
Health Real Estate Tip of the Week: Who controls the Party?

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Given the extensive nature of the NHS estate you may from time to time be asked to enter into party wall agreements to enable neighbours to carry out works at or near the boundary between properties. S.10 of the Party Wall etc. Act 1996 ("the PWA") provides a practical, surveyor-based procedure for resolving any conflicts that may arise. Until recently this has been treated as a self-contained dispute resolution process outside the jurisdiction of the Courts, however the recent case of *Lea Valley Developments Ltd v Thomas William Derbyshire* (2017) may call this into question.

In the case the Claimant (a housebuilder) entered into a contract to build 12 houses adjacent to the Defendant's property. Party wall notices were served and the parties appointed surveyors. During the course of the works severe damage was caused to the Defendant's property and under the PWA, the Claimant was required to compensate the Defendant. A dispute then arose as to the correct measure of compensation:

- Diminution in value (estimated by the Claimant's surveyor to be between £488k and £1m); or
- The costs of demolition and reconstruction (estimated by the Defendant's surveyor to be £1.95m).

The Claimant sought a declaration from the Court that the correct measure should be the (lower) diminishment in value to the property, that it was a matter for the surveyors appointed under the PWA, and that the code in the PWA overrode any jurisdiction of the Court.

The Court held that for its inherent jurisdiction to be ousted there had to be clear wording to that effect (as in e.g. the Arbitration Act 1996) - which is not present in the PWA. It was also found to be significant that the PWA includes wide powers of appeal to the Courts, which would have been absent if Parliament had not contemplated some level of judicial involvement.

The message? Get involved early and head off any potential dispute at the pass, as litigants may now look to use this decision tactically as authority to seek the Courts' input in future PWA disputes, increasing costs for the loser.