

RICS Practice Standards, UK

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# Rights of light

Practical guidance for chartered surveyors  
in England and Wales

1st edition, guidance note



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# Acknowledgments

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The RICS Boundaries and Party Walls Panel (B&PWP) is a cross-professional group specialist panel of associate and chartered surveyors from the building, land surveying (Geomatics) and rural areas of practice. It brings together some of the foremost and distinguished professional surveyors working within the arena of neighbour disputes. Its remit includes boundaries, party walls and certain easements, such as rights of way and rights of light. These issues lie at the core of RICS members' professional work.

The B&PWP also produces professional guidance and information, RICS public guides, RICS client guides, policy responses, journal articles and has been involved in the inception and ongoing operation of RICS Dispute Resolution Service (DRS) Neighbour Dispute Service. The B&PWP exists to promote understanding and best practice in the areas of Land Transfer, Registration and Administration, Encroachments, Cadastre and Boundary issues, and/or to an improvement in the administration of the Laws regarding them, within the United Kingdom and overseas.

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In order to produce this guidance the following sub group of the Panel was formed and their time and assistance is acknowledged:

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B&PWP publications can be found at [www.rics.org/land](http://www.rics.org/land) and at [www.rics.org/mappp](http://www.rics.org/mappp)

# RICS guidance notes

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**This is an RICS guidance note. It provides advice to members of RICS on aspects of the profession. Where procedures are recommended for specific professional tasks, these are intended to embody 'best practice', that is, procedures which in the opinion of RICS meet a high standard of professional competence.**

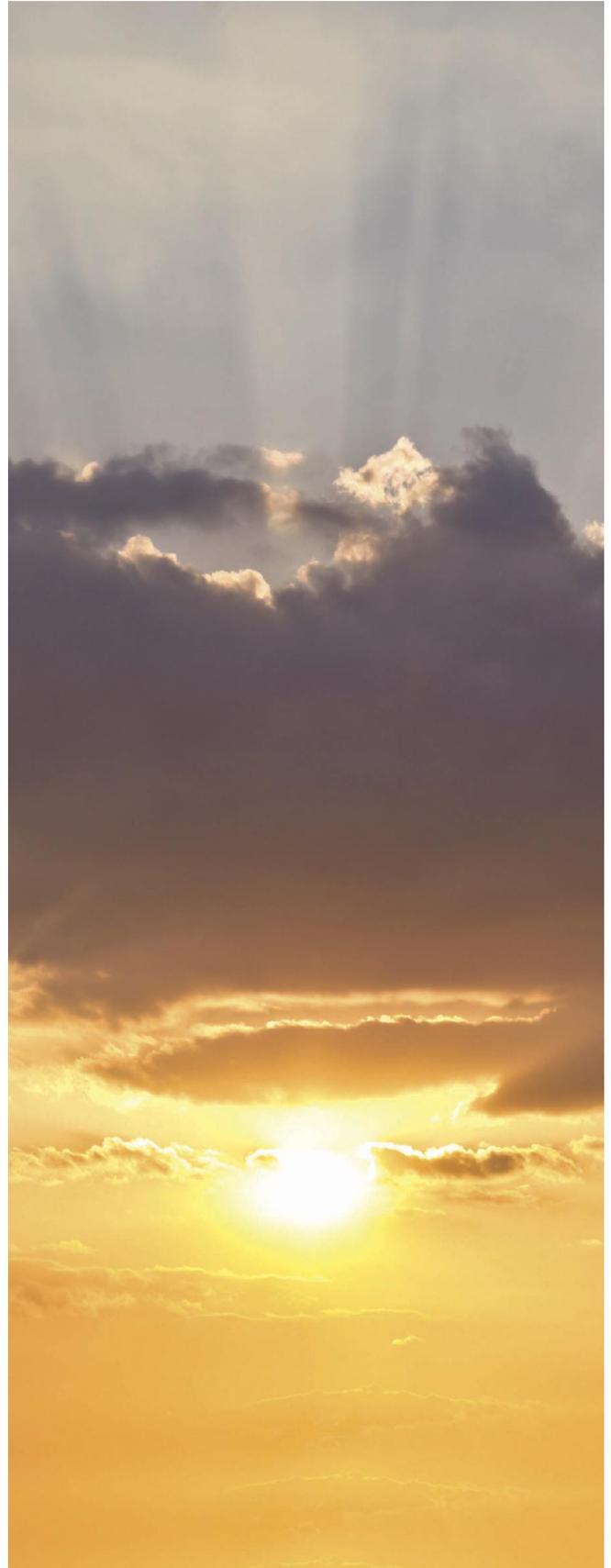
Members are not required to follow the advice and recommendations contained in this guidance note. They should, however, note the following points.

When an allegation of professional negligence is made against a surveyor, the court is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the surveyor has acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this guidance note should have at least a partial defence to an allegation of negligence by virtue of having followed those practices. However, members have the responsibility of deciding when it is appropriate to follow the guidance. If it is followed in an inappropriate case, the member will not be exonerated merely because the recommendations were found in an RICS guidance note.

On the other hand, it does not follow that a member will be adjudged negligent if he or she has not followed the practices recommended in this guidance note. It is for each individual chartered surveyor to decide on the appropriate procedure to follow in any professional task. However, where members depart from the good practice recommended in this guidance note, they should do so only for good reason. In the event of litigation, the court may require them to explain why they decided not to adopt the recommended practice.

In addition, guidance notes are relevant to professional competence in that each surveyor should be up to date and should have informed him or herself of guidance notes within a reasonable time of their promulgation.



# 1 Introduction

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The chartered surveyor in England and Wales has an established role as an expert 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 light 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 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 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 illumination through a ‘defined aperture’, usually a window opening, whether conferred by express 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.

The purpose of this guidance note is to assist the surveyor 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 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 the RICS B&PWP and RICS Dispute Resolution Service is to encourage private individuals, businesses and professional advisers (particularly the legal profession) to select a suitably qualified chartered surveyor 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

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This guidance note considers natural light specifically in the legal context of the easement known as ‘the right to 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

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

A right of light is an easement. Easements can be acquired by express grant, reservation, implied grant (i.e. intended easements, easements under the ruling in *Wheeldon v Burrows* (1875) or pursuant to section 62 of the *Law of Property Act 1925*) or by long use. The first step on any instruction is to establish whether the legal basis to make a claim exists. As to express grants or reservations, it is necessary to consider the deeds concerned and to interpret them. This will require research to ascertain whether any deeds, agreements or other title information exist that grant or prevent the acquisition of the easement. If both the dominant and servient properties are or were held by the same freehold owner then the concept of 'unity of ownership' may work to prevent the acquisition of the easement. However, if a property is let the tenant might have the potential to acquire a right against the landlord as owner of the servient land. Therefore, an assessment of the lease provisions will be required.

There are other complexities which may affect the enjoyment of rights, such as those brought about by The Custom of London and other legal principles.

A right of light will often be acquired by implied grant when the dominant and servient tenements are in common ownership, and then the common owner sells off the dominant tenement which includes a structure containing windows enjoying light from the servient tenement.

The nature of light makes the acquisition by long use the most common method. A right of light can be acquired by long use on the basis of:

- prescription at common law: user since time immemorial
- under the doctrine of lost modern grant
- by prescription under the *Prescription Act 1832*

In order for a right of light to be acquired, a flow of light through a clearly defined aperture is required.

Therefore, the right is not capable of benefiting land in general and cannot exist in favour of open garden areas, but a specific glazed area such as a greenhouse can enjoy a right of light. In this guidance note the term 'window' will be used to refer to all apertures.

The demolition or redevelopment of a building on the dominant tenement may not extinguish an already established right of light. This means that when new properties are encountered a review of the window history is required. This is to assess whether the windows are new and therefore have no rights or whether they are situated in a historic position and therefore hold transferred rights.

Certain statutory bodies and the Crown may have rights that prevent or remove the imposition of an easement of light and situations involving these bodies should be carefully researched.

The primary remedy for a significant light injury is an injunction, although the court may, if the context of the case justifies, depart from this and award compensation. However, the award of compensation should never be confused with a right to purchase oneself out of an injury, as the conduct of the parties will be taken into account. While many factors must be considered, the following four tests (derived from *Shelfer v City of London Electric Light Co* (1895)) are regarded important when establishing whether an injunction should be awarded:

- Is the injury small?
- Is the matter capable of being estimated in money?
- Is it one which can be adequately compensated by a small money payment? and
- Is it a case in which it would be oppressive to the defendant to grant an injunction?

Members should exercise extreme care when reporting to clients on the risk involved in pursuing any particular claim. Practitioners may be required by their clients to express an opinion on the technical merits of a case. In that event the surveyor's opinion must clearly state that the ultimate decision is that of the court and that the clients must seek specific advice from their legal advisers. Surveyors should also be wary of telling the court what is the appropriate remedy in any particular case.

## 2 Instructions

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There are several circumstances in which surveyors may be asked to deal with rights of light matters. These may include:

- advising an adjoining owner who has concerns regarding a potential infringement to a right of light
- assisting a developer wishing to assess impacts of rights of light on a development scheme or wishing to determine the maximum size of a potential development
- determining the amount of compensation where the parties have agreed that this would be acceptable
- acting for one or more parties (or as a court appointed expert) where the extent of light injury and the rights that relate to it or them need to be quantified and evaluated
- assessing risk for funders, insurance companies, mortgagees or other interested parties.

### 2.1 Competence and experience

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Any surveyor accepting a commission in relation to rights of light must ensure that they comply with the RICS requirements and Civil Procedure Rules in respect of competence, Professional Indemnity Insurance (PII) and conflicts of interest. Members need also to be aware of the obligations of the *Provision of Services Regulations 2009*. These regulations came into effect on 28 December 2009. The effect is to raise the status of previous best practice recommendations to those of minimum legal obligations. Therefore, all members are encouraged to review their terms to ensure compliance.

Although many cases do not involve formal litigation, litigation is always a possibility and surveyors need to assume that they may be called upon to act as an expert witness.

It is essential that members make themselves conversant with the RICS practice statement and guidance note: *Surveyors acting as expert witnesses*, 3rd edition, 2008 with 2009 amendments

([www.rics.org/standards](http://www.rics.org/standards)). This practice statement and guidance note contains advice and information on the overriding duties of an expert witness as well as the practical matters, including arranging meetings with lawyers, assessing and agreeing fees, case management and the content of reports.

### 2.2 Establishing the brief

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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. 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. While rights of light are often secondary to planning consent, etc. they seldom lend themselves to a simple solution. It is important that the client understands this

### 2.3 Client's instructions

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On instruction, the surveyor will need to carry out an investigation into whether there is likely to be a rights of light issue. 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 and the client must be advised what this time scale is likely to be.

Once the measurement and analysis approach has been decided upon, the surveyor will interpret the resulting information and present the client with guidance. The client may look to the surveyor 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.

Where a development is likely to result in an actionable injury, then the potential to negotiate a settlement may be considered. If no initial settlement or agreement between the parties can be made, then litigation or Alternative Dispute Resolution (ADR) may be appropriate – see section 9 below for further details. Here, the client must be kept advised as to the costs of each step in the process.

## 2.4 Considerations for the dominant owner

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If the client intends to seek an interim injunction suspending the development until trial, the surveyor should advise 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 will often act as expert witness. This role involves a change of emphasis to the surveyor’s activities. While up to this point the surveyor has been able to act as an adviser helping to advance the client’s case, once appointed as an expert the surveyor’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 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 surveyor 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 Part 36 Offers under the Civil Procedure Rules

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If the client indicates that he or she may accept monetary compensation, the surveyor will need to explore with them what might be attainable and what might be regarded as acceptable either in the context of private negotiation or in the context of a court ruling. Although the solicitors should advise the client of the risks, it is wise for the surveyor also to warn the client that if the servient owner makes an offer under Part 36 of the Civil Procedure Rules that the client rejects, and should the court eventually award less, then the client may have to pay both sides’ legal costs (which may be considerable) from the date of the rejected Part 36 offer. The surveyor should also warn the client that once he or she has openly indicated that a money payment would adequately compensate for the injury, the client cannot generally go back to seek an injunction. All the court will do is to assess the amount of the compensation payable.

## 2.6 Considerations for the servient owner

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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.

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

## 2.7 Measurement

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Developers are often reluctant to reveal the extent of their proposal at an early stage and the surveyor 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.

It may be appropriate to hold a pre-inspection meeting with the instructing party and their professional advisers. In other circumstances a brief site visit and a follow up letter of suggestions may suffice. The circumstances of the appointment will usually determine the best approach.

It is often helpful to have roof level access to allow sight of surrounding facing windows. Members are reminded of the safety implications of working at height. All high level inspection should be undertaken with reference to the current RICS guidance note *Surveying safely*.

The amount of preparatory effort required at this stage should be proportionate to the complexity of the case. It is important that the surveyor makes detailed and legible notes at inspections, meetings and interviews, as these may form a vital record. Similarly, it is advisable to take photographs at each stage of the investigation.

The choice of technology will therefore be determined from the above but may consist of:

- digital camera
- binoculars
- measuring tapes, level and staff
- handheld laser measuring device

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, members can download the RICS Geomatics client guide *Reassuringly accurate – how controlling accuracy can affect your project* ([www.rics.org/geomatics](http://www.rics.org/geomatics))

## 2.8 Preliminary reports

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Where advising clients, at an early point in the process, information gathering will normally commence with a site visit in order to make a preliminary assessment of the consequences of the design on the neighbouring environment.

Information gathering may also include reference to the large number of online resources currently available to view the existing conditions using, for example, both aerial and street based photogrammetric information. These resources are currently not available in real-time and while offering a good overall understanding of the site it is important to investigate the date that the information was captured and consequently whether it represents the current situation.

Surveyors should undertake a physical site inspection, not least to confirm the above digital sources. Should data be gathered from digital only information then the report must clearly identify those areas and any other relevant sources of data.

## 2.9 Modelling and technical analysis

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A 3-D representation of the site is likely to be required 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, sometimes referred to as a 'jelly mould', 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.

## 2.10 Analysis based upon full measured survey

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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, insurance purposes, etc.

The data required for this stage can be extensive and while more traditional methods may be used, on larger schemes the data will generally be captured 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 RICS client guide on laser scanning).

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. 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 RICS *Specification for surveys of land, buildings and utility services at scales of 1:500 and larger*. 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 National Grid by use of Global Positioning techniques. (See RICS *Guidelines for the use of GNSS in land 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 benchmark system is no longer maintained and while offering a validation check, should not be relied upon for height datum.

The Ordnance Survey Active GPS Network provides access to the definitive datum in England and Wales and will consequently require GPS observations local to the site. This can be supplemented with conventional traversing and spirit levelling where GPS 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](http://www.rics.org/geomatics)).

# 3 Research

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## 3.1 Document search

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It is generally a sensible idea to set the date for the actual site survey at some point after the initial site meeting or from receipt of documents, allowing time during which research can be undertaken or documents such as deeds and legal agreements can be obtained. Documents available can range from very few to a considerable bundle of drawings, plans, Report on Title etc.

When checking Land Registry title documents it is important to review those relating to both the dominant and servient owners' properties as it is not uncommon for key information to be only recorded on one title or the other.

Official Copy Land Registry entries and title plan(s), where a property is registered, are often obtainable via Land Registry Online or by post and are generally inexpensive. In addition, Land Registry may be able to supply official copies of the conveyance(s) and supporting documents on which the First Registration was based. These can give additional information that is not contained in the Registry entries and should always be investigated as a matter of course. It should be remembered that rights acquired by long use will seldom be recorded at the Land Registry and will bind the servient tenement.

Legal advice should always be sought with regard to the existence of rights and the interpretation of legal documents. Surveyors should be aware of their own professional limitations.

## 3.2 Historic aerial photography and data sources

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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, etc.

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

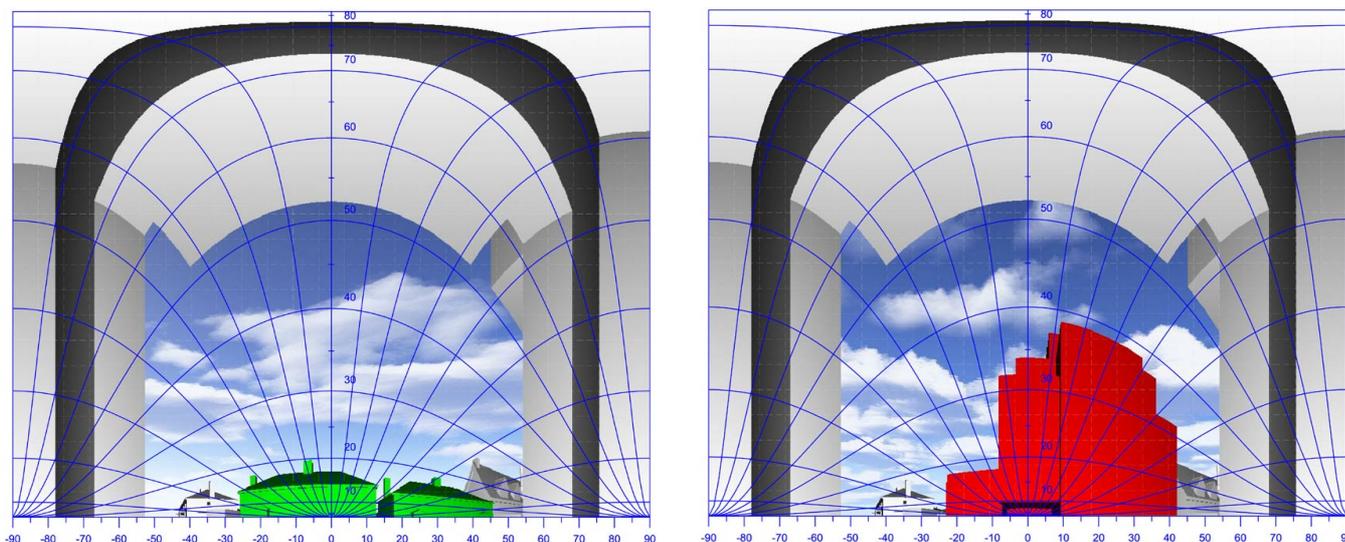
## 4 Method of assessment

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 has been widely 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.

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



## 4.1 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). The process can be done perfectly well manually but it is laborious and tedious so it is easy to make a mistake.

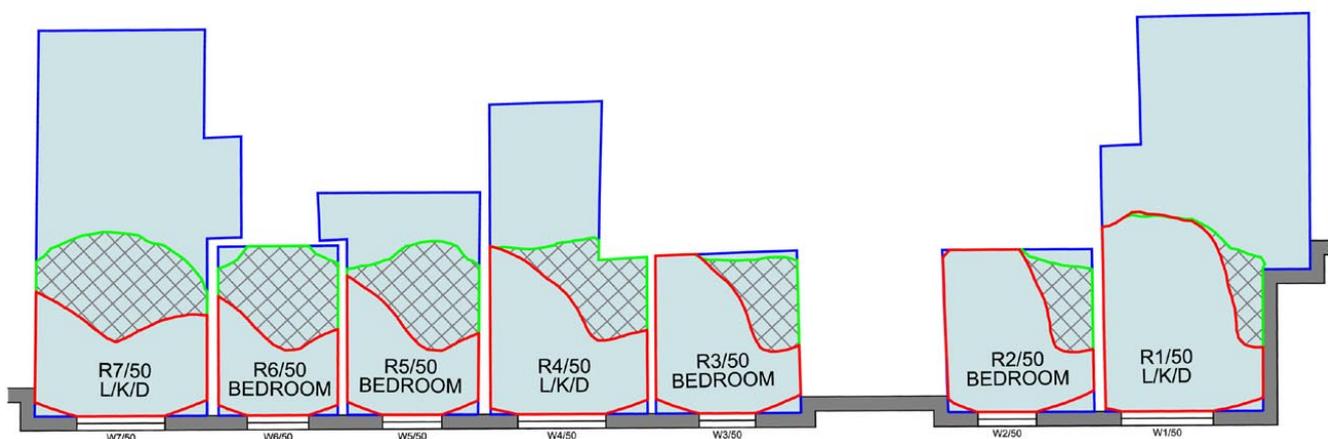
The size of the grid will directly relate to the accuracy of the end contour diagram. In negotiations the grid size should be agreed between the parties' surveyors. It is not uncommon on large projects for the computer models to be set up at an early stage with a larger grid size to speed processing 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 2: Example of a contour diagram**



The four categories of loss are traditionally termed:

<b>‘Front Zone Loss’</b> – the very serious loss below 25% of the room area
<b>‘First Zone Loss’</b> – the ‘actionable loss’ between 25% and 50%
<b>‘Second Zone Loss’</b> – the less serious and ‘non-actionable’ loss between 50% and 75%
<b>‘Makeweight Loss’</b> – 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. This value is known as the Light Standard Rent (LSR). RICS 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 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.

### Example of an EFZ table

Room/floor	Room use	Whole room area (sq. ft)	Existing >0.2% (sq. ft)	Proposed >0.2% (sq. ft)	Loss (sq. ft)	Front (sq. ft)	1st (sq. ft)	2nd (sq. ft)	MKWT (sq. ft)	EFZ (sq. ft)
<b>Ground floor</b>										
R1/50	L/K/D	333.4	136.0	121.1	14.9	0.0	14.9	0.0	0.0	14.9
R2/50	Bedroom	113.6	105.5	85.3	20.2	0.0	0.0	0.0	20.2	5.1
R3/50	Bedroom	108.6	102.1	76.4	25.7	0.0	0.0	0.0	25.7	6.4
R4/50	L/K/D	196.9	120.9	84.2	36.7	0.0	14.3	22.4	0.0	25.5
R5/50	Bedroom	144.9	98.2	54.7	43.5	0.0	17.7	25.7	0.0	30.6
R6/50	Bedroom	95.7	90.9	46.1	44.8	0.0	1.8	43.0	0.0	23.3
R7/50	L/K/D	326.5	135.7	75.4	60.3	6.2	54.1	0.0	0.0	63.4
<b>TOTALS</b>		<b>1319.6</b>	<b>789.3</b>	<b>543.2</b>	<b>246.1</b>	<b>6.2</b>	<b>102.8</b>	<b>91.1</b>	<b>45.9</b>	<b>169.2</b>

## 5 Compensation

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Where it is deemed appropriate to pay compensation for an injury, various issues need to be considered. The valuation of compensation for loss of light is a very complex and potentially litigious matter that requires a high degree of expertise. While this section covers some of the issues for consideration it is not intended to be exhaustive.

On occasion, valuations will require a multi-disciplinary approach calling upon the assistance of other advisers such as quantity surveyors and valuation surveyors. Therefore, the obligation only to undertake roles in which members hold sufficient skill and experience should not be underplayed, nor should the need to ensure that all parties are appropriately skilled to advise in this area.

The compensation process principally concerns the valuation in the following three scenarios:

- Valuing 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.

In terms of the first two of these situations there is no single accepted methodology for preparing a rights of light valuation. A detailed understanding of all appropriate valuation methods and surrounding technical and legal concerns is essential. Advice to clients may be based upon 'amenity' (also known as 'book value') or other methods to value 'diminution', or it may include any 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.

Although the practitioner may arrive at a valuation based upon the above or other methods, the courts refuse to be bound by any particular method or selection of valuation methods. This and the complexities in other aspects of analysis and valuation can make advice in this area particularly onerous.

The third valuation approach follows methods defined by statute for Compulsory Purchase – relying on the right to injunction being overridden by the application of section 237 of the *Town and Country Planning Act 1990*. Arguably, this should result in a more straightforward approach, however, this is still not without uncertainty and again a keen understanding is required together with a multi-disciplinary approach in most circumstances.

## 6 Rights of light agreements

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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 most cases 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

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Rights of Light can be reduced, lost or extinguished through various methods including unity of ownership, agreement, redevelopment, obstruction, notional obstruction and through instruments such as s. 237 of the *Town and Country Planning Act* 1990.

Unity of ownership has been discussed earlier.

The dominant and servient owners can agree to extinguish any rights of light. Agreement is often brought about as a result of compensation or perhaps a reciprocal release of rights, enabling both owners to develop within the confines of such an agreement.

The redevelopment of a site will often render the original apertures to the demolished building redundant, as walls and other obstructions, forming part of the new development, replace them. Care should be taken here as it may often be beneficial to the client to ensure that new windows overlap the original ones to ensure that rights are transferred to the new property.

A right by statutory prescription will not arise if the light is obstructed for a continuous period of one year.

Notional obstructions take place where appropriate processes are followed to prevent the acquisition of a prescriptive right, under the *Rights of Light Act* 1959. Such processes ultimately involve the service and registration of a Notice with the intent to act as a notional (fictional) obstruction. Again, this obstruction is normally required to remain in place without robust objection for a period of one year before it will have the desired effect.

Section 237 of the *Town and Country Planning Act* 1990 is used where land has been appropriated for 'planning purposes' by a local authority in order to facilitate development. This has the effect of enabling the intended development to proceed unencumbered by the threat of injunction. While effective this may still result in compensation being claimed by an injured party.

The above methods of extinguishment are complex and will often require the input of specialist legal advice.

# 8 Insurance

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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 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.

If the client is interested in this form of insurance they should contact a specialist RICS member or a broker – details of whom are available from RICS. Members are reminded that RICS is a Designated Professional Body (DPB) and as such RICS members who satisfy the registration requirements may give insurance related advice. Members should check the RICS website for details [www.rics.org/pii](http://www.rics.org/pii)

Members 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

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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](http://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](http://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.

# Appendix 1

## References and online resources

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### Statutes and regulations

Prescription Act 1832

Rights of Light Act 1959

Town and Country Planning Act 1990

Planning Act 2008

Law of Property Act 1925

Compulsory Purchase Act 1965

Land Compensation Act 1973

Civil Procedure Rules, together with associated Practice Directions, Pre-Action Protocols and Forms, available at: [www.justice.gov.uk/civil/procrules\\_fin/index.htm](http://www.justice.gov.uk/civil/procrules_fin/index.htm) – and the Protocol for the Instruction of Experts to give Evidence in Civil Claims (issued by the Civil Justice Council (CJC), June 2005, approved by the Master of the Rolls), available at: [www.justice.gov.uk/civil/procrules\\_fin/contents/form\\_section\\_images/practice\\_directions/pd35\\_pdf\\_eps/pd35\\_prot.pdf](http://www.justice.gov.uk/civil/procrules_fin/contents/form_section_images/practice_directions/pd35_pdf_eps/pd35_prot.pdf)

[www.justice.gov.uk/civil/procrules\\_fin/contents/parts/part35.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part35.htm)

[www.justice.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm)

### RICS practice standards and professional information

All RICS practice standards can be downloaded by members free of charge from [www.rics.org/standards](http://www.rics.org/standards)

#### Practice statements

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

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

#### Guidance notes

*Party Wall Legislation and Procedure* (5th edition) 2007

*Boundaries: procedures for boundary identification, demarcation and dispute resolution in England and Wales* (2nd edition) 2009

*Code of Measuring Practice* (7th edition) 2007

*The use of GNSS in land surveying and mapping* (2nd edition) 2010

### Information papers

*Direct Professional Access to Barristers* (2nd edition), 2003 (current edition under review)

### Select bibliography

#### Professional standards and guidance

BSI – BS8206-2:2008 *Lighting for Buildings – Part 2: Code of Practice for daylighting*, Garston

Littlefair, P. *Site layout planning for Daylight & Sunlight – A Guide to Good Practice*, BRE Press, 1991

CIBSE LG10:1999 *Daylighting and Window Design*

#### 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

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Cato, D., *The Expert in Litigation and Arbitration*, LLP Professional Publishing, 1999

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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.

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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

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Graham, R. & Koh, A., *Digital Aerial Survey*, Whittles Publishing Limited, 2002

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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

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

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*

[www1.landregistry.gov.uk/assets/library/documents/lrpg037.pdf](http://www1.landregistry.gov.uk/assets/library/documents/lrpg037.pdf)

*Execution of deeds*

[www1.landregistry.gov.uk/assets/library/documents/lrpg008.pdf](http://www1.landregistry.gov.uk/assets/library/documents/lrpg008.pdf)

*Land Registry plans: A summary of Land Registry plans records, Pre-registration requirements, other plans related services*

[www1.landregistry.gov.uk/assets/library/documents/lrpg040.pdf](http://www1.landregistry.gov.uk/assets/library/documents/lrpg040.pdf)

## Client Specifications

*Surveys of land, building and utility services at scales of 1:500 and larger* (2nd edition) 1997

Available from RICS books [www.ricsbooks.com](http://www.ricsbooks.com)

**Geomatics Client Guides – guides for the surveying professional available from [www.rics.org/mappp](http://www.rics.org/mappp)**

*An introduction to terrestrial laser scanning – A useful guide from RICS on terrestrial laser scanning*

*Applications of aerial photography and imagery – using 'off the shelf' and commissioned products*

*Reassuringly Accurate – a client guide to calibration*

*Scale – Once it's digital isn't everything full size? A useful guide from RICS on not tripping up over step changes in scale*

*Virtually real: terrestrial laser scanning – understanding an evolving survey technology*

*Virtually Right? – Networked GPS – A useful guide from RICS on the on aspects of cost effective networked GPS correction services*

*Virtually level – A useful guide from RICS on the transition from the familiar benchmark to heighting using GPS*

*Map Projection Scale Factor – A useful guide from RICS on how to understand and avoid the potential dangers of scale factor*

*Flood damage – reinstating your boundary. What every property owner should know – A useful guide from RICS on how to reinstate a boundary following flood damage and where you can go for advice*

## **Public guides – guides for Citizens Advice bodies**

*Rights of light*

*Party Walls*

*Subsidence*

*Boundaries*

*Compulsory Purchase Orders (CPOs)*

All available to download from [www.rics.org/residentialpropertyguides](http://www.rics.org/residentialpropertyguides)

## Appendix 2

# Quick specification for topographical and measured building surveys

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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.

## Quick specification for topographical and measured building surveys

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

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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 [ ]
- 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.

### 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 [ ]

### Relevant to both properties / either property

- 8 Planning drawings (from local council planning department)  
Supplied by client [ ] or to be obtained by surveyor [ ]
- 9 Vertical aerial photographs  
Supplied by client [ ] or to be obtained by surveyor [ ]
- 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 [ ]
- 12 Have there ever been any light obstruction notices?  
Supplied by client [ ] or to be obtained by surveyor [ ]
- 13 Search of local land charges register.

# Rights of light

## Practical guidance for chartered surveyors in England and Wales

1st edition, guidance note

This guidance note has been produced by the members of a steering group comprising specialist RICS members and legal experts.

It deals with easements known as '**rights of light**' and the approach to be adopted by surveyors practising in this field. The guidance note focuses on the different stages of a potential dispute and the processes that an RICS member could follow as an example of best practice.

Professional practice issues such as dispute resolution, mediation, how to deal with initial contact and clients are underlined and investigation techniques and appropriate resources are highlighted.

Particular emphasis is given to the primary roles of Land Registry, the professional advisor and the chartered surveyor in a rights of light dispute situation. The importance of research, field investigation, technology advances and advice on best practice survey techniques and final reports are also included. In addition, the guidance note contains extensive listings of further reading and online resources.

This guidance note is essential reading for all RICS members interested in rights of light dispute practice and will also act as an effective refresher for experienced practitioners.



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