

CASE LAW UPDATE | ARE YOU ON THE RIGHT FOOTING?

CLARITY ON 'SPECIAL FOUNDATIONS' IN BASEMENT DESIGN

CASE DETAILS:

CHATURACHANDA / ABINGDON GARDENS MANAGEMENT LIMITED (ADJOINING OWNERS)
VS FAIRHOLME (BUILDING OWNERS)

DATE:

SEPTEMBER 2015:
UPDATED MAY 2016

Neighbours contesting basement extensions will be interested in the judgment by Central London County Court, which brings clarity to the definition of 'special foundations'. Although this judgement is not binding on other County Courts it is likely to be followed by other County Court Judges in future cases.

The Party Wall etc Act 1996 'the Act' defines that any work constituting 'special foundations' can be refused under Section 7(4) of the Act by an adjoining owner. The Act states that 'nothing shall authorise a building owner to place special foundations on the land of an adjoining owner without his previous consent in writing.'

WHAT IS A SPECIAL FOUNDATION?

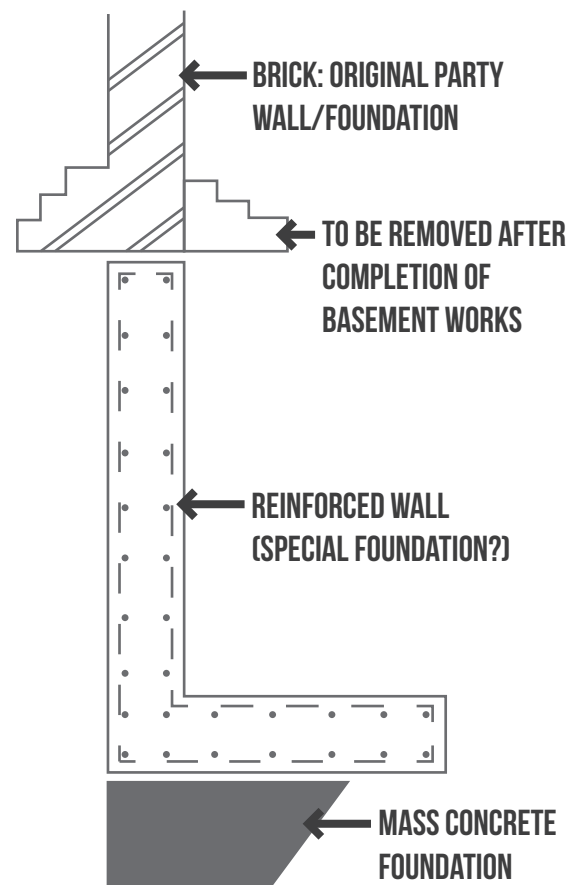
Special foundations are defined as 'those in which an assemblage of beams or rods is employed for the purpose of distributing any load'. This definition is historic and has been interpreted to include reinforced concrete. A special foundation contrasts with a (standard) mass concrete footing, which is defined as 'solid ground or artificially formed support resting on solid ground on which the wall rests.'

THE CASE

In the case of Chaturachanda / Abingdon Gardens Management Limited vs Fairholme, Mr and Mrs Fairholme (the building owners) were planning an excavation to construct a new basement and rear extension to their property in Kensington. Two neighbours served counter-notices claiming that a special foundation had been designed in the form of reinforced concrete basement walls, above a mass concrete strip foundation running beneath the edge of the basement box (see section above).

The adjoining owners' surveyors argued that the mass concrete strip was an 'artificial attempt to prevent the (wall) structure being defined as a special foundation.' The court heard evidence from expert structural engineers contesting that the basement could have been constructed economically and effectively without the mass concrete platform. The neighbours contested that the mass concrete 'will not perform an actual foundation function and is in effect performing no differently to concrete blinding. Therefore, the (wall) foundation is a special foundation.'

SIMPLIFIED/TYPICAL SECTION:





BACKGROUND AND DESIGN PRACTICE

In considering the case, His Honour Judge Edward Bailey reviewed the origin and intentions of the definition of ‘special foundations’, first introduced in the London Building Acts (Amendment) 1939 to control the use of grillage foundations, which were common in the 1930s. The Judge comments that the ‘underlying purpose of the special foundation provision is to ensure that there should be no interference with the future redevelopment of the adjoining owner’s site.’ In this case, the judge concluded ‘there is, frankly, nothing here to suggest that there is a significant interest in the adjoining owner which is being protected by the special foundations regime.’

It is standard practice in basement construction to utilise reinforced concrete, which allows for thinner walls, maximising the internal space beneath a building. The neighbours in this case argued that casting a foundation strip and allowing it to set before building the reinforced concrete wall was a more costly form of construction than simply building a reinforced concrete wall on solid ground. Hence, it was argued that the cast concrete strip was an artificial attempt to prevent the structure being defined as a special foundation.

In the case of *Chaturachanda / Abingdon Gardens Management Limited vs Fairholme*, the party wall in question involved a historic brick wall originally founded on spread brick footings. The building owners’ proposal involved further underpinning of this wall with reinforced concrete as part of a reinforced concrete basement box. On reviewing the general design, the Judge considered evidence from structural engineers and concluded that the mass concrete foundation ‘may be essential only in its temporary works context and, as part of the permanent works, it may represent over-engineering, but it cannot be castigated as an artifice or device on that basis alone.’

THE JUDGE'S SUMMARY

The overall conclusion is therefore that the vertical structure (wall) should not be classed as a special foundation on the basis that the foundation that transmits load to the ground is the mass concrete strip foundation. It could now be assumed that if the mass concrete strip was not present, then the ground beneath would also be the foundation. The reinforced concrete structure does not constitute a special foundation but is a wall to enclose the new basement.

The Judge summarised to say that the feature that transmits the load from the vertical reinforced concrete wall to the ground is the mass concrete strip foundation, and as a result of this design feature there is not a 'special foundation' that requires the adjoining owners' consent.

Although the load imposed by the structure above the ground is transmitted through both the underpinning and the strip underground, this does not make the lower structural part of the wall a foundation (in the same way that walls of a property are not deemed foundations through bearing the load of the roof). It was therefore concluded that the reinforced underpinning and the concrete strip are separate features of the building and so the wall should not be classed as a special foundation.



ADDITIONAL CONSIDERATIONS

A second argument was also put forward that the reinforced concrete box constitutes a special foundation because it distributes load, not only to the mass concrete strip immediately beneath the party wall, but also to the solid ground on the building owners' side of the wall.

After consulting drawings and calculations and reviewing evidence from structural engineers, this argument was also refuted. The Judge concluded that the concrete box only distributes load through the concrete strip immediately below, which in itself constitutes a (standard) mass concrete foundation.



CONSEQUENCES OF THE JUDGMENT

The case of Chaturachanda / Abingdon Gardens Management Limited vs Fairholme has brought some clarity to the definition of special foundations and is likely to make it difficult for adjoining owners to resist special foundations in the future.