Planning Services
Adur District Council
Portland House
Richmond House
Worthing
West Sussex
BN11 1LF

37 Hawkins Road
Shoreham-by-Sea
Sussex
BN43 6TH

19th March 2013

Dear Sir/Madam

Re Plan AWDM/0015/13
39 Hawkins Road
Shoreham-by-Sea Sussex

25 MAR 2013

Objection to planning permission

The 'sixty years property owner' [who is now 84] of 37 Hawkins Road wishes to object to this extension (per the plan) because the ' LOSS OF LIGHT', i.e.to the owners 'dining room'. Please consider the 'RIGHT OF LIGHT' re - Planning applications.co.uk (copy enclosed), also see 'RIGHTS TO LIGHT'- Law commission (copy enclosed)
There are also regulations to 20 year RIGHTS OF LIGHT rules which should be considered by the officer designated to this application.

It is hoped the '45 DEGREE RULE' should also be applied

PER THE PLANS
It should be considered ' My property boundary Wall' may not be touched / removed /damaged, and no trespass of 'building footings' for the planned extension will be permitted on to the property known as 37 Hawkins Road, Shoreham-by-Sea, Sussex BN43 6TH

Yours faithfully

[redacted]

Mrs D A. Douard

planning-
applications.co.uk

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RIGHT OF LIGHT

Basic Information

Detail

A Right of Light is protected in England and Wales under common law, adverse possession or by the Prescription Act 1832. Unlike right to freedom from smell and noise, a Right of Light has to be acquired before it can be enforced.

Natural light is a commodity that can be bought, sold or even transferred between parties. Rights can be registered, granted by deed or simply acquired by having a minimum of 20 years enjoyment of light through a window or opening. Once a window has received over 20 years of unobstructed daylight, it automatically earns itself a Right of Light. Such rights are, for Land Registration purposes, overriding interests. They are valid whether or not they are registered on the title deeds to the property which claims the right.

A development may be prevented due to a Right of Light, even if Planning Permission has been granted by the Local Authority.

If a new building limits the amount of light coming in through a window and the level of light inside falls below the accepted level, then this constitutes an obstruction. Unless the owner of the affected window waives his rights he would be entitled to take legal action against the landowner if he considered that his light is being blocked.

To complicate matters further, the law recognises that some loss of light is acceptable and the fact that there is less light does not necessarily give a land owner a right to complain.

The general rules are:

1) The reduction in light must make the property less fit than it was for its purpose.
2) The amount of "appropriate" light may vary depending upon building, use and even region.
3) The amount of light considered to be sufficient will tend to increase as standards of living and expectations increase.

Any kind of 'development' can potentially block light. For instance:

- A new shed
- Garden walls
- Extensions
- Part of a new housing or commercial development.

This may prevent a proposal from the erection of a building or extension that will significantly reduce the level of daylight to an adjoining window. Therefore if a neighbour has a window that might have acquired a Right to Light it is important to take this into consideration; the neighbour may have a case for compensation or for negotiating changes to the development. Most cases usually involve a combination of both. Taken to an extreme this could mean the removal of offending development.

House extensions are a common cause of right to light disputes as homeowners may employ a local building firm to extend their property without appreciating the development could affect their neighbours. The most common problem is where the neighbour has a window to the side of their house to which the light is blocked by a high wall. On a small building project people

rarely employ professional advisors and the first they know of a problem is when they receive a letter from their neighbour's solicitor. In any proposed development, it is vital that investigations are made to ensure that adjoining owners do not have rights which may prevent building as planned.

Local Authorities tend to adopt various guidelines for assessing right to light issues. The 45 degree rule is the most commonly used means of assessment. Overlooking and privacy can be other issues for consideration.

The 45 degree rule usually involves drawing a line from the mid-point of the sill of a window which is potentially affected by a neighbour's extension, at an angle of 45 degree towards the extension. If the proposed extension crosses that line it is unlikely to be acceptable. While there will be few grounds for exemption from the 45 degree rule where semi-detached or terraced houses are involved, where an extension is sited well forward of the affected window, and this would allow more light to reach it, the 45 degree rule may be relaxed a little.

Acknowledging the potential for trouble, most new housing projects incorporate restrictive covenants (obligations created by the landowner) which enable the developer to build, but limit the house owner. So if you buy a house on a development site and subsequently (even after 20 years) a new house is built in a position that interrupts light into your windows, then you may not have any scope for challenge.

You should contact your Council's Planning or Building Regulation department to ask for their local information. Often Council's produce a leaflet This might also be contained in an Annex to their Local Plan.

A More Detailed Guide to Rights of Light

The law stipulates that a building with openings is entitled to "adequate light for the ordinary notions of mankind". Most buildings obtain rights to light as a result of the Prescription Act of 1832, after twenty years' uninterrupted enjoyment. The other major way of obtaining a right to light is by an express grant or by an express reservation, which would be discernible from the title deeds. However, there is one essential point to bear in mind, and that is a right to light can exist only in favour of defined apertures in buildings. There is, therefore, no right recognised by law to receive light falling on un-built land.

It is possible to prevent a building obtaining a right to light by instigating the procedures under the 1959 Rights of Light Act. The act operates by allowing the creation of a notional obstruction of light received by a building over the land of another. The owner of the site in question notifies all those around the site that he has erected a 'screen', normally of infinite height, in front of their windows and the owners, served with such a notice, have a year to respond if they want to object.

Generally it is accepted practice that, provided a developer ensures that any room of an adjoining owner has more than fifty per cent of it lit to an adequate level, then it is likely that compensation will be an adequate remedy. It is usually only when a developer constructs a building which is likely to take more than fifty per cent of the light away from a room that actions may arise.

It is likely that most adjoining owners will be prepared to settle for compensation, especially where these may involve significant sums. It is, however, important to remember that a developer is not able to rely on an adjoining owner simply taking money and, furthermore, where residential property is concerned, it is apparent that Judges are inclined to side with the adjoining owner whose light is damaged, particularly where a developer can be seen to be making a profit from the scheme. It would appear from the cases that even rooms lit to fifty five per cent may not, in those cases, be adequately lit.

The other main weapon of an adjoining owner is, of course, an injunction. Four tests have been set down in an 1895 case which should guide a developer. These are:-

- Is the injury to the Plaintiff's legal rights small;
- Is it one which is capable of being measured in money;
- Is it one which can be adequately compensated by a small money payment and
- Is it a case in which it would be oppressive to the Defendant to grant an injunction?

The answers to these questions are somewhat subjective, but increasingly courts are favouring injunctions rather more than in the past. This seems to be because society nowadays generally has more concern for environmental conditions and protecting the quality of life. The trend toward redevelopment of 'brownfield' sites rather than greenfield schemes is also affecting the situation. Threats of injunctions are, of course, of serious consideration to a developer, who may be forced either to re-design or abandon a project.

The law provides various remedies in respect of infringement of right of light:

Abatement This involves the physical removal of the structure which interferes with the light to which the aggrieved party is entitled.

Damages at common law for nuisance Damages are normally awarded to compensate the Plaintiff for wrong done. The basis measure of damages for injury to land caused by nuisance is the diminution in the value of the land.

Interim Injunction which is, in essence a holding operation until the action is heard at trial.

Final Injunctions. At trial, in deciding whether the appropriate remedy is damages or an injunction, the courts apply the principles set out in the case referred to above, and if the court can answer positively in respect of each of the tests, then damages will be granted.

Damages in addition to or in lieu of an Injunction. Declaratory relief which may be appropriate where it is important to establish the parties' rights for the future, for example where disputed questions relating to a rights of light Deed have been resolved, or where disputed questions as to whether such rights have been lost by abandonment or delay have been resolved.

There is, however, another factor to be taken into account, that the level of compensation is not necessarily worked out as a basis of the area of the adjoining owner's property which loses the light. Since 1986, the affected adjoining owner takes as his compensation a part of the profit which the developer will earn from now being in a position to erect additional floors on his property. Sometimes this results in a 50/50 split. The amount of compensation could therefore be substantial.

It is not only freeholders who can be affected by such loss. Any occupiers of the building who hold under a lease may also qualify and each of those might be involved in sharing the sum awarded or agreed, depending on the terms of their leases.

This information is provided in good faith and should not be taken as an absolute and up to date resume of Right of Light. You should always seek professional advice. Specialist advisors for your area can be found in the links section of this website or on the RICS website www.rics.org.uk on the 'Find a Surveyor' section. There is a drop down box for Right of Light consultants.

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Law Commission

Rights to light

Status: We opened a consultation on this project on 18 February 2013. The consultation period runs from 18 February to 16 May 2013.

A "right to light" is an easement that gives landowners the right to receive light through defined apertures in buildings on their land. The owners of land that is burdened by the right cannot substantially interfere with it - for example by erecting a building in a way that blocks the light - without the consent of the benefiting owner.

Rights to light are valuable: they give landowners certainty that natural light will continue to be enjoyed by a property – increasing its utility, value and amenity. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished. Where a development has taken place, but a court does not order its demolition, the court may award substantial damages. It may not be clear which remedy the court will order and landowners may succeed in preventing development even if they raise the issue after building has commenced.

The Law Commission's recent work on easements, covenants and profits à prendre reviewed the general law and did not examine specific easements. It did, however, highlight the need for further work on rights to light. Such rights can have extremely important practical consequences for development. They will usually (and much more commonly than most easements) arise by long use rather than any express agreement between landowners. There will have been no activity on the burdened land to highlight the use, and the right will rarely have been registered. As a result, in many cases those burdened by and benefiting from rights to light will be unaware of their existence. The planning system does not take account of private rights of this sort, and so rights to light can impact on development even where planning permission has been granted.

The project

This project investigates whether the law by which rights to light are acquired and enforced provides an appropriate balance between the important interests of landowners and the need to facilitate the appropriate development of land. It considers the interrelationship of rights to light with the planning system, and examines whether the remedies available to the courts are reasonable, sufficient and proportionate.

The consultation

We published a consultation paper on this project on 18 February 2013. It considers the law relating to the entire life-cycle of a right to light, from creation to extinguishment. In the paper, we make the following provisional proposals:

- We propose that for the future it should no longer be possible to acquire rights to light by long use (known as "prescription").
- We propose the introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light.
- We propose the introduction of a new statutory notice procedure, which requires those with the benefit of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light), with the aim of introducing greater certainty into rights to light disputes.

- We propose that the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit, with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants.

We also invite consultees' views on a number of other issues.

Next steps

Following the close of the consultation period we will review, in discussion with Government, how to take the project forward in the light of consultees' responses. If the project proceeds to a final report with draft bill, we anticipate that publication will be in late 2014.

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