



A Right to Light is an easement where apertures, such as windows and doors, can acquire or be granted rights that are protected by law. If additional massing is proposed close to any neighbouring apertures, it is very possible the light loss may be considered to be actionable.

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Such actions range from simple conversations with the development site owner, to formal negotiations and can even go as far as needing the input of the courts. One of the more formal means by which to finalise any dispute over Legal Rights to Light is via the use of a Summary Judgement. This simply is a request to the court to decide on the issue without the need for a trial.

The recent case of *Beaumont Business Centres Ltd v Florala Properties Ltd* brings the use of Summary Judgements back to the forefront. In this case a Summary Judgement was sought by the property developer to finalise the dispute with the neighbour.

During this, the property developer made reference to a deed between the objecting party and their former and present Landlords. This stated that should light loss occur as a result of an increase in height of the development property, the former Landlord

and objecting party (tenant) would have the right to negotiate a settlement.

The property developer felt that this clause highlighted that the intention of the objecting parties were to use this claim for monetary gain, rather than to protect their right. The seeking of monetary gain rather than preserving rights can threaten the ability to seek an injunction. As a result, the developer felt that an injunction was not the appropriate remedy in this case.

It was the courts decision that the clause did not remove the objector's right to a full hearing on the matter of an injunction. It however, did not go on to pass comment on the likely outcome of such a trial. The courts interpretation of the deed in question was that its purpose was to make clear the beneficiaries of any negotiated settlement, rather than to only confer the ability to seek financial settlement.

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Two distinct perspectives can be drawn from this case:

1. For all property owners seeking to protect their rights against the impact of new developments, this is a win, with another case preserving the right to make a claim for an injunction; and
2. Conversely, the property developer in this case is clearly knowledgeable enough to know the importance of the intention of the objectors claim. They took their time to understand and form an opinion on the objector's deed, arguably using everything at their disposal to allow the development to go ahead. The area of Legal Rights to Light can easily be a minefield for less knowledgeable developers.

Clearly, the area of Rights to Light remains a challenging territory for development and growth, with the scope for a greater amount of cases to lift the veil on the multiple grey areas. With the subject of Rights to Light reform having been sidelined by the Government for the time being this case illustrates that each case is different and requires detailed, expert advice from the outset.

For further advice on Rights to Light or other Neighbourly Matters such as Daylight & Sunlight Amenity, Party Wall or Access Arrangements such as for crane oversail or scaffolding licences, Rapleys Neighbourly Matters team who operate throughout the UK will be well placed to assist. Contact either **Natasha** or **Dan Tapscott**.

