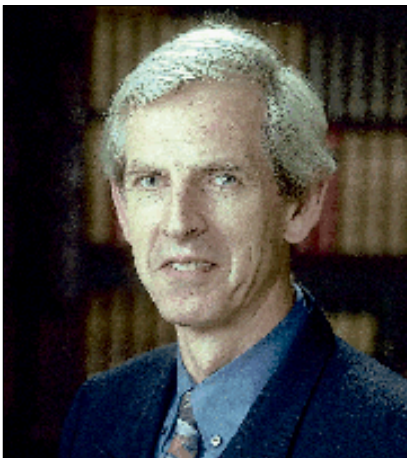


SPECIALIST CONSULTANTS JOIN BOWYER BRYCE



Tim Edens - Planning specialist

Tim Edens ARICS, a Chartered Surveyor specialising in planning matters, and Ian Martin ARICS MaPS, MEng, a Chartered Building Surveyor, have joined Bowyer Bryce as consultants.

Tim is a Chartered Surveyor with broad experience in Estate Management, planning and development work in the public and private sectors with an excellent track record of site acquisitions and planning successes.

In recent years Tim has provided a planning and development consultancy in the Health Care, Commercial and Residential sectors on behalf of major clients including Enfield and Haringey Health Authority, Enfield Community



Ian Martin - Building Surveyor

Care NHS Trust, Laing Homes and Tesco Stores Ltd.

Tim was previously a Development Executive with Tesco Stores Ltd and was responsible for overseeing the acquisition of sites for superstores throughout the UK and meeting a programme of retail expansion of 1,000,000 sq ft per annum. He has also worked for Wimpey Homes and the National Coal Board.

Tim specialises in providing advice on all planning matters including planning applications and appeals.

Ian Martin is a Chartered Building Surveyor and a member of The Association of Building Engineers and The Association of Planning Supervisors. He is experienced in dealing with a wide range of building projects from the

procurement of works for small maintenance/improvement projects to organising new build projects from conception to completion.

Due to the extension of the Party Wall Act to cover the entire country and not just Inner London, Ian has been particularly involved with Party Wall matters but also specialises in all other areas of building surveying including:

- Building inspections and reports.
- Schedules of repair, dilapidations, condition etc.
- Structural defect investigations, monitoring, precise levelling and reporting, recommended repair options, preparing specifications, tendering and supervision of work.
- Site and building acquisition for development and/or investment.
- Engaging and supervising all other professional team members.
- Supervision of design by company architects.
- Review and input into structural design matters.
- Supervision of all development and construction projects.
- Health and Safety, (CDM Regulations etc).

John Bryce, Senior Partner of Bowyer Bryce, is delighted that the Practice is now able to offer these specialist services in house.

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BOWYER BRYCE

'This is the first opportunity we have had to publicly announce that Ian and Tim have joined us but already they have proven their worth by assisting clients in a variety of ways' John said.

'Clients increasingly require specialist advice on a variety of property matters and this is another step towards us providing a complete property service rather than us having to refer clients to outside specialist consultants. Ian's technical expertise and knowledge of building construction and Party Wall matters is second to none and within a week of joining us Tim was able to quash a 'Stop Notice' served upon a client by a Planning Authority and which could potentially have prevented that client from trading and put them out of business.'

Ian Martin and Tim Edens are always willing to discuss any matters informally – they may be contacted on 0181 367 5511 or by e-mail ian.martin@bowyerbryce.co.uk or tim.edens@bowyerbryce.co.uk

PLAIN SAILING TO RATES SAVING

The description of your business premises which appears on your rate demand can affect the basis of assessment and determine whether or not rates are payable if the building becomes vacant.

This was highlighted in a recent appeal case where Bowyer Bryce were successful in changing the description of a building on Oulton Broad, Lowestoft, formerly used as a sailing school.

In the Rating List the building was described as 'Office and Premises' and had been vacant for at least 8 years. Under the Local Government Finance Act 1988, vacant retail and office premises are subject to a 50% liability charge. However, premises described as warehouse, store, factory or workshop etc are exempt from charge when vacant.

Bowyer Bryce were able to present evidence that demonstrated that the building could only be used for storage purposes. As a result, the description in the rating list was amended and the building, whilst vacant, is exempt from charge. This change can be back dated and overpaid rates refunded.

The description of the premises can also have a bearing upon the basis of assessment. In this particular case the difference between offices and storage amounted to £30 per sq m and therefore any future occupier of the building will pay less than they would otherwise have done before the description was amended.

Check therefore whether the description shown on your demand seems fair.

Steven Murray FRICS
Rating Partner

STRATEGIC PLANNING

MANY PLANNING AUTHORITIES ARE PRESENTLY REVIEWING THEIR UNITARY DEVELOPMENT PLANS AND TIM EDENS ARICS TAKES A TIMELY LOOK AT LOCAL PLAN REVIEWS AND STRATEGIES FOR OWNERS AND OCCUPIERS.

Unitary Development Plans (U.D.P's) and Local Plans set the policies for administrative boroughs and districts and it is against these adopted plans that planning applications are assessed.

However, it is frequently overlooked that these adopted plans are periodically reviewed to reflect social changes both at a national and local level and that both corporate entities and individuals can influence the outcome of such reviews by making representations to the local planning authority when the proposed draft is placed on deposit. This opportunity is however only available for a limited period of time.

The relevance of this is reflected in

the housing provision for example. Every local authority has a defined housing target to meet during the life of a Local Plan and local planning authorities seek to identify sites both in the private and public sector that will meet this identified need. Outer London Borough's in particular seek to bring forward 'brownfield' sites in order to reduce the pressure on having to release land within Metropolitan Green Belt. Therefore if companies or individuals have land not currently in residential use that is likely to become available in the short to medium term, then it would be prudent to make the planning authority aware of this at the review stage.

The outcome of such reviews establishes the planning framework for the next 5/7 years so to have a site redesignated or at the very least

identified within the written text of the Local Plan will ease the passage of a planning application in later years without recourse to a planning appeal, which can be a lengthy and expensive process.

Many local authorities are presently reviewing their Unitary Development Plans and this represents an opportunity for interested parties to undertake strategic planning.



Tim Edens would be pleased to offer any further advice and guidance. He may be contacted at Bowyer Bryce on 0181 367 5511 or by e-mail tim.edens@bowyerbryce.co.uk

PARTY WALLS UPDATE

PROPERTY OWNERS, BUILDING CONTRACTORS, DEVELOPERS AND HOME IMPROVERS EVERYWHERE SHOULD BE AWARE OF THE PARTY WALL ETC. ACT 1996. WHAT ARE YOUR RIGHTS? WHAT DO YOU DO IF A NEIGHBOUR UNDERTAKES WORK TO A PARTY WALL? IAN MARTIN EXPLAINS THE PROCEDURES AND YOUR RIGHTS.

Whilst it has been suggested that perhaps the holes in this particular legislative net are perhaps too small, very small construction jobs on occasion triggering Notices under the Act, it still offers many people protection and peace of mind during construction works, whether as Building Owner (the owner doing the work) or Adjoining Owner.

Unfortunately some people's first experience of the Act is far from satisfactory, with delays in construction projects often being caused where the appropriate notices have not been served at the correct time. This in turn can in certain circumstances lead to additional construction costs, time delay penalties, etc. Further, where notices are not served at all, Building Owners can incur legal and professional fees. These

A **Party Wall** as defined in section 20 of the Party Wall etc Act 1996 means:

- (a) a wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; or
- (b) so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners.

fees arise whether from dealing retrospectively with the necessary matters, or worse, in dealing with a civil action from an Adjoining Owner who has been forced to obtain an injunction to protect his or her interest.

It is essential at an early stage in the design process of any project including *Notifiable works*, to assess the need for the appropriate notices to be served on all Adjoining Owners. This process starts with the identification of any *party walls* or *party structures* affected.

Notifiable works include underpinning, raising, cutting into, removing chimney breasts from or demolishing the party wall and many other types of work.

The diagrams below may help in the correct identification of a 'party wall', when looked at alongside the definitions. Wall A is not a *party wall* as it does not conform with either paragraph of the definition. Wall B complies with paragraph (a) and is a *party wall* but as it has no buildings either side is called a party fence wall. Wall C clearly stands on the land of different owners, albeit not equally, and thus complies with paragraph (a) of the definition, as does Wall D which is perhaps most people's idea of a party wall.

Identification of *party walls* as defined in paragraph (b) is not however so straightforward. The most common type of *party wall* falling into this category is a *party wall* formed when a person builds an extension which uses his or her

neighbour's existing wall, as in diagram F. That is, he or she encloses on a wall owned entirely by the neighbour. It should be noted that a right to enclose on your neighbour's wall is not automatic and he or she will have to give their express permission first. Walls E, G and H serve to illustrate that it is only the part of the wall that is physically enclosed that becomes a party wall.

Another area of the legislation where notices must be served on your Adjoining Owner is where it is proposed to excavate to a lower depth than the foundations of the adjoining property that is within 3 metres; or where the Adjoining Owner's property is within 6 metres and the depth of your proposed foundation would cut a line drawn at an angle of 45 degrees from a point at the intersection of the face of the wall and the bottom of its foundation. Confusing isn't it and perhaps the subject of a future article?

The article does not deal with all the relevant points from the Act but is designed purely as a reminder that the Party Wall etc. Act 1996 can affect many types of building project and that it is essential to deal with the matters arising in good time so that delays can be avoided.

If you feel that you have a project that may require notice to be served please contact our consultant Chartered Building Surveyor, Ian Martin, who will be happy to advise you. He may be contacted at Bowyer Bryce on 0181 367 5511 or by e-mail ian.martin@bowyerbryce.co.uk.

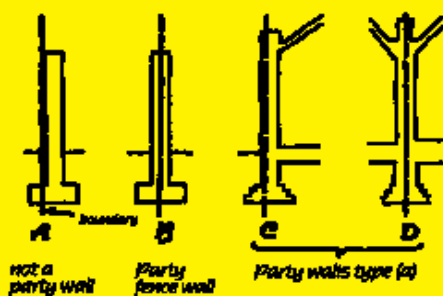


Diagram 1

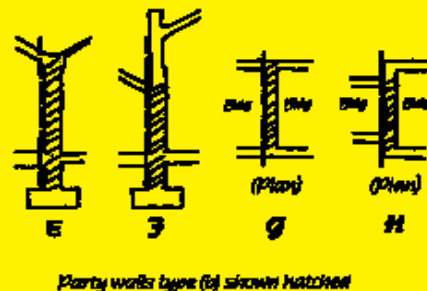


Diagram 2

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HE WHO PAYS THE PIPER...

THE NEW CIVIL PROCEDURE RULES

Are you as a client entitled to expect a surveyor, or indeed any other professional, to argue your case to their best ability, to the extent of ignoring information that harms the client's case. Of course you are, I hear you say, as I pay him!

Now this may be the case during negotiations when the parties to a dispute try to reach a settlement between themselves. Obviously any surveyor ignores information at his peril, but during negotiations he need not bring that information into discussions if he feels it harms his client's case, particularly if the other side does not appear to know about it. So far so good, as in a sense all is fair in love and war!

But what if the dispute cannot be settled by negotiation and proceeds to Court. Again I hear you say "well you act for me and I am paying you therefore you present my case." Well I have to tell you that this is not now the case. Indeed it is of course arguable that it has never been the case.

Any 'expert witness', for that is what a surveyor in a dispute is once the matter reaches Court etc, no longer owes only a duty to his client but a greater duty to the Court. Obviously no surveyor should lie or distort the facts of information and

that again has always been the case as in Court he is under oath to tell the truth. The duty now goes further than this in that the surveyor, and all professionals, are now under a greater duty to tell the "whole truth". By this I do not mean being selective with the facts of a case but bringing to the attention of the Court relevant facts that may not help the client's case and can indeed harm it. This is where the dilemma arises.

A client may feel, perhaps not unreasonably, that a surveyor should only disclose in evidence those matters which help the client. Because however the higher duty is to the Court in helping it reach the correct decision the surveyor is duty bound to present the alternative and non helpful evidence. That is not to say that the surveyor cannot in all conscience interpret the other evidence to help, or at least not hinder, his client's case when giving evidence. Indeed he should have already considered that evidence at the outset when giving initial advice and by presenting it to the Court he shows that he has taken a balanced view, which can only be helpful.

None of this is particularly new and as I say it is a duty that a surveyor has always had. Now however it is brought into sharper focus because all surveyors

who are acting as an expert witness must affirm a 'Statement of Truth' in their evidence and confirm that they have raised all matters relevant to the case, whether or not they are helpful to their client or not.

Clients should appreciate the purpose of all of this - it is to enable the parties to reach a settlement between themselves without the need for the Court. The argument is that if the parties to a dispute move away from a partisan look at the facts and the evidence and consider both sides then they are more likely to reach a settlement, with a consequent saving in Court time and costs.

A plea, therefore - please do not berate your surveyor if in evidence he presents information that does not help you, he is only doing his duty.



Ray Arrowsmith FRICS,
Professional Partner,
regularly acts as an
expert witness in
valuation and rent
disputes. He may be
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WORLD WIDE BUSINESS BENEFITS

The Bowyer Bryce web site was launched in July and includes all of the articles and features published in this and previous editions of *Business Benefits*.

In addition the site includes details of all services and contacts and will shortly include Bowyer Bryce OnLine, a complete listing of all commercial and industrial property, including investments, available through Bowyer Bryce.

The address of the site is
www.bowyerbryce.co.uk

MILLENNIUM BUG

According to research undertaken by Action 2000 many smaller companies have still not recognised how much of a risk the Millennium Bug is to their business.

Action 2000 has been set up by the Government to help all businesses. They have produced a free guide which helps to identify potential areas of risk and how to fix them.

Time is running short and any businesses who have not addressed the problem should contact Action 2000 now. Their action line number is 0845 601 2000 or their web site is www.bug2000.co.uk

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The content of this newsletter is intended to be of general interest and readers are advised not to rely upon it without seeking professional advice relating to their particular circumstances.