



thomascarroll
LEGAL INDEMNITIES

Right to Light

Risk and Insurance Solutions

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A photograph of a modern architectural structure, likely a walkway or bridge, featuring a complex network of grey steel beams and large glass panels. The structure is set against a bright, hazy sky with a warm, golden light source, possibly the sun, creating a lens flare effect on the right side. The floor is a light-colored, textured surface. A red rectangular box is overlaid on the right side of the image, containing white text. The text is enclosed in a white quotation mark icon at the start. The overall scene is clean, industrial, and modern.

“ The cost of compensation/
damages can be significant,
with legal costs, time
delays and commercial
negotiations **threatening**
the critical investment
return on developments

Background to Right to Light

- ▶ **It is established law that we all have a right to receive daylight through the windows of our homes and offices.**

A right accrues in a number of ways, being either expressly granted when the building was first built, or accumulated over time under the Prescription Act 1832. The right is automatically acquired if the light has been enjoyed through defined apertures of a building – windows and doors – uninterrupted for 20 years. It applies to the property, not the owner, so you don't need to have occupied the property for 20 years.



Gareth Cotty ACII

Director



Thomas Carroll have always shown an understanding of the commercial drivers to Real Estate transactions, proactively understanding the needs of all parties involved and tailor cover on each site accordingly.

Penny Cranston
Shoosmiths

Thomas Carroll Legal Indemnities

Thomas Carroll Legal Indemnities is the specialist legal indemnity division of Thomas, Carroll (Brokers) Limited. With over 40 years experience, our Chartered and award-winning team are proud to be a Top 50 UK Insurance Broker.

With our strong regional and national reputation in the legal indemnity sector, our specialist broking team streamlines the process of obtaining legal indemnity insurance solutions in a cost-effective way. We deal with a range of insurers, including Countrywide, CLS, TiteSolv, Aviva, DUAL, Zurich, Stewart Title and Legal & Contingency, offering bespoke wordings and choice of market to suit the needs of individual developers, investors and legal advisors.

We understand that speed, simplicity, and confidence are all key to the successful conclusion of a property transaction, where completions are often delayed or aborted altogether due to Right to Light issues. Our policies can facilitate the process, helping to expedite deals on problem transactions.



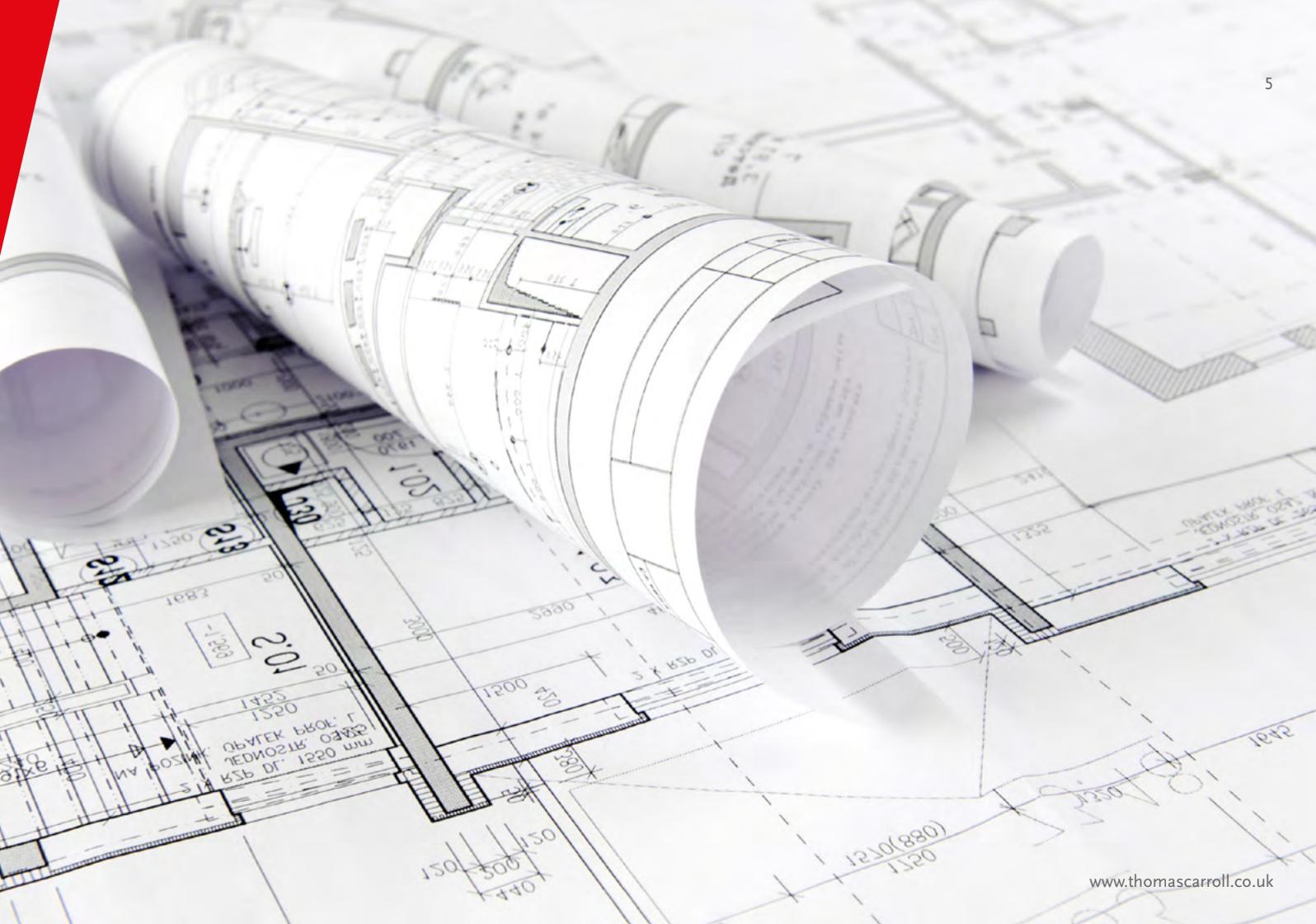


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The Benefits of Working With Us

As one of the UK's few specialist brokers, our expert teams offer a range of benefits to our clients:

- The experienced advice of one of the largest Right to Light and Legal Indemnity brokers in the UK
- Complex risks can be discussed face to face with our expert teams, ensuring we understand the risk and arrange the most appropriate cover
- Our market strength means our terms are highly competitive
- We access a number of insurers for you, giving you comfort that terms represent choice of market without the hassle of dealing with a number of different insurers
- Expert knowledge of insurer appetite, policy term variations, and unusual risks
- The ability to respond quickly, with access to dedicated, senior underwriters able to make quick decisions



Right to Light Risks

It is established law that we all have a right to receive daylight through the windows of our homes and offices.

A single Right to Light claim has the potential to significantly diminish profits, or even prevent the development altogether.

The case law that governs this right is constantly changing, and substantial compensation payouts, drastic alterations or injunctions against development are very real threats that can dramatically reduce profitability or stop the

development altogether. A Right to Light Indemnity policy will respond to third party claims, allowing the developer to manage risk and mitigate potential losses in an economical and efficient way. The ability to negotiate with injured parties as soon as notification is made prevents costly delays and the financial penalties these may bring, thus expediting matters and allowing the project to proceed.

Right to Light Risks

Where such a nuisance has occurred, the principle remedies available to the court are the award of an injunction or damages. Whilst traditionally, courts have looked to award a book value compensation, a number of cases:

- Dennis Regan v Paul Properties Ltd (2006)
- Tamares v Fairpoint Properties (2007)
- HKRUK II (CHC) Ltd v Marcus Alexander Heaney (2010)

have highlighted the legal system's increasing willingness to award an injunction against the developer rather than simply compensating the injured parties. The costs of compensation/damages can be significant, often being based on up to 30% of the developer's profit, but this is still significantly less than the cost of an injunction requiring the demolition of the offending part of the development, possibly following completion and occupation.

Effects of Law Commission Reform

The long-awaited outcome of the Law Commission's report into Rights to Light was published in late 2014, a process which was set to address the seeming disparity between the rights of landowners and developers in the UK.

Amid a raft of proposals, two significant changes have emerged which will have an impact on the future of the sector. The first replaces the current statutory test with a proportionality-based test, which ratifies the sentiment of the *Coventry v Lawrence* case of 2014. The courts should now seek to apply a balanced approach which considers a set of fixed criteria, steering away from the imposition of an injunction as a remedy to an infringement of light.

A much anticipated test case for the ruling in *Coventry v Lawrence* went before the courts in 2015: *Scott v Aimiuwu* looked to the matter of judicial remedy, and was thought likely to end the ambiguity left in the wake of *Coventry*. However, the *Scott* case centred around a private residential property, and the outcome has not alleviated the Right to Light risk for commercial developers.

In addition, a new method of controlling the threat of injunction as a bargaining tool in negotiations has been created: a Notice of Proposed Obstruction (NPO) allows a developer to put a neighbour on notice that the development being undertaken may infringe Rights to Light.

This process then limits the injured party to an eight month period in which they can injunct, or lose the right to do so.

A move to be utilised by the developer during the early negotiation stage, the NPO will prevent the developer from incurring huge financial losses should an injunction be imposed. However, this is not a cure or remedy – an unexpected eight month extension period during any stage of the project would mean that completion deadlines, loss of profits and alternative accommodation for prospective tenants would cause significant economic problems for developers, with the potential to put an end to the development altogether.

Right to Light Underwriting Information

There is a specialist, but limited insurance market for risks of this type and as expert brokers in this sector, Thomas Carroll has access to a range of insurers who can provide protection against these risks.

We can often provide indicative costs based on a Right to Light report and Gross Developed Value of the completed site, but the operation of the market is usually based around an assessment of risk based on full underwriting information, including:

- A copy of the planning permission
- Details of all publicity and consultation undertaken with neighbours
- Copies of all letters of objection/ comment received during the planning process
- A copy of the registered title to the property and to those properties which are identified in the Rights to Light report as suffering an injury
- Details of the proposed timescale for completion of the development
- Details of any proposed negotiations to release of Rights to Light with specific adjoining property owners
- Photographs of the site and adjoining premises
- Details of any past complaints or disputes with any adjoining property owners
- Details of any party wall or crane oversail agreements



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Right to Light Insurance Protection

In order to allow a development to proceed without the delay of awaiting the conclusion of Right to Light matters, a developer can take out an insurance policy to protect themselves from the range of potential costs and diminution in value associated with a legal claim and any consequences of its outcome.

You have a choice when dealing with Right to Light issues – and Right to Light insurance has quickly become an important part of the strategy.

Right to Light Insurance supplements (rather than replaces) the expert surveyor's input by enabling an appropriate Right to Light strategy and transfers the residual financial risk to the insurer's balance sheet.

Court decisions to award an injunction over damages, or an increasing amount of developers profit, have resulted in a huge increase in the number of requests for insurance to cover this risk.

Right to Light Insurance Protection

A typical insurance policy covers:

- damages awarded by the court or settlement costs agreed out of court by the insurer
- any expenses involved in complying with an injunction
- a reduction in market value following enforcement action
- abortive construction costs and contractual liabilities
- all legal defence expenses incurred
- optional extensions for loss of profit / revenue or alternative accommodation costs

Importantly, the policy provides cover for the insured and also the lender, and the policy runs in perpetuity.

For You and Your Business

As a valued client, you can also enjoy access to a range of integrated services provided by Thomas Carroll Group plc:

**CORPORATE
FINANCIAL ADVICE**

**PERSONAL
FINANCIAL ADVICE**

**BUSINESS &
PROPERTY INSURANCE**

HEALTH AND SAFETY

**LEGAL INDEMNITY
INSURANCE**

**HIGH VALUE
PERSONAL INSURANCE**

Contact Us

Our advisers would welcome the opportunity to meet you and discuss, without obligation, the support that you need.



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