

The Party Wall etc. Act 1996 Explained!

The Party Wall etc. Act 1996 is a legislative framework intended to prevent or resolve disputes in relation to party walls, party structures, boundary walls and excavations near neighbouring buildings.

If you propose to carry out work on a wall or structure of the kinds described below then you will need to give your neighbour a '**party wall notice**'. Once you have served a notice, the receipt of permission from your neighbour then constitutes what is usually known as a '**party wall agreement**'. If you do not receive consent from your neighbour, the Act provides a **dispute resolution procedure**.

Types of Work Covered by the Act:

- **Work that is to be carried out directly to an existing party wall or party structure**, for example repairs, inserting a damp proof course, raising or extending works and demolishing and rebuilding a party wall or any part thereof. Works such as drilling to fix screws for ordinary shelving, cutting in to add or replace recessed electric wiring and removing old plaster and re-plastering are generally all too minor to be covered by the Act;
- **Any new building next to the boundary line between properties;**
- **Any new building astride the boundary line between properties;** and
- **Excavation within 3 or 6 metres of a neighbouring building or structure, dependant on the depth of the excavation or proposed foundation**

The Building Owner

It is advisable for the person who intends to do the work (**the building owner**) to first discuss the planned work in full with the owner of the other property affected (**the adjoining owner**). This should hopefully provide an opportunity for pertinent details to be settled at the outset and pave the way for a party wall agreement to take shape.

The building owner should then arrange to serve **written notice** on the adjoining owner. The Act sets out particular criteria detailing what information the notice must include. Further care should be taken to ensure that all building owners are named on the notice and that the notice is served in the correct manner. For notices about excavations, plans will also need to be included with the notice.

For work on existing party walls, the notice must be served at least **two months** before the planned start date of the work. For the construction of a new wall next to or astride the boundary line and for all excavations near the boundary line, the notice must be served at least **one month** before the planned start date of any works. The notice is valid for one year from the date of service and therefore if no work has commenced within 12 months a fresh notice will need to be prepared and served. If work is commenced without having first followed the correct notice procedures, the adjoining owner could halt the work through a court injunction or seek another form of legal redress.

The Party Wall etc. Act 1996 Explained!

Further obligations on the building owner include, but are not limited to, providing temporary protection for adjacent buildings and property where necessary, making good any damage caused and avoiding any unnecessary inconvenience to the adjoining owner.

The Adjoining Owner

Upon receipt of a notice, the adjoining owner has several options. They may:

- Provide **consent** in writing within 14 days; or
- Serve a **counter-notice** requesting additional or modified works within one month (however they should notify the building owner of their intention to serve such a counter-notice within 14 days); or
- **Refuse** to consent to the proposed works (the dispute resolution procedure then takes effect); or
- **Do nothing** (a dispute is deemed to have arisen if the adjoining owner has done nothing within 14 days since service of the notice, also causing the dispute resolution procedure to take effect).

When can the works start?

If the building owner receives written consent from the adjoining owner then the works can begin right away.

If the building owner has not heard from the adjoining owner within 14 days, it is advisable for the building owner to contact the adjoining owner directly in order to check the position. This may avoid the parties formally being 'in dispute' if perhaps there has been a genuine cause for the delay.

If there has been a refusal or the adjoining owner has deliberately not acted on the notice, the dispute resolution procedure is invoked. This has its own constraints and consequences on when the work may commence.

For proposed new building works that are next to or astride the boundary line, if the adjoining owner has refused consent or has not responded to the notice, the building owner is entitled to invoke the dispute resolution procedure as above, but can also build the new wall or structure entirely on their own land after the one month notice period has expired and wholly at their own expense

Who pays for the Works?

Ultimately, this is to be agreed between the two parties. The general position is that the building owner who initiates the work pays for it if the works are solely for his benefit. However, if the work is to an existing party wall and is on account of defect or want of repair, the Act provides that the cost of the work shall be shared between the building owner and the adjoining owner.

The Party Wall etc. Act 1996 Explained!

The contributions should be proportional to the use each party makes of the wall or structure and the responsibility of each for the defect or repair concerned.

Similarly, the expense of new building works astride the boundary line can also be shared between the owners proportionally as to the use of the new wall or structure by each owner.

Dispute Resolution Procedure

If the two parties cannot reach an agreement, they should jointly appoint an agreed surveyor to draw up a **'party wall award'**. Alternatively, each party can appoint their own independent surveyor, who will then work in collaboration to draw up the award together. The surveyors are tasked with considering the interests and rights of both owners and should act in a fair, practical and impartial manner when drawing up the award.

The party wall award will set out the work to be carried out, state when and how such work will be completed, specify any additional work, record the condition of the adjoining property prior to work commencing and grant access for the surveyors to inspect the active works where necessary. The award is final and binding on both parties, however either party has the option to appeal to the county court within 14 days from service of the award if they so wish.

With regards to costs, the surveyors will decide who is responsible for their fees as part of the award. However, the rationale behind the decision follows the usual principles in that it is for the building owner to pay all costs including the adjoining owner's surveyor's fees, if the works are solely for the building owner's benefit. As previously noted, if the work is necessary due to defect or repair then the adjoining owner may have to pay a proportional contribution based on the use the adjoining owner has of the wall or structure and its level of responsibility in the defect or need of repair. The surveyors will fully consider these factors when making the award.

Final Points

It is important to remember that reaching agreement with the adjoining owner or owners under the Act does not remove the possible need to apply for planning permission and/or to comply with building regulations procedures. Equally, gaining planning permission or complying with the building regulations does not remove the need to comply with the Act where it is applicable.

If you require further information or assistance in regards to a Party Wall matter, please feel free to contact:

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