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Royal Institution of Chartered Surveyors
Understanding Easements

11th October 2018

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Introduction- Understanding Easements

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- **Characteristics of Easements**
- **Right to Light**
- **Statutory rights of Utility Companies**

What are Easements?

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- The right of one landowner to make use of another nearby piece of land for the benefit of his/her own land;
- Must be a dominant and servient tenement;
- Can take many forms;

Common Examples: rights of way, right of drainage or discharge, rights of support or the right to light

How are Easements Created?

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- Express grant;
- Implication (*Wheeldon v Burrows (1879) 12 Ch D 31*); and
- Prescription.

Avoidance of Easements

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- Using licences and permission;
- Using signage; and
- Licensing light.

Validity of Easements

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Four essential characteristics:

1. must be both a dominant and servient tenement;
2. must accommodate the dominant tenement;
3. the dominant and servient owners must be different people;
4. the right must be capable of forming the subject matter of a grant

Registration

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Easements created prior to compulsory first registration may not appear on title however these are still valid and binding. Inspection of the property is key;

Preferable to register an Easement which is created after compulsory first registration to ensure purchasers for value are bound by them; and

Solicitors and Surveyors should be aware that if the dominant and servient lands are owned by the same person then the Easement is extinguished however can still appear on title.

Solutions

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- Expressly released or varied by deed of agreement of the dominant and servient owners;
- Abandonment.

Evolving nature of law on Easements – Recent case law

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- **Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd [2017] EWCA**
- **Coventry v Lawrence [2014] UKSC 13**
- **De La Cuona v Big Apple Marketing Ltd**

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Rights to Light

- May have serious implications on development schemes in the initial stages;
- Neighbours may obtain injunctions or claim damages for interference with this right; and
- Can result in developers having to amend development plans or cease work altogether.

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What is the right to light and who has it?

An easement which allows the owners of a property to benefit from the natural light that passes over their neighbours land through defined apertures in a building.

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How does the right to light arise?

- Can attach to a parcel of land immediately (i.e. by express or implied grant or statute) or by prescription.
- Light can be acquired via prescription if the right has been enjoyed at least 20 years without interruption and without written consent.

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Conduct is crucial says new case law....

Scandia Care Ltd and another v Ottocroft Ltd [2016]

- Works commenced on Property A to replace an existing staircase that serviced flats as a fire escape
- Owner of Property B complained the new staircase interfered with his right to light and complained;
- In response, a director from the firm of developers gave an undertaking that the owner of Property B's right to light would not be interfered with
- Despite this, the developer continued with the works (at a time when they knew Property B was vacant) leading the owner of Property B to seek an injunction for the removal of the staircase

Decision: Court of Appeal upheld the county court decision to grant an injunction and deemed the developers actions un-neighbourly and high handed and knew the staircase would infringe the neighbours light.

Emphasis should be placed on adopting a careful strategy for communicating with the neighbouring owners

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Avoiding conflict with strategy

Developers should adopt a clear strategy at the outset with a view to avoiding what could result in costly conflicts.

Potential strategies could include

- Early negotiations for settlement to avoid lengthy claims
- Light obstruction notices and/or
- Right to light insurance

Statutory Rights of Utility Companies

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Overview

- Electricity - **Electricity Act 1989**
- Water and Sewage - **Water and Sewerage Services (NI) Order 2006**
- Gas - **Gas Act 1986**
- Private Pipelines - **Pipelines Act 1962**

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Electronic Communications Code

Key changes....

1. Calculation of rent
2. Additional rights for the operator
3. Termination of Agreements

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Questions?

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