CONSUMER GUIDE

Party Wall etc. Act 1996

A clear, impartial guide

For use in England and Wales

rics.org/consumerguides



Contents

How an RICS member can help 2
Introduction 3
How the Act applies to you 4
Choosing surveyors and who pays 7
The award 8
Useful links 9
Free RICS guides 9
Further information 10
Find a Surveyor 10



How an RICS member can help

As the world's largest professional body for chartered surveyors, RICS offers clear, impartial, expert advice on the issues raised in this guide.

RICS members can help property owners in a variety of ways, so whether you want expert advice and a professional assessment of your issue, an opinion on costs, representation, or a professional to manage a project for you, visit **Find a Surveyor** to find an RICS member in your area.

Using the services of RICS members offers confidence because:

- they give you clear, impartial and expert advice
- they are regulated and have strict rules of conduct to protect you, as well as holding appropriate professional indemnity insurance
- they have to update their skills and knowledge throughout their careers, so you can rely on their expertise
- you are further protected by RICS' complaints service and access to independent redress.

Look out for firms that are 'Regulated by RICS'. These estate agents and surveying firms are easy to spot as they use 'Regulated by RICS' on their stationery and promotional material.

Introduction

The Party Wall etc. Act 1996 relates to works of construction on or at boundaries, works of excavation, and excavation for and construction of foundations within certain distances of adjacent structures.

Party wall legislation applies only to England and Wales and does not exist in Scotland and Northern Ireland. The government has issued a more detailed **Explanatory Booklet** about the Act.

The Act requires property owners in England and Wales to follow a specific procedure when undertaking building work that involves:

- a party wall or a party fence wall (a garden wall which straddles the boundary)
- certain excavations and foundation constructions close to neighbouring buildings, and
- new walls at boundaries.

The Act permits owners to carry out certain specific works, including work to the full thickness of a party wall, while at the same time protecting the interests of anyone who might be affected by that work.

The Act is designed to:

- enable owners to carry out works while protecting adjoining owner's rights and avoiding unnecessary inconvenience and
- avoid or minimise serious disputes by making sure property owners notify their neighbours in advance of certain proposed works.

The Act requires that, where the adjoining owner does not agree in writing to the works, a surveyor or surveyors will determine the time and manner in which those works can be carried out.

How the Act applies to you

As the building owner

If you intend to carry out works to your property, you may fall into the category of a 'building owner' as defined by the Act. A building owner is under a statutory duty to give written notice to their neighbours of certain works.

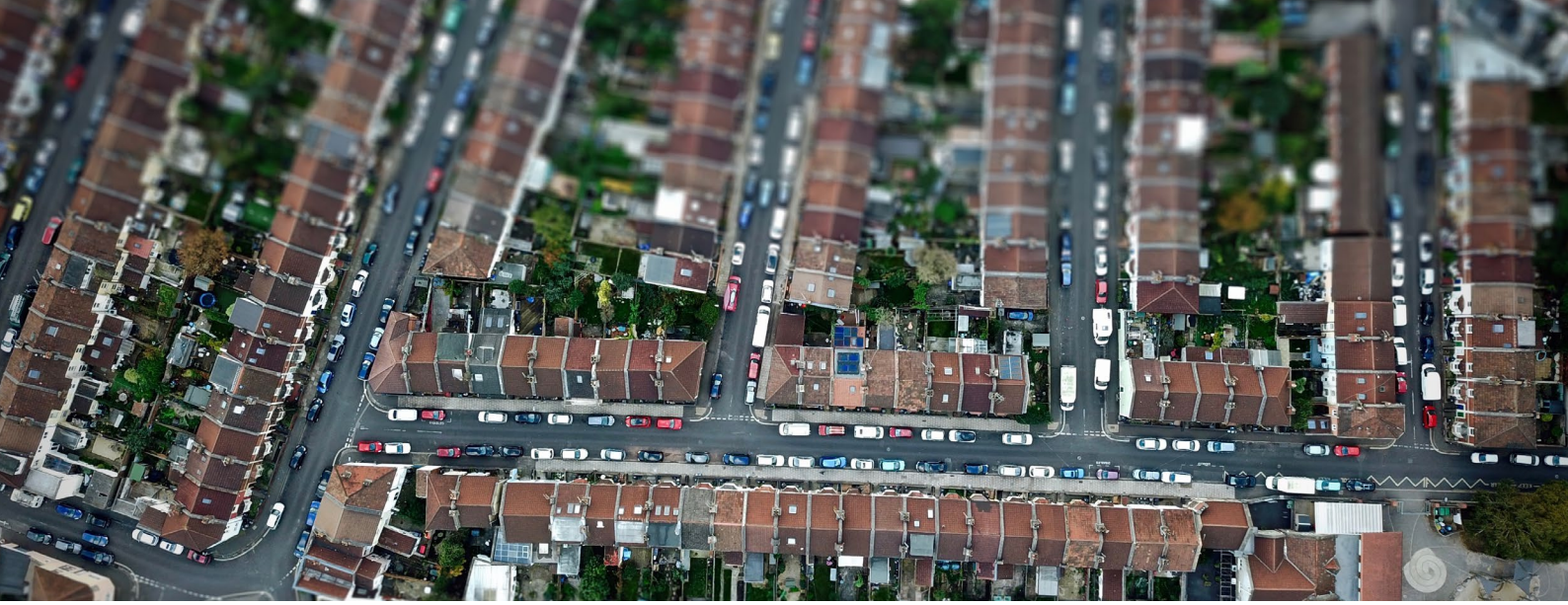
The works that require a notice are described in various sections of the Act and include:

- cutting into a party wall (for instance, to take the bearing of a beam for a new loft conversion)
- inserting a damp-proof course, even if only to your own side of a party wall
- raising a party wall and, if necessary, cutting off any projections that are in the way
- demolishing and rebuilding a party wall to a greater height and thickness
- underpinning and/or raising of party structures or walls adjacent to a party wall
- making good poorly maintained or defective party structures
- weathering the junction between independent but adjacent walls or buildings
- excavating foundations or below ground structures within three metres of a neighbour's structure and deeper than its foundations
- excavating foundations or below ground structures within six metres of a neighbour's structure and below a line drawn downwards at 45° from the bottom of its foundations
- building a new wall on or up to the line of junction (the boundary) between two properties.

Party walls usually separate buildings belonging to different owners but could include garden walls built astride a boundary (when they are known as party fence walls).

It is advisable when considering any work within proximity of a neighbour to obtain advice from a suitably qualified surveyor as to whether there is any requirement to serve notice under the Party Wall Act.

A failure to serve required notices may result in legal proceedings against you.



As the adjoining owner or occupier

An adjoining owner is, in general terms:

- a freeholder
- a tenant with a lease of more than a year or
- a person entitled to receive the rents of land, buildings, storeys or rooms adjoining those of the building owner.

An adjoining owner is entitled to notice of adjacent works.

Adjoining occupiers who are not adjoining owners (e.g. occupiers with tenancies of a year or less) are not entitled to notice. However, they still have limited rights under the Act, such as the right to compensation should loss be suffered.

Notice issued to an adjacent owner should inform of the works and may be accompanied by drawings.

You have certain options when you receive such a notice. For instance, you may be quite agreeable to the works and therefore happy to consent to allow the works to continue. Alternatively, you may be uncomfortable making such a decision and seek the advice of a suitably qualified surveyor.

A surveyor should be able to guide you as to whether to consent to the proposed works or to withhold consent (often referred to as a dissent) in order for the surveyor to give the proposals further consideration.

In the event that you do not consent, you will be required to appoint a surveyor. You may agree to appoint the same surveyor as your neighbour or you may choose your own surveyor. In general, a building owner will be required to pay the costs of an adjoining owner's surveyor, but there are exceptions (see below).

A surveyor appointed under the Act is under a duty to act impartially regardless of who appointed them. Therefore, selecting the same surveyor as your neighbour is often considered a neighbourly thing to do as this helps to reduce the costs of the neighbour. On the other hand, once a surveyor is appointed they cannot be removed by the appointing owner, and so care should be taken to appoint someone suitable.



As a building owner, what do I have to do?

You must give written notice to your neighbours of works described within the Act. This notice must be provided either one month or two months before starting work, depending on the nature of the works. It is, of course, advisable to provide this notice even earlier if possible.

Where there is more than one owner of the neighbouring property, or more than one adjoining property, you must notify all of the various owners. That includes leaseholders with an interest of over a year. It is not necessary to serve notices on mortgage lenders.

If you are proposing work to a party wall, a ceiling or floor shared with a separately owned part of the same building, such as another flat, you will have to give written notice to any adjoining owners and occupiers sharing that structure.

If possible, talk to your neighbours in detail about the work you want to do before giving them written notice. If you can resolve any potential problems in advance, they may give you written agreement in response to your notice.

Before you start the specific works, you must either have your neighbour's written agreement to the proposed works or appoint a surveyor to prepare a Party Wall Award in respect of them.

What if there's a dispute?

Where written agreement to the proposed works is not given within 14 days of the notice, the solution the Act provides is for both parties to appoint an 'agreed surveyor' who should act impartially, or for each owner to appoint a surveyor.

The surveyor(s) will draw up a document called an 'Award'.

This Award details the work to be carried out and when and how it will be done. It also usually records the condition of the relevant part of adjoining property before work begins. It may also grant access to the adjoining property so that the works can be safely carried out and the surveyor(s) can inspect work in progress.

You must have an Award before you can start work under the Act, unless the adjoining owner has given written agreement to the works.

The Award will determine who pays for the work if this is in dispute. Generally, the building owner who is undertaking the work pays for all expenses of work and the reasonable costs, but these can be apportioned between the owners where appropriate, such as for works of repair.

Choosing surveyors and who pays



The Act does not define who may act as a surveyor, and there are many people offering their services as party wall surveyors who have little relevant experience or adequate qualifications.

RICS recommends that only chartered surveyors using the designation MRICS or FRICS are chosen as appointed surveyors under the Party Wall Act. Chartered surveyors are required to keep up to date with continuing professional development, to provide and maintain adequate professional indemnity insurance, and to be suitably experienced and knowledgeable for the tasks they undertake.

A chartered surveyor should be able to confirm if they are suitably qualified and experienced in the administration of the Act or, if not, may be able to suggest a fellow surveyor who is.

All RICS regulated firms are also required to operate a complaints-handling procedure and adhere to the RICS Rules of Conduct, and other standards that may not be applicable to other non-chartered surveyors and unregulated firms.

The fees of the surveyors and any additional advisors will normally fall on the building owner serving the notice, However, where the costs are to be apportioned between the owners the costs of making an award may be apportioned accordingly. For instance, if a party wall (shared wall) is in a state of disrepair, the owner serving the notice may require part of the costs to be met by the neighbour where the cause of the defect and use of the wall is shared. A chartered surveyor will be able to advise on the correct apportionment of such costs.

An adjoining owner may also be exposed to costs if, for instance, they act unreasonably by making excessive demands on either of the surveyors or if they cause additional and unnecessary time to be spent, e.g. by demanding that surveyors make abortive or pointless visits.

Once a surveyor is appointed that appointment cannot be rescinded, however a surveyor may deem themselves as incapable of or unwilling to act. If an appointed surveyor dies or deems themselves incapable or unwilling, a new surveyor can be appointed.

The award

The appointed surveyors, or surveyor if agreed, will issue an award to both parties. The surveyors will have given consideration to the reasonableness of the works and whether they are permitted by the legislation, and will take into consideration how the work will be done and the methods of construction.

This award will detail the obligations of the parties including the payment of costs and is binding unless it is appealed to the County Court or it is outside the jurisdiction of the surveyors. An appeal against an award must be made within 14 days of service.



Useful links

Here are some useful websites for advice.

GOV.UK

The Party Wall etc Act 1996: explanatory booklet

Merthyr.gov.uk

The Party Wall etc. Act 1996: explanatory booklet for Wales

Planning portal

Planning information on party walls

Pyramus and Thisbe club

Further information for professionals

Citizens Advice Bureau

Advice for consumers

Free RICS guides

RICS has a range of free guides available for the following property issues:

Development issues

Compulsory purchase

Home extensions

Home hazards

Fire safety

Dilapidations

Flooding

Subsidence

Neighbour issues

Boundary disputes

Party walls

Right to light

Residential

Buying a home

Buying and selling art and antiques at auction

Home surveys

Letting a property

Property auctions

Renting a property

Selling a home

Visit **our consumer guides website** or **RICS' public website**.

Further information

We hope this guide is useful to you. If you'd like to know more about the Party Wall etc. Act 1996, or how RICS can help, please contact us.

Visit our website

Visit the RICS website for more information on the Party Wall etc. Act 1996.

Consumer helplines

Contact one of our regulated firms for a 30-minute initial consultation.

Find a Surveyor

Contact us if you want to find independent, impartial advice from a qualified professional with good local knowledge.

Surveying firms that are regulated by RICS are easy to spot as they use 'Regulated by RICS' on their stationery and promotional material.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

Americas, Europe, Middle East & Africa
aemea@rics.org

Asia Pacific
apac@rics.org

United Kingdom & Ireland
contactrics@rics.org

RICS®

rics.org