

Rights to light: some light reflection



With the High Court having an opportunity (in the case of *Sirosa Properties v Establishment -v- The Prudential Assurance Company Limited*) to consider the best approach to measuring and valuing the loss of light, it makes sense to reassess the way in which right to light claims have developed over the years and consider whether there is a better way.

The Waldram method

If my neighbour constructs a building that blocks natural daylight from getting through the windows of my property, the traditional method of measuring (and valuing) that loss of light is by the Waldram method – named after a chap called Percy Waldram who ‘invented’ a way (over 100 years ago) which sought to show (on a piece of paper) the curved and 3D effect of light coming through a window.

Assumptions based on the Waldram method

The problem with this method is that it makes many assumptions that should now be challenged. For example, the Waldram method requires light to be measured at tabletop height only but what about other heights within the room? It assumes that light is distributed evenly but it isn't.

And it assumes that one lumen of light is sufficient for ordinary purposes which is not the case – in such environments we would require electric lighting to meet modern requirements.

The Waldram method also assumes that an actionable interference with light (i.e. an interference which justifies an injunctive claim being brought against the developer) is one that leaves less than 50% of the room well lit.



Why should that be the hard and fast rule? And should a claimant who has a room that is already less than 50% well lit be entitled to obtain an injunction for a further loss no matter how small? That seems wrong but many claimants seek to adopt that position, relying pedantically on the 50% rule.

The Waldram method also fails to take into account reflected light and seasonal variations both of which can have a considerable impact on the real world situation.

Being blunt, the traditional Waldram method has been used to support a claims industry that has run out of control over the years and it needs to be tamed. The method has produced a rigid approach to measuring and valuing the loss of light and hampered a more flexible, pragmatic and realistic approach to settling these claims.

The test is simple. An interference with light is only actionable if it has the effect of substantially interfering with the ordinary enjoyment of the property. An interference that would not be noticeable or adversely impact substantially on the amenity of the room should not be actionable. Whilst the Waldram method might be taken into account when assessing what amounts to a substantial interference, it should not be the sole or even principal consideration. There is so much more to the exercise than that.

Technological advances

Technology has advanced significantly since the Waldram model was introduced. Modelling software is now capable of analysing more accurately whether there is sufficient daylight in the room already as well as the impact on such daylight resulting from the development. The existing requirements of the building for electric lighting (and the use of the building) are also taken into account. The software measures light over a typical year (as it changes) and in the context of the surrounding buildings, infrastructure and terrain. Particularly in commercial buildings, it is often found that the proposed development has very little (if any) impact on the need for electric lighting in those rooms. In such scenarios, it is somewhat disingenuous for the claimant to suggest that the interference with light is substantial and therefore actionable.

The future of rights to light

We need to build good quality and sustainable buildings in this country in order to meet challenging demands. The economy requires those buildings to be built in fast order. The time has come to put the monster (created inadvertently by Percy Waldram in the 1920s) back in its box and for the court to make it clear that compensation will be assessed on a much more proportionate and pragmatic basis; settling on a test that takes all the new software modelling into account so as to enable the judge to take a realistic and informed view as to real impact of the proposed development on the amenity of the room. One can consider whether such impact affects rental value. Fingers crossed that the *Sirosa Properties* case provides some clarity in that respect.

For help or advice on the rights to light or other related topics, contact [Mike Scott](#) in our [property disputes](#) team.

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