The Roman Surveyor

Those who remember the line from the Monty Python film ‘Life of Brian’ – ‘what have the Romans ever done for us’ is answered with Roads, Sanitation, Aqueducts, to name but a few of course.

If we look at the Roman Empire which lasted some 2000 years they had a business model that we could all follow, but what in reality were the Romans like – well they were shorter in stature than the Germans, not as physically strong as the Spanish, not as rich as the Africans and they were technically inferior to the Greeks.

So how did they reign for so long to beat their taller, stronger, richer and better equipped opposition enemies? The answer is that they were better organised.

The picture is clear for the party wall surveyor in that if you are organised you will rise above all others. Many party wall surveyors do not have the knowledge of their peers but by being properly organised in applying the Act they will overcome those ‘stronger’ surveyors. Those surveyors that are well known can be equalled by an organised surveyor by simply using the Act as it is written and following the laid down procedures as the Act defines.

How many times have I heard established surveyors say to me that they have been doing this for 20, 30, 40 years yet to my mind have still not learnt some of the basics of the Act? They, like many of those who opposed the Romans are virtually un-teachable. I have met many surveyors who are fighting their corner as a one man army entrenched in warfare- digging in their heels and disliked intensely by many. Those surveyors have a war chest brimming with extortionate fees collected from innocent victims simply because their opposite surveyor was too weak to stand up to them and was not organised enough.

An organised surveyor will have the right tools for the job in order to present an efficient outcome. He will not waste time in procrastination or obfuscating, but will be organised to deal with the matter. He will simply follow the Act, adding nothing and taking nothing away.

The British learnt a lot from the organised Romans as without a doubt they are the best drilled army in the world, simply because they are organised, and not necessarily because they have the latest equipment as some armies of the world do. Remember how in 1879 the battle of Rorke’s Drift was won with just a few soldiers, about 150 men defending a mission station against 2000-4000 Zulu warriors, they overcame them because they organised themselves. Eleven Victoria Crosses along with other medals were earned at that battle.

So let this be a lesson to us all to be organised in all that we do and remember what the Romans did for us!

Alex Frame FFPWS MSc MRICS FCIOB MCIMI

Editorial

Members will be familiar with the phrase “quasi-judicial” and might well have been surprised at Culture Secretary Jeremy Hunt’s admission at the Leveson inquiry of not knowing what the phrase meant before accepting the statutory role of adjudicating on the takeover of BSkyB by News Corporation.

Mike Granatt, former head of the Government Information Service, told BBC Radio 4’s Today programme that the term “quasi-judicial” means that the minister has to act like a judge and exercise discretion when required by statute to make a decision under the law; any discussion must be part of the process and in accordance with the principles of natural justice. “Normally the advice was to stay away from having private discussions with people in order that everything is seen to be fair” he said.

The suggestion, in correspondence seen at the Leveson inquiry, that Mr Hunt could not meet James Murdoch in person, but could speak on the phone, "stands in the league of bizarre", said Mr Granatt. The minister was accused of a failure of impartiality and his competence was called into question. Although he managed to resist calls for his resignation, his reputation has certainly taken a bruising.

In order to maintain public confidence in the processes of the Party Wall etc. Act 1996 (and not least for the good of our own professional reputations) it is important for surveyors, particularly when acting as an agreed surveyor or a third surveyor, to act and be seen to be acting in accordance with the principles of natural justice, of which there are two basic rules:

a) the rule against bias; and
b) the right to a fair hearing.

We should always try to be conscious of how our actions or inactions might be perceived (ministers take note) and it’s worth bearing in mind that our correspondence with one party might later be disclosed to the other.

Andrew McAllister FFPWS MSc MRICS MCIOB MCIArb
The House of Lords Luncheon
6th July 2012

The Faculty of Party Wall Surveyors broke with tradition this summer and did not hold its Annual Dinner at the Headquarters of the Royal Institute of British Architects as it had done for many years. Instead it was decided to hold a Luncheon in the Cholmondeley Room within the prestigious setting of the House of Lords.

The function held on Friday 6th July 2012 was hosted by The Lord Howie of Troon and Members of the Faculty of Party Wall Surveyors, their husbands and wives, partners and guests filled the room to capacity. After the strict formalities were observed to ensure that only bona fide persons entitled to enter the premises had been observed everyone soon relaxed in the adjacent bar enjoying pre-luncheon drinks before being ushered into the terrace of the Cholmondeley Room overlooking a grey and gloomy looking river Thames.

After an excellent meal, and as with previous functions, James Jackson was prevailed upon to announce the Loyal Toast which was then followed with the business associated with the Luncheon.

The business of the day surrounded the retirement of Mr. Charles Dawson, the outgoing President of the Faculty of Party Wall Surveyors. Charles Dawson has served the Faculty as President for eight years and has presided over its growth from a small and little know specialist organisation to the relevant and august body now of some considerable significance within the construction industry.

Firstly, Mr. Dawson presented the President’s Plate for services to the Faculty in particular and the Party Wall world in general to James Jackson. The plate was the President’s own proposal and was within his personal gift. It was only when the President made a particular description of Mr. Jackson’s voluminous girth that Mr. Jackson became aware of the honour being bestowed upon him, and, as he stated at the time, it was one of the rare moments in his life when he had been rendered speechless!

Remaining on his feet, Mr. Dawson moved on to the next presentation; namely that of the Dawson Award for excellence within Party Wall matters presented by newest Vice President of the Faculty, Mr. Phillip Beck. There was no doubt in anyone’s mind that this presentation to Mr. Alex Frame was entirely appropriate and particularly well deserved. Alex has worked tirelessly for many years as the Chairman of the Board of Directors of the Faculty of Party Wall Surveyors and has supported, encouraged and advised many aspiring Party Wall Surveyors over the years.

Phillip Beck then introduced the first of the afternoon’s speakers, Mr. Peter Sands. Peter is a long established journalist and has become well known to members of the Faculty of Party Wall Surveyors as a result of his recent presentation on the enjoyment of the use of the English Language as his after dinner speech at the Headquarters of the Royal Institute of British Architects.

However, his address to the assembled gathering was of a different nature entitled “Ten Reasons Why I Should Dislike Charles Dawson”. It may have been inspired by those within the Faculty of Party Wall Surveyors who have rumoured that the only way to get rid of Charles Dawson as President would be to shoot him !! Needless to say Peter spoke about our retiring President in a light hearted and often hilarious attempt at mock jealousy which was particularly witty and entertaining.

Mr. Dawson responded most politely to Mr. Sands before introducing the incoming President Mr. Malcolm Lelliott. Malcolm is an experienced Party Wall Surveyor who heads an architectural practice and is well versed in the management of professional organisations insofar as he is a Past President of the Architecture and Surveyors Institute. Mr. Lelliott thanked Mr. Dawson for his devotion and service over the eight years that he has held the President’s Office and assured all present that he, as incoming President, would take the baton from him and continue to ensure that the Faculty of Party Wall Surveyors would remain a revered centre of excellence whilst he retained the office himself.

Mr. Dawson then carried out his final duty as President of the Faculty of Party Wall Surveyors by introducing Major General John Moore-Bick CBE DL General Secretary of the Forces Pension Society and Second Warden of the Worshipful Company of Skinners who announced to the assembled gathering that he was the nearest thing to a Trade Union Secretary that the Armed Forces possessed.

Major General Moore-Bick has enjoyed an illustrious career within the Royal Engineers and has spent a considerable amount of time being deployed within the world’s trouble spots espousing the cause, service, skill and commitment of the sappers who have served with and under him. His concern for their well being both during and after their term of service was self evident and we were most honoured to have a guest speaker so totally and selflessly committed to the members of our Armed Forces.

Finally, to sign off eight remarkable years of Presidency with his usual epithet that I have been privileged to hear from Charles Dawson on so many occasions: GOD BLESS

James Jackson FFPWS
Outgoing President Charles Dawson

House Of Lords Luncheon
6th July 2012

New President Malcolm Lelliott

Charles Dawson presenting James Jackson with the Faculty’s President’s Plate

Vice President Phillip Beck (left) presenting the Dawson’s Award for Excellence to Alex Frame

Guest speaker Peter Sands, Journalist

Guest speaker Major General John Moore-Bick CBE DL
General Secretary of the Forces Pension Society and Past Master of the Skinners’ Company
Service of Notices and Awards

Stuart Frame of Staple Inn Chambers looks at the recent case of Freetown Ltd v Assethold Ltd [2012] EWHC 1351 (QB) and the effect that the judgment may have on party wall law.

Judgment in the recent case of Freetown Ltd v Assethold Ltd was handed down on 21 May 2012, the case dealing with the interpretation of section 15(1) of the Party Wall etc. Act 1996 ("the Act"), and in particular section 15(1)(b).

A third surveyor’s award was made dated 22 July 2011. It was sent to the parties by post either on the 22 July 2011, or the next day, 23 July 2011, there being some uncertainty as to the exact date of posting. It was received by Freetown, the building owner, on 25 July 2011. Freetown sought to appeal that award in the Mayor’s and City of London County Court, pursuant to section 10(17) of the Act, and the appeal was lodged on 08 August 2011.

Assethold, the adjoining owner, applied to have the appeal struck as an abuse of process on the basis that the appeal had been lodged out of time, arguing that the 14 day appeal period ran from the date of posting, either on 22 or 23 July 2012. Freetown, conversely argued that the appeal had been brought in time, as the 14 day appeal period started to run from the day the award was received, on 25 July 2011. The county court judge found in favour of Assethold, determining that the 14 day appeal period ran from the date on which the award was posted. Consequently, the appeal against the award was struck out, as it was deemed to have been filed out of time.

The decision was in direct contrast to the 2010 case of Satish Harpalani v Gray’s Road Investment Ltd (unreported) in which the Central London County Court had decided that the 14 day appeal period ran from the date that the award was received.

Freetown appealed the decision to the High Court, maintaining that their appeal of the third surveyor’s award had been lodged in time. The Honourable Mrs. Justice Slade DBE heard the appeal, the central issue being the interpretation of section 15(1)(b).

Section 15(1) of the Act states: “(1) A notice or other document required or authorised to be served under this Act may be served on a person—
(a) by delivering it to him in person;
(b) by sending it by post to him at his usual or last-known residence or place of business in the United Kingdom; or
(c) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate or at that office.”

The court was referred to the judgment of the Court of Appeal in the case of CA Webber (Transport) Ltd v Railtrack Plc [2004] 1 WLR 320. This case related to the service of notices and counter notices under the Landlord and Tenant Act 1954, as governed by section 23 of the Landlord and Tenant Act 1927. The court in Webber v Railtrack ruled that when such a document was sent by post, the date of service on a person is the date that it is consigned to the post, and not when received. Essentially this is because the relevant statutory provisions "clearly envisage service occurring at the moment that it is described as effected, i.e. the moment of personal service in the one case, and the moment the notice is left at the premises...Accordingly logic strongly suggests that if the act of posting of the notice by recorded delivery effects service, then the moment at which the notice is put in the post is the moment at which service is effective”.

In interpreting section 15(1)(b) of the Act, the honourable Mrs. Justice Slade stated felt that she was bound by the decision in Webber v Railtrack, holding that the wording of section 23 of the Landlord and Tenant Act 1927 was comparable to section 15 of the Act, that there was ‘no material difference’ between the two, and therefore that the decision in Webber v Railtrack should be followed. Accordingly, she gave judgment in favour of Assethold, upholding the original judge’s decision in deciding that service of a document under the Act was effected when it was consigned to the post. This meant that the appeal of the third surveyor’s award was out of time.

It is understood that a further appeal to the Court of Appeal has now been lodged on behalf of Freetown, so the law may not be settled on the matter just yet. Accordingly, it is not proposed to consider here the various arguments that were put to the court on both sides in this case, particularly on the applicability of the Webber v Railtrack case.

How will the decision affect party wall surveyors in practice? The date of posting of a ‘notice or other document required to be served under this Act’ will obviously be much more significant if post is the chosen method of service. For example, (1) A deemed dispute under the Act will arise 14 days from the date of posting of a notice pursuant to section 3 or section 6(7) of the Act. The adjoining owner will have less time to consider the proposals in the notice.

(2) An adjoining owner will essentially now have 14 days from the date that a notice is posted to him to post a consent notice pursuant to section 1(4) or section 5 of the Act.

(3) The ten day time period for requests served pursuant to section 10(4) or 10(7) or 10(8) of the Act will run from the day on which the award was posted. Consequently, the appeal against the award was struck out, as it was deemed to have been filed out of time.

(4) The parties will have less time than 14 days to lodge appeals against awards.

Continued on page 8

Paper Trail

I have always taught at seminars and maintained that in all business matters that a good file of paper trail is extremely important. This might seem blatantly obvious but very often this has shown not to be the case.

I have said this before to many that I have learnt from bitter experience relating to a small works building contract but nothing to do with party wall matters.

The administration and implementation of the Party Wall etc. Act 1996 it is just as important if not more so to ensure that all the paperwork is in place.

I have seen many party wall files where surveyors have not been correctly appointed in writing, or even appointed at all. I have seen many incorrect Notices and least of all incorrect names and addresses of the Owners given in the Award.

Unless all of the initial paperwork is in place then all that follows could be deemed to be invalid including any Awards that might have been served. This clearly could have a catastrophic affect upon the proposed works and not least a possible legal claim against the surveyor.

The important point perhaps is not so much as having a piece of paper but is it worth anything, or as Jim Jackson very often reiterates in seminars that ‘a verbal agreement is not worth the paper it is printed on’.

What precisely are these pieces of paper that need to be correctly in place having checked the names of all of the Owners, regardless of what you are told.

1. The Notices – correct names, signed and dated and completed to define the works and time.
2. The Surveyors letters of Appointment – signed by the Owners Only
3. The Selected Third Surveyor – Agreed between the two surveyors.
4. The Award – with all correct names and addresses.

Even though the Act does not say that such papers must be signed it must be clearly obvious that any legal document must carry a signature.

I leave you with the famous picture of the British Prime Minister Neville Chamberlain who cheerfully waived his piece of paper that he had received from Herr Hitler when he returned to Heston airport in September 1938!! What was that worth eh?

Alex Frame
FPWS MSc MRICS FCIOB MCMI

Training Events

TWO-DAY COURSES

This course is suitable for Estate Managers; Property Developers; Architects; Architectural Technologists; Surveyors; Engineers; Building Control Officers and all personnel with a responsibility for dealing with commercial or residential properties.

It is for those that have little experience in party wall matters but would like to become more proficient with the workings of the Party Wall etc. Act 1996.

London 3 & 4 October 2012

Cost is £395. Please contact: Nicky Castell on 01424 883300 or by e-mail nicky@fpws.org.uk for further information.

A two-day course is also run by the Association of Building Engineers (ABE) in conjunction with the Faculty at the following locations:

4 & 5 Dec 2012 in Northampton
6 & 7 February 2013 in Sheffield
3 & 4 April 2013 in Northampton
5 & 6 June 2013 in Plymouth
30 & 31 July 2013 in Manchester

Please contact: Kate Denne direct at the ABE for booking details, including their costs, on 01604 404121.

THIRD SURVEYOR COURSE

London 6 December 2012

Any member that has good experience can attend the course and if members are considering upgrading to fellow status, they should be aware that you have to attend this course to be considered. Cost is £250.

REFRESHER

London 29 November 2012

Half-day talking through common misunderstandings and taking questions from the floor and other half of the day discussing recent case law and its impact on the Act.

Cost is £195. Please contact Nicky Castell on 01424 883300 or by email nicky@fpws.org.uk for an application form.

BOUNDARIES

Following positive feedback from Members, the Faculty’s working party on boundaries has been working hard to develop a CPD seminar on the subject, similar in format to the successful party wall seminars and including PowerPoint presentation etc.

Date to be confirmed.
Regional Forums

EAST ANGLIA (Essex)
DATE: TBC
TIME: TBC
VENUE: TBC
GUEST SPEAKER: TBC
CONTACT: Alan Bright Tel: 01277 233988
E-mail: admin@alanbright.co.uk

EAST ANGLIA (Norfolk)
DATE: TBC
TIME: TBC
VENUE: TBC
GUEST SPEAKER: TBC
CONTACT: Ed Phillips Tel: 01485 545778
E-mail: edward@gemstonebs.co.uk

EAST & WEST MIDLANDS
DATE: 23 October 2012 TIME: 6.30 onwards
VENUE: The Red Lion, Warstone Lane, Jewellery Quarter, Hockley, Birmingham, B18 6NG
GUEST SPEAKER: Stuart Frame, Barrister at Law
CONTACT: James Jackson 0121 233 4145
E-mail: jamesk.jackson@btconnect.com

LONDON (North)
DATE: 8 November 2012 TIME: TBC
VENUE: Kings Head Pub, Winchmore Hill, N21 1BB
GUEST SPEAKER: TBC
CONTACT: Richard Garry 020 8886 0400
E-mail: r@garry.uk.net

LONDON (South)
DATE: Nov 2012 Breakfast Meeting TIME: TBC
VENUE: TBC
GUEST SPEAKER: TBC
CONTACT: Simon Price 0207 736 7311
E-mail: post@pricepartnership.co.uk

NORTHERN HOME COUNTIES
DATE: 16 October 2012 TIME: 7.15 p.m. to 9.30 p.m.
VENUE: Bisham Abbey National Sports Centre, Bisham Village, Marlow Road, Bisham, Marlow, Bucks SL7 1RR
GUEST SPEAKER: Stephen Merritt, Grant Egmore-Frost & Mike Wiseman of London Basement Company and Riyaz Versi, Structural Engineer.
CONTACT: Vicki Dewey-Bruce 0800 311 2077
E-mail: vdb@party-wall-services.co.uk

NORTH WEST
DATE: TBC TIME: TBC
VENUE: TBC
CONTACT: Graham Shone 0151 489 5440
E-mail: graham@hspack.co.uk

SOUTH EAST
DATE: 27 September 2012 TIME: 6.30 p.m.
VENUE: Hickstead Hotel, Jobs Lane, Bolney, West Sussex RH17 5NZ
GUEST SPEAKER: Alex Frame
CONTACT: Ambrose Ceschin 01342 719542
E-mail: info@adsitdoffice.com

SOUTH WEST
DATE: 30th October 2012 TIME: 6.30pm
VENUE: The University & Literary Club, 20 Berkeley Square, Clifton, Bristol, BS8 1HP.
Members £10 Non-Members £15 Buffet included, drinks extra.
TOPIC: TBC
CONTACT: Andrew McAllister 0117 944 4419
E-mail: info@mcallisterassociates.co.uk

WALES
DATE: 13 November 2012 TIME: Lunchtime TBC
VENUE: RICS, 7 St Andrew’s Place, Cardiff, CF10 3BE.
GUEST SPEAKER: To be confirmed
CONTACT: Philip Beck 01874 713133
E-mail: admin@htbconsult.co.uk

CPD Certification available
What is an ‘Escrow’?

Michael Mullins of Staple Inn Chambers provides a little background on escrows and their application.

An ‘escrow’ is a medieval legal concept which probably dates back as far as the Norman conquest. It arose at a time when conveyances of land were operated by ‘feoffment and livery of seisin’ and although it has developed and changed substantially it survives at least in name. Back in the 11th century transferring land between owners was not so simple given that the use of writing remained rare. To effect the transfer the transferor would perform a ceremony on the land in which he symbolically handed a clump of grass or bunch of twigs (or other symbol) to the transferee before witnesses. The ‘feoffment’ being a gift, the ‘livery’ being the delivery and ‘seisin’ meaning possession. The word ‘escrow’ itself is derived from the old French word ‘escroue’ meaning scrap of paper or roll of parchment; referring to the document or deed that would be held by a third party until a transaction was completed.

In modern times an ‘escrow’ has come to mean a conditional agreement or transfer of funds or land. As described by Lord Denning: "...a document which is executed and delivered. The accustomed formula is 'signed, sealed and delivered'. When that formula is used in the document and it is signed by the party (or in the case of a company its seal is affixed) and attested by a witness with intent by the maker that it should be binding on him, it is conclusively presumed to be 'signed, sealed and delivered'. If it is handed over to another unconditionally, it is delivered as a deed. If it is handed over to another conditionally, it is delivered as an escrow. It only becomes a deed when the conditions are fulfilled.” Alan Estates ltd v W G Stores ltd and Anor. [1981] EWCA Civ 1.

Although case concerned the granting of a long lease the principles involved are the same in relation to the transfer of funds. i.e funds are only to be transferred between the parties upon certain conditions being met. The escrow agent is effectively a middle man with no legal interest in the funds he holds and is bound to pay them out only so far as the terms of the escrow agreement allow.

In relation to party walls, escrow agreements are frequently used to determine the payment of funds held as a security in accordance with s.12 of the Party Wall etc. Act 1996 ('the Act'). The practical reasons for security being available under the Act are common sense. The facility protects adjoining owners from the need for expensive litigation for compensation as a result of an impecunious building owner undertaking works that cause damage to the adjoining owner’s land.

Escrow agreements themselves are relatively straightforward documents and follow ordinary contractual/written-instrument principles. They will firstly identify the various parties, escrow agents and define the relevant terms to be used in the agreement.

It will reference the relevant party wall award, state the amount of money to be deposited and set out the circumstances in which money will either be paid to the adjoining owner or returned to the building owner (normally on determination by the surveyors in accordance with ordinary s.10 practice). A basic sample agreement is contained in Misunderstandings and Guidance: Party Wall etc. Act 1996 by Alexander Frame (Sep 2007). There is no reason in simple cases to instruct solicitors to draft the agreement. Although in more complex cases or projects the agreements themselves will become more intricate and it maybe that the services of a solicitor or counsel are required.

Similarly there is no reason why the surveyors themselves, or one of them, cannot act as Escrow agents and hold the security money. Indeed, they are a suitable choice given their quasi-judicial role, deference to existing Party Wall award procedures and duty to be objective. One method of effecting this is opening a bank account in the joint name of both surveyors. It is however submitted that third surveyors in particular are good candidates to act as signatories given their position as final arbiter of any dispute. However, probably due to surveyors’ unfamiliarity with holding client funds on account and regulatory requirements or professional bodies, it is more common for solicitors or specialist escrow agents to hold the money in their client accounts. With larger scale projects and larger sums being deposited as security, the services of a professional third party escrow agent may well be preferable.

Escrow agreements are enforceable in the civil courts in exactly the same way as any other contractual relationship by issuing a claim for breach of contract, and the rules and authorities relating to the formation, construction and interpretation of contracts and their terms will also apply; this includes recovering sums as civil debt in the Magistrates Court under s.17 of the Act.

Michael Mullins Barrister at Law

N.B. The Faculty now an Escrow Account Facility—details to follow.
Continued from page 4

Practical difficulties can immediately be envisaged. An adjoining owner will not automatically know when a notice was posted to them, and nor the person on whom requests are made pursuant to sections 10(4) and 10(7) of the Act. However, the learned judge considered that uncertainty as to when an award was posted by surveyors was “far less than the uncertainty of relying on evidence of when an interested party received the document. He may say he was away, that the document was not given to him by the post room or a number of other reasons for late or non-receipt”. Whilst this rationale applies to service of awards by surveyors, it does not when one considers service by one party on a surveyor or on another party.

There are of course no provisions within the Act for an extension of the time periods if the relevant document is delayed or does not arrive at all. Considering this, Mrs. Justice Slade consequently stated that “Whilst this construction may cause injustice in a few cases, that is an insufficient reason to displace that of a statutory provision, section 15 of the 1996 Act, which is materially indistinguishable from section 23 LTA [Landlord and Tenant Act 1927].”

If post is the chosen method of service, then certainty of the date of posting is therefore required, and best practice dictates that this can be evidenced by simply obtaining a certificate of posting from the post office. Additionally, surveyors should perhaps also inform the intended recipient of the date of posting in their covering letter serving the relevant document. In the case of an award that is served by each of the two surveyors on their respective owners, it is also advisable to liaise with the other surveyor to ensure that the date of posting for each award is the same, since different dates for service of an award are not desirable. This point was actually mentioned by Mr. Justice Brightman in his judgment in the well known case of Gyle-Thompson and others v Wall Street (Properties) Ltd [1974] 1 WLR 123 (decided under the London Building Acts (Amendment) Act 1939) where he said: “It seems to me highly desirable that surveyors who are performing their statutory duties under s.55, should bear in mind that important matters may turn on the date of the delivery of the award and I think that they should take practical steps to ensure that there is no doubt what is the date of such delivery, and that the date is the same for the building owner as for the adjoining owner.”

Stuart Frame Barrister at Law

A Personal Long Term View of the Economy

If one was to take too seriously the red tops and their view of the current economic climate both that of the world and our own in the UK, most people would jump off the nearest tall building to escape the financial predictions of melt down and endless poverty.

Thank goodness the reality of our financial position is perhaps not as perilous as it first may appear. For a start most of us knuckle down and get on with it. We still go to work and if we don’t, try and find work. It may not be for the same remuneration but it does keep the wolf from the door. Those of us who are in a perilous position have as a last resort the state until we get sorted again or back on our feet. For any who choose not to work at all they somehow seem to get by and by comparison to third world countries very comfortably indeed.

To complain that we are hard done by is relative to our recent historic financial position. Not having the same disposable income for the frivolities of life but being able to feed, clothe, keep a roof over our heads and have sky TV, cell phones, plasma TV’s, free health and education is hardly missing out.

It is there for a matter of perspective.

Furthermore we have very short memories. Long term economic growth in the UK has been sustained from as far back as we care to refer and records allow. If we take any given period of twenty five years over the past two hundred then it can clearly be seen that whilst there are very minor fluctuations in GDP over the same period, any period, it can be shown to have consistently grown by 1% pa in real terms.

In poor economic climates middle management, service personnel, operatives become surplus to requirements and are laid off or retired early. They disappear out of the industry even though they have good severance packages and pension plans. This is not always the case but can be identified in many.

This group are also capable of taking a lesser position whilst biding their time until the economy turns and they can resume their career.

Bottom entry level into the industry is increased because it is cheap and malleable whilst top level is retained because of their track record and knowledge.

Continued on page 11
Past President’s Pen

Having been reluctant to take over the presidency back in 2004, when the Faculty Founder president retired to some 8 years later, has passed by in a fleeting moment. The trepidation I experienced back then, due in most part wondering if I was able to follow Ken Whittick in representing my peers at what, for me, is one of the top tables of a surveyor’s professional career, was daunting indeed.

The son of an East End of London docker who was told that he was a dunce when at school and would not amount to much put a lot of pressure on me. Like a duck, I paddled away like mad under the surface to stay where I was.

Being able to cope doesn’t happen by accident. Being able to contribute in a meaningful way is even more difficult.

I have coped in my own fashion and the more I put in the better I have become. A bit like Jack Nicholas when he was asked if he felt lucky winning his umpteenth open he replied “You know, the more I practice the luckier I get”. A sound knowledge and background of the Faculty’s aims and ambitions has been one advantage but not the most influential. It has been contributing that has been the most satisfactory.

This has not happened by accident. My ability to contribute and help mould this institution into what I believe to be a fine example of expertise in practical support of the general public and professionals alike has come from the support I have received within the ranks of the membership and the board.

It is no accident that the profile of the Faculty is what it is today. Respected for its knowledge, expertise and open door attitude has come about by the support and unpaid work all put in selflessly. Most people are unaware that the board of directors, forum chairmen and support lines nationally are done without pay or reward. Not only this, directors travel great distances to attend forums and meetings, e.g. Phillip, Neil, Graham, Andrew to mention but a few travel the length and breadth of the country to attend board meetings.

It is to these people, my colleagues, all who are now my friends that I thank without reservation for making my term as president so enjoyable.

I won’t say that we have not had our moments and I am the first to be provocative. If we had not then there would not have been open and honest communication. It is essential to keep the core values alive in an ever changing economic and political climate. This is the life blood of success in education, business and family, all of which we experience within the Faculty. It has brought about the success the Faculty has and will continue to have.

I shall miss being president but I can no longer bring to the role the time and energy it deserves or that all of you deserve in a president when fulfilling the role as your representative.

I will, of course, remain a loyal servant and roving ambassador for as long as I am wanted and wish the incoming president everything and more than I have had the good fortune to enjoy over the past years. As I said at the last meeting, “If you cut me open, like a stick of Blackpool rock, the words, Faculty of Party Wall Surveyors, would be printed round my not unsubstantial middle”.

If any body wishes to talk to or see me over the forthcoming months I can be found on the back of my fishing boat “Ifish”, probably with a can in hand, at berth number 007, Porto Duquesa, Manila, near Estepona Spain. All welcome but bring some beer!

Charles Dawson PFPW FFPWS MRICS FCIOB
New President’s Pen

At the AGM held in May 2012 I had the honour to be elected and to serve you as your President for the ensuing year.

Firstly, I would like to thank Chas Dawson for his unstinting efforts in promoting the Faculty to Members, Regions and Government in order to gain recognition for the work that has been developed by the Directors in the areas of Party Walls under the Party Wall etc. Act 1996, boundaries and sunlight and daylight over the period of his Office.

Chas has a practical and moral approach to problems and uses his experience to understand and determine the way forward and I hope I am able to replicate his standards and look forward to the challenge that the Faculty will undoubtedly provide during my service.

I first became involved with the work of the Faculty of Party Wall Surveyors that had been formed within the Architecture and Surveying Institute (ASI) when they were about to be separated from the ASI prior to the take-over by the CIOB.

I was invited by their then Chairman Ken Whittick (First President of the FPWS) to help him, along with other members of the ASI, to develop the FPWS into an educating and examining body for existing Surveyor to become proficient in Party wall matters under the new Party Wall etc. Act 1996.

The Government at that time wanted us to promote this idea amongst the other Chartered bodies, such as RIBA, RICS, ICE, etc. as they felt that all these bodies would benefit from a practical programme of education and training for Party Wall Surveyors as there appeared to be a general lack of consistency.

Unfortunately, our contacts with all these bodies did not produce a consensus and therefore the Faculty of Party Wall Surveyors was registered as a Limited Company Limited by Guarantee in 2001.

There were just 6 members at that stage mainly members of the ASI and members of the FPWS Board of Directors.

Since then we have come a long way and have grown by examining over 640 prospective candidates and approving more than 500 Members, Fellows and Honorary Fellows, at this point in time, from all professional bodies within the surveying, engineering and construction disciplines.

Feedback from our two day seminars tells us that many candidates are grateful for gaps in their own knowledge to be exposed and they are very pleased with the extent, quality and content of the lectures. We will continue to develop the format and refine the content.

We look ahead with our development work within the Faculty, for which I thank the Directors for their expertise, time freely given and forbearance to enable us to develop an NVQ in Party Wall matters, the continuance of the 2 day seminars, Third Surveyor and 1 day party wall top-up seminars.

As Party wall surveyors you will naturally be involved in meeting other surveyors and I would like to ask you, from the experience that you have with the process, that you take the opportunity to invite the other surveyor to become a member of the FPWS if they are not already a member.

Finally, I look forward to meeting many of you at the various seminars being held by your Regions and other functions throughout the ensuing year.

Malcolm Lelliott  PFPWS  FFPWS  MRICS  FCIIOB  FRSA
This can be argued and of course there are exceptions but it can be taken as the modom operandi in large organisations in the private sector.

The public sector can be seen to do completely the opposite of course and is forever maintaining the status quo by not getting rid of middle management, failing to recruit at entry level and pensioning off top level staff early thus losing the history of the organisation and having to re-employ them back as consultants to keep the semblance of a functioning operation. They are funded publicly therefore there is no need to make a profit which allows the steam roller effect to continue going forward with out the checks and balances that are applied in the private sector.

There are many recent examples of such bad management one of which is the British Motor Corporation in the 1970-80s. This saw the publicly owned sector as it was then, produce exceedingly poor quality over priced cars with a top heavy indifferent belligerent union indoctrinated works force. Management and work force deserved one another.

Now look at it a little more than twenty-five years later. Britain produces more high quality vehicles that sold round the world as sought after quality goods. This has been achieved not because of employing different people but by employing them on the basis that they have a vested interest in producing a product that will be in demand, and recognising that by providing, quality terms and conditions of employment.

However there is a down side to the production of quality goods that are world betters and in demand. The so called Far East economies purchase not only the goods but along with them the technology that made them superior in the first place.

Take as an example Germany. When it reunited there was an in built immediate demand for consumer goods from the old East Germany. This led for a sustained period of growth in manufacturing which produced more than could be accommodated in the newly reunified Germany. Their industry had to export to sustain its growth. This led to a two tier approach. One being to lend money to new members of the expanding European Union, which enable them to purchase expensive consumer goods at very low interest rates, and were ostensibly made in the lending source country. i.e. Germany in this instance. The second was to sell the same goods to the developing markets in Asia which has an ever increasing wealth gap between the haves and have nots.

The net result has been the near collapse of the Euro due to the inability of the recipients to repay the loans for the goods and to make the manufacturers exceedingly wealthy.

The other more dramatic sea change is that the Asian emerging economies now have the technology through purchasing the goods and more importantly the machinery for making those goods to copy them and produce consumables on par with the originals. They are cheaper due to a lower wage structure, life style and less infrastructure to support and produced in such quantities that the Western World can still not satisfy its insatiable demand for such produce due to the low cost throw away society culture. We can see this pattern having been emulated for example with the UK and the commonwealth, or USA and Japan.

The one constant however is the growth chart line remaining constant at 45 degrees and the GDP at 1% in the wealthier countries.

Western technology continues to develop new ideas and ways of doing things, therefore sustaining the growth patterns whilst the rest continue to copy, effectively maintaining the status quo. Wealth invariably stays with the wealthy the rest try and catch up.

If there are areas to be avoided when trying to generate wealth these must be seen as those with little substance and are volatile. Examples of these are wind power. New technologies that is very expensive, fundamentally unproven, not cost effective and subject to forces that are beyond control, the weather.

Nuclear power is by far the most sensible, economic option. If we had pursued that technology from conception on a rolling programme of investment and improvement, we would have by now electricity at nominal cost.

Electric cars are another. Very expensive but nothing more than a comfortable milk float. It will be a very long time before they take over from conventional cars not least due to the infrastructure required to support them nationwide.

Internet based businesses are of little substance, fast growth with equally fast fall. They are also subject to a fundamental economic flaw. The potential consumer demands more and more information which is released into the public domain. This allows for the providers competitors to become aware of the product, its contents, benefits and downsfalls but not least best price their competitors are offering, thus being able to adjust their prices/services accordingly. The adage being the more information you provide to a potential customer without the benefit of a personnel face to face or telephone sale the cheaper you will have to eventually sell the product for via the internet.
Publications

THE THIRD SURVEYOR - A GUIDE
This is Alex Frame's latest work, which explains the process whereby one arrives correctly at the appointment of a Third Surveyor in an easily digestible and comprehensible manner and then proceeds to explain in clear and concise terms the need for extensive and wide ranging abilities and knowledge necessary for a Third Surveyor to be able to provide advice, guidance and assistance to party wall surveyors, including a section at the end of the book providing an example of a Third Surveyor model award.

MISUNDERSTANDINGS AND GUIDANCE (Second Edition)
This book has been updated to include material related to the effects of recent case laws, together with further clarification of misunderstandings throughout the book.

Misunderstandings and Guidance and The Third Surveyor are available at a cost of £29.50 each + Postage and Packaging and please note that if both books are purchased, a £5.00 discount will be given.

Both books are a ‘must have’ for all practising party wall surveyors.

Please contact Nicky at the Administration office on 01424 883300 or by email enq@fpws.org.uk for details on how to purchase these books.

New Members

We are very pleased to welcome the following individuals into the Faculty:

Associate membership is aimed at part time students and less experienced party wall surveyors who are working towards full membership of the Faculty. Please do not hesitate to call upon the Regional Director (see www.fpws.org.uk) in your area should you require help or advice.

ASSOCIATES:
Gary Greenan, London
Richard Johnson, Richard G Johnson Ltd, Cheshire
Charles Nebechi, Leads Design Partnership, London
Anthony Campbell, London

MEMBERS:
Larry Russen, Russen & Turner, Norfolk
Geoffrey Pearce, East Sussex
Sean Gaughan, Lancashire
Steve Polfreman, Hertfordshire
Michael Plymsol, Grove Millican, Surrey
Gary Peter, Middlesex
Patrick McHugh, Home Plans Ltd, Middlesex
Timothy Bracken, Norfolk
David Rix, Somerset
Brian Ward, Greenward Associates, Dorset
Tim Deeks, Deeks & Associates, Essex
Craig Fookes, Qualitas Surveying, Suffolk
Mrs Teri Okoro, TOCA, London
Patrick Conlon, Saltex Rex, London
Tristan Toynbee, Toynbee Associates Ltd, London
Lawrence Daniels, London

If you have good experience in party wall surveying, you might be looking to upgrade to Fellow status. This would entail attending our ‘Third Surveyor’ course (next one 6 December 2012) for upgrade to be considered.

Please contact Nicky in the Administration office on 01424 883300 or by email enq@fpws.org.uk for details.
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Societies that are stable are good indicators of economic growth. The UK has that stability whilst China is not nor has it ever been not least for the past 40 years. Britain has minor fluctuations but can be argued that the growth and demographic can be measured as sustainable for the past 200 years. Whereas China’s has exploded by five fold in a very short space of time has been halted by the restriction on the number of children each couple can have and is now facing an ageing population. The net result of which will be in the not too distant future, stagnation, as measured by the sustained 1% growth in the UK GDP over the past.

We must look at what is normal for an investment return. What is normal? Well I suggest it is something that is not too high or to low. That is to say that either of the above are indicators of there being something wrong. Buying into a GDP that does not long term reflect 1% will inevitably fail. The way to achieve this is capital accumulation which is effectively equal to growth.

Capital accumulation sustains GDP and performs in the long term providing inflation is kept in check. Inflation if allowed to linger within an economy for too long will eventually erode equity thus stifling capital growth. This has happened in the UK, Germany and the USA during the last century, but in real terms not for long. It can be seen as an economic blip due to the relatively short time it was in the economy, the speed with which economies recovered and the rate at which growth recovered any short term losses.

This cannot be said of so called third world economies because they do not have the inherent infrastructure. In real terms, their capital investments must be in the West if they are to protect against inflation. The West already has a massive infrastructure in place to use as a cushion and bedrock from which to bounce back.

A question then must be asked as to why do we expect to receive interest on cash deposits. If it were to be stored under the bed then it would remain the same less inflation but the amount does not alter. You can argue that we lend it to banks who then invest it after taking their cut to the markets and so to business. If we were to cut this process out and invest directly into business then our returns would be greater. The banks prefer the way we save as they have control and by definition power. Wealth does not do this, its investment is long term based on the argument I have set out above. This keeps the wealthy with power, creates more wealth out of proportion to the majority by their returns being greater and ensures succession, whether that be political, heretical or just by birth.

Crises of the day are barely discernible in long term trends long term nothing changes, wealth is maintained by the wealthiest, and the rest play catch up but never actually overtake.

Charles Dawson PPPWS FFPWS MRICS FCIOB

Congratulations

The Dawson Award for Excellence (sponsored by Dawson & Associates) is awarded annually to an individual who embodies the spirit and qualities aspired to within the Faculty’s core values. Nominations were received from Members and this year’s award was presented to Alex Frame on the occasion of the House of Lord’s Luncheon on 6th July. Congratulations Alex.

The President’s Plate is in the gift of the President and is awarded for services to the Faculty. This year’s award was presented to James Jackson in appreciation of his unstinting support and efforts in establishing and developing training courses and other educational initiatives for the Faculty over many years. Congratulations to Jim also.
Red Herring

Observations

One cannot help wondering about the state of the economy and especially that of the EU. It seems to me to be somewhat similar to the following lines in as much that this is my take on events. I suspect it is at least some of the so called experts and government ministers’ way of dealing with debt crises and toxic debt in Europe. The way money is shifted and borrowed is similar to a tale of debt reduction I was party to.

A friend of mine owns a small hotel. One afternoon an American tourist turned up and asked for a room. My friend told him he had one left on the top floor, which was £100 per night. The tourist asked to view the room and left £100 deposit with my friend to secure it. He was given the key and directions to the room. My friend, the hotel owner was struggling with cash flow and trusting the tourist would take the room rushed round to the butchers to pay off his outstanding bill for meat with the £100 deposit.

The Butcher was pleased and immediately took the £100 to the slaughterhouse to pay for the pigs he had that day. The manager of the slaughterhouse never liking to be in debt took the £100 to the farmer who was also pleased to be paid so promptly for his pigs and in turn went to the warehouse owner to pay his outstanding feed bill with the same £100. The owner of the warehouse went off at once to see Moley the village lady of the night and settled his outstanding account for favours amour with the very same £100. She went immediately to my friend the hotelkeeper and gave him £100 owing to pay for the top floor room she rented on a regular basis, which was currently empty.

As she left the lobby the American tourist returned down stairs and said to my friend that he was sorry but the room was too small and he would not be taking it anyway and asked for the return of his £100 which was duly given.

Nobody was out of pocket, nobody has spent any money and all have paid their bills. Oh if it were only that easy!

Charles Dawson PPFPWS FFPWS FASI MRICS FCIOB