

PROFESSIONAL STANDARDS

Rights of Light

GUIDANCE NOTE



Published by:

Society of Chartered Surveyors Ireland,
38 Merrion Square,
Dublin 2, Ireland
Tel: + 353 (0)1 644 5500
Email: info@scsi.ie

Royal Institution of the Architects of Ireland,
8 Merrion Square,
Dublin 2
Tel: +353 (0) 1 6761703
Email: info@riai.ie

No responsibility for loss or damage caused to any person acting or refraining from actions as a result of the material included in this publication can be accepted by the authors or SCSI/RICS or RIAI.

Published June 2016

© Society of Chartered Surveyors Ireland (SCSI), Royal Institution of Chartered Surveyors (RICS), Royal Institution of the Architects of Ireland (RIAI) copyright in all or part of this publication rests with the SCSI/RICS/RIAI save by prior consent of SCSI/RICS or RIAI, no part or parts shall be reproduced by any means electronic, mechanical, photocopying or otherwise, now known or to be devised.

PROFESSIONAL STANDARDS

Rights of Light

GUIDANCE NOTE

Contents

SCSI / RICS / RIAI Guidance Note	2
Foreword and Acknowledgements	3
Document Status Defined	4
1. Introduction	5
1.1 The procedure	6
1.2 Brief summary of the law	6
2 Instructions	9
2.1 Competence and experience	9
2.2 Establishing the brief	9
2.3 Client's contract, instructions and preliminary report	10
2.4 Considerations for the dominant owner	10
2.5 Considerations for the servient owner	11
3 Research	14
3.1 Document search	14
3.2 Historic aerial photography and data sources	15
4 Measurement and Method of Assessment	16
4.1 Measurement	16
4.2 Modelling and technical analysis	16
4.3 Analysis based upon full measured survey	17
4.4 Method of Assessment	17
4.5 What is meant by 'adequately lit'?	18
5 Assessment of Compensation	20
5.1 Assessment of damages	20
6 Rights of Light Agreements	21
7 Loss of Rights of Light	22
8 Insurance	24
9 Dispute Resolution	25
Appendices	26
1 References and online resources	26
2 Quick specification for topographic and measured buildings survey	30
3 Suggested checklist of documents relevant to a right of light dispute	31

SCSI / RICS / RIAI guidance note

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations that in the opinion of SCSI/RICS/RIAI meet a high standard of professional competence. Although members are not required to follow the recommendations contained in the note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor or architect, a court or tribunal may take account of the contents of any relevant guidance notes published by SCSI/RICS/RIAI in deciding whether or not the member had acted with reasonable competence.

In the opinion of SCSI/RICS/RIAI, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each surveyor / architect to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an SCSI/RICS/RIAI disciplinary case, they will be asked to explain the actions they did take. This may be taken into account by the panel.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and have knowledge of guidance notes within a reasonable time of their coming into effect.

This Guidance Document has been prepared and is provided for general information purposes only. It is not intended to provide, and does not constitute professional legal advice. You should not act or refrain from acting on the basis of any material contained in this Guidance Note without seeking appropriate legal or other professional advice.

Foreword

It is with great pleasure that I introduce to you the Rights of Light Guidance Note. Produced by a cross professional working group, including members of the SCSi and RIAI, with assistance from external professionals, this guidance document has been developed to recommend industry best practice guidance in relation to issues pertaining to Rights of Light.

Rights of light can be a complex area, requiring participation from many specialist professionals

including surveyors, architects and solicitors. It can be often the case that many professionals are requested to take on a brief where a Right of Light issue arises. This guidance note will provide a useful basis for surveyors and architects to refer to; to ensure that proper advice is provided and specialist professionals are engaged at the appropriate opportunity.

Oliver Held MSCSI MRICS
Working Group Chairperson

Acknowledgments

The guidance note was adopted using the *RICS Rights of Light, Practical Guidance for chartered surveyors in England and Wales (GN 66/2010)*.

The SCSi and RIAI would like to express its gratitude to all original authors associated with the development of the RICS guidance note and for its permitted use in Ireland.

The SCSi and RIAI would also like to acknowledge the efforts of the following for their assistance in producing this guidance in Ireland;

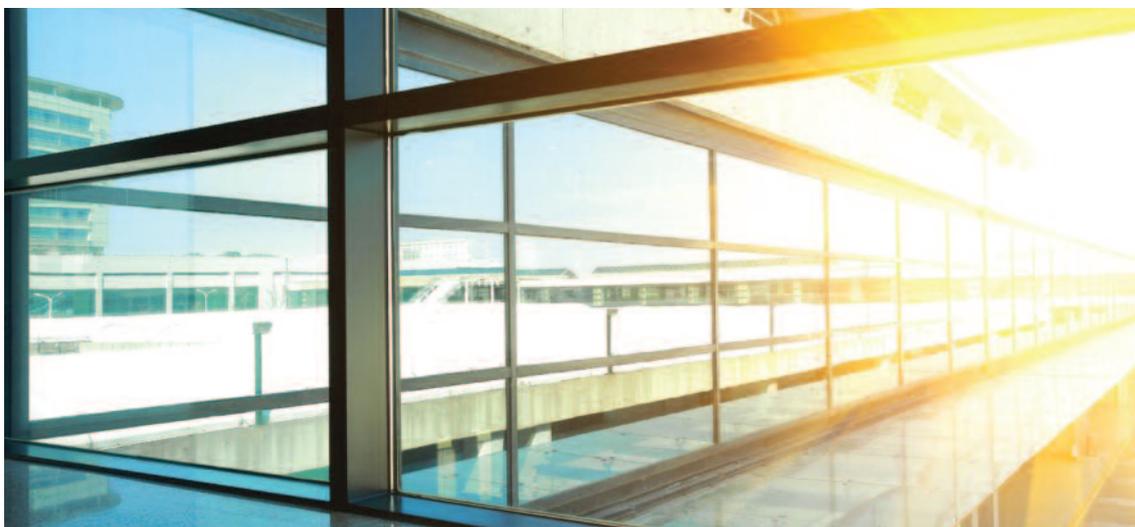
- Oliver Held MSCSI
- Patrick Shine MSCSI
- John Cowan FRIAI (Retired)
- John Elliott FSCSI
- Niamh O'Reilly FSCSI
- Samuel Buck MSCSI
- Conor Byrne MSCSI
- Martin O'Malley MSCSI
- Dermot O'Connell FRIAI
- Eamon Galligan, Senior Counsel

Document status defined (SCSI / RICS)

SCSI / RICS produce a range of standards products. These have been defined in the table below.

Document status defined		
Type of document	Definition	Status
Practice statement	Document that provides members with mandatory requirements of the Rules of Conduct for members	Mandatory
Code of practice	Standard approved by SCSI that provides users with recommendations for accepted good practice as followed by conscientious surveyors	Mandatory or recommended good practice (will be confirmed in the document itself)
Guidance note	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious surveyors.	Recommended good practice
Information paper	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

1 Introduction



Chartered surveyors and architects in Ireland have an established role as experts dealing with the enjoyment of natural light in the built environment. Issues can arise as a result of a development that may interfere with the amount of daylight received through an opening benefiting from a right of light. The physical extent of the proposed development can be strongly influenced by the constraints imposed by the impact of such rights as determined by expert practitioners. This guidance note deals solely with easements known as 'rights of light' and the approach to be adopted by surveyors / architects practising in this field. This document is aimed principally towards the practitioner who may not be an experienced specialist in the field of rights of light, although it is hoped that all chartered surveyors / architects will find it useful.

The issues associated with daylight and sunlight in the planning system are a separate area and are not covered by this guidance note. For further information, see Building Research Establishments (BRE) publication BR209 *Site Layout Planning for Daylight & Sunlight* (current edition).

A right of light for the purpose of this guidance note is a private, legally enforceable easement or right to a minimum level of natural daylight illumination through a 'defined aperture', usually a window opening, whether conferred by expressed or implied grant or obtained at common law by a process of long, uninterrupted enjoyment known as

'prescription'. As with all easements, there is a dominant tenement that enjoys the rights and a servient tenement that is subject to and carries the burden of their existence.

Any grant of planning permission does not extinguish a right of light and the right is enforceable through the courts if demonstrated.

The purpose of this guidance note is to assist the surveyor / architect in:

- Providing accurate and comprehensible information to clients with as little room for misunderstanding as practicable.
- Ensuring that, in the event of a dispute over the impact of rights of light the facts are set out in a manner that assists the parties and their legal advisers.
- Safeguarding the interests of owners, investors, insurance providers and others who rely upon a chartered surveyor's / architect's report on, and evaluation of, rights of light, whether assessing the viability of a potential development or the negative impacts of a development proposal by others.

The aim of any Dispute Resolution Service, whether SCSi or RIAI, is to encourage private individuals, businesses and professional advisers (particularly the legal profession) to select a suitably qualified chartered surveyor or architect as an expert who

can review a proposed scheme and advise on the potential implications of loss of light.

The present situation is that while some individuals and businesses are aware of the existence of professionals who specialise in rights of light, many are not. They may consequently seek advice from unqualified persons, often to the detriment of accurately identifying the problem and invariably leading to unnecessary loss or expense or worse still, ill-founded litigation. Accurate information and assessment at an early stage can often assist in obtaining a prompt and cost effective resolution.

1.1 The procedure

This guidance note considers natural day light specifically in the legal context of the easement known as 'the right of light'. Light disputes can arise outside the scope of this guidance note and as such it is important for a member when reporting to have a clear understanding as to what constitutes a right to light dispute.

A right of light as an easement requires various situations to be in place to create or trigger the formation of the legal right. Due to the legal nature of rights of light, practitioners often work closely with specialist legal advisers.

Members should avoid exceeding the extent of their competence in reporting on legal rather than technical issues.

1.2 Brief summary of the law

This section aims to give some background on the law and legal issues relating to rights of light to help put the surveyor's / architect's role in context. Members should always recommend to clients that they seek project specific legal advice from a qualified legal practitioner.

Right to Light – An Easement

A right to light is a specific right which an individual landowner may acquire over the land of a neighbour. An easement is a right enduring for the benefit of land known as the dominant tenement, which is exercisable over another person's land, known as the servient tenement. A right to light was ordinarily acquired by prescription at common law, i.e. long user. However, the Land and Conveyancing Law Reform Act 2009 (Irl) ("the 2009

Act") now provides that an easement will only be acquired by prescription on registration of a court order under section 35. Rights to light may also be acquired by express or implied grant or reservation.

A right to light can only be enjoyed by an aperture that is intended to allow the access of light to a building. The right does not exist for the benefit of the building per se and cannot apply to open land. However, a specific glazed area such as a greenhouse can enjoy a right to sunlight. In this guidance note the term 'window' will be used to refer to all apertures.

A right can only be acquired by prescription where the enjoyment of the access to light is continuous throughout the necessary period for prescription. The relevant period was twenty years under the Prescription Act 1832 (Irl) but has now been reduced to twelve years pursuant to the 2009 Act.

An interruption of more than one year will be enough to prevent the period of prescription from running any further. However, the demolition of the dominant building does not necessarily result in the extinguishment of rights to light. Bland on Easements puts the matter as follows:

"A Right to Light will survive the demolition and replacement of the building on the servient land if the relevant apertures of the new building are of the same number and dimensions of those of the old building. The question in each case turns on the degree of coincidence of the old and new aperture, but a different approach is to address the identity of the light as opposed to the identity of the aperture."

In Bickford-Smith, Francis and Weekes, the authors state:

"Thus where a window enjoying Rights to Light is increased in size, the Right to Light applies to only that portion of the larger aperture which is coincident with the pre-existing window, but equally the right to that portion is not lost by the enlargement."

Changes under Land and Conveyancing Law Reform Act, 2009 (Irl)

Under **Section 33** of the 2009 Act, a new, single statutory period of twelve years is established for all prescriptive claims (apart from those against State land). This period is the same as that for a

claim to ownership by adverse possession under the Statute of Limitations, 1957.

It is important to note that the repeal of the Prescription Act, 1832 (Irl) by the 2009 Act does not affect any rights accrued under it.

Where a period of prescription has begun to run prior to the commencement of the 2009 Act and continues to run thereafter, the requisite period to establish the existence of the easement will be acquired after a period of 20 years has run or 12 years from the date of commencement of the Act, whichever is the earlier.

A prescriptive claim to an easement or profit is based on a similar statutory system that previously operated under the Prescription Act, 1832 (Irl). However, in order to obtain **legal** title to an easement or profit by prescription, the claimant has to apply to the Court for an order confirming the claim. There is a further requirement that the Court order should be registered.

Whether interference with right to light is actionable

Whether legal proceedings may be brought in respect of an interference with a right to light depends on whether the interference that the proposed development will cause with the level of access to light enjoyed by the adjacent building amounts to a nuisance, i.e. an unreasonable interference with the rights of the occupier of that building. It is only then that the interference will be actionable, whether by way of application for an injunction or a claim for damages. Whether a nuisance has been caused is determined by reference to whether the extent of the access to light remaining is sufficient or not. The test of nuisance has been described as follows by Bland:

"The test of nuisance, and therefore the measure of the Right to Light, was adopted by the Irish Courts from the judgment in Colls and may be expressed as follows:

"In order to give a right of action, there must be a substantial privation of light, sufficient to render the occupation of the house uncomfortable according to the ordinary notions of mankind, or to prevent the plaintiff from carrying out his accustomed business on the premises as beneficially as he had formerly done."

The established authorities do allow light derived from sources, other than the apertures that have been obstructed by the servient tenement, to be taken into account in determining whether there has been a material interference with rights to light.

The Irish courts have in the past applied the so-called "45 degree rule" as a guide in determining whether there is a case to answer on a claim for interference with a right to light. This rule of thumb suggests that there is no substantial interference if the angle of unobstructed light is greater than 45 degrees. However, it is not a rule of law and other relevant factors have to be taken into account. The "45 degree rule" is not considered in modern practice to be as reliable as "sky factor" analysis.

Whilst the Courts in Ireland have accepted "sky factor" analysis, significant weight is also given to the experience of those persons working in the relevant building. Therefore, scientific evidence may not be conclusive as to whether an injunction is to be granted. In **Smyth .v. Dublin Theatre Company Limited** Meredith, J. stated:

"That the evidence of experts is not as safe a guide as the evidence of those accustomed to use the room in question. The wearer of the shoes is the one best qualified to say if and where it pinches."

On the other hand, it has to be recognised that in practice objective evidence may be a more reliable guide than the subjective opinions of individuals, especially when the Court has to consider whether or not to grant an injunction. The view of Meredith J. which has been adopted in a number of subsequent cases is in effect just another way of saying that one has to take into account the peculiar facts of the particular case.

Remedies for Interference with Right to Light: Injunction or Damages?

The primary remedy for a substantial interference with a right to light is an injunction. However, in some instances, a court may decide that damages is an adequate remedy. Where a person seeks an interlocutory injunction pending the determination of the substantive proceedings, he will be required to give an undertaking to compensate the developer for any losses the developer may have suffered in the event that the court ultimately holds in the latter's favour. The decision to apply for an injunction cannot, therefore, be taken lightly.

Before the recent decision of the U.K. Supreme Court decision in **Lawrence v. Fen Tigers Limited** ("the Lawrence case"), the leading case in relation to the appropriateness of granting an injunction, as distinct from merely awarding damages, was the decision of the Court of Appeal in **Shelfer v. City of London Electric Lighting Company**. In that case, A.L. Smith, L.J. said:

"In my opinion, it may be stated as a good working rule that –

- 1. if the injury to the plaintiff's legal rights is small,*
- 2. and is one which is capable of being estimated in money,*
- 3. and is one which can be adequately compensated by a small money payment,*
- 4. and the case is one in which it would be oppressive to the defendant to grant an injunction;*

then damages in substitution for an injunction may be given."

This set a particularly high hurdle for a defendant seeking to resist the granting of an injunction. This restrictive approach was significantly modified by the U.K. Supreme Court in its recent decision in **Coventry v Lawrence**. In summary, the Supreme Court held that:

- When determining whether to grant an injunction or to award damages in lieu, a Court should have no preconceived inclination either way.*
- The manner in which the discretion should be approached should not be constrained by rigid rules.*
- The defendant's conduct may be important.*
- The public interest is also relevant.*
- Whilst no longer imposing a fetter on the discretion, the guidance contained in Shelfer remains of some value.*

2 Instructions



2.1 Competence and experience

Any chartered surveyor / architect accepting a fee in relation to rights of light must ensure that they are competent, carry Professional Indemnity Insurance (PII) and ensure that there are no conflicts of interest.

Although many cases do not involve formal litigation, litigation is always a possibility and surveyors / architects need to assume that they may be called upon to act as an expert witness. It is essential that members make themselves conversant with current professional guidance such as the SCSi 'A guide to best practice for chartered surveyors acting as expert witness' available at www.scsi.ie. The RIAI Guidance for Architects Acting as an Expert Witness' is available on the members' area of the RIAI web site.

These guidance notes contain advice and information on the overriding duties of an expert witness as well as the practical matters, including instructions, inspections, reports and oral evidence and agreeing facts and resolving differences.

2.2 Establishing the brief

It is important that a client is made aware at the point of instruction of the technical and legal difference between natural light within the common law system and the separate methods of assessment used in planning and environmental evaluations. A client should be made aware that the granting of planning permission for the servient owner does not limit the legal rights of the dominant owner to light. They are two distinct matters, and the tests and standards that apply for daylighting levels in the Rights of Light cases and Planning Law are completely different. This will ensure that the correct study is provided and thus avoid the common misunderstanding that leads to mixing and confusing the differing methods of technically assessing light.

It is not uncommon, in rights of light cases, for clients to seek early advice but at the time of the first meeting the client may not hold all the necessary information. An initial report may comprise guidance to the client as to what is required to take the matter forward.

It is essential to establish the requirements of the client and those of any professional advisers from the outset. Rights of light seldom lend themselves to a simple solution. It is important that the client understands this.

It is important also from the outset that the architect/surveyor makes detailed and legible notes at inspections, meetings and interviews, as these may form a vital record.

2.3 Client's contact, instructions and preliminary report

On instruction, the surveyor / architect will need to form an opinion on whether or not there will be a loss of daylight. Whether or not this loss of daylight will amount to an infringement on a right of light, will need to be subsequently investigated. The SCSi or the RIAI may be able to provide the names of surveyors / architects who specialise in this area.

It is important, whether acting for the dominant owner or servient owner, that if he/she feels that there may be a rights of light issue, that he/she advises the client straight away. He/she should further recommend to his/her client that the client informs his/her solicitor of the potential issue and seek their advice. Also, he/she should recommend that a preliminary report be prepared by him/her or by a rights of light specialist, who has the competence to quantify the extent of light that will be lost, and to establish whether or not the room or rooms affected will become unusable for normal purposes due to inadequacy of light after the reduction has occurred. Information gathering will normally commence with a site visit. The importance of a preliminary report from the outset cannot be overestimated. It is likely to include some or all of the following criteria: a brief summary of the legal parameters for rights of light, an initial assessment on the amount of light loss through all the relevant windows affected, and a recommendation on whether further detailed daylight studies/calculations need to be undertaken. It is advisable that whenever possible, the preliminary report should include photographs. An initial photographic record is not only useful for illustration purposes, but it is needed to record the situation prior to any development taking place. The Rights of Light architect or surveyor specialist should also recommend in his/her report that the client forward the report to his/her solicitor for his/her consideration and guidance.

In simple cases, this process might be quite elementary, possibly using no more than 2-D drawings. In more complex cases the construction of a detailed 3-D model may be necessary and this will involve more detailed measurement by appropriately qualified surveyors.

If the designers have produced a 3-D model as part of their design process, this may be usable to assess the effects on surrounding rights of light. It may, however, take some considerable time to produce a definitive report on the likelihood and extent of injuries.

Once the measurement and analysis approach has been decided upon, the surveyor / architect will interpret the resulting information and present the client with guidance. The client may look to the surveyor / architect for certainty in this guidance and where this may not be possible due to legal, survey or other constraints, it is important to make this clear.

2.4 Considerations for the dominant owner

Dominant owners should be mindful of the fact that a right of light is a right to only a 'reasonable' amount of light and they may be unpleasantly surprised that while their light is significantly reduced, there may be no infringement on their right. When a person's light is affected by a development, there are two main courses of action that they can pursue.

1. **Planning process:** If planning permission has still not been granted, they should consider raising their concerns with the local planning authority.
2. **Legal right of light:** A right of light is a separate legal matter from the planning system which can be pursued separately through the courts.

The courts generally look favourably upon those who seek to resolve disputes early and prior to litigation. Dominant owners should also note that the further works proceed on site, their chances of being granted injunctions, in general, are reduced. It is recommended that dominant owners:

- Try to resolve disputes as early as possible and importantly before works commence on site,
- Enter into discussions with the servient owner to seek a resolution and avoid being obstructive or unhelpful,

- Consider resolving the problem via the planning process. For example, they could submit observations to the planning authority or lodge an appeal on foot of a decision. The local planning authority may request the servient owner's proposal to be amended, which could resolve the issue.

If a dominant owner decides to use the planning process, the following should be considered:

- Observations submitted to the local authority should be based upon valid planning reasons. For example, while planning authorities may take account of 'daylight and sunlight' under their own planning policy, private 'right of light' issues fall outside of their remit.
- Find out whether the development is in contravention of the planning authorities development policy; for example, they may use BRE209 or similar. However, planning authority policies are not necessarily standard or mandatory.
- Meet with the planning officer for the area to highlight your concerns.
- If relevant, consider acting in conjunction with neighbours; planning authorities are more likely to listen to a group of people.

Following submission of observations to the local planning authority and appeals to An Bord Pleanála, if planning permission is still granted, the dominant owner may seek to protect their right of light separately through the courts.

If the client's legal advisors recommend that an interim injunction be sought suspending the development until trial, the legal advisors will probably also make clear that the court may require the client to give 'the usual undertakings'. This is a cross-undertaking in damages, so that if the court awards an interim injunction as sought and the trial judge subsequently decides that the interim injunction should not have been made, the client can be made liable for the servient owner's losses. This may include the cost of delay to the development.

If the client is still minded to litigate, then the surveyor / architect will often act as expert witness. This role involves a change of emphasis to the surveyor / architect's activities. While up to this point the surveyor / architect has been able to act as an adviser helping to advance the client's case, once

appointed as an expert the surveyor's / architect's primary obligation is to the court, not the instructing party and it is therefore important to remain impartial, truthful and dispassionate at all times.

Reports presented in evidence must include the positive and negative aspects and cannot exclude inconvenient points that do not support the case.

It is essential that the surveyor, and where possible the architect, studies the RICS practice statement and guidance note, *Surveyors acting as expert witnesses*, 3rd edition, 2009 and draws the client's attention to the relevant parts.

The expert surveyors / architect is only able to complete a comprehensive and accurate report if both the client and professional adviser openly disclose all known facts. All material including plans, documents and knowledge of any relevant incidents need to be disclosed in the expert's report – even if it may appear to be disadvantageous to the case. If the client has concealed information that might come to light in court, this may harm the credibility of both the client's and expert's evidence.

2.5 Considerations for the servient owner

This guidance note has so far covered advice to dominant owners likely to be affected by nearby developments. Where the client is a developer, some of the points given above are simply reversed. However, there are other aspects that need to be considered such as;

A. What are the Key Steps in Preparing Development Proposals vis-a-vis Rights of Light?

At the very beginning of the consideration of the suitability of any site for development the architect / surveyor should examine the site to assess:-

- Are there any windows in the surrounding properties, facing towards or at an angle to the client's site / property.
- Will these properties/windows have been in situ for a period of more than 20 years reducing to 12 years from 1 December 2009 (i.e. the date of commencement of the Land Reform and Conveyancing Act 2009 (Irl)) by the time the proposed development is causing an interference with their access to light?

- Are the windows that would be affected the sole source of light to the room I rooms behind?
- What are the uses made of the adjoining rooms I buildings that may be affected.
- How many windows and neighbouring properties may be affected?

B. Site Survey

An accurate, detailed site survey is essential. In relation to rights of light, the surveyor / architect should take care to include in the survey:-

- On the clients' site, all site levels and if there are existing buildings that may be demolished, their form in plan & section with key profile (i.e. parapet, eaves, ridge, chimney etc.) levels.
- Similarly, key profile levels of existing buildings to be maintained.
- On any neighbouring sites with windows, window head and sill levels, where possible floor levels vis-a-vis window levels, and the siting and location of any I all windows in relation to boundaries of the development site.

C. Sketch Designs to Minimise Daylight Reduction

The information learned about the windows in surrounding properties from the site examination should be regarded as a site design constraint in the preparation of sketch design proposals. In this way, most possible legal actions against any proposal can be "designed out" in the initial stages before the scheme is developed too far.

The extent of the interference with light can be approximately indicated by drawing up typical sections which demonstrate the relationship of the clients existing property to the neighbour's windows, and also the relationship of the clients proposed development (including all high obstructions e.g. roofs, plant rooms etc.) to the neighbours windows.

These comparative sections will indicate the difference when viewed from the adjoining property. At this stage approximations I assumptions may have to be made with regard to the depth of the rooms behind each affected window.

Full rights of light calculations require access to the affected properties to enable measurements to be taken. Often, it is not desirable at an early design stage to request such access. Rights of light calculations at this stage may be based on a series of possible room sizes in order to quantify the risk.

An early "very approximate" test check can be made by taking a line from the head of the affected window to the top of the proposed structure, which is projected back into the room to determine sky visibility at worktop level i.e. 850 mm above floor level. It is a very rough guide as to possible acceptability if at 850 mm level (i.e. desk top level) at least half of the room maintains sky visibility.

D. Appointment of a specialist

In the same way as an architect I surveyor would advise a client to appoint fire safety, structural, services, health & safety consultants as required at the feasibility stage in the design process, if preliminary investigations suggest significant potential rights of light problems then the architect I surveyor should advise their client of the necessity I wisdom to appoint a rights of light specialist.

When a scheme is developed and finalised and a client is committed and enthusiastic about it, it is too late to realise that the scheme may cause a substantial reduction in daylight in a neighbouring property that may lead to a legal action. It is even more serious for all concerned if their realisation only dawns, after planning permission has been applied for and I or obtained, and it is discovered that the scheme can only be built if a major re-design is undertaken, or the injured neighbour is prepared to accept large amounts of compensation. Or, the situation would be even worse again, if a project has started on site, and an adjoining owner obtains an injunction to halt the works.

At an early stage, a right to light specialist may be able to:-

- Provide a set of site specific guidelines, within which it is unlikely that there will be any actionable infringement, and the design can be drawn-up accordingly.
- Advise whether or not a specific outline design proposal will cause a substantial loss of light and indicate the order of magnitude of same, and

whether or not your clients should seek legal advice.

- Advise & assist as to design changes / options which could significantly reduce the infringement.

A client will often consult a chartered surveyor or architect with a proposed development and ask for confirmation such as 'no injuries to surrounding rights of light will be caused, or if there are, they are only subject to compensation and not injunctable'. Funders and others may well be relying on the response they receive. As with acting for a dominant owner, it may be impossible to give an instant and unqualified answer.

Clients frequently press for assurance that any injuries will only attract compensation. It is important that the surveyor / architect should

remind the client that the primary remedy for a significant injury to an easement of light is an injunction. Surveyors / Architects should therefore resist the temptation to give definitive advice to clients on what the court will decide.

2.6 Measurement

Developers are often reluctant to reveal the extent of their proposal at an early stage and the surveyor / architect is requested to make an analysis with limited and preliminary information. Where this is the case, only approximate assessments of the effects on surrounding properties can be made. The limitations of the analysis must be made clear so that the client does not assume that the results are fully researched and refined.

3 Research



3.1 Document search

It is generally a sensible idea to allow an adequate period of time, after the initial site meeting or briefing, to carry out research for documents before the actual site survey is undertaken. Documents such as deeds and legal agreements may take a considerable length of time for the client legal advisors to locate and may vary in quantity, from very few to a considerable number of files, including drawings.

The most likely sources for documents are the Property Registration Authority of Ireland (PRAI), i.e. Land Registry, possibly the Registry of Deeds and title deeds for the properties concerned. The owners of the properties concerned, or their predecessors in title, may hold useful records. Historic Ordnance Survey maps and aerial photographs may be useful, particularly if the age or position of windows is in dispute. Historic details including photographs may be available from commercial sources and libraries.

When checking Land Registry Folios by the client's legal advisor for easements such as rights of light, it is important to inspect those relating to both the dominant and servient titles as it is not uncommon for key information to be only recorded on one title or the other. For instance a right of light may

be recorded as a burden on one Folio, i.e. the servient title, but not be recorded as an appurtenant on the Folio of the dominant title. Key information, including deeds and other legal agreements submitted to the Land Registry for registration, is retained by the Land Registry in the instrument relating to the Folio. However, only the registered owner, or parties with specific interests in the title concerned, may have access to the Instrument. Other parties require written permission from the registered owner to access the instrument. The most likely source for rights that have been legally formalised and recorded as a legal agreement are the actual deeds for the property or properties concerned. These are usually held by the respective property owner, their legal representative or, if used as collateral, by the relevant financial institution or lender. It should be noted that rights acquired by long use and not recorded in a legal agreement are unlikely to be recorded by the Land Registry. Such rights will however bind the subservient tenement.

While memorials of deeds retained in the Registry of Deeds contain only limited information it may be prudent to have them checked, in particular if the case is contentious and litigation is possible. It is advisable to engage a legal searcher if a Registry of Deeds check is required.

Legal advice should always be sought with regard to the existence of rights and the interpretation of legal documents. Surveyors and architects should be aware of their professional limitations and should focus on the spatial issues.

As a minimum, and subject to any limitations relating to a client instruction, surveyors / architects should undertake searches of the local authority's planning portal to establish existing or proposed room layouts of neighbouring properties if they are available. The planning portal may also have information relating to proposed developments in the immediately surrounding vicinity, which may need to be considered as part of the analysis.

Surveyors / architects may find it useful to search the internet for other relevant information, including estate agent details, which commonly include plans of properties that can also be useful in determining a room layout or use.

Surveyors / architects also need to be aware of the requirement to retain information for PII and other purposes. All vital images gathered from internet sources need to be saved for record purposes in case an image sourced online is later removed. It is important to state the accuracy of all information relied upon when advising clients.

Details of the sources of information collected and dates of retrieval should be recorded. This will be useful if the source needs to be revisited at a future date and also if a comprehensive report is required. This may prove to be essential if litigation ensues and the surveyor/architect is required to give expert evidence.

3.2 Historic aerial photography and data sources

There may be some advantage in studying historic aerial photographs and ordnance survey information covering the area in question – particularly if the age or position of windows is in dispute. Historic detail may be obtained from a number of commercially available sources.

Clients may also hold useful historic information, i.e. drawings, photographs, title information.

Historic information may be made available from the Irish Architectural Archive 44 - 46 Merrion Square, Dublin 2.

4 Measurement and Method of Assessment



4.1 Measurement

Once the initial measurement has been made, matters may then progress to a far more detailed survey process, usually carried out by specialist surveyors, either in-house or commissioned especially for the purpose. This work will involve the use of more complex instrumentation such as:

- total station with reflectorless capability
- GPS receivers
- high definition terrestrial laser scanner
- software for the manipulation of 'Point Cloud' data
- CAD software for model building
- analytical ROL software.

All measuring equipment should be issued with a calibration certificate to allow for traceability and prove adherence to quoted technical specification. For more information on calibration, surveyor members can download the RICS Geomatics client guide Reassuringly accurate – how controlling accuracy can affect your project. This is available at www.rics.org.

4.2 Modelling and technical analysis

Where appropriate, a 3-D representation may be required of the development at an early stage, which may be subject to later adjustment or adaptation. The rights of light consultant will have a good understanding of the site layout from preliminary stages of advice and should by now be in possession of all available data sources relevant to the project including the legal information referred to previously and relevant survey information, plans, elevations, sections, etc. This data is rarely complete and will often require considerable interpretation from supplementary data sources to enable the creation of a preliminary 3-D model. In some instances it may, for example, be necessary to utilise commercially available 3-D models to provide a more homogeneous dataset.

The sources of all data may need to be disclosed so that users of the resulting information are in no doubt as to the accuracy. Other supplementary data sources available include Ordnance Survey vector data, photogrammetric data and airborne light detection and ranging (LIDAR). All sources are available online and offer early stage cost benefits.

It may be more economical, in some cases, to commission a 'high definition laser scan' in the preliminary stages of advice to avoid wasteful

adjustment or adaptation of incomplete data or when it is envisaged that a full measured survey may be required in any event.

Clients or designers may request the preparation of a design model envelope, as a guide (albeit portraying strange geometrical shapes) to the limits of construction that would not cause a potentially actionable injury. This allows for the design to focus on particular areas of concern but the process of producing this envelope can be time consuming, as it may rely on several iterative computations.

The nature of the 3-D model's accuracy will dictate whether it is sufficient for scheme planning only or whether it can be used for final assessment of compensation or for expert witness reports.

As with all data utilised, the model, and drawings should clearly identify all assumptions. It is always advisable to check all the data inputs into the formulas to ensure they are correct.

4.3 Analysis based upon full measured survey

This is considered to be the most accurate 3-D model possible showing massing, adjacent window positions and room layouts. Where assumptions have to be made these will again need to be highlighted. This 3-D model should ordinarily be suitable for assessing compensation payments, expert witness work, and for insurance purposes.

The data required for this stage can be extensive and while more traditional methods may be used, it is becoming normal on larger schemes to capture the data using a 'high definition terrestrial laser scanner'. This type of equipment is mostly used by specialist geomatics surveyors who are able to advise on the levels of accuracy that can be attained. See SCSi client guide on Virtually real: terrestrial laser scanning 2012 at www.scsi.ie.

Unless full access to affected properties is permitted, room layouts can still only be assumed. Scan data can sometimes help in these assumptions as internal detail can be derived to give an indication of room extents and floor/ceiling levels and also wall finishes. If room access is allowed then no assumptions need be made, as plan layouts will be measured. These plans will generally take the form of a semi-connected survey but on occasions may require a fully-connected survey. These types of survey are defined in the SCSi guidance note *Specification for surveys of land, buildings and*

utility services at scales of 1:500 and larger. This is available for members at www.scsi.ie. Particular emphasis should be placed on the accurate measurement of windows and wall thicknesses as well as internal / external floor levels.

It is prudent to connect all survey information to the Ordnance Survey Ireland ITM co-ordinate reference system by use of Global Positioning techniques. (See SCSi Guidelines for the use of GNSS in surveying and mapping). This results in the definitive geo- referencing of the project and allows for other proprietary data sources to be used in context without transformation. The Ordnance Survey Ireland benchmark system is no longer maintained and while offering a validation check, should not be relied upon for height datum.

The Ordnance Survey Ireland Active GNSS Network provides access to the definitive datum in Ireland and will consequently require GNSS observations local to the site. This can be supplemented with conventional traversing and spirit levelling where GNSS observations are not practical. The height datum is particularly relevant in the assessment of rights of light as just a few centimetres at room level can have significant implications on the results. For more information, see RICS Geomatics client guide, *Virtually level – transition from traditional benchmarks to height using GNSS* (www.rics.org/geomatics).

4.4 Method of Assessment

The method of calculating the adequacy of light was revolutionised by research undertaken in the 1920s by Percy Waldram FRICS, together with his son, who devised what is now known as the Waldram diagram (see below). The idea that light could be assessed from a proportional view of the dome of the sky goes back much further but, thanks to Waldram's invention, the value of light from the spherical sky could now be represented on a flat piece of paper. Waldram's research showed that tasks requiring visual discrimination – generally clerical type tasks – could be performed if the point at table height (now taken as the 'working plane') in the room could receive light from 1/500th of the total illuminance provided by the sky and the diagram allowed for this to be calculated easily (if tediously). This value equates to roughly 10 Lux. Modern research (Defoe, 2009) shows that this is less than half of what most people actually require and a figure of around 25 Lux is now presented by researchers as about the practical minimum.

Although this figure is often mentioned in academic papers, the courts still work on the 1/500th (or 0.2% sky factor) figure. Until a legal case sets a different standard or criterion, members should continue to assume that the 1/500th (or 0.2% sky factor) figure will be applied by the courts. Experts, however, should be aware of other methods of measurement and may wish to put them forward as an alternative.

The Sky Factor (SF) is no longer a unit of light measurement recognised by the British Standards Institution (BSI) as its use is now limited to rights of light calculations.

4.5 What is meant by 'adequately lit'?

By drawing a grid over a room, it is possible to prepare a Waldram diagram for each node of the grid, measuring the heights and horizontal angles of the obstructions before and after. The grid height is set at the working plane of 850mm above floor level. By interpolating between the nodes, one can draw two contours; one at the 0.2% SF as existing and another at 0.2% SF as proposed (see below).

Specialist rights of light software is available that performs analysis on 3D models using calculations based on Waldram method. Alternatively, the process can be done perfectly well manually but it is laborious and tedious.

The size of the grid will directly relate to the accuracy of the end contour diagram. In negotiations the grid size should be agreed between the parties' surveyors / architects. It is not uncommon on large projects for the computer models to be set up at an early stage with a larger grid size to speed processing time. This is then reduced as the potential risk in the model is narrowed as necessary.

Once the two contours have been drawn, it can be seen that there is an area of the room that is 'adequately lit' before and after. Regardless of the amount of light before, if the 'after' proportion is less than 50% of the room area (often referred to as the 'grumble point'), it is conventionally accepted that there is a likelihood of an actionable injury to the light. However, it should be noted that the grumble point, although conventionally used, is not a rule of law and the courts preside over its interpretation.

The next stage is to prepare a table that ranks the effects of the reductions to light, room by room. It is conventional to say that where the reduction in light leaves between 25% and 50% of the room adequately lit, this is ordinarily considered a serious and actionable loss. If the reduction leaves less than 25% of the room adequately lit, then this is considered a very serious, actionable loss. If the loss lies in the zone between 50% and 75%, then this is less serious and may not be actionable loss, while if the loss lies in the zone between 75% and 100% adequately lit, this would be considered even less serious.

Figure 1: Waldram diagrams showing adequacy of light before and after proposed development

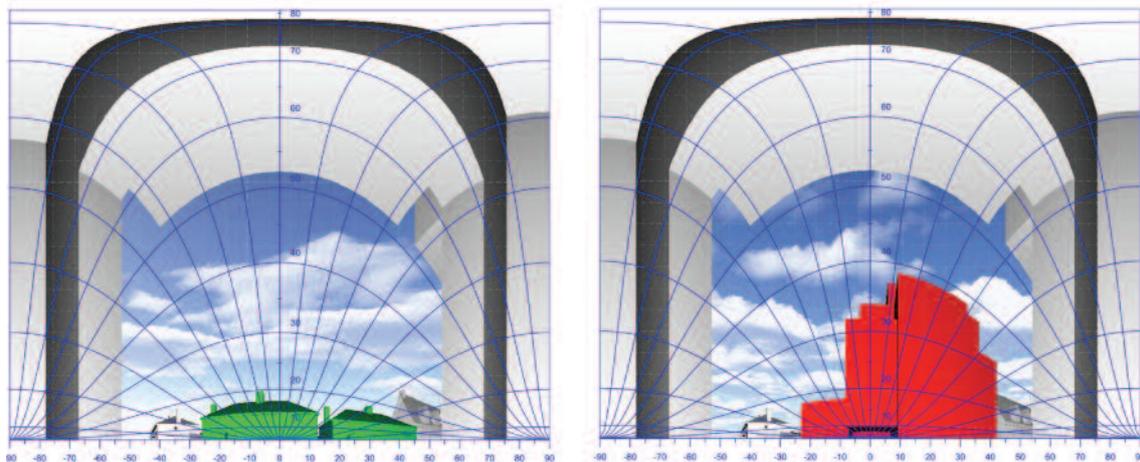
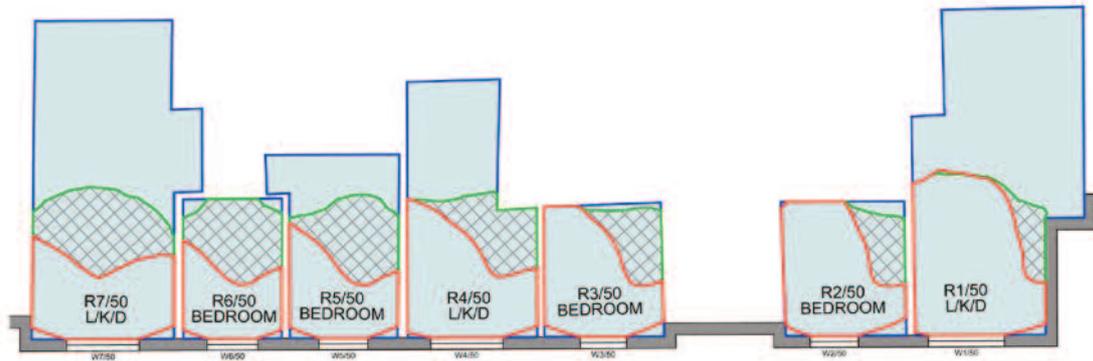


Figure 2: Example of a contour diagram



The four categories of loss are traditionally termed:

‘Front Zone Loss’ – the very serious loss below 25% of the room area

‘First Zone Loss’ – the ‘actionable loss’ between 25% and 50%

‘Second Zone Loss’ – the less serious and ‘non-actionable’ loss between 50% and 75%

‘Makeweight Loss’ – the least serious class of loss.

In order to value the losses, the zones are weighted by a simple formula: Front Zone loss is multiplied by 1.5, First Zone loss by 1, Second Zone loss by 0.5 and the Makeweight loss by 0.25. This then totals the lost adequately lit area as a proportion of the First Zone or Equivalent First Zone (EFZ). A table of losses (‘EFZ Table’) is then compiled which shows a total of the losses for that building. Provided that there are some losses in either the front or first zones, an actionable loss is likely and then the ‘parasitical losses’ in the second and makeweight zones are included. If there are no losses in the front or first zones, then losses in the other two zones would not normally, of themselves, be claimable.

From the EFZ table, the total loss of adequately lit area is derived and it is then necessary to establish a

value for the light element of that area and then to capitalise it.

A value for the light is then established and agreed between the rights of light surveyors / architects. This value is known as the Light Standard Rent (LSR). SCSi / RIAI does not recognise any historic table or chart capping the LSR value to a given market rental figure. The agreement of the LSR figure is fully open to negotiation between the parties. The LSR rate is subject to the yield for the property in question. Once this is established and, ideally, agreed, the Single Rate Years Purchase (YP) for that yield is applied from Parry’s Valuation and Investment Tables (see Appendix 1) and the EFZ total is multiplied by the rental value and the YP to produce the book value of the total loss.

Non chartered valuation surveyors / architects may need to seek specialist valuation advice from members working in the district to establish local rentals and the proportion attributable to light and the local rates of yield. If the matter is likely to end up in litigation, this advice will need to be properly researched. An estate agent’s marketing estimate is not appropriate in the rights of light compensation context.

Room/ floor	Room use	Whole room area (sq. m)	Existing >0.2% (sq. m)	Proposed >0.2% (sq. m)	Loss (sq. m)	Front (sq. 0)	1st (sq. m)	2nd (sq. m)	MKWT (sq. m)	EFZ (sq. m)
Ground floor										
R1/50	L/K/D	30.97362	12.63471	11.25046	1.384244	0	1.384244	0	0	1.384244
R2/50	Bedroom	10.5537	9.801189	7.924563	1.876626	0	0	0	1.876626	0.473802
R3/50	Bedroom	10.08919	9.485321	7.097733	2.387588	0	0	0	2.387588	0.594575
R4/50	L/K/D	18.29246	11.23188	7.822371	3.409513	0	1.328502	2.081011	0	2.369008
R5/50	Bedroom	13.46154	9.123003	5.081754	4.041249	0	1.64437	2.387588	0	2.842809
R6/50	Bedroom	8.890747	8.444816	4.282795	4.162022	0	0.167224	3.994797	0	2.164623
R7/50	L/K/D	30.33259	12.60684	7.004831	5.602007	0.575994	5.026013	0	0	5.890004

5 Assessment of Compensation

Various issues need to be considered when assessing the appropriate level of damages where compensation is deemed to be payable.

Compensation for loss of light is complex, and is governed by Law and Practice; requiring a high degree of expertise.

Valuations generally require a multi-disciplinary approach requiring the assistance of other advisors such as quantity surveyors, valuation surveyors and geomatics surveyors with sufficient skill and expertise.

The valuation process principally applies to the following:

- Valuing for the diminution in the dominant owner's property interest.
- Valuing the servient owner's gain resulting from the infringement.
- Valuing diminution according to Statutory provision.

A detailed understanding of all appropriate valuation methods and understanding technical and legal issues are essential. Advice to clients may be based upon 'amenity' or other methods to value 'diminution' and may include a number of widely used valuation techniques to measure any 'gain'. A variety of references to these methods can be found within various publications listed at Appendix 1.

The most commonly used methodology for loss of light issues is the Waldram Method. In assessing damages the surveyor is required to assess the diminution in value of the property affected by the infringement of the right to light. This is calculated according to the amount of floor area receiving the reduced level of illumination.

5.1 Assessment of damages

Measurement of Floor Area:

A surveyor must determine the diminution of the property which has been caused by the infringement of the right of light. This is calculated on a room-by-room and floor by floor basis according to the amount of floor area which has been reduced below the threshold level of illumination. For example, assuming a room has a floor area of 50 sq.m. and that 45 sq.m. of the floor area receives adequate light (0.2% sky factor or more known as the *grumble point*), and that this is then reduced to 10 sq.m. by the construction of a neighbouring building; the area of loss therefore is 35 sq.m.

The floor area affected is weighted according to the seriousness of the loss of light. The weighted floor area loss to be used as the basis for valuation is referred to as 'equivalent first zone loss' (EFZ Loss).

Valuation of Freehold Interests

The freehold valuation of the loss is straight forward. The EFZ is multiplied by the market rental value and then capitalised at the appropriate rate. On a presumed spread of annual rents from €430 psm to €1,162 psm, there is a broad consensus amongst practitioners (UK) that the daylight rental proportion for this category of property is in the region of €68. psm per annum.

The annual rent (€68 psm) should therefore be multiplied by the EFZ loss.

Valuation of Leasehold Interests

The calculation of the tenant's interest will depend upon the unexpired term of the lease or where there is an intervening rent review or to whom the lease reserves the rights. The damages payable are apportioned between the landlord and the tenant or sub-tenant, as the case may be.

6 Rights of Light Agreements

It is important, when a rights of light issue is resolved, that the agreement between the parties is set out in the form of written release and recorded to ensure that the issue does not result in any future argument.

Depending upon the form of agreement reached, the release can be relatively simple or more complex but in every case should be subject to legal advice.

Plans contained in the release should be capable of being interpreted by anyone other than the parties to the agreement as this may need to be relied upon in the future.

It is common for such agreements to include drawings showing the agreed massing profile and spot heights. Printed views from the computer model of the massing may be helpful in conveying the intended scope of release.

7 Loss of Rights of Light

The loss of a right of light is a legal matter and therefore one should seek advice from his or her solicitor or legal representative should a question of interference with that right arise. The circumstances in which an easement may be extinguished or lost include the following:

Non-use or abandonment

Under section 39, subsection (1) of the Land and Conveyancing Law Reform Act 2009, an easement may be extinguished should the dominant tenement not use the easement for a continuous period of at least 12 years, except where the easement is protected by registration with the Registry of Deeds or Land Registry or where the easement is created by express grant. Both the Registry of Deeds and Land Registry are now under the management of the Property Registration Authority of Ireland.

Section 39, sub-section (3) preserves the jurisdiction of the courts to declare an easement, however acquired, to be 'abandoned'. Mere non-user is not sufficient to establish abandonment. In addition to cessation of the user: there must be an intention to abandon or not or resume. However, a long period of non-use might raise a presumption not to resume, though one which may be rebutted by other evidence of intention. Owners do not normally wish to divest themselves of a property right and abandonment should not be lightly inferred. Extinguishment or abandonment of a right of light could not be lightly inferred; it has to be established by clear evidence. Abandonment of a right of light requires that there is a clear, unequivocal act of intentional abandonment by the dominant landowner. Timber boards fixed to a window for security purposes or constantly shut blinds would not indicate intentional abandonment. Even the physical blocking up of a window was found in one case not to be sufficient where the cills still remained and the revels retained unbroken.¹⁴

When considering non-use or abandonment, it is worth noting the distinction between a 'continuous easement', such as a right of light or a right of support, and a 'discontinuous easement', such as a right of way. A discontinuous easement is one which requires human agency, but not on a continuous basis and therefore, evidence of non-use may be more difficult to demonstrate. For example, a person may have a right of way through a piece of land and they may only exercise this right once a year. On the other hand, a continuous easement does not require human agency, rather the dominant land is adapted in some way, such as a window opening in a building.

Non-use or abandonment may also happen through the action of the servient landowner. For example, should a servient owner build a wall which infringes on the dominant owner's right of light and the dominant owner does not object for a significant period of time, then the lack of action by the dominant owner may raise a question as to his intention to abandon the right. However, this evidence may be outweighed by evidence supporting the view that the dominant landowner did not intend to abandon the right.

If a person does not wish to lose a right of light, one option is to have it registered. However, one has to factor in the possibility that this may trigger a dispute as to its existence. This is particularly relevant for those who acquired an easement under the Prescription Act 1832 because there was no requirement to formally register an easement under this repealed legislation, unlike the position under the 2009 Act. Another approach is to keep a photographic record at periodic intervals sufficient to establish actual usage.

By agreement

The dominant owner and servient owners may expressly agree to extinguish an easement. It is preferable that this would be done by deed. It is necessary to identify correctly the owners of the

¹⁴ *Marine and General Mutual Life Assurance Society v St. James Real Estate Co. Ltd.* [1991] 2 EGLR 178.

dominant and servient tenements and the relevant lands comprised in each. The deed of release should be registered with the Property Registration Authority.

Unity of ownership

A person cannot have an easement over their own land. So, if a dominant owner of an easement purchases the freehold estate of the servient owner, then the easement would automatically cease to exist. However, extinguishment on the basis of unity of ownership only applies to fee simple ownership in possession. So, a tenant can enjoy a right of light over land in the possession of his landlord.

Expiry: where the easement is for a term of years

An easement may be granted for a term of years. When the period of time expires, the easement is extinguished.

Through redevelopment or demolition

If a property is refurbished, redeveloped or demolished and rebuilt, a right of light is not necessarily lost. A right of light attached to a particular building will survive the demolition and replacement of the building if the new building has windows in substantially the same place and of the same size so that the same "cone of light" which served the old building serves the new. The right to light in such circumstances will only apply to the portion of the window or other aperture that overlaps with the positioning of the former aperture at the same location.

8 Insurance

When discussing with clients the topic of a potential injunction or claim for damages from a third party it may be appropriate to raise the subject of insurance as a possible solution. A small number of specialist title insurers have developed bespoke insurance products to meet the needs of clients/developers for whom surveyors / architects have identified potential right of light risk. Insurance wordings vary between providers but they are designed to cover the following liabilities:

Damages and compensation (including costs and expenses) awarded as a result of any enforcement action by a third party with a right of light claim

- The costs of any alteration or demolition of the development or part of it necessarily incurred to comply with such enforcement action
- Any diminution in market value of the property/ development as a result of the third party's claim

- Any costs incurred prior to the injunction/action which are subsequently rendered abortive.

It should be noted that any confidentiality clauses within the policy must be strictly observed.

Rights of Light Indemnity policies are written 'in perpetuity', and cover automatically transfers to successors in title, so the policy can be a positive benefit to developers selling on.

Surveyors / architects should also bear in mind that residential clients may have legal expenses cover, for example, under household insurance policies, which could pay the costs of their bringing or defending a rights of light claim.

9 Dispute resolution

In some instances it is not possible to resolve a rights of light matter by negotiation and the parties may need to seek redress through the courts system. There are, however, alternative methods available.

RICS operates a service where they will appoint a suitably qualified and knowledgeable chartered surveyor who, following satisfactory completion of the relevant training, is included on the Neighbour Dispute Service register. Interested surveyors can find out more at www.rics.org/drs.

Mediation is another form of Alternative Dispute Resolution (ADR) and requires specific training. RICS provides opportunities for mediation training to

members and further information is available from www.rics.org/drs. No surveyor or party to a dispute should consider mediation without a full understanding of its processes, legal authority and costs. However, mediation has much to offer. It could provide the means of bringing early resolution, to a discussion between neighbours, who wish to remain on good terms. At the other extreme, it could be part of due process in order to resolve a serious dispute between parties prior to, and in order to prevent, the dispute being settled through judicial proceedings.

There are further methods of alternative dispute resolution available and these should be explored through RICS.

RIAI Dispute Avoidance and Dispute Resolution - General

Conciliation

- (i) In the event of a dispute in relation to this contract - which is not resolved by negotiation - the parties agree to try to resolve such dispute by Conciliation, before recourse to Arbitration.
- (ii) Either party may commence Conciliation by sending a written Request for Conciliation to the other party, setting out a brief outline of that party's issues and concerns and an indication of the reliefs and/or remedies sought. The provisions in the RIAI Conciliation Guidelines and Procedures document current at the date of the delivery of the Request shall apply.
- (iii) If the parties are not able to agree on the appointment of a Conciliator, then either party may apply in writing to the RIAI requesting the nomination of a Conciliator by the President of the RIAI (or a Vice-President if the President is not available).

Arbitration:

- (i) Should any dispute arise in relation this contract, either party may refer such dispute to arbitration and the place of such arbitration shall be Ireland.
- (ii) Either party may commence Arbitration by delivering a written Notice of Arbitration on the other party. Such notice shall set out a brief outline of the dispute and an indication of the reliefs and/or remedies sought.
- (iii) If the parties are not able to agree on the appointment of an Arbitrator, then either party may apply in writing to the RIAI requesting the appointment of an Arbitrator by the President of the RIAI (or a Vice-President if the President is not available).

Appendix 1

Definitions

Skyfactor - the ratio of the illuminance indoor of a horizontal plane at a given point inside a building due to the light received directly from an overcast sky of uniform luminance sky, to the illuminance outdoor of the point due to the unobstructed sky.

References and online resources

Statutes and regulations

Prescription Act 1832

Land and Conveyancing Law Reform Act 2009

SCSI/RICS/RIAI practice standards and professional information

Practice statements

RICS, (2008) *Surveyors acting as expert witnesses*, (3rd edition), UK, SCSI

RICS, (2008) *Surveyors acting as advocates*, (2nd edition), UK, SCSI

Guidance notes

SCSI, (2011) *Boundaries: procedures for boundary identification, demarcation and dispute resolution in Ireland (2nd edition)* 2011, Ireland, SCSI

SCSI, (2011) *Measuring Practice guidance note (1st edition)* 2011, Ireland, SCSI

IPMS, (2016) *International Property Measurement Standards – offices*, 2016, IPMSC, Irl

SCSI (2010) *Guidelines for the use of GNSS in land surveying and mapping* 2010, Ireland, SCSI

SCSI (2014) *Surveys of residential property (1st edition)*, 2014, Ireland, SCSI

SCSI (2009) *Survey of land, buildings, and utility services at scales of 1:500 and larger (1st edition)* 2009, Ireland, SCSI

BSI - BS8206 - 2: 2008 - Part 2: Code of Practice for Daylighting

Littlefair, P. *Site Layout planning for Daylight and Sunlight - A Guide to Good Practice* - BRE Publication, 2011

CIBSELG 10: 1999 Daylighting and Window Design BRS

Daylight Protractors - Building Research Station

RIAI Information Papers on Declaration of Identity

RIAI Good Practice Guide 5th edition On-line.

The RIAI Guidance for Architects Acting as an Expert Witness

RIAI Property Inspection Report

RIAI Practice Note 1994/03: Declaration of Identity

RIAI Information Paper 01: Declaration of Identity

RIAI Information Paper Important Cautionary Information on Certification or Declarations of Identity 92A – August 2010

Books and journals

- Anstey, J., *Anstey's Rights of Light and How to deal with them*, 4th Edition, RICS Books, 2006
- Bannister, A. & Raymond, S., *Surveying* (7th Edition), Prentice Hall, 1998
- Bickford-Smith, S. & Francis A., *Rights of Light – The Modern Law*, 2nd Edition, Jordans, 2007
- Bland, Peter – *The Law of Easements and Profits a Prendre*
- Burnison, Gordon – *Adding some Light to the Subject – Project*, October 1978
- Burns, S. (in association with Bond Solon Training), *Successful Use of Expert Witnesses in Civil Disputes*, Tottel Publishing (Crayford, Shaw's), 2003
- Cato, D., *The Expert in Litigation and Arbitration*, LLP Professional Publishing, 1999
- Chynoweth, P. (2004) *Progressing the rights to light debate part I: a review of current practice*, article in *Structural Survey, Journal*, Vol. 22, No. 3, pp.131–137.
- Chynoweth, P. (2005) *Progressing the rights to light debate part II: the grumble point revisited*, article in *Structural Survey, Journal*, Vol. 23, No. 4, pp.251–264.
- Chynoweth, P. (2009) *Progressing the rights to light debate part III: judicial attitudes to current practice*, article in *Structural Survey, Journal* Vol. 27, No. 1, pp. 7–19.
- Clarke, P. H., *The Surveyor in Court*, article in *Estates Gazette*, 1985 (out of print but available from the RICS Library)
- Davidson, A.W., *Parrys Valuation and Investment Tables* (12th edition) EG Books, 2002
- Defoe, P. and Frame, I. (2007) *Was Waldram wrong?*, article in *Structural Survey, Journal*, Vol. 25, No. 2, pp. 98–116.
- Defoe, P. and Frame, I. (2009) *Waldram was wrong!*, article in *Structural Survey, Journal*, Vol. 27, No. 3, pp. 186–199.
- Dixon, M., *Modern Land Law* (6th Edition), Routledge, 2008
- Ellis, Patrick – *Practice; Law Adjoining Owners; Rights of Light – AJ Magazine* August 1984
- Ellis, Patrick – *Rights to Light*, The Estates Gazette Limited
- Farr, M., *Surveyor's Expert Witness Handbook: Valuation*, EG Books, 2005
- Galligan, Eamonn – *When the Price is Light – Irish Planning and Environmental Law Journal*, Volume 2 number 2.
- Galligan, Eamonn – *Damages for Loss of Light – Plan Magazine* Issue 7 / 96
- Graham, R. & Koh, A., *Digital Aerial Survey*, Whittles Publishing Limited, 2002
- Green, K. & Cursley, J., *Land Law* (5th Edition), Palgrave Macmillan, 2004

- Gaunt, J.R. and Morgan P., *Gale on Easements* (18th Edition), Sweet & Maxwell, 2008
- Hannaford, S., Stephens, J. & O'Hagan, R., *Rights of light*, RICS Books, 2008
- Hodgkinson, T., and James, M., *Expert Evidence: Law & Practice* (2nd edition), Sweet & Maxwell, 2007
- Isaac, N. & Walsh, M., *Easements & Other Rights*, RICS Books, 2008
- Millington, A. L., *An Introduction to Property Valuation*, 5th edition, EG Books, 2001
- Morris, A., *The Surveyor as Expert Witness: building and development play*, EG Books, 2005
- Murphy, Deirdre – *The Law may not always help you see the Light* – Irish Times, June 1980
- O'Connell, Dermot FRIAI – *Daylight and the Environment*, Irish Planning and Environmental Law Journal, Vol 2 No. 2.
- Olins, A., *Covenants Affecting Land – A Practical Guide*, RICS Books, 2008
- Paine, D.P., & Kiser, JD, *Aerial Photography and Image Interpretation*, Wiley- Blackwell, 2003
- Pamplin, C. (Dr), *The Little Book on Expert Witness Fees*, JS Publications, 2007
- Pamplin, C. (Dr), *The Little Book on Expert Witness Practice*, JS Publications, 2007
- Pitts, M. (2000) *The grumble point: is it still worth the candle?*, article in *Structural Survey Journal*, Vol. 18, No. 5, pp. 255–258,
- Pugh-Smith, J. & Sinclair, G., *Neighbours and the Law* (4th Edition), Sweet and Maxwell, 2005
- Purcell, Frank – *Rights of Light* – Text of Lecture given by Frank Purcell, FRIAI on 3/4/88 to student members of the RIAI.
- Redler, A., *Practical Neighbour Law Handbook*, RICS Books, 2006
- Sara, C., *Boundaries and Easements* (4th edition), Sweet and Maxwell, 2007
- Schofield, W. & Breach, M., *Engineering Surveying* (6th Edition), Butterworth Heinemann, 2007
- Timothy, P. & Barker, A., *Wontner's Guide to Land Registry Practice* (22nd edition), Sweet and Maxwell, 2009

Land Registry online resources

Objections and disputes – A Guide to Land Registry practice and procedures

www.PRAI.ie

Books

Anstey, J. Anstey's Rights of Light and How to deal with them, (4th Edition), RICS Books, 2006

Bickford-Smith, S. & De Burgh, E., Rights of Light - The Modern Law, Jordans, 2000

Ellis, Patrick J., Right to Light, The Estates Gazette Ltd. 1989

Bland, Peter, The Law of Easements and Profits a Prendre, Greens Practice Library, Round Hall Ltd, 1997

SCSI Client guides available at www.scsi.ie

- Map Projection and Scale Factor
- Scale - Let's be clear about scale
- A clear impartial guide to Boundary Disputes
- SCSI Boundaries: Procedures for Boundary Identification, Demarcation and Dispute Resolution in Ireland

SCSI Public guides – guides for Citizens/Advice bodies – available at www.scsi.ie

- A clear guide to CPO and compensation
- A guide to the Building Control (Amendment) Regulations
- Surveys of residential property
- Property and land boundaries, a checklist for purchasers
- Guide to the Living Cities Initiative
- A Guide to Flooding

Appendix 2

Quick specification for topographical and measured building surveys

The quick reference specification sheet overleaf, summarising the full RICS guidance note (Measured surveys), is intended for use on small or straightforward schemes and assumes that the first option clause (where appropriate) is used throughout. Margin numbers indicate the relevant main guidance sections or clauses.

The specifier should tick the requirement(s) needed in each subject category. Where no item is selected for a particular category the surveyor will assume that there is no requirement. Additional information, where necessary, should be provided in a covering letter.

If this sheet does not provide adequate opportunity to specify the survey then the main guidance document should be used to prepare the survey specification. Please read the User Guide carefully.

Clause	Subject	Choices				
1.1	Project Information					
1.1.2	Client					
1.1.3	Contact + Telephone					
1.2	Survey Extent	Location plan attached	Textual description	Proposals plan	(Indicate items supplied by Specifier)	
1.3	Scale(s) 1:	50	100	200	500	Other
2.1	Plan Control Grid	Local grid	Site grid plan	Based on national grid *		
2.2	Level Datum	GPS derived national datum	Benchmark derived national datum	Site datum	Local datum	
2.3	Detail Survey	Boundaries	Outline	Full Detail	(see also Buildings, Section 4)	
2.4	Trees	Foliage Lines	Trunk over 0.15m dia.	All Trees		
2.5	Height Information	Spot Heights	Contour Interval	Road Section Spacing...		
3	Underground Services	Cover Position	Cover level	Invert/ Pipe Size		
4	Buildings External	Outline	Full	Footprint	Eaves/Ridge Elevations	
4.1	Buildings Internal	Ground Floor	All Floors	Roof	Sections	
5.1	Plan Reproduction	Final Drawings	Proof Plots	Survey Report		
5.2	Digital data	State format				
5.6	Computer Media	Internet Download	Email attachment	Portable hard drive	CD/DVD	Other
	REMARKS					

*Scale factor applies

Appendix 3

Suggested checklist of documents relevant to a right of light dispute

Not all of the items below will necessarily be relevant to every case.

For the client's property

- 1 Register entry and title plan Title No. _____
Supplied by client [] or to be obtained by surveyor/ architect []
- 2 Title deeds (conveyances, transfers, deeds of grant, etc) (To be supplied by client)
- 3 Photographs from the property records or family photo album to date windows.
(To be supplied by client)
- 4 Witness statements to date new openings
(To be supplied by client's solicitor)
- 5 Pre Purchase Report or similar prepared by a chartered surveyor/architect.

For the neighbour's property

- 6 Register entry and title plan Title No. _____
Supplied by client [] or to be obtained by surveyor []
- 7 Title deeds referred to in register entry (available from Land Registry as official copies) Supplied by client [] or to be obtained by surveyor/architect []

Relevant to both properties / either property

- 8 Planning drawings (from local council planning department) Supplied by client [] or to be obtained by surveyor/architect []
- 9 Vertical aerial photographs
Supplied by client [] or to be obtained by surveyor / architect []
- 10 Oblique aerial photographs
Supplied by client [] or to be obtained by surveyor []
- 11 Old survey plans from historic archive sources (research of incorporated rights) Supplied by client [] or to be obtained by surveyor/architect []
- 12 Have there ever been any light obstruction notices?
Supplied by client [] or to be obtained by surveyor/architect []
- 13 Search of local land charges register.



Dating back to 1895, the Society of Chartered Surveyors www.scsi.ie Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.

www.scsi.ie

Society of Chartered Surveyors Ireland, 38 Merrion Square, Dublin 2, Ireland
Tel: + 353 (0)1 644 5500
Email: info@scsi.ie



About the RIAI

Founded in 1839, the Royal Institute of the Architects of Ireland supports and regulates the architectural profession and promotes the value that architecture brings to society for everyone's benefit.

The RIAI engages with government, the professions, industry, clients and the public to promote quality in architecture; to deliver quality and sustainability in the built environment; to enrich our distinctive culture and heritage; to contribute to the competitiveness of our economy; and to improve quality of life for the people of Ireland, today and for generations to come. We also provide support services to Architects and Architectural Technologists.

The RIAI seeks to provide architects with the professional training, education and research support required to consolidate the role of the RIAI - and the architecture profession generally - as champions of exemplary practice in architecture and urbanism; and to provide high quality professional services, public education, outreach programmes, and consumer protection to clients, end-users and the public.

The Registration Body for Architects

As the official registration body under the Building Control Act 2007, the RIAI is committed to discharging its obligations to administer the Register of Architects in Ireland. Although the RIAI carries out a statutory function as the Registration Body and Competent Authority for architects in Ireland, this is carried out on an entirely self-funding basis. The RIAI does not receive any Government Funding or State Aid for this statutory function.

Our Public Role

In our public role, we run a number of special initiatives such as the RIAI Simon Open Door, which has raised over €500,000 to-date for the Simon Communities to combat the issue of homelessness in Ireland. We also provide free advice at public events such as the Ideal Homes Show in the RDS.

Our annual RIAI Irish Architecture Awards are a showcase of the best of Irish architecture and are published widely through the media. Every year, the Irish public also votes – through our Public Choice Award – for their favourite building.

Our award-winning RIAI publications include *Irish Architecture*, *the RIAI Annual Review* and our bi-monthly magazine *Architecture Ireland*. This year, we are relaunching our consumer magazine *house + design*. All publications are available from the RIAI Bookshop, which stocks Ireland's largest selection of Architecture and Design books.

The RIAI is a company limited by guarantee without share capital, registered in Ireland. Company Registration Number: 003498. Company Registered Address: 8 Merrion Square, Dublin 2. Company Charitable Tax Exemption Number CHY 5436.

RIAI, 8 Merrion Square, Dublin D02YE68, Ireland. T +353 (0)1 6701703, www.riai.ie, e/mail info@riai.ie