

## **The Party Wall etc. Act 1996**

***“A Brief Explanation of The Acts Procedures” by***

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### **An Overview of Party Wall Legislation**

**The Party Wall etc. Act 1996** is not a new concept to the surveying, legal, and construction profession. Indeed, party wall legislation has existed since 1724<sup>1</sup>. The origins of the earlier Party wall legislation and its development through various successive Acts of parliament can be traced up to Part VI of the London Building Act (Amendment Act) 1939, which preceded the Party Wall etc. Act 1996. However, one significant difference between the new and earlier acts is its geographical jurisdiction. The earlier Act's jurisdiction was restricted to the Greater London Council (GLC) and Bristol<sup>2</sup> areas. Property owners requiring access to an adjoining property were reliant upon the cooperation of adjoining owners to overcome the restrictive common law principles of nuisance and trespass.

Accordingly, it was decided that new party wall legislation was necessary and created an opportunity to extend the legislative jurisdiction to include all of England and Wales. *This had the effect of turning the regime that had operated in London for so long into a country-wide regime* HHJ Thornton QC<sup>3</sup>. Consequently, the earlier acts were repealed in 1996 when the Private Bill, *The Party Wall etc. Act 1996*, was introduced by the Earl of Lytton and passed through the House of Commons by Sir Sydney Chapman and the House of Lords on the 22<sup>nd</sup> May 1996 receiving Royal Assent on the 18th July 1997.

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<sup>1</sup> Chynoweth, P. (2001)p.127-137 'Impartiality and the Party Wall Surveyor' 17 Const.L.J No 2© Sweet & Maxwell Ltd and Contributors.

<sup>2</sup> The Bristol Improvement Act 1847

<sup>3</sup> Crowley v Rushmore Borough Council [2010] EWHC 2237 Para 96 Judgement of HHJ Thornton QC

## **The Party Wall etc. Act 1996**

The Party Wall etc. Act 1996 is an enabling act, allowing an owner to undertake particular types of work as defined within the Act. However, The Party Wall etc. Act 1996 does not grant a general right to undertake construction work per se but operates within its narrow jurisdiction to confer certain rights. Furthermore, the title is a little misleading because The Party Wall etc. Act 1996 includes activities that are not limited to works to a party wall<sup>4</sup>.

The Party Wall etc. Act 1996 also includes work to boundary walls<sup>5</sup>, party fence walls,<sup>6</sup> and or excavations within specified distances<sup>7</sup> of an adjoining owner(s) structure. Furthermore, The Party Wall etc. Act 1996 supplants the common law principles of trespass by creating a right of access<sup>8</sup> onto an Adjoining Owner(s) land or building<sup>9</sup> for works in pursuant of The Party Wall etc. Act 1996. These notifiable works are defined within sections 1, through to 6.

Accordingly, The Party Wall etc. Act 1996 also provides the Adjoining Owner(s) with certain rights and procedures to protect their property from damage and/or unnecessary inconvenience and nuisance accordingly The Party Wall etc. Act 1996 is considered to be an impartial and balanced legislation.

The Party Wall etc. Act 1996 also applies to internal elements of a building that separate common parts of buildings<sup>10</sup> such as stairs and corridors within buildings of multi occupancy. The Party Wall etc. Act 1996 does not limit its definition of a party wall to a vertical structure, horizontal structures such as floors<sup>11</sup> which separate dwellings are also classified as a party wall structure.

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<sup>4</sup> A wall that separates two properties of differing ownership

<sup>5</sup> Walls on the Line of Junction (Boundary)

<sup>6</sup> walls that separate land as opposed to buildings

<sup>7</sup> Within 3m and 6m of an adjoining owners property

<sup>8</sup> Subject to satisfying section 8(1)

<sup>9</sup> Commercial, Residential & Industrial

<sup>10</sup> In joint ownership or used for a right of access

<sup>11</sup> s.20 *definition of a party structure*

The Party Wall etc. Act 1996 appears at first glance to be relatively straight forward however “*the devil is in the detail*” is important for the proper interpretation and application of the Act.

### **Implementing The Party Wall etc. Act 1996**

The Party Wall etc. Act 1996 involves the participation of various parties and professional advisers, all of which have specific roles, obligations, and duties to perform. The Party Wall etc. Act 1996 provides various titles and definitions within s. 20 of The Party Wall etc. Act 1996 to provide clarity.

An owner of a property desirous of undertaking building is referred to as the ‘*the Building Owner*’, the neighbouring owner is referred to as ‘*the Adjoining Owner*’, each owner will appoint their own surveyor who is referred to as either ‘*the Building Owners Surveyor*’ or ‘*the Adjoining Owners Surveyor*’ respectively or where both owners appoint a single surveyor he/she is referred to as ‘*the Agreed Surveyor*’. Where two surveyors are appointed they shall forthwith select another surveyor in case of a dispute who is referred to as ‘*the Third Surveyor*’. The two surveyors are appointed by statute, the third surveyor is only selected for the purposes of the Act.

### **Commencing Party Wall Procedures**

The Building Owner must serve notice for specific works<sup>12</sup>. Whilst a notice has no specific format it must contain certain information and details to ensure validity. The notice can be prepared and served by the Building Owner, although it is advisable to seek the assistance of a party wall surveyor. At this stage the surveyor is not statutorily appointed and acts as an agent to their client.

Only Owners as defined in section 20 can serve or be a recipient of a notice and subsequently statutorily appoint a surveyor. It is therefore important that all property owners are identified and receive a notice. To establish the statutory appointment the surveyor must obtain a written appointment, however the appointing owner must be made aware that the surveyor’s appointment cannot at a later date be rescinded<sup>13</sup>. Without a letter of appointment the surveyor’s have no authority to act.

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<sup>12</sup> Section 1,2 &6

<sup>13</sup> Section 10(2)

A simple error and omission during the early stages could invalidate everything that the surveyors do thereafter<sup>14</sup>. This could lead to an erroneous award being served, costs being incurred by one or both of the parties without any benefit to the owners. Indeed the surveyors could be exposed to a negligence claim.

Section 15 of The Party Wall etc. Act 1996 defines the methods of service of a notice upon an adjoining owner pursuant to either s.1, s.3<sup>15</sup>, and s.6 of The Party Wall etc. Act 1996. Once initiated the procedures must be applied to draw the dispute to a natural conclusion unless the Building Owner decides to withdraw the notice(s).

Following receipt of the notice the Adjoining Owner(s) have three options;

- a) Consent to the works,
- b) Dissent and appoint an Agreed Surveyor<sup>16</sup> pursuant to s.10(1)(a),
- c) Dissent and appoint an independent surveyor<sup>17</sup> pursuant to s.10(1)(b),
- d) Ignore the Notice.

If an Adjoining Owner selects option (a) and consents to the works, the owners are not required to do anything further<sup>18</sup>. Alternatively, the Adjoining Owner can select option (b) and appoint an “Agreed Surveyor” who operates with autonomy. If the Adjoining Owner selects option (c) both appointed surveyors shall forthwith select a Third Surveyor.<sup>19</sup> The last option (d) which is not advisable is to do nothing, in which case section 10(4) will apply and the Building Owners surveyor has certain remedies afforded by The Party Wall etc. Act 1996 to ensure the works progress.

When an Adjoining Owner fails to respond within 14 days from receipt of the notice<sup>20</sup> dissent is to be deemed to have occurred. This prevents an unreasonable or malicious Adjoining Owner delaying matters. In such instances the Building Owners Surveyor must serve a further request pursuant to s.10(4)(b) allowing a further ten day period for the Adjoining Owner(s) to appoint a surveyor, only after this period has

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<sup>14</sup> Gyle-Thompson v Wall Street (Properties) Ltd 1 WLR 123 [1974] 1 ALL ER 295

<sup>15</sup> Initiates the procedures of section 2 works to a party wall.

<sup>16</sup> Not necessarily the same surveyor as appointed by the Building Owner

<sup>17</sup> The Adjoining Owners Surveyor

<sup>18</sup> Unless a damages arise, in which case section 10 applies.

<sup>19</sup> See paragraph 2.3

<sup>20</sup> Service is deemed to have been received 2 days after service  
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expired can the Building Owners Surveyor appoint a surveyor to act on behalf of the Adjoining Owner, and both appointed surveyors forthwith select a Third surveyor.<sup>21</sup>

The Third Surveyor has no involvement unless the appointed surveyors or either of the owners refers a dispute to the Third Surveyor pursuant to section 10(11). The Third Surveyor is only ever selected and not appointed<sup>22</sup>.

### **Failure to Comply with The Party Wall etc. Act 1996 Procedures**

It is a statutory requirement that for certain works defined within The Party Wall etc. Act 1996 require a notice to be served. A failure to serve notice is a breach of that statutory duty. However, rather strangely The Party Wall etc. Act 1996 does not incorporate any penalties for failing to serve notice. The adjoining owner's only redress is at common law<sup>23</sup> they can seek injunctive relief and stop the works until notice is served.

### **Failure or Neglect to apply The Party Wall etc. Act 1996.**

The Party Wall etc. Act 1996 does not allow procedures to stall, section 10(3) defines the procedures that apply if (a) an Agreed Surveyor has not proceeded in accordance with the provisions of The Party Wall etc. Act 1996, the whole process begins de novo. Where one of the three surveyors fails, neglects, or is unable to continue to act, the opposite surveyor must serve a notice pursuant to section 10(6) and/or section 10(7) before acting *ex parte* and anything that is done by the surveyor shall be as effectual as if he had been an Agreed Surveyor.

However, if a surveyor proceeds on an *ex-parte* base, they have to be able to establish that their opposite surveyor had in fact refused or neglected The Party Wall etc. Act 1996. The courts are reluctant to enforce *ex parte* awards unless they are water tight. An alternative to proceeding *ex-parte* is to seek assistance of the Third Surveyor pursuant to section 10(11).

Section 10(5) provides an owner with the right to appoint another surveyor, where the surveyor has either died or deemed themselves incapable of acting.

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<sup>21</sup> Section 10(2)

<sup>22</sup> Statutorily or otherwise, until the Third accepts his selection.

<sup>23</sup> Crowley v Rushmore Borough Council [2010] EWHC 2237  
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## **The Party Wall Award**

The Party Wall etc. Act 1996 requires the surveyor(s) to produce and serve a 'Party Wall Award<sup>24</sup>.' The Party Wall etc. Act 1996 Award will include all of the considerations relating to the proposed works. This may include the method of works that the building owner and/or their contractors will adopt in order to ensure that the works are carried out with the minimum inconvenience, nuisance and/or to prevent damage to the Adjoining Owners property. The surveyors cannot award on matters that are outside of The Party Wall etc. Act 1996 jurisdiction.

In most instances, especially where the works are to a residential property, it is common for all matters to be combined within one party wall award. In more complex building contracts it is possible that more than one award will be required. This is at the discretion of the appointed surveyors and will be largely dependent on the nature of the works. For example, the first Party Wall etc. Act 1996 award may deal with exposing and providing protective coverings to the party wall, or stabilising works following demolition of a structure. The second Party Wall etc. Act 1996 Award may for example deal with proposed foundations which cannot be designed until the works within the first award have been completed.

Once the Award has been agreed both surveyors shall forthwith serve it upon their appointing Owners. Each owner is entitled pursuant to s.10(17) to appeal the Award in the County Court. However, time is of the essence, an appeal must be filed at a county court within 14 days from the date of service, which is the date the Owners receive the Award. Failure to file documents within the time period will mean that the award stands and cannot be later challenged in any court unless the award is considered *ultra vires* in which case the 14 day period does not apply.

## **Advantages and Disadvantages of Implementing The Party Wall etc. Act 1996**

### **Advantages**

In some construction projects certain works will require access onto an adjoining owners land. Prior to the Act, the building owner was estopped at common law unless a license was negotiated with the adjoining owner. The Act now provides a right of access on to another owner's property for "*works in pursuance of the Act*" this principle must be satisfied to effect legal access. To illustrate this point, if we

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<sup>24</sup> The Award must be served on the owners as soon as it is signed by the surveyors.  
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consider that excavations as a 'whole' can simultaneously be both within and out with s.6(1)&(2) notice, it is only those excavations which satisfy the s.6<sup>25</sup> criteria that are works in pursuance of The Party Wall etc. Act 1996. Therefore, the building owner cannot use the section 8(1) right of access to excavate parts of the foundations that are outside of the s.6(1)&(2) criteria.

The surveyor's appointment continues until the notifiable works have been completed and can deal with any matters arising out of The Party Wall etc. Act 1996, these may be resolved by service of another award, referred to as an Addendum Award. This avoids the need for expensive legal action and the inevitable delays that normally follows any dispute.

Although it is not a requirement of the Act, most surveyors as good practice will record a schedule of condition of the adjoining owner's property prior to the commencement of works and append this to the Party Wall Award<sup>26</sup>. The schedule has benefits for both the Building and Adjoining Owner. If there is pre-existing damage to the Adjoining Owner's property the schedule will prevent any false claims for damage occurring as consequence of the works.

Section 16 identifies offences, if an occupier refuses to permit a person doing anything which he is entitled to do they will be guilty of an offence, any offence is prosecuted within the magistrates court and on summary conviction can be fined an amount not exceeding level 3 of the standard scale. The penalties can therefore be exceptionally harsh.

## **Disadvantages**

Applying The Party Wall etc. Act 1996 has two significant disadvantages for the Building Owner, the first is the liability imposed by section 10(13) to pay the Adjoining Owners surveyor's reasonable costs. The second is the possible delay in starting the works, whilst the appointed surveyors complete the party wall procedures. However this can be reduced if not eliminated if the Building Owner serves the notice in sufficient time.

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<sup>25</sup> Within 3m and 6m and to depth greater than the adjoining owners foundations as defined in the Act.

<sup>26</sup> However it is not a requirement of the Act.

Where the works relate to section 2 of The Party Wall etc. Act 1996, the appointed surveyors can in certain circumstances award that an Adjoining Owner contributes towards the cost of the works and the surveyors fees.

### **Completion of Party Wall Procedures**

The surveyor's appointment terminates on completion of the works that required notice and not on completion of the works in their entirety. For example if the works relate to section 6(1) excavations within the Building Owners land anything built thereon is outside of the surveyors jurisdiction. Once the works have been completed the surveyors will check the condition of the Adjoining Owners property. If no damage has occurred and advise the owners accordingly. If damage has occurred the surveyors will deal with this by way of a further award. This may require the building owner to repair the damage or if the adjoining owner requests pay compensation in lieu of the damage.