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WELSH PUBLIC SECTOR PROPERTY CONFERENCE
27TH NOVEMBER 2018



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- *Party Wall Etc. Act 1996 – Where is Duffy’s Bedroom Now?*
 - *Give Me a Break – Lease Breaks and Suspension Bridges*
 - *Get Off My Land (And Pay For The Privilege) -Japanese Knotweed*
 - *Leave It As You Found IT – We Do Not Want To Knock It Down*

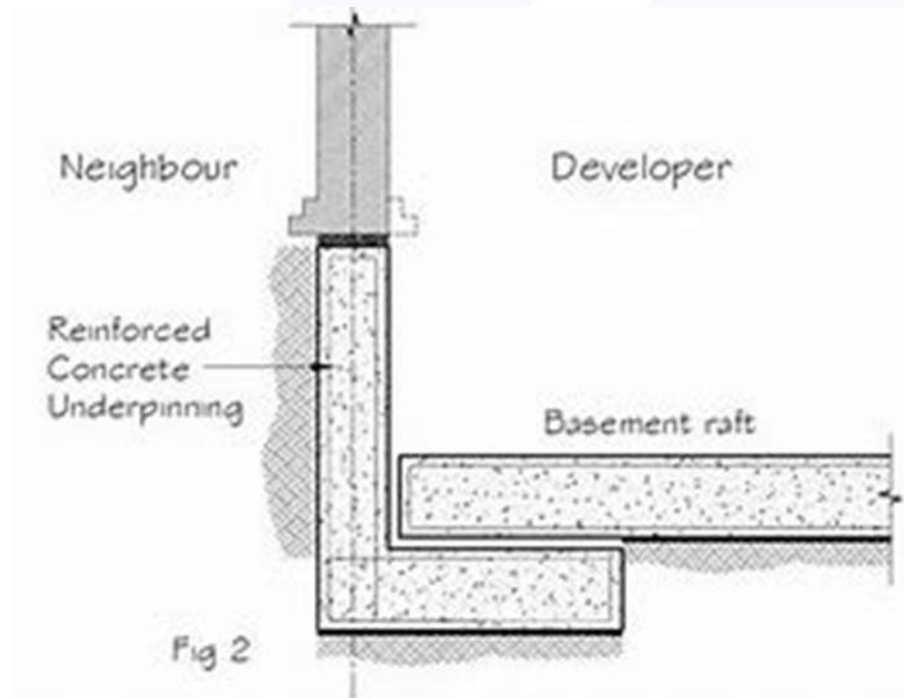
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- *The history of the Act goes back to the great fire of London in 1666*
 - *Prior to 1996 on London by way of the London Building Acts 1939 and Bristol by way of the Bristol Improvement Act 1847 matters relating to Party Walls were covered by common law*
 - *After 1996 a whole new raft of fee earning potential came for Building Surveyors*

When Does the Party Wall Etc. Act Apply?

- *Section 1 – Line of Junction Notice – building up to the boundary where no building already exists*
- *Section 2 – Party Structure Notice – any works to a Party Wall or Party Fence Wall*
- *Section 6 – Adjacent Excavations – within 3 or 6m of your neighbours property*

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- *You may be familiar with the concept of raising a Party Wall, but you can also 'raise it' downwards*
 - *This is now common in London to create new basement accommodation*

How It Is Done – Easy in Theory



NOW YOU SEE IT – NOW YOU DON'T

- *A wealthy doctor in Penarth recently commenced a basement excavation*
- *Due to 'unforeseen circumstances' part of the house disappeared into the basement*

RISKS!

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- *Basement conversions are not without risks!*
 - *Many people have woken up to find part or all of their house (and in many cases the neighbours house) have disappeared in the night*
 - *Duffy's bedroom moved from the second floor to the basement in one swift movement!*

BEDROOM 1



OPEN PLAN



A SORRY TALE – NOT ONLY THE RICH & FAMOUS

- *A couple purchased a ground floor flat*
- *Employed a Contractor to extend into the basement*
- *Entire house collapsed – ground and first floor flats*
- *Builder goes into liquidation*
- *Insurer fails to pay them*
- *Council charges to demolish unsafe building*
- *Attempt to sue S.E fails*
- *Judge laments them for choosing cheapest*
- *First floor owners have to claim off their own insurance*

Don't You Hate It When Your Neighbours Fill Your Skip!



GIVE ME A BREAK - PLEASE



COMPLIANT OR NON-COMPLIANT BREAK CLAUSE

- *A compliant breaks requires the tenant to comply with all or a specified number of lease covenants*
- *Vacant possession, repair, decoration, reinstatement - BEFORE the lease ends*
- *Non –compliant – usually requires vacant possession only and dilapidations can be sorted in the usual manner*

CASE STUDY



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- *Vacant Possession*
 - *Pay all monies owed*
 - *Complete all outstanding repairs, decorations and reinstatements*
 - *Any other covenants contained in the lease*

ISSUING OF RENT INVOICES AFTER THE LEASE ENDS

- *Tenant claims as the landlord stopped issuing rent invoices they had accepted the break clause as being valid, even though the tenant had not complied with any of the lease covenants*
- *If you dispute the validity of the lease, ensure you continue to issue rent invoices*

GET OFF MY LAND



WHO IS RESPONSIBLE?

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- *Japanese Knotweed one of the most persistent 'weeds'*
 - *The roots can destroy concrete*
 - *The roots can travel great distances*
 - *One small section of root remaining can propagate a whole new plant system*
 - *Often found near rivers, sides of roads*

WILLIAMS & WAISTELL V NETWORK RAIL INFRASTRUCTURE LTD



- *Owners of bungalows adjacent to railway complained knotweed had infiltrated their land*
- *They sued in nuisance for the cost of removal AND the diminution in the value of their homes*
- *Initial judgement in their favour*

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- *Network Rail Appealed*
 - *Judge agreed nuisance was not applicable to diminution in value*

BUT

- *Network Rail were liable to pay damages for loss of quiet enjoyment and loss of amenity as well as for the cost of removal*
- *The damages were the same as the original pre appeal award!!*

NEIGHBOUR PROBLEMS



ROOT PENETRATIONS



HELP NEEDED



INSIDE & OUT



HOW FAR CAN THEY GO?



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- *Soil removal and installation of geotextile type membranes – All waste treated as contaminated soil and must be disposed of by a licenced contractor*
 - *Foliar Spray – Herbicide treatment is weather dependant and can only be carried out at certain times in the growing cycle*
 - *Stem Injection – Safe to do in all weather conditions and is environmentally friendly. It will not affect other plants or trees in close proximity i.e. Trees with preservation orders*

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- *Interesting Dilapidations Case*
 - *Tenant has a full repairing lease on buildings and land for 60 years*
 - *Building and land left vacant for at least 15 years*
 - *Buildings now derelict*
 - *Terminal Dilapidations claim prepared*
 - *Landlord wants buildings in repair – not considered a site for redevelopment*

DEMOLITION SITE?



CAN THE TENANT DICTATE THE LANDLORD'S FUTURE USE ?

- *Tenant claims the buildings are in such a state they are only good for demolition – the landlord would not expend the monies on repairs and as the building must be demolished this supersedes all the landlord's claim*
- *But the answer is yes and no*
- *If the landlord wants to he (she) can complete the works required to put the existing albeit dilapidated building into repair and claim the cost*

DEMOLITION SITE?



CAN THE TENANT DICTATE THE LANDLORDS' FUTURE USE

- *If the landlord does not do the works he (she) must prove a loss has occurred*
- *In this case a Section 18 (1) valuation has been prepared identifying the value in good repair as existing against the value of the site for redevelopment*

CAN THE TENANT DICTATE THE LANDLORDS' FUTURE USE

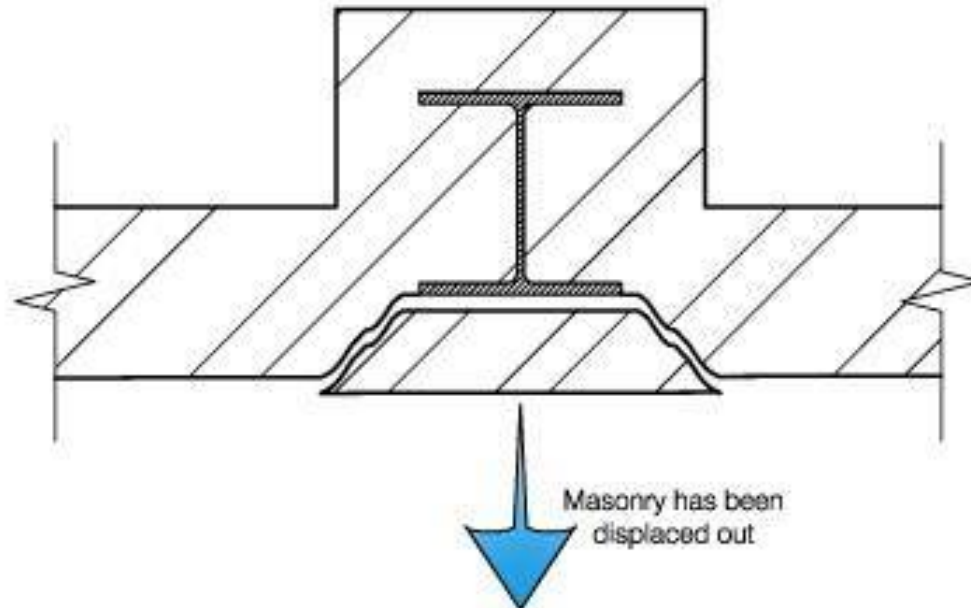
- *Case law looks at what a prudent landlord would do to extract the most profit from a site or buildings in determining the actual loss incurred*
- *The landlord identified the building in repair as suitable for a car repair or storage*
- *The tenant identified the site for redevelopment and more valuable than the existing buildings, even in repair*

REGENT STREET DISEASE (Or St Mary St Disease)

- *What similarities do Regent Street and our St Mary Street have in common?*
- *Excellent retailing experiences?*
- *Fine dining?*
- *Historic buildings constructed in the early 20th century*

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- *Most buildings constructed in the 1920's have a wrought iron or steel frame and fancy stonework detailing*
 - *The stone was fixed directly onto the steel without gaps*
 - *Metal plus water = corrosion = expansion of the metal*

SPALLING STONE



BEFORE AND AFTER

