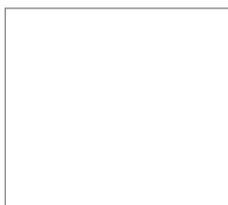
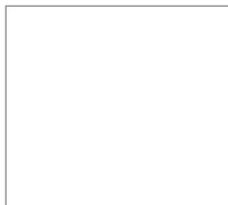


Seeing the light: Planning and **right to light** in Wales

Cymorth	Planning
Cynllunio	Aid
Cymru	Wales

A **free guide** for the general public



Produced by Planning Aid Wales

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What is this booklet?

We usually take natural light for granted. But what happens when a new building, wall or fence will reduce the amount of light you get? What are your rights to object? What can you expect the authority to do, especially when it is dealing with a planning application? What are your legal rights to light?

This booklet explains how light is dealt with, both under civil law and as part of the planning process in Wales. The advice in this guide should be used selectively and according to your specific situation. The contents are correct at the time of publication, but planning law and practice continue to change over time. If in any doubt, you should seek up-to-date professional advice.

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Your Local Planning Authority

There are 25 local planning authorities in Wales – 22 County, County Borough or City Councils, and 3 National Parks (Brecon Beacons, Pembrokeshire Coast and Snowdonia). These 25 authorities are responsible for operating the planning system, and are often referred to differently. Sometimes they are referred to as ‘Councils’, ‘Planning Departments’, or ‘Your local authority’. For the purposes of this booklet, we will refer to your Local Planning Authority as **your authority**.

PART 1: Planning and Light

Most people know that planning permission is needed for new building work. But some works do not require planning permission, because they are covered by ‘permitted development’ rights. These rights allow certain types of smaller householder development to be carried out without the need for planning permission.

Permitted development usually includes small house extensions, garages and outbuildings. It can also include fences and walls, depending on where they are and how tall they are. People using these rights to develop do not have to notify neighbours or their authority.

If a development does not need express planning permission and it causes loss of light, you have no rights under planning law. In this situation, you can only rely on your civil legal rights as described in Part 2 of this booklet. To find out more about permitted development rights in your area, contact your authority or Planning Aid Wales. If a proposed development does need planning permission, the authority has to inform neighbours about the proposal as part of the planning application process. Everyone is entitled to send in their comments on the proposal for the authority to consider before it decides the application.

Light as a planning consideration

Planning applications are decided based on policies in a local authority's development plan, national planning guidance and other 'material considerations'. Material considerations are issues which are relevant to planning. These include issues such as the visual appearance of the development and the loss of privacy to neighbouring properties. More information about material considerations can be found in the Planning Aid Wales publication 'A public guide to the land use planning system in Wales'.

Loss of light may be a material planning consideration to be taken into account when taking planning decisions. Permission for a development can be refused if the loss of light is going to be serious enough. But the authority will only look at whether the loss of light is bad enough to be un-neighbourly, or if it is likely to have an oppressive impact on your property. The authority will not be able to take account of your private civil rights.

The word used in planning for loss of light caused by a development is 'overshadowing'. But it can be very difficult to judge the overshadowing effects of a proposed building. First, the size of the finished building is difficult to visualise. Second, any effect on light reaching a neighbouring property can be hard to work out as light levels change daily and seasonally. These factors make it difficult to judge accurately the effect that a proposed building will have on light reaching a particular property.

Did you know?

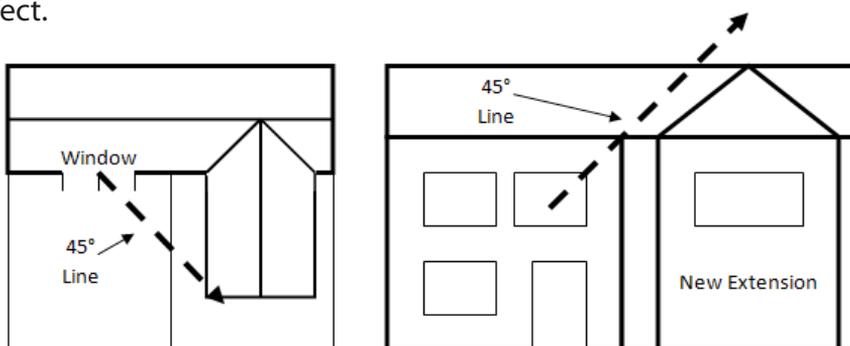
'Permitted development' rights mean that some types of minor development do not need planning permission. If this is the case, your right to light is not protected under planning law.

Calculating overshadowing impacts

The Building Research Establishment (BRE) produces a document called 'Site layout planning for daylight and sunlight - a guide to good practice'. This describes a very technical method for assessing loss of light, and the document is expensive. Some planning authorities use this technical method for working out overshadowing effects. Others have policies in their development plan to describe development which is likely to have an unacceptable overshadowing effect. Others use the '45° rule', which is described below.

The 45° Rule

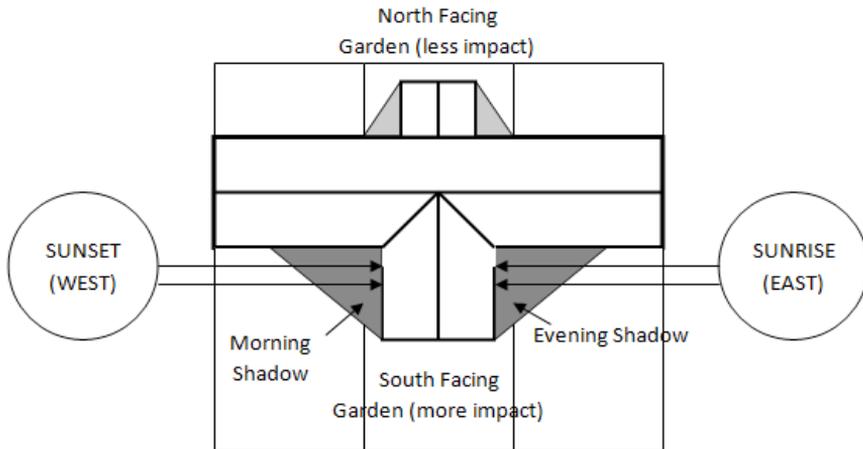
The 45° rule can be used to work out the overshadowing and overbearing effect of a new building. Take for example plans to add an extension to a neighbour's house. The impact is worked out by finding the habitable room window (or windows) in your house which will be most affected by the extension. Habitable rooms include living rooms, bedrooms and lounges, but not bathrooms. Draw a line from the centre of the window(s), extending at an angle of 45° towards the new building. If all or part of the new building will cross the 45° line, the building is likely to have an overshadowing effect.



However, you should remember that other factors are important here. The main one is the way buildings face the sun (called their 'aspect').

Aspect

With the sun rising in the east, reaching its highest point at noon, and setting in the west, the overshadowing effect of a development varies throughout the day. Also, the height of the sun in the sky and hours of daylight vary according to the season. But there is one simple rule of thumb - if your garden faces south, a house extension on either side of you is more likely to have an overshadowing effect than if your garden faced north.



If you are concerned that a development will lead to a loss of light, you can ask the planning officer dealing with the application to use the BRE's technical method before making a recommendation. You cannot force them to do it, but asking may prod them into looking again, or asking a colleague who is familiar with the method to apply it to the proposal.

What should I do if I think a proposed building will overshadow my home?

If you are worried that a proposed development will reduce the amount of natural light reaching your property, there are a number of things you can do:

1. **Discuss your concerns with the people making the planning application:** They may not have realised how much you will be affected and might be willing to change the design to address your worries. However, if friendly discussion does not solve the problem, you can object formally to the planning application.



2. **Seek further advice:** The planning officer dealing with the application should be willing to discuss the application with you. He or she can give details of what is being applied for, and discuss its possible impact. If you feel that you are not getting a fair hearing from the authority, contact the Planning Aid Wales helpline.

3. **Put your objections in writing:** Planning officers have to be impartial. They can only recommend refusing an application if there are sound planning reasons. So try to make sure the tone of your letter is not hostile. Explain clearly how you see the proposal affecting your property, mentioning particular windows and rooms which will be affected. If there are any special circumstances which make natural light particularly important to you (for example, if you are partially sighted or house-bound), be sure to mention these in your letter of objection.
4. **Invite the planning officer and / or your local councillor to come and see the site from your property:** This gives you a chance to discuss the effects of the new development, and to suggest how the scheme can be improved. Examples include adding a 'hipped' roof, or reducing the height or size of the extension.
5. **Ask to speak at planning committee:** If the planning application will be decided by the local authority's planning committee, check with the planning officer to see if you can speak at the committee meeting. If you can, it gives you a chance to put your concerns to all of the councillors making the decision.
6. **Look at the 'What to do when faced with a planning application in Wales' guidance booklet produced by Planning Aid Wales.** Once a planning application is approved, neighbours have no right to appeal against the decision. There is little further action that you can take, short of applying for a judicial review in the High Court of the way the decision was made, or exercising any civil rights you may have through the courts.

Did you know?

There is no 'third party' right of appeal in planning. Once a planning application is approved, the decision can only be overturned by the High Court.

High Hedges and Light Loss

Hedges can be attractive features that provide privacy and shelter from the wind. However, hedges can result in the loss of sunlight to neighbouring houses and gardens.

Permission is not normally needed to plant a hedge - there are normally no limits how high it can grow, and you cannot reduce the height of a neighbour's hedge without their permission.

However, if the hedge is having a serious impact on the sunlight and daylight in your property and your neighbour refuses to control the hedge, you are now allowed to make a complaint your local authority.

As part of the Anti-Social Behaviour Act 2003, the government put in place new rules which give more protection for neighbours affected by overshadowing from high hedges. The Act also gives guidance for local authorities to allow them to work out the impact of loss of light from such hedges.

These rules mean that some protection is now available against evergreen hedges over two metres in height (these rules do not apply to individual trees, groups of trees or woodlands).

If the local authority accepts your complaint, they can issue a 'remedial notice' which will require the owner of the hedge to cut it back and stop it from growing over a certain height again. If your neighbour does not follow the actions in the notice then they may be prosecuted.

The local authority may charge a fee for you to make a complaint, and may reject the complaint if they think you haven't tried to resolve the complaint with your neighbour first.

If you would like more detailed information about hedges or would like to make a complaint about a hedge that is affecting your light, get in touch with your local authority.

PART 2: Civil law and your right to light

The planning system allows daylight to be protected when a new development takes place, but your right to light in your home is also protected by civil law. This are separate areas of law outside of the planning system. The second part of this booklet describes civil rights to light.

You have a legal right to light if you can prove that you have enjoyed light through a window or opening for a minimum period of twenty years. You also have a legal right to light if it has been granted by a deed.

Did you know?

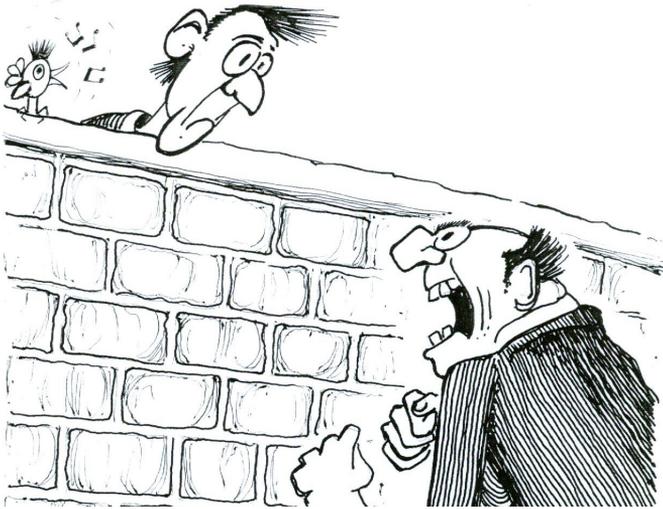
The planning system protects against overshadowing issues, but this is different from your right to light under civil law. For further information on your civil right to light, you should seek legal advice.

Easements

Under civil law, your right to light is known as an 'easement'. The easement allows you to use someone else's land or property to obtain light which benefits your property. There are two types of easement: 'Express' easements, which are usually referred to in the deeds to your property, and 'acquired' easements, which usually come after twenty years' use of the light.

An express easement exists where a neighbouring land owner has granted the use of light to a person buying your land or property at some time in the past. They are quite rare but if an express easement is granted in clear terms in your deeds, you may be able to enforce it in the County Court. In other words, you may be able to use it to

stop your neighbour from carrying out a proposed development. However, you must advise your neighbour at an early stage that you have a legal right to light.



Stay calm! Try to resolve things amicably

Sometimes, you may be able to claim an 'implied' easement. This happens if you can prove in court that your right to light must have been in the minds of the owner of your neighbour's land and the purchaser of your land. This gives considerable room for doubt, so you should seek legal advice if you are thinking about making this claim.

A right to light can be claimed if light has been enjoyed through a particular window or opening for twenty years, as long as the right was not given by agreement. It needs to be proved that the existence of such a long use was more likely than not. But do remember, long use rights only apply to buildings – you cannot claim a right to the light reaching your garden.

How far do civil rights of light extend?

The courts will look at whether the light remaining after obstruction by a new building is enough to allow the owner of a nearby building to continue to enjoy the comfortable use of that building. The test will vary depending on the building concerned.

Do remember that in civil law, reduction in the amount of light coming through a window is not a relevant issue. What counts is whether the room can continue to be used comfortably for its normal purpose.

In the past, the courts tended to rely on technical calculations to assess a case, but nowadays they usually use the simpler 'normal purpose' test. For example, the test for a living room may be whether someone can still read during the day without artificial light. The test is not clear cut, which makes going to court an uncertain business.

If you do establish a legal right to light, you may be able to enforce it even if planning permission has been granted for a building which may affect that light. However, you will have to give detailed evidence in court about the precise effect that the new building will have on the amount of light reaching your property.

Please note that civil rights to light are not usually taken into account by local authorities when they consider planning applications.

Did you know?

'Long use' rights to light only apply to buildings – you cannot claim a right to the light reaching your garden.

The Human Rights Act

The Human Rights Act gives people freedom to enjoy their own property. It also protects against outside interference with their private, home and family life. Both of these could be affected by, for example, a neighbour's proposal to build an extension.

While planning authorities must take account of the Human Rights Act, the rights it protects are not absolute. For example, both you and your neighbour have additional rights to use your land as you wish. This means more legal weight could be given to your neighbour's right to use their land, than to your right to light and privacy.

How do I enforce my civil rights?

This short guide cannot hope to provide all the information needed to prepare for a civil court action. Right to light is not a straightforward area of law and you should seek expert legal help.

Did you know?

Civil rights to light are not taken into account by local authorities when they consider planning applications.

Where to go for more advice

If you need further advice about loss of light in planning, you can discuss the matter with your authority or engage a planning consultant. You can find more information about your authority and contact details at www.planningaidwales.org.uk or by contacting Planning Aid Wales on 02920 485 765. A list of planning consultants certified by the Royal Town Planning Institute is available from www.rtpiconsultants.co.uk or can be obtained from Planning Aid Wales.

Further information and links

Planning Aid Wales

Planning Aid Wales provides free information and advice on the land use planning system to eligible individuals and community organisations. A telephone helpline service is available from 10am to 1pm, Monday to Friday.

Helpline: 02920 625000

Website: www.planningaidwales.org.uk

Email: info@planningaidwales.org.uk

Address: First Floor, 174 Whitchurch Road,
Heath, Cardiff, CF14 3NB

Online planning guidance

The Welsh Assembly Government has prepared a variety of guidance documents on planning issues in Wales. These are available from:

<http://wales.gov.uk/topics/planning/policy>

Planning Inspectorate

For more information about planning appeals, you can contact the Planning Inspectorate for Wales:

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Telephone: 02920 823 866

Fax: 02920 825 150

Website: www.planning-inspectorate.gov.uk

Email: wales@planning-inspectorate.gsi.gov.uk

Public Services Ombudsman for Wales

If you think that your planning authority has not dealt fairly with a planning matter, and you have already pursued a complaint through the authority's official complaints procedure, the Public Services Ombudsman for Wales may be able to help:

Public Services Ombudsman For Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Telephone: 01656 641 150

Fax: 01656 641 199

Website: www.ombudsman-wales.org.uk



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