

A Guide to The Party Wall etc. Act 1996

The principles of the Party Wall etc Act 1996 (the "Act") can be traced back to the Great Fire of London, but the benefit of the Act was only expanded to England and Wales following the passing of the 1996 legislation.

What works does it concern?

Existing party walls that are being worked on, new party walls that are being constructed and new walls which are built up to the boundary where the boundary has not been previously built on by either side. The "etc" part of the Act relates to the additional inclusion of adjacent excavation. If you are excavating within 3m, to a lower level than your neighbour's foundations or transcending a 45 degree line from their foundations, within 6m, you need to serve notice under the Act.

Who is entitled to notice of the works?

Firstly, it is important to ascertain which neighbours are "owners" under the Act. Broadly an owner is a tenant with a lease of more than one year, a freehold owner or a party who is under contract for purchase or under an agreement to lease. Housing association tenants are generally not entitled to notice, but the association almost certainly will be.

Following notice:

Once notice has been served the "adjoining owners" have three options. Firstly, they can simply consent and the process ends at this point. Failing this they will either openly dissent or not respond to the notice within 14 days in which case they are deemed to have dissented. The result is the same - there is a "dispute" under the Act that requires settlement by party wall "award". This leads to options two and three whereby both parties can agree to use one surveyor (the "agreed surveyor") or for the adjoining owner to request their own surveyor.



The Award:

The surveyors determine the dispute and the matter is settled by award. It is important that you furnish your contractor with a copy of the award and that

you and your contractor follow any restrictions the award imposes. For example, the award may restrict the hours of working for the works which the award relates to – usually in line with the hours imposed by the Control of Pollution Act 1974.

Important considerations / key facts:

- There are minimum notice periods with regard to each section of the act. The periods vary from 1 to 2 months depending on the nature of the work.
- Even where works have been regularised by award the minimum notice period needs to be followed unless the adjoining owner specifically states that works can commence earlier.
- If your scheme involves deep excavations or significant works to a party wall itself be prepared for a "Security for Expenses" request by adjoining properties. It is normal practice for an escrow account to be set-up, with funds only being released upon the signature of the two surveyors.
- Where works may lead to non-negligent damage claims it is strongly advised to ensure your contractor has damage to cover this.
- Vibration monitoring may be a sensible investment if your scheme involves driven piles or deep excavation. Vibration monitoring allows surveyors and engineers to more easily assess damage causation.
- Where the proposals are complex, the adjoining owner's or agreed surveyor may request a checking engineer
- If you are working on a party wall with open fires on the other side be prepared for a request to cover the the adjoining owner(s) fires to prevent soot falls damaging their property and finishes.
- The first thing the two surveyors do when formally appointed is name a third surveyor. The third surveyor is usually unaware they have been selected and is only contacted if the surveyors for each side are unable to agree on a matter.
- Where the works relating to the notice require access over an adjoining owner property the adjoining owner should not unreasonably withhold access following notice under the Act.

Tel (South) 0207 033 3757

Tel (Midlands/North) 01636 653 055

info@mesbuildingsolutions.co.uk

www.mesbuildingsolutions.co.uk