

What a swell party? Party walls in practice

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A recent case has highlighted the strict limitations that apply to party wall dispute procedures.

To go back to basics: if you are intending to carry out works (as the 'building owner') which may affect a wall, structure, fence or foundations shared with a neighbour (the 'adjoining owner'), you need to instruct a surveyor to advise whether the works are 'Party Wall Works' within the meaning of the Party Wall Act 1996. If they are, it is critical to serve party wall notices on the adjoining owner before carrying out the proposed works. Our experience shows that by taking this step, you can sidestep expensive, stressful and sometimes complex litigation further down the line.

If the adjoining owner consents to the works, this must be recorded in writing. However, this is unusual. It is standard practice for the adjoining owner not to consent and a deemed or actual dispute will then arise under the Act. Alternatively, he can serve a counter-notice requiring modifications to the proposed works.

The Act contains a cost-effective procedure for resolving party wall disputes by surveyors. Providing the Act is properly invoked by the service of the notice, the parties' surveyors can resolve any disputes relating to party wall works and record agreement in a 'Party Wall Award'. An Award can prescribe the manner in which works can be done, and / or order the payment of damages.

RESOLUTION OF DISPUTES

Surveyors do not have jurisdiction to resolve disputes where the initial party wall notice:

- was only served after the works commenced; or
- did not specify the works which are being disputed.

The party wall notice therefore has to describe the extent of the works accurately and fully for the statutory dispute procedure to apply.

In these circumstances any claim for damages caused by the works would need to involve formal court proceedings against the building owner, based on trespass, negligence, nuisance and / or breach of statutory duty. Bringing and defending such claims can be costly because each party will need to prove its case by relying on expert evidence, generally from a surveyor and a structural engineer (depending on the nature of the claim).

LIMITATIONS AFFECTING THE ADJOINING OWNER

As the recent case of *Bridgland v Earlsmead Estates Limited* [2015] clarified, an adjoining owner's statutory counter-notice cannot prescribe the manner in which the proposed party wall works are carried out. The counter-notice can only require additional works to the party wall, fence or structure itself.

The case also confirmed that a claim brought by the adjoining owner for 'unnecessary inconvenience' suffered because of a building owner's party wall works should be dealt with by the parties' surveyors according to the statutory dispute procedure. The court cannot resolve this kind of claim in the first instance.

We have a great deal of experience of Party Walls and the issues raised by the Act. We often deal with situations where surveyors do not have jurisdiction to act, and also have experience of appealing Party Wall Awards in court. If you or anyone you know needs advice on such matters, please get in touch.

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