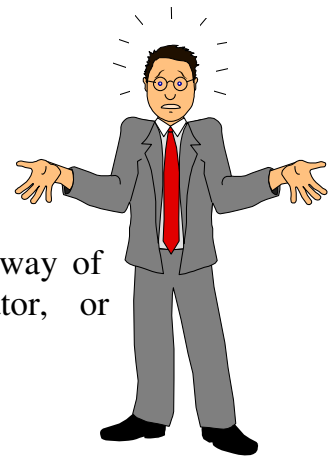


# **What is a third surveyor in relation to Party Wall etc Act 1996?**

If you need help and advice with regard to party walls, third party surveyors, surveyors, building surveys, structural surveys, home buyers reports or any other property matters please call 0800 298 5424 for a friendly chat.

## **What is a third surveyor?**

A third surveyor is a very unique role. It comes about as part of the Party Wall etc Act 1996. Although some may frown upon our description we feel the easiest one line way of describing the third surveyor is a sort of arbitrator, or quasi arbitrator.



## **Third surveyor, an arbitrator by another name?**

When the Party Wall Act became nationwide its intention was to be “for the benefit of all involved with party walls”, be it the alteration, amending, rebuilding or new construction. However, experience had shown from the older Acts, such as the 1939 London Building Act (and amendments). Sometimes the party wall surveyors acting for the building owner and the adjoining owner or owners did not manage to resolve the dispute and got into difficulties. Therefore a way to deal with this is to have a third surveyor to help matters proceed smoothly.



### **So far so good; so how does a third surveyor work?**

Two scenarios: first we must say, with an agreed surveyor (where both parties have agreed to have one surveyor) there is no such thing as a third surveyor, as surely the agreed surveyor should be able to agree with themselves! If they can't then the next process really is to go to court! Where there is a two surveyor situation, known as appointed surveyors, this is where the building owner having appointed their surveyor and the adjoining owner has either had their surveyor appointed or appointed for them, known as the second surveyor. The two appointed surveyors should then immediately select a third surveyor. We say immediately because you do need to select the third surveyor before the disagreements start, if indeed they do start.

### **So where do third surveyors come from?**

They should be knowledgeable and are often eminent surveyors with loads of experience with party wall work. Typically, appointed surveyors use a list of three third surveyors and the building owner's appointed surveyor forwards this to the adjoining owner's appointed surveyor and one of the three choices of third surveyor is chosen.



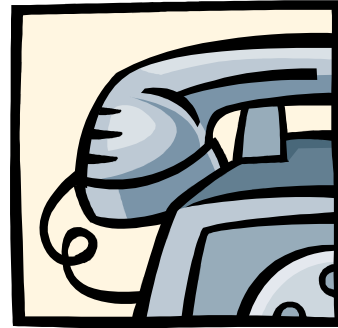
It is of course advisable to advise the third surveyor that he is the third surveyor, as he may not be available to carry out the role. It is also general common courtesy. We personally have had one instance where we had the most famous party wall surveyor John Anstey put down as the third surveyor, that the appointed surveyor had recommended, as was quite a common practice on those days. Unfortunately for us all, John Anstey had passed away about one year previously and therefore was not available for the third party role, but we are sure would have been amused about the situation!

### **When should the appointed surveyors agree a third surveyor?**

Just to reiterate appointed surveyors should agree a third surveyor almost immediately after they have been appointed.

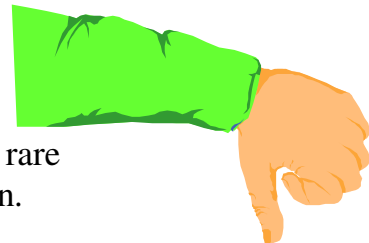
### **What if they can't agree upon a third surveyor?**

This really is a bad start to a party wall agreement. If this does happen, however, the Party Wall Act has provision made for the Local Authority to appoint a third surveyor. We are advised that in some areas it is a fairly commonly used system, but in our area it isn't. We know this because we are the Local Authority's recommended third surveyor and have been since the Act began and the only times that we have had phone calls from the Local Authority is to come and carry out seminars on the party walls, etc, for their employees, which we have done on several occasions (as well as at a university). We are of course happy to do this and if there is anyone out there that needs to know more, please telephone 0800 298 5424 to discuss.



### **What if the party wall surveyor recommended doesn't want to be the third party surveyor?**

Quite simple, they refuse. This is why it is best to have a willing victim before having them on your list, and again we have been on and have prepared many lists over the years and it really is a relatively rare situation, and even rarer where you are called to action.



### **So who does call to action?**

This can be the building owner, the adjoining owner or either of their appointed surveyors.

### **When should they be called?**

At a recent conference there was much debate, and at many previous conferences there has been much debate, about when a third surveyor should be called and probably, equally, when the third surveyor should act. First things first, the obvious time when a third surveyor should be called is when the two surveyors can't come to an agreement. Interestingly, it is well known this is most frequently on fees! It can of course also be on technical issues, be they of a construction nature or be they of a Party Wall Act nature.

### **It is more interesting when the building owner or adjoining owner calls for the third surveyor**

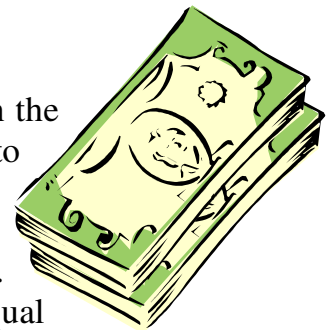
Although the point that is very much discussed with party wall surveyors is when the building owner or the adjoining owner calls for the third party surveyors thoughts, which of course they have every right to do. The naive third party surveyor has, of course, to be careful, where an informed client (the adjoining owners if they know the Part Wall Act) can request the third party surveyor's comments and frustrate the process if carried out correctly. The third surveyor has to be aware that he can't treat any enquiries for his assistance too flippantly.

### **So what does a third surveyor do when he is in action?!**

Assuming all things are equal and the third surveyor takes on the challenge, first things first he must check that this really is a party wall award by checking that the surveyors have been appointed and that the party wall award has been served correctly, as set down by the Act. Simple, but there is case law showing where the third surveyor acted and of course it wasn't a party wall matter!

### **The third surveyor's fees, how and who pays?**

The other matter is the third surveyor's fees. They are in the very beneficial position that they can request fees prior to giving their judgement. There are a number of ways of getting the fees successfully; one way is to take a deposit up front, that is favoured by many, from both parties. Another is to take monies up front from both parties (equal amounts) that equals the sum that is likely to be awarded and then reimburse based upon the percentage of your award.



The third system is to simply ask the party that the Award is against to pay, but this could be difficult as obviously the party involved may be aggrieved at that stage by the time the third surveyor has made his judgement.

### **Third surveyor out of action**

There are other times when a third surveyor may not act, other than not wanting to, at the outset. He can, of course, have taken on additional work during the course of negotiations and when he is called upon not have the time that he sees fit for the role. He can equally feel that

possibly technically, for whatever reasons he isn't suited, or, finally, he may have died, as we have previously mentioned with the John Anstey case earlier. Funnily enough, it is not the first time that we have had the story of John Anstey being appointed as the third surveyor.

### **Third surveyor needs to ensure they have the depth of knowledge**

The third surveyor just needs to just pause and check that he is capable of being the third surveyor. He must, of course, have an indepth knowledge of The Party Wall etc Act 1996. We feel they must be practising fairly regularly, they must have a good technical knowledge of the type of problem, or understand when their knowledge is limited and seek expert advice, they must be able to see the wood from the trees, they must be a very good communicator, they must have the time available and the energy!



Also other important side knowledge is required, such as the Civil Procedures Rules, general health and safety, a good and current knowledge of case history in relation to party wall awards and specific CDM Rules, although they could of course seek specialist expert advice, and things the party wall surveyor should remember is that they are not a Judge by then can be taken to court for his judgement and many have done in the past! Also, it is essential to have a copy of the Party Wall etc Act 1996.

### **Put it in writing**

We can't stress too strongly that the third surveyor should be appointed in writing and also we feel that a letter confirming the appointment is common courtesy and decency and a phone call prior just to check they are a willing third surveyor.



### **Section 10(11)**

The third surveyor's duties are to make determination as requested by either the surveyor or either owner, to resolve disputes and give advice and direction and to serve an award, as Section 10(15)(a)(b)

If you truly do want an independent expert opinion from a chartered surveyor with regard to party walls, third party surveyors, surveyors, building surveys, structural surveys, engineers reports, specific defects report, home buyers reports or any other property matters please contact 0800 298 5424 for a chartered surveyor to give you a call back.

If you have a commercial property, be it leasehold or freehold, then you may wish to look at our Dilaps Website at [www.DilapsHelp.com](http://www.DilapsHelp.com) and for Disputes go to our Disputes Help site [www.DisputesHelp.com](http://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).

The contents of the web site are for general information only and is not intended to be relied upon for specific or general decisions. Appropriate independent professional advice should be paid for before making such a decision.

All rights are reserved the contents of the web site is not to be reproduced or transmitted in any form in whole or part without the express written permission of [1stAssociated.co.uk](http://1stAssociated.co.uk).