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Neighbour dispute? Please (Don't) Help Yourself

All property development involves a degree of financial and legal risk. In two recent cases the Courts have intervened to protect an innocent landowner when a neighbouring developer has ignored his or her legal rights. In one case part of a building will have to be pulled down where 'rights of light' were ignored, and, in another, substantial damages were awarded where a developer seized part of a neighbour's building as part of a redevelopment.

The powers of a court

The English courts have historically been able to award two main remedies, being either an award of money (for example 'damages'), or an order that someone does, or desists from doing, a particular act (an injunction). How the court should decide which is more appropriate has evolved into a series of principles over the years.

Am I entitled to an injunction or an award of damages? The rights of light perspective

The value of a property can depend upon a number of things, amongst them the amount of natural light which comes through the windows of the property. A number of cases over the years have established how a legal right to light can be acquired. The case of *HXRUK II (CRC) Ltd v* Heaney provides a warning to property owners and developers about the risks they face when not respecting a right of light enjoyed by neighbouring property.

With the boom in construction and development in the late 1990s and 2000s, especially in crowded town and city centres, developers were frequently facing claims by owners of neighbouring properties that their rights of light were being (or would be) interfered with by a particular development. A perception developed that a developer would usually be able to buy his way out of a right of light claim, and that the courts would be unlikely to stop a development, and even less likely to require a building which had already been built to be re-constructed. This view probably reached its highpoint – almost literally – in the case of *Midtown Ltd v City of London Real Property Company Ltd* (2005), where a very large development in Central London was permitted to proceed, and only damages were awarded to neighbouring property owners, despite a finding that their rights of light had been interfered with.

Since *Midtown*, the tide seems to have turned. For example, in *Regan v Paul Properties Ltd* (2007) a developer was required to 'cut back' the top part of its planned new development in Brighton because it would have adversely affected the light enjoyed by Mr Regan's property. Then, this year, in the *HXRUK* case, a building owner (HXRUK) in Leeds found itself in the High Court following the addition of two new storeys to its city centre property. The owner of a neighbouring property, a Mr Heaney, was successful in persuading a court that the two

additional storeys caused a serious enough breach of his right to light to make it reasonable to order that they be removed.

What was particularly noteworthy about the *HXRUK* case was that, in a number of earlier cases, it had been assumed that an injured party must help itself by bringing court proceedings promptly to protect its legal rights once it is aware of a potential problem. One cannot now rely unthinkingly upon that assumption. In *HXRUK* the trial did not take place until the building works had been completed, but the court was still prepared to order the necessary re-construction. *HXRUK* was an unusual case; no building owner should take it for granted that it can sit on its hands whilst a neighbouring development takes place, but *HXRUK* demonstrates that inaction in itself need not be fatal to a claim for an injunction.

Awards of exemplary damages where a court is particularly displeased with a property owner

Even if a court does not order an injunction where a party's legal rights have been infringed, it still has some choice as to the amount of damages it awards to an injured party.

An award of damages in usually quantified as a sum to compensate someone by putting them into the position they would have been in had their legal rights not been breached. It is a measure of the claimant's 'loss'. The scope of awards of damages is a still-developing area, but usually a court will not award damages above and beyond a claimant's loss unless it is very displeased with the conduct of the defendant. One such case was *Ramzan v Brookwide Ltd (2010).*

Mr Ramzan ran a restaurant at 125 Alcester Road in Birmingham. Part of his property was used as a storeroom, and was a flying freehold, as it was physically situated above the ground floor of no 123 next door, but could only be accessed from no125.

The owner of no123 in 1999 knocked down the wall that divided their property from the storeroom, bricked up the doorway which had previously connected the storeroom to the rest of no125, and subsumed the storeroom into a newly developed flat forming part of no123.

Mr Ramzan's son (who had acquired the legal right of action in relation to no125), was awarded nearly £450,000 plus interest, from Brookwide. This included an award of £60,000 by way of exemplary damages. This was because the court was not satisfied that simply awarding the profit from the development (around £20,000) would be sufficient deterrent to stop Brookwide committing the same type of acts in the future.

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