



PARTY WALL MEDIATION SCHEME

What is my position as a non-owning occupier of adjoining property?

1. The Party Wall etc. Act 1996 ('the Act') takes effect when an owner of land ("a building owner") wishes to carry out building works in any one of three situations. These three situations are where the building owner wishes:
 - (1) to build on the 'line of junction' between his property and land immediately adjoining his land;
 - (2) to carry out building or repair works to a party wall; or
 - (3) to excavate his land at any point which is (a) within 3 metres of any part of a building or structure on his neighbour's land and the excavation will extend below the bottom of the foundations of the neighbour's building or structure, or (b) within 6 metres of any part of a building or structure on his neighbour's land, and any part of the proposed excavation will meet a plane drawn downwards at an angle of 45° from the bottom of the adjoining owner's foundations towards the building owner's excavation.
2. In any of the above three situations the Act requires the building owner to serve a notice on the adjoining owner to alert the adjoining owner that he proposes to carry out the works in question.
3. For the purposes of the Act the adjoining owner on whom a notice must be served includes not just the freehold owner, but also any person who (a) is entitled to receive the whole or part of the rents or profits of the land, (b) a tenant under a lease for more than a year, or (c) a purchaser of an interest in the land greater than a tenancy from year to year. As a consequence the building owner may find that there are several 'owners' of the adjoining property, especially where the property has been let on two or more long leasehold flats.
4. There is no obligation on the building owner to serve a notice on any occupier of adjoining property who is not the owner of that property.
5. However, although an adjoining occupier who is not an owner does not have to be served with a notice before works under the Act are carried out, the Act does recognise

that such an adjoining occupier may be adversely affected by the works. S7(1) of the Act provides that the building owner may not carry out any party wall works "in such a manner or at such time as to cause unnecessary inconvenience to any adjoining owner or any adjoining occupier". S7(2) of the Act provides that the building owner must compensate any adjoining owner and adjoining occupier for "any loss or damage which may result to any of them by reason of work executed in pursuance of this Act."

6. The dispute resolution procedure under the Act (ie the making of an Award by one or more party wall surveyors) does not apply to disputes arising between an adjoining occupier and the building owner under the rights granted to the occupier under s7(1) or (2). Accordingly an adjoining occupier who finds that a building owner who is not prepared to carry out his building works under the Act in a manner which the occupier finds acceptable, or an adjoining occupier who considers that he has suffered loss or damage as a result of the building owner's works under the Act, but who finds that the building owner is not prepared to make satisfactory compensation, will have to take court proceedings by way of a Claim Form under CPR Part 7 to enforce his rights.
7. *Section 7(1)*: Where the adjoining occupier considers that he is being subjected to unnecessary inconvenience because of the manner or time of the works carried out by the building owner it will almost certainly be necessary for the adjoining owner to seek an interim injunction in the county court either to prevent the works continuing or, more likely, to impose conditions on the manner in which and the time at which the works are carried out. Interim injunctions can be obtained very speedily in the county court. There will rarely be a situation where mediation is a suitable way forward in such a case. A building owner who is amenable to being considerate is likely to discuss the problem and take steps to meet the adjoining occupiers concerns. A building owner who is not amenable to being considerate is unlikely to agree to mediation, let alone participate in a constructive mediation or stick to any agreement limiting the manner or timing of the works.
8. It is important to note the phrase "unnecessary inconvenience" in s7(1). The 1996 Act recognises that all building works are likely to cause some inconvenience to adjoining occupiers. That is part of everyday life that we all have to put up with. But starting too early, eg before 8am, or continuing after, say, 6pm, or working on Sundays may well be held by the county court judge to involve 'unnecessary' inconvenience and an injunction restraining such working ordered. Or the building owner may engage contractors who use particularly noisy machinery, or equipment that causes excessive vibration, and such practices may be considered to be 'unnecessary'. It will always be a matter of fact and degree, and no hard and fast rules may be given.
9. An adjoining owner wishing to consider seeking injunctive relief is well advised to seek legal assistance, at least for an initial view. Most litigation lawyers should be able to deal with an interim injunction. The lawyers on the Scheme's list of solicitors and direct access counsel certainly will be able to assist in this connection. The important thing for the

adjoining occupier is not to wait until the works are done or almost done. The golden rule with interim injunctions under s7(1) is '(a) first speak to the building owner or the contractors to ask that the offending behaviour is stopped and if this gets you nowhere, (b) go to court now or put up with the inconvenience'.

10. *Section 7(2)*: If an adjoining owner considers that he has suffered loss or damage by reason of work executed under the Act, then an action will lie for damages in the county court. (An action may be brought in the High Court but it is unlikely that the High Court will entertain any but the biggest of claims and an action started in the High Court is likely to be transferred to the county court.) The claim is best considered to be a statutory claim under s7(2) of the Act with any loss or damage suffered being quantified by reference to common law principles. The alternative view is that the claim will be a common law claim in tort. It hardly matters. The sensible course is both to claim under s7(2) of the 1996 Act and under the relevant common law tort. This will usually be the torts of nuisance and negligence, but there may occasionally be claims under the tort of trespass.
11. Claims for loss and damage have a six-year limitation period starting at the date of damage, unless the claim is for personal injury where a three-year limitation period applies. (The law relating to limitation periods in personal injury claims is not exactly straightforward and legal advice may be needed). But do not wait. Send a CPR 'protocol letter', ie a letter setting out the nature of the claim in sufficient detail for the reader to understand what you are claiming and how you allege the loss or damage arose. If no satisfactory offer to discuss the matter or make compensation is made within a reasonable time in response to your letter, then seek legal advice with a view to commencing proceedings.
12. Where the claim is for loss or damage under s7(2) of the Act, mediation could well be a sensible option. Indeed, if you start proceedings without mediating (or engaging in some other form of alternative dispute resolution-ADR) the court is expected under the Civil Procedure Rules to advise you strongly to do so. There may be costs penalties if you do not mediate or engage in another form of ADR.
13. It is important to note that s7(1) and s7(2) relate to unnecessary inconvenience or loss and damage arising out of works which are covered by the 1996 Act. The likelihood is that the building owner will be having building work undertaken at his property that is not covered by the Act in addition to work covered by the Act. If the unnecessary inconvenience or loss and damage the adjoining occupier is concerned about arises from work outside the Act, s7(1) and s7(2) cannot be relied on. Any claim will have to be brought in tort under the common law.
14. This short note on the position of the non-owning occupier of adjoining land cannot possibly cover all the many situations that may arise when building works cause a nuisance or annoyance or cause loss and damage. Except where you are entirely sure of

your own position in respect of any claim, it is always advisable to seek legal advice. Such advice can be expensive, but it will be less costly to get sound advice from the lawyer at the start than find out at the end of litigation that you have lost the case and have to pay the other side's costs. Many solicitors and direct access counsel will give initial advice as to your position at an affordable cost. This will enable you to assess the strength of your case before initiating proceedings. And do check any insurance policy you may have. It is not uncommon for insurers to offer legal expenses insurance cover under a variety of policies.