of stakeholders on a range of possible options for reform. The consultation is available [here](#) and responses are sought by 16 May 2012.

Proposals include:

- that it will no longer be possible to acquire rights to light simply by long use
- that there should be a new statutory test to clarify when the courts will award damages instead of ordering an injunction
- that a procedure be introduced for the extinguishment of rights that are obsolete or have no practical benefit, resembling that for restrictive covenants

Should you require assistance in formulating a response please contact the author or your usual K&L Gates real estate contact.

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