

Understanding protection works

Where residential or commercial building works are to be carried out which may affect or damage another's property, the Relevant Building Surveyor has an obligation to determine whether "protection works" are required under the *Building Act 1993* and *Building Regulations 2006*. Exceptions apply if before building works are commenced, the RBS is provided with two certificates certifying the structural design complies with the *Act* and *Regulations*.

If protection works are required, the owner carrying out the works must serve Notices (Forms 3 and 4, as set out in the Regulations) on all adjoining owners who will be affected by the works. An "adjoining owner" means the owner of an adjoining property, including land such as any street, highway, lane, footway, square, alley and right of way at risk of damage.

The Form 3 must state the prescribed details of the proposed building and protection works including date, nature, location, time, and duration of the protection works and should include all plans, drawings and specifications of the proposed work. If the Notice is defective, incomplete or not served correctly, the notice may be invalid and of no effect. Strict compliance with the *Act* is required.

Once a Form 3 is provided, an adjoining owner must, within 14 days, serve a notice in reply (Form 4). The adjoining owner may agree; disagree; or request more information in relation to the protection works. If an adjoining owner fails to serve a Form 4, they are deemed to have agreed to the protection works. If

the adjoining owner disagrees or requests more information, the RBS must make a further determination as to the appropriateness of the protection works.

Once these works are agreed or determined they must be implemented. The owner is granted automatic access to an adjoining owner's land to perform them. This does not however grant the owner access to perform "building works" which is distinct from protection works. The owner and adjoining owner must also undertake a survey of the adjoining property, recording in writing or by photos/video any existing cracks or defects.

The owner must also take out insurance against damage to the property and members of the public for an amount agreed with the adjoining owner. The insurance must be in place before the protection works are performed and for a period 12 months after the work is completed. The owner must also pay all of the adjoining owner's costs and expenses in assessing and supervising the protection works together with compensation for any loss, inconvenience or damage they may suffer.

If the owner or adjoining owner dispute an RBS determination or are otherwise unable to agree, either may appeal to the Building Appeals Board for a review and decision.

This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.



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