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Developers beware rights of light

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In the recent case of *HKRUK II (CHC) Ltd v Heaney*, the High Court granted a **commercial** property owner an injunction requiring a developer to cut back its **completed** development.

Facts

The developer intended to build two additional floors on top of commercial office premises. The developer had been advised before commencing development that it would cause an actionable loss of light to a former bank building opposite and therefore sought to reach an agreement with the owner prior to commencing the development. However no agreement was reached and the developer commenced the development. The owner of the former bank did not bring proceedings for an injunction, despite threatening to do so. Following completion of the development, which took 18 months, the developer applied for a declaration that it was free from any liability to the owner. The owner counterclaimed for an injunction or damages.



Decision

The High Court granted the owner of the former bank an injunction, despite the fact that the infringement related to commercial rather than residential premises and that the owner had delayed in seeking an injunction for over 18 months, whilst the development was started and completed. The court followed the recent case law relating to infringement of light to residential premises. It confirmed that the primary remedy for infringement is an injunction and the court's discretion to deprive a claimant of an injunction should only be exercised in "very exceptional circumstances". The court stressed that, in order to avoid the grant of an injunction, a defendant must show that **all four** of the following criteria are satisfied:

- The injury loss is small. The court held that the injury to the former bank was not small, although it was borderline. The character of the bank, the extent of the restoration work carried out and the extent of the loss of light established real damage.
- The injury is capable of being estimated in money. The court held that the owner's loss was capable of being calculated in monetary terms.
- The injury can be adequately compensated by a small money payment. The court stated that it would have assessed damages at £225,000, which it did not consider to be a small amount.
- It would be oppressive to the developer to grant an injunction. The court held that it would not be oppressive to grant an injunction, since the infringement was not trivial, and was carried out in the knowledge that it was actionable and with a view to profit.

Consequences

The decision undermines the previous opinion that it is difficult for claimants to obtain an injunction in relation to commercial buildings, particularly if the development has already been completed. Developers must not assume that rights of light can be bought out after the development has been completed, or that failure of potential claimants to act quickly will prevent them obtaining an injunction. Developers should resolve any potential rights of light issues before commencing their development.