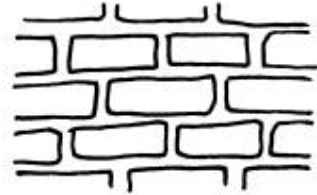


Party Wall Who's Who

If you need help and advice with regard to disputes, particularly party walls matters, or you require a structural report, or a building survey, or a schedule of condition or dilapidations report or any other property matters please call 0800 298 5424 for a friendly chat.

The following article gives a detailed technical commentary on the who's who within a party wall Act dispute. There follows the brief non-technical version:



Building owner = the legal building owner; the one that is having the work carried out

Adjoining owner(s) = the legal adjoining owner and anyone with rights over 12 months

The advising party wall surveyor = the one used before the Party Wall Act comes into being

The appointed surveyor = the surveyor that the building owner and the adjoining owner appoint to ensure the Act is carried out

The third surveyor = a "Judge" for the two appointed surveyors, should they not reach agreement.

Agreed surveyor = where both parties agree to have one surveyor to manage the Act.

Solicitors = should have minimal involvement with the Party Wall Act

The technical version for due professionals that, perhaps, are a bit rusty and who does what in the party wall “game”

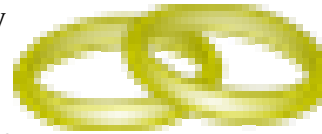
The party wall who’s who guide

Unlike the other Who’s Who guide to the rich and famous, this article explains about the various people who are involved in the Party Wall Etc Act 1996.

The building owner

As the name implies, this is the person, or company, or couple, who own the property. They are usually the people that initiate the Party Wall Act, as it has many benefits for them over and above that, which they have in civil law.

From the point of view of the Party Wall Act it is very important that the owners are correctly named, as this is a legal document. From memory we believe there is a case where a couple were named as Mr and Mrs Jones as owning the property, when they weren’t actually married. It was argued by the other party wall surveyor that the Notice hadn’t been correctly served – it is amazing what people can argue about, but we are sure there was good reason and normally good reason means a fair amount of money is involved.



The adjoining owner or owners

In all cases there will be an adjoining owner, in some cases there may be several adjoining owners, particularly the more complex projects and schemes. Within the commercial world, or on a larger project, it is fairly common to have several adjoining owners. In fact there can be several adjoining owners for one property, as anyone with an interest in it of more than one year is considered an adjoining owner, as is the actual freeholder.

Again, it is very important that adjoining owners are correctly named in the documentation, as the Party Wall Etc Act 1996 is a legal document and process.

This does bring up the problem of actually finding the adjoining owners, which can be far easier to say than do, particularly where the property has

been leased and sub-leased, or the adjoining owners simply don't want to be found, for whatever reason.

The advising surveyor to the building owner

First of all, it of course doesn't have to be a surveyor at all, it can be anyone. We think it goes without saying that the advising surveyor should know about the Party Wall Etc Act 1996. Even though initially, if contacted by the building owner, they aren't the party wall surveyor until they are officially instructed, when there is a party wall dispute (more about this later in an example case).

The rationale behind the advising surveyor not being the party wall surveyor is that until a dispute arises the Party Wall Act doesn't come into affect.

The advising surveyor to the adjoining owner or owners

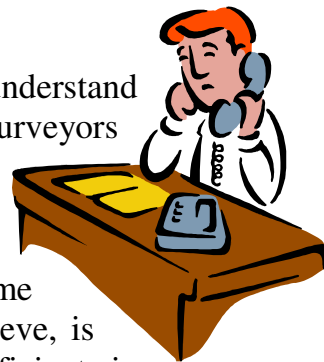
Equally, we can have the situation where the adjoining owners seek advice on party wall matters without the Party Wall Act being invoked. This is because, once again, unless there is a dispute situation the Party Wall Act doesn't come into being.

Using an advising surveyor

The best way we can explain using an advising surveyor is if you give the analogy that it is very much like seeking advice from a solicitor as to whether your proposed actions will be lawful or not. Indeed, it could be argued that the party wall surveyors, when the Party Wall Act is invoked, very much take a role on that would traditionally be thought of as a solicitor's role.

Solicitors

Solicitors, or the "S" word, should really know and understand that Party Wall Acts are carried out by party wall surveyors and generally it is best if solicitors have as little involvement as possible.



One of the main reasons that the Party Wall Act came into being, in the form that it is, we are led to believe, is because solicitors have been ineffective or inefficient in carrying out the earlier Acts, although we are unsure about this, as, as far

as we know, it is often quoted that the Party Wall Act has been in existence for several hundred years, in one form or another, with party wall surveyors carrying out the Act.

The appointed party wall surveyor for the building owner

When is a building owner's party wall surveyor not an appointed building owner's party wall surveyor?

Just to clarify, the building owner's party wall surveyor is not appointed until the Notice has been served and it has been dissented. There are various case laws relating to this:



Adams -v- Marylebone Borough Council 1907

Emms -v- Polya 1973

Leadbetter -v- Marlborough Corporation 1904

London & Manchester Assurance Company Limited -v- O&H Construction Limited 1989

Louis -v- Sadiq 1997

Lehman -v- Herman 1993

The rationale behind the appointed party wall surveyor is that if both parties consent to the work, as is often the case, particularly with residential matters, the appointed party wall surveyor has no dispute to resolve. As much as some party walls may wish, if there is no dispute then there is no need to appoint party wall surveyors.

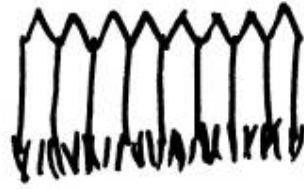
The building owner needs to ensure that they appoint a party wall surveyor in the correct manner, otherwise anything thereafter agreed can be disputed, as they haven't been appointed correctly.

Interestingly, the Notice that is served before the appointed party wall surveyors are appointed, where there is a legal obligation to carry it out, can be written by the building owner (rather than a solicitor or party wall surveyor) and will become a legal document, although it is usual for the building owner to have this served on their behalf by a party wall surveyor (the non-appointed type). The Notice needs to be nothing more complicated than the building owner's name and address, details of the work that is to be carried out and the proposed start date. Incidentally, we believe the reason behind the Notice needing to be in writing is so that if it is agreed and then, if anyone changes their mind at a later date, there is some reference point.

The appointed adjoining owner(s) party wall surveyor

Again, the party wall surveyor can be in an advisory role and, indeed, often is. If an adjoining owner has had a Notice served upon them by the building owner (or his adviser) and has not dissented on it, they may simply want advice.

Indeed, when enquiring recently to an eminent surveyor if an appointed adjoining party wall surveyor had been appointed, then had responded and argued that although they had responded to the Notice they weren't appointed until they had officially received the correct valid appointment from their adjoining owner.



The third surveyor

This is who the appointed surveyors need to appoint as soon as they are appointed! This is just in case they should disagree and can't come to an agreement, everything is then referred to a third surveyor. Indeed, if the building owner or the adjoining owners are unhappy then they, in turn, can also refer to the third surveyor.

The agreed surveyor

The agreed surveyor, or more correctly the appointed agreed surveyor, is where both parties agree to appoint the same party wall surveyor to deal with the serving and enactment of the Party Wall Etc Act 1996.

All court cases courtesy of Alex M. Frame's excellent Party Wall Etc Act 1996 book "Misunderstandings and Guidance", so if they are wrong please contact him not us!

If you truly do want an independent expert opinion from a chartered surveyor to specialise in party wall work please contact us on 0800 298 5424 for a chartered surveyor to give you a call back. We are also happy to carry out third surveyor work. If you require a structural survey, a schedule of condition, a dilapidations report, specific defects report, home buyers reports or any other property matters please contact us.

If you have a commercial property, be it leasehold or freehold, then you may wish to look at our Dilapidations Website at www.DilapsHelp.com

and for Disputes and anything else relating to party wall matters please go to our Disputes Help website www.DisputesHelp.com.

We hope you found the article of use and if you have any experiences that you feel should be added to this article that would benefit others, or you feel that some of the information that we have put is wrong then please do not hesitate to contact us (we are only human).

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