

Force Majeure

14.2 We reserve the right to delay performance or to cancel the Appointment (without liability to you) and we will not be liable to you for any delay in performing or failure to perform our obligations under the Terms of Appointment where that delay or failure is caused by any circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or your default provided that, if the event in question continues for a continuous period in excess of 10 days, you shall be entitled to give notice in writing to us to terminate the Appointment.

15.0 Severability

15.1 If any provision of the Terms of Appointment (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Terms of Appointment, and the validity and enforceability of the other provisions of the Terms of Appointment shall not be affected. If a provision of these Terms of Appointment (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.0 Entire Agreement

16.1 The Terms of Appointment constitute the entire agreement and understanding of the parties as to the subject matter of the Terms of Appointment. They supersede any prior agreement or understandings between the parties and no variation of the Terms of Appointment will be binding unless agreed in writing.

17.0 Applicable Law and Jurisdiction

17.1 These Terms of Appointment and any dispute or claim, including a dispute or claim of a non-contractual nature, arising under or in connection with these Terms of Appointment shall be governed by and construed in accordance with the law of England and Wales.

17.2 The parties to these Terms of Appointment irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising under or in connection with these Terms of Appointment. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

17.3 Where relevant, the Terms of Appointment will be subject to both the 2008 edition of the RICS '*Surveyors acting as Expert Witnesses*' and '*Surveyors acting as Advocates*' *Practice Statement and Guidance Notes* and the Civil Procedure Rules and Pre-Action Protocols that came into force in April 1999. A judicial or quasi-judicial body in the United Kingdom may rely upon our subsequent Expert Evidence. A copy of the RICS '*Surveyors acting as Expert Witnesses and Advocates Practice Statement and Guidance Notes*' can be supplied to you on request.

18.0 Provision of Service Regulations

18.1 Under the ~~Provision of Service Regulations 2009~~, we are required to make certain information available to customers to whom we are providing services. This information can be found at the following web address:
<http://www.savills.co.uk/footer/provision-of-services-regulations.aspx>



APPENDIX 6

Savills Guidance Note – Daylight and Sunlight

Daylight and Sunlight Guidance Notes

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SAVILLS GUIDANCE NOTES - AN OVERVIEW OF DAYLIGHT AND SUNLIGHT

1.0 INTRODUCTION

- 1.1 Daylight and sunlight are amenities enjoyed by the inhabitants of a building. Whilst 'Rights to Light' have been acknowledged in England and Wales for hundreds of years, recently issues surrounding the need for adequate lighting has become more important to Local Authorities, particularly when assessing the design of a development and the impact it may have on surrounding properties.
- 1.2 Daylight and sunlight considerations are now commonly incorporated within Unitary Development Plans (UDP's) and Local Plans and play an important part in many planning applications. This is principally enforced via Environmental Impact Assessments (EIAs), which were introduced under the EIA Regulations 1999¹.
- 1.3 Clearly, where analysis is required, this must follow relevant guidance, most notably Building Research Establishment (BRE) Guidance Note 209 – '*Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice*'.²
- 1.4 Broadly speaking, the aim of the BRE guide is to help to ensure that conditions in the local environment are considered. The aim of this is to secure sufficient sunlight and daylight for new developments and surrounding neighbours in order to promote good interior and exterior conditions. Needless to say, where daylight and sunlight is not considered or is not provided for in accordance with the relevant guidance, the Planning Application would be subject to potential failure and an extensive redesign process in order to rectify any shortfalls.
- 1.5 Although Local Authorities do have subtle differences in their application of daylight and sunlight criteria, BRE Guidance Note 209 provides the basis of most Local Authority requirements.
- 1.6 There are many factors that need to be taken into account when assessing daylight and sunlight in respect of a proposed development, therefore it is important that a holistic case specific approach is taken in order that all variables can be accounted for.

2.0 BRE GUIDANCE NOTE 209

- 2.1 The BRE Guide is often the main document used by Local Authorities when considering daylight and sunlight as part of the planning approval process. It provides the basis of what level of loss can be considered 'material' (i.e. at which point levels become unacceptable) - therefore assisting in the process of development control.
- 2.2 It is important to emphasise that whilst the BRE Guidelines are not mandatory and should not to be used as an instrument of planning policy, they have become an important 'guide' to planners when considering the design of a proposed development and the impact it will have upon the surrounding urban area.
- 2.3 The BRE Guide states:

"The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and the guide should not be seen as an instrument in 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. In special circumstances the developer or Planning Authority

¹ Correct title being the 'Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999'.

² This document was first published in 1991 as a direct commission from the Department of the Environment. BRE 209 was most recently updated in October 2011. The document superseded the 1971 Department of the Environment '*Sunlight and daylight*' guidance document. BRE Guide 209 takes into account the British Standard Code of Practice for Daylighting; BS8206 Part 2 - a stand alone document which also provides guidance on this matter.

may wish to use different target values. For example, in an historic city centre, or in an area with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings”.

2.4 BRE Guide 209 (2011) sets out a number of circumstances where it may be appropriate to consider alternative daylight and sunlight target levels which are particularly relevant in respect of dense city-centre development. These circumstances include:

- Where the provision of balconies to neighbouring properties makes them particularly sensitive to development of neighbouring properties it may be appropriate to analyse the position without these balconies in place.
- Where there is an extant planning consent for a site the effect of the permitted scheme may be used as a benchmark when considering future revised or alternative schemes.
- The target levels adopted should be consistent with the site context. Therefore where a higher degree of obstruction is evident to existing neighbouring properties similar targets may be considered in respect of new development.
- Where a neighbouring property has windows close to a joint site boundary it should not take more than its share of light and there should be parity between the constraints imposed on neighbouring sites. This may be assessed by considering a ‘mirror-image’ of the affected property as the baseline position for development of the neighbouring site.

2.5 The greatest need, under normal circumstances, for daylight and sunlight is to ‘habitable’ rooms of residential buildings. This is acknowledged within the guidelines, which place the most emphasis on these uses. Indeed Local Authorities are usually only concerned with the impact to ‘habitable’ rooms and this is often reflected in the drafting of local planning policy.

2.6 The BRE Guide considers both daylight and sunlight. These factors are discussed separately below.

3.0 DAYLIGHT

3.1 Daylight, or skylight, is the amount of light that enters a room and should not be confused with sunlight (discussed later) which is direct sunlight. Daylight can be used to determine the loss of light to a building as a result of a neighbouring development or the internal quality of daylight within a room.

3.2 Initially, when considering the impact to a nearby building the BRE Guide states that where a new development falls beneath a 25 degree angle, taken from the centre of a neighbouring window or a point 1.6m above ground level in relation to floor to ceiling windows, then there will be no material impact on daylight and no further analysis is required. If this is not the case then the BRE Guide recommends that further analysis is undertaken to establish if there will be adequate daylight or, to be precise, light from the sky.

3.3 The BRE Guide and other relevant supporting documentation suggests various methods for calculating daylight;

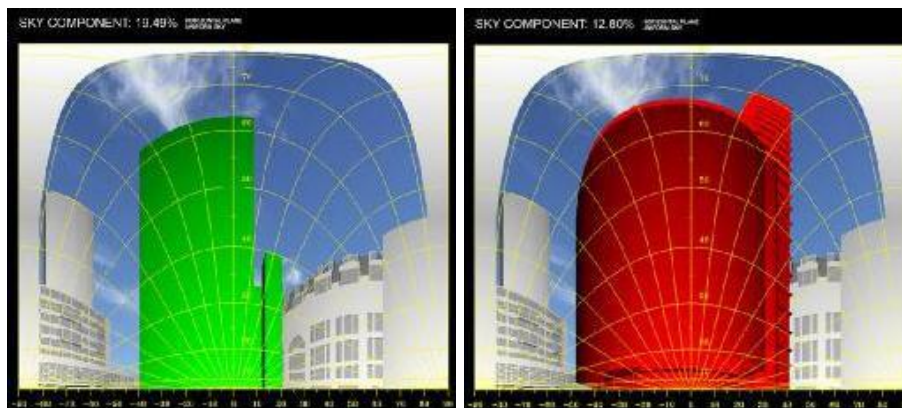
- Vertical Sky Component (VSC)
- No Sky Contours or Daylight Distribution (NSC/DD)
- Average Daylight Factor (ADF)

4.0 VERTICAL SKY COMPONENT (VSC)

4.1 This is the measure of the amount of skylight incident on a vertical plane (i.e. a window). Where establishing the daylight falling upon a window we consider the light at the centre of the window. The VSC is calculated by assessing the ratio of skylight available as a percentage of the unobstructed skylight

available at that same point. For a uniform sky, the maximum value is 50% (since the point is on a vertical plane, clearly only half the hemisphere of light can contribute). For a CIE³ sky, the maximum value is 39.6%.

- 4.2 The guidelines state that if the VSC at the centre of a window is less than 27% and less than 0.8 times its former value as a result of the development in question, the diffuse day lighting of the existing building will be adversely affected. A value of 27% corresponds to an infinite obstruction angle of 25 degrees - which is why at 25 degrees and above we can normally discount the need for any further daylight and sunlight analysis (see 3.2 Above). Again it is important to note that the BRE Guide (as with all the BRE guidelines) can be interpreted with a degree of flexibility and this is not a hard and fast rule.
- 4.3 One way of measuring the VSC and displaying any change clearly is by using a Waldram Diagram. As can be seen (below), this method can be used to provide an easy to understand pictorial representation of the pre and post construction VSC.



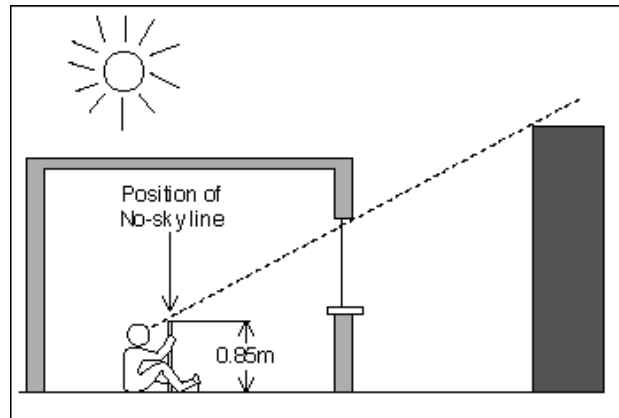
An Example Of A Waldram Diagram Analysis

- 4.4 As already established an unobstructed view from the vertical plane of a window would give a VSC value of 39.6%, this would correspond to 50% of the hemisphere. The diagram shows how 12.8% of the sky remains after an obstruction has been erected which, when compared with the existing situation shows a marked decrease from the original 19.49% VSC. This is less than 0.8 times it's former value and is less than the 27% recommended. Consequently the VSC for this window would fall beneath the guideline BRE target value – and, as a result, introduce potential planning risk. Accordingly, on this hypothetical project, we would need to work closely with Planners and Architects in order to mitigate this problem and secure planning consent.

³ Commission Internationale d'Eclairage – the creator of the model for a standard overcast sky.
Savills Commercial Limited: Guidance Notes – An Overview of Daylight and Sunlight

5.0 NO SKY CONTOUR (NSC) / DAYLIGHT DISTRIBUTION (DD)

5.1 The NSC measures the point, at desktop level, where sky is no longer visible through a window. See below:



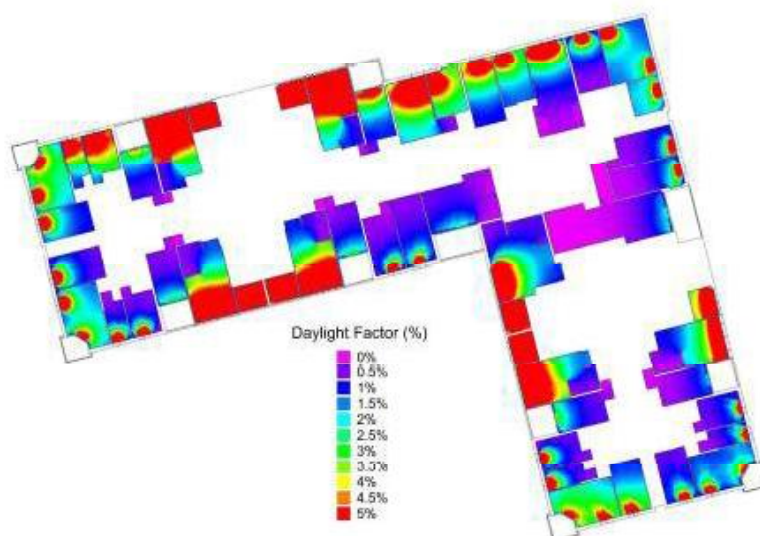
How To Establish The Location Of The No Sky Contour

5.2 The NSC is similar to the VSC approach in that the BRE guidelines state that 20% reduction to the existing area of sky visibility within the room is considered acceptable. Accurate assessment of the position of the No-Sky Contour is reliant upon knowing room layout although an adequate indication of the position may be achieved by adopting appropriate assumptions based upon external observations.

5.3 The NSC, which is sometimes referred to as the Daylight Distribution (DD), enables a greater understanding of the spread of daylighting within a room. The BRE Guide does not relate this methodology of analysis to 'room use', instead it is used to simply provide an understanding of the 'change' caused by the proposed development.

6.0 AVERAGE DAYLIGHT FACTOR

6.1 Average Daylight Factor or ADF is qualitative assessment of the amount of daylight within a room, in other words it is used to show how well a room is illuminated (see diagram below).



Daylight Factor Analysis With Results Indicated On A Floor Plan In False Colour