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Our Ref : sph/1421/15005

Dear Alessandro

Daylight and Sunlight Assessment – Six Hills Way, Stevenage, Hertfordshire SG1 1ST

Further to the correspondence between yourself and Linda Sparrow, Senior Planning Officer at Stevenage Borough Council, on the 22nd November 2022, we understand that the Council have raised questions over the fact that the submitted daylight and sunlight assessment is based on a now outdated guidance document.

I have looked back at the report that we have prepared for this project and our most recent revision was issued on the 29th September 2021 and this accompanied the planning application that was submitted in November 2021.

The September 2021 report was prepared using the Building Research Establishment, entitled 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice', Second Edition, 2011. This was the most recently published guidance document available at that time.

In June 2022, the updated Third Edition of the BRE Guidelines was released. This includes updated methodologies for analysing the provision of daylight and sunlight to habitable rooms within the proposed development but does not make fundamental changes to the way impacts on neighbours are assessed.

The important point here is that the Guidelines are not just used as a tool to assess the adequacy of daylight and sunlight provision to new development. They are in fact used to inform the design process and as is very often the case, there are numerous design iterations before a compliant scheme is achieved. These design iterations are informed by the analysis we undertake during the design process. Therefore, in the case of the Six Hill development, the design was informed and shaped by the 2011 version of the BRE Guidelines.

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Based on the assessment that was carried out at that time, it was possible to demonstrate that the habitable rooms within the proposed development met the requirements for the provision of good levels of natural daylight and sunlight. Whilst the assessment methodologies adopted in the updated version of the BRE Guidelines have changed during the period over which the application has been determined, the principle of providing adequate natural daylight to habitable spaces has not.

In my professional opinion, I therefore believe that the aspirational targets set out within the original and updated versions of the BRE Guidelines will be met. Therefore, based on numerous other situations where this scenario has arisen since the release of the new guidelines, I would strongly recommend that the Council accept that the scheme has been designed in accordance with the guidelines that were current at the time the application was submitted.

Yours sincerely

Simon Herrington BEng CEng MICE CWEM MCIWEM

Appendix – Rights to Light Assessment Options

Overview

Generally, the balance for the need for light to existing buildings, and the need for new buildings is addressed through the planning system. However, it must be remembered that the planning system gives protection but not rights. Thus, when planning permission is applied for, a local planning authority will want to see evidence of the effect it will have upon the neighbouring properties, including, in many cases, the light and other amenities that those properties currently have.

An important consideration here is that for planning purposes, it is general practice to ignore non-habitable rooms, such as bathrooms, hallways, stairways and landings etc. However, any of these windows can obtain an easement of light, for which the term “rights to light” is a synonym. An easement of light is a right to light through a window, where that light has passed over a neighbour’s land.

The House of Lords established the principle that, in the context of a right to light, a nuisance is to be judged not by how much light is taken away from a room, but by how much light will be left and whether there will be “*sufficient light according to the ordinary notions of mankind for the comfortable use and enjoyment of his house as a dwellinghouse, if it is a dwellinghouse, or the beneficial use and occupation of the house if it is a warehouse, shop or other place of business*”. If the room retains adequate light, then no nuisance will be caused. Essentially, a developer is able to take away some of his neighbours’ light as long as an adequate amount will remain.

This last point is very important because the test for adequacy used for rights to light is different to the principles adopted for a daylight/sunlight assessment, which focusses on the magnitude of change, rather than the adequacy of light retained. Consequently, the methodologies for assessing impacts are notably different. The assessment techniques used for daylight/sunlight studies place much less reliance on detailed survey information than a RTL study would and therefore the quality and level of accuracy of a daylight/sunlight model is likely to be less than for a RTL study.

In practice, the use of a more detailed survey for a daylight/sunlight study, which may for example pick up elevation detail for all neighbouring properties, would only improve its quality, albeit the survey costs may be greater than required at the planning stage. However, it would not be appropriate to base a RTL study on a daylight/sunlight model that was created using limited topographical information and estimated window positions. Therefore, to avoid abortive survey costs and time delays, it is important to carefully consider RTL risks from the outset, so if at a later date, the daylight/sunlight model needs to be relied upon to support a RTL study, it has been built to an appropriate standard.

The options set out below have therefore been carefully considered to allow specialist RTL advice to be utilised at optimum stages within a development and to ensure that the most cost-effective strategy is identified.

Option 1 - Desktop Indicative Rights to Light Appraisal

This would be informed by the work carried out as part of the Daylight and Sunlight assessment with the objective being to provide a realistic insight into potential risks, either at the early stages of a development or as the project progresses. This would take the form of short note setting out the following:

- where material Rights to Light (RTL) risks are likely to exist;
- an impression of how significant they are, i.e. is there risk of injunction;
- an initial 'ball-park' estimate of potential compensation;
- proactive and commercial advice as to how to resolve risks. For example, design change, negotiation to secure release, insurance etc, as well as advice on practical next steps such as what further information or analysis might be required.

The fees to undertake this appraisal would be £410 plus VAT.

Taking into account the indicative nature of this assessment it is important to understand and acknowledge the following caveats:

- advice provided under this option cannot officially be relied upon. It is intended purely as initial guidance that is always subject to confirmation;
- this would be a desktop study and as such, a site visit by the RTL specialist is not included and therefore suitable imagery must be available to enable a meaningful review; and
- this would not include a review of the legal title for the site or surrounding properties.

Notwithstanding this, by drawing on a wealth of experience, this initial desktop appraisal will provide a practical and commercial approach to addressing RTL risks in the early stages of the development, and if necessary, will provide robust advice on developing a strategy to resolve these risks.

Option 2 – Early Involvement Assessment

Whilst the Indicative RTL appraisal summarised in Option 1 represents excellent value, it is nevertheless a review of the scheme that is being submitted for planning. If, however, from the outset there is a strong indication that RTL could present significant constraints to the design process, it is often prudent to identify potential RTL risks at the beginning of the design phase and set out an appropriate strategy to manage these.

One of the most important advantages of this approach is that can often inform the level of detail needed in the modelling of the neighbouring buildings and the level and quality of survey information required. This can therefore avoid the frustration and abortive costs associated with having to commission further surveys and amend or rebuild the 3D model used for the Daylight and Sunlight assessment to ensure that it is sufficiently accurate to be relied upon in court. Typically, a Daylight and Sunlight assessment model would be based on a less comprehensive survey and is therefore unlikely to meet the quality criteria expected of a RTL model. Whilst this approach is more expensive from the outset, in the long run it can result in significant savings in time and money if RTL risks are identified as a principal constraint to developing the site.

Obviously, if from the Early Involvement Assessment, it is clear that RTL risks are low, then decisions regarding the level of survey detail required can be more robustly informed.

The fees associated with this RTL option are very much dependent on the scale and nature of the development and the number of windows likely to be impacted etc. Typically, for an initial assessment at the commencement of our engagement, the cost to provide a short note highlighting potential RTL risks and setting out recommendations for survey requirements and a strategy for mitigating or managing these risks would be between £250 and £400 plus VAT.

From this point forward, the level of input from the RTL specialist will vary depending on the complexity of the development and the degree of risk associate with the proposed scheme. At this point we would therefore provide a bespoke quotation for the remaining stages.

Option 3 – Post-planning RTL Study

This could be required where Option 1, or other circumstances may have dictated the need to carry out a detailed RTL study after the scheme design has been fixed and the Daylight and Sunlight assessment has been completed. Depending on the level of survey information that was available at the time of building the 3D model for the daylight/sunlight assessment, this may require additional survey work and amendments or modifications to the original model. At this stage it is essential that to ensure the model can be relied upon by the RTL specialist, it will need to upgraded form being ‘fit for planning purposes’ to ‘legally robust’. Obviously, this would not be required if the appropriate modelling specification had been identified through the Option 2 approach.

Again, the level of involvement will be dependent on the complexity of the development and the potential RTL risks and therefore we would provide a bespoke quotation for this option upon request.