**The Party Wall Act does not provide adequate protection to neighbours against basement developments.**

**Camden Council contends that compensation and reparation will be adequately covered by a Party Wall Agreement between developer and neighbour. As this write up shows, it does not**.

**Pitfalls of the Party Wall Act**

The Party Wall Act (“PWA”) of 1996 was **not** originally intended to protect neighbours against significant damages inflicted upon their house as a result of large scale basements that extend significantly beyond the footprint of a house.

The PWA is an utterly unsatisfactory mechanism and can inflict numerous unfair consequences on neighbours as this note shows.

We know of cases where neighbours had to spend over £100,000 on legal and professional costs in order to fend off aggressive and totally unscrupulous developers. These are non-refundable costs. This is not to mention the incredible and ongoing stress inflicted on neighbours and the loss of earnings due to very significant time that one has to spend defending one’s property. Furthermore a substantial number of totally unscrupulous developers will threaten their neighbours with financial claims in the hundreds of thousands of pounds for delaying their work, should they win.

In most circumstances neighbours will be forced to capitulate if they do not have the financial mean, time and stamina and technical understanding to stand up to such a threat and thereby expose their properties to severe lasting damages.

The following illustrate the sort of unforeseen legal complications and expense one resident living adjacent to an extensive excavation experienced in Downshire Hill, NW3:

* In order to acquire financial guarantee against the likely damage to his property, the neighbour was forced to spend considerable time and money ensuring that the developers paid a proper and commensurate sum into an escrow account as part of a complicated Party Wall Agreement.
* When the developer disagreed with the reasonable sum proposed by the neighbour, the developer demanded the matter to go to arbitration. The arbitration panel ruled in favour of the neighbour.
* Undaunted, the developer then, appealed and subsequently threatened again, to talk the neighbour to county court to settle the escrow. Although unlikely, if the neighbour had lost he would have been liable for delaying the start of the work if developer’s appeal were to overturn the arbitration ruling. After some understandable hesitation, the neighbour opted to stand up to the financial aggressive blackmail, e.g. the developer threatened to sue the neighbour for close to half a million pound for delaying the start of the work; and a deal was done on the escrow amount as per the neighbour’s reasonable request.
* Inevitably, once the excavation started cracks started to appear in the neighbour’s property. The developer refused to accept that these were caused by his building works.
* As the work progressed new Party Wall details had to be incorporated and modified and again, the neighbour had to fend off financial blackmail to accept the developer’s dangerous construction method. The neighbour’s surveyor was regularly monitoring the works – a requirement of the PWA which had been agreed would be done by the developer – until the latter summarily announced that the would no longer pay for him. In order to ensure that the building workd were regularly inspected and carried out safely in line with the conditions of the PWA, the neighbour was forced to guarantee to pay the surveyor himself.
* Despite the conditions and agreements contained in the PWA, it will be possible, as completion of this development approaches, for the developer to argue that the escrow account should be withheld from claim by the developer can unilaterally argue that the escrow account could be withheld although there may still be more work to be finished off. Should an argument ensue, it will be necessary, once again for the neighbour will be forced to pay for further legal advice and representation to state his case.

Even after a Party Wall Agreement, legal battles frequently ensue if a developer disputes – as often they do – the cause of damage to a neighbouring property. Camden’s confidence in a PWA to right all ills is clearly misplaced since compensation, if it comes at all is, is too often a slow process and wholly inappropriate. The standard of repair to any damage, when it is agreed, is often sub-standard and can be the cause of further legal proceedings.

* In another case, in South Hill Park, NW3, where the very severe structural damages inflicted on a neighbouring house means it is currently being held up by giant wooden props, the developer has still not completed remedial work five year on. There are similarly unresolved claims in other parts of the borough.
* Furthermore, once the work is completed very often the special purpose vehicle “SPV”, that the developer used as the undertaking entity is taken of all its financial assets so in case the neighbours want to enforce the remedial work to be done or sue for damages, the SPV being stripped of any financial assets, cannot enforce remedial action since the SPV does not have the mean to do so!

Dr Michael de Freitas, Emeritus Professor of Engineering Geology at Imperial College, London has stated as an indisputable fact that *“subsidence can occur as long as eleven years after the completion of excavation works”.* There is convincing evidence of this in Hampstead, West Hampstead and, in particular, South Hampstead, where virtually every property adjacent to, or neighbouring, a basement excavation has experienced destabilisation of some kind and/or garden and cellar flooding. Party Wall Agreements afford no protection in such cases. It is hardly surprising that all major insurance companies now demand to know of excavations within an average radius of 400 metres from the property to be insured and that innocent neighbours, as well as basement developers’ insurance policies are invalidated the moment building works start. Every resident, developer or neighbour, is required to inform their household insurance company of proposed basement works.

Camden’s current reliance on the Party Wall Act to resolve protection concerns and safeguard homeowners against damage is totally ineffective in the case of neighbours living three or four houses along a terrace from proposed works. Since they are not legally entitled to be included in any party wall agreement, the law, and by default Camden Council, affords them no protection whatsoever. Yet their homes are just as likely to suffer damage triggered by basement excavations as those living immediately adjacent.

**Conclusion**

At the end of the day, although the neighbours have to pay as much as over one hundred thousand pounds to defend themselves, suffer immense stress and inconvenience for a prolonged period of time, their house can still be damaged and not fully repaired by a long margin, to its original state. Neighbours further along are given no financial protection whatsoever.

We believe it is time to change current Policies and guidelines so as to more fairly balance the planning process in favour of residents who are opposed to basement developments and to ensure altogether better protection of neighbouring houses than is currently the case.