



PARTY WALL MEDIATION SCHEME

## How to initiate an appeal in the county court

The Civil Procedure Rules governing the initiating of an appeal in the county court are at CPR Part 52 Practice Direction B, paragraph 4:

*"4.1 An appellant's notice (Form N161 ...) must be filed and served in all cases. The appellant's notice must be accompanied by the appropriate fee or, if appropriate, a fee remission certificate.*

*4.2 Documents to be filed with the appellant's notice:*

*The appellant must file with the appellant's notice–*

- (a) three copies of the appellant's notice and one additional copy for each respondent;*
- (b) a copy of the sealed order under appeal;*
- (c) where an application was made to the lower court for permission to appeal, a copy of any order granting or refusing permission to appeal together with a copy of the reasons, if any, for allowing or refusing permission to appeal; and*
- (d) grounds of appeal, which must be set out on a separate sheet attached to the appellant's notice and must set out, in simple language, clearly and concisely, why the order of the lower court was wrong or unjust because of a serious procedural or other irregularity (Rule 52.21(3))."*

This note will consider each of the above requirements in turn.

1. **Form N161 (an appellant's notice).** The Civil Procedure Rules, the Practice Directions and the CPR prescribed forms may be found and downloaded from the MOJ website at [www.justice.gov.uk/courts/procedure-rules/civil](http://www.justice.gov.uk/courts/procedure-rules/civil). Form N161 has 12 Sections. It is designed primarily for appeals against court judgments, and does not lend itself readily to Party Wall Award appeals. It should be filled in as appropriate, see below.

Section 1 (Details of case appealing against) asks for a Claim or Case Number. This has to be left blank. The court will allocate a Case Number once the appeal is issued.

Section 2 (Details of the appeal). There is no 'court' from which the appeal is brought, so complete the box at 'Other (please specify)' with 'Award under Party Wall etc Act 1996', and the name of the Judge will be the name(s) of the surveyor(s) making the award.

Section 3 (Legal Representation) If you do not have legal representation tick 'no', but this in no way precludes you from instructing a solicitor of direct access counsel later. If you do decide to have representation the lawyer concerned will inform the court accordingly.

Section 4 (Permission to appeal) You do not need permission to appeal.

Section 5 (Other information required) The likelihood is that you will wish to appeal the Award as a whole. Most judges will be content that you simply state that you are appealing the entire Award, but it might be safe to set out the relevant section of the Award to which you object. You will need to bring the appeal within the 14 day period allowed by s10(17) 1996 Act, and tick the yes box for lodging the notice in time. The court has no power to extend the time for appealing.

Section 6 (Grounds of Appeal) This of the Appellant's Notice requires the Grounds of Appeal to be set out, in numbered paragraphs, on a separate sheet attached to the Form N161. See below.

Section 7 (Arguments in support of grounds of appeal) This section requires a 'Skeleton Argument' setting out the arguments in support to be set out on a separate sheet and attached to the Appellant's Notice. It is commonplace in Party Wall Award appeals for the court to allow additional time to file a skeleton argument, and the first Order the court makes will set a date by which the argument must be filed and served. Nevertheless the Appellant's Notice does expect the Skeleton Argument to be filed at the same time as the Notice. [If the Grounds of Appeal are sufficiently detailed the court may dispense with the need for a Skeleton Argument].

Section 8 (Aarhus Convention) does not apply to a Party Wall Award appeal.

Section 9 (What are you asking the appeal court to do?) The Form offers either 'set aside the order which I am appealing' or 'vary [that order]'. The safe approach is to tick the 'set aside' box. Occasionally the appealing owner is clear what variation to the Award is sought and makes that clear in the box in which a substitute order may be specified, but still tick the set aside box. You will not want an order for a 'new trial'.

Section 10 (Other applications). Applications alongside the appeal are unusual in a party wall award appeals, but an adjoining owner may wish to apply for an order preventing the building owner from carrying out works under the Award under appeal, in effect an order under Part A of Section 10. If you are being very cautious you can include an application for

additional time to serve a Skeleton Argument. As stated above, Part B (application for extension of time) does not apply in a party wall appeal. The court simply has no power to grant such an extension.

Section 11 (Evidence in support) only needs to be filled in where an application is being made under Section 10 (Other applications). An application to prevent the building owner proceeding with the works should be supported by reasons, usually an explanation that the whole purpose of the appeal is to prevent or vary the works for which authorisation has been given in the Award.

Section 12 (Supporting documents) specifies the supporting documents required to be filed together with the Appellant's notice. Three copies of the Appellant's notice are required for the court together with three copies of the grounds of appeal. (Three copies are totally unnecessary in a Party Wall Award Appeal but rules are rules). One copy of the Appellant's notice for each respondent (this enables the court to effect service). You will not have a sealed order. Instead provide a copy of the Award under appeal. There will be no order relating to appeal; the Party Wall etc Act 1996 gives permission. Civil legal aid will not be granted for a Party Wall Award appeal, except perhaps in the most exceptional of circumstances. Incidentally, the list of documents which are required to be filed does not include a skeleton argument as required by Section 7.

2. **"Filed and served"**. Filed means filed at court, and served means served on the respondent (ie the other owner). "'Filing' in relation to a document means delivering it, by post or otherwise, to the court office", CPR Part 2.3. Filing at court can sometimes be difficult. Given the very short time allowed for an appeal, there may be insufficient time to post the completed documentation. If the county court to which you are appealing has a public

counter, you may hand the documents in at the counter, the usual opening hours for which are 10am to 4pm. But few county courts have a public counter. Instead there is a 'drop box' at or near the court entrance into which the documents may be placed. You will almost certainly find the drop box closed at 4pm, and you are unlikely to find a letter box through which to post your documents.

3. Filing is however permitted by e-mail, see CPR Part 5 Practice Direction 5B. Fine, but if you are at the very end of the 14<sup>th</sup> day of the making of the Award, beware paragraph 4.2 of this Practice Direction which applies the public counter / drop box closing time to e-mail filings:

*"4.2 Where an e-mail, including any attachment, is sent pursuant to this practice direction and the e-mail is recorded by HMCTS e-mail software as received by the court at or after 4.00pm and before or at 11.59pm –*

*(a) the date of receipt of the e-mail will be deemed to be the next day the court office is open;*

*(b) the date of issue of any application will not be before that date; and*

*(c) any document attached to that e-mail will be treated as filed on that date.*

*4.3 It remains the responsibility of the party sending an application or other document to the court pursuant to this practice direction to ensure that it is received or filed within the applicable time limits, taking into account the operation of this practice direction."*

In *Basu v Baron* (19 July 2019)<sup>1</sup> the judge at Central London County Court held that an e-mailed Notice of Appeal received by the court at 4.02pm on the final day for which an appeal could be brought was filed in time. The Learned Judge relied on the House of Lords case *Mucelli v Government of Albania* [2009] UKHL 2 where Lord Neuberger stated with respect to a time limit under the Extradition Act 2003 that the appellant was entitled to the whole of the last day in which to file his appeal. There has been no

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<sup>1</sup> A copy of this decision may be found at [www.boundariesbook.co.uk](http://www.boundariesbook.co.uk)

criticism of the *Basu* decision, which indeed has been followed in other county court cases, but it has not been tested in the Court of Appeal. Send your e-mail before 4pm if at all possible.

4. The court undertakes service, but you are well advised to send the respondent a separate copy.
  
5. **"Accompanied by the appropriate fee"**. Fees are chargeable under the Civil Proceedings Fees Order 2008, as amended from time to time. HMCTS publishes a Guidance Note, EX50, which contains the fees, available at gov.uk. At present the fee for initiating an appeal is £151, but do check with the court before paying the fee; fees do have a habit of changing. The fee may be paid by cheque or credit card. If you are filing by e-mail have regard to paragraph 2.3 of Practice Direction 5B which provides:

*"In the County Court-*

*(a) if a fee is payable in order for an e-mailed application or other document to be filed with the court, a party must, when e-mailing the court –*

*(i) provide a Fee Account Number, credit card number or debit card number which the party has authority to charge of the applicable fee: and*

*(ii) authorise the court to charge the applicable fee to that Account or card number.*

*(b) [this provides that the total pages of both e-mail and any attachments should not exceed 25 sheets of paper, double-sided printing, ie a total of 50 pages].*

It is necessary therefore both to give a credit card or debit card number and to give an express authorisation to the court to charge the fee to that card (Fee Account Numbers are used by litigation solicitors who incur many fees). This is straightforward enough, but it is worth stressing that a credit card number must be given. This is stressed in this note because HMCTS issues a guidance document entitled 'The use of email in the Civil and Family Courts' which suggests that if the litigant wishes to pay by card all he needs do is include a contact telephone number and the court will make contact to arrange payment. The guidance document does not accurately reflect the Rule, and the court has to follow the Rule, not an administrator's guidance document.

6. **Documents to be filed with appellant's notice.** These are listed in paragraph 4.2 52PDB (see above). The Grounds of Appeal is an important document, and, see above, the rule requires that the Grounds "*must set out, in simple language, clearly and concisely, why the order of the lower court was wrong or unjust because of a serious procedural or other irregularity*". In theory it is possible to amend the Grounds of Appeal after issue, and add new grounds. But obtaining permission to add new grounds may not be given in a Party Wall Award appeal, because this may be seen by the court as a way of circumventing the short 14 day time limit for bringing appeals. Accordingly include in your grounds anything that you consider you may wish to argue. No-one will object to your ditching one or more grounds after issue. In Party Wall matters a 'serious procedure or other irregularity' will cover such things as lack of notice under ss1, 3 or 6 of the Act, a failure properly to appoint or select a party wall surveyor, or other failures to comply with the 1996 Act. Such failures may be described as 'technical points' which are usually frowned on by the court which has fairly wide powers under CPR Part 3 (Case Management Powers) to override such points. However in the well-known case of *Gyle-Thompson v Wall St. (Properties) Ltd* [1974] 1 WLR 123, Brightman J stated:

“The position of the adjoining owner whose property rights are being compulsorily affected, is intended to be safeguarded by the surveyors appointed pursuant to the procedure laid down by the Act. Those surveyors are in a quasi-judicial position with statutory powers and responsibilities. It therefore seems to me important that the steps laid down by the Act should be scrupulously followed throughout and short cuts are not desirable.”

The Act referred to in the above quotation was the London Building Acts (Amendment) Act 1939, the predecessor Act to the 1996 Act, but the comments apply equally to the law under the 1996 Act.

Set out all the various Grounds of your appeal, clearly and concisely, so that the court and the respondent know what you state is wrong with the Award. You should not argue your case in the Grounds of Appeal; that is done in the Skeleton Argument. As noted above, where the Grounds of Appeal are set out in sufficient detail to make it clear to the Respondent what the appeal is all about the court may dispense with a Skeleton Argument. However, do note that ‘setting out in sufficient detail’ and ‘arguing your case’ are two very different matters. The safe course is to set out your grounds of appeal in a clear and concise form, and then summarise the points you wish to argue in your Skeleton Argument. ‘Skeleton’ argument is intended to be just that, a summary of your arguments. Some judges will allow a parties to put in pretty fleshy arguments; others will object. The safe course is to summarise your arguments emphasising the essential points and leaving the rest for the hearing. Where additional arguments occur to you later, and this may frequently be the case, an additional skeleton argument may be served. Few judges will object. The judge is in a much better position to conduct the appeal if he or she is able to get to grips with all the points both parties wish to make at the hearing.

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Please note that the wording of the Civil Procedure Rules, Practice Directions and Forms does change from time to time. It is hoped that this Note accords with the current wording, and that any changes since the original drafting of the Note have been taken into account. Nevertheless you should ensure that you have downloaded the up to date wording from the MOJ website when preparing your Notice of Appeal so that you are working from the Rules applicable to your appeal.