

## Can I obtain a Party Wall Injunction?

The Party Wall etc. Act 1996 is a mechanism designed for balancing rights of the building owner who wishes to undertake work to refurbish or develop the property against the rights of the adjoining owner to ensure no damage or extensive inconvenience are caused during the process. Specialist party walls solicitor, [James Holton](#), considers how an adjoining owner can protect their rights when their neighbour plans to undertake work near to their property.

### What works are notifiable to the adjoining owner?

It is common for building owners to carry out development work which is notifiable under the Party Wall etc. Act 1996 without serving a party wall notice on the adjoining owner. Examples of notifiable works include:

- Carrying out works to an existing party structure.
- Building a new party wall adjacent to the boundary.
- Building within three (or sometimes six) metres of the adjoining owner's walls or building.
- Carrying out excavation works within three (or sometimes six) metres of the adjoining owner's walls or building (i.e. to protect the adjoining owner from subsidence caused by the proposed works).
- Placing foundations on the adjoining owner's land.

In these circumstances the adjoining owner can seek an interim injunction (i.e. a Court Order) to prevent notifiable works from being completed. An injunction may prevent work from being undertaken until either the adjoining owner provides consent, or the building owner proves that they do not require such consent.

### When should I apply for an injunction?

Immediately! If an adjoining owner suspects that notifiable works are being carried out and risk causing damage to their property, then they should usually apply to Court immediately.

The Court will be more likely to grant an injunction where the application is made as soon as possible. If an adjoining owner waits several weeks to apply, then the Court may conclude that they are too late or the works themselves may already have been completed.

### What is the process?

It is usually best to speak to the building owner or their contractor to establish what is happening and to ask them to stop work until a party wall notice has been served and consent provided.

If the building owner refuses, then a letter before action should be sent notifying the building owner that, unless they cease work, then the adjoining owner will be left with no alternative but to apply to Court for an injunction.

The application for an injunction may be on the grounds of trespass, nuisance (i.e. damage to land or interference with quiet enjoyment of land) or breach of statutory duty (i.e. failure to follow the Act in the first place).

When the injunction application has been made, the Court will list the matter for a hearing. If the Court grants an interim injunction to halt works, then the matter will be listed for a final hearing (say seven days later) to decide whether the injunction should be lifted or made final.

### **Cross-undertaking**

To apply for an injunction, the Court will usually require the adjoining owner to provide a cross-undertaking for damages. This means that the adjoining owner will need to make a promise to the Court that, should it transpire that an interim injunction should not have been granted, then the adjoining owner will pay damages to the building owner for any losses suffered.

For example, if an interim injunction is granted and later discharged, then the adjoining owner may be liable for any contractors' costs incurred by the building owner whilst the works could not progress. An unsuccessful adjoining owner may be ordered to pay any such abortive costs.

### **What evidence will I need?**

It will usually be a good idea to instruct a party wall surveyor to prepare a detailed schedule of condition as soon as possible. This will assist the Court in understanding the damage being – or which will potentially be – caused by the works.

The adjoining owner or their party wall surveyor will also need to provide a witness statement setting out what has happened and the damage that the works will cause to the adjoining owner's property.

### **What test will the Court apply?**

The test which the Court applies to an injunction application is as follows:

1. Is there a serious issue to be tried? The adjoining owner needs to satisfy the Court that the claim has some substance and has real prospect of success.
2. Will payment of damages be an adequate remedy? The Court will consider whether the payment of damages by the building owner to the adjoining owner will be an adequate remedy instead of an injunction.

3. Where is the balance of convenience? The Court will weigh the potential inconvenience and/or loss from each party's perspective when assessing whether an interim injunction should be granted.

### **Who pays the costs?**

Both parties will also need to bear in mind that in litigation the winning party is usually entitled to recover their costs from the losing party. Therefore, if the adjoining owner's application is successful, then they will seek an order for the building owner to pay their costs.

Typically, the successful party can recover 60-75% of their costs from the unsuccessful party. It is however important at the outset to consider the other party's financial ability to pay any costs order.

### **DTM Legal**

Our specialist property litigation team support clients and their professional advisors in the resolution of [party wall disputes](#). We appreciate the need for effective, objective-led action to protect your property interests which can include both litigation and alternative dispute resolution.

[James Holton](#) is named as a "rising star" in the Legal 500 and is a property litigation and specialist. For advice on party walls please refer to [Party Walls](#) and to contact James please telephone 01244 354800 or email him at [james.holton@dtmlegal.com](mailto:james.holton@dtmlegal.com).