

Following points need to be considered by Building Owners when undertaking building works that come under the jurisdiction of the Party Wall etc Act 1996 (the "Act"). Please note that the list below is not exhaustive, as issues could arise differently on specific cases, and other areas and sections of the Act or case law may become prevalent:

NB: Party wall surveyors are meant to be impartial, non-bias and appointed to resolve disputes for matters under the Act

1. All building works that come under the "Act", should allow for in their budgets the costs for party wall negotiations. For general guidance only, allow for the following:

- .1 Surveyor to the Building Owner (BOS):
 - a. 1 to 2 hours work per adjoining owner for service of notices. This would include land registry searches, preparing notices and serving notices.
(eg: a property with five adjoining owners, could have hours serving notices in the range of 5 to 10 hours work).
 - b. 8 to 10 hours works per adjoining owner for party wall negotiations, preparing Schedule of Condition, the Award and publishing the Award.
(eg: a property with five adjoining owners, could have party wall negotiations in the range of 40 to 50 hours work).
 - c. 1 to 2 hours works per adjoining owner following publication of Awards for general issues and sign off, assuming NO damage has occurred.
- .2 Surveyor to the Adjoining Owner (AOS):
 - a. 6 to 10 hours works per adjoining owner for party wall negotiations, preparing Schedule of Condition, the Award and publishing the Award.
(nb: an adjoining owners surveyor that deals with more than one adjoining owner, would naturally charge more)
 - b. The adjoining surveyor would normally have his costs written into the Award, which would allow for a sign off.
 - c. Sometimes, depending on the nature of the works, an interim visit would also be costed into the Awards, in such circumstances allow for a further 1 to 2 hours.
 - d. Additional fees and costs are always allowed for in the Award for damage, based on hourly rates.
- .3 Hourly rates for party wall surveyors currently vary from: 100 to 150 £/hr generally, although there are some surveyors in London charging upto £275 £/hr and more. The Act states reasonable costs (thus including the surveyors fees), which really depends on what is determined as reasonable. Hence Adjoining Surveyors fees (currently) could range from £600 to £1500 £/hr per adjoining owner. The fees for the Building Owners surveyors fees are agreed by contract, and are based on hourly rates.

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- .4 Hence, projects that have two Adjoining Owners, one each side (i.e: terraced house) could give rise to the following current party wall costs (fees):

BOS = £ 2250 to £ 3000 + VAT (based on my fees at £125 £/hr +VAT)

AOS = £ 1200 to £ 3000 + VAT (ie: two surveyors)

Please note that projects beside flats would have greater number of adjoining owners and the costs (fees) would reflect this, although my fees are mitigated slightly by duplication of Awards etc, but they normally are higher especially if each adjoining owner decides to use their own surveyor.

2. Schedule of Conditions (SOC).

- .1 Schedule of Conditions are not a requirement or obligation under the Act.
- .2 It would be upto the party wall surveyors to determine the dispute and any damage that may result as a result of the undertaking of the works. Hence, it is prima facia evidence that damage has occurred if it can be compared to a SOC that has been undertaken, and normally placed in the Award prior to the works starting.
- .3 The surveyors would not normally wish to do a SOC for areas that appear remote from the works, or the works involved are of a minor nature.
- .4 Just because the SOC has not recorded an area that was later claimed to be damaged, this does not remove the obligation for putting right that damage by the Building Owner (BO). It is down to the surveyors under the Act to determine whether the damage was as a result of the works, quite often it is assumed that it is, unless some other compelling evidence can be given to the contrary.
- .5 If the nature of the works change in any way, then the Building Owner should inform the surveyors, as what was previously not considered within the SOC may now need to be included.

3. All building works that come under the “Act”, should allow for the possibility of damage.

- .1 It is not easy to assess costs prior to the damage occurring, as this will depend on the damage that has resulted from the works.
- .2 It is the responsibility of the Building Owner to either pay for, or get the damage put right. i.e: The Building Owner, cannot claim that they are awaiting costs or insurance pay out from the contractor prior to putting the damage right.
- .3 It is within the rights of the adjoining owners to ask for money in lieu payments. This is normally written within the Award as a reminder of this right under the Act. It is becoming more frequent that the adjoining owners are preferring to ask for money in lieu, instead of having the contractor who undertook the works and (in their eyes) caused the damage, to undertake the repairs.

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- .4 Surveyors costs will be charged at an hourly rate, so protracting or delaying the issue of dealing with the damage could only incur additional costs (fees).
- .5 Normally, a schedule of damage and making good is undertaken by the surveyors at additional costs (fees).
- .6 Normally the adjoining owners get their own prices in for the surveyors to agree. I always want three quotes to be given. I do like the Building Owner to arrange for another independent person to quote. The prices for making good have to be reasonable, and therefore I generally find that the contractor that caused the damage can never really provide a reasonable cost to put it right, after all we are looking at money in lieu, and not for him to put it right.
- .7 Normally, it is better to agree amicably the payment in lieu, otherwise another Award will be written to determine this, and upheld in the courts if necessary, and thereby causing additional costs and fees.

4. It is advisable that the works to be undertaken under the “Act” are clearly defined on the drawings.

- .1 Confusing drawings, with discrepancies or which are poorly coordinated will cause a lack of confidence in the works that are to be undertaken. This will cause additional time by the surveyors and it will be reflected in the fees charged.
- .2 Also certain types of structural work (i.e: underpinning, piling etc), could result in additional costs (fees) from the adjoining surveyors appointing independent structural engineers to check the proposals. It is the design structural engineer's responsibility to come up with proposals that are best suited for structural work in relation to the Party Wall Act that and would best suit their client.
- .3 The Awards need to reflect the actual works to be undertaken. Any changes in the proposed works may require new or additional notices, and/or agreements and/or Awards. Hence, the surveyors should be informed of any intended changes immediately. Again this will be reflected in the costs (fees) of the surveyors.
- .4 It is not the job or the responsibility of the surveyors to undertake the design. Their responsibility is to resolve the dispute (or deemed dispute) between the Building Owner and Adjoining Owner (AO), as result of the proposed works shown on the Notices (i.e: with drawings attached), or that has been undertaken in pursuant of the Act (whether a notice has been served or not), in order to determine damage or other matters (eg: security, enclosure costs etc)

5. Site plans, indicating adjoining buildings / adjoining owners.

- .1 It would be very useful if all designers provide a "to scale" drawing indicating the site boundaries, boundary walls, boundary party walls and nearby buildings, including those

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to the rear and sides, and the exact location of the proposed works related to these other structures and buildings.

- .2 It would be very useful if the Building Owner or the design team discover as much out as possible as regards the adjoining properties and owners, as this will save time and costs in the serving of notices.

6. Special foundations

- .1 These are basically reinforced foundations.
- .2 It appears to be common practice in basement works, that the structural engineer proposes special foundations.
- .3 The Building Owner has no right to place special foundations on the adjoining owners land without written consent to do so by the adjoining owner. If consent is not given then the foundation works need to be undertaken using wider, mass filled foundations without reinforcements.
- .4 If special foundations are allowed, and the adjoining owner subsequently decides to undertake their own works to which the special foundations cause additional costs, then the Adjoining Owners can claim for these costs against the Building Owner.

7. Enclosure costs

- .1 If the adjoining owner had already extended the party wall, either raised it or even lowered it (i.e: basement construction), then the building owner shall pay for the privilege of using it (enclosing upon it).
- .2 Enclosure costs are based on half of the current price to construct the wall (due proportion).
- .3 Building Owners should view this enclosure costs as a benefit, as they have avoided in having to build the wall themselves at full cost. They are only paying for half the costs in doing so.

8. Third Surveyor (TS)

- .1 Either party (BO or AO) or the surveyors appointed can call upon the Third Surveyor to resolve matters that cannot be agreed on.
- .2 Approaching the TS is quite often used to determine the fees of the AOS, if they appear to be unreasonable. However, a well-formed time sheet (or identification of his/her hours used), normally shows whether the surveyor is being reasonable in his/her fees. The BOS fees are agreed by contract and are therefore not part of the Award.

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- .3 BOS or AOS, must get approval from their appointing owners prior to calling on the TS, as there are likely to be high costs in resolving the disputed matters. TS fees are currently in the region of £250 to £300 per hour + VAT.
- .4 The TS requires to be paid before he determines the dispute by way of Award.

9. Awards

- .1 Both the BO and AO can appeal any Award made by the surveyors (including the TS) in county court, within 14 days following its publication. Therefore, it is important to understand the Award and its conditions.
- .2 The Award and the Act would not allow any deviation from the works shown in drawings within the Award, without prior approval.
- .3 Once the 14 days have lapsed, the Award, which is a legal document is conclusive, the conditions of which can be upheld in court.

10. Security for expenses

- .1 Following a recent court case, *Kaye v Lawrence* (2010), security for expenses are becoming a more common request.
- .2 Security is a financial burden placed on the Building Owner, upon serve of notice by the Adjoining Owner.
- .3 If the amount of security cannot be agreed then this is a dispute that can be resolved by the surveyors by way of Award. This would incur additional costs (fees) for the surveyors.
- .4 Also, with the current economic climate, I imagine security will start to be almost common practice. Adjoining Owners do not want to have the problem of the party wall being exposed and left open, as the contractor or even building owner goes bankrupt without some method of remedying the issue.

11. Conclusion

I hope the above general points help the Building Owners, in order to identify the areas, especially costs that needs to be considered and built into any building works that are beside and adjoining other properties.

The best way for the Building Owner to look at the Act, is as an enabling Act that gives certain rights that under common law would not be permitted (i.e: trespass). If you can also imagine that it is also meant to be a neighbourly Act that protects and compensates Adjoining Owners' properties from potential and actual damage, without having to take matters to court under a civil action, where matters can get really expensive. (Recent case law: *Jones-Lovegrove v Ruth-Ruth* (2011))

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