



PARTY WALL ETC ACT 1996

PCA GUIDANCE NOTE FOR CONTRACTOR MEMBERS

This Guidance Note is of necessity general in nature and companies and individuals should satisfy themselves that specific circumstances are comparable. The Association does not imply and will not accept liability should a Company or individual be prosecuted as a consequence of alleged breach of this Act.

This document is intended to give a basic introduction to the Act and is specific to the Wood Preserving and Damp-proofing Industry. It will help you decide on your responsibilities and how they can be discharged.

INTRODUCTION

There are many horror stories about disputes involving party walls. Most are outside London and based on the lack of overall rights of owners. In principle, set out in the Law of Property Act 1925 a party wall is considered to be severed vertically between the owners, while having such rights to support and use as may be appropriate. An easement of support and use exists so that, for instance, an owner can cut into the middle of a wall or remove a chimney breast without giving the neighbour notice.

In London the situation has been different. Following the great fire in 1666, the next year the Privy Council laid down procedures to follow when rebuilding the numerous party walls. These have been updated at various times, up to the London Building Acts (amendment) Act 1939 which is current until the 1996 Act comes into force. The fundamental principle is that adjoining owners share a party wall up to the boundary and both have rights over the other side. This view affected the old London County Council area, now the areas of the inner London boroughs.

THE ACT

In general, the 1996 Act brings the rest of England and Wales into line with the London system. It 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. It allows for work to proceed expeditiously, 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. A key point is that surveyors appointed by building owners are appointed under an Act of Parliament and have clear duties under the Act, which can take precedence over the owners wishes.

SCOPE OF THE ACT

The Act has three areas of application:

- Construction of New Party Walls.
- New Excavations Lower than Existing Foundations of Nearby Structures.
- Works on Existing Party Walls.

NEW PARTY WALLS

If a building owner wishes to build a new party wall he must serve a notice on any adjoining owner at least one month before the intended start date, stating his desire to build and describing the intended wall.

If the adjoining owner consents, he must serve a notice of consent, the party wall may then be raised straddling the boundary or as else, where agreed, and the cost of building it 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 his own expense.
- Entirely on his own land, 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.

EXCAVATIONS

If an owner wishes to excavate:

- Below the bottom of foundations of the 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. Adjoining owners can require underpinning or other strengthening or safeguarding measures at the proposers expense.

REPAIRS TO PARTY WALL

Where a party wall exists, each owner has certain rights set out in the Act. These include demolition and rebuilding, underpinning, thickening, cutting in, DPC insertion 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.

NOTICES

These are required prior to any repair works commencing.

PARTY STRUCTURE NOTICE (PSN)

This must include the name and address of the owner, work details, proposed start date and be issued not less than 2 months beforehand.

Note 1 - Dangerous structures provisions override the requirements to serve party structures notice in advance.

Note 2 - This procedure should not prevent building owner from carrying out party wall works with the written consent of adjoining owners e.g. as an earlier date.

On receipt of a Party Structure Notice, an owner has three choices:

- Give written consent within fourteen days to the work being done.
- Object to the work being done failure to respond is deemed to be an objection.
- Serve counter notice requiring additional works to be carried out for the adjoining owners convenience.

A counter notice should specify the works required, be accompanied by plans and must be served within one month of the Party Structure Notice. An owner, served with a Counter Notice, must comply with its requirements unless they are:

- Injurious to him.
- Will cause unnecessary inconvenience.
- Will cause unnecessary delay in the works described in the Party Structures Notice.

Should either side object to the others notice then a dispute is deemed to arise which will be resolved by the appointment of a surveyor or surveyors in accordance with the disputes procedure in Section 10 of the Act.

RIGHTS AND DUTIES OF OWNERS

There are a number of rights and duties arising from the Act:

- Not cause unnecessary inconvenience to adjoining owners or occupiers.
- Compensate for loss or damage due to works being carried out.
- Carry out temporary works to protect adjoining land or buildings.
- Not place special (i.e. reinforced) foundations on an adjoining owners land without written consent.
- Not deviate from plans provided except by agreement between the owners or their surveyors, or in the event of a dispute determined in accordance with the described procedure.
- A building owner, his agent or a surveyor appointed under the Act has the right during usual working hours to enter adjoining owners land or premises for his purposes under the Act and may remove furniture or fittings or take other actions necessary for that purpose. If the premises are closed, the building owner may, if accompanied by a Police Officer, break open fences or doors in order to gain entry. These rights are subject to such notice as may reasonably be practicable in emergencies, subject to 14 days notice that access is required.

RESOLUTION OF DISPUTES

When a dispute arises, either both parties agree to appoint a single surveyor (the agreed surveyor) or each party appoints his own surveyor and these two surveyors forthwith appoint a third surveyor. Appointments must be in writing and will not rescind by either party. The Act lays down detailed requirements of the surveyors, particularly in terms of time.

FINANCIAL ASPECTS

The Act contains detailed provisions for which owner pays what expenses and makes provision for security to be provided by either party and requires accounts to be submitted promptly, clearly and reasonably.

EFFECT ON MEMBERS

Typically, member contractors will be called upon to carry out works on existing party wall under Section 2 (2)f of the Act. Under Section 3 of the Act, the building owner is obliged to serve the Party Structure Notice at least two months before his intended start date. However, the wording of the Act suggests that if the adjoining owner(s) consent, in writing, to the works being carried out, this notice period can be waived.

Under Section 5 of the Act, if consent is not received within 14 days of the issue of the Party Structures Notice, dissent is assumed and a dispute deemed to have arisen. The dispute procedure, Section 10 of the Act, then comes into play. It contains strict time constraints.

ADVICE TO PCA MEMBERS

It is clear that responsibility under the Act falls on property owners.

It follows, however, that there is a duty of care on contractors (effectively acting as agents for owners doing work) to ensure their clients are aware of the Act when work on Party Walls is required.

Clearly it is in the contractors interest to ensure, as far as practicable, that their clients get neighbours' consent for work on Party Walls, to enable realistic programming of work to take place!

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.
- An express condition of contract between member and client, to the effect that the client accepts responsibility for notification.
- 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-liable' basis provide a single sheet summary of the Act and, in particular, the requirements of a Party Structures Notice, which can be sent to the client (or neighbour!).

NB

If consent is not obtained, then dissent must be assumed, leading to the statutory 2 monthly notice of work and appointment of surveyors, at which point we would suggest clients be referred to a suitably qualified Building Surveyor of their choice. (Members may or may not be able to give names of suitable surveyors).

A model notice paragraph, Notice of Acceptance clause and summary are attached for information.

Feedback from members in London where this scheme has operated for many years suggests that this Act could be a useful introduction for the risk assessment aspect of the COSHH Regulations.

Members will be aware that insertion of a damp proof course and re-plastering of one side of a wall only cannot be expected to bring about an improvement on the un-plastered side. Questions on this aspect can give an opportunity to survey the other side, examine decorations, confirm the thickness of the Party Wall and discuss the problems of residual salts, leading to the possibility that the neighbour may want his side re-plastered at cost (he will benefit from it and can, therefore, under the Act be expected to contribute accordingly).

APPENDIX 1

Typical Report Clause

As the works described in this report involves a Party Wall, we must draw your attention to the fact that the Party Wall etc Act 1996 applies. This requires the owner of a property to notify his/her neighbour(s) of proposed works and obtain the neighbours consent to the works. A neighbour cannot unreasonably withhold consent, but should you require further advice or information, please initially contact our office or a suitably qualified party wall surveyor.

APPENDIX 2

Typical Acceptance statement - to be added where the client is asked to sign confirming the Order.

Where works on a Party Wall are included, as noted in the Report, the Client is deemed to have obtained the neighbour's consent to the works affecting the Party Wall and indemnifies the (member) for the costs of all liabilities arising from the owners responsibilities under the Act.

APPENDIX 3

Party Wall etc Act 1996

Summary - Party Wall Agreements.

The Party Wall etc Act 1996 effectively gives joint rights and duties to neighbours who share a Party Wall. It allows work to proceed expeditiously, but ensures adjoining owners are properly protected.

Where a Party Wall exists, each owner has certain rights set out in the Act. These include demolition and re-building, underpinning, thickening, damp-proof course insertion, etc. These rights are subject to a requirement for appropriate notification and also to the making good of damage caused by such work to adjoining premises.

Notification may be by letter or by a Party Structures Notice. This must include the name and address of the owner, work details, proposed start date and be issued not less than 2 months beforehand:

- Dangerous structures provisions override the requirements to service party structures notice in advance.
- This procedure should not prevent a building owner from carrying out party wall works with the written consent of adjoining owners e.g. at an earlier date.

On receipt of a Party Structure Notice, an owner has three choices:

- Give written consent within fourteen days to the work being done.
- Object to the work being done (failure to respond is deemed to be an objection).
- Serve a counter notice requiring additional works to be carried out for the adjoining owner's convenience.

A counter notice should specify the works required, be accompanied by plans and must be served within one month of the Party Structure Notice. An owner, served with a Counter Notice, must comply with its requirements unless they are:

- Injurious to him.
- Will cause unnecessary inconvenience.
- Will cause unnecessary delay in the works described in the Party Structures Notice.

Should either side object to the others notice then a dispute is deemed to arise which will be resolved by the appointment of a surveyor or surveyors in accordance with the disputes procedure in section 10 of the Act.

There are also certain general Rights and Duties arising from the Act.

Member contractors acting, as agents, for owners should:

- Not cause unnecessary inconvenience to adjoining owners or occupiers.
- Compensate for loss or damage due to works being carried out.
- Carry out temporary works to protect adjoining land or buildings.
- Not place special (i.e. reinforced) foundations on an adjoining owners land without written

consent.

- Not deviate from plans provided except by agreement between the owners or their surveyors or, in the event of a dispute, determined in accordance with the described procedure.
- A building owner, his agent or a surveyor appointed under the Act has the right during usual working hours to enter adjoining owner's land or premises for his purposes under the Act and may remove furniture or fittings or take other actions necessary for that purpose. If the premises are closed, the building owner may, if accompanied by a Police Officer, break open fences or doors in order to gain entry. These rights are subject to such notice as may reasonably be practicable in emergencies, subject to 14 days notice, that access is required.

In most cases, consent will be obtained, but if this is not the case, owners should consult a qualified Building Surveyor for detailed advice or to appoint a surveyor to act on his/her behalf under the Act.

FOOTNOTE

Most of these duties will also affect contractors carrying out work on behalf of building owners.

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.