

AN INTRODUCTION TO THE PARTY WALL ETC ACT 1996 November 2011

The Party Wall Act can add to the cost and cause delays to a building project: surveyors might be instructed late, or act slowly, or the neighbour may act slowly in responding. If dealt with tactfully and professionally, however, the Party Wall Act protects the parties and allows for reasonable building work to be carried out by a 'building owner', without causing unnecessary inconvenience to a neighbour ('adjoining owner'). For example, the demolition and rebuilding of a party wall, the cutting of flashing into a neighbour's wall, and entry onto a neighbour's land, are all covered by the Act.

The Party Wall Act applies in the following circumstances:

- Building or carrying out work to a party (shared) wall, type A (diagram 1).
- Building or carrying out work to a party wall, type B (diagram 2).
- Building or carrying out work to a party structure, for example a floor or wall in a flat (diagram 3).
- Building or work to a garden wall astride the boundary line (Party Fence Wall) (diagram 4).
- Building a wall which is up to the line of the boundary (diagrams 5 and 6).
- Excavations within 3 metres to a greater depth than the 'adjoining owners' foundations (diagram 7).
- Excavations within 6 metres to a greater depth than as shown in diagram 8.

If one, or more, of the above circumstances apply, then the building owner's surveyor will serve a notice on the 'adjoining owner'; it is important that the service of notices is carried out in strict accordance with the Act. Any deficiency may render the whole procedure invalid, possibly resulting in delay and increased costs. The parties should be made aware of the statutory time limits which apply.

Once a notice has been served, the 'adjoining owner' has the following options:

- Dissent to the works and appoint his/her own surveyor;
- Dissent to the works and agree to the appointment of one 'agreed surveyor';
- Express his/her consent in writing.

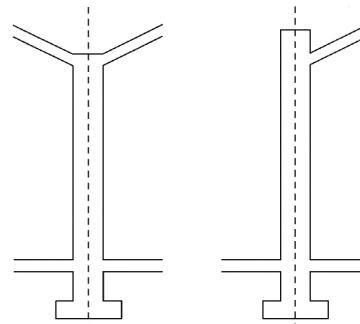


Diagram 1— Party Wall type A

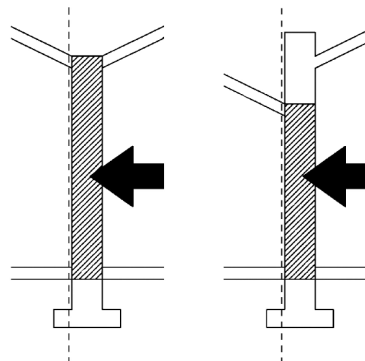


Diagram 2 – Party Wall type B

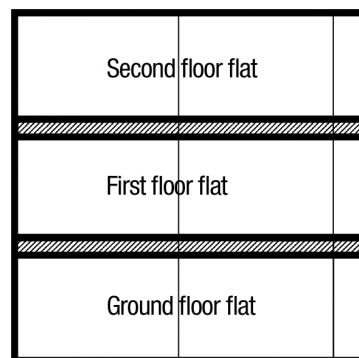


Diagram 3 – Party Wall structure

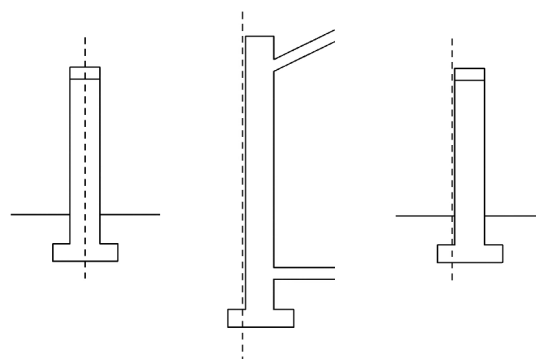


Diagram 4

Diagram 5

Diagram 6

There is little or no advantage to an 'adjoining owner' expressing his consent: they will have less protection than would be available if consent had not been given. If the 'adjoining owner' wants to be co-operative, but still wants maximum protection under the Act, then he may dissent to the works and agree to the appointment of an 'agreed surveyor' (when an 'adjoining owner' dissents, a dispute is said to have arisen). This will reduce professional costs incurred by the 'building owner' and can provide a more proportional course of action than might be the case if each party appointed his/her own surveyor. Whether one or two surveyors are appointed, the surveyors undertake a statutory role and their duty is to both parties, regardless of who is paying their fees! The 'building owner' will, however, normally pay the fees reasonably incurred by the surveyor(s).

In the first instance, a surveyor will be acting as a professional consultant, advising the client as to whether, and how, the Act applies. Once notices have been served and a 'dispute' has arisen, then the surveyor becomes an 'appointed surveyor'. The appointed surveyor's primary role is to balance the interests of the two appointing parties. This has been referred to as a 'practical tribunal' (*Adams v Marylebone Borough Council [1907] 2 KB 822*), regulating the nature and conduct of the construction operations even-handedly between the parties.

After notice has been served, and the surveyor has been appointed, the surveyor will discuss the project with both parties and prepare an award which may include details such as architectural drawings, method statements, hours of work, reasonable measures to protect the 'adjoining owner's' building from damage and unnecessary inconvenience, and a schedule of condition.

The schedule of condition is important so that the surveyor can determine if any damage has been caused by the works. This is equally important for both parties: In *Roadrunner Properties Limited (1) John Dean (2) Suffolk and Essex Joinery Limited [2003] EWCA Civ 1816*, the neighbour brought an action for damage caused to the party wall by the defendants. The defendants had not served notice under the Party Wall Act, as they should have, and the judge imposed a greater liability on the defendant to prove that the damage was not caused by them. In common law, the burden would be on the claimant to prove that the damage was caused by the work.

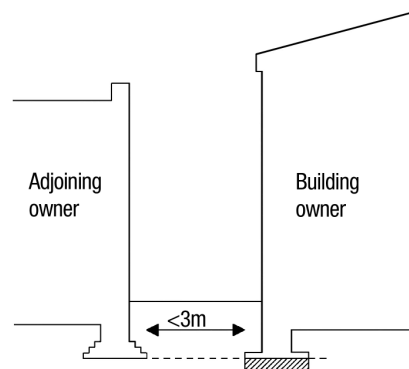


Diagram 7 – Excavations within 3m

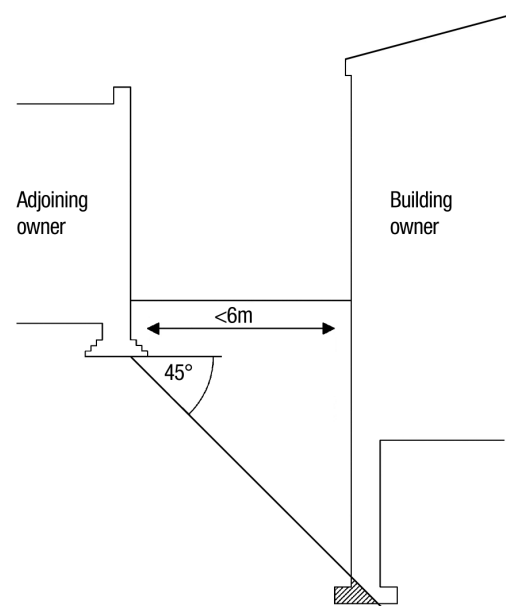


Diagram 8 – Excavations within 6m

If you think that the Party Wall Act may apply, then contact me and I will guide the parties through the process.

Daniel Sutherland BA(Hons) PGDipSurv MRICS is a Chartered Building Surveyor and Party Wall Surveyor at :

Sutherland Surveyors
25 Kings Park Road, Bournemouth,
Dorset, BH7 7AE

For more information or advice contact:
Daniel Sutherland

Email: info@sutherlandsurveyors.co.uk
Direct dial: 01202 237377