

NEIGHBOURLY MATTERS

Dealing with the legal rights of adjoining owners of a site is nothing new to the development industry. Higher density and more mixed-use developments in traditionally residential areas, however, has prompted planning authorities to become increasingly conscious of the rights of neighbouring occupiers.

£40bn

over £40bn of construction activity took place in 2005, the highest so far this decade.

This document summarises the main areas which developers and neighbours should be aware of before and during the construction process.

Daylight and sunlight

There is increasing evidence that the absence of daylight and/or poor lighting can create a variety of health and well-being problems. It has prompted planners to become more concerned with how new developments obstruct the daylight and sunlight penetration of neighbouring properties, and the light conditions in proposed schemes. Developers in many areas are now required to submit a daylight and sunlight study to support their planning applications.

Right to light

Windows or openings to a building should receive an adequate amount of light. If a new development reduces light within a neighbouring property to an inadequate level, it constitutes a nuisance which,

under English law, the aggrieved party is able to claim an injunction and/or damages.

A developer will want to know the likelihood of an injunction being obtained or the amount of damages (compensation) to be paid. Equally, a neighbour will want to ensure that their property rights are properly protected.

Access agreements

Without the express permission of a neighbour, a trespass will occur if a developer allows a crane to oversail or scaffolding to be placed on or over a neighbour's land. Such permission is usually via an Access licence.

Access to Neighbouring Land Act 1992

This Act — applying to England and Wales only — is designed to provide access to neighbouring land for the execution of "basic preservation works". It is obtained by applying to the courts for an Access Order.

Construction noise and pollution

Developers or contractors are obliged to minimise the effects of noise, dust and vibration. If a neighbour is considerably inconvenienced or suffers loss, it can seek an injunction and/or damages from the developer.

Party Wall etc Act 1996

This Act assists developers, providing rights to carry out works affecting a party wall or structure, excavations close to adjoining properties and the erection of boundary walls. It enables developers to cut into a party structure, underpin it and inject into it. In return, the developer must serve legal notices on its neighbours or those with a legal interest in surrounding properties. If a dispute arises, surveyors are appointed on both sides, and a statutory duty is placed upon developers to avoid unnecessary inconvenience and compensation for loss or damage.

Rights of way

Rights of way can exist on sites and they often need to be amended to facilitate a development.

OUR NEIGHBOURLY MATTERS SERVICES

“Neighbourly matters” is a collective term which covers a number of specialist building surveying skills that we undertake. The table below specifically show what these are:

Daylight & sunlight

- > assimilation of drawings showing the proposed development and neighbouring properties
- > investigating and understanding the UDP
- > initial advice on the potential effects on developments on daylight and sunlight to neighbouring properties
- > technical analysis in accordance with published guidance
- > preparation of reports to support a planning application or any subsequent objections
- > ongoing advice on possible adjustments to improve daylight and sunlight or to comply with LA requirements

Right to light

- > initial advice on likely interference from development
- > investigation of neighbours’ rights and review of legal documentation
- > advice on the risk of an injunction compared to compensation and possible remodelling of proposed development
- > detailed analysis including computer modelling, generation of light contour plans and light-loss calculations negotiation and settlement of claims
- > advice on Light Obstruction Notices

Access advice

- > assimilation of drawings showing the proposed development and neighbouring properties and land
- > initial advice on whether access is permitted under statute onto/over

neighbouring land or whether an Access Agreement is required

- > identifying ownership interests in the adjoining properties/land
- > producing draft Access Agreements and preparing and agreeing Schedules of Condition
- > negotiating and agreeing Access Agreements

Construction noise and pollution

- > comply with legislative requirements
- > help neighbours liaise with developers to ensure the effects of noise, dust and vibration are minimised or thereafter assist neighbours in pursuing a claim against the developer

Party Wall etc Act 1996

- > initial advice on the rights, obligations and implications of the Act
- > identifying ownership interest in the adjoining properties
- > preparing and serving Party Wall Notices
- > preparing and agreeing Schedules of Condition
- > negotiating and agreeing Party Wall Awards
- > administering the terms of the Act

Rights of way and escape

- > negotiating private and public rights of way for dominant and servient tenements

Boundary advice and disputes

- > reviewing historic documents, title deeds and agreements to understand the “paper” boundary position
- > attending site to inspect any physical features that could identify the physical boundary position
- > liaising with the neighbours regarding the position of the boundary – assimilating the various information and advising on the likely boundary position

The firm

Gerald Eve LLP is a leading firm of chartered surveyors and property consultants operating from a network of nine offices across the UK. We have achieved one star accreditation and are classified as a ‘first class place to work’ by The Sunday Times Best Companies to Work For’ survey.

Our clients – including 40 per cent of the FTSE100 – hold some of the largest property portfolios in the country. We provide advice to ensure that our clients’ operational and non-operational properties cost them as little as possible and deliver the maximum return possible.

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