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ADDRESS

THE WHITEHOUSE
BELVEDERE ROAD
LONDON SE1 8GA

CONTACT

TEL 020 7202 1400
FAX 020 7202 1401
MAIL@GIA.UK.COM

WWW.GIA.UK.COM

By Email
jamie@simoncommunity.org.uk

Jamie Nalton
The Simon Community
St. Joseph's House
129 Malden Road
London
NW5 4HS

Dear Jamie,

Re: 129 Malden Road, Simon's Community – Daylight, Sunlight and Right of Light Letter Report

GIA have been instructed to carry out an indicative Daylight/Sunlight and Rights of Light assessments in order to understand the risks associated with Scott Whitby's proposed scheme at 129 Malden Road.

The results and advice contained in this letter report are based upon the proposed scheme produced by Scott Whitby Studio and issued to GIA on the 22nd January 2016.

In order to understand changes in light caused by the proposed scheme, a comparison of the existing and proposed light levels have been undertaken. GIA have created an indicative three dimensional computer model of the site and surrounding properties using site photography and drawings including floorplans, elevations and DWG models provided to GIA by Scott Whitby Studio. We then modelled and technically assessed the neighbouring windows and rooms which are likely to be sensitive to a development on this site.

Assumptions

1. A three dimensional model of the site and surrounding properties has been created using site photography and detailed drawings including floorplans, elevations and DWG models provided by Scott Whitby Studio on the 22nd January 2016.

2. The location and size of the windows in the surrounding properties have been based on GIA's site photographs and elevations and floorplans provided by Scott Whitby Studio. These floorplans have been inserted into our three dimensional model

3. Best estimates have been made as to the uses which are carried out legally within the adjoining properties (in terms of commercial and residential units). We have estimated these by reference to the Valuation Office Agency (VOA), external observation and where possible from Local Authority records.

4. Unless otherwise stated we have assumed that all adjoining properties, where old enough, will be able to demonstrate a legal Right to Light by virtue of Section III of the Prescription Act 1832. This is an important assumption as legal deeds and agreements may override prescriptive Rights to Light.

5. Floor levels have been assumed for the adjoining properties as access has not been obtained. This dictates the level of the working plane which is relevant for the No Skyline assessment.

The Site and Proposal

The site is located in the London Borough of Camden and bound by Malden Road to the North and residential properties to the South, East and West. The site and surrounding properties are indicatively outlined in black on Figure 1 below.

Our understanding of the exiting site is depicted on GIA drawings: 10418-001, 01-03 located in (Appendix 02).

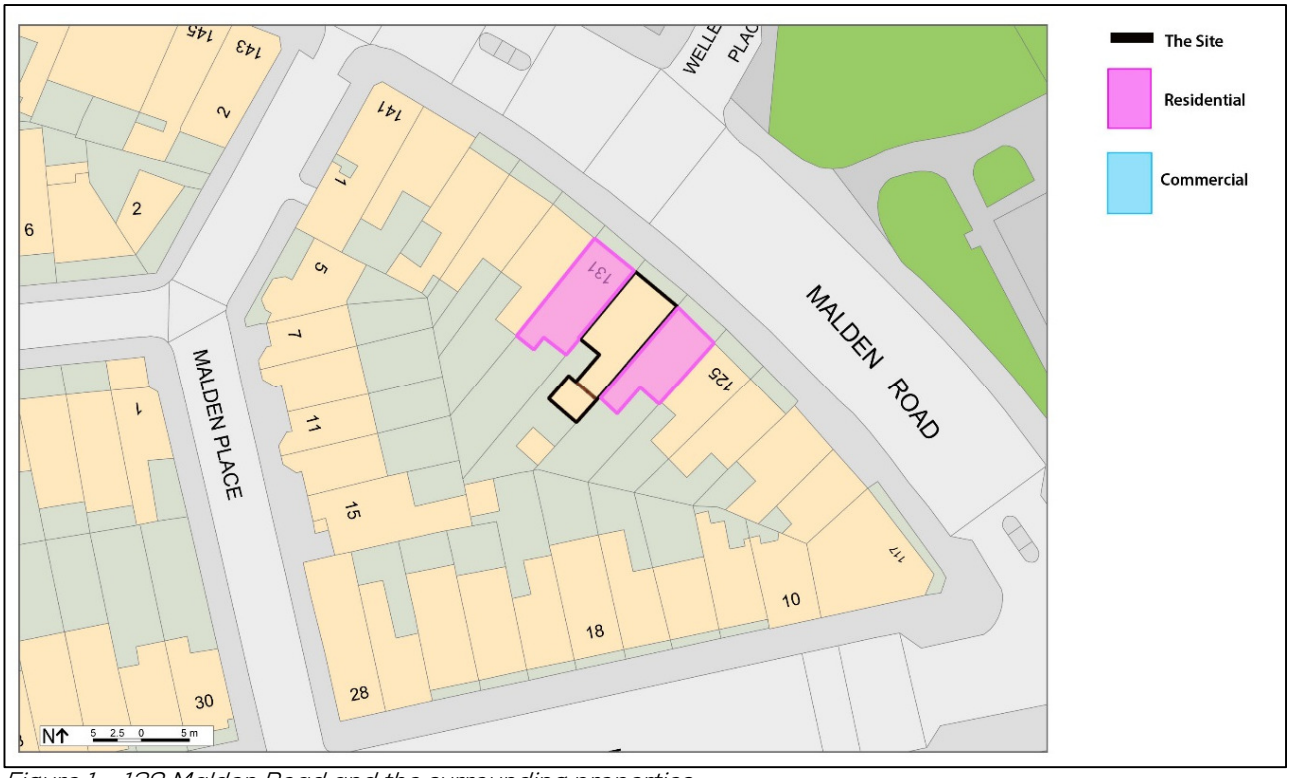


Figure 1 – 129 Malden Road and the surrounding properties

The proposal seeks to increase the massing at roof level by approximately one story and extend the basement, ground and first floor levels to the rear of the property. GIA's understanding of the proposed scheme is illustrated on GIAs drawings 10418-001, 04-06. (Appendix 2).

Surrounding Properties

Daylight and Sunlight (Planning)

Daylight and Sunlight is a planning matter, which reviews the changes in light within neighbouring properties by reference to the 2011 Building Research Establishment (BRE) guidelines 'Site Layout Planning for Daylight and Sunlight'. The BRE states that residential properties have a greater requirement for Daylight and Sunlight than commercial properties (Site Layout Planning for Daylight and Sunlight, Paul Littlefair, Page 7, Paragraph 2.2.2). This handbook is the primary authority for these matters and therefore it is not only this practice, but also the Local Authority (LA), who will be considering your application by reference to these guidelines.

The BRE Guidelines provide two main methods of calculation for daylight in existing residential properties; the Vertical Sky Component (VSC) and the No Sky Line (NSL). The VSC calculates the amount of sky visible at the centre of each window facing the site whereas the NSL divides the areas within the room at table top height (850mm) which can and cannot see the sky. The BRE suggest that a 20% change in the existing and proposed levels of VSC and NSL or a retained VSC of 27% will be unnoticeable to an occupant.

In relation to Sunlight, the BRE criteria calculates the annual probable sunlight hours (APSH) which evaluates the amount of sun available in both the summer and winter for each given window facing within 90° due south.

If the window receives more than 25% of the total APSH and at least 5% in the winter months between 21 September and 21 March, then the room should receive enough sunlight.

Our technical analysis indicates that upon successful implementation of the proposed scheme all of the 29 rooms, served by 42 windows within 127 and 131 Malden Road, achieve full compliance with the 2011 BRE Guidance, in both daylight (VSC, NSL) and sunlight (APSH) and therefore we believe that the proposed scheme should not pose any Daylight or Sunlight barrier at planning.

Rights to Light (Legal)

GIA have undertaken a Rights of Light technical assessment in order to understand the implications of the proposed scheme on the legal light easement enjoyed by the surrounding properties.

As you may be aware, Rights of Light is a private legal matter and not a planning consideration. Rights of light is a private legal easement for which the most common method of acquisition is through 20 years of uninterrupted access of light through an aperture (Section III, Prescription Act 1832). When an aperture has acquired a Right to Light, the right is considered to be absolute and indefeasible.

It is possible to interfere with a neighbouring owner's light, as it is the amount of light that a room is left with as opposed to that which is taken away that is critical. As long as the light remaining is considered sufficient then no injury may have been caused. GIA uses the rule reinforced by Carr Saunders v Dick McNeil Associates Ltd and Others (1986) that states sufficient light is where one lumen of light is available at table top height to 50% or more of the room in commercial properties (William Cory & Sons v City of London 1954). In residential properties we consider 55% to be the minimum retained level as per Ough v King -1967. If an injury is caused, a neighbouring owner could seek damages or an injunction, irrespective of planning consent.

Where a building has been extended within the prescriptive period, a party "who is injuriously affected, is entitled to recover full compensation for all the damage in respect of the deterioration in value of his property" (London, Tilbury and Southend Railway Company vs The Trustees of the Gower Walk Schools 1889).

The Rights of Light technical analysis illustrates that all of the rooms assessed within 127 Malden Road will remain adequately 'well lit'. This means that while some diminution in light may occur, the rooms will remain over 55% well-lit and therefore we believe, based on our understanding of current case law that, no injury will be caused.

Of the 15 room's assessment within 131 Malden Road, 14 remain adequately 'well lit', while one room (R3/First) experiences a small loss of light that we would consider to be de minimums. This means that losses are small and are unlikely to be considered to be material or cause a nuisance, therefore we believe that no injury will be caused.

Summary

GIA have undertaken Daylight/ Sunlight and Rights of Light analysis as a means of understanding the alterations in light that would occur within surrounding properties should the proposed scheme be implemented.

Daylight and Sunlight analysis has indicated that all 29 rooms, served by 42 windows within 127 and 131 will retain sufficient levels of VSC, NSL and APSH thus remain in full accordance with the 2011 BRE Guidelines. Therefore, the proposed scheme should not present a barrier to planning.

Rights of Light analysis has also been carried out. The results indicate that all of the rooms within 127 Malden Road will remain adequately 'well lit' in the proposed scenario, while 14 out of the 15 rooms will remain 'well lit' within 131 Malden Road. The remaining room experiences a loss of light that we believe to be de minimus, and therefore we believe, no injury will be caused. This is based on our understanding of case law and our knowledge of 127 and 131 Malden Road internal room layouts.

I trust the above is clear, however should you have any further queries please do not hesitate to contact me.

Yours sincerely
For and on behalf of GIA

Holly Morgan
Assistant Surveyor
holly.morgan@gia.uk.com

Appendix 01

Principles

Principles of Daylight and Sunlight

Background

The quality of amenity for buildings and open spaces is increasingly becoming the subject of concern and attention for many interested parties.

Historically the Department of Environment provided guidance of these issues and, in this country, this role has now been taken on by the Building Research Establishment (BRE), the British Standards Institution (BSI) and the Chartered Institute of Building Services Engineers (CIBSE). Fortunately they have collaborated in many areas to provide as much unified advice as possible in these areas.

Further emphasis has been placed on these issues through the European Directive that require Environmental Impact Assessments (EIA's) for large projects. Parts of these assessments include the consideration of the micro-climate around and within a proposal. The EIA requires a developer to advise upon, amongst other matters, the quality of and impact to daylight, sunlight, overshadowing, solar glare and light pollution.

It is also clear, particularly through either adopted or emerging Unitary Development Plans (UDP's), that local Authorities take this matter far more seriously than they previously did. There are many instances of planning applications being refused due to impact on daylight and sunlight to neighbouring properties and proportionately more of these refusals are appealed by applicants.

Where developers are seeking to maximise their development value, it is often in the area of daylight and sunlight issues that they may seek to 'push the boundaries'. Local Authorities vary in their attitude of how flexible they can be with worsening the impact on the amenity enjoyed by neighbouring owners. In city centres, where there is high density, it can be the subject of hot debate as to whether further loss of amenity is material or not. There are many factors that need to be taken into account and therefore each case has to be considered on its own merits. Clearly, though, there are governing principles which direct and inform on the approach that is taken.

These principles are effectively embodied within the UDP's and the guidance they expressly rely upon. For example, in central London, practically all of the Local Authorities expressly state they will not permit or encourage developments which create a material impact to neighbouring buildings or amenity areas. Often the basis on what is constituted as 'material' will be derived specifically from the BRE Guidelines. The guidelines were produced in 1991, as a direct commission from the Department of the Environment, and entitled 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice'. In October 2011, the BRE Guidelines were updated and the revised edition states the 2011 BRE "… supersedes the 1991 edition which is now withdrawn".

Principles of Daylight and Sunlight

These guidelines are normally recognised as being the main source for which amenity issues can be considered. The document is used by the majority of local Authorities (adopted within the policy) and consequently they are referred to extensively by designers, consultants and planners. Whilst they are expressly not mandatory and state that they should not be used as an instrument of planning policy, they are heavily relied upon as they advise on the approach, methodology evaluation of impact in daylight and sunlight matters – a key consideration through the planning policy.

The BRE Guidelines

The BRE give criteria and methods for calculating daylight, and sunlight as well as overshadowing and through each approach define what they consider as a material impact. As these different methods of calculation vary in their depth of analysis, it is often arguable as to whether the BRE definition of 'material' is applicable in all locations and furthermore if it holds under the different methods of calculation.

As the majority of the controversial daylight and sunlight issues occur within city centres these explanatory notes focus on the relevant criteria and parts of the Handbook which are applicable in such locations.

In the Introduction of 'Site Layout Planning for Daylight and Sunlight (2011)', Section 1.6 (page 1), states that:-

> *"The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and this document should not be seen as an instrument of planning policy. Its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly because natural lighting is only one of many factors in site layout design (see Section 5). In special circumstances the developer or Planning Authority may wish to use different target values. For example, in an historic city centre a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings".*

Again, the third paragraph of Chapter 2.2 (page 7) of the document states:-

> *'Note that numerical values given here are purely advisory. Different criteria may be used, based on the requirements for daylighting in an area viewed against other site layout constraints'.*

The reason for including these statements in the Report is to appreciate that when quoting the criteria suggested by the BRE, they should not necessarily be considered as appropriate. However, rather than suggest alternative values, consultants in this field often remind local Authorities that this approach is supportable and thus flexibility applied.

Measurement and Criteria for Daylight & Sunlight

The BRE handbook provides two main methods of measurement for calculating daylight which we use for the assessment in our Reports. In addition, in conjunction with the BSI and CIBSE it provides a further method in Appendix C of the Handbook. In relation to sunlight only one method is offered for calculating sunlight availability for buildings. There is an overshadowing test offered in connection with open spaces.

Daylight

In the first instance, if a proposed development falls beneath a 25° angle taken from a point two metres above ground level, then the BRE say that no further analysis is required as there will be adequate skylight (i.e. sky visibility) availability.

The two methods for calculating daylight to existing surrounding residential properties are as follows:

- Vertical Sky Component (VSC) and
- No Sky Contours (NSC)

The main method for calculating daylight to proposed residential properties is:

- Average Daylight Factor (ADF)

Each is briefly described below.

(a) Vertical Sky Component

Methodology

This is defined in the Handbook as:-

> *"Ratio of that part of illuminance, at a point on a given vertical plane that is received directly from a CIE standard overcast sky, to illuminate on a horizontal plane due to an unobstructed hemisphere of this sky."*

"Note that numerical values given here are purely advisory. Different criteria may be used, based on the requirements for daylighting in an area viewed against other site layout constraints".

The ratio referred to in the above definition is the percentage of the total unobstructed view that is available, once obstructions, in the form of buildings (trees are excluded) are placed in front of the point of view. The view is always taken from the centre of the outward face of a window.

This statement means, in practice that if one had a totally unobstructed view of the sky, looking in a single direction, then just under 40% of the complete hemisphere would be visible.
The measurement of this vertical sky component is undertaken using two indicators, namely a skylight indicator and a transparent direction finder. Alternatively a further method of measuring the vertical sky component, which is easier to understand both in concept and analysis, is often more precise and can deal with more complex instructions, is that of the Waldram diagram.

The point of reference is the same as for the skylight indicator. Effectively a snap shot is taken from that point of the sky in front of the window, together with all the relevant obstructions to it, i.e. the buildings.

An unobstructed sky from that point of reference would give a vertical sky component of 39.6%, corresponding to 50% of the hemisphere, and therefore the purpose of the diagram is to discover how much sky remains once obstructions exist in front of that point.

The diagram comes on an A4 sheet (landscape) and this sheet represents the unobstructed sky, which in one direction equates to a vertical sky component of 39.6%. The obstructions in front of a point of reference are then plotted onto the diagram and the resultant area remaining is proportional to the vertical sky component from that point.

Criteria

The BRE Handbook provides criteria for:

(a) New Development
(b) Existing Buildings

A summary of the criteria for each of these elements is given and these are repeated below:-

Principles of Daylight and Sunlight

New Development

Summary

In general, a building will retain the potential for good interior diffuse daylighting provided that on all its main faces:-

(a) no obstruction, measured in a vertical section perpendicular to the main face, from a point 2m above ground level, subtends an angle of more than 25 degrees to the horizontal;

(b) If (a) is not satisfied, then all points on the main face on a line 2m above ground level are within 4m (measured sideways) of a point which has a vertical sky component of 27% or more.

Existing Buildings

Summary

If any part of a new building or extension measured in a vertical section perpendicular to a main window wall of an existing building, from the centre of the lowest window, subtends an angle of more than 25 degree to the horizontal, then the diffuse daylighting of the existing building may be adversely affected. This will be the case if either:

(a) the vertical sky component measured at the centre of an existing main window is less than 27%, and less than 0.8 times its former value;

or

(b) the area of the working plane in a room which can receive direct skylight is reduced to less than 0.8 times its former value.

The VSC calculation has, like the other two methods, both advantages and disadvantages. In fact they are tied together. It is a quick simple test which looks to give an early indication of the potential for light. However, it does not, in any fashion, indicate the quality of actual light within a space. It does not take into account the window size, the room size or room use. It helps by indicating that if there is an appreciable amount of sky visible from a given point there will be a reasonable potential for daylighting.

(b) No Sky Contours

This is the part (b) of the alternative method of analysis which is given under the Vertical Sky Component heading in this Appendix. It is similar to the VSC approach in that a reduction of 0.8 times in the area of sky visibility at the working plane may be deemed to adversely affect daylight. It is however, very dependent upon knowing the actual room layouts or having a reasonable understanding of the likely layouts. The contours are also known as daylight distribution contours. They assist in helping to understand the way the daylight is distributed within a room and the comparisons of existing and limitations of proposed circumstances within neighbouring properties. Like the VSC method, it relates to the amount of visible sky but does not consider the room use in its criteria, it is simply a test to assess the change in position of the No Sky Line, between the existing and proposed situation. It does take into account the number and size of windows to a room, but does not give any quantative or qualitative assessment of the light in the rooms, only where sky can or cannot be seen.

(c) Average Daylight Factor

This is defined in Appendix H of the BRE Document as:
"*Ratio of total daylight flux incident on the working plane, expressed as a percentage of the outdoor illuminance on a horizontal plane due to an unobstructed CIE Standard Overcast Sky.*"

This factor considers interior daylighting to a room and therefore is a more accurate indication of available light in a given room, if details of the room size and use are available.

Criteria

The British Standard, BS8206 Part II gives the following recommendations for the average daylight factor (ADF) in dwellings.

The BRE Handbook provides the formula for calculating the average daylight factor. If the necessary information can be obtained to use the formula then this criteria would be more useful.

Room	Percentage
Kitchen	2%
Living Rooms	1.5%
Bedrooms	1%

It is sometimes questioned whether the use of the ADF is valid when assessing the impact on neighbouring buildings. Firstly, it is often the case that room layouts and uses may not have been established with certainty.

Additionally this method is not cited in the main body of text in the BRE Guidelines but only in Appendix C of that document. It is however, the principal method used by both the British Standard and CIBSE in their detailed daylight publications with which the BRE guide recommends that it should be read.

The counter-argument to this view is that whilst room uses and layouts may be not definitely established, reasonable assumptions can easily be made to give sufficient understanding of the likely quality of light. Building types and layouts for certain buildings, particularly residential, are often similar. In these circumstances reasonable conclusions can be drawn as to whether a particular room will have sufficient light against the British Standards. In addition, the final result is less sensitive to changes in the room layout than the No Sky Contour method as it is an average and this element represents only one of the input factors. It is in cases where rooms sizes have been assumed a more reliable indicator than the No Sky Line method.

Clearly if a room which is being designed for a new development is deemed to have sufficient light against the British Standards, then it should equally follow for a room assessed in a neighbouring existing building.

The average daylight factor considers the light within the room behind the fenestration which serves it. The latter is therefore likely to be more accurate because it takes into account the following:-

a) All the windows serving the room in question.

b) The room use.

c) The size and layout of the room.

d) The finishes of the room surfaces.

Summary

The VSC (which forms part of the ADF formula) is helpful as an initial first guide, especially where access to the rooms in question is not available. Where the room layouts and uses are established or can be reasonably estimated we consider it appropriate to analyse the average daylight factor as well as the vertical sky component.

Sunlight

(a) Annual Probable Sunlight Hours (APSH) method

Sunlight is measured in the Handbook in a similar manner to the first method given for measuring the VSC. A separate indicator is used which contains 100 spots, each representing 1% of annual probable sunlight hours.

The BRE calculated that where no obstructions exist, the total annual probable sunlight hours would amount to 1486. Therefore, each dot on the indicator equates to 14.86 hours of the total annual probable sunlight. Again, to use this indicator the obstructions need to be scaled down and overlaid onto the sunlight indicator.

Those spots which remain uncovered by the scaled obstructions are counted and this gives the percentage of total annual probable sunlight hours for that particular reference point. Again, like the VSC, the reference point is taken to be the centre of the window.

Criteria

Again, the BRE Handbook gives criteria for:

(a) New Development

(b) Existing Buildings

A summary is given in the Handbook on page 16 and this is as follows:-

New Development

Summary

'In general, a dwelling or non-domestic building which has a particular requirement for sunlight, will appear reasonably sunlit provided';-

(a) at least one main window wall faces within 90 degrees of due south; and

(b) the centre of at least one window to a main living room can receive 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in the winter months between 21 September and 21 March.

Existing Buildings

Summary (page 17)

'If a living room of an existing dwelling has a main window facing within 90° of due south, and any part of a new development subtends an angle of more than 25° to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected. This will be the case if a point at the centre of the window;

- *receives less than 25% of annual probable sunlight hours , or less than 5% of annual probable sunlight hours between 21 September and 21 March;*
- *receives less than 0.8 times its former sunlight hours during either period; and*
- *has a reduction in sunlight received over the whole year greater than 4% annual probable sunlight hours.*

It will be noted that the BRE clearly separates summer from winter and indicates that a 20% reduction for either may be material. The Handbook also states that- *"To assess loss of sunlight to an existing building, it is suggested that all main living rooms of dwellings and conservatories, should be checked if they have a window facing within 90º of due south. Kitchens and bedrooms are less important, although care should be taken not to block too much sun... A point at the centre of each window on the outside face of the window wall may be taken".*

(b) Area of Permanent Shadow- Sun Hours on Ground

The 2011 BRE Handbook, 'Site Layout Planning for Daylight and Sunlight' (Second edition) also provides criteria for open spaces where sunlight will be required, including; gardens, parks, children's playgrounds, public squares etc.

The BRE Guidance acknowledges that sunlight in the space between buildings has an important effect on the overall appearance and ambience of a development. The worst situation is to have significant areas on which the sun only shines for a limited part of the year.

In summary the BRE document states the following:-

"It is suggested that, for it to appear adequately sunlit throughout the year, at least half of a garden or amenity area should receive at least two hours of sunlight on 21 March. If, as a result of new development an existing garden or amenity area does not meet the above, and the area which can receive some two hours of sun on 21 March is less than 0.8 times its former value, then the loss of sunlight is likely to be noticeable".

In relation to general overshadowing we often provide, where appropriate, an hourly record for existing and proposed situations, the effect of overshadowing on December 21st, March 21st and June 21st.

For open spaces the sun hours on ground criteria is naturally adopted but this offers limited understanding of how a space will feel or appear generally.

City Centres

The introduction of the BRE document gives the example of *'historic city centres'* being a case where there is the need for flexibility and altering the target values for criteria when appropriate, to reflect other site and layout constraints.

To explain why it is appropriate to alter these values, one needs to go further into the BRE Handbook to examine how the criteria for the vertical sky component criteria was determined and the reason therefore for varying the criteria in City Centres.

Appendix F of the document is dedicated to the use of alternative values and, it also demonstrates the manner in which the criteria for skylight was determined for the Summary given above, i.e. the need for 27% vertical sky component for adequate daylighting.

This figure of 27% was achieved in the following manner:

A theoretical road was created with two storey terraced houses upon either side, approximately twelve metres apart. The houses have windows at ground and first floor level, and a pitched roof with a central ridge.

Thereafter, a reference point was taken at the centre of a ground floor window of one of the properties and a line was drawn from this point to the central ridge of the property on the other side of the road. The angle of this line equated to 25 degrees (the 25 degrees referred to in the summaries given with reference to the criteria for skylight).

This 25 degrees line obstructs 13% of the totally unobstructed sky available, leaving a resultant figure of 27% which is deemed to give adequate daylighting. This figure of 27% is the recommended criteria referred to earlier in this report. It will be readily appreciated that in a City Centre, this kind of urban form is unlikely and is impractical. It would therefore be inappropriate to consider values for two storey terraced housing in a City Centre.

It is therefore sometimes necessary to apply different target criteria or at least acknowledge that the recommendations in the BRE cannot be achieved.

In addition, it is often the case that residential buildings within city centres are served by balconies. Balconies restrict lighting levels even more and thus if they were to be rigidly taken into account, a neighbouring proposal would be artificially and inappropriately constrained. This view is supported by the BRE and is equally another reason for flexible and sensible interpretation of the guidelines.

Outline Principles Of The Current Law And Practice Of Rights To Light

This brief summary represents GIA's understanding of the law on Rights to Light and the calculation of compensation, updated to October 2014. It is provided simply as explanatory background and information for GIA clients, is not a legal report, nor is it produced for reliance on these matters; and thus is not to be used as such. It is intended as no more than a sketch outline of a very detailed subject on which independent legal advice should be sought.

1. Introduction

The measurement of light diminution or loss, and the law and practice which have built up around rights to light is a very complex and technical area. It often raises sensitivities regarding the establishment of development potential and risk for subsequent generation buildings, and hence asset valuations. This is particularly the case in ever more densely developed urban environments. In recent times it has been a particularly controversial, fast-moving and challenging field, notably in cases of rising development opportunities and land values, where policy is driving ever-increasing density of proposals.

The summary which follows is designed solely to assist clients of GIA in gaining a general understanding of the workings of the process. Because the terminology used can be unfamiliar, a Glossary is attached. Since much of the law in this field has emerged from decided cases in the courts, notably with significant and recent litigation, a summary of the Leading Cases encountered is available on request for those interested in gaining access to a fuller examination of the principles.

2. Acquiring a Right To Light

A right to light constitutes an easement in English law – negative in form – which exists in favour of defined apertures in buildings (not simply for a site or plot of land). Its infringement, if established, involves the tort of private nuisance.

Unlike restrictive covenants, the right to light can come into existence in several ways: by express or implied grant, or by long enjoyment (prescription). Creation by both express and implied grant can occur by inadvertence on a sale of land or grant of a lease if the formal documents are not prepared with care.

There are essentially three ways in which long enjoyment can create an easement:-

- by Prescription at Common Law – almost never encountered;
- by the Doctrine of Lost Modern Grant – employing a legal fiction that a grant by a (now lost) deed is taken to have occurred; and
- by Prescription under the Prescription Act 1832 – this is by far the most common method of acquiring an easement of light.

Once acquired, a right may be extinguished by several means, as summarised in para 12 below.

3. Headline Summary of the Legal Position

The starting point is to establish whether a right exists in relation to a defined window, and if so, the identity of the party (or parties) enjoying the benefit. Next, the level of infringement which is or would be caused by a nearby development comes into play. If actionable interference is established, is this a degree of severity which could give rise to an injunction if the obstruction were to proceed, or has in fact gone ahead; or is the interference at a lower level where a monetary payment (damages) is likely to be the outcome? The law and corresponding professional market practice in this critical area has been in a state of considerable flux in recent years.

If the level of light loss is sufficiently serious as to place the parties in the territory of injunctions, and the injured party wishes to pursue this remedy, particular tactical considerations come to the fore. If, conversely, the matter is likely to be settled by negotiating for a level of compensation in lieu of an injunction (or runs through the litigation process of a full trial to establish the level of damages to be awarded), the debate switches to entirely different tactical considerations and to the different methods of calculating the level of compensation which should be expected.

This, too, has been a significant area of controversy in recent years, being unavoidably so closely bound in with the injunction versus damages-only equation. The law in this area is also in a considerable state of flux, which inevitably means that further change is likely, both in decided cases and as market practice continues to evolve.

As a broad overview, the following points frame the subject:-

- Rights of light can be obtained solely through defined window openings or glazing.
- A right is not necessarily to the same standard or level of light as currently enjoyed. The question to be posed is not what light is taken away, but what light is left, and whether the light is sufficient for normal purposes *according to the ordinary notions of mankind* having regard to the purposes for which the building was designed (and the nature of that design), and its potential future purposes, allowing for sensible change of use and alterations.
- There is no right to an exceptional amount of light. Case law does however recognise that, whilst the light must be *sufficient* for the comfortable beneficial use of the dominant tenement for normal uses having regard to the particular character of the building, different types of uses (residential, shop, factory, office, and so forth) are likely to be subject to different thresholds. Light-sensitive uses can attract a higher level of protection.
- Foreseeable future changes in the layout and organisation of space, and reasonably anticipated changes of use should be brought into the assessment. Determining the question of infringement is not confined to the status quo as revealed by inspection of existing condition.
- The specific location(s) identified as harmed can influence the result. Loss or reduction of light quality in space which has no or only marginal benefit, or areas unlikely to be regarded as important for light enjoyment will count for less than those sensibly considered to be useable only with a higher level of good quality natural light.
- The all-important question of whether a servient tenement obstruction has caused or will cause an actionable interference is a question of fact.

  If a dispute is litigated to trial, the practice of rights of light surveyors, the use of Waldram diagrams, and the established market approach will not necessarily be taken as the definitive basis of assessment of this – although it will always be highly influential as (at the very least) a starting point. There is no fixed requirement on the Court to accept the practice of specialist surveyors.
- In general terms, artificial light, and the possibility of its enhancement so as to mitigate adverse impacts of an obstruction, is disregarded in deciding whether the nuisance threshold has been crossed. Artificial lighting may, however, be relevant in the outcome, in terms of the relief to be granted – injunction or damages.
- Other sources of light which mitigate a face-on-face loss (e.g. skylights) will be taken into consideration, at least where they have legally secured entitlement to receiving light. In this way, the overall position is brought into assessment so overall gains and losses are to be brought into the reckoning. Glazed tiles and similar modern light-reflecting surfaces will not count for this purpose – these could be removed, and therefore cannot be assumed to remain in place.
- Already poorly lit rooms enter the analysis at a clearly established disadvantage. In these cases, actionable injury can still occur, although the case law is not entirely clear.

Given the scope of this summary note, the above is simply a flavour of the headlines in play in this area of assessment.

4. Injunctions

An Injunction is an equitable remedy, which it is open to a Court to order where a legal right has been proved, and its infringement is demonstrated or immediately threatened. The fact that this is a discretionary remedy, not an automatic right, is important. The conduct of the parties to the litigation may influence the decision of a Court to conclude that the prevention of a proposed action or the insistence on its reversal should be assessed as the outcome. Where damages are an adequate remedy, the Court may well conclude that a continuing infringement may be tolerated, although as a matter of general first approach, a party establishing its right and the infringement of it is usually considered as a starting point to be entitled to an Injunction to restrain or remedy that infringement.

The main types of Injunction encountered in Rights of Light cases are:-

- a Prohibitory Injunction preventing steps from being taken;
- a Mandatory Injunction requiring the Defendant to put in train positive action to correct and respond to his breach;
- an Interim Injunction – put in place before trial of an action to preserve the status quo before the facts are established and the degree of interference is assessed;
- Quia Timet Injunctions – (literally "because he or she fears") dealing with a threatened or apprehended nuisance, where there is proof of imminent danger or damage, and that if this eventuates, the outcome will be very substantial;
- a Final Injunction – (which may be either prohibitory or mandatory), determining the outcome.

The very serious risk of the Court requiring a cross-undertaking in damages to be given by the Claimant to the Defendant in Interim and Quia Timet cases, where a Claimant seeks to maintain the status quo is a reason why there is a critical need for extreme care and clear advice in framing a litigation strategy in this area.

5. Compensation Calculation – Technical Surveyor's Assessment

If in a rights of light case a Judge considers damages are the appropriate remedy then the question of the basis of those damages is most relevant. At present there is still much debate on this point and therefore we have set out below the two main propositions currently put forward. They relate particularly to the impact on commercial buildings.

This section considers the loss / impact to the dominant owner. The next section considers the consequence of a gain to the developer, or servient owner, through creating this impact.

A compensation formula has been established through caselaw, and is commonly adopted as a starting point in assessing how the loss of light can be translated into a base-level compensation amount.

Section 9 of this note indicates that the loss of light in a building is assessed by determining the difference in area between a 0.2% sky factor contour (SFC) line in an existing situation, and the contour in the proposed condition.

The area of loss is then zoned in relation to the importance of the light to the room in question. For example if a room of 100 sq ft was under consideration and the light in the existing and proposed conditions was assessed, a situation such as the following may arise:-

Area of Room	Area of 0.2% SFC (E)	Area of 0.2% SFC (P)	Actual Area of Loss
100 sq ft	76 sq ft	24 sq ft	52 sq ft

(E) = Existing

(P) = Proposed

Here the actual area affected is 52 sq ft, but this is before it has been zoned. There are four zones, each representing 25% of the room area. Loss in the front zone is given a weighting of 1.5, that in the first zone a weighting of 1, in the second zone a weighting of 0.5 and finally the third or makeweight zone a weighting of 0.25 (unless the injury is actionable in which case the makeweight zone weighting is 0.5).

In the given example 1sq ft of the front (initial 25% of the room area) zone is affected, all 25 ft of each of the first and second zones, and 1 sq ft of the makeweight zone. This produces the following results (all figures expressed in sq ft):-

Room No.	Whole Room	Half Room	Area of 0.2% SFC (E)	Area of 0.2% SFC (P)	Loss	Front	First	Second	Mkt	EFZ
1	100	50	76	24	52	1	25	25	1	39.5
Area after Weighting						1.5	25	12.5	0.5	

The EFZ is the equivalent front zone, which is the resultant figure once all of the areas of loss have been factored, and in this case is 39.5.

The EFZ is the area of loss which is entered into the following compensation equation.

Compensation = EFZ (sq ft) x Proportion of rental figure due to rights of light (£) x Year's Purchase (YP)

The proportion of the rental figure which is due to rights of light is unlikely to be large. In an office environment it would be unusual for it to exceed £5.00 per sq ft, reducing below this level for other kinds of use.

If our example were that of an office, the equation would now read,

Compensation = 39.5 x 5 x Year's Purchase

The Year's Purchase is based on the current market yield, which is often provided by valuers. In this example, if a yield of 8% were adopted, the Year's Purchase would be 12.5.

Therefore the overall technically assessed compensation figure for loss occurring in this room is:-

Compensation	**=**	**39.5 x 5 x 12.5**
	=	**£2468.75**
	say	**£2500.00**

This example is based upon a situation where an Injunction is not being sought by the dominant tenement owner(s).

6. Compensation – Brief Legal Summary

Overview

The method used by rights of light surveyors to convert measured light reduction into a figure of financial compensation explained in section 5 above can be taken as the starting point for commercial negotiation of terms by which neighbours then begin to explore the basis on which to settle arrangements if it is to be agreed that an infringement is to be allowed to proceed, or the threat of litigation compromised.

The parties' negotiating positions will sit on a spectrum between (at its lower end) a multiple of this often modest amount, and (at its outer limit) a very significant, potentially gain-based share of the profits to be achieved by a successfully implemented building scheme.

Where they sit on this spectrum will be very heavily influenced by the likely extent of the diminution in light, and the adverse impact on the dominant tenement – as well as factors such as the nature of the uses, actual or proposed in the accommodation which enjoys the benefit of light, and the potential for section 237 being used to drive through a scheme which may be considered to offer substantial public benefits.

The way in which the Courts approach the computation of damages where damages are considered an adequate remedy in substitution for an Injunction is briefly summarised below. This power is enshrined in section 50 of the Senior Courts Act 1981.

The pivotal decision – Injunction, or damages

The crux of settling a rights of light dispute, and accurately gauging the strength of a given party's negotiating position, is usually the all-important question of whether the level of harm indicates that an injunction will be forthcoming at trial, to prevent the infringement. Until recently, long-established practice was to apply the so-called *Shelfer tests*, *Shelfer* being a leading case decided in 1895 which established that there were four key tests, all of which had to be met in order to result in a damages-only award. The four tests are:

i. Is the injury to the Claimant's legal right small?; and
ii. Is it one which is capable of being measured in money?; and
iii. Is it one which can be adequately compensated for by a small monetary payment?; and
iv. Is it a case in which it would be oppressive to the Defendant to grant an Injunction?

These four factors also had a bearing on the method of calculating damages.

A prominent recent example of a widely publicised ruling from the Court of Appeal (*Regan v Paul*, in 2006) exemplified the fact that where a Claimant has indicated a refusal to accept money, as a matter of general approach he should succeed in obtaining an Injunction, even though as a matter of technical light-loss measurement the extent of the injury is small. Although in laymans' terms the *Shelfer tests* appeared to be generally applicable in that case, the outcome was that an Injunction was awarded.

The February 2014 Supreme Court ruling in *Coventry v Lawrence*, explained below, has again altered the position.

General damages: the Carr-Saunders multiplier

Once it has been established that a neighbour with protected rights is in a position to claim a reduction in the enjoyment of light, a developer (who, after all, is able to shrink its project so as to avoid any legal infringement), must face up to the possibility – perhaps inevitability – that a negotiated settlement with an adjoining owner who benefits from rights is unavoidable.

The *Carr-Saunders* multiplier has been used in practice as a way of "softening the blow" for non-injunctible infringements, by recognising that it is often appropriate for there to be a more generous level of compensation payable to an adjoining owner above the arithmetic-only *Waldram diagram* compensation formula-basis of calculating the value of a light reduction.

From this somewhat accommodating culture of nearly thirty years ago, the law has accelerated forward, although the *Carr-Saunders* touchstone is still very important.

The overall approach to the measure of damages

Following the February 2014 Supreme Court ruling in *Coventry v Lawrence*, and with it a greater assumed willingness of the Courts to award damages in lieu of an injunction, it is expected that market practice will increasingly move in the direction of the commercial result that damages:

> *should not always be limited to the value of the consequent reduction in the value of the Claimant's property. Whilst double counting must be avoided, the damages might well, at least where it was appropriate, also include the loss of the Claimant's ability to enforce [her] rights which may often be assessed by reference to the benefit to the Defendant of not suffering an Injunction.*

This appears to be a thinly disguised attempt to embrace the concept, which has been accepted in the market in this area, that someone harmed by an infringement has a negotiating position whose value should be converted into a damages claim where an injunction is not available. Commercial parties in a pure negotiation, who have foregone the opportunity to secure an Injunction, are negotiating in an environment in which this elusive benefit has a value which can be very difficult to pin down.

Damages equivalent to a negotiated price for permitting the encroachment

In overall terms these are compensatory damages, concerned with the loss suffered by the Claimant. In addition to general damages (compensatory damages that cannot be quantified with any precision), a party who has a strong negotiating position which empowers him to obstruct a valuable redevelopment has a stand point which it is wise to assume he will defend to the fullest. Surrendering that position can be translated into a "valuable right" which has a monetary cost to remove it in the market place.

Because the law in this area is hard to summarise in the current state of flux, it is helpful to look back to the decided cases in which the "negotiated price" principle has arisen – *Wrotham Park v Parkside Homes (1974), Carr-Saunders (1986), Jaggard v Sawyer (1995), Gafford v Graham (1999), Amec v Jury's Hotel (2000), Tamares (2007)* and *Forsyth-Grant v Allen* being prominent examples.

Accepting that the Supreme Court's 2014 ruling in *Coventry v Lawrence* has acknowledged that the law is in flux on this, it is likely that the direction taken in market practice will come to influence the development of the law – not a reassuring statement for clients dealing with specific negotiations in pressing (especially urgent) commercial circumstances.

Does it feel right?

The cases decided in this area, notably *Amec v Jury's Hotel* and *Tamares*, apply the disarmingly simple-sounding test "does it feel right?" to the end result of a valuation-based damages figure. In some ways this is reassuring, because it seems to import a broad common-sense look at the outcome of what can sometimes be a rather obscure result. On the other hand, it has about it the feeling of the broadest of brushes. The case law tends to bear this out, at present.

Tamares: the cut-back approach

Tamares was a case which in some ways illuminated the worst aspects of the operation of an injunctible rights of light negotiating position. The outcome (after a full trial) was that the infringement, of a very insignificant aperture in a commercial building in central London, was non-injunctible. So the litigation process culminated in the need to place a value on the infringement, to settle the amount of the damages.

The methodology used involved notionally slicing a chunk out of an axonometric cube of the proposed development built-form, and then arriving at a hypothetical value of the profit which would have been derived from building this portion of the proposed cube of development. This necessarily requires a series of calculations in respect of a theoretical scheme, making assumptions about a series of elements, including the costs, time, planning achievability (and delay), deferment, risks, and so on – of a theoretical scheme or schemes.

This illustrates the problems of moving to a non-injunction negotiated settlement framework – particularly in an area where the law is very much in a state of development.

Gain-based or equitable damages

Moving up the sliding scale, this begins to reach the thinner atmosphere where damages are awarded in order to deprive the Defendant of gains made as a result of his tort. The law begins to fragment quite quickly here – having moved on from compensatory damages (concerned with the loss suffered by the Claimant) into something beginning to feel like exemplary damages, typically awarded where the purpose of the infringement was designed to make a profit.

This is a very complex and fast-changing area, where clients will most certainly need sophisticated advice in several dimensions. Not least because the sums of money involved may be very substantial when parties to the dispute begin to look at (on a spectrum) what might be considered release-fee damages, restitutionary claims, disengorgement damages for unjust enrichment, and the like.

An account of profits

A recent Court of Appeal decision (*Forsyth-Grant v Allen (2008)*) indicates that the Courts are likely to be extremely reluctant to countenance the use of proceedings for an account of profits – that is, to obtain from the Defendant the entirety of the profit he has earned from his infringement. The Court clearly thought as a matter of principle that the Claimant had adopted altogether too aggressive an approach.

7. Express Documentation

Where there is express documentation concerning Rights of Light the provisions of such Agreements will override the Common Law principles. Often these documents require clear interpretation with particular regard as to whether they contain restrictive or permissive Covenants.

(A) Restrictive Deeds

These are documents which forbid parties from building beyond certain profiles or angles. An injunction can be sought where a party intends to breach the permitted profile. Therefore the express consent of the Adjoining Owner will be required to vary or renew the Agreement.

The burden of restrictive covenants generally run with the land, and normally each and every party in that land has an interest in such a covenant. Therefore in seeking a variation, a developer must either approach all parties having such an interest or seek an indemnity from the superior interests in respect of potential claims from lesser interests.

(B) Permissive Deeds

These are documents where, often, one party confirms that it has no objection to a certain building, profile or angle. Therefore if one always developed within that profile, there would always be consent available.

However, if a proposed development exceeds the approved profile an action could only be taken against the developer if that part of the proposed building which exceeds the permitted profile causes a nuisance, i.e. diminishes the light materially.

8. Use of the Light

It has been questioned in the past whether the use of the rooms behind the windows under consideration determines whether an actionable interference arises.

Precedent case law has established that the Court should consider not only the actual present use of the premises but also any purpose to which they may reasonably be put.

If the dominant owner (the interest that can demonstrate the right to light) chooses to use a well illuminated room for a use for which little light is required he does not lose his right to use at some future time the same room for some other purpose for which more light is required.

The case of ***Price v Hilditch*** also supports this view: in that particular case a room was used as a scullery but could have been used as an ordinary habitable room; it was therefore held that there was an actionable nuisance caused by the defendant's building operations.

9. Method of Assessment

The easement of light is directly related to the amount of sky visibility available on the working plane (e.g. the top of a table which is taken to be set at a horizontal level of 2 feet 9 inches, or approximately 850mm). Therefore the amount of sky is assessed for each of the affected rooms and this is determined by the use of what is known as the Waldram Diagram.

In 1932 it was acknowledged by an International Conference on Illumination that sufficient light to enable visual discrimination would equate to 1 lumen per square foot. This is the amount of light given out over a 1 square foot area by a candle 1 foot distant.

The amount of sky visible through a defined window opening will therefore determine the illumination at a particular point within a room. A sky factor of 0.2% at a point equates to 1 lumen per square foot as an overcast sky provides 500 lumens.

The Consultant therefore evaluates on plan a contour where 0.2% of the sky factor exists at working plane height within a room, firstly in relation to buildings which currently exist opposite the window in question and secondly in relation to new buildings which are intended to be built opposite this window.

It will be appreciated that where the new buildings are of a greater size and massing than those of the existing then a small area of sky will be observed from a given point in the room. This would mean that to see the same amount of sky as before which equates to 1 lumen one would need to come closer to the window.

If all points within a room which receive 1 lumen per square foot are joined up, a curve is obtained which defines the area of the room which is "well lit". This so called sky factor contour is derived for existing and proposed conditions, enabling the Consultant to calculate areas of loss due to the erection of the proposed building.

This figure can then be put into a formula for assessing the loss in terms of monetary value. The calculation for compensation is further explained in Section 5 above.

The method of valuation is generally accepted by the Courts who consider experts advice useful but the former will also take into account not only how much light has been taken away but also how much is left to a Dominant Owner's building after a development has taken place.

It has been argued that the availability of 1 lumen or 0.2% sky visibility over half the area of a room may be sufficient to meet one of the Court's requirements which is to provide a sufficient daytime light level "for the ordinary notions of mankind". This is known as the "50/50" rule.

10. Internal Room Layout

Where rights of light issues arise it is often not possible to determine the size and shape of the rooms behind those windows which provide the Adjoining Owner's right to light.

Therefore, one should make what are considered to be reasonable assumptions as to the position and size of rooms for the purpose of producing the daylight contours.

It may be that these assumptions are incorrect and this may mean, on occasions, that the advice should change accordingly.

A good example of this situation may be where it is assumed that the adjoining property has one room served by two windows. The reality may in fact be that a partition divides the room into two, each half served by one window.

The difference in daylight levels to these two rooms, if a development occurred opposite them could be dramatic compared to the single room.

11. Transferred Rights of Light

It should also be noted that there is sufficient caselaw to indicate that the owner of an adjoining building may be successful in an action against the developer even if the window openings within that building are completely new. This is on the basis that the new window openings have a degree of coincidence with those which existed previously in the demolished building.

This concept is known as the "transference" of rights of light. Caselaw has supported actions brought against developers where this situation has arisen.

12. Extinguishment of Rights of Light

It is possible to extinguish a right to light by the following means:

- It may be released by express agreement between dominant and servient tenement owners.
- By uniting the ownership of the dominant and servient land.
- By abandonment – although considerable care is needed with this, because the case law on abandonment of easements requires a significant burden of proof to demonstrate a fixed intention completely to abandon a right. An area which requires caution.
- Where interruption occurs before the necessary period of more than nineteen years and one day has elapsed, or by employment the light obstruction notice procedure explained in the next paragraph.
- By the demolition or alteration of the dominant building – but no means in every situation where this occurs. As with abandonment, a high threshold of proof is required, and the intention to re-build is likely to displace extinguishment, making use of pre-existing rights.
- Rights extinguished by statutory powers – typically by compulsory purchase or the operation of section 237 of the Town and Country Planning Act 1990 (the latter being briefly outlined in para 17 below).

13. Light Obstruction Notices

Section 2 of the Rights of Light Act 1959 creates the use of Light Obstruction Notices. The Notice can be regarded as a 'notional' screen erected on the concerned party's land (servient land); replacing the previous need to build a physical obstruction. The Light Obstruction Notice is registered on the Local Land Charges Register.

Interest holders in the building accruing the right to light (dominant land) and others affected by the Notice have a one-year period to try and protect their rights before their right is lost. There are two options available for the dominant owner in terms of remedies; declaratory relief or the cancellation/variation of the Notice.

To register a Notice, there are a number of formalities involved which should be followed under the Act.

Before the application is made, adequate publicity needs to be given to those who are likely to be affected by the Notice. This is evidenced by a certificate from the Lands Tribunal. The concerned party has two ways in which the Notice can be lodged:

- The standard procedure (definitive certificate) provides that there has been adequate publicity at the time of applying for the certificate. The concerned party is required to send the proposed application with a covering letter to all interested parties (those who do or may benefit from rights as adjoining owners), identified through a Land Registry Search. A copy of the application should also be sent to the address of the dominant land labelled "occupier" to catch any unregistered interests.
- The expedited procedure (temporary certificate) will only be allowed in exceptional circumstances; the application will need to be supported by a thorough explanation. This procedure is normally utilised where a right of light is about to be accrued as it has been interrupted and there is insufficient time to obtain the definitive certificate to prevent it. The temporary certificate is only effective for a limited time; a definitive certificate needs to be obtained afterwards. The decision to issue a temporary certificate cannot be challenged by judicial review.

As noted above, the Light Obstruction Notice remains in effect for twelve months unless challenged by a prospective dominant owner. If the expedited process is used, the twelve month period begins on the date of the temporary certificate and not on the subsequent definitive certificate. Once a Notice is registered and is unchallenged, section 3 of the Act provides the restriction of the right to light will be in the same dimensions as specified in the application.

14. Section 62, Law of Property Act 1925

Described as "a trap for the unwary" in the Law Commission's review of the law of easements, section 62 operates as a word-saving mechanism designed to shorten and simplify conveyancing documents by importing general words into transfers of land. Unless section 62 is negatived by express wording, a transfer will be deemed to operate to transfer a host of rights and benefits. By this means it is possible for a disposal of land, including the grant of a new lease, quite possibly inadvertently, to convert precarious or fragile benefits enjoyed with land into full legal rights.

The wording of the section makes clear that the importation only occurs if and insofar as a contrary intention is not expressed in the transfer deed. The result is that if land is sold or a lease is granted with no express reservation made in relation to easements of light, it will be inferred that the purchaser or tenant will have acquired proven rights as part of its new legal estate. The point is therefore very important to bear in mind in the general preparation of transfer and lease documents. This is a major red-flag point.

The Law Commission in its earlier 2011 report recommended a change in the operation of the law in this respect, but its recommendations remain to be accepted and passed into law.

15. Ownership

Where two properties are demised to the same owner, this is referred to in legal (easement) language as unity of seisin, or, more accurately, unity of ownership. If the dominant and servient tenements come into the ownership and possession of the same person, any easement is extinguished. Unity of possession without unity of ownership is not enough; and unity of ownership means acquisition of both tenements for a fee simple absolute (freehold). Easements of light cannot be acquired when unity occurs, because an essential requirement for the creation of an easement is missing. There are ways of avoiding unity of seisin occurring, with careful structuring of asset ownerships. This serves to remind us that the law and practice of rights to light is a cross-roads where the legal areas of tort law (nuisance), easements (the enjoyment of a legal right), and remedies (injunctions, and damages in the form of monetary compensation), meet the direct commercial and real estate markets, often in head-on confrontation.

However, it is still possible for a lessee to acquire a prescriptive right over his landlord unless his lease prevents this occurrence (see above).

16. The Important Case Law

The evolution of a technical area of law by means of litigation can be somewhat unsatisfactory, given the accidental nature of the way in which points arise and are contested through the Courts (or, conversely, settled before a decision is reached); and because the emergence of points of general principle can be restricted by the very particular facts and circumstances thrown up by individual cases. The field of rights to light is a good example of these limitations. Nevertheless, a clear understanding of the law which operates in this area does involve an awareness and understanding of the important cases.

The leading cases which are encountered in the area of rights to light are summarised in more detail in the accompanying Annex. By way of overview, the following points are worth highlighting:

- In less straightforward cases, where a window/aperture is not obvious, be careful to ensure that you have a "building" if you rely on 1832 Act prescriptive rights.
- Apply up-to-date common sense judgement to the level of loss of light, bearing in mind that the *Colls* "ordinary notions of mankind" test, whilst not assuming artificial light, will recognise the need to live in a modern dense urban environment.
- Avoid the assumption that the *Shelfer tests* still presume that an Injunction will be available unless you risk falling down the cascade of small injury, money-calculation, small amount, oppressive-to-the-defendant test.

  Coventry v Lawrence has changed the game, probably moving the fulcrum on the critical balance more in favour of damages rather than an Injunction.
- Where the window/aperture is of particularly high-value (special light-quality capable of being demonstrated), make sure that your evidence is unimpeachable.
- But have a thoroughly realistic appreciation that the law takes a pretty robust common-sense approach to the use of buildings where accommodation can function perfectly well with modest or lower (declining) levels of light.
- Beware however the possibility that a neighbour can quite properly argue for a future change of use needing more light, or the likelihood of carrying out alterations which will need better quality light. Avoid too much reliance on the status quo.
- The *grumble point* (a phrase used in caselaw) is a helpful reminder that site-inspection and realistic common-sense is often as important as over-reliance on too much technical and IT-based science.
- The fifty/fifty rule is simply a convenient rule of thumb – no more.
- Certain buildings which admit light, notably those which have, or might reasonably expect to have sensitive receptor occupiers, can put the dominant owner in a powerful position, which servient owners should approach with caution.
- In calculating damages:
  - When the Mandatory Injunction is destined to fail, and Lord Cairns' Act (in its modern form) is engaged, proceed with caution, and expect that some element of the developer's anticipated profit is up for negotiation.
  - Beware of falling into the *Carr-Saunders* difficulty of failing to assist the Judge with the requisite information, so he is left to a largely speculative assessment.
  - Pay attention to the granular sub-division of each potential element of a theoretical negotiation along the lines of *Amec v Jury's*, as echoed in *Tamares*.

17. Section 237, Town and Country Planning Act 1990

The continued enjoyment of rights which benefit neighbouring land (including rights of light) can be overridden by use of a procedure found in section 237 of the 1990 Planning Act, in circumstances where a building *which has been acquired or appropriated by a local authority for planning purposes* interferes with the neighbour's pre-existing rights.

It is proving to be a means of resolving rights of light disputes, both (as the Law Commission put it) "to encourage negotiated settlement, and to force a resolution where no such settlement could be reached", and to overcome situations where important development and the commercial back-up required for this (i.e. funding) is being prevented by a neighbour's refusal to consider settling.

Invoking this power requires the active co-operation of a local authority, satisfied that there is a legitimate planning purpose underlying the scheme. Since the circumstances will usually involve high-value land interests, it is almost invariably attended by complex restructuring of property assets which is likely to involve significant transaction and tax implications, in order to bring about the acquisition or appropriation *by the local authority*.

It is the practice of local authorities to consider the use of this procedure as a last resort, applying the policy test and evidential threshold derived from compulsory purchase law – the need to demonstrate that there is *a compelling case in the public interest*. Accordingly, a developer which seeks to engage the benefits of section 237 will need to be able to show that every reasonable effort has been made to try to agree terms for settlement with affected dominant owners, usually offering terms to permit interference which can be shown to be calculated on a generous basis. Practice may vary according to the public benefit and importance of the development proposal in this respect.

The benefits of section 237 can also be invoked to accommodate the subsequent redevelopment of buildings on a site which has been the subject of acquisition or appropriation by the correct procedures.

Compensation is payable to the dominant owner, on the basis of the diminution in the value of the land of the owner whose rights have been overridden. The assessment of compensation will not take into account any betterment enjoyed by the claimant; and "ransom" values – equitable damages assessed as if a ransom was being released – may not be recovered under the statutory compensation code.

18. Law Commission Consultation on Rights to Light

The Law Commission is currently undertaking a review of the Law as it relates to Rights to Light. Their recent more general work on Easements, Covenants and Profits à Prendre (concluding with a final report and draft Bill presented to Parliament in June 2011) reviewed the general law but did not examine specific easements. It did, however, highlight the need for further work on rights to light. As noted, such rights can have extremely important practical consequences for development. They will usually (and much more commonly than most easements) arise by long use rather than any express agreement between landowners. There will have been no activity on the burdened land to highlight the use, and the right will rarely have been registered. As a result, in many cases those burdened by and benefitting from rights to light will be unaware of their existence. The planning system does not take account of private rights of this sort, and so rights to light can impact on development even where planning permission has been granted.

The Law Commission's subsequent rights to light-specific project investigates whether the law by which rights to light are acquired and enforced provides an appropriate balance between the important interests of landowners and the need to facilitate the appropriate development of land. It considers the interrelationship of rights to light with the planning system, and examines whether the remedies available to the Courts are reasonable, sufficient and proportionate.

The Law Commission published a paper on 18th February 2013. It considers the law relating to the entire life-cycle of a right to light, from creation to extinguishment. In the paper, they made the following provisional proposals:

- It is proposed that for the future it should no longer be possible to acquire rights to light by long use (i.e. prescription), although buildings which currently enjoy Rights will continue to do so.
- It is proposed that a new statutory test be introduced to clarify the current law on when Courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light.
- It is proposed that a new statutory notice procedure be introduced, which requires those with the benefit of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light), with the aim of introducing greater certainty into rights to light disputes.
- It is proposed that the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit, with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants.
- Consultees' views were also invited on a number of other issues.

Following the completion of the consultation period in May 2013 the Law Commission will review, in discussion with Government, how to take the project forward in the light of consultees responses. If the project proceeds to a final report, its publication, including a Draft Bill, is currently proposed for late 2014.

19. Payments and Receipts for the Right to Light

In the light of the High Court decision in the Heaney case, many property developers are giving considerable thought to resolving issues arising from the right to light of neighbouring buildings at an early stage. Typically, 'resolving' involves paying sums of money to the owners of those buildings in order to ensure that they will refrain from obstructing the development. As a result, there are both payments and receipts arising from the existence of rights to light that will have tax and accounting consequences for both parties.

Payer

Almost always in such cases, the payer will be a property developer who is looking to construct a building. The cost is, therefore, likely to be a cost of construction and hence should be part of that cost for both direct tax and accounting purposes. However, the indirect tax position will be more complex.

As rights to light are, in law, an 'easement' they are chargeable to stamp duty land tax (SDLT) and there may, therefore, be a requirement to file a land transaction return and pay SDLT. If the transaction is chargeable to SDLT, this will be calculated on the VAT inclusive price of the transaction. The VAT position here is complex and will depend on a variety of factors including whether the payment represents either damages (outside the scope of VAT) or the acquisition of a right (a supply for VAT purposes). Which side of the line the payment falls may on occasions be unclear and will need to be determined. It will also be relevant whether the recipient has opted to tax their interest in the property that gives rise to the right to light. The key issue for the payer will be whether VAT is payable and if so whether they will be able to recover all of that VAT.

Recipient

In the case of recipients who are required to reflect the payment in their financial statements, a variety of possible accounting treatments can apply. In practice, such amounts are either recognised in the profit and loss account in full in the period of receipt or are treated as part of an accounting profit or loss on disposal of the underlying property.

From a direct tax perspective, the recipient in most cases receives a capital sum derived from their right and is, therefore, treated as making a disposal. As the receipt is a capital sum, even in cases where financial statements are prepared, the tax treatment will not follow the accounting treatment. Whether or not the receipt gives rise to a charge to either capital gains tax or corporation tax on a capital gain, therefore, is often not straightforward.

Where the property having the right to light is the owner's main residence, it is likely that the disposal will be exempt from capital gains tax. However, where the property is held for investment or business occupation, the receipt is likely to represent a part disposal of the property and the amount chargeable to tax would be reduced by a proportion of the original cost base of the property calculated by reference to the market value of the property after the disposal. This may require a formal valuation exercise to be undertaken. In some cases, it may also be possible to defer tax on any gain that arises until a future disposal of the property itself.

Although the cost of any indirect tax on the transaction would be borne by the payer, it will also be important for the recipient to comply with their obligations. This is particularly relevant to VAT where, if the transaction is a taxable supply, it will be the recipient who is treated as making that supply and will, therefore, need to issue a VAT invoice (where appropriate) for the sale, and correctly account for any VAT on the next VAT return.

CONCLUDING COMMENTS

Disputes in the rights of light area are often of considerable commercial significance because their resolution becomes necessary to de-risk major development projects. Sophisticated advice is recommended in all but the most straightforward cases. It is easy for neighbours to assert rights and claim infringement at an injunctible or heavily compensatable level. It is often not straightforward to pin down the level of actual light reduction. In cases where there are several layers of legal interests in addition to the freehold, the situation is complicated by the need to split claims between several parties.

This can mean that the resolution of these matters is very often far from straightforward or quickly resolved.

GIA will be pleased to assist with further clarification of any points which our clients may wish to explore further.

GIA

October 2014

GLOSSARY OF TERMS

Abandonment

- It is advisable to proceed with caution when considering whether an established right to light has been abandoned, even where the building containing the apertures which benefit from the right has been demolished. This is because the general law of easements (of which a right to light is a subset) imposes a very high hurdle before abandonment will be taken to have occurred.

Cross-undertaking in damage

- On an application for an interim injunction the Court will not anticipate the final outcome of the proceedings: it may well turn out that when determined at trial, the defendant is exonerated from having committed a breach. For this reason the Claimant may be required, as a condition of the grant of an interim injunction, to give an undertaking in damages in respect of any loss suffered by the defendant while the injunction is in force, should it prove to have been wrongly issued.

  Given the potentially open-ended and very significant exposure which this often entails, the risk of being required to give a cross-undertaking is a very significant factor in any litigation strategy.

- An undertaking in damages will not normally be required where the Crown or a local authority seeks an injunction in the fulfilment of its statutory powers and duties.

Dominant Tenement (or Dominant Owner)

- A term taken from the law of easements, the dominant tenement, which must be "accommodated by" (i.e. benefit from) the right, is the property which has the legal right to enjoy and expect to continue to benefit from a minimum standard of natural light.

EFZ

- In assessing light loss and valuing for its effect, surveyors divide up rooms into separate zones, weighted according to their proximity to or distance from given apertures. Good light levels should be present for a minimum of 25% of a room; and the loss is treated as more serious the closer to the window it is demonstrated to be impeded.

  The EFZ, or Equivalent First Zone, describes the methodology of converting into a table used for analysis of the weighted measurements according to the separately defined zones within each affected room. The weighting must be adjusted according to the particular facts in any given assessment.

Light Obstruction Notice

- In order to prevent uninterrupted enjoyment of light for the requisite period from gaining a prescriptive easement under the 1832 Act, the Servient Tenement owner must interrupt the use for a period of one year or more, following which the twenty year period for prescription is re-started.
- Until the Rights of Light Act 1959 was passed, it was necessary for a servient owner seeking to interrupt the benefit of light by erecting a physical structure in front of a window. The 1959 Act introduces the concept of a notional interruption, by means of registering an appropriate notice and serving it on relevant neighbour property interests via the Upper Tribunal (Lands Chamber), stating the relevant dimensions of the notional obstruction.
- If the notice is not challenged on specified grounds, interruption will be treated as having taken place. It is assumes that the obstruction will serve equally to impede the acquisition of an easement of light under the doctrine of Lost Modern Grant.

Lost Modern Grant doctrine

- Another concept which draws on the general law of easements, a right may be acquired by being derived on the legal fiction that where a use has, without protest or covert action, continued for twenty years, the law will assume that there must have been a grant of a right by some form of deed which has somehow been lost.
- This is often considered to add a layer of confusion, particularly in contested litigation, and a strong case has been made for reform by the abolition of the doctrine, but for the present it continues to operate.

Notice of Proposed Obstruction procedure

- Another proposal made by the Law Commission in its recent consultation (and thus one which is still on the drawing board and subject to further consideration) is a suggested mechanism known as the Notice of Proposed Obstruction or NPO, designed to flush out dominant tenement owners who claim to have an entitlement to an injunction, but who as the law and practice currently operates decide to refuse to engage with a would-be developer, and stonewall any attempts to come to negotiated terms to settle any rights to light dispute.

Prescription

- The law will treat an easement as having come into being through the lapse of time where a landowner make use of a neighbour's property for a sufficient period, openly and peaceably, without protest or interruption. Because the enjoyment of light is passive, the owner of the dominant land need do no more than be able to demonstrate that his windows have been receiving light for twenty years.
- References to the period of twenty years in connection with prescription requires qualification to the extent that owing to the peculiarities of the Prescription Act 1832, prescriptive use for nineteen years and one day will be taken to establish the easement, because the servient owner, who must effectively block the light for a full year, will be unable to create a year's interruption before the twentieth anniversary milestone is passed.
- The Law Commission's recent consultation provisionally proposed that prescription should be abolished altogether for future rights to light – this change would have only prospective effect – existing rights to light acquired by prescription would continue to be valid. This again is a proposal which has yet to be progressed further.

Prescription Act 1832

- This was the landmark legislation which introduced prescription as a method of acquiring a right of light. The form of the legislation, very different to modern day Parliamentary language and law making, has been much-criticised, but is to a large degree hallowed by many decades of decided cases. It is not available such as to enable rights to be acquired against Crown Land.
- The Law Commission's project to review the workings of the law on rights to light (see para 18) recommends a number of changes of significance to the workings of the Act.

Rights of Light Act 1959

- The Act which introduced the concept commonly referred to as a Light Obstruction Notice, explained above.
- The Law Commission's current review would involve a number of proposed reforms to the workings of the 1959 Act. At present it is unclear whether these changes will come to pass.

Section 84, Law of Property Act 1925

- Section 84 creates a mechanism by means of which restrictions applying to user of or building on land can be modified by application to the Lands Chamber of the Upper Tribunal (formerly the Lands Tribunal) provided (paraphrasing):
  - the restriction can be considered obsolete because of a change in the character of the property, neighbourhood or otherwise;
  - that reasonable use of land is being impeded by the continued existence of a restriction which confers no practicable benefit, or is contrary to the public interest, and that money will adequately compensate for its removal; and
  - that the beneficiaries of the restriction can be taken to have agreed to its discharge or modification; or that the requisite change will not injure those beneficiaries.
- If the Law Commission's recommendations to change the law are in due course enacted, the current powers and procedures would be capable of discharging or modifying rights to light, including existing rights, by virtue of section 84. Until then, however, the procedure is not available.

Section 237, TCPA 1990

- This is the mechanism, explained in para 17 above, whereby a local authority may acquire or appropriate land for planning purposes, convert an affected neighbour's entitlement to rights into a compensatable-only monetary payment, and proceed to interfere with rights. The procedure has been used to enable tall buildings to proceed where infringement of rights is known to occur, and is considered to be appropriate when an adjoining owner who benefits from rights is refusing to co-operate either by simply declining to engage in any negotiation, or is holding out for a level of compensation considered to be beyond the bounds of reasonableness even at a generous level of proposed settlement.
- Because the substance of the procedure is akin to the compulsory removal of legal rights, invoking the power can give rise to controversy, and requires the local authority to be able to demonstrate that there is a compelling case in the public interest permitting it to do so.

Servient Tenement (or Servient Owner)

- The converse of the dominant tenement, a servient tenement is land burdened by the existence of a right to light enjoyed by the dominant tenement.

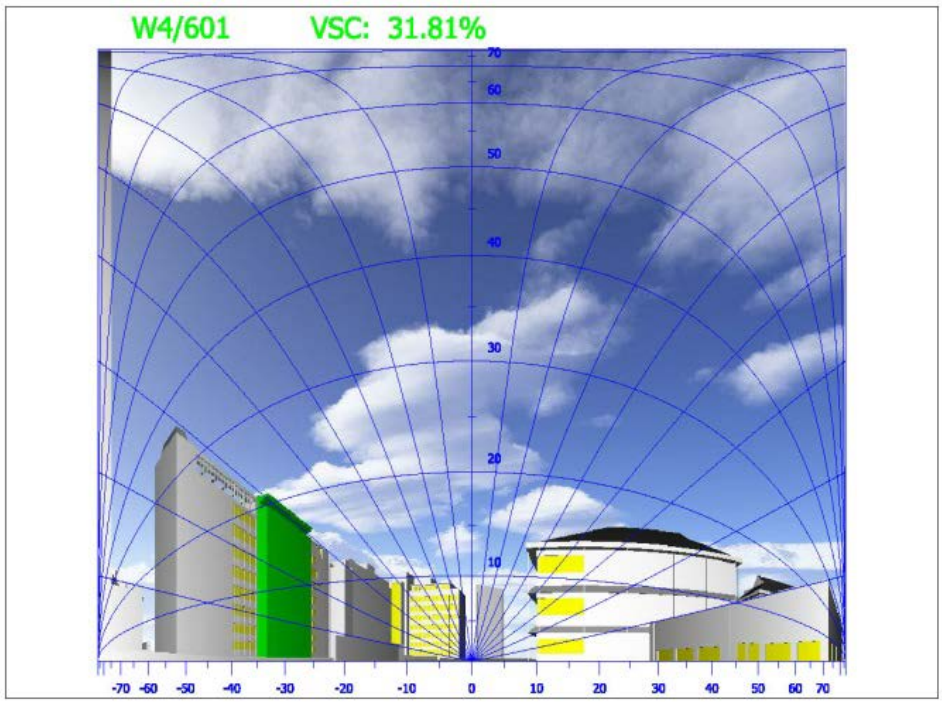
Transferred Rights

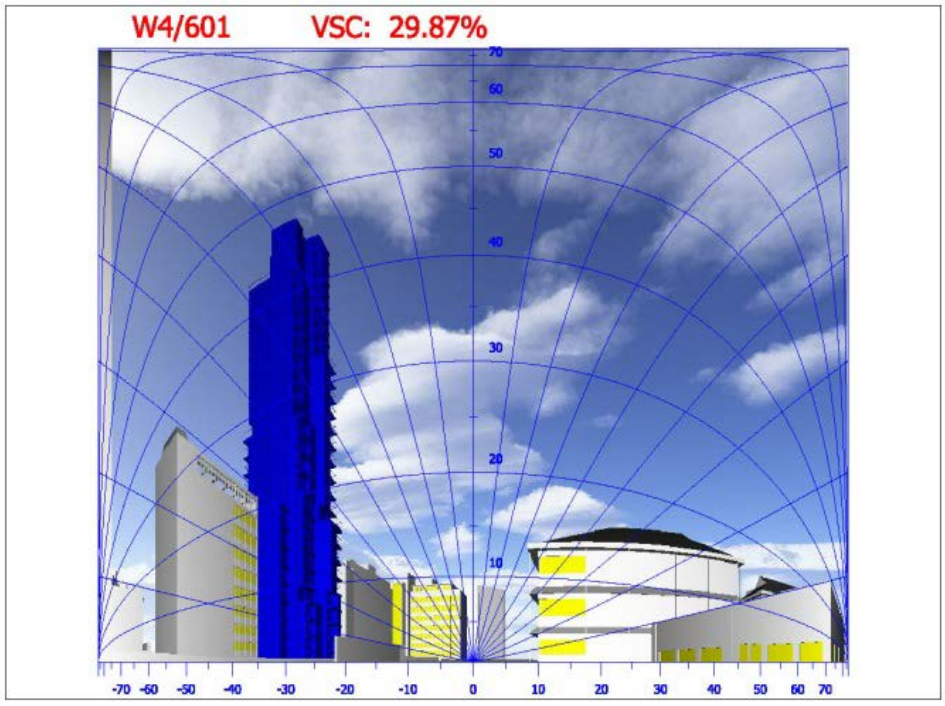
- A notably tricky area in establishing whether rights have been acquired by any given aperture is the extent to which corresponding apertures in a previous building elevation which may overlap with the existing condition in a replacement elevation not in a position for the requisite period itself to have acquired prescriptive rights, can be relied upon so as to connect the two to give rise to transferred rights.

  This is partly a consequence of the very high hurdle which must be established before abandonment of an established right to light will be taken to have occurred.
- Proving transferred rights requires the production of evidence of the exact dimensions and profile of the relevant parts of the prior building elevation. Issues may arise where the walls of the earlier and later building stand in different positions relative to the servient tenement.

Waldram Diagram

- A method of measuring light devised in the 1920s, and, with up-to-date technology applied, still in use, by which data is translated into a two dimensional representation of the view from the room in question, for which purpose it is essential to have available mathematically exact information on the before-and-after situations.





Appendix 02

Drawings

SOURCES OF INFORMATION

GIA
SITE PHOTOS

F!ND MAP
IR03-030216-FIND MAPS
MasterMap (OS Plan) 1 yr licence

PLANNING
overlooking_adjacent buildings 127 and 131

NOTES:
N.B. DO NOT SCALE OFF THIS DRAWING

ALL HEIGHTS AND DIMENSIONS GIVEN IN mm AOD

EXISTING SCENARIO SHOWN IN GREEN

PROJECT:
129 MALDEN ROAD
LONDON

DRAWING NAME:
PLAN VIEW

EXISTING SCENARIO

DRAWN	SCALE	CHECKED	DATE
MT	1:150 @ A3	BD	09.02.16

PROJECT No.	DRAWING No.	RELEASE No.	REVISION No.
10418-	01	01	-

gia
The Whitehouse
Belvedere Road
London SE1 8GA
t 020 7202 1400
f 020 7202 1401
mail@gia.uk.com
www.gia.uk.com
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PROJECT:
129 MALDEN ROAD
LONDON

DRAWING NAME:
3D VIEW

EXISTING SCENARIO

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The Whitehouse
Belvedere Road
London SE1 8GA
t 020 7202 1400
f 020 7202 1401
mail@gia.uk.com
www.gia.uk.com
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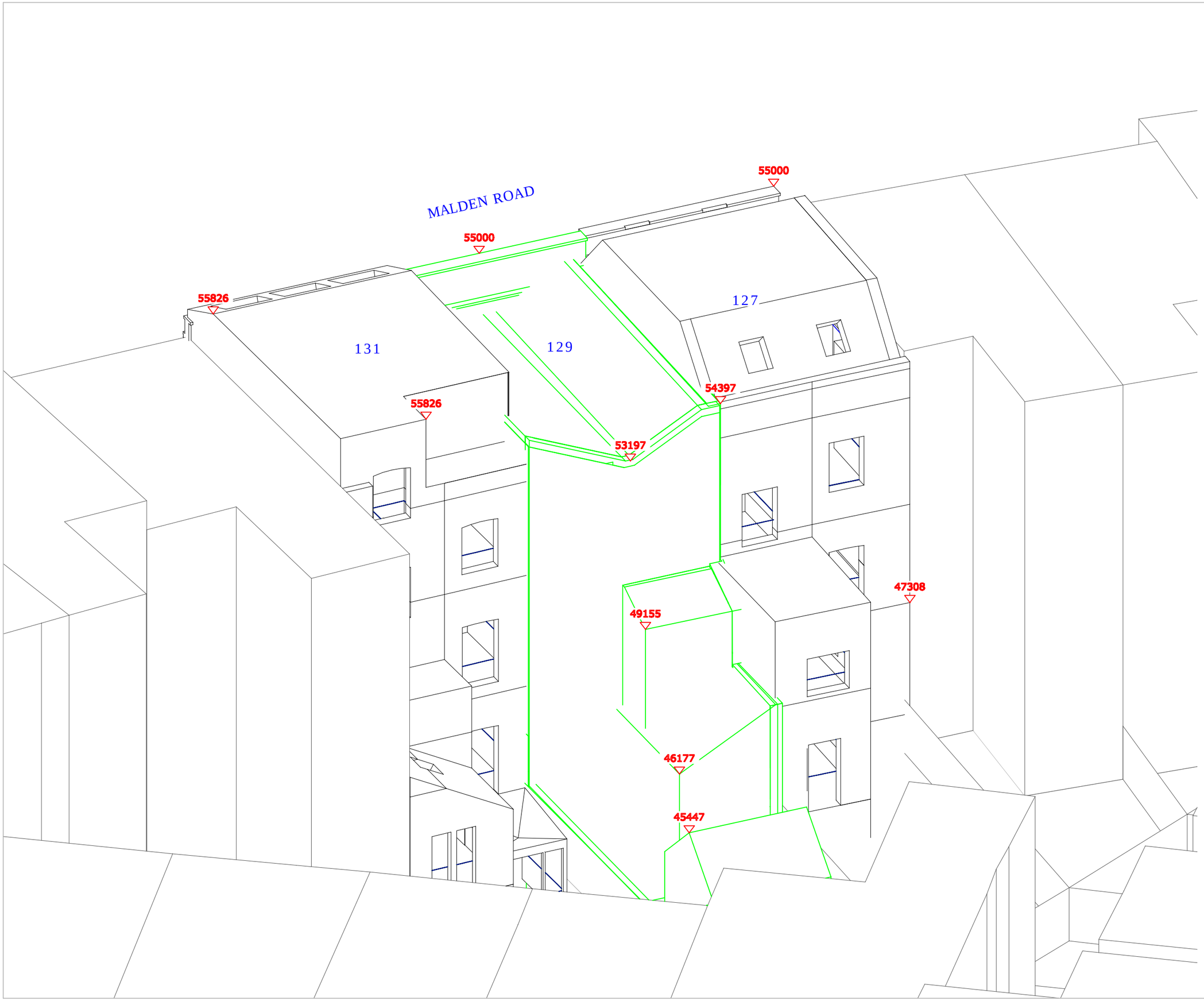

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The Whitehouse
Belvedere Road
London SE1 8GA
t 020 7202 1400
f 020 7202 1401
mail@gia.uk.com
www.gia.uk.com
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Proposed

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Scott Whitby
IR02-220116-Scott Whitby(Model)
160121 129 Malden Road 3D_Slanted Roof_Lights

NOTES:
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PROPOSED SCHEME SHOWN IN BLUE

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DRAWING NAME:
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PROPOSED SCHEME IR02
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London SE1 8GA
t 020 7202 1400
f 020 7202 1401
mail@gia.uk.com
www.gia.uk.com
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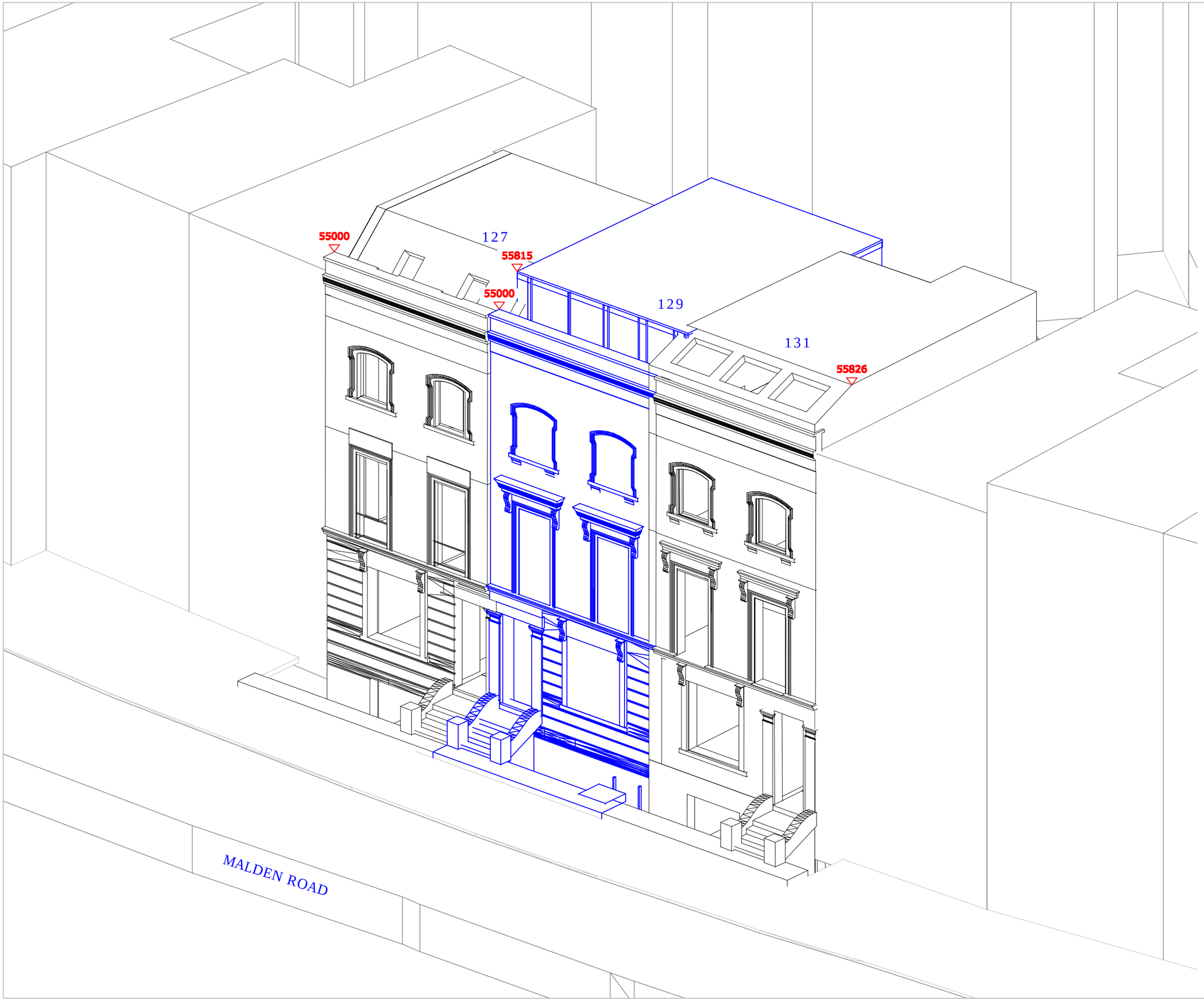

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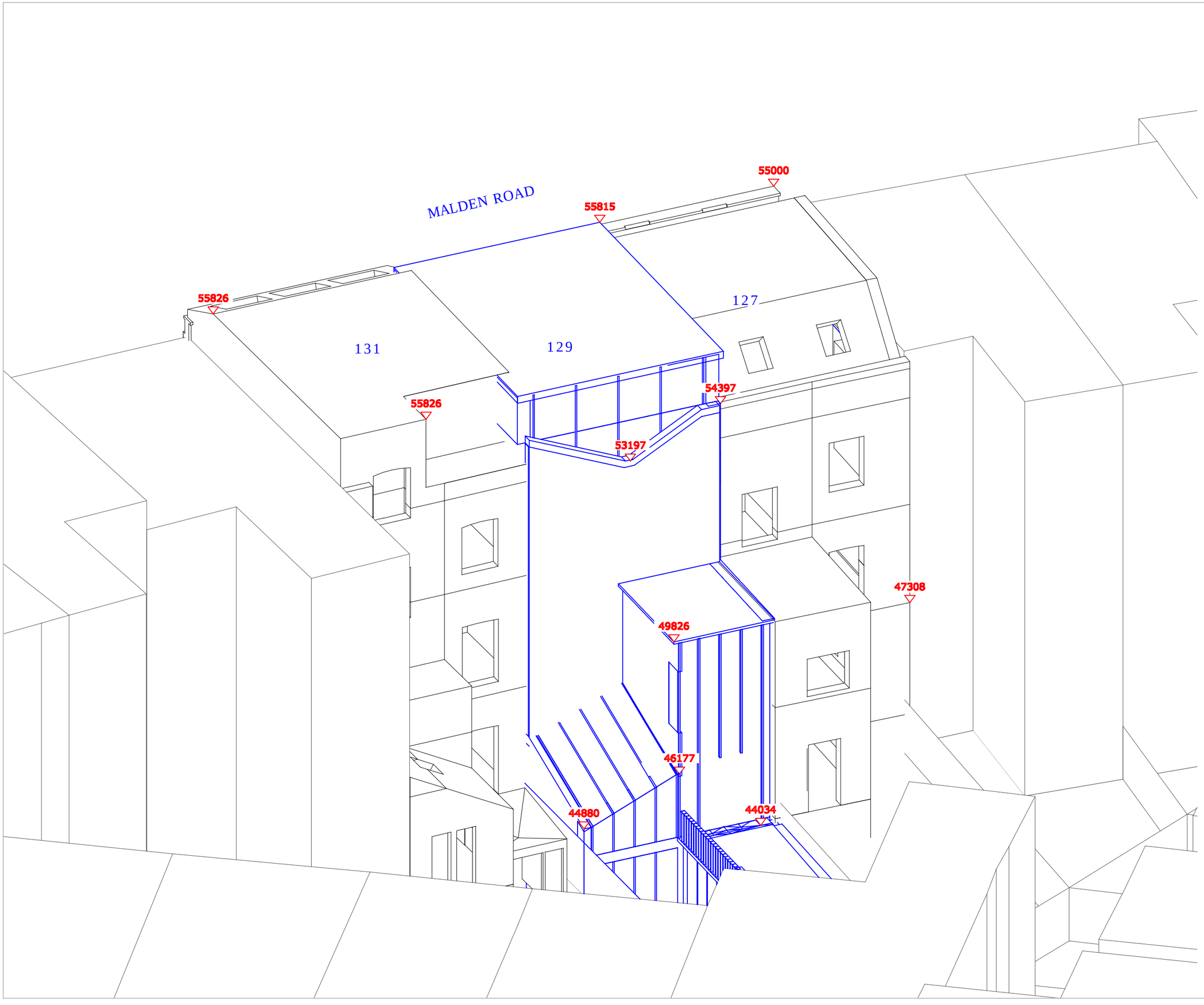

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gia
The Whitehouse
Belvedere Road
London SE1 8GA
t 020 7202 1400
f 020 7202 1401
mail@gia.uk.com
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Appendix 03

Results

EFZ ANALYSIS

Room/ Floor	Room Use	Flat Number	Whole Room	Existing >0.2%	Proposed >0.2%	Loss	Front	1st	2nd	MKWT	EFZ
127 Malden Road											
R1/Basement	Unknown		127.57	121.42	121.42	0.00	0.00	0.00	0.00	0.00	0.00
R1/Ground	Unknown		128.43	124.79	124.79	0.00	0.00	0.00	0.00	0.00	0.00
R2/Ground	Unknown		106.43	97.46	97.46	0.00	0.00	0.00	0.00	0.00	0.00
R3/Ground	Unknown		91.27	57.35	57.55	-0.20	0.00	0.00	0.00	-0.20	0.00
R4/Ground	Unknown		108.65	29.45	29.45	0.00	0.00	0.00	0.00	0.00	0.00
R1/First	Unknown		127.81	119.55	119.55	0.00	0.00	0.00	0.00	0.00	0.00
R2/First	Unknown		114.50	98.51	98.51	0.00	0.00	0.00	0.00	0.00	0.00
R3/First	Unknown		91.24	60.25	60.25	0.00	0.00	0.00	0.00	0.00	0.00
R4/First	Unknown		108.65	62.60	62.60	0.00	0.00	0.00	0.00	0.00	0.00
R1/Second	Unknown		127.81	120.65	120.65	0.00	0.00	0.00	0.00	0.00	0.00
R2/Second	Unknown		114.37	94.00	94.00	0.00	0.00	0.00	0.00	0.00	0.00
R3/Second	Unknown		39.83	38.69	38.69	0.00	0.00	0.00	0.00	0.00	0.00
R4/Second	Unknown		109.62	101.97	101.97	0.00	0.00	0.00	0.00	0.00	0.00
R1/Third	Unknown		382.08	353.92	353.48	0.43	0.00	0.00	0.00	0.43	0.11
TOTALS			1778.26	1480.61	1480.37	0.23	0.00	0.00	0.00	0.23	0.11
131 Malden Road											
R1/Basement	Bedroom	Basement Flat	125.59	123.26	123.26	0.00	0.00	0.00	0.00	0.00	0.00
R2/Basement	Kitchen	Basement Flat	58.03	52.96	52.96	0.00	0.00	0.00	0.00	0.00	0.00
R1/Ground	Bedroom	Flat1	125.59	122.81	122.81	0.00	0.00	0.00	0.00	0.00	0.00
R2/Ground	Hallway	Flat1	60.25	60.12	60.12	0.00	0.00	0.00	0.00	0.00	0.00
R3/Ground	Kitchen	Flat1	102.77	94.26	94.26	0.00	0.00	0.00	0.00	0.00	0.00
R4/Ground	Living Room	Flat1	126.07	89.51	84.76	4.76	0.00	0.00	0.00	4.76	1.19
R1/First	Bedsit	Flat 3	177.57	174.13	174.13	0.00	0.00	0.00	0.00	0.00	0.00
R2/First	Bathroom	Flat 3	126.07	101.26	100.83	0.42	0.00	0.00	0.00	0.42	0.11
R3/First	Storage	Flat 3	29.51	13.13	12.38	0.74	0.00	0.74	0.00	0.00	0.74
R1/Second	Kitchen	Flat 4	89.41	87.18	87.18	0.00	0.00	0.00	0.00	0.00	0.00
R2/Second	Bedroom	Flat 4	73.87	73.02	73.02	0.00	0.00	0.00	0.00	0.00	0.00
R3/Second	Stairwell		8.12	7.45	7.45	0.00	0.00	0.00	0.00	0.00	0.00
R4/Second	Bathroom	Flat 4	89.53	87.00	87.00	0.00	0.00	0.00	0.00	0.00	0.00
R1/Third	Living Room	Flat 5	297.08	296.27	296.27	0.00	0.00	0.00	0.00	0.00	0.00
R2/Third	Stairwell		8.12	7.93	7.93	0.00	0.00	0.00	0.00	0.00	0.00
TOTALS			1497.58	1390.28	1384.36	5.92	0.00	0.74	0.00	5.18	2.04

DAYLIGHT ANALYSIS

Vertical Sky Component						
Room	**Window**	**Room Use**	Existing	Proposed	Loss	**%**
127 Malden Road						
R1/Basement	**W1/Basement**	Unknown	20.5	20.5	0	0.0
R1/Ground	**W1/Ground**	Unknown	39.2	39.2	0	0.0
R2/Ground	**W2/Ground**	Unknown	39.1	39.1	0	0.0
R3/Ground	**W3/Ground**	Unknown	22.2	22.6	-0.4	-1.8
R3/Ground	**W5/Ground**	Unknown	7.7	7.7	0	0.0
R4/Ground	**W4/Ground**	Unknown	11.7	11.7	0	0.0
R1/First	**W1/First**	Unknown	39.3	39.3	0	0.0
R2/First	**W2/First**	Unknown	39.3	39.3	0	0.0
R3/First	**W3/First**	Unknown	27.7	27.7	0	0.0
R3/First	**W4/First**	Unknown	10.9	10.9	0	0.0
R4/First	**W5/First**	Unknown	18.8	18.8	0	0.0
R1/Second	**W1/Second**	Unknown	39.4	39.4	0	0.0
R2/Second	**W2/Second**	Unknown	39.4	39.4	0	0.0
R3/Second	**W3/Second**	Unknown	32.6	32.6	0	0.0
R4/Second	**W4/Second**	Unknown	32.6	32.6	0	0.0
R1/Third	**W3/Third**	Unknown	38.8	36.7	2.1	5.4
R1/Third	**W4/Third**	Unknown	38.8	38.6	0.2	0.5
R1/Third	**W1/Third**	Unknown	29.7	29.7	0	0.0
R1/Third	**W2/Third**	Unknown	29.6	29.6	0	0.0
131 Malden Road						
R1/Basement	**W1/Basement**	Bedroom	18.8	18.8	0	0.0
R2/Basement	**W2/Basement**	Kitchen	12.2	11.9	0.3	2.5
R2/Basement	**W3/Basement**	Kitchen	14.1	13.8	0.3	2.1
R2/Basement	**W4/Basement**	Kitchen	11.6	11.4	0.2	1.7
R1/Ground	**W1/Ground**	Bedroom	39.2	39.2	0	0.0
R2/Ground	**W2/Ground**	Hallway	39.2	39.2	0	0.0
R3/Ground	**W4/Ground**	Kitchen	23.7	23.7	0	0.0
R3/Ground	**W5/Ground**	Kitchen	23.8	23.8	0	0.0
R3/Ground	**W6/Ground**	Kitchen	14.4	12.3	2.1	14.6
R3/Ground	**W7/Ground**	Kitchen	18.9	18.4	0.5	2.6
R4/Ground	**W8/Ground**	Living Room	19.7	18.5	1.2	6.1
R1/First	**W1/First**	Bedsit	39.2	39.2	0	0.0
R1/First	**W2/First**	Bedsit	39.2	39.2	0	0.0
R2/First	**W4/First**	Bathroom	27.5	27.4	0.1	0.4
R3/First	**W3/First**	Storage	15.7	14.9	0.8	5.1
R1/Second	**W1/Second**	Kitchen	39.4	39.4	0	0.0
R2/Second	**W2/Second**	Bedroom	39.3	39.3	0	0.0
R3/Second	**W3/Second**	Stairwell	24.7	24.7	0	0.0
R4/Second	**W4/Second**	Bathroom	33.4	33.4	0	0.0
R1/Third	**W2/Third**	Living Room	39.6	39.6	0	0.0
R1/Third	**W3/Third**	Living Room	39.6	39.6	0	0.0
R1/Third	**W4/Third**	Living Room	39.6	39.6	0	0.0
R2/Third	**W5/Third**	Stairwell	35.2	35.2	0	0.0

DAYLIGHT ANALYSIS

Room	Window	Room Use	Flat Number	Glazed Area	Average Daylight Factor Existing ADF	Existing Total	Proposed ADF	Proposed Total	Loss	%
127 Malden Road										
R1/Basement	**W1/Basement**	Unknown		3.0	1.6	1.6	1.6	1.6	0	0.0
R1/Ground	**W1/Ground**	Unknown		2.9	2.8	2.8	2.8	2.8	0	0.0
R2/Ground	**W2/Ground**	Unknown		2.2	1.7	1.7	1.7	1.7	0	0.0
R3/Ground	**W3/Ground**	Unknown		1.4	0.8		0.8			
R3/Ground	**W5/Ground**	Unknown		1.0	0.4	1.2	0.4	1.2	0	0.0
R4/Ground	**W4/Ground**	Unknown		1.0	0.4	0.4	0.4	0.4	0	0.0
R1/First	**W1/First**	Unknown		2.0	1.5	1.5	1.5	1.5	0	0.0
R2/First	**W2/First**	Unknown		2.1	1.5	1.5	1.5	1.5	0	0.0
R3/First	**W3/First**	Unknown		1.0	0.8		0.8			
R3/First	**W4/First**	Unknown		1.0	0.5	1.3	0.5	1.3	0	0.0
R4/First	**W5/First**	Unknown		1.4	0.6	0.6	0.6	0.6	0	0.0
R1/Second	**W1/Second**	Unknown		1.1	1.3	1.3	1.3	1.3	0	0.0
R2/Second	**W2/Second**	Unknown		1.1	1.2	1.2	1.2	1.2	0	0.0
R3/Second	**W3/Second**	Unknown		1.2	2	2	2	2	0	0.0
R4/Second	**W4/Second**	Unknown		1.1	1.2	1.2	1.2	1.2	0	0.0
R1/Third	**W3/Third**	Unknown		0.5	0.3		0.3			
R1/Third	**W4/Third**	Unknown		0.5	0.3		0.3			
R1/Third	**W1/Third**	Unknown		0.5	0.2		0.2			
R1/Third	**W2/Third**	Unknown		0.5	0.2	1	0.2	1	0	0.0
131 Malden Road										
R1/Basement	**W1/Basement**	Bedroom	Basement Flat	3.0	1.7	1.7	1.7	1.7	0	0.0
R2/Basement	**W2/Basement**	Kitchen	Basement Flat	0.8	0.6		0.6			
R2/Basement	**W3/Basement**	Kitchen	Basement Flat	1.5	1.2		1.2			
R2/Basement	**W4/Basement**	Kitchen	Basement Flat	0.8	0.6	2.4	0.6	2.3	0	0.0
R1/Ground	**W1/Ground**	Bedroom	Flat1	2.9	2.9	2.9	2.9	2.9	0	0.0
R2/Ground	**W2/Ground**	Hallway	Flat1	2.1	2.1	2.1	2.1	2.1	0	0.0
R3/Ground	**W4/Ground**	Kitchen	Flat1	0.9	0.5		0.5			
R3/Ground	**W5/Ground**	Kitchen	Flat1	0.9	0.5		0.5			
R3/Ground	**W6/Ground**	Kitchen	Flat1	0.6	0.4		0.3			
R3/Ground	**W7/Ground**	Kitchen	Flat1	0.4	0.3	1.6	0.3	1.5	0	0.0
R4/Ground	**W8/Ground**	Living Room	Flat1	1.7	0.8	0.8	0.8	0.8	0	0.0
R1/First	**W1/First**	Bedsit	Flat 3	2.0	1.2		1.2			
R1/First	**W2/First**	Bedsit	Flat 3	2.0	1.2	2.3	1.2	2.3	0	0.0
R2/First	**W4/First**	Bathroom	Flat 3	1.5	0.9	0.9	0.9	0.9	0	0.0
R3/First	**W3/First**	Storage	Flat 3	0.3	0.4	0.4	0.4	0.4	0	0.0
R1/Second	**W1/Second**	Kitchen	Flat 4	1.1	1.6	1.6	1.6	1.6	0	0.0
R2/Second	**W2/Second**	Bedroom	Flat 4	1.1	1.7	1.7	1.7	1.7	0	0.0
R3/Second	**W3/Second**	Stairwell		1.3	4.7	4.7	4.7	4.7	0	0.0
R4/Second	**W4/Second**	Bathroom	Flat 4	1.2	1.2	1.2	1.2	1.2	0	0.0
R1/Third	**W2/Third**	Living Room	Flat 5	1.1	0.8		0.8			
R1/Third	**W3/Third**	Living Room	Flat 5	1.1	0.8		0.8			
R1/Third	**W4/Third**	Living Room	Flat 5	1.1	0.8	2.3	0.8	2.3	0	0.0
R2/Third	**W5/Third**	Stairwell		1.3	8.7	8.7	8.7	8.7	0	0.0

DAYLIGHT DISTRIBUTION ANALYSIS

Room/ Floor	Room Use	Flat Number	Whole Room	Prev sq ft	New sq ft	Loss sq ft	%Loss	%Prev	%New
127 Malden Road									
R1/Basement	Unknown		127.57	124.75	124.75	0.00	0.00	97.78	97.78
R1/Ground	Unknown		128.43	125.77	125.77	0.00	0.00	97.93	97.93
R2/Ground	Unknown		106.43	105.39	105.39	0.00	0.00	99.02	99.02
R3/Ground	Unknown		91.27	71.52	71.72	-0.20	-0.28	78.37	78.58
R4/Ground	Unknown		108.65	49.72	49.72	0.00	0.00	45.76	45.76
R1/First	Unknown		127.81	121.38	121.38	0.00	0.00	94.97	94.97
R2/First	Unknown		114.50	113.12	113.12	0.00	0.00	98.80	98.80
R3/First	Unknown		91.24	80.72	80.72	0.00	0.00	88.46	88.46
R4/First	Unknown		108.65	96.66	96.66	0.00	0.00	88.96	88.96
R1/Second	Unknown		127.81	122.99	122.99	0.00	0.00	96.23	96.23
R2/Second	Unknown		114.37	112.08	112.08	0.00	0.00	98.00	98.00
R3/Second	Unknown		39.83	38.87	38.87	0.00	0.00	97.61	97.61
R4/Second	Unknown		109.62	104.96	104.96	0.00	0.00	95.75	95.75
R1/Third	Unknown		382.08	372.86	372.82	0.04	0.01	97.59	97.58
131 Malden Road									
R1/Basement	Bedroom	Basement Flat	125.59	124.33	124.33	0.00	0.00	99.00	99.00
R2/Basement	Kitchen	Basement Flat	58.03	57.69	57.69	0.00	0.00	99.42	99.42
R1/Ground	Bedroom	Flat1	125.59	123.48	123.48	0.00	0.00	98.32	98.32
R2/Ground	Hallway	Flat1	60.25	60.14	60.14	0.00	0.00	99.82	99.82
R3/Ground	Kitchen	Flat1	102.77	100.94	100.94	0.00	0.00	98.21	98.21
R4/Ground	Living Room	Flat1	126.07	111.56	102.76	8.80	7.89	88.49	81.51
R1/First	Bedsit	Flat 3	177.57	174.84	174.84	0.00	0.00	98.47	98.47
R2/First	Bathroom	Flat 3	126.07	118.62	118.60	0.01	0.01	94.09	94.08
R3/First	Storage	Flat 3	29.51	19.27	18.99	0.28	1.47	65.30	64.35
R1/Second	Kitchen	Flat 4	89.41	87.70	87.70	0.00	0.00	98.08	98.08
R2/Second	Bedroom	Flat 4	73.87	73.23	73.23	0.00	0.00	99.14	99.14
R3/Second	Stairwell		8.12	7.68	7.68	0.00	0.00	94.61	94.61
R4/Second	Bathroom	Flat 4	89.53	87.89	87.89	0.00	0.00	98.17	98.17
R1/Third	Living Room	Flat 5	297.08	297.08	297.08	0.00	0.00	100.00	100.00
R2/Third	Stairwell		8.12	7.99	7.99	0.00	0.00	98.38	98.38

Annual Probable Sunlight Hours (APSH)

SUNLIGHT ANALYSIS

				Window								Room					
				Existing		Proposed						Existing		Proposed			
Room	Window	Room Use	Flat Number	Winter APSH	Annual APSH	Winter APSH	Annual APSH	Winter Loss	Annual Loss	Winter %Loss	Annual %Loss	Winter APSH	Annual APSH	Winter APSH	Annual APSH	Winter %Loss	Annual %Loss
127 Malden Road																	
R3/Ground	W3/Ground	Unknown		3	46	3	46	0	0	0.00	0.00						
R3/Ground	W5/Ground	Unknown		4	22	4	22	0	0	0.00	0.00	4	47	4	47	0.0	0
R4/Ground	W4/Ground	Unknown		2	21	2	21	0	0	0.00	0.00	2	21	2	21	0.0	0
R3/First	W3/First	Unknown		10	58	10	58	0	0	0.00	0.00						
R3/First	W4/First	Unknown		7	25	7	25	0	0	0.00	0.00	12	60	12	60	0.0	0
R4/First	W5/First	Unknown		6	30	6	30	0	0	0.00	0.00	6	30	6	30	0.0	0
R3/Second	W3/Second	Unknown		18	64	18	64	0	0	0.00	0.00	18	64	18	64	0.0	0
R4/Second	W4/Second	Unknown		14	59	14	59	0	0	0.00	0.00	14	59	14	59	0.0	0
R1/Third	W3/Third	Unknown		27	76	27	71	0	5	0.00	6.58						
R1/Third	W4/Third	Unknown		27	76	27	75	0	1	0.00	1.32	30	97	30	96	0.0	1
131 Malden Road																	
R2/Basement	W2/Basemen	Kitchen	Basement Flat	4	30	4	27	0	3	0.00	10.00						
R2/Basement	W3/Basemen	Kitchen	Basement Flat	1	28	1	25	0	3	0.00	10.71						
R2/Basement	W4/Basemen	Kitchen	Basement Flat	0	17	0	17	0	0	0.00	0.00	4	39	4	36	0.0	8
R3/Ground	W4/Ground	Kitchen	Flat1	10	51	10	51	0	0	0.00	0.00						
R3/Ground	W5/Ground	Kitchen	Flat1	11	51	11	51	0	0	0.00	0.00						
R3/Ground	W6/Ground	Kitchen	Flat1	10	38	10	34	0	4	0.00	10.53						
R3/Ground	W7/Ground	Kitchen	Flat1	14	44	13	42	1	2	7.14	4.55	15	61	15	60	0.0	2
R4/Ground	W8/Ground	Living Room	Flat1	8	42	7	36	1	6	12.50	14.29	8	42	7	36	12.5	14
R2/First	W4/First	Bathroom	Flat 3	16	55	16	55	0	0	0.00	0.00	16	55	16	55	0.0	0
R3/First	W3/First	Storage	Flat 3	15	41	13	39	2	2	13.33	4.88	15	41	13	39	13.3	5
R3/Second	W3/Second	Stairwell		23	56	23	56	0	0	0.00	0.00	23	56	23	56	0.0	0
R4/Second	W4/Second	Bathroom	Flat 4	24	64	24	64	0	0	0.00	0.00	24	64	24	64	0.0	0
R2/Third	W5/Third	Stairwell		26	70	26	70	0	0	0.00	0.00	26	70	26	70	0.0	0