



The Party Wall etc Act 1996: (June 2012)

A Church Growth Trust Briefing Paper

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1 Introduction

Many building owners in the London area may already be familiar with the concept of Party Wall legislation as this has been a matter for legislation in London for many years. In 1996 similar legislation was extended to the remainder of the United Kingdom and many churches outside of London remain in ignorance of the current legislation, now applied across the UK.

The origins of the Act arise from a fire in Puddings Lane in London in 1666. Subsequently, there was an Act made in 1667 requiring party walls and party piers to be built up between new buildings, which led to Part VI London Building Acts (Amendment) Act 1939

The aim of the Party Wall etc Act 1996 was to extend the tried and tested provisions of the London Building Acts to the whole of England and Wales. It rests upon a principal of voluntary agreement between parties, wherever possible and seeks to deal fairly with the interests of owners on either side of a boundary when one of them wants to do building work on, or close to, the boundary.

Most domestic householders will understand the concept of a party wall e.g. a wall between semi-detached or terraced properties, but party walls can exist between non-residential properties such as churches and their neighbours, whether their neighbours are residential properties or any other kind of properties. In fact, a wall between a building and a vacant plot of land can be a party wall. The definitions of a party wall and works which fall into the scope of the Party Wall etc Act are quite extensive. As well as work to the party wall itself, work against, or within a certain distance of, the party wall can fall under the scope of the Act and require a party wall agreement. This can include work to chimneys and gardens walls.

A common mis-conception is that obtaining Planning Permission and Building Regulations Approval are all the legal requirements required for a building project and this is not the case. Party Wall matters are not dealt with by the local authority. Obtaining Planning Permission and Building Regulations Approval are separate from, and in addition to, any requirement to enter into a Party Wall Agreement with your adjoining owners.

If you are planning work on or near a party wall or boundary, your designers will normally advise you if you need a party wall agreement. However, the Act also applies to repairs and maintenance work, where a designer may not be involved.

If your neighbour commences work on or near your boundary and you have not received a party wall notice, it is recommended that you read the summaries given in Section 4 of when notices should be served. If you consider that if your neighbour should have served you a notice, you should immediately let your neighbour know, in writing, about the Act. You may also wish to send him a copy of the free explanatory booklet listed in Section 11. If matters are not resolved and if work continues without your consent you may seek to legally stop the work as described in Section 6.5

Advance notice of your neighbour intending to carry out building work is often gained if your neighbour makes a planning application, and the local authority send you notice. However, this will not always be the case as not all building work requires planning permission or your neighbour may have failed to submit a planning application when he should have. If you receive a planning notice, this would be a good time to commence informal discussions and ensure that your neighbour is aware of the Act

2 Legislation and guidance

The Party Wall etc Act 1996 came into effect on 01 July 1997 and applies to the whole of England and Wales.

Various professional institutes and bodies have produced explanatory guidance books and leaflets. The most readily available are explanatory booklets produced by the Department for Communities and Local Government which includes helpful diagrams. Details are given in the last section of this document.

3 What is termed as a party wall?

The Act covers all of the following:

3.1 A Party Wall

A wall standing *astride a boundary* of land belonging to two or more different owners and which:

- Is part of one building or
- Separates two or more buildings

A wall which stands *wholly on one owners land* but is used by two or more owners to separate their buildings. Typically this would include an arrangement where one owner constructed the wall in the first instance and the adjoining owner has butted their building up to it without constructing their own wall.

3.2 A Party Fence Wall

A party fence wall is not part of a building but stands astride a boundary line between lands of different owners and is used to separate those lands. This typically includes a garden wall, but does not include wooden fences.

3.3 A Party Structure

A party structure can include a wall or floor or other structure which separates buildings approached by separate entrances or staircases. This typically includes floors between flats or floors where one part of a building is partially above or below part of the adjoining building.

4 What work is covered by The Party Wall Act?

4.1 New building on the boundary line

This is covered by Section 1 of the Act:

- Building a new party wall, or party fence wall, *astride* the boundary
- Building a new party wall or party fence wall, with *one face up against* the boundary.

Note that whilst the face of a building wall may be on the line of the boundary, foundation projections below ground and eaves/gutter overhangs above ground will often extend over the boundary line unless special design measures are taken.

4.2 Work to an existing party wall

This is covered by Section 2 of the Act:

This would typically include:

- Inserting a damp-proof course through the whole thickness of the wall;
- Cutting out a pocket to receive the bearing of a lintel or beam;
- Raising the height or increasing the thickness of the wall or underpinning the foundations of the wall;
- Making good or repairing the wall;
- Demolishing and rebuilding of the wall;
- Cutting away from the wall any projecting footing, projecting jamb, flue or chimney breast;
- Cutting away to install flashings between a higher and lower level or roofs;
- Cutting away or demolition of a part of a building which overhangs the boundary;
- Raising a party fence wall or rebuilding/alteration to form a party wall;
- Carrying out work which would expose a party wall, where it previously was not exposed.

Guidance documents published by the Government indicate that some minor works on party walls may be so insignificant that serving of a notice under the Act would be generally regarded as not necessary. These include:

- Drilling and plugging the wall to receive fixings for ordinary wall units or shelving;
- Cutting into the wall to add or replace recessed electrical wiring or sockets;
- Replastering.

4.3 Excavation near neighbouring buildings

This is covered by Section 6 of the Act:

- Excavate, or excavate and construct foundations for a new building or structure where:
 - Excavations are within 3m of a neighbouring owner's building or structure and where that work will go deeper than the neighbour's foundations.
 - Excavations are within 6m of a neighbouring owner's building or structure and where that work will be below a line drawn at 45 degrees from the bottom of the neighbour's foundations.

Note that the distance of 3m or 6m is between buildings/excavations and not from the boundary. Excavations will usually include any projecting foundations below ground And will also include excavations for drainage trenches and the like, in addition to excavations for the foundations of the building itself. A common problem when determining if this situation is applicable, is lack of knowledge regarding the exact depth of the neighbour's foundations which usually cannot be determined without investigation. With regard to the 6m rule, an adjoining owner could include your next-but-one neighbour, if they have foundations within 6m.

5 Who are considered as owners?

The person instigating the proposed building work is commonly known as “the building owner” and the affected neighbours as “the adjoining owner”.

Owners may be male, female or they may be multiple or joint owners. They may also be companies or other sorts of bodies, such as church trustees or charities.

Under the Act, an owner includes the persons or body:

- Holding the freehold title or
- Holding a leasehold title for a period exceeding one year or
- Who is under contract to purchase the freehold or leasehold title or
- Who is entitled to receive rents from the property.

When notifying an adjoining owner, it may be necessary to notify more than one person or body (e.g. Where there is a long-term tenant or leaseholder it will be necessary to notify the landlord as well). Where there is more than one owner of a property or where there are more than one property, it will be necessary to notify all owners.

6 Serving notice on owners

6.1 How the notice is served

Serving the notice of intended work is a simple operations. It can be undertaken by the building owners themselves, without any need to appoint a party wall surveyor, designer or other professional.

If possible, the most practical approach, and that which generally maintains good relationships and communications, is for the building owner to informally discuss the proposals or drawings with the adjoining owner prior to formally serving the notice, although this is not a legal requirement under the Act. This enables adjoining owners, who may not be familiar with the proceedings, to raise queries or make comments before the formal notice is served, generally leading to a much speedier response to the formal notice.

The notice may be delivered in person or forwarded by post. Where the neighbouring property is empty, or the owner not known, the notice may be addressed to “the owner” and affixed to a conspicuous part of the premises. However, as the notice requires a positive response within the time-frame detailed below, affixing the notice to the property does not achieve anything if the owner does not visit to collect and act upon the notice. It is therefore preferable to endeavour to seek details of the owner through such sources as Land Registry if possible.

6.2 What information needs to be in the notice?

There is no official form for giving notice under the Act. However, the notice MUST contain the required minimum information:

- A clear statement that the notice is a notice under the provisions of The Party Wall etc Act 1996;

- The notice must be dated;
- Name and address of the building owner(s) serving the notice;
- The notice must be signed by all the owners;
- The name and address of the building concerned;
- Full details of the work proposed. Ideally this will include plans etc. (e.g The form can be completed as saying “works to be carried out as shown on drawing number xxx dated yyy);
- When the work is proposed to start.

At least two months notice is required for work on an existing party wall. At least one months notice is required for erecting a new wall or building on the boundary line or for excavating within 3m or 6m of adjoining properties. The notice is only valid for one year, so should not be issued too early.

The recipient is to respond positively in writing within a limited period as detailed below if a dispute or delay is to be avoided. It is therefore prudent to include a form which may be completed and returned, together with a stamped addressed envelope, which may improve the response time.

Your professional advisors may be able to provide you with standard or sample notices which can be used. If not, the Guidance Booklet produced by the Department of Communities and Local Government includes sample letters for the various types of notices and advice on how to complete them, together with sample positive and negative responses.

The notice will usually include details of the party wall surveyor you intend to use in the event that a negative response is received or a dispute arises. Should a positive response be received the appointment of a party wall surveyor would not be necessary.

6.3 What happens if the adjoining owner agrees?

If the adjoining owner agrees, in writing, within 14 days of the serving of the notice, there is no need for action by the building owner and no need to employ a party wall surveyor.

If either one month or two months notice has been given, the adjoining owner can agree to commence earlier, but is not obliged to. Any such agreement must be in writing.

In the case of a new wall astride the boundary line the cost of the wall *may* be shared. Such an agreement must be in writing and should record details of the location of the wall, the allocation of costs and other agreed conditions. This does not apply to new walls constructed against the boundary.

6.4 What happens if the adjoining owner does not agree?

NEW BUILDING ON THE BOUNDARY LINE (see section 4.1 above)

If the work relates to constructing the wall entirely on your own land (e.g. with one face on the boundary line):

You may commence work one month after your notice was served. You have a right for your foundations to extend under the adjoining owner’s land provided they are not

reinforced concrete or other special foundations. You may not install reinforced concrete or other special foundations which extend below the adjoining owner's land without his written permission.

The wall has to be built wholly at your own expense and you have to compensate the adjoining owner for any damage caused by the building of the wall or constructing the foundations below his land.

If the work relates to a proposed wall which is astride the boundary line:

If the adjoining owner objects or fails to agree within 14 days of the notice you may proceed, but must modify the construction so that the wall is built wholly on your land and wholly at your expense. You may not commence until one month after the date of the notice.

As described above, you have a right for your foundations to extend under the adjoining owner's land provided they are not reinforced concrete or other special foundations. You may not install reinforced concrete or other special foundations which extend below the adjoining owner's land without his written permission.

The wall has to be built wholly at your own expense and you have to compensate the adjoining owner for any damage caused by the building of the wall or constructing the foundations below his land.

WORK ON EXISTING PARTY WALLS (see section 4.2 above)

If the work relates to work on an existing party wall and if the adjoining owner does not agree in writing within 14 days of serving the notice, work cannot proceed until the dispute has been resolved.

Even if the adjoining owner does not specifically object, but simply fails to respond within the required 14 days, this is considered as a disagreement and a dispute is deemed to have arisen and work cannot commence. In practice, on occasions, a failure to respond can occur without the intention of a disagreement (e.g. the adjoining owner may forget to respond, be ill, on holiday etc). Holding informal discussions with adjoining owners, prior to personally handing the notice and providing a ready-made form for acceptance, can reduce the possibilities of objection or lack of response.

If a negative response is received or no response is received a party wall surveyor must be appointed as detailed in Section 7.

Where the work involves work to an existing party wall, the adjoining owner, is entitled to issue the building owner with a counter notice. A counter notice is not necessarily an objection to the works, but sets out details of work to be incorporated if the adjoining owner is to agree. A counter notice may set out what additional or modified work the adjoining owner requires to be carried out for his own benefit. This may include such items as chimney breasts, coping flues, recesses, buttresses or piers as may be reasonably required by the adjoining owner. The counter notice can also require any special foundations to be placed at a greater depth or require them to be constructed to bear the additional load to be carried by columns of any intended building by the adjoining owner.

The counter notice has to be issued within one month of the original party wall notice and has to be accompanied by plans, sections or particulars of the required works, but if the adjoining owner intends to issue a counter notice within the month he should let the building owner know that he intends to do so within 14 days.

If a building owner receives a counter notice from the adjoining owner, he has 14 days in which to serve a notice to indicate his consent to the counter notice. If he does not do so a dispute is deemed to have arisen. The owner receiving the counter notice does not have to comply with the requirements of the counter notice if the proposals would be injurious to him, cause unnecessary inconvenience to him, or cause unnecessary delay to the execution of the works.

EXCAVATIONS NEAR NEIGHBOURING BUILDINGS (see section 4.3 above)

As for work on existing party walls as described above, if the owner does not agree in written within 14 days, or fails to respond, then a dispute is deemed to have arisen and work cannot commence. A party wall surveyor has to be appointed as detailed in Section 7 below.

However, unlike notices for work to existing party walls, there is no provision for the adjoining owner to issue a counter notice when the work involves excavations near to neighbouring buildings.

6.5 What happens if work commences and no notice has been given?

If the building owner commences work without giving the required notice, the adjoining owner may seek to stop the work through a court injunction or seek legal redress, although it would be advisable to seek professional advice before commencing such action.

7 Appointing a party wall surveyor

7.1 Who can be the party wall surveyor?

As far as the Act is concerned, the party wall surveyor can be *any person* who is not party to the dispute. However, it is desirable that the surveyor should have a good knowledge of construction and with experience of administering the Act, rather than general expertise. There is no requisite qualification but a qualified building professional with some knowledge of party wall matters would be most appropriate.

As the surveyor is required to act impartially in order to draw up an agreement between the owners it would not be appropriate to choose the designer or person responsible for overseeing the building work employed by the building owner already engaged in another capacity, as there could be a conflict of interests. Similarly it would be difficult for a close friend or family member of one of the parties to be impartial.

Details of some professional bodies whose members may act as party wall surveyors are given in the last section of this document.

7.2 Do the building owner and the adjoining owner have to appoint separate surveyors?

The simple answer is no. The concept is that both owners agree to appoint one surveyor, who will act impartially between the owners to reach an agreement under the Act. This is not the same concept as when purchasing a property when the purchaser and vendor appoint different solicitors which can, in some circumstances, arise in confrontation.

If the building owners cannot agree on one party wall surveyor, there are facilities in the Act for them to each appoint a separate surveyor. Those two surveyors would then draw up the award jointly between them. If they cannot reach an agreement the two appointed surveyors would select a third independent surveyor to draw up the award.

7.3 What does the party wall surveyor do?

The party wall surveyor will prepare an “award”, also known as a “party wall award” or “party wall agreement”. Typically this will:

- Set out the work to be carried out;
- Say when and how the work is to be carried out (e.g. days when work is permitted or not permitted to be undertaken);
- Specify additional work, such as temporary protection or reinstatement following the work;
- Contain a report or photographic survey of the properties before commencement of the work, so that any damage arising from the works can be assessed;
- Give details of access required by the surveyor to inspect the works, in order to check they are in accordance with the award prepared.

The surveyor’s award is final and binding unless it is amended by the Court. Each owner has 14 days to appeal to the County Court against an award, but this would only be made if an owner believes the surveyor’s award to be fundamentally wrong, rather than in relation to matters of detail.

7.4 Who pays for the party wall surveyor(s)

The surveyor or surveyors will decide who pays their fees but normally the building owner instigating the works can expect to pay all the costs if the works are solely for his benefit.

8 Providing access for the building contractor or surveyors

The adjoining owner is obliged, when necessary, to allow access for the building owner’s workmen, surveyor, architect etc to carry out the works associated with the Party Wall Act during normal working hours. 14 days notice of the required access should usually be given, except in case of emergency when such notice as is reasonably practical should be given

If the adjoining property is closed then the building owner, his agents and workmen may break open any fences or doors in order to gain access if accompanied by constable or other police officer.

It is usually in the adjoining owner’s best interest to voluntarily allow access (e.g. a better visual appearance to the construction of a wall can be achieved if access is available from the adjoining owner’s side).

9 After the work is completed

The party wall surveyor will normally make an inspection upon completion of the work to confirm that the work contained in the award has been satisfactorily completed.

A copy of the agreement from the adjoining owner or a copy of the award made by the party wall surveyor should be kept with other legal documents relating to the property.

In respect of excavations near to neighbouring properties (see section 4.1), upon completion of the work, the building owner is obliged to supply particulars of the work undertaken, including plans and sections if requested to do so by the adjoining owner.

10 Summary

If mutual agreement can be achieved between owners by the issue of a Party Wall Notice and the receipt of a positive response, there is no requirement to employ additional professionals or party wall surveyors, which can lead to substantial delays in commencing the project and substantial professional costs.

11 Additional information:

- The Party Wall etc Act 1996, published by HMSO, ISBN 0-10-544096-5 £6.00. PDF Copies may be downloaded from the web site of the Office for Public Sector Information, www.legislation.go.uk
- The Party Wall etc Act 1996 : Explanatory Booklet, published by the Department for Communities and Local Government. Tel: 0303 444 000, www.communities.gov.uk
- The Royal Institution of Chartered Surveyors and other professional institutes publish a variety of guidance books on Party Walls. Details can be found in their online bookshop www.ricsbooks.com
- The following organisations or professional bodies may hold details of their members who act as Party Wall Surveyors:
 - Faculty of Party Wall Surveyors (FPWS) Tel: 01424 883300 www.fpws.org.uk
 - Chartered Institute of Architectural Technologists (CIAT) Tel: 020 7278 2206 www.ciat.org.uk
 - The Royal Institute of British Architects (RIBA) Tel: 0202 7307 3700 www.architecture.com
 - The Royal Institution of Chartered Surveyors (RICS) Tel: 0870 333 1600 www.rics.org/uk