39 The Meadway
SHOREHAM BY SEA
West Sussex
BN43 5RN

Philip Navier

21 January 2011



James Appleton
Executive Head of Planning, Community and Wellbeing
Adur District Council
Civic Centre
Ham Road
SHOREHAM BY SEA
West Sussex
BN43 6PR

Your reference ADC/0356/10

For the attention of Peter Barnett

DEMOLITION OF CHALET BUNGALOW AND ERECTION OF SEMI-DETACHED PAIR OF PART TWO/PART 3 STOREY 3 BEDROOM HOUSES (WITH GREEN ROOF TERRACES AND FRONT BALCONIES) (REDUCTION IN SIZE)

43 Old Fort Road, Shoreham by Sea, West Sussex. BN43 5RL

Dear Sir:

I refer to my earlier letter. Please find attached an extract from the Rights of Light Act 1959. Please will you check Adur District Council's records to determine if there has been a registration of a notice in lieu of obstruction of access of light. You will be aware that for the purposes of preventing the access and use of light from being taken to be enjoyment without interruption, any person who is an owner of land over which light passes to a dwelling house, workshop or other building may apply to the local authority in who area the building is situated for the registration of a notice under this section 2 of the Rights of Light Act 1959.

It is the duty of Adur District Council [or any previously named authority] to register the notice with the appropriate local land charges register. If such registration has taken place please will you provide me with the date of registration.

My bungalow has had quiet enjoyment of Winter sun without interruption for more than 20 years – as have the neighbouring properties on either side of 43 Old Fort Road. The proposed construction of a building exceeding the original size and height of the bungalow – indeed may go at least 600mm beyond the rear of neighbouring properties and to the height of the tallest neighbouring building. This significant increase in size of the buildings going on the plot will have an impact. On the information provided the proposed block house[s] impacts on my and my neighbours' right to unobstructed light. As Adur District Council is the relevant authority for registration of notices under the Rights of Light Act 1959 it can properly be expected that Adur District Council will respect that if no registration has been made I am my neighbours have acquired a right to unobstructed access to light.

I have hear from a third party that the developer has been told that a Planning Officer said, when the objection letters were being considered, that no significance is given to the issue of historically acquired access to light. As I was not present I do not know what was actually said but this has flagged up a potential issue – hence the comment in my previous letter that I expect Adur District Council to respect statute. Life has shown me that all matters do not proceed as I might expect. On the Local Government Ombudsman's website there is a recent finding that a Borough Council did not properly handling a planning application.

Yours faithfully

[redacted]

Philip Navier

UK STATUES - RIGHTS OF LIGHT ACT 1959 (1959 Chapter 56)

An Act to amend the law relating to rights of light, and for purposes connected therewith [16 July 1959]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. . . .

original 1959:
(1) For the purposes of any such proceedings as are mentioned in the next following subsection -
(a) SECTION THREE of the PRESCRIPTION ACT 1832
(whereby the uninterrupted enjoyment of the access of light for 20 years may confer an absolute right thereto) and
(b) SECTION SIX of that ACT (which provides that in cases for which a period of prescription is defined by the act, proof of enjoyment for lesser period shall not raise any presumption in support of a claim) shall have effect as if in the said section three, 20 years were substituted with 27 years.

NOTES:
Amendment
Repealed by the Statute Law (Repeals) Act 1974.

2 Registration of notice in lieu of obstruction of access of light

(1) For the purpose of preventing the access and use of light from being taken to be enjoyed without interruption, any person who is an owner of land (in this and the next following section referred to as the "servient land") over which light passes to a dwelling-house, workshop or other building (in this and the next following section referred to as "the dominant building") may apply to the local authority in whose area the dominant building is situated for the registration of a notice under this section.

(2) An application for the registration of a notice under this section shall be in the prescribed form and shall -
(a) identify the servient land and the dominant building in the prescribed manner, and
(b) state that the registration of a notice in pursuance of the application is intended to be equivalent to the obstruction of the access of light to the dominant building across the servient land which would be caused by the erection, in such position on the servient land as may be specified in the application, of an opaque structure of such dimensions (including, if the application so states, unlimited height) as may be so specified.

(3) Any such application shall be accompanied by one or other of the following certificates issued by the Lands Tribunal, that is to say,
(a) a certificate certifying that adequate notice of the proposed application has been given to all persons who, in the circumstances existing at the time when the certificate is issued, appear to the Lands Tribunal to be persons likely to be affected by the registration of a notice in pursuance of the application;
(b) a certificate certifying that, in the opinion of the Lands Tribunal, the case is one of exceptional urgency, and that accordingly a notice should be registered forthwith as a temporary notice for such period as may be specified in the certificate.

(4) Where application is duly made to a local authority for the registration of a notice under this section, it shall be the duty of [that authority to register the notice in the appropriate local land charges register, and
(a) any notice so registered under this section shall be a local land charge; but
(b) section 5(1) and (2) and section 10 of the Local Land charges Act 1975 shall not apply in relation thereto].

NOTES:
Amendment
Sub-s (4):
words in square brackets substituted by the Local Land charges Act 1975, s 17(2), Sch.1.

(5) Provision shall be made by rules under section three of the Lands Tribunal Act 1949 for regulating proceedings before the Lands Tribunal with respect to the issue of certificates for the purposes of this section, and, subject to the approval of the Treasury, the fees chargeable in respect of those proceedings; and, without prejudice to the generality of subsection (6) of that section, any such rules made for the purposes of this section shall include provision

(a) for requiring applicants for certificates under paragraph (a) of subsection (3) of this section to give such notices, whether by way of advertisement of otherwise, and to produce such documents and provide such information, as may be determined by or under the rules;
(b) for determining the period to be specified in a certificate issued under paragraph (b) of subsection (3) of this section; and
(c) in connection with any certificate issued under the said paragraph (b), for enabling a further certificate to be issued in accordance (subject to the necessary modifications) with paragraph (a) of subsection (3) of this section

NOTES:
Extent
This Act does not extend to Scotland.

3 Effect of registered notice and proceedings relating thereto

(1) Where, in pursuance of an application made in accordance with the last preceding section, a notice is registered thereunder, then, for the purpose of determining whether any person is entitled (by virtue of the Prescription Act 1832, or otherwise) to a right to the access of light to the dominant building across the servient land, the access of light to that building across that land shall be treated as obstructed to the same extent, and with the like consequences as if an opaque structure, of the dimensions specified in the application,
(a) had, on the date of registration of the notice, been erected in the position on the servient and specified in the application, and had been so erected by the person who made the application, and
(b) had remained in that position during the period for which the notice has effect and had been removed at the end of that period.

(2) For the purposes of this section a notice registered under the last preceding section shall be taken to have effect until either
(a) the registration is cancelled, or
(b) the period of one year beginning with the date of registration of the notice expires, or
(c) in the case of a notice registered in pursuance of an application accompanied by a certificate issued under paragraph (b) of subsection (3) of the last preceding section, the period specified in the certificate expires without such a further certificate as is mentioned in paragraph (c) of subsection (5) of that section having before the end of that period been lodged with the local authority,

and shall cease to have effect on the occurrence of any one of those events.

(3) Subject to the following provisions of this section, any person who, if such a structure as is mentioned in subsection (1) of this section had been erected as therein mentioned, would have had a right of action in any court in respect of that structure, on the grounds that he was entitled to a right to the access of light to the dominant building across the servient land, and that the said right was infringed by that structure, shall have the like right of action in that court in respect of the registration of a notice under the last preceding section:
Provided that an action shall not be begun by virtue of this subsection after the notice in question has ceased to have effect.

(4) Where, at any time during the period for which a notice registered under the last preceding section has effect, the circumstances are such that, if the access of light to the dominant building ha been enjoyed continuously from a date one year earlier than the date on which the enjoyment thereof in fact began, a person would have had a right of action in any court by virtue of the last preceding subsection in respect of the registration of the notice, that person shall have the like right of action in that court by virtue of this subsection in respect of the registration of the notice.

(5) The remedies available to the plaintiff in an action brought by virtue of subsection (3) and subsection (4) of this section (apart from any order as to costs) shall be such declaration as the court may consider appropriate in the circumstances, and an order directing the registration of the notice to be cancelled or varied, as the court may determine.

(6) For the purposes of section four of the Prescription Act 1832 (under which a period of enjoyment of any of the rights to which that Act applies is not to be treated as interrupted except by a matter submitted to or acquiesced in for one year after notice thereof)
(a) as from the date of registration of a notice under the last preceding section , all persons interested in the dominant building or any part thereof shall be deemed to have notice of the registration thereof and of the person on whose application is was registered;
(b) until such time as an action is brought by virtue of subsection (3) or subsection (4) of this section in respect of the registration of a notice under the last preceding section, all persons interested in the dominant building or any part thereof shall be deemed to acquiesce in the obstruction which, in accordance with subsection (1) of this section, is to be treated

as resulting from the registration of the notice;
(c) as from the date on which such an action is brought, no person shall be treated as submitting to or acquiescing in that obstruction:

Provided that, if in any such action, the court decides against the claim of the plaintiff, the court may direct that the preceding provisions of this subsection shall apply in relation to the notice as if that action had not been brought.

NOTES:
Extent
This Act does not extend to Scotland.

4 Application to Crown land

(1) Subject to the next following subsection, this Act shall apply in relation to land in which there is a Crown or Duchy interest as it applies in relation to land in which there is no such interest.

(2) Section three of the Prescription Act 1832, as modified by the preceding provision s of this Act, shall not by virtue of this section be construed as applying to any land to which (by reason that there is a Crown or Duchy interest therein) that section would not apply apart from this Act.

(3) In this section "Crown or Duchy interest" means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.

5 Powers to make rules

(1) . . . . .

NOTES:
Amendment
Sub-s. (1):
repealed by the Local Land Charges Act 1975, s 19, Sch 2.

(2) Any rules made [under section 14 of the Local Land Charges Act 1975 for the purposes of section 2 of this Act] shall (without prejudice to the inclusion therein of other provisions as to cancelling or varying the registration of notices or agreements) include provision for giving effect to any order of the court under subsection (5) of section three of this Act.

NOTES:
Amendment
Sub-s. (2):
words in square brackets substituted by the Local Land Charges Act 1975, s 17(2), Sch.1.

6 . . . . .

NOTES:
Amendment
Repealed by the Northern Ireland Act 1973, s 41(1), Sch 6, Pt 1.

7 Interpretation

(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:
"action" includes a counterclaim, and any reference to the plaintiff in an action shall be contrued accordingly;
["local authority", in relation to land in a district or a London borough, means the council on the district or borough, and in relation to land in the City of London, means the Common Council of the City;]

NOTES:
Amendment

Sub-s (1):
definition "local authority" substituted by the Local Land Charges Act 1975, s 17(2), Sch 1.

"owner", in relation to any land, means a person who is the estate owner in respect to the fee simple thereof, or is entitled to a tenancy thereof (within the meaning of the Landlord and Tenant Act 1954) for a term of years certain of which, at the time in question, not less than seven years remain unexpired, or is a mortgagee in possession (within the meaning of he Law of Property Act 1935) where the interest mortgaged is either the fee simple of the land or such a tenancy thereof; "prescribed" means prescribed by rules made by virtue of subsection (6) of section fifteen of the Land Charges Act 1925 as applied by section five of this Act.

(2) Reference in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment

NOTES:
Extend
This Act does not extend to Scotland

8 Short title, commencement and extent

(1) This Act may be cited as the Rights of light Act 1959.

(2) This Act, except sections one and six thereof, shall come into operation at the end of the period of three months beginning with the day on which it is passed.

(3) This Act shall not extend to Scotland.

(4) This Act, ... Shall not extend to Northern Ireland.

NOTES:
Amendment
Sub-s (4):
words omitted repealed by the Northern Ireland Constitution Act 1973, s 41(1), Sch 6.



Rights of light - Legal issues



The effect of loss of light - The Telephone House Development, Tunbridge Wells