



Rights to Light in Republic of Ireland

A right to light is the right to access light through windows, skylights or other apertures without obstruction by the owner of another property. It is a legal right known as an easement and is "a right exercised for the benefit of land by obliging another owner of land to suffer a use of land or refrain from using his land a particular way".

Unlike Rights of Way, which allow one owner to do something on another's land, a right to light will generally prevent an adjoining owner from doing something on his or her property. Critically, the existence of a neighbouring owner's right to light is not extinguished by the grant of Planning Permission to develop land or a planning exemption under the Planning and Development Act 2000. It is therefore essential to consider how, if at all, any potential development may impact on adjoining owners' access to light at a very early stage. A failure to do so, could be extremely costly.

Establishing a Right to Light

A right to light may be established by express or implied grant. A Vendor of a parcel of land may, for example, expressly reserve a right to light for the portion of the adjoining land retained. In the absence of an express reservation, a right to light may also be implied.

Historically, a right to light in Ireland was commonly established by prescription. Section 3 of the Prescription Act 1832 provides that

"When the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing"

As appears from the above, the right to light must have been enjoyed for twenty years without interruption. The Prescription Act only protects light for a "dwelling house, workshop, or other building". A right to light cannot be claimed in respect of open ground such as a garden. The light must come through a window or other aperture designed for the purpose of admitting light. Though there is no decision on the point, it does not appear that it would extend to a right to light for a solar panel.

The Prescription Act 1832 was repealed by The Land and Conveyancing Law Reform Act 2009 ("the LCLR Act"). This introduced some significant changes to the right to light in Irish Law. The required period of use and enjoyment of the right to light was reduced from 20 years to 12 years. Section 40 (2) of the LCLR Act provides that a right to light may be implied where (a) it is necessary to the reasonable enjoyment of the part of the land disposed of, and (b) was reasonable for the parties to assume at the date the sale took effect as being included in the sale.

Any party who enjoys a right to light may apply to Court for an Order confirming this right. Where that individual had a right to light under the repealed Prescription Act 1832, those rights were extinguished unless they applied to Court within 3 years of the LCLR Act's introduction for an Order confirming their right. In such circumstances, that individual would have to show that it enjoyed a right to light for at least 12 years from the date of enactment of the LCLR Act.

Interference with Right to Light

In order for interference with a Right to Light to be actionable before the Courts, the obstruction must amount to a nuisance. The test in Ireland can be summarised as follows:

"In order to give a right of action, there must be a substantial privation of light, sufficient to render the occupation of the house uncomfortable according to ordinary notions of mankind, or to prevent the Plaintiff from carrying out his accustomed business on the premises as beneficially as he had formerly done".

Courts generally used rule of thumb that there was no substantial interference if the angle of unobstructed light was in excess of 45 degrees. Measurement of the angle of light through the windows before and after the obstruction. One of the facts to be considered *Smyth v Dublin Theatre Company Limited* [1936] I.R. 692.

Damages or an Injunction?

The UK considered the question in *Lawrence v Fen Tigers* [2014] 2 All E.R. 622 – "the outcome should depend on all the evidence and arguments"

Section 40 of Land and Conveyancing Law Reform Act 2009

Subsection 2 "Where the owner of land disposes of part or all of it in parts, the disposition creates by way of implication for the benefit of such part or parts any easement over the part retained, or other or parts simultaneously disposed of, which-

a) is necessary to the reasonable enjoyment of the part disposed of and

b) was reasonable for the parties, or would have been if they had adverted to the matter, to assume at the date of disposition took effect as being included in it"

Disclaimer

This document does not present a complete or comprehensive statement of the law, nor does it constitute legal advice. It is intended only to highlight issues that may be of interest to clients of BLM. Specialist legal advice should always be sought in any particular case.

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