

Rights of light

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Stuart Wright reviews a 2017 legal case to clarify whether it is a leaseholder or freeholder that is entitled to release rights of light

I am developing a plot of land that will impinge on the rights of light of a neighbouring building. The occupier has a long lease on this building, so can I offer them compensation for loss of their rights of light, given they are immediately affected by it, and not the freeholder, who is not in occupation?

The courts have recently been discussing this very topic in the case of [Metropolitan Housing Trust Limited v RMC FH Co Ltd \[2017\] EWHC 2609 \(Ch\)](#).

A right to light is the right to receive natural light through a defined window or aperture in a building from another parcel of land; it is not a right to a view. It is a specified form of benefit classified in law as an easement, which is a formal legal right.

If a proposed project would interfere with a recipient's legal rights, action can be brought to prevent it, including an injunction to stop development. This risk means developers will often take pre-emptive action and try to negotiate a financial settlement in return for a release of the rights. Given the values of city centre developments, settlement sums can be significant.

Metropolitan Housing Trust was brought by the leaseholder seeking a declaration from the court that it was the correct party to give the developer a valid release of a right to light. In this instance, a proposed development would infringe the rights of light of both the freeholder, RMC, and the long leaseholder, MHT, of a property, and the developer had been negotiating with MHT for the necessary release.

The lease was not due to expire for around 100 years, so while the freeholder had only a remote interest in the property it still had a legal interest. The law on rights of light is not concerned about which party is physically in possession of the property and assumes any rights are acquired on behalf of the freehold owner; so it is not safe to assume that freeholders have no rights, even if their reversion is a long way in the future.

The court was only asked to decide whether the terms of the lease under which the long leaseholder owned the building prevented it from providing a valid release of the right to light. The judge agreed with the freeholder's view that the terms of this particular lease prevented the long leaseholder from providing such a release: the right to light in this case attached to the freehold interest in the property and could not be properly released by the tenant.

The freeholder successfully used the detailed terms of the long lease to argue that the right was part of the 'demised premises'. Even though no right to light existed at the point of lease grant, such a right accrued by prescription after 20 years' 'continued use', and the court held

that, even though MHT had acquired the right through its own long enjoyment, on acquisition the right simultaneously attached to the demised premises. Therefore, any subsequent interference with or release of the right would amount to the long leaseholder permitting an encroachment upon or against the demised premises?, which was prohibited under the lease terms.

It was accepted that, despite breaching the terms of the lease, MHT's release of its own rights of light would not deprive the freeholder of its rights in turn. Nevertheless, by allowing such an interference in the communal right to light, MHT's release may amount to an annoyance or inconvenience to the freeholder, which again would also be a breach of the long leaseholder's lease covenants, as it may require the landlord to litigate to assert its own right to light.

So what does this mean for developers? The law is complex, and much depends on how the right to light was acquired and the precise terms of the lease. The key thing to remember is that when considering who to approach to release rights of light, all owners of property need to be considered – freeholders, long leaseholders and occupational tenants.

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Further information

- This feature was taken from the [RICS Property journal](#) (May/June 2018)
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