

“ Plain speaking legal advice ”

## Rights to Light

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Developers risk higher compensation payments for infringing rights to light.

Developers face a significant increase in the amount of damages they have to pay for infringing a neighbour's right to light as a result of a groundbreaking case.

It has been common, up until recently, for developers to pay an amount of compensation for infringement that is equivalent to 5-15% of the developer's likely profits from the development. The High Court in *Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd* sets a new precedent for developers by awarding compensation that is just short of 30% of the likely profits. The High Court offered some very welcome (and overdue) guidance on assessing the level of damages. One notable guidance point is that the court should have regard to the nature and seriousness of the breach; if this is the case, then it is odd that such a high award was made on these facts where the particular infringement was regarded as 'modest' by the court.

The guidance is still very useful to developers and advisers in an area very short of reported cases. There are two key elements to the assessment; firstly that the court must try to identify what would have been a 'fair' result had the parties been in negotiations over the issue and secondly that any damages awarded must not be so large that the development would not have taken place if such a sum had been payable. The last point is interesting in that many developers may still be able to continue with the development but the payment of damages may have an indirect effect on the commercial viability of the project.

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Developers must ensure rights of light are considered early on in the development plans. Failure to take these rights into account could be costly and may cause long term damage to the commercial success of the project.

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If you would like to discuss these issues with our Property team then please contact Tim Hardesty on 01267 686222.

Watchmoor Park  
Camberley  
Surrey  
GU15 3YL

tel: 01276 686222

4 Station Road  
Aldershot  
Hampshire  
GU11 1HU

tel: 01252 322451

51 Guildford Road  
Bagshot  
Surrey  
GU19 5NG

tel: 01276 451451

3&4 Market Place  
Wokingham  
Berks  
RG40 1AL

tel: 01189 774045

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