We are not amused

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Vivien King comments on a costly party wall award that could have been avoided

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Building works and developments ? whether commercial or residential ? on or near a boundary between properties in differing ownerships lead to numerous arguments and disputes.

The Party Wall etc Act, 1996 (the act) contains a much-respected dispute resolution framework administered by impartial surveyors. It sets out statutory procedures, rules and regulations for giving notice of proposed works and a procedure for both the building owner and the adjoining owner to follow before, during and after works are conducted.

These should be followed with care: surveyors specialising in party wall work should be instructed, and lay clients given a clear explanation of the act, particularly where residential property is involved.

Party structure notices

The Queen on the Application of Farrs Lane Developers Limited v Bristol Magistrates Court (Defendant) and James McAllister (Interested Party) [CO/3431/2015] concerned a developer ? the building owner ? who was converting an abandoned industrial building into flats and who had instructed a surveyor, Mr McAllister, to serve party structure notices on 10 owners of adjoining sites under the act.

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McAllister, in accordance with the act, made 10 awards: 5 as the "agreed surveyor" and 5 acting jointly with the surveyor appointed by the relevant adjoining owner. Each award stated that the developer should pay McAllister's fees of ?1,300 plus VAT for preparing and serving each notice, together with fees for extra work based on an agreed rate of ?90 per hour plus VAT. Fees for the 10 cases totalled ?24,363.72.

Despite agreeing McAllister's hourly rate, the developer felt that the surveyor's fees were excessive. But rather than appealing the awards to a county court as it was entitled to do, it simply failed to pay.

Under the act, McAllister issued 10 complaints in the Bristol Magistrates' Court for non-payment of his awarded fees. The developer defended its decision, saying the

magistrates had no jurisdiction to make the orders McAllister sought as he was neither the building owner nor the adjoining owner under the act, and his fees were not a matter of dispute between those parties.

Judicial review

The magistrates said they had been making orders for unpaid fees for 10 years and granted McAllister a judgment for his fees and costs, but refused to give reasons. Accordingly, the developer issued proceedings for a judicial review of their decision, and the case came before Mr Justice Holgate sitting in the High Court.

There were 3 issues to be decided in court.

1. Were the awards themselves pertaining to the surveyor's costs ultra vires ? beyond the powers ? as they did not relate to a dispute between the building owner and adjoining owners?
2. Even if an award can include an order to pay surveyor's costs, can it direct a party to pay them to the surveyor directly, instead of awarding direct payments between the building owners and adjoining owners?
3. Had the magistrates erred in awarding McAllister his costs based on his 38.5 hours on the case multiplied by his ?90 hourly rate?

Mr Justice Holgate concluded the following.

1. While the act did relate to disputes between the building and adjoining owners, an award may determine "any other matter arising out of or incidental to the dispute", according to section 10(12)(c) of the act. The judge found an award under the act is not restricted to matters about which the building owner and the adjoining owner disagree.
2. He rejected the contention that an award could not direct payment to be made directly to the surveyor.
3. Addressing the magistrates' award for costs, the judge said it was in their discretion to award the surveyor reasonable and just costs.

He did not interfere with their order. However, in relation to the costs of the case heard before him, the judge awarded McAllister costs at the rate for a litigant in person only, that is, ?19 per hour.

It is not so much what he said as what he did not say that has caught this commentator's eye.

According to the judge, the developer had an opportunity under the act to challenge the 10 awards in the county court. The route down which this case had subsequently been drawn ? that is, through the magistrates' court and High Court ? incurred costs that exceeded the challenged fees, and although this did not form any part of the basis of his judgment, he said it should be noted. His disapproval was very clear.

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Further information

Related competencies include:

- Conflict avoidance, management and dispute resolution procedures

- Legal/regulatory compliance

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