

The Party Wall Act for Property Managers

At some point, all property managers have to deal with Party Wall matters, yet it remains an area that many are unfamiliar with. In fact, not all building surveyors are fully au fait with Party Wall work, so we made certain that EK McQuade became market-leading specialists.

Find out more

www.ekmcquade.com

Contact our London office

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EK McQuade is the product of a merger between the Party Wall specialists at McQuade Property Consulting and the Party Wall team at Earl Kendrick, renowned for our specialist knowledge of property management, particularly for residential blocks.


Our mixed skillset means we are uniquely qualified to help property managers navigate the issues involved. We're able to focus on long-term relationships with property managers, as they can have confidence in our ability to handle all surveyor-led aspects of blocks of flats maintenance.

While we manage Party Wall matters for our clients from start to finish, it is useful for property managers to understand the procedures and terminology, so what follows is our seven step guide.



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Step 1:

The Party Wall etc Act 1996 provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations near neighbouring buildings. The person who plans to undertake work that is subject to the Party Wall Act is known as the 'building owner'. Whoever owns a building neighbouring the building owner's property or occupies it with an interest greater than a one year tenancy, is known as the 'adjoining owner'.

In the context of block management, it is important to highlight that there may be a number of adjoining owners within the block, because most walls will be Party Walls one way or another. And not only walls, but floors and ceilings too. Most communal areas will also include Party Walls in relation to one or more flats.

Where you/your client may issue a notice

Common types of work where your client or landlord (as the building owner) may issue a Notice for repairs to their block include: chimney repairs, roof repairs or renewals, repairs to boundary walls and damp treatment.

Where you/your client may receive a notice

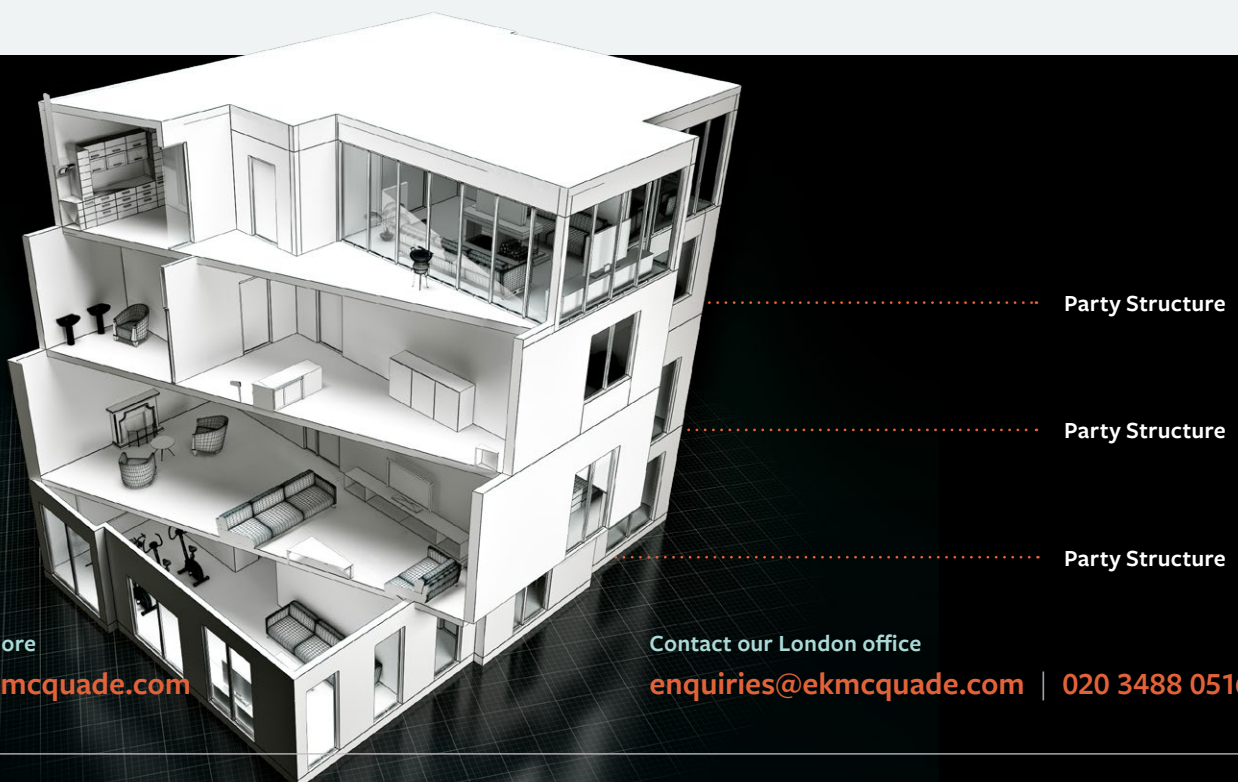
Common types of work where your client or landlord may receive a Notice for works nearby, within or adjoining their block, include general construction such as basement excavations in neighbouring sites, works to an adjoining building or adjacent penthouse works

or other extensions, as well as roof repairs or new leadwork.

A landlord may also receive a Party Wall notice if leaseholder works that fall under the Party Wall Act are being undertaken within a flat.

Step one is for the building owner to appoint a surveyor to prepare and serve the Party Wall notices and to agree the terms of the Party Wall Award. This appointment is termed the 'building owner's surveyor'. The building owner begins the process by asking a surveyor to review the plans and identify any potential problems before submitting a fee proposal. The building owner then formally appoints the surveyor by letter.

The building owner's surveyor will check HM Land Registry to ensure they have the correct owner's name for the adjoining property and send them a notice of the proposed works.



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Step 2:

Ideally the adjoining owner should hear about the proposed work before receiving a formal notice. An informal approach can often smooth the process by drawing attention to any likely problems in advance. But technically, step two is issuing the formal notice.

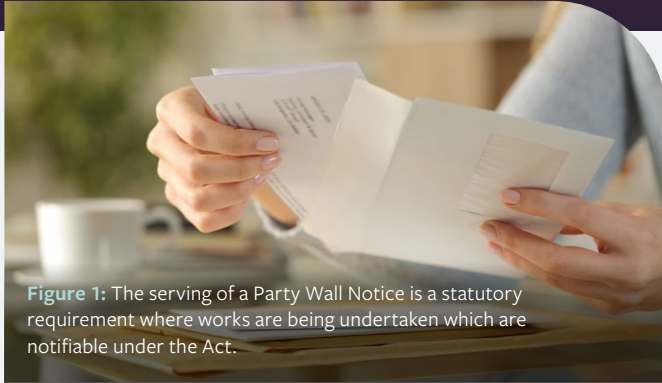


Figure 1: The serving of a Party Wall Notice is a statutory requirement where works are being undertaken which are notifiable under the Act.

There are three different basic types of notice, the use of which depends on the particular works. A 'Party Structure Notice' is required where works like those mentioned above are being undertaken to an existing Party Wall or Party Structure (e.g. a floor separating two flats). For these types of works, a notice must be served at least two months in advance of the works.

A 'Line of Junction Notice' is required where a new party wall or party fence wall is being built astride the boundary, or where a new wall is being built wholly on the land of the building owner, but up against the boundary line. Examples could be building a boundary wall, or building a new extension up to or on the boundary. For these types of works, a notice must be served at least one month in advance of the works.

Finally, an 'Adjacent Excavation' Notice is required in the instance where works are being undertaken to excavate or excavate and construct foundations for a new building within three metres of a neighbouring owner's building, but also where the new excavation will go deeper than the neighbour's foundations. An 'Adjacent Excavation' Notice is also required where works are being undertaken to excavate or excavate and construct foundations for a new building within six metres of a neighbouring owner's building, where the new excavation will cut a line drawn downwards at 45 degrees from the bottom of the

neighbour's foundations. For these types of works, a notice must also be served at least one month in advance of the works.

The Party Wall Act and Licence to Alter

Quite often, works being undertaken inside flats by leaseholders fall under the Party Wall Act in addition to requiring a Licence to Alter, so it's important to understand that having the latter does not render the former redundant. The leaseholder undertaking notifiable works will become the building owner under the Act. The requirement to serve a Party Wall notice is a statutory requirement and the process is entirely separate from the Licence to Alter process. Works that may be undertaken by a leaseholder (as building owner) which fall under the Party Wall Act, include removing chimney breast projections, cutting into the party wall to insert padstones or fixings for new beams and also cutting into the floor or ceilings (Party Structure).

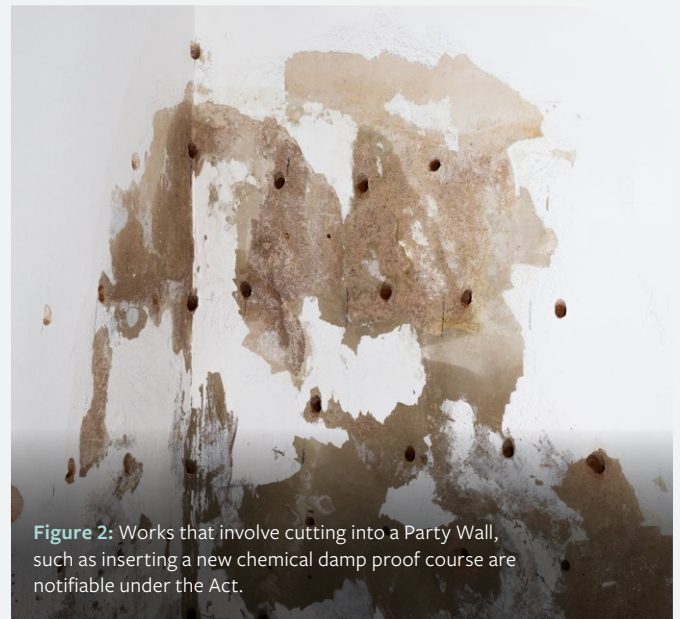


Figure 2: Works that involve cutting into a Party Wall, such as inserting a new chemical damp proof course are notifiable under the Act.

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Notices will be needed where the Party Wall or Party Structure is in between adjoining flats (adjoining flat owners will be the adjoining owner) and also where the Party Wall or Party Structure separates the communal areas (where the freeholder/landlord will become an adjoining owner). In some instances, the leaseholder undertaking notifiable works will need to serve notices both on adjoining flat owners and the freeholder/landlord (all of whom will be adjoining owners).

When a notice is served by a building owner, the adjoining owner has 14 days to respond. If they do not respond within 14 days, the building owner will serve a 10 day notice requiring them to respond within 10 days. If the adjoining owner still does not respond, the building owner can go ahead and appoint a surveyor to act on their behalf.

This has important implications for property managers, as if they do not respond within the required time frames, the building owner will proceed to appoint a surveyor to act on behalf of the landlord. The landlord (adjoining owner) will therefore not have any control over the appointment of the surveyor acting on their behalf.

In some instances, the leaseholder undertaking notifiable works will need to serve notices both on adjoining flat owners and the freeholder/landlord.

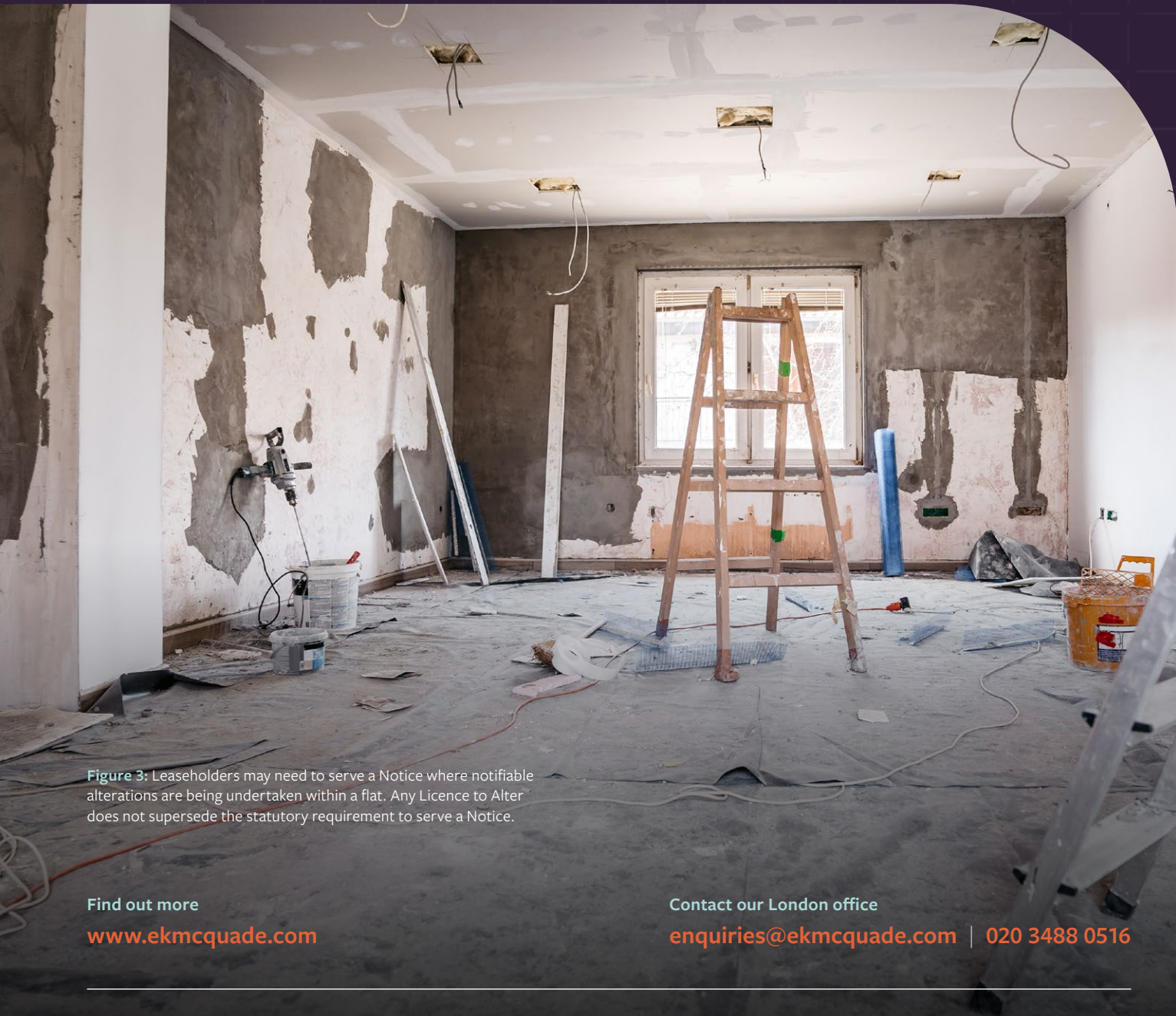


Figure 3: Leaseholders may need to serve a Notice where notifiable alterations are being undertaken within a flat. Any Licence to Alter does not supersede the statutory requirement to serve a Notice.

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Step 3:

Step three depends on the adjoining owner's response to the notice. They can either 'consent' to the works and let them proceed without further consultation, or they can 'dissent'.

The latter does not necessarily mean objecting to the works, but simply appointing a surveyor to oversee the process. This is achieved by either accepting the building owner's surveyor as an 'agreed surveyor' or appointing a surveyor of their own, termed the 'adjoining owner's surveyor'. In the majority of cases, we recommend the second option. Upon appointment, the building owner's surveyor and the adjoining owner's surveyor will select a 'third surveyor' to adjudicate if the two parties cannot agree on any matter. Except in very exceptional circumstances, all surveyors' fees are paid by the building owner. These vary widely depending on the job, but typically surveyors appointed by the building owner will quote a fixed fee, while the adjoining owner's surveyor charges by the hour.

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Step 4:

Step four is an inspection of the adjoining property, whose condition is recorded either by the agreed surveyor or the building owner's and adjoining owner's surveyors.

The former will then prepare what's called a 'schedule of condition' of the adjoining owner's property. An accurate schedule is essential so it can be shown that any subsequent damage to the property is a result of the work and not due to pre-existing factors.

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Step 5:

In step five, the surveyors or agreed surveyor prepare a document called a 'Party Wall Award' or 'Party Wall Agreement' setting out how the work should proceed and the rights and responsibilities of each party. The award also covers things like access for the surveyor, working hours and what happens in case of damage.

In some circumstances, the surveyors may also require the expertise of other consultants, for example a structural engineer. The building owner will also be liable for the fees of these other third-party appointments.

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In some circumstances, the surveyors may also require the expertise of other consultants, for example a structural engineer.

Step 6:

Once Party Wall Award document has been signed by all the surveyors concerned, it is finally time for step six: the work can go ahead.

Step 7:

Once the work has been completed, step seven is to re-inspect the adjoining building to check for any damage caused by the work.

If any damage is found, the matter will be resolved in line with the Party Wall Award document. Typically, the building owner's contractor will carry out repairs or the adjoining owner will accept cash in lieu of rectifying the damage.

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Summary:

Clearly, then, the bulk of a surveyor's work on Party Wall matters takes place in the early stages: steps one to five. This work ensures there are no messy legal issues after the building work itself. Of course, all of the above assumes the original building owner understands and abides by the rules set out in the Party Wall Act.

Occasionally, people undertake work illicitly, usually from ignorance of the law. That is why, when undertaking your property inspections, you should keep an eye out for any works in neighbouring buildings, works close to or on the boundary, and any suspicious activity by leaseholders. If you suspect any works

should be covered by the Act, you should establish who the owners are, what work is being carried out, and request confirmation in writing that the works do not fall under the Party Wall Act.

If in doubt about works being undertaken on a neighbouring property or prospective work on your own building, it's always a good idea to consult a building surveyor. EK McQuade offers free advice on our Party Wall Hotline. We also run Party Wall workshops for property managers. If you are interested in participating, call the hotline to find out more.

Call our Party Wall Hotline: 020 3488 0516



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Glossary

The 'Act'

The Party Wall etc. Act 1996.

Owner

Defined by the Act as anyone having an interest in a property of greater than 1 year i.e. not an Assured Shorthold tenant.

Building Owner

An Owner proposing to carry out works that fall within the scope of the Act.

Adjoining Owner

An Owner of any neighbouring property to whom the proposed works are notifiable.

Occupier

A person that resides at an Adjoining Owner's property, other than the Adjoining Owner themselves. Occupiers do not have to be notified but do have other rights under the Act.

Notifiable Works

Any works proposed by a Building Owner that fall under sections 1, 2 or 6 of the Act.

Party Wall Notice

A formal document that is served on an Adjoining Owner by a Building Owner, providing details of the proposed work and when it is expected to commence. An Adjoining Owner can either consent or dissent to a notice.

Consent

To agree to the proposed works.

Dissent

The opposite of consent — if an Adjoining Owner dissents they create a dispute under the Act.

Dispute

The term used in the Act when an Adjoining Owner does not consent to the works upon receipt of a notice. The Owners are deemed to be in dispute if consent is not given with 14 days of the notice being served.

Award

Owners that are 'in dispute' must appoint surveyors (or agree to appoint a single surveyor). The surveyors resolve the dispute by agreeing the terms of an Award and serving it on the Owners.

Party Wall Agreement

See 'Award'.

Counter Notice

Upon being served a notice by the Building Owner, an Adjoining Owner can serve a counter notice, requesting him to carry out specific works.

Line of Junction

An imaginary line dividing the lands of adjoining owners. Unlike a boundary line the Line of Junction also extends upwards.

Section 1 of the Act

Covers construction of new walls on the line of junction between two Owners. Building astride the line of junction is only possible with the Adjoining Owner's written consent. Notice should be served one month before the proposed start date of any section 1 works.

Party Structure

A wall, floor or partition separating adjoining properties.

Section 2 of the Act

Covers works to an existing Party Structure. There is a wide scope of works that fall under this category, including raising, repairing, demolishing and rebuilding, cutting into, cutting away projections and exposing a party wall. Notice is served under Section 3 of the Act and should be served two months before the proposed start date of any section 2 works.

Adjacent Excavation

Digging close to an Adjoining Owner's property — covered by Section 6 of the Act. Notice served under Section 6 of the Act is often referred to as a 'Notice of Adjacent Excavation'.

Section 6 of the Act

Covers adjacent excavations within 3 and/or 6 metres of an Adjoining Owner's property. If excavations are within 3 metres of an Adjoining Owner's building and deeper than the base of their foundations, they will be notifiable under this section. The 6 metre rule will normally only be applicable if the work includes piled foundations and/or bulk excavation. Notice should be served one month before the proposed start date of any section 6 works.

3 Metre & 6 Metre Notices

Alternative requirements for a Notice of Adjacent Excavation depending upon the relevant distance.

Party Wall

There are two types recognised under the Act:

Type (a) — a wall that stands astride the boundary belonging to two or more different owners.

Type (b) — a wall that stands wholly on one owner's land but is used by two or more owners to separate their buildings.

Party Wall Surveyor

A surveyor appointed by either, or both, of the Owners. Anyone can be appointed as a Party Wall Surveyor except the Owners although an understanding of construction and procedures under the Act is desirable. Surveyors appointed under the Act have an obligation to act impartially.

Building Owner's Surveyor

A surveyor appointed by the Building Owner.

Adjoining Owner's Surveyor

A surveyor appointed by the Adjoining Owner.

Third Surveyor

Is selected at the outset by the two appointed surveyors but is only called upon where there is a matter that they themselves cannot resolve.

Agreed Surveyor

A surveyor appointed by both the Building Owner and Adjoining Owner.

Rights of Entry

Where work is authorised by the Act and access to the Adjoining Owner's property is necessary to execute said work that right is provided by Section 8 of the Act.

Security for Expenses

Section 12 of the Act gives an Adjoining Owner the right to request Security for Expenses i.e. ask that funds are placed in an independent account by the Building Owner in case the works are started but not finished. If the Building Owner disputes such a request the matter passes to the appointed surveyors to resolve.

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How can EK McQuade help?

Party Wall matters can be a major headache for architects, developers and property managers alike. But negotiating Party Wall awards does not have to be stressful; in the right hands, the whole process can be surprisingly hassle-free.

EK McQuade have successfully completed more than 2000 awards, including complex basement projects and high-end developments in both the residential and commercial sectors.



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