

PHILIP NAVIER

39 The Meadway  
Shoreham by Sea  
West Sussex  
BN43 5RN

**ADUR & WORTHING COUNCILS  
DEVELOPMENT MANAGEMENT  
ECONOMY DIRECTORATE  
PORTLAND HOUSE  
44 RICHMOND ROAD  
WORTHING  
WEST SUSSEX BN11 1HS**



- 6 FEB 2025

Business Support

Your reference           AWDM/0002/25

HANNAH BARKER

4 February 2025

ALTERATION AND EXTENSION TO EXISTING ROOMS IN ROOF CONSISTING OF REMOVAL OF FIRST FLOOR ROOF AND WALLS AND CONSTRUCTION OF NEW TIMBER CLAD WALLS AND FLAT ROOF

Dear Sir / Madam

To me the proposed plans are no clear. Either there is a pitched roof or a flat roof. The lack of detail opens up a possibility of anything and everything happening. The 45 Old Fort Road, Existing 1<sup>st</sup> Floor [Sheet 1] suggests that the property already has a traditional flat roof but to the untrained observer the drainage outlets to the rear of the property suggest that the property has a flat roof sloping from a high point in the South to a low point in the North.

To further suggest that all is not what it appears the 45 Old Fort Road, Existing elevations shows that the roof has an elevated centre section when viewed from the front which disappears when viewed from the side [Sheet 2]. Quite how this is achieved causes me to question the quality and professionalism of this application and whether the rights of the residents of properties to the side and rear are being properly respected.

Without detailed plans showing elevations and the likely shadowing caused by a larger building mass I must object to the way this matter is being progressed.

I have been through a similar process with the Council in 2011. There Council is on notice that I am likely to refer matters to the Local Government Ombudsman if there is any inappropriate waiving of the DC Standard – I attach my letter of 27 December 2011.

I have flagged up my Right to Light.

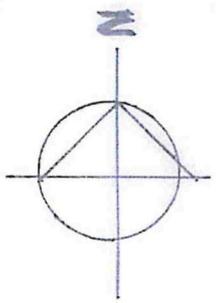
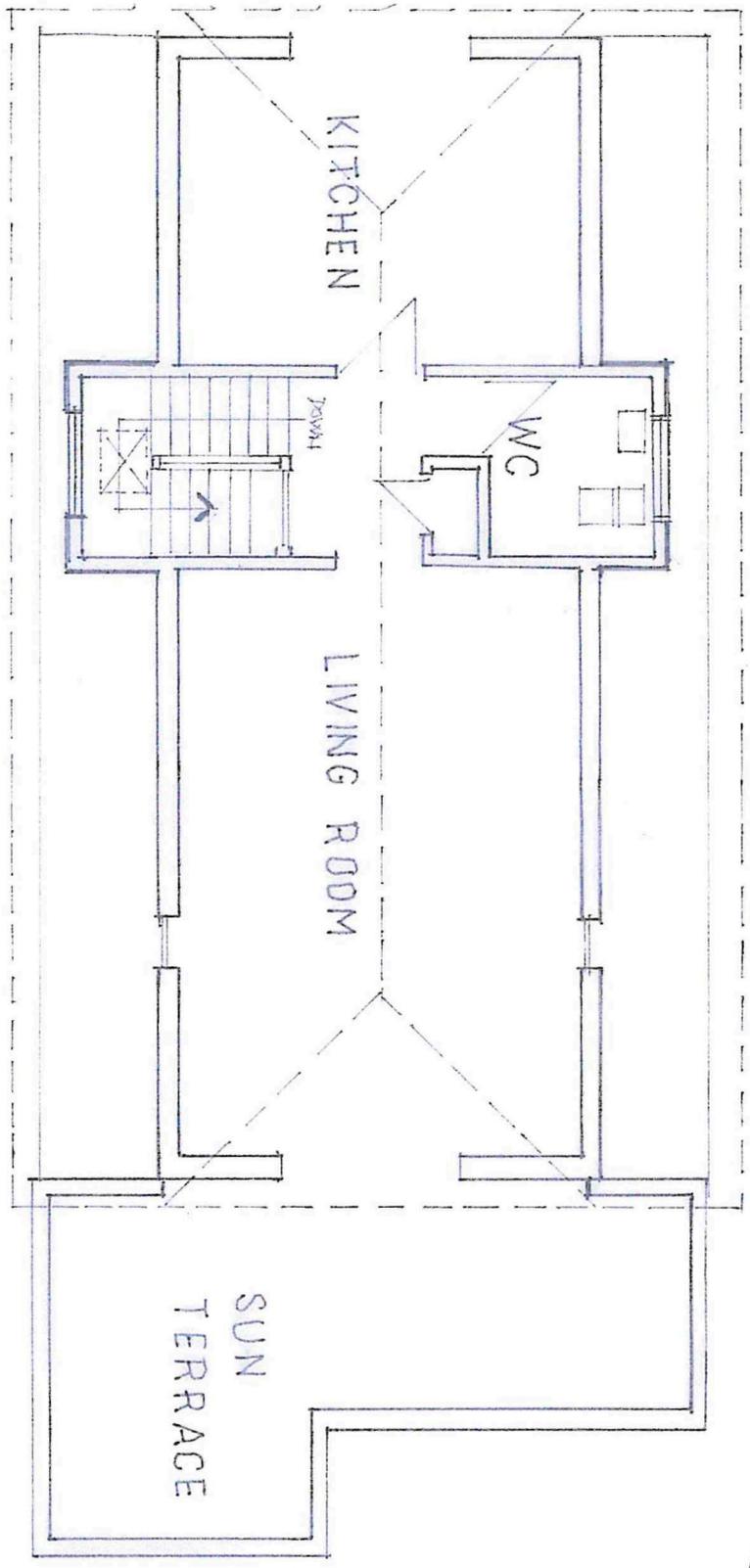
Again, we enter into the realms of confliction information. Either get things correct and provide accurate and informed information or dismiss this matter. The title of this matter says there is a new flat roof but it appears on some diagrams not to cover the main structure!



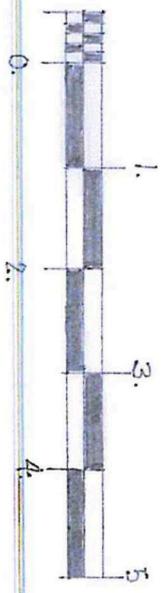
Philip Navier

45 OLD FORT ROAD - EXISTING 1st FLOOR

DRAWING  
No 45/04

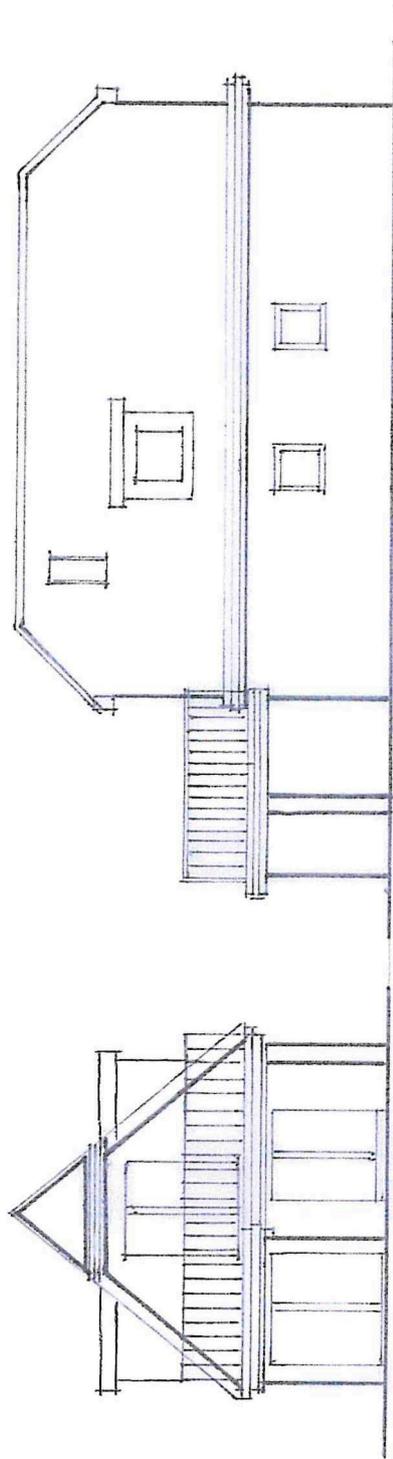


Sheet 1



METER SCALE BAR

Sheet 2



SOUTH

EAST

DRAWING N° 45/05



METER SCALE BAR 1/20

45 OLD FORT ROAD - EXISTING ELEVATIONS

.....

39 The Meadway  
SHOREHAM BY SEA  
West Sussex  
BN43 5RN

# Philip Navier

27 December 2011

Peter Barnett  
Planning Services  
Adur and Worthing Council  
Portland House  
Richmond Road  
WORTHING  
West Sussex  
BN11 1LF

Your ref: A WDM/0827/11

Dear Mr Barnett

DEMOLITION OF CHALET BUNGALOW AND ERECTION OF 2 SEMI-DETACHED TWO-STOREY THREE-BEDROOM HOUSES WITH PARKING AT FRONT

LOCATION OF DEVELOPMENT – 43 OLD FORT ROAD, SHOREHAM BY SEA, WEST SUSSEX BN43 5RL

I am shortly going away with my daughter and will be unable to attend the planning committee hearing. As I am a single parent I have no partner who could attend in my place. I trust that you will be able to place my letter before the committee.

#### PRIVACY/RIGHT TO LIGHT

The previous landowners of No.43 Old Fort Road, the property to the rear of my bungalow, did not take steps to prevent my bungalow obtaining a right to light by instigating the procedures under the 1959 Rights of Light Act. The required notices were not filed and cannot now be filed as my property has enjoyed 20 years enjoyment of light.

The report to the Committee says: -

*At the rear, No.39 The Meadway is a bungalow, the nearest part of which (a rear conservatory) is approximately 19m from the rear wall of the proposed dwellings. While this is less than the 22m recommended in the DC Standard, . . .*

December 27, 2011

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*this figure is usually required in order to prevent overlooking between dwellings. In this case, the rear-facing windows of the dwellings at first floor will serve kitchens and will be high level, 1.8m above the floor level, to prevent any views to the north towards The Meadway. Overlooking of dwellings to the east and west will also be avoided by high-level windows at first floor.*

It goes on to say: -

*The proposed dwellings will not project as far into the site as No's 45 and 47 to the east and, at only 5.5m tall, they will not result in unacceptable loss of daylight to the rear garden and conservatory of No.39 The Meadway. That property is already partly shaded by vegetation on the boundary within the site which may be removed as part of the redevelopment. The proposed dwellings will be 12m from the rear boundary. No.39 owner's claim to a right of light under common law (and the Prescription Act 1832) is not a planning matter but a civil matter between the landowners involved which he could attempt to pursue privately whether or not planning permission is granted.*

*The statement "That property is already partly shaded by vegetation on the boundary within the site" ought to have clarified that the vegetation are trees - the main tree is a fig that during the Winter has no leaves thereby allowing Winter sunshine into my property which will not occur should a solid structure be erected. This issue of privacy will be further impacted should, in particular, the fig tree be removed - "vegetation on the boundary within the site which may be removed as part of the redevelopment."*

From my prospective there is an admission that there will be a loss of light. I have flagged up an issue that I have an overriding interest that earned itself from a Right to Light. Whilst "the 22m recommended in the DC Standard" concerns privacy I believe it reasonable to argue that waiving the standard has a wider impact and if planning consent is given on the plan as currently drafted then I will refer this matter to the Local Government Ombudsman as I believe that it is entirely inappropriate to waive the DC Standard.

## PARKING

The documentation filed contains conflicting information. The now appears to be a wall going down the shared driveway between the properties on Old Fort Road - access to the properties at 43 Old Fort Road being via halls situated to the East and West of the development. The plan shows the existing crossover is retained but yet the proposed new boundary wall between 41 and 43 will render the crossover to be unusable. The current driveway is large enough to allow parking at the rear. If the driveway is narrowed then I would question whether the neighbour at No41 will be able to access their garage. The plans show the parking bays to be accessed via a crossover close to the boundary wall with

*December 27, 2011*

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no.45 [see the Block Plan] but on the photographic representation submitted it is in the middle of the boundary wall of the plot. Accordingly if as recommended in the submission to the committee that . "*A condition is recommended to control the details of new boundary walls/fences.*" This will need to be carefully crafted and enforced.

Sincerely,

Philip Navier

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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](http://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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**MES ENERGY SERVICES**

# A Guide to Right of Light

Recent court cases have highlighted the importance of dealing with potential Right of Light issues early in the design process. Many Planning Authorities are also now asking for light issues to be considered as part of a planning application.

## What is the Right of Light?

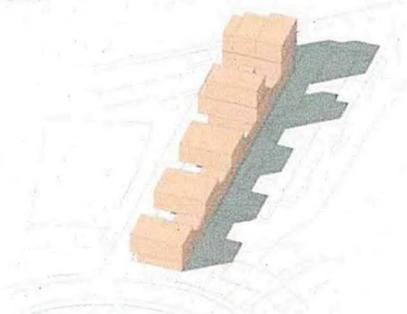
A legal right to light may be acquired by 'anyone who has had uninterrupted use of something over someone else's land for 20 years without consent, openly and without threat, and without interruption of more than a year.'

If a new building (or extension, wall etc) limits the amount of light entering a window below an accepted level this can constitute an obstruction and legal action can be taken.

Although large urban developments often lead to Right of Light issues, smaller house extensions are also a common cause of light disputes, particularly where a neighbour has a window to the side of their house to which the light has been reduced by a new wall.

## What action can be taken?

A neighbour may have a case for compensation or apply to the Courts requiring the development to be changed, even after it has been built. This can have significant cost implications.



## What can MES do to assist?

Because we are specialists in this complex area we act on behalf of both developers or neighbours to assess the size of a light 'injury' and to quantify its value for compensation purposes. As this is generally settled out of Court we can also carry out the negotiations for our clients with the back up of our detailed analysis of the extent of the light loss.

## Planning considerations

Planning authorities often require detailed evidence of how neighbouring properties are affected by a new development or extension before granting planning consent.

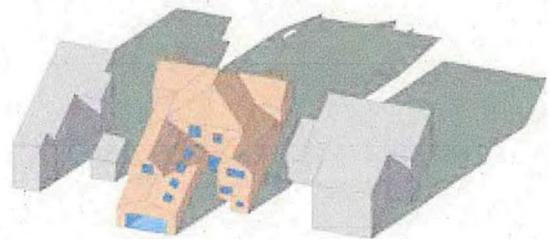
We are very experienced in providing the required daylighting/sunlight calculations, evaluation and reports for successful planning purposes.

It is important to bear in mind that the benchmark parameters used for planning approval purposes are often different to those used by the Courts to assess Right of Light 'injury'.

It should be noted therefore that planning approval does not necessarily provide a developer or householder with the reassurance that a Right of Light claim cannot be subsequently made.

## Why Use MES?

We are members of the Royal Institution of Chartered Surveyors (RICS) specialising in Right to Light issues. We also carry out our own 3D modelling so we can measure light implications very accurately. Therefore you can be assured of a professional, knowledgeable and cohesive service.



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