

# PARTY WALL

## case law update

### 1 ENFORCING PARTY WALL AWARDS

**CASE DETAILS:** FARRS LANE DEVELOPMENT LTD v BRISTOL MAGISTRATES COURT, 9 FEBRUARY 2016

ENFORCEMENT OF AWARDS THROUGH MAGISTRATES' COURTS

- In this case, the Development Company appointed a Surveyor to issue Party Wall Structure Notices to multiple Adjoining Owners of a proposed development and agreed the fees upfront. After the Party Wall Awards had been issued, the Developer claimed that the fees were excessive. The Surveyor then issued a complaint under section 17 of the 1996 Act in the Magistrates Court to recover the sums which were awarded.
- The Developer asked for a Judicial Review, arguing that the Magistrates had no jurisdiction to make an order in favour of the Surveyor because Party Wall Awards should only deal with disputed items between Building Owners and Adjoining owners. The High Court rejected this, confirming that an Award can be enforced in its entirety -including directions on costs and fees- through the Court system. The judgement also confirmed that an Award under section 10 of the 1996 Act requiring payment of a Surveyor's fees may direct that such payment be made direct to the Surveyor by any party.

### 2 REPLACING A PARTY WALL SURVEYOR, THE RIGHT WAY

**DETAILS:** PROPERTY SUPPLY AND DEVELOPMENT LTD v VERITY, 17 DECEMBER 2015

VALIDITY OF PARTY WALL SURVEYOR APPOINTMENT FOLLOWING A RESIGNATION; VALIDITY OF SUBSEQUENT AWARD

- In this case, the Building Owner commenced demolition works on their site, leaving it with temporary protection, which extended to the thatched roof of the Adjoining Owner. However, 20 months later, no further works had been carried out and there was no protection left for the Adjoining Owner's roof. As a result, the adjoining property suffered damage, which the Adjoining Owner looked to recover through the appointment of Party Wall Surveyors (replacing surveyors who had resigned) and an Addendum Award.
- The judge found in favour of the Building Owner that the Addendum Award for £15k worth of damages and fees was invalid because the Addendum Award had been made by Surveyors who were invalidly appointed by the Adjoining Owner on behalf Building Owner. The judgement clarifies the process of appointing replacement Party Wall Surveyors after resignations and the process of making Awards where this occurs under section 10 of the 1996 Act.

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### 3 ARE YOU ON THE RIGHT FOOTING?

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**CASE DETAILS:** CHATURACHANDA v. FAIRHOLME, 23 SEPTEMBER 2015

CLARITY ON 'SPECIAL FOUNDATIONS' IN BASEMENT

- This case examines the definition of “special foundations”. This is of great importance to house owners, Surveyors and designers when considering basement extensions to properties.
- The judge finds for the Building Owners and holds that the function of the reinforced concrete box in this basement extension project is distinct from the function of the proposed strip foundation underneath. The reinforced concrete structure therefore does not constitute a special foundation for the purposes of the Party Wall etc. Act 1996.

Our **Are Your Foundations on the Right Footing?** leaflet explains further. Please click here

[http://www.2110consult.com/wp-content/uploads/2016/05/Case-Law-Update-Chaturachanda\\_Abingdon-Gardens-Management-Ltd-vs-Fairholme-23rd-Sep-2015-May-16.pdf](http://www.2110consult.com/wp-content/uploads/2016/05/Case-Law-Update-Chaturachanda_Abingdon-Gardens-Management-Ltd-vs-Fairholme-23rd-Sep-2015-May-16.pdf)

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### 4 UNDERPINNING THE RIGHT TO BASEMENT EXTENSIONS

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**CASE DETAILS:** GRAY v. ELITE TOWN MANAGEMENT, 23 JULY 2015

CLARITY ON BUILDING OWNERS RIGHT TO BASEMENT EXTENSION DESIGN

- This case clarifies a number of issues related to adjoining basement extensions in London. The judgement deals with the right of the Building Owner under Section 2(2) of the Party Wall Act etc. 1996 to underpin their basement construction and with section 7(1) in respect of causing “unnecessary inconvenience”, the basis on which the Adjoining Owner’s Party Wall surveyor refused approval of the chosen design for the works.
- The judgement confirms the Building Owner’s right to the underpinning design solution for their basement extension. Whilst it is good practice for Party Wall Surveyors to consider alternative solutions, there is no legal duty on a Party Wall Surveyor to propose alternative designs as this would potentially change the surveying role to that of the designer of the building scheme with resulting liabilities.

**The full judgement:**

To read the full judgement, click here

[http://www.crownofficechambers.com/assets/docs/news/gray\\_v\\_elite\\_town\\_-\\_approved\\_judgment\\_-\\_230715.pdf](http://www.crownofficechambers.com/assets/docs/news/gray_v_elite_town_-_approved_judgment_-_230715.pdf)

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## 5 RULING IN THE SPIRIT OF THE PARTY WALL ACT

**CASE DETAILS:** MILLS v. SAVAGE / MILLS v. SELL, 15 JUNE 2015

VALIDITY OF SURVEYOR'S APPOINTMENT AND RESIGNATION; THIRD SURVEYORS'S ROLE AND JURISDICTION

- This is a complicated case with several disputed issues between Building Owners and multiple Adjoining Owners for extensive building restoration works. After Party Wall Notices were served and disputes escalated, three separate Party Wall appeals followed, principally examining the validity of Surveyor appointments and resignations and the role of Surveyors in making Awards.
- On the three separate Party Wall appeals the judgements were as follows:
  1. A Party Wall Surveyor can resign, deeming himself incapable of acting on whatever ground seems appropriate. Whatever other Party Wall Surveyors think about the action, they have to accept it and proceed accordingly.
  2. Section 10(17) of the 1996 Act provides that the appeal against a Party Wall Award may be made within 14 days, beginning with the day that the Party Wall Award is served. The judge found that this period started on the day when the Party Wall Award was received.
  3. Section 10(10) of the 1996 Act does not allow the exclusion of an appointed Party Wall Surveyor who is willing to be involved in making a Party Wall Award. Whilst each case needs to be judged on its merits and in context, receiving and considering each side's representations is essential part of the role of a Party Wall Surveyor.  
  
Section 10(15) of the 1996 Act offers protection for third Surveyor fees in the event they make a Party Wall Award by stipulating that they should serve the Award after receiving payment for the costs of making it. No upfront fees can be demanded before consideration of matters or making the award.

We have a specialist Party Wall Team who will be able to answer any questions or offer advice.

For further information on any Party Wall matters, please contact us on [0845 209 9999](tel:0845209999) or email [info@2110consult.com](mailto:info@2110consult.com)

