

**The Newsletter
of the
Faculty of
Party Wall Surveyors
October 2006**

19 Church Street
Godalming
Surrey
GU7 1EL
enq@fpws.info
www.fpws.info
01424 883300



EDITORIAL

Why is it that I keep getting the odd balls in life, and before you can answer I can guess what you are thinking.

I fielded a telephone call recently whose name I did not get due to the lack of interjections that I could make to find out, but she was certainly someone of the character of Mrs Weatherspoon!

'Hello, can you help me. I'm in desperate trouble' – Oh here we go again I inwardly sighed. 'Yes of course what can I do?' 'There's something wrong with my party wall, it's not working properly', 'How do you mean?' I enquired. 'Well – I can hear everything that goes on next door'.

'When you mean everything do you mean the telephone ringing or the T.V. or the dog barking or even maybe a domestic argument?' 'Ooh much more than that' she blurted. 'I can hear when the bath is running, walking up and down the stairs and even grunting noises when the son brings his girl friend home!'

'So what is your complaint' I joked, 'do you want a vision panel as well?' She did not get the joke. 'I understand that you are an expert in this matter' she said most inquisitively. I do not take kindly to being called an expert after hearing a recent interpretation was given to me as an 'Ex' is just a 'has been' and a 'spurt' is just a little squirt!

'Well I have been working in the field of party wall matters for some years', I replied, but I do not think that this problem that you have comes under the Party Wall Act, and whilst I would like to help you I'm not so sure that I can. 'Well I think that is quite disgraceful' she said raising her voice. 'You must be able to do something about this terrible neighbour that I have'.

'Unfortunately I can't' I quietly replied, 'but my advice might be that you insulate the wall on your side to deaden the noise'. 'Then I shall make them pay', she said raising her voice another octave. 'I do not think that your neighbour is likely to agree to that,' trying to calm her down. 'Then I shall sue them', came the retort. 'You should think very carefully before you try to do such things as that my dear', I said desperately trying to cool her down.

'Don't you call me dear, I shall report your unhelpfulness to the Faculty of Party Wall Surveyors, you have not helped me at all', and the phone suddenly went dead. I did try to help her, honest I did!

Alex M Frame. MSc, MRICS, FFPWS, FCIQB, FASI, MCFI.

Oh, by the way Injunctions



I have had several occasions recently to get involved in injunctions where the building owner has started work without serving notice and simultaneously damaged the adjoining owners property . Usually starting with phone call from a distressed and stressed adjoining owner. I gather as much information as possible including evidence (the joy of digital cameras and email) and invariably write a short note to the Building Owner pointing out the error of their ways and a request to stop work until Party Wall Actions are taken. I also point out that their failure to do so would leave the adjoining owner with little option other than to seek an injunction. Invariably they know they are not complying and choose to ignore the letter, and therefore I advise the adjoining owner to seek an injunction.

It supprises me that most people believe they have to use a solicitor to gain an injunction, this is not the case . With a little research and a supporting report from the Party wall Surveyor most owners can obtain an injunction virtually immediately at a cost of some £150.00 court fees plus of course the report cost (these are likely to be recovered by the adjoining owner by being awarded in the court as long as it is requested in the injunction). The court judges are usually helpful if the owners represent themselves and are clear in putting forward their case (this is where Party wall Surveyors reports can have a major input) .

As I thought it would be of interest to members I have persuaded one of my appointing owners to write outlining the pain and pleasure of obtaining an injunction.

Work is still stopped on site and Party wall actions are still ongoing .

A Ceschin MFPWS Member No: 0061

Party Wall Notice — No Party for me.

Nonchalantly parking the car on my rather congested road of Edwardian terraced houses on one of the few days that I returned home from work in daylight, happened to look up and notice that the builders that had been making such a noise in the empty house next door appeared to have removed the chimney breast in the first floor front room adjoining my front room.

Not trusting my aged eyesight I asked my daughter to have a look and see if the chimney breast had been removed; she confirmed that indeed it had. She even pointed out the hole in the ceiling where I guess the flue would have gone up to the chimney stack.

The following day I asked the builders whether they had removed the chimney breast in both the ground and first floor rooms and whether they had put in any support. They confirmed that they had but when I asked them who the owner was or the name of the building company they worked for they became very uncommunicative. I said that no Party Wall Notice had been served and that I needed to speak to the owner urgently. Eventually they gave me the number of a man they said was the owner.

I then contacted the Building Control department of my local council. Building Control confirmed that the work completed thus far in the neighbouring house did require a Party Wall Notice to be served. They also confirmed that they had not received any Building Notice in respect of my neighbouring property.

I won't bore you with the details of the very hasty research that I did for the remainder of that day and the next, suffice to say that it involved numerous telephone calls to the number given to me by the builder, the local authority and various legal help lines to name but a few. What I will say, however, is that the clearest and most helpful advice I received was from a Party Wall surveyor that I found through a website.

The Surveyor emphasised the urgency of the matter and also told me about the option of obtaining an Injunction Order to stop the work next door. This would be to protect my interests until a Party Wall Notice had been served and the proper procedure followed.

Having failed to achieve any communication with the building owner I found myself making a decision to try and obtain an Injunction Order. The Party Wall Surveyor did advise that it was possible to obtain an injunction without use of Surveyors and he could provide an initial report to support the application.

Well, I knew I had to go to Court, but what Court? County? Magistrates? And where? Did I have to use my local authority Court or could I go to one near work? Did I just turn up? Make an appointment? What forms? How much? Despite being an avid Googler I found it very difficult to find the answers I needed through straightforward research.

And guess what, Courts don't answer their telephones! BUT the Personal Support Unit 'PSU' at my local authority County Court did and from my discussion with them it seemed that the County Court was the place to be - so off

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President's Pen



I find it is becoming increasingly difficult to get worked up about matters of what once I deemed of the utmost importance. Now I'm beginning to consider them to be trivial. People not on time, the phone constantly engaged, the cheque's in the post syndrome. I think you get the gist. These would have annoyed me no end in the past but not so much now. Perhaps being older or more philosophical they don't seem to matter so much. My grumpy old man approach to life is a passing phase and I reflect back on things, not through rose-tinted glasses, but to some extent the harsh reality in which they occurred.

We didn't have enough money, we couldn't afford a holiday, let alone a new car and the mortgage payments did get missed on occasion in our house. I admit we think we are now, quite frankly comfortably off and make no bones about it even though I still work very hard.

Don't misunderstand me, I do not condone the throw away consumer society we have invented and nor do I embrace the futile waste of natural resources as an ever demanding sacrifice to economic growth. This seems to have created a society at the very least impolite and at the worst, suicidal in its pursuance of avarice. But what I do embrace is technology.

My working life is now so much easier and the trick is to keep the level of production in balance with the ease of access to information. Too often in our office, because a document can be downloaded, cut and pasted and sent out as a new document representing the requirements of a different client, we wrongly assume we have met, professionally, the instructions.

Mistakes often happen where something is missed and the information, spelling or address is incorrect and put down in the end to a computer error. The computer didn't make a mistake, the operator did. Our role as party wall surveyors is vital in the accuracy of the served award. If it is inaccurate and subsequently challenged, from notice to served award, it would be found to be invalid if tested in court.

Many of you, me included, will have fallen into the trap and because so few awards are ever tested we get away with it. So perhaps take a step back when preparing your next draft award and by writing one from scratch, just to see how difficult it can be, which will give you an insight into how much we take for granted and how easily a mistake can be included in the document.

Whilst we should all enjoy the benefit of technology, let's not let it take from us our integrity in the pursuit of an easy life.

Charles Dawson MSc FASI MRICS FCIQB FFPWS President



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Book Reviews

Ken Whittick is pictured here showing copies of the books he has written:

“**The Origin of Party Wall Law in the City of London**” the “**Practice Notes**” and “**The Third Surveyor**” co-written with R E Cove at a cost of £15.00 each.

Faculty News

Attention all Members

It is important that all members have a copy of the Faculty Handbook. The handbook is A5 size and contains Practice Notes, Draft Awards, Schedule of Condition, Party Wall etc. Act 1996, Code of Conduct, Byelaws, Articles of Association, Memorandum of Association, List of all Members, (which will be updated annually).

It also comes with a CD containing useful information such as draft letters and flow charts.

Some of the early members may not have the above and therefore should contact head office to obtain their copy at a cost of £30.00.

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New Membership

The following Surveyors have been elected as members of the Faculty:

Neil Cunningham - North East Region
Adrian Marston - North East Region
Michael Lee - North East Region
Marcus Wearmouth - North West Region
Anthony Crosby - North East Region
Ms Rachael Wood - East Anglia Region
Marc Simpson - North East Region

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I went, nerves and yellow postit notes in abundance.

Having arrived at my local authority County Court, the PSU very helpfully did some of the legwork for me, liaising with the Court Office, getting the right form and establishing that if I submitted my Injunction application before 2pm I would be seen that day as an urgent case. The support they gave was enormously helpful as I would not have known who to talk to, what questions to ask and inevitably may well have missed the deadline for submitting my Injunction application that day.

The Injunction application form was relatively straightforward. The PSU again provided help by clarifying what information went where and what bits of the form had to be completed. Then it was upstairs to hand the form in to the Court Office.

I sat down and read really awful magazines trying to keep my mind occupied — I must confess having never been in a Court before I found it a rather nerve racking experience. Eventually, my name was called and I was taken into a room to see a judge (not into a Court Room which is what I had expected).

The judge read my form, asked me a few questions about what had happened and then asked me what I wanted. It wasn't quite what I expected as I assumed, rather naively, that the judge would decide what I needed (rather than me telling him what I wanted). However, as suggested by the surveyor that I had been talking to, I said that I wanted an "Injunction to stop the work next door until a Party Wall Notice had been served and an award was in place". Lo and behold the judge granted me an injunction.

So far, so good! But that wasn't the end of it I had to serve the Injunction myself in four different ways (which might give you an idea of the complexity around identifying both the owner and the owner's location) and I had to come back the following day for another hearing!

Injunction in hand I went and served it as directed (it was all written in the Injunction itself so I didn't have to remember anything — which was handy). So I served the Injunction Order as required and began preparing myself for the hearing scheduled for the following day. The judge had suggested that I summarise what had happened since I first noticed the chimney breast had been removed, including what steps I had taken to both identify and communicate with the building owner, the builders, my local authority etc. and of course taken advice from the Party Wall Surveyor.

In Court again; this time in a Court Room! On arrival at the Court I had to fill in a Court attendance slip and hand it to the Court Usher. I also gave the usher the summary I had prepared on the advice of the judge from the previous day. Eventually, I was called into the Court room. The building owner sent a 'friend' to represent him and the friend was accompanied by a man who described himself as the 'main building contractor'. Technically the judge did not have to accept the 'friend' into the Court but in this instance he did (I think this was probably in an attempt to try and help progress matters).

Once again the hearing was pretty straightforward. The judge asked each of us questions and listened to our responses. It was not a comfortable experience listening to the other side tell blatant untruths and to see the judge seemingly give equal weight to both me (a fine and upstanding citizen) and the other side (rogue builders with no consideration for the law, other people or honesty). It was quite a comfort when someone said to me later that whilst the judge might listen to everything said with no question it does not mean that he (or she) believes everything that is said! The hearing took about 20 minutes in total and culminated with another Injunction Order being granted. Again it was for a set timeframe and yet another hearing was set for the following week.

Between hearing 2 and 3 the building owner served a Party Wall Notice (as he should have done before embarking on any work on the Party Wall). I was advised that the notice was defective, in that it failed to include even the most basic requirements, such as name and main address of building owner, details of the proposed work etc etc. I called on the services of the surveyor who provided me with sound advice. It was at this point that I discovered that the works done thus far next door had already had an adverse impact on my property - but that's another story.

Back in Court the following week I had again prepared some explanatory papers for the Judge. This included a summary of events since the last hearing, copies of correspondence with Building Control (the builders had still not submitted a Building Notice to the local authority), the Planning Department (the builders had not complied with a condition of the planning permission), and an interim report prepared by the surveyor detailing the damage to my property.

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Oh, by the way Injunctions

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This time it was just the Judge, the Court usher and me. Once again I told the Judge briefly what had happened and said yet again that what I wanted was an Injunction stopping work on the Party Wall until proper Notice had been served and a Party Wall Award was in place. This time the Judge granted an Injunction until 7 June, but he also ordered that the building owner provide a statement to the Court within 3 weeks otherwise he would be debarred from defending the action (the Judge did explain that this might not be permanent as the building owner could appeal). I asked about costs and was told that these would be 'reserved', which meant that they would be considered at the next or subsequent hearings.

So here I am now. The Injunction Order is in place, another Party Wall Notice has been served and I'm waiting for advice from my surveyor as to the next step. I intend to apply to the Court about 10 days before the Injunction Order expires and will decide what to do depending on the progress made at that point. I will apply for my costs to be paid by the defendant (the building owner) — so far this amounts to the costs of the Injunction (GBP 150.00, Land Registry searches, and surveyor's costs). I don't know whether these will be granted, nor how to pursue them if they are but having successfully obtained the Injunction I'm sure I'll manage to find out how. It is certainly expected that the Judge will decide in my favour as if the building owner had served Notice as required I would have never had the need to seek the Injunction in the first place.

My advice to anyone finding themselves in my position is to get a copy of the Party Wall Explanatory Booklet published by the Office of the Deputy Prime Minister and any similar leaflets published by your local authority — both these have proved invaluable in knowing what my rights as an adjoining owner are. Also get in contact with your local authority as it may be that the Party Wall Notice is not the only procedure that may not have been followed and Building Control may prove helpful in determining exactly what is happening in the adjoining property.

Last but by no means least make contact with a FPWS member that deals with Party Wall matters you may find that they are the only experts who provide you with practical advice — Party Wall matters do seem to fall outside the remit of every other 'authority' and the surveyor may well be the only person who seems to be on your side.

A Ceschin MFPWS Member No: 061

Anecdotes

A recent experience is perhaps an example of olde world values still applying. A developer bought up a number of properties next to a retired army captain. A company member was appointed Owner's Surveyor and we were told that even before the existing properties were demolished, the retired captain was a really difficult old stick and challenged the development at every opportunity as his property had a common boundary with the development.

To cut a 4 year long story short, I was tasked with making further enquiries before the works were to be resumed (after activity on the site was halted for two years) as the appointed Surveyor was away on leave. Instead of writing to the elderly gentleman, I decided to visit him in person to get some photographs and take measurements.

I found a wonderfully polite elderly retired captain, ready to have a joke, offered me a sherry (or cup of coffee) and invited me into his lovely house so that I could take pictures from the top floor that overlooked the development - something which had never been done before.

He said, "I wish they'd sent you round earlier, all I wanted was to talk to somebody and sort the matter out over a cup of tea or beer, I can't stand people writing to me when they could talk to me". He'd been living on his own for several years and was delighted with the company and a chat. I'm looking forward to an easier passage with the development from this time on.

Jeff Groom Member No: 0130

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The ABC of Party Walls



The ABC of Party Walls

D is for Dissent – Section 5, 6(7)

When a Notice is served the Adjoining Owner has 14 days in which to consent or dissent. Should this period expire a dissent is deemed to have arisen. The difference should be noted between dissent and deemed dissent.

Dissent does not mean that the works cannot proceed, but simply means that the Adjoining Owner has a difference of opinion to the proposition. The word can of course mean an argument or quarrel, so it is an unfortunate word that is used in the Act, albeit that both Owners may well be in that state of disagreement.

D is for Dispute – Section 5

A dispute arises between two Owners because dissent has been raised. If a dispute arises then the Act says that it shall be settled in accordance with Section 10 of the Act, which is where the surveyor(s) is (are) appointed to settle the dispute.

D is for Deemed – Section 5

Again this follows from a Notice that has not been replied to after the expiry of 14 days and a dispute is therefore deemed to have arisen.

D is for Damage – Section 7 (2)

The word used here should be understood to be something that becomes 'physically broken' because of the works and not something claimable in the legal sense such as loss of enjoyment. Such a claim might be proven but this is outside the remit of the party wall surveyor under the Act.

Footnote: A response from Robin Ainsworth (Mem 025) to 'C is for Compensation' in the last issue and is printed below.

'Loss or damage may include accidental or unavoidable physical damage caused by reason of other things, perhaps even measurable inconvenience however it cannot, in my opinion, include unnecessary inconvenience.'

Compensation is indeed payable under section 7 (2) for loss or damage caused by reason of any work executed in pursuance of the Act. However, section 7(1) prohibits exercising conferred rights in such a manner or at such a time as to cause unnecessary inconvenience.

I cannot therefore envisage any circumstance where work, or the time and manner of execution thereof, can be both 'in pursuance of the Act' AND cause "unnecessary inconvenience". Believing the two expressions to be mutually exclusive.

If I am correct then where work or its execution causes an unnecessary inconvenience' it cannot be 'in pursuance of the Act' and therefore is outwith the scope of compensatable loss or damage the surveyors can award as defined by section 7(2)

Editor – Any damage caused as a result of the works, which clearly has arisen because of the works, must be compensatable. No responsible person causes damage deliberately, ergo, any damage caused must be seen as 'unnecessary' and therefore must be compensatable, simply because it has arisen due to the works – surely?

The last issue article entitled 'Oh, by the way.....' has caused a stir and a response from Robin Ainsworth has arisen – too long to publish but generally states that the Notice posted through the letterbox by Jim Jackson was not properly served and begs us to read section 15 of the Act for the proper way to serve a Notice.

Editor – Well spotted Robin, but it was only an anecdotal article, however I do not think any judge would view this as not being served, particularly as the recipient actually handled the document!

Alex M Frame. MSc, MRICS, FFPWS, FCI0B, FASI, MCMI.

FACULTY PUBLICATIONS

The Faculty is also taking orders for the Faculty of Party Wall Surveyors Practice Notes Book. This book is a handy A5 size that makes it easy to take anywhere. It is a useful reference to the Act and those contemplating working in this field will find this pocket-sized book to be of considerable help. The author is Mr. K G Whittick a party wall Surveyor for over 40 years.

It contains a brief history of the Act and then goes on to give breakdown of what the Act means, with diagrams to help. It also covers Draft Awards and Schedule Layout for a Schedule of Conditions. The book contains the Party Wall etc. Act 1996 reproduced under the terms of Crown Copyright guidance issued by HMSO.

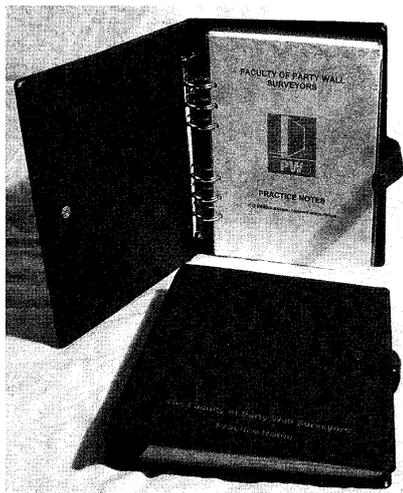
The cost of these Practice Notes is £30 to include a copy of a CD containing useful information such as draft letters and flow charts,

inclusive of postage and packing

To order the above phone **01424 883300** or write to:

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Faculty Courses

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

14th/15th November 06 - ABE Northampton HQ

8th/9th January 07 with the ABE in Torquay

14th November 06 at Clarence, 53 Whitehall, London SW1 for the CIOB, .

Also the Faculty holds one-day seminars, for those undertaking the Faculty's Tutorial for qualification to practice as a *Third Surveyor*, and emails will be sent out periodically advertising those. The next course being at the RIBA offices on 21st November 06.



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Also at:
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Surrey
GU4 8BT
Tel: 01483 456012
Mobile: 07767 297026

