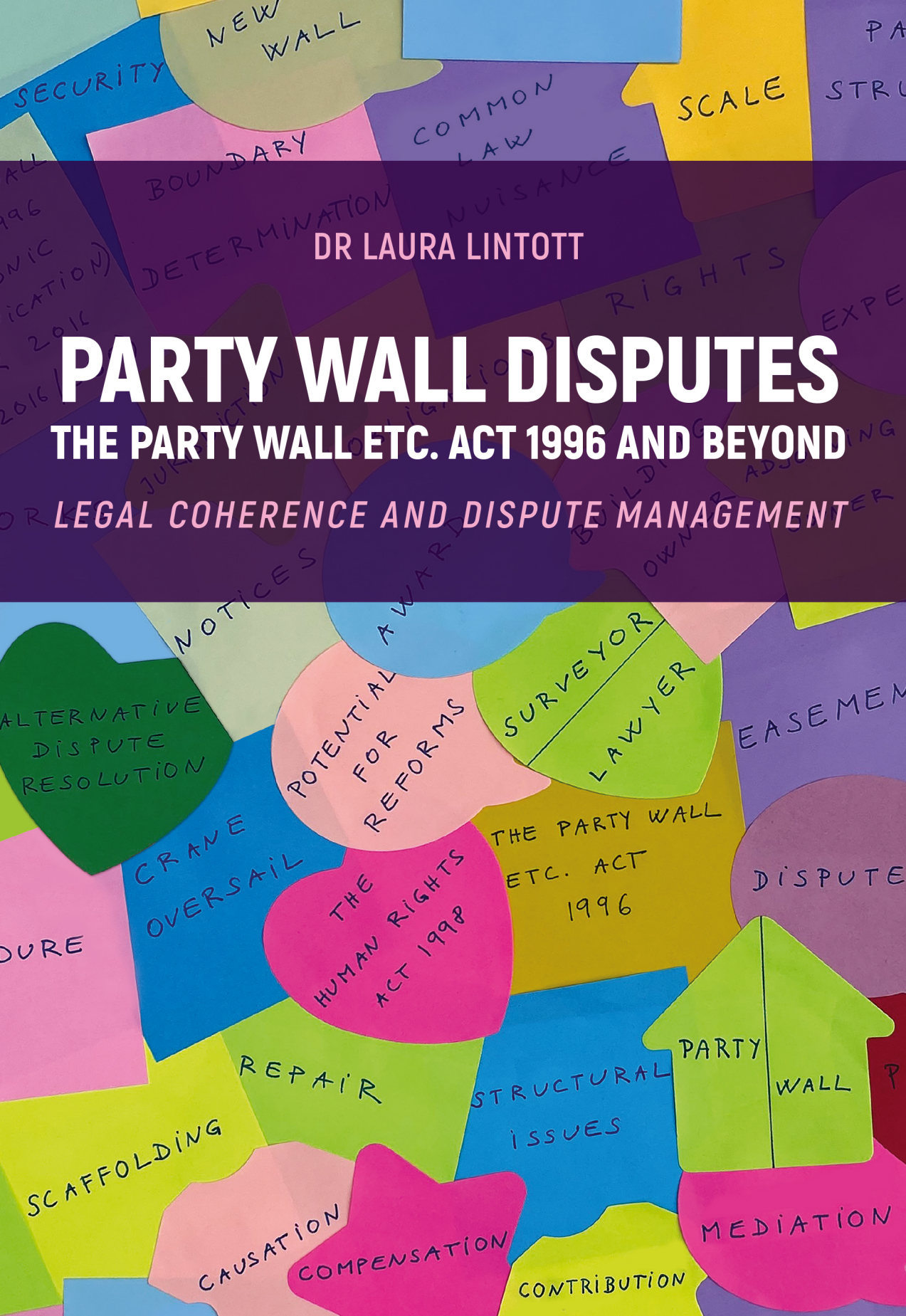


DR LAURA LINTOTT

PARTY WALL DISPUTES

THE PARTY WALL ETC. ACT 1996 AND BEYOND

LEGAL COHERENCE AND DISPUTE MANAGEMENT



Party Wall Disputes: The Party Wall etc. Act 1996 and Beyond

Party Wall Disputes: The Party Wall etc. Act 1996 and Beyond

Legal Coherence and Dispute Management

Dr Laura Lintott, LLM PLP (BPP), MA (Oxon), PhD (Cantab), FCI Arb

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Dedication

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About the Author

Dr Laura Lintott, LLM PLP (BPP), MA (Oxon), PhD (Cantab), FCIArb is a Solicitor Advocate and International Arbitrator in London. She has extensive experience leading on complex international and domestic construction disputes. Laura is a Fellow of the Chartered Institute of Arbitrators and Visiting Fellow at King's College London where she joined the Centre of Construction Law & Dispute Resolution's Taskforce, which responded to the Law Commission's two consultations regarding Arbitration Act 1996 reforms reflected in the Arbitration Bill noted in the King's Speech in 2024. The Arbitration Act 2025 then received Royal Assent on 24 February 2025. Laura contributed a chapter to the book *The History of the Technology and Construction Court on its 150th Anniversary*, edited by Sir Peter Coulson and Dr David Sawtell. She is a frequent panellist/(podcast) speaker and publishes regularly in numerous journals and periodicals.

Foreword

Party wall practice and procedure occupies a complex niche in the spectrum of professional practice. Born of necessity after the Great Fire of London in 1666, it had become a tool of regulatory control by 1939 as part of the London Building Act. Part regulation to ensure best practice, part an ordering of ownership rights in areas of common interest and use, it incorporates notions of construction technology, an understanding of boundaries and their importance and resolution of disputes under a statutory umbrella.

And it was the transition from the local London Acts to a nationally applicable statutory process in which it was my great privilege to have a hand in. Translation from local metropolitan to national application was not entirely straightforward, not least because the conventions, assumptions and circumstances moved from a well-understood and to some extent standardised Inner London environment, to a far wider geographical area in which all manner of different situations might arise. Notable lacunae were a better definition of 'surveyor' and the loss of a sanction for failing to serve a notice before embarking on notifiable works, issues that remain for a future reform.

Coming to the matter as I do with the scars of parliamentary debate and procedure that accompanied my efforts to take the then Party Wall Etc Bill through its stages in the House of Lords where it began its passage, I must firstly pay tribute to those expert practitioners on whose shoulders I stood and most particularly those of the late John Anstey FRICS. Among parliamentary colleagues, the Earl of Kinnoull, Lord Dubs, Paul Beresford and Paul Overall deserve particular mention here.

But here and now in what I am certain will become a seminal treatise on the subject of party wall legislation and procedure it gives me great pleasure to preface the remarks of a legal expert in this area. Some 28 years after the Party Wall etc. Act 1996 came into force, it is indeed time for a review – a retrospective on what has happened since and forward thinking on where things might go from here.

Although I would never count myself as an expert on party walls, I can say with confidence that Dr Lintott has done the professions both of the law and of surveying in particular, as well as property owners, a great service in providing something of a stocktake, taking us to the heart of what ownership means in legal and practical terms, setting out the inevitable brokerage that professionals need to engage where the tectonic plates of title, use of land, statute and common law, easements, planning and construction codes, rights, liabilities and obligations all meet. In all of this the practicalities of give and take, essential where there are common (and potentially conflicting) interests with shared usage of physical

features and defined proximity to neighbours, are not lost. In our increasingly densely developed built environments this continues to underpin one of the slickest and securest of property markets in the world. In terms of global competition and attraction this matters hugely to our national wealth and to the rules-based system. Dr Lintott's book is a very useful consolidation of matters of law, fact and dispute resolution options relevant to party wall disputes.

She is mindful of the reality that party wall practice is ultimately driven by mutual proprietary and essentially practical considerations, by function of walls and other party structures, and within defined proximity, the effects on neighbours she points out that it relies hugely on the broader knowledge and competence of professionals and their assessment of practical implications of a building owner's proposed works and the logical means of resolving any differences that arise. Further she highlights that fomenting differences where they do not need to arise, failure to offer viable workarounds where these exist and standing on principle rather than on best and most cost-efficient practical outcomes are matters every professional should strive to avoid. She also appreciates the fundamentally facilitative nature of party wall procedures and practice and the importance of the informal tribunal created under the dispute resolution procedures of s.10.

Of course, there are many areas where party wall services could be improved: the definition of 'Surveyor' for instance; better and more specific training and possibly accreditation of practitioners and, as Dr Lintott suggests, express dispute avoidance provisions, and for lawyers, a more focussed and dedicated area of legal practice drawing together the many threads she identifies.

From my observation, it is fair to say that from the earliest days of its parliamentary process, there have been attacks on the fundamental premise, philosophy and process as represented by the Party Wall etc. Act 1996 and arguably of all its antecedent processes and precedents under the London Building Acts; some legal views held the Party Wall etc. Act 1996 to be offensive to the concept of title, that matters touching and concerning this core tenet of property ownership might be left to 'mere' surveyors – and these without any requirement for relevant knowledge and training at that! It was observed that appointed surveyors do not have any regulated functions in this respect though of course prior to 1997 scores of practitioners had decades of highly successful party wall practice behind them. On the other side were loft conversion and other specialist construction concerns which objected to the very idea that property owners might not have absolute and unfettered rights to do what they liked within the confines of their own property.

It may be that this consideration led to HS2 legislation dis-applying significant parts of the Party Wall etc. Act 1996 but seemingly the intention to reduce bureaucracy in public infrastructure schemes was also attended by a fundamental misunderstanding of what party wall procedure actually entailed.

Dr. Lintott ends by suggesting that a more focussed and integrated approach to the various interactions is now necessary; as one of those one time general practice surveyors who definitely learned much about party walls 'on the hoof' but having had a broad spectrum of property practice and experience, I can attest to the risks that a too narrow focus in professional expertise is indeed the potential enemy of something as interactive as party wall practice.

John Anstey was a wonderful raconteur of odd-ball situations he had encountered in professional practice, including the occasion when during foundation work, the neighbour's basement kitchen was inadvertently filled with fast setting concrete slurry! Fortunately, the surveying profession has risen to the challenge with some outstanding professionals in the field, many of whom recognise that accreditation is the way forward to secure public confidence, consistency of service and effective delivery.

In all this, practitioners would be wise to study carefully this timely reminder of just how many allied moving parts may be involved on the fringes of party wall practice which the Pyramus and Thisbe Learned Society and the Faculty of Party Wall Surveyors have been at pains to promote and reinforce. But ultimately it remains the case that the procedures under the Party Wall etc. Act 1996 are very narrowly defined so knowledge of scope and limitations and of the other areas the unwary practitioner might inadvertently stray into should at very least provide a timely route map to navigating the minefield.

January 2024

The Earl of Lytton

Preface

Throughout my career, I have worked as a construction disputes solicitor in private practice, which encompasses a rich mix of international arbitration, domestic litigation, mediation, expert determination and importantly advisory work to achieve dispute prevention, mitigation or settlement. In parallel, I wrote my PhD Thesis at the University of Cambridge (where I also took on teaching responsibilities), which formed the basis of this book. Additionally, I became a Visiting Lecturer and subsequently a Visiting Fellow at King's College London, where I am active at the time of writing this book. I teach on the MSc Construction Law and Dispute Resolution course, while working as a Solicitor Advocate and International Arbitrator in London. I also joined the Centre of Construction Law & Dispute Resolution's Taskforce, which responded to the Law Commission's two consultations regarding Arbitration Act 1996 reforms reflected in the Arbitration Bill noted in the King's Speech in 2024. The Arbitration Act 2025 then received Royal Assent on 24 February 2025. In 2024, I became a Fellow of the Chartered Institute of Arbitrators.

Over the years, both in my professional and private life, I have witnessed clients and friends experiencing adversity linked to party walls, with potential or actual related disputes arising out of these. Helping to mitigate such disputes has been a very rewarding experience and the aim of this book is to share with others the results of my PhD research and experience in this area.

Party wall disputes can escalate quickly. Once such a dispute starts, it is rare for the parties thereafter to be able to live harmoniously next to each other, especially after a court decision is served. This book therefore sets out a range of legal and factual issues, including and going beyond the Party Wall etc. Act 1996 (**PWA 1996**), to consider before and during a party wall dispute, including dispute resolution avenues that are available to the parties. These include the notice mechanism under the PWA 1996. They also include alternative dispute resolution methods in situations where: (i) the building owner fails to serve an appropriate party wall notice before starting the relevant works, as the PWA 1996 will not apply and the parties will need to go to court if a dispute arises; (ii) the building owner does serve the relevant notice under the PWA 1996, but the party wall award is appealed, and the parties end up in court as a result; or (iii) the building owner and adjoining owner enter into a contract choosing an alternative dispute resolution method to use should a dispute arise – if a dispute is settled, there is no dispute to apply the notice mechanism to under the PWA 1996 (you will see the relevant case law on this specific point in Chapter IV explaining why/how such an agreement can come about and what its effects are). In such situations,

to save money, time and emotion, parties can avoid going to court or stop court proceedings by agreeing to pursue an alternative dispute resolution avenue such as settlement negotiation discussions between the parties (with or without lawyers), early neutral evaluation, mediation, medi-arb, arbitration, adjudication or expert determination.

As a disputes lawyer, I have seen how negative emotion can lead to the destruction of oneself and of others. On a more positive note, I have also witnessed how the conscious decision to collaborate, empathise with the other side and look beyond the immediate goals and emotions to reach a compromise can salvage seemingly unsolvable situations. Where there is a will, there is a way. It sometimes takes one person to turn things around, be it the legal representative, party wall surveyor or one of the parties or experts. That one person with a calm and positive attitude and openness to new solutions often has the power to motivate others to pause and think how to bring a gloomy dispute to an end, where everyone can feel like they have gained something. Let us all be that person.

Working in private practice alongside my academic and teaching endeavours has taught me to question long-established rules and principles, discuss and collaboratively challenge current practices with the intention of encouraging progress. Most things should be questioned from time to time, to enable practices to develop and improve outcomes.

Collaborative dialogue can speed up progress while instilling joy into people's lives. Prejudice, conscious and unconscious bias, fear of the unknown, personal interest and also fatigue all stand in the way of experiencing progress in a collaborative, exciting and accelerated manner. Everyone has a choice to listen and respectfully respond, support or try something else of their own. Success can grow exponentially through meaningful collaboration. Improvement is a never-ending process and should be encouraged. Attempts at improvement may not always be perfect but without such attempts, there is no progress. The main thing is to keep on trying.

Working on this book has motivated me to collaborate with lawyers, party wall surveyors, academics and friends, to ask questions, reflect on some current set views and procedures and seek new helpful approaches. I have been fortunate to meet enlightened lawyers and party wall surveyors with brilliant insights and open minds. I do not have all the answers; therefore, I would like to encourage readers of this book to continue going with time and keep developing solutions that can help those in difficult situations prevent, mitigate, settle or manage any party wall disputes they find themselves in.

The evolution of the law cannot be stopped. It is fascinating to watch its transformations and rewarding to be part of the process when it takes positive turns. This book recognises the importance and value that both lawyers and party wall surveyors bring to the table and embraces cooperation between the two professions which is in the best interest of the clients who need their help.

This book also emphasises the need to think contextually, to take into consideration areas of law and fact that go well beyond the PWA 1996, in order to be well informed and to choose a path forward that may not have been apparent at first glance. Knowing when to stop escalating a dispute that is disadvantageous from commercial, emotional and time perspectives for either/any of the parties involved is a true skill and is not easy when embroiled in a dispute. This is where third parties can help (lawyers, party wall surveyors, mediators etc.).

This book does not replace the need to consult a lawyer. If you are reading this book as someone who is facing a party wall dispute, I encourage you to seek legal advice in good time, which may prevent having to spend much more substantial sums later down the line.

I do hope you will enjoy reading this book and that it will give you some comfort should you be facing a party wall dispute yourself. I also hope this book will spark more curiosity in this highly relevant area of law. Most importantly, I wish you all the success in preventing or amicably resolving party wall disputes, be it in your private or professional life.

The electronic version of this book will feature colour diagrams.

All the best!

Dr Laura Lintott, LL.M PLP (BPP),
MA (Oxon), PhD (Cantab), FCI Arb

Glossary of Definitions

1939 Act London Building Act 1930 and London Building Acts (Amendment) Act 1939, together

39HP 39 Headfort Place, London SW1X 7DE (*Wellington Properties Limited v The Trustees of the Will of the Second Duke of Westminster, Grosvenor Estate Belgravia*) [2018] EWHC 3048 (Ch)

ADR Alternative dispute resolution

ANLA 1992 Access to Neighbouring Land Act 1992

Approved Document E Guidance issued by the Secretary of State for the purposes of giving practical advice as to the requirements of Schedule 1 to, and Regulation 7 of, the Building Regulations 2010 (SI 2010/2214) for England and Wales (HM Government, ‘Resistance to the passage of sound – Approved Document E’ (2003 edn incorporating 2004, 2010, 2013 and 2015 amendments))

Bill Property Boundaries (Resolution of Disputes) Bill [HL] 2019-20

BRE Building Research Establishment

BRE Guide Building Research Establishment guidelines

Building Regulations Building Regulations 2010 (SI 2010/2214)

Convention European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, Rome, 4 November 1950)

COPA 1974 Control of Pollution Act 1974

CPR Civil Procedure Rules (The White Book Service 2024 (Sweet & Maxwell, 2024))

DCLG The Department for Communities and Local Governments

DCLG’s Explanatory Booklet DCLG’s explanatory booklet (with the latest version from May 2016) on the PWA 1996, <https://www.gov.uk/government/publications/preventing-and-resolving-disputes-in-relation-to-party-walls/the-party-wall-etc-act-1996-explanatory-booklet>

EPA 1990 Environmental Protection Act 1990

First Protocol First Protocol to the Convention

FPMA 1774 Fires Prevention (Metropolis) Act 1774

HHJ His or Her Honour Judge

HRA 1998 Human Rights Act 1998

HS2 Legislation High Speed Rail (London – West Midlands) Act 2017 and High Speed Rail (West Midlands – Crewe) Act 2021

LRR 2003 Land Registration Rules 2003/1417