



party wall matters
arise



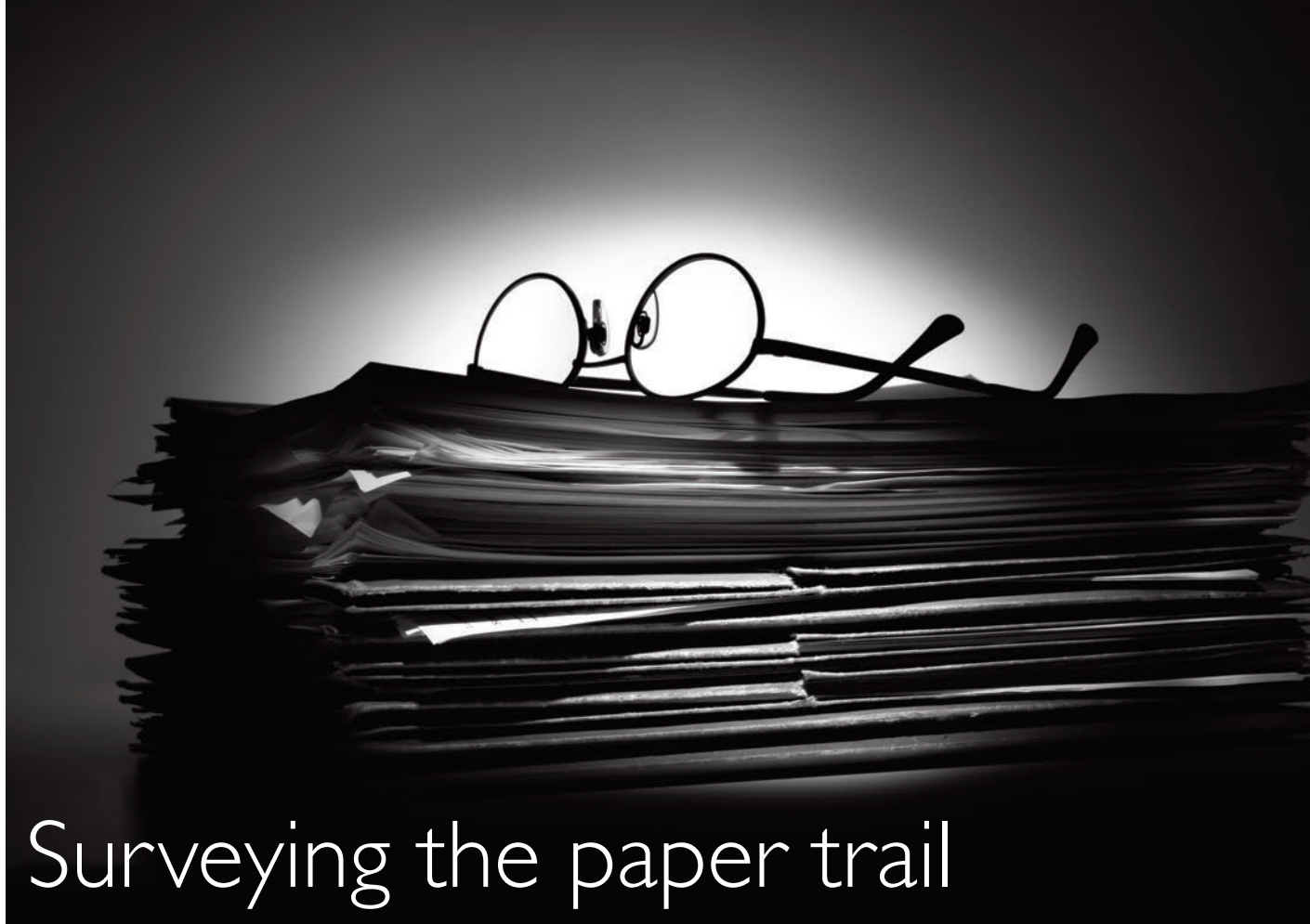
because
party walls matter

party walls limited are independently regulated and experienced specialists in party wall issues affecting both building and adjoining owners.

The Party Wall etc Act 1996 applies for the following works:

- work on an existing wall shared with another property
- building on the boundary with a neighbouring property
- excavating near a neighbouring building

If you or your neighbour are planning to carry out some work to your property and you would like some independent advice on party wall matters please contact us on **020 8877 0365**.



Surveying the paper trail

Keeping a paper trail of all Party Wall etc. Act 1996 documents is a key element to avoid legal failings, as demonstrated by Alex Frame, Chairman of the FPWS...

I have always taught at seminars and maintained that in all business matters, a properly filed and managed paper trail is extremely important. This might seem blatantly obvious, but very often, a paper trail will not be maintained, and can result in a catalogue of legal failings.

I have learnt the paper trail lesson from bitter experience relating to a building contract, but nothing to do with party wall matters. It may be a jaundiced view, but you have to assume that anything you do might end up in court, and if you bear that in mind, it is most unlikely to happen.

“Unless all of the initial paperwork is in place, then all that follows could be deemed to be invalid, including any Awards that might have been served.”

The administration and implementation of the Party Wall etc. Act 1996 is just as important, if not more so,

to ensure that all the paperwork is in place, simply because the party wall surveyor is preparing a legal document.

I have seen many party wall files where surveyors have not been correctly appointed in writing, or even appointed at all. I have seen many incorrect notices, and not least of all, incorrect names and addresses of the owners given in the award.

Unless all of the initial paperwork is in place, then all that follows could be deemed to be invalid, including any awards that might have been served. This clearly could have a catastrophic effect upon the proposed works and not least a possible legal claim against the surveyor.

The important point perhaps is not so much having a piece of paper, but is the paper worth anything? Or, as one of my colleagues, Jim Jackson very often reiterates in our seminars; “a verbal agreement is not worth the paper it is printed on”.

What precisely are the documents that need to be correctly in place in order to create a good paper trail?

In order to help, I have created a 12 point-plan for party wall surveyors to follow:

1. Check the ownership of all parties to the matters, regardless as to whether which party appoints you. This is easily done (in the vast majority of cases) at Land Registry, for which the cost is extremely small. Open an account with Land Registry as constant use will be made in this respect;
2. Check that the notices served are valid – do they have the correct names and addresses of the building owners particularly? The adjoining owner may be referred to just as the owner at this stage;
3. Check that the notices refer correctly to the works with regard to the drawings received;
4. Check that you have your letter of appointment and have exchanged copies with the other surveyor;
5. Check that you have selected a third surveyor in writing;
6. Check that you have informed the appointing owners with the name and details of the third surveyor, and that they have the right to contact him/her;
7. Check the content of the award again before serving, have you given the full names, correct addresses, genders, pluralities?;
8. Check that you have kept a signed copy of the award;
9. Check that when you serve the award that you have informed the owners of their rights to appeal within 14 days;
10. Check that the other surveyor has served the award – exchange letters that state this;
11. Check that you have proof of postage. (applicable to all documents such as notices, 10 day letters and the award);

12. Check that your costs invoice has been sent to the owner (usually building owner), either from you or via the other surveyor.

If you undertake the above you should have a file containing a good paper trail confirming the required processes of a competent Party Wall Surveyor.

Suffice to say the Act generally works well, as do the surveyors who administer and implement it. The Faculty of Party Wall Surveyors (FPWS) even provide free advice lines that are open to surveyors and the general public alike, to assist in all associated matters.

I leave you with the famous picture of the British Prime Minister Neville Chamberlain who cheerfully waived his piece of paper that he had received from Herr Hitler when he returned to Heston airport in September 1938. What was that worth?



Alex Frame
Chairman

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Party Wall matters arise... because Party Walls Matter

We are based in South West London and specialise in all party wall matters in London and the Home Counties. Party Walls Limited was founded in 2009 with the coming together of three independent experienced Surveyors who specialise in this niche area of surveying.

With over 90 year's collective experience, Party Walls Limited provides professional cost effective Party Wall advice and solutions for both residential and commercial developments of all sizes.

We are regulated by the Royal Institute of Chartered Surveyors and are members of the Faculty of Party Walls Surveyors, The Pyramus & Thisbe Club, the Chartered Institute of Builders and the Worshipful Company of Constructors.

Tel: 020 8877 0365
www.partywallslimited.com

Whether you are a developing owner, a concerned neighbour or an architect or engineer looking to give the right advice or proposal to a client, give us a call to discuss the problem. Tel: 020 8877 0365





The Party Wall etc. Act 1996

The Party Wall etc Act 1996 grew out of an earlier Act of Parliament that was specific to London. With increasing development and disputes elsewhere, the Act was introduced across England and Wales from 1st January 1997 and has steadily become more commonly used.

Proper use of the Act ensures that a neighbour that could be affected by any work covered by the Act is not taken by surprise by contractors suddenly appearing over the garden wall or on the adjoining roof, or carrying out noisy works to the party wall. It is not a solution for all the problems that can arise between neighbours during building works, and it cannot prevent disagreements occurring, but it goes a long way towards making sure that there is a degree of respect between the parties.

There are still variations in the interpretation of parts of the Act with several changes of direction having occurred through Court decisions, but a considered, sensible and honest approach by surveyors can usually arrive at an acceptable solution.

The Act is to be used when certain works, identified in various sections of the Act, are proposed. There is a procedure to follow, within which there are a number of options, and details of these are discussed later on.

The intention of the Act is to enable the works to be carried out and to provide information and reassurance for the affected neighbours.

You would expect that an Act of Parliament that came into force in 1997 and could affect as much as 25% of the population of England and Wales would be quite well known. But no! For a very high percentage of these people, the Party Wall etc Act 1996 turns up as a great surprise, causing delays and unexpected costs.

Planning authorities, architects, engineers and contractors will all now advise the Building Owner (the person who owns the property where work is taking place) to sort out the Party Wall procedures before the work is started.



What is a party wall matter?

The Party Wall etc Act 1996 sets legal obligations put in place to safeguard the rights and responsibilities of both a Building Owner and Adjoining Owner during certain building works to shared walls (party walls) or close to adjacent buildings. Some examples of works covered are:

- Loft conversions
- Extensions
- Excavating within 3m or 6m of a neighbouring property
- Building on the boundary with a neighbouring property
- Underpinning
- Some alterations or internal refurbishment

The Party Wall Act does not change any requirement for Planning Permission or Building Regulation

Approval for building works and equally obtaining Planning Permission or Building Regulation Approval does not negate the legal requirements under the Party Wall etc Act 1996.

If you or your neighbour are carrying out work and you are unsure if the works fall under The Party Wall etc 1996 Act, please contact us for free independent advice on all party wall matters.

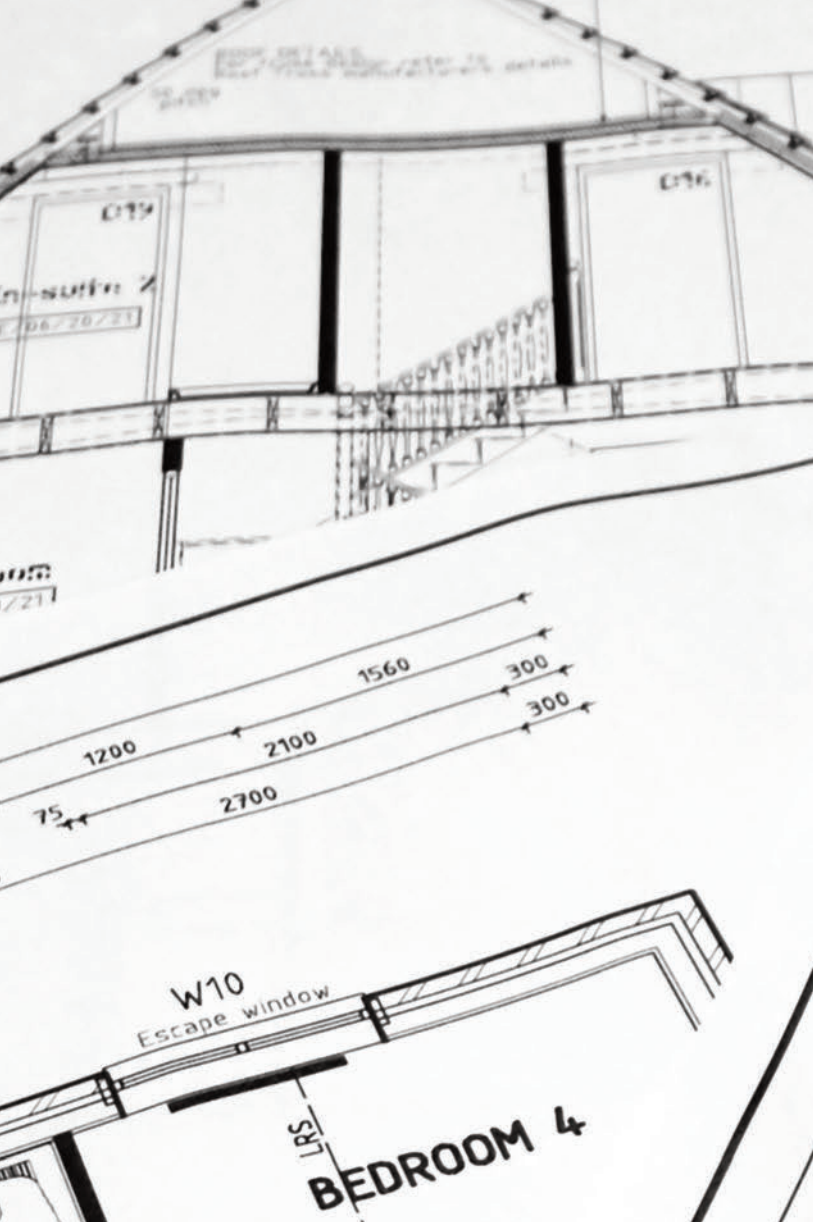
For further in-depth information and a copy of The Party Wall etc Act 1996 click here

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/133214.pdf>

What is a Party Wall Award?

A contract between the two owners, prepared and served by the surveyor or surveyors, setting out the duties and obligations of both parties. It also serves as a 'buffer' between the parties in the event that there are matters under dispute that fall within the Act. It also makes it possible to find a resolution to problems that may arise without a long and expensive legal procedure, as long as the problem falls within the surveyor's remit.





I want to undertake building work – what do I do now?

If you are planning works that may fall under the Party Wall etc. Act 1996 you are called the Building Owner. The first thing you need to do is serve Notice on all parties that may be affected. This could mean that they have an interest in the party wall or have an adjoining boundary or have a structure within 3 metres (in some cases 6m) of your excavation work.

For works to a party wall you are required to give 2 months Notice before those works commence. For foundation or excavation works 1 month Notice is required.

Obviously serving Notice yourself is the first way to save money but please be aware that if the Notices are incorrect in any way and a dispute arises, they may be deemed invalid and a new Notice will have to be served.





Neighbourliness

The first thing we advise a building owner to do is to talk to his neighbours, especially if you already have a good relationship with them. We appreciate that it is a sad fact that not everyone gets on with their neighbours, but an initial visit or informal chat is always the best way to start proceedings.

Any works to your property can be disruptive to you neighbours, albeit unintentional. Taking around a copy of your plans and discussing your proposals with neighbours before serving the required Notice can make everyone feel happier.

From our experience we find that this simple act of neighbourliness can often assist on matters being agreed swiftly without either party spending a small fortune, although formalities still have to be processed.

If a neighbour chooses to appoint his own independent surveyor please bear in mind that this is rarely a vindictive act to cost you additional fees but is just his right under the Party Wall etc. Act 1996.



NOTICE

I have just received a Notice – what do I do now?

If you have received a Notice about proposed works your neighbours plan to carry out to their property, you are called the Adjoining Owner. You are required to respond in writing, within 14 days from the date of Notice.

There are two ways you can respond:

Consent to the Notice:

This simply put means that you agree for your neighbours to continue with their proposed works without a Party Wall Award being produced. You are still protected by the Party Wall etc Act 1996 if a dispute should arise later on.

We do advise an adjoining owner who consents to the Notice to request that a Schedule of Condition be undertaken by a surveyor of those parts of his property that are immediately adjacent to the proposed works. This will provide a record of the current condition of the adjacent areas prior to works commencing so that in the unlikely event of damage being caused it can be easily identified.

Choosing to 'consent' to the Notice is often confused with giving your 'consent' to the proposed works. Disputing the proposed works should be through the planning process and not the Party Wall etc. Act 1996.

Dissent to the Notice:

This option means that a Party Wall Award is prepared and served prior to the works commencing.

You now have two further options: you may concur in the appointment of an Agreed Surveyor or you may appoint an additional Surveyor, called the Adjoining Owner Surveyor.

Agreed Surveyor

The Party Wall etc. Act 1996 is devised in such a way that a Surveyor appointed by any party, whether developer or neighbour, is required to act impartially to administer the obligations, rights and duties of both owners. Having an Agreed Surveyor is often much quicker and is certainly more cost effective, and Section 10 of the Act is quite clear that there is no conflict of interest when both parties agree to use the same surveyor.

Adjoining Owners Surveyor

You may appoint a surveyor of your choice, and that surveyor's reasonable fees, in all normal circumstances, will be met by the Building Owner.

Choosing to 'dissent' to the Notice is often confused with disagreeing with the proposed works. If you disagree with the proposed works you should contact your local planning authority. Dissenting to the Notice simply means that you want a Party Wall Award produced before the works commence. It is not a tool to delay or stop the proposed works.

Watch the time...

Under the Party Wall etc Act 1996 there are certain timescales that need to be adhered to as either the Building Owner or the Adjoining Owner.

The Building Owner is required to serve Notice for works that affect the party wall a minimum of two months prior to works commencing and one month prior for foundation or excavation works.

Once Notice is received the Adjoining Owner has 14 days to respond in writing stating if they consent or

dissent to the works and if the latter, who their surveyor will be. If no response is received by the Building Owner or his surveyor within 14 days a further Notice will be served stating that the parties are now deemed to be in dispute and a surveyor must be appointed. If no written response is received, a Surveyor will be appointed for the Adjoining Owner by the Building Owner or his Surveyor under Section 10(4) of the Act.

Not responding will not delay the proposed works.





Fees

For a high percentage of people, the Party Wall etc. Act 1996, still turns up as a great surprise, causing possibly delays, unwanted stress and unexpected costs. Addressing party wall matters at an early stage – and not ignoring the Act – minimises the risk of delays and escalated costs to you or your neighbours' works.

At Party Walls Limited we believe in providing an efficient and cost effective service based on an hourly rate or fixed price service depending on the scale and complexity of the works.

Our hourly fee ranges from £130-£140 (Central London) and incorporates reasonable travel costs and disbursements.

We would be happy to discuss your proposed works with you to help with budgeting. So if you need any further advice, please contact us and we will do our best to help. **Tel: 020 8877 0365**

Services

Party wall procedures under the Act do not have to be complicated. At Party Walls Limited we pride ourselves in offering straight-talking advice that is cost effective.

We regularly act for both Building Owners and Adjoining Owners. We are increasingly appointed to act as 'Agreed Surveyor' for both parties as being a Party Wall Surveyor requires you to be independent and impartial, and to work for the Act. Also, having an Agreed Surveyor helps keep costs to a minimum

Our services include:

- Assessment of proposals and advice
- Serving of or responding to Party Wall Notices
- Undertaking Schedules of Condition
- Agreeing Party Wall Awards
- Access issues and license agreements
- Dispute resolution under the Act.



Meet the team at Party Walls Limited

Stephen T Coward MFPWS – Director

Steven worked for a number of years in Estate Agency in Richmond, Putney and Fulham. He then took professional qualifications and ran his own practice as a Fellow of the Incorporated Society of Valuers and Auctioneers, undertaking general surveying and valuation work. He now specialises in party wall work and is a member of the Faculty of Party Wall Surveyors.

Steve has four children (three of whom have finally left home, and he is working on the fourth) and now two grandchildren.

Nigel Acres AssocRICS MFPWS – Director

Nigel worked in Fulham from 1987 having previously worked as a Building Surveyor in private practice after making a move from the City where he worked in the estates department of both NPI and NEM for commercial property matters.

Nigel's move to Fulham resulted in him taking over the responsibility for the Building Surveying department of an established local firm of Surveyors.

Nigel moved to set up his own consultancy in 2005. Having built up a good working relationship with several property management companies he still retains a regular involvement with residential building surveying issues. Having gained a vast amount of experience in party wall matters this is now proving a valuable asset to both home owners and local contractors who have need of expert advice concerning party wall legislation.

Nigel is an Associate member of the RICS as well as being a member of the Faculty of Party Wall Surveyors and an elected member of the Pyramus and Thisbe Club.

Faye Galligan BSc (Hons) ICIOB – Director

Faye graduated from London South Bank University gaining a First Class degree. She is an Incorporated member of the Chartered Institute of Building, a member of the Pyramus and Thisbe Club and a Freeman of the Worshipful Company of Constructors, having won the Constructors Prize in 2009.

Faye previously worked in property management and general practice surveying before joining a leading City Party Wall specialist practice working in all party wall matters. She worked independently for several years before joining Stephen and Nigel as a Director of Party Walls Limited.

Faye lives with her partner and three young children.

Clients

London Borough of Hammersmith and Fulham

London Borough of Richmond upon Thames

Metropolitan Police

Corporate clients

Andooi Design

Red Square Architects

Janine Stone

Work Ltd

Links to Government websites

www.partywalls.org.uk

www.fpws.org.uk

Party duties

Neil J Dransfield former President of CIAT examines the circumstances of serving a Party Wall notice...

The Party Wall etc Act 1996 (the Act) is applicable to England and Wales and must be followed in certain narrowly defined circumstances. They are basically where planned building work is close to a structure that belongs to a neighbour. Its requirements are quite separate to those of Planning and Building Regulations.

The purpose of the Act is to confer rights on the building owner (the person intending to carry out building work) in exchange for obligations and duties. The Act's overall objective is to bring certainty to both the building owner and the adjoining owner.

Designers, especially Chartered Architects, Chartered Architectural Technologists and Chartered Surveyors, will have a duty to inform their clients about the requirement of the Act.

Where the Act applies

The following are examples of where a building owner is required to serve a formal notice on adjoining owners (notices must be in writing, must show relevant details and are only valid for one year):

- When building work is planned on a boundary with a neighbouring property – Examples are building a garden wall, or the outside wall of a new building or extension, at the boundary. Section 1 of the Act applies and a “Line of Junction Notice” must be served at least one month in advance of the work;
- When work is planned directly to an existing wall or other structure which is shared with another prop-

erty – This includes party walls, and can include the outside wall of a neighbour's building, but also covers separating floors between flats and garden walls built astride the boundary. Examples are underpinning or thickening, repair, inserting a damp proof course or flashing, cutting off projections, strengthening and opening up and exposing the structure. Section 2 of the Act applies and a “Party Structure Notice” must be served under Section 3 of the Act at least two months in advance. These notices frequently occur in roof space conversions, building in (or removing) beams, removing chimney breasts, altering chimneys, roofs or floors, demolitions, and sometimes in extensions;

- When an excavation is planned within 3 metres of a neighbour's building or other structure, where it will be to a lower level than the underside of the neighbour's foundation – Examples are foundations to a building or extension, but also includes excavations for drain or services trenches within 3 metres. Section 6(1) of the Act applies: An “Adjacent Excavation and Construction Notice” must be served at least 1 month in advance. These types of notice frequently occur in new building work and in extensions, but can apply to structural alterations;
- When an excavation is planned within 6 metres of a neighbour's building or other structure, where that excavation would cut a line drawn downwards at 45° from the underside of the neighbour's foundation – Examples are especially deep foundations or drains within 6 metres. Section 6(2) of the Act applies: An “Adjacent Excavation and Construction Notice” must

be served, again at least 1 month in advance. Again, these types of notice frequently occur in new building work, extensions and structural alterations.

Disputes under the Act

Agreeing to a notice in writing allows the work to proceed. However, if a neighbour does not agree (or even does not reply within 14 days) a dispute arises. Section 10 of the Act (Resolution of disputes) applies. The building owner and adjoining owner must then either:

- a) Agree to appoint one surveyor (an “agreed surveyor”), or;
- b) Each appoints their own surveyor. (Those 2 surveyors then select a third surveyor, but only in case of a dispute between themselves.)

The dispute procedure under Section 10 may well be longer than the period required for the notice, and in complex cases can be several months.

An Award

The dispute is resolved by the surveyors on behalf of the owners, and the result is the service of an “Award” for each dispute. An Award is a legal document describing when, where and how the work subject to the Act is to be carried out. An Award cannot deal with matters outside the Act, and therefore cannot deal with other work on site.

Once served, both the building owner and the adjoining owner each have a right to appeal the Award in the county court, but only for a period of 14 days. After that the Award is totally binding and shall not be questioned in any court. This is a very powerful provision – it brings certainty to the building work.

Other Items

The Act cannot be used to resolve boundary disputes, and neighbours cannot use it to prevent approved work from being carried out.

The Act deals with many matters not covered above

and only the Act should be relied on for the scope and meaning of any item. There are many guides available relating to the Act, but even they should not be relied on in preference to the Act.

A surveyor under the Act would be a professionally competent person and can be the designer, so long as he or she is not a party to the dispute. The surveyor must however be a person, not a firm, with obvious PII implications.

References:

The Party Wall etc Act 1996 (published by HMSO, ISBN 0-10-544096-5)
<http://www.legislation.gov.uk/ukpga/1996/40/contents>

The Party Wall etc Act 1996 Explanatory Booklet (published by the Department for Communities and Local Government)
<https://www.gov.uk/party-wall-etc-act-1996-guidance>

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