

# The Party Wall Etc. Act 1996 (England and Wales)

## Introduction

Members have the responsibility to advise clients when work falls within the scope of the Party Wall etc. Act 1996 (the Act). It is recommended this is done at the outset of any appointment for architectural services.

In order to understand the scope and limitations of the Act it is advisable to obtain a copy of it, rather than rely entirely on guidance documents. The Act is written in a comprehensive and clear way and should be readily understood. Parts of it are quoted in this paper (in italics), they are intended as an indication of what the Act involves and not as a full interpretation.

The Act is an enabling act, it allows a project to progress, even when there is a dispute with a neighbour. Neighbours cannot use it to prevent a project proceeding, but disputes do add to the cost, and notice periods (and particularly disputes) add to the timescale.

Members should advise their client on the implications of the Act, that is whether it applies to any particular work. They could be asked to act as an agent for the client (who is a building owner under the Act) involving serving a notice on relevant neighbours (adjoining owners). Additionally, members could agree to be appointed as an agreed surveyor, acting for both the building owner and adjoining owner, in the event of a dispute under the Act. Separate terms should be agreed with the client for either preparing and serving any notice, or acting as a surveyor under the Act. Members should be familiar with the need for the various types of notice, and the rights and responsibilities of the building owner and adjoining owner(s). Notices are detailed in Sections 1, 3 and 6 of the Act, and counter notices are dealt with in Section 4.

The Institute provides pro forma notices for use by members.

The Act becomes effective when:

- the building is planned on a boundary with a neighbouring property (Section 1);
- work is planned to an existing wall or other structure which is shared with another property (Section 2 Rights);
- excavations (not just foundations) are planned near a neighbouring building within 3 or 6 metres (Section 6).

Once it has been determined that the work falls within the scope of the Act, a notice must be served, having regard to prescribed timescales, on the adjoining owners. Such a notice is a pre requisite to the building owner enjoying the rights

conferred by the Act. The Act also provides protection, not only to an adjoining owner, but also to the building owner. It affords certainty. Notices could well involve more than one property, and could involve adjoining leasehold tenants (if long term), as well as freehold owners.

## Section 1

Where a Section 1 (line of junction) Notice is to be served at least one month prior to works commencing, the intended construction must cross, or have its face on, the line of junction (the boundary). This usually relates The Party Wall Etc Act 1996 (England and Wales) to a new wall either forming the outside of a building, or to a new garden wall.

Note however:

- 1.(1) This section shall have effect where lands of different owners adjoin and –
- a. are not built on at the line of junction; or
  - b. are built on at the line of junction only to the extent of a boundary wall (not being a party fence wall or the external wall of a building), —

This limits the serving of a Section 1 notice. It is also important to note that Section 1 has no equivalent to Section 5 or paragraph 6(7), meaning that once served, and the time limit of the notice has passed (one month), the work described in the Section 1 notice may be proceeded with so long as the work is wholly on the building owner's land and at his expense.

The building owner is given the right to project necessary foundations (to the structure to which the Section 1 notice relates) onto the adjoining owner's land so long as he compensates any adjoining owner and any adjoining occupier for any damage. This right does not however extend to Special Foundations. They are defined as foundations in which an assemblage of beams or rods is employed for the purpose of distributing any load. They may not project.

Any dispute relating rights conferred by Section 1 would be dealt with in accordance with Section 10 (Resolution of Disputes).

## Section 2

When dealing with rights under Section 2 of the Act (Repair etc of Party Wall) for which a Section 3 (Party Structure Notice) is served, at least two months' notice must be given, but a longer time should be allowed to resolve any dispute arising. Even a non-response from an adjoining owner by the end of the fourteen day 'agreement' period triggers a dispute:

An agreement other than in writing is not acceptable (the Act requires the adjoining owner to respond in the form of a notice).

Members must bear in mind that not just Party Walls may be involved with Section 2 rights:

The Act gives the following definitions:

- 'Party Fence Wall — means a wall (not being part of a building) which stands on lands of different owners and is used or constructed to be used for separating such adjoining lands, but does not include a wall constructed on the land of one owner the artificially formed support of which projects into the land of another owner.'
- 'Party Structure — means a party wall and also a floor partition or other structure separating buildings or parts of buildings approached solely by separate staircases or separate entrances.'
- 'Party Wall' means:
  - a) a wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and
  - b) so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners.

Section 2 rights, again as covered by a Section 3 notice, also relate to the external wall of an adjoining building, even though it is not a Party Wall or Party Structure. This is an example of the very important 'etc' part of the Party Wall etc Act. Some examples are:

- 2(2)(h) to cut away or demolish parts of any wall or building of an adjoining owner overhanging the land of the building owner or overhanging a Party Wall to the extent that ... etc;
- 2(2)(j) to cut into the wall of an adjoining owner's building in order to insert a flashing...etc. There are other examples.

### Section 3

Section 3 of the Act requires a notice to state:

- a) the name and address of the building owner;
- b) the nature and particulars of the proposed work including, in cases where the building owner proposes to construct special foundations, plans, sections and details of construction of the special foundations together with reasonable particulars of the loads to be carried thereby; and
- c) the date on which the proposed work will begin.

Section 3(2) requires that:

A party structure notice shall:

- a) be served at least two months before the date on which the proposed work will begin;
- b) cease to have effect if the work to which it relates:
  - i) has not begun within the period of twelve months beginning with the day on which the notice is served; and
  - ii) is not prosecuted with due diligence.

Once a notice has been served, an adjoining owner may dissent (dissent includes not replying), give their consent within fourteen days, or serve a counter notice setting out requirements and specifications within one month. The building

owner is required to comply with a counter notice unless execution of the requirements would:

- a) be injurious to him;
- b) cause unnecessary inconvenience to him; or
- c) cause unnecessary delay in the execution of the works pursuant to the party structure notice.

### Section 4

The counter notice under section 4(2) is required to:

- a) specify the works required by the notice to be executed and shall be accompanied by plans, sections and particulars of such works; and
- b) be served within the period of one month beginning with the day on which the party structure notice is served.

### Section 5

Under section 5 of the Act (Disputes arising out of Sections 3 and 4), if any party does not give consent within 14 days from the day on which the notice was served he shall be deemed to have dissented from the notice and a dispute shall be deemed to have arisen between the parties. Section 10 (Resolution of Disputes) would then automatically come into play.

### Section 6

Rights under Section 6 of the Act (Adjacent excavation and construction) are provided by serving a notice where:

- (1)(a) a building owner proposes to excavate, or excavate for and construct a building or structure, within a distance of three metres measured horizontally from any part of a building or structure of an adjoining owner; and
- (1)(b) any part of the proposed excavation, building or structure will within those three metres extend to a lower level than the bottom of the foundations of the adjoining building or structure of the adjoining owner; or
- (2)(a) a building owner proposes to excavate, or excavate for and construct a building or structure, within a distance of six metres measured horizontally from any part of a building or structure of an adjoining owner; and
- (2)(b) any part of the proposed excavation, building or structure will, within those the six metres meet a plane drawn downwards in the direction of the excavation, building or structure of the building owner at an angle of 45° to the horizontal ...etc.

A section 6 notice should be served at least 1 month prior to works commencing.

Section 6(5) of the Act requires:

In any case where this section applies the building owner shall, at least one month before beginning to excavate, or excavate for and erect a building or structure, serve on the adjoining owner a notice indicating his proposals and stating whether he proposes to underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner.

Section 6(6) of the Act also requires:

The notice in subsection (5) shall be accompanied by plans and sections showing:

- a) the site and depth of any excavation the building owner proposes to make;
- b) if he proposes to erect a building or structure, its site.

Section 6(7) sets out a similar provision for deeming dissent for adjacent excavation and construction notices to that in

Section 5 (for party structure or counter notices). Dissent invokes Section 10 of the Act (Resolution of disputes). Note again that a dispute is deemed to have arisen if either a Section 3 or Section 6 notice has not been consented to within fourteen days (the provision regarding dissent does not apply to a Section 1 notice).

### Section 10

Section 10 (Resolution of disputes) prescribes the manner for resolving any dispute under the Act. It sets out requirements for appointing surveyors, and all necessary procedural and detailed matters. Section 10 is a comprehensive and well thought out section, with failsafe mechanisms carefully built in. It is important to remember that the Act will be satisfied if the adjoining owner agrees in writing.

Section 10 gives the building owner and adjoining owner(s) two options. They can either:

- a) agree to appoint one surveyor (an 'agreed surveyor'); or
- b) each appoint a surveyor. Those two surveyors then select a third surveyor.

By this process a surveyor or surveyors are appointed for each dispute (each dissent) arising from the notices served. A project may therefore have several disputes. Section 20 of the Act (Interpretation) contains the definition:

Surveyor — means any person not being a party to the matter appointed or selected under section 10 to determine disputes in accordance with the procedures set out in this Act. Of the two alternatives, obviously option (a) would be less expensive for the building owner, as he normally bears the cost of the work and the surveyors. Some important exemptions to the principle of the building owner pays are set out in Section 11 (Expenses).

The Act clearly sets out requirements and rights of surveyors and therefore should be read carefully. It is absolutely essential that the surveyor acts impartially. Section 10(10) requires that the 'agreed surveyor' or 'the three surveyors' settle by award any matter within the scope of the Act which is in dispute between the building owner and the adjoining owner(s).

The parties have a right to appeal an award in the county court within fourteen days, otherwise the Award is conclusive and shall not be questioned in any court. This is a very powerful provision and requires the utmost consideration in drawing up an Award.

### Other items

The Act also defines Rights etc including Compensation (Section 7); rights of Entry (Section 8); non interference with Easements (Section 9); payment of Expenses (Section 11), right to serve a notice or other documents by means of electronic communication (Section 15) and various other detailed matters, including exemptions, in Sections 12 to 19. Section 20, as previously mentioned, deals with Interpretation and contains important definitions. It does not address the definition of 'work'.

### Sources of reference

These can be obtained from the Stationery Office (formerly HMSO) or visit [www.hmso.gov.uk](http://www.hmso.gov.uk):

*The Party Wall etc Act 1996* (published by HMSO, ISBN 0-10-544096-5)

*The Party Wall etc Act 1996 (Commencement) Order 1997 (SI 1997/670 [C.24])* (published by TSO, ISBN 011-064-2139)

*The Party Wall etc Act 1996 (Repeal of Local Enactments) Order 1997 (SI 1997/671)* (Published by TSO, ISBN: 011-064-2120)d

These are available free of charge from DETR (formerly DoE) Publications, Dispatch Centre, Blackhorse Road, London SE99 6TT. T: 020 8691 9191 F: 0202 8694 0099 :

*A Short Guide to the Party Wall etc Act 1996*

*The Party Wall etc Act 1996 Explanatory Booklet*

Available from bookshops:

*Party Walls and what to do with them* by John Anstey (from RICS Books)

*The Party Wall Act Explained: Green Book* (The Pyramus and Thisbe Club (also available from RICS Books)

*Misunderstandings and Guidance* by Alex M Frame (Faculty of Party Wall Surveyors ISBN: 978095509956-4)

*The Third Surveyor* by Alex M Frame (Faculty of Party Wall Surveyors. ISBN: 978095509955-7)

*Party Walls – A practical guide.* RIBA publishing. ISBN: 9781859463109

*Architects Guide to Job Administration – The Party Wall etc Act 1996* (RIBA Publications)

NB — This list is not exhaustive, there are many publications available on this topic.

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