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## HAVE YOU SEEN THE LIGHT?

**BY TESSA HASKEY**

It is comparatively easy to acquire a right to light. The actual enjoyment of light to a building for 20 years without interruption will create an absolute right, unless that enjoyment was by written consent.

The owner of a building whose light is infringed, or likely to be infringed, by a development, can seek an injunction to stop that infringement; or claim damages. The perception has arisen amongst developers that the Courts are unlikely to interfere with a development once it has been completed, and will award damages instead. Thus, allowing the developer to continue with its development without fear of interference; but knowing that it may have to make a reasonable payment to compensate for loss of light.

In *Regan v Paul Properties Ltd* [2006], Paul Properties was constructing a mixed use commercial and residential development across the road from Mr Regan's maisonette. Mr Regan complained to the developer that the penthouse, to be constructed as part of the development, would substantially affect the light to his living room. The developer ignored the complaints and continued with the development. Six months after the development had begun, Mr Regan applied for an injunction. The Court ordered damages in place of the injunction, but Mr Regan appealed, and

on appeal the injunction was granted, and the development of the penthouse prevented.

It is now clear that if a developer ignores complaints from those with rights to light, then it runs the risk of an injunction and the work ceasing. The developer will need to show the Court why damages are an adequate remedy, and the Courts have made it clear that damages will only be awarded in exceptional circumstances.

In another recent case which preceded the *Regan* case, *Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd* [2006], damages were considered an adequate remedy, and it was left to the Court to decide the level of damages. The Court took into account the nature and seriousness of the breach in trying to assess what the parties would have negotiated had they decided between them what the compensation for loss of light should be.

Damages were assessed at just under one third of the developer's profit for infringement of the right to light. This is higher than most developers would expect to pay and follows a similar rule used for compensation for ransom strips.

# CLIMATE CHANGE BY JOANNA NICHOLLS

The hot topic on everyone's lips at the moment is the global battle against climate change and what needs to be done to circumvent the impact that carbon emissions are having on the atmosphere and subsequent global warming. One of the main culprits of carbon emissions is buildings and there have been and are to be legislative changes to attempt to make the United Kingdom's buildings more sustainable. The United Kingdom government's policy is to reduce carbon dioxide emissions by 60% by 2050. The Energy Review was published last summer, with the aim of addressing how such a reduction in emissions can be achieved.

## Focus on the building sector

The property industry is increasingly in the firing line as a target for the UK government to achieve reduced carbon emissions, as buildings produce around 50% of the UK's carbon emissions.

So far, the main regulatory pressure to improve buildings' performance has been by amending the Building Regulations by way of the Building and Approved Inspectors (Amendment) Regulations 2006 which came into effect on 6 April 2006 (implementing parts of the Energy Performance of Buildings Directive). The new regulations amend Part F and Part L of the Building Regulations and affect all new buildings and also works carried out to existing buildings. The changes to Part L of the Building Regulations impose a requirement for buildings to attain a better standard of air tightness than before, minimising uncontrolled air leakage through the building fabric that results in draughts and wasted energy and by introducing energy performance standard ratings. To take account of the changes to Part L, Part F, which primarily deals with the design of ventilation systems, has also been amended.

A further government intervention is the introduction of Home Information Packs (HIPs) which will have to be produced on the sale of dwelling houses and which will need to include energy performance certificates rating the energy efficiency of homes on a scale of A to G and include suggestions as to reducing carbon emissions from houses. There is uncertainty at present as to when HIPs will be introduced.

## Further changes afoot

Further policies proposed by the government are as follows:

- Compulsory compliance with the introduction of 5 Levels for the Code for Sustainable Homes which provides a standard for key elements of design and construction of new homes.
- The introduction of energy performance certificates for commercial buildings which are due to become a statutory requirement in 2009.
- Local planning authorities policies for a percentage of energy in new developments to come from on-site renewables.
- A Planning Policy Statement on Climate Change is being developed, which will promote spatial planning of new developments that contribute towards reducing carbon emissions.
- Other parts of the Energy Performance of Buildings Directive still to be implemented, eg measures dealing with the regular inspection of boilers and air conditioning systems.

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## Implications for developers

- There will be initial outlay costs associated with incorporating low or zero carbon systems, such as energy saving insulation, more efficient boilers, solar panels and mini-wind turbines into new builds.
- There will also be training and familiarisation costs associated with the implementation of energy performance certificates and compliance with any new regulatory provisions.
- The planning process is likely to become more burdensome once the PPS comes into play. Additional consideration will need to be given (preferably prior to submitting planning applications) to the carbon emissions of the buildings themselves; the layout and even the siting of large developments to cater for reduced travel and overall energy use; and on-site renewable sources.
- Energy prices are likely to rise and the government will probably find other creative ways of reducing carbon emissions, perhaps by either taxing emissions or providing tax incentives for property owners and occupiers to reduce emissions from buildings, eg via business rates and council tax or stamp duty land tax exemptions.

## Implications for landlords/tenants

- Corporate social responsibility will increasingly mean there is pressure on firms to take space in green buildings, leaving landlords of non-compliant buildings suffering.
- Conversely, the marketability of a building will be higher if it complies with the standards imposed, allowing owners to report positively on the building's environmental impact and attracting a higher rent/premium. Compliant buildings will also have an advantage in seeking institutional investors and insurers.

## Implications for legal advisers

- Once the requirement of energy performance certificates is introduced, additional time will need to be spent undertaking due diligence exercises to see certificates to establish the energy efficiency of existing buildings.
- Warranties may well become part of the conveyancing process, both from experts who prepared energy performance certificates and from those constructing new-builds.
- Lease drafters may need to consider imposing new energy obligations on the landlord and/or tenant, perhaps with landlords imposing energy performance standards on tenants and/or a tenant imposing an obligation on the landlord to run the building in as energy efficient a manner as possible.

## What the wise amongst us should do

- Developers need to think ahead and consider carbon and waste consequences of construction.
- Keep an eye on what is going on with the regulatory framework, particularly the Building Regulations which will probably be amended further to incorporate the government's plans to make all new developments carbon-neutral.
- Consider putting 'zero carbon' policies in place to meet both the expectations of government and customers/clients.
- Consider how energy efficient your existing buildings are and implement refurbishments to improve the energy efficiency of them.



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