

# Building Surveying, Property Consultancy and Party Wall specialists



[www.cardoemartinburr.co.uk](http://www.cardoemartinburr.co.uk)

Cardoe  
Martin  
Burr



## About Us

Cardoe Martin Burr Limited provide Building Surveying and Property Consultancy services to corporate, institutional and individual clients. The practice is wholly owned by its Directors who share the belief that excellence in service is the key to creating a successful business. Our role as Chartered Building Surveyors involves the care of all types of property within the built environment and our success as a practice is based upon our ability to perform this role for a broad range of property owners and occupiers.

The majority of our work is undertaken for clients in London and the South East but we regularly provide building surveying services for institutional, pension fund and some private clients throughout the UK.

Cardoe Martin Burr is a Quality Assured company and operates a company management system to the requirements of ISO 9001:2008.

We are Chartered Building Surveyors and operate in accordance with the professional standards required by The Royal Institution of Chartered Surveyors and hold £5 million professional indemnity insurance cover for each and every claim.



### Contact us

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# Consultancy

## Building Surveys

We undertake building surveys of all types of office, industrial, retail, residential and public buildings on behalf of occupational users and institutional investors throughout the UK. Environmental audits and services inspections are also arranged.

Recent Instructions include:



Building survey of several warehouse units for an institutional purchaser



Building survey of a Victorian terrace house for a residential private client.

## Project Management

We recognise that handling a construction project requires firm and positive management to achieve satisfactory completion of the works on time and within the client's budget.

Recent instructions include:



Overseeing the clearance of a 3.5 acre site and the refurbishment of a building being retained as part of the proposals for a leading property investor.



Stripping out and refurbishment of a retail unit and upper parts prior to re-letting for a pension fund client.

## Development Monitoring

Cardoe Martin Burr act as the lenders surveyor for the development of speculative and pre-let warehouse and office schemes which involves assessing the design and monitoring the works from commencement through to completion.

Recent Instructions Include:



Development monitoring of new warehouse units for a pension fund client.



Development monitoring of a new build pre-let warehouse and laboratory facility on behalf of a pension fund client.

## Fire Insurance Valuations

Cardoe Martin Burr undertake insurance valuations for building reinstatement purposes on behalf of commercial and residential property owners and occupiers.

The valuations are undertaken by our Building Surveyors in conjunction with our Consultant Quantity Surveyors and information is drawn from an extensive database of client portfolios.

Recent Instructions Include:



Insurance valuation for reinstatement purposes of a retail centre for an Investment Manager.



Insurance valuation for reinstatement purposes of a hotel for an Investment Manager.

## Dilapidations Advice

Liability to repair under the terms of a lease can vary significantly under current statute and case law. Currently numerous pension fund clients benefit from our watchful eye upon their tenants repairing strategies – or lack of them!

Recent Instructions include:



Overseeing dilapidations works for a tenant to minimise their liability prior to lease expiry, after a schedule of dilapidations was served on them by their landlord. A successful handover to the landlord was achieved prior to the termination of the lease enabling the client to achieve a substantial saving on their damages claim.



Preparation of a terminal schedule of dilapidations on behalf of a pension fund for service upon a commercial tenant.



Negotiation of a dilapidations claim on behalf of a commercial tenant wishing to exercise a break option in their lease.

## Defect Diagnosis

This has proved an effective service to many clients. The early diagnosis of building defects can reduce the cost and complexity of repairs and minimise disruption to building occupiers and staff.

Recent Instructions Include:



The eradication of an acute condensation issue within several flats that form part of a mixed use development.



The initial identification and organisation of remedial works in relation to an outbreak of dry rot within a residential dwelling.





# Neighbourly Matters

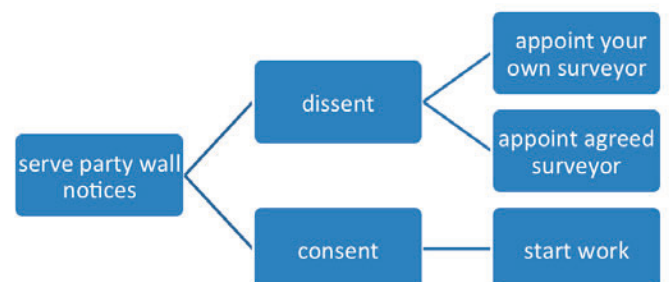
## Party Wall etc. Act 1996

**So why employ a party wall surveyor?** The Party Wall etc. Act 1996 was a carefully written piece of legislation. Can you do it all yourself?

Cardoe Martin Burr have a Neighbourly matters division which deals solely with Party Wall matters. We are extremely experienced and have a dedicated team which ensures that we are efficient. We are also selected as third surveyor for referrals in disputes and as expert witnesses. As Chartered Building Surveyors we also have an excellent knowledge of building pathology and defect analysis to aid in the party wall process.

You can do some of it yourself, but there are a lot of pitfalls. You can serve notice by yourself, but once you have served notice and dissent occurs, surveyor(s) must be appointed, as you cannot act on your own behalf, whether as building owner or adjoining owner.

The Act wasn't written to cover every eventuality. This can lead to conflict between surveyors and how it is interpreted. Some surveyors, not all, use the differences in interpretation to create a situation and difficulties that are unnecessary. Below is a flow chart showing the initial process:



So, starting at the very beginning, taking this from the stance of being the person who wants to undertake the work, you firstly need to decide whether or not you are going to serve party wall notices – do you know enough about the process? There are statutory timescales to be followed and different types of notice. Cardoe Martin Burr are very experienced in the process and can take the headache out of potentially getting it very wrong!

So there are 3 types of notice:

**Party structure notice** – this is for work to the party wall, party fence wall or party structure. It carries a statutory time-scale of two months.

**3m/6m Notice** – This is for excavation within the distances specified. The 3m rule applies where foundations go lower than the adjoining owner's property and the 6m rule is within 45degrees. So if the excavation is within 5m and 5.5m deep, the Act applies. This carries a statutory notice period of one month.

**Line of junction Notice** – this applies when building on the line of junction, whether astride it or close to it, and if foundations project onto the adjoining owners land. It is nearly impossible to serve a party wall notice unless you determine the location of the boundary, ie. is it a party wall, party fence wall or boundary wall? If you don't get it right then the notice is invalid or the award is meaningless, that is where Cardoe Martin Burr can advise you properly. This carries a statutory notice period of one month.

Whilst there are statutory notice periods, it isn't as simple as that. Once notice has been served the adjoining owner has 14 days to respond. If they do nothing that DOES NOT mean you can just get on with the work. You have to give them a further 10 days to respond. If they still do nothing you are obliged to appoint a surveyor to act on their behalf – it does not mean consent.

Whilst on the face of it, serving notice shouldn't be that complicated, the Act is open to interpretation, which is why we are here to advise as we have significant experience in the field.

**Raising a wall upwards or along the boundary line** – The boundary has already been built on whether it is going up to the sky or down the line of junction on either the building owners side or the adjoining owners side, so is notice needed under s1(5)?

Is notice required to put a mansard roof on top of a block of flats? – This depends on who owns the roof space and what the deeds say. If you do not own the space you do not have the right to extend into it.

**Definitions of 'party structure'** – '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'.

**Definition of adjoining owner** – 'adjoining owner' vs 'adjoining occupier', respectively mean any owner and any occupier of land, buildings, storeys or rooms adjoining those of the building and for the purposes only of section 6 within the distances specified in that section'.

This argument could also be extended to foundations and enclosing walls – what if you, as a leaseholder, only own the 'surfaces'?

**How long is a letter of appointment valid for?** We would say until an Award is in place. A notice could expire but does that stop you from reserving notice if you have already appointed a surveyor? You shouldn't assume that the adjoining owner would appoint the same surveyor again.

Even if you have a property portfolio you should sign a letter of appointment for each of the properties to avoid any confusion about ownership. Companies quite often have a portfolio of properties that may be held in different names under a 'holding company', and it is important that you get ownership details correct otherwise the process is invalidated. Likewise, if part way through the construction project you decide to sell the building, the process starts 'de Nouvo'. So you should think carefully about the issue of ownership if you are a developer.



That is different if you are an adjoining owner. I have known some adjoining owners consent to a notice or appoint an agreed surveyor and then they sell the property, and the new owner, once an award is served, is left with the decisions made by someone else.



So whether you're a building owner or adjoining owner, you need to know who can sign a letter of appointment or acknowledge a notice:

Who can sign for;

**Companies** – a Director

**Executors** – a trustee of the estate or a solicitor

**Guardians** – only those named

**Charities** – only those individuals named

**Trust funds** – normally a solicitor

**And finally** – the mad woman who dies and leaves her property to the cat.....

**Minor bureaucratic errors** – this can be as simple as business partners putting the property in individuals names rather than a company name because the bank won't lend them money, but because of the name change, notices have to be reserved or an Award becomes invalid. What if a Guernsey Based Trust is dissolved but the land registry details are

not updated and the property then becomes in the ownership of another company, spelt marginally differently and now based in the States?

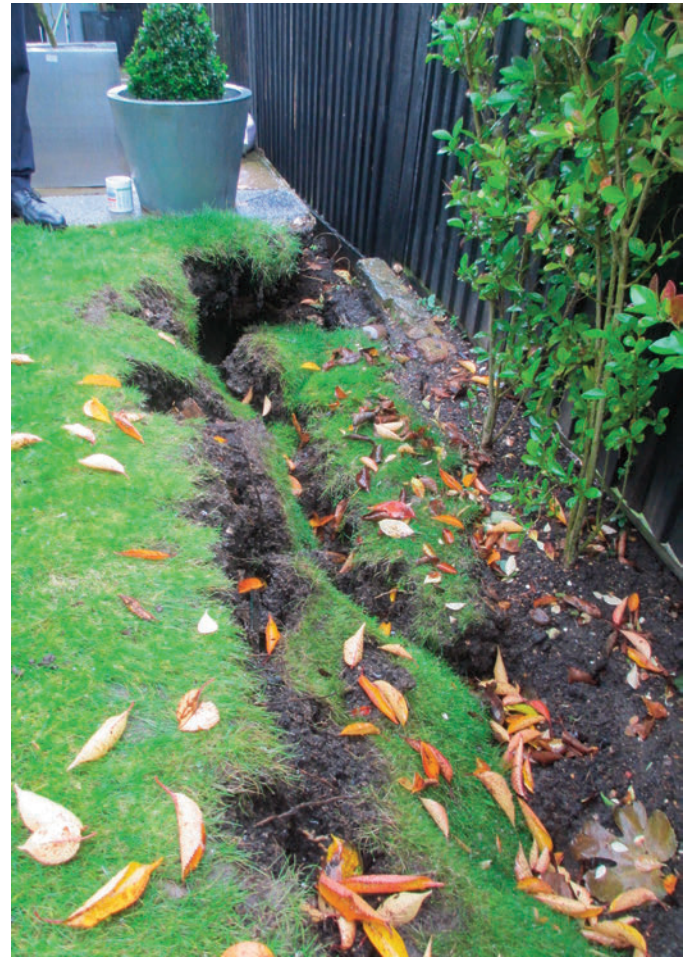
**So what happens if you serve notice and then you decide not to proceed with the works?** The notices can expire without any work having been undertaken by surveyors. However, if you do decide not to go ahead and surveyors are appointed, then you should be aware that surveyors will have incurred fees for which you would be liable. You cannot withdraw a notice, unless it is invalid, in which case it is void anyway. So if a notice is valid then surveyors can still award fees.

**Who do you serve notice on?** I find it is always more personal to do your homework using a land registry search so that you can address the notice and the letter accordingly. If you address it to the owner occupier, then you should really be fixing it to the door and taking a photograph of service rather than relying on the post. Sometimes, land registry information can become out of date and no-one bothers to update it. However, when that happens and you have served notice based on this information, then you have done so at the last known address and thus the notice is valid.

So those are the basics and the pitfalls, but it is much more complex than that. There is a lot of case law now for which surveyors use the precedent.

**What if an adjoining owner consents to a notice and then damage is caused?** Onigbanjo vs Pearson upheld that the Adjoining Owner is still protected by the Act. If owners can agree repairs then there is no dispute. If they can't, then both parties should appoint surveyors to act, and if necessary, the Adjoining Owner should serve notice on the Building Owner to put right damage.

**What happens if your work does cause damage – can your builder put the damage right?** That very much depends on the adjoining owner and how well you have got on during the project. The adjoining owner could obtain quotations for the repair work or could accept compensation in lieu.



**How often is damage caused?** In my experience, relative to the volume of party wall projects, damage is fairly rare. How much damage caused varies and depends on the proposed works, how carefully the works were considered, and the method statements that were provided. Whilst I wouldn't expect to see a method statement for a concrete padstone and inserting a beam into the party wall, that can only be completed successfully and without damage if either beam is spliced, or the 'slot' in the party wall is long enough. You do not have the right to go into the party wall more than half its thickness – if you do, damage is inevitable.

Sometimes damage is caused by accident and not by negligence. Vibration can also cause damage. With larger basement schemes it is becoming more popular for works to be monitored so that trigger levels can be established and work stopped if they are reached, what are acceptable levels? Buildings move quite often due to fluctuations in temperature and weather conditions.

**Can compensation be paid for necessary inconvenience?** The act requires that an adjoining owner should not be inconvenienced unnecessarily and surveyors should be able to ensure that this is avoided. However, in some situations inconvenience cannot be avoided due to noise, loss of amenity or loss of rent in extreme situations. An adjoining owner should not expect to be paid compensation just because they are living next to a building site – sometimes it is unavoidable.

Security for expenses – under the Act the adjoining owner is entitled to request this prior to works commencing. Surveyors determine the amount to be held and how it is to be held. Some surveyors have client's accounts and are happy to hold the funds, otherwise the money is held by the building owners solicitor in either a client account or in escrow.

It's unfortunate that Kaye vs Lawrence came along and put a 'a cat amongst the pigeons' and turned on its head what most surveyors believe – you can't

have security for expenses for causing damage because you have no right under the Act to cause damage. Security in my view can only be used for the likelihood of non completion of the notifiable works. There is a rare occasion when an ornate garden could be destroyed by the proposed works, or a party fence wall demolished and not rebuilt, or a basement excavation started and not completed.

**What does it mean when a surveyor says they are going to go 'ex parte'?** Why would they want to, it's very lonely! It should be very rare that a situation arises where you have to threaten another surveyor with s10(6) or (7) and to actually then have to make an award. I find that normally an issue works itself out as most surveyors wouldn't like it if you proceed ex parte – it doesn't show them in a very good light. But if a surveyor finds themselves in that position, then there is normally a good reason why they are neglecting or refusing to Act. Before they do so, they must establish what the issues are that need to be remedied to avoid them proceeding down a course of action. Refusing to sign an award because fees are not agreed is one of the common grounds. This can be pre-empted by putting in a clause covering what is a reasonable fee, and then to suggest that if they want any additional fee that they ask the 3rd surveyor. This normally brings the desired response of an award being signed, and I am yet to have an adjoining owner's surveyor refer a matter of fees to the third surveyor. After all, neither the adjoining owner or the building owner are going to want to pay the third surveyor's fees to see what he thinks – the only one to benefit would be the surveyor.

**Another tricky decision – do you really want to appoint an 'agreed' surveyor?** Is the matter going to be straightforward or are you putting a surveyor in the middle of neighbours' with an underlying conflict? As Party wall surveyors, we are required to act in the best interests of the wall.

To raise a party wall full width or not – think of the later implications. It's not just the unsightly appearance, but what happens when the adjoining owner wants to do the same in the future – a horrible detail between two junctions that can't be weath-

ered properly. This doesn't just affect mansard roof constructions, but single storey extensions built up to the line of junction rather than a party wall. As soon as you see this situation you know there was disagreement between neighbours.



**When should you consider serving notice under s2(2)?** – it should really be of structural consequence. Does your neighbour really need to know that you want to fix some shelves or a picture to the wall?

**Finally, who is the third surveyor and what do they do?** When two surveyors are appointed, it is their first duty to select a third surveyor. The third surveyor in essence adjudicates when the two surveyors can't agree. Sometimes that is also because their respective owners don't like what is being proposed. They are very rarely on technical matters for interpreting the Act. Articles written by a couple of the renowned third surveyors show that these relate to fees, extent of repair, whether a notice is valid, security for expenses etc etc etc.

So you can issue your own party wall notices but after that you have to appoint a surveyor to act on your behalf. Cardoe Martin Burr are here to help.



## Towing the Party line

Sara Burr of Pyramus & Thisbe Club highlights some of the common temptations and misconceptions in exercising the rights of The Party Wall etc Act 1996...

**T**here are many unscrupulous building owners who get away with not serving party wall notices. Well why not? It can be an expensive process and it can delay works starting. But what if the adjoining owner takes offence and obtains an injunction? What happens then? You panic. Can you serve notices retrospectively? Do you really need a party wall award? What happens when you come to sell the property?

So, for a simple side extension or loft extension, why bother serving notices at all? It can't be that difficult to cut a hole into the party wall for a padstone or excavate a trench and fill it with concrete. Who is going to notice if you undertake the work under the cover of darkness? Well, people do notice and then you are in trouble. Why not change the design so that the work isn't notifiable under the Act? Sometimes that is possible, but if you are going to do that then at least write to the neighbours and advise them that the work you are doing isn't noti-

fiable and give the reasons. If an adjoining owner understands that the excavation won't go lower than the bottom of their foundations or that you have put a post in to support a ridge beam, they may still take advice but it won't stop your work.

A vast number of people don't know what is covered by the Act. Do you need to serve notice for putting up shelves, chasing into the wall for electric cables, drilling into the party wall for structural fixings or the removal of a chimneybreast, for example? If in doubt there are guidance notes on the Pyramus & Thisbe Club website, if you are unsure, we always advise that you ask.

Another important consideration is the quality of information you provide, short cutting this will not save you time. You can't serve notice for works for excavation next to your neighbour's house without having a plan and section drawing showing the depth of excavation, as it won't be valid.



statutory time scales for the different notices. Work to the party wall has a notice period of 2 months and excavation notices is 1 month. It isn't as simple as that though. More complicated schemes can take longer to agree – if you are undertaking basement works to a domestic property then you could be looking at 6 months or more. You don't have to wait until you have planning permission to be able to serve notice – you can serve notices as soon as you have exchanged contracts if you are purchasing the property. You should also be aware that notices are only valid for a year, if matters aren't concluded during that period, new notices must be served.

Can you serve notices yourself? The simple answer is yes. The Deputy Prime Minister's office has templates, but there can be pitfalls that can invalidate the process. It is also worth noting that just because someone doesn't respond to a notice, it doesn't mean that the works can just go ahead, as lack of response is a deemed 'dispute'. There are timescales and subsequent letters that need to be sent.

However if an adjoining owner 'dissents' to a notice, that means they want their interests to be looked after by means of a surveyors award. Whilst some take that as meaning they don't want you to go ahead with the works, it is quite often used as a tool to frustrate the process. Surveyors deal with resolving the issues to protect the adjoining owners' interests. Once an adjoining owner dissents to a notice, you have to appoint a surveyor to act on your behalf – you can't act for yourself.

The Pyramus & Thisbe Club has been established for 40 years this year, and has now acquired the status of Learned Society. There are members across the country – a surveyor local to you can be found on our website.

What is the difference between a party fence wall and a fence? There is a general misunderstanding that they are the same and that title deeds show ownership. Party fence walls and fences are not the same. Putting a simple fence up does not require party wall notices to be served. Constructing a Party Fence Wall, i.e. a solid wall rather than a fence, however, does require notice and you do not have the right to construct a wall astride the boundary where one did not exist before.

Claiming ignorance is no defence, as many local authorities state on the planning decision notices that there is a requirement to comply with the legislation. Not serving notices can not only be expensive, but can delay works or even prevent them from continuing.

It is advisable to always make sure you leave enough time to serve the notices and deal with the procedures before starting the work. There are



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# Projects

The Projects division of Cardoe Martin Burr specialise in administering works to residential mansions blocks, estates and large developments and providing all other building surveying management services. We have overseen complex renovation and refurbishment projects upon vacant and occupied buildings, including schemes requiring sensitive handling of occupiers requirements. Recent assignments include listed and character buildings, prestige and mixed use developments.

## External projects

Recent instructions include:



Repairs and restoration to Grade II listed central London residence



External repairs and decorations to a prestigious west London mansion block

## Internal Projects

Cardoe Martin Burr endeavour to build strong working relationships with Property Managers, Client Representatives, Resident Organisations, Landlords, and Occupiers to ensure that our schemes are prepared and managed as efficiently as possible. We understand the balance that must be achieved between successful completion of the project to agreed costs and standards, whilst minimizing disruption to building occupiers.

Recent instructions include:



Internal repairs and redecorations to a prestigious West End residential block



Comprehensive refurbishment scheme to landmark Chelsea mansion block

## Licence for alterations

Under the terms of most residential and commercial leases, the Lessee (tenant) is required to obtain the Landlords approval prior to undertaking significant alterations to the building. Cardoe Martin Burr provides specialist advice to Landlords and Tenants upon such matters to allow consents to be issued and we check the works in progress and at completion.

Recent instructions include:



Structural alterations to a West London block in a conservation area



Advising the landlord and their solicitors on proposed alterations to a flat internal gas supply



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