

# Cooper's Neighbourly Matters

## PARTY WALL LEGISLATION

### The Party Wall Etc Act 1996

This Act came into effect on 1st July 1997. This fact sheet explains how it may affect you as a property or legal professional, owner or neighbour.

#### WHAT IS A PARTY WALL?

A party wall is defined as a wall standing on the land of two owners to a greater extent than simply projecting foundations or a wall which separates buildings of different owners.

The Act also refers to party structures and party fence walls. A party structure can be a party wall or a floor separating parts of a building accessed via separate entrances, and a party fence wall is normally a boundary or dividing wall.

#### WHO IS AN OWNER?

An owner can be any occupier of land, buildings, storey(s) or rooms. Therefore, there may be several owners of one wall, e.g. a Freeholder with an agreement to purchase, or Leasehold owner. Under the Act, the owner carrying out the works is known as the "Building Owner", whereas the owner on the other side is known as the "Adjoining Owner".

#### WHAT IS A BUILDING OWNER ALLOWED TO DO?

The Act defines the rights and restraints given to the Building Owner. In general terms, he can raise, thicken, underpin, cut into or, in extreme cases, demolish and totally re-build party walls, party fence walls and structures.

#### WHAT ARE THE PROCEDURES IF THE ACT IS INVOKED?

Firstly, you should determine how the works affect your neighbours and serve the correct Notices. Works to construct walls up to or on the boundary, to party walls, structures, fences or, under particular circumstances, the formation of new foundations within 3 or 6 metres of your neighbours' property may require separate Notices. Notices for anything affecting a party wall or structure must be served at least two months before the works begin, or in the case of works for the creation of a new party fence wall or construction of a wall up to a boundary or excavations, one month. In the event of a Dangerous Structure Notice being served, these timescales can be waived.

The Adjoining Owner will have 14 days to serve a Counter Notice. They can consent or dissent to the works. Failure to respond within 14 days is deemed dissent. If they dissent then it will be necessary to enter a Party Wall Award.

The Award will be drawn up by the appointed surveyors. If there are many Adjoining Owners, the Building Owner's Surveyor may find himself dealing with a number of different surveyors.

Party Wall Legislation has developed since 1429 through a succession of Public Acts culminating in the new 1996 Act. The 1996 act applies to all of England and Wales.

Although considered by some as an Act designed to perpetuate a dark art the intention of the Act is to ensure that any work on or affecting a party structure or foundations which may affect an adjoining property are carried out so that the developer and neighbour affected by the works are not prejudiced.

The common sense approach of the Act, prevents many neighbourly disputes from arising or developing into protracted and often bitter conflicts.

The main intention of the Act is to mitigate and pre-empt problems which may arise, protecting the rights, interests and remedies of both owners.

It will not be possible to explain or define all elements of the 1996 Act in this circular. However, we hope our brief description of the main elements will help.

## THE AWARD

The Award should include details of the works to be undertaken, hours and methods of working, protection to neighbouring premises, rights of entry, a Schedule of Condition of the neighbouring premises and details of fees. It should incorporate drawings and allow for the preparation of future Awards if necessary.

Normally the Award would become absolute 14 days after it is published to the Building Owner and Adjoining Owner. However, it can be challenged by either of the Owners in the local County Court if they do not agree with its provisions or after the 14-day period if it was not correctly drawn up or flawed in a major way.

The Act overrides the individual interests of the Owners. Once the Surveyor is appointed, an Owner ceases to be the Client and becomes an Appointed Owner. Thereafter, the Surveyor must act strictly in accordance with the Act as opposed to the specific interests of a particular owner. This should result in the Award being fair, equitable and binding. It is essential that this is pointed out to inexperienced owners as it is often difficult for them to appreciate the difference between a Surveyor's duty to a Client and an Appointed Owner.

## WHO PAYS FOR WHAT?

Normally, all expenses are met by the Building Owner. However, if work is required because of a defect or lack of repair, costs can be shared according to the use of the element and responsibility for the defect. There are also special provisions for costs or compensation to be paid for the latter use of a structure or foundations constructed at the cost of the Building Owner. In circumstances where an Adjoining Owner feels there is a financial risk associated with the Building Owner's works, they may ask for monies to be deposited in advance of the works.

There is concern that the cost of the party wall procedures for small works could be high in comparison with the value of the work itself. It is hoped that responsible Surveyors will advise that Adjoining Owners can consent to minor works, such as cutting new flashings into a wall, and that minor projects, such as the formation of a new back extension to a family home, can be dealt with by the appointment of a single Surveyor. The Act cannot be promoted unless Surveyors advise and charge responsibly and recommend an appropriate course of action for each development.

## WHAT IF A DISPUTE OR DAMAGE OCCURS?

If the Surveyors cannot agree they will refer to a third party wall Surveyor who will effectively arbitrate on the disagreement. The Surveyors should agree on the appointment of a 'Third Surveyor' immediately when the response to the initial Notice has been received. If agreement on the Third Surveyor is not possible, an appointment can be made by the Local authority.

The Schedule of Condition will enable the Surveyors to agree where damage has occurred. The Building Owner will normally be responsible for making good any damage. Surveyors can require the works to be undertaken or, if agreed by the Owners, can make financial settlements.

## CONCLUSION

The Act should be viewed as a positive measure to promote good practice when carrying out works on or about a party structure and as an aid to promote neighbourliness.



**Michael Cooper**  
Head of Neighbourly Matters  
Director - Building Surveying  
and Neighbourly matters  
Mobile +44 7500 783 632  
Michael@cooperscbs.com

Our neighbourly matters team, lead by Michael Cooper, specialise in party wall legislation and neighbourly dispute resolution.

Michael Cooper the director of the team is a chartered fellow of the RICS. He chairs the Boundaries and party wall panel of the Royal Institution of Chartered Surveyors and is chair of a working group responsible for the drafting of the RICS Party Wall guidance notes.

The team members act as appointed Surveyors for Building and Adjoining Owners and Michael Cooper also acts a third surbeyor sometimes settling matters in dispute between appointed surveyors .

Michael is past chair of the London Pyramus and Thisbe Society a learned society who regularly meet to discuss party wall and associated issues.

Michael has more than 30 years experience in the field and during his career has advised adjacent owners on some of the most high-profile construction projects, including The Shard and 'Walkie Talkie' towers in London.

Clients range from the largest developers, institutions and authorities to commercial and residential owners and tenants.