

SUBSTANTIAL DAMAGES FOR MINOR DAMAGE

The Message: Developers who interfere with the right to light of a property owner or occupier may be held liable to pay damages of an amount far and above the amount of the loss actually caused by their actions.

The Case: The High Court has given clear guidelines as to how damages for infringing a right to light are to be calculated and has made it clear that such damages are not to be restricted to the actual loss of amenity suffered but are to be calculated by reference to the amount of the profit being made by the developer (*Tamares (Vincent Square) Limited v Fairpoint Properties (Vincent Square) Limited* (8 February 2007)).

On 4 September 2002, the High Court found that the Defendants re-development of the Rochester Row Magistrates Court and Police Station had infringed the Claimant's right to light to two windows to a stairway leading to the basement of the Claimant's building in Vincent Square, Westminster. The Court considered that, in the special circumstances of the case, it would be oppressive to grant an Injunction to require the Defendant to carry out the demolition works necessary to remedy the breach and that, instead, the Claimant should be restricted to a remedy in damages.

The actual loss in value caused to the Defendant's building by the loss of light was, at most, only £3,030. However, if the amount that the Claimant could have reasonably demanded in return for allowing the development to proceed unaltered would have been greater than the actual loss suffered, then the Claimant can recover this sum instead.

There is only one previously reported High Court judgment on the assessment of damages for infringement of a right to light but the Judge also considered other cases where damages had been awarded against developers for infringing the rights of a property owner and he concluded that the overall principle is that the damages should reflect the sum the Claimant could fairly expect to have obtained for a release of its rights by way of negotiation with the Defendant at the time of the breach.

In calculating what this sum would be, the Court has to take into account the nature and seriousness of the breach and that the Claimant would have a significant bargaining position as it would have a right to prevent or restrict the proposed development and would expect to receive some part of the likely profit from the development in return for giving up such right. If there is evidence of the likely size of the profit to be made by the developer, the Court should normally award a sum based upon a fair percentage of this profit but such sum should not be so large that the developer would not have agreed to have paid this much. At the end of the day, the Court has to award a sum which, after consideration of all the relevant factors, feels right.

It is the size of the profit being made, rather than the extent of the loss of rights being suffered, that is the most relevant factor and the Judge held that, in a normal case, damages of one third of the likely profit was the likely result of any negotiation. This percentage reflects the fact that it is the developer who is taking the risk that the project may not proceed or may not make the expected profit.

Based upon the expert valuation evidence, the Judge concluded that a one third split of the profit would result in a sum of £58,166 being paid by way of damages but, given the insignificance of the infringement actually suffered, he reduced that figure to £50,000 to give a fairer result.

No doubt, in the light of this Judgment, many property owners will now appreciate that they should not simply tolerate infringements as to their rights, however minor, but should hold out for substantial compensation or damages in relation to any such proposed or actual infringement.