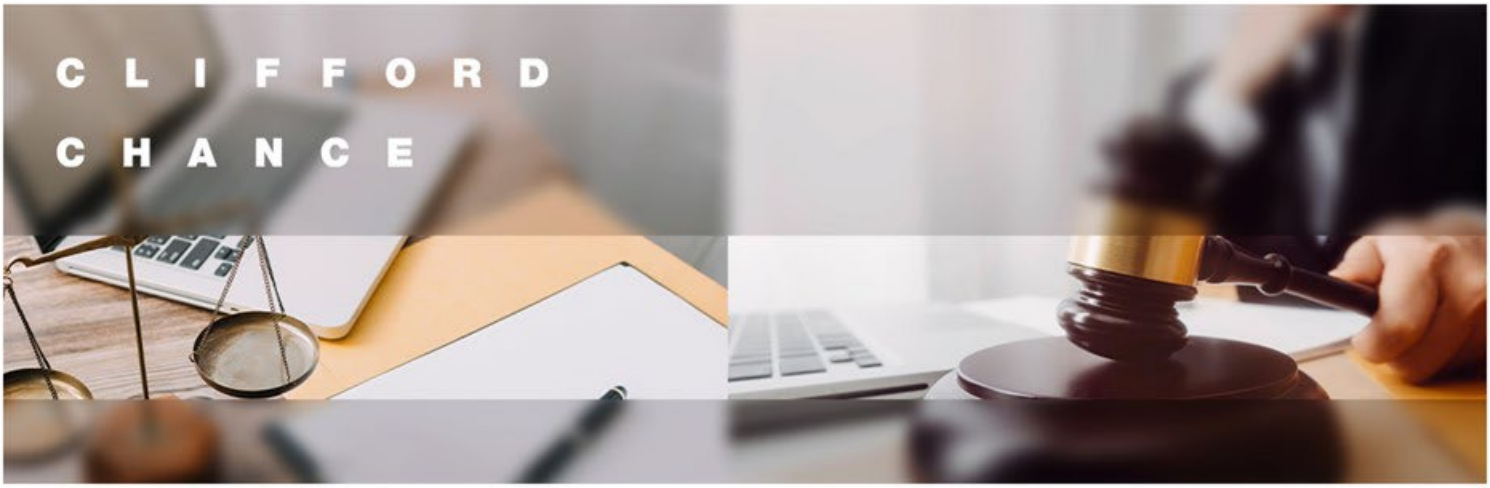

BANKSIDE YARDS SCHEME – LATEST RIGHTS OF LIGHT DISPUTE TO REACH HIGH COURT

The dispute between some residents of Bankside Lofts and developers of the new £2.5bn Bankside Yards scheme has brought the issue of rights of light to the courts. Rights of light cases rarely reach court as most are settled privately. This High Court judgment sheds light on the courts' current approach to rights of light disputes and the attitude towards the types of relief available to claimants.

Key issues

- The Bankside Yards case concerned a dispute between residents whose right of light had been impacted and major developers.
- Rights of light cases rarely reach the courts as they are usually settled.
- A key question is whether the 100-year-old Waldram method is still relevant in rights of light cases.
- Whether injunctive relief would be granted.
- If damages were awarded in lieu, the type of damages and method of calculation.

INTRODUCTION

The Bankside case has attracted significant attention as it is a recent high-value dispute that has reached the High Court.

The iconic Bankside Lofts development, located on the southern bank of the Thames, has been involved in a dispute with the developers of the new Bankside Yards scheme. Residents of Bankside Lofts asserted that the recently completed Arbor tower infringes upon their rights of light.

The Judgment, handed down on 8 July 2025 by Justice Fancourt, clarifies the approach the courts adopt when assessing rights of light claims, despite recent developments in alternative methods of measuring interference with such rights.

BACKGROUND OF THE CASE

Bankside Lofts, a residential development completed in the late 1990s, has long been a prominent feature of London's South Bank. However, the construction of the 19-storey Arbor tower, part of the £2.5 billion Bankside Yards development, has led to a dispute over rights of light.

Residents Stephen and Jennifer Powell, along with fellow resident Kevin Cooper (together the "**Claimants**"), argued that the new tower obstructs natural light from entering their flats, impacting their quality of life.

The case is significant as many consider the application of the Waldram methodology, a century-old test used to assess light loss, outdated. Interested parties were keen to discover whether the courts would adopt modern methods of assessing light loss. The High Court's decision was expected to clarify the legal standards for rights of light claims and potentially introduce new methods for evaluating light interference in urban environments.

HISTORICAL POSITION

Before the Judgment was handed down, the test for rights of light infringement had always been the Waldram methodology. It was thought that modern methodologies such as radiance analysis might allow for greater flexibility in urban development, enabling larger projects without infringing on neighbouring properties' rights of light.

The Waldram Test:

The Waldram test, developed in the 1920s, assesses whether a new development infringes on a neighbouring property's rights of light by measuring the amount of daylight reaching a room through its windows. A room is considered adequately lit if at least 0.2% of the sky dome is visible from 50% of the working plane (typically set at table height). If a new building reduces the level of light below this level, the offending building may be deemed to cause an actionable loss.

However, it has been criticised for its simplicity and failure to account for modern lighting expectations and technologies. Historically, the courts have relied on this method alongside expert reports to decide whether a loss of light warrants an injunction or compensation.

JUDGMENT

The Judgment considered several key issues. Firstly, whether the construction of Arbor tower caused an actionable interference with the Claimants' rights of light, and if it did, whether the Court should exercise its discretion and grant an injunction. The Court was also asked to consider whether, if an injunction is refused, damages should be awarded, and if so, what form those damages should take.

Justice Fancourt concluded that there is a substantial adverse impact on the ordinary use and enjoyment of the flats. This conclusion was based on the results from the Waldram method, which the judge reiterated is an established, universally applied and agreed standard. Radiance results and the BRE Guidance methods were considered, but it was made clear that although these methods may give useful information about the nature of the impact on light of obstructions, they do not serve to replace the Waldram method.

Even though interference was established, Justice Fancourt stated that injunctive relief would be futile as Arbor or a similar building would likely be re-built with the protection under s 203 of the Housing and Planning Act 2016. Therefore, ordering its demolition would be hugely wasteful as well as oppressive to Ludgate House Limited (the "**Defendant**") and its tenants.

Damages in lieu were awarded and the Court concluded that "negotiating" damages was more suitable than diminution in the value of the flats – effectively, what could have been negotiated in return for giving a release of the rights. The Court found that it would be inadequate to compensate for the loss that has been suffered as a difference in value, which is a measure of the exchange value of the flat not its use value. As the purpose of a right to light is to protect use and enjoyment of the property, use value is a more appropriate basis for damages.

Overall, this Judgment makes clear that the Waldram method remains most suitable in rights of light cases and despite interferences to a person's right of

light, the Courts are prepared to consider "negotiated" damages in lieu of injunctive relief, especially where s 203 applies.

IMPACT ON OUR CLIENTS AND OUR EXPERTISE

The Judgment provides a recent example of how the Courts deal with issues of rights of light. Here are some key takeaways for clients:

- **Waldram method remains relevant**: Clients considering developments that may impinge on the public's rights of light should welcome the clarity provided by this judgment as this method remains the standard for measuring light loss.
- **The impact of s 203**: Clients should consider the application of s 203 when forming development plans. The pragmatic stance taken by Justice Fancourt may give developers comfort that developments that may gain protection under s 203 may not face an injunction demanding the destruction of their developments.
- **Type of damage**: Based on this judgment, damages are likely to be assessed on a "negotiated basis", rather than by reference to diminution in value.
- **Extent of damages**: It was held that the right approach is to assume that the Claimants and Defendants would be commercial in their negotiation of damages and not be forced into agreement. In this Judgment, the settled value was between 10-15% of the increase in value, calculated based on hypothetical negotiations taking place in August 2019 (although the closest available figures were in 2021), just before the start of the works to build Arbor.

Our clients will require updated guidance on how to interpret the findings in this Judgment. This Judgment reinforces the Waldram method, but there are nuances around the conclusions reached. As always, the extent to which this case may be applied to specific situations will need to be carefully considered and analysed.

If you have any queries, please do not hesitate to reach out to a member of the Clifford Chance Real Estate Litigation team or your usual Clifford Chance contact.

CONTACTS

Ben Hatton
Director (Real Estate Litigation)

T +44 7949055430
E Ben.Hatton
@cliffordchance.com

Jordan Gulwell
Associate (Real Estate Litigation)

T +44 7929721952
E Jordan.Gulwell
@cliffordchance.com

Jerry Yeung
Trainee Solicitor (Real Estate Litigation)

T +44 7974518214
E Jerry.Yeung
@cliffordchance.com