

RICS PROFESSIONAL STANDARD



# Rights of light

England and Wales

3rd edition, March 2024

Effective from 1 June 2024

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This document applies to England and Wales many of the principles outlined within this standard are globally applicable and may support RICS members outside these jurisdictions who are engaged with the property development, neighbour dispute and geospatial data capture sectors.

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# Acknowledgements

The RICS Rights of Light Expert Working Group (RoLEWG) is a cross-professional specialist group of lawyers, experts and chartered surveyors from the building, geospatial surveying, development and rural areas of practice. It brings together some of the foremost and distinguished professional surveyors and experts working in the arena of neighbour disputes. This is a subgroup of the RICS Boundary & Party Walls Practice Panel (BPWPP) with a remit covering encompasses boundaries, party walls and certain easements, such as rights of way and rights of light, and environmental issues such as daylight and sunlight within the planning and environmental impact context of surrounding properties.

The BPWPP also produces professional standards and practice 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 and Boundary Dispute Mediation Service (BDMS). The BPWPP 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, in the UK and overseas.

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# RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The RICS [Rules of Conduct](#) set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and information relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents relevant to professional practice, such as cross-sector guidance, codes and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

## Document definitions

Document type	Definition
RICS professional standards	<p><b>Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.</b></p> <p>RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour.</p> <p>They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include:</p> <ul style="list-style-type: none"> <li>• mandatory requirements, which use the word 'must' and must be complied with, and/or</li> <li>• recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome.</li> </ul> <p>In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.</p>
RICS practice information	<p><b>Information to support the practice, knowledge and performance of RICS members and regulated firms, and the demand for professional services.</b></p> <p>Practice information includes definitions, processes, toolkits, checklists, insights, research and technical information or advice. It also includes documents that aim to provide common benchmarks or approaches across a sector to help build efficient and consistent practice.</p> <p>This information is not mandatory and does not set requirements for RICS members or make explicit recommendations.</p>



# 1 Introduction

## 1.1 Scope

This professional standard deals solely with easements known as 'rights of light' (RoL) and the approach to be adopted by surveyors practicing in this field. It is aimed principally towards RICS members who are experienced specialists in the field of RoL. This professional standard is applicable only in England and Wales.

A right of light for the purpose of this document is a private, legally enforceable easement or right to a minimum level of natural illumination. This is through a defined aperture, generally 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 carries the burden of it. In this professional standard the term 'window' will be used to refer to all apertures.

## 1.2 Application of this standard

This professional standard applies to England and Wales when undertaking rights of light instructions with regards to the relevant legislation ([Rights of Light Act 1959](#) and section 203 of the [Housing and Planning Act 2016](#)). While the geographic scope of this standard is England and Wales, many of the principles outlined within this standard are globally applicable and may support RICS members outside these jurisdictions who are engaged with the property development, neighbour dispute and geospatial data capture sectors.

## 1.3 Purpose

The purpose of this professional standard is to assist the RICS member 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 on an RICS member's report/evaluation of RoL, whether assessing the viability of a potential development or the negative impacts of a development proposal by others.

RICS members have 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.

The issues associated with daylight and sunlight in the planning system are a separate area. For further information, see the Building Research Establishment's (BRE) publication [Site layout planning for daylight and sunlight: a guide to good practice \(BE 209\)](#) and RICS' [Daylighting and sunlighting](#).

## 1.4 Effective date

This standard is effective from 1 June 2024.

## 2 Summary of the law

Members should always consider recommending that clients seek project-specific legal advice from a qualified legal practitioner.

The first step of any instruction is to establish whether the legal basis to make a claim exists. A right of light is an easement. Easements can be acquired by express grant, reservation, implied grant (i.e. intended easements, easements, in some cases under the rule in *Wheeldon v Burrows* [1875] L.R. 12 Ch D 31 or pursuant to [section 62 of the Law of Property Act 1925](#)), or by long use.

With express grants or reservations, it is necessary to consider the deeds concerned and interpret them. This will require research into 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 have been held by the same freehold owner, 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 that may affect the enjoyment of rights, such as those brought about by the Custom of London (entitles freeholders to build to unrestricted height on ancient foundations) and other legal principles.

In order for a right to light to be acquired, a flow of light through a clearly defined aperture is required. Therefore, the right is not capable of benefiting bare land or gardens although, in the case of a development property, the land adjacent may be considered in terms of compensation. It is also the case that a specific glazed area, such as a greenhouse or winter garden, can enjoy a right of light.

A right to light will often be acquired by implied grant when the dominant and servient tenements are in common ownership, and the common owner sells off the dominant tenement that 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 to light can be acquired by long use on the basis of:

- prescription at common law – user since time immemorial (it is unlikely that this will arise in relation to rights of light)
- under the doctrine of lost modern grant
- by prescription under the [Prescription Act 1832](#).

Deeds or other agreements may contain provisions that exclude the grant of any implied right to light, or which operate as a consent in order to prevent a right of light arising by prescription.

This can be a complex area of law, both in terms of interpretation of the agreement and the effect on third parties, and legal advice should be taken.

The demolition or redevelopment of a building on the dominant tenement may not extinguish an already established right to light. This means that when newly built properties are encountered, a review of the window history is required to assess whether the windows are wholly new and therefore have no independent 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 majority of RoL disputes are settled by negotiation between parties, although the primary legal remedy for a light injury is an injunction. However, the court may – if the context of the case justifies – depart from this and award compensation. A servient owner cannot assume that the court will order compensation to allow them to purchase their way out of a right of light, as all circumstances of the case (including the conduct of the parties) will be taken into account. Traditionally, the following four tests (often referred to as the Shelfer tests from *Shelfer v City of London Electric Light Co [1895] 1 Ch 287, CA*) were regarded important when establishing whether an injunction should be awarded.

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

In the past, the courts had been willing to award an injunction unless all four of the Shelfer tests were satisfied. However, following cases such as [Coventry v Lawrence \[2014\] UKSC 13](#) (also known as the Fen Tigers case), the courts will consider all the circumstances in deciding whether an injunction is appropriate. The fact that all four Shelfer tests are not satisfied will not necessarily mean that an injunction should be granted, though where the four tests are satisfied this will often result in an injunction being refused and an award of damages made in lieu.

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 RICS members'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. Members acting as expert witnesses should also be wary of telling the court what the appropriate remedy is in any particular case.

# 3 Professional conduct

## 3.1 Professional competence

Members should note that compliance with the wording of Acts of Parliaments such as the [Rights of Light Act 1959](#) or [section 203 of the Housing and Planning Act 2016](#) may not be sufficient to achieve compliance with the standards expected of an RICS member, as members have professional duties over and above the strict wording of the Acts. For the purpose of this professional standard, members are reminded of their obligations under the [Rules of Conduct](#).

Where an RICS member is appointed as an RoL surveyor there should be a real benefit to the customer in terms of the requisite competence, ethical behaviour and customer care provided. RICS members **must** undertake their work with due skill, care, and diligence and with proper regard to the technical standards expected of them. The purpose of this professional standard is to assist RICS members in understanding those technical standards.

RICS has developed a specific Assessment of Professional Competence specialist pathway for experienced and trainee RoL expert chartered surveyors. More details can be found at [sector pathways](#) and in the APC guide for Rights of Light surveyors, which provides guidance for those undertaking the assessment pathway. For more information see [Appendix D RICS Assessment of Professional Competence \(APC\) for rights of light](#) and the related in-depth APC guide published alongside this standard.

RoL can be a complex subject, and RICS members and other experts are reminded of the [RICS Consumer guide: Right to light](#). This consumer guide is designed for distribution to clients, other professionals and affected citizens.

## 3.2 Acting with integrity

While the above-mentioned legislation is silent on the conduct of expert surveyors while carrying out their appointment, RICS expects its members to be honest, straightforward, and trustworthy in all that they do. This can relate to both the way they interact with the parties and the way they make decisions pursuant to their statutory appointment. This requirement is of particular importance for all neighbour dispute sub-sectors.

## 3.3 Conflicts of interest

Members should refer to the current edition of RICS' [Conflicts of interest](#). RICS members are expected to avoid actual or perceived conflicts of interest when accepting RoL appointments. RICS members should also consider whether a conflict may arise during the appointment and whether that conflict renders them incapable of performing the role.

Once appointed as an expert witness, RICS members perform a specific professional function. They no longer owe sole responsibility to the party that makes the appointment; their primary duty is to the court and their role is to provide professional insight based on evidence and knowledge. RICS members should consider their position in relation to all parties as part of any conflict-checking procedures. RICS may ask members to demonstrate that they have considered whether a conflict of interest, or a perception of conflict, has arisen and what steps they have taken to avoid or manage that conflict.

RICS [Rules of Conduct](#) require all firms to operate a complaints-handling procedure (CHP). Firms should be prepared to provide a copy of the procedure when asked.

Nothing prevents RICS from investigating and acting in relation to alleged breaches of RICS [Rules of Conduct](#) where it believes it is appropriate to do so in an ongoing RoL matter, but the parties cannot seek from RICS any determination inconsistent with court proceedings. It is entirely at the discretion of RICS to decide whether it should start or continue an investigation into a member's professional conduct while RoL matters are ongoing.

# 4 Instructions

## 4.1 Scope of services

There are several circumstances in which members may be asked to deal with RoL matters ([RICS Neighbourly Matters scope of service](#)). 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 their potential development on the rights of light of the surrounding properties or wishing to determine the maximum size of a potential development
- advising the client on the geospatial and mapping data requirements necessary to fulfil their project needs
- 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, and
- advising property owners on managing right light risk to their estate and preserving future development potential and their existing right of light work.

Any member accepting a commission in relation to RoL **must** ensure that they comply with 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](#) (also see [Complying with Provision of Services Regulations for business and Competent Authorities](#)).

Although many cases do not involve formal litigation, litigation is always a possibility and members need to assume that they may be called on to act as an expert witness. Members **must** be familiar with the current edition of RICS' [Surveyors acting as expert witnesses](#). This publication contains advice and information on the overriding duties of an expert witness, as well as practical matters including arranging meetings with lawyers, assessing and agreeing fees, case management and the content of reports.

See also [Appendix C Protocol for disputes relating to rights of light \(Rights of Light Protocol\)](#).

## 4.2 Establishing the brief

At the point of instruction, the client should be made aware of the technical and legal difference between natural light in 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 avoid confusing the differing methods of technically assessing light.

In RoL cases, it is not uncommon for clients to seek early advice. However, at the time of the first meeting the client may not hold all the necessary information on the proposed design and the consultant may not have had internal access to the surrounding properties. An initial report may comprise guidance to the client as to what is required to take the matter forward. The limitations and reservations of this type of initial report **must** be agreed at the point of instruction as new business terms cannot be imposed post instruction.

Members **must** establish the requirements of the client and those of any professional advisers from the outset. While RoL are often secondary to planning consent, etc. they seldom lend themselves to a simple solution. It is important that the client understands this together with the basis of accuracy and tolerances in the report.

## 4.3 Client's instructions

It is important that the member engages closely with the client to agree a clear set of written instructions that will provide the client with the information they require from the work. This will vary due to the level of certainty that is required by the client at this stage.

On instruction, the member, as a minimum, will need to carry out the necessary due diligence on the site and surrounding properties to ascertain any relevant title or other matters (see *Checklist of documents relevant to a right of light dispute* that accompanies this standard) that the client's solicitor may need to advise upon. In simple cases this process might be quite elementary, possibly using no more than 2D drawings. In more complex cases, the construction of a detailed 3D model may be necessary, and this will involve more detailed measurement by appropriately qualified surveyors.

If the designers have produced a 3D model of any proposed new development as part of their design process, this may be usable to assess the effects on surrounding rights of light. It may, however, take considerable time to produce a definitive report on the likelihood and extent of injuries; the client **must** be advised what this time scale is likely to be.

Not all software systems are identical and while some CAD information can be commonly shared, other data items may need recoding and conversion to be usable in a given system. The time and cost of this conversion may need to be explained to a client to prevent the false assumption that any existing model can be plugged into an RoL system and run in a technical analysis.

When using 3D models or context provided by another member of the team, the client needs to understand the specific technical need for the survey accuracy required in an RoL technical study. General visualisation models may not have been created to the survey



standard accuracy that is required (see [Appendix B](#)). Should this general information be used, errors and a loss of accuracy are potentially being built into the technical study.

Once the measurement and analysis approach has been decided, 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, the RICS member should make this clear. If the study is based on assumed layout or non-surveyed data, this limitation should be clearly stated in the report so that third-party readers, such as funders and insurers, can identify the limitations in the scope of the technical study. The instructions should be clear on this to avoid misunderstandings and expectations.

Where a development is likely to result in a potential actionable injury, then the potential to negotiate a settlement may be considered. If no initial settlement or agreement between the parties can be made, litigation or Alternative Dispute Resolution (ADR) may be appropriate – see section 11. Here, the client should be kept advised as to the potential costs of each step in the process and instructions clearly drafted as appropriate.

It is best practice for RICS members to communicate special scenarios, rationale and/or limitations in their report.

## 4.4 Considerations for the dominant owner

The first consideration is to ensure that the dominant owner's property does enjoy an RoL and that they are the beneficiary of that RoL. Next, the RICS member should check that the dominant owner has clearly communicated their concerns over any perceived potential loss of light that may arise from the servient owner's developments.

The RICS member should then check that the required level of technical analysis appropriate to the specifics of the development and site is made available by the servient property's surveyor (or undertaken if they refuse to provide such). This technical work should be agreed with the servient property's surveyor so that there is agreement on the nature and quantum of any lost light.

If the client intends to seek redress by way of compensation, the RICS member should negotiate the deed of release and settlement figure. If the client wishes to seek an interim injunction suspending the development until trial, the RICS member should advise that the court may require the client to give an undertaking in damages. This means that if the court awards an interim injunction 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 proceed to litigation, the RICS member will often act as expert witness. This role involves a change of emphasis in the member'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 rather than the instructing party. 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 relevant matters that do not support the case. RICS members **must** familiarise themselves with RICS' [Surveyors acting as expert witnesses](#), and draw 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.

## 4.5 Considerations for the servient owner

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 an RICS member 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. The member should remind the client that the primary legal remedy for a significant injury to an easement of light is an injunction and that what constitutes a significant injury is ultimately a decision for the courts.

The member should also remember that the quality and accuracy of their advice will depend upon the quality and detail of the information they have when carrying out the assessment. Information concerning neighbouring properties and their internal layouts, legal advice and the quality of the survey used to create the 3D model for analysis will all impact the accuracy of the technical work and analysis.

## 4.6 Part 36 offers under the Civil Procedure Rules

If the client indicates that they may accept monetary compensation, the surveyor and their legal team 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, the surveyor may also advise the client that if the other party makes an offer under [Part 36 – offers to settle – Civil Procedure Rules](#) that the client rejects, there may be costs consequences if the client achieves a result less favourable than the offer. If an offer is made by a defendant that the claimant rejects, the claimant may have to pay both sides' legal costs and interest on the costs from the date of the offer. If an offer is made by the claimant that the defendant rejects, the defendant might be ordered to pay not only damages but also indemnity costs, additional interest on costs and damages (from the date of the rejected Part 36 offer), and an additional sum of up to 10% of damages. These amounts can be considerable.

The member should also warn the client that once they have 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.

## 4.7 Measurement

Developers are often reluctant to reveal the extent of their proposal at an early stage and the surveyor can be requested to make an analysis with limited 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 the results are fully researched and refined.

Once the initial measurement has been made, matters may then progress to a far more detailed survey process, usually carried out by specialist measurement 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
- GNSS receivers
- high-definition terrestrial laser scanner
- software for the manipulation of 'point cloud' data
- CAD software for model building
- analytical RoL software
- imagery (unmanned aerial system (UAS), aerial and satellite).

All measuring equipment should be issued with a calibration certificate to allow for traceability and prove adherence to quoted technical specification. RICS' [Measured surveys of land, buildings and utilities](#) is an invaluable best practice resource for all measurement and geospatial surveying activity. A customised survey detail accuracy banding table is reproduced in [Appendix B](#).

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 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 inspections should be undertaken with reference to RICS' [Surveying safely](#).

The amount of preparation required at this stage should be proportionate to the complexity of the case. Members should make 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.

## 4.8 Preliminary reports

At an early point in the process, information gathering will normally begin with a site visit in order to make a preliminary assessment of the potential consequences of the design on the neighbouring environment.

Information gathering may also include reference to the considerable number of online resources currently available to view the existing conditions using, for example, aerial imagery information. These resources are currently not available in real time and, while offering a good overall understanding of the site, it is important to recognise the date that the information was captured and consequently whether it represents the current situation. A member's report should be suitably caveated if there are limitations.

Consideration of the appropriate data set for the instruction is advised. Depending on the stage of works, use of the data produced and the reliance placed on it, different sets of data will be appropriate. Examples include the following.

- A combination of photogrammetry, site visit photographs and desktop research (planning portal, etc.). This would be considered appropriate for preliminary works, including initial reviews/letters, feasibility studies and initial advice.
- A combination of point cloud data, photogrammetry model, site visit, desktop research (planning portal, etc.) and industry standard assumptions relating to neighbouring layouts. This would be considered to be accurate, with the exception of any data missing or assumed in relation to the internal layouts. This is most commonly used for submission of reports for planning and risk mitigation purposes, such as the beginning of negotiations and insurance.
- Internal scan data for the surrounding neighbouring properties in addition to the previous bullet point would be the highest level of accuracy. Appropriate for use when investigating for final assessment, insurance, negotiation and court purposes.

## 4.9 Modelling and technical analysis

A 3D representation of the site and its surroundings is likely to be required at an early stage, which may be subject to later adjustment or adaptation. The surveyor 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 often requires considerable interpretation from supplementary data sources to enable the creation of a preliminary 3D model. In the preliminary report it may be useful to utilise commercially available 3D models to provide a more homogeneous dataset.

The sources and provenance of all data may need to be disclosed so that users of the resulting information are in no doubt as to its accuracy and origin. 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' (Figures 1-4) in the preliminary stages of advice. This avoids wasteful adjustment or adaptation of incomplete data.

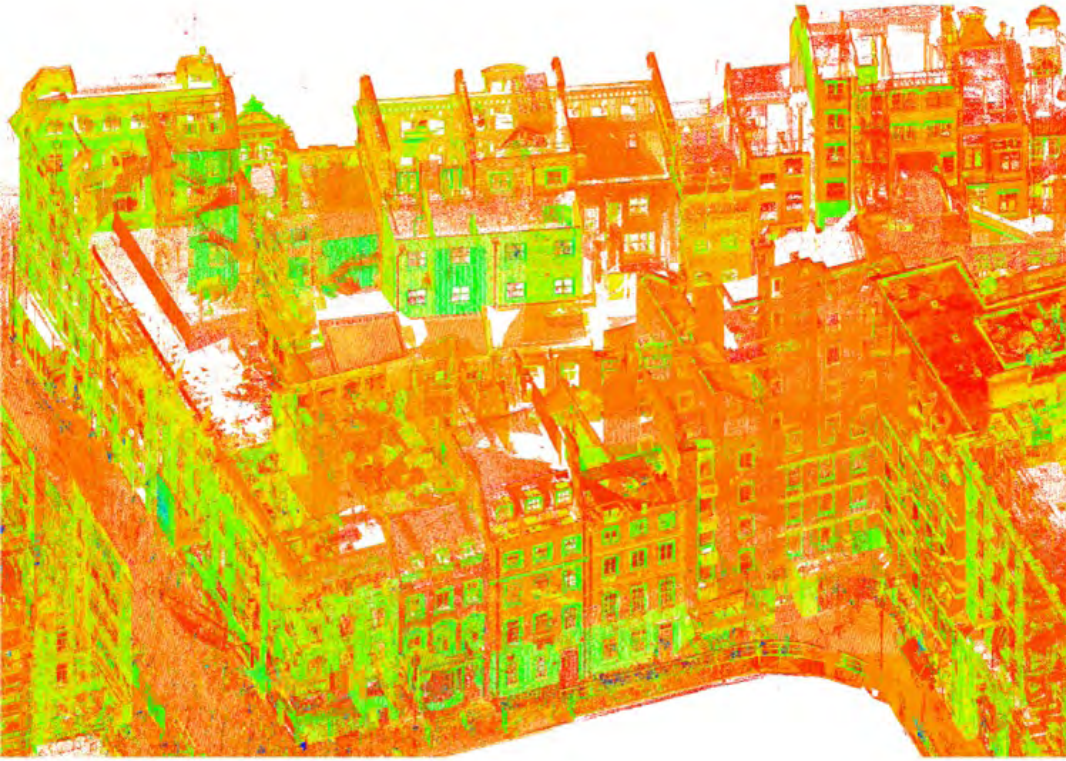


Figure 1: Scanned point cloud of development area

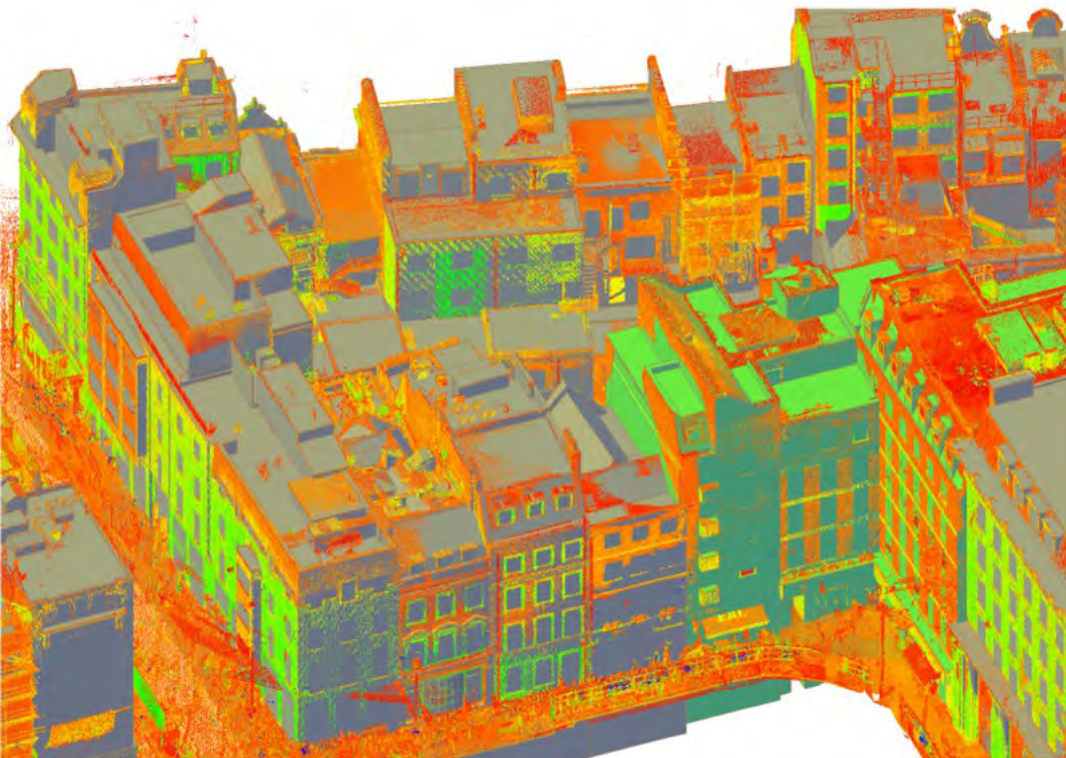


Figure 2: Scan and model

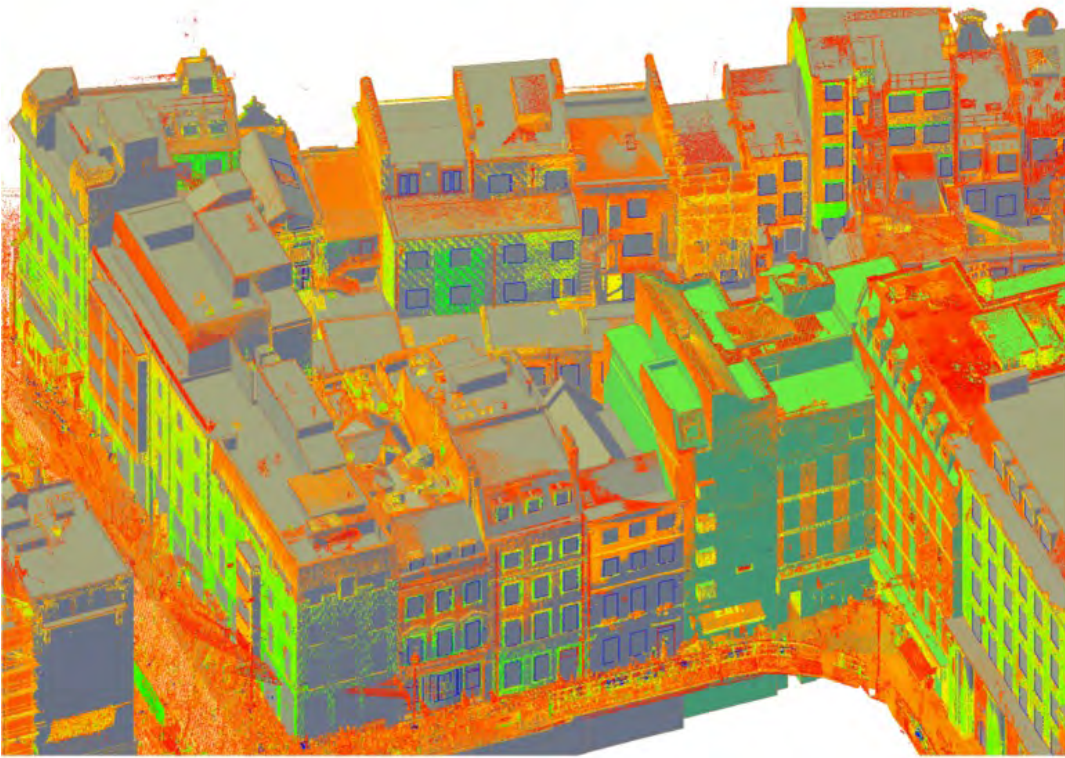


Figure 3: Scan model with windows

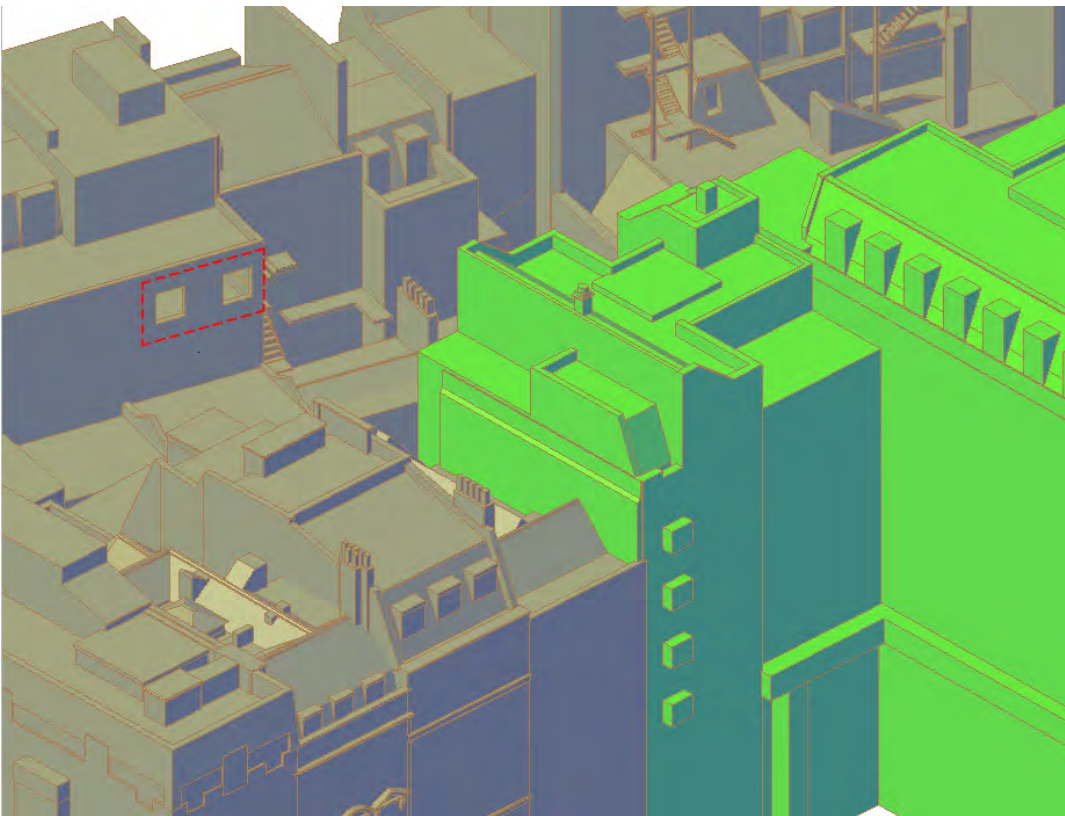


Figure 4: Model only

Clients or designers may request the preparation of a design model envelope, sometimes referred to as a 'jelly mould' or 'safe 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 3D 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.

## 4.10 Analysis based on the full measured survey

The full measured survey is considered to be the most accurate 3D model possible showing massing, adjacent window positions and room layouts. Where assumptions **must** be made these will again need to be highlighted. This 3D model should ordinarily be suitable for assessing compensation payments, expert witness work, insurance purposes, etc. It is best practice for an RICS member to communicate special scenarios, rationale and/or limitations in their report.

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 will be able to advise on the levels of accuracy that can be attained.

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 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 RICS' [Measured surveys of land, buildings and utilities and specification](#).

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' [Use of Global Navigation Satellite Systems \(GNSS\) 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 on for height datum.

The [Ordnance Survey Active GPS Network](#) provides access to the definitive datum in the UK 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 critical in the assessment of RoL as just a few centimetres at room level can have significant implications on the results. Potential height issues should be discussed with the design team. See [Appendix A Sample specification for rights of light – full measured survey](#).



# 5 Research

## 5.1 Document search

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 for research to be undertaken or documents such as deeds and legal agreements 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.

Where a property is registered official copy Land Registry entries and title plan(s) are inexpensive and obtainable via [Land Registry Online](#) or by post. 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 but will bind the servient tenement.

The appropriate legal advice should always be sought with regard to the existence of rights and the interpretation of legal documents.

## 5.2 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 aerial imagery may be obtained from a number of commercially available sources such as:

- [Ordnance Survey Mastermap imagery layer](#)
- [Bluesky aerial imagery](#)
- [Verisk Geoinformation Group](#)
- [Google maps](#)
- [Bing maps](#)
- [Getmapping.](#)

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

Members 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 on when advising clients.

The evolution of unmanned aerial systems (UASs)/drones is changing the economics of their use. It is now cost-effective to collect imagery using relatively inexpensive equipment and for that imagery to be available for use the same day, in some cases before even leaving the site.

It is important to understand the provenance and accuracy of aerial imagery if it is being used as any basis for measurement or modelling. Google Maps imagery for example is an amalgamation of multiple data sources and is designed for a specific purpose (i.e. navigation). It can be used for initial site investigation and online reconnaissance but should not be used for modelling purposes. A more technical, in-depth investigation and comparison of imagery captured by different platforms can be found in RICS' [Earth observation and aerial surveys](#).

## 6 Method of assessment

The assumption previously employed was that an illuminance level of one foot-candle, (the light given out by an ordinary candle approx. 305mm away) would provide adequate daylight if achieved over at least half the area of the room at worktop level and that this is represented by 0.2% of the unobstructed sky value. This value equates to roughly 10 Lux (the Lux is 1 Lumen/m<sup>2</sup>). Comparatively, normal minimum artificial light levels in offices are set at 350 Lux with task lighting providing 500+ Lux.

Modern research ([Defoe, Frame et al](#) 2005 to 2013) gives a figure of around 25 Lux as 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.

The method has a number of inherent inaccuracies. One is that it uses the uniform sky, which does not take into account the variance in sky brightness from the horizon to the zenith but regards all the sky as being uniformly bright. As a result, the Sky Factor (SF) is no longer a unit of light measurement recognised by the British Standards Institution (BSI) and its use is now limited to rights of light calculations.

Experts should be aware of other methods of measurement and may wish to put them forward as an alternative.

Typically, Waldram Diagrams (see Figure 5) are prepared at each node of a 300mm grid both as existing and as proposed. This is best achieved using computer modelling. Each point of obstruction is measured for its horizontal angle, height and distance to give its vertical angle. The value of light from different angles of altitude is adjusted in the diagram.

The size of the grid will relate to the accuracy of the end contour diagram. The grid size should be agreed between the parties' surveyors in negotiations. 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. If several rooms are involved, the numbers of calculations required rise rapidly.

By calculating the area of sky visible from each node on the grid, a contour diagram can be prepared showing the area of the room that has visibility of 1/500th of the sky or better.

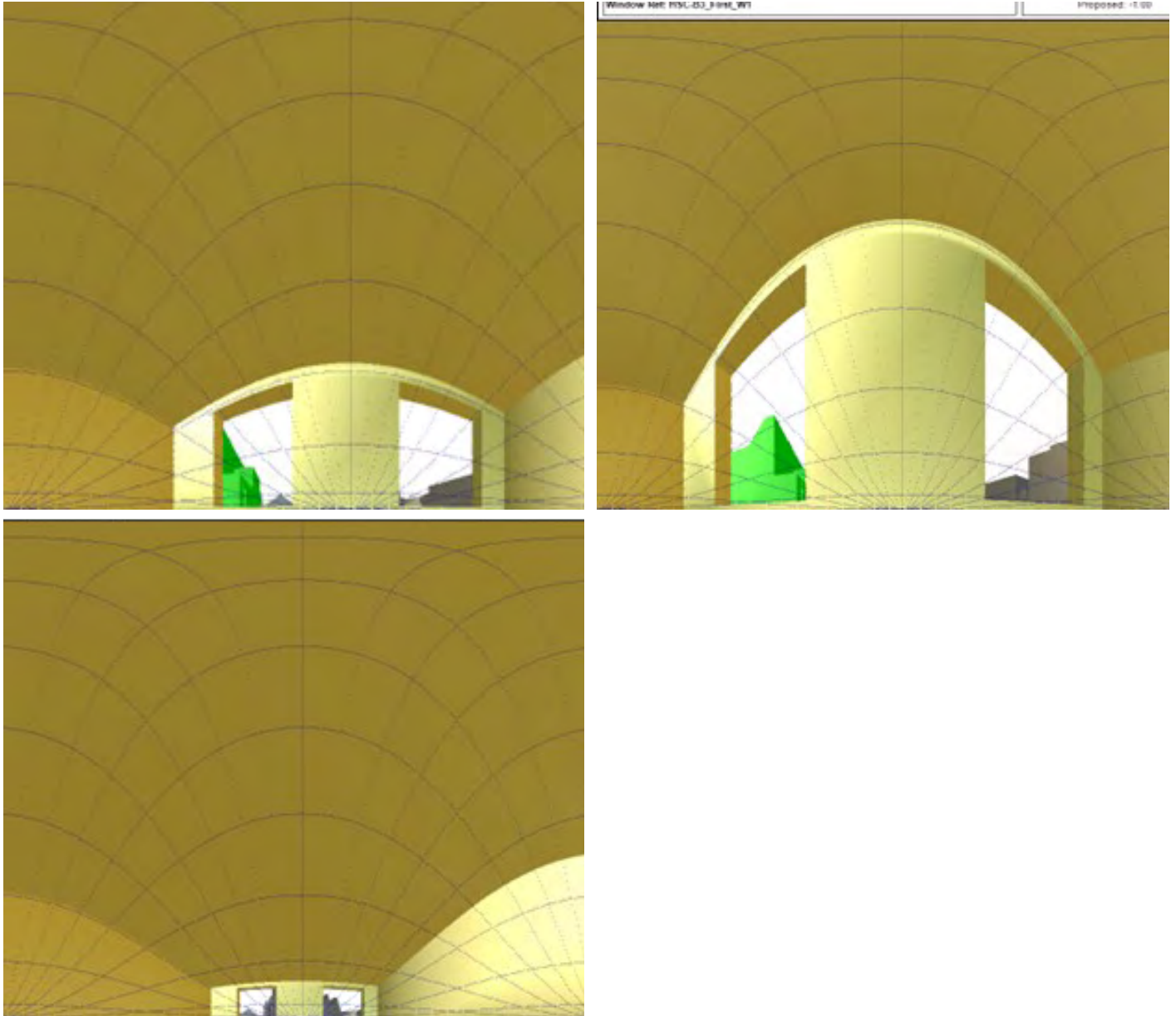


Figure 5: Waldram diagrams

## 6.1 What is meant by 'adequately lit'?

The legal definition is that the premises should have through its ancient windows a quantity of light as required 'for the ordinary purposes of inhabitancy of the tenement or use as business premises according to the ordinary notions of mankind' (Davey LJ in [Colls v Home & Colonial Stores \(1904\) AC 179](#)).

Waldram concluded that if over half the room had a light level of one foot-candle or better, the room as a whole would be considered 'adequately lit' by the ordinary person.

Regardless of whether the area was adequately lit before, if the 'after' proportion is less than 50% of the room area, it is conventionally accepted that there could be a potential actionable injury to the light. Surveyors have been openly rebuked in court for suggesting what is or is not an actionable level of loss.

Members should use caution when using the term 'actionable' in reports to the court or suggesting that a particular level of reduction should be treated by the court as a legal injury or disregarded as only a 'technical injury'. When reporting directly to a client it is of course necessary to flag that an impact on a dominant building could amount to a 'technical injury', which, subject to legal review, could amount to a 'potentially actionable' claim – although it should always be emphasised that the ultimate decision would be decided by the courts. Since several notable court decisions (e.g. *Beaumont Business Centres vs Floral Properties Ltd [2020] EWHC 550 (Ch)*) have generally recognised that RoL impacts should be considered on any 'reasonable future layouts' of the dominant building, members should remember to have regard to any potential reasonable adaptations to a dominant building when conducting their technical analysis and providing their final advice.

If an obstruction reduces the adequately lit area but more than, say, 55% of the room area remains adequately lit then, even if it was previously well-lit to 100% of its area, case-law suggests that a court would be extremely unlikely to find this a potential actionable injury.

Where a room is already adequately lit to less than 50% of its area, courts have ruled that it is already poorly lit, and any significant reduction of the adequately lit area is potentially actionable (it should be remembered that the term 'significant' has not been defined).

The next stage is to prepare a table that ranks the effects of the reductions to light, room by room.

- If the reduction leaves less than 25% of the room adequately lit, this is considered a very serious, actionable loss.
- If 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 loss lies in the zone between 50% and 75%, this is less serious and may not be actionable loss.
- If the loss lies in the zone between 75% and 100% adequately lit, this would be considered even less serious and certainly not actionable of itself.

This raises the question of 'parasitical losses'. In the past, courts have ruled that once one room becomes injured to an actionable degree, the non-actionable areas of loss have to be taken into account as well since they represent a more generalised reduction in amenity. This is particularly relevant to questions of compensation and these are more fully explored in section 7. It has also been stated that even those rooms whose windows have not existed for 20 years and may have no independent right to light should also be considered in terms of parasitical loss.

When advising clients, it is important to indicate to them what levels of injury are likely to be found actionable were the matter to proceed to litigation and how a court might react to the extent and gravity of the injury. Members should remind clients that civil litigation is not a predictable process and there are many factors the court might take into account in deciding that a particular obstruction will cause a potential actionable injury and whether that injury might result in an injunction or an award of compensation.

This may mean working closely with the client's legal advisors in providing the technical evidence that they can use to advise on the legal aspects and the litigation risks.

Alternatively, the client may decide to reduce the massing of the proposed building to avoid causing the level of injury that might be found actionable. This may require close work with the design team, perhaps carrying out several iterations of the calculations, in order to refine the proposals to a level that will not cause a possibly actionable level of injury.

Figure 6 shows a series of typical rooms with the contour of 1/500th or 0.2% as existing shown in green and the proposed contour of the same value shown in red, with the cross-hatching showing the area presently adequately lit that will no longer be adequately lit as proposed.

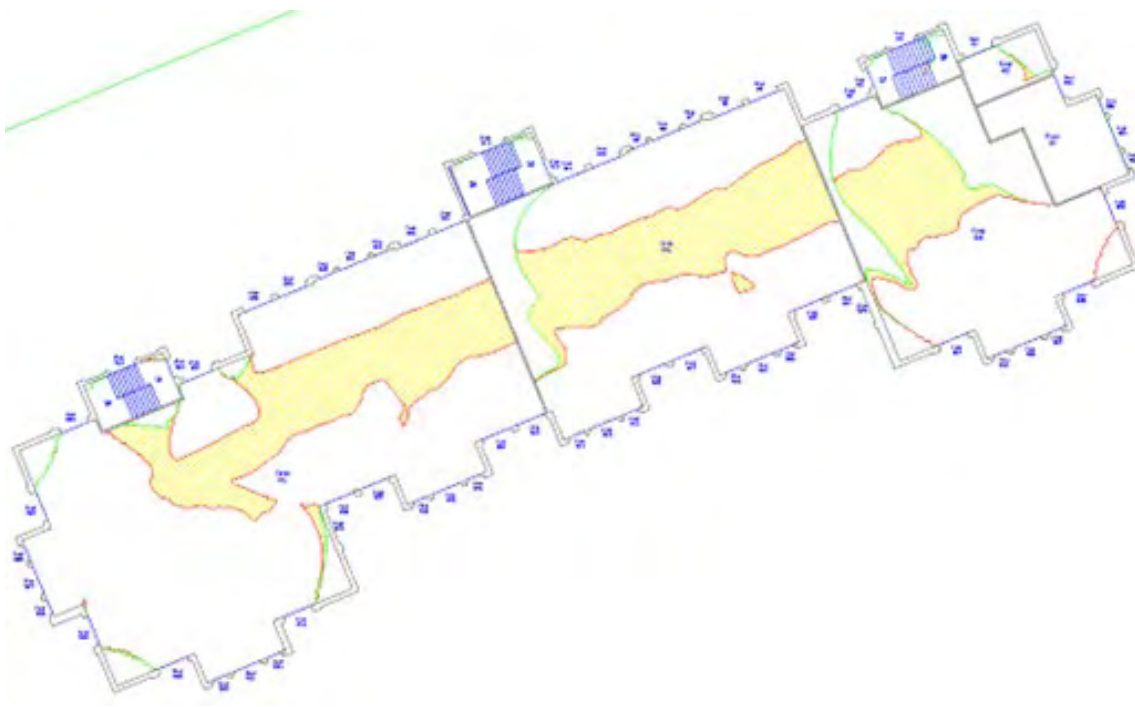


Figure 6: Example of a contour diagrams

# 7 Compensation

The valuation of compensation for loss of light is a 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 and, if legal proceedings are contemplated, legal advice might be sought as to the appropriate measure of loss.

On occasion, valuations will require a multi-disciplinary approach calling on the assistance of other advisers, such as quantity surveyors and valuation surveyors. Therefore, members should only undertake roles when they hold the sufficient skill and experience.

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

- a valuing the diminution in the dominant owner's property interest
- b valuing the servient owner's gain resulting from the infringement
- c valuing diminution according to statutory provision.

In terms of the first two, there is no single accepted methodology for preparing an RoL valuation. A detailed understanding of all appropriate valuation methods and surrounding technical and legal concerns is essential. Advice to clients may be based on 'book value' or other methods to value diminution or it may include any number of widely used valuation techniques to measure any gain.

Although the practitioner may arrive at a valuation based on 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. There is insufficient recognition in the sector that there is no compulsion of parties to enter into voluntary agreements or to negotiate on terms which are not advantageous to the other and a statement should be included on the consequences of no consensus.

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 203 of the Housing and Planning Act 2016](#). Arguably, this should result in a more straightforward approach, however, this is not without uncertainty and a keen understanding together with a multi-disciplinary approach is required in most circumstances.

The four categories of loss are traditionally termed:

**Front zone loss** – the 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 is multiplied by 1
- second zone loss is multiplied by 0.5 and
- makeweight loss is multiplied by 0.25.

The total is the lost adequately lit area as a proportion of the first zone or Equivalent First Zone (EFZ). A table of losses (EFZ table – see table 1) is then compiled showing a total of the losses for that building. Provided that there are some light 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 light losses in the front or first zones, losses in the other two zones would not normally, of themselves, be claimable.

Where there are light losses in the front or first zone then any losses in the makeweight losses are moved up to second zone for valuation purposes. Conversely, where losses are limited to second zone (parasitic loss) then, for valuation purposes, these are moved down to makeweight.

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.

Next, a value for the light is established and agreed between the RoL 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* and the EFZ total is multiplied by the rental value and the YP to produce the book value (Bv) of the total loss.

This Bv figure represents the direct loss suffered in pure light terms. Negotiation custom has evolved such that in non-CPO situations the strength of the perception risk of an injunction is factored into the compensation and represents equitable losses based on the decision in *Carr Saunders v Dick McNeill Associates [1986] 1 WLR 922*. This is known as the Enhanced Book Value (Ebv) and can be taken from various multiple uplifts ranging from 2.5 times Bv upwards.

Practitioners other than chartered valuation surveyors may need to seek specialist valuation advice from members working in the district to establish local rental values 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 thoroughly researched. An estate agent's marketing estimate is not appropriate in the RoL compensation context.



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)
Ground floor										
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

Table 1: Example of an EFZ table

Note: valuations are done on a square foot basis.

## 8 Rights of light agreements

It is important, when an RoL 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 on 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 accurately interpreted by anyone other than the parties to the agreement as this may need to be relied on in the future.

It is common for such agreements to include drawings showing the agreed massing profile and spot heights together with a building tolerance to allow for on-site differences. Printed views from the computer model of the massing may be helpful in conveying the intended scope of release.

# 9 Loss of rights of light

Rights of light can be reduced, lost, abandoned, extinguished or prevented from arising in various ways including:

- unity of ownership (discussed previously)
- agreement between the dominant and servient owners
- redevelopment
- alteration
- obstruction
- notional obstruction
- compulsory purchase and
- the opportunity for injunctive relief can be lost through instruments such as [section 203 of the Housing and Planning Act 2016](#).

## Agreement

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. Landlords should be advised on the need to make express provision to reserve rights in order to prevent tenants acquiring rights against their landlord or nearby third parties.

## Redevelopment

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 be beneficial to the client to ensure that at least some of the new windows overlap the original ones to ensure that rights are transferred to the new property, ensuring there is a clear intent for the right to be transferred and the same light enjoyed to the new building. The production of overlay drawings to prove the intention of the transfer of a right at the time of a redevelopment should be considered.

Purchasers of urban centre developments should, as a matter of due diligence, make the necessary investigations at the time of purchase if they wish to rely on this type of right. Retrospective proof is now more complex as less historically important buildings may not be well documented, making the gathering of survey data on a long-demolished property difficult. Archives are typically now only kept for 6–12 years.

## Obstruction

A right by statutory prescription (*Prescription Act 1832*) will not arise unless enjoyed for upwards of 20 years 'next before' court proceedings. If the light is obstructed for a continuous period of one year during the 20-year period, a right of light by statutory prescription will not arise. 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 Light Obstruction Notice (LON) (see also [section 9.1](#)) with the intent to act as a notional (fictional) obstruction. Again, this obstruction is normally required to remain in place without objection for a period of one year before it will have the desired effect.

If advising someone who has received an LON, the RICS member **must** explain that it is only possible to object if it can be proven that the notice has been incorrectly served or that in fact the right is already in existence or will be obtained before the one-year period has elapsed. To object, one must either formally require the LON to be withdrawn and obtain a Certificate of Withdrawal or must commence court proceedings to stop the one-year time period. The one-year period is established in the Act and cannot be adjusted by agreement or by the court, and therefore delay in response can have serious consequences for an owner if they have already acquired a prescriptive right, as once the notice has been in place for one year that prescriptive right will be lost.

When the RICS member is acting for the party wishing to serve the LON, they should be aware that this is good estate and property management to prevent a third party acquiring an easement of light over their client's property. As there is some legal uncertainty over the timing of the one year, the 20 year period and the objection period, it is recommended that such notices should be served before the apertures in the property in question are over 18 years to be fully safe (see [section 9.1](#)) but must certainly be served before the apertures in the property in question are over 19 years and one day. However, once the notice is served the onus of proof sits with the recipient of that LON to prove that the notice is invalid for the reasons set out above. It is not sufficient to just object to the notice.

It is important to recognise that the serving of notices is a legal process best undertaken by legal professionals, though surveyors can assist and provide any information required.

The duty to respond and deal with an LON is a common obligation in a commercial property lease and members operating in the property management sector should have clear procedures in place to ensure that an LON is identified and reacted to when received.

See also [section 9.1](#).

## Compulsory purchase and appropriation

[Section 203 of the Housing and Planning Act 2016](#) is used where land has been appropriated for 'planning purposes' by a local authority in order to facilitate development. This will usually only be done where a compelling case can be put forward that the development is in the public interest and that without appropriation the development could not or is very

unlikely to be delivered because of rights of light. This right under the Act can be carried forward and used by a follow-on private sector developer.

The worth of this right in land has a significant facilitation benefit. This benefit has the effect of enabling the intended development to proceed unencumbered by the threat of injunction. However, properties retain the right to claim compensation for the injury and it is common but not essential to demonstrate, among other things, that there has been an offer of a commercial settlement on usual terms and that this has been unsuccessful.

However, once the s.203 is in place, any compensation will be assessed in accordance with the compulsory purchase method which will, almost inevitably, be lower than the commercial offer. Therefore, project appraisals should still allow for the necessary commercial level of compensation budgets and associated professional fees until such time as the s.203 is in place. Members **must** not confuse the removal of the injunction threat with the removal of a property owner's legal right to receive compensation for any diminution in the value of their property as a result of the loss of light. The above methods of extinguishment are complex and will always require the input of specialist legal advice.

## 9.1 Light Obstruction Notices (LONs)

While an RoL may be gained by prescription, i.e. 20 years uninterrupted use, as well as through a grant and time immemorial, it can be prevented from arising by a physical or legal obstruction. Under s.4 of the *Prescription Act 1832*, the use will be interrupted by an obstruction that is submitted to or acquiesced in for a period of one year. The physical obstruction is straightforward in that (provided one has the necessary planning permissions and the adjoining owner has not yet acquired a right to light) a building or permanent hoarding may be erected prior to the expiry of 19 years and a day from the creation of the window. The structure or hoarding (once erected) will prevent the RoL from being acquired. However, this is not always practical and it is often the case that more than 20 years will expire before a development is commenced. In these cases a legal obstruction is necessary.

The *Rights of Light Act 1959* provides a mechanism by which one party can stop a neighbouring property from acquiring a right to light over their land without the need to construct an actual building or other obstruction. Registering a notice of notional obstruction has the same effect as a real obstruction being erected. The LON will be effective to interrupt the 20-year period if no action is taken by the dominant owner to challenge it within one year of registration. In order to challenge a LON, the dominant owner will need to establish a right of action to prevent an actual obstruction, i.e., that they enjoy a right of light.

In this context, owners should be aware of s.3(4) of the 1959 Act, which deems the dominant owner's enjoyment of light to have begun a year earlier than it actually began. In other words, the dominant owner will be entitled to challenge a LON if he has enjoyed light for upwards of only 19 years. What this means in practice is that the registration needs to occur before 18 years and one day has expired in order to avoid the risk of a successful challenge to the LON. The other thing to bear in mind is that while an emergency notice may be obtained, the actual process of obtaining a final notice can take several months.

It is important to recognise that this is a legal process best undertaken by legal professionals, though surveyors can assist and provide any information required.

Despite this, it is essential that members are aware of the process and requirements as set out below.

## 9.2 The process

In the first instance it is necessary to download the relevant forms issued by the Upper Tribunal ([Lands Chamber](#)) so the servient owner may make their application to the Registrar of the Upper Tribunal (Lands Chamber).

[Form T383: Application for a Certificate of the Tribunal – Rights of Light Act 1959](#) must be accompanied by:

- three copies of the proposed application [form A – Application for Registration of a Light Obstruction Notice](#)
- a coloured block plan (one copy appended to each copy of form A) and
- the application fee.

Form 1 is the application to the Tribunal for a certificate to confirm that adequate publicity of the proposed application to the local authority has been given. Form A is the application for the registration of a light obstruction notice as a local land charge.

In order to complete form 1 it is necessary to:

- identify the applicant who could be the freehold owner(s), or a tenant with at least seven years remaining on the lease of a mortgagee in possession. For the notice to be valid it is essential that the correct legal identity is used. It is not unknown for an 'owner' to have used a different entity when the property was registered and so a check on land registry is essential
- identify the servient land. Again, the land registry plans should be checked and compared with what is visible on the ground, though for the purposes of this form it may be sufficient to provide a postal address if this is available otherwise the title number(s) should be included
- name the correct local planning authority
- if the requirement is for a certificate authorising the registration immediately of the proposed notice as a temporary notice, the reason for the case being one of exceptional urgency must be stated. This is most usually required when the light has been enjoyed for more than 17 years and there is a risk that the full notice of notional obstruction may arrive too late to be legally effective
- set out all those who may have an interest in being notified. The tribunal will actually set their requirement for notices but commonly these will include all freehold owners, leaseholders, mortgagees and most importantly any occupants whatever their position. Since the form requires names and addresses it is usually only possible to provide

information that is available on land registry or possibly in the electoral register. There is an element of doubt in the case of a block of flats, for example, whether persons who would be unaffected by the proposal should be notified

- identify to whom any communications should be addressed, i.e. it could be to themselves or to their agent
- submit three copies of the proposed application and plan.

The application form A is similar to form 1 and requires:

- applicant name and address
- whether they are freeholders, leaseholders or mortgagees in possession, and the address or description of the servient land including a statement on how it is identified on the plan, i.e. edged or coloured appropriately. Only the building is to be identified and not the surrounding land
- the correct name of the local planning authority
- the intended notional obstruction identified, i.e. one boundary or all boundaries or parts of boundaries and these should be identified here and on plan as between points, e.g. between point A and point B
- the height of the obstruction to be stated. For most situations this will be 'unlimited' as anything less risks future difficulties. However, where the neighbouring property has some windows that will have a right to light and some that will not, a notional obstruction that would cause a right of light injury to a window that has the easement will fail in its entirety and the notional screen may therefore need to be specified in more detail.

The plan to be attached to this form should be a simple coloured block plan indicating the servient land and dominant building, edged or coloured in contrasting colours. It is essential to edge or colour the outline of the building against which the notice is being registered – not the outline of the parcel of land on which that building stands. The position and extent of the proposed opaque structure must be marked by another colour, and the letters A-B-C as necessary. Note also that the dominant building could include dwellings not directly affected by the proposed obstruction.

At this stage the form is effectively a draft which, if approved, would be sent to the LPA for registration.

The forms are then sent to the registrar who will determine what notice is to be given and whether this is by advertisement or otherwise, such as by letter, to the relevant parties. It should be noted that the registrar will require evidence of the notice having been published in the required way. If letters are sent, this will necessitate using a tracked delivery (the postal rule does not apply) and, if delivered by hand by the agent, the agent would be required to certify that delivery took place.

The registrar will also state a time limit by when compliance should be achieved and, where a temporary notice is required, time limits for each stage, i.e. the temporary notice will be completed but the full application must be completed within a specified time period.

If upheld with a definitive certificate, the date from which the notice runs will be the date of the original temporary certificate.

What frequently occurs is that letters sent by special delivery with the post office cannot be delivered, meaning that a second attempt or hand delivery is required. Failure to notify everyone in accordance with the registrar's requirements could lead to the registration being declared invalid. Equally a certificate of delivery by the agent where this did not occur can also lead to the process being declared invalid.

Several ways may be employed to prove delivery, such as taking digital photographs at the time of delivery with a copy of the daily newspaper adjacent to the envelope and the post box.

Once the registrar is satisfied, they will issue a certificate to the applicant which confirms they are satisfied that the requirements have been met. This, along with a copy of form A and its attachments, should be sent to the registrar/clerk of the local land charges registry at the relevant local authority, together with the appropriate fee. The LON will then be registered as a local land charge for one year, representing the necessary period of interruption. It should be appreciated that after the expiry of one year this entry will disappear from the register and so the servient owner must ensure they retain copies and, if necessary, renew the process within the next 19 years.

The absence of a record after one year creates difficulties for dominant owners, particularly where they are successors in title to the person on whom notice was served. However, once the transition mentioned above has been completed then details will be held by Land Registry.

At this point it is necessary to reiterate that any notice that was served in the last year of the 20-year acquisition period could be successfully challenged. It is possible for a neighbouring owner to raise an action against an LON if they have enjoyed the right to light for more than 19 years and one day on the basis that they will have acquired that right to light before the notice has run its course.

### 9.3 Appeals and actions

A temporary certificate can last for no more than six months but it is impossible to challenge the registrar's decision to issue one, except by way of judicial review. If the definitive notice is challenged one year since the temporary notice, even though it is within one year of the definitive notice, this will fail (*Bowring Services Limited v Scottish Widows Fund and Life Assurance Society* [1995] 1 EGLR 158).

Where the effect of the notice is such that a physical obstruction of the same dimensions would cause an actionable loss, i.e. the right to light had already come into being, then any action would be the same as if a physical obstruction had been erected and thereby could receive the same relief by way of injunction and/or damages.



Any challenge to the notice would have to be by way of legal proceedings unless the servient owner can be persuaded to withdraw their application. Until such challenge, the dominant owners are deemed to have acquiesced in the obstruction for the purposes of s4 of the *Prescription Act 1832*.

Members can provide certain information and drawings to facilitate the application but need to be wary of providing incorrect information if they undertake to provide the whole service. The key elements to consider are:

- 1 ensure that the dominant property does not already benefit from a right to light or carefully define those parts that do not, so that those that do are excluded from the notice drawings
- 2 properly identify all of the parties with a legal interest or are occupiers in the dominant properties and make sure that the client is one of the 'owners' of the servient property identified on the form
- 3 make sure to identify the correct local authority
- 4 provide drawings/plans that comply with the registrar's requirements as to scale, colouring and labelling
- 5 complete the forms accurately and fully
- 6 serve all of the required notices and be prepared to provide evidence of publication in the required form
- 7 be prepared to serve notices by hand where other delivery cannot be confirmed and provide evidence and a certificate by the person delivering the notices that this has been done
- 8 ensure that the correct fee is paid both to the registrar and the local authority.

# 10 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 risk management strategy.

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 that are subsequently rendered abortive.

Where the client is the dominant owner seeking an injunction or damages against the developer, litigation funding may be available. The funder pays the client's own expenses of the litigation and, if the action fails, will write off their investment. The funder will usually provide an indemnity against the award of costs to the developer if the case is lost. This is a required term of a funding agreement if the funder is a member of the [Association of Litigation Funders](#) in England and Wales. The client brings their case with no cash outlay and no risk of adverse costs. Where the action is successful, the funder charges a share of any award or uplift on the sums advanced or a combination of the two. Litigation funding is obviously a desirable option for a risk-averse claimant and its availability should be made known to the client.

Any party to litigation can seek to cover the risk of paying the opponent's costs if they lose a court action or an arbitration through an insurance product called After the Event (ATE) insurance. ATE is usually obtained through the solicitors instructed on the case and can be extended to cover the client's own disbursements and even the costs of solicitors and counsel. Any client entering into litigation should be advised of the availability of ATE.

## 10.1 Available extensions

Available extensions include the following.

- Delay costs – where the scheme is delayed, e.g. by temporary injunction or by advice of legal counsel, the policy can be extended to cover contractual costs subsequently incurred such as additional interest charges and contractors penalties.
- Consequential losses – if due to enforced cut back and a reduction in the scheme, the developer suffers consequential losses, i.e. loss of contracted rent or sales, cover can be considered by insurers.
- Previously, RoL indemnity policies were predominantly written on a post-planning basis, but insurers will now, in certain circumstances, consider offering cover pre-planning.
- Whereas previously there was a strict exclusion in all policies regarding material discussions with ‘injured neighbours’, insurers now allow cover on an agreed conduct basis. This allows the developer to proactively approach the neighbour in order to secure a deed of release aligned to a policy excess that will reflect the likely settlement figure plus an allowance for professional costs. Thus, the policy will cover the costs of injunction (as above) or alternatively inflated release costs, over and above the excess, leveraged by the threat of injunction.

Such proactive strategies would need to be in consultation and with the agreement of insurers. Otherwise, it should be noted that any confidentiality clauses in the policy **must** be strictly observed.

RoL Indemnity policies are written ‘in perpetuity’, and automatically cover transfers to successors in title, so the policy can be a positive benefit to developers selling on.

Insurers have expressed concern over receiving RoL reports from surveying and/or building consultancy/environmental firms that have little experience regarding RoL. Sometimes they will not accept these reports as a basis for their underwriting of the risk, insisting on a report from an experienced RoL surveyor.

If the client is interested in this form of insurance, they should contact a specialist RICS member or a broker – details available from RICS. Members are reminded that RICS is a Designated Professional Body (DPB) and RICS members **must** only advise on insurance where they are properly regulated to do so either through the FCA or the RICS DPB scheme. Members should check the [RICS website](#) for details.

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 bringing or defending an RoL claim.

The insurances discussed here relate to protecting to the interests of the servient owner (i.e. those causing the injury). In the event the surveyor is acting on behalf of the dominant (injured) owner, there may be legal expenses insurance available to support their claim for damages/injunction.

# 11 Alternative Dispute Resolution (ADR)

## 11.1 DRS Neighbour Disputes Service

RICS operates a service where it will appoint a suitably-qualified chartered surveyor who has undertaken specific training for inclusion on the [Neighbour Disputes Service](#) register to advise the general public and/or professional advisers in respect of neighbour dispute issues. This training includes the practice and procedure of the Neighbour Disputes Service, and competence in the production of expert reports that comply with the Civil Procedure Rules (CPR) and their relationship to associated RICS professional standards.

To initiate the service, one or more of the disputing parties may apply to the RICS Dispute Resolution Service on a Neighbour Disputes application form.

The Neighbour Disputes Service is designed to resolve boundary and other neighbour disputes in order to reduce costs and, where possible, avoid the need for trial. Where court proceedings are unavoidable, Neighbour Disputes Service is designed to assist the court in coming to a prompt and informed decision, avoiding prolonged litigation and the potential for escalation to higher courts.

## 11.2 Mediation

Mediation is a voluntary, non-binding and private form of ADR, whereby a trained neutral person (the mediator) helps the parties reach a negotiated settlement in a carefully controlled environment. If the parties are successful in settling the dispute between them, that settlement can be recorded in a written agreement which becomes legally binding upon the parties.

Mediation as a form of ADR is becoming increasingly popular, largely due to the success of mediations (most boundary dispute mediations result in a positive settlement for the parties). Courts will usually require disputing parties to attempt mediation in the hope that it will prevent a trial. Likewise, RICS members involved in matters such as boundary disputes should consider and, where possible, advocate the process.

RICS members should use their professional skills and manner to help parties resolve their disputes, limit or eliminate matters in contention, and reduce conflict and tension. This should be based on evidence rather than falling into the adversarial trap of what the party 'wants'. Rights of light mediation can be highly emotive and an RICS member needs to be prepared for this. The roles require considerable tact and diplomacy to help bring the opposing parties together to resolve a problem without recourse to litigation.

A successful mediation allows the parties control over any resulting settlement, saves the parties considerable time, costs, and stress, and potentially helps heal relationships. Mediation should be handled carefully however, as an unsuccessful mediation is likely to result in further entrenched positions, higher costs and longer timescales to achieve a settlement.

An RICS member can have various roles at a mediation. When suitably trained they can act with the consent of parties as the mediator, assistant mediator or an adviser to one of the parties in the dispute. Regardless of role, the RICS member should be aware of the potential implications of their actions and ensure that they are suitably qualified and fully conversant with the mediation process.

### 11.2.1 Types of mediation – facilitative versus evaluative

A mediation may be conducted using traditional facilitative mediation methodology or, more likely if an RICS member is involved, an evaluative mediation methodology. While the former method does not necessarily require technical knowledge by the mediator and involves joint sessions with each individual party, it does not allow the mediator to make recommendations to the parties, give advice or opinions.

The evaluative process involves ‘shuttle’ negotiations and frequently does not use a joint session (often as a result of the animosity between the parties remembering that this is a decision for both parties to agree on). It enables the expert (adviser or mediator) to help inform the parties in dispute on their case’s strengths and weaknesses and seeks to let the parties consider how a court would likely treat and resolve their case. The evaluative mediator is therefore placed in a trusting and influential position, through imparting technical knowledge and information about which the parties may have previously been unaware. The member should therefore be an independent source of knowledge with skills and behaviours to assist the parties in reaching a mutually satisfactory resolution.

### 11.2.2 Exclusions of liability

As a consequence of utilising evaluative mediation methodology, it is important for the RICS member to emphasise with the parties that the final decision for settlement still rests with the parties. No responsibility is assumed for the accuracy or legal completeness of any advice or opinion proffered (whether intentionally or not) in the course of the mediation or for any assistance given in or about the content or drafting of any settlement agreement.

The parties should acknowledge that they are not entitled to rely upon any such advice, opinion or assistance and should seek their own legal or other professional advice. This is ideally included as part of the parties’ agreement to mediate terms and conditions.

### 11.2.3 Acting as an adviser

If acting as an adviser to one of the parties at a mediation, significant technical knowledge and preparation skills are required to play an active and effective role. Before the mediation

the RICS member should ensure they are familiar with the mediation process. It is common for parties involved in a boundary dispute to obtain legal advice and, if so, it is likely the lawyer or a mediation provider will coordinate arrangements for the day. If a party is not legally represented, it may fall to the RICS member to assist in readying their client for the mediation. For reference, an example outline of a mediation process (RICS Model Mediation Settlement Agreement) is available on the [RICS website](#).

The RICS member attending a mediation should be well prepared, including knowing the case and the advice they have previously provided. If both parties to the mediation have advising surveyors in attendance it is not uncommon for those advisers to meet in joint sessions and the RICS member should be ready and willing to participate in such an exercise.

A surveyor attending a mediation should conduct themselves in a manner befitting an RICS member throughout (see [section 3](#)), remembering it is not an opportunity to 'win' but their client's opportunity to settle their dispute.

#### 11.2.4 Acting as the mediator

An RICS member should only accept an instruction to act as mediator if suitably qualified and insured to do so ([ACRE Mediation](#)). An RICS member accepting an instruction to mediate should ensure they adhere to RICS regulatory guidance and the [European Code of Conduct for Mediators](#). An instruction to act as a mediator may come from the parties to the dispute, from a mediation provider or from the parties' lawyers. There is always a need to ensure that an appointed mediator retains their independence and neutrality.

Appointments through the RICS Neighbour Dispute Service, an RICS regulated mediation provider or other professional mediation provider, helps the RICS member retain their independence and neutrality. It can be difficult to be accepted as a truly impartial mediator if the initial contact has come from one of the parties only. In the rare case where one party only is to be responsible for the mediator's professional fees it is likely, unless jointly agreed, that the other party will perceive the mediator as being partial and not truly independent. Therefore, RICS advises RICS members to seek joint appointment as a mediator by all parties to the action and to ensure that a strong mediation contract exists between themselves, the parties in dispute and any legal representative.

A mediator accepting an instruction to mediate should ensure they have no conflicts of interest and satisfy themselves that they are competent to accept the instruction and that the expected range of work is within their scope of professional knowledge. It will then fall to the mediator or mediation provider to make arrangements for the day and to supply the parties' agreement to mediate terms and conditions, which governs the mediation. The agreement should be signed by the parties and all attendees prior to the mediation commencing to ensure that confidentiality and mediation privilege is maintained.

# Appendix A Sample specification for rights of light – full measured survey

## A1 Client site

Client site details	Client/lead consultant contact details
Client building no./name:	Client/lead consultant contact:
Street name:	
Town:	Direct line:
Postcode:	Mobile no.:
County:	Email address:

Measured survey information is required for the above-mentioned property and its surroundings for the purpose of a rights of light study, which has been commissioned to assess the effect of development proposals on neighbouring properties.









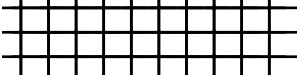
## A2 Purpose of survey

The measured survey information will form the basis of a 3D computer model that will cover the details specified on the scoping plan attached. The computer model will be used in the analysis of affected property apertures and form part of the assessment of any potential actionable injury to neighbouring properties. This information is generally captured early in the design process and is sensitive in nature. All information should therefore be treated with the strictest confidence throughout the assessment process and not be divulged to third parties.

## A3 Scope of survey

The scope of the survey is defined on the attached scoping plan (\_\_\_\_.pdf /dwg/dgn) and is categorised according to the nature of the investigation.

[The scoping plan should be referenced to an extract of the latest available Ordnance Survey digital map. The legend below gives an indication of the convention that can be used on scoping plans. This should be supplemented with additional written information in complex areas. Additionally, aerial imagery can be marked up with transparent shading to provide further clarity if required.

Description	Legend	Accuracy band	Included	✓	×
Study extents			✓		
Client's site		E	✓		
Massing and windows/apertures required (including set-backs)		E	✓		
Massing only (from survey)		F/G	✓		
Massing only (from nat'l mapping)		H/I	✓		
Additional ground levels		E	✓		
Spot heights		E	✓		
Trees modelled (generalised)		E/F	×		
Measured floor plans		D/E	×		

The accuracy band defined in the table refers to section 2 of RICS' [Measured surveys of land, buildings and utilities](#).

The scope of the survey should be developed by the appointing consultant and follow on from a detailed site inspection. Additional information, ideally in the form of photography, should be gathered to convey as clearly as possible any areas that are of particular interest to the study. Time spent at this stage can be invaluable. This will avoid costly re-visits when data is omitted from the survey as a consequence of a poor or misinterpreted scoping document.]

## A4 Access and visibility

Responsibility for all access arrangements should be clearly defined by the instructing party.

All measured survey information should be collected, either from within the client's property demise or from publicly-accessible areas. Every effort should be made to capture remote information on neighbouring properties without physical access. This can generally be achieved by making observations from strategic roof vantage points or by utilising extendable tripods to allow for unhindered views of the adjacent properties. Data should only be collected from neighbouring properties where express permission has been arranged in advance of the survey.



Where access is not possible with survey instrumentation, positions and heights of apertures should be approximated if possible. This must be clearly annotated as being indicative either on the model or 2D drawings as appropriate.

The surveyor is reminded of the safety implications of working at height and in public areas. All inspections and measured survey operations should be undertaken with reference to the current edition of RICS' [Surveying safely](#).

## A5 Professional guidance

All measured survey work shall be carried out in accordance with RICS' [Measured surveys of land, buildings and utilities](#). Specific attention is drawn to the following sections that deal with horizontal and vertical coordinate systems.

Survey coordinate reference system		✓/×
An existing local grid for which there are existing survey control points		×
A site grid based on existing site features (e.g. a building grid). Give details:		×
An arbitrary grid proposed by the surveyor and agreed with the client		×
The country's national grid. Give details:	O.S. National Grid (GNSS / OSTN15)	✓
Other (specify)		×

Vertical reference datum		/×
Surveyed heights (levels) quoted in metres above O.S. National Grid (GNSS/OSGM15)		✓
Surveyed heights (levels) quoted in metres above client-defined site datum		×
Surveyed heights (levels) quoted in metres above arbitrary datum (e.g. floor level)		×
Surveyed heights (levels) quoted in metres above * O.S. Benchmark (GNSS check only)		×

\*Please note: Ordnance Survey Benchmarks are no longer maintained as a valid height reference.

## A6 3D computer model

The nature of a survey is driven by many things including cost and size of the project as well as the specifics of the end deliverable, which is generally a 3D computer model. In general, analytical software used in the assessment of rights of light uses a 3D computer model

with all objects modelled as 3D solid geometry, although some do use a 3D wireframe with surfaces attached.

The deliverables when capturing the data for the full measured rights of light survey are defined below as Deliverable 1 – terrestrial laser scanning or Deliverable 2 – conventional land survey. Both these deliverables can be used to develop a 3D computer model suitable for assessing rights of light.

<b>Deliverable 1 – terrestrial laser scanning (3D survey)</b>		✓/✗
Plan of scan locations		
Scan registration report		
Web-enabled viewing of scan locations (intensity)		
Web-enabled viewing of scan locations (colour)		
Additional general digital photography		
Point cloud format (*.pts,*.ptx,*.pod,*.e57,*.pcg,*.rcs,*.rcp,*.other please specify)		
3D solid model of objects details defined within the 'scope of survey'		
<b>2D CAD plans derived from the point cloud showing the following:</b>		✓/✗
	Building footprints (heights at base)	
	Boundary walls (heights at base and top)	
	Other structures (heights at base and top)	
	Additional ground levels (specify location/ interval)	
	Hedges (heights at base and top)	
	Trees (heights at base and top)	
	Other (specify)	
CAD output 3D/2D *.dwg / *.dgn *.pdf		
CAD units: metres or millimetres – Coordinate system: either full grid or truncated (circle applicable)		

<b>Deliverable 2 – conventional land survey (2D surveys)</b>		✓/✗
Coordinate schedule of survey stations/witness sketches		
Traverse report		
General digital photography for site and surrounding buildings within scope		
<b>2D CAD plans derived from total station measurements showing the following:</b>		✓/✗
	Building footprints (heights at base)	
	Boundary walls (heights at base and top)	

<b>Deliverable 2 – conventional land survey (2D surveys)</b>		<b>✓/×</b>
	Other structures (heights at base and top)	
	Additional ground levels (specify location / interval)	
	Hedges (heights at base and top)	
	Trees inc. trunk dia, crown circum/height/species	
	Other (specify)	
<b>2D CAD roof plans derived from total station measurements showing the following:</b>		<b>✓/×</b>
	All roof areas detail as defined within scope	
	Ridges	
	Eaves	
	Plant rooms/screens	
	Changes in level	
	Other (specify)	
<b>2D CAD elevations derived from total station measurements showing the following:</b>		<b>✓/×</b>
	All elevations detail as defined within scope	
	Windows (structural opening)	
	Doors (structural opening)	
	Other apertures (structural opening)	
	Frames	
	Mullions	
	Glazing bars	
	Bricked-up/blocked or boarded apertures	
	Ridges	
	Eaves	
	Plant rooms/screens	
	Roof profiles	
	Chimney stacks	
	Gables	
	Parapets	
	Balconies	
	Walkways	
	Solid balustrades (opaque or glazed)	
	Projecting canopies	

Deliverable 2 - conventional land survey (2D surveys)		✓/×
	Brise soleils	
	Cornices	
	External staircases	
	Other (specify)	

## A7 General

Particular attention should be paid to apertures at basement/lower ground floor level as these are often the ones that suffer most injury and are sensitive in the assessment. When data is being captured by conventional survey techniques, sections will need to be included to show depths of overhangs with the position of the head of the aperture below. Additionally, where a building changes in profile further sections must be provided unless it is adequately described on the roof plan drawings.

Particular attention should be paid to the existence of pavement light-wells and also windows or apertures obscured behind walls or fences that can be easily missed. The surveyor's best efforts should be made to record their existence. If it is not possible to physically measure these apertures using conventional or laser scanning equipment, annotated photography or suitable oblique aerial views should be used to inform those making the rights of light assessment of their existence.



Figure 7: Example scoping plan

# Appendix B Survey detail accuracy banding table

Taken from RICS' [Measured surveys of land, buildings and utilities](#).

Customised for the purposes of rights to light survey (bands C, D, E, F, G).

Band	(X,Y)	(Z)	Example survey types/uses	Approximate legacy plot scale output required to achieve accuracy band	Min size of feature shown true to scale (not symbolised)
C	+/- 10mm	+/- 5mm	Engineering surveying and setting out, high accuracy measured building surveying, heritage recording	1:20	10mm
D	+/- 20mm	+/- 10mm	Right of light scanned surveys, engineering surveying and setting out, measured building surveys and floorplans, high accuracy topographic surveys	1:50	20mm
E	+/- 50mm	+/- 10mm	Right of light scanned surveys and 3D modelling, measured building surveys, topographic surveys, net area surveys, drone UAS, GNSS surveys	1:100	50mm

F	+/- 100mm	+/- 50 mm	Low accuracy measured building surveys, topographic surveys, drone UAS, GNSS surveys, aerial imagery	1:200	100mm
G	+/- 200mm	+/- 50mm	Massing studies from survey, topographic surveys, low accuracy measured building surveys, aerial imagery	1:500	200mm
H	+/- 500mm	+/- 125mm	Low accuracy topographic surveys, massing studies based on national urban area mapping, tree surveys, aerial imagery	1:1000	500mm

Table 2: Banding table

# Appendix C Protocol for disputes relating to rights of light (Rights of Light Protocol)

## C1 Preliminary

This Protocol applies where either:

- an owner (the **Developer**) wishes to extend or develop its property in a way that may infringe rights of light and wishes to resolve rights of light issues prior to commencing development, or
- an owner (the **Adjoining Owner**) believes that its rights of light may be infringed by a neighbouring development but has not yet been approached by the Developer to resolve rights of light issues.

The aim of this Protocol is to provide a process, which seeks to ensure that the Developer and the Adjoining Owner exchange information in a timely manner to minimise the scope for disputes between them; and to enable any such disputes to be promptly resolved, keeping costs to a minimum.

It is assumed that, prior to embarking on the steps contemplated by the Protocol, the Developer will have engaged a suitably qualified or RICS registered rights of light surveyor (a **Surveyor**) and/or solicitor to act on its behalf. References in the Protocol to steps to be taken by the Developer may include a surveyor or solicitor on its behalf.

Each case is different and there may be cases in which it is inappropriate for the parties to follow all or part of this Protocol. In particular, there may be circumstances in which a party is advised to issue court proceedings as a matter of urgency. In those cases, the parties should consider the extent to which they are able to comply with the spirit of the Protocol without prejudicing their position and should endeavour to do so where reasonable.

It is not the function of this protocol to provide advice to the parties. Rights of light disputes frequently involve complex legal and technical issues and specialist advice should be sought.

Where a Developer has (or is considering taking out) an insurance policy in respect of rights of light claims, the terms of the policy should be studied carefully and specialist advice taken before taking any of the steps contemplated by the Protocol.

## C2 Introductory Letter and Initial Response

Where a Developer has identified that its intended development may potentially result in an interference with access to light to an Adjoining Owner, and the Developer wishes to undertake further assessments and/or resolve the potential claim prior to commencing development, the Developer may, as a first step, send an **Introductory Letter** to the Adjoining Owner providing the following information:

- a brief summary of the proposed development
- where appropriate, copies of plans for the proposed development or a link to any planning application or consent on the local authority's online portal
- a statement that the Developer wishes to take steps to ascertain the extent to which the development may impact the Adjoining Owner's access to light and, if appropriate, to resolve any claims arising
- a request that the Adjoining Owner provide access to the Adjoining Owner's property to the Developer's Surveyor for the purpose of ascertaining room layouts and undertaking assessments
- a request that (where the Adjoining Owner is able to do so, and subject always to data privacy considerations) the Adjoining Owner provide details of any tenant or occupier of the Adjoining Owner's property who should be contacted to arrange access
- a recommendation that the Adjoining Owner should appoint an independent Surveyor to act on its behalf. The letter can include an offer to provide a list of independent Surveyors on request but should make clear that the Adjoining Owner is ultimately free to appoint a surveyor of its choice
- confirmation that the Developer will meet the Adjoining Owner's reasonable fees for taking advice from a surveyor up to a capped amount to be agreed between the Surveyors
- contact details for the Developer's Surveyor.

The Adjoining Owner should respond to the **Introductory Letter** within a reasonable time period, which in most cases will be no more than 21 days. This **Initial Response** should:

- confirm that the Adjoining Owner is able to arrange access for inspection purposes or (where it is able to so and subject always to data privacy considerations) provide details of any tenant or occupier who may be contacted to arrange access
- confirm that the Adjoining Owner has instructed a surveyor to act on its behalf and provide contact details.

Where an Adjoining Owner has not received any **Introductory Letter** (or similar approach from a Developer) but believes that an intended development may infringe its rights of light, the Adjoining Owner may send an **Adjoining Owner's Introductory Letter** to the Developer setting out:

- the nature of the Adjoining Owner's interest



- any evidence reasonably required to demonstrate that the Adjoining Owner's property enjoys rights of light over the Developer's property
- a statement that the Adjoining Owner believes that the development may impact the Adjoining Owner's access to light and that the Adjoining Owner wishes to protect its rights. This may include a request that the development should be amended accordingly
- confirmation that Adjoining Owner is willing to provide access to the Adjoining Owner's property to the Developer's Surveyor for the purpose of ascertaining room layouts and undertaking further assessments
- a request for confirmation that the Developer will meet the Adjoining Owner's reasonable fees for taking advice from a surveyor up to a capped amount to be agreed between the Surveyors
- contact details for the Adjoining Owner's Surveyor (if appointed)
- a request for contact details for the Developer's Surveyor.

The Developer should respond to any **Adjoining Owner's Introductory Letter** within a reasonable time, which in most cases will be no more than 21 days. If the Developer believes that the intended development will not infringe any rights of light enjoyed by the Adjoining Owner, the **Developer's Initial Response** should set out the basis for this belief and enclose any appropriate evidence in support of it. Otherwise, the **Developer's Initial Response** should provide the following information:

- a a brief summary of the proposed development
- b where appropriate, copies of plans for the proposed development or a link to any planning application or consent on the local authority's online portal
- c a statement that the Developer is willing to undertake (further) assessments to further understand the impact of the development upon the Adjoining Owner's access to light
- d a recommendation that the Adjoining Owner should appoint an independent Surveyor to act on its behalf (if it has not already done so). The letter can include an offer to provide a list of independent Surveyors on request but should make clear that the Adjoining Owner is ultimately free to appoint a surveyor of its choice
- e confirmation that the Developer will meet the Adjoining Owner's reasonable fees for taking advice from a surveyor up to a capped amount to be agreed between the Surveyors
- f contact details for the Developer's Surveyor.

In some cases, the Developer may consider it premature (in the context of its development proposals) to provide or all of the above information. In such cases, the Developer should confirm that this is the case and that it will provide a **Developer's Initial Response** at a later date as appropriate.

It is recognised that in some cases it may be appropriate for all or part of the above exchanges to take place on a without prejudice basis.

### C3 Exchange of information

Save where the Developer believes that any rights of light enjoyed by the Adjoining Owner will not be infringed, within 14 days of the **Initial Response** or **Initial Developer's Response** (or, if later, the date on which the Adjoining Owner provides details of its appointed Surveyor) the Developer's Surveyor should make contact with the Adjoining Owner's Surveyor to:

- arrange an **inspection** of the Adjoining Property. In more complex cases it will often be appropriate for this to be a joint inspection attended by the Developer's Surveyor and the Adjoining Owner's Surveyor
- agree an appropriate cap for the Adjoining Owner's reasonable surveyor's costs to be reimbursed by the Developer. The Developer should arrange for this amount to be confirmed by way of a solicitor's undertaking if requested by the Adjoining Owner.

Within a reasonable time following the **inspection** (which will usually be no more than 14 days, but will depend upon the complexity of the case) the Developer's Surveyor should write to the Adjoining Owner's Surveyor to:

- provide an electronic copy of any technical loss of light analysis undertaken (or any updated analysis if one has previously been provided).

**Request any further information** that the Developer reasonably requires in order to assess whether the Adjoining Owner may have a claim for infringement of rights of light (and if, so, the extent or quantum of any such claim). It is not possible to be prescriptive about what this information will be but it may include:

- evidence of the age and history of the Adjoining Owner's property where there is some reasonable doubt as to whether it benefits from rights of light
- copies of any title deeds relevant to rights of light which the Developer is unable to obtain these from Land Registry
- details of any tenancies of the Adjoining Property and copies of any leases which the Developer is unable to obtain from Land Registry
- room layout plans for the Adjoining Property
- confirm that the Developer will meet the Adjoining Owner's costs of providing any requested information up to a reasonable cap.

If the Adjoining Owner believes that it reasonably requires any **further information** from the Developer at this stage, this should also be requested within a reasonable time following the Inspection.

Each party should **respond** to any **request for further information** within a reasonable time, which will usually be no more than 14 days. If a party anticipates that it will take longer to comply with a **request for further information**, it should provide an indication of its anticipated timescale for a response. If a party is unwilling or unable to comply with any part of a **request for further information**, its response should set out the reasons for this.

In a case where the Developer does not believe that any rights of light enjoyed by the Adjoining Owner will be infringed, the Developer should nonetheless consider whether it is appropriate to follow the above process on a basis which is without prejudice to that position.

## C4 Dispute resolution

Following the **Exchange of Information**, the parties' Surveyors should aim to meet or speak within 14 days in order to discuss the claim. It will usually be appropriate for this **initial meeting** to be on a without prejudice basis. At the **initial meeting**, the Developer's Surveyor should confirm whether the Developer wishes to put forward any proposal to resolve any claim. If the Developer does not wish to put forward a proposal, the reasons for this should be explained.

The parties' Surveyors should use the **initial meeting** to narrow the issues between them. The extent to which this is possible will differ in each case but it will often be possible to agree at the very least the technical level of any loss of light on a traditional Waldram basis and a book value amount in respect of that loss. The parties should also consider the extent to which other methods of technical analysis may be relevant. If there are differences of view as to the appropriate technical methodologies to be applied and/or the practical application of any methodology (for example, assumed room layouts or baseline scenarios), these should be explored. If there are technical or legal issues upon which the parties' Surveyors are unable to agree, these should be recorded.

Within 14 days of the **initial meeting**, the Developer's Surveyor should write to the Adjoining Owner's Surveyor (on a without prejudice basis if the **initial meeting** was without prejudice) setting out the matters which were agreed and unagreed. The Adjoining Owner's Surveyor should respond within 7 days either confirming that the Developer's letter accurately sets out the position or identifying any respects in which it does not. The Surveyors should endeavour to agree a list of agreed and unagreed matters within 21 days of the **initial meeting**.

In most cases it will be appropriate for the Surveyors to meet or speak on more than one further occasion to seek to further narrow the issues between them and/or to discuss proposals to resolve any claim.

If at any point either party considers that the discussions between Surveyors are not making sufficient progress, that party may send to the other an open **Letter of Claim** setting out its position and enclosing any key documents in support of that position. The other party should send a response within 28 days setting out its own position and enclosing any key documents.

Each party should take advice from its solicitor and Surveyor before sending any **Letter of Claim** or response. The **Letter of Claim** or response should comply with any relevant provisions of the *Civil Procedure Rules* 1998 and associated Practice Directions.

Within a reasonable time (which will usually be no more than 21 days) after the exchange of the **Letter of Claim** and response, the parties' solicitors (and, if appropriate, Surveyors) should speak on a without prejudice basis to discuss:

- what are the **Issues in Dispute** between the parties and whether it is appropriate to confirm this on an open basis so as to formally narrow the issues
- whether there is any reasonable prospect that the some or all of the **Issues in Dispute** can be resolved through further discussions between the Surveyors
- whether some form of **Alternative Dispute Resolution** procedure would be more suitable than litigation and, if so, endeavour to agree which form to adopt.

The options for resolving disputes without litigation include:

- a mediation** – a form of facilitated negotiation assisted by an independent neutral party
- b arbitration** by a suitably qualified and experienced lawyer or surveyor agreed upon by the parties or appointed in default of agreement from the Property Panel of the Chartered Institute of Arbitrators by the President of that Institute
- c expert determination** by an independent third party (for example, a barrister, solicitor or surveyor experienced in the relevant field) or
- d early neutral valuation** – a non-binding assessment by an independent third party of the merits of all part of the parties' respective positions.

# Appendix D RICS Assessment of Professional Competence (APC) for rights of light

## D1 Introduction

RICS has now launched a specialist route to becoming a chartered surveyor for those following the career pathway of rights of light (RoL) in the Land and Resources Pathway. While this has now been available for a while and a significant number of surveyors are at varying stages ranging from first application through to a few having passed their assessment of professional competence (APC), the pathway is still gathering awareness. This appendix explains what has been learned from the process undertaken by the early applicants and how this pathway will help make a candidate a chartered surveyor in this highly specialised segment.

APC candidates who have engaged on this journey range from those who started their careers working with the architectural technologist and software side of the office, through to those who may originally have undertaken RICS Accredited Degrees in building surveying route but have found employment within a specialist practice. While historically rights of light were a building surveying skill, the modern APC has prevented many capable practitioners from achieving MRICS because their practice was unable to offer the breadth of experience necessary to fulfil the requirements of RICS. A common pitfall for future building surveyors is the requirement to obtain contract administration experience, closing the pathway to membership for those working in a specialist professional consultancy. The new route seeks to solve that problem and provide a means for all these individuals to achieve chartered status.

The assessment framework remains the same as for all other pathways into the profession and can be summarised as follows.

Entry status	Assessment	Process		Submission documents	
Accredited degree and up to 5 years' experience	APC	24 months (400 days) minimum structured training	Professionalism module and ethics test	5500-word summary of experience, 3,000-word case study and CPD record	Assessment interview
Accredited Degree and 5-9 years' experience	APC	12 months (200 days) minimum structured training		5500-word summary of experience, 3,000-word case study and CPD record	
Accredited Degree and 10 years or more experience	APC	Straight to assessment		5500-word summary of experience, 3,000-word case study and CPD record	
Any degree or relevant professional qualification, 5 years' experience and/or with at least 1 post degree qualification	APC	Preliminary review		5500-word summary of experience, 3,000-word case study and CPD record	
Senior position and 10 years' experience with no degree, or 5 years' experience with relevant degree	Senior Professional Assessment	CV and 400-word profile statement review		400-word profile, 3 x 1,000 to 1,500-word case studies and CPD record	
Specialist profile and 10 years' experience with no degree, or 5 years' experience with relevant degree	Specialist Assessment	CV and 400-word profile statement review		400-word profile, 3 x 1,000 to 1,500-word case studies and CPD record	

Table 3: Assessment framework

Unfortunately, the pathway is closed to rights of light practitioners seeking to train the next generation of practitioners via an apprenticeship. The RICS Degree Apprenticeship is only currently accepting candidates working towards becoming a chartered building surveyor or chartered quantity surveyor. This is a government limitation imposed via the apprenticeship scheme and it is hoped that if employer and candidate interest can be proved, it will be allowed for RICS Accredited Degree Courses in building surveying to feed apprentices into either the chartered surveyor and/or chartered building surveyor pathway.

See the separate RICS Assessment of Professional Competence (APC) for rights of light.

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