

Rights of Light

Third Edition

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PREFACE TO THE THIRD EDITION

Since the second edition of this book appeared in 2007, the law relating to rights of light has certainly not stood still. The period since then has been dominated by three significant developments.

Firstly, the courts have become increasingly ready to grant injunctions, including mandatory orders requiring demolition of completed buildings, to protect rights of light, even if the victim has taken no action to seek interim relief prior to completion of the works. The apogee of this approach is *HKRUK II (CHC) Ltd v Heaney*, decided in 2010.

This in turn sent shock waves through the development industry, and in part was responsible for the second significant event, heightened activity by the Law Commission with respect to easements in general and rights of light in particular. The general effort of the Law Commission is contained in its report Lawcom 327 *Making Land Work: Easements, Covenants and Profits à Prendre*, which was produced in April 2011. With specific reference to rights of light, the Commission launched a project on rights of light reform, initiated by a consultation paper which appeared in February 2013. This presaged quite far reaching changes to the law, certainly by comparison with the views in Lawcom 327 which had only recently preceded it, including four measures in particular: first, it was proposed that prescriptive rights of light would be abolished; secondly, prospectively, measures to restrict the grant of injunctions by establishing a system requiring developers to give notice to those affected by prospective loss of light from the development, and requiring those affected to take action within a limited period or lose their right to seek an injunction were to be adopted; thirdly, there was to be a new statutory definition of the criteria for granting injunctions; and, finally, it was proposed to confer on the Lands Chamber of the Upper Tribunal powers to vary or abrogate rights to light in certain situations.

These proposals in turn were overtaken by the third major event, the Supreme Court decision in *Lawrence v Fen Tigers Ltd*, of February 2014. Whatever this decision means, given the dissonance between the members of the court and the deficiencies in some of the reasoning, it seems clear that the previous law on the grant of injunctions to remedy nuisances has been relaxed substantially.

The Law Commission published its Report and draft Bill on 4 December 2014 (Law Com No 356) (having taken *Lawrence v Fen Tigers Ltd* into account)

and Chapter 20 sets out the proposed reforms and it comments on what is *not* proposed. Until these proposals are the subject of legislation in force *Lawrence v Fen Tigers Ltd* remains the ‘last word’ on the subject of remedies, at least for the present. To what extent that decision mitigates the risk to developers is not yet established.

When we wrote the preface to the first edition, we set out our objective as to give a full account of the modern law relating to rights of light. This we believe we succeeded in doing. We also expressed our belief that the time was right for a book dedicated solely to rights of light. This has been borne out by events. The law relating to rights of light remains as always challenging and difficult, but of great practical importance to many development projects.

In this third edition we have taken account of these and other developments and where necessary re-written substantially the text, in particular those sections dealing with remedies.

The law is stated as at 8 December 2014.

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December 2014