

Toeing the party (wall) line

Andrew Bussey discusses a case study that shows how building defects may not be due to subsidence but caused by work on neighbouring land

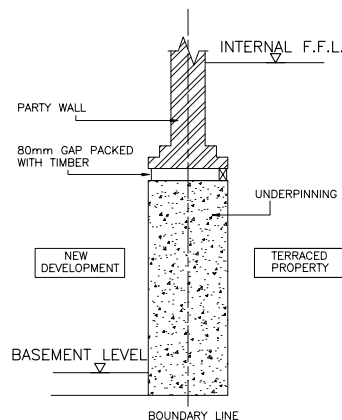
In previous *Building Surveying Journals*, we have considered good practice to follow when administering subsidence claims on domestic properties. Over the years, it has emerged that, after investigating problems at properties, many defects don't actually relate to subsidence but instead to resettlement of the property's foundations due to excavation activity on neighbouring land. Since 1997, The Party Wall, etc. Act has been in force throughout England and Wales, and Section 6 of the Act was designed to avoid these types of problems.

The principle behind the Act is to ensure that, in advance of the works, building owners notify their neighbours of their intentions and that their neighbours have the right (in the majority of circumstances) for an award to be prepared that considers the risk to their property and provides them protection in the immediate and longer term.

Lack of awareness

So why is this situation still happening? The answer is simple: many building owners and their professional advisors, surveyors and architects are still not aware of the relevance of the Act and the procedures that need to be followed. This is an area where building surveyors, with their sound knowledge of the subject, can provide assistance and prevent problems from occurring. To illustrate the pitfalls of not obeying the Act, we will look at an anonymous subsidence case that discovered significant breaches of the Act.

The subject property is a typical end terrace Victorian property in North London. The owner had reported significant



The underpinning and basement work that needed consideration under the Act

cracking throughout the building and particularly in the stairwell, which had suggested the exposed gable end wall had dropped down. The owner had also mentioned vegetation in close proximity and, without the benefit of a visit to site, an obvious possible cause of movement would be clay shrinkage subsidence that is typical for the north London area.

However, upon arriving at the site, there was a new building being constructed along the right-hand gable wall of the property, which included a 2m deep basement set immediately adjacent to the property's gable end wall. Upon further inspection, we confirmed that all the cracks in the building were recent and the owner explained that these had occurred shortly after construction works on the neighbouring site had started.

Over the following weeks, we completed internal trial holes to the affected property and discovered the original foundations were in the region of 700mm deep and the gable wall had in fact been underpinned by the adjoining developers down to the 2m basement depth. Furthermore, we discovered that

between the top of the underpinning concrete and underside of the original brickwork foundations, there was an approximate 80mm gap which should have been dry packed but instead had been infilled with scrap timber wedges. This was the obvious cause of the movement, with the gable end wall of the affected property gradually dropping down as the timber consolidated under the significant load of the wall above.

We made enquiries with the local authority to establish what had previously existed on the adjoining site and found there had been a low-rise building. This meant the lower section of the gable end wall was originally a 'party wall' as defined in the Act, i.e. it was a wall separating buildings belonging to different owners.

If only...

If the adjoining developers and their advisors had a good knowledge of the Act, the above problems could have been easily avoided.

To their credit, the developers did serve excavation notices under Section 6 of the Act indicating their intentions to create the basement, but the adjoining owner in the terrace property did not respond to the notice within 14 days as they were out of the country on business. This should have led to an automatic 'dispute' situation and the building owner/developer should have then engaged their own surveyor to issue a letter under Section 10 of the Act requesting that the adjoining owner either appoint their own surveyor or alternatively accept the agreed surveyor option.

Beyond this, the party wall surveyor(s) would have

specifically looked at the nature of works intended and prepared an award for both owners to obey. An integral part of this would have been the method of creating the basement to ensure the integrity of the adjoining property was not affected during the construction works and also in the longer term. The surveyor(s) would then, during the course of discharging the award, have overseen relevant works on site and the shambolic situation of the terraced property's gable end wall floating on timber packers would never have come about.

Furthermore, the involvement of party wall surveyor(s) would have also highlighted that additional notices were necessary under the Act, as the wall being underpinned is a party wall in its own right.

The legal bits

Our investigations demonstrated significant movement to the property due to clear breaches of the Act. Excavation works and works to a party wall had been undertaken without consent being obtained or an award signed and served. Party wall notices should have been served referring to section 2(2) a, f & n and section 6(1), and an award prepared to this effect. Works have been carried out under these sections without consent or an award being served and a clear breach therefore exists.

To repair the defects to the Victorian property, further investigation works are necessary into the integrity of the underpinning undertaken and, obviously, a sound connection needs to be created between this and the original foundations. When the stability of the gable wall has been addressed,



Timber packers in between original footing and concrete underpinning

cosmetic repair works throughout the building can be considered, including movement joints between the underpinned and non-underpinned parts. This whole process is likely to prove an expensive operation as all works need to be undertaken from the building's interior. Costs in excess of £50,000 are expected plus professional and legal expenses.

A recovery action is now being sought against the developers and this is likely to result in them funding not only the cost of the remedial works but all associated professional fees and other losses such as alternative accommodation. This all stems from the building owner's clear failure to respect the procedures laid down in the Act. The recovery is against the owner of the development site and, of course, it may be the case that he can seek redress against his professional advisors for their failure to make him aware of party wall procedures.

No news is good news

In their ignorance, the adjoining developers were under the impression that a lack of reply to a party wall notice inferred

consent; whereas under the Act, it actually means dissent and ultimately leads to a party wall award being prepared.

The key lesson for any building owner wishing to undertake work subject to the Act is to ensure that their agent serving notices does so in the correct fashion covering all the correct sections of the Act, namely: line of junction, party structure, excavation and the associated consents. Obviously, if no response is forthcoming, and frustrating as it may seem, procedures under the Act do still need to be obeyed and building owners must accept the inevitable delays and costs that this creates.

It goes without saying that, even if party wall procedures are followed in full, there are some occasions where movement to an adjoining owner's property still does occur and the building owner is still responsible for making good. However, in these situations, the courts will acknowledge the efforts of the building owner to comply with the Act and it is usual for damages to be restricted purely to the remedial building works and not any other associated costs.

References

Educated guesswork, page 14, *Building Surveying Journal*, October 06

Digging deep, page 22, *Building Surveying Journal*, January 07

Stopping the slide, page 22, *Building Surveying Journal*, March 07

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