

# Guidance Note

## Party Wall Etc. Act 1996



*February 2023*



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## 1. INTRODUCTION

This guidance note has been produced to provide independent generic guidance on the Party Wall etc. Act 1996. This act only applies to England and Wales. The Act does not apply to Scotland and Northern Ireland, although some of the guiding principles may be beneficial to help prevent disputes between neighbours.

This revised version has been extended in scope to include greater emphasis on other sectors of The Property Care Association and structural waterproofing in below ground structures.

## 2. DEFINITIONS

- **Award**  
Legally binding document prepared by the Party Wall Surveyor or Surveyors.
- **Notice**  
A written communication by the Building Owner informing the Adjoining Owner of the works they propose to undertake.
- **Party Wall Advisor**  
Person advising on party wall matters who may be appointed although they have no statutory authority and they work on a client/consultant basis.
- **Party Wall Surveyor**  
A person appointed in writing by owner/s and where notices have been served and dissented to by Adjoining Owner/s – this position carries statutory authority to administer the relevant provisions within the Party Wall etc. Act 1996.
- **Building Owner**  
An owner of land who is ambitious of exercising rights under this Act.
- **Adjoining Owner**  
Any owner and any occupier of land, buildings, storeys, or rooms adjoining those of the Building Owner. N.B an owner under the Act is any party that has an interest in a property that exceeds 12 months, i.e. long Leaseholders including tenants etc.
- **Line of Junction**  
Alternative term for separating boundary.

## 3. THE ACT

The Act came into force on 1st July 1997, although its roots go back several centuries starting in London, when the aim was to prevent the transmission of fire between adjoining buildings. Although the Act is now a well-established piece of legislation, a comprehensive and full understanding should not be necessarily assumed. Whilst most concede that the Act is not perfect, an understanding of the Act is essential for PCA members for three reasons:

- It is statute law of the land.
- It aims to avoid unnecessary legal battles while managing tensions in neighbourly relations.
- Your clients will often be Building Owners and making them aware of their responsibilities allows you to add value to your service offering.

In general, the Act imposes significant responsibilities on owners of buildings and structures who wish to carry out work affecting party walls, or who wish to excavate for foundations within certain proximity to a neighbour's foundations. It allows for work to proceed quickly, but also ensures that all adjoining owners are properly protected. This is done by a system of notices and counter notices, the provision, and duties of surveyors, and a clearly laid out system for resolving disputes. In this sense it is a form of alternative dispute resolution known as ADR.

It is important to note that obtaining a Party Wall Agreement will not remove the need to obtain planning permission or comply with the Building Regulations or any other legal protection that may be placed on a building, such as the protection afforded as a listed structure. The Act stands in isolation to these other requirements and is therefore not the concern of the local Planning Department, Building Inspector or Conservation Officer.

#### **4. ACT PHILOSOPHY & CORE PRINCIPLES**

The Party Wall Act is often referred to as 'enabling legislation,' in essence it provides a framework capable of handling a number of common issues concerning certain types of building works between a 'Building Owner' (undertaking the work in question) and 'Adjacent Owners', i.e. any affected neighbours. As a contractor it is always prudent to ensure that your clients are not only aware of their responsibilities under the Act, but where applicable, that they have taken steps to adequately address the requirements, starting with serving party wall notices.

Where carried out with skill, knowledge and experience, the effective administration of the Party wall Act reduces the chances of conflict and dispute between neighbours and where either actual or deemed disputes do arise, such matters can be more readily contained and ultimately concluded without recourse to legal remedy and the courts. The Act promotes the significance of communication and transparency.

Ideally, appointed Party Wall Surveyors should possess not only a good working knowledge of the Act itself (including case law), but also a thorough understanding of construction and not least, particularly effective personal or soft skills such as communication. Practically, this involves foreseeing the potential implications and identifying any risk profiles associated with a given project. Also being able to manage expectations and agreeing an appropriate and proportionate set of requirements are all important aspects. In the final analysis it is important to help relieve an Adjoining Owner's concerns, while allowing the Building Owner to proceed without unreasonable delay and reduce the risk of disproportionate costs from Surveyors fees.

## 5. DEFINITIONS OF A PARTY WALL

There are essentially two main types of party wall:

- a. A Type A Party Wall is a wall that is astride the boundary of land belonging to two (or more) different owners. This wall could form one structure, such as diagram 1, or separate two structures such as in diagram 2.

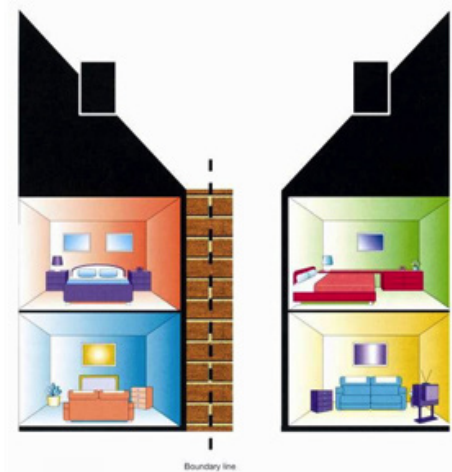


Diagram 1

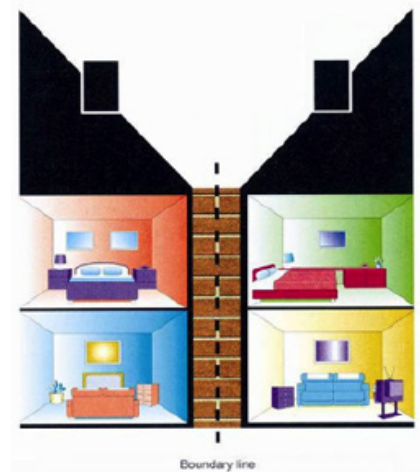


Diagram 2

- b. A Type B Party Wall is a wall that is wholly on one owner's land and is used by two (or more) owners to separate their buildings. See diagram 3

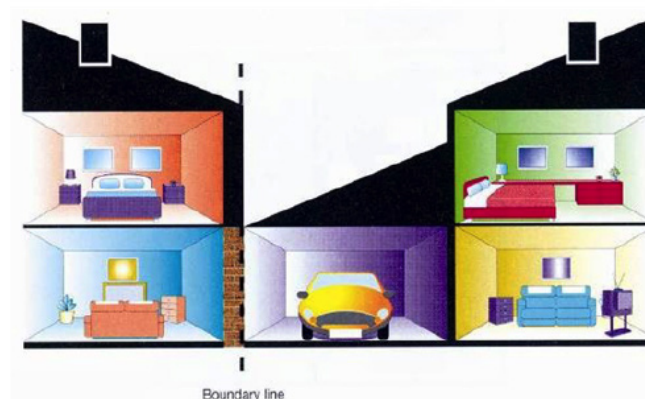
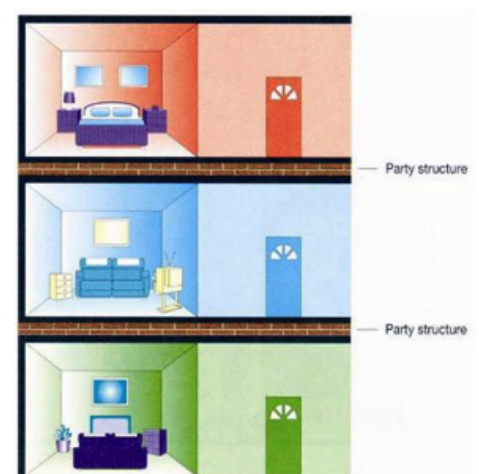


Diagram 3

The Act also refers to party structures which may include a floor or wall that separates flats. Therefore, such physical demarcating structures, such as boundaries between properties, are of course reflected in the horizontal plane and not just the vertical. In such circumstances, many flats will be leasehold and therefore the precise point of the separating boundary between one legal demise and another will usually be detailed in the associated lease document. See diagram 4 to the right.



(Illustrations taken from [www.gov.uk](http://www.gov.uk))

## 6. SCOPE

The Party Wall Act allows a Building Owner to progress with their building project, while the implications of the proposed works upon the Adjoining Owner's property interests can be fully considered. This means that any potential and significant risks can be anticipated, allowing the provision for adequate safeguards to be applied before the works commence. This process is all enshrined within a written legal framework called an Award. The appointed surveyors undertake the preparation of the award, and which will include many relevant bespoke phrases together with a number of standard or generic phrases.

**N.B.** Where an Award has been prepared, it will be essential that as a Contractor you are provided with a copy to read and absorb. This is not least so that you are able to understand what may be required of you in undertaking your duties, e.g. non-use of power tools when working on a party wall or cutting a line in a solid concrete floor before breaking it up with power tools. Another condition may include dust and vibration mitigation which may involve the way you not only undertake the work but what you may need to price for in your quotes/estimates.

The Act has three areas of application:

- Construction of new walls built on or over the line of junction (boundary).
- New excavations lower than existing foundations of nearby structures.
- Works on existing party walls or party structures.

### 6.1 Construction of New Walls Built on or over the Line of Junction.

Section 1 of the Act covers new walls. In reality this section is infrequently used and unlikely to be applicable to most members. This section becomes applicable if a Building Owner wishes to build a new wall on or over the line of junction. In this instance, the Building Owner must serve a Notice on any Adjoining Owner at least one month before the intended start date, stating their desire to undertake the works, and describing the intended wall. It should be noted that the construction of a wall over or astride the line of junction (boundary position) can only be undertaken with the Adjoining Owner's consent. Additionally, Section 1 of the Act only relates to land that has not been previously built on.

If the Adjoining Owner consents to a wall that is constructed over the line of junction, they must formally consent to the appropriately prepared and served Notice. The new (party) wall may then be raised straddling the boundary or where agreed, the cost of building can be shared between the owners in proportion to their intended use.

If the Adjoining Owner does not consent, the owner may still build the wall:

- At their own expense.
- Entirely on their own land, i.e. 'up to' the line of junction, apart from the right to put foundations below the level of the land of the Adjoining Owner subject to compensation for any damage so caused and 'only as are necessary'.

### 6.2 New Excavations Lower than Existing Foundations of Nearby Structures.

Increasing land values and limited space in some built up areas has meant that retrofit as well as new basements have become ever more popular. Despite their increase in popularity, some media stories have portrayed this style of extension in a poor light. Additionally, such basement works are akin to minor forms of civil engineering (on a smaller scale) and therefore potentially introduce a significant range of risks to any such project. These may include concerns connected with de-watering, settlement, and underpinning of party walls. While these aspects are the domain of Structural Engineers along with Party Wall Surveyors before works commence, again as a Contractor it will always be important to have read through the Award and be aware of any requirements it places upon you. For example, where de-watering is a possibility, you should ensure that your insurance provides adequate cover.



In view of these potentially heightened risks, this places a greater emphasis upon the Party Wall Surveyors to systematically think through the implications and not least, to manage the possible increased tensions between respective owners and therefore the potential for neighbourly conflict. In these instances, awareness and following the guidance set out by the Act's philosophy and core principles becomes more significant.

For Contractors engaging in the removal of invasive weed species, where such activities involve removal of soil to remove roots or stolons and rhizomes, the same Section 6 of the Act may apply. For example, where excavations take place lower than the foundations serving an adjacent older property with little or no foundations, and within a range of three meters. It should therefore be assumed all works within 3m of adjacent properties may need to be classed as 'notifiable works' until, and unless, a Party Wall Surveyor or Structural Engineer says otherwise.

Where Builders/Contractors are excavating for strip or trench fill foundations for the purposes of building a new party fence/wall, or wall for a side, or full width extension, to a terraced or semi-detached house; the same rule may apply.

The general rule is if deeper foundations are required within three meters of an adjoining owner's physical structure e.g. house footings, garage, or brick/stone wall, then a section 6 excavation notice will be required.

**N.B.** Piling contractors should be aware that the Act may apply to additional dwellings due to the six-meter rule, e.g. working to the rear of a narrow set of terraced properties.

More specifically, Section 6 of the Act details two types of excavation that become applicable under the Act:

- Where excavations are likely to be below the bottom of foundations of an adjacent building within 3m horizontally, or;
- Within 6 m horizontally and to a depth exceeding, that which meets a line drawn downwards at 45 degrees from the bottom of the foundation, a similar notice arrangement is required.

In either instance, Adjoining Owners can require underpinning or other strengthening or safeguarding measures at the Building Owner's expense, as is necessary. Similarly, the Building Owner has the right to underpin an Adjoining Owner's foundations, as necessary, to safeguard their property.

In these scenarios it is possible that the structures are not connected, but are still covered by the Act, even if the buildings are separated by different ownerships, e.g. a public highway. In addition, excavations for a provision of laying drainage pipes also comes under the remit of the Act.

Due to the complex nature of new basement construction, the services of a Structural Engineer regarding concept design, temporary works, as well as project oversight is critical, and such plans will reveal in detail the particular implications from such notifiable works and the importance of an experienced Party Wall Surveyor working with a Structural Engineer.

### **6.3 Works on Existing Party Walls.**

Sections 2 and 3 of the Act cover existing party walls and shared structures and is where the Act is most likely to be applicable for the majority of PCA members. Where a party wall or shared structure exists, each owner has certain rights set out in the Act. These include demolition and rebuilding, underpinning, thickening, cutting in, DPC insertion, installation of membrane plugs etc. These rights are, however, subject to notification and also, to the making good of damage caused by such work to adjoining premises, or internal furnishings and decorations.

Examples also include removal of a chimney breast, likewise, severing a chimney breast and including a support steel section and even flashing around a shared chimney or shared parapet wall. In such circumstances an Award will usually specify that the adjoining owners corresponding fireplaces will require temporarily sealing up prior to the works. Where such matters are overlooked, it is likely to lead to needless aggravation and a loss of trust in the process.

More classic examples include removing brickwork from a party wall to form a pocket for a padstone to support a steel section. Please note that you will normally only be permitted to cut into half of the widths of the party wall e.g. 112mm or 4.5" in a standard 225 or 9" solid wall. Most Awards will also stipulate the use of hand tools only i.e. no power or hammer tools which can often produce cracking on a neighbour's wall.

**N.B.** Remember that the human body is extremely sensitive to vibration and therefore what may seem like a Contractor simply doing their job, if power tools are used upon a wall, this could lead to (sometimes serious) problems, between neighbours.

In such circumstances it is recommended to advise adjoining owners in advance when such works will be taking place. Social media apps such as WhatsApp can be useful to keep people in the loop.

## 7. NOTICES

A Notice is a written legal document that informs the Adjoining Owners of the intention to carry out works that would be covered by the Act. Notices can be served by the Building Owner or a Surveyor acting on their behalf. However, the type of Notice will vary, depending on the types of works to be undertaken.

Notices are only valid for 12 months. While this is not typically an issue on smaller domestic jobs, it may be applicable on larger basement projects.

Once a Notice has been served, the Adjoining Owner essentially has three choices; to consent, dissent, or provide a counteroffer setting modifications or amendments to the work. If consent is not provided within 14 days, the matter is then considered to have automatically defaulted, i.e. gone into a dispute. At this point, a 10 Day Letter can then be served on the Adjoining Owner, which, if no formal response to the Notice is received within 10 days, this enables the Building Owner to appoint a surveyor to act on the Adjoining Owner's behalf under 10(4)(b) of the Act. In other words, the Building Owner's surveyor can appoint someone to act legitimately on behalf of the Adjoining owner thus allowing the process to continue and not be frustrated indefinitely.

If, however, the Adjoining Owner dissents to the Notice, then the parties must appoint a Party Wall Surveyor to resolve what is mostly a 'deemed' dispute. It should be noted, however, that, until a surveyor has been appointed to act on behalf of the Adjoining Owner, the Adjoining Owner can consent to the Notice, or appoint an Agreed Surveyor.

**Note: The Act and its various provisions is not invoked unless a Building Owner serves a relevant, valid Notice. In essence, no Notice no Act.**



## 8. THE ROLE OF A PARTY WALL SURVEYOR

The role of a Party Wall Surveyor is always impartial, regardless of which party they are appointed by. The Surveyor is entrusted with statutory authority, on behalf of the Crown, to administer the Act appropriately and reasonably. It therefore carries particular responsibilities to act in a suitably professional manner.

If both parties agree to the Notice, then a surveyor needn't be appointed, and works can commence. In this instance, however, it is advisable that a Schedule of Condition be carried out at the Adjoining Owner's property prior to commencement of the works. A Schedule of Condition is essentially a photographic (and often descriptive) record of the areas considered likely to be affected by the notifiable works, which can be referred to in the event that damage is reported.

If, however, a Notice has not been consented to, then a surveyor will need to be appointed. Anyone can act as a Party Wall Surveyor, as there are no mandatory qualifications. It is prudent, however, to ensure that when appointing a Party wall Surveyor that they are suitably experienced and qualified to act in this regard, while holding adequate and valid professional indemnity insurance. A key point is that Surveyors appointed by Owners are appointed under an Act of Parliament and have clear duties under the Act, which can take precedence over the owner's wishes.

**N.B.** Also once a surveyor has been appointed, their statutory appointment means that they cannot be removed from the role. For this reason, an Owner should choose wisely.

Each party can appoint their own Surveyor, or they can appoint an Agreed Surveyor, who will act on behalf of both the Building Owner and Adjoining Owner. In this case the relevant parties must provide a written letter of appointment consenting to an Agreed Surveyor. In many instances this can be preferable as it reduces costs, but all parties must remember the role of the Surveyor as detailed above. In practice, the more complicated the project the more advisable it is for two surveyors to be appointed. Conversely, more straight forward jobs, where notices are dissented to, are perhaps more reasonably covered by a single Agreed Surveyor.

If two separate Party Wall Surveyors are appointed, then they must select a Third Surveyor who acts where and if required, as an arbiter i.e. if a dispute occurs between the two Surveyors, or between a surveyor and an appointing owner. In these instances, the Third Surveyor can make a determination to settle a particular matter that has been specifically requested. However, where such matters are appealed, then the Court will ultimately decide. This is the exception, not the rule.

Finally, it should be noted that, under all normal circumstances, the fees relating to Party Wall Surveyors are in most, but not all circumstances borne by the Building Owner. This includes the Adjoining Owner's Surveyor's fees and sometimes the costs of other specialists such as an 'Advising Engineer'.

## 9. AWARDS

An Award is the final document produced by the Surveyor(s). The document is produced for the benefit of both parties and will set out:

- The names and addresses of the respective owners plus the surveyors.
- Works to be carried out.
- When and how the work is to be conducted.
- Notably, specific safeguarding clauses to reflect the specifics of a given project.
- Any financial considerations where applicable.
- Allows access for the Surveyor to inspect whilst works take place.

An appeal can be made against the award and must be done within 14 days to a lower court.

The Award is often referred to as the Party Wall Agreement.

## 10. ADVICE TO MEMBERS

It is clear that responsibility under the Act falls on property owners who intend to undertake building projects which in so doing involve notifiable works, e.g. removing a chimney breast upon a party wall or drilling and injecting a damp course into a shared party wall structure. It follows, however, that there is a duty of care on Contractors (effectively acting as agents for owners doing work) to ensure that their clients are aware of the Act and when their project includes notifiable works. Clearly it is in the Contractor's interest to ensure, as far as practicable, that their clients are abiding by the requirements of the Party Wall Act from the outset, to enable realistic programming of works to take place. This is because, if no provision has been made and the process has to start from scratch, project start times are almost certainly going to be affected.

**N.B.** It is advisable not to assume that a Building Owners architect or Building Control Officer/Surveyor has made such requirements sufficiently clear.

In instances where a Contractor commences notifiable works where no notices have been served and no Award is in place, then an Adjoining Owner is within their rights to obtain (an almost immediate) injunction to halt such works, until the relevant provisions within the Act have been fully complied with. This can not only diminish neighbourly relations further, but add potentially considerable time and stress to a given project, when this occurs.

Therefore, we would advise members to put in place the following matters:

- A clause in reports to put Clients 'On Notice' about the Act and its requirements with their obligations.
- An express condition of contract between member and Client, to the effect that the Client accepts responsibility for notification and compliance with the Act.
- An amendment to the Notice of Acceptance from Client to member Contractor to confirm that consent has been obtained by the Client.
- An invitation to the Client to refer back to the member for initial advice.
- On a 'non-liaible' basis provide a single sheet summary of the Act and, in particular, the requirements of a Party Wall Notice, which can be sent to the client (or neighbour).
- In practice, by not only being aware of the Act and how it works plus what the essential legal obligations are (where this is supplemented by consistent and clear communication, with all concerned), then a Contractor will be seen to be informed, professional and ultimately adding value.


## 11. ACKNOWLEDGEMENTS

The PCA would like to thank Mark Duckworth, MRAC CSRT MFPWS C. BUILD E FCABE AssocRICS and Ed Ruffles, BSc (Hons) MRICS for their support and contributions to this document.

## 12. REFERENCES

- Party Wall etc. Act 1996 An Easy Guide – Alex M Frame
- <https://www.gov.uk/government/publications/preventing-and-resolving-disputes-in-relation-to-party-walls/the-party-wall-etc-act-1996-explanatory-booklet>

**DISCLAIMER:** The advice in this document is of necessity, general in nature and property owners should satisfy themselves that specific circumstances are comparable. This company does not imply and will not accept liability should a property owner a) be prosecuted or b) be the subject of a civil action by a third party as a consequence of alleged breach of the Act.



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