



# The Pyramus and Thisbe Club

PROMOTING EXCELLENCE IN PARTY WALLS PRACTICE





# WELCOME



Thisbe, by John William Waterhouse, 1909.

## **Welcome to the Pyramus & Thisbe Club**

This e-Book introduces the Pyramus & Thisbe Club and provides an insight into its history, composition and objectives.

The Pyramus & Thisbe Club is a Learned Society. The Club's membership, currently in the order of 1000 strong, is drawn from professionals with an interest in the law and practice of party wall matters under the Party Wall etc. Act 1996. For those not familiar with the Act, it confers rights over party structures and provides a framework for the settlement of disputes between neighbours, by surveyors' award.

In the following pages you will find articles about the history of the Club, how the Club was (so curiously) named and the development of party wall legislation in England and Wales. There is a report on the law case that was the spark for the Club's inception, *Gyle-Thompson v Wall Street* and an insight into the nature of party walls.

The Pyramus & Thisbe Club is regarded as the leading authority on party wall practice. Members of the Club are currently advising Parliament on Bills concerning subterranean development and property boundaries. Overseas governments have also sought advice from the Club.

The Club's motto, taken from Shakespeare's *'A Midsummer Night's Dream*, is, "The wall is down that parted their fathers." The Club also uses the strap line "Promoting excellence in party wall practice." This objective has always been and remains, central to the work of the Pyramus & Thisbe Club.



# HISTORY

Founded 1795

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HORNE  
& CO. Chartered Surveyors**

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Our ref  
Your ref

T. Leach Esq.,  
George Head & Co.,  
10 Carlos Place,  
London W.C.1.

19th April, 1974

Dear Mr. Leach,

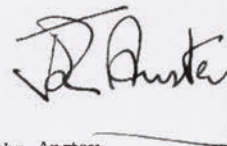
My incompetent and incomparable assistants have suggested that it might be rather fun to form a Party Wall Surveyors Club, the Chairman of which would be known, of course, as "The Third Surveyor." Subscriptions, naturally, would be "a reasonable fee."

The number of specialists in party walls seems to be growing and it is apparently a concomitant fact that party wall work is becoming more concentrated in the hands of specialists. I thought, therefore, that there might be many advantages in some sort of informal association in which those practitioners could exchange views and perhaps meet for an occasional lunch or supper. Interesting papers, awards and notes of tricky situations could be circulated and there might be considerable scope for settling of differences.

I would not propose that it should be a body with an examination qualification nor indeed that entry should be otherwise than by invitation, nor would I propose that entry be limited to principals, but that assistants (I am sure you will understand why I have to insert this sentence) who take an active hand in party wall matters should also be eligible.

If you would be interested and if you can think of other people who might be, and whom you would recommend for invitation, perhaps you would like to write back and give me your views in general.

Yours sincerely,



John Anstey

## The Pyramus and Thisbe Club

The Pyramus and Thisbe Club was founded in 1974 at the instigation of the late John Anstey, following widespread misreporting of the case of Gyle-Thompson v Wall Street (1973). The Club was formed to exchange news and opinions about interesting party wall cases. The original membership of 46 active party wall surveyors agreed to meet quarterly and these early meetings took place at the Little Ship Club in the City of London. Membership grew but was then limited to 100 and the Club moved its meetings to The Cafe Royal in Regent Street.

The Club takes its name from Shakespeare's Pyramus and Thisbe, the lovers in "A Midsummer Night's Dream" who whispered through a chink in a wall. The Club's motto, a quotation from the play, is "The wall is down that parted their fathers." The Club's quarterly newsletter is "Whispers."

Until 1997, the Club's activities were confined to inner London, where the London Building Acts (Amendment) Act 1939 applied only to party walls in the former LCC area. In 1993 a Club working party began drafting a Parliamentary Private Bill for England and Wales. The Bill which was sponsored through Parliament by The Earl of Lytton (now a past chairman of the Club) received Government support and became the Party Wall etc. Act 1996. It came into force in July 1997.

The Club's pivotal role in framing the Act was acknowledged by The Earl of Kinnoull during the debate following the Bill's second reading in the House of Lords, when he said of the Club, "I know that that club of professionals has done tremendous work. I pay particular tribute to its chairman, John Anstey, who, like other colleagues has been active in helping to draft the Bill."

The Pyramus and Thisbe Club continues to maintain relationships with Government and Parliament. Members of the Club have formed advisory panels to consider the Subterranean

Development Bill and the Property Boundaries (Resolution of Disputes) Bill. The Club has assisted the Government in producing a guide to the Act and Club members have advised overseas governments on party wall and neighbourly matters.

In a 2008 case in Romford County Court, His Honour Judge Platt acknowledged the Club's members when he said, "It is a tribute to the surveyor's profession as a whole and to the members of the Pyramus and Thisbe Club in particular that issues over party walls have generally been resolved by a pragmatic and cooperative approach to the provisions of the Act and consequently appeals to the County Court have been extremely rare."

The Club's membership is drawn from a mixture of surveyors, architects, engineers, other construction professionals and lawyers, all of whom have an interest in party wall matters. Today there are some 1000 members practising throughout England and Wales. The only qualification for membership is a serious professional interest in the subject and a willingness to disseminate information among fellow members about difficult or interesting cases.

The Club is a non profit-making organisation and has acquired the status of a Learned Society. It promotes the highest standards of professional conduct among its members. The Club has published a two volume "Collected Papers" from the first 20 years of its proceedings and "The Party Wall Act Explained" written by the members of the original working party, now in its second, revised edition.

This year, the Club celebrates its 40th anniversary.

# ABOUT US

## Who we are

The story of Pyramus and Thisbe originated in the mists of time. Ovid recorded it as a tale told by one of the daughters of Minyas while the women spun and threaded. It is a simple story of love, misunderstanding and disaster. The couple, though forbidden to see each other, fall in love through a crack in the party wall between their families' houses. They decide to meet one night in a quiet spot outside town. Thisbe arrived first and whilst waiting for Pyramus was frightened by a lion who, having recently eaten, went of the stream to drink. On scurrying away, Thisbe dropped her shawl, which the lion found, played with, and tore, leaving on it bloody stains from his gory meal before departing. Whilst Thisbe was still hiding Pyramus turned up, found the bloody and ravaged shawl and, believing the worst, stabbed himself, unable to continue life without his love. Thisbe then arrived and, being of similar passion, also stabbed herself whilst embracing her love. The relevance of this tale to Party Wall Surveyors is in the detail, in the message, and possibly in the result:-

According to Ovid

*“the lofty party wall between Pyramus & Thisbe’s houses was of brick and was said to have been built by Semiramis”.*

Semiramis was not proud of his creation since

*“the crack developed in the party wall when it was being built”*

As all P&T members can confirm by experience,

*“this fault had gone unnoticed for long years”*

This is a clear case of a latent defect, which the lovers had no intention of disclosing to the respective owners. Not only did they talk through the wall but they could feel each other's breath and

*“oft times wished enough that they could embrace”*

Thus the adjoining occupiers have very different views of the defect from those of the Adjoining Owners.

The deceased Poet Laureate, Ted Hughes, also wrote an interpretation of this tragic tale and to him it was the very mud-brick city of Babylon and the crack was

*“a result of earth tremors”*

As a justifiable ground-movement claim, there would, in the eyes of a 20th-century and street-wise poet, seem little point in raising the matter of the unreliable Semiramis and the crack which only the kids had noticed. In Hughes' version, whilst the lovers also wished the crack to widen for the purpose of embracing, they also feared that too large crack would bring in the Surveyors, loss adjusters and contractors and thus part the lovers utterly.

*“But in this tiny crack may our great loves,*

*Invisibly to us, meet and mingle!*

*Then each would kiss the crack in the cold plaster.”*

As every schoolboy knows, William Shakespeare selected Nick Bottom and Francis Flute for the respective Pyramus & Thisbe roles in his rustic interpretation of Ovid, and it is to his Master Snout that all Party Wall Surveyors should bow and be thankful. It was Master Snout who stated

*“In this same interlude it doth befall*

*That I, one Snout by name, present a wall...*

*And such a wall, as I would have you think*

*That in it crannied hole or chink”*

You will recall that Wall held his fingers thus and thus performed the task of

*“that vile Wall which did these lovers sunder”*



And after his brief performance...

*“my part discharged so;  
and, being done, thus Wall  
away doth go.” (exit)*

The story (Soap?) proceeds and Thisbe dies.

*Moonshine and Lion are left to bury the dead*

*“Ay and Wall too” says Demetrius*

Bottom (starting up) says

*“No, I assure you: the wall is down that  
parted their fathers”*

Thus we have our motto.

It took the deaths of both owners’ children to bring down the wall between forbidding parents. Whilst the party wall divides, faults or changes to the party wall can result in the bringing together of disputing parties and it is here that the true role of the Party Wall Surveyor lies. The late John Anstey continually advocated as desirable use of the Agreed Surveyor, the truly arbitrary agent, and it is the lesson of Pyramus & Thisbe and Master Snout the tinker that should be ever with us in our dealings. To administer the Act, to impartially act through the wall and our

*“...part discharged so;  
and, being done, thus Wall  
away doth go.” (exit)*

**Martin O’Shea**





# WHAT IS A PARTY WALL?

29.08.2013



## **Notes on the definition of party wall in successive Acts**

by Lawrance Hurst with assistance from Robin Ainsworth

The 1667 rebuilding Act following the great fire was the first Act to mention party walls although they had been a legal requirement since the Assize of Henry Fitz-Ailwyn in 1189. Clause viii of the 1667 Act included the words:

### **Act for Rebuilding the City of London**

(18 & 19 Car.2 Ch. viii)

*That there shall be Party-walls and Party-piers, set out equally on each Builder's Ground, to be built up by the First Beginner of such Building; and that convenient Tothing be left in the Front-wall by the said First Builder, for the better joining of the next House that shall be built to the same:*

and the words 'party wall' continued to be used in successive Acts, but it does not seem to have been the practice of including definitions in Acts until Queen Victoria's reign when 'party wall' was defined for the first time, in the 1844 Act, which included the following clauses.

### **Metropolitan Building Act 1844**

(7 & 8 Vic. Ch. lxxxiv)

in clause 2

*The Term 'external Wall' to apply to every outer Wall of Buildings now built or hereafter to be built, which (excepting the Footing thereof on one Side) shall stand wholly upon Ground of the Owner of such Buildings, and shall not be used or intended to be used as a Party Wall under the Definition herein-after contained, whether the same shall adjoin or not to other outer or to Party Walls*

*The Term 'Party Wall' to apply to every Wall which shall be used, or be built in order to be used, as a Separation of Two or more Buildings with a view to the Occupation*



*thereof by different Families, or which shall be actually occupied by different Families, and also every Wall which shall stand upon Ground not wholly belonging to the same Owner to a greater Extent than the Projection of its Footing on one Side:*

Clauses in later Acts read as follows:

**Metropolitan Building Act 1855**

(18 & 19 Vic. Ch. cxxii)  
in clause 3

*‘External wall’ shall apply to every outer wall or vertical enclosure of any building not being a party wall:*

*‘Party wall’ shall apply to every wall used or built in order to be used as a separation of any building from any other building, with a view to the same being occupied by different persons:*

*‘Cross wall’ shall apply to every wall used or built in order to be used as a separation of one part of any building from another part of the same building, such building being wholly in one occupation:*

*‘Party structure’ shall include party walls, and also partitions, arches, floors, and other structures separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without:*

**London Building Act, 1894**

(57 & 58 Vic. Ch. cxiii)

*15. The expression ‘external wall’ means an outer wall or vertical enclosure of any building not being a party wall.*

“The external parts of premises are those which form the enclosure of them beyond which no part of them extends, and it is immaterial whether those parts are exposed to the atmosphere or rest upon and adjoin some other building, which forms no part of the premises let.”  
Green v. Eales (1841), 2 Q.B. (A. & E.) 225.

*16. The expression ‘party wall’ means:*

*(a) A wall forming part of a building, and used or constructed to be used for separation of ad-joining buildings belonging to different owners, or occupied, or constructed, or adapted, to be occupied by different persons; or*

*(b) A wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners.*

A wall has been held to be a ‘party wall’ to such height as it belongs in common to two buildings, and to cease to be a “party wall” for the rest of its height. *Western v. Arnold* (1872), L.R. 8, Ch. 10, 84; 43 L. J. (Ch.) 123.

*17. The expression ‘cross wall’ means a wall used, or constructed to be used, in any part of its height as an inner wall of a building for separation of one part from another part of the building, that building being wholly in, or being constructed or adapted to be wholly in, one occupation.*

*18. The expression ‘party fence wall’ means a wall used, or constructed to be used, as a separation of adjoining lands of different owners, and standing on lands of different owners, and not being part of a building, but does not include a wall constructed on the land of one owner, the footings of which project into the land of another owner.*

*19. The expression ‘party arch’ means an arch separating adjoining buildings, storeys,*

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*or rooms belonging to different owners, or occupied, or constructed, or adapted to be occupied by different persons, or separating a building from a public way or a private way leading to premises in other occupation.*

*20. The expression 'party structure' means a party wall, and also a partition floor or other structure separating vertically or horizontally buildings, storeys, or rooms approached by distinct staircases or separate entrances from without.*

## **London Building Act, 1930**

(20 & 21 Geo. 5. Ch. clviii)

*'party arch' means an arch separating adjoining buildings storeys or rooms belonging to different owners or occupied or constructed or adapted to be occupied by different persons or separating a building from a public way or a private way leading to premises in other occupation;*

*'party fence wall' means a wall used or constructed to be used as a separation of adjoining lands of different owners and standing on lands of different owners and not being part of a building but does not include a wall constructed on the land of one owner the footings of which project into the land of another owner;*

*'party structure' means a party wall and a partition floor or other structure separating vertically or horizontally building, storeys or rooms approached by distinct staircases or separate entrances from without;*

*'party wall' means:*



*(a) a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons; or*

*(6) a wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners;*

**London Building Acts (Amendment) Act, 1939**  
(2 & 3 Geo. 6. Ch. xcvi.)

*‘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 from without;*

*‘party wall’ means:*

*(i) 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*

*(ii) so much of a wall not being a wall referred to in the foregoing paragraph (i) as separates buildings belonging to different owners;*

**Party Wall etc. Act 1996**

(41 Eliz. II. Ch. xv.)

*‘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 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;*

**Summary**

In 1844 and 1855, the primary definition of a party wall was a separating wall, with, almost as an afterthought in 1844 but omitted in 1855, a wall astride the boundary.

In 1894, we have (a) & (b) definitions, still with the primary definition being a separating wall, but now with a definite alternative of a wall astride the boundary.

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In 1930, we have basically the same as in 1894.

In 1939 the alternatives were reversed, the separating function definition now being restricted to “so much of a wall”, however this was for the purposes of Part VI only, an alternative definition applying to the rest of the 1939 Act, where “so much of a wall... together with the remainder (if any) of the wall vertically above such before-mentioned portion of the wall” applied for all other purposes.

In 1996, the primary definition of ‘a wall astride the boundary’ was retained and the 1939 Part VI definition wording was repeated for separating walls.

## **Common Law Influence**

Banister Fletcher (5th Edn 1914) includes a reference to a law case in 1872 (*Weston v Arnold*, under the Bristol Improvement Acts 1840 & 1847) in which it was decided that a wall was only a party wall “to such height as it belongs in common to two buildings, but to cease to be a ‘party wall’ for the rest of its height.” This judgement of course applied to the 1855 Act in force at that time, when a party wall was only defined as a separating wall, the alternative of a wall astride the boundary having been omitted from that Act and might not have been generally applicable as it was under the Bristol Acts, but has been referred to in the recent TCC judgement – *Jones v Ruth* – and its application confirmed, as outlined in the postscript below.

It is interesting to note that this 1872 judgement, effectively of “so much of a wall”, as enacted in 1939 and 1996, was not confirmed in the 1894 Act so did not statutorily apply from 1894 to 1939. Thus, between 1855 and 1894, when there was no alternative definition of a wall standing on the lands of different owners, the whole/full height of



any wall built as a separating wall was included in the definition of a party wall regardless of where the boundary lay, and from 1894 to 1939 the same applied where the dividing party wall stood on the land of only one owner.

### **Food For Thought**

So if you are concerned with PWeA works to a building in the old LCC area dating from between 1855 and 1939, or perhaps between 1894 (bearing in mind the 1872 judgment) and 1939, there was nothing to say that it was not the whole/full height of a separating wall on the land of one owner “used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons” that was defined as a party wall. It could be implied therefore that the non-owner of the wall may have had a statutory right to enclose on previously non-enclosed areas without needing the consent of the owner on whose land the wall stands, presumably with payment under the equivalent of what is now s11(11) of the 1996 Act.

I wonder, when considering party walls built between those dates, does that right continue today, or does the current PWeA type (b) definition of a ‘party wall’ retrospectively over-ride the fact that historically the full height/whole of such walls were by definition ‘party walls’?

### **Postscript**

In the recent TCC judgement – Jones v Ruth – where Mr Ruth, the building owner, of a two storey terrace house (no 103), enclosed on the gable wall of Ms Jones’ adjoining three storey house (no 105) and the Judge held that this was a trespass. The party wall in the basements and lower storeys is two bricks thick, off which the one brick thick gable wall of the adjoining house (no

105) had been built; on the adjoining owner’s side with its external face on the centre line of the two brick thick wall below. Flues from fireplaces in the building owner’s house (no 103) were incorporated in that wall, above his original roof, up to stacks at parapet level. The Judgement includes the following:

As to the dividing walls between 103 and 105 the following declarations are made:

- a) The gable wall of 105 not enclosed by the chimney of 103 and the basement ground and first floors of 103 are and were in the ownership of 105.
- b) The garden walls dividing 103 and 105 are wholly the property of 105 the claimants.

which confirms that the adjoining owner’s gable wall, above the original roof of the building owner’s house, cannot be interpreted as a raising on the party wall with a right to enclose, as most party wall surveyors would have held before this Judgment, but is an external wall in its own right.

A logical extension of this is that a line of junction which is not built on exists on top of a party wall and the appropriate notice if an owner wishes to raise, or rather build on it is under s.1, and not under s.(2)(a). Hence a notice under s.1 should be served if a building owner wishes to build a wall on top of a party wall, perhaps under s.1 (5) for a new external wall to enclose a loft extension, if the adjoining owner does not consent to a raising on the party wall.

# CASE STUDY

## Gyle-Thompson and others v Wall Street (Properties) Limited



### **The Pyramus and Thisbe Club** **Gyle-Thompson and others v Wall Street** **(Properties) Limited**

By Donald Ensom

A summary of this case is as follows:-

Defendants, owner of warehouse, one wall of which formed the rear boundary of houses erected by Plaintiffs. Warehouse being demolished for redevelopment of site for housing. The wall was approximately 38ft high and the Building Owners wished to reduce the height to a much lower level. Notice served under Section 47 on the 22nd February 1972; works described as “the partial

demolition and rebuilding of the present warehouse wall in connecting it with the new premises to be erected behind it on out side”. This particular Notice was served on eleven house owners but matters between Building Owners and Adjoining Owners in all but three of the cases were settled by negotiation and can be ignored.

Adjoining Owner’s Surveyor maintained that the Act did not authorise demolition and rebuilding to a lower height.

The warehouse having been virtually demolished, the stability of the wall caused anxiety and the Building Owner’s Surveyor served Notice that the Building Owner would require to enter on the gardens and shore up the wall.

Further attempts were made by negotiation to resolve the problem of the reduction in height of the wall. An Award was signed relating to the shoring.

Negotiations having come to naught the Third Surveyor was called in and the three Surveyors met on the 18th December 1972. The Third Surveyor determined that the three Surveyors had no power to act as the Notice of the 22nd February was more than 6 months old (Section 47(3)).

On the 20th December new Notices were served under Section 47(1) which relied on the provisions of 46(1)(k) and the works stated were “the demolition of the existing party fence wall and its replacement with a party fence wall 19ft. high in accordance with the Architect’s drawing shown to you previously”. The Notices were addressed to the individual house owners.

The two Surveyors again could not agree and referred the matter to the Third Surveyor. A meeting took place on the 18th January 1973 and on the 2nd March 1973 the Building Owner’s Surveyor and the Third Surveyor under the powers of Section 55(1) issued an Award, the substance of which was that the Building Owner was permitted to take down the wall and rebuild it to a height of 19ft.



Demolition commenced on the 17th March, which was one day after the 14 days allowed for an appeal in the County Court and a 14 days restriction which was set out in the Award. Demolition was stopped initially by the intervention of the police and subsequently by an injunction.

The Adjoining Owner then took the case to Court and claimed that the Award was null and void. During the case it was agreed that the only Section 46 rights which were relevant were:

A right to make good underpin thicken or repair or demolish and rebuild a party structure or party fence wall in any case where such work is necessary on account of defect or want of repair of the party structure or party fence wall; and

A right to raise a party fence wall to raise and use as a party wall and a party fence wall or to demolish a party fence wall and rebuild it as a party fence wall or as a party wall.

Adjoining Owners' Counsel argued that 46(1) did not confer any specific right to reduce the height of a party fence wall and that had it been intended that this right exist the Act would have said so. Counsel for the Building Owner submitted that by implication of 46(1)(k) did confer the right and that if this right did not exist there was no purpose in conferring a right to demolish and rebuild if the former wall could not be changed because there was already a power in 46(1) to demolish and rebuild where the structure was defective and that no-one would want to take down and rebuild to the same height unless the wall were defective.

The Judge did not accept this argument, but suggested that someone might want to rebuild a party fence wall in more durable or appropriate materials or to renew it before it started to develop defects!

Whatever the Judge's reasoning he nevertheless held that there was no right to demolish and rebuild to a lesser height.

The judgement then went into a second major point, as to whether the Appeal was in the right Court, i.e. should it have been in the County Court. The arguments here are in my view strictly legal and of no real relevance to party wall practice and, therefore, I have not gone into detail.

Having found that the Appeal was correctly in the High Court, the Judge stated that on those two points alone the Adjoining Owner succeeded but then went on to deal with some procedural objections. These were:

That the December 1972 Notices were not served on the Plaintiffs but on the Adjoining Owner's Surveyor who had not been given authority to accept service. You will see above that the Notices were addressed to the individual owners.

That the Adjoining Owners' Surveyor was not appointed by them to be their Surveyor. It is believed that the Judge did not see the Notice of Appointment dated 3rd September 1972 which stated "I hereby appoint Mr. V. F. Johnson, FRICS, FI Arb., as my Surveyor in connection with the above matter, the Notice being headed with the title of the Act and the words "Party Wall between 51 Paulton Square and the premises known as 57 & 63 Old Church Street, S. W. 3.".

That the Award was not delivered until 20th March 1973, when a copy was handed to the Plaintiff's Solicitors i.e. after demolition had commenced (see above that the Award was signed on the 2nd March 1973). He did, however, state that the Adjoining Owners on the 26th January fully reporting on the proposed Award and advising them of their right to Appeal.

# CASE STUDY

## Crossrail and the Party Wall Act

### Crossrail and the Party Wall Act

#### Introduction and summary of Crossrail's works

This paper explores the use of the Party Wall etc. Act, 1996 on the Crossrail project and takes as a case study, the Eastern Ticket Hall of Bond Street Station.

On this site, Crossrail's work consists in brief, of the demolition of the existing buildings, the excavation of the station box and the construction of a single storey ticket hall for passengers to enter, purchase tickets and descend to the trains. Temporary shafts are constructed to enable men and machinery to construct permanent cross-over tunnels which will link the eastbound and westbound running tunnels. A proposed temporary crossover tunnel will facilitate access for the tunnel boring machine and enlargement of the running tunnels to give platform space for passengers. The site will be left by Crossrail as seen below for its previous owner to develop the 'Masterplan Scheme'.



At the time of writing, the demolition is complete. The perimeter secant wall, constructed with contiguous piling, and the bearing piling is all complete; tunnelling, crossovers and station box excavation works are yet to be commenced.

This paper will show that the Party Wall Act has facilitated agreements between owners, in particular within the unique remit of the March 2007 Undertaking and allowed Crossrail's works to continue uninterrupted once designs have been finalised. It has provided a collaborative forum for negotiating agreements whilst protecting the adjoining owner's building from excessive damage.

It will also report on the sophisticated monitoring and settlement compensation systems which are available to twenty-first century designers to ensure that complex civil engineering projects can continue to take place in the world's busiest cities without causing excessive damage to neighbouring buildings.

There is no other building with a Grade II\* listing status across the whole of the Crossrail project which is so close to an adjacent deep excavation. The photograph below shows the adjoining



Both temporary access shafts can be seen, but eventually the whole site will be excavated to form the station box



building on the far side of the site and illustrates its proximity to the civil engineering works.

### **A brief history of Crossrail**

In 1974, the transport committee, headed by Sir David Barren recommended running British Rail rolling stock in tunnels from Paddington to Liverpool Street. When the project is delivered in 2018, it will link the West End, City and Canary Wharf for the first time, and the rail capacity of London will increase by a tenth overnight.

### **History of the Party Wall Act**

The Party Wall etc. Act, 1996, to give it its full and proper name, originates from Henry Fitz-Alwyn's Assize dated 1189 and was developed in 1667 to facilitate the rebuilding of London following the Great Fire of 1666; subsequent legislation through the centuries continued to modify the wording until the London Building Acts (Amendment) Act 1939 set out the provisions in Part VI. The wording in Part VI is refined but largely repeated in the 1996 Act.

### **Outline of the Party Wall Act**

The Party Wall Act is facilitative in that it acknowledges and supports the right of the building owner to develop land which is lawfully owned, allowing development to commence once an award has been made, subject to the satisfaction of other statutory requirements.

The Act is administered by party wall surveyors who are nominated by the owners. Building surveyors, structural engineers and architects are preferred with a professional working knowledge of construction; lawyers are less favoured as the process of agreeing an award is intended to be cooperative and not adversarial. There may be an advantage in appointing a surveyor who is a practicing member of an accredited body of property professionals such as the Royal Institution of Chartered Surveyors (RICS), Royal Institute of British Architects (RIBA) or the Institution of Structural Engineers (IStructE), as accreditation requires compliance with a Professional Code of Conduct.

The surveyor's role is such that duty of care lies with the properties in question; the surveyor must be impartial and should not allow the appointing owner to influence the process. An adjoining owner who for example, objected to the works during the planning consultation period cannot further frustrate the progress of development through the Party Wall Act. There are timescales built into the process which means that a surveyor who is very slow to respond may find he loses his voice as an award can be made 'ex-parte'. If surveyors cannot reach agreement, a third surveyor, named at the very beginning of the process and before disagreement has had a chance to arise will hold sway.

A 'building owner' under the Act means an owner of land who is desirous of exercising rights under the Act. If a subsidiary company is set up for the purposes of development, it is that special purpose vehicle which is cited as the building owner and not the parent or holding company of which the development company is an off-shoot.

An 'adjoining owner' may be a freeholder, a leaseholder and indeed any tenant who occupies the property with an agreement which has more than one year left to run. A shorthold tenant who renews the agreement annually does not have owner's rights as there is always less than one year to the expiry of the tenancy.

The building owner will serve notices for the relevant works on an adjoining owner and if a dispute arises within the meaning of the Act, an agreed surveyor is appointed by both owners or each owner appoints his own surveyor to resolve the dispute.

The meaning within the Act of the word 'dispute' or 'dissent' specifically does not mean that the adjoining owner can prevent the works if he finds them disagreeable – the opportunity to take that stance is typically at the planning stage. 'Dispute' in this case means that the adjoining owner wishes to avail himself / herself of the opportunity to

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appoint a surveyor who will agree the award and thereby safeguard his / her interests. The use of the word 'dispute' can give rise to the idea of an opportunity for an argument; this is not intended by the Act.

An award sets out the ownership of the properties and the appointment of surveyors. It describes the notifiable works, sets out the rights of each owner and the responsibility of the building owner to make good any damage that the works may cause, or to pay money in lieu. It sets a time limit on the work and will include relevant documents – architect's and engineer's drawings, impact assessments and monitoring agreements, contractor's method statements, fees and other costs. Once the award is served by the surveyors, each owner has a right to appeal the award within a two week period if he / she feels it has been improperly made. Usually, the award and its terms are carefully considered and this rarely happens in practice.

Whilst the Act sets out statutory time limits starting from the date on which notices are served, in fact, the award cannot be agreed until the methodology for executing the works has been agreed. In the case of this project, Crossrail engineers would discuss the methodology with engineers under each of the different contracts and once this was agreed an award could be made. The works which are the subject of the award must generally be commenced within 1 year of service.

### **Notices normally required under the Party Wall Act**

A building owner must serve a notice on the adjoining owner if he/she wishes to:

- build on or astride the line of junction (the boundary) – section 1
- carry out work to a party structure – section 3 (invoking rights under section 2)
- excavate within 3 or 6 metres (measured

horizontally) of the adjoining owner's property – section 6

The obligation to serve notice under section 6 does not just extend to excavations for foundations, but for deep excavations for tunnels as well. The fact that the excavation does not start at the surface is not material; it is the removal of the ground support, upon which the adjoining owner has a right to rely for support of his / her building which makes the work notifiable.

There is an option open to an adjoining owner to 'consent' to the notified works. It would be highly recommended that consent is conditional upon the preparation of a pre-commencement schedule of condition which is reviewed upon completion of the works in order to determine whether any subsequent damage to the property is attributable to the works. In practice consent is rare, particularly with owners of commercial properties, and the building owner should always prepare for the eventuality that consent will not be forthcoming and awards will be required throughout. In the case of Crossrail, consent to works was received in less than 2% of cases.

### **The building owner**

Crossrail Limited comprises Transport for London and the Secretary of State for Transport. In this case study, the two buildings which were compulsorily purchased by Crossrail were owned by the same freeholder as the adjoining building, a Grade II\* listed property. The site was purchased by The Secretary of State for Transport.

### **Disapplication of legislation for major projects**

There is a national and regional interest in seeing the Crossrail project completed as quickly as possible. Firstly, the project is publicly funded and the longer the project is under construction, the more costly it is likely to be. Secondly, infrastructure work of this nature in a heavily congested part of a major city comes with significant disruption to peoples' lives – roads are closed and those which are not are subject to



additional traffic with heavy goods vehicles transporting an increased amount of plant, materials and people. Huge volumes of excavated soil need to be disposed of, utilities are rendered vulnerable and noise levels are increased. Thirdly, once complete, the increased efficiency of the transport system is intended to boost the economy – and the sooner the better.

To increase speed of construction, several pieces of legislation have been disapplied either in part or in total. This follows the success of the Channel Tunnel Rail Link Act 1996 which employed the same method prior to the construction of the Channel Tunnel Rail Link, now known as High Speed 1(HS1).

No doubt legislation to facilitate future infrastructure projects will continue to seek to disapply Acts of Parliament to suit their needs.

### **The Crossrail Act and the disapplication of the Party Wall Act**

It is the requirement to serve notices for excavations which led to the disapplication of section 6 of the Party Wall Act. This type of infrastructure development would be slowed inexorably if awards were awaited prior to commencing work. There would be literally tens of thousands of owners along its 118km length, 21 km of which are tunnels, all requiring awards to be agreed before any tunnelling could take place.

Paragraph 17 of Schedule 14 to the Crossrail Act disapplies the duty on Crossrail to comply with certain sections of the Party Wall etc. Act, 1996, (reproduced here verbatim):

- No notice under section 1(2) or (5) of the Party Wall etc. Act 1996 (c. 40) (notice before building on line of junction with adjoining land) shall be required before the building of any wall in exercise of the powers conferred by this Act.
- Sections 1(6) and 2 of the Party Wall etc. Act 1996 (rights of adjoining owners) shall not have

effect to confer rights in relation to:

- (a) anything held by the Secretary of State or the nominated undertaker and used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act, or
- (b) land on which there is any such thing.

- Section 6 of the Party Wall etc. Act 1996 (underpinning of adjoining buildings) shall not apply in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by this Act.

### **Obligation on Crossrail to protect buildings in general**

To convince parliament that a key piece of protective legislation can be disapplied, a robust alternative must stand in its place. Crossrail Information Paper D12 – Ground Settlement outlines mitigating measures proposed by Crossrail to protect buildings which are predicted to be subject to high levels of settlement, drawn as contour lines on a map of the area showing ‘zones of influence’. Different activities will cause different ground movement. For example, demolition may cause ground heave as the ground is ‘unloaded’; tunnelling with a tunnel boring machine (TBM) can cause a ripple effect and settlement of the ground is calculated using a formula based on the area of the face of the cutting shield. In general, greater movement is likely in close proximity to the works, in particular around complex station sites where there may be cumulative effects from several tunnels.

Vulnerable buildings within high contour values of the zone of influence are identified, assessed and categorised according to their risk of damage due to predicted movement. Those with a high risk category are subject to further assessment. The adjoining building in this case study was given a ‘Phase 3, Iteration 2’ assessment, an in-depth structural assessment due to its proximity to the tunnelling works, its heritage status, its age and construction. Following this assessment it was

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## Crossrail and the Party Wall Act

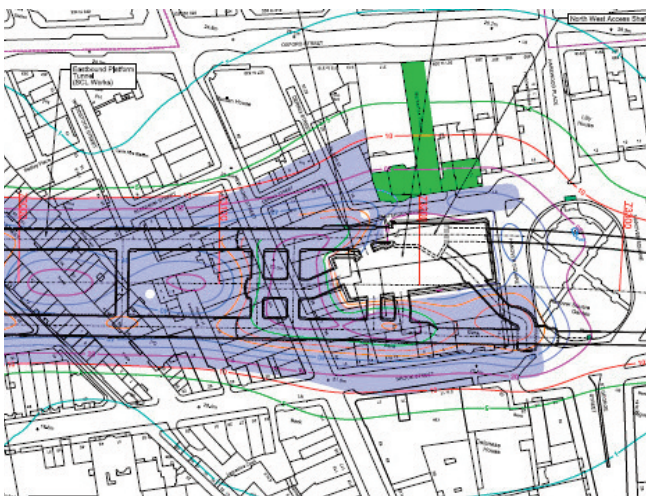
considered prudent to follow the most stringent settlement mitigation practice and a dedicated grout shaft was built from which controlled heave could be directed.

Recommendations are made for protection of the building. Though the adjoining building has a cantilevered stone staircase, it has been provided with supporting steels in the past and was not thought to be at risk of collapse through excessive movement. However, the glass dome was thought to be at risk – see section below: **(Predicted damage to the glass dome)**.

A defects survey, comprising a written and photographic record, is undertaken of all buildings estimated to be subject to 10 mm of settlement or more. If damage is reported, the original survey is compared with a further inspection and this will form the basis for any claim.

Paragraph 7 of Schedule 2 covers entitlement to losses should these arise as a result of the works, but the distribution of public money among claimants would not be undertaken lightly.

Relevant buildings also have the opportunity to enter into a Deed of Settlement with Crossrail.



Contours of the zone of influence with mauve showing the area of the compensation grouting 'array'. The site is white, with the adjoining building to the south.

Grout shafts are seen as small white circles.

### March 2007 Undertaking and re-application of the Act for Section 6 works

In March 2007 an undertaking was signed between the Secretary of State for Transport and the freeholder of the adjoining building. Whilst Crossrail's proposals were not known in detail at the time, the infrastructure principles and anticipated settlement were sufficiently known to be able to agree the following:

The Promoter (Crossrail) hereby –

- acknowledges by virtue of its means of construction that the (adjoining) Property may be sensitive to differential movement;
- acknowledges that the Station Works will increase the settlement of the (adjoining) Property beyond that caused by the construction of the running tunnels alone
- agrees that suitable protective works shall be taken during construction to prevent so far as is reasonably practicable any damage... beyond Damage Category 1...

The adjoining owner was sufficiently concerned about the adjoining property that Crossrail agreed that:

- ...consultation will be held with (the adjoining owner) for all works that would require a party wall award as if the party wall award negotiation was proceeding.

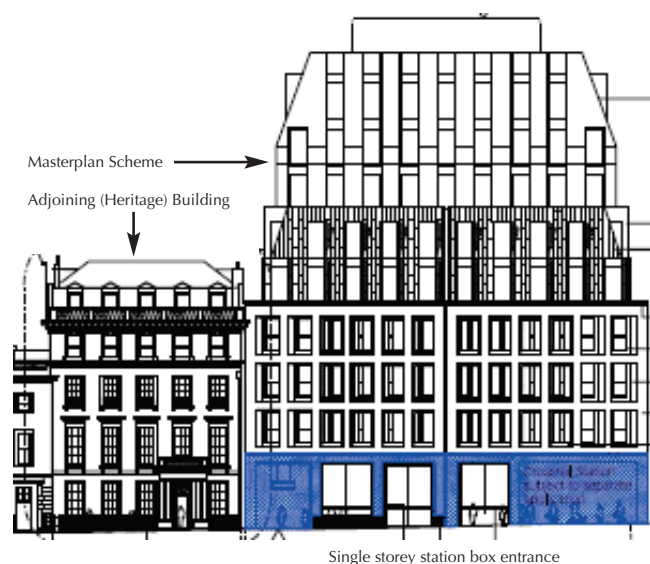
This clause effectively reinstated the rights of the freeholder of the adjoining building to the benefit of section 6 of the Party Wall Act. It is worth noting that there is but one property and one freeholder across the whole 118 km of the Crossrail project which has an undertaking reinstating the benefits given by the Party Wall Act. Crossrail considered whether to draft and agree an alternative bespoke procedure with the freeholder, but in the end decided to implement the Party Wall Act itself as the legislation is tailor-made for the purpose. Note



also that these rights did not extend to the leaseholder who was not a signatory to the March 2007 undertaking.

### Compulsory Purchase and Masterplan Scheme

The Crossrail Act gives Crossrail the power to compulsorily purchase properties which are strategically advantageous to the infrastructure project. In this case study, the entire block, consisting of 21 properties was wholly owned by the same freeholder, albeit held under different subsidiary companies. The two buildings which were compulsorily purchased by Crossrail were to the north-west corner of the block. When Crossrail's works are complete, the long term intention of the, now adjoining freeholder is to develop the site with the completed single storey ticket hall, shown below in blue, and to construct a nine storey commercial building on top of it. This, together with open public spaces at ground floor is called the 'Masterplan Scheme'.



### English Heritage

All proposed work to the adjoining building is carefully controlled due to its Grade II\* listing. Westminster City Council's conservation officers automatically inform English Heritage of proposals and there is a mandatory 12 week consultation period for any significant proposals. For minor

repair works, the general rule is that these should be carried out in 'like for like' materials, including lath and plaster which was found in several of the walls. Paint and brickwork (lime mortar) should also match wherever possible.

A patch of blockwork was found in the east wall flanking the cantilevered stone staircase into which it was proposed to insert cementitious anchors. The blockwork was replaced with a steel box frame, fixed to the flanking brickwork; the box frame improved the rigidity of the whole wall so that it would be capable of withstanding the additional shear forces. In a listed building, such work must be reversible so that when there is no further need for the box frame, it can be removed, the original blockwork reinstated and the property returned to its original condition.

A distinctive feature of the building is the ornamental plaster dome over the supported cantilevered stone staircase. The circular dome features plaster eagles and cameos to the squinches, gold edged and tasselled drapery to the supporting arches, hexagon and rose inset decorative circumference to the glass dome and egg and dart cornices.



### Demolition

When a building is demolished, the adjoining building may be exposed to elements which it is not designed and constructed to deal with. Over time, buildings may move, settle and gradually

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take support from their neighbours; this is particularly true of historic brick buildings with shallow spread footings. The adjoining building may have come to rely for support on the building which is about to be demolished, so temporary support must be provided in its place. Walls must be strengthened to cope with exposure to new wind loads and protection from precipitation is also vital. If there are no plans to replace the demolished building with a permanent structure, the protection provided must be permanent.

In this case study, the original proposal was for a steel gantry frame to be constructed within the adjoining building to withstand wind loads and this highly intrusive scheme was given heritage consent. The demolition contractor reviewed the proposals and presented an alternative scheme which fixed steel walings to the party wall with resin anchors bolted through the cross walls of the main staircase.

This proposal took the temporary works outside the adjoining building making it far less intrusive. It had the additional advantage of allowing the follow-on contracts for piling and excavations, which would have been impossible if raking props had been implemented.

Investigative works, both intrusive drilling and thermal imaging, were carried out to check the thicknesses of all walls, the connections of the cross walls to the party wall and the construction of the cross walls themselves. Some cross walls had doorways and timber framing which limited the locations of the resin anchors, some of which were designed to be 2.5 metres long. It was decided to change the resin anchors to cementitious ones and this required additional heritage consent.

Demolition required notices under section 2 of the Party Wall Act to repair the party wall (2)(2)(b), cut into it for anchors (2)(2)(f), remove projections (2)(2)(g), expose the party wall to the elements, subject to providing adequate weather protection

(2)(2)(n). Since the Crossrail Act did not disapply section 2 of the Party Wall Act, several awards, listed below, were made in the names of the freeholder and the head leaseholder, both of whom had appointed the same party wall surveyor. To avoid any delay to the progress of works on site, awards were agreed as the proposed works were in final design stages:

- Demolition to ground level
- Replacement of resin anchors with cementitious anchors
- Demolition of the rear part of the building
- Temporary propping required as an interim measure
- Demolition of the basement slab and removal of mass concrete foundations (which were connected to the adjoining owner's foundations)
- Record of repairs carried out to the party wall







These 2 photographs show the site post-demolition with the temporary steels and weatherproofing fixed to the party wall.

### **Change of Ownership of the development site**

The Secretary of State for Transport, as building owner, served notices on the adjoining owners for the proposed demolition of the building owner's premises and awards for the demolition works were agreed and served. After the demolition works were complete, and before the piling works commenced the ownership of the site was transferred from the Secretary of State for Transport to Transport for London.

Ordinarily, a change in the building owner means that all notices are invalid and therefore all awards coming from the invalid notices are invalid. The reason for this is that whilst rights to develop run with the land and can be transferred, the particular obligations to repair and support adjoining buildings which are expressed in the awards cannot be transferred; they have to be taken up voluntarily and under the Act. The prescribed method for assuming obligation is through the procedure of serving a notice and agreeing the terms of an award. If an adjoining owner changes, the vending party merely has to inform the purchaser that there is an award in place; the buyer stands in the shoes of the seller and acquires the same rights.

In this case with SoS and TfL, both being government departments, it was agreed that the obligations

could be transferred from one to another. Insurance policies were held in joint names, for example. Furthermore, new notices for piling and other excavations were served in the name of the new owner and awards agreed in that name.

In addition, a 'Supplemental Agreement' was signed at the end of March 2011 between Crossrail and the adjoining owner setting out agreements in respect of both the Crossrail development and the Masterplan Scheme.

### **Movement Monitoring**

Where practicable Crossrail would carry out a full year of background monitoring to establish seasonal movement trends. Baseline readings of the adjoining building were taken on 13th September 2010, demolition of the two buildings on the site commenced in March 2011 and completed in October 2011. Horizontal north-south (x axis), east-west (y axis) and vertical movement or settlement (z axis) of a building can be monitored using a wide range of equipment of varying precision. During the demolition phase, monitoring was restricted to the front and rear elevations as these were exposed and targets could be fitted, but as demolition progressed and the party wall became exposed, targets were fitted to the party wall itself.

Additional monitoring was required for the excavation works; the full range of monitoring of the adjoining building is set out below:

- Tilt meters connected to a mains supply can show real time north/south and east/west movement over a period of time and are used as a reliable early warning system for differential settlement
- Invar scales are narrow 600mm long 'bar codes' read manually
- Precise Levelling Points (PLP)
- Automated Total Stations (ATMs) which read

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geodetic prisms fixed to adjoining buildings in real time

- Hydrostatic levelling cells (HLCs) detect vertical ground movement and differential settlement; a whole terrace of buildings can be linked in this way
- Inclinometers are used to detect lateral deflection of piles

Existing cracks can be monitored with:

- Demec (dismountable mechanical) studs which are read with Vernier callipers and can be used to detect widening of cracks and shearing to a high degree of accuracy
- Tell tales or calibrated gauges fixed across the cracks,
- Vibrating wire gauges which are pulled taut across an existing crack; the natural frequency of the wire changes when the tension in the wire changes ie if the crack opens and the movement is read from a transmitter box fixed to a structure nearby.
- Linear Variable Differential Transformers (LVDTs) can accurately read the opening of a crack as the sliding armature moves relative to the fixed body of the displacement transducer.

### Vibration Monitoring

Vibration is not permanent movement, it terminates once the activity stops. Nevertheless, the damage it causes can be permanent. Buildings can withstand a higher level of vibration or peak particle velocity (PPV) than people, who can experience feelings of nausea with even moderate vibration levels. High vibration levels can arise from demolition works, and be transmitted to adjoining buildings, particularly if they are connected. In this case, the adjoining property was separated by a sheet of compressible hardboard which went some way to mitigating the transference of

vibration, but it was patchy in places and in fact a great deal of vibration was felt.

The best way of determining whether vibration has caused damage to a property is with a comprehensive schedule of condition of the building which is reviewed upon completion of the demolition. It was found post demolition that old mortar was vibrated out of joints in brickwork and existing cracks in historic plaster had opened up. However to date, so significant damage has been caused to the building by the works.

### Differential settlement and buildings

If an entire building settles by, say 20mm, whilst the settlement may be noticed, damage will be minimal. It is differential settlement which is most damaging to a building, when one part of the building moves, but the other parts do not. Throughout the Crossrail project, every effort has been made by engineers to predict the likely values of differential settlement and limit it. The buildings which are most vulnerable to differential settlement are historic buildings with:

- shallow spread footings
- cantilevered staircases
- decorative internal plasterwork
- glass fronts with slender timber and steel members

Modern buildings tend to have deeper and more substantial foundations as structural standards of proof have improved over the years. Buildings with piled foundations are held to be less at risk.

Trigger values for ground slopes resulting from differential settlement of the adjoining building have been set at 1:1250 (green); 1:1000 (amber); 1:800 (red) with actions at each value.

### Compensation Grouting and Grout Shafts

A proven method of limiting settlement is with



compensation grouting. This methodology was successfully used in the Jubilee Line Tunnel construction when the Big Ben bell tower was prevented from collapse with this technique. Grouting is pumped under pressure into the ground beneath the vulnerable building. It can be accurately targeted and will cause a controlled heave of the ground but it can only be used in low permeability soils. Shafts approximately 20 metres deep have been strategically positioned within the zone of influence. From these shafts, a horizontal array has been constructed with tubes of up to 100 metres in length, arranged like the spokes of a bicycle wheel.

When settlement is detected by the monitoring instrumentation, grout is pumped along the length of the “Tubes a Manchette” to the area where it is needed.

Even though the work was carried out by Crossrail and the depth of the grout shaft was within three metres and below the level of the adjoining owner’s foundation, the work was not notifiable under the Party Wall Act as the land on which it was constructed was owned by the adjoining owner and not Crossrail.

### **Predicted damage to the glass dome**

The glass dome is constructed of faceted panes of Georgian wired glass with each pane supported on a frame of uncertain material or quality. A steel beam appears to assist with support but the method of support and the end bearing into the party wall cannot be verified.

Engineers predicted high levels of movement to the dome of the adjoining building, particularly during tunnelling works Q4 2012, Q1-Q2 2013. Initially it was considered prudent to prevent serious damage to the dome by constructing a ‘crash deck’ in the building’s foyer beneath the dome so that if the dome becomes unseated, it does not fall to the ground. The crash deck proposals were later modified to a less intrusive scheme. The edges of the glass panels are held in

place with foam-backed adhesive strips and a layer of adhesive film has been applied to the outer face of the glass, over the whole construction for maximum stability.



### **Damage categories**

Burland (1995) has defined categories of damage as follows:

- 0 – Negligible – hairline cracks less than 0.1mm
- 1 – Very slight – Typical crack width of 1mm
- 2 – Slight – Typical crack width up to 5mm
- 3 – Moderate – Typical crack width is 5-15mm
- 4 – Severe – Typical crack width is 15-25mm
- 5 – Very severe – Typical crack width is greater than 25mm

The March 2007 undertaking confirms that Crossrail will ‘so far as is reasonably practicable’ limit damage to the adjoining building to Category 1

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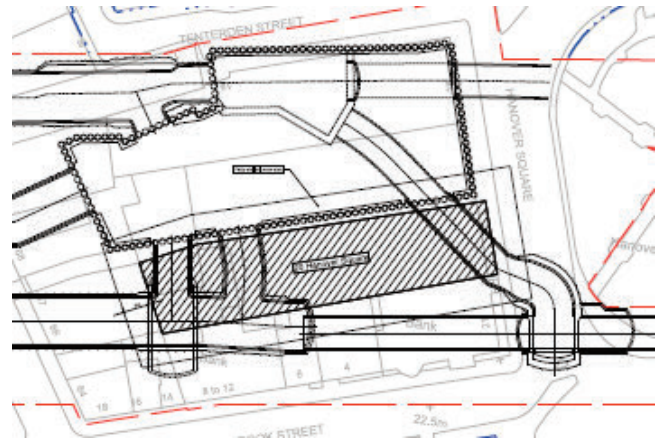
### Piling and deep excavations

Certain excavations within 6 metres of a property are notifiable. The criteria is removal of the ground support, which is assumed to run at an angle of 45 degrees downwards from the base of the wall of the adjoining owner's building. If this ground is removed from beneath the 45 degree splay line within 6m, a notice must be served. However if the works within 6 meters are part of a greater scheme, the whole works are held to be awardable and cannot be commenced until an award is agreed. For example, in the case of deep basement excavations, the work cannot be commenced in the opposite corner from the adjoining building simply because it is more than 6 metres away. Once the award is agreed, the whole works can commence. In the case of the Crossrail site, this meant piling, tunnelling and other excavation works were agreed in awards prior to commencement.

### The role of the checking engineer

When the building owner's proposals are complex, the appointed surveyor is advised to nominate a checking engineer to review the building owner's engineer's proposals with respect to party wall matters and to advise accordingly. In the case of the demolition phase, the checking engineer's role was traditional and the two engineers liaised closely to develop and agree the scheme. The design was CAT III checked by an independent engineer not associated with the Crossrail project and the agreed scheme was incorporated in a party wall award.

When it came to the tunnelling phase, essentially civil engineering proposals, the checking engineer's role became primarily to ensure the protection of the adjoining building. Prior to the appointment of the tunnelling contractor, Crossrail's designs were already well advanced. The contractor's engineers worked with Crossrail's in-house engineers to develop the proposals and work could not start on site until Crossrail's engineers had signed off the scheme. Designs were CAT III checked by two independent engineers and presented to the checking engineer as confirmation of due diligence.



This diagram shows the site with secant piled perimeter retaining wall and the adjoining building hatched. The running tunnels run east to west across the north of the piled box and to the south of the adjoining building. The Temporary Crossover, a spray concrete lined tunnel cuts across the north east corner of the adjoining building. Other permanent crossover tunnels run north to south at the west end of the building.

### Conclusion

The Party Wall experience on this particular site has been one of respectful co-operation. The reason for this is largely because both the building owner and the adjoining freehold owner have a twin goal which they wish to reach with minimum damage to the adjoining owner's property, minimum disruption to the occupying tenants (who you will recall have no rights in the Undertaking) and in the shortest possible timeframe.

Other sites on the project have not had the same fortunate experience and Crossrail has been seen as an opportunity for airing disapproval of infrastructure projects in general, distracting Crossrail and their contractors from the job at hand and worse – claims for security for expenses from the public purse for example. Disruption to neighbours in general has been carefully controlled by Section 61 agreements between Crossrail and the Local Authorities and in general, adherence to mitigation practice has been excellent.

**Author: Shirley Waldron BArch (Hons) Dip Arch RIBA, director of SW Architects.**

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# Lords a leaping

## The Subterranean Development Bill

Some time ago Lord Selsdon, whom I know in a professional capacity, began a series of conversations with me about subterranean development. In December 2011, the Subterranean Development Bill began its passage through parliament.

The Club has played a leading role in drafting the Bill. An advisory panel was set up for the purpose. I first of all approached Lawrance Hurst for some urgent engineering wisdom. The other members of the National Management Team, John Lynn, Graham North and Alistair Redler were recruited. David Reynolds, as incumbent London Chairman, Robin Ainsworth, who was the Club's liaison with the Office of the Deputy Prime Minister were pressed into service and of course John Lytton, our own parliamentary expert.

Hugh St John joined us as geotechnical expert. Most recently, Richard Grove joined, having been asked to advise the Belgravia Residents Association.

Work started on an amendment to the Localism Bill. Lord Selsdon's was one of a number of amendments relating to basement developments. He was later offered parliamentary time to introduce a bill dedicated to subterranean development as a private members bill. This is the bill that was first read in parliament on December, 8th. The bill, together with its explanatory note prepared by Lord Selsdon, is now on the Club's website. Discussion is invited. Comments should be forwarded to [subterraneandevlopmentbill@partywalls.org.uk](mailto:subterraneandevlopmentbill@partywalls.org.uk).

The advisory panel set out to avoid measures too draconian and prohibitive and very quickly realised that dispute resolution provisions in the Party Wall etc Act 1996 were ideally suited to a new bill governing subterranean development. As currently drafted, the bill follows the principles enshrined in the 1996 Act. It does introduce a tighter definition of "surveyor" and incorporates penalties if it is ignored.

The bill could not pass through all of the stages necessary before receiving royal assent during the last parliament. It may be reintroduced in the current parliament. Ultimately, it may not become law at all or it may be reinstated within the Localism Bill or conceivably as an amendment to the Party Wall Act. However, during the debate following the Bill's second reading, it became clear that the Government does not favour new primary legislation, particularly in light of current initiatives to cut down on "red tape". Regulators are currently assessing the Bill to report to ministers on whether the

Bill's provisions can be introduced via existing regulatory frameworks. As I write this review, they have yet to report. I will prepare some notes from time to time in future editions of Whispers to let you know how the Bill is getting along.

**David Moon**



# Third Surveyor Referrals

It was an honour and a privilege to be invited to speak at the P&T London Conference on 22 March of this year on the subject of "The Role of the Third Surveyor". These words are not a repeat of talk but part of some of the issues I covered.

I am told that I am often nominated and occasionally selected to act as Third Surveyor but of course the number of times one is nominated or selected is not known unless there is a matter in dispute which has to be determined. Fortunately the number of referrals are, what one might consider, to be relatively small bearing in mind the vast number of Party Wall Awards which are agreed across London (and England & Wales) and the times that one may be nominated or selected as Third Surveyor.

The vast majority of Party Wall Surveyors will avoid referring matters to the Third Surveyor as often a pragmatic and sensible approach avoids such a situation arising. Having said this, there are occasions where there is a professional difference of opinion and two Surveyors are simply unable to agree. There is no reason why two Surveyors, acting independently – as they must – should fall out on a personal level just because they disagree on a point.

However, sadly this is not always the case. Too often I see correspondence between Surveyors which contains personal invective, insults and reference to matters which are not relevant to the points they are discussing and trying to agree.

I would urge all Party Wall Surveyors to keep their discussions and deliberations on matters arising out of Notices to those issues which are relevant to the dispute arising from the Notices and not get sidetracked into personal attacks or worse still, siding with one of the owners because they are under pressure to do so.

I am pleased to say that the vast majority of Party Wall Surveyors manage to avoid falling into those traps.

We all, on occasions, have moments in our working day where we may feel our opposite numbers are being unreasonable or plainly daft and are tempted to respond in a very personal way. I know I do and I am sure, if you are honest, you do too.

What I try to do in that situation is to dictate a reply and then sleep on the matter only to find that the following day I have calmed down a little and



will edit my response in a way that it relates solely to the pertinent issues at hand.

As part of my research for the London Conference, I reviewed all of the Third Surveyor referrals made to me over the last 3 years to see what was the subject matter or matters referred and which required determination. I have not included general enquiries or matters which were referred to me and then I did not need to

make an award. In other words the subject matter which Surveyors were unable to agree between them and they were:-

- |   |     |
|---|-----|
| i. Agreeing the extent of damage caused to an adjoining property.   | 28% |
| ii. The amount of the Adjoining Owner's Surveyor's fees.  | 20% |
| iii. The amount of a financial payment to an Adjoining Owner in lieu of damage being made good under s.11(8). | 17% |
| iv. Miscellaneous – e.g. can stacks be removed from party walls.  | 11% |
| v. Organising Security for Expenses accounts.   | 10% |
| vi. Claims for compensation for loss under s.7(2).  | 9%  |
| vii. Invited to make an award with either the Building Owner's or Adjoining Owner's Surveyor.                 | 5%  |

The first thing which struck me is that the most contentious is not fees!

The second thing that surprised me was that I had not appreciated how many times Surveyors had been unable to agree upon the extent of damage which had been caused to an adjoining property.

More often than not, this came about as a result of the Schedule of Condition being poorly prepared, lacking in detail or failing to cover a sufficient area of the adjoining property, taking into account the extent of the Building Owner's works.

For example, with the number of basement and double basement excavations being undertaken over the last couple of years, I would often see the Schedule of Condition limited to the party wall only and barely into the depth of the room let alone the rest of the property.

Movement then occurs to that adjoining property to both the party wall and the other areas of the building, only for the Building Owner's Surveyor to argue that some of those cracks away from the party wall existed all along. If that were the case, why didn't the Surveyors include it?

I would suggest that all Surveyors consider extending their condition surveys to other parts of the adjoining property where there are extensive works proposed next door. The additional time spent in extending the Schedule of Condition (and after all you are at the property anyway so what is an extra half an hour or hour of time?) is time extremely well spent compared to the time that is expended in arguing over whether or not cracks existed before the excavation took place.

So once again it boils down to the age old comment that the Schedule of Condition, despite not being a "legal requirement", nor is it mentioned in the Party Wall Act, is probably the most important part of the process when looking at the matters which give rise to a dispute.

The issue of fees is always a challenging subject. I do not think that anyone begrudges another Surveyor from earning a reasonable fee for doing a proper job in accordance with the Act and as required by appointed Surveyors as far as case law is concerned. However, there are occasions where an Adjoining Owner's Surveyor seems to spend an inordinate

# ARTICLE

## Third Surveyor Referrals. 14.06.2012

amount of time at a high hourly rate for dealing with matters which really should not take that long.

By way of an example, a Surveyor who describes himself as knowledgeable and experienced and looking to charge somewhere between £150-£200 per hour should not then claim to spend 2 hours looking at a draft Award and expect to be paid for it. There are of course very rare occasions where enormous detail is required in an Award which may justify an hour or so's time in commenting on the Award (and when I say this I am excluding consideration of drawings and Method Statements etc.) but I fail to see how an experienced practitioner should take more than 30-60 minutes in commenting upon an Award.

When I am asked to determine what a reasonable fee for an Adjoining Owner's Surveyor should be, I look at the information that has been provided and consider what a reasonable Surveyor should spend in terms of time in dealing with the matter. Having said this, often a Building Owner's Surveyor fails to fulfil his role properly and sends poor information to his opposite number without looking at that information or drip feeds every piece of information through such that the Adjoining Owner's Surveyor has no choice but to keep looking at the information and thus spend more time on the matter.

Sometimes the Building Owner's Surveyor behaves in this way because they have quoted a very low fee for acting for the Building Owner and they want to leave all the work to be done by their opposite number. In that situation, it is only reasonable that the Adjoining Owner's Surveyor's fees should be higher than what might have otherwise been anticipated if the Building Owner's Surveyor has failed to do his job properly.

Building Owner's Surveyors should not simply be a post box for the transfer of information from the Design Team to the Adjoining Owner's Surveyor. The Building Owner's Surveyor has the same duty

and responsibility to be impartial and independent and comment upon the proposals as the Adjoining Owner's Surveyor.

The Surveyors should bring "value" to the process. More often than not that is what we do but just occasionally Surveyors lose sight of this and are sidetracked into running up high fees. The amount of the Party Wall Surveyors' fee can sometimes be more than a third of the total cost of the works.

This must be avoided.

The comment by one Judge in a case concerning the amount of a Party Wall Surveyor's fees for acting as an Agreed Surveyor, and which was being contested by one of the owners makes the point:-

"The complaint is that he made a three course banquet out of what should have been a snack."

Once the Third Surveyor has made an award, and I generally make my award and send it to the Surveyors for them to serve on their respective owners and for those Surveyors to ensure that their owners are aware of their rights of appeal, one does not hear too much more unless the Award has been appealed and even then I am only told after the Appeal has been heard!

One such case was Sokal v Rodrigues 2008 where one of the four awards that I made as Third Surveyor ended up in the Court of Appeal. One of the grounds for the Appeal was that I acted beyond my authority in determining whether the Adjoining Owner's property had suffered damage arising from works before notice had been served for that work. I took the view that it was in the interest of both owners for the Surveyors to determine that particular matter and if they were unable to do so then the matter would come to me for determination. It did and I awarded that no such damage had arisen only to find (fortunately) that the Court of Appeal agreed that I had authority to make such a determination.

For those of you who may have had the misfortune to attend one of my talks on the subject, you will know that I am very keen on the Party Wall Surveyors taking an active role in determining matters between owners and not for Surveyors to avoid dealing with matters because they claim it is beyond their "authority". After all, if the Party Wall Surveyors do not deal with those matters, who is going to?

I think the courts are looking for Surveyors to resolve these matters as efficiently and economically as possible. Matters referred to the courts in time-consuming litigation is not an economic way to resolve disputes.

Another case where my Award as the Third Surveyor was appealed is the county court Judgement of *Kremer v Loost* 1997 (under the London Building Acts (Amendment) Act 1939) where I was asked to determine a number of matters including whether:-

The Building Owner's Surveyor (who was also the Building Owner's Architect) could fulfil the role of the Architect and the Party Wall Surveyor i.e. was there a conflict of interest?

The Building Owner (who was the leaseholder wishing to add an extra floor to the top floor flat) should name the freeholder as the joint Building Owner in the Notice?

I should have waited for the Adjoining Owner's Surveyor to return from holiday for further Submissions?

His Honour Judge Cowell considered the appeal to the Award and said the following:-

"A number of cases have been cited to me which show what a third surveyor cannot do, and of course it is quite clear in all those cases that he could not decide on matters which were not in any way within the sections of the Building Act. But it seems to me that the matters really could not

start without a decision on those two fundamental matters (whether the Surveyor was properly appointed and whether the freeholder should be enjoined in the Notice) and he (the third surveyor) was bound to decide it and, as I have indicated, it seems to me that he was simply right."

My answer to each was:-

Yes.

No.

No (because I had received enough information already).

Whilst this was a case under the old procedures, the principles remain true for the current Act.

I finished my presentation to the London Conference with my favourite quote from Hamlet, as befitting a Club which has a quote from *Midsummer Night's Dream* as its motto, that reflects my approach and is one which I think should apply to all appointed Surveyors under the Act, not just the Third Surveyor:-

(Polonius to Laertes)

"This above all: to thine own self be true,

And it must follow, as the night the day,

Thou canst not then be false to any man."

Hamlet Act I, Scene III

If all Surveyors stick to this maxim, then they shouldn't go too far wrong.

**Graham North FRICS MCI Arb**

14 June 2012



# PARTY WALL

## A History of Party Wall Legislation

**As presented by Lawrance Hurst to the Pyramus and Thisbe Club on 21st March 1997**

As you know, party walls come in two sorts – walls astride the boundary, which do not necessarily need to be used by the buildings on both sides, and walls on one side of the boundary which are used by the buildings on both sides. But you may not know that until 1939 the latter was the dominant and primary definition, and hence until then it can be inferred that, at least from the point of view of party wall legislation, the actual position of the boundary was less important than the use of the wall. The change in the separation definition when it became secondary in 1939 is also interesting. The 1930 definition reads:

*“a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons”*

You will realise that this is very different from the 44(ii) definition in the 1939 Act, repeated in the new Act, which is only *“so much of a wall...”*

and I suggest the change was made because the comprehensive legislation which first appeared in 1856 had resulted in most buildings in the area to which the Act applied being by then constructed or reconstructed with walls astride the boundary and hence that was the most important definition. The actual use is still important, whichever the sort of party wall, but the emphasis is now more on where the actual boundary line runs. It will be interesting to see which of the definitions we have now had in London since 1939 becomes most important in construction which has not been built with party wall legislation in force, or at least in mind.

Reflection on this change prompted me to look back through the party wall provisions in earlier Acts and now I will share with you some of my findings.

The earliest reference to walls in London between buildings and to disputes between neighbours, goes back to the legal date *“beyond which no man can remember”*, i.e. time immemorial, in the year King Richard 1st was crowned – 3rd September 1189. At that time Henry Fitz-Ailwyn was Mayor of London, and his Assize ordained, amongst other things, provisions:

*“for the allaying of the contentions that at times arise between neighbours in the city touching boundaries made or to be made between the lands”*

Now, some eight hundred and eight years later, the Party Wall etc. Act 1996 will extend those provisions to the rest of the country.

Henry Fitz-Ailwyn’s Assize required each neighbour to give one foot and a half of his land on which they shall build at their joint costs *“a stone wall three feet in thickness and sixteen feet in height”*

Arches for cupboards or larders could be incorporated providing they were no more than one foot deep i.e. they could not encroach beyond the centre line. If one neighbour could not afford to build his half of the wall he was required to give three feet of his land for the wall to be built at the cost of the other, but, in exchange for effectively moving the boundary, he could use the wall to bear his joists and enclose his building.

The Assize also contained clauses relating to rights of light, drainage and other neighbourly matters. Disputes, when the neighbour objected to some aspect of the building in course of erection adjoining his ground, were referred to the Mayor assisted by the twelve elected men who formed the Assize, for adjudication.

The reason given for requiring a stone wall between adjoining lands was to reduce the risk of spread of fire, and indeed the Assize mentions the fire of 1136 which broke out at London Bridge, destroyed St Paul's and other buildings, as far as St. Clement Danes' Church, and the houses built of wood covered with straw or stubble and the like which burnt so easily. This theme, of incombustible construction to reduce the risk of spread of fire, was the reason for party wall legislation until the 19th century, and indeed of course for other regulations that sought to control building construction.

I say sought to control building construction because that aspect of legislation seems to have suffered, perhaps not for eight hundred and eight years but for 700 or 750 from lack of enforcement measures. I say this because the legislation was regularly reiterated in London, and of course the Act of 1667, following the great fire of London in 1666 which I think first actually calls them "*party walls*", said much the same things as had been said nearly 480 years earlier. It also defined various sorts of buildings and specified both wall thicknesses and sizes of floor timbers. Once again the adjoining owner was not allowed to use the wall until he had contributed to the cost. Wages and costs of materials were to be reasonable, and, presumably to help overcome the shortage of labour, foreigners were to be treated as freeman for several years. This Act uniquely included a provision entirely unrelated to building, which has been allowed to lapse. I refer to the requirement for the 2nd September

*"to be yearly for ever hereafter observed as a day of public fasting and humiliation in the City and Liberties – to divert the like calamity for the time to come"*

London however was not alone in suffering disastrous fires, other local Act relating to specific fires were made for:

Norwich	in 1534, relating somewhat tardily to a fire in 1508
Edinburgh	in 1618 (fire in 1584)
Northampton	in 1675 (September last)
Warwick	in 1694 (5th September last)
Tiverton	in 1731 (5th June, 1731)
Blandford Forum	in 1731 (4th June, 1731)

(May and early June must have been a particularly hot and dry period in the West Country in 1731)

Wareham	in 1673 (25th July, 1762)
and Chudleigh	in 1808 (22nd May, 1807)

and most of these refer to straw roofs, some of them to thatched walls, and to non-combustible reconstruction.

It is interesting to note that, notwithstanding the lack of party wall legislation throughout the country, the indications are that we have been building with effective fire breaks for many years. This conclusion emerges from a comparison with an American experience where throughout the nineteenth and early 20th centuries disastrous fires laid waste large areas of their cities.

You must of course remember that fire resistance, as we now understand it, is a comparatively modern term and indeed relating it to a duration of so many hours or half hours dates from the late 1940's.

Before 1900, the expression was 'fireproof' which generally meant nothing more than non-combustible, as in the fireproof warehouses and mills of the north of England with brick jack arch floors on cast iron beams and columns, enclosed with brick walls.

# PARTY WALL

But to revert to party walls, and to the history of the London legislation.

In 1724 workmen appointed by both owners in dispute were required to give evidence to the Justices who issued an Award. So we come for the first time to an Award, but it is still in the hands of the lawyers and is really no advance on Henry Fitz-Ailwyn's Assize. We need to wait until 1772, when the two adjoining owners in dispute about rebuilding a defective party wall served Notices in a form set out in the Act and each appointed

*“two surveyors or able workmen”*

to award on the matter. Now it is out of the hands of lawyers and in the hands of surveyors, with small s's or able workmen, who could even be engineers! but still only in connection with defective walls. At that time then the third surveyor (or able workman) was the fifth!

Two years later, in 1774, a new Act, because the 1772 Act had been *“found insufficient to answer the good purposes intended thereby”* – a failure not exclusive to building legislation – dealt more extensively with party walls – new ones, defective ones, intermixed property that is straddling the boundary, timber partitions, and gave owners the right to raise party walls, providing they were of sufficient fix thickness to comply with the Act. The requirement for the appointment of two surveyors or able workmen for each side continued, and the Act again into the standard form of Notice to be used, three months before it was intended to pull down party walls, party arches, party fence walls or quarter partitions, when decayed or of insufficient thickeners.

This 1774 Act incidentally required the appointment of statutory surveyors for the various districts – the birth of the District Surveyors who served London so well until the demise of the GLC.

The 1844 Act defines, for the first time, party wall, external wall, and owner, and includes a right to carry out

*“other necessary works incident to the connection of the party wall for party fence wall with the premises adjoining”*

standard Notice forms are included, but the appointment of surveyors or able workmen is not repeated from the previous Act – the appeal is now to the Official Referees, assisted by the District Surveyor – back to Fitz-Ailwyn again! There was however a right of forced entry for works authorised by an Award, in cases where it was denied.

I have not discovered if the reason for the short life of the 1844 Act was the omission of appointed surveyors, for it was replaced after only 12 years by the 1856 Act, but I suspect it may have been because the 1844 Act was so much longer and more comprehensive than its predecessor and consequently the legislators just did not get it quite right.

However before leaving the 1844 Act behind, it is worth remarking on two matters, one of which we shall finally lose on 1st July, the other which has never been repeated. The first is a lack of response resulting in a deemed assent, which applied three months after service of a Notice on an adjoining owner, and also after only seven days in respect of the second, unrepeated provision, which entitled the adjoining owner in receipt of a Building Notice to give Notice that the work be delayed

*“so as to cause it to be executed at a more seasonable or more convenient Time in reference to the Business or to the Family or domestic Arrangements of such adjoining Owner or his Tenants”.*

Just think of the discussion this right could have caused if it had continued to exist.

That Act also allowed any Party to raise a party fence wall

*“so as to screen from View any offensive Object or Neighbourhood... but not so as to obstruct the free Circulation of the Air, or to*



*injure the Property adjoining to or in the Neighbourhood of such Wall.”*

Another interesting right which was understandably quickly allowed to lapse.

The 1855 Act introduces the appointments of surveyors in much the same way as we now have ever since in London, that is either the owners can agree, or they appoint one Agreed Surveyor to act fairly between them or they each appoint a surveyor who jointly agree on a third, to whom any dispute between the first two will be referred. It also adds the definition of a party structure to the definitions it repeats from its predecessor, but interestingly omits a wall astride the boundary from the definition of a party wall-which is only:

*“every wall used or built in order to be used as a separation of any building from any other building, with a view to the same being occupied by different persons”.*

The alternative of

*“a wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners”*

was reintroduced in 1894 as sub-paragraph (b), perhaps because of a law case in 1872, when a wall was held to be a party wall to such a height as it belongs in common to two buildings and to cease to be a party wall for the rest of its height. We have then to wait until the 1939 Amendment Act for the two definitions to be reversed, with the wall astride the boundary taking first place, and as I mentioned at the beginning, for the second definition to be brought into line with the 1872 law case.

The 1855 Act also includes the right to cut into any party structure to cut away a footing or breast etc. in order to erect an external wall against the party wall and indeed

*“to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same...”*,

and continues

*“the right to perform any other necessary works incident to the connection of the party structure with the premises adjoining thereto.”*

With the exception of minor refinements and of provisions relating to excavations within 10 and 20 ft. which appeared in the 1894 and 1939 Acts respectively, and to special foundations which appeared in the 1939 Act, the 1855 Act effectively included all the rights and obligations of neighbouring owners where the line of junction is built on or built beside, and of the procedure for settling differences that we in London have been accustomed to finding in the 1939 Amending Act and the rest of England will soon too become accustomed to find in the new Act. What was not set down in detail however and indeed had not been included since 1667 was the procedure and rights where the line of junction is not built on, or built beside, for which we had to wait until 1894. This omission for over 225 years was perhaps because the area to which successive Acts applied was already fully developed and hence new party walls or external walls adjacent to the line of junction would be unlikely to be required.

You can perhaps now appreciate how the provisions set out in Part VI, which are so familiar to us in London, developed over the years. These provisions have been refined but largely repeated verbatim in the new Act and we wait with some trepidation to see if they are as readily applicable to buildings which do not have 808 years of party wall history behind them.

# EXHIBITION

## Party Walls since AD50

# The British Museum

## Party Walls since AD50

The British Museum held an exhibition which ran till 29th September 2013 on:

### Life and death Pompeii and Herculaneum

It has yielded this gem:

As you will know from your history lessons, the volcano Vesuvius erupted in AD79, burying two cities, Pompeii and Herculaneum and from the 1700s archaeological digs have uncovered the buried towns and revealed details of the lives of the inhabitants. The marble plaque below was discovered on a wall between two ordinary homes in a side street in Herculaneum and gives an insight into the social realities that must have been present in every town in every street in the Roman Empire. It gives a glimpse of the property ownership and influence of freedmen and women in that society. The marble plaque is inscribed on both sides; on each side is an inscription.

One side reads:



M. NONI. M. L. DAMA

PARIES. PERPETUUS. PRIVAT(US)

'This is the wall of Marcus Nonius Dama the freedman of Marcus, private and in perpetuity'

The other side reads:



IVLIAE PARI(es)

PRIVA(TUS) PERPETUUS

'This is the wall of Julia, private and in perpetuity'

The man's inscription explicitly states that he is a freedman, M(arci) L(ibertus); the woman's gives only one name, Julia, and no hint of her father's name, suggesting that she, too is a freed slave. The plaque probably marks a dispute that was settled by the city magistrates.



## Property Boundaries (resolution of disputes) Bill

Thanks to all of you who write to your MPs advising them of this Private Members Bill and asking them to support it. As anticipated, the Bill had its first reading but failed its second. Charlie Elphicke MP for Dover and sponsor of the Bill accepted the P&T London Branch's offer to form a "Practitioners Advisory Group" to examine the Bill in greater detail. I decided that the Group should comprise not only member of the Pyramus & Thisbe Club but others as well. Further to this end I invited Alex Frame to represent the Faculty of Party Wall Surveyors and David Powell as the leading expert in the country on boundary matters. Apart from Alex and David Powell the group comprised myself as Chairman, David Moon (as Chairman of the National Committee) and David Hannent (Chartered quantity Surveyor, originator of the National Schedule of Rates and practitioner in the field of boundary disputes).

The PAG has met on a number of occasions and the original drafting of the Bill (based upon the Party Wall etc Act 1996) has been developed to the point where it should be presented it to the Ministry of Justice. Like the Party Wall etc Act 1996 the Bill proposes a system of "expert

determination" with a right of appeal. In order to maintain flexibility and provide a degree of protection against future developments we are advocating secondary legislation based upon schedules and practitioners' guidance notes.

I do not intend to throw the Bill open to general consultation at this stage, I fear that this would lead to a deluge of well meaning comment and criticism. It would be impossible to please everybody! The aim of the PAG, is to be able to present the Ministry with a suggested solution to the problem of boundary and "rights of way" disputes that is reasoned, based upon a proven procedure, as flexible and to a degree "future proof" as possible, is to the public benefit and has the support of practitioners and Members of Parliament.

### **Andrew Schofield**

Chairman of The London Branch of The Pyramus & Thisbe Club & Practitioners Advisory Group for the Property Boundaries (Resolution of Disputes) Bill



# TRESPASS



## Trespass Matters

**By way of introduction to his article on trespass, David Bowden referred to the 1667 Rebuilding Act (Museum of London website) and to the following clause in particular:**

*IV The Lord Mayor shall on or before the 1st April 1667 declare which and how many streets shall hereafter be deemed by-lanes, streets or lanes of note, or high and principal streets. All the said streets intended to be rebuilt shall be marked and staked out (so that) the breadth, length and extent thereof shall be better known and observed. (The penalty for moving or removing these stakes was three months imprisonment or £10, or, if the offence was committed by a person of low and mean condition, that he shall be openly whipped till his body be bloody).*

The act of trespass has a long and glorious history in this country, often being met with violence or imprisonment.

Prior to the enclosure acts much land was held and used in common. Even party walls were generally held in common until the 1925 Act.

Whilst mass trespass such as that at Kinder Scout in 1932 has led to the right to roam open country under the Countryside and Rights of Way Act 2000, numerous legislation has permitted more and more governmental and quasi-governmental officials to enter private urban land, at the same time closing off more public land to the rest of us. Only the Party Wall etc Act 1996 and the Access to Neighbouring Land Act 1992 are of any help to a building owner.

A building owner wanting access onto his neighbour's land to carry out building works on

his own land is affected by various laws, both common and statute.

Firstly trespass is a tort, plain and simple. It does not need to involve damage, and the remedy is an injunction, damages, or both.

A trespasser can be ejected with reasonable force. Reasonable force is undefined, but is less than shooting him (2001) or shaking him off a ladder (1754).

Secondly, under the European Convention, Article 8, everyone has the right to respect for his private and family life, his home and his correspondence, which means no trespassing.

Thirdly, we have statutory offences, the following being a pertinent, if small, selection.

Under the Theft Act 1968, section 9, a person is guilty of burglary if he enters a building as a trespasser and attempts to steal or damage anything in the building, and on conviction on indictment is liable to imprisonment for up to fourteen years.

Under the Criminal Law Act 1977, section 6, anyone who without authority uses or threatens violence to any person or property in order to gain entry into any premises for himself or another, when there is someone there opposed to such entry is liable to arrest, and on summary conviction to imprisonment for up to six months or a fine at level 5, £5,000, or both.

Under the Criminal Justice and Public Order Act 1994, anyone who satisfies certain conditions and has been directed by a police officer to leave land and either fails to leave the land as soon as reasonably practicable, or comes back within three months commits an offence, can be arrested

without a warrant, and is liable on summary conviction to up to three months in prison or a fine of up to level 4 on the standard scale, £2,500, or both.

Under the Serious Organised Crime and Police Act 2005, section 127, a police constable may direct a person to leave the vicinity of premises and not return within a period as the constable may specify of up to three months, failure to comply with which renders him liable, on summary conviction, to imprisonment for up to 51 weeks or a fine not exceeding level 4 on the standard scale, £2,500, or both.

Finally, under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144 is the new offence of squatting in a residential building, which attracts imprisonment of up to 51 weeks or a fine at level 5 on the standard scale, £5,000, or both.

How should our poor building owner get around this little lot and get onto next-door's land to fix his building without ending up either ejected, arrested, imprisoned, fined, or all of them?

He could just ask his neighbour, but a refused request effectively brings the bad news that there will be no access.

He might think it perhaps better to go in quietly and hope either no-one notices, or if they do, his work can be finished before the adjoining owner can get an injunction or find a friendly policeman to give the necessary direction and make an arrest.

There is always a risk as injunctions can be got very quickly; you only need a judge, a sworn statement, an undertaking in damages on an indemnity basis, and either nerves of steel or enough stupidity to follow it through. The risk of

# TRESPASS

the police actually turning up is perhaps variable, as is the risk that the landowner may simply know a lot of large people who are happy to help him exercise his common law right of self help.

Better, though, the Access to Neighbouring Land Act enables access to be obtained through the courts where necessary for the maintenance and preservation of land. Whilst this does include taking down and rebuilding, it also generally involves lawyers and costs in terms of time and money, sometimes compensation, and is very rarely used.

Better still, and far more friendly, at least to the building owner if perhaps not the adjoining owner, is the Party Wall etc Act.

It developed from legislation in London after the Great Fire in 1666, a tad over three hundred years later, the benefits of which were extended to developers in the rest of England and Wales.

It facilitates construction and the full use of a parcel of land by codifying rights over the generally shared ownership of party walls, by granting protection to nearby foundations regardless of the adjoining owner's rights of support to them, and by giving rights of temporary access to facilitate, at times permanent, works on the adjoining land.

The Party Wall etc Act is administered by surveyors rather than lawyers, and the courts generally don't get a look in until all has been settled in an award by them.

Under section 1, notice has to be given before building a new wall on the boundary.

The only right given over adjoining land is to place projecting footings between 1 and 12 months after service of notice.

Clearly, a right of access to do that follows, as the foundation work is in pursuance of the Act, but it does not do so so clearly to build the wall.

Section 2 relates to works to party walls, essentially where there is a form of shared ownership and rights are given over the adjoining owner's property.

Without the Act, rebuilding next-door's half of the party wall would be a trespass, but with it, it is not.

Again, clearly a right of access to do that follows.

Section 6 controls excavation.

Notice has to be served if there is an intention to excavate within prescribed distances of other people's buildings.

There is a right to underpin or otherwise safeguard the foundations of next door's building, and if that is not intended, the adjoining owner can demand it. Any dispute is determined by the surveyors.

This section has two main effects:

Firstly it removes any question as to whether the adjoining owner has any right to support to his building, which he may well not have, particularly if none was granted or none acquired by prescription.

Secondly, it gives the building owner the right to underpin the adjoining owner's building, thereby preventing its existence hindering full development of the building owner's land.

Clearly, a right of access for underpinning or other safeguarding follows.

Section 7 prevents the placing of special foundations on adjoining land without consent,



ie there is no right to put reinforced concrete on adjoining land.

It also, and most importantly, effectively states that all rights granted by the Act are subject to not causing unnecessary inconvenience to any adjoining owner or to any adjoining occupier.

This is important because it goes to the very heart of the Act.

Much as in a failure to serve notice properly, without which we would not have had the P&T, no right can be exercised so as to cause unnecessary inconvenience. Whilst there is the right to cause necessary inconvenience, including damage, with compensation and making good following, there is no right to carry out work, even otherwise authorised by the Act, so as to cause unnecessary inconvenience. With no right to do the work, it follows that there is no right of access, and no protection as in the avoidance of claims in nuisance where the nuisance necessarily followed the carrying out of the work. With no right to do the work, any access to adjoining land and any work to adjoining buildings or land, including the other half of the party wall, will be trespass.

Section 8 gives a right of access to adjoining land for the purpose of executing any work in pursuance of this Act, provided fourteen days' notice is served or there is an emergency. The courts, guided by lawyers, have held "work in pursuance" to include any work referred to in the Act, and so access would be available for construction of a boundary wall notified under section 1 as well as the projecting footings.

Section 11 makes it an offence for an occupier to refuse to permit, or anyone to hinder or obstruct a building owner, from doing anything he is entitled to do with regard to land or premises under

section 8, punishable on summary conviction by a fine at level 3, £1,000. Although there is no immediate imprisonment, it would follow failure to pay the fine.

Following the statutory provisions to gain access may cost you a few thousand pounds, but enables you to avoid unexpected delay to the contract as well as avoiding missing Christmas at home because you had to spend it at Her Majesty's pleasure. It turns the tables and any adjoining owner or occupier trying to stop you from entering his land and doing authorised work, as he can end up being fined or spending Christmas inside instead of you.

As Derek Curtis Bok, a North American lawyer and president of Harvard, once said, "If you think education is expensive, try ignorance."

Unless you are capable of making a comeback on chat shows after spending time in prison, at least a quarter of the term imposed with a further quarter out on tag, it might be better to stick to the lawful methods of getting work done on other people's land.



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