



**LAW COMMISSION
CONSULTATION PAPER No 210**

RIGHTS TO LIGHT

RESPONSE FORM

This optional response form is provided for consultees' convenience in responding to our Consultation Paper on Rights to Light.

You can download the Consultation Paper free of charge from our website at: www.lawcom.gov.uk (see A-Z of projects > Rights to Light).

The response form includes the text of the questions and provisional proposals in the Consultation Paper, with space for answers. You do not have to respond to every question or proposal. Answers are not limited in length (the box will expand, if necessary, as you type).

Each question and provisional proposal is followed by a reference to the Chapter of the Consultation Paper in which that question or proposal is discussed, and the paragraph at which it can be found. Please consider the discussion before responding.

We invite responses from **18 February 2013** to **16 May 2013**.

Please send your completed form:

by email to: propertyandtrust@lawcommission.gsi.gov.uk or

by post to: Law Commission
Steel House, 11 Tothill Street, London SW1H 9LJ

Tel: 020 3334 0200 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, wherever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

Freedom of Information statement

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000 and the Data Protection Act 1998 (DPA)).

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Your details

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020 7353 2484
Are you responding on behalf of a firm, association or other organisation? If so, please give its name (and address, if not the same as above):
Compulsory Purchase Association c/o Contact Property Training Ltd 4a Woodside Business Park Whitley Wood Lane Reading RG2 8LW
If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential:
No
As explained above, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

We would be grateful for any evidence that consultees can provide which illustrates the impact of possible rights to light claims on the funding of development projects. Are consultees aware of any developments which have failed to secure financing as a result of potential or actual rights to light disputes? If so, what are the costs associated with these types of frustrated developments?

Consultation Paper, Part 1, paragraph 1.30

Not relevant to CPA responses

We ask consultees to provide evidence as to the proportion of developments which involve rights to light, and evidence of any attendant delays. We would also be interested to know if consultees are aware of any plans for developments which have either been unable to go ahead or had to be altered because of rights to light disputes.

Consultation Paper, Part 1, paragraph 1.35

Not relevant to CPA responses

Do the figures of the costs of disputes discussed in Chapter 1 conform with consultees' experiences of the cost to a development of rights to light issues? Have these experiences changed since *Heaney* was decided?

Consultation Paper, Part 1, paragraph 1.41

Not relevant to CPA responses

We ask consultees to provide us with evidence of the costs to developers of engaging with rights to light disputes, particularly with regard to:

- (1) the costs involved in preparing for rights to light disputes, including the costs of indemnity insurance, legal fees and the instruction of surveyors;
- (2) the cost to developments of delay caused by rights to light disputes;
- (3) the cost to developments of altering development plans as a result of rights to light disputes; and
- (4) the amounts set aside (expressed as a percentage of anticipated profits or otherwise) to deal with potential rights to light disputes.

Consultation Paper, Part 1, paragraph 1.43

Not relevant to CPA responses

We ask consultees to provide us with evidence of the costs to owners of rights to light of engaging in rights to light disputes.

Consultation Paper, Part 1, paragraph 1.45

Not relevant to CPA responses

We would be grateful for any evidence that consultees can provide about alternative ways in which rights to light disputes are commonly resolved and the costs of doing so, including evidence about the costs of a local authority using section 237 of the Town and Country Planning Act 1990 to resolve rights to light disputes.

Consultation Paper, Part 1, paragraph 1.47

CPA members have wide experience of the use of section 237 of the Town and Country Planning Act 1990 and equivalent provisions. Where any land is owned by a local planning authority and is to be made available for development, whether by sale or the grant of development leases, the authority invariably appropriates the land to planning purposes within the meaning section 237, or such appropriation is insisted upon by a proposed developer. The cost of such appropriation is minimal as all that is required is an appropriate resolution by the authority. On occasions land may be acquired by a local planning authority for planning purposes, and then re-transferred to a developer with the benefit of section 237, with the object of "washing the title" of third party interests. This may occur where the authority is strongly supportive of development, and the developer runs into difficulty with freeing the land of some third interest. The decision in Ford Camber v Deanminister[2006] 3 EGLR 81 is an illustration of this in respect of land subject to a right of way, but it could apply to a right to light. The costs involved are largely the transaction costs. If the third party interest is interfered with, the owner of the interest is entitled to compensation for any diminution in value of the land that benefits from the interest, and is not entitled to a consideration that might be negotiated in the absence of the statutory powers: see Holliday v Breckland Council [2012] UKUT 193 (LC).

In cases where land is compulsorily acquired for non-planning purposes, and where section 237 (and equivalent provisions) do not apply, the exercise of statutory powers will authorise an interference with a right to light; the owner of land having the benefit of such a right will then be entitled to compensation under section 68 of the Lands Clauses Act 1845, or section 10 of the Compulsory Purchase Act 1965, as the case may be, on the basis in Holliday v Breckland Council.

We would appreciate any evidence that consultees can provide on how the amenity provided by natural light is, or might be, valued.

Consultation Paper, Part 1, paragraph 1.49

Not relevant to CPA responses

We invite consultees to make any further comments, or provide any additional evidence, which they feel may be relevant when assessing the practical and economic impact of rights to light.

Consultation Paper, Part 1, paragraph 1.51

Where section 237 of the 1990 Act applies, or sections 68 of the 1845 Act, or section 10 of the 1965 Act, the owner of land benefitting from a right to light will be compensated as described above

We provisionally propose that prescription should be abolished for rights to light.

Do consultees agree?

Consultation Paper, Part 3, paragraph 3.48

Not relevant to CPA responses

Consultees, in particular those who do not wish to see the abolition of prescription for rights to light, are asked to tell us their views on the procedural requirements for the service and registration of light obstruction notices under the Rights of Light Act 1959, and whether they wish to see any reform or simplification of those requirements.

Consultation Paper, Part 3, paragraph 3.54

Not relevant to CPA responses

We ask consultees whether reform is needed to the principles governing when an obstruction of light is actionable and, if so, we would be grateful for consultees' suggestions for reform.

Consultation Paper, Part 4, paragraph 4.43

Where section 237 of the 1990 Act, section 68 of the 1845 Act, or section 10 of the 1965 Act apply, actionability, but for the exercise of the statutory power, is relevant to an entitlement to compensation: see Wildtree Hotels v Harrow LBC [2001] 2 AC 1. The CPA does not advocate any change in the present principles governing whether an obstruction is actionable.

We provisionally propose that a court may award damages in substitution for an injunction in rights to light cases if the grant of the injunction would be disproportionate, bearing in mind:

- (1) the size of the injury in terms of loss of amenity (which can include consideration of whether artificial light is usually used by the claimant);
- (2) whether a monetary payment will be adequate compensation;
- (3) the conduct of the claimant;
- (4) whether the claimant delayed unreasonably in bringing proceedings; and
- (5) the conduct of the defendant.

Do consultees agree?

Consultation Paper, Part 5, paragraph 5.50

The CPA draws the attention of the Law Commission to the basis of compensation (diminution in value of benefitted land) where an obstruction is statutorily authorised as against damages on a negotiation basis at common law. The CPA also draws the attention of the Law Commission to its own Report No. 286 - *Towards a Compulsory Code: (1) Compensation* at para 11.23, where it recommended that there should be a single claim for depreciation caused by the construction or use of public works in place of the claims in section 10 of the Compulsory Purchase Act 1965 and in Part I of the Land Compensation Act 1973.

We would be grateful for consultees' views on limiting to rights to light cases reform of the test for when damages may be awarded in substitution for an injunction.

Consultation Paper, Part 5, paragraph 5.56

Save as above, not relevant to CPA responses

We would be grateful for consultees' views on the options for reform of the method of assessment of equitable damages explored in Chapter 5. We would also be grateful for consultees' views on the introduction of a cap on the amount of equitable damages that may be awarded and how this could be achieved in practice.

Consultation Paper, Part 5, paragraph 5.94

The CPA draws the attention of the Law Commission to the basis of compensation (diminution in value of benefitted land) where an obstruction is statutorily authorised as against damages on a negotiation basis at common law

We provisionally propose that a court should not be able to grant an injunction to prevent or remedy an infringement of a right to light where the dominant owner has received a Notice of Proposed Obstruction and has not protected his or her right to an injunction in accordance with the procedure described in Chapter 6 and illustrated by the draft clauses at Appendix C of this Consultation Paper.

Do consultees agree?

Consultation Paper, Part 6, paragraph 6.47

Not relevant to CPA responses

We would be grateful for consultees' comments on the detail of the Notice of Proposed Obstruction procedure as provisionally proposed, including:

- (1) the form and content of the notice;
- (2) the rules governing service of the notice;
- (3) the third-party effect of the notice;
- (4) responding to the notice by a counter-notice and issuing proceedings;
- (5) multiple-notices and shelf-life; and
- (6) cost recovery.

Consultation Paper, Part 6, paragraph 6.48

Not relevant to CPA responses

We would be grateful for consultees' views on the suitability and practicability of limiting the Notice of Proposed Obstruction procedure to use in relation to rights to light benefiting commercial premises only.

Consultation Paper, Part 6, paragraph 6.50

Not relevant to CPA responses

We would be grateful for consultees' views on whether the law of abandonment through alteration of apertures should be reformed and, if so, how the current law could be improved.

Consultation Paper, Part 7, paragraph 7.48

Not relevant to CPA responses

We provisionally propose that the jurisdiction of the Lands Chamber of the Upper Tribunal should be extended so as to enable it to make orders for the modification or discharge of existing rights to light.

Do consultees agree?

Consultation Paper, Part 7, paragraph 7.132

Not relevant to CPA responses