



Understanding the Party Wall Act

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Introduction

Rules around procedures for handling party wall matters have been longstanding practice in London, dating back to the Great Fire, but on 1 July 1997 the Party Wall, Etc Act 1996 came into force, providing a framework for such matters in the whole of England and Wales.

It is common for property adjusters to examine losses where an understanding of the Party Wall Act is key to attributing liability, arranging repairs and managing the potential impact on timescales and reserves.

The purpose of this document is to provide a basic guide to the workings of the Act, plus rights and responsibilities, and to share some typical building claim examples.

In reading this document, adjusters should be able to identify potential involvement of the Act and consequences early in the claim process and advise their principals and policyholders and engage appropriate professionals to consider the matter further.

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The Act

In abbreviated terms, the purpose of the Act is to create rules and processes around new buildings on boundaries, items of work to party walls, party structures and party fence walls, and if excavating to certain depths near to adjoining owners' structures.

Within the Act there are strict processes for serving notices, disputes and awards to enable matters to be resolved efficiently and cost effectively between parties without the need for major legal expense and referral to the court.

There are also procedures for obtaining access to inspect and execute works, to seek contributions from adjoining owners, and security for expenses.

The Act is an enabling piece of legislation intended to allow building owners to do works without undue hindrance from adjoining owners and ensuring all parties' interests are properly protected.

The Act does not apply in Scotland or Northern Ireland, where the common law still applies to such matters. The Act does not override other legislation. It needs to work in conjunction with the likes of planning legislation, Building Regulations and CDM that typically apply on construction work and building losses.

Definitions

The Act has a full list of important definitions, and some key ones are as follows:

"adjoining owner" and "adjoining occupier" respectively mean any owner and any occupier of land, buildings, storeys or rooms adjoining those of the building owner and for the purposes only of section 6 within the distances specified in that section;

"building owner" means an owner of land who is desirous of exercising rights under this Act;

"owner" includes -

- a) a person in receipt of, or entitled to receive, the whole or part of the rents or profits of land;
- b) a person in possession of land, otherwise than as a mortgagee or as a tenant from year to year or for a lesser term or as a tenant at will;

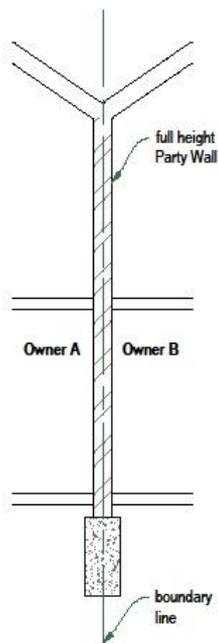




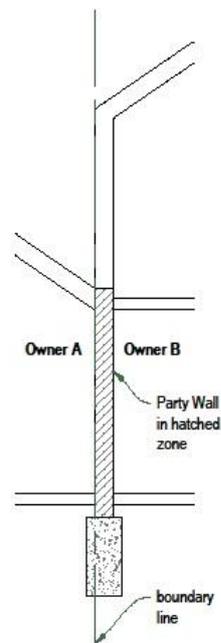
- c) a purchaser of an interest in land under a contract for purchase or under an agreement for a lease, otherwise than under an agreement for a tenancy from year to year or for a lesser term;

"party wall" means -

- (a) a wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and
- (b) so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners;



Party Wall



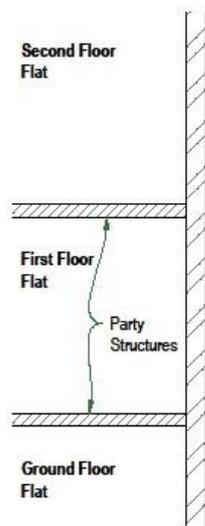
Party Wall

"party fence wall" means a wall (not being part of a building) which stands on lands of different owners and is used or constructed to be used for separating such adjoining lands, but does not include a wall constructed on the land of one owner the artificially formed support of which projects into the land of another owner;

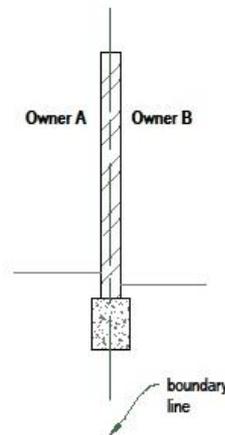




"party structure" means a party wall and also a floor partition or other structure separating buildings or parts of buildings approached solely by separate staircases or separate entrances;



Party Structure



Party Fence Wall

"surveyor" means any person not being a party to the matter appointed or selected under section IO to determine disputes in accordance with the procedures set out in this Act.

In simplified terms, a party wall is a wall that divides two properties, a party structure is a ceiling or floor that divides two properties, and a party fence wall is a garden wall that divides two properties where the boundary passes up it.

When a notice is required

Section 1 of the Act deals with constructing new walls at the line of junction or boundary.

In short, if a new wall is to be constructed along the boundary line, a notice needs to be served under Section 1 of the Act.

This is not a regular notice for insurance claims, as the construction of a new wall where one did not pre-exist is not symptomatic of like for like rebuilding that would apply to a claim. However, it can



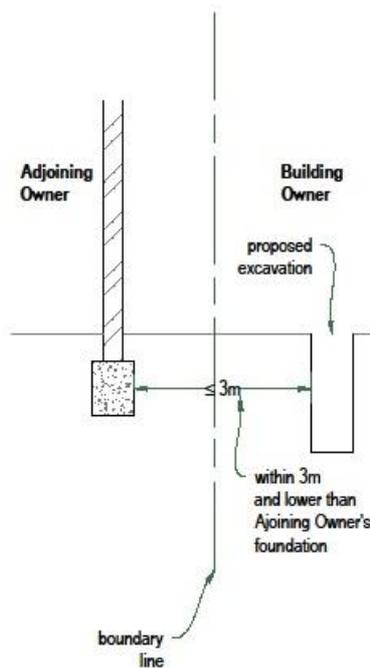


apply in some circumstances, and adjusters and their advisors need to be aware of the Act's requirements.

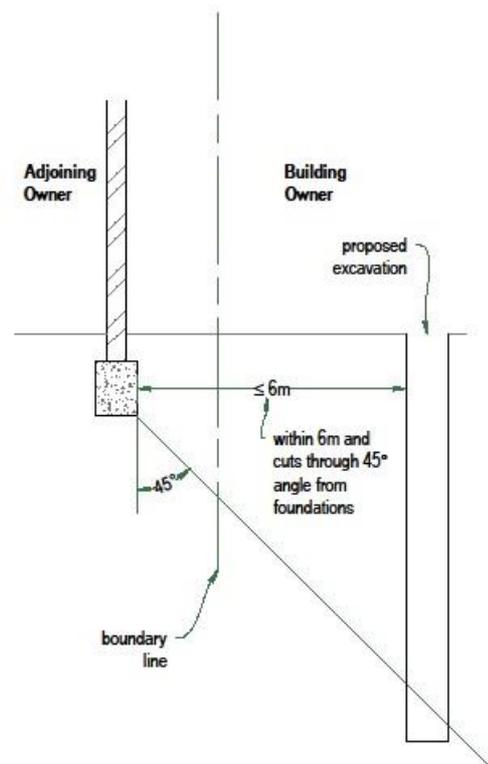
Section 2 of the Act refers to works to party walls, party structures and party fence walls. If work such as underpinning, cutting in to, cutting away from, raising, thickening, making good, demolishing and rebuilding and exposing is intended to any such an item, then a notice needs to be served.

It is commonplace for these to apply on insurance claims. For the likes of subsidence claims, underpinning of party walls and structural repair to party walls is a regular occurrence. Similarly, with fire damaged buildings, it may be necessary to expose a party wall or cut into it as part of the repair process.

Section 6 deals with excavation in close proximity to adjoining owners' structures and frequently occurs on insurance claims.



3m Excavation



6m Excavation





Section 6 (1) says that if excavations are intended within three metres of an adjoining owner's structure to a lower level than their foundations, then notice needs to be served.

Section 6 (2) says that where excavation is intended within six metres of an adjoining owner's structure and this cuts through a 45-degree line from the bottom of their foundations, then notice needs to be served.

Where excavation works for new foundations, underpinning or drainage and services apply in close proximity to other people's property, then notices under Section 6 may apply, and adjusters and their advisors need to be aware.

Serving notice

Line of junction or boundary notices under Section 1 and excavation notices under Section 6 need to be served at least one month before works begin. Party wall, party structure and party fence wall notices all need two months' notice.

It is possible to begin works ahead of these notification periods, but only with the express permission of the adjoining owners.

Building owners can serve notices direct, but they typically engage an agent to do so. If so, a letter of authority needs to be provided to the agent.

On notices, it is vital to state key information such as the building owner, adjoining owner, site and location of the works. Template forms are available from party wall organisations that fulfil the correct criteria.

The intention is that the notice enables the adjoining owner to make an informed decision about the works. The notice needs to refer to the precise sections of the Act being invoked and incorporate supporting drawings and information to enable a decision to be taken.

If incorrect information is provided, or wrong owners and addresses, then notices are invalid.

It can prove useful to check Land Registry details for owners' details, but if precise information is not available it is acceptable to simply serve a notice on 'the owner'.





Where there is no correspondence address or mailbox to deliver a letter, it is possible to simply pin a notice in a prominent position on the building. It is good practice to photograph the notice being pinned in place.

It maybe the case that multiple notices are needed. More than one adjoining building maybe affected. Also if a tenant of a building has a lease in excess of one year they are also regarded as an owner under the act.

Adjoining owner response

After a notice is served, the adjoining owner has fourteen days to reply.

If they consent, they still have the protection of the Act in that should the building owner cause damage to their building, the building owner would still be liable for arranging repairs.

However, if an adjoining owner wants the building owner to consider other concerns and impose certain working conditions, then they dissent to the notice.

An option is to engage a single surveyor to operate in an agreed surveyor role, working for both the building owner and adjoining owner. When surveyors are engaged to act as party wall surveyors, they should do so in an independent and unbiased way, simply interpreting the Act in relation to the circumstances of the particular project. Building owners and adjoining owners should have confidence in the surveyors to act impartially, but more often than not, the building owner's surveyor is assumed to be acting with the building owner's interests at heart and an adjoining owner often elects to engage their own surveyor.

The engagement of a Building Owner's Surveyor and separate Adjoining Owner's Surveyor is more commonplace than the single Agreed Surveyor option.

In the event of an adjoining owner not responding because they choose to ignore the notice, are away from the property or it is unoccupied, then after fourteen days a dispute situation is declared and this enables procedures under the Act to proceed without delay.





Disputes

If a dispute situation arises through an adjoining owner formally dissenting or just failing to respond, then a party wall award is required.

This is a legally binding document that describes the owners' properties, notice served, the works, the respective surveyor or surveyors, and then the rules for executing the work.

If the owners select an agreed surveyor, that individual can rapidly consider all concerns and prepare an award.

Where two surveyors are involved, they begin their discussions by exchanging letters of appointment to confirm they are authorised to act, and then select a third surveyor that they can turn to in the event they disagree over an item.

In circumstances where the work is purely for the benefit of the building owner, e.g. demolishing and rebuilding their detached garage following a fire on new, deeper foundations, then it would be appropriate for the adjoining owner's surveyor's fees to be settled by the building owner (or their insurers if connected to a valid claim).

At the outset of their dialogue, the two surveyors need to agree the adjoining owner's surveyor's fee. This needs to be fair and reasonable and it is not unusual for the third surveyor to be called upon to provide a decision on what is fair and reasonable.

The adjoining owner's surveyor will be expected to keep a record of his time so the fee can be justified and entered into the award.

Good well-versed party wall surveyors will work together to consider the overall situation in relation to the Act and an award is typically prepared for a simple dispute in three to four weeks.

In the event dialogue between the surveyors stagnates there are rules for delays, and in the absence of a response one surveyor can proceed on an ex-parte basis to progress matters if required.

An award will typically include reference to the original notice and works intended in sections of the Act and confirm drawings and specifications to be followed.

It may emerge that method statements are included for certain aspects of the project.

A condition survey is typically added to the award but is not essential. This provides a factual snapshot of an adjoining owner's property before works. If no access is possible and a survey cannot





be completed and problems come about during the works, experienced surveyors should still be able to identify fresh damage from longstanding problems.

Works on site

When the award is agreed between the surveyors or the agreed surveyor, it is served on the affected owners and they have fourteen days to appeal in the County Court. However, if an award has been well prepared, listening to all concerns, it is rare for such an appeal to be implemented.

After fourteen days, the opportunity to appeal is lost and works can then begin on site.

When the project moves to site, it is typical for party wall surveyors to attend to ensure that the works and processes in the award are being accurately followed. In the event the works vary it is likely that fresh notices and awards would need to be prepared, incurring significant delays and further expense.

Access rights

Where line of junction works are being carried out and works to party structure, party wall or party fence wall, access onto an adjoining owner's land is possible, subject to providing adequate advance notice.

In some circumstances, adjoining owners are entitled to compensation for the upset of the works involved.

Damage

A well-considered award, with surveyors who understand construction and the impact of the works, should very much eliminate scope for damage to an adjoining owner's property.

However, issues do occur with the likes of cracks developing and damp ingress.

A further award would be needed to determine what repairs are appropriate and who is responsible. This sits with the agreed surveyor or two surveyors that prepared the original award.





Where an adjoining owner's property is damaged by works, insurers are often notified and adjusters attend site, but if an award is in place this already provides rules for assessing the damage and rectification, and an adjoining owner should not be turning to his insurers for assistance.

An award to resolve building damage to an adjoining owner's property is subjective and needs to be a fair and reasonable resolution to the problem.

If an adjoining owner's property was in immaculate condition pre-works and has suffered cracks following underpinning, a fair judgement might be monitoring to ensure the cracks have re-stabilised and then comprehensive crack repairs and redecorations to restore the pre-incident condition.

However, if pre-underpinning that property was already full of cracks and dilapidated and matters have only worsened during the works, then a fair resolution might be to simply monitor to ensure stability but no crack repairs or redecorations as this was required irrespective of the building owner's work.

As with the earlier awards, owners are in a position to appeal if they object to a further award's content.

If damage is reported, having a reliable pre-works condition survey is very valuable, and in some circumstances it may be considered appropriate to execute such a survey where party wall processes are not obligatory or when an adjoining owner has consented.

A condition survey needs to be a combination of reliable narrative and good quality photographs identifying all relevant rooms and elevations on an item by item basis. Lazy, unspecific condition surveys are of very limited use.

Contributions and expenses

Where work is being carried out to a party wall, party fence wall or party structure and there is a want or need of repair and both the building owner and adjoining owner obtain benefit from the works, then contributions can be sought under Section 11 of the Act.

For example, if a party wall has significant structural cracking that is active and warrants underpinning and structural repair, then both parties either side of the wall would benefit from repairs and both should contribute equally towards the works and fees involved.





To invoke this, a building owner would look to specify works, obtain quotations to illustrate value for money, and then, when serving notice, make the request for a contribution.

In the event the adjoining owner refuses, an award would be prepared between the two surveyors confirming the contribution and the statutory obligation for the adjoining owner to pay.

It is possible under the Act for funds to be placed into secure accounts by property owners for the surveyors to release at appropriate stages in works.

Some practical 'adjusting' tips

If building owners and adjoining owners are on good terms, dialogue between everyone before notice is served is very helpful to explain the works and the need for notices. Consent usually follows, or an agreed surveyor appointment which is speedy and cost-effective.

In situations where there are contentious relations or no response from an adjoining owner and a dispute emerges, then discussions can be lengthy and expensive, and adjusters need to make their principals and policyholders aware of this. If it's evident from the beginning that the two surveyors are unlikely to agree then a third surveyor appointment is probable and that will incur extra expense and delays. If an owner is likely to appeal an award no matter how well constructed then huge expense and delays will prevail.

In some circumstances, party wall surveyors will need to turn to specialists such as structural engineers for guidance over what should go into an award, and this will add further delays to the award process and costs can mount up.

In situations where there are multiple adjoining owners there is potential for multiple awards and the involvement of several surveyors, and an adjuster identifying this early in the claim process and managing everyone's expectations will assist.

Adjusters need to be aware that work on a boundary, on a party wall, structure or party fence wall, or excavations near neighbours' structure can all invoke the act and they should consult appropriate professionals early in the claim process.





When it goes wrong

Adjusters should now have an understanding of when notices apply and the procedures that then follow. However, construction does go ahead on buildings without notices being served, and if damage is sustained building owners have exposure to many liabilities.

Below is a domestic property that collapsed when a trench was excavated, undermining the foundations. This was carried out by a developer without any party wall notices. The property needed to be completely demolished and reconstructed with the owner placed in alternative accommodation.

This was a clear breach of the Party Wall Act that the owners of the collapsed property and their insurers were easily able to prove, and the developers on the adjoining site were exposed to the entire building loss, alternative accommodation and all professional fees.

If notices had been served and surveyors involved, measures would have been in place to excavate in a controlled method that would avoid collapse and the vast expense and disruption that actually occurred.



Some scenarios

- As part of some water damage repairs, insurers have agreed to a contractor's suggestion to install an injection DPC and this includes a party wall. *A Party Structure notice needs serving and 2 months ahead of works starting.*





- Fire has caused smoke damage and charring to trusses in a semi-detached house and a structural engineer has said they need renewing. *The work will involve exposing the party wall and notice needs serving 2 months in advance of the roof being removed.*
- A claim has been accepted for accidental damage to drains and the only option to repair is excavation and replacement. It is close to the neighbour's house and the drains are very deep. *The drain depth and neighbours foundation depth need to be established and if the drain excavations pass below the foundations then notice under section 6 may apply and needs providing 1 month ahead of works.*
- A policyholder has seen cracks develop to their property during the construction of a basement below their neighbour's house and they have raised a claim with insurers. At the first meeting they explain a party wall award is in place but the two surveyors can't agree on the cause of the cracks and remedial work and the insured has raised a claim as they are not getting anywhere. *At this stage this probably isn't a matter for insurers. Instead the two surveyors should acknowledge they can't agree and refer the matter to the third surveyor who will make a binding decision. Insurers may become involved when the third surveyor's award is released and it may be appropriate to appeal the award.*
- On a subsidence claim the property and party wall are continuing to move and underpinning is needed. Next door is also moving but they are refusing to underpin. *The building owner has a right to underpin under the act and that includes the party wall. Notices are needed under section 2 and 6 and need serving 2 months ahead of work beginning. Because the party wall is moving there is a want of repair and the adjoining owner will benefit from the work and cost contributions to works and fees could be sought.*
- A policyholder raises a claim for cracks on their property and it relates to deep excavations continuing on the site next door close to the boundary and no party wall notices have been served. *Approach the adjoining owner and explain the damage and ask their contractors to halt works. If this is not successful an injunction to stop work could be sought.*





Further Reading

For more information the Act itself is recommended but there are also guidance notes and publications on the subject through the RICS, Faculty of Party Wall Surveyors, Pyramus and Thisbe Club and Chartered Association of Building Engineers.

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