The Party Wall etc Act 1996

The saying goes that an Englishman's home is his castle, but this could not be further from the truth when undertaking building works to the castle.

Not only does a building owner need to satisfy what are often stringent planning issues and obtain planning permission but he will then often need to traverse the intricacies of the Party Wall etc Act 1996 ("the Act") and deal with what may be an obstructive neighbour.

When does The Party Wall etc Act 1996 apply?

The Act applies where works are proposed to any structure separating buildings or parts of buildings, boundary walls and excavations near neighbouring buildings. Its purpose is to give a building owner a statutory right to carry out works that would otherwise be a nuisance or constitute trespass. The Act also affords access over a neighbour's property to carry out the work thereby avoiding the need for an access order under the Access to Neighbouring Land Act 1992. It also sets out, via a tribunal of surveyors, a simple means of dispute resolution without court involvement, via the making of what is called a Party Wall Award. Whilst the purpose of the Act is to enable works to be undertaken and provide a quick and effective means of resolving disputes, it does give significant rights to neighbours including the right to be compensated for any loss or damage caused. These rights, especially to an obstructive neighbour, can often hinder what ought otherwise to be a straightforward development and radically increase the cost of the development.

Whilst the Act was intended to provide a simple means of dispute resolution, disputes frequently arise which lead to court action, such as:

1. Whether the Act applies at all and, if it does, whether an Award has been complied with. The cases of Uddal v Dutton [2007] and Chliafchtein v Wainbridge Estates Belgravia Limited [2015] concerned applications for injunctions to restrain works not in accordance with the Act or an award.

2. Whether a structure includes special foundations which are prohibited under the Act without a neighbour's written consent. The case of Chaturachinda v Fairholme (2015) indicates that not every structure utilising reinforced concrete will amount to a special foundation.

3. Whether a neighbour is entitled to compensation and, if so, how compensation should be assessed. Is a neighbour entitled to claim for such things as loss of amenity or must he simply put up with what are

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often extensive and noisy building works? The case of Lea Valley Developments Limited v Derbyshire [2017] was the first authority on the point, decided some 20 years after the Act came into force. It confirmed that common law principles do apply. The decision in Welter v McKeeve [2018] confirmed that a neighbour is under a duty to mitigate his loss, although the nature and extent of the duty to mitigate remains uncertain.

Our dedicated property dispute solicitors deal with neighbourly matters, some of whom have been involved in some of the cases mentioned above. If you would like more information, please contact our property litigation solicitors by emailing online.enquiries@la-law.com or calling 01202 786268.

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