



P D BUILDING CONSULTANCY LIMITED
Surveying a Better Way



- **Building Surveys**
- **Commercial Mediators**
- **Party Wall Specialists**



Limited

**Surveying
A Better Way**

Nationwide Surveyors



Member

CI Arb



CONTACTS

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About us

PD Building Consultancy Ltd are an independent professional surveying practice with over 35 years of experience in the construction industry.

We offer a wealth of experienced advice and in depth knowledge of the construction industry to help you through all your building dilemmas including project management, building surveys, snagging, damp and cracking inspections, hand over/completion, covering the entire UK, and any size commercial or domestic.

We are members of the Chartered Institute of Building (CIOB), the Faculty of Party Wall Surveyors (FPWS), The Chartered Institute of Arbitrators and we are approved by the Safe Contractor Scheme.







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Building Surveys

**All types of Building Surveys
are our business**

Any size domestic and commercial property



Reporting on the overall condition



Noting defects and remedial work required



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**“Giving expert
advice on all
your building
requirements”**

We carry out cracking and damp inspections

Any sign of cracking can cause worry



We advise you on how to monitor, alleviate or eradicate the crack and advise you as to what may have caused it



Inspecting the crack, and getting swift, expert advice from our qualified professionals





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Commercial Mediation

A common misconception is that the Mediator asks each party what they want and then issues an award in the middle of the two figures.

This is not correct as the Mediator does NOT make any decisions but encourages each party to look at the dispute from all angles.

IT IS THE DISPUTING PARTIES THAT AGREE THE SETTLEMENT NOT THE MEDIATOR.

Paul is a member of Chartered Institute of Arbitrators (CI Arb), and holds a certificate in Commercial Mediation.

As with other forms of alternative dispute



resolution Mediation is a method of dispute resolution which is less costly in time and fees than other forms of dispute resolution and in many cases courts will ask parties to a dispute if they have attempted mediation before the matter goes to court and if not then they are more than likely to insist that the parties attempt to settle the issue by mediation.

The mediator is to remain impartial and must encourage the parties to reach a settlement which is acceptable to both parties an agreement is then prepared by the mediator and signed by both parties.

The process of Mediation is Without Prejudice and any notes taken by the mediator will be destroyed at the end of the

process. The Mediator will not disclose anything to the second party without the first parties permission

The process is informal with no one acting as a judge or jury and any party can stop the proceedings at any time if they feel that an agreement is not going to be achieved.

Using Mediation a dispute can usually be resolved in a day or if it is apparent that an agreement cannot be reached then the process is terminated and referred back to the courts. The success rate for Mediation as a dispute resolution is in the region of 80%.

Both parties share the cost of the appointed Mediator and we are able to advise a fee quotation based on a Day rate on request.



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Party Wall Specialists

Understanding The Party Wall Etc Act 1996 and why it exists

If you have wall or/fences shared by adjacent properties, they are usually jointly owned by the two owners and are termed party walls. A party wall isn't only the wall between two semi-detached properties, it is also; a wall forming part of only one building but which is on the boundary line between two (or more) properties; a wall which is common to two (or more) properties, including where someone has built a wall and a neighbour has subsequently built something butting up to it; a garden wall, where an extension wall butts up against it and; is used to separate the properties but is not part of any building; the floors and ceilings of flats, apartments, and marionette's.

If you share a party wall you have a legal responsibility when it comes to carrying out certain works. The Party Wall Etc Act 1996 that came into force in 1997 gives right and responsibilities to both sides sharing a party wall when one or other party wall owner is planning or undertaking work on the said party wall. The Party Wall Etc Act 1996 is there to enable the building owner to proceed



with the works, having obtained building regulations and/or planning consent. It is to protect both the building owner and adjoining owner by ensuring that their property and rights are protected.

Why employ us - Can you do it yourself?

You can of course do some of the administration required under the Act but there are some snags.

You can serve the Notice, but consideration should be given that if dissent occurs, a surveyor(s) must be appointed as they act impartially, you cannot impartially act on your own behalf as adjoining owner or building owner.

There is a process to follow, which can be found on the Faculty of Party wall website, do you know enough about the process? The Act was not written with every eventuality and you need to be clear with the wording and understand which section of the Act applies to your building project, as well as which Notice applies, otherwise the Notice can be invalid and works cannot commence

until the Award is in place. There can be conflict between surveyors and differences on how the Act is interpreted, there are statutory time implications that must be adhered to; furthermore matters can involve a third surveyor for referrals or disputes as expert witnesses, but in the main you are already dealing with your building project which can cause distractions of its own and also needs close attention. Notwithstanding this the adjoining owner could dissent and appoint their own surveyor, you will need to be able to answer their surveyors queries etc. within the statutory time scales.

At PD Building Consultancy, we understand and have significant experience working with the Act. Would you administer your own conveyance? It can be done but often on these projects the details and the time frame is of the essence. The Act and serving Notices is not necessarily complicated but can be interpreted differently, as experienced Party Wall Surveyors we give experienced advice and assistance within the statutory timescales required.



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What type of Notice should you be serving under which Section of the Act?

3m/6m Notice

Statutory Notice period - one month

This Notice is served if you intend to excavate and build within 3/6 metres of your building and to a lower level than the bottom of your foundations.

The 3m rule applies when the foundations are lower than the adjoining owners property

The 6m rule applies when the foundations are within 45 degrees of the adjoining owners property

or

You propose to underpin or otherwise strengthen the foundations of your building or structure to safeguard them.

or

You do not propose to underpin or otherwise strengthen the foundations of your building or structure, but it is proposed to safeguard them.

Party Structure Notice

Statutory time scale two months

This Notice is served for works to a party wall, party fence or party structure.



Such as demolishing and/or rebuilding a party wall, increasing the height or thickness of a party wall; inserting a damp proof course; cutting into the party wall to take load bearing beams; underpinning a party wall.

Line of Junction Notice

Statutory Notice period one month

This Notice is served when building on 'the line of junction' or 'boundary line' this includes on or close to the boundary line and includes foundations and guttering that are projecting onto the adjoining owners land.

This type of Notice is reliant on where the actual boundary, line of junction is and is served as either as a party wall, party fence wall or boundary wall.

Serving of Notices and the Time scales.

As mentioned there are clear statutory timescales. Once the correct Notice is served, the adjoining owner has 14 days to respond.

If you do not get a reply, you CANNOT, just start the works, you must write to them again advising them they are IN DISSENT (Dispute) and allow them a further 10 days to either agree to a surveyor or appoint their own. You may still not hear anything from them, you still CANNOT start the works. Once the 10 days are up you are obliged to appoint a surveyor to act on their behalf.

This does not mean consent, a party wall surveyor acts impartially.

The Adjoining Owner/Occupier (Neighbour)

This is any owner, including tenant occupying the land or room that is adjoining the building where the works are proposed.

If a tenant is in situ, they are 'occupying' the land and have to have Notice served on them as well as the legal owner of the property. All parties in any adjoining property MUST be given the statutory Notice period required under the Act. The legal owner may consent, the tenant may not, and therefore the Award must still be put in place in accordance with the Act. Ensure that the Notices are served correctly and to the correct address and legal owners is not always straight forward, as the property may be held in a property portfolio with a holding company and it may be difficult to understand who is the correct legal owner, if the Notice is served to the wrong address, or person it is invalidated. The best way to check ownership of properties is via a Land Registry search.

If the property you want to carry out building works on is leasehold, it must be determined as to what is actually owned under the lease. The landlord will determine if works can or cannot be carried out, again, Notices will need to be served, under what section?

Party duties

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

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

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

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

Where the Act applies

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

- When building work is planned on a boundary with a neighbouring property – Examples are building a garden wall, or the outside wall of a new building or extension, at the boundary. Section 1 of the Act applies and a "Line of Junction Notice" must be served at least one month in advance of the work;
- When work is planned directly to an existing wall or other structure which is shared with another property – This includes party walls, and can include the outside wall of a neighbour's building, but also covers separating floors between flats and garden walls built astride the boundary. Examples are underpinning or thickening, repair, inserting a damp proof course or flashing, cutting off projections, strengthening and opening up and exposing the structure. Section 2 of the Act applies and a "Party Structure Notice" must be served under Section 3 of the Act at least two months in advance. These notices frequently occur in roof space conversions, building in (or removing) beams, removing chimney breasts, altering chimneys, roofs or floors, demolitions, and sometimes in extensions;
- When an excavation is planned within 3 metres of a neighbour's building or other structure, where it will be to a lower level than the underside of the neighbour's foundation – Examples are foundations to a building or extension, but also includes excavations for drain or services trenches within 3 metres. Section 6(1) of the Act applies: An "Adjacent Excavation and Construction Notice" must be served at least 1 month in advance. These types of notice frequently occur in new building work and in extensions, but can apply to structural alterations;
- When an excavation is planned within 6 metres of a neighbour's building or other structure, where that excavation would cut a line drawn downwards at 45° from the underside of the neighbour's foundation – Examples are especially deep foundations or drains within 6 metres. Section 6(2) of the Act applies: An "Adjacent Excavation and Construction Notice" must be served, again at least 1 month in advance. Again, these types of notice frequently occur in new building work, extensions and structural alterations.



Disputes under the Act

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

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

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

An Award

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

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

Other Items

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

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

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

References:

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

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

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