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Thesis Title: Party Wall Disputes: Legal Coherence and Dispute Management

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Declaration: This thesis is submitted for the degree of Doctor of Philosophy

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. I further state that no substantial part of my thesis has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the relevant Degree Committee.

Name: Laura Lintott

Title: Party Wall Disputes: Legal Coherence and Dispute Management

Summary: This thesis analyses a spectrum of legal and factual issues linked to party walls and related disputes that, to date, have not been brought and analysed together. The aim is to provide a contextual analysis of these different areas of law and fact and thereby formulate a separate area of party walls and related disputes of its own merit, to provide a more comprehensive understanding of party wall disputes and a framework to help resolve party wall disputes in a practical and effective way.

The thesis:

(a) Analyses the meaning of a 'party wall'.

(b) Analyses the regime of the Party Wall etc. Act 1996 (**PWA 1996**).

(c) Presents different party wall dispute resolution avenues. It includes a number of case law examples and party wall scenarios where disputants ended up going to court. Chapter IV focuses on how disputes may be resolved in the light of the dispute resolution process of the PWA 1996 as well as court process and alternative dispute resolution procedures. This thesis advocates for pragmatic and cost-/time-effective solutions outside of court where possible.

(d) Looks beyond the PWA 1996 and connects separate areas of law/fact, providing a contextual view of the issues relevant to party wall disputes as it is not sufficient to rely only on the PWA 1996. These include:

    (i) Statutory rights (Access to Neighbouring Land Act 1992, Law Property Act 1925, Land Registration Act 2002, Human Rights Act 1998, Crossrail Act 2008 and the High-Speed Rail (London – West Midlands) & (West Midlands – Crewe) Acts 2017).

    (ii) Proprietary rights – easements (right of way/support, drainage rights and whether there is an ancillary right or obligation to repair or not).

    (iii) Tort (noise, vibration and nuisance related to the right to light).

    (iv) Factual issues around structural matters relevant to party walls.

With thanks to my supervisor, Professor Martin Dixon, my husband, Alexander Lintott and my parents for their kind, inspirational and tireless support.

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I. CHAPTER ONE – INTRODUCTION

1 The Aim of This Thesis

The aim of this thesis is, through mainly doctrinal but also contextual analysis, to bring together those areas of law and fact that are most relevant to, and frequently encountered in, party wall disputes, provide a more comprehensive understanding of party wall disputes and provide a framework to help resolve such disputes in a practical and effective way.

This thesis analyses points of friction between owners or occupiers of neighbouring properties linked by party walls. At first glance, issues linked to party walls would seem to be regulated by the Party Walls etc. Act 1996 (**PWA 1996**). While the PWA 1996 focuses on party walls and attempts to provide a notice dispute resolution mechanism in relation to disputes arising out of them, it is very narrow in its scope and does not consider crucial areas of law and fact. It also is not helpful where the parties do not voluntarily subscribe to the notice dispute management mechanism created by the PWA 1996. The PWA 1996 also does not compel the parties to consider a range of other out of court dispute resolution mechanisms.

Having said that, the PWA 1996 does contribute with some positives, including the notice dispute resolution mechanism (albeit a voluntary one) for the parties to attempt to resolve disputes out of court. This addresses disputes where an adjoining owner (Adjoining Owner) does not respond to a notice by the building owner (Building Owner) relating to proposed works or where the Building Owner does not respond to a counter-notice. The surveyor's award then focuses on works that fall under the PWA 1996. The award does not, however, go beyond the PWA 1996. Effective use of the PWA 1996 can be achieved only if done in the context of other legal and factual areas and with the right guidance from legal professionals.

The main issue is that there is currently no clear framework that recognises the multifaceted nature of party wall disputes. The dispute resolution process dealing with the layered and sometimes intertwined areas of law and fact behind party wall disputes

can be highly contentious, if not acrimonious. The issue is that a layperson may conclude that reaching out to the PWA 1996 will provide them with sensible and safe guidance for the party to deal with a party wall dispute on their own, without hiring a legal professional. Unfortunately, this is a misleading impression that the PWA 1996 can create, which can lead to a situation detrimental to the parties trying to solve party wall disputes on their own rather than referring to legal specialists in this area (however, there are not many party wall specialists available on the legal services market).

Party wall disputes often touch on other areas of statute law that can impact on each other (for example, the Access to Neighbouring Land Act 1992, the Land Registration Act 2002 or the Human Rights Act 1998), property rights (such as, rights of way, rights of support, drainage rights, or rights linked to easements) and tort (such as, nuisance related to noise and vibration or breaches of rights to light). In addition to areas of law, there are factual matters that also need to be considered in the context of party wall disputes and include structural issues (such as, cracks in party walls, subsidence, underpinning, thickening, raising, repairing, cutting into a party wall, increasing or decreasing its height, exposing a party wall, or demolishing it and fully rebuilding it). It is these areas of law and fact relevant to party walls that have so far not been brought together in a structured and in-depth way.

There is a need for a new approach to party wall disputes as they should no longer be viewed as peripheral issues linked to property, construction or commercial disputes and projects. There is a lack of a specialism focussing primarily on party wall disputes as a valid and complex area of its own and there is no clear framework or structure to be applied when a party wall dispute arises. Party wall disputes require a multifaceted approach.

As the range of issues linked to party walls and related dispute management is currently fragmented, there is a necessity to connect the different areas of law and fact related to party walls, analyse how and why they are relevant and how disputes emanating out of them can be better managed ensuring that relevant legal principles are assessed and adhered to, giving clarity to courts and relevant parties. Providing such a clarity and mapping out the area related to party walls, bringing in different

elements of the law and fact, means creating a separate party wall discipline of its own.

This thesis also presents dispute management and resolution options, including a strategy analysis prior to a dispute arising as well as dispute management, which includes settlement negotiation, surveyor's award, mediation, expert determination or litigation. This thesis advocates a pragmatic cost- and time- effective dispute resolution approach, out of court where possible (considering the common disproportionality between the value in dispute and costs/time connected to litigation).

The new approach resulting in the analysis in this thesis provides benefits to scholars, lawyers, who will be more confident in advising on party walls, as well as their clients – members of the public – receiving such advice. It calls for a reform of the party wall dispute resolution system.

By setting out links between different legal areas as well as factual issues, it becomes possible to systematise issues surrounding party walls so that they become predictable and therefore more manageable. This in turn results in greater efficiency and effectiveness in party wall dispute prevention, management and resolution. This thesis provides different perspectives when it comes to party wall disputes and in some cases even offers a choice of which areas of law/issues to prioritise to achieve a more favourable dispute outcome.

Parties do not always have to resort to court proceedings if they are not happy with an award under the PWA 1996 or circumstances linked to other areas of law and can try other options to address the dispute. Chapter IV on dispute resolution analyses dispute management under the PWA 1996 but also practical aspects of party wall disputes and other dispute resolution avenues. It gives solutions and options how parties can resolve party wall disputes outside of court. Factors reflected include relationships between neighbours and time and cost involved in party wall disputes, which are all valid considerations for parties to party wall disputes when deciding how to manage and address such disputes.

Although, as explained above, the complexity of party wall disputes is addressed by

this thesis, the simple and most common reason as to why party wall disputes arise is often the basic right, need and emotion behind preserving the landowner's or occupier's territory and not negatively impacting on that of the adjoining land.

2 Methodology

As noted above, the purpose of this thesis is to carve out a distinct party wall discipline of its own, a sub-set of neighbourly matters. This is to offer coherence, providing an overview of a range of factors that need to be taken into consideration when it comes to party wall disputes. It is to serve as an inspiration to investigate alternative methods of dispute resolution to preserve neighbourly relationships and save cost and time.

This thesis pursues a predominantly doctrinal (but also contextual) approach to assist in providing a picture of party walls, related disputes' multi-layered facets and clarity as to what needs to be considered in the context of such disputes (i.e. different areas of law and fact). The contextual approach stems from an analysis of different legal areas (statutes, proprietary rights and torts) and factual aspects, that are relevant to party walls, and bringing these together. An analysis of different legal and factual areas results in a systematic analysis and approach to party wall dispute management and resolution. The choice of the particular areas of law, case law, legislation and examples discussed in this thesis is based on practical issues that can commonly arise out of party walls.

The research methodology includes a review and analysis of primary sources (including legislation, statutory instruments, government guidance, case law, official reports), as well as secondary sources (including commentaries, texts and articles from both academics and practitioners).

It is also mainly the doctrinal and contextual analysis approach that is adopted in this thesis when it comes to case law reviewed and discussion. The current literature that is available on the issue of party walls contains gaps in the way in which party walls are approached and what issues are considered. The primary focus seems to be mostly on the PWA 1996 and the case law emanating from it, but the surrounding areas of law are touched upon very briefly (usually only by way of reference or short

note on not more than a few pages). To be able to bridge this gap, the areas of law, practical aspects of party wall disputes and related case law forming the basis of this thesis have been selected due to their relevance to party wall disputes, showing that these disputes go beyond the realm of the PWA 1996.

Some of the case law pre-dates the PWA 1996. This is because the PWA 1996, to some extent, reflects its legislative predecessors and the case law preceding the PWA 1996 assists in giving a fuller context/picture of the area of party walls when touching on other areas of law and/or interpretation of the PWA 1996. Case law pre-dating when the PWA 1996 was enacted also provides a rich spectrum of examples showing how the law around party walls has developed.

The focus is on legal principles and theory, as well as factual scenarios in case law related to party walls leading to disputes. Each of the chapters is systematically broken down by topic (for example, right of way, right of support, drainage rights and issues linked to repair (under proprietary rights in land – easements)) and shows how it is connected to party walls.

The approach to the process of selecting the topics for the chapters is based on the need to clarify the legal and practical context surrounding party walls and related disputes.

3 Structure and Chapter Breakdown

The thesis is broken down into chapters ranging from an introduction to the topic, through identifying the issues linked to party walls and grouping them by relevant type of law or fact to dispute resolution options and management. The analysis sets out the topic of party walls and focuses on the immediate issues emanating from party walls. It probes dispute management and resolution options. It shows the wide spectrum of legal issues surrounding party walls and dispute resolution management, avenues and process.

Chapter one is an introduction to the thesis and research question.

Chapter two sets out what party walls are in the first place in connection with different pieces of legislation and case law. It also discusses the way in which the PWA 1996

distinguishes between party walls, fence walls and party structures, as well as the main types of party walls. This is illustrated with examples from the 'Party Wall etc. Act 1996: Explanatory Booklet'[1] that was produced to assist with interpreting the PWA 1996. The chapter also touches on excavations and special foundations.

Chapter three deals with the PWA 1996. However, the chapter focuses only on issues linked to party walls to the extent to which the limited framework provided by the PWA 1996 applies. Chapter three gives a historical overview of the legislative developments leading to the PWA 1996 inception and explains the main areas covered by the PWA 1996 as well as rights and obligations of the parties connected to party walls.

Chapter four analyses the different dispute resolution avenues that are most relevant to party walls. It explains the notice dispute resolution mechanism in relation to party wall disputes under the PWA 1996. The focus is initially on the dispute resolution procedure under the PWA 1996 (including awards and injunctions). Then, the chapter proceeds to analysing additional forms of dispute resolution as to party walls that are available to parties. Chapter four also discusses the strategy behind the decision-making process as to which dispute resolution avenue is necessary or possible and approaches that parties to party wall disputes may find most beneficial in the context of their circumstances in terms of emotion, cost and time. The aim is to show what options are available to those affected by current and/or potential disputes arising out of issues linked to party walls.

Chapter five looks at other areas of statute law that have an active interface with the PWA 1996. This includes the Access to Neighbouring Land Act 1992 (**ANLA 1992**). The ANLA 1992 is relevant to this thesis as it gives limited right of access to a neighbour's garden and/or land to carry out 'basic preservation works', which can be highly relevant to party walls. Prior to the ANLA 1992 having been passed, adjoining property owners had virtually no right to go onto their neighbour's land unless an express easement had been granted, such as a right to maintain drains, pipes and wires. The ANLA 1992 is therefore discussed in this thesis as well as whether it

[1] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016)

dovetails with the PWA 1996.

In connection with this, practical considerations are taken into account that are relevant to party walls, such as scaffolding and crane oversail and their interactions with party walls.

Discussed are also the Land Registration Acts 1925 and 2002 in the context of boundary determination. The chapter explains what this involves, what the general boundaries rule is, as well as the rules for fixing boundaries under the two Land Registration Acts. Also, in the context of boundary determination, chapter five explains what role the Law of Property Act 1925 plays. Tangible case law examples are used to show the connection between the issues above and party walls.

The chapter analyses the Property Boundaries (Resolution of Disputes) Bill (**Bill**). While there is no certainty that the Bill will progress through Parliament, it is still relevant to this thesis as the Bill aims to set out a clear dispute resolution structure in relation to the location or placement of boundaries and private rights of way regarding an estate in land title without having to go to court. It is a piece of legislation modelled on the PWA 1996 and therefore also mentioned in this thesis.

Chapter five also discusses the Human Rights Act 1998 together with the European Convention of Human Rights as it touches on the landowner's or land occupier's right to fair trial and right to respect for private and family life, both relevant in the context of party walls.

Chapter five further considers the Environmental Protection Act 1990 and Control of Pollution Act 1974 from which the local authority environmental department derives powers to deal with certain issues that can be linked to party walls, such as potential nuisance, dust and deposits from construction sites.[2]

The Crossrail Act 2008 and the High Speed Rail (London – West Midlands) & (West

[2] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016)

Midlands – Crewe) Acts 2017) are also touched upon as they, in some respects, override the PWA 1996.

All of these pieces of legislation are relevant to party walls as they either interact with, amend or complement the PWA 1996.

Chapter six analyses proprietary rights in land (easements). Proprietary rights govern parties' ability to sue and enjoy both land in their physical possession and land in the physical possession of others. This is highly relevant to, and can be interlinked with, party walls.

Chapter six focuses primarily on the rights set out below.

(a) The right of way with which party walls can interfere.

(b) The right of support (also covering weather protection and excavations), highly relevant to party walls, which can either require or provide support. This in turn leads to related rights of the landowners/occupiers with an interest in the relevant party walls.

(c) Drainage rights and whether there is an ancillary right or obligation to repair or not.

(d) Whether there are rights or obligations to repair a party wall.

Chapter six highlights a number of cases together with clear images of situations where proprietary rights in land affect party walls.

Chapter seven explores further aspects of relevance to party walls from the tortious perspective. It initially explains the meaning of common law nuisance before analysing examples of nuisance relevant to party walls, such as noise nuisance (including control of construction noise, sound proofing and vibration) and rights to light. Examples of implications for party walls stemming from tort are illustrated by way of case law.

Chapter eight focuses on factual issues related to party walls and structural issues

specifically. These include, for example, cracks in party walls, subsidence, underpinning, thickening, raising, repairing, cutting into party walls, increasing or decreasing party wall height, exposing party walls, or demolishing these and fully rebuilding them.

Chapter nine is the conclusion to this thesis. It provides a synthesis explaining how the different pieces/chapters of the thesis fit together and what inference this leads to. This includes an assessment of the legal coherence of how party wall disputes are dealt with and the best options in terms of dispute management.

II. CHAPTER TWO – WHAT IS A PARTY WALL?

1 Introduction

Before one can analyse party wall disputes, and the related legal coherence forming the backbone behind the topic of party walls and related disputes, the first step is to identify what ‘party walls’ are.

Party walls can obstruct a view, limit a source of light, impede a neighbour's air space, or have an impact on a land's support. Party walls need to be repaired from time to time, so the question arises as to who needs to repair them. This in turn leads to issues about whether it is possible to require a person to repair a party wall. Parties need to be clear on their rights to be able to access the relevant party walls. If a party attempts to access a party wall and wrongfully interferes with the other party's possessory rights in its land, this can lead to trespass. Overgrown roots of a tree can interfere with a party wall. Works on a party wall can cause construction noise and vibration. Alternatively, party walls in buildings may not be insulated enough to prevent certain noises from carrying from one room to another. A party wall is not necessarily visible in its entirety. It can be linked to the ground or to a structure. It can be linked to the ground below the land surface and it can be impacted by ground conditions.

From the above examples it is clear that party walls can be at the root of many disputes linking statutory, proprietary, tortious and structural matters. This is simply because of the highly contentious nature of the disputes linked to party walls. When the parties are evaluating which dispute resolution avenue they should take, this depends on their personal preference, willingness or necessity to preserve the relationship between the neighbouring landowners, cost and time available and need for clarity, certainty and a binding outcome.

2 Definitions of 'Party Wall'

When it comes to defining what exactly the terminology 'party wall' means, there is no clear cut definition.[3] Before a legal estate in tenancy in common was abolished by the

[3] *Kempston v Butler* (1861) 12 Ir.C.L.R. 516 at 526

Law of Property Act 1925, in relation to a wall that was owned in common by different owners, each of the owners had generally the right to demolish the wall as long as the intention was to rebuild it again and to do the required repairs and underpinning.[4] However, case law made it clear that the provisions of the party wall legislation superseded such common law rights.[5] In common law, the terminology 'party wall' is not defined and does not have an exact meaning,

According to *Megarry & Wade*, since 1925,[6] the term 'party wall' may mean any one of the things listed below.[7]

> "*(i) a wall divided longitudinally into strips, one belonging to each of the neighbouring owners; or*
>
> *(ii) a wall divided as in (i), but each half being subject to an easement of support in favour of the owner of the other half;*
>
> *(iii) a wall belonging entirely to one of the adjoining owners, but subject to an easement or right in the other to have it maintained as a dividing wall.*
>
> *Prior to 1926 there was a fourth category. There could be a party wall of which the two adjoining owners were tenants in common. The disadvantage of such a wall was that either owner could insist upon partition. Had special provision not been made by statute, all party walls in this category would have become subject to a trust for sale after 1925. It was provided therefore that after 1925 all party walls of this kind, whether created before 1926 or after 1925, should be deemed to be severed vertically, and that the owner of each part should have such rights of support and use over the rest of the wall as were requisite for giving the parties rights similar to those which they would have enjoyed had they been tenants in common of the wall. The practical effect of this provision was to translate all party walls of this kind into the second category listed above*."

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[4] *Standard Bank of British South America v Stokes* (1878) 9 Ch D 68, paras. 70-71
[5] *Ibid.* and *Selby v Whitbread & Co* [1917] 1 KB 736
[6] Law of Property Act 1925, section 38
[7] Megarry & Wade: *The Law of Real Property* (9th edition)., Chapter 29 – Species of Easements and Profits, Section I. Party Walls, para. 29-044

To elaborate on the terminology in the different categories, 'longitudinal division into two strips' in (i) above means that the ownership of the party wall is split longitudinally between the two landowners. However, cases of longitudinal division of this kind are rare. The issue with this category is that neither owner has any right of lateral support from one another. This can lead to either owner removing their half of the wall. While having to act with reasonable care, the result may be a structure that is not capable of standing on its own.[8]

The effect of the Law of Property Act 1925 (section 38) was that a party wall is not owned in common but longitudinally where each of the parties has an easement of support over each other's property. While party walls fell under the law of co-ownership or easements of support, they had to be excluded from the statutory trust for sale that was imposed in cases of co-ownership after 1925.[9] There are easements that can affect party walls, which is why a separate chapter VI further below is dedicated to easements in connection with party walls.

According to *Gale on the Law of Easements*:[10]

> "*A wall could (and still can) be a party-wall up to a certain point, namely, so far as it divides two buildings of unequal height, and an external wall above that point; and a pilaster or portico, or a fascia, which appears to form an integral portion of one house, may be parcel of and pass on a conveyance of another house. The raising of a party-wall by one part owner without the consent of the other is a violation of that other's right of ownership and possession of his half, and is not less so because a private Act provides that it shall be lawful for the owner or part owner of any party-wall to raise it, provided that the wall when raised will be of the substance required by any byelaw.*"

The above statement provided by *Gale on the Law of Easements* further shows that where a wall is a 'party wall', it is linked to certain rights and obligations that parties to the party wall must abide by.

As opposed to the definitions addressed above, which revolve around ownership,

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[8] *Ibid*. para. 29-045
[9] *Ibid*. para. 29-046
[10] *Gale on the Law of Easements*, 21st Ed., para. 11-01

when it comes to the definition of what a 'party wall' is under the PWA 1996, this definition does not relate to ownership but to the function of the wall. The PWA 1996 applies to England and Wales and some of its provisions were adopted from inner London and other parts of the country, which were in existence for a number of years prior to the PWA 1996.[11] The PWA 1996 regulates the construction and repair of party walls as well as related dispute resolution within the realms of the PWA 1996.[12]

Section 20 of the PWA 1996 states:

> "*… "party wall" means –*
>
> (a) *A wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and*
>
> (b) *so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners.*"

As *Keating on Construction Contracts* says, a party wall always forms part of one or more buildings and where a wall does not stand on the land of both owners, such a wall will constitute a party wall only to the extent that it separates two buildings (as per the definition of section 20(b) of the PWA 1996).[13]

By way of example, where a wall separates two terraced houses up to the height of two storeys (out of eight) however the wall is that of one building at the next (third) storey, for level 3, it will not be a party wall. It would be a party wall only if it stood on the lands of both owners. Equally, where a wall separates houses for the full depth of one house but then carries on as the external wall of the other house, it will not be a party wall from the point of the end of the first house. Again, it would be a party wall only if it stood on the lands of both owners.[14]

Notably, the PWA 1996 does not abolish fabric rights, meaning rights of ownership

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[11] *Ibid*, para. 29-049
[12] Megarry & Wade: *The Law of Real Property* (9th edition)., Chapter 29 - Species of Easements and Profits, Section I. Party Walls, para. 29-043
[13] *Keating on Construction Contracts* (11th Ed, 2021) para. 16-086
[14] *London, Gloucestershire and North Hants Dairy Co v Morley & Lanceley* [1911] 2 K.B. 257; *Drury v Army & Navy Auxiliary Co-operative Supply* [1896] 2 Q.B. 271

and support. On the contrary, it places an obligation on the Building Owner to provide protection from weather in case where the Building Owner exposes a party wall to the elements.[15] There can be temporary interference with, for example, support that the party wall provides during construction works.[16]

Section 20 of the PWA 1996 distinguishes between:

(a) Party walls – Walls forming part of a building and standing on lands of different owners to a greater extent than the projection of any artificially formed support on which the walls rest and walls separating buildings belonging to different owners.

(b) Party Fence Walls (or boundary walls) – Walls, which are not part of buildings and stand on land of different owners plus are used or constructed to be used for separating such adjoining lands. However, Party Fence Walls do not include walls that have been built on the land of one owner where the artificially formed support projects into the land of another owner.

(c) Party Structures – Party walls and also floor partitions or other structures separating buildings or parts of buildings approached solely by separate staircases or separate entrances.

All three types of walls/structures are further elaborated on below.

Party walls envisage some form of solid structure and their purpose is to divide properties of different landowners or occupiers. The Department for Communities and Local Governments (**DCLG**) has issued an explanatory booklet (with the latest version from May 2016) on the PWA 1996 (**DCLG's Explanatory Booklet**).[17] It provides more detailed explanatory information on party wall issues with illustrations showing clearly the differing main scenarios.

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[15] Section 2(2)(n) of the PWA

[16] Stephen Bickford Smith and Camilla Lamont, "*Party Wall etc. Act 1996 – 10 years on*," (Landmark Chambers, 13 November 2007), p.6

[17] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016)

The PWA 1996 is silent on what materials party walls might consist of. However, according to paragraph 3 of the DCLG's Explanatory Booklet, wooden fences or hedges are not party walls, whereas a masonry garden wall is a party wall. This suggests that a party wall needs to be of a more solid nature whereby materials, such as, brick or cement would qualify as being sufficient to form a party wall. However, this is not stated anywhere in the PWA 1996. Where the PWA 1996 is not clear or is mute on a point relevant to party walls, it is a good idea to check the DCLG Explanatory Booklet (a guidance provided by the Government). While the DCLG Explanatory Booklet may not answer every question, it does provide some guidance and elaborates on the PWA 1996 with practical examples and assists in interpreting the PWA 1996.

In conjunction with the type of materials party walls should be made of, building regulations have existed in one shape or another since cities emerged. This stems from the fact that when buildings collapsed or were on fire, the consequences could be potentially catastrophic. Governments therefore have traditionally tried to intervene to prevent loss of life and property.[18] Looking at fire safety legislation, this has reacted from a historical perspective to fatal or catastrophically damaging fires due to the Great Fire of London in 1666 after which the London Rebuilding Act 1667 decreed: *"[t]hat all the outsides of buildings be henceforth made of brick or stone*." This was to replace timber. Hence it was envisaged for party walls and external walls to be one to two bricks in thickness. Also, streets were to be of sufficient width so that fire spreading is prevented across them.[19] District surveyors were responsible for enforcing the regulations and anyone who erected a building in contravention of these regulations had to face a criminal offence charge. The relevant building would then be destroyed as it would be deemed a common nuisance.[20]

Before analysing the legal relationships linked to party walls, the question is who are the parties that claim ownership over party walls. Section 20 of the PWA 1996 defines

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[18] "*Grenfell Tower and the failure of building and fire safety regulations introduction*," Journal of Housing Law, J.H.L. 2017, 20(5), pp. 110-115
[19] "*Fire safety in tall buildings - Part 1: tall, super-tall and mega-tall,*" Construction Law Journal, Const. L.J. 2017, 33(7), pp. 442-445
[20] *Grenfell Tower and the failure of building and fire safety regulations introduction*," Journal of Housing Law, J.H.L. 2017, 20(5), pp. 110-115

the terms set out below.

(a) A 'Building Owner' is an owner of land who wishes to exercise rights under the PWA 1996.

(b) An 'Adjoining Owner' is any owner of land, buildings, storeys or rooms adjoining those of the Building Owner.

(c) An 'Owner' is a term that is non-exhaustive and includes:[21]

"*(a) a person in receipt of, or entitled to receive, the whole or part of the rents or profits of land;*

(b) 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; and

(c) a purchaser of an interest in land under a contract for purchase or under an agreement for a lease, otherwise then under an agreement for a tenancy from year-to-year or for a lesser term."

The Building Owner needs to establish whether the object in question is a party wall, a Party Fence Wall or a Party Structure under the PWA 1996 in order to find out whether the PWA 1996 applies and, if so, what requirements the Building Owner has to meet in order to comply with the PWA 1996.

As for adjoining occupiers (including a large class of periodic tenants) that do not qualify as owners, they have rights of compensation under section 7(2) of the PWA 1996 and the right to receive notice prior to property being entered under section 8 of the PWA 1996. However, adjoining occupiers do not have the right to be heard in deliberations that lead to an award determining what works are to be carried out.[22]

The two main distinguishing factors are (a) the position of the party wall relative to the land's boundary; and (b) if any structures are attached to it or are part of it. In addition, the Building Owner has to identify who owns the wall, which may not be always clear

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[21] *Keating on Construction Contracts* (11th Ed, 2021) para. 16-090
[22] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 14

due to boundary issues. These are further discussed in Chapter V, paragraph 3 on boundary determination.

The PWA 1996 addresses three types of work:

> "*(1) Construction of party structures on or at a boundary where there is no existing party structure (s. 1);*
>
> *(2) Works to existing party structures (s. 2); and*
>
> *(3) Excavations within six metres of other buildings of structures (s. 6).*"

The main types of party walls include:[23]

(d) Type A Wall – A wall standing on the land of two owners to a greater extent than just projecting foundations; and

(e) Type B Wall – The part of a wall standing on the land of one owner that separates the buildings of two property owners.

Diagram 1 below sets out examples of Type A and Type B walls. It illustrates two variations of each: Type A Wall and Type B Wall as the distinction is vital for the following reasons:

(a) In the case of a Type A Wall, the wall can be part of one building or two (or more) separate buildings. These types of walls usually form part of terraced or semi-detached houses. The location of the wall's foundations should not be taken into account when investigating whether or not the wall stands on a boundary.

(b) In the case of a Type B Wall, it is a wall which stands entirely on the land of one of the Building Owner and the Adjoining Owner has an enclosed building. A Type B Wall has to be enclosed on both sides.

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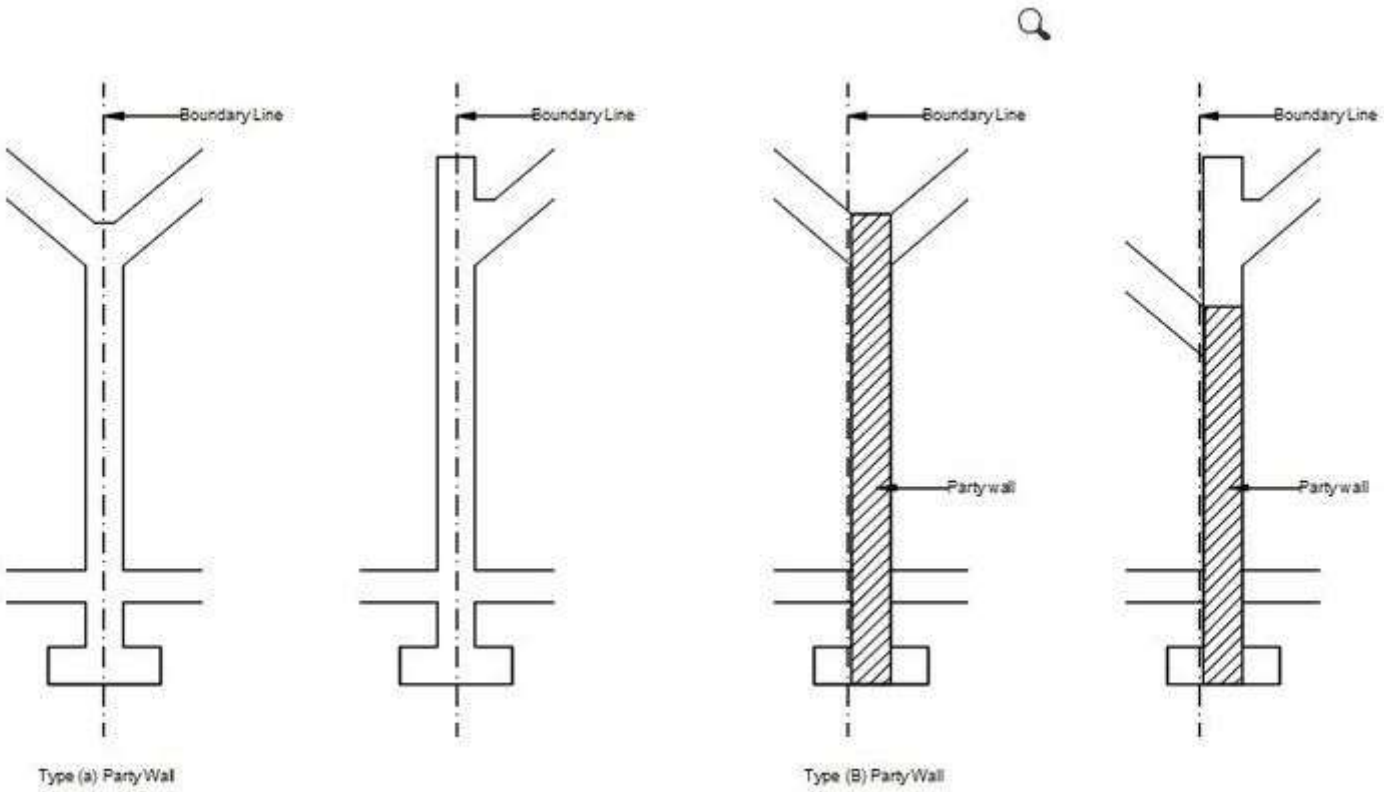
[23] Harvey – Norman Architects, "*Party Wall Act of 1996 – What is it and what are your obligations under it?*" <https://www.harveynormanarchitects.co.uk/articles/the-party-wall-act-of-1996-definitions-and-obligations> accessed 15 May 2022

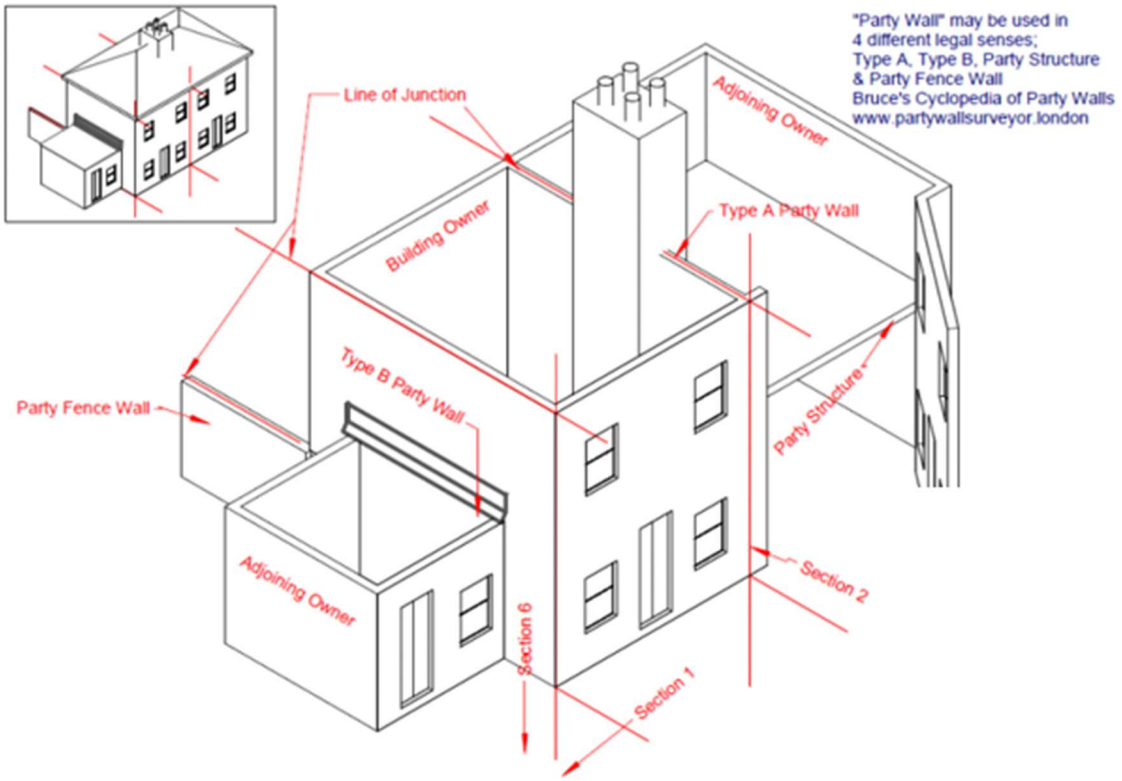
Diagram 1[24] – Types of Party Walls[25]



[24] *Ibid.*

[25] Illustrations of the types of walls discussed in this chapter are taken from a number of sources and are useful visual aids assisting in the clear division between the different categories of party walls. The different categories result in different legal rights and obligations for the relevant parties (the Building Owner and the Adjoining Owner).

Diagram 2 – Example of Types of Party Walls in a Building[26]



[26] Bruce Spenser MSc MCIOB, "*Easements, Rights of Light et and the Party Wall Award*" <https://pwbsl.com> accessed 15 May 2022

Diagram 2 above sets out an illustration of types of party walls inside a building. Walls that are not party walls include:[27]

(a) Boundary walls – Although these are referred to in the PWA 1996, they are not defined. The rather complex explanations in sections 1(1)(b) and 2(1) of the PWA 1996 suggest that Party Fence Walls (external wall of a building) and freestanding walls (standing only on the land of one landowner or occupier) are boundary walls.[28] Put simply, one could say that a boundary wall is where a fence wall or garden wall is built wholly on one owner's land.

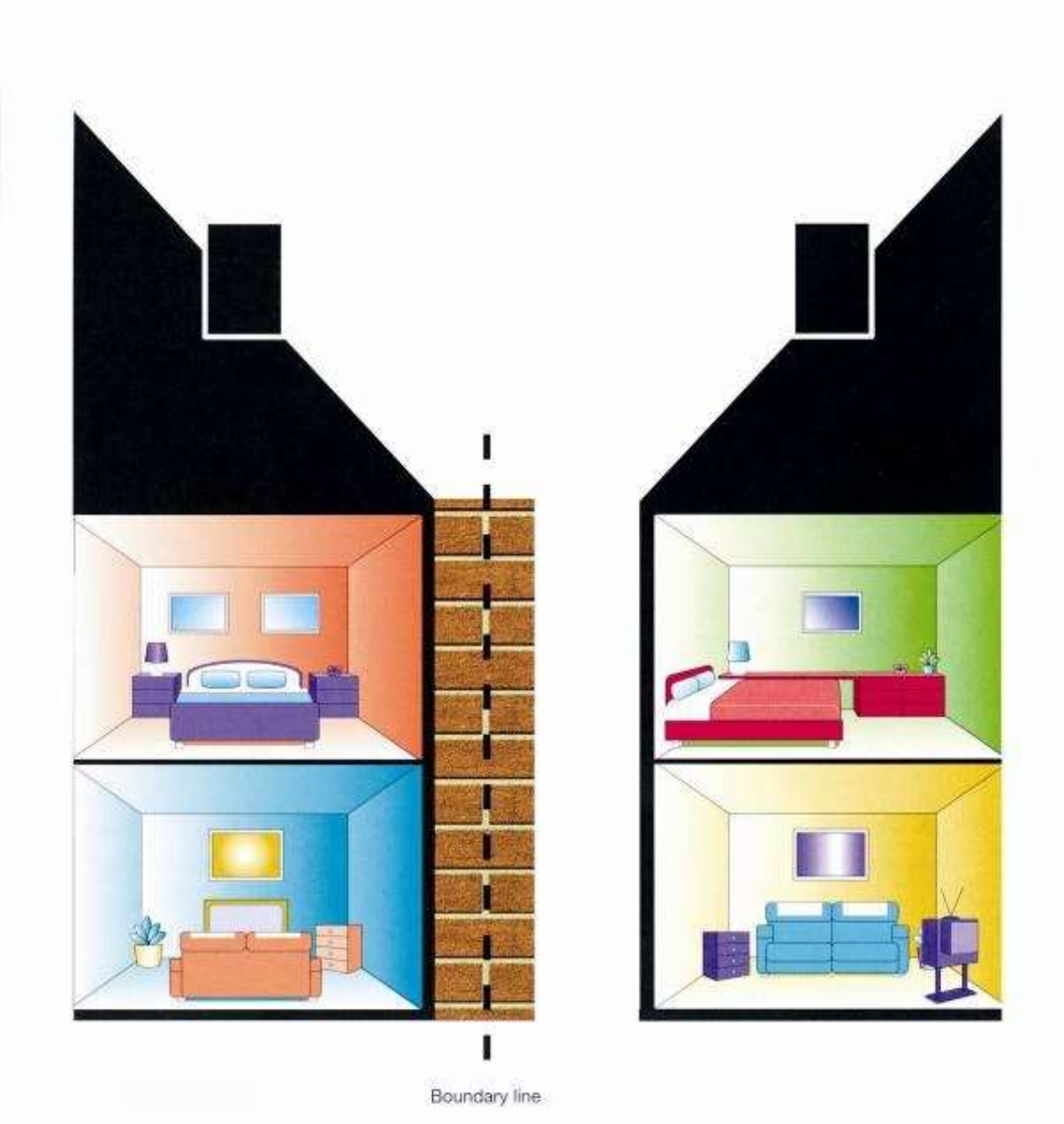
(b) External walls – Where the wall of a building is built up to but does not stride the boundary.

The three types of works that the PWA 1996 covers are set out in sections 1 (new building on line of junction), 2 (repair etc. of party wall: rights of owner) and 6 (adjacent excavation and construction) of the PWA 1996.

The illustrations set out below (Diagrams 3 to 5) show individually the different variations of the Type A Wall and the Type B Wall.

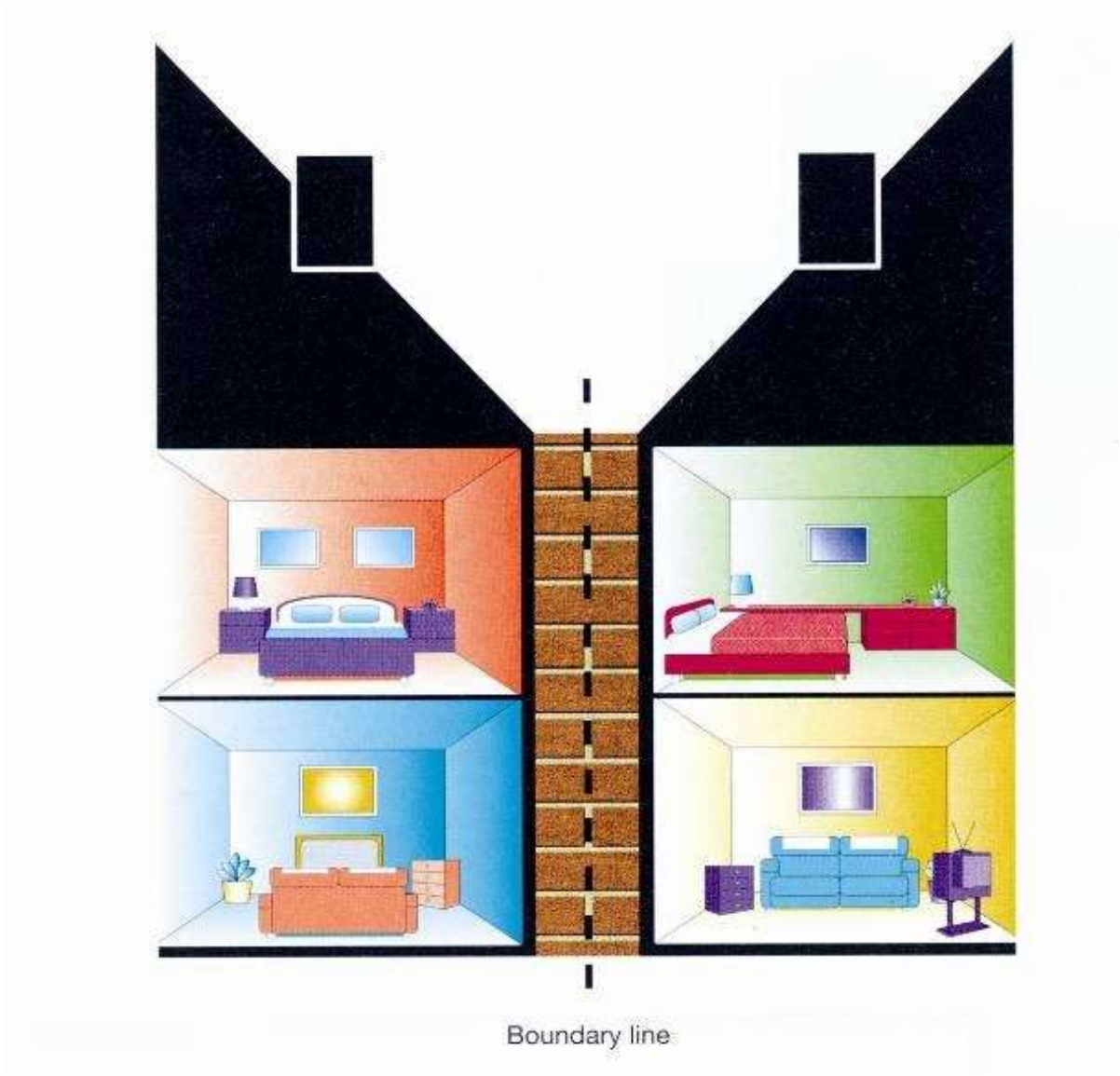
[27] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 3, p. 5
[28] *Keating on Construction Contracts* (11th Ed, 2021) para. 16-089

Diagram 3 – Type A Wall forming part of one building[29]



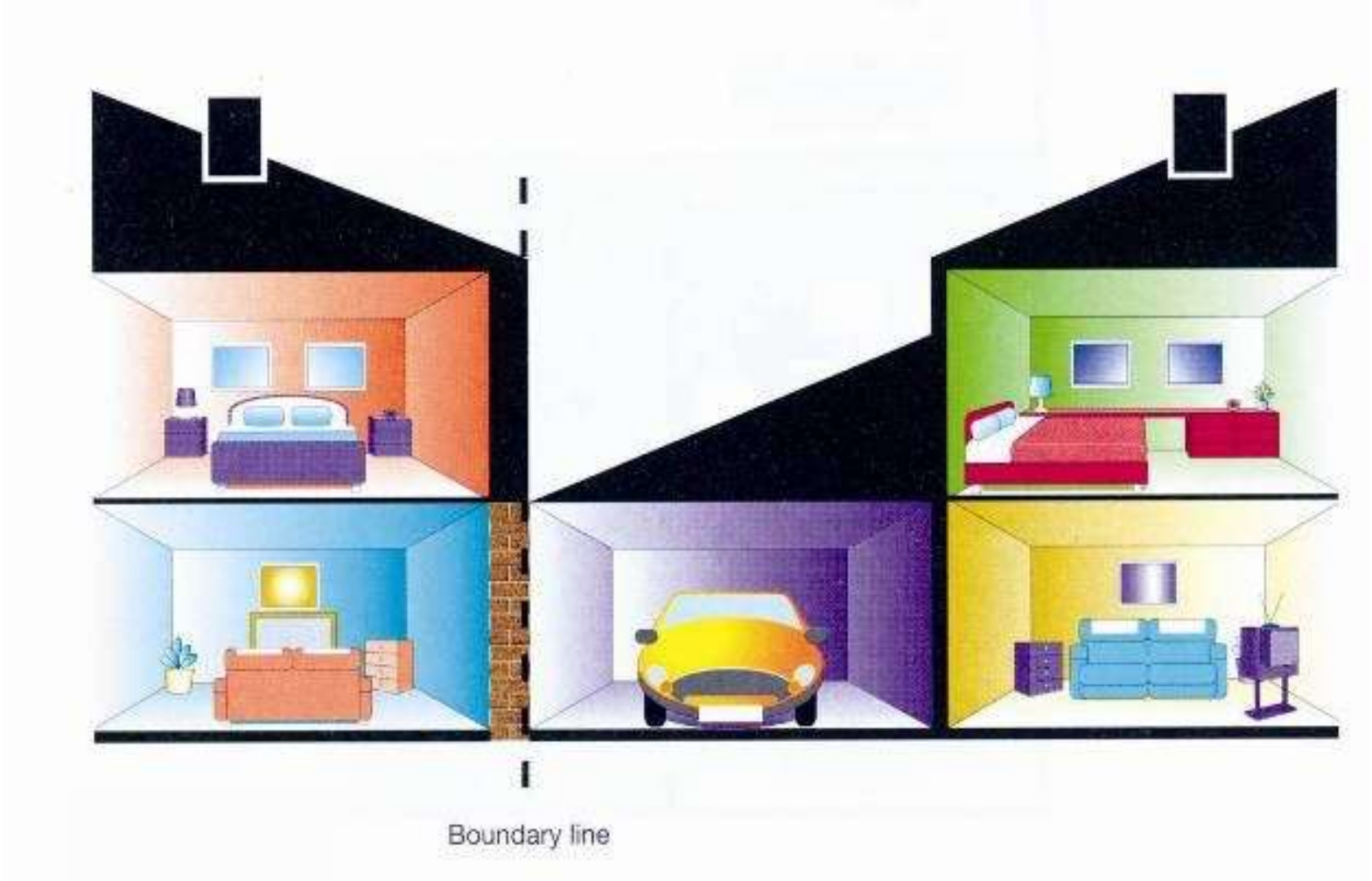
[29] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), p. 6

Diagram 4 – Type A Wall forming part of two buildings[30]



[30] *Ibid.* p. 7

Diagram 5 – Type B Wall[31]



[31] *Ibid.* p. 8

As shown in Diagram 5, there will be situations, where a wall is longer or taller than the enclosed part of the Adjoining Owner's structure. In such a case, it is only the part of the wall which is enclosed to the neighbouring building that is an actual party wall. Therefore, in Diagram 5 above, the section of the wall which is above the garage (on the left) does not form part of the party wall.

Section 20(a) of the PWA 1996 is silent on the status of overhangs in Type A Walls. By way of example, a wall can stand on one side of the boundary at ground level in its entirety. However, at the same time it can be corbelled out at a level that is higher up thus resulting in it overhanging the adjoining land. The question arises whether such a wall, or its upper part that is thickened, should be viewed as standing on lands of different owners. If so, it would mean that the word 'on' would include the word 'over' in this particular context. However, the answer seems to be 'no', which is supported by section 2(2)(h) of the PWA 1996 as it specifically addresses overhangs. Although there seems to be room for interpretation that such an overhanging wall is a party wall to the extent that it overhangs the adjoining land. However, Jessel MR noted that courts have the duty to read such legislation in a reasonable manner,[32] by the fact that the wording of section 20 of the PWA 1996 does not seem to contradict the interpretation and by the fact that a contradictory conclusion is noticeably inconvenient.[33]

Another concern is that section 20(b) of the PWA 1996 raises the question as to how the PWA 1996 applies where a building encroaches illegally on adjacent land. Where a boundary wall is positioned on A's land entirely and B builds a building enclosing on it, without permission, such a wall becomes a party wall falling under section 20(b) of the PWA 1996. In terms of adverse possession, by having enclosed on A's wall, B is not only trespassing but is actually taking possession of its surface – that surface being part of A's land.[34] Where B serves notice trying to claim rights under the PWA 1996, A has the power to sue for removal of the trespassing building and will have the right

[32] *Standard Bank of British South America v Stokes* (1878) 9 Ch 68, para. 76
[33] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 10-11
[34] *Prudential Insurance Lt v Waterloo Real Estate Inc* [1999] 2 EGLR 85

to succeed subject to B not having acquired title by adverse possession.[35] For B to be able to acquire immediate rights, it has to negotiate with A for these. For A to be able to keep full control of its wall, it should grant only a revocable licence to enclose on A's building. This will ensure that B's possession is prevented from being an adverse one.[36] This scenario seems to cover the options in terms of trespassing in relation to section 20(b) of the PWA 1996.[37]

3 Party Fence Wall

Another type of a wall caught by the PWA 1996 is the Party Fence Wall. Under section 20 of the PWA 1996, this is a wall, which is not part of a building, standing on lands of different owners (astride the boundary between two properties) and is used or constructed to be used for separation of the adjoining lands:

> "… *a wall (not being part of a building) which stands on lands of different owners and is used or constructed to be used for separating adjoining lands, but does not include a wall constructed on the land of one owner the artificially formed support of which projects into the land of another …*"

However, if the artificially formed support of a wall constructed on the land of one owner projects into the land of another owner then it is not a Party Fence Wall. What this refers to is a footing or foundation and this is connected to section 1(5) of the PWA 1996, which allows these footings and foundations to be built on the land of an Adjoining Owner.[38]

A Party Fence Wall (as shown in Diagrams 6 and 7 below) could be, for example, a masonry garden wall.

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[35] Generally, 12 years adverse possession is required under paragraph 1, Schedule 6 to the Land Registration Act 2002; *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676; *Best v Chief Land Registrar* [2015] EWCA Civ 17; *Conveyancer and Property Lawyer* (Sweet and Maxwell) 2015, p. 432 (West)
[36] *Heslop v Burns* [1974] 1 WLR 1241
[37] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 11
[38] Nicholas Isaac, "*The Law and Practice of Party Walls*," Property Publishing, 2014, para. 2-36

Diagram 6 – Party Fence Wall (Part 1)[39]

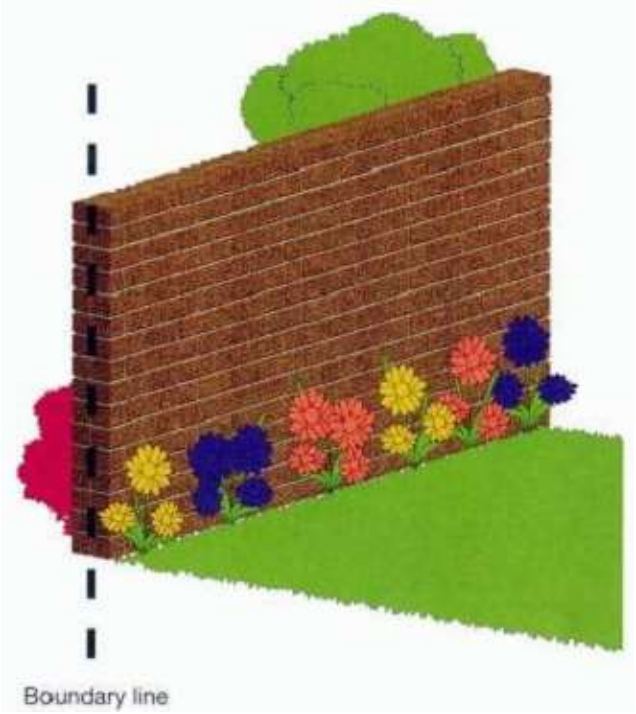
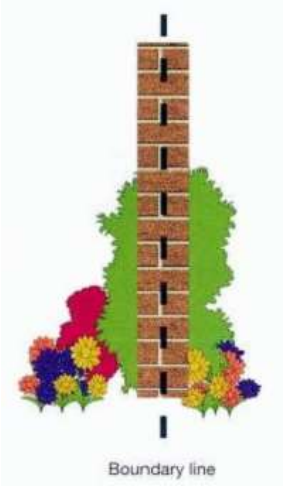


Diagram 7 – Party Fence Wall (Part 2)[40]



[39] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), p. 8
[40] *Ibid.*

If a wall is built entirely on the Building Owner's land, it is not a Party Fence Wall. This is the case even if the footings or foundations of the wall extend into the Adjoining Owner's land, such as a railway embankment.

For completeness, when it comes to Party Fence Walls, one should bear in mind that if the wall encloses a railway embankment and the Building Owner wants to maintain or repair it, the Building Owner has no legal right of access to enter the railway. In such a case, the Building Owner will need to contact Network Rail (or another relevant train company) to obtain consent to do so bearing in mind that this will be possible only if the services and the safety of the builders are maintained. This is because entering railway land without permission is a criminal offence,[41] which is the case even for the purposes of repairing a structure by the Building Owner on the Building Owner's land. From a practical perspective, Network Rail (or another relevant train company) could do the repair works itself at its own cost and will be more inclined to do so if the Building Owner makes it clear to them that it is the relevant train company that is liable for actionable nuisance caused by its land damaging the Building Owner's wall.[42]

4 Party Structures

Finally, the PWA 1996 refers to Party Structures. According to section 20 of the PWA 1996 a Party Structure is "*a party wall and also a floor partition or other structure separating buildings or parts of buildings, approached solely by separate staircases or separate entrances*." All party walls are Party Structures, and the term also refers to horizontal Party Structures such as floors or ceilings between, for example, two adjoining flats or maisonettes as shown in Diagram 8 below. Roofs are not viewed usually as Party Structures. However, if the structure supporting it is shared between two properties, then that part is likely to be a Party Structure. Similarly, chimney stacks, which are shared between two properties, are also likely to be party walls or Party Structures.

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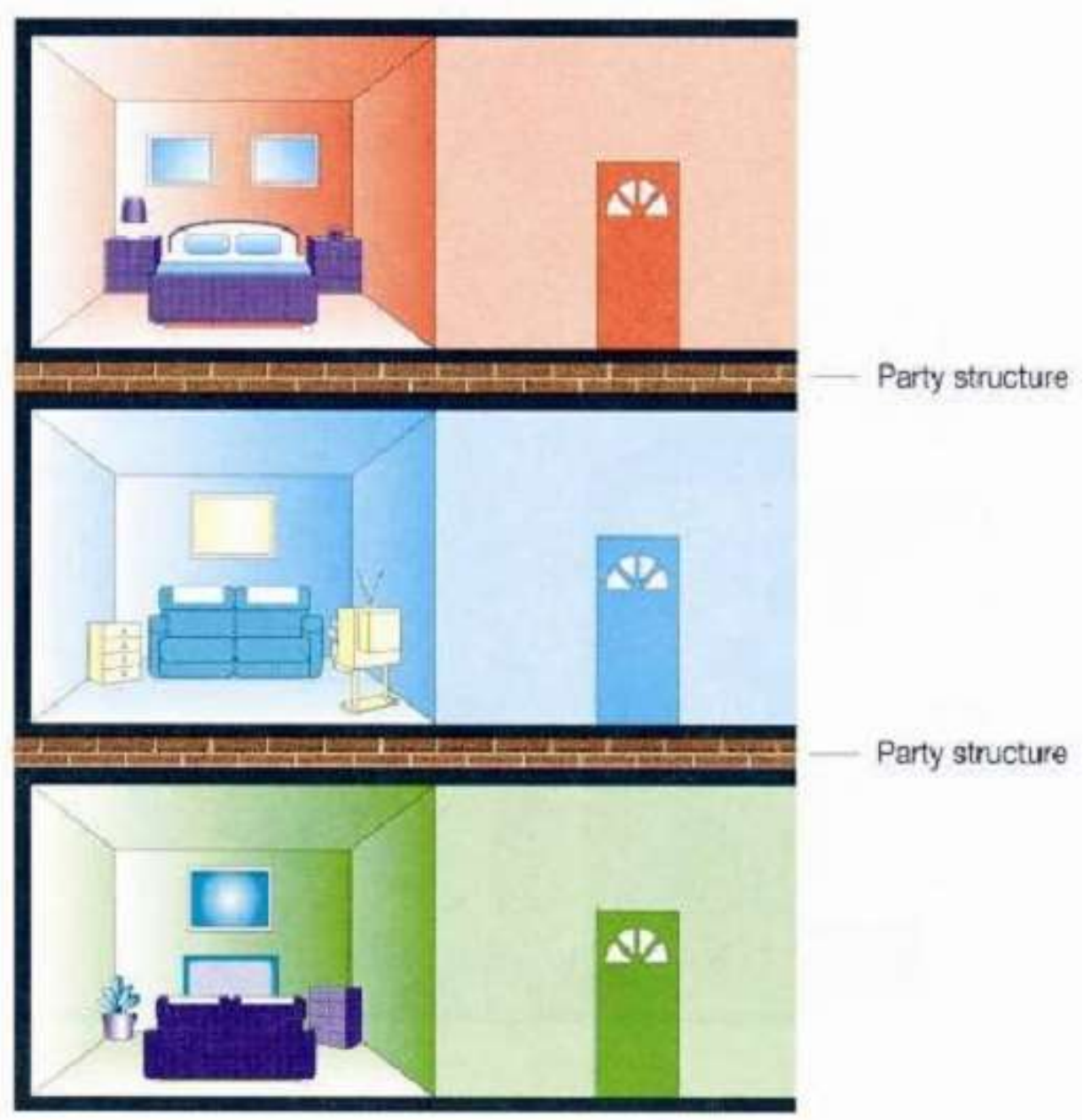
[41] Section 55 of the British Transport Commission Act 1945

[42] Michelle Rousell, "*Is a wall enclosing a railway embankment a party wall*?" Practical Law UK, Ask, Resource ID 5-522-4375 (8 July 2015) <https://uk.practicallaw.thomsonreuters.com/5-522-4375?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

Diagram 8 – Party Structure[43]



[43] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), p. 9

5 Excavations

The PWA 1996 also refers to certain types of excavation works in the context of party walls as such excavations can have an effect on a party wall and related legal rights and obligations of the Building Owner and Adjoining Owner(s). In the case where the Building Owner wants to excavate near neighbouring buildings, it should inform the Adjoining Owner(s) by serving a notice. Section 6 of the PWA 1996 provides for two options with regards to excavations:

(a) works to excavate; and

(b) works to excavate for and erect a building or structure within either:

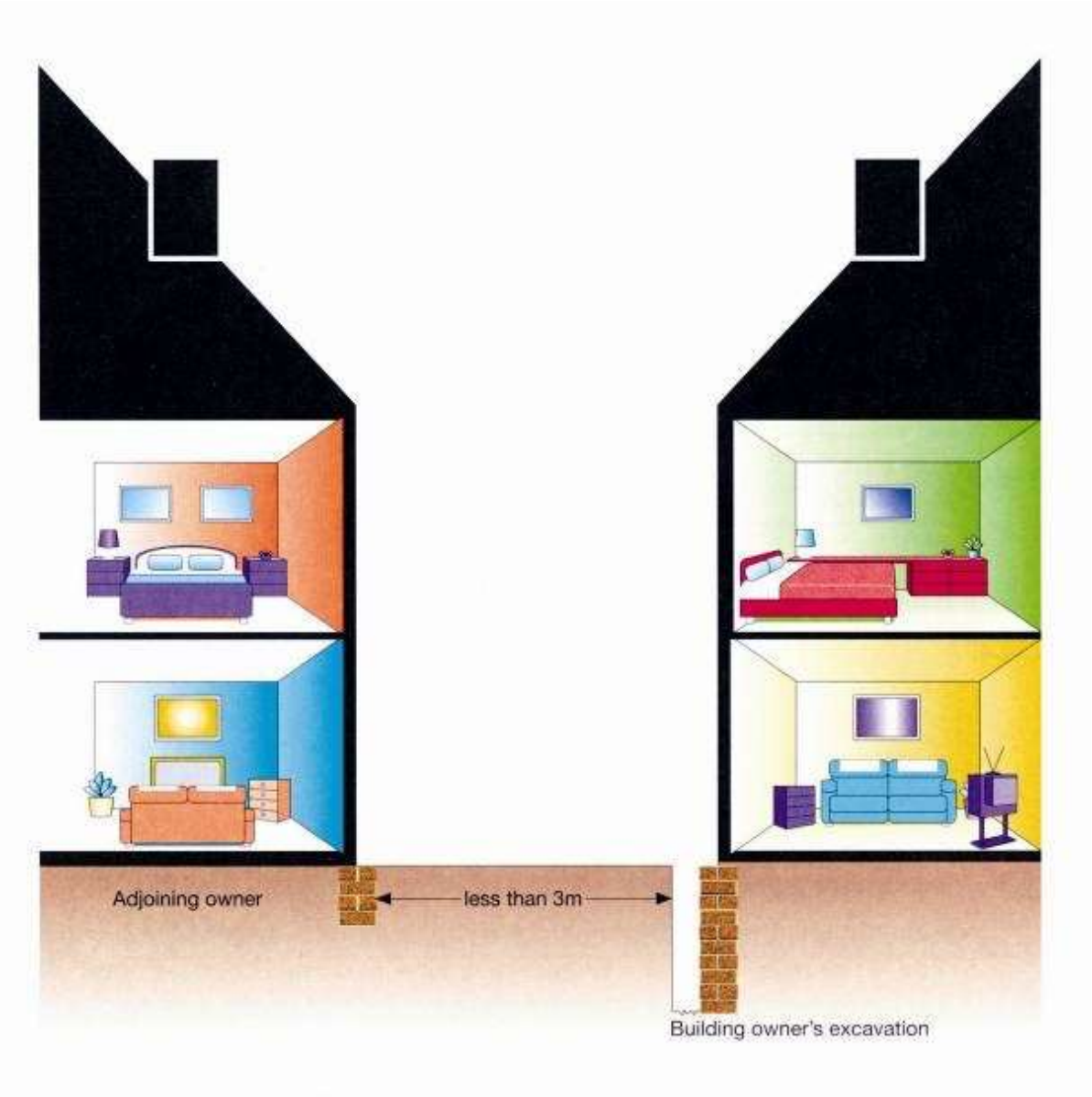
(i) three metres from the Adjoining Owner's structure, if the proposed excavation would be at a lower level than the level of the bottom of the Adjoining Owner's foundations (Diagram 9 below); and

(ii) six metres from the Adjoining Owner's structure if any part of the proposed structures (typically foundations) would be dissected by a line drawn downwards at a 45 degrees angle from the nearest part of the Adjoining Owner's foundations (Diagram 10 below).

Liability for damage caused by tree roots and branches can cause private nuisance to the land of the Adjacent Owner. As the terminology 'building or structure' is not defined in the PWA 1996, there is some speculation as to what exactly is a 'building or structure'. It could be "… *anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built together, constructed as to make one whole, which then is called a structure …*"[44] or even include a wall.[45]

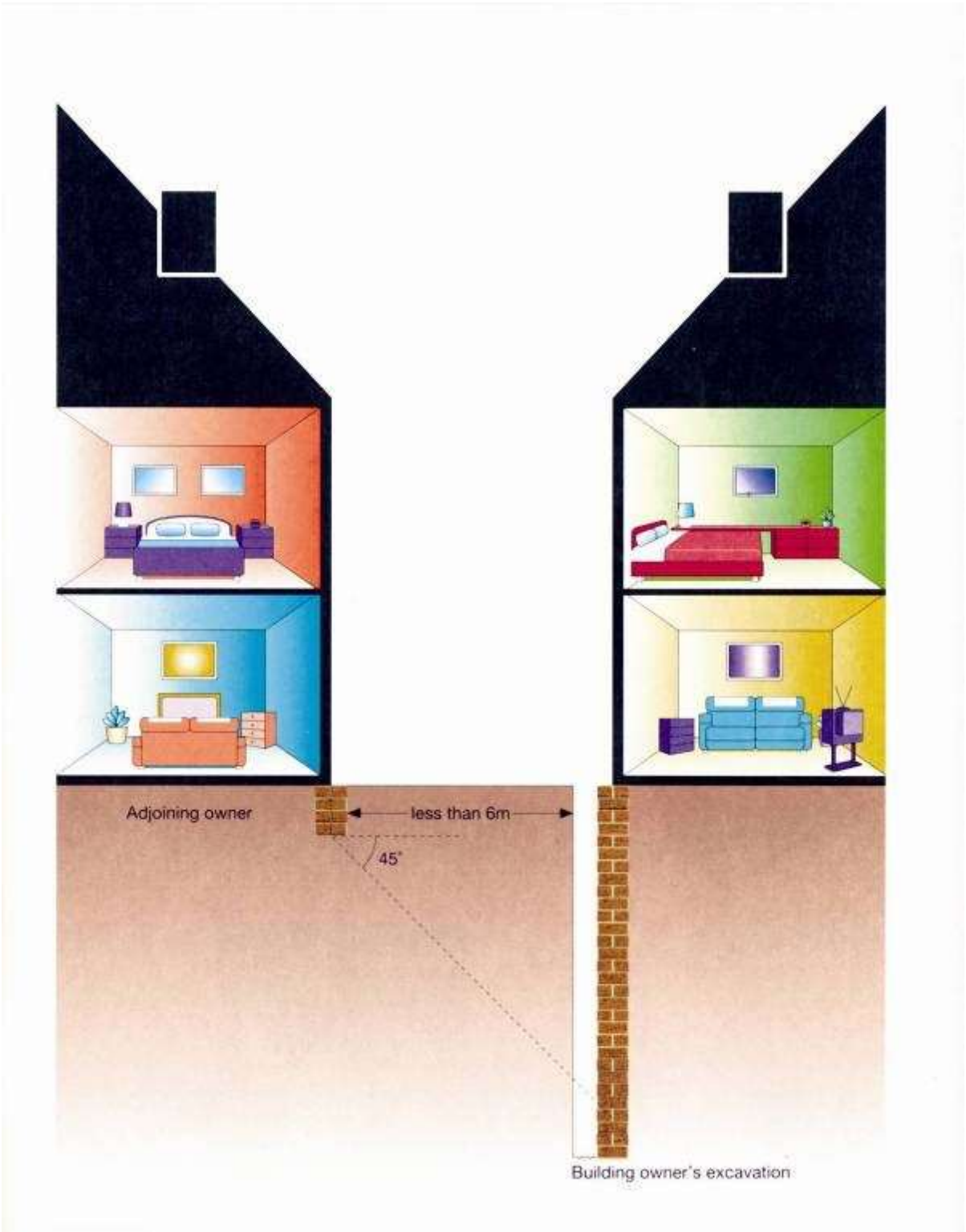
[44] *Hobday v Nicholl* [1944] 1 Al ER 302l
[45] *Mills & Rockley v Leicester CC* [1946] KB 315

Diagram 9 – Excavation[46]



[46] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), p. 20

Diagram 10 – Excavation[47]



[47] *Ibid.*p. 21

6 Special Foundations

The PWA 1996 refers also to special foundations where they can affect the rights and obligations of the Building Owner and Adjoining Owner(s) in the context of party walls. According to section 20 of the PWA 1996, special foundations relate to a: "… *foundation in which an assemblage of beams or rods is employed for the purpose of distributing any load* …". According to section 7 of the PWA 1996, special foundations on the Adjoining Owner's land require the Adjoining Owner's previous (i.e. prior to the start of the works) consent in writing (oral consent by the Adjoining Owner is not sufficient) irrespective of any party wall award. The Adjoining Owner can give a counter-notice thereby making its consent conditional. This would include, for example (according to practitioners' view), requesting for a special foundation to be deeper or constructed to carry a greater load than proposed. In such a case, the Adjoining Owner will have to bear the costs of such additional works.[48] As the definition relates to reinforced concrete foundations, these can be quite sensitive due to potential impact with respect to the ability of an Adjoining Owner to develop its property at a later date. This is because where a Building Owner comes across an uncooperative Adjoining Owner, the Building Owner often designs out special foundations from the proposed works, for example, using mass concrete to replace reinforced foundations.[49]

7 Conclusion

The definitions and clarifications as to what party walls are / can be and what works affect them lay the ground for understanding when and how certain rights and obligations of the Building Owners and Adjoining Owners arise and what relevant procedures apply to the parties under the PWA 1996. The area of party walls is dispute-prone and such disputes can quickly grow acrimonious due to the impact a party wall can have on the rights/obligations of Building Owners and Adjoining Owners. The potential for disputes can arise when properties are renovated, changed or when

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[48] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), pp. 19-21 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022

[49] Nicholas Isaac, "*The Law and Practice of Party Walls*," Property Publishing, 2014, paras. 2-55 to 2-57

new properties are built. This is partly the reason why the PWA 1996 has been introduced (elaborated on in Chapter III) to assist with regulating any alterations to buildings, land, fences and walls. While the PWA 1996 is helpful, it does not cover all areas of law and fact that can affect party walls and linked neighbourly relationships between Building Owners and Adjoining Owners.

III. CHAPTER THREE – STATUTORY RIGHTS – PARTY WALL ETC. ACT 1996

1 History behind the Party Wall etc. Act 1996

Now that the meaning of the term 'party wall' has been clarified (as well as the terminology linked to works related to party walls and relevant parties), let us examine the historical evolution of the legislation behind the PWA 1996. The area of party walls has been in the making for centuries. Before the PWA 1996, there were a number of different principles that applied to party walls throughout England and Wales. London, for example, was governed by a number of Building Acts with Pt VI of the London Building Acts (Amendment) Act 1939 being the latest. Then there were other parts of the country, including Bristol, which were governed by local acts. However, the issue was that most of the country was not governed by statute at all. Instead, it was governed by a complex system of common law that depended on the party wall in question in each case.[50] The roots of the party wall legislation in London date back to Henry Fitz-Alwyn's assize of 1189. The initial motivation behind the legislation was to prevent the spread of fire by requiring substantial stone walls to be constructed between houses. However, as the great fire of London of 1666 shows, enforcing this rule was not as effective as it should have been. The Fires Prevention (Metropolis) Act 1774 (**FPMA 1774**)[51] covered party walls extensively and gave owners the power to raise party walls, as long as these were sufficiently thick and in compliance with FPMA 1774. It also contained provisions for the appointment of statutory surveyors. The oldest piece of legislation covering party walls resembling the modern form is Part III of the Metropolitan Building Act 1855.[52]

The next piece of legislation in the evolutionary process of party walls regulation was the London Building Act 1894 (amended in 1905).[53] This was superseded in 1930 by the London Building Act 1930[54] but this step was not considered entirely satisfactory, and several provisions had been superseded due to changes in construction technology. As a result, relevant provisions of the London Building Act 1930 have been

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[50] *Keating on Construction Contracts* (11th Ed, 2021), para. 16-083
[51] 14 Geo 3 c LXXVIII
[52] 18 & 19 Vict c CXXII
[53] 57 & 58 Vict. c CCXIII & 5 Edw. VII c CCIX respectively
[54] 20 & 21 Geo 5 c CIVIII

re-enacted with amendments in amendments in Part VI of the London Building Acts (Amendment) Act 1939.[55] It was to be construed as one with the London Building Act 1930 (together, the **1939 Act**). The 1939 Act applied only to the Inner London Boroughs.[56] Interestingly, statutes that adopted the wording of the current English pieces of legislation back then were passed in a number of states of Australia in the 19th century in order to control construction work in larger cities.[57]

The PWA 1996[58] was introduced by the Earl of Lytton (a practising chartered surveyor) as a Private Members Bill into the House of Lords, received Royal Assent on 18 July 1996 and came into force on 1 July 1997 by the Party Wall etc. Act 1996 (Commencement) Order 1997, SI 1997/670.[59]

According to the Earl of Lytton, as he stated in the House of Lords debate on 31 January 1996:[60]

> "*The aims of the Bill are to extend the tried and tested provisions of the London Building Acts to England and Wales. It rests upon a principle of voluntary agreement between parties wherever possible; it provides for notice to be given where works are proposed; there is an opportunity to respond and comment; it sets out to protect existing structures; there is a clear liability for damage and making good; there is provision for the resolution of disputes, other than by going to law; it sets out how costs of works and fees arising from them shall be dealt with; and clarifies the extent of rights over common structures, including floors—that is, floors between different units of occupation.*"

The Earl of Lytton also noted that the at the time Bill is a "*safety net and not a fiery hoop*," which makes sense as the procedure set out in it is voluntary and breach of the PWA 1996 does not result in criminal liability. Another point the Earl of Lytton raised in the same debate was that the Bill included changes to adapt local legislation to

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[55] 2 & 3 Geo 6 c XCVII
[56] London Government Act 1963, section 43
[57] Examples include the Melbourne Building Act 1849 (13 Vict No 39) (Vic), Launceston Building Acts 1854 and 1894 (18 Vict No 18, 58 Vict No 32), (Tas), Sydney Building Act 1879 (42 Vict No 25) (NSW), Hobart Building Act 1918 (9 Geo V No 75) (Tas)
[58] Party Wall etc. Act 1996, "*Introduction*"
[59] SI 1997/670
[60] Vol 568 cc1535-48 <https://api.parliament.uk/historic-hansard/lords/1996/jan/31/party-wall-bill-hl> accessed 12 December 2022

national purposes and that one of the reasons to pass the Bill included the need to rectify an "*awkward legal precedent to do with party walls used by only one owner, and it sets out to remedy an anomaly relating to different treatment of floor structures.*"[61]

One of the criticisms raised in the debate was that the Bill did contain a definition of 'surveyor', i.e. a competent or a relevant professional person', which means that there is no regulation or safeguard of the quality of surveyors to deal with party wall disputes. The issue of not having any safeguards in place to ensure quality and consistency of surveyors and their party wall awards persists in the current PWA 1996. The general view in the debate of the Lords was a surprise over having party wall legislation (prior to the Bill) in place that does not consistently apply to areas outside of London.

The debate continued on 22 May 1996,[62] where the Earl of Lytton incorporated a number of amendments to the Bill having taken into consideration the previous debate on 31 January 1996. The Lords' overwhelming support in favour of passing the PWA 1996 seems to be largely due to the recognition of the fact that party wall disputes are highly contentious in nature and at the time the legislation on party walls did not apply in a consistent manner to England and Wales.

The regime applied by the PWA 1996 was essentially the one under the 1939 Act. Section 21(1) of the PWA 1996 confers the power on the Secretary of State to amend/repeal earlier local Acts. This allowed Part VI of the 1939 Act and section 27 and 32 of the Bristol Improvement Act 1847 to be repealed.[63] According to the Earl of Lytton, the reason behind enacting the PWA 1996 was to ensure that party wall legislation essentially extended the provisions of the 1939 Act to the entirety of England and Wales.[64]

Local Acts that contain provisions that address party wall issues other than those that have been specifically repealed are not affected by the PWA 1996 and the

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[61] House of Lord Debate, 31 January 1996, Vol 568 cc1537 <https://api.parliament.uk/historic-hansard/lords/1996/jan/31/party-wall-bill-hl> accessed 12 December 2022
[62] House of Lord Debate, 22 May 1996, Vol 572 cc931-55 <https://api.parliament.uk/historic-hansard/lords/1996/may/22/party-wall-bill-hl> accessed 12 December 2022
[63] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 1-4 and 7-8
[64] Hansard HL Debates Vol 568 31 Jan 1996, col 1536

commencement or repeal orders.[65]

In essence, the PWA 1996 repeats the main provisions of the 1939 Act.[66] While the 1939 Act was repealed by the PWA 1996, case law on the 1939 Act and further legislative predecessors are still of relevance and aid interpretation of the PWA 1996 provisions. This follows the principle of interpretation from the case *Barras v Aberdeen Steam Trawling and Fishing Co Ltd:*[67]

> "*It has long been a well established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it*."

Where there is case law on previous versions of the PWA 1996, such case law will be followed when it comes to the issue how the PWA 1996 should be interpreted.[68] This is also why this thesis refers to numerous cases pre-dating the PWA 1996 as these cases are well placed in aiding interpretation of the PWA 1996 as well as covering gaps the PWA 1996 does not cover when it comes to other areas of law and fact.

2 The Purposes of and Main Areas Covered by the Party Wall etc. Act 1996

The PWA 1996 mainly emerged due to the fact that construction works by a Building Owner can result in damage being sustained to structures or buildings of an Adjoining Owner and/or affect the Adjoining Owner's use or enjoyment of the structure or party wall.

Stephen Bickford Smith concisely summarises the operation of the PWA 1996:[69]

> "*Party walls separating the lands of adjoining owners are sensitive areas at*

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[65] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 8
[66] *Kaye v Lawrence* [2010] EWHC 2678 (TCC)
[67] [1933] AC 402, para. 411
[68]Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 3-4
[69]*Ibid.* p. 4

common law. Since each owner has some interest in the wall, often neither can do any work to it without the consent of the other, which may lead to paralysis. The broad object of the Act is to set up machinery enabling the building owner to carry out works within the scope of the Act. The machinery starts with a notice under the Act, and, unless the adjoining owner consents, this sets in train an elaborate procedure for referring the matter to surveyors for determination. The surveyors embody their decision in an award which, subject to the possibility of appeal to the county court, is binding on both parties."

There are two main purposes the PWA 1996 has. First, it makes it possible for the Building Owner to carry out works to a Party Structure or to make use of it. This is because, had the PWA 1996 not been in place, some of these works would amount to nuisance and/or trespass. The second purpose of the PWA 1996 is that it gives safeguards to Adjoining Owners where works are carried out to a Party Structure. Again, had the PWA 1996 not been in place, Adjoining Owners could have ended up in situations without having a recourse to remedy. This would be the case, for example, where the Building Owner removes its half of the party wall, which causes the Adjoining Owner's half to be exposed to the weather. The PWA 1996 provides for safeguards, which include the need to give notice to Adjoining Owners before Building Owners carry out any works and ensuring that they make good any damage caused by such works.[70]

The PWA 1996 gives a structure to property neighbours in England and Wales who share a boundary enabling them to carry out construction work falling under the PWA 1996. It is concerned with (a) building a new party wall or a wall adjacent to its side of the boundary;[71] (b) carrying out works, repairs to or rebuilding a Party Structure or a party fence;[72] (c) excavating, or excavating for and erecting a building or structure within three or six metres from the building or structure of an adjoining owner;[73] and (d) construction of special foundations or placing foundations on the adjoining owner's

[70] *Keating on Construction Contracts* (11th Ed, 2021) para. 16-083
[71] PWA, s 1
[72] *Ibid.*, s 2
[73] *Ibid.*, s 6

land.[74]

3 Areas of Uncertainty

However, it should be borne in mind that there are exceptions to the PWA 1996 applying to England and Wales and one should check in each case whether such exceptions apply or not. For example, one of such exception is the Inner London that belongs to the Inns of Court.[75] Additionally, the PWA 1996 does not apply to specific works that fall under legislation applying to the Crossrail railway construction in London.[76]

As noted earlier, the PWA 1996 refers to Adjoining Owners and Building Owners. Under section 20 of the PWA 1996, 'Adjoining Owner' or 'Adjoining Occupier' means any owner and any occupier of land, buildings, storeys or rooms adjoining those of the buildings of the Building Owner and for the purposes only of section 6 within the distances specified in that section. If there are more Adjoining Owners, the Building Owner needs to serve notice on all of them.

3.1 Scale

There are works that are considered to be too small to be caught by the PWA 1996, which include:[77]

(a) drilling into a party wall to fix plugs and screws for ordinary wall units or shelving;

(b) cutting into a party wall to add or replace recessed electric wiring and socket; and

(c) removing old plaster and re-plastering.

The distinguishing feature is whether the work has any consequences for the structural strength and support of the party wall as a whole or could cause damage to the

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[74] *Ibdi.*, ss 7 and 20
[75] Section 18 of the PWA
[76] Crossrail Act 2008 (2008 c 18), Schedule 14, para. 17
[77] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 6, p. 11

Adjoining Owner's side of the party wall.[78] It very much depends on the individual circumstances and it is never a mistake to seek out advice of a relevant qualified building professional, although, in general and as mentioned above, removing old plaster would not be considered to fall under the PWA 1996. These nuances are further aided by case law. In terms of the issue of plaster removal, in *Kelliher v Ash Estates Holding Ltd and another*,[79] it was held that section 2(2)(f) of the PWA 1996 could apply in relation to this. It depended on the way in which the work was done. If the plaster was in poor condition and could be removed easily, it would not fall within the scope of the PWA 1996. If an electric tool was needed to remove it, which could go into the edge of the brickwork, that would be substantial cutting into the Party Structure and hence would be caught by the PWA 1996.[80] This is an example of how important it is to view legislation in the context of case law, which can aid in how legislation could or should be interpreted where the answer enshrined in legislation is not immediately obvious or where there are gaps.

3.2 Location

Another slightly unclear area is chimney breasts removed by a party on its side of a party wall. As per section 2(2)(g) of the PWA 1996, if the works include cutting away from a party wall any projecting chimney breast, this would be caught by the PWA 1996.

3.3 What does the PWA 1996 not do?

The objective of the PWA 1996 is to prevent disputes from arising between neighbours by allowing for certain works to be done which would otherwise be treated as nuisance or trespass. Alternatively, the objective of the PWA 1996 is to help parties to party wall disputes to navigate through them. It should be noted that complying with the PWA 1996 does not absolve the parties from their duties with regards to obtaining planning permissions and/or complying with building regulations (which are both covered by separate legislation).

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[78] *Ibid.*
[79] [2013] PLSCS 308
[80] Stephen Bickford-Smith, Landmark Chambers and Helena Davies, DWF LLP, "*Bankers' bunkers: neighbours' rights*", Estates Gazette, 4 January 2014, p. 3

According to *Nicholas Isaac*:[81]

> "*The Act, like its predecessors, operates to vary the common law as it relates to the difficult and potentially highly contentious physical and legal area where two people's ownership of land meets. The importance of the common law property background upon which the Act operates will, it is hoped, be increasingly appreciated by the reader as this book descends into the detail of the Act."*

The question is, what does the PWA 1996 not do. According to Stephen Bickford Smith:[82]

> "*The Act does not make it a criminal offence not to comply with its provisions (except failure to allow entry to premises). Nor does it provide any supervisory role by the local council or government to see that individuals comply with the Act.*"

In addition, the notice provision mechanism (further elaborated on in Chapter IV), is a voluntary one and the PWA 1996 cannot force the parties to comply with the mechanism.

3.4 Construction rights

To take it further, the PWA 1996 does not fully cover the different areas of law and fact discussed in this thesis. By way of example, where construction rights are not available under the PWA 1996, a Building Owner may try to rely on common law rights in order to carry out such works. While it can be assumed that where the PWA 1996 has codified an existing common law right such common law right is no longer available,[83] where common law party wall rights have not been repealed, these may co-exist alongside statutory rights. Examples of such rights are fabric rights (a Building Owner

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[81] Nicholas Isaac, "*The Law and Practice of Party Walls*," Property Publishing, 2014, para. 1-25
[82] "*Party Wall etc. Act 1996 – 10 years on*", Stephen Bickford Smith and Camilla Lamont (Landmark Chambers, 13 November 2007, p. 2
[83] *Standard Bank of British South America v Stokes* (1878) 9 Ch D 68; *Lewis & Solome v Charing Cross, Euston, & Hampstead Railway Company [*1906] 1 Ch 508; *Selby v Whitbread & Co* [1917 1 KB 736]

can keep a common law right to carry out work to its own side of a party wall as long as this does not interfere with the Adjoining Owner's fabric rights)[84] or common law construction rights (some of these survive to carry out works to the whole thickness of a party wall[85] notwithstanding rights that exist in parallel under the PWA 1996).[86]

4 Rights and Obligations of the Parties under the Party Wall etc. Act 1996[87]

The PWA 1996 gives rights and obligations, which are personal to the Building Owner and are not binding to its successors. It also means that if a leaseholder would like to carry out construction works, such a leaseholder will be viewed as the Building Owner for the purposes of the PWA 1996 and should serve a party wall notice accordingly. The relevant freeholder is not obliged to serve such a notice.[88]

The PWA 1996 confers extensive rights on those that carry out works falling under the PWA 1996. Such rights include the right to enter any land, remove furniture/fittings or even break open doors or fences to enter premises if a police officer accompanies such a party. Conversely, the Building Owner is obliged to compensate the Adjoining Owner or occupier in relation to any loss/damage that has been caused by carrying of the works. The PWA 1996 ensures that a Building Owner that failed to comply with the PWA 1996 when carrying out works that fall within the PWA 1996, is liable in nuisance or trespass. A mandatory injunction necessitating removal/reversal of unauthorised works may be granted by a court in exceptional situations.[89]

The below rights and obligations conferred by the PWA 1996 apply only if the Building Owner decides to follow the notices mechanism under the PWA 1996.

Typical rights conferred by the PWA 1996 on Building Owners include those listed

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[84] *Upjoh v Seymour Estates Ltd* [1938] 1 All ER 614
[85] *Jolliffe v Woodhouse* (1894) 10 TLR 553
[86] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), pp. 7-8
[87] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), pp. 25-26 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869> accessed 15 May 2022
[88] *Ibid.,* p. 9
[89] Megarry & Wade: The Law of Real Property (9th edition), para. 29-051

below.[90]

(a) party wall repairs;

(b) insertion of a damp proof course;

(c) underpinning the whole thickness of a party wall (for example, to prevent settlement);

(d) cutting into a party wall to take the bearing of a beam (such as a loft conversion);

(e) raising the height of a party wall (for example, adding a new storey);

(f) extending a party wall downwards (such as forming a basement);

(g) demolishing and rebuilding a party wall (for example, if it is structurally defective); and

(h) cutting off projections from a party wall (or from an Adjoining Owner's boundary or external wall) if necessary to build a new wall adjacent to that wall (for example, removing a chimney breast).

The statutory obligations of the Building Owner are:

(a) informing all Adjoining Owners prior to any intended works under section 2 of the PWA 1996; and

(b) providing temporary protection for adjacent buildings and property where necessary.

The Building Owner has a number of statutory obligations with regards to the works relating to party walls and caught under the PWA 1996:

(a) serving a notice on the Adjoining Owner, which must be clear enough so that the Adjoining Owner understands which counter-notice to give in

[90] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 4, p. 10

response;[91]

(b) exercising reasonable care when carrying out the works;[92]

(c) not causing unnecessary inconvenience to the Adjoining Owner during the works under section 1(1) of the PWA 1996;[93]

(d) making good any damage caused by the works or paying in lieu of making good if the Adjoining Owner requests it;[94]

(e) commencing the works, with due diligence, within 12 months of the date of the notice so that the Building Owner does not lose the rights under the notice;[95] and

(f) carrying out the works as agreed between the Building Owner and the Adjoining Owner or as set out in the party wall award under section 7(5) of the PWA 1996 if there is a dispute under section 10 of the PWA 1996.

The Adjoining Owner's rights conferred by the PWA 1996 include:

(a) raising a dispute in response to the Building Owner's notice under section 5 of the PWA 1996; and

(b) by way of a counter-notice, requiring the Building Owner to add additional works into the Building Owner's notice under section 4 of the PWA 1996.

The Adjoining Owner's obligations under the PWA 1996 include those listed below.

(a) Allowing the Building Owner and its workmen access to the Adjoining Owner's land under section 8 of the PWA 1996 after receiving a notice of at least 14 days prior to any works starting. Such right of entry includes also a surveyor appointed or selected under section 10 of the PWA 1996,

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[91] *Hobbs Hart & Co v Grover* [1899] 1 Ch 11
[92] *Alcock v Wraith & Swinhoe*[1991] E.G. 137 (C.S.)
[93] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 4, p. 10
[94] *Ibid.*
[95] ss 1, 3 and 6 of the PWA

erection of scaffolding[96] or removing any furniture or fittings by the Building Owner or his workmen.

(b) Serving a counter-notice within one month of service of the Building Owner's notice if the Adjoining Owner requires additional works to be incorporated into the Building Owner's works on an existing party wall (section 4 of the PWA 1996).

(c) Contributing to the cost of the work if the Adjoining Owner requires the Building Owner to carry out additional works or agrees to the construction of a new party wall.[97]

According to HHJ Grant in *Heathcote and another v Doal and another*:[98]

> "… *the whole point of the Party Wall Act is to provide for a regime of the service of notices and counter-notices, the appointment of surveyors, the provision of an award, all of which is intended to be done before works are commenced.* …"

It means that the PWA 1996 aims to give clarity and a structured process to adhere to in order to avoid unnecessary confusion in terms of which party is responsible for which works, damage, cost and prevent conflict where possible. In addition, if a dispute arises anyway with regards to party walls, the PWA 1996 provides a basic set of guidelines how to proceed. However, the following chapters will also focus on areas that go beyond the realm of the PWA 1996 and Chapter IV discusses the dispute resolution process under the PWA 1996 as well as other dispute resolution avenues that are available to the relevant parties.

5 Party Wall etc. Act 1996 (Electronic Communication) Order 2016 (SI 2016/335)

Before moving on to separate pieces of legislation from the PWA 1996, the Party Wall etc. Act 1996 (Electronic Communication) Order 2016 (SI 2016/335) (**Order**) needs to be mentioned as it allows a notice or other document served under the PWA 1996 to

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[96] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 37, p. 25
[97] Section 11 of the PWA
[98] [2017] EWHC B8 (TCC), para. 40

be capable of being served on a person by way of an electronic communication sent to an electronic address that the recipient has specified and if such a recipient has made its willingness clear to receive the communication by electronic means.[99]

Interestingly, one might question the need for the Order when looking at section 15 of the PWA 1996, which does not contemplate electronic service. However, it notes methods by which service 'may' be effected. The word 'may' is important as it implies that the list of how communication is effected is not an exhaustive one and therefore service by email, for example, is permissible. While this is a logical conclusion, before the decision in *Knight v Goulandris*,[100] the practice was that the methods of service expressly stated in the PWA 1996 were considered as the correct ones. The Order was introduced more as a reflection of the fact that at the time the PWA 1996 was enacted, electronic method of service was not available. However, the Court of Appeal in *Knight v Goulandris* made a point of the fact that what is an effective method of service is not determined by the government's interpretation (nor by practice) concluding that a statutory instrument is needed.[101] The fact that the Court of Appeal opted for a simply logical interpretation of the PWA 1996 is reassuring and the Court of Appeal's approach to interpretation in *Knight v Goulandris* is applicable not only to the PWA 1996 but is a universal principle of interpretation that can be applied to other statutes.

6 Conclusion

The PWA 1996 is the result of legislative evolution in the area of party walls over the course of several centuries. It aims at regulating relationships between the Building Owner and the Adjoining Owner who have rights and obligations in relation to the relevant party wall and to assist with dispute resolution prevention and resolution.

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[99] "*The Party Wall Act Explained – A Commentary on the Party Wall Etc. Act 1996*," The Pyramus & Thysbe Club, 3rd Edition. 2016, p. (v) – Please note that as part of the changeover to the Pyramus and Thisbe Society, a working group has been set up in 2022 to review this publication, otherwise also known as the 'Green Book'.
[100] [2018] Civ 237
[101] "*Procedure: service by email*," Propety Law Bulletin, P.L.B. 2018, 39(1), 4

There are various uncertainties emanating from the PWA 1996 in relation to the scope and location of the relevant works performed on a party wall and construction rights.

The PWA 1996 has no mechanism in place to force the relevant parties to comply with it as the notice procedure contained within it is in essence voluntary. While courts may take the non-compliant party's conduct into account and try to penalise a party for not complying with the PWA 1996 notice procedure, it is not a criminal offence not to comply with it.

Finally, it is important to bear the Order in mind in the context of the PWA 1996 to ensure that any electronic communications in relation to party walls are validly served.

IV. CHAPTER FOUR – DISPUTES RELATED TO PARTY WALLS

1 Introduction

This chapter focusses on the dispute resolution process in relation to party walls. The analysis first looks at the procedure under the PWA 1996 and then at other dispute resolution methods and the reasons for these as well as their potential outcomes. While useful and well structured, the dispute resolution system under the PWA 1996 does not provide the only viable dispute resolution method and should not be seen as the only mechanism that should be followed. The point is that, as discussed later, parties to party wall disputes have several options available to them in relation to the ways by which they can navigate the dispute resolution process and how formal or informal they would like it to be.

2 Notices and Dispute Resolution Procedure under the PWA 1996

Where the Building Owner opts into the notices mechanism under the PWA 1996, an Adjoining Owner (or Adjoining Owners) can agree with the Building Owner's proposals or come to an agreement with the Building Owner on changes in the way in which the works are to be done.[102] As long as the Building Owner meets the requirements of the PWA 1996, it can carry out the works to which the notice regime applies under the PWA 1996. Wherever the works by the Building Owner fall under the PWA 1996, according to section 8 of the PWA 1996, it will have the right to enter upon the Adjoining Owner's land for the purpose of carrying out the works. However, such access is subject to a 14 days' notice given by the Building Owner prior to entering the Adjoining Owner's land.

3 When a Dispute Arises under the PWA 1996

A dispute has arisen if the:

(a) Adjoining Owner does not respond to a notice by the Building Owner

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[102] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 12, p. 4

after 14 days of being served with regards to work to:[103]

(i) Existing party walls and structures (section 2 of the PWA 1996);

(ii) Excavation and construction (section 6 of the PWA 1996); and

(b) Building Owner does not respond within 14 days to a counter-notice (section 5 of the PWA 1996).

As for work done with regards to a new building on the line of junction (section 1 of the PWA 1996), the Building Owner may only build the new wall as an external wall entirely within its own land and at its own expense if the Adjoining Owner does not respond after 14 days of the notice having been served by the Building Owner.[104]

4 Notice Procedure

As for notice provisions, the Building Owner has to first establish whether any of the works it is planning to carry out fall under the PWA 1996. If so, the Building Owner should give notice to all Adjoining Owners of the works to which the PWA 1996 applies. The notice requirements are set out below.

4.1.1 Works to an existing wall under sections 2 and 3 of the PWA 1996

The Building Owner has to give the Adjoining Owner two months' notice before the works commence. Alternatively, the Building Owner can obtain the Adjoining Owner's prior written consent to the works under section 3(3) of the PWA 1996).

In response, the Adjoining Owner can:

(a) Serve a counter-notice under section 3 of the PWA 1996 within one month under section 4(2) of the PWA 1996. Unless the Building Owner consents to the counter-notice within 14 days of its service, a dispute will arise. However, there is no provision under the PWA 1996 for a counter-

[103] *Ibid.* para. 49, p. 8
[104] *Ibid.* para. 49, p. 8

notice with regards to new walls or Party Fence Walls under section 1 of the PWA 1996 nor with regards to excavations under section 6 of the PWA 1996. The purpose of the counter-notice is to give the Adjoining Owner the option to have any additional works carried out by the Building Owner on top of the works specified in the Building Owner's initial notice given under section 3 of the PWA 1996.

The counter-notice has to specify the additional works that the Adjoining Owner requires to be incorporated into the Building Owner's works and should enclose plans or other particulars of the works. In the case of *Bridgland v Earlsmead Estates Ltd*,[105] it has been established that:

> *"… A party structure notice relates to the building owner's proposed works. Following such service, an adjoining owner may (but does not have to) serve a counter notice. But such a counter notice relates to other work to be carried out on the "party fence wall or party structure" (see the opening phrase of section 4 (1) (a) of the 1996 Act) which "may reasonably be required for the convenience of the adjoining owner" (see the closing phrase of section 4 (1) (a) of the 1996 Act). Such other work which is the subject matter of a counter notice is not the same as the proposed work which the building owner intends to carry out, and the purpose of function of a counter notice does not concern or relate to the manner in which the building owner's proposed work is to be carried out. Further, such other work can only be carried out on the "party fence wall or party structure"; it is not the same as any further work which the adjoining owner might wish to carry out, or have carried out on his own land. A counter notice therefore cannot, and does not, relate to such further work. …"*[106];

When a counter-notice has been served, the Building Owner has 14 days within which to give its consent and so has to comply with the

[105] [2015] EWHC B8 (TCC)
[106] *Bridgland v Earlsmead Estates Ltd*[2015] EWHC B8 (TCC), para. 18

counter-notice subject to section 4 of the PWA 1996. If the Building Owner does not consent within 14 days of the counter-notice having been served, a dispute arises to which section 10 of the PWA 1996 applies. Any costs of the additional works under the counter-notice are the liability of the Adjoining Owner.

(b) Give a written notice of consent within 14 days under section 5 of the PWA 1996 with regards to an existing wall under section 2 of the PWA 1996. However, the Adjoining Owner cannot give such a consent in relation to works on new buildings on line of junction (section 1 of the PWA 1996) nor with regards to work on adjacent excavations and constructions (section 6 of the PWA 1996). The consent should not be a general consent but specify what exactly it relates to.[107] Once the Adjoining Owner has given its written consent to works under section 3 of the PWA 1996 but later suffers damage, it can pursue its rights also under section 10 of the PWA 1996 since the case of *Onigbanjo v Pearson*.[108]

(c) Refuse to consent in writing; or

(d) Ignore the Building Owner's notice, in which a dispute will automatically arise after 14 days from the service of the Building Owner's notice.

4.1.2 New wall or Party Fence Wall under section 1 of the PWA 1996.

When building a new wall or Party Fence Wall under section 1 of the PWA 1996, the Building Owner has to give one month's notice of its intention to build a new wall or Party Fence Wall on the line of the junction, i.e., the boundary.

The Adjoining Owner cannot give its written consent before the works begin. For walls astride a boundary, the Adjoining Owner has 14 days within which to give its written consent. If this is given, the new wall or Party Fence Wall can be built half on each of the owners' land with the costs being divided between the owners. If the Adjoining

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[107] *Seeff v Ho and another* [2011] EWCACiv 186
[108] [2008] BLR 507]

Owner does not agree to a wall astride the boundary, the Building Owner has to build the wall entirely on its own land at its own cost.

If the Building Owner wants to build a wall on its own land with the footings or foundations extending over the boundary, there is no need for the Adjoining Owner's consent. The Building Owner can start the works once the one month has expired from the day the notice has been served on the Adjoining Owner. The Building Owner will be responsible for costs of such works and for compensation in case the Adjoining Owner suffers damage caused as a consequence of the works.

Where the intended wall is to be built purely on the Building Owner's land including the footings or foundations, no notice under the PWA 1996 is needed unless section 6 of the PWA 1996 applies (see below).

4.1.3 Excavations within three or six metres of the Adjoining Owner's buildings under section 6 of the PWA 1996

Where there are excavations within three or six metres of the Adjoining Owner's buildings under section 6 of the PWA 1996, the Building Owner has to give the Adjoining Owner one month's notice of its intention to carry out the excavation works (to which section 6 of the PWA 1996 applies). The Adjoining Owner cannot give its written consent before the works start and the Building Owner needs to follow the notice procedure according to section 6 of the PWA 1996. The Building Owner has an obligation to underpin or strengthen the foundations on the Adjoining Owner's land if the Adjoining Owner requires this. A dispute will arise if the Adjoining Owner does not consent to the Building Owner's notice within 14 days.[109] Although the PWA 1996 does not provide for any enforcement procedures, if a Building Owner fails to serve a notice, the Adjoining Owner may seek to stop the Building Owner's work. This can be done through court injunction or seeking other legal redress, if the Building Owner starts

[109] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), pp. 15-16<https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022

such work without having first given a notice, which is compliant with the PWA 1996.[110]

The particulars in relation to service of notices are governed by section 15 of the PWA 1996 as amended by the Party Wall etc. Act 1996 (Electronic Communications) Order 2016 (SI 2016/335). This added further provisions with effect from 6 April 2016 as to the means of electronic communication pertaining to notices under the PWA 1996. That is, as long as the recipient confirmed its willingness to receive notices by electronic means, this is deemed acceptable.

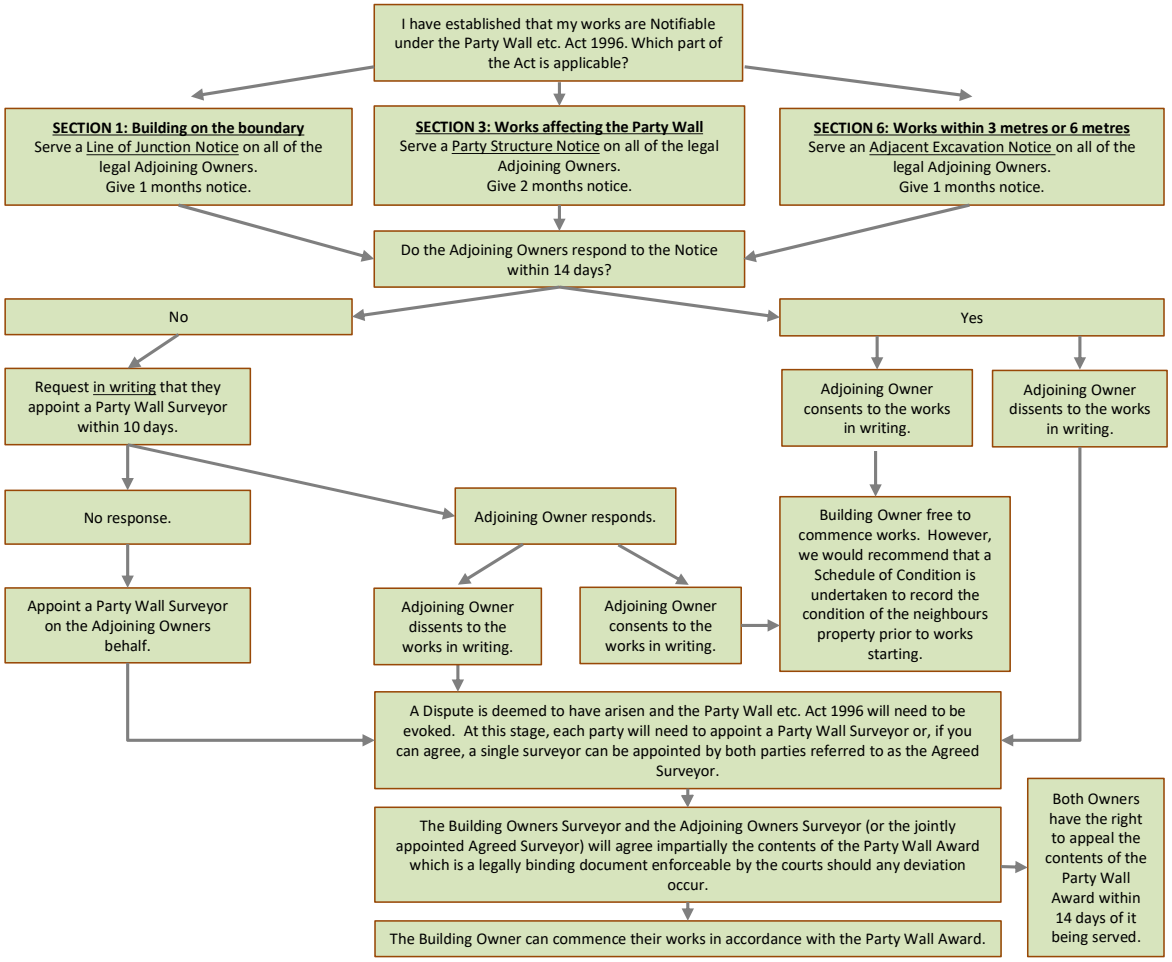
If the Building Owner fails to serve a correct notice or serves the notice on the wrong recipient, the consequences can be severe. In reality, such a failure might be an honest mistake and the most amicable way forward is for the Adjoining Owner to ask the Building Owner to stop work and follow the correct procedures. The Adjoining Owner may decide, however, to seek an injunction or compensation instead.

Diagrams 11 and 12 below set out the requirements under the PWA 1996 and the party wall process for Building Owners and Adjoining Owners respectively. Diagram 13 sets out the party wall process under the PWA 1996 as a comprehensive overview.

The notice and dispute mechanism under the PWA 1996 above ties in with the party wall dispute resolution procedure further under the PWA 1996 (at paragraph 5 below) showing how a dispute crystallises and setting out a path for the parties to try and resolve it out of court. It is one of the mechanisms that can be effectively applied and in paragraph 6, further mechanisms are explored and advocated for.

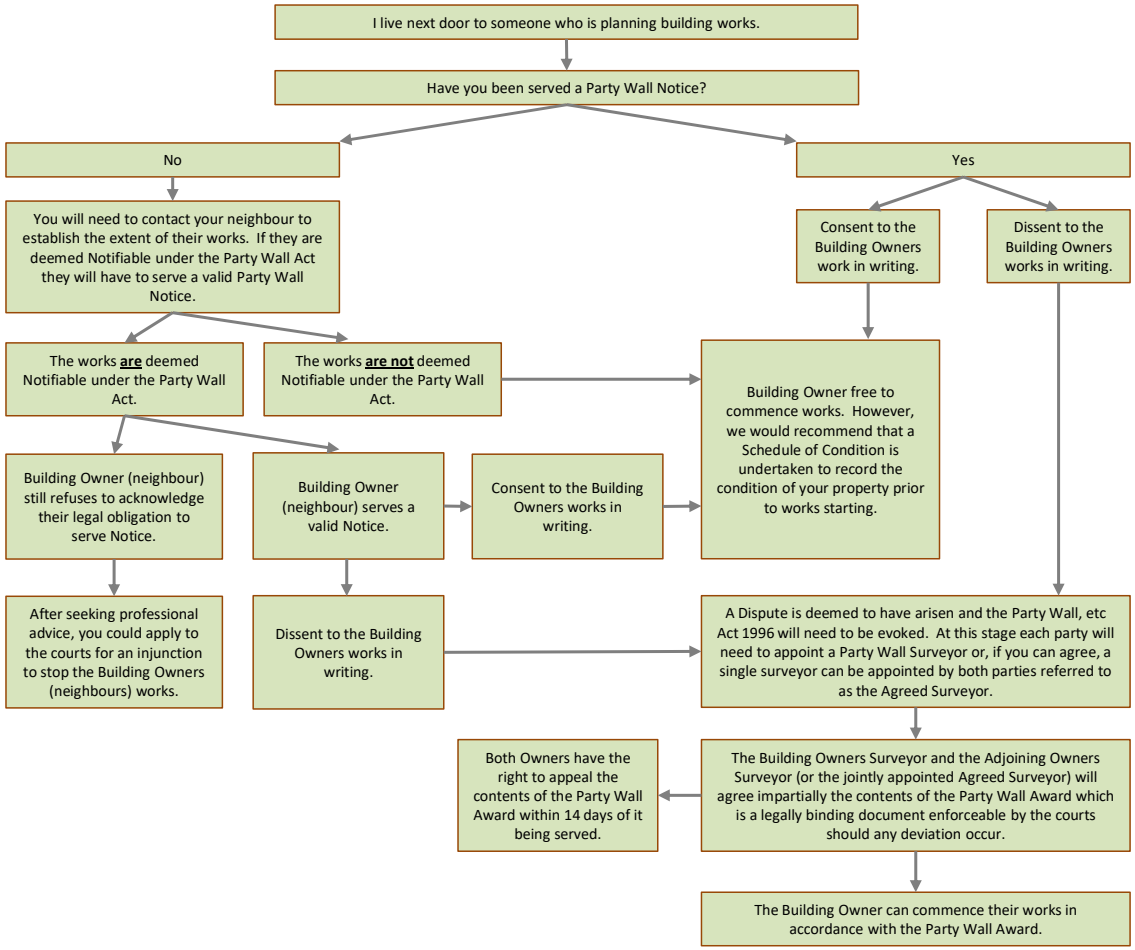
[110] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 5, p. 10

Diagram 11 – Party Wall Notices Mechanism for Building Owners[111]



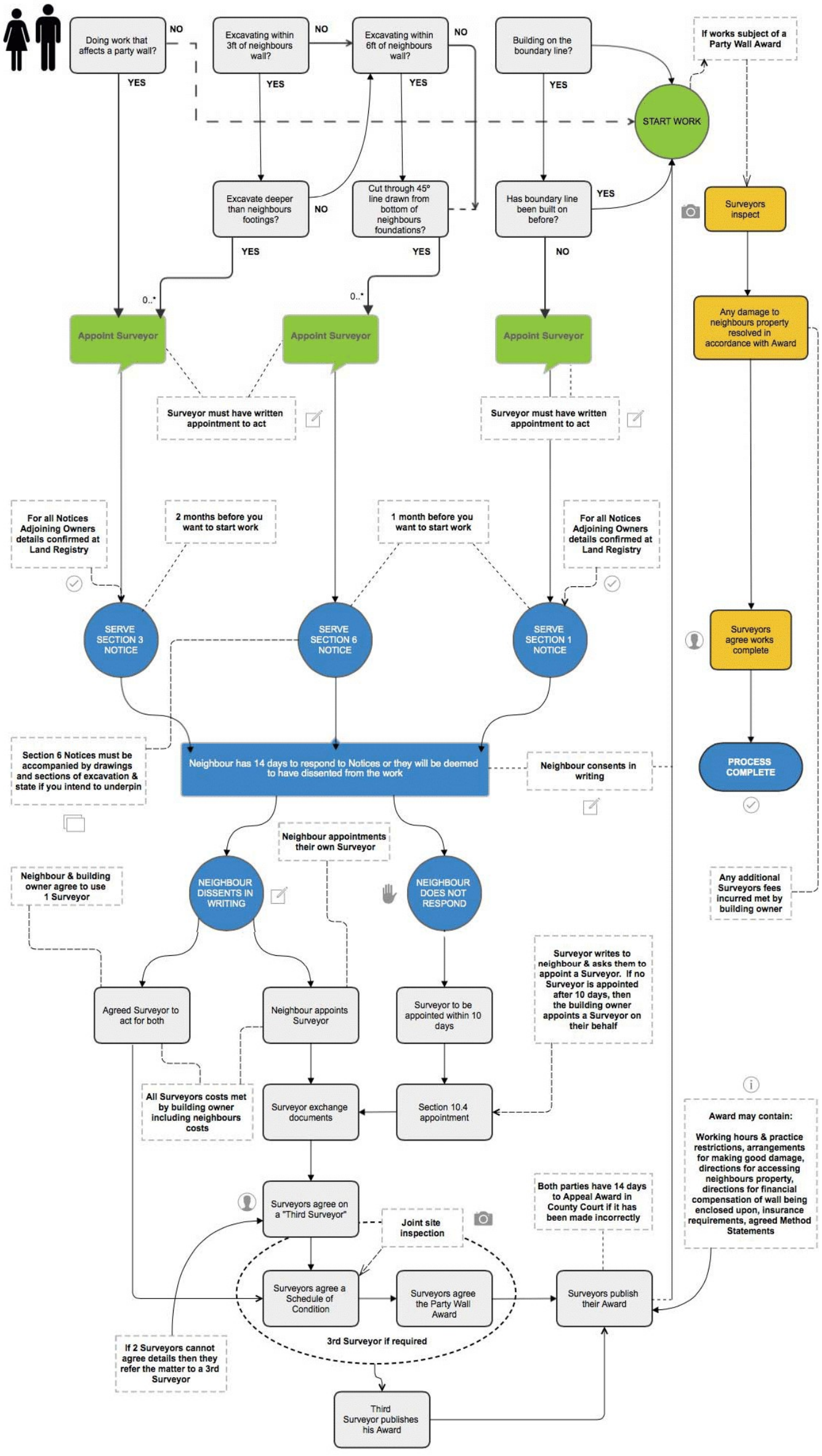
[111] The Party Wall Company, "*Party Wall Process for Building Owners*" <http://partywallcompany.co.uk/PDF/The_Party_Wall_Process_For_Building_Owners.pdf> accessed 15 May 2022

Diagram 12 – Party Wall Notices Mechanism for Adjoining Owners[112]



[112] The Party Wall Company, "*Party Wall Process for Adjoining Owners*" <http://partywallcompany.co.uk/PDF/The_Party_Wall_Process_For_Adjoining_Owners.pdf> accessed 15 May 2022

Diagram 13 – Comprehensive Party Wall Notices Mechanism under the PWA 1996[113]



[113] Colliers Stevens, "*Party walls – your questions answered*," Chartered Building Surveyors (10 January 2019) <https://collier-stevens.co.uk/advice-hub/party-wall/party-walls-your-questions-answered/> accessed 15 May 2022

5 Party Wall Dispute Resolution Procedure Under the PWA 1996

5.1 Introduction

The dispute resolution procedure under the PWA 1996 is regulated by section 10 of the PWA 1996. This procedure applies where a dispute is about to arise or has already arisen between a Building Owner and an Adjoining Owner regarding works to which the PWA 1996 applies. The party wall process under the PWA 1996 is illustrated in Diagram 13 above.

In the case of a dispute, the points set out below apply.

(a) A dispute will arise if there is no written consent by the Adjoining Owner within 14 days to a notice served by the Building Owner in relation to building (1) a new wall or Party Fence Wall under section 1 of the PWA 1996; (2) an existing party wall under section 3 of the PWA 1996; or (3) an excavation under section 6 of the PWA 1996.

(b) A dispute will arise if the Building Owner does not consent to the Adjoining Owner's counter-notice within 14 days of services of the counter-notice under section 4 of the PWA 1996.

(c) The matter will be resolved in accordance with paragraph 12 of the DCLG's Explanatory Booklet:[114]

  (i) First level – Amicable discussion between the Building Owner and the Adjoining Owner. Any agreements should be in writing.

  (ii) Second level – If an agreement cannot be reached, it is recommended that the Building Owner and the Adjoining Owner agree on appointing an agreed surveyor to prepare an award (as per DCLG's Explanatory Booklet).

  (iii) Third level – If the Building Owner and the Adjoining Owner

[114] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 12, p. 4

cannot agree on appointing an Agreed Surveyor, each (the Building Owner and the Adjoining Owner) can appoint a surveyor to prepare the award together. Together, the two appointed surveyors will select a third surveyor under section 10(1)(b) of the PWA 1996. The third surveyor comes into play when the other two appointed surveyors cannot agree or if the Building Owner / Adjoining Owner / either surveyor calls upon the third surveyor to make the award under section 10(1) of the PWA 1996. The surveyors' appointment should be made in writing.

The first step[115] for the party wall surveyor is to determine, whether it has jurisdiction to act in order to resolve the dispute deriving such jurisdiction in party wall matters from section 10 of the PWA 1996. This includes establishing, for example:

(a) whether the structure to which the dispute relates is a Party Structure or a Party Fence Wal; and/or.

(b) whether the Building Owner gave the appropriate notice under the PWA 1996.

However, the surveyor(s) does/do not have jurisdiction to make an award where the dispute in question is not a dispute for the purposes of section 10 of the PWA 1996, which is in line with the decision in *Blake v Reeves.*[116] This point was raised in the case of *Power v Shah*,[117] where it was held that surveyors that were allegedly instructed under section 10 of the PWA 1996 did not in fact have jurisdiction to make an award. In this case, the Building Owner had done works to its property, which caused damage to the property of the Adjoining Owner. The Building Owner never served a notice under section 3 of the PWA 1996. As the PWA 1996 was never invoked by the Building Owner, the dispute in question was not one arising under the PWA 1996:

"*Read as a whole the Act is more readily seen as creating a mechanism which*

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[115] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 134
[116] [2009] EWCA Civ 611
[117] [2022] EWHC 209 (QB)

only comes into play when invoked by the person seeking to perform works even though when the Act has come into play the adjoining owner can take certain steps unilaterally."[118]

This means that the PWA 1996 offers an alternative to court dispute resolution, however this is a voluntary process and is subject to the Building Owner (party wanting to perform the relevant works) serving a notice on the Adjoining Owner. If the Building Owner does not follow the notice mechanism under the PWA 1996, neither the Building Owner nor Adjoining Owner benefits from the PWA 1996. However, the Adjoining Owner has recourse to court.

5.2 The Surveyor

The surveyor has to act with impartiality and has to make use of its professional and technical knowledge as well as knowledge of the PWA 1996. There are similarities between the surveyor's role and the role of an arbitrator, expert witness (who needs to be impartial) and contract administrator (under a building contract).[119] As a quasi-arbitrator, the surveyor has to abide by the rules of natural justice meaning that it must enable the parties to make submissions and then give them due consideration with regards to any submissions made. The jurisdiction of the surveyor is limited to (according to practitioners' view):[120]

(a) determining the parties' dispute about works the Building Owner is allowed to carry out;

(b) works which fall under the PWA 1996;[121] and

(c) awarding compensation and costs dealing with losses and inconvenience caused by the works.

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[118] *Ibid.* para. 58
[119] *Ibid.* p. 221
[120] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), pp. 25-26 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022
[121] *Woodhouse v Consolidated Property Corp* [1993] 1 EGLR 174, CA

The surveyor has no jurisdiction over works carried out by the Building Owner outside of the scope of the party wall award nor to retrospectively approve work that has been completed. The surveyor can make a further award dealing with unforeseen events, if necessary (based on section 10(12) of the PWA 1996).

Under section 10(5) of the PWA 1996, a party wall surveyor can be replaced only if they die, become incapable of acting or deem themselves incapable of acting (all of which also applies to the third-party surveyor under section 10(9) of the PWA 1996). The appointing party or the other two surveyors may in such circumstances appoint another surveyor.

If a party wall surveyor refuses under section 10(6) of the PWA 1996 or neglects under section 10(7) of the PWA 1996 to act effectively, the other may proceed in that surveyor's absence (acting *ex parte*). This also applies to the third agreed surveyor (section 10(9) of the PWA 1996). According to section 10(7), a request has to be served on the surveyor who neglects to act effectively giving them ten days in which to act. As long as the surveyor responds before the other surveyor acts *ex parte* (even if it is after such ten days), this is deemed to be acceptable. As for section 10(6) under the PWA 1996, there is no need to serve such a request. If a surveyor wrongly acts *ex parte*, a court will quash that award.[122]

5.3 The Award

According to section 10(12) of the PWA 1996, the surveyor's award may determine:

(a) the Building Owner's right to execute any work;

(b) the time and manner in which the Building Owner executes any work; and

(c) any other matter arising out of or incidental to the dispute in question (including the costs of making the award).

[122] *Patel and another v Peters and others* [2014] EWCA Civ 335, para. 33

According to paragraph 51 of the DCLG's Explanatory Booklet, the award is also to include a provision in relation to any necessary checking that the work has been carried out according to the award. Although there is no provision in the PWA 1996 as to a prescribed form for the award, in practice many party wall surveyors use the model award prepared by the Royal Institute of Chartered Surveyors (**RICS**).

According to para. 14 of the DCLG's Explanatory Booklet (at p. 12), the award should state:

(a) what works will be carried out;

(b) when and how the works will be carried out with timing requirements in the award overriding the notice provisions in the PWA 1996;

(c) any additional works required;

(d) any other matter such as costs of making the award; and

(e) a record of the condition of the Adjoining Owner's property before the works begin (often with photographic evidence) to protect the Adjoining Owner.

From a practical perspective, before any work starts, a record of condition should be included and this should include all sections of the Adjoining Owner's property on which the works could impact. Without a record of condition, it would be very difficult for the Adjoining Owner to prove any damage caused by the Building Owner's work.[123]

A party wall award should not be confused with an arbitration award as the procedure differs in the sense that to be able to have an arbitration award, there must be a binding arbitration 'agreement in writing' (as defined in section 5 of the Arbitration Act 1996) between the parties. It follows that the Arbitration Act 1996 does not apply to party wall awards. If either of the parties is dissatisfied with the award, they have the option of

[123] Practical Law Construction, "*PWA 1996: reviewing the party wall surveyor's award*," Practical Law UK Practice Note, Resource ID 7-516-5148 (Maintained), pp. 1-2 <https://uk.practicallaw.thomsonreuters.com/7-516-5148?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

appealing to the county court within 14 days of the service of the award under section 10(17) of the PWA 1996.

The decision in the case of *Zissis v Lukomski*[124] has clarified what the procedure should be for an appeal under section 10(17) of the PWA 1996 and that in some situations it is possible for a party to start Civil Procedure Rules (**CPR**) 7 or 8 proceedings (for example, where the surveyor acts *ultra vires*, an error in the statutory procedure occurred or the 14-day limit has expired). In this case, the appellant (Zissis) appealed to the county court against an award under section 10(17) of the PWA 1996, which was a statutory appeal governed by Part 52 of the CPR.[125]

Sir Peter Gibson noted that:

> " *… On the contrary I think it plain that Part 52 was intended to cover a form of statutory appeal like that under section 10(17) and that the provisions of Part 52 are amply sufficient to allow justice to be done on such an appeal* …."[126]

There are other ways than an appeal under section 10(17) of the PWA 1996 to challenge the validity of an award.[127] In order to appeal, the appellant needs to file a notice within 14 days of service of the award. Deemed service is not ascertained by the application of the CPR. In *Knight v Goulandris*,[128] it was stated that:

> "… *section 15(1)(a) plainly requires such service on a person, for it speaks of the method by delivering it to him in person. I find it hard to conceive that such a method does not involve receipt by that person. Of course, such a person may decline receipt by casting it from him, but if a notice is delivered by person to another person, I do not see that it can be properly said that the person to whom the notice is delivered can say that he has not received it*…."

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[124] [2006] EWCA Civ 341
[125] *Zissis v Lukomski and another* [2006] EWCA Civ 341
[126] *Ibid*., para. 39
[127] *Ibid*., para. 44
[128] [2018] 1 W.L.R. 3345

The principle stated in the case shows that whether a document has been served or not depends on the question of receipt of that document. The document has been served on the date of receipt occurring. While there are exceptions to this rule, the basis where to start is the point in time of the date of actual receipt by the appellant and then calculating 14 days from such date.[129]

A separate action or counterclaim may be brought for a declaration or relief inconsistent with the award even where there has been no appeal. Alternatively, its enforcement may be resisted.[130] A separate action can go ahead by way of a claim under CPR Part 7 or by way of the alternative procedure under Part 8. A Part 7 claim is more usual as most challenges of the validity of an award depend on showing evidence that part or all of the award is *ultra vires*. This would include a situation where the challenge is that the supposedly authorised works go beyond the powers of the surveyor under section 2 of the PWA 1996. In addition, it will be necessary to show to the court what the award purports to authorise by reference to the documents referred to in the award. Similarly, in a situation where it is to be determined whether the costs have been awarded properly, factual evidence will have to be drawn upon to show the circumstances in which the costs were incurred. On the other hand, a claim under Part 8 focuses on questions of law without pleadings and with limited evidence. This would work where, for example, an award is challenged on the basis of a clear procedural irregularity. However, where there are fact-specific challenges and cases, where pleadings and cross-examination of witnesses are necessary, a claim under Part 8 is not suitable and a claim under Part 7 should be sought.[131]

The PWA 1996 is silent on the point as to whether, whilst the parties await the result of the appeal, the award is binding on the parties or whether the award is suspended. The strong tendency is to follow the school of thought that the award is binding whilst awaiting the decision on the appeal. The PWA 1996 would fail to operate if it were

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[129] Andrew Smith, "*Party Walls: The Basic Fundamentals of Appeals and Injunctions*," Child & Child <https://www.childandchild.co.uk/legal-guides/party-walls-rights-of-light-and-boundary-disputes/party-walls-the-basic-fundamentals-of-appeals-and-injunctions/> accessed 15 May 2022

[130] *Re Stone and Hastie* [1903] 2 KB 463*; Gyle-Thompson v Wall Street Properties Ltd* [1974] 1 All ER 295*; Woodhouse v Consolidated Property Corp* [1993] 1 EGLR 174, CA

[131] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 157

allowed for the Adjoining Owner to delay the implementation of the award by filing a notice of appeal. This does not, however, leave the Adjoining Owner helpless in a situation where it wishes to prevent an award. In such a case, the Adjoining Owner has the option to apply for an interim injunction and give an undertaking in damages.[132]

In a situation where a part of an award is invalid, this does not invalidate the award in its entirety but only then where the invalid part can be severed and is not intertwined with the rest of the award[133] so that severing the invalid section of the award would distort the award.[134] The court will therefore consider the severability of the part of the award which is invalid.[135] Under section 19 of the Senior Courts Act 1981, the court has jurisdiction to provide declaratory relief.[136] The court will, however, not always exercise this power and will take into account the individual circumstances of the matter before it in deciding whether it will exercise its power under its jurisdiction. The courts will not support a claim for declaratory regime if they view it as the party's way to subvert the statutory regime (according to practitioners' view).[137]

In *Lea Valley Developments Ltd v Derbyshire (No. 2)*,[138] O'Farrell J explained what the reasons behind the courts were when ruling that it should exercise inherent jurisdiction:

> "… *I then turn to the issue as to whether or not the court should exercise its inherent jurisdiction in this case or whether it would be more appropriate to stay the proceedings pending determination by the surveyors of the outstanding*

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[132] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 160
[133] *Selby v Whitbread & Co* [1917] 1 KB 736, para. 748
[134] *James E McCabe ltd v Scottish Courage Ltd* [2006] EWHC 538 (Comm)
[135] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Lawand Practice*" (4th edn, LexisNexis 2017), p. 161
[136] *Lea Valley Developments Ltd v Derbyshire (No. 2)* [2017] EWHC 1353 (TCC), para. 30: "*… The court has an inherent jurisdiction to provide declaratory relief under s.19 of the Senior Courts Act 1981 and as set out in CPR 40.20. …"*
[137] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), p. 26-30 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022
[137] *Zissis v Lukomski*[2006] EWCACiv 341,
[137] *Ibid.*, para. 39
[138] [2017] EWHC 1353 (TCC) at paras. 32-37

matters in relation to the party wall dispute. … I start by looking at the award that was issued on December 2014. This award is in fairly clear and straightforward terms. … The option of making payment in lieu of carrying out the works is one that can be exercised at the discretion of the defendant and is not something that can be imposed on the defendant. That award is final and conclusive in accordance with s.10(16) no appeal having been started by either party to overturn or modify the terms of that award. The issue that the claimant is asking the court to determine is one that is narrow in compass and one that ought to be capable of determination by the court after a relatively short hearing. … it would not be trespassing on the role of the surveyors under the Act, it would simply be identifying the appropriate test that the surveyors should adopt when making their assessment. The court would not be determining the dispute as to the amount of compensation, it would simply be determining the appropriate interpretation of the law, the Award and the Act so as to enable the surveyors to move forward and settle the further award. … The parties have not yet referred this matter to the surveyors, and therefore the sensible course is for both parties to wait for the court determination before seeking a further award from the surveyors. The advantage of having this point determined is that it could narrow the issues between the parties and leave the surveyors to determine the facts and figures based on the reports that are already available. Although that will not exclude the possibility of any appeal, it is very likely to dispose of the key dispute. Given that this matter can be determined by the court in short order, it is the sort of issue that is appropriate to be dealt with by way of a Part 8 claim."

It should be noted that the process of claiming declaratory relief is not a straightforward one and, if the parties cannot agree amongst themselves, the statutory appeal regime under the PWA 1996 is usually better suited. The surveyor must act impartially and owes to all parties a duty of care, diligence and impartiality, which may expose the surveyor to either contractual or tortious liability (for professional negligence). Either party may claim damages against a party wall surveyor if the surveyor is found to have breached a duty of care and diligence to either of the parties. Courts are, however, unlikely to set aside an award on this basis and therefore trying to overturn an award should be based on the statutory appeal process. Even if the party wall surveyors

agree on a method statement, this does not mean that the Adjoining Owner will not sustain any damage on its property. The agreed method statement will also not protect the Building Owner from the Adjoining Owner's potential claim for compensation. Usually, the Building Owner is automatically liable to the Adjoining Owner in cases where the Adjoining Owner has sustained damage to its property because of the works performed by the Building Owner. In such a case, the Building Owner has to make good any damage so caused to the Adjoining Owner's land or buildings. There is, however, an exception to this rule when the works are in relation to an existing party wall under section 2 of the PWA 1996, where only certain works and damage give rise to liability of the Building Owner for compensation. Damages stemming from works to demolish and rebuild a party wall to reinforce it under section 2(2)(e) of the PWA 1996 will amount to compensation. On the other hand, damage arising out of works to repair a party wall or Party Fence Wall under section 2(2)(b) of the PWA 1996 will not give rise to the Building Owner's liability. The PWA 1996 also covers the costs linked to making the party wall award. Costs are covered in section 10 of the PWA 1996, and expenses are covered in section 11 of the PWA 1996. Neither costs nor expenses are defined terms in the PWA 1996.

5.4 Costs

As costs are noted a number of times under section 10 of the PWA 1996, the term is clearly used in a similar way as it is when used in relation to litigation. Therefore, costs under the PWA 1996 include:

(a) fees of any surveyor appointed to discharge a function under the PWA 1996; and

(b) legal and other professional costs incurred by the parties as to operating the procedures of the PWA 1996.[139]

Costs could include, for example, costs incurred in relation to service of notices, fees of engineering and other consultants, and fees for legal advice related to the

[139] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 163

procedures of the Act.[140]

Where the two appointed surveyors disagree, the third surveyor may hold a hearing at which to address the issue and they may make an award. The costs of such a hearing would be regarded as costs payable under the PWA 1996.[141]

On the other hand, costs of actual or threatened proceedings for the purposes of enforcing common law or equitable remedies (for example, damages, injunction for trespass or nuisance) fall outside of the PWA 1996.[142]

According to section 10(12)(c) of the PWA 1996, the party wall surveyor has jurisdiction to decide who will pay for the costs of making the award. Section 10(1) of the PWA 1996 defines the terminology of 'reasonable costs' and includes the costs in:

(a) making and obtaining the award under section 10(13)(a) of the PWA 1996;

(b) inspecting the works to which the award relates under section 10(13)(b); and

(c) dealing with any other matter arising out of the dispute under section 10(13)(c) of the PWA 1996.

Therefore, the fees of the party wall surveyor fall within section 10 of the PWA 1996.[143] While it is common for the Building Owner to pay all party wall award related costs, an award can order payment only in relation to 'reasonable costs' related to the award and so if the Building Owner objects to paying the costs, the Building Owner can start costs-only proceedings – that is if the parties cannot agree a way forward on the costs. Costs-only proceedings are suitable in a situation where the parties have agreed on all issues and this has been confirmed in writing, including which party is to pay costs

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[140] *Onigbanjo v Pearson* [2008] BLR 507
[141] *Chartered Society of physiotherapy v Simmonds Church Smiles* [1995] 1 EGLR 155
[142] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 163-164
[143] *Farrs Lane Developments Limited v Bristol Magistrates' Court v James McAllister* [2016] EWHC 982 (Admin), para. 28

but cannot agree on the amount of the costs.[144]

Although the party wall award can state the amount of the costs and which of the parties should pay them, the award is not to specify to whom the costs should be paid. As the Adjoining Owner's surveyor does not have a contractual relationship with the Building Owner, it cannot sue the Building Owner directly for payment of their fees.[145]

It follows that the Adjoining Owner's surveyor must address the Adjoining Owner to get those fees. The Adjoining Owner must address the party wall award to specify that the Building Owner has to reimburse it for the Adjoining Owner's professional costs. The costs of the award can include legal costs as long as these are reasonably and properly incurred and are in relation to the dispute. However, this does not include legal costs of the Adjoining Owner in bringing proceedings such as an injunction to restrain works or for trespass or nuisance.[146]

Although legal costs fall outside the PWA 1996, if court proceedings are subsequently issued, those legal costs may be recoverable under the usual CPR costs principles. The PWA 1996 does not cover interest payable for late payment of the party wall surveyor's costs.

According to section 10(15) of the PWA 1996, the third party wall surveyor can require that their costs are paid before serving the award on either the parties or their party wall surveyors. There is however a limit in terms of when the third party wall surveyor can require their costs, as they cannot do so before they even start work or before beginning to make an award.[147]

5.5 Expenses

Expenses are referred to in sections 1(3)(b), 1(4)(a), 1(7), 11, 12, 13,14 of the PWA 1996. The term 'expenses' refers to the actual cost of carrying out works including the

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[144] CPR 46.14(1)
[145] *Maanen v West Greenwich Developments plc*, unreported, 27 November 2009
[146] Christine *Reeves v Beatrice Blake* [2010] 1 W.L.R. 1, para.21
[147] *Mills and another v Savage and another Mills and another v Sell and another* (unreported, 15 June 2016)

prime cost of the works, reasonable incidental professional fees (for example, architect or quantity surveyor), fees paid to statutory authorities and insurance related to the works.[148]

In cases where the works to a party wall are part of a wider project, it is necessary to ensure that the expenses are separated in relation to the works to which the PWA 1996 applies from the global cost of the project.[149] Costs in relation to issues which are too remote from the relevant works falling under the PWA 1996 will not form any part of the expenses under the PWA 1996 (for example, feasibility studies, environmental assessments or expenses in relation to the obtaining of a planning permission).[150]

If the Adjoining Owner is responsible under section 11 of the PWA 1996 to pay for some of the costs and expenses of the works (either as this was agreed by the parties or as this was decided in a party wall award), then the Building Owner has to serve a detailed account. This is to be done within 2 months after completion of the works on the Adjoining Owner showing the amount payable by each of the parties. The Adjoining Owner then can serve a notice of its objections within one month, otherwise it will be deemed to have accepted the account (under section 13 of the PWA 1996). All property rights in the works remain vested in the Building Owner until the Adjoining Owner settles the account under section 14 PWA 1996.

Under section 17 of the PWA 1996, any sum payable under the PWA 1996 can be recovered summarily as a civil debt. Such proceedings are usually brought in the Magistrates' Court under the Magistrates' Court Act 1980. Another way in which to enforce a money award is by way of the adjudication enforcement procedure.[151]

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[148] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 164-165
[149] *Ibid.*, p. 165
[150] *Ibid.*, p. 165
[151] Section 9.2 of the Technology and Construction Court Guide (TCC Guide)

5.6 Compensation

With regards to compensation, under section 7(1) of the PWA 1996, the Building Owner has to ensure that it does not cause unnecessary inconvenience to any Adjoining Owner or any Adjoining Occupier when exercising its right. Under section 7(2) of the PWA 1996, the Building Owner has to compensate any Adjoining Owner as well as any Adjoining Occupier for any loss or damage resulting from work performed under the PWA 1996. These provisions are in place to provide a balance considering the PWA 1996 protects the Building Owner. The PWA 1996 is allowing the Building Owner to act in a manner that would usually amount to trespass or nuisance, had it not been for the PWA 1996. This needs to be seen in context of the potential 'right/obligation to repair' as further discussed in chapter VI of this thesis. Adjoining Occupiers are covered by section 7 of the PWA 1996 as well. Having noted this, Adjoining Occupiers cannot participate in the section 10 of the PWA 1996 procedure but, as they may be affected by the Building Owner's works, section 7 of the PWA 1996 adds a safeguard to the Adjoining Occupiers, which may include tenants as well as other residents of the Adjoining Owner's property. However, if the Building Owner's works cause a loss to the Adjoining Owner or Adjoining Occupier and such works go beyond the works authorised by the party wall award or the PWA 1996, then the Adjoining Owner's or Adjoining Occupier's remedy may be a common law claim for damages in trespass or nuisance instead of the PWA 1996.

The right to compensation is not limited to compensating the Adjoining Owner or Adjoining Occupier for unnecessary inconvenience under section 7(1) of the PWA 1996. It is more likely that an Adjoining Owner or Adjoining Occupier is entitled to recover compensation for: (a) all loss or damage resulting from the works (irrespective of whether out of unnecessary inconvenience or otherwise); and (b) any loss or damage arising out of the very existence of the finished works carried out in pursuance of the Building Owner's rights under the PWA 1996 and not works carried out in breach of an award or outside of the scope of the Building Owner's rights.[152]

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[152] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), p. 35 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022

In *Bridgland v Earlmead Estates Limited*,[153] His Honour Judge David Grant stated:

> "… *I therefore reject Mr Taylor's submission that the consequence of a failure to serve a party structure notice is that a building owner is not then "exercis(ing) any right conferred on him by this Act", and as a result is absolved from the requirement not to cause unnecessary inconvenience to an adjoining owner. …*"

According to section 17 of the PWA 1996, all compensation payments under the PWA 1996, expenses and costs are summarily recoverable as civil debts. Under section 7(1) of the PWA 1996, the party wall surveyor will assess the amount of compensation payable for the unnecessary inconvenience and under section 7(2) of the PWA 1996 for loss or damage.

In the case of *Lea Valley Developments Limited v Derbyshire (No. 2)*,[154] Adrian Williamson QC (sitting as Deputy Court Judge) analysed a situation where a party wall award was made prior to works commencing noting that the Building Owner:[155]

> "*… make good all structural or decorative damage to the Adjoining Owner's property occasioned by the works … If so required by the Adjoining Owner, make payment in lieu of carrying out the works to make the damage good, such sums to be determined by the Agreed Surveyor …*"

It was held, obiter, that there is difference as to how section 2 of the PWA 1996 is treated in this context compared with the treatment of section 6 of the PWA 1996. It was noted that section 2 of the PWA 1996 made reference to 'making good', whereas section 6 of the PWA 1996 did not.[156] A party wall award in relation to section 2 of the PWA 1996 may set out an Adjoining Owner's right to compensation in relation to making good of the Adjoining Owner's premises before any actual damage has

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[153] [2015] EWHC B8 (TCC), para. 23
[154] [2017] EWHC 1353 (TCC)
[155] *Lea Valley Developments Limited v Derbyshire (No. 2)* [2017] EWHC 1353 (TCC), para. 7
[156] *Ibid.*, paras. 21-23

occurred. However, a party wall award in relation to excavation works under section 6 of the PWA 1996 may not set out such an Adjoining Owner's right to compensation.

5.7 Jurisdiction to award compensation

Jurisdiction to award compensation lies exclusively with the party wall surveyor on the premise that sections 7(1) and 7(2) of the PWA 1996 specifically relate to unnecessary inconvenience, damage or loss arising when the Building Owner is carrying out works subject to its rights under the PWA 1996. The party wall award sets out the works that the Building Owner can carry out without unnecessarily negatively affecting the Adjoining Owners and Adjoining Occupiers. Even if the Building Owner follows the award correctly, loss or damage can sometimes still occur to the Adjoining Owner or Adjoining Occupier. In such a situation, the party wall surveyor can provide for an addition to their initial award with a further award for the Building Owner to pay compensation.[157] Where the Building Owner fails to comply with a party wall award during carrying out of its works resulting in loss/damage suffered by the Adjoining Owner, this can claim for remedy if it decides to start court proceedings.

5.8 Security

Section 12 of the PWA 1996 gives the Building Owner and the Adjoining Owner the right to ask the other party for security in relation to expenses if certain circumstances apply.[158] According to section 12(1) of the PWA 1996, the Adjoining Owner may serve a notice asking the Building Owner for security before the Building Owner starts the works. In *Kaye v Mathew Lawrence*,[159] Ramsey J, sitting as a county court judge, noted as follows:

> "… *It is evident from the provisions relied on by Mr Hutchings as giving rights, such as section 2(2)(f) that, even within those provisions, all the relevant work could be carried out on the property of the building owner. In such circumstances I do not consider that it could be argued that security would only*

[157] *Onigbanjo v Pearson* [2008] BLR 507
[158] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 173
[159] [2010] EWHC 2678 (TCC)

apply to work being carried out on the adjoining owner's land. For instance, cutting into the party structure on the building owner's land could weaken the structure and cause damage to the structure on the adjoining owner's land. …"

Therefore, a request for security for work to which the PWA 1996 applies does not have to be only in relation to work carried out on the Adjoining Owner's land. On the contrary, security can be required in relation to work carried out on the Adjoining Owner's land as well as on the Building Owner's land, as long as the work falls under the PWA 1996.

The PWA 1996 is silent on how security under section 12 should be given. One could argue that a party wall surveyor could hold the money jointly in a bank account or the parties' solicitors could hold the funds. Where there is a particular risk (for example, of not completing the building works; defaulting in carrying out the works; or running a real risk that the works will cause damage to the Adjoining Owner), it is appropriate to make provision for security. Money could be held in an escrow bank account or the client account of a firm of chartered surveyors or solicitors.[160]

5.9 Failure to Comply with the PWA 1996

The Building Owner has statutory obligations under the PWA 1996 and if it does not comply with the PWA 1996, it will lose the PWA 1996's protection. According to *Louis v Sadiq*,[161] without the Adjoining Owner's written consent, or if not in accordance with a valid party wall award, if the Adjoining Owner suffers any damage or loss as a result of the Building Owner's works, such damage or loss is actionable in private nuisance. The Building Owner may also be liable for trespass. The courts tend to side with the Adjoining Owner where it suffers damage caused by works where no notice was served[162] as it is the Building Owner who has the power to trigger the PWA 1996.

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[160] RICS Practice Standards UK, "*Party wall legislation and procedure*" (6th edition, guidance note), p. 20 <http://www.fieldingsurveyors.co.uk/wp-content/uploads/RICS-Party-Wall_-6th-edition.pdf?_sm_au_=isVLMfpHt104sqr5QcLJjKQ1j7GJ1> accessed 15 May 2022
[161] (1997) 74 P&CR 325
[162] *Roadrunner Properties Ltd v Dean and another* [2003] EWCA Civ 1816

In *Crowley t/a Crowley Civil Engineers v Rushmoor Borough Council*,[163] HH Judge Thornton QC held that:

> "… *any failure to serve the requisite notice before work started would amount to a breach of statutory duty which would allow a court to award damages representing the compensation that would have been awarded by the surveyors appointed under the Party Wall Act for any damage caused by the work that would have been avoided had the notice provisions of the Party Wall Act been complied with*."

If the Building Owner fails to carry out the relevant works in compliance with the PWA 1996, it may be liable also for breach of statutory duty and the Adjoining Owner is then entitled to claim damages. One could argue that since the claimant has a claim in tort for trespass and/or nuisance, it is unnecessary to decide whether there is also a claim for breach of statutory duty.[164]

A Building Owner who fails to comply with the PWA 1996 will only be left with its common law rights. The Building Owner will be in breach of the PWA 1996 if it fails to serve a notice or fails to serve the correct notice or serves the notice on the wrong recipient. At first instance, as it may be a matter of a genuine mistake, the parties should try and resolve this amongst themselves. However, if needed, the Adjoining Owner may seek an injunction or compensation.

While courts are able to award damages, as noted by HH Judge Thornton QC in the above quotation, there are several aspects to this. First, the Adjoining Owner first needs to bring a claim in court. Secondly, the court can decide, at its discretion, whether it considers it appropriate to award damages, injunctive relief or specific performance (depending on the facts of each case) – if any at all. Thirdly, while courts will generally sympathise with the Adjoining Owner where it is a victim of damage caused by works performed by the Building Owner, which failed to serve the

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[163] [2009] EWHC 2237, para. 104
[164] *Roadrunner Properties Ltd v Dean and another* [2003] EWCA Civ 1816, para. 9

appropriate notice under the PWA 1996,[165] there is no guarantee that the relevant court will actually grant the relief the Adjoining Owner is claiming for. Finally, if the Adjoining Owner cannot proceed with such a claim (for example due to time/financial constraints), the Building Owner will not suffer consequences of its breach of statutory duty.

5.10 Injunctions

Injunctions function as orders for a particular person or persons to do or not to do certain acts. Should a party be in breach of an injunction, the remedy for such a breach includes committal for contempt, a fine or sequestration.[166]

Examples of injunctions with regards to the PWA 1996 include those set out in the case law listed below.

(a) *Udal and another v Dutton and another*,[167] where HHJ Coulson QC granted an injunction preventing the Building Owner from continuing to demolish the party wall in question. The Building Owner also had to erect a temporary hoarding where the initial party wall had already been demolished. HHJ Coulson QC held:[168]

> " … *The relevant principles are to be found in the older case of American Cyanamid Co.-v-Ethicon Ltd. [1975] AC 396 (HL) and in the more recent decision of the Court of Appeal in Zockoll Group Ltd.-v-Mercury Communications Ltd. (No. 1) [1998] FSR 354 and in the decision of Chadwick J (as he then was) in Nottingham Building Society-v-Eurodynamics Systems Plc [1993] FSR 468 at 474. … The Claimants need to demonstrate three things: that there is a serious issue to be tried; that the balance of convenience favours the grant of an injunction; and that damages*

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[165] *Roadrunner Properties Limited v Dean,* [2003] EWCA Civ 1816
[166] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p.43
[167] [2007] EWHC 2862 (TCC)
[168] *Udal and another v Dutton and another* [2007] EWHC 2862 (TCC), paras. 13-14

would not be an adequate remedy."

(b) *Histed v Prosperity Developments Ltd*,[169] where the Adjoining Owner was successful in its application for a without notice injunction to prevent the Building Owner from carrying out piling, excavation and ground works over the August bank holiday weekend. Although the parties agreed to have the injunction in place until the planning permission was acquired for the revised works, the Building Owner applied to vary the terms of the injunction or to have it lifted. The Adjoining Owner opposed the Building Owner's application noting that the Building Owner heavily disregarded its obligations under the PWA 1996 as well as the original planning permission. It was held that the injunction should remain in place. Mr Justice Holroyde held:[170]

> "*I am afraid I am led to the conclusion that there is a clear inference to be drawn here of a cynical plan to try to get the job done over the Bank Holiday weekend, in the hope that it would be impracticable at such a time for neighbouring property owners effectively to prevent the work, and in the further hope that once the job had been done it would be too late for anyone to complain about this. This, as I say, is not something which happened by inadvertence or through over- enthusiasm or through ignorance of the Defendants' obligations. It was deliberately done, in my judgment, despite clear notice of their obligations.*"

(c) *Heathcote and another v Doal and another*,[171] where the HH Judge Grant granted an interim injunction without notice. Conduct of the parties was also an important factor in making the decision.

(d) In *Chliaifchtein v Wainbridge Estates Belgravia Ltd*,[172] HHJ Coulson QC awarded an Adjoining Owner the costs of obtaining an injunction

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[169] [2013] EWHC 4463 (QB)
[170] *Histed v Prosperity Developments Ltd [*2013] EWHC 4463 (QB), para. 23
[171] [2017] EWHC B8 (TCC)
[172] Ltd [2015] EWHC 47 (TCC)

preventing a Building Owner from breaching a party wall award under the PWA 1996 (by preventing excavations). The case shows what factors the court takes into account when deciding costs. The court looked at the Adjoining Owner's as well as the Building Owner's conduct.

Conduct of the parties was also an important factor in making the decision in *Heathcote and another v Doal and another*,[173] where HH Judge Grant held:

> "… *the whole point of the Party Wall Act is to provide for a regime of the service of notices and counter-notices, the appointment of surveyors, the provision of an award, all of which is intended to be done before works are commenced. The failure by the defendants to comply with the provisions of the Act was a matter which in my judgment did take this case and its circumstances out of the norm. I regard this as a serious matter.* ..."[174] and "… *In my judgment, to commence work without serving the appropriate notice under the 1996 Act is a serious matter, such that it takes the case and its circumstances out of the norm. The norm is to comply with the Act and serve the relevant appropriate notices. …"*[175]

HH Judge Grant awarded the claimants their costs of the injunction application, including the costs on an indemnity basis[176] for part of the relevant period (which were ordered because the defendant failed to comply with the PWA 1996).[177] The court also criticised the first surveyor's notices, which were served after work had started and contained inaccurate and inconsistent descriptions of the proposed works, which was considered wrong and misleading.[178]

Unintended financial consequences of an injunction were highlighted in *Nelson's Yard Management Company and others v Eziefula*,[179] where the Building Owner failed to reply to four letters of the Adjoining Owner and the Adjoining Owner's surveyor was

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[173] [2017] EWHC B8 (TCC)
[174] *Heathcote and another v Doal and another* [2017] EWHC B8 (TCC), para. 40
[175] *Ibid.* para. 44
[176] *Ibid.* 46
[177] *Ibid.* para. 40
[178] *Ibid.* para. 41]
[179] [2013] EWCA Civ 235

not able to gain access to the site. Most importantly, there was a real risk that the Adjoining Owner's property was at risk.[180]

Compensation may be more appropriate (rather than an injunction) where, for example, the Building Owner's works have already reached completion, in which case the Adjoining Owner may seek compensation where the Building Owner has failed to serve a notice. In *Crowley t/a Crowley Civil Engineers v Rushmoor Borough Council*,[181] HHJ Thornton QC identified three ways in which an Adjoining Owner can seek compensation:[182]

> " *… Firstly, the relevant arbitration provisions provided for by the Party Wall Act can always be operated retrospectively. These provisions involve the appointment of surveyors to resolve disputes arising in connection with any matter connected with any work to which the Party Wall Act relates. The surveyors so appointed would have jurisdiction to award appropriate compensation for any damage resulting from excavation or demolition work close to the flank wall and the adjoining planter which could and should have been, but had not been, made subject to an appropriate award prior to work starting and which undermined and damaged the foundations and the property that they supported (see sections 7(2),10(1), 10(12), 10(13)(c)) and 17 of the Party Wall Act). … Secondly, any failure to serve the requisite notice before work started would amount to a breach of statutory duty which would allow a court to award damages representing the compensation that would have been awarded by the surveyors appointed under the Party Wall Act for any damage caused by the work that would have been avoided had the notice provisions of the Party Wall Act been complied with. … Thirdly, Mr Sampla's rights to claim damages for negligence, nuisance, trespass or withdrawal of support are not affected by the Party Wall Act …*"

To be clear, the regime under the PWA 1996 does not relate to an arbitration process,

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[180] *Nelson's Yard Management Company and others v Eziefula* [2013] EWCA Civ 235, para. 4
[181] [2009] EWHC 2237
[182] *Crowley t/a Crowley Civil Engineers v Rushmoor Borough Council* [2009] EWHC 2237, para. 103-105

the term 'arbitration' has therefore been used erroneously by HHJ Thornton QC.

5.11 Contribution and Causation

A Building Owner's liability to pay damages for breaching the PWA 1996 can be the basis for assessing contribution under the Civil Liability (Contribution) Act 1978 from a contractor in a scenario where the contractor's works, which were carried out on the Building Owner's behalf, contributed to the damage due to the contractor's negligence.[183]

Causation has been discussed in *Roadrunner Properties Limited v Dean,*[184] where the Court of Appeal has given guidance on how a court should scrutinise expert evidence with regards to causation of damage to property in a situation where the presumed cause is work to a party wall where the Building Owner failed to serve notice on the Adjoining Owner under the PWA 1996. The Court of Appeal noted that:[185]

> "… *a court should be prepared to take a reasonably robust approach to causation. If it can be shown that the damage which has occurred is the sort of damage which one might expect to occur from the nature of the works that have been carried out, the court must recognise that the inability to provide any greater proof of the necessary causative link is an inability which results from the building owner's failure to comply with its statutory obligations. In those circumstances, as it seems to me, the court should be slow to accept hypothetical and theoretical reasoning in relation to causation advanced by the building owner after the event. It is within the building owner's power to ensure that proper evidence is or could be available; and if the conduct of the building owner has chosen to deny the adjoining owner the opportunity to obtain evidence, then the court should be slow to accept ex post facto and hypothetical reasoning and theory. The essential requirement, of course, is that the claimant proves the causal link which he or it asserts; but, as I have said, if there is material from which such a causal link can properly be established, I think a*

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[183] *Crowley t/a Crowley Civil Engineers v Rushmoor Borough Council*[2009] EWHC 2237
[184] [2003] EWCA Civ 1816
[185] *Roadrunner Properties Limited v Dean* [2003] EWCA Civ 1816, para. 29

court, in those circumstances, should be slow to discard common sense in favour of expert hypothesis. …"

The Court of Appeal allowed the claimant's appeal holding that, where the Building Owner does not serve a notice with regards to work on a party wall in accordance with the PWA 1996, the Building Owner should be penalised as a result.

5.12 Failure to Agree on a Surveyor and Acting beyond the Realm of the Party Wall etc. Act 1996

Where either of the parties fails to agree to the appointment of a party wall surveyor and does not appoint its own party wall surveyor, the other party can appoint such a surveyor on the defaulting party's behalf under section 10(4) of the PWA 1996.

According to section 8(2) of the PWA 1996, it is an offence if the Adjoining Owner refuses a person access to its land to carry out works or obstructs a person from carrying out works (if the Building Owner has given a 14 days' notice of the proposed entry and is entitled to carry out works). In such a case, the Building Owner and its agents may break open with police assistance any fences or doors that prevent it from exercising its right of access to the adjoining land to carry out works. However, oversail cranes or scaffolding over the Adjoining Owner's land and buildings would constitute an actionable trespass.

If the Building Owner acts contrary to the party wall award or the rights it has under the PWA 1996 and causes loss and damage, it may be sued for damages in trespass or nuisance, or would be liable for breach of statutory duty if its acts beyond the rights granted under the PWA 1996 and the party wall award. The Adjoining Owner's remedy then lies with the courts and the remedy is damages (or injunction might be sought where appropriate).[186] It is not possible for a party wall surveyor to retrospectively issue an award to authorise such works. If the Building Owner fails to complete the works or has left the building in an unsafe and dangerous condition, the Adjoining

[186] *Udal and another v Dutton and another* [2007] EWHC 2862 (TCC)

Owner should raise the issue with the local authority building control department.[187]

5.13 Buying a Property When a Party Wall Award Has Already Been Made

When buying a property where a party wall award has already been made, the buyer should take certain precautions:[188]

(a) Party wall awards are personal to the original parties. It should be considered how its rights under the PWA 1996 are affected. A buyer of the Building Owner's interest with the benefit of a contract for purchase is an 'owner' under section 20 of the PWA 1996 and therefore can serve a party wall notice prior to the completion of the transfer. A buyer without the benefit of a contract for purchase will have to wait until contract completion before it can serve a new party wall notice and go through the same procedures as the seller. To avoid any delays if the works continue after the sale, the future buyer can give notice jointly with the current Building Owner meaning that the party wall award can be made with all relevant parties and take into account the current and future identities of the Building Owner (however this may not always be feasible).

(b) Where there was more recent work, the buyer should review the award, supplemental awards and other correspondence from the party wall surveyors to locate any damage or other problems. Enquiries of the seller should always be made.

(c) Assessing distribution of payments is vital (such as compensation or a contribution towards expenses) which may arise after the sale. If the proposed works fall within section 2 of the PWA 1996, no notice by the

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[187] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), para. 39, p.25

[188] Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), pp. 43-46 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022

Building Owner nor award is needed if the Adjoining Owner consents to the works in writing under section 3(3) of the PWA 1996. The Adjoining Owner's consent is likely to be personal to the original Building Owner. A buyer can prepare and serve a fresh notice on the Adjoining Owner once the buyer contracted to buy or bought the Building Owner's interest.

(d) Potential liability for breaches of the PWA 1996 – It has to be evaluated where such liability may rest after the sale. If the Building Owner's works go beyond the realm of the PWA 1996 and the Adjoining Owner suffers financial or physical damage as a result, the common law principles of nuisance, trespass and breach of statutory duty become relevant. The distinguishing factor is whether the issue giving rise to the loss was a one-off or is an ongoing tort.

(e) Adjoining Owner has consented to the works – Buyers of either Building or Adjoining Owner's interests should look at the distribution of payments (for example, compensation or contribution towards expenses), which may arise after the sale but out of party wall procedures which started during the seller's time as owner.[189] PWA 1996 rights and liabilities are personal to the original parties. A buyer of the Building Owner's interest should be able to buy free from such liabilities unless they were party to the original notice or had contracted to indemnify the seller for compensation payments arising after the date of sale. If such liability is taken on, this should be reflected in the purchase price and/or the buyer may want to get an indemnity from the seller as to any compensation payment that later becomes due from the new Building Owner to the Adjoining Owner as a result of the works commenced by the seller. If the buyer is buying from the Adjoining Owner, an agreement should be reached with the seller that any compensation due to the Adjoining Owner under section 7 of the PWA 1996 will be apportioned appropriately. Further, any liability as to the vesting of the works in the Building Owner under section 14(2) of the PWA 1996 should be

[189] *Selby v Whitbread* (1917) 1 KB 736

considered as well as contingent claw back provisions in sections 1(3)(b) and 11(11) of the PWA 19961996.

5.14 Party Wall Dispute Resolution Procedure under the PWA 1996 – Conclusion

It is clear from the title of this thesis that its focus is on the ways in which party wall disputes can be managed. The dispute resolution process under the PWA 1996 is an important part of this thesis. While this thesis promotes other mechanisms as well, as set out further below, one must not forget about the PWA 1996 dispute resolution mechanism. This is far from perfect and is further clarified as well as scrutinised in case law. It needs to be born in mind that rights to claim for, for example, negligence, nuisance, trespass, withdrawal of support, under other pieces of legislation etc. are not affected by the PWA 1996. Therefore, the dispute resolution process under the PWA 1996 is limited in its scope. However, it is an important and valid mechanism that is open to parties to party wall disputes.

The level of detail of how disputes are addressed under the PWA 1996 shows both reasoning and a decision tree how parties should behave under the PWA 1996 to solve party wall disputes and to benefit from the protection of the PWA 1996. While this is helpful to understand the rationale behind the mechanism, it is not the only mechanism one can follow and those mechanisms set out below offer sometimes a more pragmatic, emotionally sensitive, holistic (capable of covering other areas of law) and cost-/time-effective solution if the parties are willing to be open to them. In any case, both the mechanism under the PWA 1996 and those described at paragraph 6 below are voluntary (except once the parties end up in court, and even then, they can decide to settle if they both agree on this step, which courts support and promote).

6 Other Forms of Dispute Resolution as to Party Walls

Following on from paragraph 5 above and the party wall dispute mechanism under the PWA 1996, let us take a step in a different direction, namely what other dispute resolution options there are for parties to party wall disputes. The emotional burden of this type of disputes was well summarised in a House of Lords decision, where Lord

Hoffmann stated:[190]

> "*Boundary disputes are a particularly painful form of litigation. Feelings run high and disproportionate amounts of money are spent. Claims to small and valueless pieces of land are pressed with the zeal of Fortinbras's army. It is therefore important that the law on boundaries should be as clear as possible.*"

The above statement summarises the courts' view of neighbourly disputes in general. While the judicial attitude may continue in this direction, the fact remains that neighbourly disputes cannot be eradicated. Party wall disputes are a subsection of neighbourly disputes and since they cannot be entirely prevented, there are ways to manage the related disputes more efficiently. Senior members of the legal and surveying professions have issued a protocol for disputes between neighbours and the location of their boundary. It is aimed at both residential and commercial landowners and occupiers and the primary function of the protocol is to guide parties through neighbourly matter disputes. However, parties can cooperate with the provisions of the protocol purely if they choose. The protocol attempts to set out a structured process for neighbourly matter disputes where parties exchange information in line with an agreed timeline ideally leading to a swift dispute resolution minimising the cost, time and negative emotional impact involved.[191] However, the effectiveness of the protocol and the parties' adherence are not as clear cut or reliable as other forms of dispute resolution set out further below.

When it comes to party walls, the PWA 1996 regulates the dispute resolution process whereby a surveyor or surveyors issue a party wall award deciding the matters between the parties. Section 10 of the PWA 1996 applies to the resolution of disputes in relation to party walls and sets out a basis for the purposes of dispute prevention and resolution as to party walls, boundary walls and excavations located in the

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[190] *Alan Wibberley Building Ltd. v Insley* [1999] 1 W.L.R. 894, p. 895

[191] Stephanie Tozer, Guy Fetherstonhaugh QC, Jonathan Karas QC, Nicholas Cheffings, Matthew Ditchburn: *Protocol for Disputes between Neighbours about the Location of their Boundary (The Boundary Disputes Protocol)* (September 2017) <https://www.propertyprotocols.co.uk/the-boundary-disputes-protocol>

proximity of neighbouring buildings.[192] As noted above, a party wall award can be appealed. However, there is a difference between a valid award, with which the appellant is not content and an award that is defective and therefore null and void with no effect, which therefore requires no appeal. The assumption with a defective award should then be that there is no right to perform the works in the award or to pay any awarded costs. An example of a defective provision forming part of an award would be that the Building Owner must make good any damage caused to the property of the Adjoining Owner stemming from the performed work. This is because the PWA 1996 defines and limits the obligations of a Building Owner in relation to 'making good' (not including works carried under section 6 of the PWA 1996). When a valid award is appealed, this can lead to either a complete rehearing where the judge will consider all facts afresh considering new evidence or simply by reviewing what has been submitted already for the purposes of the award. The judge can modify or rescind the award. Costs linked to appeals can vary and courts will generally encourage the parties to settle the dispute by way of alternative dispute resolution.[193]

Surveyors investigate the dispute and communicate their decision in a party wall award as discussed above. While this is often the practical way forward, it is not the only way to resolve a dispute in relation to party walls and the abundance of case law mentioned in this thesis shows that. However, while it is possible to litigate a dispute, there are other methods to resolve disputes that may prove to be effective alternatives in the right circumstances where the parties do not want to resort to court. The various methods of resolving disputes without recourse to litigation relate to alternative dispute resolution, which is an overarching term relating to a number of dispute resolution methods. These include negotiations between the parties in dispute such as mediation (where lawyers have a general duty to advise clients on mediation)[194] or expert determination. However, expert determination has the potential to amount to an expensive, lengthy and complex process that may prove to provide little benefit to

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[192] Ministry of Housing, Communities & Local Government, "*Guidance – Preventing and resolving disputes in relation to party walls*" (published on 18 June 2013 and last updated on 12 May 2016) <https://www.gov.uk/guidance/party-wall-etc-act-1996-guidance> accessed15 May 2022

[193] Andrew Smith, "Party Walls: The Basic Fundamentals of Appeals and Injunctions," Child & Child <https://www.childandchild.co.uk/legal-guides/party-walls-rights-of-light-and-boundary-disputes/party-walls-the-basic-fundamentals-of-appeals-and-injunctions/> accessed 15 May 2022

[194] *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576

actual litigation. Alternative dispute resolution is growing in popularity often providing a faster and cheaper way to achieve an understanding between the parties. It also provides an avenue where the parties cannot or do not want to cut ties with each other and therefore seek to find a solution where the relationship can continue. Considering that party walls are linked to landowners/occupiers where the extreme solution to cut ties completely is achieved by leaving the relevant property, this may often be a burdensome and unfeasible solution. Courts encourage amicable dispute resolution between parties and where the parties refuse alternative dispute resolution without a reasonable foundation, this can result in court-imposed cost sanctions on either or both parties.[195]

However, it is not only the outright refusal to participate in alternative dispute resolution that is taken into account by courts. It is also the conduct of the parties during the alternative dispute resolution process itself that courts will consider where such conduct is considered to be unreasonable. For example, in *Malmesbury & Ors v Strutt & Parker*,[196] it was held that where parties are behaving in an unreasonable way during a mediation process, this is considered to be equal to an unreasonable refusal of the parties to participate in the mediation. In this case, this meant that the claimant's costs were reduced by 20%. However, the court was able to reach this decision because both parties to the dispute waived privilege covering the mediation. In most cases, parties will not be willing to waive privilege as to mediation or settlement negotiations in general and therefore the effect of this decision is somewhat limited.[197]

The reason why parties are usually unlikely to waive privilege in relation to mediation or settlement negotiation is because when a party puts forward a sum as part of a settlement offer, this could sway the court when making a decision on financial sums awarded. Parties will often therefore mark relevant correspondence as 'without prejudice save as to costs'. This means that while the parties can bring to the court's attention the fact that they attempted to settle/mediate or find a resolution by means of another alternative dispute resolution avenue, the actual figures, conditions and

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[195] *Longstaff International Ltd v Evans (Costs)* [2005] EWHC 4 (Ch)
[196] [2008] EWHC 424 (QB) (18 March 2008)
[197] Alexander Walsh, "*A practical guide to neighbour disputes and the law*," (Law Brief Publishing 2020), pp. 73-74

facts of such avenues remain confidential and the court cannot have access to the information. The benefit of this is that the parties can show the court that they tried to settle/resolve the dispute out of court but unfortunately were not able to reach an agreement. In particular, where a party can show that it proactively sought alternative dispute resolution avenues and the other party refused to co-operate, the court may take this into account when awarding costs.

Disputes on neighbourly matters have a tendency to escalate relatively quickly, which is why alternative dispute resolution avenues provide a good mechanism to resolve a dispute as early as possible resulting in saving both time and cost.[198] The main benefit for a negotiated settlement is that the parties have the freedom to accept the terms of the settlement, influence those terms, and, should the terms prove unacceptable to them, walk away from the settlement discussions in the worst-case scenario. In addition, negotiated settlement saves cost and risk connected to a court process and gives the parties the option to keep the terms of the settlement confidential. The relationship between the parties to a negotiated settlement is more likely to 'survive' the dispute than if the parties went to court. This is particularly valuable in relation to neighbouring residential property owners but also developers and contractors in relation to construction sites related to new builds. If a relationship breaks down, it puts substantial strain on neighbours where one or both can decide that the only option is to leave and therefore carry the burden of intricacies linked to selling or leasing their property. Similarly, where there is a new development in the process of being built, preserving the relationship means a relatively smooth process of completing the new development. Once a settlement has been agreed, the parties are more likely to honour the terms of the settlement agreement into which they entered voluntarily compared to a court judgment imposing terms with which the parties may not be comfortable.[199]

Where alternative dispute resolution fails and the parties proceed to court, the parties need to follow the relatively rigid court procedure, which is likely to result in a substantial loss of time and money for the parties involved. Party wall appeals are held

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[198] *Ibid.*, p. 74

[199] Andrew Smith, "*Party Walls: The Basic Fundamentals of Appeals and Injunctions*," Child & Child <https://www.childandchild.co.uk/legal-guides/party-walls-rights-of-light-and-boundary-disputes/party-walls-the-basic-fundamentals-of-appeals-and-injunctions/> accessed 15 May 2022

in the county court. However, should a party not be content with the county court decision, it has a right to appeal to the Court of Appeal (only with the Court of Appeal's permission). This is because the appeal of a county court decision related to a party wall award is treated as a second appeal for the purposes of the CPR. The Court of Appeal is under no obligation to grant such a permission.

> "*The Court of Appeal will not give permission unless it considers that–*
>
> *(a) the appeal would–*
>
> *(i) Have a real prospect of success; and*
>
> *(ii) Raise an important point of principle or practice; or*
>
> *(b) There is some other compelling reason for the Court of Appeal to hear it.*"[200]

The parties need to be aware that they might find themselves in a situation where the Court of Appeal does not give permission to appeal a county court judgment and the dispute therefore cannot be appealed further. An exception to this rule, however, is whether the validity of an award is in question and where the county court finds that the award is not valid. Where a party wishes to appeal such a finding, such an appeal is treated as first appeal. Therefore, it will be the judge in the county court giving permission to pursue the appeal and not the Court of Appeal. While the PWA 1996 does not indicate whether the appealed decision is binding but not final or whether it is suspended, the logical assessment is that the appealed decision is binding but not final. This is because, for example, it would be unconscionable for an Adjoining Owner to delay the enforcement of an award by filing an appellant's notice. The Building Owner could incur significant loss, such as contractual delay costs or funding expenses. This would be particularly unfair where the appeal lacks merit. The Adjoining Owner has the option to apply for an interim injunction if it does not wish to comply with the award and to prevent its consequences while the appeal procedure is in motion. At the same time, where an appellant wishes to apply for an interim injunction, it must provide the court with a cross-undertaking in damages

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[200] Mark Thomas and Claire McGourlay "*English Legal System Concentrate: Law Revision and Study Guide*" (Oxford University Press 2017), p. 248

compensating the Building Owner. Such an undertaking is to cover losses if it is concluded that the appeal was baseless. Without the undertaking, the appellant's application for an interim injunction is likely to be refused by the court. If it is found that the application for the interim injunction lacks merit and the appellant has to pay the cross-undertaking in damages, there will be an enquiry determining how much should actually be paid. The enquiry can last months.[201] The enquiry itself is a new claim determined based on evidence.[202]

Alternative dispute resolution avenues can appear to be much more attractive to the parties involved in a dispute and courts, which are under financial pressure, encourage settlement out of court as well or at least a serious attempt at settlement prior to starting court proceedings. Court proceedings provide parties to a party wall dispute with much less control and flexibility. In addition, in general, court proceedings are public and so if the parties would like to keep the details of the dispute confidential, alternative dispute resolution may serve them better. Further, considering the relatively limited value in a party wall dispute, parties should consider how practical it is for them to go to court, where legal and other fees have the potential of becoming much higher than the actual value in dispute. Unfortunately, and as mentioned earlier, due to such disputes being often of a highly emotional nature, parties sometimes resort to court proceedings ignoring such practical points like cost and time involved. While this is not ideal, and also is not completely preventable, hope lies in ensuring that the parties are aware of alternative dispute resolution avenues available to them and that even during court proceedings, such proceedings can be suspended in order for the parties to be able to consider and discuss settlement options. It is the spirit of this thesis to promote such alternative dispute resolution avenues to help parties to party wall disputes find alternative solutions out of court, to save money, time, emotional distress and to be able to move on to pastures new.

Mediation is one of the most effective avenues when seeking to resolve a dispute

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[201] *Gray v Elite Town Management Limited* [2016] 11 WLUK 91

[202] Andrew Smith, "*Party Walls: The Basic Fundamentals of Appeals and Injunctions*," Child & Child <https://www.childandchild.co.uk/legal-guides/party-walls-rights-of-light-and-boundary-disputes/party-walls-the-basic-fundamentals-of-appeals-and-injunctions/> accessed 15 May 2022

amicably, especially where the parties struggle to communicate without a third party (a mediator). The cost and time involved are significantly less than those spent on court proceedings for either party. Mediation is relatively straightforward. The parties meet and an independent mediator encourages them to discuss the issues in dispute and reach a resolution. Usually, the mediator is a solicitor or barrister, who has relevant experience in the field. The mediation process provides for flexibility, however, usually the parties start with meeting in the same room together with their lawyers and make the submissions to the other side as well as the mediator. This is however not compulsory. Thereafter, the parties can split into separate rooms and the mediator goes to and from each of the parties as an intermediary encouraging the parties to strip the issues to the main points and settle. This is particularly helpful where the parties are emotionally involved in the dispute as it helps deescalate the situation by having an intermediary. As party wall disputes can be acrimonious, it can be better to agree not to have a meeting with everyone in the same room at the start to ensure that settlement negotiations are not jeopardised by heightened emotions or even confrontation. In such a case, each party will proceed to their own meeting room while the mediator goes from one party to the other to assist the process. Sometimes, it is then possible to have an all parties meeting later on in the mediation process once the parties have a better idea of what they are willing to accept, and the negotiation has assumed a positive direction. A mediation settlement outcome provides for more flexibility than a ruling of the court. As mediation is confidential (being usually covered by without prejudice privilege), the parties benefit from the dispute and outcome not being on public display. The time and expense in relation to preparing for a mediation is limited compared to the much more laborious preparation for a trial. All the preparation usually involved in relation to a mediation is for the parties or their lawyers to draft a Position Statement and to prepare the mediation bundle with relevant evidence each party relies on. Mediations are, however, not limited to be used only prior to parties deciding to go to court. On the contrary, mediations can take place at any stage during the court proceedings. Strategically, however, if a mediation is to be started during court proceedings, parties will often time this for stages, for example, post-disclosure or before witness statements of fact are exchanged. This is due to the fact that at these points in time, the parties will have substantial information available to them to be able to assess their prospects of success in a mediation. In terms of cost, the parties generally each cover the costs of their own lawyers and half of the

mediator's fees.[203]

As for other alternative dispute resolution avenues, while arbitration may spring to mind, it has been well established that the PWA 1996 dispute resolution process does not relate to arbitration or statutory arbitration[204] (albeit section 10 of the PWA 1996 refers to an 'award').[205]

In *Dillard v F & C Commercial Property Holdings Ltd*,[206] it was held that where there is a potential dispute under the PWA 1996, the parties have the right to enter into a binding agreement where they agree to pursue an alternative dispute resolution process meaning that they are 'opting out' of the PWA 1996.[207]

> *"… the primary pointer to what they must have intended is the reference to "any dispute" arising under Clauses 7.5 and 10.4 being referable to expert determination. What the parties must be taken to have agreed is that all such disputes, whether otherwise verbally covered by the wording in Clause 11, would be referable exclusively under Clause 12 and not under the party wall dispute resolution procedure. (j) It is accepted rightly that parties may contractually opt out of the Act, as the parties have done here in part at least relating to the relief set out in Clauses 7 and 10 of the Deed*.[208]

Parties can opt for alternative dispute resolution of their choosing and opt out of the PWA 1996. In this case, the parties wished to proceed with expert determination. This is a process where the parties agree to jointly appoint an expert, who then determines non-legal issues that are in dispute between the parties. This is done on a binding basis. This alternative dispute resolution avenue is appropriate in disputes where the parties do not have a dispute relating to the facts or the applicable law. However, in

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[203] Alexander Walsh, "*A practical guide to neighbour disputes and the law*," (Law Brief Publishing 2020), p. 75
[204]Party Wall &Boundaries Hub "*What can party wall surveyors learn from arbitration? (Part 1)*," 26 November 2019 <http://www.boundariesbook.co.uk/?p=985> accessed 15 May 2022
[205] *Lea Valley Development Ltd v Derbyshire* [2017] EWHC 1243 (TCC)
[206] [2014] EWHC 1219 QB
[207] Nicholas Issac QC and Matthew Hearsum, "*The New Party Wall Casebook*" (Property Publishing, 2019), pp. 164-165
[208] *Dillard v F & C Commercial Property Holdings Ltd* [2014] EWHC 1219 QB, para.17

complex cases, expert determination can reach the cost and time investment of court proceedings.[209]

A rare case in relation to the alternative dispute resolution process is *Mohamed & Lahrie v Antino & Stevens*,[210] where an injunction was awarded preventing party wall surveyors making an award where the parties had an agreement as to the way in which to settle their past as well future disputes.[211] This was to encourage and support the parties free will as to the way in which they wanted party wall disputes to be dealt with.

There are a number of critical considerations set out below that parties to party walls should consider to ensure that any dispute resolution process runs as smoothly as possible. It is advisable for the parties to keep a record of their negotiations as well as any settlement attempts, which will be considered potentially as mitigating factors by courts, should the situation escalate. Any agreement between the parties as to how to proceed with works on a party wall should be recorded in writing for future reference and potential use in court to prevent any inconsistencies, miscommunications and establish certainty of what the parties agreed. The value of recordkeeping must not be underestimated and is crucial in any kind of dispute resolution process and even more so in court. The parties would be always wise to shield themselves in this way as it is impossible to say whether a potential dispute could arise and whether it may or may not end up in court. Preventative behaviour of this nature ideally assists all parties involved, including the judge, mediator, surveyor(s), experts, witnesses and most importantly, the actual parties to the relevant party wall disputes.

It is a good idea to consult a chartered building surveyor for advice before party wall works start (whether as an Adjoining Owner or a Building Owner). This will ensure that the party/parties are well informed and can communicate before a dispute ensues and make sure there is a record of any such communications and any relevant evidence

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[209] Alexander Walsh, "A practical guide to neighbour disputes and the law," (Law Brief Publishing 2020), p. 76
[210] (2017) Central County Court, unreported, 13 December 2017
[211] Nicholas Issac QC and Matthew Hearsum, "*The New Party Wall Casebook*" (Property Publishing, 2019), pp. 262-263

in relation to such works (Chapter VI, paragraph 3.4).

Transparency, communication and keeping the relevant authorities informed is a good way to mitigate the likelihood of complaints and resulting disputes. It also provides a robust defence where a statutory nuisance prosecution is started nevertheless by a local authority for breach of an abatement notice. A developer can then defend its case by highlighting that it complied with the necessary requirements. Unfortunately, this would not be considered a defence to a complaint lodged by a party, other than a local authority (Chapter VII, paragraph 3.1).

Obtaining legal advice before starting a dispute or shortly after the other party has started the dispute is another commendable step so that the parties are fully informed of their options and have an idea of their likelihood of success and best strategy based on legislation, case law and practical aspects benefiting from legal advisers' prior experience and specialised knowledge. This will also help the parties to present the strongest argument possible. However, consulting a lawyer as a preventive measure can assist in managing or even avoiding a dispute in time.

While a practical point, it is worth mentioning: it can be invaluable to maintain a trail of paper evidence showing parties' offers and alternatives suggested and lack of cooperation and response from the neighbours. If such offers are made on a 'without prejudice basis, subject to costs', while the content of settlement offers remains confidential, the fact that a party attempted settlement is disclosable to the relevant decisionmaker (e.g. court, mediator, arbitrator, surveyor). This alone shows the parties' behaviour and can influence the decisionmaker's award on costs as an attempt to settle is viewed as a positive step forward. Developers should also maintain evidence of their advance notice of proposed works. Maintaining such conduct that the developer can show to the court is more likely to win the court's sympathy (Chapter VII, paragraph 4.5).

The best way forward is transparency and clear communication between the parties before issues arise (Chapter VII, paragraph 4.6). Once the parties are embroiled in litigation, usually the communication and transparency and co-operation between the parties slows down, which can pave the path for inflexibility and further escalation.

An engineering survey can help allocate responsibility before a disaster ensues but

most importantly help prevent such disasters from occurring (Chapter VIII).

Party wall disputes are often linked to heightened emotions considering the personal nature of the disputes and that the parties are likely to have to come across each other after the dispute conclusion on a long-term basis due to party walls being linked to ownership/occupation of land. Considering a potential need for the relationships to continue, alternative dispute resolution can offer a more palatable avenue than courts where one of the parties or both parties are not happy with the outcome. This is why mediation is becoming increasingly popular as it saves both money and time, but also leads to a more amicable settlement on terms usually more acceptable to the parties than a court ruling would be.

7 Conclusion

This chapter focuses on the different party wall dispute resolution options. One should assess and give consideration to the different dispute resolution avenues without assessing the notice mechanism under the PWA 1996 and related dispute resolution process. Of course, if a party to the dispute is not happy with the outcome of an award under the PWA 1996, it can appeal and go to court.

As noted above, the notice mechanism under the PWA 1996 is not strictly speaking compulsory and it is also not the only party wall dispute resolution avenue. This thesis promotes the importance and benefits of alternative dispute resolution to assist parties to disputes save money, time and stress surrounding party wall disputes. While it is not always possible to settle out of court, it is an avenue that is worth at least considering before going to court. Parties to a settlement agreement have much more power over the terms of the arrangement and are more likely to willingly comply than in a situation where terms are dictated by the court and may result in dissatisfaction of one or more (all) parties to the dispute. The court is likely to consider the conduct of the parties to the dispute, which also includes a party refusing to participate in settlement negotiations.

In essence, parties to a party wall dispute have a certain level of control as to how far they are willing to go, how much they are willing to spend and how much time they

want to devote to a dispute.

A third party, (for example, a mediator), may be helpful in situations where parties have reached a negotiation standstill due to heightened emotions. Having a third party to assist the negotiation can help focus on the facts in dispute and on the pragmatic solutions that can benefit the parties.

This chapter brings together the different dispute resolution mechanisms and options parties to party wall disputes may wish to pursue depending on the circumstances of each individual case.

V. CHAPTER FIVE – OTHER STATUTORY RIGHTS RELEVANT TO PARTY WALLS

1 Introduction

While the PWA 1996 focuses on party walls, it is not the only statute that is relevant to party walls. To avoid any doubt, the PWA 1996 does not authorise works that infringe on another piece of legislation and vice versa, other pieces of legislation cannot simply override the PWA 1996 (with exceptions). An award under the PWA 1996 cannot serve for the purpose of authorising works that infringe another piece of legislation. What this means is that while an award can authorise certain works to be done, if a consent or permission is required under another statute, the Building Owner carrying out the works is not absolved from such consent or permission just because it holds an award authorising its works under the PWA 1996.

Section 7(5)(a) of the PWA 1996 is also clear on awards not dispensing with any need for statutory consent. An award cannot, for example, allow for building works to be carried out without having to comply with the relevant safety requirements. An award can also not serve for the purposes of allowing materials to be used that are not permitted by the relevant building regulations. However, an issue may arise where the award sets out work suggested by a Building Owner to be done in a modified way due to technical reasons. This will particularly be an issue where the modification may result in the need for a planning application permission or listed building consent or even for building regulations to be relaxed (which is possible under the powers conferred by the Building Act 1984 on local authorities). The fact remains that surveyors are not prevented by the PWA 1996 from awarding works that will need a statutory consent, including, for example, a planning permission or listed building consent under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The PWA 1996 has also no impact on building regulations requirements or work on construction sites regulations.[212] As the

[212] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 215

PWA 1996 is not the only piece of legislation that is relevant to party walls, in this chapter, the focus is on other pieces of legislation that are relevant to party walls. There are a number of key pieces of legislation that interact with, overlap with or even to a limited extent override the PWA 1996. These key pieces of legislation are therefore analysed in this chapter.

2 Access to Neighbouring Land Act 1992

2.1 Relevance of the Access to Neighbouring Land Act 1992 to Party Walls

The Access to Neighbouring Land Act 1992 (**ANLA 1992**) is included in this thesis for a simple reason: it applies where the PWA 1996 does not in the context of landowners' access to neighbouring property to carry out works that are reasonably necessary for preserving their own land, or part of it.

The ANLA 1992 came into force in January 1993. Although it does not mention party walls or the PWA 1996 specifically, it has a limited relationship with the PWA 1996. The ANLA 1992 does not use the same terminology as the PWA 1996, however for the purposes of this thesis, references to the Building Owner and Adjoining Owner used in the PWA 1996 are also used in connection with the ANLA 1992.

Without having an easement over the neighbour's land or the consent of the Adjoining Owner, there appears to be a point of standstill if a building is on or near a boundary where the Building Owner needs to carry out works to the building for the purpose of which it needs to access the Adjoining Owner's land. This is an example of a situation where works cannot be carried out without access to such a building.[213] Prior to the ANLA 1992 having been passed, Adjoining Owners had virtually no right to go onto their neighbour’s land unless an express easement had been granted, such as a right to maintain drains, pipes and wires.

The ANLA 1992 gives the Building Owner the right to obtain access to the Adjoining Owner's land for the purposes of carrying out works in limited circumstances where the Adjoining Owner refuses to consent to the Building Owner having access to its

[213] Stephen Bickford-Smith, David Nicholls, Andrew Smith, “*Party Walls Law and Practice*” (4th edn, LexisNexis 2017), p. 213

land and where there is no easement that could assist the Building Owner in accessing the land in question. An example of the Adjoining Owner's consent is a situation where the Adjoining Owner and the Building Owner enter into a scaffolding or crane oversail licence (discussed further below).

According to *Megarry & Wade*, rights emanating from the PWA 1996 have a substantially wider scope than those enjoyed by Building Owners that need accessing the Adjoining Owners' property for the purposes of carrying out works that are reasonably necessary to preserve their own land (all or in part). These rights provided by the ANLA 1992 will only be relied on by a landowner where the PWA 1996 does not apply.[214]

Where the Adjoining Owner refuses to grant access to its land to a Building Owner, the Building Owner has the right to make an application to the county court under Civil Procedure Rule (**CPR**) 8 for the purposes of obtaining an access order.[215] If the court issues an access order, it needs to be satisfied that the works are reasonably necessary for the preservation of the whole or any part of the Building Owner's land and that the works cannot be carried out without access to the Adjoining Owner's land (or that carrying out such work would be substantially more difficult without the requisite access).[216]

There are certain works that are automatically considered to be reasonably necessary in order for the land to be preserved. Such works are called 'basic preservation works' and include those listed in section 1(4) of the ANLA 1992:

> "… *(a) the maintenance, repair or renewal of any part of a building or other structure comprised in, or situate on, the dominant land;*
>
> *(b) the clearance, repair or renewal of any drain, sewer, pipe or cable so comprised or situated;*
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> *(c) the treatment, cutting back, felling, removal or replacement of any hedge,*

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[214] Megarry & Wade: *The Law of Real Property* (9th edition), Chapter 29 - Species of Easements and Profits, Section I. Party Walls, para. 29-047
[215] *Ibid.*, s 1(1)
[216] *Ibid.*, s 1(2)

tree, shrub or other growing thing which is so comprised and which is, or is in danger of becoming, damaged, diseased, dangerous, insecurely rooted or dead;

(d) the filling in, or clearance, of any ditch so comprised; …"

However, a court will refuse to issue an access order where the works would interfere with the Adjoining Owner's right to enjoy its land. Alternatively, the court will also refuse to issue an access order where the works to a party wall would cause hardship to the Adjoining Owner.[217]

Where the court grants an access order, this has to include details of the work that the court allows to be carried out by the Building Owner on the Adjoining Owner's land as well as the timeline as to when such works can be carried out, and compensation, should there be any loss incurred by the Adjoining Owner. Depending on the individual circumstances of each case, the access order can include also some other terms, for example, payment to the Adjoining Owner of a fair and reasonable sum in exchange for the Building Owner's privilege of entering the Adjoining Owner's land with the exception where the works are to residential land.[218] Such sum is calculated by reference to the financial advantage of the order to the applicant (Building Owner) and connected persons and the level of inconvenience that the respondent (Adjoining Owner or other person) may suffer due to the entry.[219]

Although there may be some overlap between the PWA 1996 and the ANLA 1992, where the PWA 1996 applies, the Building Owner has to comply with its provisions. A Building Owner is not permitted to use an access order issued under the ANLA 1992, in order to side-step the requirements under the PWA 1996. Access rights that can be acquired under the ANLA 1992 are not necessary as the PWA 1996 gives a Building Owner rights to enter the Adjoining Owner's land. Where the PWA 1996 does not apply, the ANLA 1992 may be applied to give a Building Owner the right to access an Adjoining Owner's land to carry out such works. Putting it explicitly, the ANLA 1992

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[217] *Ibid.*, s 1(3)
[218] *Ibid.*, s 2
[219] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 214

cannot be used to circumvent the PWA 1996.

During the passage of the Bill in relation to the PWA 1996, the Earl of Lytton noted:[220]

> "*The Bill will have no effect on title. The wall owned by one party or another is not a party wall, nor does it cut across provisions for easements contained in titles. It is not designed to affect common law rights or support or conflict with other statutory requirements … the Bill dovetails in with the Access to Neighbouring Land Act. I am satisfied that there is no conflict with that. Statutory consents such as planning, listed buildings and Building Regulations will be unaffected …*"

It however transpired that the PWA 1996 does not dovetail in with the ANLA 1992 in the case of *Dean v Walker*,[221] which is known for being of great importance for the invention of the new category of 'party and party wall'.[222]

In this case, Walker needed to repoint a free-standing external wall and obtained an order giving them access to Dean's property so that Walker could carry out repairs to a wall. The wall marked the boundary between Dean's and Walker's properties. Dean resisted the application under the ANLA 1992 noting that the ANLA 1992 "*applied only to works to the dominant land and that either the whole wall, or at least the neighbour's side of it, was part of the servient land*."[223]

Dean appealed the order that granted Walker access to Dean's property. Grounds for the appeal included the two main arguments set out below.

(a) The access order authorised work to be done on part of a party wall which belonged to Dean. The ANLA 1992 gave no authority for the order to be made.

(b) Walker did not own the part of the wall on which the work was authorised.

According to Dean, the application for access was also not necessary because Dean

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[220] *Ibid.* p. 203
[221] (1996) 73 P&CR 366, CA
[222] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 214
[223] *Ibid.*

was always willing to agree for the work to be carried out.

The appeal was dismissed on the grounds set out below.

(a) As the affected part of the party wall that needed repair works to be carried out belonged to Walker, Walker was entitled to the order as the repairs were reasonably necessary and there was no evidence of Dean's willingness to consent to the necessary access.

(b) The Court of Appeal did not have to assess whether the judge at first instance was correct in concluding that the wall belonged to Walker. However, the Court of Appeal determined that the court at first instance was correct in that a wall could be a party wall in part and belong in another part to one of the joint owners separately. (This followed judgments in *Knight v Pursell*[224] and *Weston v Arnold*).[225] The wall in this case was coextensive between Dean's and Walker's properties and therefore belonged to Walker. Therefore, it was not necessary to determine whether the ANLA 1992 applied to works on a neighbour's land.[226]

The Court of Appeal concluded that the ANLA 1992's reference to works 'to land' is not limited to dominant land only. Therefore, it was not necessary in this case to determine ownership of the wall, which was split vertically. The Court of Appeal's judgment shows that there is an overlap between the PWA 1996 and the ANLA 1992. The wall in the case was a Party Fence Wall. Therefore today (at the time of the case, the PWA 1996 was not in force yet), the ANLA 1992 would not be necessary or sufficient for the Building Owner's purpose. An order under the ANLA 1992 cannot override the compulsory requirements of the PWA 1996. In addition, an award under the PWA 1996 now carries rights of entry allowing access without having to apply for an order under the ANLA 1992. It would therefore seem that within the overlap between the PWA 1996 and the ANLA 1992, where the works are needed within the PWA 1996, the ANLA 1992 no longer applies. This limits the scope of the ANLA 1992

[224] (1879) 11 Ch. D. 412
[225] (1872-73) L.R. 8 Ch. App. 1084
[226] *Dean v Walker* (1997) 73 P. & C.R. 366

substantially. However, there may be situations where the Building Owner will need to apply both the PWA 1996 and the ANLA 1992. This would be the case where the Building Owner needs access for repair or maintenance work to its own property not falling within the PWA 1996 as well as a party wall (where the PWA 1996 applies). This is because where the purpose of works is not carried out pursuant to the PWA 1996, an award issued under the PWA 1996 does not authorise entry in relation to such works.[227] For the purposes of this thesis, the ANLA 1992 is noted because of its interplay with the PWA 1996, however, its scope and application is fairly limited in this context but for the exception mentioned above regarding the Building Owner's need of access for work to its own property not falling within the PWA 1996.

2.2 Practical Consideration – Scaffolding and Crane Oversail

In relation to development sites, where construction is ongoing, arranging legitimate access is crucial to be able to facilitate such construction efficiently, to maintain a property and to build near a boundary. For this purpose, developers can seek to enter into scaffold or crane oversail licence agreements with Adjoining Owners, which includes relevant property owners as well as leaseholders.

Where there are works that do not fall under the PWA 1996, trying to access the relevant property or party wall without obtaining permission first from the Adjoining Owner is likely to lead to trespass. Therefore, permission is required from the Adjoining Owner prior to accessing its land for the purpose of legitimate repairs.[228]

However, it is not possible to force the Adjoining Owner to enter into, for example, a scaffolding or crane oversail licence. Similarly, where there is a right of way over another property within the deeds, this does not automatically mean that the developer or Building Owner has the right to erect scaffolding or a crane over the Adjoining Owner's land.

Section 8 of the PWA 1996 (focussing on rights of entry) is however likely to extend to

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[227] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 215

[228] *John Trenberth Ltd v National Westminster Bank Ltd,* (1980) 39 P. & C.R. 104 (1979)

include erecting scaffolding as long as it is used for the purposes of the PWA 1996. Similarly, section 8 of the PWA 1996 does not entitle the Building Owner to oversail cranes over the Adjoining Owner's land, which could amount to actionable trespass. The main reason is because scaffolding is likely to be needed for the required access to perform works in relation to the party wall, whereas the same argument is less likely to apply to cranes. To err on side of caution, it is advisable to enter into a scaffolding / crane oversail licence agreement and set out the exact nature of the scaffolding / crane oversail, the duration of the scaffolding / crane being present and its purpose as well as any pecuniary advantage obtained by the Adjoining Owner under the licence.

In *London & Manchester Assurance Company Ltd v O & H Construction Ltd*,[229] a dispute arose between adjoining owners of areas of old London quays. The court held that the defendants unlawfully encroached on the claimants' property. This is because the defendants demolished a party wall without obtaining a consent and in its place built their own structures encroaching onto the claimants' land. The court made mandatory interlocutory orders so that the offending structures were to be removed. The defendants also built over part of a footpath that was on the claimants' part of the boundary. In addition, the defendants swung a crane over the claimants' land without having obtained a permission prior to doing so. In his judgment, Harman J noted:

> "*I did, however, make an order restraining any trespass by the boom or jib of the crane over the plaintiffs' land. It is, of course, notorious that the use of a crane swinging round from the useful position upon a neighbouring site is liable to intrude into the airspace of other persons and thereby to commit a trespass. The matter has been the subject of a good deal of litigation. It is, in my view, beyond any possible question on the authorities and the law that a party is not entitled to swing his crane over neighbouring land without the consent of the neighbouring owner. Upon that basis, I accepted an undertaking, having said that I should impose an order. An undertaking was of course just as binding and even more effective than an order, because it did not need service and a penal notice endorsed upon it in order to bite. The purpose of the undertaking was to restrain any permission or causation of any part of the crane trespassing*

[229] (1990) 6 Const. L.J. 155

over the plaintiffs' land. As it seems to me, that undertaking which I accepted over the effective hearing of the motion can only properly now be continued, if necessary by order, over trial of this action. I have heard nothing from Mr. Ellis, who has been most eloquent in his attempt to make bricks without straw, which could conceivably justify the trespass by swinging the crane over the neighbouring site."[230]

It is irrelevant whether the crane is or is not carrying a load over the Adjoining Owner's land as the jib itself can constitute trespass (without a crane oversail licence, where PWA 1996 does not apply and where there is no express right in the property deeds). This is based on the decision in *Anchor Brewhouse Developments Ltd v Berkley House (Docklands Developments) Ltd*,[231] where Scott J held:

"*It is in my judgment well established that it is no answer to a claim for an injunction to restrain a trespass that the trespass does no harm to the plaintiff. Indeed, the very fact that no harm is done is a reason for rather than against the granting of an injunction: for if there is no damage done the damage recovered in the action will be nominal and if the injunction is refused the result will be no more nor less than a licence to continue the tort of trespass in return for a nominal payment.*"[232]

A developer, who needs to use a crane that will oversail over the Adjoining Owner's land, needs to communicate with the Adjoining Owner in order to secure an oversail crane licence agreement, usually for a pecuniary advantage. Again, the Adjoining Owner is in a stronger position during such related negotiations particularly if the developer's scheme depends on the Adjoining Owner's acquiescence, which may drive the pecuniary sum upwards. In legal terms however, the licence will protect the developer and ensure that it is not committing trespass[233] onto the Adjoining Owner's land when the developer's crane is oversailing the Adjoining Owner's land.

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[230] *London & Manchester Assurance Company Ltd v O & H Construction Ltd* (1990) 6 Const. L.J. 155, para. 158
[231] (1988) 4 Const. L.J. 29
[232] *Anchor Brewhouse Developments Ltd v Berkley House (Docklands Developments) Ltd* (1988) 4 Const. L.J. 29, para. 33
[233] *John Trenberth Ltd v National Westminster Bank Ltd,* (1980) 39 P. & C.R. 104 (1979)

3 Boundary Determination and Related Legislation in the Context of Party Walls

3.1 Introduction

Boundary determination is an important topic to be analysed in conjunction with party walls as these can demarcate boundaries between properties. The PWA 1996 refers to 'boundary walls' as section 1 of the PWA 1996 notes that it will have effect:

> "*where lands of different owner adjoin and (are not built on at the line of junction; or (b) are built on at the line of junction only to the extent of a boundary wall (not being a party fence wall or the external wall of a building), and either owner is about to build on any party of the line of junction.*"

Further, section 2(1) of the PWA 1996 relates to "*where lands of different owners adjoin and at the line of junction the said lands are built on or a boundary wall, being a party fence wall or the external wall of a building, has been erected*."

In light of the PWA 1996 referring to 'boundary walls', it needs to be clarified what a 'boundary' is and how it is determined as well as its link to party walls. Considering the boundary of a property determines what rights and liabilities of a property owner or occupier will operate, it is important to have clarity as to how boundaries are established.

The characteristics of a boundary include:[234]

(a) A boundary is a line that divides two contiguous parcels of land.[235]

(b) A boundary may be physical, in that it is marked by a physical feature, which may be natural (such as a river)[236] or artificial (such as a wall).

(c) A boundary is fixed by acts of owners that are proven, statutes/orders of

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[234] Halsbury's Laws of England, 1. Delimitation of boundaries (1) Nature of boundaries 301. Definition of a boundary.
[235] *Stepney Corpn v Gingell, Son and Foskett Ltd* [1909] AC 245, HL
[236] *Scratton v Brown* (1825) 4 B & C 485; *Bickett v Morris* (1866) LR 1 Sc & Div 47; *Holford v Bailey* (1849) 13 QB 426)

relevant authorities having jurisdiction or by legal presumption (where there is no statute or order fixing the boundary).

The first source of information is the title deeds establishing the boundary line. If part of the description is correct, that part can be read on its own and independently from an incorrect part, which can be rejected.[237] If there are several conflicting descriptions of the boundary line, the court must establish the parties' true intentions. Although this should be done from the written instrument, extrinsic evidence can be admitted, if the description is too general, contradictory, uncertain or ambiguous to set out the correct boundary lines.[238]

Where the description and plan conflict:

(a) where the plan is described to be 'for identification purposes only', the description is the prevailing source[239] but where the description is not adequate, the court may conclude that the plan determines the parties' intentions;[240]

(b) where the description of the property includes the wording 'more particularly delineated or described on the plan', the plan will prevail;[241] and

(c) where the deed describes the plan as being 'for identification purposes only' and further describes the property as being 'more particularly delineated on the plan', the two statements cancel each other out in which case neither of the plan or description dominates.[242] It is ultimately the grantor's responsibility to ensure that a plan is accurate as a deed is construed *contra proferentum* (against the interests of the grantor). An erroneous plan may be disregarded where the parcels clause is clear.[243] If there is a transfer or conveyance describing the land by reference to a

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[237] *Llewellyn v Earl of Jersey* [1843] 11 M. & W. 183
[238] *Lyle v Richards* (1866) L.R. 1 H.L. 222
[239] *Hopgood v Brown* [1955] EWCA Civ 7; *Neilson v Poole* (1969) 20 P&CR 909
[240] *Wigginton & Milner Ltd v Winster Engineering* Ltd [1978] 1 WLR 1462; *Targett v Ferguson* (1966) 72 P&CR 106)
[241] *Eastwood v Ashton* [1915] AC 900
[242] *Neilson v Poole* (1969) 20 P&CR 909
[243] *Maxted v Plymouth Corporation* (1957) 169 EG 427

plan of very small scale, related circumstances need to be taken into consideration.[244] Where there is a conflict between the dimensions on a plan and measurements scaled from it, resolution comes from reference to extrinsic evidence.[245]

Determining where the boundary lies is crucial in cases where the party wall is positioned on such a boundary. Where the boundary is not clearly set out in the title deeds, there are a number of legal boundary presumptions that can assist. It is possible to submit evidence to rebut such presumptions. Examples of established legal presumptions include roadways, hedges and ditches, non-tidal rivers and streams, lakes or sea-shores. However, these cannot apply when section 60 of the Land Registration Act 2002 determines the boundary.[246]

3.2 Registered Land Boundaries

3.2.1 General Boundary Rule

Ordnance Survey maps form the basis of Land Registry plans. However, such Ordnance Survey maps are subject to accuracy and plotting limitations. Land Registry title plans are created based under the 'general boundaries rule' as the legal boundary is usually uncertain. This means that the exact boundary line remains undetermined by the Land Registry with the exception where an application is made for the exact boundary line to be ascertained, which eventually leads to this being added to the Land Registry plan. The Land Registration Rules 2003/1417 (**LRR 2003**) used to set out the general boundary rule and the procedure for fixing boundaries, which is supporting the Land Registration Act 2002 (**LRA 2002**). Both came into force on 13 October 2003. As the Land Registry accepts there may be mistakes in the register, it is possible to make an application for the register to be altered based on accurate evidence.[247]

According to section 60(3) of the LRA 2002:

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[244] *Gillon v Baxter* [2003] EWCA Civ 1591; *Cameron v Boggiano and another* [2012] EWCA Civ 157
[245] *Cook v JD Wetherspoon plc* [2006] EWCA Civ 330
[246] Ruoff & Roper: *Registered Conveyancing*, Vol. 3, Part 9 – Land Registry Practice Guides, Land Registry Practice Guide 40 Supplement 3: 1 July 2019, H40C.012-019
[247] HM Land Registry Practice Guide 77 – "*Altering the register by removing land from a title plan*"

"*(1) The boundary of a registered estate as shown for the purposes of the register is a general boundary, unless shown as determined under this section.*

(2) A general boundary does not determine the exact line of the boundary.

(3) Rules may make provision enabling or requiring the exact line of the boundary of a registered estate to be determined and may, in particular, make provision about—

(a) the circumstances in which the exact line of a boundary may or must be determined,

(b) how the exact line of a boundary may be determined,

(c) procedure in relation to applications for determination, and

(d) the recording of the fact of determination in the register or the index maintained under section 68.

(4) Rules under this section must provide for applications for determination to be made to the registrar."

According to rule 118 of the LRR 2003, the exact line of the boundary is to be determined when the proprietor of a registered estate makes an application to the registrar, who, once satisfied, must give notice of the application to the owners of land that adjoins the boundary to be determined. The notice is not needed where an Adjoining Owner has entered into a written agreement setting out the exact boundary line or where a court order has been issued determining the boundary according to rule 119(2) of the LRR 2003. The recipient of a notice can object within the period ending at noon on the twentieth working day after date of when the notice had been issued according to rule 119(3) of the LRR 2003 unless extended. According to rule 117 of LRR 2003, the right to apply for a boundary to be determined also applies to a right to apply for only a part of a boundary to be determined. Rule 122 of the LRR 2003 allows the registrar to determine the exact line of a common boundary in certain circumstances.

Boundary fixing has historically been time consuming and expensive. It is a procedure

that is rarely used as the applicant has to cover the costs of all the works. These difficulties remain under the LRA 2002 and are even more complex due to rule 119 of the LRR 2003 setting out the procedure on an application for the determination of the exact line of boundary. Considering, however, that fixing boundaries can prevent a squatter from acquiring the right to be registered as proprietor as a result of adverse possession, fixing boundaries may become more common.

The Land Registry aims to show the land and its boundaries as accurately as possible. Where a person believes that a legal presumption exists, has valid grounds for this, and also believes that the red edging on a title plan should include additional land, they may apply for an alteration to be made to the register. Even so, the boundary will remain a general boundary. Parties may decide to enter into a boundary agreement.

There are two types of boundary agreements:

(a) those that amount to an exchange of land; and

(b) those where parties merely intend to demarcate an unclear boundary that is referred to in title documents.[248]

An agreement merely demarcating an unclear boundary may be informal.[249] A boundary agreement can also be inferred from the parties' conduct. These types of agreements are ideal in that they save time and cost for neighbouring property owners, can avoid a dispute as well as procedural steps related to the application process under the LRR 2003.

Boundary determination can be highly contentious and the main principles applied to boundary disputes are set out in the decision in *Acco Properties Ltd v Severn*.[250] When it comes to party walls, boundary disputes are highly relevant as further noted below and particularly as party walls can be erected on boundary lines.

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[248] *Neilson v Poole* (1969) 20 P&CR 909)
[249] *Acco Properties Ltd v Severn* [2011] EWHC 1362 (Ch) and *Charalambous v Welding* [2009] EWCA Civ 1578
[250] [2011] EWHC 1362 (Ch)

3.3 Law of Property Act 1925 and Party Walls

The Law of Property Act 1925 (**LPA 1925**) is relevant both to boundaries and to party walls. Section 38(1) of the LPA 1925 sets out that a boundary runs along the centre of a party wall:

> " *(1) Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.*"

To add clarity as to the distinction between a 'party wall' and 'boundary wall', section 1(1) of the PWA 1996 is helpful in that it states:

> "(1) *This section shall have effect where lands of different owners adjoin and-*
>
> (a) *Are not built on at the line of junction; or*
>
> (b) *Are built on at the line of junction only to the extent of a boundary wall (not being a party fence wall or the external wall of a building).*"

In light of this, section 20 of the PWA 1996 needs to be highlighted as it defines the terminology 'party wall' as:

> *" (a) A wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and*
>
> *(b) so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners.*"

The three legislation quotations assist in assessing what amounts to a party wall and further case law set out below further clarifies this.

In *Wellington Properties Limited v The Trustees of the Will of the Second Duke of Westminster, Grosvenor Estate Belgravia*,[251] the main issue was whether the flank wall of 39 Headford Place, London SW1X 7DE (**39HP**) adjoining the Halking Street Garden was a party wall within the meaning of section 38(1) of the LPA 1925 and of section of the PWA 1996. In turn, on appeal, the main issue was whether the judge was correct on the true construction of a lease transfer dated 25 April 1990 where Grosvenor transferred 39HP to Lady Anthea Peronelle Rees and where the claimant was the successor in title.[252]

Clause 3(b) of the Transfer provided that it was agreed between the parties:

> "*that the walls and/or fences separating the property hereby transferred from adjoining properties are party walls and/or fences and shall be used maintained and repaired as such*."[253]

The court at first instance agreed with the claimant's argument that the clause meant that the walls separating 39HP from adjoining properties, including the garden wall were party walls. The defendant argued that the words relate to 'adjoining properties' and therefore mean 'adjoining buildings', which the garden is not and so the garden wall should not be construed to be a party wall.[254]

The Court of Appeal held that that it agrees with the defendant's interpretation of clause 3(b) and allowed the appeal.

> "… *ii) It is, of course, correct, that, where a terraced house is enfranchised, then the freehold acquired by the enfranchisor will only include half of each party wall, But the Garden Wall is not a wall between adjacent houses in a terrace, it is a wall between a house and a garden. On Wellington's construction, Lady Rees failed to acquire all of the house which she was entitled to. That is contrary to the expressed purpose of the Transfer. …*

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[251] [2018] EWHC 3048 (Ch)
[252] *Wellington Properties Limited v The Trustees of the Will of the Second Duke of West-minster, Grosvenor Estate Belgravia* [2018] EWHC 3048 (Ch), p. 1, para. 1
[253] *Ibid.*, p. 1, para. 20
[254] *Ibid.*, p. 1, para. 22

iv) The plan shows the boundary between 39HP and Headfort Place as being the front wall, not the middle of the road. If that is correct, it would be surprising if that wall were a party wall. (The arrows indicate that it is not.) "

In the context of boundary issues, it is important to look at the LPA 1925 (and section 38(1)) in conjunction with sections 1 and 20 of the PWA 1996 when assessing the existence of party walls. The turning point in this case was clause 3(b) of the transfer.

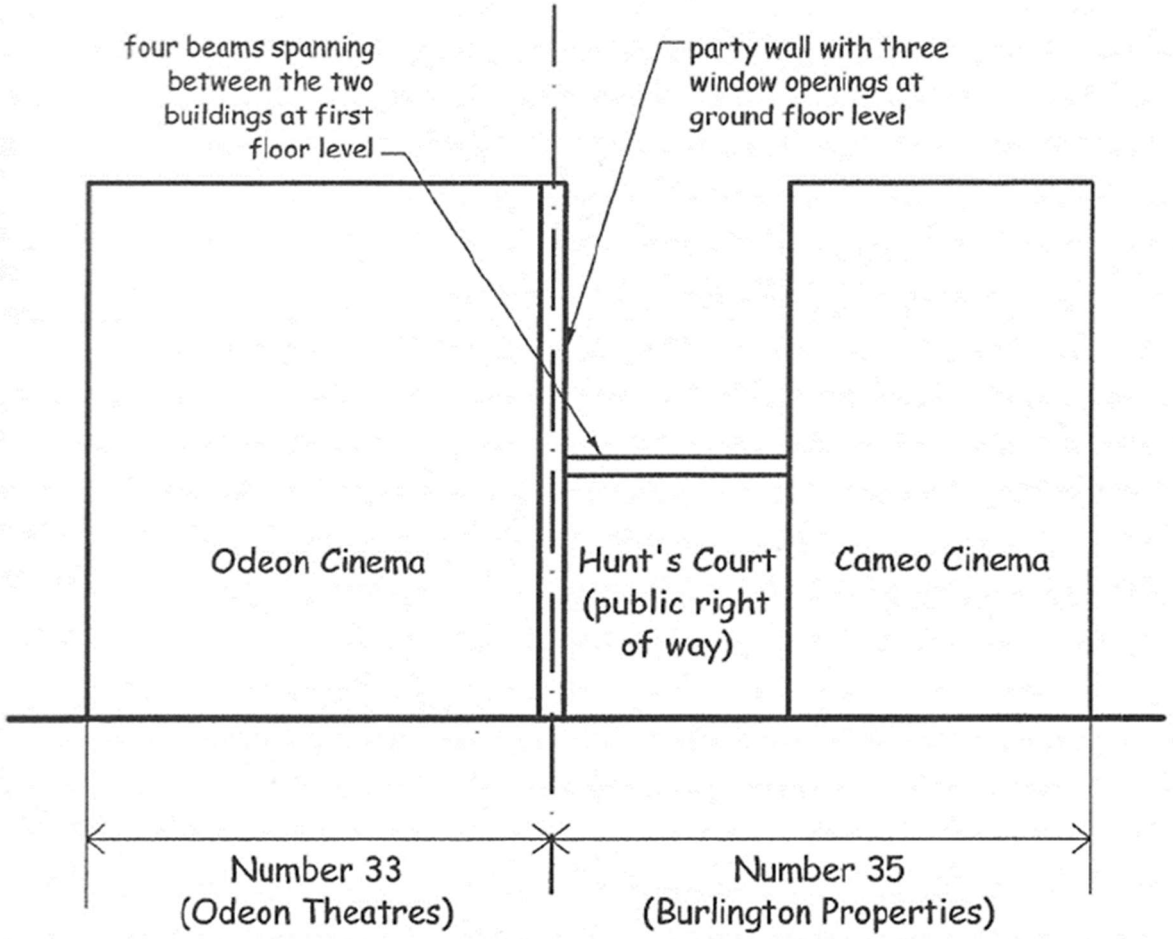
Another case, *Burlington Property Company, Limited v Odeon Theatres, Limited*,[255] shows a dispute between a Building Owner and an Adjoining Owner as to a party wall where section 39(5) of the Law of Property Act 1925 was referred to and relied on by the claimant (later appellant). For ease of reference, Diagram 14 provides an image showing the positioning of the party wall.

For context of this case, section 39(5) of the LPA 1925 states:

"*For the purpose of effecting the transition from the law existing prior to the commencement of the M1Law of Property Act, 1922, to the law enacted by that Act (as amended), the provisions set out in the First Schedule to this Act shall have effect – (5) for dealing with party structures and open spaces held in common; …*"

[255] [1939] 1 K.B. 633

Diagram 14 – *Burlington Property Company, Limited v Odeon Theatres, Limited*[256]



[256] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 81

First Schedule, Part V of the LPA 1925 at paragraph 1 contains an important consideration in relation to boundary determination in the context of party walls:

> "*Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.*"

The case relates to taking down and rebuilding of a party wall (several storeys tall). At first instance it was held that the appointed surveyors had no jurisdiction to act as 'arbitrators' and to make an award. The main issue was whether the Building Owner (defendant) was entitled to substitute existing windows in the ground storey portion of the party wall with a wider opening coming down to the ground level so that foot passengers could pass through them and from an adjoining public court. It was held:

> "*The judgment of the county court judge was wrong in so far as it affirmed the award of the arbitrators in determining that the respondents might rebuild the party wall with openings in it, or at all events with openings larger than the windows which it formerly contained. The wall is a party wall. It has all along been used for the separation of the adjoining premises now respectively vested in the appellants and respondents, and the evidence shows that these parties and their predecessors have been and are respectively entitled to one half of the wall and to the use of the wall for the support of their respective buildings. It is therefore a party wall within the definition of that expression in the Law of Property Act, 1925, s. 39, sub-s. 5, and First Schedule, Part V., clause 1, the London Building Act, 1930, s. 5, and Watson v. Gray. If the wall was originally held in undivided shares, then the provisions of the Act of 1925 sever it vertically and give to the appellants the side next to their premises with rights of support and user over the rest of the wall; so that in any case the appellants have these rights in the wall. In the absence of any provision or agreement to the contrary,*

the expression "party wall" means a solid and continuous party wall."[257]

The wall was considered to be a party wall. The Court of Appeal held that the defendant could only demolish and rebuild the party wall in accordance with substantially the same design as it was. Therefore, the defendant was not entitled to rebuild the party wall to a different design.

The topic of boundaries and party walls are intrinsically intertwined considering that party walls affect two or more parties who are landowners or occupiers. It is therefore important to carefully assess where exactly boundaries lie in relation to party walls and for this purpose to consider the title deeds establishing boundary lines, legal boundary presumptions and relevant legislation, including the LPA 1925 (which sets out where the boundary runs in relation to a party wall in section 38(1)), LRA 2002 (which sets out the general boundary rule in section 60), PWA 1996 (setting out what constitutes a party wall in section 20) and also consider the relevant case law. Therefore, where party walls are intertwined with the issue of boundary determination, it is important to consider all of the above aspects and not to focus only on the party wall in connection with the PWA 1996 in isolation. This is because a party wall's position and alignment with underlying boundary lines determines the relevant parties' rights and obligations. While the PWA 1996 applies to party walls, it is important to know where boundary lines lie determining ownership of the relevant sections of the party wall.

4 Property Boundaries (Resolution of Disputes) Bill [HL] 2019-20

The very same Earl of Lytton who introduced the PWA 1996, attempted to divert boundary disputes away from litigation and from tribunals with a similar mindset as that behind the PWA 1996 showing that property boundaries and related disputes are connected with party wall disputes. He wanted the disputes to be dealt with by surveyors. As a result, the Property Boundaries (Resolution of Disputes) Bill [HL] 2019-20 (**Bill**) was introduced as a Private Member's Bill into the House of Lords on 13 July 2017 for the first reading. However, the new proposed legislation stalled. The Bill did not progress past the first reading and considering no date has been set for its second reading, it remains to be seen what will happen with the Bill.

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[257] *Burlington Property Company, Limited v Odeon Theatres, Limited* [1939] 1 K.B. 633, para. 637

The reason, however, why the Bill needs to be mentioned in this thesis is because of its purpose, which is to set out a dispute resolution structure in relation to the location or placement of boundaries and private rights of way as to an estate in land title. This touches on party walls and it makes sense why both the Bill and the PWA 1996 stem from the same mind-set, namely that of the Earl of Lytton.[258] In fact, the Bill was modelled on the PWA 1996. Both the PWA 1996 and the Bill aim to make the dispute resolution process more straightforward and faster for adjoining neighbours rather than going to court in relation to party walls and boundaries / rights of way respectively, areas, which often overlap (as is also clear from chapter VI covering easements and their relevance to party walls). Instead, both the PWA 1996 and the Bill aim for surveyors to be appointed for such dispute resolution purposes.

In practice, boundary disputes, especially in a residential context, arise rarely about the actual land. Disputes usually revolve around broader issues between the parties with such issues being a sore spot for the parties for protracted periods of time. The level of animosity in boundary disputes is often directly inversely linked to the size of the land the dispute relates to. Once such a dispute starts, it is rare for the parties thereafter to be able to harmoniously live next to each other, especially after a court decision is served. This is why the trend of mediations in the context of boundary disputes emerged with the aim that the parties enter into a deal with the idea that there are no winning or losing parties. This is elaborated on in Chapter IV. However, there are situations where the parties simply cannot come to an agreement. In such cases, usually a county court would be the most common forum for such disputes. Parliament aimed to try and remove such disputes to alleviate courts by coming up with the Bill.[259]

A serious flaw in the system, however, is the fact that the proposed process relies entirely on the expertise of surveyors. Unfortunately, most surveyors cannot be expected to have the relevant expertise in relation to the issues involved in boundary disputes including, for example, legal document interpretation, the concept of estoppel, boundary agreements and the issue of adverse possession.[260] The same

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[258] *Boundaries and Easements*, 7th Ed., para. 24-001
[259] Arthur Moor of Hardwicke, "*Property Litigation Blog; Boundary disputes*", Practical Law UK Articles, Resource ID W-008-6296 (11 July 2017), p. 1 <https://uk.practicallaw.thomsonreuters.com/Document/I57332ceb51de11e798dc8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)> accessed 15 May 2022
[260] *Ibid*, p. 2

criticism applies to the PWA 1996 considering that, again, surveyors are not regulated and lack the necessary legal training to deal with potentially complex statutory rules and other legal issues. There is therefore no transparency of the level of award making quality or guarantee of consistent surveyor awards.

In addition, the Bill, if passed, will not apply to boundary disputes between leasehold owners of land or between a leaseholder owner and a freehold owner of land (unless the freehold owner was willing to be involved in the procedure imposed by the Bill).

This is because the Bill defines the 'owner of land' as a:

> "*freehold owner of land who is desirous of establishing the position of a boundary between his land and the land of an adjoining owner or a private right of way*."[261]

An 'adjoining owner' refers, like the 'owner', to a freehold owner of land. Boundary disputes between freehold owners can still end up in court through the appellate procedure, where a party is not happy with a surveyor's decision.

The Bill is unlikely to move forward. Boundary disputes, like party wall disputes, suffer from similar problems. For example, it is not uncommon for the value in dispute to be lower than or similar to the costs linked to court proceedings. In addition, if surveyors are chosen to decide such disputes, the issue is that they are not regulated, which means that there is a variability in quality and direction of their awards stemming from the fact that such disputes are interdisciplinary, and surveyors may not have the required experience and expertise. While this is far from ideal, the trend for the future is to prevent courts being inundated with boundary and party wall disputes, and for these to be solved with alternative dispute resolution leading to parties having more control over the process and outcome, as well as linked cost and time to the dispute.

[261] Property Boundaries (Resolution of Disputes) Bill [HL], section 15

5 Human Rights Act 1998

The Human Rights Act 1998 enshrines two main rights that can affect party walls and related disputes: right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Article 6(1)) and respect for one's private and family life, his home and his correspondence (Article 8). These rights apply also to party walls and related disputes and are therefore analysed further below.

The purpose of the Human Rights Act 1998 (**HRA 1998**) is that it incorporates most of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 (**Convention**) into domestic law. The most relevant articles of the Convention to party walls are listed below as well as the reasons as to why they are relevant.

5.1 Article 6(1)

Article 6(1) of the Convention states:

> "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.* … "

Article 6(1) of the Convention is likely to apply to a party wall award as this can be viewed as a determination of civil rights and obligations of the parties to the dispute. This is because of the consequences the award will have to which the PWA 1996 applies. The main issue here is whether the system set out in the PWA 1996 for determining party wall awards complies with Article 6(1) of the Convention. A problem could arise if there were limitations as to the recourse to a formal judicial determination.[262]

This issue was addressed in the case of *Zissis v Lukomski and another*,[263] where Zissis and the first defendant were owners of adjoining houses. Zissis wanted to carry out works covered by the PWA 1996 and therefore issued a notice to the first

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[262] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 217
[263] [2006] EWCA Civ 341

defendant under section 6(5) of the PWA 1996. The case revolves around an appeal to the county court against a party wall award under section 10(17) of the PWA 1996, which was a statutory appeal governed by CPR 1998 Part 52.[264] It was held that the appeal court had ample powers under Part 52 so that it can determine the appeal in a just way.[265]

The dispute related to the works. The second defendant, acting as the first defendant's surveyor pursuant to section 10(1)(b) of the PWA 1996, made an addendum award under section 10(7) of the PWA 1996. Zissis then appealed against the award pursuant to section 10(17) of the PWA 1996 by way of commencing proceedings under CPR Pt 8. Zissis sought orders that the award be rescinded or modified. The district judge dismissed the claim, despite asserting that the addendum award was not valid. The judge held that Zissis' appeal was a statutory appeal and therefore should have been brought under CPR Part 52. As Zissis however was out of time in relation to an appeal under CPR Part 52, the judge dismissed the claim.[266] Zissis appealed to the Court of Appeal, which held that Zissis appealing the award in the county court was not correct procedurally as appeals under section 10(17) of the PWA 1996 need to be made under CPR Part 52 and not under Pt 8.

> "*I think it plain that CPR Pt 52 was intended to cover a form of statutory appeal like that under section 10(17) and that the provisions of CPR Pt 52 are amply sufficient to allow justice to be done on such an appeal*."[267]

As the award was made under the PWA 1996 without a hearing, an appeal by way of a rehearing would mean that the county court would be required to gain evidence to be able to reach its own independent decision as to whether the award was incorrect. CPR Part 52 was held to be appropriate to ensure justice is served on an appeal under section 10(17) of the PWA 1996. The Court of Appeal also held that the district judge was incorrect in dismissing the claim considering that he concluded the addendum award to not be valid. Instead, the district judge should have allowed for Zissis' particulars of claim to be amended so that they sought relief in the form of a declaration

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[264] "*Party Wall etc Act 1996 - appeal procedure under section 10(17)*," Construction Law Journal, Const. L.J. 2006, 22(7), 469-481
[265] *Zissis v Lukomski and another* [2006] EWCA Civ 341
[266] *Ibid.* para. 18
[267] *Ibid.* para. 41

that the award was a nullity. Alternatively, the district judge should have allowed for the proceedings to continue under CPR Part 52(3).[268]

> "*Submissions to the effect that an appeal hearing should be a rehearing are often motivated by the belief that only thus can sufficient reconsideration be given to elements of the decision of the lower court. In my judgment, this is largely unnecessary given the scope of a hearing by way of review under rule 52.11(1). Further the power to admit fresh evidence in rule 52.11(2) applies equally to a review or rehearing. The scope of an appeal by way of a review, such as I have described, in my view means that the scope of a rehearing under rule 52.11(1)(b) will normally approximate to that of a rehearing 'in the fullest sense of the word' such as Brooke LJ referred to in para 31 of his judgment in Tanfern Ltd v Cameron-MacDonald (Practice Note) [2000] 1 WLR 1311. On such a rehearing the court will hear the case again. … Circumstances in which the hearing of an appeal will be a rehearing are described in paragraph 9 of the Practice Direction supplementing Part 52. This refers to some statutory appeals where the decision appealed from is that of a person who did not hold a hearing or where the procedure did not provide for the consideration of evidence. In some such instances, it might be argued that the appeal would in effect be the first hearing by a judicial process, and that a full hearing was necessary to comply with article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms … It will if necessary hear evidence again and may well admit fresh evidence.*"[269]

The Court of Appeal further held that PWA 1996 awards cannot be enforced by way of summary procedure set out in CPR 70.5.

> "*CPR r 70.5 creates a procedure, which can be initiated by a court officer without the intervention of a judge, for the enforcement of an award of a sum of money made by any court, tribunal, body or person other than the High Court or a county court so long as an enactment provides that the award may be enforced as if payable under a court order, or that the decision may be enforced*

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[268] *Ibid.*
[269] *Ibid.* para. 39

as if it were a court order. The 1996 Act contains no such provision, so that an award made under that 1996 Act cannot be enforced through the CPR r 70.5 procedure."[270]

As either party can appeal against the award through which it has access to a full rehearing in the county court (section 10(17) of the PWA 1996), it is unlikely that the system will be criticised for not complying with Article 6(1) of the Convention.[271] Article 6(1) of the Convention and its effect as to whether a statutory provision that has severe consequences in a specific case should be declared incompatible with the Convention right was discussed in the House of Lords decision in *Wilson v First County Trust Limited*.[272] It was held that the harsh consequences caused by a statutory provision will not result in the provision being declared incompatible with the relevant Convention right.[273]

"*Section 6(1) provides that it "is unlawful for a public authority to act in a way which is incompatible with a Convention right". On a natural reading this provision is directed at post-Act conduct. The context powerfully supports this interpretation. One would not expect a statute promoting human rights values to render unlawful acts which were lawful when done. That would be to impose liability where none existed at the time the act was done*."[274]

The reference in the above quotation is to section 6(1) of the HRA 1998. The argument here is that where party wall awards have been made in contravention of this section, as long as the award preceded the HRA 1998, the HRA 1998 will not apply. The emphasis is therefore on awards under the PWA 1996 once the HRA 1998 came into force on 2 October 2000 incorporating the ECHR provisions in England, Wales and Northern Ireland.

The analysis of the relevant legislation provision has to be done in context and it has to be assessed whether the set of measures is a proportionate response as to the

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[270] *Ibid.*, para. 59
[271] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 217
[272] [2004] 1 A.C. 816
[273] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 218
[274] *Wilson v First County Trust Limited* [2004] 1 A.C. 816, p. 830, para. 12

issue at hand by Parliament.[275] While Section 6(1) of the HRA 1998 is unlikely to cause an issue, when going through the dispute resolution motions, parties would be wise to consider from a strategic perspective whether, should one of them opt for an appeal, rehearing is something that could benefit their case. A rehearing has the advantage of, for example, further evidence being considered by the judge, which can affect or even result in a change of the outcome of the judgment.

5.2 Article 8

According to Article 8 of the Convention:

> "*(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*."

It is clear that activities under sections 2 and 6 of the PWA 1996, can lead to interfering with home and family life. This is because works related to party walls can cause noise, or vibration, or create dust, which can sometimes be disruptive. Pollution and noise may lead to infringement of Article 8 of the Convention.[276] However, whether this actually amounts to such an infringement depends on the level of the disruption. If losses of amenity are minor, this is unlikely to lead to interference with Article 8 of the Convention.[277] Those affected by such interference would be the Adjoining Owner and Adjoining Occupier. This is because these parties have no power over whether to submit or not to submit to the Building Owner's activities. This is subject to an award

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[275] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 217
[276] *Lopes-Ostra v Spain* (1994) 20 EHRR 277 and *Hatton v United Kingdom* (2003) 37 EHRR 28
[277] *Lough v First Secretary of State* [2004] 1 WLR 2557, p. 2573, para.43

under section 10 of the PWA 1996.[278]

Relevant provisions of the PWA 1996 do not interfere with Article 8 of the Convention, however the factors set out below need to be taken into consideration:

> "*(1) The circumstances in which interference can occur are in practice limited.*
> *(2) The rights of the building owner are closely defined and circumscribed.*
> *(3) Compensation is payable on exercise of those rights.*
> *(4) In the case of an adjoining owner, he must be notified of the works proposed and is entitled to an award from an independent surveyor or tribunal of surveyors.*
> *(5) The interference is transitory, lasting only as long as the works in question.*
> *(6) The statutory scheme as a whole may be justified on the basis of economic well-being, and is proportionate.*"[279]

As to whether there could be a situation where particular exercise of the powers under the PWA 1996 could lead to a breach of Article 8 of the Convention, it is not likely that the exercise of the rights under sections 2 or 6 of the PWA 1996 in relation to the position of an Adjoining Owner would ever lead to giving rise to a claim that the Article 8 of the Convention was engaged. However, this does not apply to adjoining occupiers as they are not entitled to take part in the procedure. It follows that it is the responsibility of Building Owners that Adjoining Occupiers are not affected unreasonably by noise, pollution or discomfort caused by the Building Owner's exercise of its rights under the PWA 1996. As for rights of entry under section 8 of the PWA 1996, these are not likely to lead to breach of Article 8 of the Convention as these provisions (such as a warrant) are of long standing, facilitate a speedy resolution of party wall disputes and there is no requirement to be performed in any prescribed manner.[280]

On balance, section 8 of the PWA 1996 relating to rights of entry should not be

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[278] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 217
[279] *Ibid.* p. 217
[280] *Ibid.* pp. 217-218

exercised too harshly as such conduct risks later being held in breach of Article 8 of the Convention by court. This is because the consequences of such conduct would not immediately give rise to a new cause of action under the HRA 1998 as this requires public authorities to protect human rights. A party, however, that feels that its rights have been or are likely to be violated, can apply to the county court for relief against the party in breach. Consequently, a party can start proceedings in court seeking, for example, an injunction or appeal against a party wall award during which it can raise an Article 8 of the Convention argument, which can impact on the relief granted by the court.[281]

5.3 Article 1 of the First Protocol to the Convention

Article 1 of the First Protocol to the ECHR (**First Protocol**) states:

> "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

Although works performed under the PWA 1996 can lead to interference with enjoyment of a party's possessions, the PWA 1996 is almost certainly compliant with Article 1 of the First Protocol due to the safety measures enshrined in the PWA 1996,[282] such as the time limitation on the duration of an interference as well as compensation provisions.[283] The PWA 1996 has also public benefit as its aim.[284] Additionally, one has to consider that by section 1(6) of the PWA 1996, the Building Owner that is building a party wall or party fence wall at the line of junction built wholly

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[281] *Ibid.* p. 218
[282] *Ibid.* p. 219
[283] *Stran Refineries v Greece* (1995)19 EHRR 293 and *Matos e Silva v Portugal* (1996) 24 EHRR 573
[284] *James v United Kingdom* (1986) 8 EHRR 123

on its own land is allowed to "*place below the level of the land of the adjoining owner such projecting footings and foundations as are necessary for the construction of the wall.*" This could be interpreted in such a way that the PWA 1996 essentially allows for subterranean encroachment. This could amount to an infringement of Article 1 as it could be viewed that the Building Owner is expropriating the Adjoining Owner's rights in its subterranean property. One could argue that the main issues are whether the encroachment is necessary for the construction of the wall as well as the degree of such encroachment.[285] However, these factors are opaque and it remains to be seen what courts will decide should such issues be raised.

6 Environmental Protection Act 1990 and Control of Pollution Act 1974

According to the Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet:*"[286]

> "*You should contact your local authority environmental department who have powers under the Environmental Protection Act 1990 and the Control of Pollution Act 1974 to deal with matters of noise and other potential nuisance, such as dust and deposits from construction sites*."

The Environmental Protection Act 1990 (**EPA 1990**) deals with noise nuisance and its main aim is to ensure that the environment quality is not reduced via excessive noise meaning noise that is loud and intrusive, whether persistent or intermittent affecting the quality and comfort of everyday life (such as, construction works to party walls). The EPA 1990 also deals with other statutory nuisances relevant to party walls, such as, for example:

(a) Smoke, fumes or gases from any premises;

(b) dust, steam or smells from business premises;

(c) accumulations or deposits;

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[285] Phillip Aliker, *Party walls and arbitration*, New Law Journal, 155 NLJ 866, 3 June 2005
[286] (May 2016), para. 40

(d) noise or vibration;

(e) premises in a poor state; or

(f) artificial light.

For these to be considered statutory nuisances, they have to pose a health risk or a nuisance. Where a party is not able to address the nuisance issue directly, it has the option of contacting its local authority Environmental Health Department or a similar authority, who then has to investigate the complaint and then take action on the complainant's behalf if the authority comes to the conclusion that a statutory nuisance has materialised, is likely to materialise or be repeated.[287]

Where the relevant authority does not feel it can take action, the affected party can take action through the Magistrates Court under section 82 of the EPA 1990, which is a swift and a relatively cheap way of dealing with the issue as no legal representation is necessary.

The Control of Pollution Act 1974 (**COPA 1974**) relates to control of noise on construction sites, which is determined by the relevant local authority. This will serve a notice stipulating how noise is to be controlled where advance consent has not been secured. The COPA 1974 provides for a definition of best practicable means to minimise noise and vibration. Sections 60 and 61 of the COPA 1974 ensure that all construction sites are subject to a notice and consent procedure where a party can apply for consent in advance from the neighbouring party to be able to perform activities generating noise during construction works.[288]

Examples of works to party walls that may be caught by the COPA 1974 can include, for example: "… *use of power tools that utilise percussive, boring, cutting, grinding or impact techniques on party walls/floors or occupied properties …*".[289]

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[287] Environmental Protection Act 1990, s. 79
[288] The Royal Borough of Kensington and Chelsea, "*Code of Construction Practice: Minimising the Impact of Noise, Vibration and Dust*", p. 43<https://www.rbkc.gov.uk/environment/advice-builders/code-construction-practice-minimising-impact-noise-vibration-and-dust> accessed 15 May 2022
[289] *Ibid.*, p. 21

7 The Crossrail Act 2008 and the High Speed Rail (London – West Midlands) & (West Midlands – Crewe) Acts 2017

7.1 The Crossrail Act 2008

Following the implications of the Channel Tunnel Rail Link Act, the Crossrail Act 2008 has legislative powers to disapply the effect of the PWA 1996. According to section 17 of the Crossrail Act 2008:

> "*(1) No notice under section 1(2) or (5) of the Party Wall etc. Act 1996 (c. 40) (notice before building on line of junction with adjoining land) shall be required before the building of any wall in exercise of the powers conferred by this Act.*
>
> *(2) Sections 1(6) and 2 of the Party Wall etc. Act 1996 (rights of adjoining owners) shall not have effect to confer rights in relation to—*
>
> > *(a) anything held by the Secretary of State or the nominated undertaker and used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act, or*
> >
> > *(b) land on which there is any such thing.*
>
> *(3) Section 6 of the Party Wall etc. Act 1996 (underpinning of adjoining buildings) shall not apply in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by this Act.*"

However, the Crossrail Act 2008 provides for mitigating measures with the aim to protect structures located in areas that are at high risk of ground settlement.[290]

7.2 High Speed Rail (London – West Midlands) & (West Midlands – Crewe) Acts 2017[291] (HS2 Legislation)

The purpose of the amendments to the PWA 1996 by the HS2 Legislation is to ensure that there are safeguards in place for owners of buildings or land adjacent to the HS2

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[290] RICS isurv, "*Crossrail: lifting legislative provisions – Easing the load*," (22 May 2017) <https://www.isurv.com/info/390/features/11162/crossrail_lifting_legislative_provisions> accessed 15 May 2022

[291] HS2, "*Party wall guidance under the HS2 regime*," May 2022 <www.hs2.org.uk> accessed 15 May 2022

railway. At the same time, the aim is also to ensure a safe cost- and time-effective delivery and operation of the HS2 railway. Excavation as well as underpinning works and party wall works are covered.[292] The changes were introduced as otherwise, each interface of the HS2 works with an adjacent property would need to be determined in line with the procedures in the PWA 1996 or agreed between surveyors. Another purpose of the changes was to reduce the likelihood of complex disputes with Adjoining Owners while also protecting them. Schedule 23 of the HS2 Legislation specifically provides amendments to the notification procedure (sections 1(6) and 2 of the PWA 1996), rights of Adjoining Owners (section 3 of the PWA 1996), underpinning of adjoining buildings (section 6 of the PWA 1996) and dispute resolution procedure, where a modified arbitration procedure applies if a dispute comes about in relation to an issue connected with works to which PWA 1996 applies and the work is needed for HS2 purposes or relates to buildings/structures located on Secretary of State's or the Nominated Undertaker's land in order to build the HS2 railway.[293]

8 Conclusion

When considering legal coherence and dispute management in relation to party wall related disputes, party walls must be seen in a legislative context. The PWA 1996 on its own is not the only piece of legislation that can apply to party walls, which is the reason why the ANLA 1992, LPA 1925, the Bill, HRA and the Convention as well as the EPA 1990, COPA 1974, the Crossrail Act 2008 and the High Speed Rail (London – West Midlands) & (West Midlands – Crewe) Acts 2017 are covered in this thesis.

The PWA 1996 does not authorise infringement of other pieces of legislation and vice versa. Where parties are in a party wall dispute, they must not rely automatically on the PWA 1996 alone. In order to prevent a dispute, or manage it, if it cannot be avoided, Building Owners must be aware what legislation they need to comply with when performing works under the PWA 1996. If a party wall award is appealed in court and higher instance courts, judges must be aware of legislation outside of the PWA 1996 when making their decisions. Otherwise, they could potentially be found to be in breach of such legislation.

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[292] *Ibid.*, p.1
[293] *Ibid.*, p. 3

The ANLA 1992 should be viewed as potentially complementary with the PWA 1996, linking into practical issues of scaffolding and crane oversail to ensure that the Building Owner does not commit trespass.

Boundary determination is intrinsically linked with party walls, which can stand on or be linked to boundary lines and in this context, the LRR 2003 and LRA 2002 need to be borne in mind. In the context of boundary determination, the LPA 1925 needs to be considered as it is relevant both to boundaries and party walls.

The Bill, while its future is uncertain, is a step in a similar direction as the PWA 1996 was in that it stems from the same mind-set and aims at assisting neighbouring parties to resolve disputes without the need of going to court straightaway.

The HRA 1998 and Convention can affect relationships between neighbouring parties when it comes to party walls and related disputes, specifically Articles 6 (entitlement to a fair and public hearing) and 8 (right to respect for one's private and family life) of the Convention and Article 1 (peaceful enjoyment of one's possessions) of the First Protocol to the Convention. The HRA 1998 incorporates directly the most important sections of the ECHR into UK domestic law. It affects interpretation and use of all legislation in the UK and therefore it affects interpretation and use of the PWA 1996. The Articles of the Convention most relevant to the PWA 1996 are Article 6, relating to the right to a fair trial. and Article 8, relating to the right to respect for private and family life.

Article 6(1) of the Convention, which directly refers to the right to fair and public hearing within a reasonable time by an independent and impartial tribunal, was further examined in *Zissis v Lukomski and another*,[294] where the Court of Appeal held that considering either party is able to appeal against a party wall award and so has recourse to a full rehearing in the county court according to section 10(17) PWA 1996, the likelihood that the system under the PWA 1996 will be criticised for non-compliance with Article 6(1) of the Convention is small. In connection with Article 6(1) of the Convention, it was also considered whether a statutory provision that has severe consequences in a specific case should be declared incompatible with the Convention

[294] [2006] EWCA Civ 341

right in *Wilson v First County Trust Limited.*[295] The House of Lords held that harsh consequences caused by a statutory provision in itself will not result in the provision becoming incompatible with the relevant Convention right. Assessment of the situation has to be done in context.

Article 8(1) of the Convention relates to the right to respect for private and family life, home and correspondence. Activities under sections 2 and 6 of the PWA 1996 can interfere with Article 8(1) of the Convention if levels of pollution and noise are excessive. A party can start proceedings during which it can raise an Article 8 of the Convention argument.

Although the relevant sections (2, 6 and 8) of the PWA 1996 do not appear to clash with Article 8 of the Convention, there are a number of factors that need to be taken into consideration. While exercise of the rights under sections 2 or 6 of the PWA 1996 in relation to the position of an Adjoining Owner is not likely to give rise to a claim that the Article 8 of the Convention was engaged, it is important to point out that this does not apply to Adjoining Occupiers. Therefore, it is the Building Owners' responsibility that Adjoining Occupiers are not affected unreasonably by noise, pollution or discomfort caused by the Building Owners' activities under the PWA 1996. In addition, rights of entry under section 8 of the PWA 1996, should also not be exercised too harshly to ensure that Article 8 of the Convention is complied with.

Works performed under the PWA 1996 are almost certainly compliant with Article 1 of the First Protocol as the PWA 1996 contains safety measures mitigating circumstances that could lead to infringement of Article 1 of the First Protocol. In addition, the PWA 1996 has public benefit as its aim. A Building Owner should however be cautious when performing works under section 1(6) of the PWA 1996 as these could amount to expropriation of the Adjoining Owner's rights in its subterranean property (where relevant).

Finally, in the context of potential nuisance caused by works performed on a party wall, the EPA 1990 and COPA 1974 need to be borne in mind. The Crossrail Act 2008 and the HS2 Legislation have an impact on the PWA 1996 in that they amend its

[295] [2004] 1 A.C. 816

provision and/or application in the context of the Crossrail and HS2.

The message for Building and Adjoining Owners is therefore to think contextually, not to get comfortable under the ‘protective shield and guidance’ of the PWA 1996, and not to be lured into a false sense of security. It is crucial for the parties to be aware of their rights and obligations in order to prevent potential, or effectively manage, disputes.

VI. CHAPTER SIX – PROPRIETARY RIGHTS IN LAND – EASEMENTS

1 Introduction – Easements

When discussing the definition of 'party wall' in Chapter II, reference was made to four categories used prior to 1926 as to what the terminology 'party wall' may mean. Two of those categories related to easements, i.e. "*(3) a wall belonging entirely to one adjoining owner, but subject to an easement in the other to have it maintained as a dividing wall; or (4) a wall divided longitudinally into two portions, each portion being subject to a cross-easement in favour of the owner of the other.*"[296] While the effect of the LPA 1925 has been to transfer walls, which prior to the PWA 1996 would have been in the first of the four categories, into the fourth category, party walls have been historically linked to easements, as they presently also are.[297]

While party walls are not easements themselves, easements can affect party walls. This is why this chapter is dedicated to several types of easements in the context of party walls. The main easements particularly relevant to party walls are the: (a) right of way; (b) right of support;(c) drainage rights; and (d) right to light (however this is covered in Chapter VII at paragraph 4, as although the right to light is an easement, obstruction of passage of light can lead to becoming a nuisance in tort). While the right or obligation to repair is not an easement as such, it is relevant to easements and can be intrinsically linked to these as discussed further in this chapter.

2 Easements – Right of Way

Considering that party walls can suffer deterioration leading to collapse, they need to be considered in the context of the easement of right of way (for example, where a footpath runs alongside a party wall and there is a public right of way). Liability could arise for the party wall owner(s) where, for example, the party wall falls and causes personal injury to a by-passer. Where there is a grant of an easement over a part of land, this will usually not entitle the user to demolish parts of the party wall for the

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[296] *Gale on the Law of Easements*, para. 11-01
[297] *Ibid.*, para. 11-02

purpose of widening the access unless express provisions allow for this.[298]

The examples of case law set out below show the interface that can arise between the easement of a right of way and party walls.

In the case of *Mills v Blackwell*,[299] there was a field whose owner sold the roadway, however reserved a right of way at all times and for all purposes connected with the present and every future use of the field. This included vehicles as well. The roadway and the field were separated from each other by a stone wall, which contained a wooden gate. Both properties changed ownership, however the rights and burdens were passed to the respective successors in title. The now new owner of the field decided to demolish part of the stone wall for the purposes of adding six feet to the width of the gateway. The owner of the right of way objected and claimed that there was no entitlement to demolish sections of what was essentially a party wall and that there was also no entitlement to broaden the gateway.

It was held that the "*conveyance had to be construed in accordance with the physical characteristics of land at the time.*"[300] The reason behind this conclusion was the fact that there was no specific provision in relation to the way in which the gateway was to be treated apart from the declaration that the wall was a party wall.

The Court of Appeal held that there was no entitlement to demolish any part of the party wall or to broaden the gateway. Therefore, the previous position had to be reinstated. The issue here was that the reservation was 'badly worded' and failed to deal with the point at which the right of way entered the adjoining land. If the wording of the reservation in the original conveyance covered the possibility, the position would have been clear and the problem could have been mitigated in this way.

> "*The conveyance, moreover, did not specifically mention any points relating to access or egress. Consequently, it would be absurd to conclude that Mr Blackwell was entitled to demolish the whole of the wall so that access and egress might be obtained from any point along the strip "But why should they be entitled to choose an access point anywhere they may reasonably select,*

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[298] Case Comment, "*Easements: point of access*," Property Law Bulletin, P.L.B. 1999, 20(3), 18-19
[299] (1999) 78 P. & C.R. D43
[300] *Ibid.*

when it is absolutely plain from the physical layout at the time of the conveyance that the access point was at and through the gate 4 feet 6 inches wide". There was nothing insubstantial or transient about a dry stone wall and simply nothing in the conveyance to suggest an intention that the point or extent of access or egress should be anywhere or be to a greater extent than what was then capable of enjoyment."[301]

In *Moona Dawoodi v John M Zafrani, Kashif Zafrani*,[302] Dawoodi owned a property that included a narrow path. The original purpose of the path was to allow deliveries to the back for the adjacent properties. The path was however no longer used for the purpose for which it was built. As the path was no longer in use when Dawoodi purchased the property, he decided to build a large shed extending onto the path. M. Zafrani bought the neighbouring property with the plan to demolish the property they bought and to build a new building in its place. M. Zafrani's architect provided incorrect advice to him that Dawoodi's path was within M. Zafrani's boundary. Following this advice, M. Zafrani started works on his property without having applied for planning permission, without serving a party notice and without the consent of the local authority's building control. As part of the works, M. Zafrani also built scaffolding on Dawoodi's path, again, without asking Dawoodi for permission to do so.

The court held:

"*Of course, the defendant should have obtained a party wall award. In such an award, a licence could have been granted for the use of the claimant's land. A fee would have been payable for that use.*"[303]

A party wall can interfere with the right of way and in order to prevent a dispute between the parties, the best way forward is proper communication, which in this case would have included the defendant issuing a party notice to the claimant. This way, court proceedings could have been avoided if the defendant had taken steps to keep the claimant informed of what it intended to do, giving the claimant the opportunity to agree or disagree in advance of any works and finding a solution that would be

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[301] *Ibid.*
[302] 2015 WL 6655169
[303] *Moona Dawoodi v John M Zafrani, Kashif Zafrani* 2015 WL 6655169, p. 58

acceptable to both parties in an amicable way enshrined in a party wall agreement or, if not acceptable for the parties, by way of a party wall award.

The case of *Parkinson v Reid*,[304] revolves around a right of way that refers to a stairway. In 1926, the owner of lot 28 granted the owner of lot 29 a right of way over the abovementioned stairway. The stairway led to the second floor of the building on lot 28. The owner of lot 28 covenanted with the owner of lot 29 that it keeps the stairway in repair and reconstructs it should the stairway be partially or completely destroyed. At the same time, the owner of lot 29 granted the owner of lot 28 the right to use the flank wall on lot 29 as a party wall. The point was that the party wall would support the stairway. The titles of both lots passed on to different parties and in 1961, lot 28 was affected by fire in which the building was badly damaged. As a result, the damaged building and the stairway, which was not itself damaged, were pulled down. The claimant however decided to seek a mandatory injunction to ensure that the covenant to repair the stairway would be enforced. The court held that although there was a covenant to repair and reconstruct the stairway, its burden did not pass on with the land and therefore was not enforceable as privity of contract was missing. The benefit of the covenant to enjoy the use of the wall on lot 29 as a party wall passed on with the land. As long as the stairway was used, then the owner of lot 29 had the duty to keep the stairway in repair. However, the obligation ended when the use ended. As the staircase was removed, its use ceased and therefore the court concluded that the court action had to fail.[305]

In this case, the party wall was supporting the right of way (staircase). The party wall did not negatively interfere with the right of way, however it formed part of it. It is another point of view where the interplay between the party wall and a right of way is in itself not contentious. This case focussed more on the fact that the obligation to maintain the right of way ceased with the end of use of the staircase. However, the staircase could not have existed on its own without the party wall, which suggests that a relationship between a party wall and a right of way is possible.

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[304] [1966] 1 WLUK 544
[305] *Parkinson v Reid* [1966] 1 WLUK 544

In the case of *Burlington Property Company, Limited v Odeon Theatres, Limited,*[306] which is a Court of Appeal case where the defendant owned 33 Charing Cross Road, Burlington owned the adjoining premises at 35 Charing Cross Road. The flank wall of Odeon was a party wall, which was several storeys high. On the other side of the party wall was the Burlington's land (Hunt's Court), which was subject to a public right of way. Odeon planned to demolish the party wall and rebuild it with arches allowing access to no. 33 from Hunt's Court.[307] Surveyors were appointed as 'arbitrators'[308] to settle the differences between Burlington and Odeon. The surveyors' award stated that Odeon was entitled to go ahead with its proposed works. At first instance, the court held that the wall was in fact a party wall and re-affirmed the validity of the surveyors' award. Burlington appealed. The Court of Appeal (Slesser L.J.) stated:

> "… *it appears by the conveyance of 1905 that at that date there was a party wall and that the half of the wall, with regard to which complaint is now made that it has been interfered with, was and has been at all material times the property of the appellants. In those circumstances, unless the respondents here can show some statutory right to interfere with what, on the face of it, is the absolute property of the appellants, it must necessarily be that an award which gives to them a power to do that which in law they have no power to do must be bad. I seek in vain in the only statute suggested to be competent to give them the right for any power whatever in this behalf. Sub-sect. (vii.) of s. 114 of the London Building Act, 1930, seems to me to give them no such right. It confers a right "to pull down any party structure which is of insufficient strength for any building intended to be built and to rebuild the same of sufficient strength for the above purpose." The whole complaint which the appellants make is that their moiety of the party structure has not been rebuilt as it formerly was, and certainly has not been rebuilt with any consideration of strength, seeing that the apertures in it are considerably wider than they were in the original building.*"[309]

The Court of Appeal held that the surveyors lacked jurisdiction to make such an award and that Odeon could only demolish and rebuild the party wall in accordance with the

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[306] [1939] 1 K.B. 633 and (touched upon in Chapter V)
[307] under section 117(1) of the London Building Act 1930
[308] under the London Building Act 1930, Part IX
[309] *Burlington Property Company, Limited v Odeon Theatres, Limited* [1939] 1 K.B. 633, para. 641

substantially same design as it was. Therefore, Odeon was not entitled to rebuild the party wall to a different design.

This is a case showing that there are situations where a party wall can run along a right of way (in this case a public right of way). While the dispute was about whether one party was able to demolish and rebuild the party wall based on different designs compared to its original designs, the fact remains that the crux of the issue was ensuring that the party wall was of the same strength to support the respective buildings. This case also shows the interdependency between the need to ensure support to the relevant buildings as well as the function of the right of way and the need to sustain its use. This case highlights the status of a 'party wall' as opposed to 'any' wall in that interference with a party wall must follow a given set of rules, either the parties can agree between themselves how to deal with the party wall or alternatively, a party wall award is necessary to ensure works to a party wall are carried out appropriately. While on the face of it the defendant was acting in accordance with the party wall award, the issue here was that the surveyors went beyond their jurisdiction in the first place. It is an interesting case in that the Building Owner was following an invalid party wall award.

In conclusion, party walls can interfere with rights of way. They can also be interdependent. A party wall can form a part of a right of way or interfere with it. It can demarcate the boundary of the easement. When a party wishes to build, demolish, or change a party wall, it should carefully investigate its rights and obligations, whether the wall is a party wall and communicate with the affected neighbouring party(/ies) before starting works to try and prevent a potential dispute. It is advisable for the parties to keep a record of their negotiations and any settlement attempts, which could be considered as a mitigating factor by courts, should the situation escalate. Any agreement between the parties as to how to proceed with works on a party wall should be recorded in writing for future reference and potential use in court to prevent any inconsistencies or miscommunications and establish certainty of what the parties agreed. Where the parties cannot agree how to deal with a party wall, they should seek a party wall award deciding the matter. From a practical perspective, the Building Owner should think carefully before carrying out any works to the party wall where the Adjoining Owner is appealing the party wall award until the matter is fully settled. This

is to mitigate any loss of money and time.

3 Easements – Right of Support

3.1 Introduction

When discussing the right of support, a distinction needs to be made between an easement and a natural right regarding support to land, which exists automatically (it arises naturally for land) and enjoys the protection of the law of tort. A natural right of support cannot be removed and if the support is removed leading to subsidence, the affected party can seek damages.[310]

A natural right of support is enjoyed by every landowner who may have an action against a neighbour in nuisance for deliberately removing the support by quarrying[311] or by having removed a subjacent strata of minerals[312] or where the support is removed by natural causes arising on the neighbour's land (where the defendant was a aware of the danger and its failure lied in the fact that that it did not act reasonably and did not remove the hazard).[313] It is only the land in its natural state to which the natural right of support extends.[314]

The right to the support of a building is not a natural right, however a right (easement) can be obtained by grant or prescription.[315] Where a building has enjoyed the right of support from an adjoining building for a minimum of twenty years, it has acquired such right thereafter. If two buildings are in common ownership and one of them is sold to another party, this party will usually gain a right of support under section 62 of the LPA 1925. Where a neighbouring house has been demolished causing shrinkage to the clay beneath the foundation of the neighbour's house, this can be actionable.[316] Sections 38 and 39 and Schedule 1 Part V paragraph 1 of the LPA 1925 refer to rights of support and of user in relation to party walls.[317]

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[310] *Gale on the Law of Easements*, para. 10-02
[311] *Redland Bricks Ltd v Morris* [1970] AC 652
[312] *Lotus Ltd v British Soda Co Ltd* [1972] Ch 123
[313] *Leakey v National Trust* [1980] QB 485
[314] *Hunt v Peake* (1860) Johns, 705
[315] *Dalton v Angus* (1881) 6 App Cas 740, paras. 830-831
[316] *Brace v South East Regional Housing Association Ltd and Another* [1984] 1 EGLR 144, CA
[317] *Gale on the Law of Easements*, para. 11-03

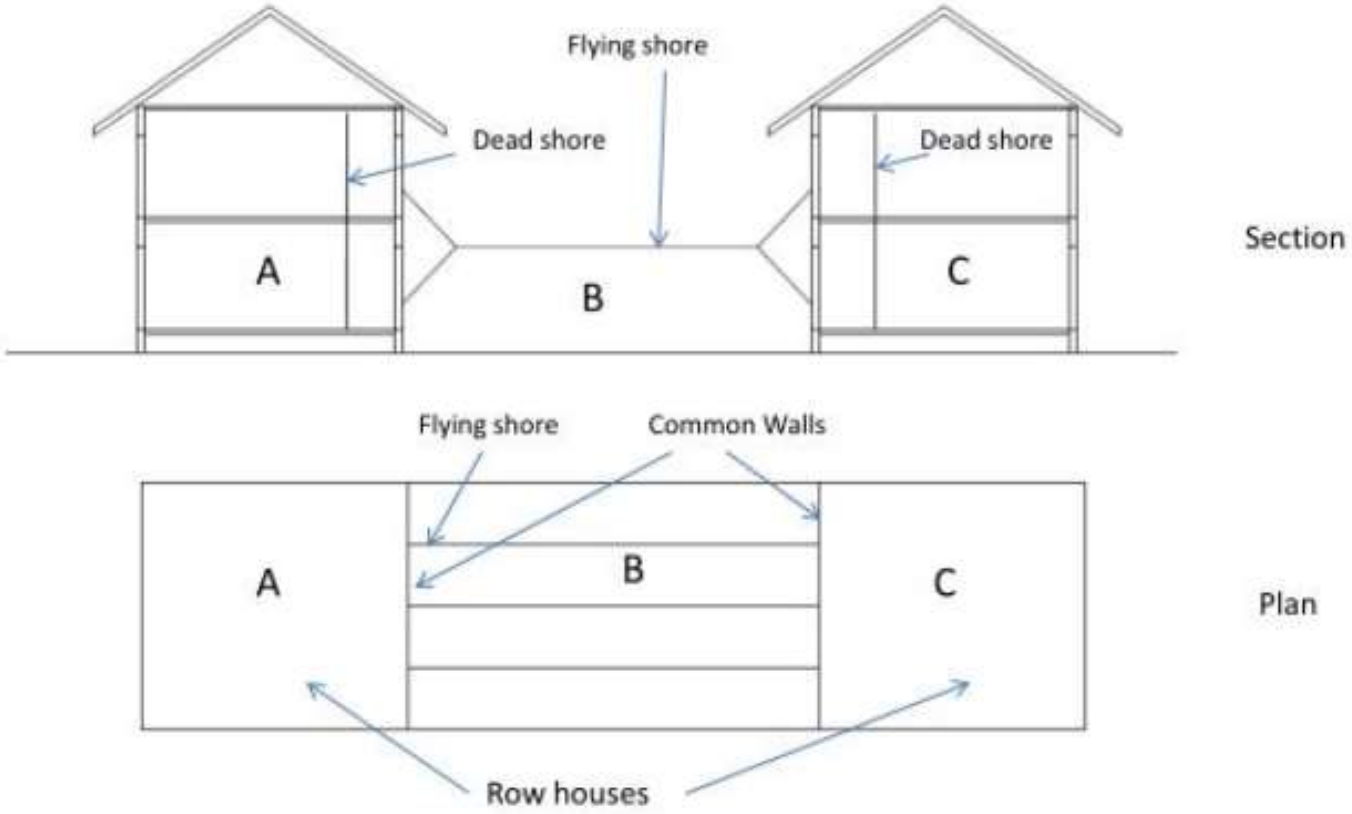
A party wall built between two houses, which is the common boundary between these houses, is owned by both parties. Therefore, both parties enjoy an easement of support. Where support has been withdrawn, this is actionable only once damage occurs, not before.[318] Although the concept of nuisance has been expanded to include nuisance by loss of support, it is not likely to affect works under the PWA 1996[319] because the nuisance arises from long neglect rather than actual works on a party wall.[320] Diagrams 15, 16, 17 and 18 below are examples of easements of support in relation to party walls and excavations. Diagram 15 illustrates a situation where the middle of three row houses has been demolished. Flying shores are used to temporarily provide support to the parallel walls of houses A and C before the intermediate building B is rebuilt.

[318] *Midland Bank Plc v Bardgrove Property Services Ltd and John Willmott (WB)* [1992] 65 P & CR153, CA; *Yorkshire Water Services Ltd v Sun Alliance & London Insurance plc & Others* [1998] Env LR 204

[319] *Holbeck Hall Hotel Ltd v Scarborough Borough Council* [2000] QB 836, CA

[320] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 207

Diagram 15 – Row Houses – Easement of Support[321]



[321] Shailesh Kumar Pathak and Richard Sadokpam ,"*Easement – Professional Practice,*" p. 6 <https://www.slideserve.com/anika/easement-powerpoint-ppt-presentation> accessed 15 May 2022

Section 2 of the PWA 1996 relates to work that can include acts that would be deemed to interfere with the right of support. Although carrying out such work is expressly authorised by the PWA 1996, liability to make good damage caused by the works is also expressly imposed by sections 2(3)(a), (4)(a), (5), (6) and 7(2) of the PWA 1996. Therefore, where the Adjoining Owner's right of support is impacted by work that has been carried out under the PWA 1996, such Adjoining Owner is protected by the above provisions of the PWA 1996. If the Adjoining Owner then decides to start a dispute, under section 10 of the PWA 1996, an award will provide for works that need to be carried out to ensure adequate support to the Adjoining Owner's property. The question that arises here relates to the right of support and the effect of the works on such a right. The ambiguity that arises touches on the issue of whether the existing right continues or where the work carried out results in the Adjoining Owner's property being supported by a new structure, whether the previously enjoyed easement of support ends. There are two case examples relevant to the effect of section 9(a) of the PWA 1996 (albeit predating the PWA 1996), which states:

> "*Nothing in this Act shall- (a) authorise any interference with an easement of light or other easement in or relating to a party wall; …*".

The first case is that of *Selby v Whitbread & Co*,[322] where Whitbread was authorised by an award to demolish a building leading to removal of support from the flank wall of the of the Selby's building. This was followed by a second award, which required that Whitbread supports the flank wall by erecting a pier of 'substantial character'.[323] However, Whitbread failed to do so. Selby sued for, among other, wrongful withdrawal of support.

McCardie J held that the statutory rights superseded the common law right of support:

> "*The two sets of rights, namely, the rights at common law and the rights under the Act of 1894 (which followed the Act of 1855), are quite inconsistent with one another. The plaintiffs' common law rights are subject to the defendants' statutory rights. A new set of respective obligations has been introduced. The common law was seen to be insufficient for the adjustment of modern complex*

[322] [1917] 1 KB 736
[323] *Ibid.*, para. 740

conditions. Hence I think that the Act of 1894 is not an addition to but in substitution for the common law with respect to matters which fall within the Act. It is a governing and exhaustive code, and the common law is by implication repealed."[324]

McCardie J rejected the claim, however he did grant damages to the claimant for the defendant's failure to build the pier. This makes sense as the first award authorised for the support to be removed leading to the existing right of support to be overridden. The second award was then upheld showing that the Adjoining Owner is protected. This is because the award secures adequate provision for continuing or restoring support which in turn protected the former right of support. As the pier was not erected, there was no question over whether the claimant had a right of support derived from the pier. This case dates from before the PWA 1996, however it is relevant in terms how a court can approach a schism between common law and statute law. The meaning of section 9(a) of the PWA 1996 is that Selby would have the right of support once the pier was erected and there would be no need to have to prescribe it from scratch.[325]

The second case is that of *Sack v Jones*.[326] Sack and Jones owned adjoining houses, which were separated by a party wall and had implied mutual rights of support. According to Sack, Jones' house was subsiding, dragging the party wall over, resulting in damage to Sack's house due to lack of repair and underpinning. The court held that Sack's allegations lacked evidence and even if there was sufficient evidence, there would have been no cause of action.

The court (Astbury J.) held:

"*Now although the defendant's house is subject to an easement of support in favour of the plaintiff's house, the defendant is under no obligation to the plaintiff to keep her own house in repair for that purpose. … Even if there were any pull in the present case it can only have arisen from subsidence of the defendant's house and flank wall in the ordinary course of nature without any action on the*

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[324] *Selby v Whitbread & Co* [1917] 1 KB 736, para. 752
[325] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 207-208
[326] [1925] Ch. 235

part of the defendant. The non-liability of the servient owner to repair appears also from Chauntler v. Robinson and Dalton v. Angus…. In the present case the defendant has done nothing at all. Her tenant resides in her house, which is in good repair. This action is brought owing to the belief of the plaintiff and her advisers that the defendant's house is pulling the plaintiff's over. That hypothesis has not been established, but if it had, I do not think that in the particular circumstances the defendant would be in any way liable. The action fails, and must be dismissed with costs.[327]

The interference with the easement of support was not caused by Jones but by natural causes for which the defendant could not have been held liable. However, see decision in *Leakey v National Trust*,[328] (referred to below).

A notable case in relation to the right of support in connection with a party wall is *Brace v South East Regional Housing Association Limited and Another*,[329] where Brace and the first defendant owned two terraced houses. The first defendant wanted to demolish its house with no intention of rebuilding it. The relevant act at the time, the London Building Act (Amendment) Act 1939, did not apply to the properties. Brace and the first defendant nevertheless decided to appoint surveyors and sign a Party Structure agreement including a schedule of permitted works. The issue was that the first defendant's demolition of its house resulted in the soil (clay) drying out. The shrinkage of the soil caused subsidence damage to Brace's house. As a result, Brace claimed damages for negligence and the wrongful removal of support against both the first defendant and its surveyor. The judge at first instance held that the defendants were not negligent. However, he also held that the defendants were liable for wrongful removal of support. Although the Court of Appeal dismissed the first defendant's appeal, it did not decide the surveyor's appeal.

The Court of Appeal held that Brace's existing right of support did not depend on the agreement between the parties that allowed the defendant to demolish its house. The agreement itself was not an award (albeit it was modelled on an award under the

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[327] *Sack v Jones* [1925] Ch. 235, paras. 240-243
[328] [1980] QB 485
[329] [1984] 1 EGLR 144

London Building Act (Amendment) Act 1939). In addition, the London Building Act (Amendment) Act 1939 did not apply. The main point of the case was whether Brace abandoned its right of support. Based on the agreement, it was held that that Brace did in fact not abandon its right of support. The decision is highly relevant to the right of support in the context of party walls, although it is silent on the issue enshrined in section 9(a) of the PWA 1996.

Case law is aligned with the PWA 1996 in that the PWA 1996 does not authorise interference with an easement as per section 9(a). This gives clarity and shows consistency in both legislative and case law developments. While party walls and related works benefit from certain freedoms granted by the PWA 1996, these are not meant to trump easements and linked rights and obligations of the relevant parties.

3.2 Weather Protection

There is no easement of protection from the weather,[330] which essentially means that a Building Owner has the right to remove its neighbouring wall or building even if this leads to exposing its neighbour's external wall to the 'full blast of the elements'.[331] Weather protection is mentioned in the context of party walls in the chapter on easements as it can often be linked to the easement of support. According to *Gale on the Law of Easements*:[332]

> "*In the light of this decision [Upjohn v Seymour Estates Ltd],*[333] *it may be that the ruling in Phipps v Pears, in a case which did not involve a party-wall, that there is no easement to be protected from the weather, needs to be modified in the case of the kind of party-wall which is within s.38 of the LPA 1925. With such a party-wall, it can be said that the owner of one-half of the wall is entitled to use the other half of the wall, not only for support but also for protection from the weather and this right is conferred by the statute. The owner of one-half of a party-wall can in an action against a third party only recover damages in respect of the one-half vested in him.*"

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[330] *Phipps v Pears* [1965] 1 QB 76
[331] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 208
[332] *Gale on the Law of Easements,* 21st Ed., para. 11-03
[333] [1938] 1 All E.R. 614

While weather-protection as such is not an easement, the need to ensure that the Adjoining Owner has such protection makes sense in the context of the right to support, considering that long-term weather impact on an exposed party wall can cause such support to diminish or disappear completely as time progresses.

The Building Owner may be liable in damages at common law if it removes a wall leading to exposure of an internal wall for the first time or if it exposes an external wall or any other wall to serious wind suction.[334] In relation to damages of this kind, section 7(2) of the PWA 1996 provides for compensation and special precautions in relation to such damages, which should form part of the party wall award.

In *Marchant v Capital & Counties plc*,[335] as shown in Diagram 16, Marchant's new house was built against and had enclosed on the back wall of a warehouse owned by Capital. Capital then demolished the warehouse complying with the valid party wall rules valid at the time. The part used by Marchant's house was left erected in its original place.[336] The previously internal party wall dividing Marchant's premises from the demolished premises was left exposed to the weather. The surveyors' award imposed an obligation on Capital to *"… Maintain the exposed face of the party wall in a weatherproof condition*. …"[337]

After a few years, rain penetrated through the exposed face of the wall resulting in damage to Marchant's property. As a consequence, the claimant sought to enforce the obligation against Capital. The court allowed Marchant's appeal. It held that Capital was in breach of its continuing obligation enshrined in the surveyor's award. The court imposed a continuing obligation on Capital to maintain the wall in a weatherproof condition. While this is a slightly unusual ruling, considering that continuing obligations are not imposed lightly by surveyors, imposing such a continuing obligation is within a surveyor's power.

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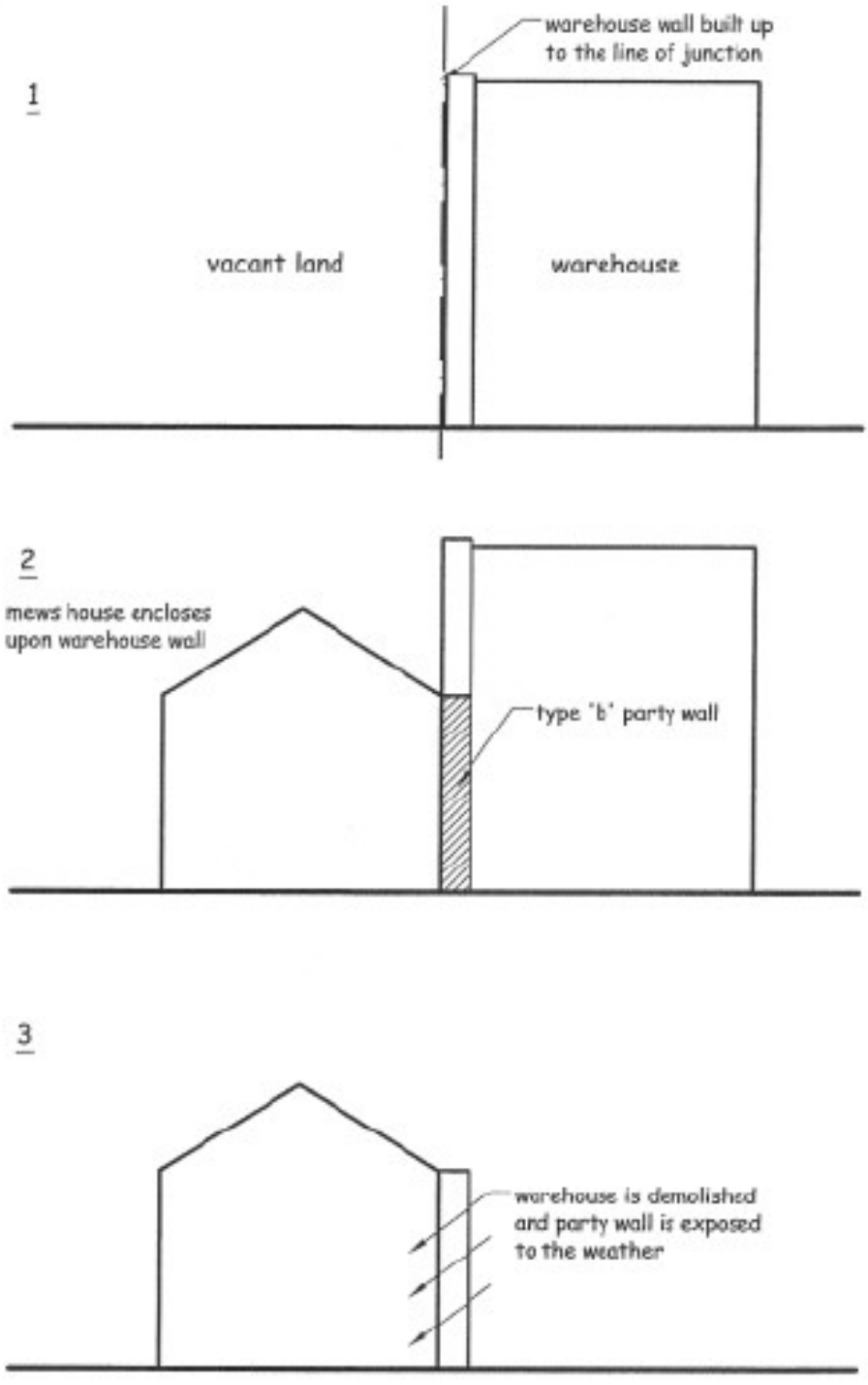
[334] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 207-208
[335] 1983 WL 215690 (1983)
[336] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 266
[337] *Marchant v Capital & Counties plc* 1983 WL 215690 (1983), page 3

Diagram 16 – *Marchant v Capital & Counties plc*[338]



[338] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 267

In *Rees v Skerrett*,[339] it was held that an award can validly impose an obligation to maintain a party wall on the Building Owner once works have been completed, meaning that the Building Owner is required to protect the wall from weather.[340] The Court of Appeal also held that a Building Owner who had demolished its property is liable for the damage caused to a building of an Adjoining Owner caused by wind damage and water penetration. It also held that structural damage that is caused by wind could fall under the obligations related to the easement of support. As a result of the wind, it became clear that the wall on its own was not stable enough and required support. Although there is now a right in common law that protects from the weather, the court applied *Leakey v National Trust*,[341] imposing a positive duty on the landowner to "*do that which is reasonable in all the circumstances to prevent or minimise the known risk of damage to the neighbouring property.*"[342]

Rees recovered damages for the losses caused by both the withdrawal of support as well as by the weather damage. The withdrawal of support argument is the easement of support route, whereas the weather damage argument is the nuisance or negligence route. According to the court (Lloyd J):

> "*Though it is not relevant on the facts to the present case, it is worth noting that the carrying out of works such as those undertaken by Mr Skerrett would now be governed by the provisions of the Party Wall etc Act 1996. By section 2(2)(n) of that Act a building owner has the right to expose a party wall hitherto enclosed subject to providing adequate weathering. Though an owner who is subject to a demolition notice does not have to serve a party structure notice under section 3 (see section 3(3)(b)) he is still liable to compensate his neighbour for loss or damage resulting from the work done under section 7.*"[343]

Extension of the common law by the decision of this case is not as revolutionary as it may have appeared at first considering that now the PWA 1996 would apply to a situation similar to the one in the above case. The decision in *Phipps v Pears* dates

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[339] [2001] 1 WLR 1541, CA
[340] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), pp. 208-209
[341] [1980] QB 485
[342] *Ibid.,* para. 495
[343] *Rees v Skerrett* [2001] 1 WLR 1541, CA, paras. 1553-1554

from 1965, prior to the PWA 1996 having been enacted. However, the decision in *Rees v Skerrett* dates from 2001, after the PWA 1996 had been enacted. The decision in *Rees v Skerrett* points to the PWA 1996, which deals with weather-proofing in the context of party walls and ensures that by exposing a party wall, a Building Owner needs to provide adequate weather-proofing. This statutory principle promoted in *Rees v Skerrett* is further supported by the above quotation from *Gale on Easements*.[344] This shows a departure from the approach in *Phipps v Pears* as while weather-proofing is not an easement as such, the potential hardship to an Adjoining Owner in the context of party walls and easements seems to have been addressed by the PWA 1996.

3.3 Excavations

Support can be either ‘subjacent’ (from below) or ‘adjacent’ (from the neighbouring property). Excavation works on the Building Owner's land are covered by section 6(10) of the PWA 1996, which provides that the Building Owner is not relieved from "*any liability to which he would otherwise be subject for injury to any adjoining owner or any adjoining occupier by reason of any work executed by him.*"

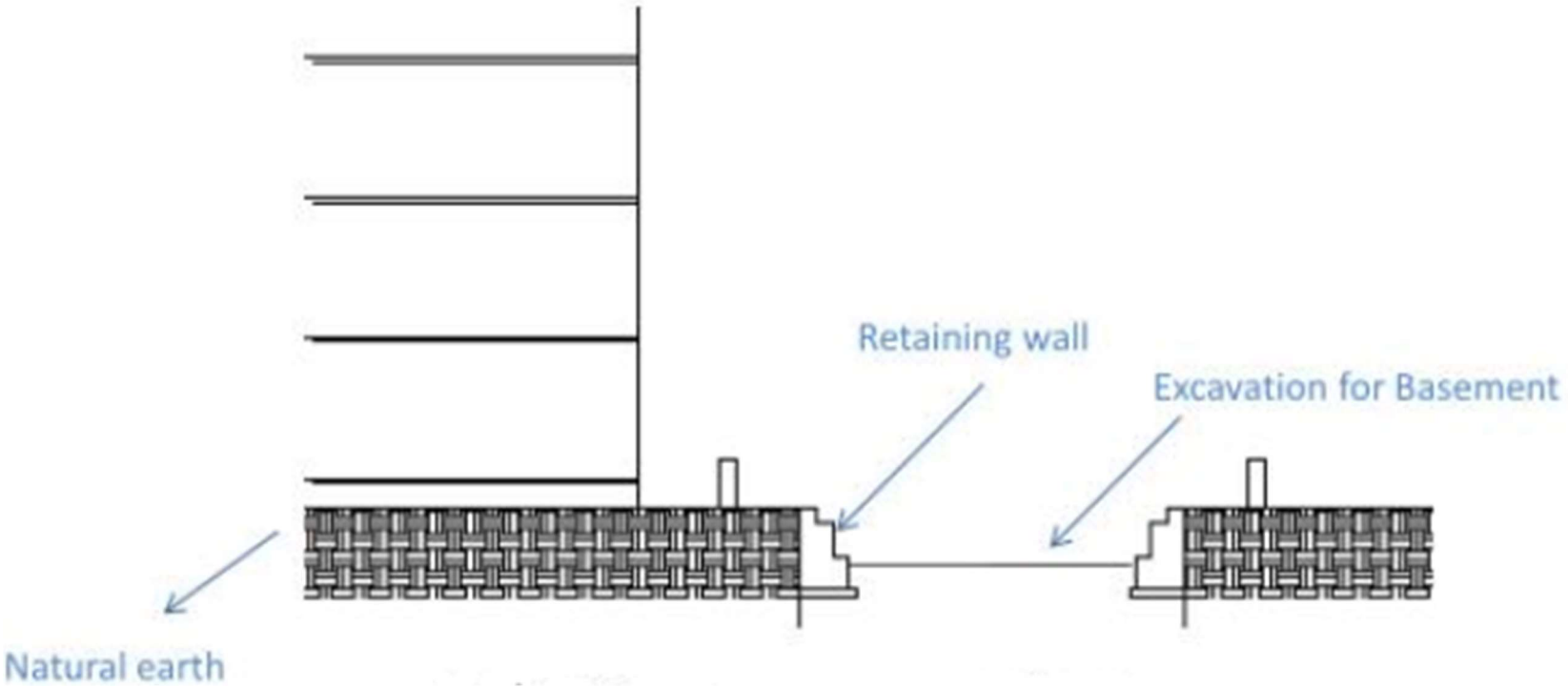
By way of example, in *Dodd v Holme*,[345] Holme performed excavation works on his own soil. Dodd's building was in dilapidated condition and, as no shoring was provided, the Dodd's building collapsed. The collapse was caused by Holme's excavations. The issue in question was whether a party making such excavation is obliged to ensure that the Adjoining Owner's property's foundations are not weakened, and should they be weakened, whether the party making the excavations is guilty of actionable negligence. Holme was held liable in negligence.

Where the neighbouring land is to be excavated for the purposes of building a basement, the party excavating the land has the duty to provide adequate shoring or a strong retaining wall on its own land at its own cost (Diagram 17). If, as the result of the excavation, the Adjoining Owner's land suffers damage, the Adjoining Owner is entitled to compensation by the Building Owner who is responsible for the natural

[344] 21st Ed., para. 11-03
[345] 110 E.R. 1296

support of the Adjoining Owner's land.

Diagram 17 – Easement of Support[346]



[346] Shailesh Kumar Pathak and Richard Sadokpam ,"*Easement – Professional Practice,*" p. 18 <https://www.slideserve.com/anika/easement-powerpoint-ppt-presentation> accessed 15 May 2022

Another example of excavation works negatively affecting the Adjoining Owner's part of the party wall is demonstrated in *Ray v Fairway Motors (Barnstable) Ltd*,[347] where the parties owned adjacent yards. Fairway performed excavation works in its yard down to a depth of four feet. This was immediately next to Ray's boundary wall, as can be seen in Diagram 18. As a result, Ray's wall and a shed subsequently built against it were damaged.

Ray sought to recover his losses from Fairway due to the Fairway's alleged negligence and for breach of Ray's natural rights and easements of support.[348]

It was held that Fairway failed to prove that the shed placed on top of the party wall caused them any prejudice that would justify the assertion that the easement of support was extinguished.

> *"… the defendants failed to prove that the erection of the workshop produced such an additional burden on the servient tenement that the easement of support should be treated as extinguished. On this basis, the defendants did not seriously contend that they were not liable for the full amount of the damages awarded by the trial judge*."[349]

It was further held that Ray's claim for damages for infringement to its easement succeeded, however its alternative claim in negligence failed as an owner of land is entitled to do what they wish with their own land.[350]

Before starting excavation works falling under the PWA 1996 affecting a party wall, the Building Owner is advised to consult a surveyor to assess how the excavation works could affect the party wall and their long-term consequences. This will aid in assessing what (if any) excavation works are viable and communicating with the Adjoining Owner to agree on the best way forward. Such an agreement should be in writing for evidentiary purposes at a later point in time should it come to a dispute.

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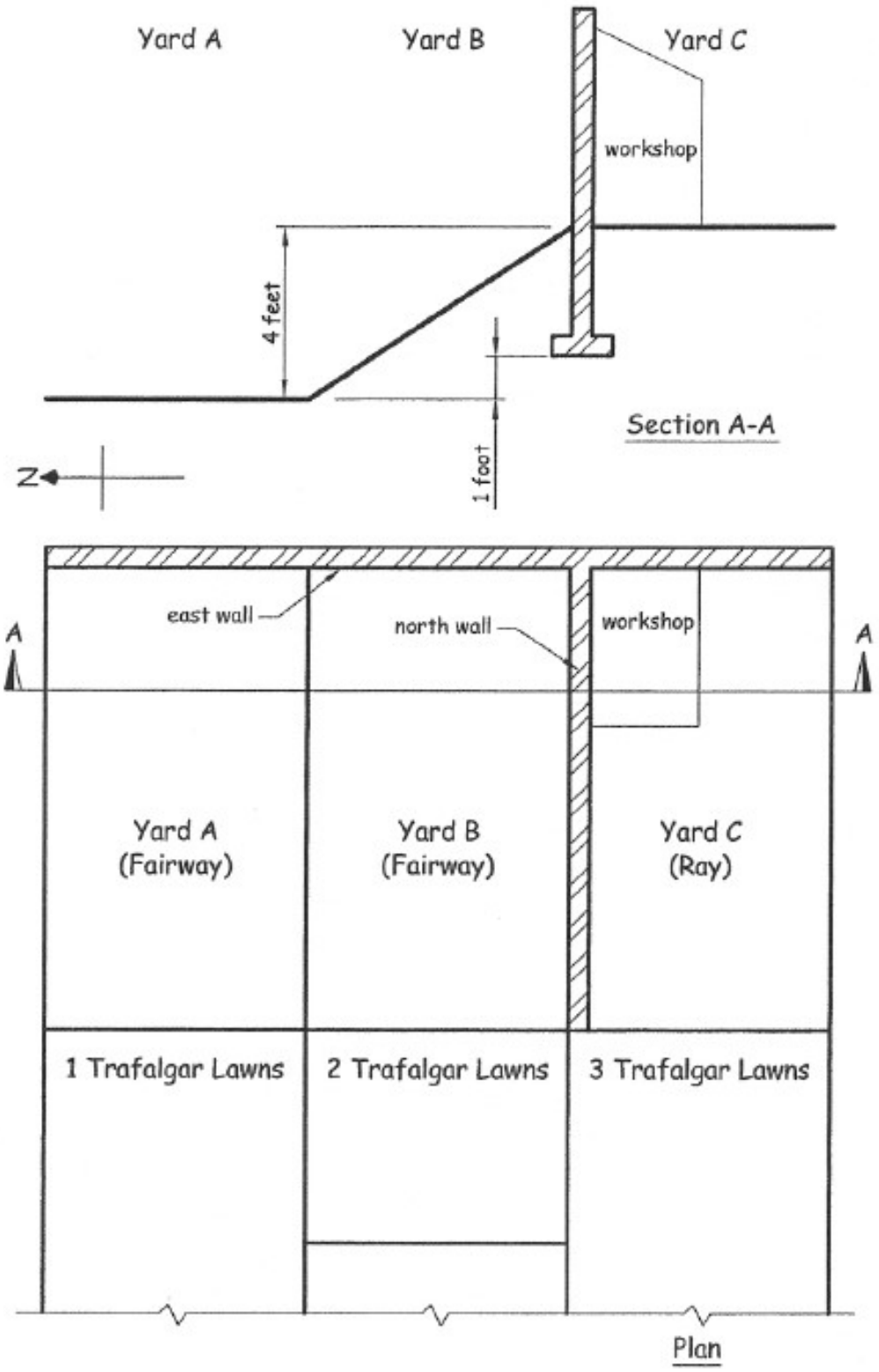
[347] (1968) 20 P & CR 261
[348] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 317
[349] *Ray v Fairway Motors (Barnstable) Ltd* (1968) 20 P & CR 261, para. 274
[350] *Ibid.*

Diagram 18 – Ray v Fairway Motors (Barnstable) Ltd[351]



[351] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 319

3.4 Easements – Right of Support – Conclusion

As can be seen, the easement of the right of support is relevant to party walls and may be created by implied grant due to necessity. Where adjoining buildings are joined by a party wall, they mutually support each other. Where one of such buildings is demolished, it can cause serious issues leading to the collapse of the adjoining building. The owners of both buildings owe a duty of support to each other. Where a party decides to demolish its building, it must provide continued support of the remaining building on the Adjoining Owner's land. The right of support and related duty of support also applies where ground is removed too close to a neighbouring building. The same right of support applies also in situations where there is a risk that ground, as opposed to a building, will collapse due to excavation on neighbouring land. A right of support applies where retaining walls coincide with boundaries between properties.

The PWA 1996 applies to work carried out pursuant to section 2, which includes acts that could interfere with the right of support. The PWA 1996 authorises such work but also protects the affected Adjoining Owner (sections 2(3)(a), (4)(a), (5), (6) and 7(2)). Where a dispute arises, an award under section 10 of the PWA 1996 will address how such works should be performed to ensure the Adjoining Owner's property is adequately supported.[352]

An owner of land who demolished its property is liable for the damage caused to an adjacent building by wind damage and water penetration. Excavation works on the Building Owner's land are covered by section 6(10) of the PWA 1996 under which the Building Owner is liable for injury to any Adjoining Owner or occupier resulting from work executed by the Building Owner.

The right of support is an easement that needs to be considered carefully before a party starts demolishing a building affecting a party wall or performing works that could negatively impact a party wall and related support to the adjacent building. Whether a party wishes to perform such works or is at the receiving end, it may be a good idea to consult a chartered building surveyor for advice before such works commence. This will ensure that the party/parties are well informed and can communicate before a

[352] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 207

dispute ensues as well as make sure there is a record of any such communications and any relevant evidence in relation to such works.

4 Drainage Rights

Rights of drainage may, similarly to rights of support, be created by way of implied grant due to necessity for the mutual enjoyment of the adjoining properties, which depends on the particular circumstances in each individual case. In *Pyer v Carter*,[353] the court held:

> "*Where the owner of two or more adjoining houses sells and conveys one of them to a purchaser, such house is entitled to the benefit and is subject to the burthen of all existing drains communicating with the other house, without any express reservation or grant for that purpose*."

Party walls, while separate from drainage rights, could become intertwined with such rights if drainage runs through them or is affected by them. In the case of *Walby v Walby*,[354] it was held that the test for implying an easement of necessity is a strict one:

> "*He accepted that the test for necessity was a strict one and that the facts must be such that the land retained cannot be used at all without the implication of an easement. Applying this approach to the present facts, Morgan J. concluded that the absence of a drainage easement did not prevent the retained land being used at all. Accordingly, it would not be right to imply the reservation of a drainage easement on the ground that it was an easement of necessity*."[355]

It is not enough to show that the easement is necessary for the reasonable enjoyment of the land retained. In addition, the facts of the case need to show that the retained land cannot be used at all unless an easement is implied.

In the case of *Arena Property Services Limited v Europa 2000 Limited*,[356] a dispute arose in relation to a party wall dividing 98 Farringdon Road, EC1 and 96 Farringdon Road. The owners of the freehold of no. 98 (Europa) and the owners of a leasehold in

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[353] 156 E.R. 1472, para. 1472
[354] [2013] 1 P. & C.R. DG6
[355] *Walby v Walby* [2013] 1 P. & C.R. DG6, para. D14
[356] [2003] EWCA Civ 1943

no. 96 (Arena) planned to do work to the party wall and therefore served the relevant notices. Works performed by freeholders of no. 98 gave rise to a claim for damages in nuisance. Arena removed a soil pipe, which served Europa's property and protruded onto Arena's property. The initial decision was that Arena was not liable for compensation payment to Europa. Subsequently, Europa appealed the decision. Europa argued it was entitled to compensation as an Adjoining Owner under section 7(2) of the PWA 1996 and that the soil pipe was covered by an easement. Arena's argument was that the soil pipe amounted to trespass.

The relevant drainage pipe, which is at the crux of the dispute ran through both no. 98 and no. 96 properties:

> "*The soil vent pipe came from 98 Farringdon Road and passed across the party wall at the first floor level and travelled to near the ground, at which point it passed through the party wall back on to the property forming part of 98 Farringdon Road. From there it was, or ought to have been, connected to the mains drainage. This soil vent pipe served the upper floors of 98 Farringdon Road which, as I shall explain, were subsequently the subject of a leasehold interest created in favour of the appellants in May 2001*."[357]

The pipework attached to the outside of the building was in the vertical plane. One of the main questions was whether the surveyor's award was capable of extinguishing the easement (if there was such an easement). At first instance, it was held that the defendant failed to establish the existence of an easement and that a surveyors' award was capable of extinguishing the easement (had there been one) as the PWA 1996 provided its own code, which supersedes the common law with the only easements being preserved noted in section 9 of the PWA 1996.

On appeal, Europa tried to argue that as the claimant relied on the PWA 1996, it had implicitly accepted that an easement existed. The appeal was dismissed. The Court of Appeal held that the surveyors' award would not have extinguished the easement. This could have been extinguished only when Arena rendered the pipe unusable. However, the Court of Appeal agreed with the first instance judge on the point that

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[357] *Ibid*, para. 3

Europa failed to establish that an easement existed for more than twenty years. In fact, the easement was not extinguished until Arena blocked the pipe so that it could not serve any use for the Adjoining Owner (Europa).

> *"… s.9 would seem to exclude the possibility of any works which might permanently deprive an adjoining owner of his easement. On this basis, Arena would have had no right to remove the soil pipe without simultaneously preserving the substance of the easement. In practice, this would have required the pipe to be re-routed, as was previously the practice at common law as well as under the London Building Acts. Indeed, as has already been noted, this is now standard practice under s.2(5) of the 1996 Act. In these circumstances, the dubious possibility of buying out an easement with compensation under s.7(2) should never need to arise*."[358]

The case shows that drainage rights are capable of being an easement and can become a contentious matter in connection with party walls. It is not the intention of the PWA 1996 to interfere with easements which is clear from the wording of section 9(1) of the PWA 1996.

As a conclusion to drainage rights, a right of drainage can transpire independently from a party wall if, for example, it runs through or along the party wall, in which case it will have to be taken into account.[359] Drainage rights are relevant to party walls and should be considered carefully if a potential interference between the two is a possibility. The PWA 1996 is not meant to 'trump' easements and therefore an award will not be capable of extinguishing an easement on its own.

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[358] Paul Chynoweth, "*The Party Wall etc Act 1996: Compensation and Treatment of Easements*," The Conveyancer (2004), p. 240
[359] Christopher Cant, "*Easements – Adjoining properties and party walls*," (2013), pp. 5-6

5 Are there Rights or Obligations to Repair a Party Wall?

5.1 The PWA 1996 and Repairing a Party Wall

When it comes to party walls, naturally they require upkeep once they have been built. The question arises, who has the obligation to repair a party wall (if such an obligation exists at all) and also whether one of the parties relevant to the party wall can assert a right for the other party to repair the wall.

According to *Megarry & Wade*,[360] neither of the parties relevant to the party wall are obliged to repair their own half of the party wall. However, each has the right to repair the neighbour's half, which is a matter of choice / free will.[361] In addition, neither of the landowners or occupiers have the right to pull down the party wall, (with the exception of rebuilding it with reasonable dispatch), or to demolish their own half of the party wall meaning removal of the other party's support.[362] Also, neither of the parties is allowed to prevent the other party from enjoying a section of the party wall.[363]

Before addressing the topics of the 'right to repair' and 'obligation to repair,' in the context of party walls, in connection with the law of easements, let us view such right or obligation to repair under the PWA 1996. Where an existing party wall falls into disrepair and/or is damaged and either the Building Owner or the Adjoining Owner wants to ensure that this is addressed against the other, there are ways how to compel the other party to do so. Although it is not possible to force the other party to cooperate in repairing the party wall under the PWA 1996 procedure directly, it is possible under the PWA 1996 to obtain a party wall award. The award gives some comfort in that it provides protection if the other party tries to complain later down the line about works being done on the party wall. Another advantage of such an award is also that it can allocate costs for the works done on the party wall where such works are for the purposes of repairing existing structures.[364]

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[360] Megarry & Wade: *The Law of Real Property* (9th edition)., Chapter 29 - Species of Easements and Profits, Section I. Party Walls, para. 29-047
[361] *Jones v Pritchard*[1908] 1 Ch. 630 para. 637 and *Sack v Jones* [1925] Ch. 235
[362] *Upjohn v Seymour Estates Ltd* [1938] 1 All E.R. 614; *Brace v SE Regional Housing Association Ltd* [1984] 1 E.G.L.R. 144; and *Bradburn v Lindsay* [1983] 2 All E.R. 408.
[363] *Stedman v Smith* (1857) 8 E. & B. 1 at 6
[364] Ruth Pratt, "*4 ways you might be affected by the Party Wall Act*" (LexisNexis 24 September 2013)

Section 11(1) states that expenses of work under the PWA 1996 are usually defrayed by the Building Owner (with exceptions set out in section 11 of the PWA 1996). Should a dispute arise, it is possible under the PWA 1996 to obtain a party wall award.

Works that are small in nature, such as simple repairs (for example, re-plastering or cutting into the party wall to add or replace electrical wiring and sockets) do not require service of notice under the PWA 1996. The parties can simply agree amongst themselves what needs to be done, which should be recorded in a party wall agreement. The party wall agreement will ensure clarity of what the parties agreed amongst themselves and what works have been performed. This is a positive step the parties can make to mitigate the likelihood of a dispute arising and at the same time protect themselves should a dispute arise by having a clear record of what the parties have agreed, which the court will take into account should it come to litigation.

Section 2 of the PWA 1996 covers 'repair etc. of party wall: rights of owner.' Works falling under section 2 of the PWA 1996 require service of a notice by the Building Owner under section 3 ('Party Structure notices') of the PWA 1996 on every Adjoining Owner in relation to neighbouring properties that are affected by such works at least two months prior the works begin. The affected Adjoining Owner has the right to agree or disagree in writing or do nothing. If the Adjoining Owner chooses to do nothing for a period of at least fourteen days, a dispute is deemed to have started and will need to be dealt with by a party wall surveyor. For avoidance of doubt, and as noted earlier, it is not the intention for the exercise of statutory rights to authorise interferences with any easements connected with party walls.[365]

5.2 **Easements and the Right vs. Obligation to Repair**

As for easements, these relate to rights to "*make some limited use of land belonging to somebody else*. *An example is a private right of way over a neighbour's land.*"[366] According to *Gale on the Law of Easements*: "*the question of ancillary easements*

<https://www.lexisnexis.co.uk/blog/dispute-resolution/4-ways-the-party-wall-act-might-affect-you> accessed 15 May 2022

[365] Section 9(a) of the PWA, *Crofts v Haldane* (1867) LR 2 QB 194and *Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(4) Rights and Duties under the Party Wall Etc Act 1996/382. Exercise of rights of repair*

[366] "*Impact Assessment of the Law of Property Bill [2011]*" by the Law Commission – Ministry of Justice, June 2011

commonly arises in connection with repairs."[367] This becomes relevant to the area of party walls where a party wall becomes an inherent part of an easement, for example, where it is the subject matter of the right of way or right to support. In this context, distinction must be made between the 'right to repair' and the 'obligation to repair'.

5.2.1 Is there a Right to Repair?

In *Jones v Pritchard*,[368] Parker J. held:

> "*Once again, the grant of an easement is prima facie also the grant of such ancillary rights as are reasonably necessary to its exercise or enjoyment. Thus the grantee of an easement for a watercourse through his neighbour's land may, when reasonably necessary, enter his neighbour's land for the purpose of repairing, and may repair, such watercourse. On this principle each party in the present case may do such acts on the property of the other as are reasonably necessary to the continued enjoyment of the easement; for example, each party would be entitled to repair the other's half of the wall in question so far as was reasonably necessary for the enjoyment of any easement impliedly granted or reserved: see Pomfret v. Ricroft.*"[369]

Where the person entitled to the easement carries out repairs on the servient tenement to prevent damage occurring to the servient property, it is that person who has to bear the burden of the repair costs and is not able to claim a contribution towards such costs from the owner of the servient tenement. There is no obligation on the servient owner to repair the subject matter of an easement and therefore is allowed to let it fall into disrepair.[370] This issue will likely be the subject to the actual terms of any grant or what the parties agree between themselves by way of a contract. The position changes if a nuisance needs to be remedied and case law has an impact as well when it comes to the question of sharing of costs[371] between the affected parties.

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[367] *Gale on the Law of Easements, 21st Ed.,* para. 1.112
[368] [1908] 1 Ch. 630
[369] *Jones v Pritchard* [1908] 1 Ch. 630, para. 638
[370] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 194
[371] *Abbahall Ltd v Smee* [2003]1 W.L.R. 1472

In *Pomfret v Ricroft*, it was held:[372]

> *"As if a man gives me a license to lay pipes of lead in his land to convey water to my cistern, I may afterwards enter and dig the land to mend the pipes, though the soil belongs to another and not to me.*"

Another example includes *Bond v Nottingham Corp*,[373] where the defendant (local authority) wanted to demolish a building under a statutory power. The issue was that the building was subject to an easement of support in relation of an adjoining building. The Court of Appeal held that while an easement of support was in existence, this in itself did not impose any repairing obligations on the servient owner (even where the deterioration of the servient building meant that the dominant building was deprived of support). It was however also held that where the servient owner demolishes its building, it is obliged to give equivalent support to the dominant building and that was the situation that the defendant was in when demolishing under a statutory power.[374]

> "*The nature of the right of support is not open to dispute. The owner of the servient tenement is under no obligation to repair that part of his building which provides support for his neighbour. He can let it fall into decay. If it does so, and support is removed, the owner of the dominant tenement has no cause for complaint. On the other hand, the owner of the dominant tenement is not bound to sit by and watch the gradual deterioration of the support constituted by his neighbour's building. He is entitled to enter and take the necessary steps to ensure that the support continues by effecting repairs, and so forth, to the part of the building which gives the support. But what the owner of the servient tenement is not entitled to do is, by an act of his own, to remove the support without providing an equivalent. There is the qualification upon his ownership of his own building that he is bound to deal with it, and can only deal with it, subject to the rights in it which are vested in his neighbour*."[375]

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[372] 85 E.R. 454 (K.B. 1680),paras. 459-460
[373] [1940] Ch. 429
[374] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 61
[375] *Bond v Nottingham Corporation* [1940] Ch. 429, paras. 438-439

This case is relevant in relation to the topic on the easement of support (discussed above at paragraph 3) as well as repairs. It is also relevant to both points – the 'right to repair' and the 'obligation to repair'. The owner of the servient tenement is not obliged to repair (here a deteriorating support provided by the building on its land). While the owner of the dominant tenement is not obliged to repair either, it has a right to enter the servient owner's land and effect repairs so that, in this case, the right of support continues.

The case shows that the right of support in itself does not create an obligation on the owner of the servient tenement to repair and does not oblige the owner of the servient tenement to prevent the building providing support to fall into decay. However, at the same time, the owner of the servient tenement must not remove the support without ensuring that it substitutes it with an equivalent to support the dominant tenement. There is a clear divide between the owner of the servient tenement acting passively or actively when it comes to its tenement providing support.

However, while the owner of the dominant tenement is entitled to enter the servient owner's land for the purpose of repair, the work performed has to be only that which is necessary and in a reasonable manner.[376] Where however the repair is not necessary, no right of entry on the servient tenement in order to perform the repairs will be implied.[377]

According to *Gale on the Law of Easements*:[378]

> "*The dominant owner is entitled to enter the servient land to effect repairs or to alter the surface of the servient land to accommodate the right granted. So a dominant owner may be entitled to enter the servient land to install lighting if that is reasonably necessary to enable the way to be used safely and conveniently.*
>
> *The following summary of the law has been described as "settled for centuries"*

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[376] *Terence Carter, Jane Carter v Jeffrey Cole, Jacquelyn Cole* [2006] WCA Civ 398, para. 8
[377] *Gale on the Law of Easements, 21st Ed.,*para. 1.112 and *Edwards v Kumarasamy* [2016] UKSC 40
[378] 21st Edition, paras. 9-112-113

and uncontroversial. Subject to contrary agreement,

(1) the grantee may enter the grantor's land for the purpose of making the grant of the right of way effective viz. to construct a way which is suitable for the right granted to him;

(2) once the way exists, the servient owner is under no obligation to maintain or repair it;

(3) similarly, the dominant owner has no obligation to maintain or repair the way;

(4) the servient owner (who owns the land over which the way passes) can maintain and repair the way, if he chooses;

(5) the dominant owner (in whose interest it is that the way be kept in good repair) is entitled to maintain and repair the way and, if he wants the way to be kept in repair, must himself bear the cost;

(6) he has a right to enter the servient owner's land for the purpose but only to do necessary work in a reasonable manner."

This was confirmed in *Regency Villas Title Ltd and Others v Diamond Resorts (Europe) Ltd and Others:*[379]

"*… step-in rights are, by definition, rights to reasonable access for maintenance of the servient tenement, sufficient, but no more than sufficient, to enable the rights granted to be used: see Gale on the Law of Easements , 20th ed, at para 1-93 and Carter v Cole [2006] EWCA Civ 398; [2006] NPC 46 per Longmore LJ at para 8(6). The dominant owner's right is "to enter the servient owner's land for the purpose, but only to do necessary work in a reasonable manner …*"

Where, on the other hand, the owner of the dominant tenement agrees to contribute to the cost that the servient tenement owner incurred when performing repairs to a road, the servient owner cannot charge the dominant owner above and beyond works which would have been done purely to repair (e.g. the road) in line with the covenant.[380]

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[379] [2017] EWCA Civ 238, para. 65

[380] *Gale on the Law of Easements,* 21st Ed., para. 9-114.

A distinction needs to be made between express grants and prescriptive rights. According to *Gale on the Law of Easements*, where, for example, a right of way is granted for 'all purposes,' then the owner of the dominant tenement can make improvements even for purposes that have not been contemplated at the time of the grant. On the other hand, a prescriptive right is restricted by the type of the use, which gave rise to it. Therefore, no improvements can be made to increase the burden on the servient tenement.[381]

In *Terence Carter, Jane Carter v Jeffrey Cole, Jacquelyn Cole*,[382] Lord Justice Longmore noted:

> "*The common law has contemplated with equanimity the prospect that both the servient owner and the dominant owner have the right of repair.*"

While the owner of the dominant tenement has a right to enter and repair, it has also the right to prevent a substantial interference with such dominant owner's right.[383]

As for the extent of the ancillary right to repair, in *Edwards v Kumarasamy*,[384] Lord Neuberger held:

> "*First, a right of way does not necessarily carry with it a right to carry out repairs to the way: such an ancillary right only arises as a matter of implication, and is normally justified because the servient owner has no obligation to repair the way. As it is put in Gale on the Law of Easements 19th ed (2012), para 1-90, "[t]he ancillary right arises because it is necessary for the enjoyment of the right expressly granted". In the present case, the Headlease, under which Mr Kumarasamy was granted the right to use the common parts, contains an obligation on the freeholder to keep the common parts in repair. Accordingly, I do not consider that it would be appropriate to imply such an ancillary right: it is not necessary for business efficacy, nor is it obvious*."

Where there is a covenant obliging a lessor to repair, which benefits the lessee, the

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[381] *Ibid., 21st Ed.,* para. 1.112
[382] [2006] EWCA Civ 398, para. 19
[383] *Gale on the Law of Easements, 21st Ed.,* para. 1.113
[384] [2016] UKSC 40, para. 57

courts will not imply a right to repair for the lessee.

When considering the principle that the owner of the servient tenement has no obligation to keep the servient tenement in good repair, while the owner of the dominant tenement is entitled to repair the servient tenement (but is not obliged to do so) with the accompanying right to enter the servient tenement – it is important to remember that the 'right to repair' needs to be examined and established in each individual case taking into account the surrounding circumstances as it is not an automatic right in itself.[385]

The Law Commission has issued a report in 2011,[386] where recommendations include "*to make it possible for the benefit and burden of positive obligations to be enforced by and against subsequent owners*."[387] This may result in having more clarity as to when the dominant owner has the right to 'step in' and repair when the affected land changes owners. It is yet to be seen how the Law of Property Bill will address this issue.

A case that discusses the 'right to repair' specifically in relation to party walls is *Barry v Minturn*,[388] where damp penetrated from the exposed face of a type A party wall into Minturn's building as illustrated in Diagram 19 below. Minturn wanted to get rid of the damp that was in the wall and therefore suggested that a damp-proof barrier is erected on Barry's side of the wall. Minturn served a notice to be able to repair the wall. It was held that the wall, which used to be a garden wall, continued to be a garden wall on Barry's side of the property. It was further held that the wall was defective as it allowed damp to penetrate into a building. Minturn had a right therefore to repair the wall. The method of repair had to be selected by surveyors in order to not inconvenience Barry unnecessarily. Minturn had no right to erect the damp-proof barrier on Barry's side. Equally, the surveyors had no authority to require Minturn to erect the damp-proof barrier on her side (which she was, however, free to do, should she wish to do so).

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[385] *Gale on the Law of Easements, 21st Ed.,* para. 1.112
[386] "*Making Land Work: Easements, Covenants and Profits a Prendre*," The Law Commission (Law Com No 327), 7 June 2011
[387] "*Easements, Covenants and Profits a Prendre*" by the Law Commission, <https://www.lawcom.gov.uk/project/easements-covenants-and-profits-a-prendre/> accessed 15 May 2022
[388] [1913] AC 584

However, Minturn was held to be entitled to insert the barrier within the thickness of the wall.[389]

The issue was that that the award required that a specific repair solution is done to a party wall (partly due to the party wall's prior history). The House of Lords considered this to be an improper basis for a decision. Nevertheless, it was not willing to overturn the award. This is due to the fact that the evidence showed that the tribunal making the award took the level of inconvenience caused to the Adjoining Owner into consideration, which is required by statute.[390]

Lord Parker of Waddington stated:

> "*I am not satisfied that it was, on the true construction of the Act,*[391] *open to the county court, at any rate under the particular circumstances of this case, to make any award which would involve the permanent appropriation of any land either of the appellant or the respondent. I am satisfied that it was not open to him to direct any works which would entail great inconvenience to the appellant, if it were possible to direct other works which, while equally effective and not involving any considerable extra cost so far as the respondent was concerned, would be accompanied by no such inconvenience. The county court judge adopted, and I think rightly adopted, the only other alternative open to him on the evidence by directing the works mentioned in his award, which works he finds, as a fact, will be perfectly effective, and can be carried out without entry on the appellant's land.*"[392]

Lord Parker of Waddington also noted:

> "*In my opinion, dampness in a wall is not a defect within the meaning of the Act unless its existence renders the wall less effective for the purposes for which it is used or intended to be used. If a wall between two gardens is damp, it is not*

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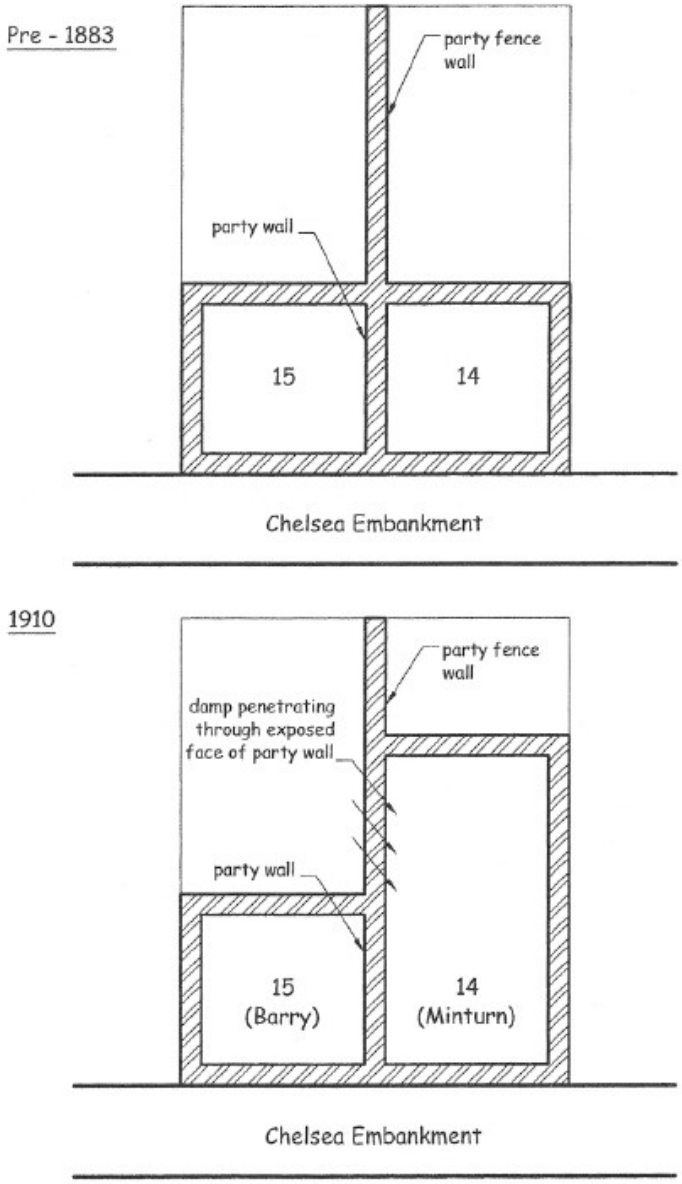
[389] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 52
[390] Paul Chynoweth, "*Invalid party wall awards and how to avoid them*" (University of Salford Manchester 2000), p. 14 <https://usir.salford.ac.uk/id/eprint/12454/2/invalid-awards.pdf> accessed 15 May 2022
[391] The 'Act' Lord Parker refers to is the London Building Act 1894.
[392] *Barry v Minturn* [1913] AC 584, page 595

on that account defective, for its dampness is immaterial.... The county court judge has found that the only defect in the wall is that part of it allows damp to percolate into the respondent's premises, and that this defect will be effectively remedied by the work he directed. This finding as a finding of fact is conclusive between the parties, and I do not think that it involves any error of law."[393]

The case highlights that while a party cannot intrude onto the other party's side of the property, courts will go to utmost length to ensure that where there is a defect to party wall that can be effectively remedied, the party affected by the defect will be entitled to perform the relevant repairs (here insert the damp-proof barrier within the thickness of the party wall) to such an extent that the repairs do not unnecessarily inconvenience the other party.

[393] *Ibid.*, para. 594

Diagram 19 – *Barry v Minturn*[394]



[394] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 53

5.2.2 Is there an Obligation to Repair?

In comparison to the 'right to repair', the 'obligation to repair' refers to a duty or the burden of the responsibility for the dominant owner to keep the subject of an easement in repair. The general principle is that the dominant owner has in fact no duty to keep the subject of its easement repaired (as noted above).[395] However, this is a generalised statement and in reality is subject to a number of exceptions. The fact remains that similarly to the 'right to repair,' whether there is an 'obligation to repair' depends on the circumstances of each individual case. While, technically, there is no principle of the 'obligation to repair,' below are examples of practical situations where an 'obligation to repair' on the part of the owner of the dominant tenement may arise depending on the circumstances of each individual case.

In *Taylor v Whitehead*,[396] Lord Mansfield stated that: "*by common law, he who has the use of a thing ought to repair it.*" According to *Gale on the Law of Easements*, this would mean that the owner of the servient tenement has no obligation to repair and that, therefore, if the owner of the dominant tenement wants, for example, the right of way repaired, then they have to perform the repair works themselves. While the dominant owner cannot be forced to repair, in practical terms, they have no other choice, in order to ensure that they are not committing trespass or nuisance.[397] This is in the context of the obligation not to cause nuisance, for example, where smoke or water is encroaching onto the servient tenement.[398]

This school of thought is further supported by the decision in *Ingram v Morecraft*,[399] where Sir John Romilly MR, albeit obiter, notes:

> "*If I grant a man right to lay pipes over my land, it follows that he must keep them watertight, for otherwise the escape of water is trespass."*

In Jones v Pritchard,[400] where Parker J elaborated on the issue:

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[395] "*Gale on the Law of Easements, 21st Ed.,* para. 1.114
[396] (1781) 2 Doug. K.B. 745, para 749
[397] "*Gale on the Law of Easements, 21st Ed.,*para. 1.114
[398] *Jones v Pritchard*[1907 J. 236.], para. 634
[399] (1863) 33 Beavan 49, paras. 51-52
[400] [1907] J. 236, p. 638

" …*there is undoubtedly a class of cases in which the nature of the easement is such that the owner of the dominant tenement not only has the right to repair the subject of the easement, but may be liable to the owner of the servient tenement for damages due to any want of repair. Thus, if the easement be to take water in pipes across another man's land and pipes are laid by the owner of the dominant tenement and fall into disrepair, so that water escapes on to the servient tenement, the owner of the dominant tenement will be liable for damage done by such water. Strictly speaking, I do not think that even in this case the dominant owner can be said to be under any duty to repair. I think the true position is that he cannot, under the circumstances mentioned, plead the easement as justifying what would otherwise be a trespass, because the easement is not, in fact, being fairly or properly exercised*."

According to *Gale on the Law of Easements*, it does not make a difference that the pipe serves not only the dominant tenement but also the servient tenement[401] (who has the right to repair but not an obligation to do so). The main distinguishing feature between the 'right to repair' and the 'obligation to repair' is that while for either to be established, circumstances of each individual case need to be considered, the 'right to repair' is a possibility or an opportunity for the dominant owner to perform repair works on the servient tenement (therefore accessing it) in order to be able to enjoy the easement (not being prevented from carrying out such by the servient owner) as long as the works are 'reasonable'. The 'obligation to repair' arises where the dominant owner runs the risk of trespass or nuisance if it does not perform the repair works.[402]

Both issues, the 'right' and the 'obligation' to repair are relevant to party walls as highlighted in *Barry v Minturn*.[403] With regards to party walls, many of them, albeit not all, are in place with an ancillary easement of support. Under common law, such an easement does not usually, with exceptions (as discussed above), impose an 'obligation to repair'. However, if nuisance arises due to neglect or failure to act, indirectly, an 'obligation to repair' may arise in practical terms, again depending on the circumstances of the particular case. An Adjoining Owner who suffers from the lack of

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[401] "*Gale on the Law of Easements, 21st Ed.,* para. 1.114
[402] *Ibid.,* para. 6-101
[403] [1913] AC 584

repair can then try to recover damages to cover costs they incurred as a result of performing the repair works on the party wall themselves. Interestingly, where a party wall results in being exposed to the elements due to disrepair, the damages can also cover the cost of finishing such a party wall as to its appearance and reasonable standard of weather proofing. It is important to remember that where the PWA 1996 applies, this supersedes common law remedies when it comes to rights of support.[404] Below are examples of case law, where an 'obligation to repair' arose or damages in relation to repair works to party walls.

In *Bradburn v Lindsay*,[405] dry rot in the party wall was caused by dilapidation and neglect in one of the semi-detached houses, also resulting in the local authority having to demolish the derelict house. This resulted in the party wall being unsupported to a large extent. As the defaulting party owed a duty to the Adjoining Owner to take reasonable steps to abate reasonably foreseeable nuisance, the Adjoining Owner was able to recover damages for covering the cost of getting rid of the dry rot and erecting the supporting buttresses.

Case law shows the courts' proclivity towards awarding damages where the Building Owner jeopardises the Adjoining's Owner's right of support by carrying out works to the relevant party wall. In *Brace v South East Regional Housing Association Ltd*,[406] an end of terrace property was demolished. Shrinkage and subsidence were caused by the conversion of a party wall into a flank wall. As the right of support was interfered with causing nuisance, damages were recovered. This is even though a party wall agreement was in place.

In *Rees v Skerrett*,[407] again, an end of terrace property was demolished. This time, damage from wind suction was caused by the conversion of a party wall into a flank wall. Damages were recovered as the right of support protection covered the effect of the weathering in question. The damages related to the support withdrawal as well as the breach of duty for the party wall to be weatherproofed once the demolition was completed: "*Indeed, the withdrawal of support where an easement of support exists*

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[404] *Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(3) Rights and Duties in Relation to Party Walls at Common Law/374. Disrepair giving rise to an actionable nuisance*
[405] [1983] 2 All ER 408
[406] (1984) 270 Estates Gazette 1286
[407] [2001] 1 W.L.R. 1541

may impose a duty to take reasonable steps to weatherproof a dividing wall once it is exposed to the elements as a result of the demolition … "[408]

However, damages in the examples above were recoverable only once the damage occurred and these cannot be recovered in relation to expenses covering works for the purposes of preventing damage that is anticipated in the future.[409]

5.3 **Covenants to Repair**

The owner of a servient tenement is not obliged to perform repairs that are needed for the owner of the dominant tenement to enjoy an easement, apart from as required by statute or any special local custom or express contract. As discussed above, where a house falls into disrepair causing damage to an adjoining house that has the right of support, the Adjoining Owner may be entitled to damages.[410]

While the parties are free to enter into a covenant where the owner of the servient tenement covenants to keep in repair a perpetual easement, successors in title will usually not be bound by this (subject to an express assignment of the benefit of the covenant). This is subject to exceptions and has been the subject of substantial debate.[411]

Gale on the Law of Easements states:

> "*It seems clear on principle that if a servient owner covenants to keep in repair the subject of a perpetual easement, the covenant, being a positive covenant, cannot be enforced against a successor in title.*"

Further, according to *Gale on the Law of Easements*:

> "*The burden and benefit of a covenant entered into by the grantor of an*

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[408] *Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(3) Rights and Duties in Relation to Party Walls at Common Law/374. Disrepair giving rise to an actionable nuisance*
[409] *Midland Bank plc v Bardgrove Property Services Ltd* [1992] 2 EGLR 168, CA and *Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(3) Rights and Duties in Relation to Party Walls at Common Law/374. Disrepair giving rise to an actionable nuisance*
[410] *Gale on the Law of Easements, 21st Ed.,* para. 1.115
[411] *Gaw v Coras Iompair Eireann*[1953] 1 WLUK 12, *Grant v Edmondson*[1931] 1 Ch. 1and *Gale on the Law of Easements, 21st Ed.,* para. 1.117

easement for a term of years devolves, no doubt, in accordance with the rules applicable as between landlord and tenant."[412]

Leasehold covenants are, however, a separate area from that of easements. For the purposes of the PWA 1996 (section 20), both the leaseholder and freeholder are viewed as 'owners.' Both the landlord and the tenant can covenant to do repair work in the leasehold agreement. A tenant can covenant to keep the premises 'in repair,' which includes an obligation to put the property into repair where the property is in disrepair at the time the lease is entered into.[413] The landlord can enter into a repairing covenant where it is obliged or has the right to carry out repair work as is reasonably required to remedy defects at the property.[414] As noted in *Gale on the Law of Easements*, the benefit and burden of a leasehold covenant will run with the land transferred (as opposed to freehold covenants, which are positive in character, which will in general not run with the land transferred).[415] While a 'right' or 'obligation' to repair is possible in leasehold covenants, and therefore can extend to party walls, this is separate from easements or the PWA 1996.

5.4 **Are there Rights or Obligations to Repair a Party Wall? – Conclusion**

While it is not possible to force the other party to repair a party wall under the PWA 1996, it is possible to obtain a party wall award, which can also allocate costs for the works done on the party wall if these are performed to repair existing structures.

Where a party wall becomes an inherent part of an easement, one has to make a distinction between the 'right' and the 'obligation' to repair.

The 'right to repair' needs to be assessed in each individual case depending on its specific circumstances. This is because there is no automatic right to repair as such. The general principle is that the servient tenement owner has no obligation to keep

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[412] *Gale on the Law of Easements, 21st Ed.,* para. 1.118
[413] *Proudfoot v Hart* (1890) 25 QBD 42
[414] *Butterworths Property Law Service/Division IV Grant of new leases – Residential properties/Chapter 9C Long Leases of Flats – Management, Perusing the Lease & Other Issues Likely to Arise While Investigating Title/D. Key Elements of a Long Lease/17. When is the Covenantor Liable to Carry Out Repairs under his Repairing Covenant?*, para. 804
[415] *Gale on the Law of Easements, 21st Ed.*, para. 4.55

the servient tenement in good repair. The dominant and servient tenement owners, however, can have a right to repair a party wall in specific circumstances but each case needs to be individually assessed on its merits.

The 'obligation to repair' refers to a situation where the dominant owner has a duty to keep the subject of an easement in repair. While the general principle is that the dominant owner has no such automatic duty, there are number of exceptions to this principle. Similarly to the 'right to repair,' whether there is an 'obligation to repair' depends on the circumstances of each individual case. While the dominant owner cannot be forced to repair, in practical terms, they may have no other choice, where they need to ensure that they are not committing trespass or nuisance

While the parties are free to enter into a covenant where the owner of the servient tenement covenants to keep in repair a perpetual easement, successors in title will usually not be bound by this (subject to an express assignment of the benefit of the covenant). As a side note, leasehold covenants are a separate area from that of easements or the PWA 1996.

Where a party wall falls into disrepair, parties should examine the nature of any potential easements that are intertwined with the relevant party wall and establish whether, in the specific individual case, a right/obligation to repair arises and by whom.

6 Conclusion

The PWA 1996 encompasses rights that can affect a number of other areas of law in relation to the Building Owner's and Adjoining Owner's relationship as to party walls. It is not the intention that the PWA 1996 affects other rights except where it is necessary to give effect to the purposes of the PWA 1996.[416]

Easements are one of the areas or legal rights that can be intertwined with the topic of party walls. Right of way, right of support and right of light are the most obvious easements that are relevant to party walls.

The Building Owner and the Adjoining Owner need to consider easements and check

[416] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 204

if any pertaining rights and/or obligations arise in relation to their party wall. This is to ensure that they do not fall short of their obligations and that they can enjoy their rights as well. Section 9(a) of the PWA 1996 is clear in that it states that the PWA 1996 does not authorise "*any interference with an easement of light or other easements in or relating to a party wall* …"[417]

The easements discussed in the context of party walls here include the right of way, right of support, drainage rights (and the discussion on the right or obligation to repair with the right to light addressed later in the context of Chapter VII at paragraph 4 below). Easements discussed in this chapter can interfere with party walls or co-exist with them, however, such easements are not limited to those discussed in this thesis. Those chosen for this thesis are easements that come up in practice most often in the context of party walls and therefore should be considered carefully. While party walls are to a large extent governed by the PWA 1996, one has to be mindful of other areas of law in parallel as well.

As for the 'right to repair' and 'obligation to repair', while these are not easements themselves, a discussion on this topic is included in this chapter as they can be linked to easements and can become highly relevant in the context of party walls.

The fact remains that the PWA 1996 is not an isolated system of rights in relation to party walls, which are affected by a number of areas of law, proprietary interests (and specifically easements being one of them) as well as practical issues. A party wall award under the PWA 1996 is unlikely to be successful in achieving a change in an easement, whether it is attempting to create or extinguish one.

[417] Christopher Cant, "*Easements – Adjoining properties and party walls*," (2013), p. 1

VII. CHAPTER SEVEN – TORTS – COMMON LAW NUISANCE

1 Introduction

Nuisance is a:[418]

> "*tort which arises from an indirect interference with the use or enjoyment of neighbouring land. For example a nuisance may be committed where construction operations interfere with neighbouring land through the production of excessive noise, fumes, smells or vibrations.*"

The PWA 1996 provides authorisation for works to party walls, which may amount to a nuisance. Section 7 of the PWA 1996 prohibits inconvenience that is unnecessary and provides for loss and damage that is caused by any works under the PWA 1996 to be compensated. The concept of 'unnecessary inconvenience' under the PWA 1996 shows resemblance to tort.[419]

This contradicts a different view, namely that under sections 1 and 2 of the PWA 1996, liability in nuisance is technically excluded and that for work under section 6, although not technically excluded, there is no practical scope for such liability.[420] However, this view appears to be a conclusion by way of implication or assumption.

In addition, while a party wall award can authorise works on a party wall, the Building Owner still must obtain the relevant consent or permission required by any other relevant legislation. Also, an award cannot be used as an excuse for using materials that are not allowed by the relevant building regulations. One has to bear in mind that the PWA 1996 does not prevent surveyors from issuing awards allowing works that in addition need statutory consents, planning permissions or listed building consents under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The PWA 1996 has also no impact on building regulations requirements or work on construction sites regulations.[421] While other

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[418] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), pp. 468-469
[419] *Ibid.,* p. 469
[420] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 210
[421] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 215

statutes, in addition to the PWA 1996, can apply to party walls and this is discussed in chapter V, it is important to mention here that the rules of statutory nuisance (for example, under the Environmental Health Act 1990) continue to apply irrespective of a party wall award permitting such works under the PWA 1996.

In addition, where a party wall award authorises works that will inevitably result in liability in nuisance, one has to be mindful of whether courts would consider such an award to be valid.

If the Building Owner has followed the notice procedure under the PWA 1996 and complied with the relevant award, it can argue reliance upon a statutory defence. However, courts could still order for the works to stop and/or for the relevant product (e.g. party wall) to be torn down having the discretion to apportion costs as they see fit.[422]

Works performed in connection with party walls can amount to nuisance, which is why a separate chapter on common law nuisance is included in this thesis. It remains to be seen what the courts' trend will be as to approach to nuisance and any application of the PWA 1996.

2 The meaning of Common Law Nuisance

Common law nuisance encompasses private nuisance (which in practice is encountered more often) and public nuisance. In *Attorney-General v. Sheffield Gas Consumers Co.*[423], it was stated that:

> "… *in cases of private nuisance the injury is to individual property, and in cases of public nuisance the injury is to the property of mankind*. "

Private and public nuisance are not mutually exclusive. A sum of private nuisances can amount to a public nuisance. The same conduct can give rise to both private nuisance as well as public nuisance.

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[422] *Louis v Sadiq* (1997) 74 P&CR 325
[423] (1853) 3 De Gex, Macnaghten & Gordon 304 43 E.R. 119 – para.125

In *Hunter v Canary Wharf Ltd*,[424] three kinds of private nuisances were identified by the House of Lords: (1) nuisance by encroachment on a neighbour's land; (2) nuisance by direct physical injury to a neighbour's land; and (3) nuisance by interference with a neighbour's quiet enjoyment of their land. However, these are only examples of nuisance and do not constitute formal categorisation.

The cause behind private nuisance lies usually in a party's activity on its own land, such activity being lawful and which the party is entitled to do. However, such activity can turn into a nuisance when its consequences affect the neighbouring land. This can be, for example, by causing physical damage. Damage as such is not a required component of the cause of action for nuisance and is quite 'elastic' (as the court noted in *Network Rail Infrastructure Ltd v Williams and another*).[425] The damage or interference with the enjoyment of the neighbour's land (1) must be substantial or unreasonable; (2) can arise from a single incident or a 'state of affairs'; and (3) can be caused by inaction or omission as well as by positive activity.

In *Cambridge Water Co. v Eastern Counties Leather plc,*[426] it was stated:

> "*But it by no means follows that the defendant should be held liable for damage of a type which he could not reasonably foresee; and the development of the law of negligence in the past 60 years points strongly towards a requirement that such foreseeability should be a prerequisite of liability in damages for nuisance, as it is of liability in negligence.*"

A private nuisance can involve a continuing or repeated harm and is actionable in tort. The claimant can start civil proceedings against a defendant for either or both:[427]

(a) Damages compensating for their loss for the items set out below.

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[424] [1997] AC 655, para. 30
[425] [2018] EWCA Civ 1514, para. 614
[426] [1994] 2 A.C. 264, p. 300
[427] Practical Law Environment, "*Common law nuisance*," Resource ID 6-502-4804 (Maintained), p. 3 <https://uk.practicallaw.thomsonreuters.com/Document/Ib5554812e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a698923> accessed 15 May 2022

(i) Actual physical damage (costs incurred or that need to be incurred to remedy the land and consequential losses).

(ii) Loss of enjoyment of the claimant's property (or proprietary interest) due to unreasonable interference with the property rights (damages awarded calculated on the basis of diminution of those rights' value as a result of the nuisance). However, considering that the purpose of the proceedings is to stop the nuisance, such loss can be difficult to quantify as it will be temporary.

(b) Injunctive relief requiring the defendant to abate a continuing nuisance and to ensure that its recurrence is prevented. Any compensation is for the interference with the claimant's property rights.

In *Leakey v National Trust for Places of Historic Interest or Natural Beauty*,[428] it was held that:

> "… *an occupier of land owed a general duty of care to a neighbouring occupier in relation to a hazard occurring on his land, whether such a hazard was natural or man-made; that the duty was to take such steps as were reasonable in all the circumstances to prevent or minimise the risk of injury or damage to the neighbour or his property of which the occupier knew or ought to have known; that the circumstances included his knowledge of the hazard, the extent of the risk, the practicability of preventing or minimising the foreseeable injury or damage, the time available for doing so, the probable cost of the work involved and the relative financial and other resources, taken on a broad basis, of the parties; and that, in the present case, it being accepted by the defendants that the quantity and cost of the work required had not gone beyond their financial or other capacities or been greater than had been necessary to deal with the actual damage to the plaintiffs, the plaintiffs had been entitled to judgment* …"

According to the decision in *Goldman v Hargrave*,[429] the standard of the required duty

[428] [1980] Q.B. 485 w, para. 486
[429] [1967] 1 A.C. 645 – 647

of care is that the occupier is required what is reasonable to expect of them in their individual circumstances. To assess whether a statutory nuisance exists, it is often necessary to consider whether a common law nuisance exists. The reason behind this is that every statutory nuisance must either amount to a common law nuisance or negatively affect health.

3 Noise, Including Control of Construction Noise, Sound Proofing and Vibration

Common law noise nuisance can be private or public nuisance. In private common law noise nuisance, the claimant can start proceedings in court against the party creating the noise nuisance causing an interference with the claimant's use or enjoyment of their land. The claim is for damages and/or injunction to stop the noise nuisance. Where an act endangers health, property or comfort of the public, public nuisance arises, which is actionable in tort and can even amount to a criminal offence. Under Part III of the Environment Protection Act 1990 (**EPA 1990**), a local authority will investigate a noise amounting to statutory noise nuisance. This is usually after a member of the public complains. The local authority then decides whether the issue amounts to nuisance or negatively affects health. If it decides it is a statutory nuisance, it must serve an abatement notice, which requires the recipient to stop the noise nuisance. If the recipient fails to do so, the local authority can then bring criminal proceedings against them and/or obtain an injunction to stop the nuisance. When assessing whether there is a noise nuisance, the parties should seek the advice of a qualified acoustic engineer.[430]

There is no clear definition of noise nuisance and there is also no noise level that is defined as 'prejudicial' to health. Negative effects of noise nuisance include sleeplessness and interference with personal comfort or enjoyment. The levels of noise amounting to such nuisance vary due to variability of tolerance threshold in each person. The factors that need to be judged (usually by a local authority environmental health officer for the purposes of an abatement notice) include location, time of

[430] Sarah Radcliffe, noise expert at Curload Consultants, "*Measuring noise nuisance*," Resource 0-502-1969 (4 May 2010), p. 1 <https://uk.practicallaw.thomsonreuters.com/0-502-1969?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

occurrence, duration and frequency. Where a claim is started for common law private noise nuisance, it is the civil court that assesses the factors in each individual case to decide as to whether the noise amounts to nuisance or not.

In the Supreme Court decision in *Coventry (t/a RDC Promotions) v Lawrence*,[431] it was set out what approach to adopt when a court is faced with a choice between awarding damages or granting an injunction in nuisance:

> "*The issues raised on this appeal are as follows: the extent, if any, to which it is open to a defendant to contend that he has established a prescriptive right to commit what would otherwise be a nuisance by means of noise; the extent, if any, to which a defendant to a nuisance claim can rely on the fact that the claimant "came to the nuisance"; the extent, if any, to which it is open to a defendant to a nuisance claim to invoke the actual use of his premises, complained of by the claimant, when assessing the character of the locality; the extent, if any, to which the grant of planning permission for a particular use can affect the question of whether that use is a nuisance or any other use in the locality can be taken into account when considering the character of the locality; the approach to be adopted by a court when deciding whether to grant an injunction to restrain a nuisance being committed, or whether to award damages instead, and the relevance of planning permission to that issue.*"[432]

It was held that it was possible to obtain by prescription a right to commit what would otherwise be a nuisance by noise; a defendant could not argue that the claimant came to the nuisance; a defendant could rely on activities as forming part of the character of the locality but only as long as they did not amount to nuisance; just because the activity amounting to nuisance benefited from a planning permission would not absolve the defendant; the court has a discretion as to whether to award damages in lieu of an injunction. All these factors were relevant when the court was deciding whether to grant an injunction or damages in relation to a nuisance claim.

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[431] Also known as: *Coventry v Lawrence, Lawrence v Coventry (t/a RDC Promotions), Lawrence v Fen Tigers Ltd* [2014] 2 W.L.R. 433

[432] *Coventry v Lawrence, Lawrence v Coventry (t/a RDC Promotions), Lawrence v Fen Tigers Ltd* [2014] 2 W.L.R. 433, paras. 440-441

3.1 The Interrelationship between the PWA 1996 and Noise, Including Control of Construction Noise, Sound Proofing and Vibration

Paragraph 40 of the *Party Wall etc. Act 1996: Explanatory Booklet*[433] notes that a party affected by excessive noise from work being carried out in relation to a party wall should contact their local authority environmental department. This is because the Environmental Protection Act 1990 and the COPA 1974 give the authority the power to deal with noise and other potential nuisance issues including dust and deposits from construction sites.

On one hand, when a party wall is being built, repaired, maintained or extended, disputes may arise between neighbouring owners due to the noise and vibration accompanying such construction works on the relevant party walls. On the other hand, party walls need to meet certain criteria in relation to sound insulation so that neighbouring parties are not disrupted by noise nuisance behind the party walls.

According to section 4(3) of the PWA 1996:

> "*A building owner on whom a counter notice has been served shall comply with the requirements of the counter notice unless the execution of the works required by the counter notice would— (a) be injurious to him; (b) cause unnecessary inconvenience to him; or (c) cause unnecessary delay in the execution of the works pursuant to the party structure notice*."

To clarify, the PWA 1996 authorises works that can result in physical infringement of the neighbouring owner's land or create disruptions such as dust, vibration, noise or other issues. However, the PWA 1996 also highlights the importance that this work must be carried out in such a way as to not cause inconvenience that is not necessary. Therefore, if unnecessary inconvenience is caused by the works to the party wall, this will be considered unlawful. The Adjoining Owners or occupiers have then the right to start action in relation to such disruption. When a dispute of this kind is referred to surveyors, it is paramount that these do not authorise works that fall outside of the PWA 1996. This is important as the surveyors have a lead role in regulating the process correctly and balancing the interests of the parties by whom they have been

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[433] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016), p. 26

appointed. Most importantly, it is the surveyors' duty not to frustrate the statutory process put in place. At the same time, surveyors need to ensure that the Building Owner can exercise its rights under the PWA 1996 and yet protect the Adjoining Owner's or occupier's interest so that no undue inconvenience is caused to them. This is done by the surveyor issuing an award, where it defines as accurately as possible what work may be lawfully carried out under the PWA 1996 followed up by reasonable inspection of the work covered by the award.[434]

3.2 Noise Nuisance Caused by Works to Party Walls

The different types of noise relevant to works on party walls include industrial noise and construction noise. British Standard 4142:1997 sets out the method of rating industrial noise, which affects mixed residential and industrial areas and rates the probability of complaints resulting from industrial dwellings that are in close proximity. The standard[435] compares the industrial noise to background noise and the difference predicts the likelihood of complaints (a difference of about +10 dB and above is likely to result in complaints being made). Further noise nuisance includes noise from licensed premises, noise from neighbours, transport noise and leisure noise.[436]

Construction and engineering noise is regulated by sections 60-61 of the COPA 1974. A local authority is responsible for serving a notice on premises imposing requirements as to how construction works are to be performed. This can include restrictions on the times of the day when these can be carried out, what plant can or cannot be used and also defining the limits on related noise and the duration of the works. Where a party would like to prevent a local authority serving a notice, it can make a consent application predetermining the details of the works and what measure are to be applied to mitigate any issues.[437]

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[434] RICS professional standards and guidance, England and Wales, "*Party wall legislation and procedure*," (7th edition, Royal Institution of Chartered Surveyors (RICS) August 2019), p. 15 <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/party-wall-legislation-and-procedure-rics.pdf> accessed 15 May 2022

[435] British Standard 4142:1997

[436] Sarah Radcliffe, noise expert at Curload Consultants, "*Measuring noise nuisance*," Resource 0-502-1969 (4 May 2010), pp. 2-4 <https://uk.practicallaw.thomsonreuters.com/0-502-1969?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

[437] Section 61 of the COPA 1974

Transparency, communication and keeping the relevant authorities informed is a good way to mitigate the likelihood of complaints and resulting disputes. It also provides a potential defence where a statutory nuisance prosecution is started nevertheless by a local authority for breach of an abatement notice. The developer can then defend its case by highlighting that it complied with the necessary requirements. Unfortunately, this would not be considered a defence to a complaint lodged by a party, other than a local authority.[438]

Statutory noise nuisance needs to be proved and it is for a local authority environment health officer to assess whether a statutory noise nuisance is being caused. It can carry out scientific assessments and compare them to the limitations in British standards. However, it is ultimately up to the environment health officer to conclude whether they believe that a statutory nuisance is being caused. If the noise nuisance is not resolved, the local authority can serve an abatement notice, which the receiving party can appeal in the magistrates' court. If the recipient however does not comply with the notice, the local authority can prosecute the recipient in the magistrates' court. Both the recipient and the local authority may need an expert witness. It is important to consider having a strong legal team as well as an experienced expert witness in order to present the strongest argument as to why the relevant party's expert witness' interpretation of the noise level is the correct interpretation. After hearing the arguments of each party, the magistrates' court will then conclude whether a statutory noise nuisance has been caused or not.[439] When a party receives an abatement notice, it should check with the local authority what information it holds on the case. It should also check with its acoustics consultant whether there is a serious issue and make a full noise assessment. It is advisable to try to communicate with the local authority together with the party's acoustic consultant and settle the matter out of court if this is at all possible. This can be done by agreeing terms acceptable to the local authority such as preparing a noise mitigation strategy that the local authority approves and then implementing it. It is always advisable to keep open lines of communication

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[438] Section 82 of the EPA 1990 under section 61(9) of the COPA 1974

[439] Sarah Radcliffe, noise expert at Curload Consultants, "*Measuring noise nuisance*," Resource 0-502-1969 (4 May 2010), p. 5 <https://uk.practicallaw.thomsonreuters.com/0-502-1969?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

and transparency between the parties to a noise nuisance dispute.[440]

3.3 Noise Nuisance and Party Wall Sound Proofing

Up to this point, the focus was on noise nuisance caused by works on party walls. However, party walls have to also meet certain criteria in relation to sound proofing so that neighbouring parties are not disrupted by the noise caused behind the separating wall (or otherwise called party wall). A study has been carried out in relation to the likelihood of disputes arising due to noise nuisance.

> "*A random sample of the Great Britain population resident in attached properties built subsequent to 1947 was surveyed to obtain data on the incidence of nuisance occasioned by noise from neighbours, transmitted through party walls and floors. It is concluded on the basis of the present evidence that less than 10 % of the population are likely to be bothered by neighbours' noise. It is nevertheless the most widespread form of noise nuisance and while the percentage of the population affected may appear relatively small the actual numbers concerned are large enough to warrant further study. There appear to be differences in the proportion of residents disturbed according to the type of dwelling, though there is little evidence of marked changes in the incidence of nuisance according to the date of construction*."[441]

The importance of preventing and/or addressing disputes arising out of noise nuisance between attached neighbouring residential properties is relevant here. Poor sound proofing between adjoining properties that leads to noise nuisance is not remediable under the EPA 1990.[442] This is because it is not reasonable to expect that neighbours behave more quietly due to the poor sound proofing between the properties. Everyday noise will therefore not amount to statutory nuisance. However, if everyday noise is carried out in a way that is not reasonable, such as playing musical instruments loudly

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[440] *Ibid.*, pp. 4-5
[441] F.J. Langdon and I.B. Buller, "*Party wall insulation and noise from neighbours*," Journal of Sound and Vibration, Volume 55, Issue 4 (22 December 1977), pp. 495-507 <https://www.sciencedirect.com/science/article/abs/pii/S0022460X77811747?via%3Dihub> accessed 15 May 2022
[442] Following case law, in particular *Southwark v Mills* [2001] 1 A.C. 1, *Baxter v Camden LBC* [2001] Q.B. 1 and *Vella v Lambeth LBC* [2006] Env. L.R. 33

for extended periods of time, this is something that can be addressed.

The Secretary of State issued guidance for the purposes of giving practical guidance as to the requirements of Schedule 1 to, and Regulation 7 of, the Building Regulations 2010 (**Building Regulations**)[443] for England and Wales (**Approved Document E**).[444] The aim is to achieve a basic standard of sound insulation performance internally between dwellings. This regulation provides a level of sound privacy from neighbouring parties.

Approved Document E contains specific acoustic performance requirements for new builds and conversions, relating to airborne sound insulation and impact sound insulation. The fact that refurbishments are harder to soundproof than new builds is reflected in the requirements, which are more lenient towards refurbishments. The requirements relate to sound insulation that is between residential dwellings sharing a party wall or floor. They do not relate to internal floors and walls inside dwellings. These fall under more lenient requirements for sound insulation that does not have to be sound tested. Sound insulation relates to airborne and impact sound insulation. Airborne sound insulation relates to sound travelling through the air and through separating structures between individual rooms. Sound that this relates to includes speech, music and television sound, i.e., noise sources radiating sound into the air and not directly into the structure. Impact sound insulation relates to noise caused by an actual impact on a structure, for example, footsteps, chair scrapes, dropped objects or objects impacting on the floor.

In order for residential dwellings to comply with Building Regulations, a qualified acoustic engineer[445] must conduct acoustic testing. Diagrams 20, 21 and 22 below set out below show sets of sound tests required for different types of residential dwellings or developments. They relate to types of testing required for flats with a separating floor and party wall, flats with separating floors and dwelling-houses with party walls

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[443] SI 2010/2214

[444] HM Government, "*Resistance to the passage of sound – Approved Document E*,", 2003 edition incorporating 2004, 2010, 2013 and 2015 amendments (E1 – Protection against sound from other parts of the building and adjoining buildings; E2 – Protection against sound within a dwelling-house etc.; E3 – Reverberation in the common internal parts of buildings containing flats or rooms for residential purposes; and E4 – Acoustic conditions in schools)

[445] Accredited to conduct sound testing by an organisation such as Ukas or the Association of Noise Consultants

but no separating floors. Sound testing should be conducted once building works have been completed. Usually, where an acoustic test has failed, this is due to the construction works not having been completed or where penetrations and air gaps have not been sealed and doors not put in place. Any impact sound insulation testing in residential dwellings should be done before the floor finish to ensure this is accurate as different types of floor finish can influence the test results, which may no longer apply where floor finish is replaced with a different material (for example carpets and hard flooring).[446]

[446] Chris Parker-Jones, "*Sound Testing to comply with Part E for Residential Developments*" <https://www.parkerjonesacoustics.com/insights/articles/sound-testing-explained?_sm_au_=isVqLCN6nnV6w05VQcLJjKQ1j7GJ1> accessed 15 May 2022

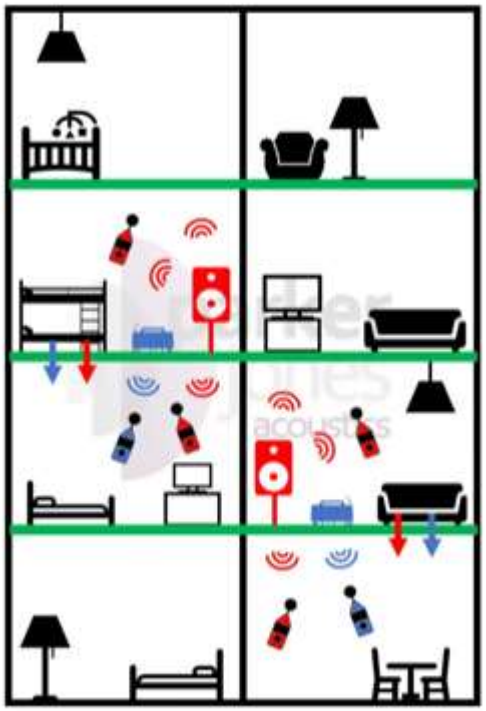
Diagram 20 – Sets of Tests in Flats with a Separating Floor and Party Wall[447]

One set of tests should compromise 6 tests (4 airborne, 2 impact):

- 1 airborne test across a wall between (where possible) a pair of living rooms
- 1 airborne test across a wall between (where possible) a pair of bedrooms
- 1 airborne and 1 impact test across a floor between (where possible) a pair of living rooms
- 1 airborne and 1 impact test across a floor between (where possible) a pair of bedrooms

[447] *Ibid.*

Diagram 21 – Sets of Tests in Flats with Separating Floors[448]



One set of tests should compromise 4 tests (2 airborne, 2 impact):

- 1 airborne and 1 impact test across a floor between (where possible) a pair of living rooms
- 1 airborne and 1 impact test across a floor between (where possible) a pair of bedrooms

[448] *Ibid.*

Diagram 22 – Sets of Tests in Dwelling-Houses with Party Walls but no Separating Floors[449]

One set of tests should compromise 2 tests (2 airborne):

- 1 airborne test across a wall between (where possible) a pair of living rooms
- 1 airborne test across a wall between (where possible) a pair of bedrooms

[449] *Ibid.*

3.4 Noise Nuisance and Party Walls – Case Law Examples

3.4.1 'Reasonable' Use of Dwellings

The case law examples set out below show the importance of distinguishing between what is considered to be reasonable and unreasonable noise in the context of party walls and why.

The first case here is that of *Reinhardt v Mentasti.*[450] Although this case is about a stove, put up by the defendants, the heat of which penetrated through the party wall and rendered the cellar of the adjoining house unfit for storing wine, Kekewich, J. commented on the issue of noise explaining the relevance of its degree when deciding whether it amounts to nuisance.

As for the case, Kekewich, J. held that although the defendants acted reasonably in the way in which they used their house, they did in fact cause serious annoyance and injury to the claimant. The claimant claimed for an injunction and damages. Kekewich, J. granted an injunction, however this was not enforceable for three months as Kekewich, J. gave the defendants time to consider what is the best course of action for them in the given circumstances.

As for nuisance and the relevant test in relation to the level of disturbance by one party to the other when it starts to amount to nuisance, Kekewich, J. noted:

> "*It seems to me, therefore, that, notwithstanding some passages in some judgments to the contrary, the application of the principle governing the jurisdiction of the Court in cases of nuisance does not depend on the question whether the defendant is using his own reasonably or otherwise. The real question is, does he injure his neighbour?*"[451]

This statement shows that while one party's action may be reasonable for its own use that does not prevent the action to amount to nuisance if it injures the other party. Kekewich, J. refers to another case in his decision, namely *Broder v Saillard*,[452] where

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[450] (1889) 42 Ch. D. 685
[451] *Reinhardt v Mentasti*(1889) 42 Ch. D. 685, para. 690
[452] (1876) 2 Ch. D. 692

he reiterates a quotation from Jessel, M.R. set out below.

> "*I take it the law is this, that a man is entitled to the comfortable enjoyment of his dwelling-house. If his neighbour makes such a noise as to interfere with the ordinary use and enjoyment of his dwelling-house, so as to cause serious annoyance and disturbance, the occupier of the dwelling-house is entitled to be protected from it."*[453]

Kekewich, J. further refers to the same case and Jessel, M.R.'s quotation as to the issue that the 'reasonable use of its property' cannot be the test where the party materially disturbs the other party from enjoying its property.

> *"Whether the stables are unluckily so situated as that the noise from the horses, not being uncommon horses in any way, materially disturbs the comfort of the plaintiffs' dwelling house, and prevents the people sleeping at night*."[454]

It is clear that while a party may not be unreasonable in the level of noise it is creating on its premises, the crux lies in the fact as to whether the noise is such as to 'materially disturb' the Adjoining Owner from also enjoying its property. It is a question of degree and circumstances in each case.

In *Others Baxter v Camden London Borough Council (No 2)*,[455] which is a House of Lords decision, the focus was on the relevance of adequacy of insulation in relation to party walls in residential dwellings. In the first case, the tenants made a complaint under the arbitration clause of their tenancy agreement that the sound insulation between the flats was not effective as it did not minimise the noise created by the normal and ordinary user of the premises. The arbitration tribunal held that the landlord (council) was in breach of the covenant for quiet enjoyment in each tenancy agreement and ordered the landlord to carry out the necessary works to the premises to rectify the position. The council appealed to the High Court and the judge upheld the arbitration tribunal's award. The council appealed again to the Court of Appeal, which by a majority reversed the judge's decision.

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[453] *Ibid.*, para. 701
[454] *Ibid.*, para. 702
[455] [2001] 1 A.C. 1, HL

In the second case, the tenants complained to the council that the noise created by the neighbours' day-to-day living seriously interfered with the claiming tenant's enjoyment of the flat due to inadequate sound insulation. What is meant by 'day-to-day living' of the neighbours is the reasonable use of domestic premises. The council refused to improve the sound insulation. As a result, the tenants brought action in the county court claiming damages for breach of the covenant of quiet enjoyment of the tenancy agreement and for nuisance. The court dismissed the claim and the Court of Appeal upheld the county court's decision.

The tenants proceeded to appeal to the House of Lords, which dismissed the appeals on the grounds set out below.

(a) The covenant for quiet enjoyment did not extend to interference due to the condition of the property before the grant of the tenancy or from usage that the parties must have contemplated. The noise that the tenants complained about was due to, what essentially amounted to structural defects at the time the flats were let to the tenants. The noise also resulted from activities within the tenants' contemplation. Therefore, the landlord did not breach the respective covenant for quiet enjoyment.

(b) The ordinary and reasonable use of the flats by the neighbours did not amount to an actionable nuisance. Where a tenant complained of noise nuisance emanating from the neighbour's flats, the common landlord could not be held liable in tort as a result of having permitted the commission of an actionable nuisance. This is the case where the noise complained of stems from ordinary and reasonable use where the neighbour could not be held liable for such noise nuisance.

Focussing on the issue of noise nuisance in this chapter, there are a number of points of relevance when establishing what can amount to noise nuisance and why. The noise complained of in question included the neighbour's televisions, babies crying, coming and going, cooking, cleaning, quarrels and lovemaking. The resulting lack of privacy caused tension and distress to the tenants.

One of the statute-related points noted by Lord Hoffmann relevant to this case included the fact that Mrs Tanner's block of flats was constructed in about 1919. Ms Baxter's

terrace house was converted in 1975. This meant that both sets of works (construction and conversion) had to comply with the byelaws in force at the time (i.e., the London Building Acts). The issue there is that these were silent on the required standards regarding sound insulation. The Building Act 1984 updated and replaced the previous system of local byelaws by introducing nationally applicable regulations prepared by the Secretary of State for the Environment. Specifically, the Building Regulations 1985 (SI 1985/1065) included for the very first time a requirement that walls and floors separating dwellings from each other should resist the transmission of airborne and impact sound.[456] However, the reason why these regulations could not be applied by the House of Lords to the case is that the regulations apply only to buildings constructed or converted after the regulations came into force. This means that as the relevant buildings in the case pre-date the regulations, the tenants could not rely on them. This is also the reason why the tenants attempted to rely on the argument of noise nuisance. When Lord Hoffmann turned to the issue of the law of private nuisance, he noted that the main crux of the problem the tenants were dealing with was the fact that:

> "*Nuisance involves doing something on adjoining or nearby land which constitutes an unreasonable interference with the utility of the plaintiffs' land. … What is the nuisance of which the appellant's complain? The sound emanating from their neighbours' flats. But they do not allege the making of these sounds to be a nuisance committed by the other tenants. … But I do not think that the normal use of a residential flat can possibly be a nuisance of the neighbours. If it were, we would have the absurd position that each, behaving normally and reasonably, was a nuisance to the other. … I do not understand how the fact that the appellants' neighbours are living in their flats can in itself be said to be unreasonable. If it is, the same, as I have said, must be true of the appellants themselves.*"[457]

[456] Part E of Schedule 1 to the Regulations
[457] *Southwark LBC v Tanner* ([2001] 1 AC 1, HL), para. 15

3.4.2 Noise Caused by Construction Works

In *Matania v National Provincial Bank Ltd and The Elevenist Syndicate Ltd*,[458] the second defendant carried out alterations to its first-floor premises without obtaining the consent of the first defendant, who was their landlord. The alterations resulted in works creating excessive dust and noise. The claimant had to vacate its premises, which were on the first and second floors respectively of the property as shown in Diagram 23 below.

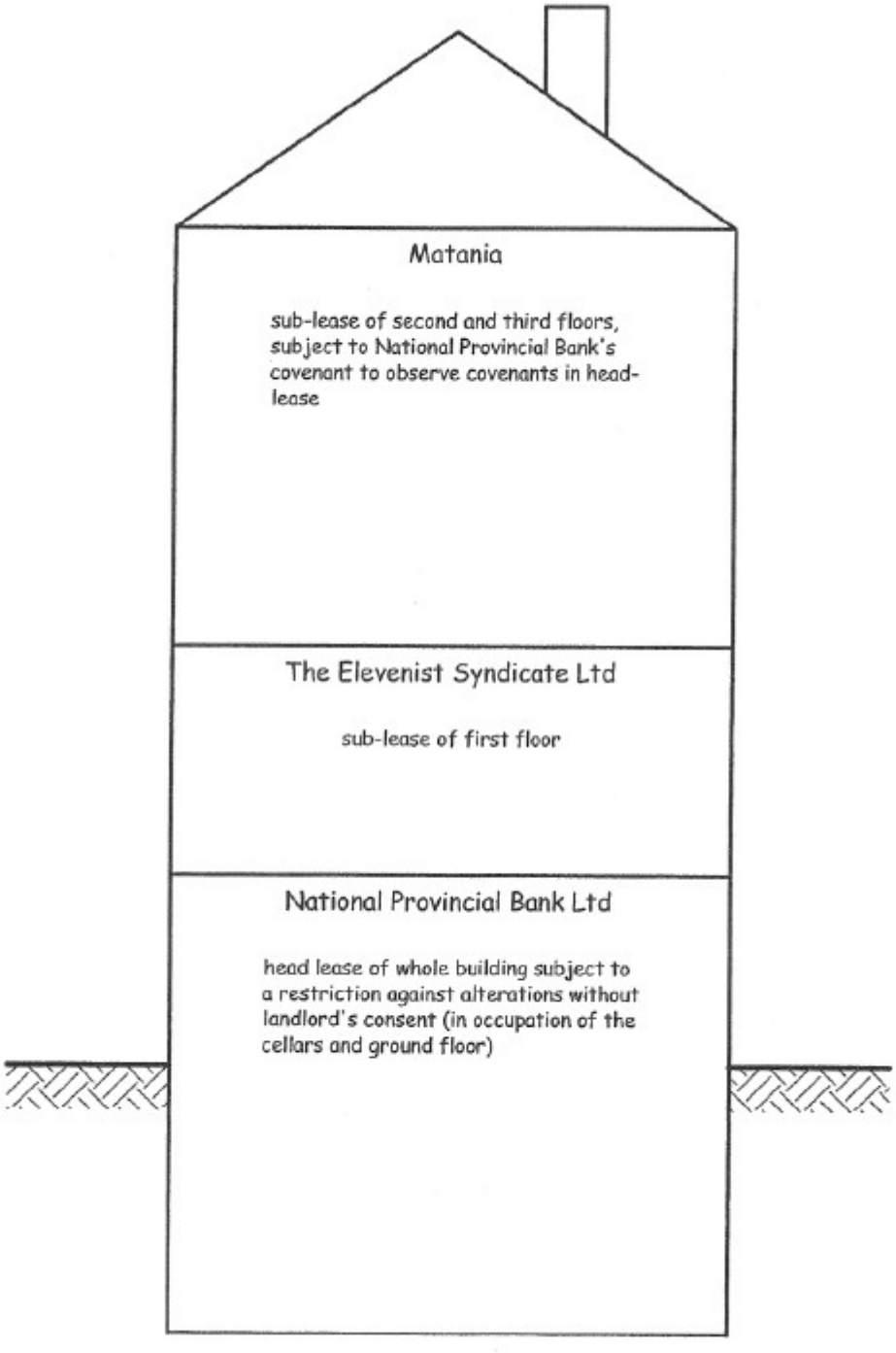
The Court of Appeal held that the first defendant (landlord) was not in breach of its covenant for quiet enjoyment. This is because the first defendant did not carry out the works and did not permit them either. It was the second defendant's contractor who failed to exercise reasonable skill and care when carrying out the works.

As for the dust, the Court of Appeal held that this could not have been avoided. It also held that the noise could have been mitigated had the contractor staggered working hours avoiding most disruptive times for the claimant. The contractor's conduct resulted in actionable nuisance and the second defendant owed a duty that could not be delegated to the contractor in relation to the works, considering these had an inherent risk of nuisance. The second defendant was therefore liable for its contractor's negligence.

This case shows that noise caused by works that carries through the party wall can result in nuisance, the liability of which does not necessarily fall on the party causing it directly (here the contractor).

[458] [1936] 2 All ER 633

Diagram 23 – ***Matania v National Provincial Bank Ltd and The Elevenist Syndicate Ltd***[459]



[459] *Ibid.*; and Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 277

The case of *Hough v Annear*[460] revolved around a situation where the parties owned adjoining properties and one party wanted to repair the roof of its property to build an extension. The parties instructed a joint surveyor who concluded that the PWA 1996 applied to the works in question and later added that the works however did not affect the party wall. The parties therefore agreed for the works to progress. Once the works started, however, the claimant started complaining about the noise and dust emanating as a result of the works. It also turned out that the works in fact did impinge on the party wall. Once the works were completed a surveyor prepared a party wall award and a determination. According to the claimant, the works involved an intrusion and therefore the defendant was in breach of section 3 of the PWA 1996 resulting in the claimant's entitlement to damages. The damages related to cracking to the claimant's property and for noise nuisance and dust. The noise complained of related to the works allegedly having been carried out too noisily and the radio playing too loudly.

The court held that damages did not apply for breach of statutory duty under section 3 of the PWA 1996 as there was no significant impact on the value of the claimant's property. However, it was accepted that cracking did occur during carrying of the construction works and the claimant was therefore awarded £600. As for the noise, it was held that the works carried out prior to 6 p.m. were not considered to be too noisy. There was no evidence of the presence of a radio. It was accepted that there was some excessive noise on occasions after 6 p.m. and before 9 p.m. It was rejected that there was an unreasonable amount of dust. As a result, the claimant was awarded £350 in relation to the issue of nuisance. Finally, it was also held that there was no substantive claim in trespass.

This case suggests that the issue of what is considered to be 'excessive' noise and what is considered to be 'reasonable noise' lies at the crux of whether the court will consider the noise in relation to a party wall to amount to nuisance and award any damages and/or an injunction.

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[460] [2007] 11 WLUK 31]

3.5 Vibration

Similarly to the restrictions on noise and dust, the PWA 1996 authorises work involving physical encroachment onto a neighbour's land or produce vibration (or other inconvenience or annoyance) as long as the work is carried out in a way that does not amount to unnecessary inconvenience. If vibration is caused that amounts to unnecessary inconvenience, this is unlawful and is actionable by Adjoining Owners and occupiers.[461] It is advisable for the adjoining parties to attempt to discuss the matter first before proceeding to formal dispute resolution. Alternatively, the parties can consider negotiation through their consultant surveyors (this is different from appointing a surveyor for the purposes of a determination under the PWA 1996).

Under the PWA 1996, a distinction has to be made between vibration related to notifiable works to party walls under section 2 of the PWA 1996 and works, which are not notifiable. This is of significance because a Building Owner has to pay for damage caused to the Adjoining Owner's property by works on the party wall only if such works are notifiable under the PWA 1996. If they are not notifiable, then the Building Owner has no obligation to put the damage right. In such a case, the Adjoining Owner has the option to bring an insurance claim on its insurance, if it has one, due to the Building Owner's contractor being careless.

Vibration caused by works to party walls can cause, for example, the brickwork and mortar to shake. This in turn can cause loosening of materials such as dust or debris. Sometimes bricks can be loosened and enter the property of the Adjoining Owner. This can result in dirt on the Adjoining Owner's property leading to costly cleaning bills. Depending on the degree of these instances, this can be seen as an intrusion and nuisance.

The PWA 1996 makes sure that should the Building Owner's party wall works cause damage to an Adjoining Owner's party wall, the Building Owner will be held responsible under the PWA 1996 in relation to the linked cost of making good such damage as to notifiable works. Should it come to a dispute, it is common for the party

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[461] RICS Practice Standards UK, "*Party wall legislation and procedure*" (6th edition, guidance note), pp. 3-4 <http://www.fieldingsurveyors.co.uk/wp-content/uploads/RICS-Party-Wall_-6th-edition.pdf?_sm_au_=isVLMfpHt104sqr5QcLJjKQ1j7GJ1

wall award to set out the protection requirements in relation to the Building Owner's contractor. It is clear that prior to starting party wall works, the Building Owner should consider what proactive steps it can take so that its contractor follows them in compliance with the PWA 1996. Often hand tools reduce vibration linked to such party wall works.

Section 79(1)(a)-(h) of the EPA 1990 includes categories of matters, which can amount to a statutory nuisance. These include noise from premises, as well as vibration emitted from premises so as to be prejudicial to health or a nuisance.

In *Scott v Firth*,[462] it was stated that:

> "*In order to constitute a nuisance, there must be, not merely a nominal, but such a sensible and real damage as a sensible person, if subjected to it, would find injurious, regard being had to the situation and mode of occupation of the property injured. Semble, if a man builds a rolling mill close to inhabited cottages, so that the vibration produced by the hammers cracks the walls of the cottages, and the noise of the mill causes them to become and remain uninhabited, he cannot justify these injuries, on the ground that they were caused by him in the reasonable and proper exercise of his trade in a reasonable and proper place.*"[463]

This case was referred to in *Reinhardt v Mentasti*[464] (noted above in connection with noise nuisance) and gives an example, albeit not relating to a party wall, where vibration is severe enough to constitute nuisance. The facts of the case related to an action for a nuisance. The claimant complained that its several cottages and reversion suffered an injury (the walls of the cottages cracked, the tenants left and the cottages remained unoccupied) caused by vibration stemming from the steel hammers used in the workshops of the defendant. The claimant also complained of the disturbance caused by the noise of the hammers. The defendant pleaded not guilty and argued that the grievances the claimant complained of were caused by the defendant in the reasonable and proper exercise of his trade in a reasonable and proper place. In

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[462] 176 E.R. 595
[463] *Ibid.*, p. 595
[464] (1889) 42 Ch. D. 685, para. 689

addition, the defendant argued that the cracking of the cottage walls was caused by the removal of the adjoining cottages (taken down by the defendant to be able to build the mill) and not by the vibration. In addition, the defendant argued that the unoccupied cottages were dilapidated and in disrepair. Therefore, they were unoccupied due to their state and not the noise. Blackburn, J. stated:

> "*The question is, whether this is a case of nuisance, that is, of actionable wrong? If the defendant, in the course of using these hammers, produced, not merely a nominal, but such a sensible and real damage as a sensible person occupying the cottage would find injurious, that is, a nuisance; but that which is a sensible and real inconvenience to property situated in one place, or occupied in one way, will be none to property situated in another place or occupied in another way. If you are of the opinion that the vibration caused by the hammers has shaken and cracked the walls of the cottages, you will probably consider that to be a substantial and real mischief. If, on the other hand, you think the damage was caused by the removal of the adjoining cottages, whether that was justifiable or not, you ought to find a verdict for the defendant on that part of the case. So with regard to the cottages standing empty: if that was caused by the hammering, you will find a verdict for the plaintiff; if by the want of repair, for the defendant. A further point has been raised by the plea that the grievances complained of were caused by the defendant in the reasonable and proper exercise of his trade in a reasonable and proper place. My opinion is, that in law that is no answer to the action. I think that that cannot be a reasonable and proper exercise of a trade which has caused such injury to the plaintiff as she complains of. That, however, is matter of law to be disposed of hereafter; and the defendant is entitled to your opinion upon the fact, whether this was a reasonable and proper exercise of the trade, although it did cause injury to the plaintiff. I am unable to direct you as to what is reasonable and proper in that sense. You must say, first, was there a nuisance to the plaintiff's property, being such as it is? secondly, if you are of opinion there was a nuisance, what is the amount of the damages? thirdly, were those damages caused by the*

reasonable and proper exercise of the defendant's trade."[465]

The jury found for the defendant based on the first point, therefore it became unnecessary to consider the rest of the issues. However, the points raised by Blackburn, J. assist in assessing when and why vibration may amount to actionable nuisance. One factor that needs to be considered is the degree of real damage that a sensible person would consider harmful. This needs to be decided on a case-by-case basis, as what constitutes a real inconvenience amounting to nuisance in one situation may not amount to nuisance in another. A further factor is whether the grievance has been caused "*in the reasonable and proper exercise of a party's trade in a reasonable and proper place*."[466] Blackburn, J concluded that this is not relevant. The point is that even if the grievance has been caused "*in the reasonable and proper exercise of a party's trade in a reasonable and proper place*", that does not justify the injury.

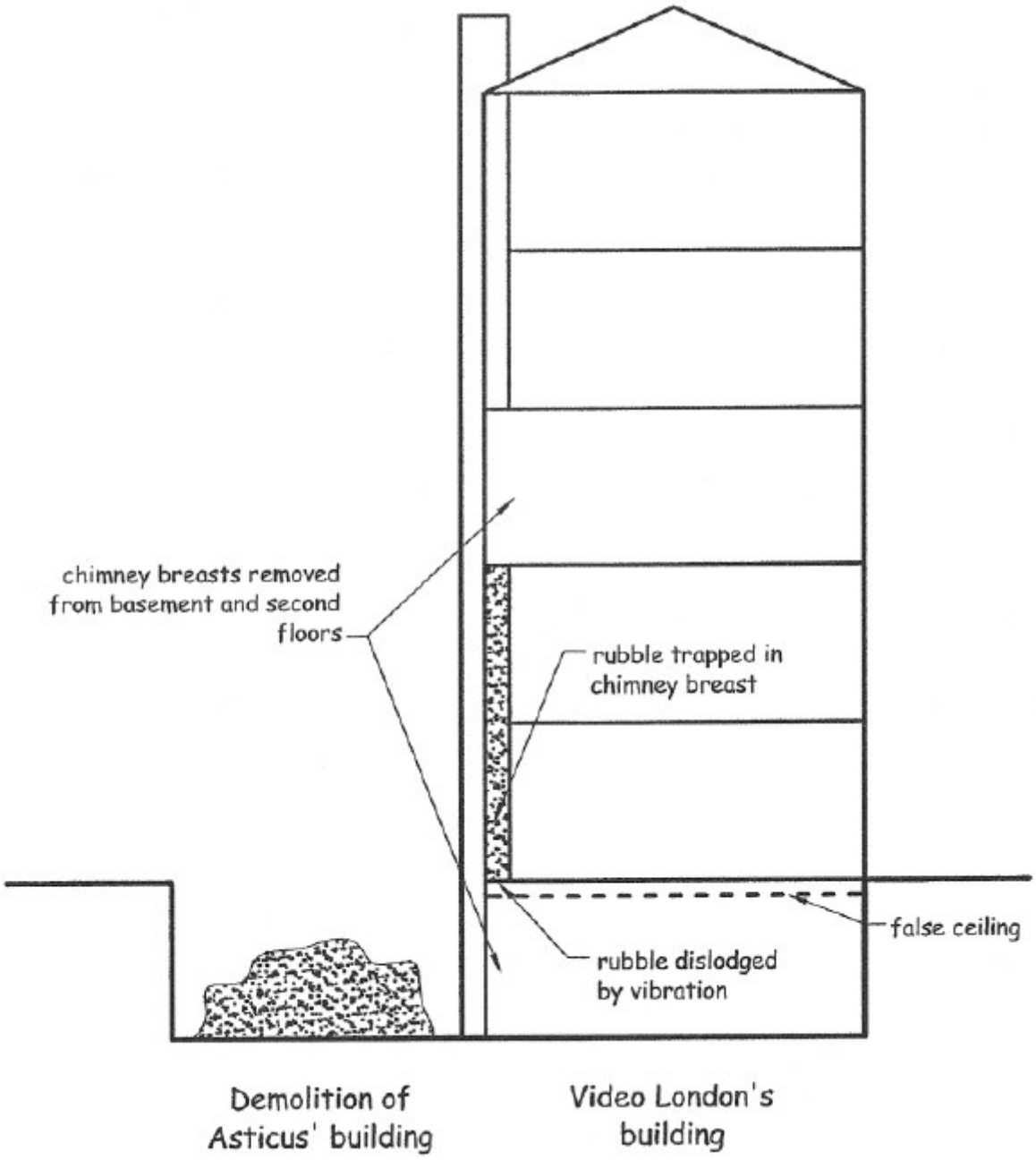
In *Video London Sound Studios Ltd v Asticus (GMS) Ltd and Keltbray Demolition Ltd*,[467] the second defendant was a demolition contractor who was instructed by the first defendant to demolish buildings on its site. The demolition works resulted in substantial damage to some expensive recording equipment of the claimant as illustrated in Diagram 24. The damage was partly caused by vibration to the building due to the demolition works. The surveyors that were appointed issued an addendum award, which required the first defendant to reimburse the claimant the cost of the damage. However, the first defendant did not pay. Therefore, the claimant brought proceedings in nuisance, negligence and for breach of the surveyors' award. The Technology and Construction Court held that the surveyors' addendum award was in fact invalid. This is because the recording equipment was not a fixture but a chattel. Therefore, the first defendant was not held to be liable for breach of the award and was also not liable in negligence for failing to undertake an adequate pre-demolition inspection. The court however held that both defendants were liable in nuisance as the defendant’s demolition works caused physical damage to the claimant’s property. The recording equipment did not form part of the premises of the claimant as it was not annexed to the premises and a chattel could be treated as part of realty only if

[465] *Scott v Firth* 176 E.R. 595, p. 596
[466] *Ibid.*, p. 596
[467] [2001] 3 WLUK 133

some degree of physical annexation was present. A reasonable care and skill defence did not apply considering the claimant suffered physical damage. The damage was reasonably foreseeable.[468]

[468] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 406

Diagram 24 – ***Video London Sound Studios Ltd v Asticus (GMS) Ltd and Keltbray Demolition Ltd***[469]



[469] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 408

3.6 Noise, Including Control of Construction Noise, Sound Proofing and Vibration – Conclusion

As can be seen above, noise and vibration can come hand in hand in connection with works to party walls covered by the PWA 1996. One of the key factors in deciding whether the noise or vibration caused by construction works to party walls amount to nuisance is whether the noise or vibration is substantial enough.

It is not a sufficient defence that the defendant used its own property reasonably. The deciding point is whether the defendant's behaviour injures its neighbour.[470] The law is that a party is entitled to the comfortable enjoyment of its dwelling. It is therefore protected from noise and vibration caused by its neighbour interfering with its ordinary use and enjoyment of its dwelling causing serious annoyance and disturbance.[471]

It follows that a party's reasonable use of its property must not disturb its neighbour from enjoying its property.[472] If the noise or vibration materially disturbs the Adjoining Owner from enjoining its own property, it will amount to nuisance, irrespective of whether such disturbance was caused by reasonable use of the party's property causing the noise or vibration.

However, each case needs to be assessed individually as the level and severity of noise/vibration amounting to nuisance is not defined and is subjective to the facts or circumstances of every individual case. Courts will look at and assess the degree and circumstances in each case.

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[470] *Reinhardt v Mentasti*(1889) 42 Ch. D. 685, para. 690
[471] *Broder v Saillard*(1876) 2 Ch. D. 692, p. 701
[472] *Ibid.*, p. 702

4 Rights to Light

4.1 What is a Right to Light?

A right to light is an easement where the benefiting party has the right to enjoy the natural light, which passes over another party's land and then enters through defined openings (such as windows, glass roofs or skylights) into a building. As confirmed in *Colls v Home & Colonial Stores Ltd*,[473] once such a right to light has been established, it entitles the benefiting party to receive enough natural light through such opening as to allow the room or space behind the opening to be used for its ordinary purpose. The level of a right to light is limited in scope.

Land that has not been developed cannot obtain or benefit from a right to light across the land of another. This means that when it comes to land that has not been built on, there is no right to light. In accordance with the decision in *Dalton v Angus*,[474] there has to be a building on the dominant land benefiting from having access to light. The right to light refers for sufficient natural illumination and not to direct sunlight.

There is no right to a 'prospect or view' according to the decision in *Phipps v Pears*.[475]

> "*Suppose you have a fine view from your house. You have enjoyed the view for many years. It adds greatly to the value of your house. But if your neighbour chooses to despoil it, by building up and blocking it, you have no redress. There is no such right known to the law as a right to a prospect or view …*"

There is no right to a view to a property:[476]

> "*The erection of a building will not be restrained because it injures the Plaintiff by obstructing the view of his place of business.*"

A right to light does not protect privacy.[477]

> "*It appears to me that to constitute a breach of such a covenant there must be*

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[473] [1904] AC 179
[474] (1881) 6 App Cas 740
[475] [1965] QB 76, para. 83
[476] *Butt v Imperial Gas Company* (1866-67) L.R. 2 Ch. App. 158, para. 158
[477] *Browne v Flower* [1911] 1 Ch 219, p. 228

some physical interference with the enjoyment of the demised premises, and that a mere interference with the comfort of persons using the demised premises by the creating of a personal annoyance such as might arise from noise, invasion of privacy, or otherwise is not enough."

A right to light does not entitle to the same amount of light compared to that enjoyed before an obstruction was built. There can be a reduction of light subject to what is left being enough to enjoy the ordinary and normal use of the relevant room.

As for solar panels, a right to light does not apply to direct sun rays to fuel them. This is because a panel situated on the roof does not constitute a room used normally. This approach has been adopted by the Law Commission:[478]

"*… objects that do not have apertures, such as solar panels, are almost certainly not capable of benefiting from a right to light.*"

The Law Commission commented:[479]

"*Accordingly, we do not make any recommendation that allows the creation of easements that benefit solar panels.*"

A right to light is an easement where one party has the right to enjoy the natural light passing over another party's land entering through defined openings. The right to light is limited to dominant land that has been built upon, and to natural illumination (not direct sunlight). There is no right to a view and the right to light does not protect privacy. A reduction of light is considered to be acceptable as long as enough light is left for the ordinary enjoyment of the relevant room. The easement of a right to light can be created in the immediate term by implied grant or by express grant by way of deed (or reservation) or by statute. It can be created also over time by common law of prescription or by the doctrine of lost modern grant or by Prescription Act 1832 (**PA 1832**). Apart from specific statutory provisions, a right to light can be suspended by unity of ownership, physical impediment, light obstruction notices in accordance with the Rights of Light Act 1959, custom of London, abandonment, modification and agreement between affected parties or where there are physical changes in the

[478] Law Commission, *Reforming the law – Rights to Light*, Law Com No 356, p. 24
[479] *Ibid.*

location of benefiting property.

4.2 Nuisance Related to the Right to Light

Although the right to light is an easement, obstruction of passage of light can lead to becoming a nuisance in tort. In *Higgins v Betts*,[480] the test was considered in deciding whether an obstruction to light amounts to actionable nuisance:

> *"… the test is not whether so much light has been taken as materially to lessen the enjoyment and use of the house that its owner previously had, but whether so much is left as is enough for the comfortable use and enjoyment of the house according to the ordinary requirements of mankind."*

Where it is found that that the right to light was or will be infringed, the party whose land is the owner of the right to light has the option to apply for an injunction against the infringing developer. It should be taken into account that the court has discretion to award damages instead of awarding an injunction. In *Beaumont Business Centres Ltd v Florala Properties Ltd*[481] it was held that:

> "*The burden was on F to show why an injunction should not be granted; B did not have to show that F had committed a deliberate breach of B's rights, knowing that that was what it was doing, ... As between B and F, B was entitled to an injunction requiring F to cut back its development. F had gone ahead knowing of the risk it was taking and had acted in an unneighbourly fashion. The injury B would sustain was not small, nor was it easily quantifiable. It was not oppressive to order a cut back, and B's failure to apply for an interim injunction was not a significant factor (paras 340-342). If B wanted an injunction, it would have to join S and S could be heard on whether an injunction should be granted (paras 344-352). B was entitled to negotiating damages in lieu of an injunction (and as an alternative to compensatory damages) of £350,000. That was the sum which B and F, acting reasonably, would have agreed in return for B giving up its rights, Morris-Garner v One Step (Support) Ltd [2018] UKSC 20, [2019] A.C. 649, [2018] 4 WLUK 243 followed. F's hotel as built was worth about*

[480] [1905] 2 Ch. 210, para. 210
[481] 2020 WL 01235011 (2020), headnote

£1.1 million more than the hotel that F would have built if constrained by B's rights; and the appropriate percentage of that figure that B should receive was just less than one-third, Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd [2007] EWHC 212 (Ch), [2007] 1 W.L.R. 2167, [2007] 2 WLUK 229 considered (paras 277-318)."

Therefore, it can be seen that the court may be inclined to award damages instead of an injunction where it deems an injunction to be inappropriate.

4.3 Enforcing a Right to Light

Rights to light can be easements and the breach of these can result in nuisance. In common law nuisance, the claimant has to prove that the defendant caused the nuisance and that it damaged the claimant's land or substantially interfered with its property interest. To be able to prove nuisance stemming from a breach of a right to light easement, the affected party must show that the loss of light amounts to a nuisance and that the interference was substantial and of a level entitling the owner of the right to light to equitable remedy (such as injunction or specific performance) and/or compensation. Different measurement methods of light adequacy are discussed further below. It is not enough to show that the amount of available light has been reduced. This has been confirmed in the case of *Higgins v Betts*:[482]

"*There must be a substantial deprivation of light, sufficient to make the premises in a sensible degree less fit for the purposes of business or occupation.*"

Where a right to light has been or is about to be infringed, the party benefiting from the right to light has the right to apply for an injunction against the other party causing such interference. The court can however grant damages instead of an injunction. Where a claimant is to establish a nuisance, it has to prove that due to the reduction in light, its property has become substantially less comfortable and convenient than before the reduction in light has occurred. This test has been established in *Beaumont Business Centres Ltd v Florala Properties Ltd*:[483]

"*Accordingly, I conclude that to establish its claim in nuisance, Beaumont needs*

[482] [1905] 2 Ch 210, para. 212
[483] 2020 WL 01235011, para. 138

to prove that, by virtue of the reduction in light, its premises have been made substantially less comfortable and convenient than before; which in practice means it must show that, by virtue of the reduction, it is likely to suffer a loss of rental income over the balance of its 26 year term, in an amount which is more than trifling or de minimis It is therefore irrelevant whether the premises were "well lit", within the definitions used by rights of light surveyors, before the reduction in light caused by Florala's works."

Although there are no standard measures of quantifying what amounts to 'sufficient light', there are 'rules of thumb' used as a point of reference. The Building Research Establishment (**BRE**) guidelines[484] aim to ensure that adequate levels of natural light can be achieved in new dwellings and unacceptable impact on light to neighbouring properties are minimised. Local Planning Authorities, which use BRE, usually approve only planning applications, which do not have a negative impact on daylight and sunlight to neighbouring properties. The BRE assists with 'rule of thumb tests' determining if any additional daylight and sunlight tests are needed.[485]

Daylight (or ambient light) refers to the volume of natural light entering a building providing enough illumination of internal accommodation between sun rise and sunset. Sunlight on the other hand refers to direct sunshine.[486]

According to Littlefair, it is the purpose that a room is used for that determines the amount of daylight it needs.[487]

"*Obstructions can limit access to light from the sky. This can be checked by measuring or calculating the angle of visible sky Ø, angle of obstruction or vertical sky component (VSC) at the centre of the lowest window where daylight is required. If VSC is:*

- *At least 27% (Ø is greater than 65°, obstruction angle less than 25°)*

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[484] Building Research Establishment, *'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*" (12 September 2011)
[485] P. J. Littlefair,"*Site Layout for Daylight and Sunlight: A Guide to Good Practice*" (2011, 2nd edition), pp. 3-9
[479] *Ibid.*, pp. 3-6
[487] *Ibid.*

conventional window design will usually give reasonable results.

- *Between 15% and 27% (Ø is between 45° and 65°, obstruction angle between 25° and 45°) special measures (larger windows, changes to room layout) are usually needed to provide adequate daylight.*

- *Between 5% and 15% (Ø is between 25° and 45°, obstruction angle between 45° and 65°) it is very difficult to provide adequate daylight unless very large windows are used.*

- *Less than 5% (Ø less than 25°, obstruction angle more than 65°) it is often impossible to achieve reasonable daylight, even if the whole window wall is glazed.*"

There is no 'hard and fast rule' in relation to the angle of 45° as a matter of law.[488] The reality is that a person can be in a situation where it is left with much less than 45° of light, but still has suffered no actionable diminution.[489]

Another 'rule of thumb' is the '50:50 rule' (**50:50 Rule**), which may be deemed adequate.

> "*A method employed by expert witnesses to measure the obscuration of light caused by a new building is to estimate the amount of direct sky which will reach a hypothetical table 2 feet 9 inches high in a particular room. By this method a room is regarded as adequately lit for all ordinary purposes if 50 per cent or more of its area receives not less than one lumen of light at table level. This so-called "50/50 rule", however, is merely a useful guide and not to be applied rigidly without regard to the shape and size of the room or the disposition of the light within it. Its justification is that an owner is unreasonable if he complains that the corners or other parts of the room where good light is not expected are poorly lit, if the room as a whole remains well lit. The proportion of the room which receives the required amount of light is determined by the drawing by a rights of light surveyor of a light contour map known as a "Waldram" diagram*

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[488] *Colls v Home and Colonial Stores Ltd* [1904] A.C. 179
[489] *Gale on the Law of Easements*, 21st Ed., para, 7-27

after Mr Percy Waldram, who devised the method in the 1920s."[490]

While a special form of Waldram diagram can be used for VSC estimation on an external wall or window as an alternative to the skylight indicator,[491] the Waldram diagram approach has been criticised in *Masonic Hall Co v Sheffield Corp*[492] and *Fishenden v Higgs and Hill*[493] as not being conclusive and in *Ough v King*[494] it was held that the method was not decisive.

There is also the 25° 'rule of thumb' when a new development faces directly the impacted window.[495]

4.4 The Interrelationship between the PWA 1996 and Rights to Light

The test of an interference is not how much light was taken away by an obstruction but whether there is enough light left for ordinary enjoyment of the benefitting premises. The amount of light to which a building is entitled is that which is enough for the ordinary use of the building.[496]

> "*… the owner or occupier of the dominant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind, and that the question for what purpose he has through fit to use that light, or the mode in which he finds it convenient to arrange the internal structure of his tenement, does not affect the question.* "[497]

Section 9 of the PWA 1996 sets out its relationship with rights to light below.

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[490] *Gale on the Law of Easements*, 21st Ed., para, 7-28
[491] P. J. Littlefair, "*Site Layout for Daylight and Sunlight: A Guide to Good Practice*" (2011, 2nd edition), pp. 49-52
[492] [1932] 2 Ch. 17 at 24
[493] (1935) L.T. 128 at 143 and 144
[494] [1967] 1 W.L.R. 1547
[495] P. J. Littlefair, "*Site Layout for Daylight and Sunlight: A Guide to Good Practice*" (2011, 2nd edition), p. 7
[496] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 206
[497] *Colls v Home & Colonial Stores Ltd* [1904] AC 179, para. 204

"*Nothing in this Act shall-*

(a) *authorise any interference with an easement of light or other easements in or relating to a party wall; or*

(b) *prejudicially affect any right of any person to preserve or restore any right or other thing in or connected with a party wall in case of the party wall being pulled down or rebuilt.*"

Although section 9 of the PWA 1996 aims to cover easements in general, it also does specifically refer to and protects the easement of the right to light. It follows that although section 2(2)(l) of the PWA 1996 gives the right "*to raise a party fence wall, or to raise such a wall for use as a party wall, and to demolish a party fence wall and rebuild it as a party fence wall or as a party wall*", this cannot interfere with an existing easement of light.[498]

Although the PWA 1996 is clear on the need to protect easements of the rights to light, when surveyors are faced with a dispute and having to make an award, they may come across pertinent legal questions before they are able to make such an award. It needs to be established whether there is an easement at all. In addition, if there was an easement once, the point may be raised that the easement has come to an end, for example by way of abandonment and to prove abandonment, there has to be evidence of an intention to abandon.[499]

Rights to light relate to daylight, which consists of three elements: (a) the externally reflected element; (b) the internally reflected element; and (c) the sky element.[500]

4.5 Case Law Examples of Party Walls' Ability to Interfere with Rights to Light

To probe the connection between party walls and rights to light, below are examples of relevant case law showing how party walls may interfere with rights to light and what stance courts have a tendency to take in situations related specifically to parties'

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[498] *Crofts v Haldane* [1867] 1 WLUK 87and Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 206
[499] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 206
[500] *Ibid.*, p. 302

sincerity and conduct, evidence of parties' agreements, court's discretion to choose between awarding damages and injunctive relief, whether a greenhouse can be considered to be a building and therefore benefits from rights to light or not, whether a party wall must be a permanent structure for the purposes of rights to light, whether a wall can be divided into a party wall and 'ordinary wall' containing windows, whether a party wall can be subsequently extended in terms of height and how this may intervene with the neighbour's right to light.

In *Ottercroft Limited v Scandia Care Limited Dr Mehrdad Rahimian*,[501] the parties occupied adjoining properties. Without having served a notice on Ottercroft under the PWA 1996, the defendants started construction works on a storeroom and a staircase. Ottercroft considered the defendants' works interfered with Ottercroft's right to light. Therefore, Ottercroft started court proceedings. This was followed by each of the defendants giving an undertaking. However, the defendants continued and completed building a metal fire-escape staircase. This was in the way of Ottercroft's view. The judge at first instance held that the staircase obstructed Ottercroft's window and therefore infringed Ottercroft's right to light. The defendants' actions were in breach of the undertaking without notice under the PWA 1996 or a planning permission. Although the infringement was considered to be minor so that the damage could have been measured in money, the judge at first instance held that the breach of binding undertakings gave a reason to grant an injunction. He ordered that the staircase be removed or altered and awarded costs to Ottercroft. He also held that the second defendant kept Ottercroft in the dark regarding his plans despite knowing that these might infringe a right to light. The defendants appealed the first instance decision based on the grounds that the order was disproportionate and oppressive[502] noting that damages should have been awarded rather than an injunction, that the defendant was not personally liable, and that the judge should not have ordered payment of Ottercroft's action, party wall legal and surveyor's costs. The Court of Appeal dismissed the appeal and decided to grant a mandatory injunction instead of damages due to the inconsiderate conduct as well as the fact that the staircase was put in place

[501] [2016] EWCA Civ 867; [2016] 7 WLUK 115 (CA (Civ Div))
[502] Property Law Bulletin, "*Procedure: obligations to the court*", Case Comment, P.L.B 2016, 37(6), 44 <https://uk.westlaw.com/Document/IED200F109B7C11E6BC4BD8CA38210D45/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&firstPage=true> accessed 15 May 2022

in breach of the defendant's undertakings.

> "*… the judge considered that the defendants had acted badly throughout, and earlier in his judgment he had described Dr Rahimian's behaviour as "high handed"; indeed, he went so far as to hold that Dr Rahimian wished his neighbours to remain in ignorance of what he was doing.* "[503]

On the point of proportionality, when considering remedies, these are measured in line as to what is appropriate to the particular situation. In this case, damages might have been appropriate if the defendants' conduct had been conscionable. However, the defendants acted in a high handed and oppressive manner and in such a situation, they could not have expected for the court to exercise its discretion to their advantage. It should be noted that where developers are trying to negotiate with neighbours and the neighbour or neighbours refuse to participate in the negotiation, it is advisable that the developers maintain a trail of paper evidence showing their offers and alternatives suggested and lack of cooperation and response from the neighbours. The developers should also maintain evidence of their advance notice of proposed works. Maintaining such conduct that the developer can show to the Court is more likely to win the Court's sympathy.[504]

In *Frederick Betts Ltd v Pickfords Ltd*,[505] Frederick leased a plot of land from Pickfords. This was partially covered with buildings and occupied by Pickfords together with the adjoining property as business premises. The lease had a covenant obliging Frederick to build a warehouse. This would have to be done based on approved plans showing that the back wall of the warehouse had to include certain windows. The wall of the warehouse was built entirely on the leased land. The local authority then asked Frederick to block up windows in the back wall of the warehouse on the basis that the wall was a party wall.

The court held that Frederick had an implied unqualified right to the access of light

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[503] *Ottercroft Limited v Scandia Care Limited Dr Mehrdad Rahimian* [2016] EWCA Civ 867; [2016] 7 WLUK 115 (CA (Civ Div)) para. 13
[504] Property Law Bulletin, "*Procedure: obligations to the court*," Case Comment, P.L.B 2016, 37(6), 44 <https://uk.westlaw.com/Document/IED200F109B7C11E6BC4BD8CA38210D45/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&firstPage=true> accessed 15 May 2022
[505] [1906] 2 Ch. 87, paras. 87-96

passing through the relevant windows and that Frederick's architect who supervised the building of the warehouse lacked the authority to block the windows. Pickfords used the wall as a party wall causing the local authority to demand that the windows had to be blocked up. It was further held that Pickfords derogated from their grant by using the wall as a party wall and trespassed. As a result, the court ordered that Pickfords disconnect their buildings from the wall.

The first floor of the warehouse was to be used as a showroom with three windows in the south or back wall, which were to overlook Pickfords' premises. There were no planned windows for the back in the ground floor of the warehouse. After some initial objections, Pickfords eventually approved the building plans. Under a collateral agreement, the defendants were obliged to clear buildings off the leased land.

When the back wall of Frederick's warehouse was built, Frederick's architect verbally agreed with Pickfords' architect, without Frederick's knowledge, for the projecting roof beams and stanchions to be built into the wall, which was done. Frederick was later served with a notice by the district surveyor under the London Building Act 1894 requiring Frederick to brick up all three windows in the back wall as otherwise the warehouse fails to comply with the Act (the oldest piece of legislation covering party walls resembling the modern form is Part III of the Metropolitan Building Act 1855[506] with the next Act being the London Building Act 1894 (amended in 1905)).[507]

Frederick was summoned for not having complied with the notice. At the summons hearing, the magistrate opined that the back wall of the warehouse (to the extent covered by Pickfords' shed or extended within three feet above the roof of the shed) was a party wall. Therefore, Frederick would have to block up the relevant windows. However, the summons was adjourned pending trial, which Frederick started. Frederick's main argument was that blocking up the relevant windows would lead to the show-room being unfit for its intended use.

> "*The plaintiffs claimed: (1.) An injunction to restrain the defendants from committing any trespass on the walls of the warehouse and from using these walls as party walls; (2.) a mandatory injunction requiring the defendants to*

[506] 18 & 19 Vict c CXXII
[507] 57 & 58 Vict. c CCXIII & 5 Edw. VII c CCIX respectively

disconnect their buildings from the plaintiffs' walls; (3.) an injunction to restrain the defendants from preventing the plaintiffs from enjoying the lights of the back of the warehouse according to the terms of the lease, and a mandatory injunction requiring the defendants to pull down any erections which interfered with such enjoyment; (4.) damages."[508]

Frederick also argued that a wall can turn into a party wall where it is used as a party wall regardless of the ownership of the wall.

In *Drury v Army and Navy Auxiliary Co-operative Supply, Ltd.*[509] it was held that a wall used as a party wall does not always lead to the wall being a party wall in its entirety. The party wall is only a party wall to the extent of the user e.g. only a part of the wall up to a certain height may be a party wall. In this particular case, Kekewich J noted that it is a matter of fact that the parties agreed for the claimants to erect buildings containing certain windows.[510] Kekewich J then proceeded to refer to a decision by Stirling J. in his judgment in *Aldin v Latimer Clark, Muirhead & Co.*:[511]

"*… where a landlord demises part of his property for carrying on a particular business, he is bound to abstain from doing anything on the remaining portion which would render the demised premises unfit for carrying on such business in the way in which it is ordinarily carried on.*"

Considering that blocking off the relevant windows would lead to Drury's show-room not being fit for its purpose, following Stirling J.'s line of chain of thought, the defendants are wrong in saying that the wall is in its entirety a party wall.

Kekewich J further stated that Drury's architect agreed with the defendants' architect that the roof beams and stanchions should be built into the wall, which was also done. However, Drury's architect did not communicate this to Drury, who found out only after this was done. Such action was not within Drury's architect's authority.

It was held that the external wall was built by Drury on its own land. For the purposes

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[508] *Frederick Betts Ltd v Pickfords Ltd* [1906] 2 Ch. 87, paras. 87-96
[509] [1896] 2 Q.B. 271
[510] *Frederick Betts Ltd v Pickfords Ltd* [1906] 2 Ch. 87, para. 93
[511] *Aldin v Latimer Clark Muirhead & Co* [1894] 2 Ch. 437, para. 444

of the defendants, they had no right to use Drury's wall. In fact, the defendants used Drury's wall as a party wall, which the defendants had no right to do. In addition, Drury protested as soon as they found out about this.

The court's decision is set out below.

> "*There will be a perpetual injunction restraining the defendants from committing any trespass on the walls of the plaintiffs' warehouse and from using any part of the walls as a party wall, and an order that the defendants do within one month from the service thereof remove the stanchions and roof beams so far as they stand upon or overlap the plaintiffs' premises, and there will be also an inquiry as to damages. The defendants to pay the costs of the action down to and including the trial.*"[512]

The point of this case lies in the fact that a party cannot choose to use its neighbour's wall that is built on the neighbour's land as a party wall, especially if the neighbour protests as soon as it has knowledge of such use.

This case also touches on the question of whether a section of a wall can be simply a wall and not a party wall and whether another section of the same wall can be a party wall. Although this has been raised in this case, it has not been answered as it did not form the crux of the case. However, the same question was raised in *Crofts v Haldane and Another*,[513] where it was decided that the simple answer is yes, a part of the same wall can be a party wall while the rest of the wall is not a party wall (and is just a simple wall instead). At the same time the two sections of the wall can co-exist in harmony and the part of the wall that is not a party wall can contain windows. The case also highlights the seriousness with which courts approach a party's insincerity and that the court has discretion to choose between injunctive relief and damages. When it comes to interference of a party wall with a party's rights to light, courts will look at what the parties agreed amongst themselves, their conduct as well as the actual function of the party wall and whether it is actually a party wall and to what extent.

Considering dispute management related to a clash between party walls and rights to

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[512] *Frederick Betts Ltd v Pickfords Ltd* [1906] 2 Ch. 87, para. 97
[513] [1867] 1 WLUK 87, para. 194-200

light, parties would be wise to keep any agreements, communications and complaints as well as offers of settlement in writing and accessible, should the matter proceed to a surveyor or court for decision as courts will take the parties' conduct and recorded purpose of the disputed wall into consideration. *Frederick Betts Ltd v Pickfords Ltd*[514] is a prime example of intertwined issues between parties linked to party walls and rights to light.

Another case of particular interest is that of *Clifford v Holt*[515] as it relates to a greenhouse and whether it was considered to be a 'building' within the meaning of section 3 of the PA 1832 that is capable of enjoying a right to light and also whether it can be protected by an injunction against interference with access to light.

Clifford was the occupier of a detached house and garden under a lease. At the back of the house was the garden attached to it, which was bounded on its North West side by a party wall or fence of about eight feet, which divided it from the garden of another house purchased by Holt. There was a greenhouse at the further end Clifford's garden and a section of the party wall formed the northern end of the greenhouse. Both Clifford's house and the greenhouse enjoyed a right to light.

Holt started to build a party wall in the garden without giving any notice to Clifford. Clifford was not at home at the time and had no knowledge of Holt's intention to build the party wall. When Clifford returned and saw the party wall, he consulted his architect. The architect contacted Holt's architects noting that the party wall was causing significant obstruction to the access of light and air to Clifford's greenhouse and that unless the building works were stopped subject to further negotiations with Clifford, he would apply for an injunction. As Holt was not forthcoming, Clifford applied for an injunction "… *from erecting or permitting to remain erected any wall, building, or other structure, so as to damage, injure, or obstruct any of the lights of the plaintiff's house or greenhouse, and from unlawfully raising or otherwise dealing with the party wall between the plaintiff's and defendants' premises or trespassing on the said wall*."[516]

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[514] [1906] 2 Ch. 87, paras. 87-96
[515] [1898] 12 WLUK 27, paras. 698-703
[516] *Clifford v Holt* [1898] 12 WLUK 27, paras. 699

Holt raised the wall from 8 to 25 feet and intended for the building works to continue so that the party wall would reach 40 feet. Clifford alleged that this would cut off the north and northeast light to his greenhouse and would also interrupt access of air to his premises and lower their value.

Kekewich J proceeded to assess whether the greenhouse can be considered to be a 'building' with the meaning of section 3 of the PA 1832 requiring access of light for ordinary purposes for which light is required:[517]

> "… *when a building is of such a character that access of light is of importance to it, it is in fact a "building," and that therefore the Legislature intended that there should be protection for that light if it has been enjoyed for an uninterrupted period of twenty years.*"

It was held:

> "…*that the defendants' wall caused a substantial obscuration of light to the plaintiff's greenhouse, and that the obscuration was of that material character that the Court ought to interfere; also that the existence of the wall was sufficient to render the plaintiff's residence less marketable … it has been established to my satisfaction that the wall does interfere with the plaintiff's greenhouse, and on that ground he is entitled to the protection of the Court.*"[518]

Clifford was granted a mandatory injunction. This aligns with the view of the Law Commission and RICS, which view greenhouses to be capable of enjoying a right of light (therefore being considered a 'structure' for this purpose capable of acquiring rights to light by prescription).[519]

Yet again, it can be seen that as long as the claimant can show that its land (under ownership or lease) has a right to light which has been interfered with by the

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[517] *Ibid.*, para. 702
[518] *Ibid.*, paras. 702-703
[519] Law Commission, Reforming the law, *Rights to Light*, Law Com No 356, pp. 36, 39, 45, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/391684/44872_HC_796_Law_Commission_356_PRINT.pdf accessed 31 December 2022>; RICS professional guidance, UK, *Rights of light*, 2nd edition, March 2016, p. 4; <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/rights-of-light-2nd-edition-rics.pdf> accessed 31 December 2022

defendant, courts tend to exercise their discretion to award an injunction to stop such interference as damages are not always enough to make good the damage caused by it.

In *Presland v Bingham*,[520] Presland initially started an action for an injunction or damages for interference with a right to light pertaining to its house as Bingham re-built an old party wall fifteen feet above its original height. This was however not due to a solid structure but due to Bingham piling up empty cases against the party wall, which were from time to time removed, i.e. the obstruction was not permanently in place. As the evidence was conflicting, North, J. at first instance held that there was no interruption of Presland's land's right to light, and that Presland had a right to an inquiry as to damages.

North, J. held that, firstly, Presland proved that it had a right to light for more than twenty years which has been materially interfered with by Bingham's new wall. The judge then proceeded to the second question, and what was the effect of the piled-up boxes. He concluded that while Presland had a right to light, there was no evidence that this had not been interrupted. He therefore did not grant any relief to Presland. However, due to the judge's dissatisfaction with Bingham's evidence, he dismissed the action without costs.

Presland appealed. Cotton, L.J. commented on the burden of proof of each party:

> "*I may say my own opinion is that if it appears upon the evidence of the Plaintiffs that there has been an interruption of a permanent character, one likely in its nature to be of a permanent character, then it would lie on them to shew that it did not in fact last for a year; but if on the evidence it appears that the interruption is one not likely to be of a permanent character, one which from its very nature is not of a permanent character, it lies upon the Defendant, who objects to the light having been gained, to shew by his evidence that there has been an interruption which has been existing and acquiesced in for more than a year.*"

Cotton, L.J. then proceeded to analyse the nature of the 'interruption' and concluded

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[520] [1889] 3 WLUK 16, paras. 268-278

that the interruption was only of a temporary nature and therefore the defendant's defence fails. The conclusion was that "… *the access of light to the skylight over the workshop of the Plaintiffs has actually been enjoyed for the full period of twenty years before the commencement of this action without any such interruption …*" Cotton, L.J. held that any damage was to be ascertained by the Official Referee in relation to the present wall having been built above the height of the old party wall of eight feet. Lindley, L.J and Lopes, L.J. agreed with Cotton L.J.

This case is slightly different compared to typical party wall cases in the context of a right to light in that here the dispute revolved around a temporary infringement of less than a year. By temporary infringement, it is meant piling up boxes against the old party wall (not the newly built party wall) as the boxes have not remained in the same place for a year due to the fact that they have been removed and replaced with other boxes over the course of time. It is due to this temporary nature of these piled up boxes that damages were deemed appropriate as opposed to a mandatory injunction.

The case of *Smith v Smith*[521] concerns a landowner and occupier of a house and workshop (claimant) and his neighbour (defendant) who raised a low party wall eight feet from the claimant's window to a height of twenty-six feet. The claimant started proceedings as it complained about the party wall creating an obscuration of its right to light. The Court held that the claimant did not lose its right to relief by delay or agreement. Therefore, the claimant was entitled to a mandatory injunction to remove the party wall.

In this case, the claimant was able to produce evidence that the rooms facing the party wall were deprived of light to such an extent as a result of the raised party wall that the affected rooms could be used only with the assistance of gaslight and that the workshop was close to not being fit for its purpose. The evidence also showed that the house was next to uninhabitable, the health of some inmates was affected, and that the claimant's family had to leave the premises. The defendant tried to argue that the claimant's right to light was barred by delay in asserting his claims and acquiescence.

Sir G. Jessel, M.R concluded that the court has discretion to award damages in place

[521] (1875) L.R. 20 Eq. 500 (1875), paras. 500-505

of a mandatory injunction where it considered fit to do so. He further held that the judicial discretion was to be exercised so "… *as to prevent the Defendant doing a wrongful act, and thinking that he could pay damages for it.*"[522] One decisive factor to consider was as to whether the defendant was aware that he was doing wrong and was taking on the risk of being disturbed in doing the wrong. Another important (however not standalone) factor was whether the claimant was materially injured. However, this needs to be assessed in context with the amount laid out by the defendant.

Sir G. Jessel, M.R. held that the injury in this case was most serious to the claimant and that damages were not sufficient.

In this case, it can be seen that a party that is the owner of a land enjoying a right to light that has been infringed (and showing relevant evidence) has a good chance of pursuing an injunction against the defaulting party. It is advisable to act early so that the defaulting party does not succeed in trying to argue that the party benefiting from a right to light has lost it through delay in opposing the infringement or even by acquiescence. The decision confirms, again, the courts' view that they have discretion to choose between awarding damages or an injunction. The defendant attempting to argue against such discretion was dismissed.

Here the defendant was fully aware that it has been depriving the claimant of his right to light by erecting the party wall. The claimant in this case was materially injured and it was held that the defendant cannot 'buy' its infringement, i.e. doing a wrong and then simply paying damages instead of an injunction. It would have been out of proportion for the defendant to be allowed, in essence, to force the claimant to accept the defendant's infringement of the claimant's right to light and for the claimant to leave the house and be forced to 'sell' it to the defendant.

On the principle of the courts having discretion to award damages in lieu of an injunction, while this is still the case and has been further confirmed in the Supreme Court's judgment in *Coventry (t/a RDC Promotions) v Lawrence*,[523] the approach to that discretion has been subject to debate over a number of years (with some

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[522] *Smith v Smith* (1875) L.R. 20 Eq. 500 (1875), para. 505
[523] [2014] 2 W.L.R. 433

examples set out below).

- In *Shelfer v City of London Electric Lighting Co (CA)*,[524] it was held that the courts' discretion to award damages in lieu should not be exercised in order to deprive a claimant of its right to an injunction (with rare exceptions).

- In *Miller v Jackson*,[525] it was held, on appeal, that when the court exercises its equitable jurisdiction to grant an injunction, it must take into consideration public interest.

- In in *Coventry (t/a RDC Promotions) v Lawrence*,[526] it was held that public interest has to be taken more into account, where an existing planning permission authorising carrying on an activity causing a nuisance can be a factor favouring the court to grant damages in lieu of an injunction and that a more flexible approach should be taken by courts when being asked to award damages in lieu (as opposed to the approach suggested in *Watson and others v Croft Promo-Sport Ltd*,[527] where judges have been too keen to grant injunctions without considering the option of granting damages in lieu).

- In *Raymond and another v Young and another*,[528] the Court of Appeal pointed out that there may be circumstances where both damages at common law and a permanent injunction could be awarded (this could be the case where, for example, it is likely that the defendant's conduct will continue).

It is safe to say that party walls are very well capable of infringing a right to light hence causing disputes between the parties. While going to court is an option, it is often worthwhile for the parties to consider whether settling the matter out of court is a better option thereby mitigating additional costs and protracted amount of time linked to the court process, especially if the costs linked to the party wall are disproportionately small compared to costs linked to court procedure for each of the parties.

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[524] [1895] 1 Ch 287
[525] [1977] 3 W.L.R. 20
[526] [2014] 2 W.L.R. 433
[527] [2009] EWCA Civ 15
[528] [2015] EWCA Civ 456

The case of *Weston v Arnold*[529] is interesting in that the main point was whether a wall is a party wall if it contains windows and how this resonates with a right to light. In this case Weston was the owner of a house where one wall was to the height of the first story a party wall between Weston's house and Arnold's building. However, above that height, the wall had windows opening to the external air. Weston demolished his house and wished to rebuild it with windows in the same position as prior to the demolition. He therefore gave a notice to Arnold that the wall, which Weston viewed to be a party wall, was in disrepair and was to be rebuilt at the parties' join expense as supported by two surveyors. Arnold then built a building obstructing the light coming through Weston's windows as per Diagram 25 below. At first instance, it was held that the wall above Arnold's building was in fact not a party wall and Weston was not prevented from making windows in it. An injunction was granted to prevent Arnold from obstructing the right to light.

The wall between the parties' premises is described below.[530]

> "*The south side of the Plaintiff's house overlooked a courtyard and outbuildings belonging to the Defendants, which outbuildings were built up against the Plaintiff's house, so that to the height of the first story the wall of Plaintiff's house was a party wall between the two buildings. The Plaintiff's house consisted of a ground floor, used as a kitchen, and two stories above it, and there were twelve windows in the south wall, all of which opened on the external air over the outbuildings. The Defendants' building now complained of was a warehouse just beyond the outbuildings*."

Arnold was of the opinion that when the wall was built again, it should not have any windows as it is a party wall. After the injunction was granted at first instance, Arnold requested that the Vice-Chancellor dissolve the injunction. This was refused on the basis that the part of the wall that extended above the defendants' buildings was not a party wall. Arnold then proceeded to the Court of Appeal.

Sir W.M James, L.J. held that:

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[529] [1873] 8 WLUK 6, paras. 1084-1093
[530] *Weston v Arnold* [1873] 8 WLUK 6, para. 1085

> "*Now, a party wall is a thing which belongs to two persons as part owners, or divides two buildings one from another. It is beyond even the power of the Legislature to make that a party wall which is not a party wall. … they cannot make what is not a party wall a party wall, any more than they can make a square a circle*."[531]

He held that in this case, part of the wall divided the two houses and the part above it was Weston's separate and undisputed property: "… *it appears to me that a wall may be in part of its length a party wall, and in part of its length an external wall, and there is no distinction between height and length*."[532] As the windows were in the separate wall above the party wall section, Weston as the owner has acquired a right to the windows in this separate wall and a neighbour cannot raise his building to darken such windows. Sir W.M. James, L.J. concluded that Weston was entitled to the injunction obtained from the Vice Chancellor. Sir G. Mellish, L.J. agreed with Sir W.M. James, L.J. and confirmed that Weston had a right to light and that the injunction has to be made perpetual against Arnold.[533] This decision is consistent with that in *Crofts v Haldane and Another*[534] as well as in *Frederick Betts Ltd v Pickfords Ltd*[535] discussed above.

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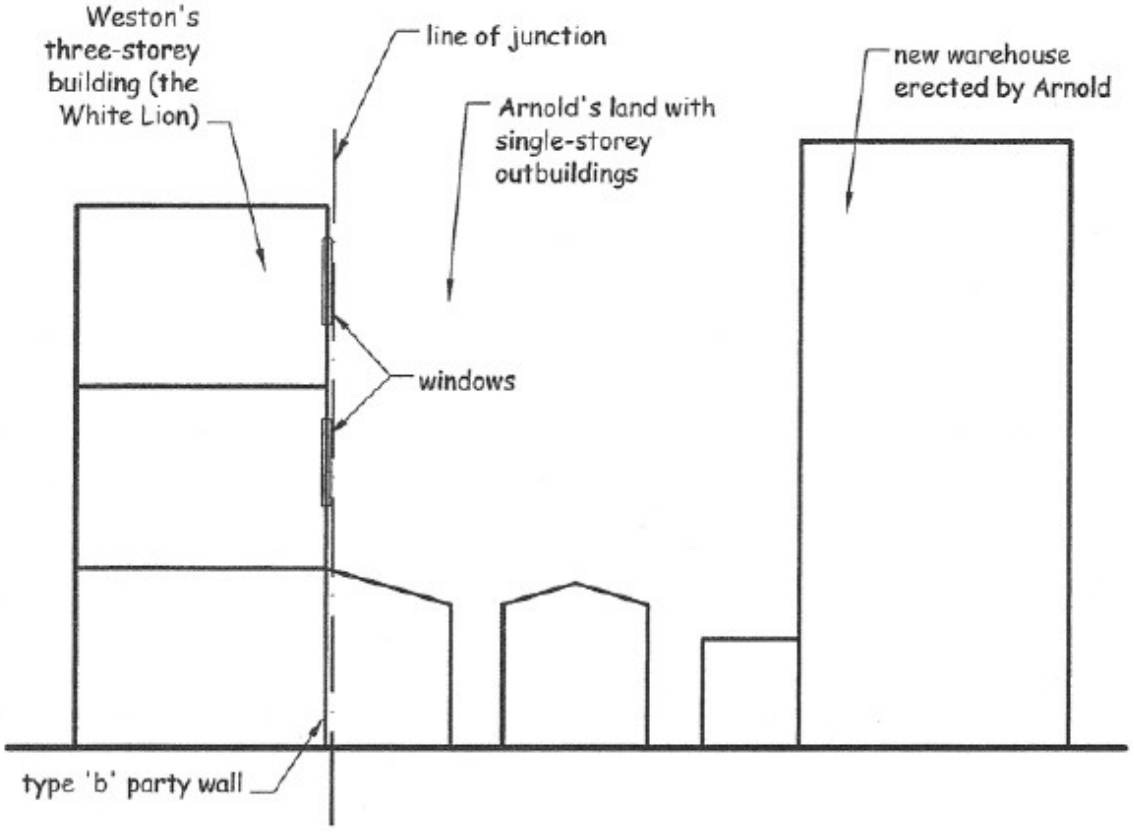
[531] *Ibid.*, para. 1089
[532] *Ibid*., para. 1090
[533] *Ibid.*, para. 1093
[534] [1867] 1 WLUK 87, para. 194-200
[535] [1906] 2 Ch. 87

Diagram 25 – *Weston v Arnold*[536]



[536] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 420

As considered in Chapter III at paragraph III, the oldest piece of legislation covering party walls resembling the modern form is Part III of the Metropolitan Building Act 1855.[537] The case of *Crofts v Haldane and Another*[538] is from year 1867 and although it relies on the Metropolitan Building Act 1855, the main principles, when it comes to party walls, are the same as today linked with the PWA 1996. In this case, Crofts was the owner of premises used as a gallery for exhibiting pictures and paintings for sale as well as water-colour drawings and other works of art. For the gallery to be functional, it was entitled to have the light and air entering through certain windows. The defendants wrongfully erected a party wall and building near such windows. This prevented Crofts from using his premises as a gallery. The defendants were the owners of the party wall and Crofts was the Adjoining Owner.

A dispute arose between the parties and was referred to three surveyors which produced an award stating that the party wall and building "*had been built in conformity with the award, and part of the erection was the wall and building complained of by the plaintiff.*"[539] However, the actual dispute about light, air and related damage remained still unsettled and to be decided by the surveyors.

Cockburn, C.J. held that:

> "… *amongst other rights in relation to party structures, the building owner shall have a right to raise any party structure permitted by the act to be raised, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishing sand decorations thereof. Under that enactment, Mr. Clarke contends that the building owner has a right to raise an external wall, although he interferes with the ancient lights in the neighbouring premises. … the statute gives the right to raise any party structure "on condition of making good all damage to the neighbouring premises and the internal finishings," it clearly means that the building owner must restore the neighbouring premises to their condition previous to the erection; and cannot*

[537] 18 & 19 Vict c CXXII
[538] [1867] 1 WLUK 87, paras. 194-200
[539] *Crofts v Haldane and Another* [1867] 1 WLUK 87, p. 196

be forced into meaning, not only that he is to restore or make good any structural damage, but to give pecuniary compensation for destroying access to light … unless express power be given to interfere with the right to light, it ought not be inferred."[540]

Cockburn, C.J. also noted that "… *if the building owner has no right to raise a party wall so as to interfere with the right to light, there is no matter arising under the act for the surveyor's arbitration.*"[541] It is clear that in this case it is the court that has jurisdiction to decide the unresolved dispute about the interference of the party wall with the claimant's right to light and not the surveyor's process. Blackburn, J. and Lush, J. agreed with Cockburn, C. J.

The right to build a party wall does not give a right to interfere with the right to light. This is why the surveyors did not have jurisdiction to decide disputes on the issue of easements of light.[542] This resonates with section 9 of the PWA 1996, which states that: "*Nothing in this Act shall – (a) authorise any interference with an easement of light or other easements in or relating to a party wall; or (b) prejudicially affect any right of any person to preserve or restore any right or other thing in or connected with a party wall in case of the party wall being pulled down or rebuilt."*

Party walls can interfere with a right to light. It is also clear that Courts have a discretion to award an injunction or damages in relation to a party's interference with another party's right to light. Courts are not hesitant to award an injunction where they conclude that damages do not suffice in a situation where the easement of the right to light exists, has not been extinguished and has been interfered with without the interfering party having the right to do so.

4.6 Dispute Resolution in the Context of Party Walls and Rights to Light – Conclusion

While the right to light being an easement, its infringement can lead to becoming a

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[540] *Ibid*, p. 198
[541] *Ibid.*
[542] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), p. 97

nuisance in tort. As noted in *Higgins v Betts*,[543] the test establishing whether a right to light has been infringed is whether enough light is left for the comfortable use and enjoyment of the relevant premises in line with the usual requirements of mankind. If the benefiting owner's land has suffered an infringement of its right to light, the benefiting landowner can apply for an injunction against the infringing party bearing in mind that the court has the discretion to award damages instead where it considers an injunction to be inappropriate and damages to be a sufficient remedy. This has been confirmed also in the cases of *Ottercroft Limited v Scandia Care Limited Dr Mehrdad Rahimian*,[544] *Frederick Betts Ltd v Pickfords Ltd*[545]or *Presland v Bingham*.[546]

Considering the case law examples in this chapter, the parties need to be aware that should their case get to court, courts are likely to take into account the parties' conduct and any agreements amongst themselves in relation to the right to light and/or party wall in question. Courts have also been open to dividing sections of a wall in dispute into the relevant party wall and the rest of the wall that does not amount to a party wall. Parties should also be careful not to assume what does and what does not amount to a permanent structure for the purposes of rights to light (for example in the case of *Clifford v Holt*,[547] the court held that a green house in that instance did amount to such a permanent structure).

Where the benefiting landowner wishes to enforce a right to light, it must show that the loss of light amounts to nuisance i.e., that there is a substantial deprivation of light making the premises less fit for their intended purpose[548] or less comfortable and convenient than before the reduction in light has occurred.[549] There is no given measure quantifying what amounts to 'sufficient light'. However, there are 'rules of thumb' that can assist in assessing the required amount of light.

Section 9 of the PWA 1996 states that the Act does not authorise any interference with an easement of light. Although section 2(2)(l) of the PWA 1996 gives the right to build

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[543] [1905] 2 Ch. 210, para. 210
[544] [2016] EWCA Civ 867; [2016] 7 WLUK 115 (CA (Civ Div))
[545] [1906] 2 Ch. 87
[546] [1889] 3 WLUK 16
[547] [1898] 12 WLUK 27, paras. 698-703
[548] *Higgins v Betts*, [1905] 2 Ch 210, para. 212
[549] *Beaumont Business Centres Ltd v Florala Properties Ltd.* (2020 WL 01235011, para. 138

party walls, it also makes it clear that it does not qualify for such party walls to interfere with an existing easement of light.

As can be seen from case law on the interrelationship between party walls and rights to light, as long as it is established that the easement of a right to light exists, has not been extinguished, and has not been interfered with without a valid authorisation, courts tend to make an award in favour of the benefiting land usually in the form of an injunction or, if this is not appropriate, in the form of damages, at the discretion of the relevant court.

Before going to court however, the parties are advised to consider whether it is appropriate to settle disputes related to party walls infringing rights of light outside of court. This is because court procedure takes time and costs money that can go over and above the value of the issues in dispute. The parties, usually owners or occupies of neighbouring properties, have to consider that they may have to co-exist with the opposing party to the dispute for years to come unless one of the parties decides to leave. Therefore, the relationship between the parties needs to be taken into consideration. The best way forward is transparency and clear communication between the parties before the issues arise. Where one party intends to raise a party wall, it is prudent to check if such a wall could potentially infringe the other party's right to light. The party planning to build such a wall should notify the other party of its intentions and understand whether the benefiting party raises any concerns in advance of any construction works on the relevant party wall. Both parties should keep a paper record showing communications between the parties recording a chronology of events and how the situation develops. This will add clarity and assist any settlement negotiations as well as a potential court dispute.

However, it is not always possible to avoid a clash between neighbouring properties when it comes to party walls being built that infringe a right to light. It is also not always possible or cost-effective to amend and limit the design of a new development being built so it does not infringe a right to light. In a situation where a property is about to acquire a right to light due to having had 20 years of uninterrupted enjoyment of light under the PA 1893, a developer has the option to serve a timely light obstruction notice before the 20 years expire as then it will prevent the right to light from crystallising. This is subject to the notice not being successfully disputed by the benefiting owner

resulting in the notice being set aside. At an early stage and prior to building a party wall that may infringe a neighbouring property's right to light, the developer should consider investigating an applicable insurance cover for the risk of any claims that may potentially arise. The cost of such a cover is a factor that the developer should consider as well. The insurance cover will not lower the chances of a dispute, but it may cover full or part of the consequences of such a claim for infringement of rights to light. The exact wording of the insurance policy needs to be carefully checked as not every insurance cover covers the same issues and the cost linked to such cover may vary considerably as well as its limits. Insurers usually require that the policy holder does not make contact with potential claimants (contrary to courts' views). Therefore, insurance covers of this type may be limited to small interferences with rights to light. Hence, where insurance does not apply, developers should try to approach the benefiting owner to try and negotiate a settlement, potentially for a price. Alternatively, the developer can contact the local authority who may agree to extinguish the rights.[550] The threat of this step alone may convince the parties to settle the matter amongst themselves rather than going through official channels.[551]

If the parties end up in a dispute over a party wall, they can resort to an award from a surveyor to decide matters and/or go to court. The benefiting owner must issue a notice to the developer as soon as the benefiting owner becomes aware of an infringement of a right to light. If it does not, it faces the danger of losing the right under section 4 of the PA 1832 and/or due to abandonment.

As noted above, although disputes are sometimes unavoidable, parties usually benefit from settling the matter amongst themselves both from a time as well as cost perspective.

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[550] Town and Country Planning Act 1990, s. 237
[551] Hogan Lovells, "*Practice & Law – Developing Themes*" (23 November 2013) The Estates Gazette, ABI/INFORM Collection, p. 120

VIII. CHAPTER EIGHT – STRUCTURAL ISSUES

Party walls are essentially structures that can affect neighbouring properties. While this thesis has been focussing on legal aspects and context of party walls, it is not possible to discuss party walls without mentioning practical issues such as, for example, structural issues linked to party walls, which can result in a dispute if not managed with a dispute avoidance strategy in mind. Structural issues range from cracks in party walls, subsidence, underpinning, thickening, raising, repairing, cutting into a party wall, increasing or decreasing its height, to exposing a party wall or demolishing it and fully rebuilding it.

Section 2(1) of the PWA 1996 states:

> "*This section applies where lands of differing owners adjoining and at the line of junction the said lands are built on or a boundary wall, being a party fence wall or the external wall of a building, has been erected.*"

Subsection 2(2) of the PWA 1996 sets out the Building Owner's rights. It is the works to which section 2 of the PWA 1996 applies that requires a notice to a Party Structure to be served prior to starting the works.

Cracks could mean a grave structural issue in a party wall. An element of movement in houses is inevitable potentially resulting in cracks in the plasterwork or brickwork. It can result from poorly considered alterations, which weakened the structure due to inadequate support during works or because the works have added weight or stress to the walls, which was not expected at the time the building was built. One can sometimes observe structural problems prior to serious damage or collapse of the structure, the signs of which include: cracks and bulges in the internal/external walls or binding doors/windows due to, structural movement or damp weather, tapered cracks running diagonally from the corner of doors/windows, which point to weak spots in the structure, cracked render/plaster around the top of windows suggesting that the carrying part of a timber lintel is rotting, cracks between a bay window and the building suggesting incorrectly tied bay windows to the structure and sloping floors indicating subsidence or other structural issues.

Following the decision in *Lea Valley Developments Ltd v Derbyshire*,[552] an award that imposes an obligation on the Building Owner to make good damage in material to match the existing fabric and finishes does not extend to a scenario where the Adjoining Owner's property requires to be demolished and rebuilt.[553] Costs of making good are to be shared between the Building Owner and the Adjoining Owner with the apportionment depending on the use which the two owners make of the wall as well as the responsibility for the defect or disrepair.[554]

The conditional rights the Building Owner has, which are set out in section 2 of the PWA 1996 include underpinning, demolition, cutting into Party Structure and reducing height of a party wall or Party Fence Wall.

The right to underpin under section 2(2) (a) of the PWA 1996 a party wall (fully or partially) relates to the need to strengthen the foundations of the party wall. Underpinning a party wall may be required in situations where there is settlement, subsidence or where additional weight is to be imposed on a party wall. This would be the case, for example, where new supports are fixed into the party wall, or an extension is added at the roof level. As a result, foundations may need to be extended so that the impact of the additional weight is spread further and deeper. Older buildings often have quite shallow foundations. Foundations of Victorian houses may rely on just three courses of corbelled brickwork. It is a must of underpinning to be carried out in mass concrete. An Adjoining Owner must give its express consent before the Building Owner is allowed to place reinforced concrete over the boundary line onto the Adjoining Owner's property.[555]

As for subsidence, this refers to the ground underneath foundations giving way whereby it withdraws support from a party wall and causes it to drop. Where a party wall forms part of a building, such subsidence can put a strain on the building destabilising the walls. Some examples of causes behind subsidence include effects of droughts, tree roots (most severe effects are caused by poplars, oaks, willows, ash, plane and sycamore trees and fast growing leylandii and eucalyptus) and heavy frosts

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[552] [2017] EWHC 1353 (TCC)
[553] Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017), p. 107
[554] Alistair Redler, "*Practical neighbour law Handbook*" (2007) RICS Books, p. 86
[555] *Ibid.*, p. 84

which can cause clay sub soils to shrink or swell severely. Other causes of subsidence include leaking drains (turning the ground under the building or party wall into a soft, squelchy marshland), nearby excavation works (extension being erected next door), sinkholes and old mine-works. Subsidence should not be mistaken for settlement, which is another type of downward movement. However, in most cases, buildings settle gradually over time in the process of the ground beneath being slowly compressed adjusting to the weight of the new building. This would apply, for example, where structural changes include a loft conversion. Period houses were built with very shallow foundations but were still able to accommodate a certain amount of movement. This is because foundations of period houses were built using flexible lime-based materials. Compared to modern concrete strip foundations of the 20th century, period houses were built with brick footings, which widened out at the base in a stepped pattern in order to be able to spread the load. The main reason why foundations have been built at a deeper level in the 20th century is to avoid movement in the ground caused by frost and seasonal moisture changes. Footings of period houses are less than half a meter deep and so their stability depends on the conditions of the ground they were built on. While chalk and rock are firm, clay can dry out leading to shrinkages and cracks in hot weather, recovering later when swelling back into shape during wet weather. Where a party is concerned about subsidence, it may decide to opt for underpinning, which effectively means making an excavation down to stable ground and pumping several tonnes of concrete into the excavations. This may however cause issues when applied to old buildings as it poses additional strain between the firm new area and the old walls. Another option, which is gentler and cheaper when it comes to period houses is laying several courses of brick under the defective section of the party wall. In this way, contact is re-established with firm ground.

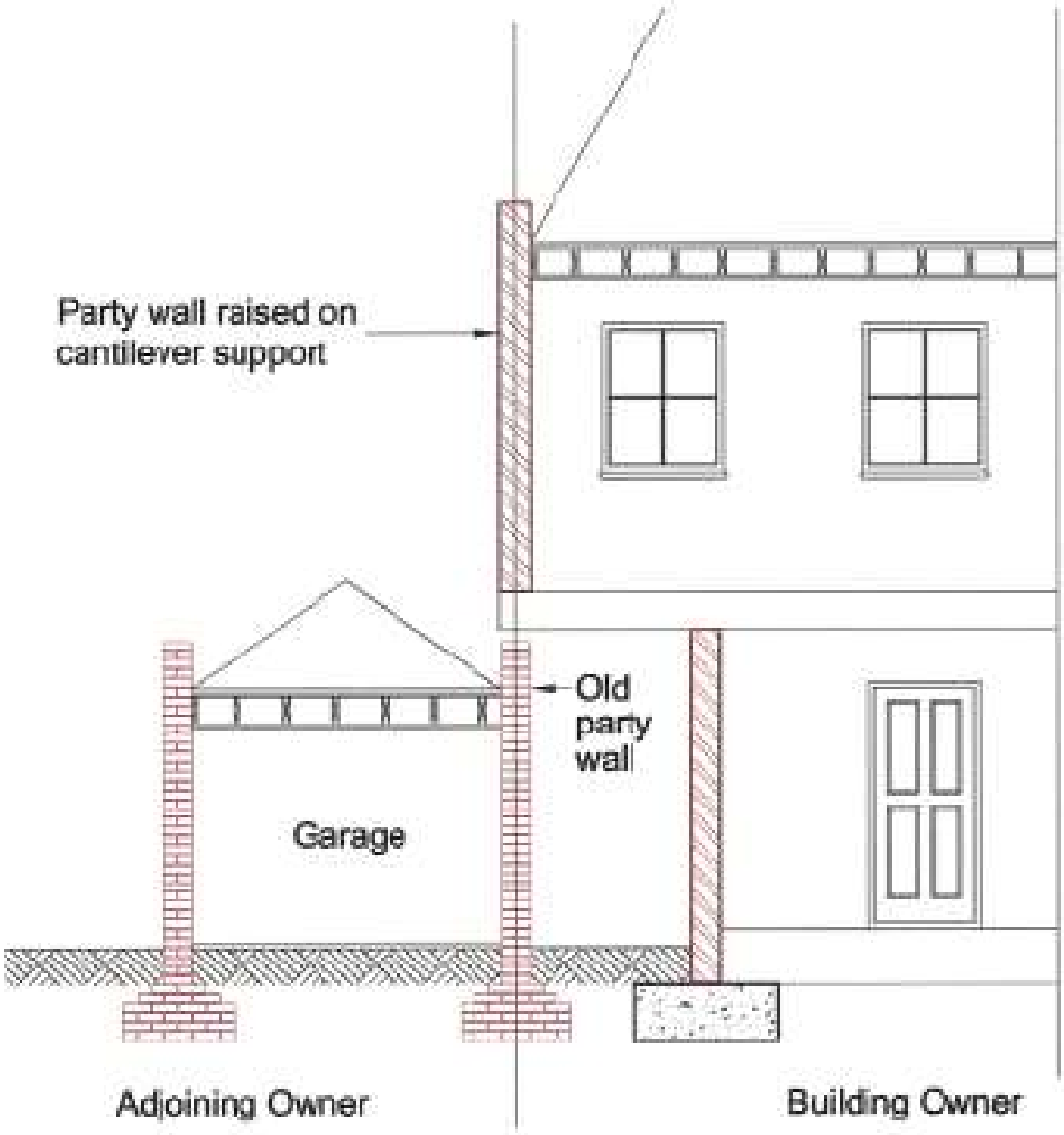
A method to strengthen a party wall includes thickening. This is more relevant to lower levels where the party wall carries an increased load caused by alterations to the attached building. Older buildings have usually thicker walls at lower levels than at upper levels. Where additional support is needed in relation to walls at upper levels, one can add brickwork to one side, which takes the line of the wall to the lower level. In this way, the load is carried and transferred down to the foundations throughout the

thicker brickwork.[556]

The right to raise a party wall can extend to any purpose including raising a party wall at roof level to enclose a roof extension. It can also include a garden Party Fence Wall to enclose on it for a new extension. The PWA 1996 gives no definition of the materials which should be used or the criteria how these should be selected for the purpose of raising a party wall. The optimal way however would be for the Building Owner raising the party wall to take reasonable requests of the Adjoining Owner into consideration, particularly in situations where the party wall will be visible only from the Adjoining Owner's property. Where the choice of materials is considered to be expensive, the cost can be shared by agreement between the Building Owner and the Adjoining Owner. In situations where building new brickwork directly on the old party wall below may not be considered prudent, where a party wall is old and in poor condition, there may be uncertainty about its ability to withhold additional weight without the need to take the old party wall down and rebuild it. However, rebuilding a new party wall may also not be considered appropriate as it can result in substantial construction works. A solution can be that the raised section of brickwork is supported on a cantilever from the frame of the new building (examples are set out in Diagrams 26 and 27 below). What this means is that the brickwork would overhang the full width of the party wall. While it would touch it at the junction, it would not impose weight on it. While this is considered to constitute raising a party wall under the PWA 1996 by most surveyors, there is some dissent as well. Therefore, each case should be evaluated on its own merit. This is an important consideration as where the wall does not fall under the PWA 1996, there is no right of access to the land of the Adjoining Owner to build the wall.[557]

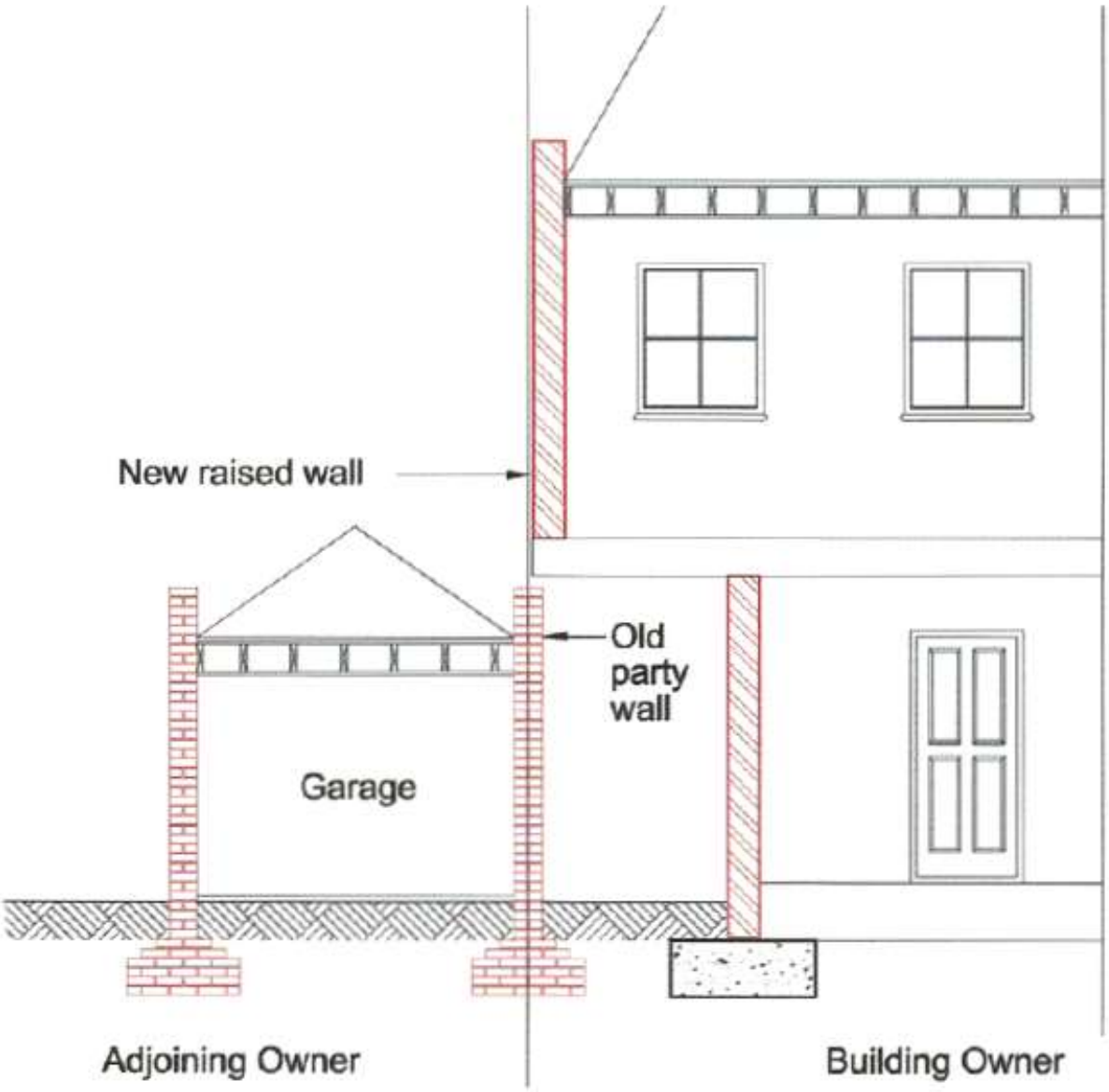
[556] *Ibid.* p. 84
[557] *Ibid.*, pp. 84-85

Diagram 26 – New structure Cantilevered Fully over a Party Wall[558]



[558] *Ibid.*, p. 85

Diagram 27 – New Structure Cantilevered over Party Wall, up to Boundary Line[559]



[559] *Ibid.*, p. 86

The main purpose of raising or replacing a Party Fence Wall is usually where a wall separates two gardens and is used to enclose a new extension. For example, a Party Fence Wall needs to be raised to a height sufficient for the new extension. Equally, a Party Fence Wall may need to be taken down and replaced with a new wall that is more substantial and meets modern regulations when enclosing a building.[560]

The right under section 2(2)(f) of the PWA 1996 of cutting into a party wall may become relevant where it is required to form a concrete pad stone to support a new steel beam where internal structural partitions are removed. Cutting into a party wall may also be required in order to strengthen roof joists in order to create a floor where a roof space is converted into a new room. The extent to which a cut is made into the party wall is not restricted by the PWA 1996. However, usually surveyors require that a concrete pad stone or beam does not extend further into the party wall than half the thickness of the wall. The reason for this is precautionary to ensure that the risk of damaging the Adjoining Owner's internal finishes is minimised. It also gives the Adjoining Owner the option to use an equal half thickness of the wall in that location. However, these restrictions are not rooted in the PWA 1996 and there may be situations where such restrictions should not apply. For example, this is the case where a house has very thin party walls and the Building Owner needs to insert the pad stone to a greater depth for the purposes of proper construction. Cutting into a party wall may also be needed where a chemical damp proof course needs to be inserted or for the purposes of cutting in a flashing. There is also a right to cut away any projection from a party wall which includes footings, chimney breasts and flues. A party has the right to cut off any structure overhanging the party wall, which extends to pipes, gutters, eaves details as well as major structural cladding where a building has been built with parts of the elevation overhanging the party wall. The most important factor here is that structures can be cut off even if they are purely on the Adjoining Owner's land and therefore do not trespass. As long as these structures overhang the party wall, they can be cut off. The level to which they overhang the party wall can be very small and this still gives the right to cut them off.[561]

The right to reduce height of a party wall or Party Fence Wall under section 2(2)(m) of

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[560] *Ibid.*, p. 87
[561] *Ibid.*, pp. 86-87

the PWA 1996 gives the Building Owner the right to either reduce or demolish and rebuild at lower height party wall or a Party Fence Wall. The wall cannot be reduced to a height of less than two meters. In the case where the wall encloses the building of the Adjoining Owner, it must not be reduced to less than the height to which it is enclosed (with appropriate parapet). The Adjoining Owner has the option to serve a counter notice within 14 days of the original notice where the Adjoining Owner does not want to have the wall reduced in height. The notice would then require the Building Owner to maintain the current height of the party wall. However, in such a scenario, the Adjoining Owner has to then pay a proportion of the cost of the party wall to the Building Owner where it is either above two meters in height or above the Adjoining Owner's building's height. However, where the Building Owner incurs no cost (where, in order to comply with the counter notice, the wall is left in place and not reduced), the courts are likely to decide that the responsibility of maintenance as to the upper level of brickwork in the future will be with the Adjoining Owner. This would mean that the Adjoining Owner takes responsibility for the party wall as a result of the counter notice.[562]

A party wall can be exposed by construction works. This can happen, for example, where an initially internal face of the party wall is left exposed to the weather after an existing building has been demolished. Such an exposure can be permanent or temporary. In such a case, the PWA 1996 will apply and that will be the case even though no works have been performed on the party wall itself. Under section 2(2)(j) PWA 1996, there is an obligation for the Building Owner to ensure that an adequate weatherproofing to the wall is provided. In a situation where the exposure of the party wall is temporary before the new building is constructed, it is considered to be adequate for the party wall to be protected by roofing felt or heavy gauge polythene sheet that is secured with timber battens. However, where the party wall is to be left exposed permanently, then the Building Owner has to ensure adequate weatherproofing (for example with a cement render) which interplays with weather protection required as discussed in Chapter VI.[563]

Demolishing works are required where a partition that does not conform with statutory

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[562] *Ibid.*, p. 87
[563] *Ibid.*

requirements has to be removed. This is particularly relevant to older terraced houses built with no separating party wall between roof spaces that are adjoined. Alternatively, there may be a simple timber partition serving as a separation between two attached buildings. Mortgagors can require that where there is no partition between two buildings (or where there is no substantial partition), a party wall should be constructed that is of sufficient strength and is sufficiently fire resistant. The PWA 1996 will apply where such a robust party wall is to be rebuilt.[564] In addition, there is a right to take down and rebuild a Party Structure due to the Building Owner's requirement for the party wall to be more robust or built using different materials. This also includes a right to lay open a building belonging to the Adjoining Owner where necessary, subject to compensating related loss. An example of this includes where office space becomes unusable where the enclosing party wall is missing.[565]

In *Hughes v Percival*,[566] Hughes was responsible for considerable works to his property (Diagram 28 below). The works affected party walls on both sides and by the end of the construction works, independent contractors negligently damaged one of the party walls. This resulted in a substantial collapse damaging also the second party wall adjoining Percival's property. It was held that Hughes was liable for the damage that Percival suffered. This is because, when carrying out construction works to party walls, a Building Owner owes a non-delegable duty towards an Adjoining Owner. Hughes had a common law right to carry out the construction works to the party wall. However, this included a high risk of damage to the property of the Adjoining Owner (Percival). In a situation like this, the law imposes a reciprocal duty of care on both owners in favour of the Adjoining Owner, which cannot be delegated. For the avoidance of doubt, duty of care relates not only to the hazardous elements of the works but to all works to a party wall. Although independent contractors caused the damage to Percival's property during works on Hughes's behalf, it was Hughes who was liable for damage caused by the works.[567]

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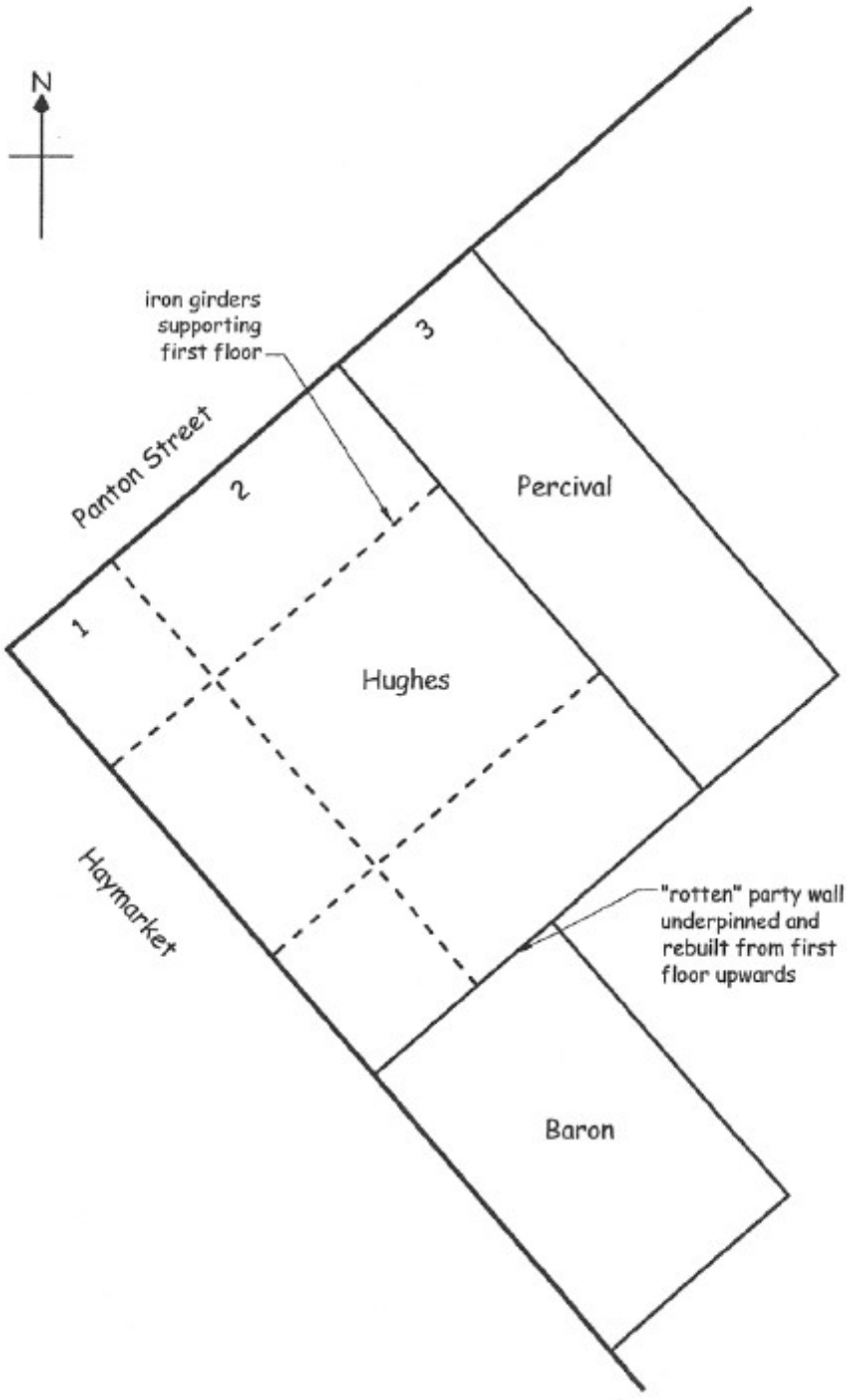
[564] *Ibid.*, p. 86
[565] *Ibid.*
[566] (1883) 8 App Cas 443
[567] Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007), pp. 169-174

Diagram 28 – *Hughes v Percival*[568]



[568] Paul Chynoweth, "*The Party Wall etc Act 1996: Compensation and Treatment of Easements*," The Conveyancer (2004), p. 170

Where a retaining wall collapses onto the neighbouring owner's land, it is the landowner from where the problem originated that has the obligation to clean up the debris and make sure that the issue will not occur again. This is the case even where no fault is shown. If an Adjoining Owner secures an *ex parte* injunction preventing a developer from breaking the terms of a party wall award, the Adjoining Owner will be entitled to costs. This is the case if the Adjoining Owner can demonstrate that it has justification of its precipitate action.[569]

In *Coope v Ward*,[570] a wall was built by a landowner's predecessors. The purpose of the party wall was to hold back the land from the neighbouring land. This is because the surface of the landowner's land was initially higher by about four feet than the neighbouring land. The difference in height increased to nine feet a few decades later. In 2010, there was a heavy snowfall because of which the wall collapsed into the neighbouring land. There were no obvious warning signs prior to the collapse that would indicate the collapse was imminent. The Court of Appeal held that it was the landowner who bore the full responsibility as there was a mutual measured duty of care. Although a breach of the duty of care was not possible to establish, the landowner was responsible for the collapse arising from the addition of earth made by the predecessors. For the purposes of carrying out any engineering calculations and to do the work needed, the landowner had the right to enter the neighbour's land.

As a side note, while there was found to be an easement of support in relation to the four feet of higher land over the neighbouring land, as there was a change imposing a greater burden that cannot be separated from the original rights, the initial easement was destroyed. As there was no easement, the Building Owner was responsible as it was from its property where the issue arose. The best precautionary measure for landowners in relation to retaining walls is to have an engineering survey done identifying potential issues and way in which to address them. In this case it was held that the question was not 'if' the wall would collapse but 'when' the wall would collapse. An engineering survey helps in similar scenarios to allocate responsibility before a

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[569] Property Law Bulletin, "*Boundaries: issues with neighbours*," P.L.B. 2015, 35(10), 76 <https://uk.westlaw.com/Document/I84B9E430D4E211E4A204A332330F1FAE/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)> accessed 15 May 2022

[570] [2015] EWCA Civ 30

disaster ensues but most importantly help prevent such disasters form occurring.[571]

In *Chliaifchtein v Wainbridge Estates Belgravia Ltd*,[572] there was a party wall award between an Adjoining Owner (claimant) and a Building Owner (defendant). A method statement in relation to permitted ways to carry out excavations close to the party wall formed part of the award. In addition, the Adjoining Owner secured an *ex parte* injunction. This forbade works that were not strictly in accordance with the method statement. At the time, the Building Owner had no issue with the continuation of the injunction. The Building Owner however objected to paying the related costs as it claimed that the claim was precipitate and not necessary. It was held that the Building Owner had to pay the costs to the Adjoining Owner. The claim was therefore successful. The injunction continued and there were some failures to comply with the method statement. The main point of the decision was to strike the right balance between what was actually happening on the site and how the parties behaved. The court held that there was sufficient evidence for the costs award to be justified.

When incurring structural issues in relation to party walls, section 2 of the PWA 1996 should be consulted in relation to the related rights and obligations as to the Building Owner and Adjoining Owner in order to manage dispute avoidance measures, such as an open line of communication between the Building and Adjoining Owners and managing any costs/losses linked to structural issues caught by section 2 of the PWA 1996. While signs pointing to structural issues may appear to be subtle to begin with, an engineering survey could be carried out in order to find out whether there are any underlying structural issues, their cause, where the related responsibility falls and rights and obligations of neighbouring owners. This is to prevent or at least mitigate damage caused by such structural issues.

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[571] Property Law Bulletin, "*Boundaries: issues with neighbours*," P.L.B. 2015, 35(10), 76 <https://uk.westlaw.com/Document/I84B9E430D4E211E4A204A332330F1FAE/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)> accessed 15 May 2022

[572] [2015] EWHC 47 (TCC)

IX. CHAPTER NINE – CONCLUSION

The multifaceted nature of party wall disputes calls for a reform of the party wall dispute resolution system as a whole as there is currently no all-encompassing framework to help resolve such disputes covering the legal and factual areas in this thesis. This thesis is spearheading a contextual approach to party walls as a valid area of its own, where different areas of law and fact are brought together and through providing a comprehensive framework to assist in a more cost- and time-effective party wall dispute prevention, management and resolution. The competing issues within the framework all play an important role in party wall disputes and need to be carefully considered when assessing what is the best strategy and dispute resolution route to take.

As party wall disputes might be highly personal in nature, it is common for disputes emanating out of them to grow acrimonious with emotions running high, standing in the way of practical, time- and cost-effective solutions. The analysis in this thesis shows different angles of party wall disputes by way of case law examples highlighting what types of problems can arise in the context of party walls. In order to be able to aid those with party wall issues, first there needs to be clarity in terms of what qualifies as a party wall, because not all boundaries do, and secondly, there needs to be a defined legal area of party walls of its own merit. This means, taking into account different pieces of legislation regulating party wall related issues and disputes, case law interpreting such legislation clarifying how it applies in specific factual scenarios, the law of easements and the law torts.

It is this contextual analysis of the various aspects that can affect party walls that allows for a carefully carved out area of party walls to be defined, which in turn can lead to formulating a well-informed dispute resolution framework and strategic advice to parties to party wall disputes, including precautions to be taken pre-dispute, dispute prevention, management and resolution options taking into account the parties' objectives and time and cost involved in such dispute resolution process.

The new approach and findings in this thesis are reassuring in that they provide a rounded view of issues most likely to occur in connection with party wall disputes, showing a pattern of the types of problems linked to party walls. Where there is a

pattern, there is a potential for problem-solving systematisation and framework.

In the common law system, there are very few legal specialists who are focussing on party wall disputes. The tendency is to qualify into a specific area, such as commercial law, family law, construction law, property law etc., focussing closely on the detail of each of these areas, which can lead to not seeing connections to other legal areas and the context of a multi-disciplinary problem. In situations where different areas of law overlap and/or affect an issue, one quickly recognises the lack of specialists on the market when it comes to party walls. The concern is then the quality and consistency of surveyors' awards and legal advice given to parties to party wall disputes. By creating a party wall legal area of its own, members of the public that are at the pre-dispute stage or in the middle of a party wall dispute would benefit from consistency, cost and time efficiency and clarity and would have more control over the strategy and consequences of their actions and dispute resolution choices. (As a side note, the lack of regulation of party wall surveyors puts an additional strain on party wall dispute resolution consistency.)

It is the contextual analysis of party wall disputes that shows a novel approach, whereby it is not just the PWA 1996 that stands in the centre of the issues governing them. On the contrary, this thesis explores areas of law that complement the PWA 1996 and are relevant where the PWA 1996's realm does not reach. While the PWA 1996 is a crucial piece of legislation in relation to party walls, it is but one piece of the puzzle concerning party wall disputes.

This thesis analyses and assimilates seven main issues.

First, it dissects the definition of what a 'party wall' is. This is an important foundation that the rest of the thesis builds upon because the definition of 'party wall' is not isolated only to the wording of the PWA 1996. Instead, there are other pieces of legislation, as discussed in Chapter II, that aid the definition as well as the DCLG's Explanatory Booklet.[573] In this context, Chapter II also considers works that can affect party walls (for example, excavations) and what consequences this can have in relation to the relevant parties' rights and obligations as well as dispute resolution

[573] Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016)

mechanisms and procedures.

Secondly, this thesis analyses the PWA 1996, the history behind it, its purpose, the areas it covers, and the rights and obligations of parties connected to party walls. The PWA 1996 is a pivotal piece of legislation in the context of party walls. However, its scope is limited, meaning that the rest of the thesis ventures well beyond the PWA 1996 and into different legal and factual areas providing a party wall area contextualisation.

Thirdly, the thesis analyses ways in which to manage and resolve party wall disputes. It elaborates on the mechanism provided by the PWA 1996, which provides for a voluntary notice dispute resolution mechanism but fails to provide other practical dispute resolution options. Chapter IV therefore goes beyond the PWA 1996 into litigation (while binding, this often provides a cumbersome and expensive solution that may not be practical for the parties due to the cost and time involved) and methods of alternative dispute resolution, as well as dispute prevention and settlement negotiation, with a focus on practical needs of the parties involved. This thesis promotes alternative dispute resolution mechanisms and dispute prevention, leading to more practical and digestible solutions for the parties, taking into account the fact that parties to party wall disputes often need to continue living in close proximity of each other for years or generations to come, meaning that preserving the relationship can be of value to them as well as limiting the cost and time of the party wall dispute.

Fourthly, this thesis brings together other pieces of legislation that affect party wall disputes and related rights and obligations in order to provide a solid legislative platform where different statutes either complement the PWA 1996, overlap with it or simply serve as a monitor to ensure that the PWA 1996 is compliant with the overall system of legislative rules within the society nationally (such as the Human Rights Act 1998).

Fifthly, having discussed the various legislative and dispute resolution aspects, this thesis delves into another area of law, namely proprietary rights in land affecting party walls and related disputes, with a particular focus on easements. The reason is because, as case law examples in Chapter VI show, it is not uncommon for party walls and easements to be intertwined. In such a situation, when a party wall dispute arises,

its outcome and or/works performed on a party wall can have a knock-on effect on a linked easement. One has to be sensitive to easements in the context of party walls. The PWA 1996 is very clear on neither condoning nor authorising interferences with easements. While explaining which proprietary rights are particularly relevant to party walls, this thesis uses case law examples as to why that is and what the courts' inclination is when attempting to solve related party wall disputes and what factors play an important role. Party wall disputes where easements are intertwined with a party wall or works performed on it must be managed in such a way as to ensure that any such linked easements are not interfered with. If they are interfered with, the liable party should be aware of the consequences of its actions, such as a court ordering it to pay damages to the other party. Awareness of these issues means that parties can decide before a dispute arises what works to perform on a party wall and in what way, in order not to interfere with any connected easement with the aim of avoiding a party wall dispute altogether.

Sixthly, this thesis discusses torts with a focus on common law nuisance relevant to party walls, again using case law examples to demonstrate which tortious issues can be encountered in party wall disputes and what the courts' tendency is when approaching such issues. Similar to the area of proprietary rights in land, tortious issues (such as, noise, vibration or rights to light) can be intrinsically linked to party wall matters that impact such tortious rights. When a party wall dispute arises (and ideally before), one has to consider whether any infringements affecting tortious rights are likely to or have occurred. This will help parties to be aware of the consequences of their actions should related disputes arise and, for example, sanctions be ordered by a court.

Finally, it is not only different legal aspects and areas that are brought together in this thesis that relate to party wall disputes. Practical aspects and matters of facts, also play a non-negligible role in party wall issues, which is why this thesis discusses structural issues pertinent to party walls.

While there is a solid literature base available in relation to the application of the PWA 1996, other areas of law and legislation are usually covered in a short form showing that they are of relevance but not exploring these in greater depth. This is why research

related to this thesis revolves heavily around statute and case law showing how other areas of law and legislation are relevant to party walls, why and what are the main aspects of these areas that are pertinent, and which need to be considered in connection with party walls and related disputes.

While the contextual overview of this thesis is one of the main new approaches, another factor that is of importance is the way in which disputes could or should be conducted in relation to party walls and the avenues available to the parties involved with the aim of a solution which is both practical and cost effective. While the surveyor procedure under the PWA 1996 is useful, it is not all-encompassing in terms of the variety of legal issues that can arise in the context of party walls. The PWA 1996 notice dispute resolution mechanism also does not always lead to a final satisfactory outcome. While court proceedings are usually a possibility, the view formed in this thesis is that parties should at least consider the option of alternative dispute resolution when it comes to party wall disputes. There are a number of factors discussed that the parties need to consider in order to find the most practical way forward in terms of dispute resolution strategy and management. Party wall disputes can grow acrimonious very quickly due to the personal nature of the properties involved. It is therefore important to perform a balancing act between the actual financial value in dispute and any cost and time linked to the court procedure avenue. Where communication between the parties has broken down, a third party, for example, a mediator may be a potential and effective solution depending on the circumstances.

This thesis has analysed aspects that are relevant to party walls with the aim of providing an overview of the issues most relevant to party walls from a practical perspective where the parties are most likely to require legal advice or support as to party wall disputes. It does not aim to encompass every single problem that can stem from party walls, however it discusses an overview and analysis of the most pertinent areas that should be taken into consideration when discussing legal implications that can arise out of party walls and related disputes. This thesis also demonstrates that the new contextual approach leads to a more comprehensive grasp of party wall issues, providing a clearer framework to assist in identifying such issues and managing disputes linked to party walls. It also promotes the importance of alternative dispute resolution combined with a practical and strategic approach, often leading to

pragmatic solutions and a greater cost and time effectiveness.

Learning lessons from different legal and factual areas relevant to party walls and from relevant reasoning and interpretation form the 'bricks' of an independent 'party wall area' of its own merit and can benefit both scholars as well as parties affected by party wall issues and their advisors.

Parties to party wall disputes to date have very little to lean on. The PWA 1996 on its own is not comprehensive enough to give them all the protections and dispute resolution options that are out there. Beyond the PWA 1996, there is a chaos of different legal and factual issues that the parties do not necessarily anticipate or notice to start with. This can lead to negative outcomes, which could have been prevented by being aware of all the issues impacting on the relevant dispute through having a framework of such issues in place and by an appropriate cost- and time-sensitive dispute resolution strategy. This thesis has identified most pertinent legal and factual issues that can affect a party wall dispute and has set out what dispute resolution options parties can choose to minimise their losses.

There is an appetite for a consolidated and comprehensive legal understanding of the party wall dispute management area from academic, professional (legal and surveyor) and client perspectives. It is important that this area develops further, is fully recognised, and continues to flourish in the years to come including effective and efficient dispute prevention, management and resolution methods.

X. BIBLIOGRAPHY

1 Legislation (primary and secondary) and government guidance (primary and secondary)

1.1 Access to Neighbouring Land Act 1992

1.2 Bristol Improvement Act 1847

1.3 British Standard 4142:1997

1.4 British Transport Commission Act 1945

1.5 Building Act 1984

1.6 Building Research Establishment guidelines

1.7 Building Regulations 1985 (SI 1985/1065)

1.8 Building Regulations 2010 SI 2010/2214

1.9 Channel Tunnel Rail Link Act 1996

1.10 Civil Liability (Contribution) Act 1978

1.11 Civil Procedure Rules

1.12 Control of Pollution Act 1974

1.13 Crossrail Act 2008 (2008 c 18)

1.14 Department for Communities and Local Government, "*Party Wall etc. Act 1996: Explanatory Booklet*" (May 2016)

1.15 "*Easements, Covenants and Profits a Prendre*" by the Law Commission, <https://www.lawcom.gov.uk/project/easements-covenants-and-profits-a-prendre/> accessed 15 May 2022

1.16 Environmental Protection Act 1990

1.17 Fires Prevention (Metropolis) Act 1774 14 Geo 3 c LXXVIII

1.18 European Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950

1.19 Hansard HL Debates Vol 568 31 Jan 1996, col 1536

1.20 High Speed Rail (London – West Midlands) Act 2017

1.21 High Speed Rail (West Midlands - Crewe) Act 2017

1.22 HM Land Registry Practice Guide 77 – "*Altering the register by removing land from a title plan*"

1.23 Hobart Building Act 1918 (9 Geo V No 75) (Tas)

1.24 HM Government, "*Resistance to the passage of sound – Approved Document E*,", 2003 edition incorporating 2004, 2010, 2013 and 2015 amendments (E1 – Protection against sound from other parts of the building and adjoining buildings; E2 – Protection against sound within a dwelling-house etc.; E3 – Reverberation in the common internal parts of buildings containing flats or rooms for residential purposes; and E4 – Acoustic conditions in schools)House of Lord Debate, 31 January 1996, Vol 568 cc1537 <https://api.parliament.uk/historic-hansard/lords/1996/jan/31/party-wall-bill-hl>

1.25 House of Lord debate, 31 January 1996, Vol 568 cc1535-48 <https://api.parliament.uk/historic-hansard/lords/1996/jan/31/party-wall-bill-hl> accessed 12 December 2022

1.26 House of Lord Debate, 22 May 1996, Vol 572 cc931-55 <https://api.parliament.uk/historic-hansard/lords/1996/may/22/party-wall-bill-hl> accessed 12 December 2022

1.27 House of Lord Debate, 22 May 1996, Vol 572 cc931-55 < https://api.parliament.uk/historic-hansard/lords/1996/may/22/party-wall-bill-hl>

1.28 Human Rights Act 1998

1.29 "*Impact Assessment of the Law of Property Bill [2011]*" by the Law Commission – Ministry of Justice, June 2011

1.30 Land Registration Act 1925

1.31 Land Registration Act 2002

1.32 Land Registration Rules 2003/1417

1.33 Launceston Building Acts 1854 and 1894 (18 Vict No 18, 58 Vict No 32), (Tas)

1.34 Law Commission, *Reforming the law – Rights to Light*, Law Com No 356

1.35 Law of Property Act 1925

1.36 Law of Property Bill

1.37 London Building Act 1930 20 & 21 Geo 5 c CIVIII

1.38 London Building Act 1894 (amended in 1905) 57 & 58 Vict. c CCXIII & 5 Edw. VII c CCIX respectively

1.39 London Building Acts (Amendment) Act 1939 2 & 3 Geo 6 c XCVII

1.40 London Government Act 1963

1.41 London Rebuilding Act 1667

1.42 "*Making Land Work: Easements, Covenants and Profits a Prendre*," The Law Commission (Law Com No 327), 7 June 2011

1.43 Melbourne Building Act 1849 (13 Vict No 39) (Vic)

1.44 Magistrates' Court Act 1980

1.45 Metropolitan Building Act 1855 18 & 19 Vict c CXXII

1.46 Ministry of Housing, Communities & Local Government, "*Guidance – Preventing and resolving disputes in relation to party walls*" (published on 18 June 2013 and last updated on 12 May 2016) <https://www.gov.uk/guidance/party-wall-etc-act-1996-guidance> accessed 15 May 2022

1.47 Party Wall etc. Act 1996

1.48 Party Wall etc Act 1996 (Commencement) Order 1997, SI 1997/670

1.49 Party Wall etc. Act 1996 (Electronic Communication) Order 2016 (SI 2016/335)

1.50 Planning (Listed Buildings and Conservation Areas) Act 1990

1.51 Prescription Act 1832

1.52 Property Boundaries (Resolution of Disputes) Bill 2019-20

1.53 Rights of Light Act 1959

1.54 Senior Courts Act 1981

1.55 Sydney Building Act 1879 (42 Vict No 25) (NSW)

1.56 Town and Country Planning Act 1990

2 Case law

2.1 *Abbahall Ltd v Smee* [2003]1 W.L.R. 1472

2.2 *Acco Properties Ltd v Severn* [2011] EWHC 1362 (Ch)

2.3 *Alan Wibberley Building Ltd. v Insley* [1999] 1 W.L.R. 894

2.4 *Alcock v Wraith &* Swinhoe [1991] E.G. 137 (C.S.)

2.5 *Aldin v Latimer Clark Muirhead & Co* [1894] 2 Ch. 437

2.6 *Anchor Brewhouse Developments Ltd v Berkley House (Docklands Developments) Ltd* (1988) 4 Const. L.J. 29

2.7 *Arena Property Services Limited v Europa 2000 Limited* [2003] EWCA Civ 1943

2.8 *Attorney-General v. Sheffield Gas Consumers Co* (1853) 3 De Gex, Macnaghten & Gordon 304 43 E.R. 119

2.9 *Bond v Nottingham Corp* [1940] Ch. 429

2.10 *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402

2.11 *Barry v Minturn* [1913] AC 584

2.12 *Baxter v Camden* LBC [2001] Q.B. 1

2.13 *Beaumont Business Centres Ltd v Florala Properties Ltd* 2020 WL 01235011 (2020)

2.14 *Best v Chief Land Registrar* [2015] EWCA Civ 17

2.15 *Bickett v Morris* (1866) LR 1 Sc & Div 47

2.16 *Blake v Reeves* [2009] EWCA Civ 611

2.17 *Bond v Nottingham Corporation* [1940] Ch. 429

2.18 *Brace v South East Regional Housing Association Ltd and Another* [1984] 1 EGLR 144, CA

2.19 *Bradburn v Lindsay* [1983] 2 All E.R. 408

2.20 *Bridgland v Earlsmead Estates Ltd* [2015] EWHC B8 (TCC)

2.21 *Broder v Saillard* (1876) 2 Ch. D. 692

2.22 *Browne v Flower* [1911] 1 Ch 219

2.23 Bu*rlington Property Company, Limited v Odeon Theatres, Limited* [1939] 1 K.B. 633

2.24 *Butt v Imperial Gas Company* (1866-67) L.R. 2 Ch. App. 158

2.25 *Cambridge Water Co. v Eastern Counties Leather plc* [1994] 2 A.C. 264

2.26 *Cameron v Boggiano and another* [2012] EWCA Civ 157

2.27 *Charalambous v Welding* [2009] EWCA Civ 1578

2.28 *Chartered Society of physiotherapy v Simmonds Church Smiles* [1995] 1 EGLR 155

2.29 Chlia*ifchtein v Wainbridge Estates Belgravia Ltd* [2015] EWHC 47 (TCC)

2.30 Christine *Reeves v Beatrice Blake* [2010] 1 W.L.R. 1

2.31 *Clifford v Holt* [1898] 12 WLUK 27

2.32 *Colls v Home & Colonial Stores Ltd* [1904] AC 179

2.33 *Cook v JD Wetherspoon plc* [2006] EWCA Civ 330

2.34 *Coope v Ward* [2015] EWCA Civ 30

2.35 Cov*entry v Lawrence, Lawrence v Coventry (t/a RDC Promotions), Lawrence v Fen Tigers Ltd* [2014] 2 W.L.R. 433

2.36 *Crofts v Haldane* (1867) LR 2 QB 194, [1867] 1 WLUK 87

2.37 *Crowley t/a Crowley Civil Engineers v Rushmoor Borough Council* [2009] EWHC 2237

2.38 *Dalton v Angus* (1881) 6 App Cas 740

2.39 *Dean v Walker* (1996) 73 P&CR 366, CA

2.40 *Dillard v F & C Commercial Property Holdings Ltd*[2014] EWHC 1219 QB

2.41 *Dodd v Holme* 110 E.R. 1296

2.42 *Drury v Army & Navy Auxiliary Co-operative Supply* [1896] 2 Q.B. 271

2.43 *Eastwood v Ashton* [1915] AC 900

2.44 *Edwards v Kumarasamy* [2016] UKSC 40

2.45 *Farrs Lane Developments Limited v Bristol Magistrates' Court v James McAllister* [2016] EWHC 982 (Admin)

2.46 *Fishenden v Higgs and Hill* (1935) L.T. 128

2.47 *Frederick Betts Ltd v Pickfords Ltd* [1906] 2 Ch. 87

2.48 *Gaw v Coras Iompair Eireann*[1953] 1 WLUK 12

2.49 *Gillon v Baxter* [2003] EWCA Civ 1591

2.50 *Goldman v Hargrave*[1967] 1 A.C. 645

2.51 *Grant v Edmondson* [1931] 1 Ch. 1

2.52 *Gray v Elite Town Management Limited* [2016] 11 WLUK 91

2.53 *Gyle-Thompson v Wall Street Properties Ltd* [1974] 1 All ER 295

2.54 *Holford v Bailey* (1849) 13 QB 426

2.55 *Holbeck Hall Hotel Ltd v Scarborough Borough Council* [2000] QB 836, CA

2.56 *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576

2.57 *Hatton v United Kingdom* (2003) 37 EHRR 28

2.58 *Heathcote and another v Doal and another* [2017] EWHC B8 (TCC)

2.59 *Heslop v Burns* [1974] 1 WLR 1241

2.60 *Higgins v Betts* [1905] 2 Ch. 210

2.61 *Histed v Prosperity Developments Ltd* [2013] EWHC 4463 (QB)

2.62 *Hobbs Hart & Co v Grover* [1899] 1 Ch 11

2.63 *Hobday v Nicholl* [1944] 1 Al ER 302l

2.64 *Hopgood v Brown* [1955] EWCA Civ 7

2.65 *Hough v Annear* [2007] 11 WLUK 31]

2.66 *Hughes v Percival* (1883) 8 App Cas 443

2.67 *Hunt v Peake* (1860) Johns, 705

2.68 *Hunter v Canary Wharf Ltd*[1997] AC 655

2.69 *Ingram v Morecraft* (1863) 33 Beavan 49

2.70 *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676

2.71 *James v United Kingdom* (1986) 8 EHRR 123

2.72 *James E McCabe ltd v Scottish Courage Ltd* [2006] EWHC 538 (Comm)

2.73 *John Trenberth Ltd v National Westminster Bank Ltd* (1980) 39 P. & C.R. 104 (1979)

2.74 *Jolliffe v Woodhouse* (1894) 10 TLR 553

2.75 *Jones v Pritchard* [1908] 1 Ch. 630, [1907 J. 236.]

2.76 *Kaye v Lawrence* [2010] EWHC 2678 (TCC)

2.77 *Kelliher v Ash Estates Holding Ltd and another*[2013] PLSCS 308

2.78 *Kempston v Butler* (1861) 12 Ir.C.L.R. 516

2.79 *Knight v Goulandris* [2018] 1 W.L.R. 3345

2.80 *Knight v Pursell* (1879) 11 Ch. D. 412

2.81 *Lea Valley Development Ltd v Derbyshire* [2017] EWHC 1243 (TCC)

2.82 *Lea Valley Developments Ltd v Derbyshire* (No. 2) [2017] EWHC 1353 (TCC), para. 30

2.83 *Leakey v National Trust* [1980] QB 485

2.84 *Lewis & Solome v Charing Cross, Euston, & Hampstead Railway Company* [1906] 1 Ch 508

2.85 *Llewellyn v Earl of Jersey* [1843] 11 M. & W. 183

2.86 *London & Manchester Assurance Company Ltd v O & H Construction Ltd* (1990) 6 Const. L.J. 155

2.87 *London, Gloucestershire and North Hants Dairy Co v Morley & Lanceley* [1911] 2 K.B. 257

2.88 *Longstaff International Ltd v Evans (Costs)* [2005] EWHC 4 (Ch)

2.89 *Lopes-Ostra v Spain* (1994) 20 EHRR 277

2.90 *Lotus Ltd v British Soda Co Ltd* [1972] Ch 123

2.91 *Lough v First Secretary of State* [2004] 1 WLR 2557

2.92 *Louis v Sadiq* (1997) 74 P&CR 325

2.93 *Lyle v Richards* (1866) L.R. 1 H.L. 222

2.94 *Maanen v West Greenwich Developments plc*, unreported, 27 November 2009

2.95 *Malmesbury & Ors v Strutt & Parker* [2008] EWHC 424 (QB) (18 March 2008)

2.96 *Marchant v Capital & Counties plc 1983* WL 215690 (1983)

2.97 *Masonic Hall Co v Sheffield Corp* [1932] 2 Ch. 17

2.98 *Matania v National Provincial Bank Ltd and The Elevenist Syndicate Ltd* [1936] 2 All ER 633

2.99 *Matos e Silva v Portugal* (1996) 24 EHRR 573

2.100 *Mills v Blackwell* (1999) 78 P. & C.R. D43

2.101 *Maxted v Plymouth Corporation* (1957) 169 EG 427

2.102 *Midland Bank Plc v Bardgrove Property Services Ltd and John Willmott (WB)* [1992] 65 P & CR

2.103 *Miller v Jackson* [1977] 3 W.L.R. 20*Mills and another v Savage and another Mills and another v Sell and another* (unreported, 15 June 2016)

2.104 *Mills & Rockley v Leicester CC* [1946] KB 315

2.105 *Mohamed & Lahrie v Antino & Stevens* (2017) Central County Court, unreported, 13 December 2017

2.106 *Moona Dawoodi v John M Zafrani, Kashif Zafrani* 2015 WL 6655169

2.107 *Neilson v Poole* (1969) 20 P&CR 909

2.108 *Nelson's Yard Management Company and others v Eziefula* [2013] EWCA Civ 235

2.109 *Network Rail Infrastructure Ltd v Williams and another* [2018] EWCA Civ 1514

2.110 *Onigbanjo v Pearson* [2008] BLR 507]

2.111 *Others Baxter v Camden London Borough Council (No 2)* [2001] 1 A.C. 1, HL

2.112 *Ottercroft Limited v Scandia Care Limited Dr Mehrdad Rahimian* [2016] EWCA Civ 867; [2016] 7 WLUK 115 (CA (Civ Div))

2.113 *Ough v King* [1967] 1 W.L.R. 1547

2.114 *Patel and another v Peters and others* [2014] EWCA Civ 335

2.115 *Parkinson v Reid* [1966] 1 WLUK 544

2.116 *Phipps v Pears* [1965] 1 QB 76

2.117 *Pomfret v Ricroft*85 E.R. 454 (K.B. 1680)

2.118 *Power v Shah* [2022] EWHC 209 (QB)

2.119 *Presland v Bingham* [1889] 3 WLUK 16

2.120 *Proudfoot v Hart* (1890) 25 QBD 42

2.121 *Prudential Insurance Lt v Waterloo Real Estate Inc* [1999] 2 EGLR 85

2.122 *Pyer v Carter* 156 E.R. 1472, para. 1472

2.123 *Ray v Fairway Motors (Barnstable) Ltd* (1968) 20 P & CR 261

2.124 *Raymond and another v Young and another* [2015] EWCA Civ 456

2.125 *Re Stone and Hastie* [1903] 2 KB 463

2.126 *Redland Bricks Ltd v Morris* [1970] AC 652

2.127 *Rees v Skerrett* [2001] 1 WLR 1541, CA

2.128 *Regency Villas Title Ltd and Others v Diamond Resorts (Europe) Ltd and Others* [2017] EWCA Civ 238

2.129 *Reinhardt v Mentasti* (1889) 42 Ch. D. 685

2.130 *Roadrunner Properties Ltd v Dean and another* [2003] EWCA Civ 1816

2.131 *Sack v Jones* [1925] Ch. 235

2.132 *Scott v Firth* 176 E.R. 595

2.133 *Scratton v Brown* (1825) 4 B & C 485

2.134 *Seeff v Ho and another* [2011] EWCA Civ 186

2.135 *Selby v Whitbread & Co* [1917 1 KB 736]

2.136 *Shelfer v City of London Electric Lighting Co (CA)* [1895] 1 Ch 287*Smith v Smith* (1875) L.R. 20 Eq. 500 (1875)

2.137 *Southwark LBC v Tanner* ([2001] 1 AC 1, HL)

2.138 *Southwark v Mills* [2001] 1 A.C. 1

2.139 *Standard Bank of British South America v Stokes* (1878) 9 Ch D 68

2.140 *Stedman v Smith* (1857) 8 E. & B. 1 at 6

2.141 *Stepney Corpn v Gingell, Son and Foskett Ltd* [1909] AC 245, HL

2.142 *Stran Refineries v Greece* (1995)19 EHRR 293

2.143 *Targett v Ferguson* (1966) 72 P&CR 106)

2.144 *Taylor v Whitehead* (1781) 2 Doug. K.B. 745

2.145 *Terence Carter, Jane Carter v Jeffrey Cole, Jacquelyn Cole* [2006] WCA Civ 398

2.146 *Udal and another v Dutton and another* [2007] EWHC 2862 (TCC)

2.147 *Upjohn v Seymour Estates Ltd* [1938] 1 All ER 614

2.148 *Vella v Lambeth LBC* [2006] Env. L.R. 33

2.149 *Video London Sound Studios Ltd v Asticus (GMS) Ltd and Keltbray Demolition Ltd* [2001] 3 WLUK 133

2.150 *Walby v Walby* [2013] 1 P. & C.R. DG6

2.151 *Watson and others v Croft Promo-Sport Ltd* [2009] EWCA Civ 15

2.152 *Wellington Properties Limited v The Trustees of the Will of the Second Duke of Westminster, Grosvenor Estate Belgravia* [2018] EWHC 3048 (Ch)

2.153 *Weston v Arnold* (1872-73) L.R. 8 Ch. App. 1084

2.154 *Wigginton & Milner Ltd v Winster Engineering Ltd* [1978] 1 WLR 1462

2.155 *Wilson v First County Trust Limited* [2004] 1 A.C. 816

2.156 *Woodhouse v Consolidated Property Corp* [1993] 1 EGLR 174, CA

2.157 *Yorkshire Water Services Ltd v Sun Alliance & London Insurance plc & Others* [1998] Env LR 204

2.158 *Zissis v Lukomski* [2006] EWCA Civ 341

3 Commentaries

3.1 Boundaries and Easements, 7th Ed., para. 24-001

3.2 Gale on the Law of Easements, 21st Ed.

3.3 Keating on Construction Contracts (11th Ed, 2021)

3.4 Megarry & Wade: *The Law of Real Property* (9th edition).

3.5 Nicholas Isaac, "*The Law and Practice of Party Walls*," Property Publishing, 2014

3.6 Nicholas Issac QC and Matthew Hearsum, "*The New Party Wall Casebook*" (Property Publishing, 2019)

3.7 Paul Chynoweth, "*The Party Wall Casebook*" (Blackwell Publishing Ltd 2007)

3.8 Stephen Bickford-Smith, David Nicholls, Andrew Smith, "*Party Walls Law and Practice*" (4th edn, LexisNexis 2017)

4 Articles, Notes, Guidance

4.1 Alexander Walsh, "A practical guide to neighbour disputes and the law," (Law Brief Publishing 2020)

4.2 Alistair Redler, "*Practical neighbour law Handbook*" (2007) RICS Books

4.3 Andrew Smith, "Party Walls: The Basic Fundamentals of Appeals and Injunctions," Child & Child, <https://www.childandchild.co.uk/legal-guides/party-walls-rights-of-light-and-boundary-disputes/party-walls-the-basic-fundamentals-of-appeals-and-injunctions/> accessed 15 May 2022

4.4 Arthur Moor of Hardwicke, "*Property Litigation Blog; Boundary disputes*", Practical Law UK Articles, Resource ID W-008-6296 (11 July 2017), <https://uk.practicallaw.thomsonreuters.com/Document/I57332ceb51de11e798dc8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)> accessed 15 May 2022

4.5 Bruce Spenser MSc MCIOB, "*Easements, Rights of Light et and the Party Wall Award*," <https://pwbsl.com> accessed 15 May 2022

4.6 Building Research Establishment, 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" (12 September 2011)

4.7 Butterworths Property Law Service/Division IV Grant of new leases – Residential properties/Chapter 9C Long Leases of Flats – Management, Perusing the Lease & Other Issues Likely to Arise While Investigating Title/D. Key Elements of a Long Lease/17. When is the Covenantor Liable to Carry Out Repairs under his Repairing Covenant?

4.8 Case Comment, "*Easements: point of access*," Property Law Bulletin, P.L.B. 1999, 20(3), 18-19

4.9 Christopher Cant, "Easements – Adjoining properties and party walls," (2013)

4.10 Chris Parker-Jones, "*Sound Testing to comply with Part E for Residential Developments*," <https://www.parkerjonesacoustics.com/insights/articles/sound-testing-explained?_sm_au_=isVqLCN6nnV6w05VQcLJjKQ1j7GJ1> accessed 15 May 2022

4.11 Colliers Stevens, "*Party walls – your questions answered*," Chartered Building Surveyors (10 January 2019), <https://collier-stevens.co.uk/advice-hub/party-wall/party-walls-your-questions-answered/> accessed 15 May 2022 [ ]

4.12 *Conveyancer and Property Lawyer* (Sweet and Maxwell) 2015, p. 432 (West)

4.13 F.J. Langdon and I.B. Buller, "*Party wall insulation and noise from neighbours*," Journal of Sound and Vibration, Volume 55, Issue 4 (22 December 1977), <https://www.sciencedirect.com/science/article/abs/pii/S0022460X77811747?via%3Dihub> accessed 15 May 2022

4.14 "Grenfell Tower and the failure of building and fire safety regulations introduction," Journal of Housing Law, J.H.L. 2017, 20(5)

4.15 Halsbury's Laws of England, 1. Delimitation of boundaries (1) Nature of boundaries 301. Definition of a boundary

4.16 Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(4) Rights and Duties under the Party Wall Etc Act 1996/382. Exercise of rights of repair

4.17 Halsbury's Laws of England/Boundaries (Volume 4 (2020))/4. Party Walls/(3) Rights and Duties in Relation to Party Walls at Common Law/374. Disrepair giving rise to an actionable nuisance

4.18 Harvey – Norman Architects, "*Party Wall Act of 1996 – What is it and what are your obligations under it?*," <https://www.harveynormanarchitects.co.uk/articles/the-party-wall-act-of-1996-definitions-and-obligations> accessed 15 May 2022

4.19 Hogan Lovells, "*Practice & Law – Developing Themes*" (23 November 2013) The Estates Gazette, ABI/INFORM Collection

4.20 "Fire safety in tall buildings - Part 1: tall, super-tall and mega-tall," Construction Law Journal, Const. L.J. 2017, 33(7)

4.21 Mark Thomas and Claire McGourlay "*English Legal System Concentrate: Law Revision and Study Guide*" (Oxford University Press 2017)

4.22 Michelle Rousell, "*Is a wall enclosing a railway embankment a party wall*?" Practical Law UK, Ask, Resource ID 5-522-4375 (8 July 2015),<https://uk.practicallaw.thomsonreuters.com/5-522-4375?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk>accessed 15 May 2022

4.23 P. J. Littlefair, "Site Layout for Daylight and Sunlight: A Guide to Good Practice" (2011, 2nd edition)

4.24 Party Wall & Boundaries Hub "*What can party wall surveyors learn from arbitration? (Part 1)*," 26 November 2019,<http://www.boundariesbook.co.uk/?p=985> accessed 15 May 2022

4.25 "Party Wall etc Act 1996 – appeal procedure under section 10(17)," Construction Law Journal, Const. L.J. 2006, 22(7), 469-481

4.26 Paul Chynoweth, "*Invalid party wall awards and how to avoid them*" (University of Salford Manchester 2000), <https://usir.salford.ac.uk/id/eprint/12454/2/invalid-awards.pdf> accessed 15 May 2022

4.27 Paul Chynoweth, "The Party Wall etc Act 1996: Compensation and Treatment of Easements," The Conveyancer (2004)

4.28 Practical Law Construction, "*PWA 1996: reviewing the party wall surveyor's award*," Practical Law UK Practice Note, Resource ID 7-516-5148 (Maintained), <https://uk.practicallaw.thomsonreuters.com/7-516-

5148?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

4.29 Phillip Aliker, *Party walls and arbitration*, New Law Journal, 155 NLJ 866, 3 June 2005

4.30 Practical Law Environment, "*Common law nuisance*," Resource ID 6-502-4804 (Maintained), <https://uk.practicallaw.thomsonreuters.com/Document/Ib5554812e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a698923> accessed 15 May 2022

4.31 "*Procedure: service by email*," Property Law Bulletin, P.L.B. 2018, 39(1), 4

4.32 Property Law Bulletin, "*Boundaries: issues with neighbours*," P.L.B. 2015, 35(10), 76, <https://uk.westlaw.com/Document/I84B9E430D4E211E4A204A332330F1FAE/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)> accessed 15 May 2022

4.33 Property Law Bulletin, "*Procedure: obligations to the court*", Case Comment, P.L.B 2016, 37(6), 44,<https://uk.westlaw.com/Document/IED200F109B7C11E6BC4BD8CA38210D45/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&firstPage=true> accessed 15 May 2022

4.34 RICS isurv, "*Crossrail: lifting legislative provisions – Easing the load*," (22 May 2017) <https://www.isurv.com/info/390/features/11162/crossrail_lifting_legislative_provisions> accessed 15 May 2022

4.35 RICS Practice Standards UK, "*Party wall legislation and procedure*" (6th edition, guidance note), <http://www.fieldingsurveyors.co.uk/wp-content/uploads/RICS-Party-Wall_-6th-edition.pdf?_sm_au_=isVLMfpHt104sqr5QcLJjKQ1j7GJ1> accessed 15 May 2022

4.36 RICS professional standards and guidance, England and Wales, "*Party wall legislation and procedure*," (7th edition, Royal Institution of Chartered Surveyors (RICS) August 2019), <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/party-wall-legislation-and-procedure-rics.pdf> accessed 15 May 2022

4.37 RICS professional guidance, UK, *Rights of light*, 2nd edition, March 2016, < https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/rights-of-light-2nd-edition-rics.pdf>

4.38 Ruoff & Roper: *Registered Conveyancing*, Vol. 3, Part 9 – Land Registry Practice Guides, Land Registry Practice Guide 40 Supplement 3: 1 July 2019, H40C.012-019

4.39 Ruth Pratt, "4 ways you might be affected by the Party Wall Act" (LexisNexis 24 September 2013), <https://www.lexisnexis.co.uk/blog/dispute-resolution/4-ways-the-party-wall-act-might-affect-you> accessed 15 May 2022

4.40 Sarah Radcliffe, noise expert at Curload Consultants, "*Measuring noise nuisance*," Resource 0-502-1969 (4 May 2010),<https://uk.practicallaw.thomsonreuters.com/0-502-1969?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29&comp=pluk> accessed 15 May 2022

4.41 Shailesh Kumar Pathak and Richard Sadokpam,"*Easement – Professional Practice,*" <https://www.slideserve.com/anika/easement-powerpoint-ppt-presentation> accessed 15 May 2022

4.42 Stephanie Tozer, Guy Fetherstonhaugh QC, Jonathan Karas QC, Nicholas Cheffings, Matthew Ditchburn: *Protocol for Disputes between Neighbours about the Location of their Boundary (The Boundary Disputes Protocol)* (September 2017), <https://www.propertyprotocols.co.uk/the-boundary-disputes-protocol> accessed 15 May 2022

4.43 Stephen Bickford Smith and Camilla Lamont, "*Party Wall etc. Act 1996 – 10 years on*," (Landmark Chambers, 13 November 2007)

4.44 Technology and Construction Court Guide (TCC Guide)

4.45 The Party Wall Company, "*Party Wall Process for Building Owners*," <http://partywallcompany.co.uk/PDF/The_Party_Wall_Process_For_Building_Owners.pdf> accessed 15 M2ay 2022

4.46 The Royal Borough of Kensington and Chelsea, "*Code of Construction Practice: Minimising the Impact of Noise, Vibration and Dust*", p. 43 <https://www.rbkc.gov.uk/environment/advice-builders/code-construction-practice-minimising-impact-noise-vibration-and-dust> accessed 15 May 2022

4.47 Tim Reid (Hogan Lovells) and Practical Law Construction, "*The Party Wall etc. Act 1996 (PWA 1996)*," Practical Law UK Practice Note, Resource ID 8-383-5739 (Maintained), <https://uk.practicallaw.thomsonreuters.com/Document/Ib5556c44e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)#co_anchor_a952869>accessed 15 May 2022