

HKRUK II (CHC) Ltd v Heaney

Right to light update



A High Court decision in the case of HKRUK II (CHC) Ltd v Heaney highlighted the risk to developers who start works before the resolution of an actionable interference with a right to light enjoyed by a neighbouring building

The Court held that damages were not an appropriate remedy for the interference, and so granted an injunction to the owner of the neighbouring building. The effect of the judgment is that the developer will have to remove the offending part of its completed works - at a cost of between £1m and £2m - in order to remedy the interference.

An unusual feature of this case was that it involved a right to light dispute in which the Claimant was the developer and the Defendant the owner of the property suffering the interference with its right.

Background

The Claimant developer purchased a building in central Leeds in 2007 and subsequently acquired planning consent to re-develop the building. The planning consent authorised the addition of two floors to the existing five stories of the building.

The Claimant wrote to the Defendant in 2008 to inform it of the nature of the proposed works. It also conceded that the proposed works would result in an interference with the Defendant's right to light. The Claimant made an offer to compensate the Defendant for the interference, but this offer was rejected. The works were completed, in 2009. During the works the Defendant's correspondence with the Claimant was sporadic: it was characterised by extended periods of silence and unfulfilled threats to issue injunction proceedings.

Having completed the works, the Claimant issued proceedings to seek a declaration that the Defendant was not entitled to an injunction, as the Defendant could be adequately compensated by a small money payment. The Defendant, having finally been spurred into action, counterclaimed for an injunction seeking the removal or modification of the two extra floors.

The Court's decision

The Court (following existing caselaw) held that it could only award damages instead of an injunction if the Claimant could demonstrate that (i) the injury to the Defendant was small; (ii) it was capable of being estimated in monetary terms; (iii) it could be adequately compensated by a small money payment; and (iv) the grant of an injunction would not be oppressive to the Claimant.

Although the loss of light affected less than 1% of the EFZ of the neighbouring building, the most badly affected areas were deemed to be 'star rooms'. On that basis the Court found that the injury to the Defendant was not small. Also, due to the character of the neighbouring building and the amount spent by the Defendant in restoring that character, the Court concluded that the injury suffered was not capable of being remedied with a money payment. In other words, the Claimant failed to satisfy the first and third limbs of the test.

In addition, the Court found that an injunction would not be oppressive to the Claimant. The Claimant's interference with the Defendant's right was not trivial; it was not inadvertent; it was committed in the knowledge that it was an actionable breach; and it was motivated by profit. It was not driven by necessity and was easily avoidable (albeit at a reduced profit). Given those circumstances the Court found that it would be wrong to compel the Defendant to accept monetary compensation that it did not want. The Court duly found that the Defendant was entitled to injunctive relief.

Comment

This decision illustrates how important it is for developers to resolve right to light issues before incurring significant expenditure on building works. The judgment contains no real comment on the Defendant's conduct following its receipt of notice of the works. Accordingly, the conclusion to be drawn is that unless the beneficiary of the right expressly accepts compensation for loss of light, the developer faces a considerable risk of being ordered to remove the offending works. At best, the impact of such an order would be to reduce a building's profitability; but for developers operating under severe financial constraints, the consequences of such an order could prove far more serious.

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