

**The Newsletter  
of The  
Faculty of  
Party Wall Surveyors  
May 2009**

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We hope you agree this newsletter comes at a time of greater buoyancy in the market place. Our members are reporting increasing numbers of enquiries plus heavier workloads and for the time being at least, a general mood of optimism seems to be very much all around us.

On a similarly positive note, Faculty is also striding forward with a host of initiatives which we hope will be of use to our members. These include:

- We are developing a training seminar for matters relating to Rights of Light and Boundary Determination. Judging from the responses received from members so far, we are confident it will be successful and we are looking at developing these specialisms within the Faculty umbrella. Further announcements will be made in due course..... (A particular thank you to Vicky Dewey-Bruce).
- Our regional structure is now organised and we are close to having a regional representative to cover all the regions within England and Wales. This will give a point of contact for all our existing and new members, and will permit greater involvement at regional level.
- Our conversations with the Chief Executive of Local Authority Building Control (LABC) have proven most successful and we are confident we will be working together much more closely in the future. This will enable Faculty to become the first port of call for LABC and planning departments with regard to Party Wall matters.
- We have held successful talks with the RICS Events Co-ordinator in Wales (Kathryn Cook) and will be delivering seminars over the next few months across South, Mid and North Wales. These will be held under the joint names of Faculty and RICS to demonstrate a strategic alliance in party wall matters in Wales. We are working to extend this to other regions.

Continued over...

## FACULTY CONTACT DETAILS

**All mail should be directed to:**

**The Faculty of Party Wall Surveyors, PO Box 86, Rye,  
East Sussex TN31 6EX  
Tel: 01424 883300 or e-mail [enq@fpws.org.uk](mailto:enq@fpws.org.uk)**

# FACULTY INFORMATION

## WHO'S WHO IN THE FACULTY

**The Faculty of Party Wall Surveyors**  
**PO Box 86**  
**Rye**  
**East Sussex**  
**TN31 9BN**

### Editorial Team:

Editor: Stuart Slater  
 Production: Nicky Castell

### Seminar Bookings, Subscriptions & Advertising:

Contact Nicky Castell: 01424 883300

### Technical & Legal Queries:

Contact Nicky Castell: 01424 883300

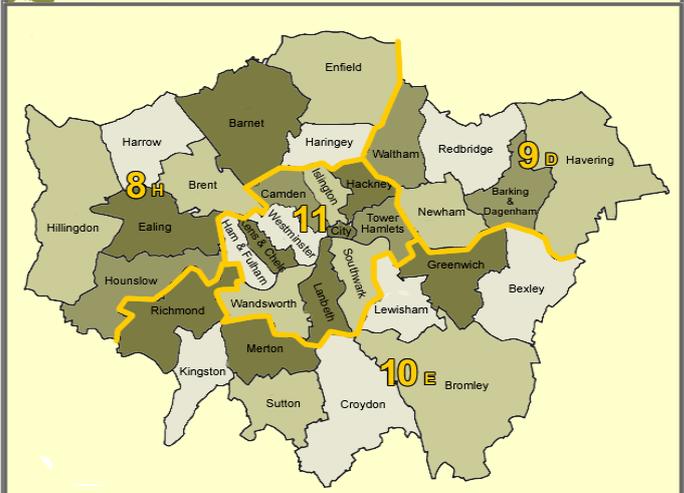
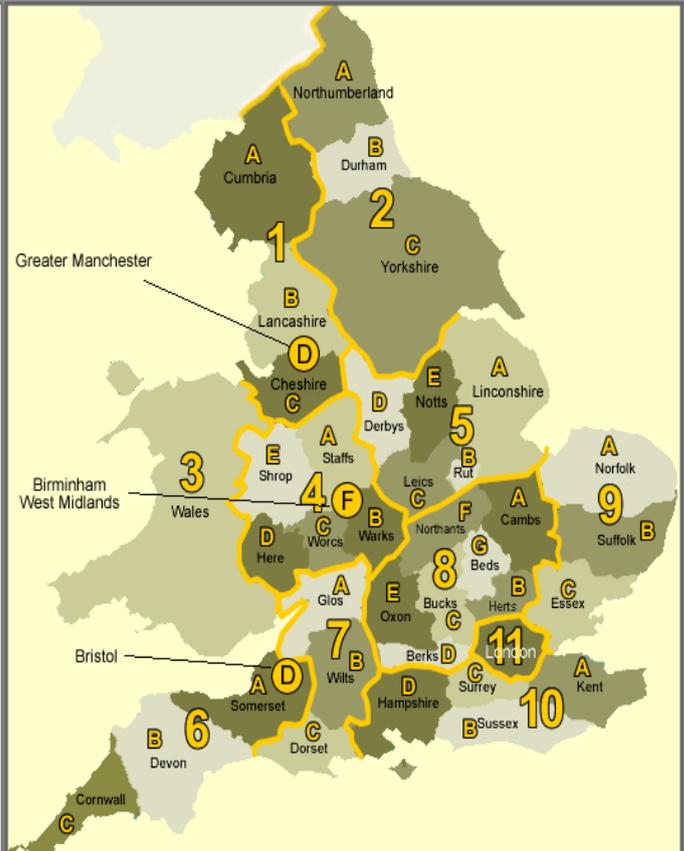
### Directors:

Charles Dawson ( President)  
 Malcolm Lelliott (Treasurer)  
 Phillip Beck  
 Nicky Castell  
 Alf Clark  
 Arthur Cross  
 Neil Cunningham  
 James Jackson  
 Simon Price  
 Stuart Slater  
 Alex Frame (Chairman)

### Regional Representatives:

Region 1, North West (Neil Cunningham) Tel: 0191 389 1057  
 Region 2, North East (Neil Cunningham) Tel: 0191 389 1057  
 Region 3, Wales (Phillip Beck) Tel: 01874 713133  
 Region 4, West Midlands (James Jackson) Tel: 0121 233 3113  
 Region 5, East Midlands (James Jackson) Tel: 0121 233 3113  
 Region 6, South West (Andrew McAllister) Tel: 0117 944 4419  
 Region 7, Wessex (Stuart Slater) Tel: 01672 514707  
 Region 8, Northern Home Counties (Alex Frame) Tel: 01895 811177  
 Region 9, East Anglia (pending)  
 Region 10, South East (Malcolm Lelliott) Tel: 01483 416411  
 Region 11, London (Simon Price) Tel: 0207 736 7311

\*A-H refers to primary and secondary areas within each region.



## EDITORIAL (continued)

There is much to do and I look forward to reporting back further progress in the next Newsletter. Please continue to submit your questions and features and we will be pleased to publish them in the usual way.

Before I sign off, I need to advise there are a number of members who have not yet paid subscriptions for 2009. We are never keen to lose members who would otherwise wish to remain with us, particularly in light of the recent economic pressures and as such we encourage non-payers to contact Nicky on 01424 883300. We would be pleased to try and help — there is usually a solution....

**Stuart Slater—Editor**  
**FFPS BSc(Hons) MRICS**

# DIRECTOR'S PROFILE



**Name: Neil Cunningham**

**Age: I sometimes act 20, I feel 50 but I am actually 41!**

## **About Me:**

I am married with two teenage sons, the eldest of which is travelling around Australia for 7 months before University (lucky beggar).

I currently live and work in Chester-Le-Street, Co Durham but I was born and bred in Liverpool and I am a passionate Liverpool fan. We moved to the Northeast over 14 years ago. We love the Northeast region and its people.

I started my building surveying career at 18 with Oxfordshire County Council. I moved back to Liverpool 3 years later for the birth of my first son and went to University to study Building Surveying. I spent a short time in Liverpool working for private practices having some hard years in the recession of the early 90's where I learnt how to work hard and chase fees.

We moved to the Northeast, and my second son was born. I have worked for a number of local and national practices. At the age of 36 I eventually built up the courage to branch out on my own and now run a small practice with my wife, offering most core building surveying.

I enjoy building surveying as it is so diverse and every day is different. I look forward to the challenge of working in a difficult financial climate and harder times. I am confident we can meet the challenge.

My passion in life is my family, in particular family holidays but I find work sometimes gets in the way. I like to go out walking with our pet Border Collie to keep fit.

I am passionate about fireworks and I would love to learn to fly a plane. When I was young I tried to be a fighter pilot (before Top Gun) however if I could choose my career again I would love to design pyrotechnics.

I enjoy being director of the Faculty as party wall work relies on a great sense of integrity. The Faculty strives to improve standards and maintain its integrity in this profession.

**Neil Cunningham**  
**FFPWS MRICS**

# REGIONAL REPRESENTATIVE

We are pleased to announce that Andrew McAllister based in Bristol has accepted our offer to act as the Regional Representative for the South West. Andrew's role is to be the point of contact for all our members, further develop the regional forum, raise Faculty profile and to organise training and seminars in this region. Until further notice, the South West region includes Devon and Cornwall. We wish Andrew every success in this role and confirm his contact details as follows:

**Andrew McAllister**  
**FFPWS MRICS MCIOB RMaPS**  
**McAllister Associates Limited**  
**27 Claremont Avenue**  
**Bristol**  
**BS7 8JD**

Telephone: 0117 944 4419 & e-mail: [info@mcallisterassociates.co.uk](mailto:info@mcallisterassociates.co.uk)

## James Jackson

MRICS FFPWS Hon. FGIS

QUANTITY SURVEYORS  
PLANNING SUPERVISORS  
PARTY WALL SURVEYORS

R Windsor & Company  
117 Warstone Lane  
Hockley, Birmingham  
B18 6NZ

Tel: **0121 233 3113**  
Mob: **07787 403 014**

## Alex Frame

FFPWS MSc MRICS FASI FCIQB MCFI

Architectural Designers  
& Surveyors  
Party Wall specialist

Building Services  
Plans prepared



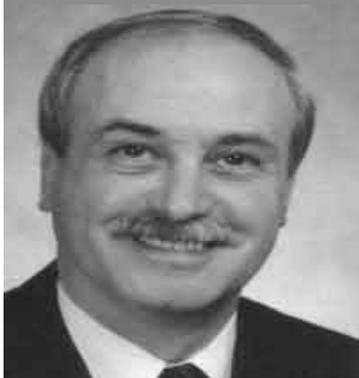
Tel: **01895 811177**  
FAX: **01895 811177**  
Mob: **07816 070 740**

## NEW MEMBERSHIP

The following surveyors have been elected as Associates, Members or Fellows of the Faculty:

Stephen Cornish	Upgrade to Fellow
Gary Sharpe	Upgrade to Member
John Singer	Upgrade to Member
Michael Lane	Upgrade to Member
Peter Taylor	Member
Chris Shepherd	Member
Dean Jones	Member
John Kershaw	Member
Peter Winch	Member
Chris Lewis	Member
Ian Gill	Member
Robert Davies	Member
Neil Rawlings	Member
Donald Fitt	Member
Alan Woodridge	Member
Alan Watson	Member
Miss Jill Thompson	Member
John Buckley	Member
Jeff Wynne	Member
Philip Antino	Member
Mrs Kasia Whitfield	Member
Melvyn Baker	Member
Paul Carter	Member
Paul Sothern	Member
Mark Duckworth	Member
Jason Hughes	Member
Paul Neilson	Member
Charles Delaney	Associate
Jonathan Gray	Associate
Geoffrey Kingdon	Associate
Paul Dinsdale	Associate

# THE ABC OF PARTY WALLS



## L is for Line of Junction

The Act refers to a boundary between two owners as a Line of Junction. It is an imaginary line of no thickness but of infinite length.

A Line of Junction does not need to run in a straight line.

S1 of the Act refers to 'New building on the line of junction'. It should be carefully noted that it only has effect where the line of junction has not been built on. This simply means that if a structure already existing on the line of junction then any further work is not notifiable under the Act.

If, for example, there is an extension to the side of one house and it is built on the line of junction, then to build an extension on the other by the neighbour means that no notice can or needs to be served, albeit that a S6 notice may be required.

This also means that the owner of the single storey side extension cannot serve a notice to build above his own extension unless of course he demolishes the extension including grubbing out the foundations and returning the ground to 'virgin land'. He will then be able to serve a S1 notice and obtain the benefits of the Act.

There has been much discussion on 'Building on the Line of Junction' as to how far away is considered to be still within this line. Let us be clear for the Act speaks for itself, ON the line of junction does not mean CLOSE TO. It is either ON the line or it is NOT on the line. A Structure 5mm away is NOT on the Line of Junction.

**Alex Frame—Chairman**  
**FFPWS MSc MRICS FCIQB FASI MCFI**

## LEGAL OPINION

We are pleased to report that Faculty has sought legal opinion on the following matters: (these responses are available for download on the Faculty website for use by Members).

- County court case of Onigbanjo v Pearson heard on 29 May 2008 in the Mayor's & City of London Court.
- Clarification on position and forms for making claims via a magistrates' court.
- Judgment of Davies & Sleep v Wise & Wise.

We are seeking further opinion on a number of additional party wall matters, so watch this space.....

Should any member wish to seek private legal opinion on any matter relating to the Act, we may be able to put you in direct contact with our legal advisers. Contact the Faculty for more information.

\* Faculty cannot be held responsible for any actions resulting from this information.

\*\*Any such private instruction with our legal advisers would be a direct matter at your own expense.

## AWARDING FEES

The current economic climate has caused me to take a closer than normal interest in the financial health of my practice and to keep a weather eye on the debtors list. Now I can only speak anecdotally from personal experience, but there appears to be an increasing trend amongst even previously prompt paying clients, to stretch their credit terms, intentionally or otherwise, with the result that I (or more accurately my part-time secretary) am having to spend more time issuing statements and payment reminders etc. Whilst I would hope that none of us became party wall surveyors solely for the financial remuneration, it would seem prudent to take all reasonable measures to facilitate recovery of fees due.

The party wall award commonly provides for payment of the adjoining owner's surveyor's fees in connection with the dispute, as illustrated by the template award in the RICS Guidance Note. However, as Alex Frame points out in 'Misunderstandings and Guidance', there is no good reason why provision should not also be made in the award for payment of the building owner's surveyor's costs (fees). There is a clear advantage in doing so – an award can be enforced in court if any breach has occurred, therefore any fee due to a surveyor for making the award is far more enforceable if it is contained in the award. On the 2 occasions where, as adjoining owner's surveyor, it has sadly been necessary to refer a claim for non-payment of fee to the county court, simple reference to the relevant clause in the valid and binding award within the particulars of claim has both clearly stated my case and, I believe, ensured that judgement could only be found in my favour. Moreover, as Alex further points out, the use of the term 'summarily' within S10, together with the statutory nature of the surveyor's appointment under the Act, means that the magistrate's court may be used as an alternative vehicle for recovery of fees to the more common county court route. The magistrate's court is likely to prove a quicker and more effective option – for further details refer to S17 and P96 of 'Misunderstandings and Guidance'. (Editor—refer also to **legal opinion** on page 5).

I wonder how many of us are still following the RICS model out of habit, rather than taking Alex's sage advice. I, for one, am now drafting awards to contain payment provision for both surveyors' fees and have only received positive comments from other surveyors (the appointing owners remain strangely silent on the matter!). This is not scaremongering, or even merely a knee jerk reaction, but sensible financial practice in challenging times.

**Phillip Beck**  
**FFPWS BSc(Hons) MRICS RMaPS**

## WORKING FROM HOME....

I was intrigued to read recently that Boris Johnson said that most people want to work in an office and fulfil the basic psychological and social need for human contact, conflicts, motivation and friendship. He went on to say that home working was euphemism for "Sloth, apathy, staring out the window and random surfing on the internet".

With the growing number of people working from home, including surveyors, it is becoming the choice of many people.

It is estimated that up to 12% of the working force work from home.

We, as a practice, relocated from offices in Central London to twelve regional offices some 20 years ago, with the advent of facsimile machines and more latterly the internet and e-mails. The need for face-to-face interaction dissipated. It made financial sense.

Overheads such as office rentals at 15% of turnover were in many cases more than the profit margins achievable.

As surveyors, it does not allow us to avoid the movement from home to our place of work. But the nature of our work does not mean we are stuck, as many office workers are, with a commute to work each day. Our routine is often varied both by the nature of the work and location.

There is now a national Work at Home day in May. This is encouraging people who do commute to experience just how easy it may be to do some of their work from home and probably on-line.

It has been estimated that commuting to work can take up as much as 45-50 days per year so re-claiming some of this time must have benefits for the individual and society as a whole.

### **The benefits are:**

- Ecologically friendly, less pollution and CO2 omissions.
- Savings on: Time, travel, money, café/food, parking.
- Tax efficient. A proportion can be claimed back for: Council tax, mortgage interest, lighting, heating, insurance, telephones.
- Office overheads
- Rentals reduced.

### **Downside:**

- Unregulated hours often mean longer hours.
- Balancing work and family commitments.
- Identifying residential areas to work areas.
- Planning (change of use).
- Maintaining good relationships with neighbours.

Continued over

# WORKING FROM HOME (continued)

Working from home invariably requires self-motivation, so it may not necessarily be ideal for everybody. Most people who work for themselves are self motivated and many employees find staff are more productive when they control their own environment.

Flexibility in the workplace is, I believe, the way forward especially in highly skilled professional practice where a degree of autonomy is essential.

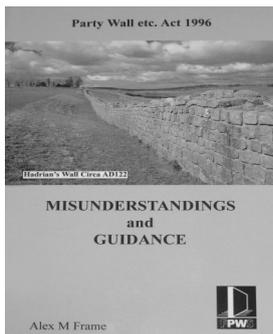
Before you start up an office in your spare bedroom or garage, check with the Local Planning Office and your Insurance Company that you are not contravening their requirements. You must also carry out a risk assessment to ensure potential hazards have been identified to you and others, which includes visitors and that you have taken the necessary precautions to ensure that any risk is minimalised. Failure to do so may leave you subject to a claim if anyone is injured.

**Charles Dawson—President  
FFPWS MRICS FASI FCIQB**

## FACULTY TIE

**Faculty Ties** .... and for a nice present to yourselves, these ties come in Burgundy or Navy Blue and are priced at £15.00.

.....all are inclusive of p&p



A book published by the Faculty and written by Alex Frame, our Chairman, is on sale for £29.50p.

The book entitled 'Misunderstandings and Guidance' covers virtually all the sections of the Act and has helpful conclusions at the end of each section.

The book also contains model licences for scaffold and crane, an escrow account, court procedure forms and model awards as well as the Act itself.

**ACONSULT**  
**Party Wall Surveys**

Mile End, Old Odiham Road, Alton Hampshire GU34 4BW  
Tel 01420 84263 Fax 01420 84263  
e-mail artcross@compuserve.com



Malcolm V. Lelliott (Managing Director)  
PPASI, Hon. FASI, MRICS, FCIQB, FFPWS, FRSA

Chartered Surveyor

Tel: 01483 416411  
malcolm@mvllelliott.demon.co.uk

19 Church St. Godalming, Surrey, GU7 1EL. www.mvl-architects.co.uk Fax 01483 419281

## CPD SEMINARS

**CPD half day seminars** for Local Authorities around the country will continue to be undertaken to assist Building Control and Planning Officers.

Should any members wish to organise a seminar in their region, please contact **Nicky on 01424 883300**.

For further information on arranging CPD events, please contact **Nicky on 01424 883300 or e-mail nicky@fpws.org.uk**

## FACULTY COURSES

Seminars are arranged at various levels of education all around the country and can be half day, one day or two day courses. Two day courses can lead to Full Membership should he/she successfully complete the course and should he/she then successfully pass interview. For further details please contact **Nicky on 01424 883300 or e-mail nicky@fpws.org.uk**

The next two day course has been arranged by the Faculty on **28/29 September 2009** in London at the offices of the **Construction Industry Council**. To book a place please contact **Nicky on 01424 883300 or alternatively e-mail nicky@fpws.org.uk**

Two day courses are in the process of being arranged in Birmingham and Newcastle.

Third Surveyor one-day seminars are also held and can lead to full membership should he/she successfully pass a subsequent interview. Upon successful interview, Third Surveyor delegates may also be offered Fellowship dependent on experience. Please contact **Nicky on 01424 883300 or e-mail nicky@fpws.org.uk** for further details.

The next Third Surveyor course has been arranged by the Faculty on **3 November 2009** in London at the offices of the **Construction Industry Council**. To book a place please contact **Nicky on 01424 883300 or alternatively e-mail nicky@fpws.org.uk**

The Faculty, in conjunction with the Association of Building Engineers (ABE) also run a two day course 'Certificate in Party Wall Studies' and the following dates have been arranged:

### **21/22 October Nottingham**

The ABE are also running Third Surveyor 1-day course on the following dates:

### **14 July 2009 Northampton**

### **15 September 2009 Northampton**

Please contact Sarah Dennison direct at the ABE for booking details: 01604 404121 or alternatively e-mail sarah.dennison@abe.org.uk



## Dawson Associates

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Simon J. Price  
BSc. (HONS) FRICS  
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Phone: 020 7736 7311  
Fax: 020 7731 0418  
Email: post@pricepartnership.co.uk

Also at:  
15 The Street Shalford  
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GU4 8BT  
Tel: 01483 456012  
Mobile: 07767 297026



# QUESTIONS & ANSWERS

Members may be interested to read some of the queries and correspondence received from both members of the public and party wall surveyors alike:

## **Question 1:**

"I have served notice on a company naming them correctly at their correct registered offices address. It was marked for the attention of their named property manager. I have not as stated by S15 of the Act served it on "the company secretary".

Do you believe this would invalidate the notice?"

## **Answer:**

"Our initial reaction is that the manager is not a relevant spokesperson for the company. He has no interest in the corporate entity. He is not on the Articles of Association. He is not listed at Companies House. We think it must be the directors or the secretary.

However, S15(1)(c) does not mention the directors, just the secretary or 'clerk'. That tells us our initial reaction maybe wrong. A clerk of the company has no interest in the company. Therefore, S15 is really about effecting service and the notice being communicated. On the face of it, S15(1) by including the word 'clerk' seems to allow the possibility for service on persons not having an interest in the company. A manager may well then be appropriate. Maybe the CPR can be of assistance:-

CPR Part 6.4(4) - "A document is served personally on a company or other corporation by leaving it with a person holding a senior position in the company or corporation."

CPR Practice Direction 6.2 defines a senior position as:

- "(1) in respect of a registered company or corporation, a director, treasurer, secretary, chief executive, manager or their officer of the company or corporation, and
- (2) In respect of a corporation which is not a registered company, in addition to those persons set out in (1), the mayor, chairman, president, town clerk or similar officer from the corporation."

Interestingly, S15(1) is permissive, not exclusive. It says "may be served on a person". Therefore, are other forms of service, permissible under the CPR, permissible under the Act? There are other methods of service permissible in CPR 6.2—i.e. for companies in accordance with S725 of Companies Act 1985—sending by post or leaving it at an "authorised place" i.e. the company's registered office.

For these reasons, we believe the notice to be duly served. Service of the notice at the registered office, for attention of the manager, is good service under CPR Part 6. We wouldn't like to argue before a judge that such service invalidates the notice, we think he would not be impressed by such an argument."

# QUESTIONS & ANSWERS (continued)

## **Question 2:**

"In a building with separate flats on different floors, is the formation of new structural openings through internal load bearing walls, which are entirely within one flat, covered by the Act, where these walls provide support to other flats above?"

## **Answer:**

"Where a structural alteration is to be made within a flat that will affect the structural stability of the building, then it is necessary to serve a notice on your adjoining owners to inform them of the works that are to be carried out. If your adjoining owners agree to the works then it is advisable to obtain their permission to inspect their premises to obtain a schedule of condition of the walls, floors and ceiling that are in the same vicinity of the works that you will be carrying out so that you have a record of what exists in their property prior to you commencing work. This will give you something to measure against should there be a claim made against you after the works have been carried out. If the adjoining owner dissents to the works an award will have to be prepared to enable you to proceed with the works and this will normally include a schedule of condition to be prepared."

## **Question 3:**

"I am based in Oxford and was wondering what range would be 'reasonable fees' for an adjoining owner's surveyor's costs? I have received a charge of £150 per hour from the adjoining owner's surveyor whereas my own surveyor is charging me £35 per hour. The rate of £150 was not settled until the end when the award was being finalised. Is £150 per hour a reasonable rate for site visits, correspondence, reviewing, telephone calls etc.? I know my own surveyor should have agreed a rate from the beginning...."

## **Answer:**

"It is not the rate that is important as the final figure. An experienced party wall surveyor may take say 8 hours @ £150 per hour, whereas a less experienced party wall surveyor may take 16 hours @ £75 per hour but the final fees would be the same.

In Oxford, £150 is quite high but if we were involved, we would not necessarily object to the rate but perhaps the final fee.

Yes, it should have been discussed beforehand between the surveyors.

£35 is low. Much too low. This is an unrealistic comparison.

If the award has been served and you feel the fees are excessive you can appeal in the country court within 14 days of service of award.

If the award has not yet been served the third surveyor may be able to help you."

## **Question 4:**

"With respect to a S6 notice, I realise a drain run is not a structure as it has no foundations. The drain run in question is an old style man hole, with 225mm walls built off a concrete slab. Does this constitute a structure and so should a 3m notice be served for adjacent foundations? Foundations will, of course, need to be excavated to a depth greater than the invert level of the drain run due to their proximity."

## **Answer:**

"S6(1)(a) requires a building owner to notify if "an excavation is to be made within 3m of a building or structure and where the excavation is to be lower than the foundations of the building or structure".

Our thoughts on this matter is that a drainage run with an inspection chamber is a structure and has foundations and therefore it would be necessary to service notice. The point being that the adjoining structures are considered before the works commence."

**Send your questions to [enq@fpws.org.uk](mailto:enq@fpws.org.uk)**

# ANNUAL DINNER

After the success of last year's dinner it was unanimously agreed that the event should be repeated. Therefore, Faculty has decided to maintain its close links with the Royal Institute of British Architects and has chosen to hold the function again in the Lutyens Room of the Royal Institute of British, Architects 66 Portland Place, London W1B 1AD. We encourage and sincerely hope you can attend.

## THE FACULTY OF PARTY WALL SURVEYORS

Cordially invites you, your partner and your guests to its

### ANNUAL DINNER

to be held at

**Royal Institute of British Architects  
Lutyens Room  
66 Portland Place  
London W1B 1AD**

on

**Friday 10<sup>th</sup> July 2009 at 6.30 pm for 7.00 pm**

**with Guest Speaker, Gerry Hanson, Broadcaster & Writer  
&  
Guests of the Faculty to include The Earl of Lytton**

Dress Formal



### BOOKING FORM – ANNUAL DINNER

\*Please complete in block capitals and send all applications made payable to The Faculty of Party Wall Surveyors to  
PO Box 86, Rye TN31 9BN\*

Please reserve                      place(s)                      Amount enclosed £                      £49.50 per person

Surname    First Name

Surname    First Name

Organisation

Address

Postcode

Phone

FAX

Mobile