



## Party Wall etc. Act 1996

### Frequently asked questions

#### **What is the purpose of the Act?**

The Act regulates works to party walls and structures, and excavation or construction close to neighbouring buildings. It also provides a statutory framework for resolving related disputes.

#### **Who is an owner?**

An “owner” includes anyone entitled to receive rents or profits from land, anyone in possession of land (other than certain tenants or mortgagees), and purchasers under a contract or agreement for a lease. A “**building owner**” is an owner wishing to exercise rights under the Act. “**Adjoining owner**” and “**adjoining occupier**” refer to owners or occupiers of neighbouring land or buildings, including those within prescribed distances of proposed excavations.

#### **Why must a notice be served?**

Service of a valid notice by the Building Owner is a prerequisite to invoking the Party Wall etc. Act 1996 and is the legal basis upon which all rights under the Act are conferred and obligations arise. Notice periods are one or two months depending on the work.

#### **Work to which the Act relates:**

The Act covers three distinct categories of work:

- New building on the line of junction;
- Alterations to party structures (typically walls, but also floors);
- Certain excavations and construction works below ground and in proximity to neighbouring structures.

Typical examples include:

- Constructing a new wall on the boundary;
- Underpinning, thickening, or raising a party wall or party fence wall;
- Cutting into a party structure or an adjoining building;
- Cutting away projections from a party wall;
- Demolishing and rebuilding a party wall or a party fence wall;
- Exposing a party wall that is currently enclosed;
- Excavating for and constructing foundations or other structures within 3m or 6m of an Adjoining Owner’s structure and at prescribed relative levels.

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#### **Do I need to respond to a notice?**

Yes. The adjoining owner should confirm their position in writing. If they **consent**, the building owner may proceed once the notice period has expired. If they **dissent** or do not consent to works under sections 3 or 6 within 14 days, a dispute will arise and must be determined by surveyor(s) under section 10.

An Adjoining Owner might choose to **dissent** if they:

- Doubt the Building Owner’s right to carry out the proposed works;
- Have reservations about the adequacy of the design, temporary works, or other protective measures;
- Have concerns about the potential impact the works may have on their property;
- Are concerned about potential inconvenience or temporary loss of amenity;
- Have misgivings about the competence or track record of the Building Owner, designers, or contractor;
- Require further clarity and certainty before the works proceed.

#### **What happens in the event of a dispute?**

The dispute must be resolved by surveyor(s) acting in a statutory capacity. Each party may appoint their own surveyor, or both may agree on a single surveyor.

#### **What is the role of surveyors?**

The role of a surveyor under the Act is *sui generis* (unique) and quasi-judicial or quasi-arbitral in nature. It combines technical expertise with legal interpretation and determinative decision-making. Surveyors are appointed under statute rather than contract. Their sole function is to resolve matters in dispute objectively and impartially, balancing the rights and interests of both parties. They are appointed in a personal capacity, must be independent of the parties, and do not act as advocates for their appointing owner. Surveyors appointed or selected under the Act:

#### **CAN:**

- Determine whether the proposed works may be lawfully executed;
- Determine the timing and manner of the works;
- Determine matters arising out of or incidental to the dispute, including costs;
- Obtain independent specialist advice.

#### **CANNOT:**

- Waive statutory notice periods;
- Advise on insurance;
- Enforce the terms of an Award (other than payment of fees);
- Delegate their statutory functions.

#### **DO NOT:**

- Provide design advice (though they may draw attention to legal implications);
- Supervise or monitor works on site.

If a party fails to appoint a surveyor within ten days of a request, the other party may appoint one on their behalf. Once the Award has been served, the surveyors’ role becomes *functus officio* (their duty is fulfilled) unless a further dispute arises. They are not obliged to entertain complaints regarding the exercise of their statutory functions.



### **Whom should I appoint?**

It is advisable to appoint a qualified professional with a solid grounding in construction technology and building pathology, alongside a thorough understanding of the legislation and relevant case law. Appointing a specialist Chartered Building Surveyor qualified in dispute resolution will help ensure the Act is administered competently and effectively.

Appointments must be in writing and cannot be rescinded by either party.

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### **What is an Award?**

An Award is a legally binding document made by the surveyor(s) to determine the dispute. It authorises the works subject to specified terms and conditions and sets out the rights and responsibilities of each party. It incorporates the relevant drawings and supporting information and is formally served on both owners.

### **Can I approve a draft Award?**

No. Because the parties are in dispute, neither can approve or veto the Award. The Act gives surveyors sole authority to decide its content within their jurisdiction.

### **Can I appeal an Award?**

Either party may appeal to the county court within 14 days of service. Appeals are uncommon and can be costly, so legal advice is recommended. The court may rescind or amend the Award and make an order for costs.

### **Can my surveyor perform other roles?**

Surveyors may also act in an agency capacity; for example, advising on the Act, preparing or responding to notices, or negotiating access. These roles are separate from their statutory, quasi-judicial function.

### **What is the role of the third surveyor?**

Where two surveyors are appointed, they must jointly select a third surveyor at the outset.

They become involved only if a matter in dispute is formally referred to them by either surveyor or either party; for example, on issues of access or costs. A third surveyor's determination will be by way of an Award. Your surveyor should tell you who the third surveyor is.

### **Who pays the surveyors' fees?**

Surveyors usually determine costs in their Award. Typically, the Building Owner pays the Adjoining Owner's reasonable costs where the works are for the Building Owner's benefit, though this is not automatic. In some cases, the Adjoining Owner may be liable for costs; for example, where both parties benefit from repairs, or where the Adjoining Owner's conduct causes unnecessary time and expense. Surveyors typically invoice the party directed to pay. A third surveyor is entitled to payment prior to service of their Award. If the parties resolve matters by alternative means outside the Act, they may become contractually liable for their own surveyor's fees.

### **Can party wall surveyors resolve a boundary dispute?**

No. Determining a legal boundary under the Land Registration Act 2002 is outside their jurisdiction. Surveyors may record a finding in their Award if needed to perform their function, but it is not legally binding.

In some cases, surveyors cannot proceed until the boundary is agreed or determined elsewhere.

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

Yes, provided the works fall within the Act and proper notice has been served. This includes access needed for safe working, such as erecting scaffolding. It is a criminal offence to obstruct lawful access.

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

Surveyors commonly record the condition of the Adjoining Owner's property before works begin. This provides an evidential record in the event of damage or allegations of damage.

### **Can an Award authorise interference with easements?**

In limited circumstances, the Act permits the removal of projections from a party wall, such as gutters or foundations, where they encroach upon the Building Owner's land. However, it explicitly prohibits the permanent interference with easements in or relating to a party wall.

### **What is security for expenses?**

An Adjoining Owner may require the Building Owner to provide security before works start, usually a sum held in escrow to cover potential damage or reinstatement. The notice should state the amount and reasons. If disputed, the surveyors decide. Security is generally reserved for higher-risk situations. In some cases, a Building Owner may also request security from the Adjoining Owner.

### **Can the works be prevented?**

If the Act has been properly followed, surveyors will authorise the works, subject to compliance with statutory consents and any other terms and conditions they deem appropriate.

### **What about disturbance and inconvenience?**

Where the Adjoining Owner's premises are exposed due to demolition or rebuilding of a party structure, the Act allows for a fair allowance for disturbance and inconvenience, depending on the nature and extent of the works.

### **What if the building owner fails to comply with the Act or the Award?**

Starting notifiable works without serving notice is unlawful and may expose the building owner to claims of breach of statutory duty, trespass, nuisance and the risk of an injunction.

Professional advice should be sought if obligations are unclear. An adjoining owner may apply to the county court for an injunction to enforce compliance with the Act or the terms of an Award.

For further advice contact:

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