

PARTY WALL IMPLICATIONS

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SOME THOUGHTS TO CONSIDER

- Sledge hammer to crack a nut

- Sensible legislation to protect building and adjoining owners

- A way of getting your own back when you don't like the approved planning decision

- A mine field if the party division is not straightforward

- A way of making money

- Toothless procedure, if you choose to ignore it.

Adjacent excavation and construction

s.6(1)(a)&(b)

6. – (1) This section applies where-

- a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of three metres measured horizontally from any part of a building or structure of an adjoining owner; and*

- b) any part of the proposed excavation, building or structure will within those three metres extend to a lower level than the level of the bottom of the foundations of the building or structure of the adjoining owner.*

INTERPRETATION

This section places obligations on a building owner who wishes to excavate within certain distances of another owner's building or structure, regardless of the reasons and even if the excavation is later to be filled in. The bottom of a pile is the bottom of the foundation, for either building. However, although an adjoining building may be supported off piles, there may be adjacent boundary walls or other structures standing on the adjoining owner's land and which have shallower foundations. Where any part of these structures are within 3 or 6 metres of the proposed excavation, notice you will need to be served. For the purposes of this section "adjoining" means within three metres in s.6(1) and within six metres in s.6(2). See subsection (4).

Notice must be given where the excavation or construction come within the limits shown in the diagram opposite. Note that the minimal distance applies either to the actual structure being built or to the excavation for it.

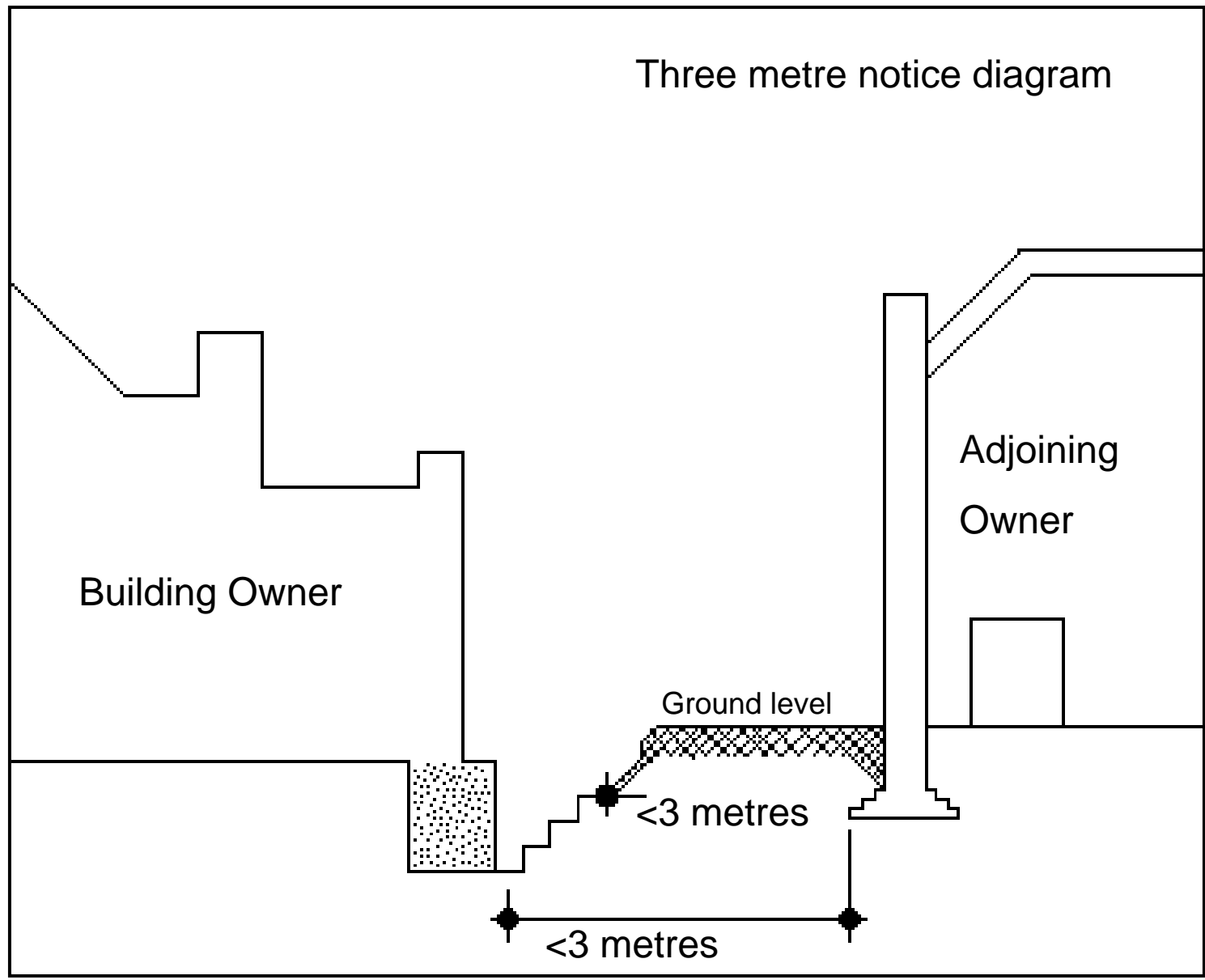
COMMENT

The necessity for serving notice for a small trial hole or a test bore is not universally agreed. If in doubt, it would seem wise to serve a notice.

A "structure" must have a foundation for it to be a relevant structure under the Act. Therefore, this would not include a timber fence or shed unless it had a concrete base forming the foundation for a shed.

Section 6 deals with proposed excavations. Some of today's ground work techniques may not strictly constitute "excavation" but could destabilise an adjoining owner's building or structure and it would be advisable for a building owner to serve notice.

Three metre notice diagram



Building Owner

Adjoining Owner

Ground level

<3 metres

<3 metres

Building Owner's Excavation or Foundations

(2) This section also applies where-

- a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of six metres measured horizontally from any part of a building or structure of an adjoining owner; and*

- b) any part of the proposed excavation, building or structure will within those six metres meet a plane drawn downwards in the direction of the excavation, building or structure of the building owner at an angle of forty-five degrees to the horizontal from the line formed by the intersection of the plane of the level of the bottom of the foundations of the building or structure of the adjoining owner with the plane of the external face of the external wall of the building or structure of the adjoining owner.*

INTERPRETATION

Subsection (2) relates to the same activities as (1), but applies when the building owners actions would cut out through a diagonal plane at 45 degrees from where the face of the wall of the adjoining building, projected downwards, would meet the bottom of its foundations within six metres measured horizontally from nearest part to nearest part. See diagram.

Note that “adjoining” is defined at (4) below to include any owner within the stated distance, so that, as shown in the diagram, there may be two adjoining buildings on the same side. The six metres is measured from the part of the construction or excavation which cuts the 45 degree plane to the nearest part of the adjoining building, whether wall or footing.

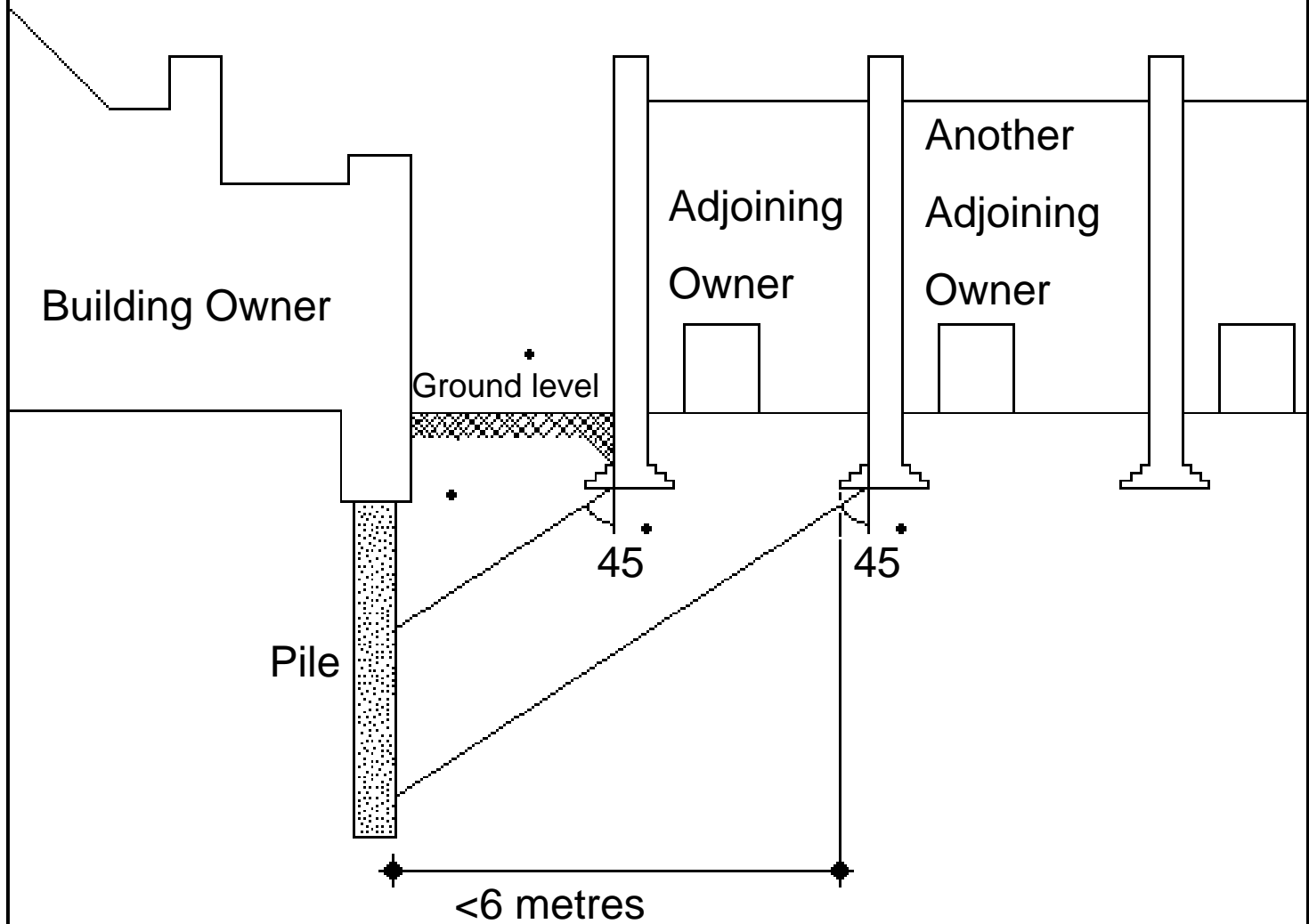
COMMENT

The purpose of this section is to notify an adjoining owner of the intention to excavate within 3 and 6 metres of an adjoining owner’s building or structure. It does not confer a right to gain access an adjoining owner’s land to erect a building as mentioned in s.6(1) and (2).

As to whether a building owner has a right of access onto an adjoining owner’s land under section 8 to excavate his (the building owner’s) land or construct foundations, the Working Party’s view is that work under section 6 is work “in pursuance of this Act” (section 8) and that the building owner is entitled to have access under section 8.

However, the members of the Working Party have different reasons for reaching this view. Three members of the Working Party believe that any works for which notice is served is work “in pursuance of this Act”. Two members of the Working Party believe that work “in pursuance of this Act” is restricted to work requiring the consent of the owners or is the subject of an award.

Six metre notice diagram



- (5)** *If the building owner desires to build on the line of junction a wall placed wholly on his own land shall, at least one month before he intends the building work to start, serve on any adjoining owner a notice which indicates his desire to build and describes the intended wall.*

INTERPRETATION

This subsection is to protect the adjoining owner from unannounced works that could affect the legal demarcation and/or the stability of his land.

COMMENT

There should rarely be any need for a “dispute” about this kind of wall. If any, it will be about where the wall is placed in relation to the boundary.

The Working Party was unable to agree unanimously as to whether a building owner may enter an adjoining owner’s land under s.8 (rights of entry) to build a wall above ground having served notice s.1(5). It hinges on the interpretation of the phrase “work in pursuance of this Act” cited in s.8. There are three views within The Working Party as follows:

View 1: The majority view is that the building owner may enter and remain on adjoining land in order to build such a wall. He may do so upon the expiration of the one month and 14-day notice periods under s.1 and s.8 respectively unless an actual dispute arises, in which case the matter must first be determined by surveyors appointed under s.10.

Reasoning: *Work undertaken as described in a notice served pursuant to s.1(5) is “work in pursuance of the Act”. The building owner may therefore enter the adjoining land, subject to serving notice of entry under s.8 access must not cause the adjoining owner unnecessary inconvenience and the adjoining owner is entitled to compensation for any damage to his property under s.1(7)(a) and for damage and loss as set out in s.7(2).*

View 2: A second view, which differs slightly from the first, is that the building owner may only enter the adjoining land if the adjoining owner consents or if an actual dispute arises. In the event of a dispute the appointed surveyors would determine whether the need for access is connected to, and necessary for, the building of the wall and make their award accordingly. In the absence of consent or an award, such as might happen if an adjoining owner does not respond to the notice, the building owner may not enter the adjoining owner's land.

Reasoning: *The details of the work must be settled either by the owners or in accordance with s.10 before it can be considered to be “work in pursuance of the Act”.*

View 3: A third view is that a building owner does not have a right to enter an adjoining owner's land under s.8 for the purposes of building such a wall.


Reasoning: *“Work in pursuance of this Act” means work in exercise of the authority conferred by the Act. The Act does not confer authority to build a wall wholly on a building owner's land: he is entitled to do this anyway without the sanction of the Act (compare this with s.2 where the Act confers rights to raise a party wall, which would otherwise be a trespass). A wall built under s.1(5) is therefore not “work in pursuance of the Act” and s.8 (rights of entry) does not apply. The Act simply requires the building owner to notify the adjoining owner before building at the line of junction so that the adjoining owner is given an opportunity to dispute the position of the intended wall and for the dispute to be determined by surveyors in accordance with s.10.*

Reasoning 3 *If an adjoining owner does not respond to a s.1(5) notice the building owner can proceed to build the wall after the expiration of the one-month period but he may not enter any adjoining land without the express consent of the owner of that land.*

In one case concerning an appeal to a third surveyor's award a county court judgment held that a building owner did not have a right of entry onto an adjoining owner's land under s.8 for building a wall on the line of junction and entirely on his own land. The building owner chose to have no legal representation in the case and the decision was not appealed and is not legal procedure.

Whatever a surveyor's own view may be on whether a right of entry may be claimed, he would be well advised to make his appointing owner aware of the differing views.

The Working Party agreed unanimously that a building owner would be entitled to access onto the adjoining owner's land under s.8 to project foundations onto next door's land as described in s.1(6) or if a party wall of party fence wall is built as set out in s.1(2) and 1(3).




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SENSIBLE LEGISLATION TO
PROTECT BUILDING
AND ADJOINING OWNERS!




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WHEN YOU DON'T
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A MINE FIELD
IF THE PARTY DIVISION
IS NOT
STRAIGHTFORWARD!



A WAY OF
MAKING MONEY!



TOOTHLESS PROCEDURE, IF
YOU CHOOSE TO
IGNORE IT!



**THANK YOU
FOR LISTENING!**