Serving notice

In his second article on developments in party wall issues, Andrew Smith looks at retrospective awards and works carried out by consent

It had long been assumed by surveyors that the case of Louis v Sadiq [1996] EWCA Civ 935 is the authority for the proposition that there is no jurisdiction for them to make retrospective awards, i.e. to make an award in respect of works carried out before notice was served or before the award was made. This has always been an erroneous assumption as borne out in another case: Rodrigues v Sokal [2008] EWHC 2005 (TCC).

“If the building owner subsequently obtains authority for the building works which were started without authority, that authority abates the common law rights from the time of the subsequent consent or when the Party Wall etc. Act procedure was successfully invoked.”

Works carried out by consent

It had also long been believed by some surveyors that if consent for the works is given under section 3(3) of the Party Wall etc. Act 1996, then it is not possible to appoint surveyors to deal with any issues that might subsequently arise. This is another misconception which was also dealt with in Onigbanjo v Pearson [2008] (unreported)* where the judge expressed the view that the ability to appoint a surveyor is not limited to the situation where there is dissent from a notice. There are a number of other sections which provide specifically that matters may be resolved under section 10 without making any reference to service of a notice. They are:

1. section 7 and especially 7(5)
2. section 11(2) and (8)
3. section 12(1) security for expenses.

All of these sections refer to section 10 without making any reference to service of a notice. The inference is that a notice does not need to be served in order to engage the provisions of section 10.

The received view now seems to be that surveyors can be appointed even if no notice has been served and certainly that the consent to the works in a notice is no bar to the subsequent appointment of a surveyor should a dispute later arise.

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* For Andrew Smith’s first article on party walls, see No blank cheques, page 27, Building Surveying Journal, Oct/Nov 09

Related competencies include: M006, T016, T017, T051