

The Pyramus & Thisbe Society

JOURNAL

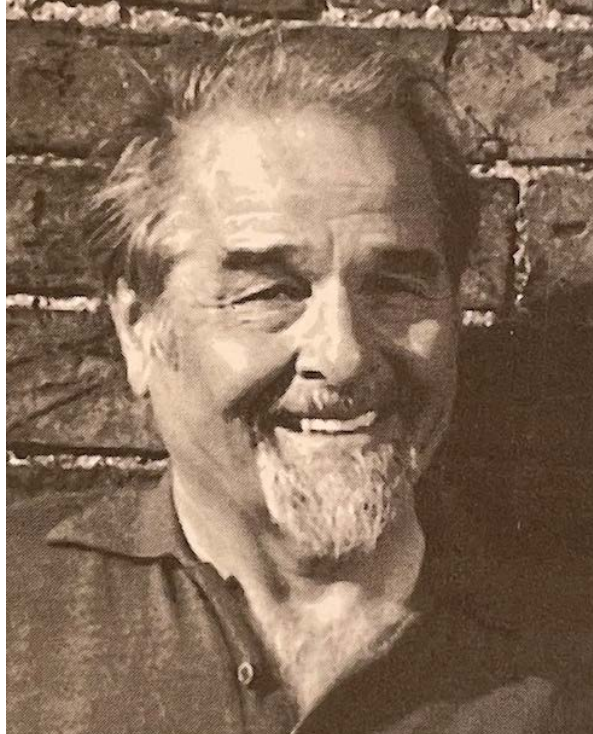
2024



The
Pyramus & Thisbe Society

LEARNED IN PARTY WALL & NEIGHBOURLY MATTERS

Foreword



50 Years of Pyramus & Thisbe

2024 SIGNALS THE 50TH ANNIVERSARY OF THE Pyramus and Thisbe Society. It was originally founded as a club in 1974. The founding members, 46 in number, met at the Little Ship Club in the City of London. The idea for a club was conceived by John Anstey or as he put it in his letter reproduced below, “My incompetent and incomparable assistants have suggested that it might be rather fun to form a Party Wall Surveyors Club”. The P&T Club became a learned society in 2022. It continues to promote excellence in standards of education and good practice in party wall matters and related subjects. 🧑

Founded 1795

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HORNE
& CO. Chartered Surveyors**

John Anstey BA FRICS

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Our ref
Your ref

T. Leach Esq.,
George Head & Co.,
10 Carlos Place,
London W.C.1.

19th April, 1974

Dear Mr. Leach,

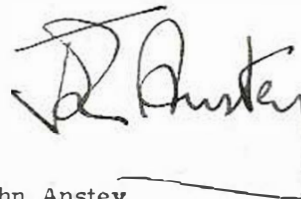
My incompetent and incomparable assistants have suggested that it might be rather fun to form a Party Wall Surveyors Club, the Chairman of which would be known, of course, as "The Third Surveyor." Subscriptions, naturally, would be "a reasonable fee."

The number of specialists in party walls seems to be growing and it is apparently a concomitant fact that party wall work is becoming more concentrated in the hands of specialists. I thought, therefore, that there might be many advantages in some sort of informal association in which those practitioners could exchange views and perhaps meet for an occasional lunch or supper. Interesting papers, awards and notes of tricky situations could be circulated and there might be considerable scope for settling of differences.

I would not propose that it should be a body with an examination qualification nor indeed that entry should be otherwise than by invitation, nor would I propose that entry be limited to principals, but that assistants (I am sure you will understand why I have to insert this sentence) who take an active hand in party wall matters should also be eligible.

If you would be interested and if you can think of other people who might be, and whom you would recommend for invitation, perhaps you would like to write back and give me your views in general.

Yours sincerely,



John Anstey

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Welcome from the Society Chairperson

FAREED FETTO

WELCOME. 2023 SAW THE FIRST edition of the Journal, of which we are all proud. In that Journal, I wrote a short (by my standards!) foreword which was addressed mainly to members of the Society. This time, I wish, in the first part of my article, to reaffirm our welcome to members of the public as well as to Society members. While the Society originated as a club, which is inward looking, it has long since moved on to become the Society, which is outward looking.

Before I proceed, I am sure you would wish to join me in congratulating and thanking the Journal production team, who devote time not only to the Journal but to other key Society publications. We are grateful for their hard work and the results it has produced.

As a Learned Society, it is our intention and pleasure to be a source of information about the Party Wall etc. Act 1996 and all associated matters; hence the Journal, which is expected to be read by member and non-member alike. In the Journal you will find interesting information about the Act, certain commentaries, who's who, and where to go for help if and when you need it.

We take -as I expressed it last year- 'humble pride' in our Society. On the one hand we share our knowledge freely without any misconceptions of being a lot of snooty 'know-it-all-been-there-done-that' pretenders, yet, on the other hand, we take pride in our earnest and sincere pursuit of -as it were- the truth about the Act.

As you are one who fits well into the second category, I hope you will, like me, find the Journal a useful and interesting item to pack with your essentials on your journey of discovery, and when you have discovered the 'truth about the Act', be sure to let us know. We have been searching it for years!

The Maker's Instructions

There seem to be two kinds of people in the world: those who use the instruction manual, and those who throw it away with the packaging. I feel I am in-between when it comes to the Society. When I got into the Society car, the engine was already running. I grabbed the steering wheel and started driving. The primary purpose at the time was to drive away from where we were, and to head towards where we wish to be. I think we have achieved the first leg, and having arrived at this pit-stop, it is worth spending a moment or two in reflection:

What (really) is a Society?

Are you, like me, a person who likes to go back to basics every time? Well, then you would be interested to know that I looked up my Shorter Oxford Dictionary and found under definition III:1 "*A number of persons associated together by some common interests or purpose, united by a common vow, holding the same belief or opinion, following the same trade or profession etc;*"

Highlights from the definition of 'Learned' include the inference of being learned because *another learned person deems you so, also, of connection characterisation and manifestation of profound knowledge of the subject (my transliteration).*

Can I say, for the purposes of this article:

"We are a number of learned persons, characterised by our profound common knowledge, bound by a common protocol, holding the same belief or opinion, while respecting free expression of other or contrary opinions, united by the common interest of advancing familiarity with party wall legislation and associated matters."

Do you think that fits?

>>

The Rear-View Mirror

“I will catch you out with the rear mirror” said the driving instructor to the cocky young experienced driver seeking a UK driving licence having driven three years on an International one.

And they did!

Amazing what one can see in the rear-view mirror, such as a car with a flashing blue light!

“Good to know”

It is good to know because the Society carries a tremendous weight of history and knowledge, the authors of the current Act having been among the founders of the Club/Society. Every time we look in the rearview mirror, we have this privileged access to firmly founded and tested knowledge.

So, fine! We have a good past, we are forming a good present, but it is the future that we must address. Things are happening, things are changing...

Enter:

“I am ai Party Wall Surveyor”

This really is about our vision for the future, which must, I suppose, involve artificial intelligence as it is already present. I imagine much of the routine aspects of party wall and associated procedures could conceivably be managed by a robot, but, please let us not eliminate the human element! Much is being made of “AI” which has now become a marketing soundbite, but an AI can only judge, weigh, consider matters in a way in which it has been programmed.

We humans are much more subtle and remain superior in the areas mentioned. Alas, that gift comes with the capability of making mistakes! But then, we learn from our mistakes (not the best way!) and we teach others of our experience. By and large, we win in the end!

Moreover, it is we, all of us, who really determine the future of the Society, by our aspirations, our conduct, our devotion, our fellowship and in many other ways. I will have the privilege of touching on this subject in my annual report ahead of the

Fellowship meeting in February 2025, but in the meantime, here are some points from my own personal wish list:

- Preserving and building upon our culture as a group of courteous and learned professionals with a common goal
- Developing our website towards a super streamlined comprehensive website -a hub of communication and interchange (by app of course!)
- Expansion of our sphere of acquisition and dissemination of knowledge (boundaries, legal matters, etc)
- Redrafting and lobbying for an updated version of the Act
- Setting an example of good conduct in all aspects of our profession
- Continuing to aspire and work towards being a reliable authority on matters we profess to the general public and to be of instant help, both via the website and by direct contact
- Reviewing the Society Constitution and Protocols
 - Continuing to build the Society upon the hard work and devotion of members committing to the vision and the task.

No doubt you will have your own view and idea of the future of the Society. If you feel you can take the trouble to let me or the Management Board know what they are, I, for one would be very grateful!

Thank you for reading so far. I hope you found the article encouraging. Lend a sympathetic thought to the Fellowship who will probably receive a report twice the length of this one! 📖

Fareed N Fetto FPTS CEng MStructE

CBuildE MCABE MFPWS AaPS

National Chairperson

The Pyramus & Thisbe Society

February 2024

Management Board

2024 - 2025



CHAIR

Fareed Fetto

✉ email



SECRETARY

Matthew Briggs

✉ email



FINANCE OFFICER /
TREASURER

Jonny Callard

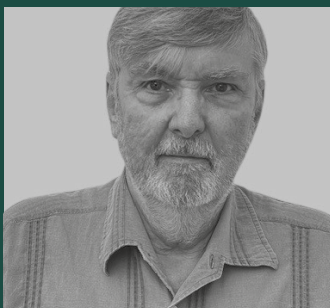
✉ email



EDUCATION OFFICER

Stuart Birrell

✉ email



PUBLICATIONS OFFICER

David Moon

✉ email



IT / WEBSITE OFFICER

Hannah Boyd

✉ email



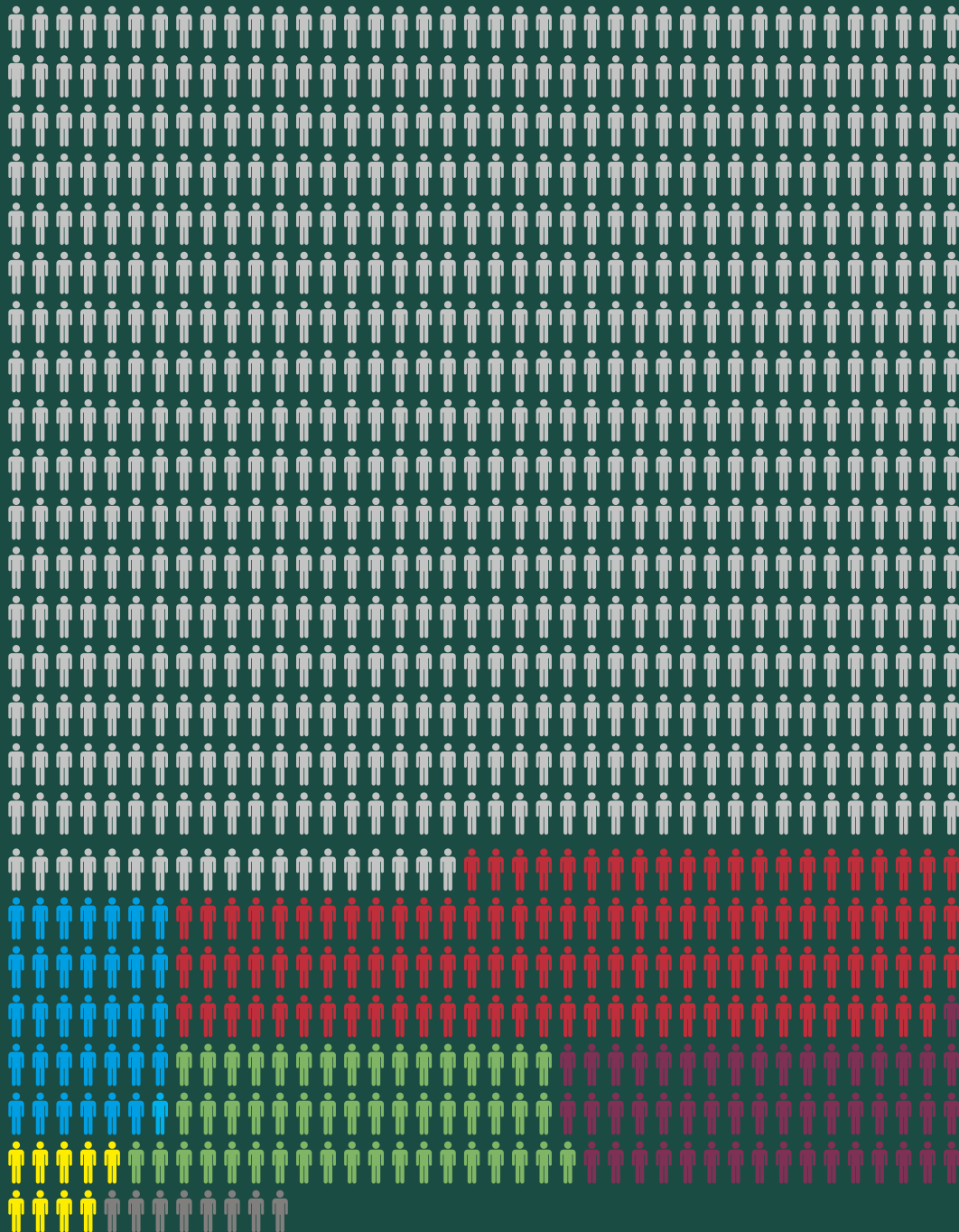
MEMBERSHIP OFFICER

Ryan Hannibal-Law

✉ email

Membership Summary

2024 IN NUMBERS



MEMBERS
MPTs

ASSOC. AFFILIATES

FELLOWS

RETIRED

STUDENT

HONORARY
FELLOWS

Membership levels of the Society

THERE ARE SEVERAL LEVELS OF MEMBERSHIP OF THE SOCIETY DESIGNED TO BE INCLUSIVE FOR ALL persons who have an interest in the Party Wall etc. Act 1996 and a desire to further their understanding and know best practice. The levels of membership are:

Student

An Individual engaged in study of a recognised professional construction qualification.

Associate

All new applicants to the Pyramus & Thisbe Society required to complete a minimum probationary period of two years after joining (the date of joining the Pyramus & Thisbe Club if relevant), before applying for promotion to become a Member, subject to meeting the relevant criteria.

Member

- a) Previous members of the Pyramus & Thisbe Club with two years membership at the transition, entitled to use the post nominal MPTS.
- b) An Associate who has made a successful application to be a Member of the Pyramus & Thisbe Society, and who is entitled to use the post nominals MPTS
- c) Fellows of the Society who have relinquished their Fellowship status, entitled to use the post nominal MPTS

Affiliate

Individuals involved in the administration Party Wall etc. Act 1996 other than as appointed or selected surveyors, such as lawyers and engineers.

Fellow

- a) Members of the Pyramus & Thisbe Club with two years membership at the transition and who are involved at branch level as Chairman, Secretary or Education Officer or, in the case of the London Branch only, a member of the committee. Entitled to use the post nominal FPTS
- b) Individuals who have been Members of the Society for at least two years and are preferably, but not necessarily professionally qualified members of a construction industry recognised organisation e.g.: the RICS, RIBA, IStructE, and who have been involved in the Society as a Member at local or national level and making a positive contribution to the Society. Entitled to use the post nominal FPTS

Honorary Fellows

Individuals who have demonstrated exceptional commitment to the Society. Entitled to use the post nominal FPTS (Hon).

Retired

Individuals who were previously Members or Fellows of the Club or Society, who retire from practice and wish to continue their membership and contribution to the Society. Retired Members and Fellows members are entitled to use the post nominals MPTS (Ret) and FPTS (Ret).

Annual Reports

2023 - 2024

Chairperson

FAREED FETTO

Chairperson's Annual Report for The Society Fellowship Annual
Meeting February 2024

The Bellyflopper has Flipped

AS I STARTED TO WRITE THIS REPORT, I heard the news today that the beloved helicopter Ingenuity has flown its last. It seems to have captured the hearts of people not only because of its tininess against the huge background of the planet Mars, but its sheer cheekiness in having made seventy-two, against the expectation of "only" five, flights! As I pictured this brave little soldier, lying alone, lifeless, on the red sandy and uninhabited surface, abandoned, soon to be forgotten as a pioneer, my mind drifted to the thought that, perhaps, this wee warrior may have opened another door for us earthlings to inhabit and, in our usual way, mess up what was once an innocent bystander planet. My imagination began to question whether there would be party walls on Mars, and whether they would all be red....

The factor of about fourteen to one only begins to represent the effort that a few Fellows and

Members have expended in the past year in the pursuit of various activities, in particular the

Management Board and working groups who carry in their hearts the sort of bravery and drive I speak of above. You will no doubt read with interest the various Officers' reports, and for those who have not yet taken an Ingenuity role, then my message to you is "We miss you, and we need you"!

I have now completed over two years as chairperson of a Society of which, like all of us, I am proud, and, like all of us, I have the privilege to continue to build hand in hand with yourselves and members. A great honour I have enjoyed has been simply being on the Management Board in the presence of pioneers and indefatigable contributors to the Society, some of whom are sadly stepping down after decades of service. I join you in expressing a debt of gratitude, great respect and appreciation, and in welcoming the new members of the Board for whom you will vote at the Fellowship Meeting on 27th February. Please make best endeavours to attend in person and remember that reasonable travel expenses, notified in advance, will be reimbursed. The Fellowship is the final authority of the Society, the Management Board is your servant in whom you have vested your authority. It is for this reason that I am persisting in calling for personal attendance at the

forthcoming Meeting. It is your opportunity to question, suggest, direct and, hopefully, encourage the newly-elected Board, who is keen to maintain continual communication with the Fellowship which moulds and shapes the Pyramus and Thisbe Society.

Reports

The Officers' individual reports have been published together with this my report, which reiterates and reflects the gratitude we all feel for those who have developed the Society to what it is today, and what it is 'being' as we progress.

Looking back at the year past, I see the highly successful first **P&T National Conference**, the **Counting House** and **Theodore Bullfrog Evening Sessions**, the **Diversity & Inclusion Breakfast Meetings**, the **P&T Luncheons** (we now modestly call them 'Lunches') both on a CPD and social basis, **Branch Events**, and a spirit of optimism, and a will to increase and improve such events with a view to making these accessible to all. **Branch Events** have been numerous; it is heartening to see the number posted on the website. I am aware of one Branch having made significant advances on the Education front, being involved with a local university and seeking to make contact with more. It is also heartening to note that one non-London Branch will be hosting the next Conference; more on this in due course.

I also see good **accounting and a healthy bank account**, good **membership and complaints management**, useful and informative **publications**, including the real possibility of a new Green Book this year, not to mention the **law library, blogs and vlogs**, and a wealth of valuable information in our **knowledge base**.

There has been much significant progress within the **Education and Diversity** and **IT and Website** fields.

All in all, I would say the Management Board is reporting good news. Yes, we have not perfected all yet, but we are not pausing either. Thank you for being part of this great work! 🙏

Fareed N Fetto FPTS CEng MStructE
CBUILD MCABE MFPWS AaPS

National Chairperson
The Pyramus & Thisbe Society
February 2024



Secretary

ANDREW SCHOFIELD

Secretary's Report to the Fellowship Annual Meeting 27th February 2024

LAST YEAR, 2023 HAS BEEN A YEAR OF consolidation with mixed results. The most important aspect of the Society, that of "Education" has undergone considerable change and a marked improvement. Attention has been paid to comments made by the Membership and as a result the nature, type and venue of presentations and events has diversified. Improvements continue to be made towards making presentations available through the website together with podcasts and I am pleased to report that some CPD presentations are now available to view on the website, including the inaugural National Conference. Once logged into the members' Dashboard, these can be found in the "Webinars" section of the Knowledge Library.

The changes to the education events have included a greater awareness of diversity and inclusion and from a start in London this is now being introduced into the other branches.

Unfortunately progress with publications has been slow and a re-think is going to be needed towards the production of guidance notes and the development of the Law Library. If we are to remain the foremost authority on matters relating to the administration of the Party Wall etc. Act 1996 then we need authoritative documents to back this up and these need to be regularly reviewed and coordinated to ensure that they do not conflict with either each other or changes in interpretation that might arise from litigation. On the plus side "Whispers" under the editorial leadership of Natasha Demirbag has become "essential reading" as has the Journal prepared by David Moon.

I have no wish to steal my colleagues' thunder but I am pleased to announce that the next National Conference to take place in autumn will be hosted by the West Midlands branch. This is an exciting development which I hope will pave the way towards greater branch involvement and a more cohesive identity.

As an organisation run by and for those who are in engaged in the administration of the Act it is important that we continue to place value on what we think and do as surveyors and not fall into the trap becoming overly reliant on the opinions, often persuasively voiced, of others. REMEMBER WE ARE THE EXPERTS, not the lawyers.

I have been involved with the Club/Society, London Branch Committee, National Council and latterly the Management Board, since 1995 serving as Secretary for the last fifteen year. The time has come to step down and let others take the organisation forward. Over the last few months Matt Briggs has been shadowing me and will be the Management Board nomination to take over as National Secretary. I am taking this opportunity of wishing him my best wishes in what can be a demanding and frustrating role but ultimately, extremely rewarding.

Please remember that Management Team positions are for a maximum of four years and I hope that this will encourage others to become involved, it is not a life sentence!

And finally...

Throughout my career I have seen changes brought about by the explosion of information technology. I have witnessed firsthand landlines to mobiles, typewriters to keyboards, film to digital images, drawing boards to CAD and in person meetings to "Teams". Some changes have been beneficial but without doubt, one of the disadvantages of this revolution has been the emergence of the "keyboard warrior" who is unable to communicate other than in short, often rude and frequently incorrect sentences, tends to send assistants to site and is never available to speak. We should be better than that and I am going to close this report with a heartfelt request to all members, whatever their category, to make every effort to attend in person events organised by the branches. There is resistance amongst some to accepting the necessity of this in the mistaken belief that CPD can be obtained entirely online. In my experience, reaching agreement and an effective and equitable solution is easier, quicker and altogether better if those involved meet and conduct themselves in a respectful and friendly manner. This in turn is easier to achieve if they are socially acquainted and had a chat over a drink. I hope very much that the requirement for physical attendance to comply with continuing professional development continues. 🙏

.....
Andrew Schofield FRICS FPTS(Hon)

Former Secretary 2023-2024

The Pyramus & Thisbe Society



Finance Officer

GRAHAM NORTH

Finance Officer's Report to the Fellowship Annual Meeting
27th February 2024

I AM DELIGHTED TO REPORT THAT THE Society is in excellent financial health and continues to be able to support the various branch's and initiatives that are proposed.

By calling upon the outstanding services of Ada Elliot and her team much of the organisation of the P&T is dealt with centrally which frees up time for those volunteering members to carry out the great work that they do in the various branch's up and down the country.

As the Society's financial position is so strong this has allowed subscriptions for the year 2024 to remain the same as the previous year.

This year I have stood down from my role as the Finance Officer (previously the Treasurer) after some 20 odd years and the Society is in very safe hands. I am delighted to report that Jonny Callard has succeeded me in the position as Finance Officer of the Society.

It has been a privilege to play a small part in the growth of the P&T over such a long time and I look forward to its ongoing continuing success and supporting it in any way I can. ■

Graham North FRICS FPTS(Hon)
Former Finance Officer 2023-2024
The Pyramus & Thisbe Society
January 2024



Membership Officer

DEREK G BATE

Membership Officer's Report to the Fellowship Annual Meeting 27th February 2024

THE MEMBERSHIP GROUP CONSISTED IN the 2023 year of myself as Chair, Robin Ainsworth, David Bowden, Ryan Hannibal-Law, Adam Linard, Stephen Mealings and Irene Moore. I am grateful for the assistance each member of the group has provided.

The Society currently has 1291 members, consisting of 50 Fellows, 931 Members, 163 Associates, 14 Students, 66 Affiliates and 67 Retired and 0 Honorary Fellows.

In terms of membership perhaps the two biggest changes made in the formation of the Society from the former Club, have been the introduction of the formal complaint procedure and the requirement for CPD.

In the last year, it will likely come as no surprise to the Fellowship, that complaints have been made against members. These complaints, made by other members and by owners, have been carefully filtered to ensure that the P&T Society deals only with matters relevant to membership protocol and not to matters relating to disputes. In some circumstances, sanctions have been made against members and in other less serious cases, recommendations made to assist in prevention of further difficulties.

In my report to the Society last year I wrote, "Continuing Professional Development (CPD), is considered an integral

part of the Society and paramount if we are to continue to be leaders in excellence in neighbourly matters. In this our first year, the Membership Group are not expecting that every member to have logged their CPD via the web site, but for the coming year 2023, the Membership Group will review early 2024 and expect to see every Associate Member, Member and Fellow will have logged at least 5 hours CPD in the prescribed manner".

Unfortunately, I have to report that at the time of writing it appears less than half of our members will retain their membership, if the Society enforce the requirement.

I respectfully suggest that the Fellowship consider if the CPD requirement is mandatory and, if it is what action is required to enforce the requirement.

I have found the role of Membership Officer and being part of the Management Team to be challenging but enjoyable and now that I stand down, I take this opportunity to thank all those who have helped along the way. 🙏

Derek G Bate MRICS FPTS(Hon)
Former Membership Officer 2023-2024
The Pyramus & Thisbe Society
February 2024



Education Officer

STUART BIRRELL

Education Officer's Report to the Fellowship Annual Meeting
27th February 2024

THIS REPORT TO THE FELLOWSHIP OF THE Society sets out the current status and progress in matters relating to education. In broad terms the objectives can be split into the following:

- Presentations
- Recording of presentations
- Vodcasts
- National Conference
- Engagement with further education
- Engagement with other organisations

Presentations

Presentation frequency has improved dramatically over the last year and special mention must be given to the assistance of Michael Kemp in engaging with the branches. Further engagement and progress needs to be made, a Zoom meeting of all Education Officer's will be arranged in the near future to discuss particular problems and agree on strategy moving forward.

In line with advice from members dealing with inclusion, London has started holding presentations at different times of day, namely breakfast, lunch-time and evening on a rolling monthly programme. It is early days, but it seems to be very popular. Other branches may consider mixing it up a little bit to make sure that all members can attend.

Regarding speakers, we are revisiting the current list of speakers etc but via Michael Kemp, it would be useful if branches that are having trouble finding speakers, could indicate the subject they would like discussed in order that the rest of the Society can assist.

Recording of Presentations

This has improved although it is not completely widespread yet. We have managed to upload some of the recordings that we have, both of the Conference and individual presentations, this needs further development and discussion. It is firstly not as easy as it sounds to record it without professional help and certainly editing by professionals makes an enormous difference to the final product.



There have been requests for virtual presentations, as happened during the lockdown. This will be explored further but we are very keen to encourage members to attend physically. Interaction between professionals is a large part of a Learned Society and watching a virtual presentation is not the same, however there is demand and we will see what can be done without adversely affecting numbers attending in person.

Vodcasts

This has stalled a little bit following a flurry in early 2023 but a further two are in the process of being planned, however this is a London initiative and I am not aware that any other branches have considered or attempted this. London Branch are happy to help with the logistics and give the benefits of their experiences should anybody wish to contribute.

National Conference

A very successful National Conference was held in London in March 2023. Good attendance not just from members local to London but from around the country.

This was the first National Conference (previous conferences have been held by London branch as London Branch conferences) and I am delighted to confirm that following the invitation to 'bid' for the next conference we have had successful bids from both London and a consortium of East and West Midlands. It has been decided that the next National Conference will be held in the Autumn of 2024 to be hosted by East/West Midlands, this will be held in Birmingham. I am awaiting confirmation of date and venue in order that a save the date can be sent out. It is important that all members make the effort to support this conference. We are delighted that East and West Midlands have taken up the baton. It was a little surprising that no other branches or consortium of branches made an application, but we hope for a successful first national conference outside London.

It has also been decided to try to hold conferences annually and the conference in 2025 will be held in London. Later this year we will be inviting branches to 'bid' for the 2026 conference as it takes a fair amount of time to organise these properly.

If anybody is interested in assisting in the organisation, please contact me and I will put you in touch with the relevant people. It is envisaged that the organising committees will be drawn nationally, and the subject matter drawn nationally as well.

Engagement with Further Education

We have had problems taking this forward over the past 12 months however Jeremy Price and Michael Cooper have taken this on, and we are hopeful that we will be able to engage effectively with Universities with Building Surveying and other allied courses in order to provide logistical backup, speakers and other material to assist in the education of the students.

Once this is up and running properly, we will look to expand this if we have the available resources and people prepare to get involved.

Engagement with other organisations

As reported at the last AGM we reengaged with the RICS under their new regime, regarding certification / accreditation of neighbourly matters. I am pleased to say that although progress has been a little slow, we are making progress. Michael Cooper and I gave a presentation to the Regulatory Body at the RICS in Birmingham in the Autumn and the engagement is growing. They need assistance with complaints against surveyors and we need their help to try to identify and certify competent practitioner's. Those of you who are Building Surveyors probably aren't aware but there is now again a Faculty of Building

Surveying within the RICS (no they didn't tell me either!). Michael Cooper has engaged with the Chairman and he and I are due to hold a virtual discussion in the next few weeks. Hopefully we can get their support to take matters forward.

Engagement with other bodies such as the ICE and RIBA has stalled. If any Fellows are RIBA registered architects or members of the ICE, I would be grateful if you could contact me if you are prepared to help with liaison.

On a wider point we are engaging with major landholders, not to educate surveyors how to become a party wall surveyor but to try to educate clients as to when they need advice and help. If anybody is prepared to do this on behalf of the P&T (as opposed to on behalf of their own commercial interest!) please contact me and we will try to help with resourcing.

Review of Objectives from last year

Objectives for 2023/2024 were listed as following:

- Run a successful first national conference – **Completed**
- Set in motion the necessary organisation to run a national conference in 2025 – **We have set in motion to hold annual conferences, the first one to be held in East/West Midlands in 2024, a subsequent one in London in 2025.**
- To work with the branches to enable a sufficient presentation to be provided to allow compliance with the requirements of The Society – **This is work in progress, but good progress has been made largely due to the efforts of Michael Kemp.**
- Engage with other organisations and provoke good relations and collaborations and raise the profile of the Society – **Again work in progress but good progress made with the RICS, less so with other organisations.**
- Complete engagement with Universities – **Poor progress.**
- Continue to work to produce more professional Vodcasts – **This is work in progress, needs more energy.**

Objectives for the year ahead

- Run a successful conference in East/West Midlands 2024.
- Work with London branch to start organisation of the conference in 2025.
- Continue to develop the infrastructure and expertise to enable presentations to be recorded and subsequently uploaded to the website.
- Continue with work to get these presentations on the website.
- Continue engagement with other organisations such as ICE and RIBA.
- Continue to liaise with RICS regarding recognition of our expertise.
- Complete engagement with Universities. 📌

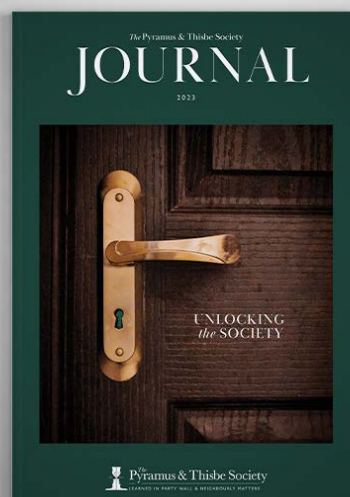
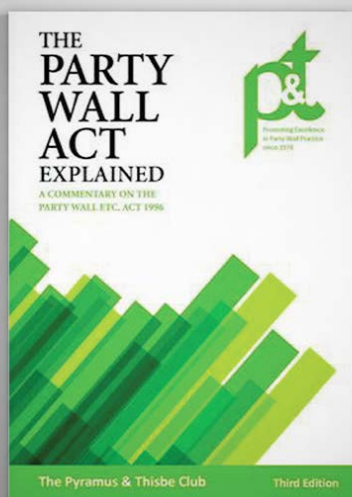
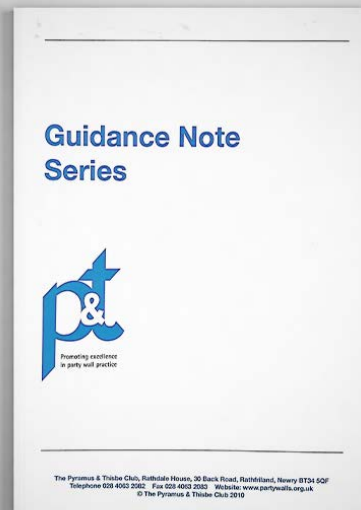
Stuart Birrell FRICS FPTS
Education Officer
The Pyramus & Thisbe Society
January 2024



Publications Officer

DAVID MOON

Annual General Meeting of the Fellowship on 27th February 2024



THIS REPORT TO THE FELLOWSHIP OF The Society sets out the current status of the Society's publications projects and proposed developments during the coming year. The Society's publications comprise the following:

- Learned Society Journal,
- Magazine (Whispers),
- Guidance Notes,
- Law Library,
- Society Archive,
- The Green Book
- The White Book,
- Other Publications Projects.

Whispers and the Learned Society Journal

Whispers continues to serve as the Society's magazine and appears on the members' section of the P&T website. The Journal presents the public face of the Society as a record of the Society's proceedings and is published annually. It appears on the public access section of the website. The editorial panel for both publications is chaired by Natasha Demirbag. Other members of the panel are; Shirley Waldron, Angela Gregson, Irene Moore, Allan Ssesanga, Nick Brown and Mike Clark. Issue 51 of Whispers is the latest edition available on the Society website. The first edition of the Journal was published in June 2023, following the Society's AGM and the National Conference held in London. The editors aim to produce three issues of Whispers and a Journal annually.

Guidance Notes

The working party is chaired by Geoffrey Adams. Other members are; Darren Frias-Robles, James Beat, Ashley Patience, Phillip Hurst and Trevor Hultquist.

The working party has reviewed the following Guidance Notes;

- 1. Notices
- 6. Referrals to a Third Surveyor
- 7. Impact Assessments
- 10. Advising Engineer
- 13. Access

The panel is currently considering the following Guidance Notes;

- 2. Appointments
- 5. Security for expenses
- 12. Special foundations
- 14. Consumer Contracts Regulations
- Applications to the Appointing Officer

It is expected that all Guidance Notes will have been reviewed by the end of 2024. Revised Guidance Notes will be added to the website as they are completed.

Law Library

The working party is chaired by Tony Fieldhouse. The surveying members are; Shirley Waldron, Aiden Cosgrave and Alistair Gill with Victoria Woolf and Howard Smith serving as the legal commentators. The working party is producing a format for the library which will include a link to the judgement in each case together with informed commentary from the surveying and legal panel members.

Archive

Following Holly Harris standing down to focus on diversity and inclusiveness initiatives for the Society, Irene Moore and Allan Ssesanga have taken charge of the Society's archives.

The Green Book

The Green Book working party is chaired by Fareed Fetto. Other members of the working party are; Martin O'Shea, Mike Clark, Rob French, James Beat, Stuart Cobbold, Michael Kemp and Irene Moore. The WP has completed its review and is presently engaged in consolidating revisions for presentation and expects to complete its objectives during the coming year. The Board of Management is considering whether the Green Book should be offered in digital form as well as hard copy. The Board's recommendation will be made to the Fellowship once the final draft of the fourth edition is at publication stage.

The White Book (Register of Members)

It has been agreed to produce the White Book in digital format and hard copy for 2023/24. Members have been advised that the White Book will not be produced in hard copy in future years.

Other Projects: The Society of Chartered Surveyors Ireland

The P&T Society has been invited to assist with the preparation of a guidance note for surveyors practising in Ireland under the Land and Conveyancing Law Reform Act 2009. The working party of David Moon, Stuart Birrell and Michael Cooper met the SCSi panel for the first time via video link on 3rd November 2022. Further meetings followed. The P&T panel issued a summary of initial recommendations in August 2023. 

David Moon FPTS(Hon)

Publications Officer

The Pyramus & Thisbe Society

January 2024



IT/Website Officer

HANNAH BOYD

IT/Website Officer's Report to the Fellowship Annual Meeting 27th February 2024

Report of the Past Year

THE PAST YEAR HAS LARGELY BEEN A consolidation year to smooth out some technical glitches with the website functionality. Plenty of work has been going on behind the scenes, to maintain and streamline the existing functions, and I must say an enormous thank you to Ada and Fareed for their ongoing assistance. This has been far more challenging than expected, and we are grateful for your patience while these niggling issues are resolved.

This is the second year we have used the new finance software to issue membership renewal invoices, which has been a difficult transition, and one which Ada is working closely with the website developers to improve.

The CPD recording function has had some minor tweaks, and should now be more user friendly. My thanks to those who have recorded their CPD hours for 2023 – especially those who have gone over and above the 5 hour requirement.

The website Branch pages are still under-utilised, and I would encourage Branch Officers to update these as regularly as possible. This is an opportunity for individual Branches to promote themselves and their events – a useful tool for potential new members. If anyone requires assistance, or would like some further guidance, please do get in touch, I will be happy to help.

On a more positive note, the Knowledge Library in the members Dashboard area now includes a lot more content, including revised Guidance Notes, Model Documents, and

the new *Journal*. We have also uploaded some recorded CPD presentations, including the 2023 National Conference, which can be purchased and viewed online – either via the 'Webinars' section of the Knowledge Library, or the

Member Shop. At the moment, these are all London Branch events, and I would encourage more Branches to record and share their own presentations where possible.

A new Social Media team has been set up, led by Tom Hopkins, to publicise the Branch events on LinkedIn, and try to generate some traction. I would encourage you to get in touch with Tom or myself with any news, events etc you would like to share.

Michael Kemp has now visited all the Branches to demo the website and its key functionality, including CPD recording, which has been well received.

Please do get in touch with any constructive feedback you might have – I am always happy to hear ideas on how it could be improved.

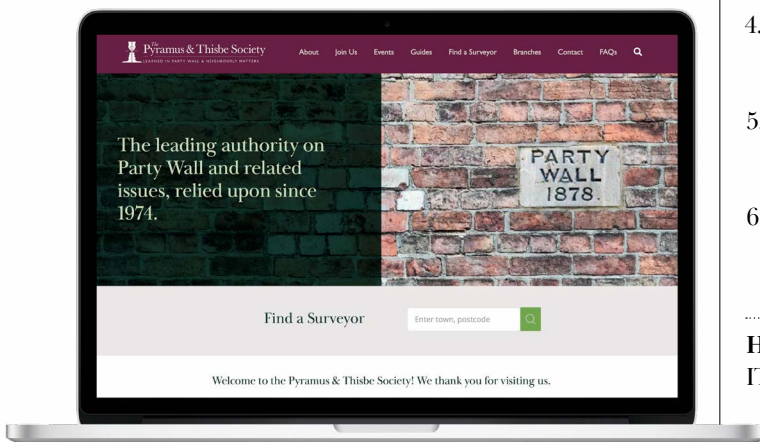
Objectives for the year ahead

1. Employ a part-time website/marketing manager, who can assist myself and Fareed liaising with the website developers, help deal with the flow of queries, and assist with improving our SEO.
2. Streamline application forms for new Student and Associate members, and those to upgrade membership status from Associate to Member, and Member to Fellow.
3. Continue to expand the Knowledge Library in conjunction with the Education and Publications Officers.
4. Support Michael Kemp to provide ongoing assistance to the Branches on how to get the most benefit from the website.
5. Continue to build our social media presence by promoting events and sharing technical content where appropriate.
6. Add new content to the website to promote the Mediation Scheme, and raise awareness of the Diversity and Inclusion initiatives. 🧑🏻‍🔧

Hannah Boyd MRICS FPTS

IT/Website Officer

The Pyramus & Thisbe Society
February 2024



National Conference

06.11.24

Announcing

for the second National Conference



The Pyramus & Thisbe Society

LEARNED IN PARTY WALL & NEIGHBOURLY MATTERS

Where___The Assembly Room,
The Exchange Building,
Birmingham City Centre

Activities for 2024



REVIEW OF THE 2023/2024 SESSION

WE ENDED 2023 with many, many calls for members to undertake their in-person CPD or

lose their membership. I imagine that the Christmas lunches last year were well-attended.

February saw the Annual General Meeting of the Fellowship and we had excellent attendance in London Victoria, with the few that couldn't make it joining us remotely.

The fellows discussed a number of matters and agreed so the board started 2024 by taking the controversial (for some) decision to remove the necessity for in-person CPD attendance.

We heard the cries of those in the regional branches where members are dispersed, and responded... London you have not got the same excuse!

We had a number members voted and made Honorary Fellows:

- Graham North
- Derek Bate
- Robin Ainsworth
- David Moon
- Alistair Redler
- His Honor Edward Bailey
- Michael Kemp
- Andrew Schofield

The Society is financially sound and during the AGM we were able to confirm that funding would be paid for speakers to visit and give talks to the branches around the country.

This is something that Michael Kemp and the Chairman Fareed Fetto ran with on their tour of the regional branches to meet the membership and discuss changes to the Award templates and the Green Book as well as build up levels of communication... I personally made it to the West Midlands meeting.

Looking Forward

It is all go! We had the 50th Anniversary dinner in October at the Butcher's Hall appropriately placed near Smithfields Market in the City of London.

We have the National Conference in November, hosted by the West & East Midlands branches.

Other matters underway

- The next edition of the Greenbook has been proofread and will be published in the near future.
- Various members of the Society have been busy recording Podcasts, etc. and Hannah Boyd is organising their publication along with setting up a P&T Spotify account.
- Holly Harris who has joined as an Inclusion Officer who has joined as an ex officio member of the management board.
- We are already looking ahead to the next conference.
- We remember our past, but we are a society with eyes on the future.

Finally, in February Ryan Hannibal-Law took over from Derek Bates as National Membership Officer; Jonny Callard took over from Graham North as National Treasurer; and I took over from Andrew Schofield as National Secretary.

We all answered invitations to get involved and become fellows helping the society. I am aware that there are current invitations for others to take on the roles for 2025, so anybody who is interested in joining the Management Board as the following should answer the call: Publications Officer, Education Officer. 🙋

Matt Briggs FPTS

Secretary

The Pyramus & Thisbe Society



Articles

50

Years with Party Walls

David Moon

THIS ARTICLE IS BASED ON TALKS GIVEN to the Thames Valley and Wessex branches of the P&T Society in November and December 2023, respectively. In what follows, you will be led through fifty years (almost) of hazy recollections of party walls leaned against, boundaries imagined or real and excavations climbed down or fallen into. In the interests of self-preservation, some locations and persons' identities have been obscured. Other inaccuracies are due to failing memory.

My introduction to party walls came in 1974, coincidentally the year in which the Pyramus & Thisbe Club was proposed by John Anstey at the suggestion (as he put it) of his "incompetent and incomparable assistants" who thought it might be fun. I was then a junior civil servant in the Ministry of Public Building and Works. Having studied at the Polytechnic in Leicester, my knowledge of party wall matters as they were managed in London, was the essence of vague. I was given a copy of the London Building Acts (Amendment) Act 1939 and propelled towards Whitehall to act for H.M. Government as adjoining owner's surveyor.

I was fortunate to meet, as building owner's surveyor, Bernard Goodenough, sadly, no longer with us. In 1974, he was a partner in Goodman Mann Associates, practising from offices in St. James's. What he thought of the long-haired youth from the Ministry, I cannot imagine.

What he did though, was to explain the mechanics of the Act, stand me a very decent lunch and leave me with the impression that party wall matters were a most gentlemanly pursuit and something that I should aspire to.

It sometimes surprises me to recall that about half of my career was spent while the 1939 Act was in force. It does not come as a surprise how few of the cases spring readily to mind. In fairness, I did less party wall work in those days. First with the Ministry (later Property Services Agency) and from 1978, in private practice with Davis & Co., most of my work was contract administration, project management, dilapidations and a sprinkling of structural surveys. However, a couple of party wall matters remain in sharp focus.

In (I think it was) 1987, I acted for an adjoining owner whose property just north of Warren Street, was managed by the firm. It was a butcher's shop with accommodation above and was a remnant with two other houses, of a war-damaged terrace. The vacant adjacent site was to be redeveloped. The building owner appointed a surveyor with whom I have worked on many occasions since. It was agreed the building owner could open trial pits to establish the depth of the party wall's foundations. It was further agreed that the pits be covered to prevent them flooding, it being early in the year during a prolonged wet spell of weather.

On a day in March, about lunchtime, the party wall failed, sliding into the excavations, collapsing the building and seriously damaging the next adjoining property in the process. Unknown to the surveyors, the labourer charged

with digging the trial pits had joined them all together forming a trench and had dug enthusiastically beyond the bottom of the foundations. By great good fortune, the butcher and his wife were out at the time but sadly, their cat was not and did not have a tenth life to rely on. The Fire brigade found an abandoned wheelbarrow and donkey jacket and fearing the worst, began to search for the missing labourer. An eye witness however, reported seeing a person fitting the description, running at speed away from the building shortly before the collapse. He was never found and the developer fled abroad. There were no casualties aside from the cat and all was eventually settled by insurance.

In 1990, I took over a case from a colleague who had retired. He was one of the original recipients of John Anstey's invitation to form a party wall surveyors' club and was a highly regarded party wall practitioner. The matter related to a development of housing by the borough council adjoining an existing terrace of houses in North London. I assumed duties in his place, as adjoining owner's surveyor. The Borough Architect acted as building owner's surveyor.

The adjoining owner alleged that damage had occurred to his property. The claim was disputed. On checking the award made by the original surveyors, they had not selected a third surveyor but had reserved selection to the President of the RICS. This was not unusual. The 1939 Act, unlike the present legislation did not contain the word 'forthwith' in the obligation to select a third surveyor. Timing was left to the discretion of the appointed surveyors and the means. We duly applied to the President (and paid the RICS fee) and John Anstey was selected.

The necessary preliminary correspondence followed. It was then that our newly selected third surveyor wrote a short (testy) note to say that he had misled himself into >>



Women of World War II monument, Whitehall

believing that our matter was one to which the 1939 Act applied. He was not alone. We had all shared that belief and we were all mistaken. The borough in question was not within the boundaries of the old LCC which defined the reach of the Act. It was an embarrassing discovery but all was not lost. The parties consented to Mr. Anstey being appointed arbitrator and on we went.

It was a very rainy day when the 'tribunal' met to examine the alleged damage. I arrived early to brief the adjoining owner about the visit. At the appointed hour, I opened the front door but found no sign of our arbitrator on the doorstep nor of the building owner's surveyor. I tried again a quarter of an hour later with the same result. After waiting a little longer I decided to venture out into the downpour for a more thorough search. I found them outside the building owner's property without shelter, the rain draining from the brim of Mr. Anstey's brown fedora in cascades. Oh dear! It seemed ill-advised to point out that we had agreed to meet at the adjoining owner's house. In spite of this inauspicious start, John Anstey's award when it came, was scrupulously fair and well-considered and entirely in favour of my appointing owner who promptly invited me to his daughter's wedding. This was the first but not the last time I was privileged to work with John Anstey.

In 1997, the Party Wall etc. Act 1996 came into effect across the whole of England and Wales. With the demise of the GLC in London, it was realised that new legislation was required to preserve the party wall dispute procedures in London and the opportunity was taken to apply them to the country as a whole. The new Act largely mirrored the old one. Some old gaps were plugged but inexperienced drafting left us with the troublesome definition of 'special foundations' and without a strong enough definition of 'surveyor'.

Looking back, life under the old regime was very different and becomes increasingly so with the passage of time. The number of practising surveyors was small then and the community well-known to one another. It was suggested to me recently that the reason the new Act's definition of 'surveyor' remained loose was out of concern that there would not be enough qualified surveyors to go round. There were fewer referrals to third surveyors who incidentally, were required to make their award within ten days of a referral being made under s.55(j). Appeals were also less frequent and the 1939 Act contained provisions under ss.55(n) and (o) for appeals to be heard in the High Court instead of the county court at the election of the parties, subject to certain undertakings being given. The 1939 Act gave no authority to the surveyors to settle a dispute over security for expenses. Under s.57, this was a matter for a judge of the county court.

Awards of that vintage were different in style, often typed on foolscap size paper

(with carbon copies) and with fewer reference documents. A full set of construction issue architectural and engineering drawings appended to an award was unheard of. Drawings were usually prepared specific to the subject matter of the award and the party wall would be coloured pink. Ah, the good old days when your office junior could be kept occupied with a set of water colours and a paintbrush! There were no method statements, they having not yet been conceived by health and safety officers. The award itself contained any necessary stipulations about the method of working. Fees were frequently expressed in guineas.

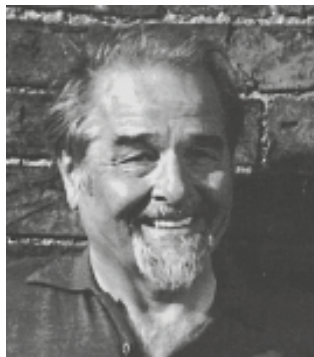
In the background, people in general were more law abiding in attitude and there was greater public awareness of what constituted good behaviour.

The 1996 Act brought immediate changes by extending the rights and obligations established in London, to the rest of England and Wales. Other changes, not least to social outlooks, have been more gradual but no less influential. Today, the circumstances in which surveyors operate under the legislation is quite different. There are many more referrals to third surveyors (who thankfully no longer have to determine the dispute within two weeks - in my case, a bit like aiming a Tiger Moth at the sound barrier) and more appeals to the county court. Lawyers are more involved in the process both before and after awards have been made. They also now write most of the authorities on the subject. When I was introduced to party wall work, the available text books were written by surveyors. The public is less instinctively law abiding and less risk averse when weighing up the pros and cons of compliance with laws that carry relatively modest sanction. The practising party wall surveyor now works in an altogether more challenging environment.

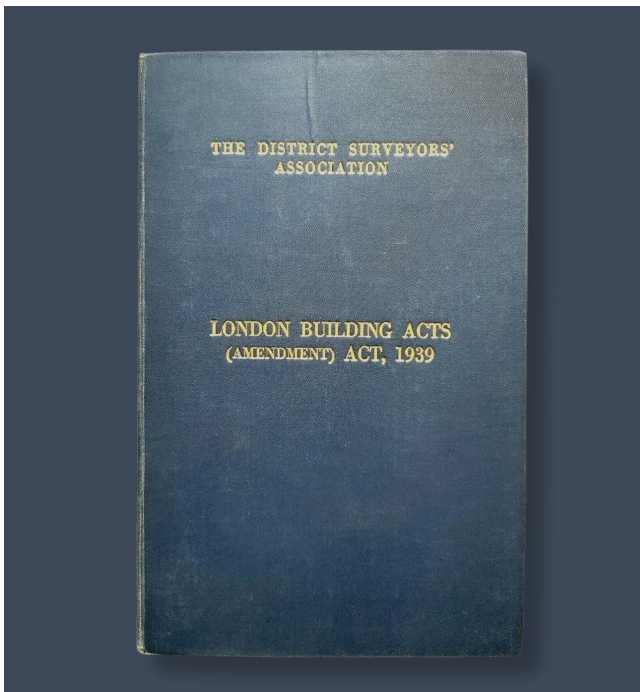
Working with the current legislation has brought moments of joy, horror and puzzlement in broadly equal measure. There follow some case summaries where those emotions were enjoyed to the full.

Alongside Colebrook Row in Islington, there is a cottage, home for a time of the essayist Charles Lamb. It stands at the end of a terrace on (a now enclosed section) of the New River, a canal built in 1613 to carry water from Hertfordshire into the centre of London.

It adjoined a development site in Colebrook Row where I was acting for the building owner. The cottage had an enclosed garden with a pond in the centre of which was an island on which stood a life-size bronze crane (Japanese bird, not Scotch derrick). I don't remember why the garden was so crowded on that cold December day but it was; filled with surveyors, architects, engineers and builders. Stepping back to allow someone to pass, I lost my footing and in the finest cartoon fashion, fell backwards into the pond. As I surfaced, I



John Anstey

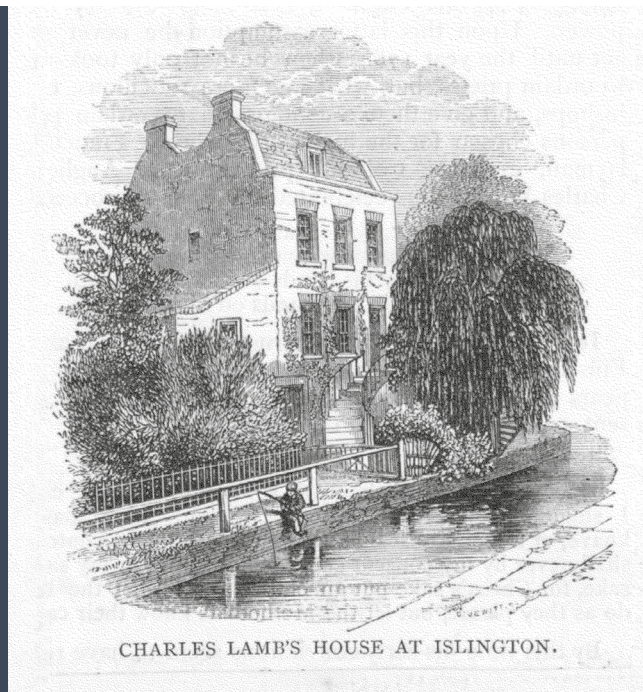


London Building Acts (Amendment) Act, 1939

heard the concerned housekeeper ask, “Has he damaged the sculpture?”

By contrast, on a very warm day several years later, I met a young surveyor standing in for his principal, the adjoining owner’s surveyor, to prepare a schedule of condition with me. The address in St. John’s Wood was one referred to by the ‘red top’ newspapers as ‘Millionaires’ Row’. The houses were (and are) very large and a bit bling and this was the blingest of all. A Rolls Royce with customised paintwork and trim loitered on the drive. We were ushered in by the housekeeper. We noticed the windows were all open. My companion expressed surprise as the house clearly had air conditioning. It was broken. We suggested it would be prudent nonetheless to close the windows when the demolition began. “What”, asked the housekeeper, “about the mink”. Both surveyors had the same thought, “put it in the wardrobe”. But “no” said the housekeeper making a sweeping gesture with her arm and repeating “the mink, the mink”. It seemed that all of the furniture in the reception rooms, including the sofa on which we sat, was covered in white mink fur.

Jet grouting is a relatively modern construction technique. My first brush with it was a development in Knightsbridge on a constricted site where deep excavations were to be dug to form multiple basements for an ‘iceberg’ building. There were many adjoining properties and no less than thirteen adjoining owners’ surveyors. Happily they all instructed Lawrance Hurst as their advising engineer whose advice proved invaluable to all. There was a debate about whether jet grouting was notifiable work and whether it would lead inevitably to trespass onto the lands of adjoining owners. I



Colebrook Cottage

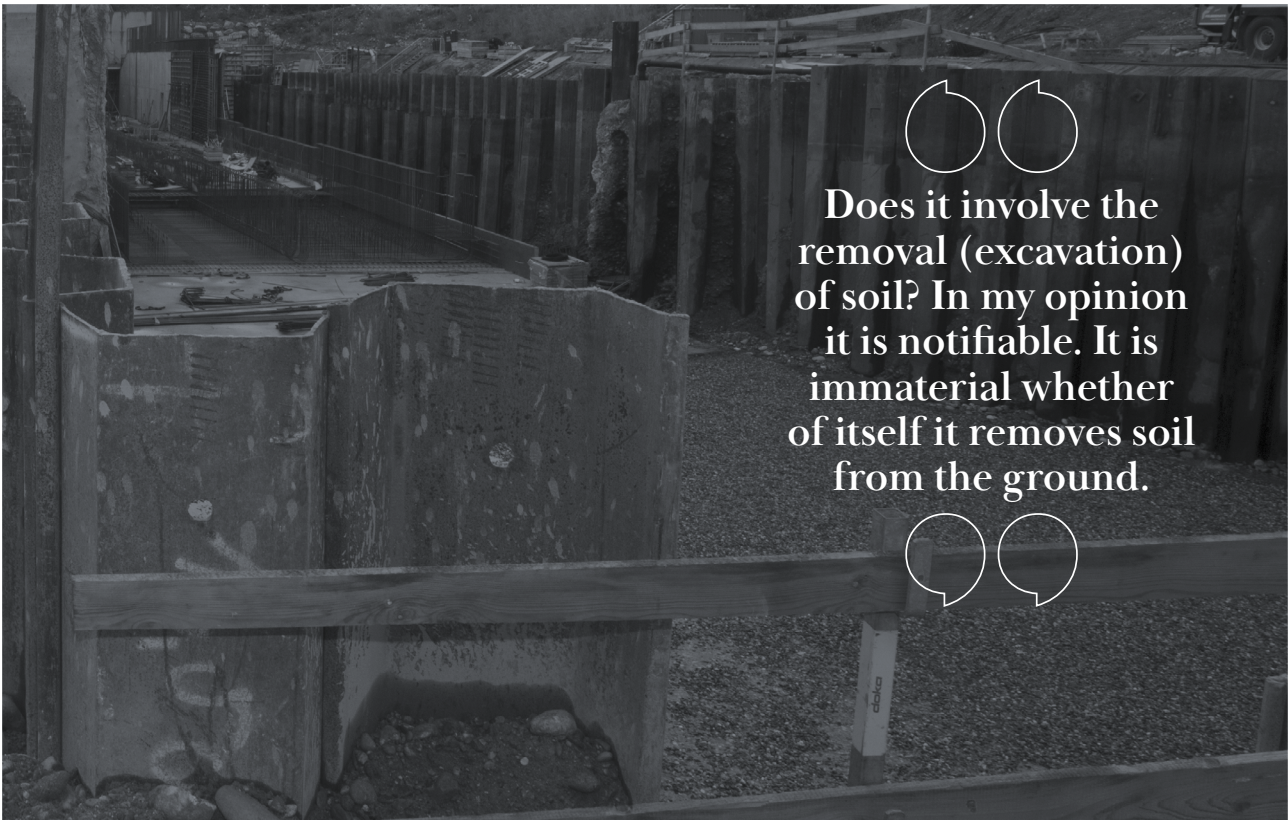
believe we treated it as notifiable being part and parcel of the excavation work, its purpose being to stabilise the ground instead of piling in one form or another which the site conditions made impossible.

The method used was a cementitious form, pumped into the ground under pressure. It went pretty well with only two unhappy moments. An adjoining owner’s basement kitchen wall was breached and the grout filled voids beneath his kitchen cupboards necessitating a whole new fitted kitchen. More spectacularly, a titled lady called one day to report a concrete fountain in her garden! She was surprisingly calm and matter of fact about what was likely to have been a unique experience for her, as it was for me.

There are sometimes surprising, unforeseen aspects to a party wall matter. One such was at a very smart house near Hyde Park. It has always been a bad habit of mine to be distracted easily by paintings, sculptures or books during visits to prepare schedules of condition. On this occasion, as I mounted the stairs, I felt more and more strongly that I had seen some of these pictures before. Sure enough there were Picassos, a Piet Mondrian or two and the odd Matisse, among many others. Yes, they were all original works and most of them clung precariously to the party wall. They were insured for an eye-watering sum greater than the GDP of a small country. They could not stay where they were bearing in mind the scale of the neighbour’s proposed works.

A small bookshelf falling off a party wall in Notting Hill recently had created months of correspondence. Can you imagine the fall-out from a Picasso bouncing off a tiled floor at the stair foot, three floors below?

It is surprisingly complicated to relocate world >>



heritage class artworks to a place of safety. There are 'before and after' condition reports prepared by experts approved by insurers, then specialist removers arrive to pack and crate up. It all takes a lot of time and is hugely expensive. But, so far, so good; until that is the adjoining owner asked innocently what did she have to look at and enjoy while her art collection was away from home? A fair point. We thought of photographic copies, some inexpensive alternative pictures, hiring some paintings from a specialist agency etc.,etc. in the end it was the adjoining owner herself who found a perfect nil cost solution. She approached a gallery which exhibited young, up and coming artists and agreed to offer her own house as an extension of the gallery and to invite art-loving friends to view and buy the pictures.

Sheet piling; two words that have the power to wake up the most torpid of party wall surveyors. There has long been discussion over whether this form of construction is notifiable work under the Act. Does it involve the removal (excavation) of soil? In my opinion it is notifiable. It is immaterial whether of itself it removes soil from the ground. It is invariably linked to excavation work and is an essential part of the excavation process where specified. I discovered quite early in my career that bashing this stuff into the ground was a cast-iron guarantee that adjoining properties will be damaged. Alternative insertion methods such as the Giken system are preferable where the pile sections are pressed into the ground. This however is not without risk.

Several years ago, close by Regent's Park, I was acting for

an adjoining owner who was remodelling his own very large, Grade II listed property. The building owner was developing two large houses on the adjacent site of one he had demolished. There were multiple basement levels which entailed digging one of the largest holes in the ground I have seen. There was to be sheet piling. My advising engineer, Derek Glenister was very clear. He didn't like it. He especially didn't like the jet watering of the pile toe to ease its passage into the ground. Derek explained that in clay soils, the water jetted under pressure risked opening natural fissures in the clay which would cause a rapid expansion in the soil. All of this was explained very patiently to the building owner's project manager, architect, engineer and contractor. It was agreed with the building owner's surveyor and awarded that the water jetting would be omitted; the piles would be pressed into the ground 'dry'.

One morning, soon after the piling work had started, routine observation of monitoring targets on the adjoining owner's property showed that on one corner, the building had lifted by 20mm. Damage was instantaneous and severe. Of course, the contractor, finding dry insertion difficult, resorted to jetting the pile toe. The predicted fissure in the clay soil opened into a cavity pushing the soil upward with force. It took years and several awards to settle compensation for the damage.

While a number of recent decisions in the courts have served to curtail the authority of surveyors, in some quarters it remains beyond question. I was in rather a hurry when I

took the call from an adjoining owner, a lady of middle years, residing in one of north-west London's leafiest and most exclusive suburbs. In fairness, she had suffered much at the hands of two very large developments backing on to her garden.

"They are eating their lunch on my roof. Are they allowed to do that?"

"No C they are not. They are trespassing and you can ask them to leave."

"Do I have to be polite to them?"

"No."

Sound of footsteps and window being opened.

*"I have my party wall surveyor on the the telephone and he says I can tell you to **** off, so get off my roof!"*

My talk for Thames Valley was entitled 'Anecdotes of a third surveyor'. At some point, I don't recall when exactly, I began to receive referrals as third surveyor. During the last few months before retirement, I believe I had in the order of twenty cases waiting for my attention. Some were simple, others quite complex and a good number were resolved by informal means.

One of the cases referenced in my talk to Thames Valley branch was an unusual damage claim. The owners lived in substantial adjoining detached houses on a steeply sloping site in Cricklewood. They did not get on. The downhill owner built a 30 metre long extension into the garden on piled foundations. The adjoining owner claimed that their garden flooded because the neighbour's new building dammed surface water that previously drained away. The referrals included some complex legal arguments on trespass, nuisance and easements compiled by lawyers long since instructed by both parties. When in due course there was a lull in the crossfire, I came to consider my award. I decided that I could not give detailed consideration to the legal arguments on extraneous matters. I was not expert in these areas of law and in my view, s.10 of the Act did not require that I should be so. The tribunal formed under s.10 determines a dispute strictly within the confines of the Act. The questions to be considered were therefore;

- Was there loss or damage?
- Was the loss caused by work carried out by the building owner?
- Was the work the subject of a notice under the Act.
- Was s.7(2) of the Act in play?

These were the core considerations when making my award which was in favour of the adjoining owner's claim. My award was appealed and as so often happens, I never heard the final outcome.

The immunity of surveyors appointed or selected under the Act has long been a hot topic. As the discussions swung back and forth, I don't suppose anyone was thinking about

the surveyors suing one another. In 2020 I was selected as third surveyor and unusually, was asked to confirm my willingness to act (and to undertake a conflict of interest check). The case involved minor domestic scale work in north London. In due course, I was asked to make an award by the building owner's surveyor. Immediately afterwards the parties advised that they had settled matters between themselves. No further action was required. However, the building owner's surveyor wanted an award for his fee. I was slow to consider this referral not least because I had doubts whether an award was appropriate. I was served with a notice under s.10(9) to act effectively within ten days. The notice was served on Christmas Eve and my office had closed for the holidays the day before. I did not see the s.10(9) notice until we reopened the office in January by which time the notice period had run. I was no longer the third surveyor.

No amount of explanation, quoting of the Act or reasoned argument succeeded in loosening this man's grip on his flawed understanding of the rules. His email he said, had been no more than 'a shot across my bows'. I was still in his mind, the third surveyor. He then threatened to sue me for his fee if I failed to make an award.

In short, that is what he did. He brought a claim in the county court against me for breach of contract. The case was heard in June 2022 and the claim was dismissed. The only surprise in all of this was that any practitioner could imagine that a contract existed between the surveyors. Impartiality, independence?

I ended my talk to Wessex branch with a short quotation, "But be of good cheer Master Ridley....." words spoken by Hugh Latimer to his friend and fellow Protestant cleric, Nicholas Ridley. Admittedly, their circumstances were even more trying than those of a party wall surveyor managing a difficult owner with a difficult project. Waiting for Queen Mary's inquisitors to finish piling bundles of twigs at your feet with blazing torches at the ready must have tested their patience even more than an email from one of the profession's 'bad boys' rejecting a request for special foundations consent. But setting aside the dire circumstances of Hugh Latimer's predicament, his exhortation to "be of good cheer" should be our guiding principle. So much more is achieved by amiability and good fellowship than any amount of ill will and resentment. 🙏



David Moon FPTS(Hon)

First published Whispers Issue 52.

The Party Wall etc Act 1996

the role of the surveyor

ANDREW SCHOFIELD

THE ORIGINS OF THE ACT ARE THE GREAT Fire of London following which it dawned on the powers that be (including Mr Samuel Pepys) that something more substantial than wood, straw and dung would improve resistance to the spread of fire. In turn this led (eventually) to The London Building Acts and in 1996, to the current legislation which, truth be told, would benefit from being reviewed - but that is a discussion for another day.

The Act is “permissive and enabling” - which means that it helps to get certain categories of building work done particularly in a congested urban environment. It sets out to achieve this by suspending common law rights and replacing them with statutory rights and duties.

The Act is a mechanism for the determination of construction related disputes within a statutory framework and surveyors appointed to carry this out occupy the bottom rung of a judicial process which can, for the very wealthy with nothing better to spend their money on, end at the Supreme Court. Unfortunately, one of the many problems of The Act is its failure to define “surveyor”. As a result, practitioners can be unregulated and range between the highly competent and those who have what might charitably be described as a basic understanding of the legislation but little else.

Anyway, here is how The Act is supposed to work...

The first thing is to understand the terminology:

- **“Building Owner”** an owner of land or property who wishes to carry out works elements of which fall within rights conferred by The Act.
- **“Adjoining Owner”** the owner of land or buildings close to that of the Building Owner.
- **“Notices”** the rights conferred by the Act fall into three categories, each of which requires an adjoining owner to be notified of the intended works. Section 3 is a notice describing works to a party wall or structure, Section 1 where it is intended to build against or astride the boundary between properties where this has not been previously built upon (known as a “line of junction notice”). Section 6 is where it is intended to excavate to a depth lower than the foundations of an adjoining owner’s building within certain prescribed distances.
- **“Appointed Surveyors”** are the surveyors appointed by the owners if, following service of a valid notice, there is

a dispute between them. The dispute can be actual or deemed in the absence of a response from the recipient.

- **“Agreed Surveyor”** the parties to a dispute can concur in the appointment of one surveyor to determine it for them and there is nothing wrong with this providing the individual concerned is competent.
- **“Third Surveyor”** this is the surveyor, usually selected by the appointed surveyors, to determine any disputes between the parties arising in connection with the works described in the notices which the appointed surveyors find themselves unable to do. The parties, either individually or jointly, can also refer a dispute between them to the Third Surveyor but this should only ever be necessary if the appointed surveyors were refusing or neglecting to consider a matter. Just because one of the parties does not like his appointed surveyor’s opinion is no reason to go to the Third Surveyor.
- **“The Award”** this is the document served on the parties recording the surveyor(s) determination of the matters in dispute. Providing it is lawful, the parties have 14 days in which to lodge an appeal at the County Court if they do not agree with it. Once this time has expired the award becomes conclusive and cannot be questioned by any Court. For the few who are still awake you will have noted the reference to “lawful”. After expiry of the appeal period an award can still be challenged if it is “unlawful”.

Application of the Act

The Act requires a clear sequence of events: notice, dispute (or deemed dispute), appointment of a surveyor or surveyors for the parties and finally, determination. The mantra is: “no notice, no Act”. The Act assists construction and other than the costs of administration there should be no reason for a building owner to avoid engaging with it.

A surveyor does not have to be engaged to prepare and sign notices but if you choose to do this yourself then make sure you get it right. The various sections of the Act describe quite clearly what an effective notice needs to contain and how it can be “served”. Make a mess of it, and you are back to square one. Depending on the works, notices need to be served one or two months in advance of the works that are intended to be carried out.

The adjoining owner’s response to a notice depends on which section of the Act it relates to. A notice to build a wall against the boundary wholly on the building owner’s land



Payment in lieu of making good: Case studies under section 11(8) of the act

DR STEPHEN CORNISH

THE ORIGINS OF THIS PAPER DERIVE FROM seminars and webinars I have presented to both the Faculty of Party Wall Surveyors and the P & T Society. I am grateful to Nicholas Isaac KC for the considerable help he has provided through our discussions and the information provided in his book *The Law and Practice*¹ and his joint publication with Matthew Hearsom in their *New Party Wall Casebook*². This paper is in four parts: the first part considers the limited provisions of section 11(8) of the Act. The relevant subsections in the Act are discussed in the second part, identifying rights and corresponding obligations under specific subsections. The central theme of this paper is payment in lieu and part 3 of this paper provides information on what can and cannot be included in such payments: a distinction is made between expenses and compensation and the conundrum of “betterment” is addressed. The final part of this paper provides three case studies, where the principles set out below are applied. Key words/phrases have been emphasised in this paper and they are: payment in lieu; make or making good; right(s); obligation(s) and corresponding obligation(s); expense(s) and betterment.

Building owner’s work to a party wall may, and frequently does, cause damage to the adjoining owner’s property. This paper will show that work carried out to party wall in pursuant of **rights** set out in specific subsections of the Party Wall etc. Act 1996 (‘the Act’) is subject to a **corresponding obligation** on the part of the building owner to **make good** all damage to adjoining owners’ premises or to their internal furnishings and decorations occasioned by the work. In reality, this obligation to **make-good** would normally be met by the building owner’s own builders (often the same individuals who have caused damage).

Where the damage has been caused to an adjoining owner’s property by the building owner’s builder, it is understandable that the former would have little confidence in that particular builder’s ability to **make-good**. In such circumstances section 11(8) provides:

“Where the building owner is required to make good damage under this Act the adjoining owner has a **right** to require that the **expenses** of such **making good** be determined in accordance with section 10 and paid to him **in lieu** of the carrying out of the work to make the damage good³.



The limited provisions of section 11(8) of the Act.

Having set out the provision of Section 11(8) it is important to consider its limited application. Nicholas Isaac advises us that the reach of section 11(8) is more limited than is often assumed. It only applies when there is a primary **obligation** on the part of the building owner to **make good** damage, i.e., the **obligation** is contained in specific sub-sections, and these are identified in the second part of this paper. Where damage is caused to adjoining owner’s property which does not fall within those sub-sections, the adjoining owner’s remedy must in any event be either (1) compensation (i.e. financial compensation) equivalent to the cost of carrying out such works under section 7(2), or in (2) a similar sum in damages on the basis of the common rule cause of action in nuisance or trespass⁴. The limited application of section 11(8) was recognised in the case of *Lea Valley Developments Limited v Derbyshire* [2017]. Here the defendant wished to carry out development on its property in Muswell Hill which involved notifiable excavation works and obtained an award authorising the same. Mr Derbyshire’s adjoining property was a block of flats, converted from what had originally been a single large house. Lea Valley’s excavation works caused substantial damage to the property, such that, by August 2016, the parties’ surveyors agreed that it was damaged beyond repair. Judge O’Farrell noted that in clause 4(d) of the award, which reported to “**make good**” any damage it caused, or to **make payment in lieu of making good**, was ultra vires, because there was no obligation to **make good** to section 6 excavation work. >>



2 The relevant subsections in the Act

Having established the limited application of section 11(8) it is now necessary to consider the sub sections in the Act where the exercising of **rights** may lead to damage and then move on to review the corresponding subsections containing **obligations to make good**; these relevant **rights** and **corresponding obligations** are summarised in table at the end of this part of my paper.

Section 2(2)(a) provides **rights** for a building owner “To underpin, thicken or raise a party structure, a party fence wall, or an external wall which belongs to the building owner and is built against a party structure or party fence wall”. These **rights** have a **corresponding obligation** under Section 2(3) of the Act to make good but only where such works are not necessary on account of a defect or want of repair of the structure or wall concerned. Consequently, where the building owner is exercising section 2(2)(a) **rights** while undertaking an extension or upgrading his building generally, he will also be liable to **make good** all damage occasioned by the work to the adjoining premises or to their internal furnishings and decorations. As a footnote, it seems almost certain that “furnishing” used repeatedly in section 2 is a miscopying of the word “finishing” used in section 46 of the 1939 Act, and, if ever in issue, it is likely to be construed by the Court as such, or as the more modern “finishes”. Section 7(2) would in any event provide for compensation to damaged furnishings⁵.

Section 2(2)(e) provides the Building Owner with **rights** “To demolish a party structure which is of insufficient strength or height for the purposes of any intended building

of the building owner and to rebuild it of sufficient strength or height for the said purposes (including rebuilding to a lesser height or thickness where the rebuild structure is on insufficient strength and height for the purposes of any adjoining owner)”. The **corresponding obligation** is Section 2(4) provides that this **right** is exercisable subject to **making good** all damage occasioned by the work to the adjoining premises or to their internal furnishings and decorations. This **obligation** is therefore in substance identical to that which applies to the **rights** under section 2(2)(a).

Section 2(2)(f) provides the Building Owner with the **right** to “To cut into a party structure for any purpose “which may be or include the purpose of inserting a damp proof course).”

Section 2(5) makes this **right** subject to an **obligation to make good** all damage occasioned by the work to the adjoining premises or to their internal furnishings and decorations. Although the **right** only specifically mentions installation of a damp proof course as an example why the building owner might wish to cut into party structure, there are many legitimate reasons why a building owner might wish to do so. The most common include cutting into the wall in order to form a padstone, or to key in a wall perpendicular to the party wall and cutting chases into the wall to run pipes or cables. The mention of cutting chases into a party wall necessitates a temporary diversion in this discussion to establish what is notifiable under this subsection, particularly in the context of *de minimis*.

The cutting-in of chases is explicitly referred to in the Department for Communities and Local Government’s Explanatory Booklet on the Act as an example of which “may be too minor to require a notice.” Nicholas Isaac comments

that this “it is almost certainly wrong in this regard, at least in most circumstances.”⁶ The unauthorised cutting of a chase into a party wall led to a hearing in the Court of Appeal in *Roadrunner Properties Ltd v Dean*⁷. In this case the use of a Kango combination hammerdrill by the Defendant caused damage to the property owned by the Claimant. The point made by in the Department for Communities and Local Government’s Explanatory Booklet engages the concept of *de minimis*. The question often asked is whether all works to a party wall must be dealt with under the Act⁸. If one wants to drill a hole to hang a picture, or remove and patch a section of unkeyed plaster, or repoint a plaster wall, do these bring the Act into play?

The answer is that if the work one is proposing to a party wall is so minor that it would not occur even to the most cautious/ nervous surveyor that damage might occur to a neighbouring property, then this will probably be considered *de minimis*, i.e. so negligible that the law does not consider it worthy of a notice. The first of the examples above would certainly fall into *de minimis* category. Plaster has certainly traditionally been viewed by party wall surveyors as also falling into this category. However, this is now doubtful following the case of *Grand v Gill [2011]* in which plaster was held to be structural in nature (in a case concerning the extent of the landlord’s implied repairing obligation). Nicholas Isaac considers that re-pointing would almost certainly, engage the Act⁹.

Section 2(2)(g) of the Act provides a building owner with the **right** “To cut away from a party wall, party fence wall, external wall or boundary wall any footing or any projecting chimney breast, jamb or flue, or other projection on or over the land of the building owner in order to erect, raise or underpin any such wall or for any other purpose”. It is worth noting that this right, which applies to cutting away any “projection on or over the land of a building owner” and “for any purpose” is, though very similar to the right at 2(2)(h) not limited by any reference to necessity, and is last potentially much wider in scope. Section 2(5) makes this **right** subject to an **obligation** on the part of the building owner to **make good** all damage occasioned by the works to the adjoining premises or to their internal furnishings and decorations.

The building owner has **rights** under Section 2(2)(h) “To cut away or demolish parts of any wall or building of the adjoining owner, overhanging the land of the building owner or overhanging a party wall, to the extent that it is necessary to cut away or demolish the parts to enable a vertical wall to be erected or raised against the party wall or building of the adjoining owner”. There appears to be a contradiction between this **right** and section 9(a) of the Act which protects adjoining owner’s “easements or relating to a party wall”. However, the **right** or easement to maintain a projecting part of a building will often not be a **right** “in or relating to a party wall”. Rather it will be a **right** which is exclusively referable to the adjoining owner’s wall (which is not a party wall). To illustrate this, some time ago Nicholas Isaac

provided an expert legal opinion as part of a determination by me as a Third Surveyor. It related to a common situation to which the **right** of section 2 (2) (f) applies, that is, projecting eaves and gutters at the top of a building, where the outside face of the flank wall of a building delineated the legal boundary between the properties. As the wall was a flank wall and not a party wall, it was determined that the **right** to cut away the projection would not be limited at all by section 9(a).

It is also common for foundations to be project beyond the boundary line separating properties. Generally, projecting foundations may be cut back under section 2(2)(h). If the foundations project from a building which is constructed (save for the foundations) entirely on the land of one owner, then section 9(a) is not engaged since the **right** to maintain them is not a **right** in “in or relating to a party wall” even if they have been in situ long enough to acquire a **right** to remain by prescription¹⁰.

Section 2(5) makes this **right** under section 2(2) (h) subject to an **obligation** on the part of building owner to **make good** all damage occasioned by the works to the adjoining premises or to their internal furnishings and decorations.

The final subsection to consider in this discussion on **rights** is Section 2(2)(j) and this provides that the building owner may “[...] cut into the party wall of the adjoining owner’s building in order to insert a flashing or other weather-proofing of a wall erected against that wall”. This narrow but important **right** provides a practical solution to the difficulty which would otherwise be faced by a building owner who wants to ensure that the junction between the two buildings, built separately but immediately adjacent to one another, is not a source for problems. Often this subsection is relied upon when a building owner is erecting an independent building which abuts directly onto an existing building of the adjoining owner. In these circumstances it is plainly in both parties’ interest that the junction between the two buildings is suitably weatherproof. Section 2(6) makes this **right** exercisable subject to **making good** all damage occasioned by the works to the wall of the adjoining owner’s building. >>>

Summary

Building Owner’s Rights	Building Owner’s Obligation
2(2)(a)	2(3)(a)
2(2)(e)	2(4)(a)
2(2)(f)	2(5)
2(2)(g)	Ditto
2(2)(h)	Ditto
2(2)(j)	2 (6)

3 What may be included in payments in lieu?

The provisions for the adjoining owner to ask for the damage to be made good or to receive **payment in lieu** has been identified and correlated. The latter option is the focus of this paper and consideration is now given to what may be included in **payment in lieu**. Section 11(8) defines **payment in lieu** as an expense and therefore it is not considered as compensation; comparing the two is of value.

Although “**expense**” and “**expenses**” are not expressly defined in the Act, it is clear from the context of their use¹¹ that they primarily refer to the actual costs of carrying out the work, including the usual costs incidental to such building work. Such incidental works include, for example, professional fees. The total costs of repairs by way of an **expense** under section 11(8) has certain parallels with compensation under section 7(2)¹² but the latter route may be more useful to the adjoining owner who has employed his own contractor to repair the damage caused by the building owner’s works. This is because the cost which has actually been incurred and paid by the adjoining owner is a loss which, unless it is unreasonable, is likely to be recovered under section 7(2). In contrast, if the party wall surveyors are asked to limit their determination to the reasonable costs of **making good**, they may well produce a lower figure. It is apparent that by definition compensation for loss or damage recoverable under section 7(2) has a wider range than **expenses** recoverable under section 11(8). This is made clear if one considers the potential heads of damage under section 7(2) over and above the costs of repair: diminution in value, alternative accommodation, storage and/or moving costs, loss of earnings, loss of amenity, legal costs, professional costs¹³. Particular circumstances may therefore dictate an adjoining owner’s decision and/ or ability to seek **payment in lieu** or compensation.

The problem faced by surveyors is determining the extent of the costs of the repairs when the adjoining requests **payment in lieu**. This problem typically arises when party wall surveyors put forward the argument that there should be a discount applied to the cost of repair claimed by an adjoining owner on the basis of **betterment**, that is, that the adjoining owner’s property would be in a better state of repair and/or decoration after the remedial works than it was prior to the building owner causing damage and consequently the adjoining owner should not receive the full cost of these works.

The phrase **betterment** is not used in the Act but its potential application requires investigation. The Court of Appeal case of *Harbutt’s Plasticine Limited v Wayne Tank and Pump Company Limited* (1970) provides authoritative guidance. Although this was not a party wall case, it is

nevertheless considered applicable by Nicholas Isaac, Matthew Hearnsum¹⁴ and the retired party wall judge HH Edward Bailey¹⁵. The *Harbutt’s* case makes it absolutely clear that there is no legal basis for discounting the costs of repairs in such cases. If, in carrying out repairs reasonably necessary to remedy the damage caused by the defendant’s works, the claimant’s property is in a better state of repair than it was prior to the defendant’s works commencing, that is just good fortune on the part of the claimant. In *Bradley v Chorley Borough Council* (1985) the Court of Appeal referred to the principle regarding obligations to remedy damage as set out in the *Harbutt’s* case and confirmed that decorations are to be considered in the same way as other property damage.

The starting position for party wall surveyors when considering the cost of repairs claimed by an adjoining owner is that the adjoining owner is entitled to be put in the position he/she would have been in but for the damage. Perhaps the key point, when it comes to decorations, is that the adjoining owner is entitled to a consistency of appearance after repair and redecoration. This is now considered in Case Study 1.



CASE STUDY 1 In this case study, I was called upon as a Third Surveyor under section 10(11) of the Act to settle a dispute between the appointed surveyors over the extent of redecoration. The above photograph shows the isolated damage to the party wall in the living room to a house, following the insertion of a beam. The extent of the crack and plaster repairs were not in dispute. The Adjoining Owner’s Surveyor considered, however, that the whole room should be redecorated because merely painting the relatively small area of repaired plaster would stand-out. The Building Owner’s Surveyor disagreed, initially saying that he felt only the new patch of plaster required painting but later changing his stance saying that he would agree to one wall being

redecorated. I was therefore asked whether the redecoration of one wall was an adequate repair. I inspected the Adjoining Owner's property and noted that the existing emulsion paint applied to the walls was not new, and clearly faded.

I determined that all the walls in the room were to be redecorated. My reasoning was based on the principles of the above mentioned Harbutt and Bradley cases: in terms of decorations the adjoining owner was entitled to a consistency of appearance after repair and redecoration. I was of the opinion that after the party wall had been redecorated, an objective observer would be able to see a difference between the party wall and the other walls in the room; a consistency of appearance was not possible. The adjoining owner was entitled to be put in the position she would have been in but for the damage.



CASE STUDY 3 In this case I was the building owner's surveyor. This case involved the cutting away of a reinforced concrete balcony from a party wall. The Building Owner's builder did not follow the agreed method of cutting the balcony away from the party wall. The unauthorised use of a Kango in the removal of the balcony from the party wall, together with vibration caused cracks in the party wall in the Adjoining Owner's living room.

The Adjoining Owner's surveyor and I recorded in the schedule of condition prepared before the notified works commenced that the decorations within the Adjoining Owner's property were relatively new and clean¹⁶. As in Case Study 1, the extent of crack repairs to the party wall were

agreed but the Adjoining Owner wanted the whole room redecorated; the Building Owner was only prepared to pay for the redecoration of the party wall. As the parties could not agree on the extent of redecoration, the Adjoining Owner's Surveyor and I were given authority by the Parties to make a further award. We determined that only the party wall required redecorating as it would not look noticeably different in terms of colour or cleanliness, from the other walls in the room.

Conclusion

The aim of this paper has been to identify where and under what circumstances an adjoining owner may request **payment in lieu for making good** under section 11(8) of the Act. This investigation has shown that the reach of section 11(8) is limited. The **obligation** for a building owner to make **payment in lieu of making good** only derives from the **rights** set out in sub sections (2)(a), (e), (f), (g), (h), and (j) of the Act. The **corresponding obligations** to these specific **rights** have been identified in sub-sections 2(3)(a), 2(4)(a), 2(5) and 2(6) and tabulated for ease of reference. Two important factors have been discussed to guide party wall surveyors in determining **payment in lieu**: first, a distinction has been made between an **expense** under section 11(8) and compensation under section 7(2); an **expense** is limited to the full costs of the repairs, which may include those costs incidental to **making good**. Two legal cases emanating from the Court of Appeal provide guidance to party wall surveyors in addressing the conundrum of **betterment** when assessing the actual costs of repair under section 11(8). The three case studies illustrate how all the principles established in this paper are applied. 



*Dr Stephen Cornish PhD MA BSc FRICS FFPWS MPTS
First published Whispers issue 51.*

¹ Nicholas Isaac, *The Law and Practice of Party Walls* (second edition) p.196. ² Published in 2019 ³ The emphasis has been added to the "key words/phrases" in this full quotation of section 11(8). ⁴ Nicholas Isaac, *The Law and Practice of Party Walls* (second edition) p.196. ⁵ See Isaac *The Law and Practice* p36, footnote 69. ⁶ Nicholas Isaac *The Law and Practice* p40, footnote 75. ⁷ Court of Appeal [2003] EWCA Civ 1816, [2004] 1 EGLR 73 ⁸ For this and what follows see Nicholas Isaac *The Law and Practice* p. 6 and 40. ⁹ *Ibid*, p.7. ¹⁰ *Ibid*, p.42. ¹¹ Sections 1(3) (b), 1(4)(a), 1(7), 6(3), 7(3), 11, 13, 14. ¹² Section 7(2) provides: "The building owner shall compensate any adjoining owner and any adjoining occupier for any loss or damage which may result to any of them by reason of any work executed in pursuance of this Act." ¹³ These losses must be related to matters in pursuance of the Act. ¹⁴ This case is included in their book *The New Party Wall Casebook*, p.86. ¹⁵ A personal communication. ¹⁶ The schedule of condition was appended to the Party Wall Award.

Risks, costs and pitfalls of seeking injunctions

HIS HONOUR EDWARD BAILEY

Introduction

There is an increasing perception that the number of building owners who are simply ignoring the 1996 Act and ploughing ahead with their developments are increasing. Even some solicitors, who should know better, have been advising their clients to take the risk that the adjoining owners will do nothing if development proceeds without notice or award, either on the basis that many adjoining owners do not know about the Act or, if they do, that the legal cost of seeking an injunction in the local county court will frighten off all but the most determined adjoining owner. Legal costs of an action that goes all the way to a witness trial can indeed be mouth-watering. However, obtaining an interim injunction is not difficult and should not be expensive if the owner, perhaps with help from his party wall surveyor, knows what he is doing.

In this article, the essential subject-matter of which was presented in a talk to the Surrey P&T, HH Edward Bailey aims to cover the basic requirements for obtaining an injunction, the potential pitfalls, and the risks which follow the litigant after obtaining an injunction.

General

In 2022, concerned that ignorance of the Act was widespread I wrote an article entitled “Dealing with the Bloody-Minded Building Owner”. In that article I consider aspects of the position in which the put-upon adjoining owner finds himself when his neighbour ploughs on with a development which engages the act without seeking an award. For this purpose I introduced the “BMBO” (the Bloody-minded Building Owner) and the “EAO” (the Exasperated Adjoining Owner). These are characters I will use in this article. Not, I hasten to add, do I suggest that all building owners who carry out work which engages the Act without compliance with the Act’s provisions are BMBOs. Far from it. Many do so out of pure ignorance. Such building owners will tend to comply with the Act when its existence and requirement are drawn to their attention. It might still be necessary, on occasion, for the EAO to seek an injunction against ignorant building owners. But it is the BMBOs who are the more likely to require stopping by the courts.

Going to law – for the EAO

I quite understand the general reluctance of adjoining owners to go to law. It is unknown territory for most, and

there are few who have not heard scary stories of the frightening expense, the horrendous delay, and the great uncertainty that an excursion into the courts entails. I have had my ear bent on many an occasion as to some terrible litigation experience. And somehow it ends up as being all my fault even though I had no connection with the case at all! I would never encourage anyone to go to law unless they have to, but if they do have to litigate I would hope that the experience does not turn into a nightmare. It should be possible to obtain appropriate relief, particularly an injunction against a BMBO intent in ignoring the Act, without undue stress and hardship. But an EAO must know what they are doing. Hopefully they will appoint a party wall surveyor who not only knows his/her surveying but can help with litigation.

Important matters if instructing a lawyer

It should not be essential to have lawyers on board. But being a litigant in person can be a daunting experience. It is the case that the way a litigant in person is treated in the courts can vary from judge to judge. An experienced party wall surveyor can help as a ‘litigation friend’ (the expression “Mackenzie friend” may still be encountered) but a surveyor has no right to address a judge (this right is reserved to barristers and solicitor advocates) and although it is perfectly open to the judge to obtain information and listen to arguments from anyone in the court room, some judges will do so but others simply will not allow it even where it might be helpful to a disposal of the matter before them “justly and at proportionate cost” (see CPR 1).

In my experience there are four important matters for the EAO to keep in mind when pursuing a claim against a BMBO with professional legal help.

- (1) Instruct solicitors or counsel who are truly experts in the field
- (2) Check household or other insurance policy to see if EAO has legal expenses cover
- (3) Clear fee agreement in place with any lawyer instructed
- (4) Keep fees down by doing part of the work yourself:
 - (a) collect all relevant documents into a bundle which is paginated and indexed
 - (b) prepare first draft of your witness statement

I will cover (4) later in this talk. As to (1) I cannot over >>

N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court	Claim no.
Fee account no. (if applicable)	Help with Fees – Ref. no. (if applicable)
	H W F - - - - -
Warrant no. (if applicable)	
Claimant's name (including ref.)	
Defendant's name (including ref.)	
Date	

1. What is your name or, if you are a legal representative, the name of your firm?

2. Are you a ☐ Claimant ☐ Defendant ☐ Legal Representative
☐ Other (please specify)

If you are a legal representative whom do you represent?

3. What order are you asking the court to make and why?

4. Have you attached a draft of the order you are applying for? ☐ Yes ☐ No

5. How do you want to have this application dealt with? ☐ at a hearing ☐ without a hearing
☐ at a remote hearing

6. How long do you think the hearing will last? Hours Minutes
 Is this time estimate agreed by all parties? ☐ Yes ☐ No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need?

9. Who should be served with this application?

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

N244 Application notice (06/22)

1

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 LEARNED IN PARTY WALL & NEIGHBOURLY MATTERS

 **Pyramus & Thisbe Society**
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stress how important it is to instruct lawyers expert in the field of Party Wall work. It is a very niche area. Few solicitors or counsel encounter it. No lawyer can cover the entire area in which the law operates, and the 1996 Act must account for a very tiny percentage indeed of the area of law which comes before the courts. A specialist really is important. The EAO does not want to end up either paying for his lawyer to learn the law, or, more seriously, paying for his lawyer's mistakes. So, although the EAO may have a 'family solicitor' with whom he is comfortable, that solicitor should not be instructed unless they can give a categorical assurance they are truly experts in this field. (Expert lawyers can be found on the Party Wall Mediation Scheme website).

With regard to (2) above, insurance cover, it is frequently forgotten that many household insurance policies include legal expenses cover the extent of which will include party wall problems. (In my own case that cover is limited to £50,000 but that should usually be sufficient to cover the cost of obtaining an injunction, but will certainly not be sufficient to cover the cost of proceedings should they go further, see below.) Unfortunately relying on your insurance cover can bring this challenge. The legal expenses insurer will usually have the right under the policy to choose any lawyers who are instructed to do the work. The insurer may have retained solicitors for this purpose who are jacks of all trades. They may have entered into agreements with the insurers on low rates in order to get the work. Whether this will produce a specialist lawyer is uncertain at best. The insurer should be asked to instruct a Party Wall Act specialist, and some will oblige, but others may not.

With regard to (3) above the EAO should, if at all possible, avoid simply agreeing an hourly rate with his lawyer. I offer some comments in this connection in my article in 'Party Walls'.

Injunctions : Interim and Final

What is an injunction? A court order restraining a person from beginning or continuing an action which threatens or interferes with a legal right of another, or which compels a person to carry out a particular act. (The latter is a mandatory injunction which is only made in certain specific circumstances.)

CPR Part 25.1(1) The court may grant the following interim remedies –

- (a) An interim injunction
- (b) An interim declaration

An interim injunction is granted before a trial takes place, and is effective pending a trial unless discharged.

An interim injunction may be contrasted with a final or perpetual injunction which is only made at the conclusion of a trial.

The statutory authority for granting interim relief is the Senior Courts Act s 37, or the County Courts Act 1984 s 38

(county court may make any order which could be made in the High Court)

Procedural rules governing interim injunctions

Established by the House of Lords in *American Cyanamid v Ethicon Ltd* [1975] AC 396. In order to obtain an interim injunction a claimant must show two things:

- (1) There is a serious issue to be tried.
- (1) The balance of convenience favours making rather than refusing an interim injunction.

A third point to note is that an injunction might be refused if the BMBO was able to demonstrate (and the burden will be on him) that damages would be an adequate remedy.

Neither (1) or (2) should cause the EAO any difficulty.

- (1) Any failure to comply with the provisions of the Party Wall etc Act 1996 will be a serious issue. Where the Act applies it is mandatory. The Act governs the work undertaken by the BMBO. It overrides the common law in giving the building owner rights he would not otherwise have, but in doing so the Act provides protection for the adjoining owner.
- (1) It is difficult to see any basis on which the balance of convenience does not lie with granting an interim injunction. The BO has not complied with the statute. The AO is entitled to have the statute enforced. His protections under the Act should be respected.

As for the third point, following the Supreme Court decision in *Coventry v Lawrence (Fen Tigers)* [2014] UKSC 13 [2015] 1 WLR 3485 it can no longer be said that damages being an adequate remedy will only prevent the grant of an injunction in wholly exceptional circumstances. In *Fen Tigers* Lord Neuberger accepted that the prima facie position was that an injunction should be granted, and indeed that the legal burden was on the defendant to show why an injunction should not be granted [121]. Subject to those points, Lord Neuberger emphasised that, when a judge is called upon to decide whether to grant an injunction or award damages in lieu, there should be no inclination either way [122]. There will usually be no difficulty in persuading a judge to make an injunction where the risk to the EAO's property is potentially serious, essentially where there might be structural complications. Such would be the uncertainty arising were the BMBO allowed to continue acting in breach of the Act no court would refuse an injunction on the basis that damages would be an adequate remedy. A difficulty would probably arise however where it was clear, or reasonably clear, that the BMBO's works would at worst only cause very minor damage or no damage at all. But in such a case it may be supposed that the EAO would not wish to go to court in the first place.

¹ A 'clear day' means that in computing the number of days neither (a) the day on which the period begins, nor (b) the day on which the period ends, are included, CPR 2.8(3). ² A Statement of Truth is essential for a witness statement to be used as evidence, CPR Pt 22. The required wording to be appended at the bottom of the statement, are: "I believe that the facts stated in this witness statement are true". This statement should be signed and dated. It does not need to be witnessed.

Starting proceedings: Claim Form

All proceedings must start with a Claim Form under either CPR Part 7 or 8. The EAO's claim will be under CPR Part 7.

A claim form needs to be issued in order to commence proceedings. In the ordinary course the claim form must be issued before any application can be made to the court. However, in cases of emergency the court will accept an undertaking to issue a claim form within 24 hours of the grant of an injunction, or possibly (in appropriate circumstances) within 48 hours, CPR 25.2.

The claim to be stated in the Claim Form will be "for an injunction and damages [in nuisance and trespass] arising out of the conduct of building works by the Defendant (ie the BO) in breach of the provisions of the Party Wall etc Act 1996".

There will be a fee to pay – see Civil Court fees EX50: fee no. 1.5 "Any other remedy £332"

Note: a form of Claim Form (and application notice N16A or N244, see below) can be downloaded from the [Justice.gov.uk](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07) website.

Making the Application

An Application Form seeking an interim injunction must be completed and served together with supporting evidence and a draft Order

The Application Form may be in Form N16A or in Form N244. Form N16A is a form specifically for interim injunctions, but most lawyers use N244, the all-purpose application form, presumably because they have this all set up for use. Either form contains various boxes which need filling. The box for the evidence to support the application should be completed "see accompanying witness statement(s)". Where a time estimate is required, I would advise "10 – 15 minutes". (How long the application actually takes depends on whether the judge has been able to read the material before coming into court and how familiar the judge is with the 1996 Act.)

The usual rule is that the Defendant must be given at least two clear¹ days' notice of the application. But in cases of emergency, the application may be made ex parte in which event the evidence in support of the application must state the reasons why notice has not been given, CPR 25.2. The fact that the BMBO has been asked to stop work, has refused, and work is ongoing at the time of the application is a good reason not to give notice at all, but the better course is to tell the BMBO by email or text that an application is being made, where and when even if the notice is far less than 2 clear days.

The applicant can just turn up at court and ask to go before a judge, but the best course is to phone the court in advance to warn them that you are coming. The usual course is for ex parte applications to be heard at 10.00 am or 2.00 pm before the court starts / resumes its business for the day. But

you may be given a different time to attend. You will need a Circuit Judge, preferably one who is familiar with party wall work, and although it is for the court to allocate the Circuit Judge who hears the application, there is no harm in telling the clerk you speak to that this is a matter which should, if at all possible, go before a 'Party Wall appeal' judge.

Evidence in support of the application

The evidence must be given in writing, by witness statement, but the judge might ask questions.

The evidence needs to cover:

- (a) Serious issue to be tried;
- (b) Balance of convenience;
- (c) The need for urgency – why notice has not been given;
- (d) Cross-undertaking in damages;
- (e) Any material fact which should be drawn to the court's attention.

Witness statements

In the ordinary course I would expect there to be two witness statements, but if the EAO has a report from his party wall surveyor, duly signed, this aspect of the evidence may be given as an exhibit to the EAO's witness statement by way of Expert Report. Better however for the party wall surveyor to make and sign his own witness statement under a 'Statement of Truth'².

Adjoining Owner's witness statement. This should cover:

- (1) AO's address and BO's address and type of house (to establish the party wall). AO should formally

confirm that he owns his house (and ideally its approximate value and his equity). Whether or not BO advised AO of his proposals before commencing building work; whether any discussion of proposed work or notice being served; BO's attitude if relevant; whether notice served, and if served confirm either the absence of an award or that work goes outside the award; whether and if so what damage to AO's property; any disturbance or other inconvenience; concern as to own property going forward; dealings with BO before seeking injunction, in particular any request to BO to stop work which has been ignored.

- (2) Party Wall Surveyor's witness statement.

This statement is necessary to prove that the BO's works being complained about are indeed notifiable works under the Act and to confirm there is no Award in place to cover these works. Observations as to potential risks to AO's property if the works are allowed to continue. The better option is for the PWS to provide witness statement, but this material could be put into an >>

expert report which is then exhibited to the AO's witness statement. Ideally an expert report will comply with the requirements of CPR Part 35.

What should a witness statements look like?

The formal requirements for a witness statement are set out in CPR Part 32

CPR Part 32.8 "A witness statement must comply with the requirements set out in Practice Direction 32. (Part 22 requires a witness statement to be verified by a statement of truth.)"

CPR Part 22 Witness Statements, 22PD2.2: "The form of the statement of truth verifying a witness statement should be as follows: "I believe that the facts stated in this witness statement are true".

This statement should be signed and dated. It does not need to be witnessed.

PD 32.17.2 Headed with the title of the claim.

PD32.18 Body of witness statement.

PD32.19 Format of witness statement. Judges differ in approach where rules not strictly followed. The important thing is to use A4 paper, decent margin, print on only one side, use a clear font with 1.5 or 2 x spacing, use short(ish) numbered paragraphs, consecutive page numbers at foot of page. i.e. make it easy to read! (these applications are quick!)

Checklist as to what the evidence needs to cover (repetition!)

- (a) The Defendant (BMBO) carrying out work in breach of the 1996 Act (= serious issue to be tried)
- (b) The fact that Act's procedures were not engaged and no Award was made by duly appointed party wall surveyors (or alternatively, if relevant, an award was made but BMBO is straying outside the Award's authorised works). It is accepted that BMBO may be delayed in his works but (i) the Act is there to be followed, and (ii) the absence of scrutiny from party wall surveyors could lead to unnecessary (and possibly serious) damage to EAO's property.
- (c) EAO concern not knowing what BMBO may do next, particularly as BMBO has demonstrated that he does not know / care about the provisions of the Act, and has not held up his works when his failure to follow the requirements of the Act has been pointed out to him.
- (d) (Where relevant which it I usually is) Why notice of the application not given: urgency. Evidence of attempt(s) to persuade BO to stop works pending party wall award – exhibit emails sent, cover conversations with BO or contractor, etc. Evidence (where appropriate) that although formal notice of the application was not given BMBO was told of application to court.
- (e) Cross-undertaking in damages – EAO owns his property. This should usually be sufficient for this purpose,

although if there is very little or no equity in the property that fact should not be hidden from the court.

- (f) Other material facts? Eg Offers by BMBO to resolve dispute outside 1996 Act, need for reassurance of party wall surveyors duly appointed. EAO having carried out or intending to carry out party wall works which might overlap with BMBO's works.

Precedents

It would, I appreciate, be comforting for any surveyor venturing into the field of interim injunctions to have precedents for the Claim Form, the Particulars of Claim, Witness Statements, and a draft Order to be presented to the Court. After all, most lawyers work from existing precedents even when they have been in practice for many years. I am not offering any precedents with this article, but would inform the reader that Victoria Woolf and I will be preparing an "Interim Injunction Pack" including a number of helpful precedents which will be available in the reasonably near future.

Cross-undertaking in damages: Possible pitfall (1)

"To pay any damages which the Defendant, or any other party served with or notified of this Order, shall sustain in consequence of the making of this Order which the Court considers the Claimant ought to pay."

This "cross-undertaking" is always required in an interim injunction order. In making the order the court has to rely on the evidence presented to it. The court rarely hears what the other side has to say. There is always the possibility that Applicant has in some way misled the court into making an order that should not have been made. If the order should not have been made, and the Defendant suffers loss then it is only right that the Applicant must compensate the Defendant for this loss.

What are the risks?

An applicant for an injunction must be careful both to be truthful in what is put in the witness evidence and also to inform the court of any matter which might be relevant to the making of an order. The obvious risks seem to me to be twofold:

- (1) the BO's works are not notifiable under the Act: - the party wall surveyor must be sure of his ground!
- (2) the AO has agreed to the works. Note here that by virtue of s 5 of the Act an AO's consent to the BO's works must be in writing to disapply the provisions of s 10. But the court may take a dim view if the AO told the BO informally that he would consent. The circumstances of any such 'consent' would be important. For example, the AO may consent to works which the BO has misrepresented to him either in nature or extent.

What else might there be? – It is quite frankly difficult to see how an enforcement of the cross-undertaking will arise in practice. (I did once have to assess damages for breach of cross-undertaking, but this was in rather unusual circumstances).

What next? - Possible Pitfall (2)

Once an injunction given, an award made, and works completed, there still remains a civil action which has had to be commenced in order to obtain the injunction but needs to be concluded.

It is to be hoped that the BMBO will agree to the action being discontinued with BMBO paying the costs of the interim injunction. (Note: the costs of obtaining the interim injunction will almost certainly be “reserved” so that the court may consider whether an award of costs should be made against the BMBO after hearing what he has to say about the matter.)

If there has been damage to EAO's property it should be possible for the party wall surveyors to make an award under s 7(2). However, strictly, the pre-award works were not “executed in pursuance of this Act” and can only be recovered in the EAO's CPR Part 7 claim, as damages for trespass or nuisance or possibly negligence. So EAO may need to pursue the claim to recover these damages if the party-appointed surveyors will not make an award of compensation. It is not unknown for party-appointed surveyors to be reluctant to make an award of compensation because difficult legal points on the calculation of damages arise. The Third Surveyor may himself feel reluctant to make an award. One approach to this problem is for the Third Surveyor to deem himself incapable of acting so that the party-appointed surveyors may select an experienced lawyer to act as Third Surveyor to determine the s 7(2) compensation by an award. This should save the parties the very considerable expense of litigating the compensation.

Unfortunately there is always the risk that the BMBO may be difficult and refuse to pay EAO's costs or allow the action to be discontinued without demanding any costs he may have incurred. If he was in breach of the Act he will have no proper basis to demand costs, but he may do so to be bloody-minded and in the hope that he will frighten the EAO into giving up his claim for costs.

The EAO, as a claimant, must bear in mind that if he discontinues his claim without securing the agreement of the defendant (the BMBO) then the basic rule is that he must pay the Defendant's costs, see CPR Part 38 Discontinuance: CPR 38.6 liability for costs.

What if BMBO proves difficult?

What are EAO's options where BMBO is being difficult and refuses to agree costs or to the proceedings being brought to an end by agreement or agreed discontinuance?

My first suggestion is that the EAO applies to the court for a stay of proceedings until all the BMBO's works have been concluded. This is a sensible course for any court to agree to, because until the works are finished there will be uncertainty as to whether enforcement proceedings are needed to ensure that the BMBO complies with the Injunction. To continue with the action in the meanwhile will run up costs which may well be wasted if the works are concluded satisfactorily and both sides are able to agree terms as to concluding the litigation.

Thereafter, if all the works have been completed without the need for further court action, but the BMBO is refusing to act sensibly, then to protect himself against liability for future costs the EAO should give serious consideration to a CPR Part 36 offer to settle for his Interim Injunction costs and nominal damages (£1).

If the BMBO will not agree to discontinuance or an acceptable settlement he will have to serve a defence. If the BMBO fails to serve a defendant or does serve one but it shows no viable defence EAO may apply for summary judgment under CPR Part 25. Provided that the BMBO's original works were outside the Act, and there was no consent for them by the EAO under s 5 of the Act it is difficult to see how the BMBO could possibly have a defence.

EAO could issue CPR Part 25 application for costs of the interim injunction and for the action to be stayed.

EAO could issue an application under CPR Part 38.6 for permission to discontinue without liability for Defendant's costs. CPR 38.6 provides: “Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant.” The application would be made on the basis that the interim injunction has succeeded in preventing the defendant from persevering with his works in breach of the Act, and there is now no useful purpose in continuing the proceedings other than dealing with costs. The evidence in support of the application should exhibit the correspondence in which the EAO has asked the BMBO to do the sensible thing, and pay the EAO's costs of the interim injunction application and then agree to the discontinuance of the claim, but the BMBO has refused for no good reason.

Risks to the Party Wall Surveyor

Restricted, other than in an exceptional case, to his advising the EAO that the works undertaken by the BMBO come within the scope of the 1996 Act when in fact they do not.

If you get this wrong you are in the wrong business (and you may need to brush the dust off your professional indemnity policy)!

Any other ideas? 🙋

First published Whispers issue 52

From

the

Vaults

Are there really two walls?

FIND OUT BEFORE YOU DEMOLISH AND AVOID SURPRISES

LAWRANCE HURST

AS FIRST PUBLISHED IN
WHISPERS 5 – SUMMER 2001

THE ACT IS ALL ABOUT AVOIDING surprises. Perhaps not really “all about” but its primary purpose today, as averred by the Earl of Lytton when promoting the Bill in the House of Lords is to find out about next door so that the works can take into account the interests of the neighbour and be designed, or varied if they are already designed, to minimise the implications for the next door building. Originally, starting in 1189, the party wall provisions were of course enacted to prevent the spread of fire across boundaries, but those essential measures are now enforced by other legislation, such as the Building Regulations, and our Act now deals exclusively with neighbourly issues.

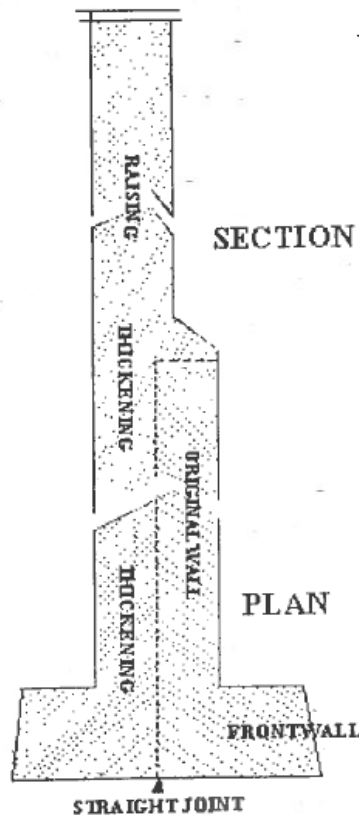
When the works include demolition, one of the most important aspects, perhaps the most important, of those neighbourly issues is establishing the limits of demolition, which sends my rambling down a snake to where I started with my title - are there really two walls? Superficial evidence, such as straight joints on the front and rear elevations and what looks like two parapets may lead you to deduce that there are two walls and that the building owner can demolished the one on his side, leaving the adjoining owners wall intact. However I do urge you to check your deductions thoroughly to establish that there really are two separate and independent walls, each of adequate thickness, before telling the demolition contractor to bash on. Unless you do, you will risk laying open the adjoining owners building, which is a surprise we all wish to avoid.

The reason for advising this extreme caution is that

thicknesses of walls, both party and external, have since time immemorial, or at least in London since the 1667 Act, and elsewhere since local Acts and By-laws laid it down, been determined by the height and length of the wall and the class of building they enclosed. This meant that if the Building Owner wished to add storeys to the top of his building, or take it down and replace it by a more lofty building, he needed not only to raise on the wall, but also to thicken it to bring it out to the thickness prescribed in the Act or the By-laws for the new height. He could of course exercise his right to take it all down and rebuild it to the new height and required thickness, but this would involve laying open and shoring the adjoining building, and no doubt paying substantial compensation to all the adjoining owners and occupiers, so was to be avoided if at all possible.

If he thickened and raised the wall, he would do this by adding a skin of new brickwork, which would inevitably be of different bricks and a different mortar to the existing party wall and so would look to his successors in title and their advisers like another wall built against the existing wall. Thickening is seldom well bonded or tied to the existing wall, but it does follow the wall in and out so there may not be a vertical plane between it and the wall.

At the top of the old wall, the raising may not be on the whole width of the old wall, leaving a step in the wall thickness on the external side which can be mistaken for a parapet, and may even have a brick on edge and tile creasing to support the illusion, for it really is, or was, a parapet, but not of the whole width of the thickened wall. >>



At the front and rear, it is not uncommon to quoin up the end of the adjoining building and build the new external walls up to that line, forming a straight joint which may or may not be on the line of junction, and incidentally completing the illusion that there are two walls.

These operations can and have to my knowledge and in my experience resulted in the situation illustrated on the opposite sketch. Now imagine the implications if the owner on the right deduces that he has his own independent wall and starts to demolish it. The demolition contractor is hopefully surprised and stops before he does real damage and shares his surprise with the building owner's advisers, work stops, re-design starts and the building owner's lawyers start to load their blunderbusses with rusty nails to allege the liability of anyone standing in the way.

Party wall surveyors and their advisers need to be alert to this possibility so that they can ensure that sufficient survey and exploratory work is undertaken before demolition starts to convince everyone concerned that there really are two independent walls each of adequate thickness to enclose the two buildings.

I suggest that accurate dimensional surveys are undertaken of the face of the party wall in both buildings, on plan at all levels, and on section, to see if there is enough thickness for two walls. If these surveys leave doubts, the results of exploratory holes on the building owner's side to discover the plane where the bricks or mortar change can be added to the surveys to reveal if there really are two walls or just one thickened, and hence what options are available to the building owner.

These actions are necessary if surprises are to be avoided and if the building owner cannot be persuaded to put them in hand, perhaps the reasons of time or expense, I venture to suggest that it is the appointed Surveyors' duty to precipitate the situation by making a preliminary Award to force his hand.

But that is only an engineer's view – what do Surveyors think?

Lawrance Hurst

QUESTIONS AND ANSWERS

I have discussed this weighty matter with an even older Codger. We have had quite a good response to the *cri de coeur* in the last issue, and a study of that response raises questions of itself.

Many of the questions require mini-articles as answers and dealing with these in the main journal would put severe demands on space. This is not really appropriate under a general heading. I have asked your Chairman to consider alternating Whispers and a Q and A publication, but the frequency of both would depend entirely on

members' input, not mine.

Predictably, there is a pattern among the questions, and there are obviously matters which give almost regular cause for debate. It was ever thus, and these will be covered by a series of articles in future issues. For this issue, we have confined this section to the comments above, and to a few questions that can be answered briefly.

I regret to say that too many questions that are raised at meetings, and in writing, refer to fees. Whilst the end object of practice is to earn a crust, I have always considered the pre-occupation with fees to be unhealthy, and possibly damaging to the public's conception of Party Wall Surveyors. If we do our jobs properly, we will be adequately remunerated. The odd bad debt, or charity case, should not stand in the way of a proper professional service, and dare I say it, duty.

Q1 What happens when the [sole individual] Building Owner [BO] dies after the publication of the Award and before the works subject of the Award are completed?

A Where there is a change of BO, then for obvious reasons, the BO named in the Award is not capable of carrying out the obligations of the Award. Properly a new notice must be served and matters must proceed as from there; although there might be a nice legal argument that executors ARE the deceased for the purposes of such matters.

However regardless of the niceties, it is usually in the best interests of the Adjoining Owner [AO] for matters to be completed as quickly as possible and thus if the AO is satisfied as to the ability and willingness of the executors / estate to complete the works and wind up the matters covered by the Award then the surveyors could be instructed to facilitate this by an exchange of letters or a supplementary Award. If the estate are unable or unwilling to complete then the AO should be able to proceed against them under the terms of the Award for any matters affecting the AO.

Q2 Is an occupier with a licence of one year length an "owner", (the licence stating that it does not create the relationship of landlord and tenant)?

A Section 20 defines owner very clearly and should be read with the circumstances in mind. A licensee for a year is not in receipt of the profits, rents etc. clause (a), not a purchaser under a contract or agreement (c) but is specifically excluded in clause (b) which says "a person in possession of land, OTHERWISE than as a mortgagee or as a tenant from year to year or for a lesser term or as a tenant at will". A licensee is possibly an even



lesser mortal than these excluded types. It is not thought that the rider set out in the question is necessary to exclude the licensee from the Act but it helps to underline the matter.

Q3 There is a pre building contract archaeological dig on a site under the powers in the relevant Act and the excavation is or is likely to be within three metres of and / or below the level of the foundations of the adjoining building. The AO instructs a surveyor but the archaeology team say they cannot wait for the time limits etc of the Act. What is the AO and his surveyor to do?

A Think hard is the short answer. This is a trap situation and applies equally to a utility company digging trenches for pipes or sewers. Before the Act applies you must have [Section 6(1)(a)] a building owner [who] proposes to excavate. The archaeology team are not building owners; and in fact the owner of the site is probably very undesirous of the dig in the first place.

The owner of the adjoining property must take such action as is possible under the statute covering the Dig or

in common law. To protect his client, a competent surveyor should be able to persuade the diggers to agree to a schedule of condition and some ground rules for their operations.

The trap of not first thinking out the basics of this situation is one that Old Codger [not to be confused with Codger who is the editor of this worthy tome] fell into head first at an early Club meeting in Cambridge. After a lengthy and irrelevant discussion the said Old Codger had a very red face when someone pointed out the simple truth – the diggers [in that case, cable layers] are no owners.

Q4 Is a long-term tenant in a block of flats whose tenancy is up to the internal face of the external walls an “owner” under the Act and hence is formal notice required?

A The lands of the respective owners do not adjoin as they are separated by the lessors half of the party wall. The tenant is not an Adjoining owner and is not entitled to notice under the Act. 🙅

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