



As our population increases there is ever more pressure to generate more living space and maximise land use.

Over recent years this has led to many developments heading skywards. Buildings are becoming ever taller to accommodate more people on the same area of land. While modern methods of construction help architects to maximise height, neighbours more frequently find that these buildings maximise their loss of light.

There has been a great deal of publicity regarding Rights to Light in recent years due to a number of high profile legal cases. This has led to greater public awareness and in turn an increase in the number of claims.

Developers should be particularly aware of this risk and ensure that adequate steps are taken to reduce exposure or obtain suitable protection.

At Mason Owen Financial Services we have several years experience in this niche area of business. There is often a conflict between industry experts regarding the use of insurance to resolve Rights to Light. A common argument is that by insuring, instead of entering negotiations with neighbours, you are not addressing the problem from the outset which could, in the courts eyes, lead to an injunction rather than a compensation amount. In the event of a catastrophic loss, insurance will put you in the position you started with but won't produce the profit of a successful development.

We tend to agree with this view which is why we try to work with the client and their legal team, the insurer and the professional surveying team to tailor a

policy that provides a balance between initial compensation you may have to pay and the ongoing liability. We can professionally manage the case to create a bespoke solution and minimise the risk of injunction.

In the case of multiple parties being affected some brokers would prefer you insure everything, demanding a higher premium and thus more commission.

At Mason Owen Financial Services however we ensure we obtain the most cost-effective way forward for our clients. In some circumstances we can help structure an approach that will allow negotiation with certain parties but still provide protection against claims from others.

WHAT DOES RIGHTS TO LIGHT INSURANCE COVER

Title indemnity insurance amounts to an indemnity against the risk that an insured matter relating to ownership and/or use of an interest in land causes actual financial loss. Rights to Light insurance is a distinct category of title indemnity insurance. Several insurers participate in this market and the coverage provided by a policy is generally similar: it will protect against the costs of attempting to remedy a claim by a third party and, in the event this is not possible, the financial loss suffered by a developer to the extent that their development is restricted by a right to light upheld by a court order.

HOW RIGHTS TO LIGHT INSURANCE WORKS

A surveyor's report may identify a number of properties capable of suffering a level of interference that would entitle the owners to seek a legal remedy.

Insuring can achieve two things. Firstly, the risk is clearly and effectively transferred away from the client. Secondly, a policy can usually be arranged and issued more quickly than the alternative approach of negotiating with all potentially affected neighbours (and, generally, the premium is less than the additional cost that the client would have incurred had negotiation with affected neighbours been pursued).

However, whilst an insurance policy will protect the insured against financial loss suffered in the event a project is halted or delayed, it cannot be assumed that an insurance policy will guarantee that a project will prevail; nor do policies indemnify loss of opportunity. Therefore, the application of insurance (in terms of scope and timing) in a particular project should always be considered carefully and discussed with a specialist broker.

Sometimes, the results of a surveyor's report can be enhanced by further legal research by the client's solicitor. This can establish whether enforceable legal rights of light actually exist in respect of those properties identified as capable of suffering a technical interference. However, title research takes time and costs money, and clients enjoy spending neither on resolving title problems.

In any event, insurers will generally consider legal aspects in a particular case during the underwriting process. Some clients may prefer the certainty that comes with removal of a particular neighbour's potential claim from the equation before works start. To this end, a surveyor's experience can be crucial in identifying a scenario in which a neighbour may value their rights to light as priceless.

An insurer will usually refer to a rights to light survey report when considering a risk (regardless of whether the insurer is formally authorised by the surveyor to rely on the report). To this end, surveyors should be conscious of whether their report is reserved to the client or extended to third parties. As such, the quality of the report will always have a bearing on the availability of insurance, or the terms and price of insurance, in a particular matter. The higher quality the report, the more likely that an insurer will be able to satisfy its own underwriting considerations and offer insurance cover.

The insurer has to balance two basic tests: will the insured event ever happen (i.e. will someone attempt to enforce a right of light); and, if so, is there likely to be anything the insurer can do to deflect the challenge to the project, or mitigate the loss this might cause. Neither test comes first or is more important: the significance of each depends on the circumstances of the case.

For the insurer, the likelihood of having to deal with a challenge to a project, and the cost of doing so, are highly relevant. These financial consequences (which include the costs of defence, negotiation and settlement as well as payment under the policy's indemnity provisions) are very material to the insurer in deciding whether to offer cover, and on what terms. Practical issues combined with the current line in court judgments will be considered in equal doses by an insurer. A surveyor's guidance in regard to the considerations relevant to quantum (of settlement or damages) is therefore of particular importance.

Generally, those insurers offering rights of light insurance use a common core of underwriting procedures.

However, underwriting is a subjective business, which is why using Mason Owen Financial Services, a Chartered Broker able to conduct a market review of insurers likely to consider the risk and advise on the suitability of any terms offered by them, is ultimately the most appropriate choice.



“Arranging Rights to Light insurance can be complicated and time consuming. Our experience in this area can save you considerable time by helping to collate information and liaising with multiple insurers to ensure the most suitable position for you in terms of the combination of cover and price”.

ALEX BIELINSKI CERT CII
Head of Legal Indemnity Insurance

Obtaining quotations

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