

Committee:	Date(s):
Property Investment Board Planning and Transportation Committee	10 July 2013 16 July 2013
Subject: Law Commission Consultation on Rights to Light	Public
Report of: City Surveyor and the Remembrancer (CS 250/13)	For Information
Summary	
<p>On 18th February 2013 the Law Commission issued a consultation paper relating to Rights to Light seeking responses by the end of May 2013. Officers of the City Corporation formulated a response following discussion with the Law Commission and representatives of the British Property Federation.</p> <p>The Remembrancer responded to the Law Commission and a copy of the response is appended to this report.</p>	
Recommendation	
<ul style="list-style-type: none"> • That the contents of this report are noted. 	

Main Report

Background

1. The consultation on rights to light forms part of the Law Commission's general statutory duty to review the law and consider reform. The Commission's stated aim was to investigate whether the law by which rights of light are acquired, enforced and extinguished provides an appropriate balance between the important interests of landowners and the need to facilitate the effective and efficient use of land through its development. With this in mind the Consultation Paper has 3 key objectives
 - a) Introduce greater certainty and transparency, making disputes simpler quicker and easier to resolve.
 - b) Ensure rights of light do not act as an unnecessary constraint on development.
 - c) Make sure that the important amenity value of rights to light remains protected under the law.

2. The Law Commission has sought to reduce the impact of rights to light by introducing four proposals for consideration. The four provisional proposals contained in the Consultation Paper are as follows:

- a) That for the future it should no longer be possible to acquire rights to light by prescription
- b) The introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light.
- c) The introduction of a new statutory notice procedure which requires those with the benefits of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light) with the aim of introducing greater certainty into rights to light disputes.
- d) That the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants

The Consultation response

3. In its response the City provided evidence of the impact and scale of the issue by identifying the number of schemes and the associated quantum of floorspace that is actively being delivered (or pending a pre-let) in the Square Mile where rights of light have had a significant and material impact. Of the 37 schemes identified 20 have been subject to some form of intervention by the City totalling 6.2 million square feet of office floorspace. The development of 20 Fenchurch Street demonstrates the City's approach in acquiring an interest in the site so as to trigger its powers under s237 in an effort to resolve a difficult right to light issue.
4. The Commission invited submissions regarding the test to be applied in relation to the award of damages in lieu of an injunction. The Commission's activity in this area has been broadly welcomed by the property industry. Experience in the City has shown that significant delays arise from dominant owners seeking an element of profit share relating to any uplift in floorspace achieved across the site. This is less than satisfactory and difficult to apportion, particularly where there are multiple interests that are impacted. The City's response supported an assessment based on diminution in value with a multiplier linked to varying levels of light reduction which would be a more appropriate measure as this would better reflect the specific circumstances of each case.
5. Presently many dominant owners use a combination of delay and a threat of injunction as a mechanism to frustrate development and extract greater compensation. Seeking to address this issue, the Commission proposed a new mechanism to notify neighbouring properties of possible interference with rights to light. A Notice of Proposed Obstruction would be served by, for instance, a developer on potentially affected neighbour and would require that neighbour to declare their objection within 4 months from the service of the notice. This proposal is broadly to be welcomed as it seems likely to

encourage any rights to light disputes to be raised at an earlier stage in the development cycle.

6. The City Corporation has requested clarification of the Commission's proposals in relation to the jurisdiction of the Lands Chamber of the Upper Tribunal

Conclusion

7. The Consultation Proposal has been welcomed by the development industry. While some elements require further consideration by the Law Commission, it seems likely that the proposals will encourage a fairer and more expeditious settlement of rights to light disputes. This, in turn, should help promote economic growth. The City has a good working relationship with the Law Commission and will continue to maintain a dialogue on this matter. Your Committee will receive further Reports as appropriate. .

Appendices

- Appendix 1 – City of London Corporation Response to the Law Commission

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