



## **Rooftop Solar v The Right to Build:**

*Property Rights. Planning Rules and the Case for Reform*

 LAGOS | ABUJA | CALABAR



[www.advocaat-law.com](http://www.advocaat-law.com)



Advocaat Law Practice



advocaatlawpractice

Nigeria is going solar at speed. The country imported solar panels worth N242.68 billion in the first half of 2025 alone and added some 803 megawatts of new capacity over the year, making it the second-largest solar market on the continent. The drivers are economic as much as environmental. The 2023 fuel subsidy removal made diesel generation prohibitively expensive, and the national grid, though connected to every urban area, remains chronically unreliable, with daily outages a routine matter and longer ones a regular feature of urban life. Rooftop solar supplements the grid when it is working, displaces diesel costs, and fills the gap when it is not. The panels are a capital investment that pays back in reduced running costs and, increasingly, in higher market value.

Urban densification has created a new tension. A development on a neighbouring plot can rise high enough to overshadow an existing rooftop installation and render it ineffective. The situation carries no obvious moral answer. The developer has done nothing wrong and is entitled to build on the land it has paid for, yet the panel owner has lost the benefit of his investment through no fault of his own. The question is whether the law offers any answer, and if not, what it should provide.

## THE LEGAL POSITION

The critical question is whether Nigerian law offers a legal basis on which the panel owner can obtain an injunction to restrain the developer. This offers a panel owner a means to legally prevent the overshadowing, or at least credible leverage in a negotiation with a developer.

Based on nomenclature, the easement of light, or the doctrine of ancient lights, is an intuitive option. An easement is a right over a property to use that property (or part of it) or prevent it being used in a particular manner, enforceable as an interest in the land itself against whoever owns that land for the time being. Rights of way are probably the most common easements but there are others such as rights to fetch water, or prevent a river or stream being diverted. The easement of light is one such right, recognised in Nigerian law as part of the received common law. The right arises from twenty years of uninterrupted enjoyment of light through a defined aperture. However, the ambit of the right is narrow, and it only protects the right to sufficient light through a window for the ordinary comfortable use of the building. It does not naturally extend to be a right to the direct sunlight required by a solar panel.

Although the issue has not been tested in Nigeria, internationally, the common law courts have been reluctant to recognise new negative easements that restrict what a neighbour may build on his own land, and no common law jurisdiction has extended the easement of light to cover solar generation. Australia, New Zealand and Canada have each considered the question and refused to do so.

A further obstacle is specific to Nigeria. Rooftop solar at any meaningful scale is a phenomenon of the last decade, accelerating sharply after 2023. No panel owner can yet show twenty years of uninterrupted solar access. Even if the law recognised a prescriptive right to solar access tomorrow, the prescription period would defeat every existing claim.

Nigerian law does recognise easements for the supply of utilities such as water, drainage and electricity, but these are largely creatures of statute and regulation rather than of the common law. The Land Use Act 1978 empowers the Governor to grant easements appurtenant to rights of

occupancy, and the sector legislation confers wayleaves and rights of way on the utilities themselves. A solar access easement might in principle belong in that company, but the category is statutory, so such a right would have to be conferred by statute or regulation rather than fashioned by a court extending the common law. The distinction matters in substance as much as in source. A buried pipe or cable, and the right of way that protects it, may influence how a building's foundations are laid without preventing its construction, whereas a solar access easement would directly restrict the height and massing of whatever could be built nearby. The deeper point is that water and power are protected as essentials rather than luxuries, and given the unreliability of mains power and the cost of diesel generation, there is a strong argument that solar should be recognised as an emerging necessity. That, however, is an argument for the legislature rather than the courts.

## POTENTIAL REMEDIES

In looking for potential solutions from the panel owner's perspective, the challenge is to find or create a recognised legal or equitable right, enforceable against the developer, that can either found an injunction to restrain the development or protect his position by other means.

Although they do not provide the automatic protection that a recognised property right would give, there are a few options open to the panel owner. The most obvious mechanism is a mutual restrictive covenant, an agreement that restricts the use of one property for the benefit of another. It works best where both neighbours have panels, or intend to, because each then has a direct interest in agreeing not to develop in a way that overshadows the other.

Enforceability against a future owner is the real difficulty. Between the original parties the covenant binds as a matter of contract. A successor who never agreed to it is bound only in equity, and only where he takes the land with notice of the covenant. That equitable rule is well settled for freehold land elsewhere in the common law world, but whether it reaches a right of occupancy under the Land Use Act has not been decided by the Nigerian courts. The difficulty is compounded by the Governor's consent, which every transfer requires and which is the one point at which a transaction is examined, yet which does not record or address private covenants between neighbours. A successor may therefore take the land without ever being alerted to the covenant, so reliance on constructive notice alone carries real risk.

The interest is registrable. A restrictive covenant is created by deed, which is a registrable instrument under the state land instruments registration laws, and in Lagos the Lands Registration Law allows the covenant to be entered as an encumbrance by registering a notice against the burdened title. Registration of that notice fixes everyone who later deals with the land with constructive notice of the covenant, so no successor can claim to have taken without notice of it. Notice, however, is not the same as enforceability. Enforceability against a successor turns on whether the burden of such a covenant runs against a right of occupancy under the Land Use Act. The received principle of equity binds anyone who takes land with notice of a restrictive covenant, which points firmly towards a right of occupancy being caught. The Nigerian courts have not yet confirmed that it is, so the protection is strong but not certain.

An estate or multi-property developer who controls every title at first sale can impose uniform solar access covenants on all the plots at once, each purchaser taking express notice from the outset. This is the classic building scheme, in which mutual covenants are enforceable among all the owners within it, and it removes the uncertainty about successors entirely. The cost of building in the protection is negligible and estates marketed on this basis may gain a real commercial advantage as solar adoption deepens.

A panel owner also has standing to object to a neighbouring development application before approval. The practical constraint is that neighbours rarely know when a planning application has been made, so this serves only those (very few) who monitor the planning register. A well-evidenced objection creates no legal right, but it puts the impact on record and may shape the conditions of any approval, and authorities will find such objections harder to ignore as adoption grows.

Often the most practical answer may be for the developer to make good the loss rather than for the panel owner to prevent the development. The developer may accommodate the displaced panels on the new building, fund an equivalent installation elsewhere on the panel owner's land, or supply the panel owner with electricity equivalent to the generation lost. Such a compromise can be negotiated between the parties, where the panel owner has the leverage of an enforceable covenant, a credible threat of an injunction, a planning objection able to delay or condition the consent, or simple neighbourly goodwill. It can also be imposed by a court as the remedy where the panel owner holds an enforceable right, or required by statute, regulation or as a condition of planning consent. Replacement of the lost capacity is, with the property-based routes uncertain, the outcome most likely to satisfy both sides.

## THE CASE FOR REFORM

The common law as currently applied does not offer a workable long-term solution, and the jurisdictions that have confronted the same challenge have generally concluded that legislative or regulatory intervention is required.

The United States offers the most developed statutory model. At least thirty states have solar easement statutes defining the content of a solar access right, the formalities for creating it, and the remedies on breach. These statutes are largely enabling rather than mandatory, giving neighbours a reliable instrument to create and register a solar easement by agreement without imposing access on an unwilling developer.

Victoria, Australia, amended its planning provisions to require the responsible authority to weigh the impact of a development on an existing rooftop installation, the test being whether the overshadowing is unreasonable rather than whether it occurs at all. England has arrived at a similar position through its courts, which now treat the overshadowing of a neighbour's solar panels as a material planning consideration that an authority cannot lawfully disregard. The authority keeps its discretion as to the weight it gives that impact, but it must take the impact into account.

One option for Nigeria is a similar planning regulation requiring developers to assess and minimise the overshadowing of existing solar installations as a material consideration. This needs no primary

legislation and could be done by ministerial instrument under the existing planning regulation framework. Another option for planning regulations is to make building height a more prominent feature of zoning rules so that there would be high-rise and low-rise zones. This would allow clustering of buildings of similar heights in proximity to each other, reducing the current reality of thirty storey blocks of flats looming over two storey family homes next door.

Primary legislation should settle the enforceability of mutual solar access covenants against successors in title, putting them on the express and registered footing that other common law jurisdictions have adopted. It should also establish a capacity replacement principle under which a developer whose project eliminates a defined quantity of a neighbour's generating capacity must either accommodate replacement panels on the new building or contribute financially in proportion to the loss. The harm can be measured in the generation forgone, and the remedy calibrated to match it. This applies to solar the logic that environmental law has long applied to other forms of resource loss.

## CONCLUSION

The law has not kept pace with the speed of solar adoption in Nigeria. A panel owner whose installation is overshadowed by a lawful neighbouring development has no property right to fall back on, and the interim tools, though worth using, are imperfect substitutes for one. Protection therefore belongs to those who plan for the conflict before it arises, through a registered covenant, a building scheme or a negotiated replacement of the lost capacity, rather than to those who wait to litigate once the foundations are in. The durable answer is for the legislature to provide, and the sooner it does, the less will be left to improvisation.

## CONTACT

---



**OLADAPO ADEMOLA**  
oladapo.ademola@advocaat-law.com



**EDWIN EKWEALOR**  
edwin.ekwealor@advocaat-law.com



**AMARACHUKWU NWOSU**  
amarachi.nwosu@advocaat-law.com



**AUGUSTINE KANAYOCHUKWU**  
augustine.kanayochukwu@advocaat-law.com



**LAGOS OFFICE**

13 Norman Williams Street  
Off Keffi Street, Ikoyi  
Lagos Nigeria

**ABUJA OFFICE**

Nigerian National Merit Award House Enspire  
1st Floor Room 3  
Plot 22 Aguiyi Ironsi Way Maitama Abuja  
Nigeria

**CALABAR**

Akom Building  
15 Murtala Mohammed Highway Calabar  
Cross River  
Nigeria

**TELEPHONE:** (LOS)+234 02014547932 (ABJ)+234 8105340496

**EMAIL:** [info@advocaat-law.com](mailto:info@advocaat-law.com)

**WEBSITE:** [www.advocaat-law.com](http://www.advocaat-law.com)