

The Newsletter
of the
Faculty of
Party Wall Surveyors
31 January 2009

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There is no doubt about it, these are difficult times. Without wishing to 'talk up' the recession, the Faculty recognises the pressures of our reduced workloads and fee incomes and we are keen to offer advice and assistance wherever we can. Perhaps this might be to help members increase their profile to help with payment subscriptions or to assist those who need wider experience in party wall matters. Maybe now is the time to upgrade from Associate to Member or Member to Fellow. It may just help. Certainly it seems, the number of enquiries we receive from the public grows by the day, and we are able to refer many queries and sources of possible work to our members in their particular region. We also know the public are increasingly using our website to source party wall surveyors, so be sure to let us know the areas in which you work and we will update your details on our website.

In the meantime, we have added some new features to the newsletter. There is a new Questions & Answers section! the President needs a new dumpy level and staff, so we have started a Classified Section, and we have also set up a debating forum on the Faculty website (www.fpws.org.uk). Your contributions and views on the forum would be very welcome.

We have also taken the opportunity during this period to review our regions and associated activities, not least including the appointment of Faculty representatives for all eleven regions. We will be reporting further on this in due course.

Finally we are seeking clarification from Legal Counsel as to a host of uncertainties relating to the Act, and will be advising you of their opinion in the near future.

FACULTY CONTACT DETAILS

Please note that some Members have been sending correspondence to our Head Office address at Godalming. **All mail should be directed to:**

**Faculty of Party Wall Surveyors, PO Box 86, Rye,
East Sussex TN31 6EX**

RECENT FACULTY DEVELOPMENTS

WHO'S WHO IN THE FACULTY

The Faculty of Party Wall Surveyors
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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

Amongst many other items on the agenda, members may be interested in a number of matters discussed at previous Directors' meetings as follows:

- 1) The 'Find a Surveyor' facility on the website has been reviewed. Primary and Secondary areas of practice are to be introduced.
- 2) 11 individual regions in England and Wales have been established. Regional Directors are to be allocated to each region.
- 3) Phillip Beck has joined the Board as Regional Director for Wales.
- 4) Seminars and CPD events are to be organised for each region and Directors' meetings shall be rotated to ensure a presence in each region.
- 5) The routes of entry into the Faculty at all levels have been reviewed to ensure all new Members and Fellows are subject to interview, irrespective of attendance at a 1 or 2 day training course.
- 6) Alex Frame's two new Faculty books are to be published, possibly with a book launch.

Next Directors' meeting is on **26th February 2009 at the offices of RIBA, 77 Portland Place, London W1B 1QX.** Members are welcome to come and meet the Directors between 4 and 5 p.m. after the meeting has closed.

THOUGHTS ON REGIONS?....

Consideration given to Discussion at a recent director's meeting turned briefly to the common theme of 'the regions'. It clearly makes sense for any national organisation, such as the Faculty, to manage itself on a day-to-day basis at a scale which is relevant to its members. Regional forums would be one way of undertaking this. This led me to ponder on what a regional forum would mean to me. As a party wall surveyor living (and occasionally practising) in rural mid-Wales, I guess my geographical region would be Wales. A regional forum for Wales would pose various logistical issues, not least of which being scale – how practical would it be to organise semi-regular meetings for a relatively small number of surveyors spread across an entire country? Are there sufficient representatives to warrant a split between North and South Wales, and would the twain ever meet? At the risk of descending into a smaller scale version of the West Lothian question, I would welcome the views of fellow Welsh (or Wales-based) members of the Faculty. Another issue is that of language. I cannot claim to be a native Welshman and embarrassingly speak rather less Welsh than any of my young children who were born here. Yet, I am always conscious of the bilingual nature of the beautiful country in which I am fortunate to live – the road signs, correspondence from utilities, statutory authorities and other public bodies and legal documents are all written in Welsh and English. The latter leads me to ponder another question – do Faculty members have any experience in drafting awards in Welsh, or have they ever received enquiries for such? There would seem to be a potential marketing opportunity for the Faculty and for those members, particularly in the north and west of Wales, who are able to offer such service. Answers on a postcard

Phillip Beck— Director
FFPWS BSc MRICS

MATTERS OUTSIDE THE ACT

I continue from the last newsletter the notes on the features and some more details of the Civil Procedure Rules (CPR) system:

Part 35

This section deals with expert evidence and the court restricts evidence to only that which is required to assist the proceedings of the case.

The court's permission is required to use an expert, and although would not normally be refused, single joint expert is most likely to be agreed upon in order to save time and costs. The parties will need to detail their request in the allocation questionnaire for their intention to call an expert and to give their identity and discipline.

Where the parties cannot agree upon a single expert the court will select from an approved list, usually prepared by various professional bodies. The parties will share the fees for the expert, but the courts may set a limit to the fees and expenses incurred.

Sometimes, because of the tight timetables and the fast track system, the use of experts has caused some concern for both parties and lawyers. Large litigation matters will quite often have a shadow expert for the single joint expert and his costs may also be recoverable.

The use of a single joint expert in construction issues is usually not appropriate as each party often instructs its own expert before litigation starts.

Expert evidence is usually given in a written report, but oral evidence may be ordered by the court. It is most unlikely that under the fast track system that an expert will be requested to attend a hearing unless it is in the interests of justice.

The overall riding duty of an expert is to the court in assisting it with their expertise to determine a matter. A statement to this effect is always made in the expert's report.

As previously mentioned one of the main purposes of the new CPR system is to encourage a settlement between the parties. To this end the court may direct the experts to meet and to draw up a list of matters of agreement. This would usually be contained in a statement of agreed items and a summary of reasons for their disagreement.

The court will allow written questions to be put by the parties on their opposing expert's report, but only for the purpose of clarification. The answers will be treated as part of that expert's report. Refusing to answer questions may cause the court to refuse the party to allow the evidence of their expert and/or disallow fees claimed.

An expert's evidence report which is found to be wholly inappropriate, lacking unsubstantiated advice or strongly biased in any way is likely to be reprimanded by the court as it clearly would be in breach of his duty, which although initially would be to his client prior to litigation, is now to the court.

Part 36

This is the section commonly used, as it deals with settlement of the dispute by either monetary or non-monetary means.

Should an offer be made by way of a payment into court, this is simply known as a part 36 payment. There are different rules to apply if offers are made before or during the proceedings. If an offer is made before proceedings then it has to remain open for a period of 21 days. The offer must include the claimant's costs up to the end of that period.

An offer or payment, which is made after proceedings have begun, cannot be accepted unless the court agrees. Where an offer is made during the proceedings it too must remain open for 21 days and can be withdrawn at any time without court sanction.

MATTERS OUTSIDE THE ACT (continued)

Acceptance of part 36 offers or part 36 payments must have the permission of the court if it is made within the 21 days of trial commencement, or if the claimant in writing within the 21 day period does not accept it.

In the situation where a defendant's part 36 offer or payment is accepted without the need of the court's permission, the costs made by the claimant are entitled up to the date of the service of acceptance. The same is also true when a claimant's offer or payment is accepted and the costs would relate back to the service of acceptance.

An offer or payment, which is not beaten by the claimant, will be liable for the defendant's costs. An offer or payment, which is not beaten by the defendant, may be penalised for failure to accept it. Interest can be added up to 10% above the base rate.

Part 44

Another good purpose of the CPR is to ensure that any costs do not run out of control and that they are kept in proportion to the case. The common general rule is that costs will follow the event, that is to say, the losers pay the winners, but again the court has discretion to depart from this rule according to circumstances.

In considering costs the court will assess the conduct of the parties before and during proceedings. The manner in which pursuance or defence has been made. Whether the case has been unduly exaggerated and whether CPR part 36 has played any role in the settlement.

The court can make many orders relating to costs including dates for calculations, before proceedings, particular matters and interest due for example. It is to be understood that even if success is gained all costs will not necessarily be awarded, such factors as time wasting in pursuing minor matters of the case, or matters that could have been settled earlier in the case.

CPR and the Alternatives

The CPT procedures have been established for legal routes through the courts, but there are of course still other means to settle disputes – Alternative Dispute Resolution (ADR) which is looked upon encouragingly by CPR.

The main alternatives to litigation procedures are:

- 1) Arbitration—governed by the Arbitration Act 1996
- 2) Expert Determination
- 3) Mediation
- 4) Judicial Appraisal
- 5) Tribunal by Experts

All of the above seem more 'user friendly' to many and encourage more of an open 'debate' on the dispute. The scenario of winning and losing under CPR litigation is removed to possible acceptable solutions for the parties concerned. The courts sponsor some of the ADR schemes, for example there is the Mediation Scheme in the Court of Appeal.

Arbitration is governed by the Arbitration Act 1996 (AA), but it should be noted that the CPR and the AA have different purposes. The purpose of arbitration is to provide an alternative to the courts whereby different rules apply. Arbitrators are encouraged not to follow the methods of the courts.

Nevertheless the CPR has principles that align with the Arbitration Act, but of course the noticeable difference being that the parties in the arbitration can agree a format that can be imposed upon the arbitrator to follow, unlike the court judge who may ignore such agreed procedures totally. Behind this lie the rules that the courts view their management for litigants, and arbitrators have responsibilities to the parties.

MATTERS OUTSIDE THE ACT (continued)

Clearly in all fair determinations the CPR and the AA both have the same interest at heart in as much that fairness of justice and costs are equally weighed.

The relatively new system of CPR introduced in 1999 has brought about a welcome reform in matters of civil litigation and something that all good practicing surveyors should have some knowledge of.

The Faculty does have the facility to offer legal advice from Counsel who is expert in party wall matters and the Act, and would encourage members to use this service rather than struggle with a problem, possibly ending up in trouble for all concerned. Contact should be initially made through our central offices.

Alex M Frame—Chairman
FFPWS MSc MRICS FCIQB FASI MCFI

James K Jackson

MRICS FFPWS Hon. FGIS

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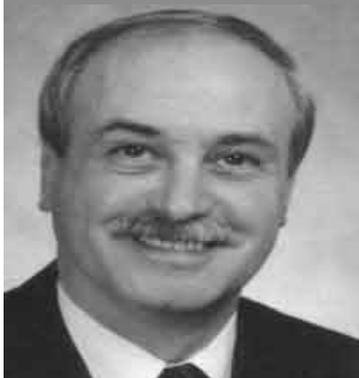
WWW.party-wall.co.uk
 e-mail: info@party-wall.co.uk

NEW MEMBERSHIP

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

Andrew McAllister	Upgrade to Fellow
Neil Cunningham	Upgrade to Fellow
Phillip Beck	Upgrade to Fellow
Stuart Slater	Upgrade to Fellow
Jonathan Miles	Fellow
Paul Sheldon	Fellow
John Hughes	Fellow
James McAllister	Fellow
Don Nicholson	Member
Christian Welsh	Member
Christopher Cook	Member
Christian Welsh	Member
Jerry Quinnell	Member
Robert Turner	Member
Kelly Gorrie	Member
Steven Wilkinson	Member
Douglas Johnson	Member
James Hands	Member
Christopher Scott	Member
Tony Copeland	Associate
Bryron Robson	Associate
Kani Premathilaka	Associate
John Singer	Associate
Richard O'Callaghan	Associate
Simon Collins	Associate
Michael Lane	Associate
Richard Shapley	Associate
Christina O'Hare	Associate
Sergey Skorobogatov	Associate
Jose Lopez	Associate

THE ABC OF PARTY WALLS



J is for Jambs

This is mentioned under Section 4 (1)(a) of the Act.

A jamb in this context is a vertical face inside an opening, usually to the full thickness of the wall.

In this particular section it should be more defined as a jamb post or jamb stone which is formed for a door opening, and must be built into the wall for the convenience of the adjoining owner if requested under a counter notice.

Notwithstanding that counter notices do not have to be adhered to by the building owner if any of the following applies:

- A) Be injurious to him;
- B) Cause unnecessary inconvenience to him; or
- C) Cause unnecessary delay in the execution of the works pursuant to the party structure notice.

Jamb comes from the French word 'jambe' meaning leg.

J is for (j)

This is one of the letters itemising certain paragraphs of notifiable works covered by Section 2 (2).

It is probably the simplest of notifiable works but one that often causes confusion for surveyors and concern for adjoining owners and says:

- J) To cut into the wall of an adjoining owner's building in order to insert a flashing or weather-proofing of a wall erected against that wall;

When a building owner wishes to erect a wall against his neighbour's boundary wall and wants to seal the gap between the two he may do so by forming a flashing CUT into the wall of his neighbour's wall. He must notify the adjoining owner by a notice under the Act that he, as the building owner, intends to do so.

The problem for surveyors has been what size can the gap be. The Act does not give us the information, but maybe the clue is in the reason for the flashing – it is for weathering purposes. A large gap of say 100mm or more (please do not take this as a recommended dimension) may not need to be weathered as sufficient air would pass through to dry any moisture that did so enter, which is likely to be small in any event.

Nevertheless if it is considered necessary to weather the junction then a right is conferred upon the building owner to do so.

The problem for the adjoining owner is that you are cutting into his property and very often he is reluctant to let you do so. Hence the Notice followed by an Award if necessary. Rather sad really to go to such expense for a relatively small matter.

Some small gaps can of course be filled with mastic pointing, and the use of a stuck on proprietary flashing would not be covered by the Act as this would not be CUT into the wall. (Generally not a good form of flashing anyway). The adjoining owner should of course be made aware that the purpose is for his benefit as well, and without charge to him.

Alex Frame—Chairman
FFPWS MSC MRICS FCIQB FASI MCFI

ECHOES OF THE PAST



Some time ago the Directors of the Faculty of Party Wall Surveyors took the decision to hold their meetings at various locations within regions of the country where, prior to the introduction of the 1996 Act, previous Party Wall Act did not apply. The background to this decision was to introduce the Directors to members of the Faculty on a face to face basis without the need for travel to London.

With this in mind, the West Midlands became the chosen location for the Directors meeting held on 15th October 2008. The venue for the meeting was the Whittington Inn located in the hamlet of Whittington near the village of Kinver, the most southerly place in Staffordshire.

There can't be many pubs in the land which have a more fascinating history than this stunning 14th Century manor house. The Whittington Inn

must be one of the most impressive hostelries in the land.

Set among the tranquil rolling hillsides of South Staffordshire, the yellow tinged timber framed house looks like something out of a history picture book. It was built in 1310 by Sir William de Whittington a knight of arms and owner of the land around Kinver. His grandson was the famous Dick Whittington who went off to London to become the Lord Mayor for three times.

The manor house has since survived a chequered history risking demolition as a punishment for hiding King Charles II after his defeat at the second battle of Worcester in 1651, where he used a priest's hiding hole within the house. In 1711 Queen Anne spent a night at the manor house and the solid oak front door holds one of only two her Royal seals in the country. In 1788 Lord Stamford changed the manor house into an Inn. He brought the license and the old sign-board from the original Whittington Inn a few hundred yards away. He also removed the stained glass window carrying the arms of the Whittington family with the de Staffords and the Lowes. But a copy hangs up in the room from which they were taken.

The Faculty of Party Wall Surveyors was offered, appropriately, the Directors room within the original 14th Century manor house part of the hostelry. During the course of the day Chef Steven Pope ensured that the Directors enjoyed the hospitality of his house including the provision of an excellent lunch.

So why choose such a remote location you may ask. The reason is in the name Whittington. The first Act relating specifically to the regulating of Party Wall matters was passed in February 1667 following an examination of the consequences of the Great Fire of London under the direction of Richard Whittington, a direct descendant of the family whose original home was in the remote South Staffordshire countryside near to Kinver.

The Faculty of Party Wall Surveyors had, therefore, chosen the ancestral home of the inaugurating family as their Midlands venue.

**James Jackson—Director
FFPWS MRICS Hon FGIS**

PRESIDENT'S PEN



This is a personal view.

Who would have thought this time 2 years ago when we were basking in the Brown era that "Boom & Bust has been eliminated from the UK economy forever", that we would be facing economic melt down the like few have seen before.

The worship of money is good, more money is even better of the 1990's coupled with the spending like a sailor on leave of the late 1990 through the 2000's and the blame culture of, "not my fault guv" has been a worrying period to say the least but it's worldwide events that are now emerging that leave me cold.

Whatever happened to due diligence?

There are families, through no fault of their own facing economic melt down due to the excessive greed of the money markets and compounded by successive governments and politicians' incompetence irrespective of political persuasion.

I am not a politician but like us all I am an observer. My observations lead me to conclude that politicians (with few exceptions) are without any comprehension of how normal people live. They are either professional politicians who have never held a proper job or from the public sector work force who have a secure job and custom made pension paid for from future taxation. How on earth can they understand, let alone resolve, these problems?

The current incumbents have taken away my personal pension 10 years ago by a windfall tax and managed to erode the current one to almost nil, leaving me no option but to continue working into my dotage.

This brings me to the point of my rant.

If I as a surveyor acted in such a manner, I would be called to answer for my actions. If found wanting, would be reprimanded and probably dismissed from membership of the professional institutions I hold dear. My clients would be duly reimbursed for my incompetence under my PII, which is right and proper. Why are these pseudo financial experts and law makers allowed to get away with it?

That is why we as practising surveyors are diligent with our approaches and advices to clients and that is why the FPWS can hold its head high in the core value and practice standards it preaches and holds its members to. The general public can have faith in a Faculty member and I call upon you all, at this time of uncertainty, to ensure that whatever your personal circumstances we hold the principles of professionalism to the forefront of whatever we undertake.

From my experience of meeting with members round the country I know this is true in the case of our Faculty members.

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

FROM THE PRESIDENT.....

A gentle reminder in what are difficult times....

Amongst concerns that I have had in recent years, many have arisen from my observations of some of the legal profession in their approach to obtaining new clients.

I believe the term is well described as 'Ambulance Chasing'.

We, in the Faculty, have set our stall as being the quintessential professionals in our particular field. The general public can only judge us on our behaviour and from past experience. They have little or no knowledge of the Party Wall etc. Act 1996 until after their involvement.

Whilst the practice of reviewing planning consents and offering our services is not unprofessional as such, it must be done with utmost clarity and openness on behalf of the surveyor concerned.

We have frowned upon, criticised and pursued to court, pseudo professionals outside our organisation for malpractice when undertaking such pursuits.

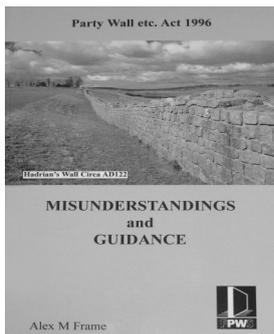
I respectfully remind all members, and I am aware as you all are of the limited opportunity for business and instructions at present, to take great care in maintaining the standards the Faculty expects and demands that we all adhere to.

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

MEMBERS' SUCCESS!

Congratulations to two Bristol based members, **Andrew McAllister** and **David Haynes** who at a recent P&T meeting in Bristol came joint top with 84%, compared to an average benchmark of 60%.

Well done to Andrew and David (and to our two-day seminars!)



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.

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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 **10/11 February 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**

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. More courses are in the process of being arranged. Please contact **Nicky on 01424 883300 or e-mail nicky@fpws.org.uk** for further details.

Further courses will be arranged throughout the year including the following venues:

**Plymouth
London
Blackpool**

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:

22/23 April 2009 HQ Northampton

9/10 June 2009 Middlesbrough

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



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QUESTIONS & ANSWERS

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

Question 1:

"I have a situation on a development where there is a metro line in a cutting along one boundary. There is a retaining wall to the cutting, which appears to be battered brick structure, i.e. leaning against the ground it is supporting (our site) and about 5 or 6m high.

Our client's development includes excavations and structures within 3 & 6m of the retaining wall but I do not anticipate, from the information I have been given, excavations or piling extending to below the bottom of the retaining wall. However, where is the foundation for such a wall as by its nature it must take support from the ground against which it is leaning.

My advice to date is to assume that this is the case and to allow to serve a Notice under Section 6 for all excavations within 6m of the top of the wall.

I assume there is other legislation regarding raising the ground, or otherwise increasing the loading, in the vicinity of the retaining wall.

Has anyone else had a similar situation or have any observations?"

Answer:

"The foundations are regarded as being at the bottom of the structure regardless as to whether it is retaining. For example in a basement. The wall is retaining yet it has a foundation at the base of the wall. The same applies to a retaining wall. Although it may be battered it will also have a foundation. Therefore the excavation does not have an effect upon the foundation of the wall until it is below the level of the retaining wall's foundation under the Party Wall Act.

There could well be a surcharge on the retaining wall as a result of a structure being built within the load area of the retaining wall, but if these foundations of the new structure do not go below the level of the retaining walls foundation then there is no Party wall matter.

You maybe advised to consult the Adjoining Owner in regard to any surcharging of the retaining wall in order to be satisfied that there is no problem in regard to the future effectiveness of the retaining wall. An Engineer should be consulted."

Question 2:

"We have a wooden fence between our property and the property of the neighbour intending to erect an extension. Can I assume that this would be exempt under the Party Wall Act?"

Answer:

"If your house is within 3m of the excavation and the excavation is to be dug below your foundations then a notice is required. There is also another requirement – if your house walls are within 6 metres of the excavations and the bottom of your foundation strike the excavation when a line is extended at 45° in a downwards direction from the edge of the bottom of your foundation, then again a party wall notice should be served."

QUESTIONS & ANSWERS (continued)

Question 3:

"The Social housing organisation I currently work for has recently under gone a restructure as part of the restructure the appointed / agreed Party Wall Surveyor has left the organisation due to pressures within the company, however She has not deemed her self incapable, dead or unwilling to carry out her duties in regard to the notices outstanding, however the Organisation is of the opinion that they can now instruct me to carry on with this work.

At this time I have refused to take over any of the notices already in place and have instructed them that they cannot remove the appointed/ agreed surveyor from the role nor can she be sacked.

Please can you clarify."

Answer:

"You are right in not assuming responsibility. As you have already indicated the appointed party wall surveyor has to continue until the work is finished or as you say deemed incapable of acting.

If she writes to the Building owner stating that she is unable to act then there would be the opportunity to step in and if everyone agrees on both sides you may continue with the party wall matters. However you would have to be appointed in writing by the Owner/Owners.

If the existing party wall surveyor does not respond to letters etc or continue with her duty, then she could face a claim against her from the Owner. Again if she does not respond then the situation will arise where she has "failed to act" and someone else could be appointed."

Send your questions to enq@fpws.org.uk

CLASSIFIED SECTION

Charles Dawson would like to buy:

Dumpy level and Staff.

Please contact Charles direct on 01424 882263 or e-mail enq@dawsonsurveyors.com

If anybody wishes to advertise in this section either to buy or sell, please contact Nicky on 01424 883300 or e-mail nicky@fpws.org.uk

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

