

# PARTY WALL ACT 1996

## guidance notes

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**Talbots** is one of the leading property practices in the West Midlands.

We undertake a wide range of property related work, which includes residential property transactions, commercial property, property development, property finance, landlord and tenant and property disputes.

“Party Wall Act” disputes create many problems for property owners. Such disputes can become very technical, they can delay projects and can be expensive to resolve.

We have Lawyers within the Practice who are members of the Pyramus & Thisbe Club, which is the specialist group for Lawyers, Surveyors and other such professionals specialising in Party Wall Act issues.

This Association assists us in delivering to clients a very specialist service and forming close relationships with other professionals working in this area.

Should you require any further information regarding Party Wall Act issues please contact:



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Further details about the Practice are available on our website  
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The following guidance notes are a user friendly summary of the statutory provisions relating to the Party Wall Act, prepared on behalf of the Pyramus and Thisbe Club and reproduced in our branding.



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# The Party Wall Act 1996

## Brief Guidance Notes

- 1 The Act became effective throughout England and Wales on 1<sup>st</sup> July 1997
- 2 The Act provides a framework for preventing and settling disputes relating to building works undertaken by person/s or organisations (defined as the Building Owner), that involve changes to party walls, party fence walls, excavations within 3 or 6 meters of an adjacent structure or building works along or astride the boundary line.
- 3 The building owner has a statutory obligation to serve the appropriate notice on their neighbours (defined as the adjoining owner).
- 4 For the terms used in the Act, Section 20 defines who are building and adjoining owners, who can be Surveyors, who is the Appointing Officer; what are a special foundation, a party wall, a party fence wall and a party structure etc.
- 5 The notices to be served for the relevant works are:
  - (i) For building works to a party wall, a party structure or a party fence wall or any affected wall of an adjoining owner - notice is served under Section 3 of the Act that refers to rights given by Section 2. There is no requirement for drawings of the proposed works to form a part of the notice although, if available, it can be useful to provide them. Drawings will usually be requested in due course. Notice under Section 3 must be served at least two calendar months before the notifiable work is to commence.
  - (ii) For works of excavation within horizontal distance of 3 metres and deeper than the foundation of an adjoining building or structure; or, for works of excavation within a horizontal distance of 6 metres and exceeding a downward plane of 45° from the base of an adjoining building or structure (see section 20) - notices are served under Section 6 of the Act. It is essential that a drawing showing the position and depth of the proposed excavation forms part of the notice. Notice under section 6 must be served at least one calendar month before the notified work is due to start.
  - (iii) For building works along or astride the boundary line (line of junction) - notices must be served under section 1 and the proposed wall described. Although drawings are not mandatory they will generally be useful in identifying the position of the line of junction and the type of wall to be built. Notice under section 1 must be served at least one calendar month before the notified work is due to start.
- 6 Notices are only valid for a period of twelve months, and if the notified work has not been started within twelve months from the date of the notice given then the process has to start again.



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- 7 If “consent” is given to a valid notice, the works can proceed according to the terms of that consent, which may permit the works to proceed immediately. Such consent must be in writing and any subsequent dispute between the parties about the notified work will have to be resolved as a dispute under the Act.
- 8 If the notice is “dissented” or if consent is not given within 14 days from the date of notification, then a “dispute” will be deemed to have arisen, and the parties must appoint Surveyors to settle the matter by an Award under section 10 of the Act.
- 9 Either the owners must concur in the appointment of a single Surveyor to settle the matter (an ‘Agreed Surveyor’), or they must each appoint a Surveyor to settle the issues. The appointments must be in writing, and if an owner fails to concur or make an appointment then, subject to a written request, the other owner may make the appointment on their behalf - see section 10.
- 10 Once an appointment has been made it cannot be rescinded. However, the Act provides, in certain circumstances, for an appointed Surveyor to deem themselves incapable of acting. If an appointed Surveyor dies before an Award is settled, then the owner may appoint a substitute.
- 11 Where two Surveyors are independently appointed their first duty is to select a Third Surveyor to whom either they or the appointing owners can turn to if the two appointed Surveyors have difficulty in reaching agreement. If, in the unusual event of the two appointed Surveyors being unable to select a Third Surveyor, then upon application, the Appointing Officer of the Local Authority must make the selection, or where the Local Authority is an owner, then The Secretary of State will make the appointment.
- 12 All Awards made by appointed Surveyors, Agreed Surveyors or Third Surveyors are subject to Appeal in the County Court, by either of the owners, within 14 days of publication of the Award. In the case of an Appeal the Courts may uphold, rescind or modify the Award as necessary, making such order as to costs as it considers suitable.
- 13 If an Appeal is not made within the 14 day period by either or both of the owners the Award will be conclusive and may not be questioned in any Court. This presumes though that the Act has been properly applied at first instance, and that the natural rules of justice have been followed.
- 14 How to Have a Party Wall “Affair”?
  - A building owner wishes to start works, which will be the subject of a notice, and seeks advice.
  - Service of notice.
  - Consent and works proceed.
  - Dissent or deemed dissent upon non-reply, the parties agree in the appointment of an Agreed Surveyor or independently appointed Surveyors.



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- In the case of independently appointed Surveyors they exchange letters of appointment confirming good authority to proceed and select a Third Surveyor.
- Further disclosure of the building works as necessary from which either of the appointed Surveyors may produce a draft Award (normally done by the Surveyor appointed by the building owner, but it can often be expedient for the Surveyor appointed by the adjoining owner to do this).
- The appointed Surveyors will agree access to the building site and the adjoining premises to consider the proposed works and to prepare a Schedule of Condition of the adjoining owner's building prior to commencement of the notified work.
- The Act does not require the preparation of a Schedule of Condition, however, it does form part of the usual process and is of benefit to the appointed Surveyors who have to settle any dispute about damage caused by or during the carrying out of the notified work.
- The appointed Surveyors settle the Award, attest, date and serve upon the owners.
- All the agreed fees and costs of the appointed Surveyors properly arising out of the due process should be paid (usually by the building owner), before any statutory work is started.
- The appointed Surveyors may make interim inspections as necessary, and on completion of the work.
- The appointed Surveyors should confirm that the awarded work has been completed and that there are no known outstanding issues, after which their role is over. (However, latent damage may necessitate reopening a case within a few years).
- If there is any dispute arising out of the completed work, this will form the subject of a further Award upon which further costs and fees may become due to the appointed Surveyors, for instance the making good of damage or payment of money in lieu.

- 15 The foregoing is a very brief outline of the application of the Party Wall etc. Act 1996 and it represents a broad guide to its procedure only. The Act's principal purpose is to provide a permissive framework under which building work may be carried out to structures in joint ownership and/or where the proposals will affect the proprietary rights of an adjoining owner.
- 16 The Act has only 22 sections, the arrangement of which is given below. The Arrangement of the Sections shows other elements of the legislation not discussed above.

## Arrangement of Sections

### **Construction and repair of walls on line of junction**

- Section 1 New building on line of junction
- Section 2 Repair etc. of party wall: rights of owner
- Section 3 Party Structures notices
- Section 4 Counter notices
- Section 5 Disputes arising under sections 3 and 4

### **Adjacent excavation and construction**

- Section 6 Adjacent excavation and construction

### **Rights etc.**

- Section 7 Compensation etc.
- Section 8 Rights of entry
- Section 9 Easements

### **Resolution of disputes**

- Section 10 Resolution of disputes

### **Expenses**

- Section 11 Expenses
- Section 12 Security for expenses
- Section 13 Account for work carried out
- Section 14 Settlement of account

### **Miscellaneous**

- Section 15 Service of notices
- Section 16 Offences
- Section 17 Recovery of sums
- Section 18 Exception in case of Temples etc.
- Section 19 The Crown
- Section 20 Interpretation
- Section 21 Other statutory requirements

### **General**

- Section 22 Short title, commencement and extent