

# The future's bright?

A recent case has illustrated how new technologies might be used to measure losses of light

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The recent judgment of *Peter Knox QC in Beaumont v Floralá* [2020] EWHC 550 CH was met with some surprise by commentators. In this case, the owner of neighbouring land obtained an injunction ordering the cutback of a development that caused relatively small losses of light to the claimant's office accommodation. In this article, we consider the court's comments on the methods of measuring losses of light in the context of the future of how these losses should be measured.

Among other things, the court considered both the Waldram analysis and radiance testing methods.

Waldram analysis uses the principles set out by Percy Waldram in the 1920s, whereby a proportion of light (1/500th of a notional sky dome from a given point within the room being tested) is calculated at multiple points, to show where diffuse skylight can reach the working plane. Before *Beaumont v Floralá*, the Waldram method was the only method of measuring rights to light that had ever been considered by the courts.

By comparison, radiance testing measures the reflected skylight bouncing off the surfaces before reaching the working plane of the subject room. It considers not only the surfaces within the subject room

but also those in the surrounding external environment. Often the amount of glazing and brightly coloured cladding and rendering used in modern buildings will have a reflective effect on the light received within neighbouring properties. The effect of trees can now also be considered with relative ease. Proponents of radiance testing therefore assert that it produces a more realistic assessment of the situation on the ground.

Of course, the disadvantage of radiance testing that is often pointed out is that the neighbour has no direct control over the surrounding environment, such as the regular cleaning of nearby glazing or cladding, cyclical decorations of the rendering, and pruning of trees. However, assigning little or no consideration to reflected skylight seems inequitable given we now have the ability to do so.

Radiance testing has not been with us for very long, as the technology to readily measure it was only developed recently, but is now a standard addition in most software packages.

The judgment in *Beaumont v Floralá* was therefore hotly anticipated by those working in the field of rights to light.

### The court's judgment

Measurement of rights to light was not considered in great detail, but the judge's comments are certainly significant. Radiance testing and the Waldram method were considered but the court preferred the Waldram method. The judge stated:

'I do not accept that I should ignore the Waldram tests. They have stood the test of time and have the advantage of giving one some measure of the loss of light. But I accept that in a case such as this where the reduction in light is not great, its results provide only a starting point in the inquiry as to whether there has been an actionable interference.'

The judge emphasised that the claimant's right was to receive natural light through its apertures. There was no right to receive reflected light or a right to have sources of reflected light from the outside maintained. The example given by the judge was that the claimant had no right to the maintenance of white rendering on the defendant's building, which reflects light. If that rendering was painted black then there would be no or little reflection and the whole appearance would be much darker.

While the judge certainly did not dismiss radiance testing as a method of measuring losses of light, he did point out its potential weaknesses. *Beaumont v Florala* will no doubt be heading to an appeal and it is certainly the case that the basis of testing is an area requiring closer attention by the courts. Prior to the judgment, there was evidence of growing confidence in this alternative method. We are aware of rights to light insurers asking for comparable analyses being submitted, leading to reduced premiums, for example.

### Time for review?

The 2014 Law Commission report on rights to light has remained on the government's back burner for some time. When it comes back on the agenda, it will certainly be playing catch up with technological developments. Besides radiance testing, there are other technologies which we believe warrant detailed consideration and other areas where judicial guidance would be helpful.

- The use of climate-based daylight modelling is on the increase. This takes radiance testing a step further by considering the diffuse skylight reaching the working plane in the subject room for a whole year based on the data collected at the closest weather station averaged over the previous 10 years. Arguably this is a more accurate real world method of analysis, but there are questions regarding the consistency of useful data collected from one station to another and the same drawbacks as radiance testing concerning the surrounding environment being out of the

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## There was no right to receive reflected light or to have sources of reflected light from outside maintained

control of the party in the neighbouring property.

- The actual basis of measurement is an area warranting clarity and consistency. We advocate the use of terrestrial laser scanning to form the basis of the 3D models. The majority of clients and some surveyors will not be aware of the hazards caused by relying on substandard data – such as brick counting, or sticking 2D elevations on block massing derived from images taken thousands of feet above them, ignoring window reveal depths or overhanging eaves – or the drawbacks in using mobile surveying methods of data capture such as vehicle mounted or handheld scanning that are not up to survey grade. Clients will be left paying increased professional fees for surveyors to argue over the quality of the data further down the line. Or, if an insurance-based solution is used, the cost of higher premium rates will be borne by clients anyway. We believe it is better to get things right from the outset as far as possible.
- There is also the use of drones to consider where you are taking detailed images flying across neighbouring properties that could do with some legislative clarity.
- Photovoltaic panels are another area – can a panel acquire an easement for the passage of light or solar radiation? Think of all those feed-in tariffs where projected returns will have been calculated based on the uninterrupted use of that light which could be devastated by neighbouring development.

It is certainly an interesting time now that surveyors have the ability to apply and consider these new technologies. Further guidance from the court of appeal would be welcomed.

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