

Resolving disputes under the Party Wall Act



What is the Party Wall Act 1996?

The Party Wall etc. Act 1996 (the act) provides a framework for preventing or resolving disputes in circumstances where development work is taking place to, or near, to party walls and certain other boundary structures (qualifying work). The act sets down a procedure that needs to be followed before commencement of any qualifying work (the pre work procedure) and, importantly, contains a swift and cost effective procedure for the resolution of disputes arising out of both the pre work procedure and the carrying out of the qualifying work itself.

The case of *Power & Kyson v Shah*

The question that came before the Court of Appeal in [*\(1\) Power and \(2\) Kyson v Shah*](#) was whether the dispute resolution provisions applied to qualifying work where the pre work procedure was ignored.

The facts of the case are straightforward. Mr. Shah carried out work to his property which included qualifying work. He did not follow the pre work procedure. His neighbour alleged that the work carried out caused damage to their property. Rather than commence proceedings in the County Court for property damage, Mr. Shah's neighbours sought to engage the dispute resolution provisions in the act. They appointed a party wall surveyor (Mr. Kysen) for that purpose. Mr. Shah refused to engage in the process and, as the act allows, a surveyor was appointed in his name (Mr. Power).

Between them, Mr. Kysen and Mr. Power issued an award under the Act which required Mr. Shah to pay compensation and to meet the surveyors' costs. Mr. Shah did not pay and, when faced with the prospect of



proceedings to enforce the award, issued his own claim for a declaration that the award was a nullity. Mr. Shah succeeded in the County Court and an appeal by the surveyors to the High Court failed. On each occasion it was determined that if Mr. Shah, as the person carrying out the qualifying work, did not engage the pre work procedure then the act (including the dispute resolution procedure) could not be engaged.

Somewhat unusually, permission for a second appeal to the Court of Appeal was allowed. This was in part down to submissions on behalf of the surveyors that there were conflicting High Court authorities on this question that needed to be reconciled. The Court of Appeal assessed the previous cases and the inconsistency relied upon by the surveyors. The Court of Appeal concluded that the principal case relied upon by the surveyors as authority for the proposition that the dispute resolution process could be engaged even if the pre work procedure was not triggered did not in fact go as far as they contended and could not be said to be authority for the proposition that the dispute resolution procedure under the act could be engaged when the pre work procedure was not followed. If it did then the Court of Appeal determined that was not correct and the case in that respect should not be followed.

It might be thought that the question at issue in (1) *Power* and (2) *Kyson v Shah* was not an issue at all. However if there was doubt prior to the Court of Appeal's decision then the question appears settled and we now have conclusive confirmation that the dispute resolution procedure under the act can only be engaged if the pre work procedure was triggered by the party undertaking the qualifying work. That does not leave affected owners of neighbouring properties without a remedy: in such cases the affected owner, as the Court of Appeal observed, retains the right to commence court proceedings for an injunction and/or damages.

How we can help

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