

Structures Guidance Note:

The Party Wall Etc Act 1996 - A Short Guidance

Note for Engineers

Introduction

Civil and structural engineers need to understand how this Act affects them in their work. If they do not they can be made to look foolish or even be considered negligent. A large proportion of complaints against engineers to disciplinary panels comes from their lack of knowledge of this Act. Its title is misleading in that it applies not just to party walls but to excavations up to 6 metres from nearby buildings. The etc. is an important part of the title.

The previous similar legislation applied only to central London but in 1997 it was extended throughout England and Wales, affecting a much larger number of engineers. The Act has assumed greater importance for engineers since the fashion for constructing new basements under existing terraced houses has taken hold, especially in London. This is a short guidance note and does not cover every aspect, for which other references and the Act itself must be consulted.

The Scope of the Act

The Act covers building work involving new structure on a boundary, work on existing party walls and excavations that could affect nearby buildings. Its purpose is to prevent or resolve disputes in these areas. The Act is “enabling legislation” and is not intended to prevent development, while protecting the rights of those affected. It defines the various players e.g. the building owner (who initiates work) and the adjoining owner on the other side of the boundary. Its aim is to reach an agreement, culminating in a Party Wall Award.

New Party Walls

Section 1 of the Act covers new walls on and beside the boundary and is infrequently used. A new wall can either be astride the boundary with the agreement of both owners or on the building owner’s side of the boundary if the adjoining owner does not agree. In both cases, the building owner needs to tell the adjoining owner by means of a notice under the Act.

Existing Party Walls

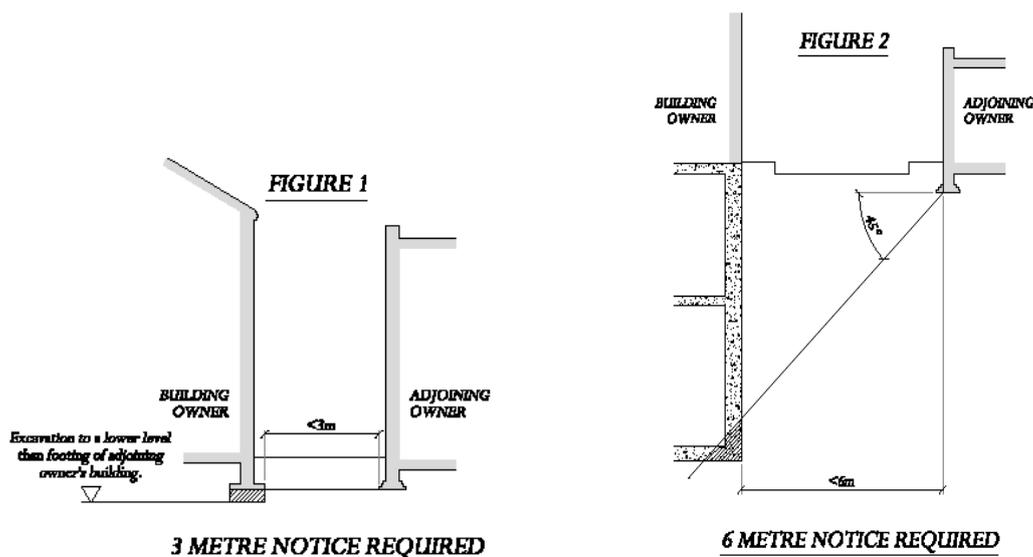
Sections 2 and 3 give the building owner the right to undertake certain works to a party wall and the responsibility for any resulting damage to the adjoining owner’s building. Before these rights can be exercised notice (generally two months) must be served on the adjoining owners for work affecting the party wall. It is common (but not mandatory) at this stage to appoint a Party Wall Surveyor, who has knowledge of the detail of the Act and who serves notices in a timely manner. The surveyor can be agreed to act for both owners, or they may appoint separate surveyors on either side with a third surveyor in reserve to settle any dispute. When Party Wall Surveyors are appointed they assume powers acting in a neutral way to safeguard the party wall and agree the Party Wall Award. The building owner and

adjoining owner have no power to interfere; they can only appeal the Award after it has been published if they disagree.

Engineers would be well advised not to take on the role of Party Wall Surveyor unless they have extensive knowledge of party wall matters and other legal aspects more usually in the remit of Chartered Building Surveyors. The engineering designer of the building owner's works is particularly unsuited to act as Party Wall Surveyor since there are different and potentially conflicting responsibilities and loyalties in the two roles.

Three Metre and Six Metre Notices

Section 6 of the Act defines the two types of excavation that require notice to be served on an "adjoining owner". The inverted commas in this part of this note reflect the unusual way that the word adjoining is used. Section 6 affects engineers particularly since the layman client can be surprised that he is affected by the Party Wall etc. Act in the absence of a party wall. The circumstances in which a Three Metre or a Six Metre Notice needs to be served are shown in the figures below. It is possible for the "adjoining owner" to be separated from the building owner's works by other ownerships, for example by a public road. One month's notice on the "adjoining owners" is required.



The engineer and any other professionals involved must make a judgement on the depth, width and distance of the "adjoining owner's" foundations. It will then be possible to advise the client whether the works are within the scope of the Act, which could have programme and other implications, not least whether a Party Wall Surveyor is needed.

The Act is based on historic legislation and it does not always sit comfortably with modern forms of construction. For example a piled foundation could generate a number of Six Metre Notices but most engineers would accept that augured piles at wide centres are unlikely to affect buildings six metres away. It is also possible to envisage circumstances where a nearby building would be affected by an excavation where neither a Three Metre or a Six Metre Notice would be needed. The requirements of the legislation must be satisfied but this should not prevent engineers from using their judgement.

Floors as Party Structures

Floors and ceilings, for example between flats in purpose-built blocks and converted houses will have party structures with the premises above and below them. The engineer would normally inspect the other floors, particularly those immediately above and below. It would be prudent that a member of the design team or a Party Wall Surveyor takes a schedule of condition of those flats before work begins. If the freeholders of the block require a licence for the alteration, it will often need supporting engineering information.

The Role of the Engineer

If it is unlikely that the engineer will be acting as Party Wall Surveyor, his contact with the Act will be as building owner's design engineer or sometimes as engineer advisor to an adjoining owner's surveyor. If an engineer advises an adjoining owner direct he needs to realise that he may be taking on responsibilities and risks more usually assumed by other professions.

Client's Design Engineer

In this role the engineer should make sure that the client is told if the Act applies, that it must be complied with and the effect this may have on programme.

The client's design engineer needs to understand the adjoining buildings, especially the party wall itself. It would be wise to inspect those buildings in order to be able to assess the possible impact of the proposals. This can be difficult and persistence may be needed. Damage often occurs in walls perpendicular to the party wall. Point loads on or near the party wall can be particularly problematic to deal with. Old buildings can be full of surprises and it takes time and thought to understand them. It is necessary to know the thickness of the party wall at all levels (not always easy) and the loads that it supports. Trial holes are needed to discover details of the party wall footings. The engineer should make a formal assessment of the effect of the design on the party wall and the nearby parts of the adjoining owners' buildings. The amount of movement should be minimised.

As client's design engineer an aspect of the Act that he needs to be aware of is the question of "special foundations". These receive particular attention in the Act as a result of historic cases. They consist of any foundation that contains steel or reinforcement under a party wall, for example a reinforced concrete retaining wall underpin, designed to resist the lateral pressure of the earth from the ground under the adjoining owner's building. The purpose of this provision is to prevent the building owner's works affecting future development on the adjoining owner's side. The adjoining owner can unilaterally veto "special foundations" so if they are proposed early written agreement is needed.

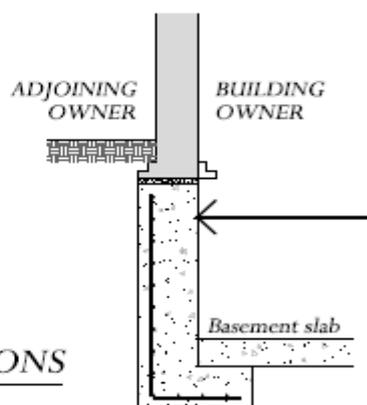


FIGURE 3
AN EXAMPLE OF
SPECIAL FOUNDATIONS

It is undeniable that retrofit basements in terraces of houses offend against normal engineering principles. The terrace is a single structure. For it to have a sudden discontinuity in the foundation level would not usually be considered good practice. It is not possible to provide a transition in the foundation depths if this would mean work under the adjoining building. Particularly on clay subsoils there is the possibility of long term movement of the adjoining buildings. If the end of terrace house has shallow footings, a basement is put into the penultimate house and there are nearby trees on a clay subsoil, there is clearly potential for an increase in relative movement and cracking.

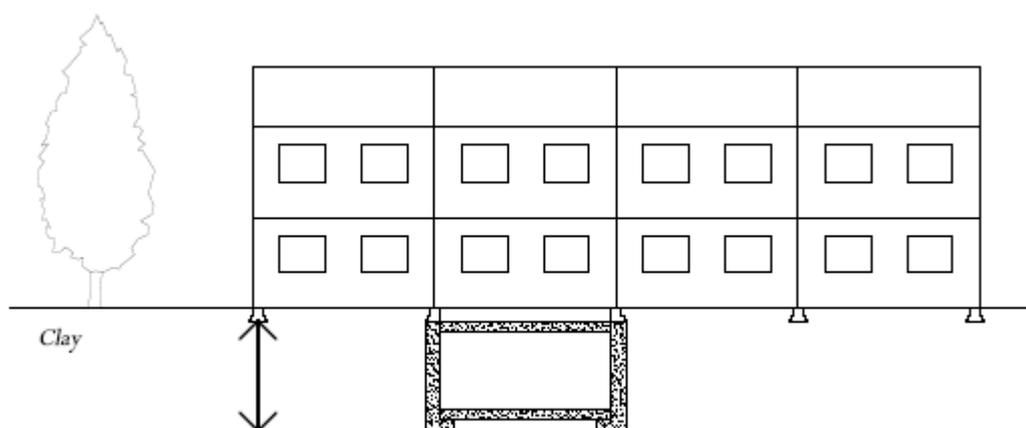


FIGURE 4 **POSSIBLE LONG TERM EFFECT ON ADJOINING OWNERS**

Engineer Advisor to Adjoining Owners's Surveyor

With the increasing complexity of construction, particularly basement construction, it is not unusual for the adjoining owner's surveyor to realise that they do not have the structural engineering knowledge to assess the impact of the proposals and to request that an engineer is employed to assist. In this capacity the engineer should restrict comments to aspects of the proposals that affect the adjoining owner's building. It is not usually necessary to check the proposals in detail but to establish that the adjoining owner's building is not compromised. Consideration should also be given as to whether the future rights of the adjoining owner to develop their site are affected by the proposals from an engineering viewpoint.

Modern procurement methods can be at odds with the timing laid down in the Act. An engineer advisor for an adjoining owner will want to know that any temporary works, for example to provide restraint to a party wall, are properly designed. If contractual arrangements dictate that this is to be done by the contractor or sub-contractor it is unlikely to be available within the desired timescale of the building owner's surveyor. This problem is overcome if the client's design engineer produces an acceptable temporary works scheme co-ordinated with the permanent works.

An advising engineer's fees are often based on hourly rates since there is no way of determining the extent of involvement at the outset; lump sums are sometimes agreed. The surveyors are only likely to award "reasonable fees" so it is strongly suggested that the engineer keeps them informed of progress and costs throughout what can be a protracted process if hourly rates are used. The engineer's fees should be included in the Award.

Further Reading	
1	Party Wall etc. Act 1996 Explanatory Booklet, 2013, DCLG www.gov.uk/party-wall-etc-1996-guidance
2	Party wall legislation and procedure, Guidance Note, 6 th edition 2011, RICS www.rics.org.uk
3	The Party Wall Act Explained, The Pyramus and Thisbe Club, 1996 www.partywalls.org.uk
4	Royal Borough of Kensington and Chelsea Residential Basement Study Report, Alan Baxter, March 2013 www.rbkc.gov.uk