Ref: AWDM/0311/17

26 Lynchmere Avenue
Lancing
West Sussex
BN15 0PD
13 March 2017

ADUR & WORTHING
14 MAR 2017
PLANNING SERVICES

Dear Sir/Madam,

I would like to thank Mr Barnett for visiting me on 6 May 2017 and showing me the full-size plans of the application having the above reference. It was difficult to see the plan properly online.

The following is additional to my letter of 6 March and is offered 'without prejudice' because I have not at this stage consulted my solicitors.

I understand what Mr Barnett was saying about your not being involved in party-wall issues, and that is therefore put aside for the time being.

However, as regards the "right to light", which you apparently ignore for "non-habitable areas" (— if I understood your term correctly, i.e. for my south-facing porch), I have unearthed the enclosed (see separate document) on the law on this.

No mention is made in the document to "non-habitable areas" when referring to exceptions to rights to light acquired by prescription in favour of buildings, only that the right cannot exist in favour of "land in its unbuilt state". Moreover, there is a mention of the ordinary use of "the building" when considering the same's basic measure of light.

As I explained, my porch, having had uninterrupted existence for at least the forty-five years that I have lived here, will have acquired a right to light by prescription, the minimum acknowledged period of time for this being twenty years.

When I bought my property in 1971/2 I was told that the wall adjacent to my front path had been part of an old greenhouse. I wondered therefore what would have happened in regard to the planning department's policy had my house not been built and the greenhouse had remained. A greenhouse by anyone's definition is a "non-habitable area" — you would not think of living there on a regular basis — yet light to it would be of paramount importance. If the structure being approved is a half a metre away from it, the law should say something on it, and I believe it does. The words "ordinary enjoyment" in the enclosed refers to buildings, i.e. not excluding non-habitable ones, such as a greenhouse (or porch). On this assumption, any loss of benefit to the owner, if such a structure were approved and built without the owner's consent, could be open to legal redress against the applicant.

Yours sincerely,

[redacted]

(Dr) James Ellis

15.4 RIGHT TO LIGHT

The right to light is an easement, capable of being acquired by grant or prescription. It is acquired in favour of buildings, and cannot exist in favour of land in its unbuilt state. The basic measure of light to which a building is entitled is that which is sufficient for the ordinary use of the building.[5] The test of an infringement, therefore, is not how much light was taken away by the obstruction in question, but whether sufficient is left for ordinary enjoyment of the dominant premises.

Section 9(a) of the Act specifically protects easements of light. It is clear, therefore, that for example the right to raise a party wall under s 2(1)(l) could not be used so as to interfere with an existing easement of light. The need to protect easements of light may involve the surveyors in difficult questions of law.

(a) It may be doubtful whether there is any easement. If the origin is prescriptive, 20 years' enjoyment provides a starting point, but the law of prescription relating to rights of light is notoriously complex and capricious.[6] Often, rights of light are regulated between neighbours by deeds whose precise legal effect is unclear. They may grant easements, expressly or by implication, but it is quite usual for them to operate only by covenants. Only easements are protected by s 9(a).

(b) If there was once an easement, it may be claimed that it has come to an end by, for example, abandonment. This is another difficult question. Even the bricking up of a window may not amount to abandonment of the easement: there must be evidence of an intention to abandon the right permanently.[7]

The surveyors making an award may therefore have to determine difficult questions of law. It is submitted that it is within their discretion to take their own

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4 See *R v Wilcock* (1845) 7 QB 317; *Eton College v Minister of Agriculture Fisheries and Food* [1964] Ch 274.

5 *Colls v Home and Colonial Stores Ltd* [1904] AC 179.

6 See Megarry and Wade, *Law of Real Property*, 6th edn (Sweet & Maxwell, 1995).

7 Compare *Tapling v Jones* (1865) 11 HLC 290; *News of the World Ltd v Allen Fairhead & Sons Ltd* [1931] 2 Ch 402; *Marine & General Mutual Life Assurance Society v St James' Real Estate Co Ltd* [1991] 2 EGLR 178.

legal advice on such questions, and that the costs of such advice will fall within s 10(13).[8]