

Legal Alert

Developers beware injunctions to protect right to light

In a recent decision that will cause concern to developers the Court of Appeal has effectively reversed the present tendency of Courts to grant damages instead of injunctive relief to neighbours complaining about interference to their rights to light.

In *Regan v Paul Properties and Others* the Court of Appeal overruled the decision of the High Court to grant damages for interference caused by a new development to the light enjoyed by a neighbouring maisonette and instead granted an injunction, despite the fact that this meant that a substantial amount of a fourth floor penthouse flat in the new development would have to be demolished. In doing so it reasserted the previously established principles that a Claimant is, prima facie, entitled to an injunction against a person committing a wrongful act interfering with a legal right and it criticised the lower court for placing the onus on the Claimant to show that damages were not an adequate remedy. It made clear that the judicial discretion to award damages in lieu of an injunction should only be exercised in very exceptional circumstances. Relevant considerations include whether:

- The injury (loss of light) is small. In this case the Court of Appeal did not consider that a reduction of light to circa 45% of the living room was small;
- The injury can be adequately compensated by a small money payment. In this case the Court of Appeal did not consider that a reduction in the value of the maisonette of only circa £5000 (2% of its value) was “small”;
- It would be oppressive to the developer to grant an injunction. In this case the Court of Appeal did not consider the fact that the value of the penthouse would be reduced by circa £175,000 to be decisive;
- The conduct of the Claimant renders it unjust to grant an injunction (e.g. he has indicated he only wants money or has unreasonably delayed his complaint). In this case the Claimant had raised the concern about loss of light at an early stage and had made it clear he was not interested in damages;

In this case the fact that the developer had chosen to take the risk of proceeding with the development (on expert advice that there was no actionable risk) despite the neighbour’s complaint appears to have influenced the Court of Appeal’s decision to grant an injunction.

This decision readdresses the balance following the recent high profile case of *Midtown Ltd v City of London Real Property Co Ltd* which had encouraged developers to believe that injunctions would be less likely to be granted in built up areas. Developers will now have to consider more carefully than ever how they should proceed in the light of concerns raised by neighbours about impact on their right to light. Simply proceeding with the development in the hope that a Court will only award limited damages rather than an injunction is likely to be a very risky and potentially very costly route.

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