

DON'T FORGET THE PARTY!



GRAHAM KINNEAR

This month I have been involved with two party wall cases where significant dispute and unhappiness has occurred; but in both instances it was fuelled purely by a lack of knowledge by the parties involved.

The first involves a property developer who acquired a house and commenced a loft conversion and a rear extension without dealing with Party Wall obligations. The other relates to an individual who received a notice from his neighbour, and thought he could use this as an opportunity to get his property refurbished at the developer's cost.

I therefore thought that I would provide YPN readers, many of whom I know undertake various property developments, with an insight to the Party Wall Etc. Act 1996 (The Act). The Act was introduced to provide a mechanism that would allow people to undertake building works, which would otherwise not be permitted under Common Law.

The process is initiated by the Building Owner (the person who wishes to undertake the work), who must serve a notice of their intentions to their neighbour, known as the Adjoining Owner.

The Adjoining Owner may consent to the works, and in the event that they do, then the Building Owner can get started.

If, however, they ignore the notice for a period of 14 days or alternatively dissent to the notice, then a dispute is deemed to have occurred and the parties are required to appoint Surveyors to produce a party wall award, which will deal with the disputed matters. Only once this Award is served upon the owners can the works legally commence.

The Award deals with the method of construction, timing of the build, and makes provision that any damage caused to the neighbouring property by the proposals is rectified by the builders, or a sum of money paid to allow the neighbour to use their own contractors. One of the biggest misconceptions is the circumstances under which notice must be served on your neighbour.

Some common works you might consider as part of your property developments that require you to serve notice include the following:

- 1. Building a wall astride the boundary between your land and next door's land.**
- 2. Building a wall on your own land but up to the boundary line.**
- 3. Where a structure already exists astride the boundary or the external wall of a building forms the boundary, and you wish to:**

- Underpin, thicken or raise the wall.
- Repair or demolish and rebuild a party wall where it is in very poor order.
- Demolish walls or arches not complying with Building Regulations and rebuild them so that they do.
- Demolish a party structure and to rebuild it to take greater loads than before.
- Cut into a party structure for any purpose, including injecting a damp proof course.
- Cut away projecting parts from a party wall.
- Cut away projecting or overhanging parts of the Adjoining Owner's building.
- Cut into the adjoining building to insert a flashing.
- Demolish a party wall and clear it away.
- Expose a party wall previously covered up or protected.

This means that a proposal for a new conservatory or extension may mean that you need to serve Party Wall notices.

If you are unsure of whether or not you need to serve notice – or indeed which notice you should serve – then I urge you to get in touch with a party wall surveyor such as myself. Not only will they be able to assist you through the process but they may also be able to make suggestions of how some minor adjustments to your proposed plans could avoid the Act in its entirety.

You should be aware that if you are doing work on or to a party structure or digging within the prescribed depths and distances without serving notices, you are acting outside the law and can be stopped. In such circumstances your neighbour can seek an injunction from the county court.

If you are a developer and are served with an injunction, you must cease work! If you do not, you could be imprisoned for contempt of court.

The courts have taken a dim view of Building Owners that proceed with work without serving notice, especially when they then go on to cause damage to a neighbour's property. In one noteworthy case, known as Roadrunner Properties Limited v John Dean, the judge made it clear that the Building Owner should not gain advantage by his failure to comply with the statutory requirements. In light of this he decided that the burden should be on the Building Owner to disprove a link between the damage and the work, instead of the reverse, which would be the normal position at common law.

So you will now have guessed that in the first of my examples, the Building Owner is currently dealing with an injunction before he can recommence works. As for the other case, the neighbour, following a heated site meeting, is now aware that any damage caused by the neighbour's development will be rectified, but the list of improvements that he was hoping would be paid for by his neighbour will sadly not be undertaken.

Many people think that the Act only applies to adjoining property. This is not the case and therefore Party Wall notices are also required where the Building Owner intends to excavate below the level of the bottom of next door's foundations within a distance of three metres.

Graham is author of
"The Property Triangle"



As always I am happy to assist YPN readers and can be contacted on **0844 414 8659** or at **graham@grahamkinnear.com**