

# Party Wall etc. Act 1996

## Frequently asked questions

### Who is an owner?

An owner is defined as:

- a person in receipt of, or entitled to receive, the whole or part of the rents or profits of land;
- a person in possession of land, otherwise than as a mortgagee or as a tenant from year to year or for a lesser term or as a tenant at will;
- a purchaser of an interest in land under a contract for purchase or under an agreement for a lease, otherwise than under an agreement for a tenancy from year to year or for a lesser term.

The Act defines "adjoining owner" and "adjoining occupier" respectively as any owner and any occupier of land, buildings, storeys or rooms adjoining those of the building owner and within certain distances in respect of adjacent excavations.

### Why is a notice necessary?

It is a legal requirement for a building owner to serve a notice on an adjoining owner prior to executing works to which the Party Wall etc Act (the Act) relates. These include: building on the line of junction (the property boundary on the ground); works to existing party structures; and certain works involving excavation and construction below ground. The notice periods are 1 or 2 months depending on the type of work.

Failure to comply with the legislation may result in the works being unlawful. If you are unsure you should seek professional advice.

### Do I have to respond to a notice?

Initial notices seek consent to the building owner's proposals from the adjoining owner. If the adjoining owner consents the building owner may proceed following expiration of the notice period. If the adjoining owner does not consent to the proposals a dispute arises and must be resolved by appointed surveyor(s).

It is important the adjoining owner makes their position clear in writing. Failure to respond to an initial notice within 14 days will give rise to a deemed dispute.

### Who can I appoint as my surveyor?

Anybody not being a party to the matter may act as your party wall surveyor. However, it is clearly advantageous to appoint a qualified professional with the requisite technical skills and experience and who is familiar with the legislation, its application and relevant case law.

Each party to the dispute may appoint their own surveyor or the parties may concur in the appointment of a single surveyor referred to as an 'agreed surveyor'.

If a party neglects to appoint a surveyor for a period of ten days beginning with the day the other party makes a request on him to do so, the other party may make an appointment on his behalf.

All appointments must be in writing and can not be rescinded by either party.

### What is an award?

An award is a legal binding determination made by the appointed surveyor(s) which sets out the rights and responsibilities in connection with the proposed works. It will identify the parties and the relevant properties and may include drawings, method statements and other relevant information. The award is served on the parties.



### What is the role of a surveyor under the Act?

A surveyor appointed under the Party Wall etc Act 1996 performs a 'quasi-judicial' function in the capacity of statutory tribunal. The surveyor's appointment is therefore made under statute and not contract. Accordingly, surveyors generally refer to the party who appoints them as an 'appointing owner' and not as a 'client'.

The surveyor's sole purpose is to determine the dispute that has arisen between the parties in connection with work to which the Act relates.

In some cases, appointed surveyors may engage other professionals such as structural engineers, quantity surveyors or other specialists to advise them.

Surveyors appointed or selected under the Act:

**DO** have authority to determine the right to execute work.

**DO** have authority to determine the time and manner of executing work.

**DO** have authority to determine any other matter arising out of or incidental to the dispute including the costs of making the award, and may also include: suitability of design; the need for temporary works; vibration monitoring; access arrangements; actual or alleged damage; compensation etc.

**DO** have a duty of care to both parties in the dispute and should have due regard for their appointing owners' interests. The surveyors will therefore endeavour to remain impartial regardless of which party is ultimately responsible for their fees and may, therefore, determine matters that find against their appointing owner.

**DO** balance rights of a building owner with responsibilities to protect the adjoining owner; their determination is set out in an award.

**DO NOT** act as advocates for the party appointing them; they do not 'do their bidding', so to speak.

**DO NOT** provide design advice or to make recommendations. However, they may highlight the legal implications associated with certain design proposals.

**DO NOT** 'police' or otherwise monitor the works on site to ensure compliance with the award.

**DO NOT** have authority to enforce the terms of an award.

Surveyors are under no statutory or professional obligation to recommend or advise upon the adequacy of appropriate insurance for the works. The parties to the dispute must make their own insurance enquiries as necessary.

Upon service of the Award the role of the surveyors is '*functus officio*' unless any further dispute arises requiring their involvement.

Surveyors are under no statutory obligation to deal with any complaints concerning their statutory roles. While surveyors may agree to provide a Complaints Handling Procedure, it will not

apply to any appointments held under section 10(1) of the Act.

### What other roles can the surveyor perform?

Surveyors are sometimes appointed to advise on the application of the Act and to prepare, serve and respond to notices on behalf of an owner or to negotiate access for matters outside the Act. These are agency roles and distinctively different to that of a surveyor acting in a statutory capacity under the Act.

**What is the role of the third surveyor?** He is selected at the outset jointly by the appointed surveyors and only becomes involved if a matter is referred to him by either of the surveyors or either of the parties to the dispute. This may be on a matter of access or costs, for instance. His determination will be via an award and he is entitled to seek payment of fees beforehand. You should be informed who the third surveyor is by your appointed surveyor; if not, ask. *N.B. There is no third surveyor in the event the parties appoint an agreed surveyor.*

### What if the building owner fails to comply with the Act or the terms of the award?

If work to which the Act relates has commenced without prior notice, the works remain unlawful, but it is nevertheless possible to invoke the Act in order to deal with matters arising from the works. An adjoining owner may apply to the county court for an injunction to enforce compliance with the Act or the terms of an award.

### Can I approve a draft of an award before it is served?

No. The very nature of a dispute is that the parties are unable to agree matters. If an award was subject to prior approval by either party, it would be possible for that party to frustrate the resolution of the dispute. The Act therefore unequivocally grants the surveyor(s) authority to decide the content of the award; limited of course to matters within their jurisdiction.

### Can I appeal an award?

Each party has a right to lodge an appeal of the award in the county court within fourteen days of service. Appeals are relatively uncommon, and the process can be protracted and expensive; anybody considering an appeal is strongly recommended to seek legal advice. The party making an appeal is the 'appellant' and the other party is the 'respondent.' The court may rescind or modify the award as it sees fit and make an order as to costs.

### Who pays the surveyors' fees?

If the works are for the sole benefit of the building owner, in all normal circumstances, they will be liable for the adjoining owner's reasonable costs by way of surveyor's fees etc. Where both parties benefit, for instance in the repair of an existing party structure, it is normal for the costs to be apportioned accordingly. Costs are ultimately determined by the surveyors. Adjoining owners in particular should be aware that they may become directly liable for professional fees if their conduct is unreasonable; for instance, if they cause the surveyor(s) to expend time beyond that which is reasonably necessary for the surveyor(s) to fulfil their statutory function. Where an award requires the building owner to pay the adjoining owner's costs by way of professional fees, it is customary for an adjoining owner's surveyor to invoice the building owner directly. If both parties opt out of the statutory process they may become liable for their respective appointed surveyor's fees under contract.

### Does the building owner have a right of access onto the adjoining owner's land?

Yes, if the works are those to which the act relates, and proper procedure has been followed. It is generally accepted that this includes any works for which a notice must be served. The right of access includes the right to erect scaffolding if necessary to ensure safe working conditions.

It is a criminal offence for an owner or occupier of land to hinder or obstruct a person having access onto the land to do anything which

they are entitled to do under the Act.

### Can an award authorise interference with easements?

No. Easements such as a right of way or agreement to overhang etc cannot be varied or extinguished by an award.

### What is 'security for expenses'?

The Act permits adjoining owners to serve notice requiring security for expenses from the building owner before the works commence. Security usually takes the form of money deposited in an escrow account by the building owner and managed by a solicitor or other regulated agent for the purpose of covering the expense of rectifying damage or reinstatement work. The notice ought to state and amount and reasons for doing so. If such a request is disputed by the building owner, the matter will be resolved by the appointed surveyors. Security for expenses is generally considered appropriate in a minority of cases and where there is a high risk of serious damage to the adjoining owner's property or there is a significant risk that the adjoining owner's property will be left exposed due to incompleteness of the works. In certain circumstances, the building owner can request security for expenses from the adjoining owner.

### Can the works be prevented?

Providing due process has been followed surveyors will enable works to commence subject to appropriate measures being in place to protect the adjoining owner's property and statutory consents being granted.

### Can the party wall surveyors sort out a boundary dispute?

The determination of a property boundary is not generally considered to fall within the jurisdiction of the surveyors appointed under the Act. In some cases, it may not be possible or appropriate for surveyors to proceed until a boundary has been agreed by the parties or otherwise determined.

### My premises will be exposed; what about disturbance & inconvenience?

Where the adjoining premises are laid open due to the demolition and rebuilding of a party structure, for the purposes of the building owner, the Act allows for a fair allowance in respect of disturbance and inconvenience to be paid by the building owner to the adjoining owner or occupier. This will depend on the nature and extent of the work and may be significant where a party wall of a building is removed exposing rooms of the adjoining building, for instance.

### What is the purpose of a schedule of condition?

It is common practice for surveyors to inspect the adjoining owner's property and prepare a schedule recording its condition prior to the works. The purpose is to provide the surveyors with evidence for reference in the event of damage or allegations of damage.

### For further advice contact:

**Graham Shone**

Tel: 0151 489 5440 or 07770755933

info@hspack.co.uk

www.freetec.co.uk

© F Associates Limited

