



“The Party Wall Act: What’s that all about?”

Firstly, without boring you with the detail, let me give you a brief background. The Party Wall Act (The Act) as we know it today was effectively born from the London Building Acts (LBA). As you will appreciate London has a large number of properties which are constructed in close proximity to one another, and neighbourly disputes were slowing down the construction process. The LBA introduced measures to make it easier for developers and home owners to carry out work along boundary lines and reduce the level of disputes by setting out specific obligations on both parties. The LBA was used successfully in London for many years until finally in 1996 it was decided to revamp the act and roll it out nationwide in the form of The Party Wall Act 1996.

The Act is wide ranging and comes into play more than you would think. But you’re not alone if you don’t know much about it. Many builders I know either don’t know about it, or worse ignore it. Professionals aren’t immune either.

You’re probably interested in this article because you’re about to carry out a construction project, or maybe your neighbour is. It may be a small extension or loft conversion, or something on a larger scale. The act doesn’t consider size it only works on principal. The initial aspect is of course to determine whether the act is applicable in the first place. If you are in any doubt it is always advisable to seek professional advice and in many instances the position is not black and white. In crude terms however, a party wall is a structure shared by two neighbours and this would include boundary walls or fences as well as the walls to a building. Perhaps in this regard the title of the act is a little misleading and more than this, it may also be applicable if you propose to construct a wall or building on land where no wall or physical boundary currently exists.

In a modern environment where most properties are in close proximity to one another it is generally the case that the act will become applicable during any construction project that involves digging foundations near to a boundary line. It may also be applicable for loft conversions or building refurbishments where the party wall is not being altered, but support is required from the wall for steel supports or suspended timber floors or ceilings etc. In conjunction, it may come into play for work that you would feel is minor, such as cutting into a wall to insert a weatherproof detail or flashing.

As you will have deduced the act is far ranging and is more often than not applicable when you carry out construction work near to neighbouring buildings / land. My advice would be to consult a surveyor who has party wall experience if you are unsure. Most surveyors would be willing to give some free advice over the phone and if the project is local to them, you will often find that they will give you a free visit to assess your particular project in the hope that, if the act is applicable you will appoint



them to undertake the role for you. Certainly in my professional experience as a chartered building surveyor I give free advice on a regular basis in the hope that it will lead to an instruction. There are surveyors who will charge regardless but the key, as always is to agree a scope of service and any fee up front to avoid confusion. Then you know where you stand.

Once you have deduced that the wall / structure is a party wall you need to determine whether the act is applicable to the work being carried out. The Act is approximately 15 pages in length and split into 22 sections with various sub-sections. It is not therefore a lengthy document and many of the sections include interpretations and explanation which means that the most relevant sections are even more condensed. There is however two main sections which apply most commonly and the home owner would be advised to be aware of;

Section 2: Repair etc: of party wall: rights of owner – This section sets out the rights of the owners of a party wall subject to serving the appropriate notice. Such rights numbered from 2 (2) (a) – (2) (n) include such works as; “to make good, repair, or demolish and rebuild, a party structure or party fence wall” as well as “to cut into a party structure for any purpose (which may be or include the purpose of inserting a damp proof course). The entire list is set out in the act and covers most work, other than very superficial, that could possibly be carried out to a wall. Under most circumstances where any work is being carried out directly to a shared wall, it would be expected that the act will come into play, although there are exceptions and you would be advised to take advice.

The second section which is likely to be most applicable is Section 6: Adjacent excavation and construction. Once again the technicalities are set out in the act but can be bewildering. In essence however, if you propose to excavate within 6 metres of an adjoining party wall / structure (remembering that a party wall could also be a garden wall or fence) the act may be applicable, if certain criteria relating to depth of excavation in relation to any party walls are achieved. If you are excavating within 3 metres the act is more than likely applicable.

Once you have determined that; a) the wall is a party wall and b) based upon the scope of work or proximity of excavation the terms of the act are applicable, it will be necessary to follow the procedures set down within the act in order to protect your position.

The first procedure is to serve notice on the adjoining owner to inform them of the work being carried out. There is no requirement to appoint a surveyor to serve these notices for you and sample templates are available online to download from various sources if you want to do it yourself. But if you do propose to serve notice yourself, be mindful of the fact that as with all things where you may not have sufficient knowledge, the repercussions of getting it wrong can have legal ramifications. On this basis it is normally advised that you seek professional assistance. The notices, when served will be different depending upon whether the work falls under section 2, section 6 or both (there are other sections but as these are less commonly applicable I



have not included commentary in this article), as too will be the length of time applicable between the notice being served and work commencing. The notice under section 2 will provide two months notice and the notice under section 6 will provide one month following which work can commence as long as everything is in order in terms of the act. Once again there are numerous ramifications relating to adjoining owner dissent, non response to notices or sheer bloody mindedness but I'll leave these for another day, or for your party wall surveyor to advise you upon. Or you may find that the adjoining owner just consents to the work in which case you can start earlier by mutual consent!

Even if the adjoining owner does consent then I would advise that a schedule of condition be prepared on the wall to ensure that you have a record of any cracks or defects before you start work. You'd be amazed at how many times a neighbour spots cracks after work has been carried out, that were actually there before!

If however the adjoining owner dissents to the work and appoints their own surveyor, as they are entitled to do under the act, then you will also need a party wall award to document agreed standards and incorporate the schedule of condition. Under these circumstances, unless you really know what you are doing you should get help. It's worth noting however, that if your neighbour does appoint a surveyor then as building owner you are likely to be liable for their fees.

The Act is a fully established act of parliament and as such is law. Ignoring the Act is common place (often through lack of awareness) but technically the perpetrator is then breaking the law. I could go into detail regarding the implications of deliberately failing to serve notice but if you are a building owner reading this article then you are clearly already aware of the act and concerned that the process is correctly followed. If you are on the other side, where a neighbour has not served notice on you, there is recourse but you should seek professional advice. It is also worth noting that ignorance is no defence when it comes to the law.

It is often believed that the act is just designed as a money spinner for professional consultants but this couldn't be further from the truth. Yes there is an industry built around the act and professionals do charge for their services, but there is enough competition to ensure that fees remain reasonable. It is in fact an enabling act that ensures that the positions of both parties are protected and more importantly, ensures that neighbours cannot stop development or repair without sufficient reason. In this regard the act can often save fees where there was once a prospect of litigation and dispute.

Despite this, it is common for projects to be undertaken satisfactorily without serving notice but this is a risky proposition as shown by the case of *Louis v Sadiq* 1996. The case revolved around an end of terrace house in London and shows the implications of the act on standard houses and thus general home owners, not just large scale developments. Mr Sadiq (building owner) carried out building work without serving notice under the act. This work subsequently caused damage to the neighbouring property and he was forced to make good this damage by the court under the terms of



the act. This is standard procedure and even if he had served the correct notices then he would still have been liable for this cost, but more importantly with what we are discussing, the courts awarded additional damages to Mr and Mrs Louis (adjoining owner) because it felt that Mr Sadiq's failure to observe the act negated any benefits of defence that he might gain from the terms of the act and therefore special damages were allowed. In this case the Louis's were awarded compensation to cover additional costs incurred through a failure to sell their house as a result of the defects and they were even awarded costs for rising construction costs in connection with their new house abroad. Had Mr Sadiq followed the correct procedures and served the appropriate notices then these substantial additional costs would not have been incurred. He would only have been liable for the cost of putting right the damage, not the additional costs. This example is by no means common place but does go to shown the potential implications of not following the correct procedures. What seems like a sensible saving on surveyor's fees could turn into a substantial cost for damages. You have been warned!

This brief article is aimed at giving a layman's view of the act for information purposes as opposed to a full technical assessment. You should seek professional advice if carrying out any work to, or in close proximity to neighbouring land or property. It should also be noted that the act does not have any bearing on any other legislation, such as the requirement for planning permission or building regulation approval etc which are completely separate entities.

This article has been written by Andrew Hodge MRICS RMaPS of A J Hodge Associates Andrew is a chartered building surveyor and has over 15 years experience in party wall matters.