IN THE COUNTY COURT
AT CENTRAL LONDON

Claim No. B02EC345

Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 4th February 2016

Before:

HIS HONOUR JUDGE LUBA QC

Between:

CARL SCHMID

Appellant

-v-

LINDA HULLS

First Respondent

-and-

NICHOLAS ATHANASOU

Second Respondent

Counsel for the Appellant: MR STEPHEN MURCH

Counsel for the Respondents: MR RICHARD POWER

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

HIS HONOUR JUDGE LUBA QC:

INTRODUCTION

1. This is my judgment in relation to an appeal arising from an award made under the Party Wall etc Act 1996. It is with some hesitation that I have decided to give an extempore judgment at the conclusion of this closely contested appeal in which I have been referred to a large number of statutory provisions and a significant number of authorities. Nevertheless, I consider that it is appropriate to indicate to the parties at the earliest opportunity the conclusions I have reached and the reasons for them. This judgment will not be as felicitously expressed as it might have been had I taken the opportunity to reserve judgment and to consider in much more detail the various materials placed before me.

THE FACTS

2. It is necessary, initially, to say something as to the factual background even though the points that arose in this appeal are almost exclusively points of law.

3. The relevant history is concerned with two adjoining properties, numbers 37 and 39 Shore Road in Hackney, East London. The owner of number 37 Shore Road is Mr Carl Schmid. He proposed in 2014 to undertake certain works to the rear of his property. As one might expect, he submitted a planning application to the local authority, Hackney London Borough Council, indicating his intentions. Those intentions included the construction, at the rear of his property, of an additional structure comprising side walls, a roof and a solid floor. The proposal was to construct this additional unit by, to a certain extent, excavating below ground level. The work was to include building works right up to the boundary of number 39 Shore Road.

4. Mr Schmid caused a letter to be sent to his neighbours at number 39 on 30th July 2014 in the following terms:

> "Dear Mrs Linda Hulls *[she being one of the neighbours]*,
>
> The Party Wall etc Act 1996, Notice of Proposed Works under section 6 of the Act, Excavation and Construction.
>
> As the owner of 37 Shore Road, E9 7TA, which is adjacent to your premises at 39 Shore Road, E9 7TA, I, Carl Schmid of 37 Shore Road notify you that in accordance with our rights under section 6(1) of the Party Wall etc Act 1996 that I intend to build within three metres of your building and to a lower level than the bottom of your foundations by carrying out the building works detailed below.
>
> The proposed works are: Excavation of ground to form new foundation. The accompanying plans and sections show the site of the proposed building and the excavation depth proposed.

> I intend to start works on 1st September 2014. If you are content for the works to go ahead as proposed please complete, sign and return the attached letter within 14 days of receiving this letter."

5. That letter enclosed a pro forma document on which it was intended that the neighbours might express their consent to the works if they wished to do so. A further piece of paper, enclosed with the letter, was a diagrammatical representation by way of architectural drawing of what it was proposed to do at the rear of the property. From the drawing it is plain that the intention was that all construction would be on the property owned by number 37 with no part of it trespassing or infringing on any part of 39.

6. The notice, as its terms make clear, purports to have been given pursuant to section 6 of the Party Wall etc Act 1996.

THE STATUTE

7. Section 6 is headed: "Adjacent excavation and construction." The opening two sub-sections describe when the provisions of section 6 apply. Section 6(1) provides that the 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 three metres extend to a lower level than the level of the bottom of the foundations of the existing building or structure of the adjoining owner."

It would have been plain to any recipient of the notice in this case that both sections 6(1)(a) and 6(1)(b) were in play given the proximity of the works to the adjoining property and given the degree of excavation proposed.

8. Section 6(3) contains, in those cases to which it applies, an important right for the building owner, that is to say, in this case, the owner of number 37. It provides that the building owner may, and if required by the adjoining owner shall, at his own expense underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner so far as may be necessary. The reference to the term "underpin" demonstrates that sub-section 6(3) envisages the entry onto the neighbour's land of the building owner or his workers to carry out works. In other words, section 3 of the Act authorises what would otherwise be as between adjoining owners a trespass on land.

9. However, such a right is accompanied by an obligation. The obligation appears from sub-section 6(5) and it is an obligation to give notice. The section provides:

> "In any case where this section applies the building owner shall, at least one month before beginning to excavate, or excavate for or erect a building or structure, serve on the adjoining owner a notice indicating his

> proposals and stating whether he proposes to underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner."

10. As its words indicate, the notice under section 6(5) serves two important purposes. First, it indicates that works are to be carried out on the building owner's own land which fall within the terms of the section. Secondly, it requires the building owner to indicate whether he is seeking to trigger the right of entry, or the right to do works on or to the adjoining property, pursuant to section 6(3).

11. Sub-section (6) requires that the notice be accompanied by plans and sections enabling the recipient to see the site and depth of the excavation and any proposed erection of building and the structure.

12. Importantly sub-section 6(7) then provides:

> "If an owner on whom a notice referred to in sub-section (5) has been served does not serve a notice indicating his consent to it within the period of fourteen days beginning with the day on which the notice referred to in sub-section (5) was served, he shall be deemed to have dissented from the notice and a dispute shall be deemed to have arisen between the parties."

13. That is an important statutory provision in its own right. What it means is that there is a deemed dispute unless, within 14 days, there is a positive consent. That, as I suggested to counsel in exchanges, covers in particular the position of a person who is properly served with the notice but to whose attention the notice does not come within the statutory period because, for example, they are away from home on holiday, in hospital etc.

14. It is against that background that one sees the reference to section 6 in the letter which Mr Schmid caused to be served on Mrs Hulls on or about 30th July 2014.

EVENTS AFTER THE NOTICE

15. There was within the 14 day period, provided by section 6(7), no indication by notice of consent to the proposal and in those circumstances there would ordinarily have been a deemed dispute. In fact, there was a written communication generated by Mrs Hulls dated 1st September 2014. This was a letter to Hackney London Borough Council's planning service centre, addressed to a council officer. It is headed: "Reference the permitted development application at 37 Shore Road" and Mrs Hulls writes:

> "I can confirm that I was consulted re the above application that was recently submitted to you by Design & Build [Mr Shmid's agents] for a four metre extension at lower ground floor level of the house which is to incorporate a new kitchen and dining room. I can also confirm that I have no objections to the proposed development and am happy for it to go ahead immediately."

16. 'Go ahead' the works seemingly did. I am told that the works started on or about 1st September 2014 as Mr Schmid had proposed in the letter of 30th July. However, without needing to descend into any of the details, it appears that things did not

proceed happily and by the early months of 2015 the adjoining owners, as I shall henceforth call them, had decided that they needed to appoint a surveyor for the purposes of the Party Wall etc Act. So it was that they appointed a Mr Antino to act for them.

17. As the provisions of the Act require, Mr Antino wrote to the building owner, as I shall henceforth refer to Mr Schmid, requesting that he, for his part, appoint a surveyor. The building owner did not accept that the party wall provisions obtained or that Mr Antino had the necessary jurisdiction. However, Mr Antino, taking the view that the Act did operate, and the building owner having failed to nominate a surveyor, appointed Mr McAllister as the second surveyor. They are the two surveyors envisaged for the purpose of the statutory regime of the 1996 Act. Unsurprisingly, given the short history I have recounted, the building owner also disputed the validity of the appointment of Mr McAllister.

18. The provisions of the Act require the appointment of a third surveyor and Mr Antino and Mr McAllister appointed a Mr Goddard as the third surveyor for the purposes of the Act. The two surveyors visited the property of the adjoining owner and her partner on 11th March 2015. The following day, a further surveyor appointed by the building owner raised in writing a concern, or point, as to the validity or otherwise of the notice served on 30th July 2014. The further surveyor raised the question of whether there was properly a dispute over which the surveyors could adjudicate in the absence of a valid section 6 notice. He took the view that the section 6 notice was invalid.

19. The building owner therefore sought a determination from the third surveyor as to whether they did have jurisdiction to determine a dispute. Mr Goddard, the third surveyor, accepted the instruction to determine that dispute and promulgated a determination dated 23rd March 2015. By paragraph 2 of his determination Mr Goddard found that the notice given under section 6 was in fact invalid, thus upholding the building owner's contention. However, for the reasons that he then gave at some length in the remainder of his determination, he found that there was a dispute on which adjudication under the 1996 Act was possible and appropriate, even if the section 6 notice was invalid.

20. The two surveyors, perhaps in an excess of caution, or perhaps as a sensible precaution, also instructed counsel to provide an advice on these questions. Advice was obtained from specialist counsel in the field, a Mr Isaac. By a written opinion given in April 2015 he advised that there was a 'dispute' for the purposes of the Act and accordingly the surveyors had jurisdiction to determine it. The surveyors then jointly undertook the exercise of seeking to determine the dispute which they had been advised by counsel existed and that they had been led to believe it existed by the determination of the third surveyor.

21. Simply as a matter of history, it is right to record that on 11th May 2015 the planning authority, the London Borough of Hackney, told the building owner that it believed that he had carried out works in excess of the planning permission that had been granted. That was because the wall between the two properties exceeded the proposed three metres in height and it was believed that the flat roof which had been constructed on the extended structure was to be used as a roof terrace. It is not for me to determine whether those matters in fact occurred, or are breaches of the planning consent, or whether the suggested unlawful works had taken place. The matter arises between the

planning authority and the building owner and I am told by the building owner's counsel that an application has been made for retrospective planning consent for the work that was carried out.

THE AWARD

22. What I am concerned with is the award that the surveyors promulgated on 11th August 2015. The award is detailed and extensive and it is not right for me, particularly in this short extempore judgment, to seek to summarise it. I have read it in full on more than one occasion. It is an impressive document seeking to grapple with what the surveyors understood to be the issues between the parties and seeking to resolve them.

23. The structure of the award is that, firstly, a chronological background narrative is offered giving much more detail of the history which I have recounted. In part 2 of the award there is then an identification of what the surveyors believed to be the dispute that they were determining. They identify some four matters of dispute. In part 3 they set out their factual findings. In part 4 they set out their determination. At paragraph [37], having satisfied themselves that they had the necessary jurisdiction, they determine that certain notifiable work has been carried out by the building owner without being the subject of notice and such work is deemed to be in breach of the Act and therefore unlawful. They then proceed to make a number of findings pursuant to their task of resolving the dispute. They fix certain amounts by way of compensation and expenses and the like.

THE APPEAL

24. It is from that award that the building owner appeals by right to this court. There are several grounds of appeal. The appeal came on paper before His Honour Judge Saggerson. That judge gave a direction that the appeal was to proceed for consideration of grounds 1 and 2 by way of preliminary issues since those grounds went to jurisdiction. Grounds 3, 4, 5 and 6, which are based on the proposition that the surveyors did have jurisdiction, are stood over until the determination of the jurisdictional grounds.

25. It is right then to turn immediately to those grounds. The first ground of appeal is that the two surveyors lacked jurisdiction under the Act to make an award as no dispute had properly arisen within the meaning of the Act and accordingly the award should be set aside. That ground of appeal has been amplified in the skeleton argument and in the oral submissions of Mr Murch, who appears for the building owner.

26. At the outset of the hearing of this part of the appeal, Mr Power, appearing for the adjoining owner, took a point as to the non-service of the Appellant's Notice on the two surveyors. I dealt with that matter and the consequences of it in an earlier judgment. My conclusion was that there had been a breach of the requirements for service but that the breach should stand waived pursuant to my powers of case management under CPR rule 3.10.

27. Mr Murch developed his first ground of appeal by specific reference to the purported notice given by his client on 30th July 2014. The notice, he submitted, was unanswerably bad. As I have already recounted, the requirement as to the content of the notice is set out in section 6(5). It requires, as I have already explained, two sorts

of information to be conveyed: information as to the proposed excavation works on the building owner's own land and a statement of whether the building owner proposed to underpin or otherwise deal with the foundations of the building or the structure of the building of the adjoining owner. As is plain from the wording of the document itself, the second requirement for a valid section 6(5) notice is not present. The document simply does not state whether the building owner proposes any work in relation to the building or structure of the adjoining owner. To that extent it is *prima facie* bad. So, says Mr Murch, everything that follows is equally bad. The statutory regime of the 1996 Act is intended to be activated by a validly given notice. If, as he submits, the notice given by his client is bad then it follows that all that thereafter happens happens beyond the jurisdiction of the Act and is a nullity.

28. He took me to a range of authorities in broad support of that proposition. Important to his argument was the decision of Brightman J, as he then was, delivered in the Chancery division in the case of *Gyle-Thompson v Wall Street (Properties) Limited [1974] 1 WLR 123*. In that case the non-compliance with the then relevant statute was in relation to the non-service of a particular document. It followed from the fact of non-service that the particular document or notice was invalid. In the course of giving his judgment in that case the learned judge said at p130H:

> "Surveyors are in a quasi-judicial position with statutory powers and responsibilities. It therefore seems to me important that the steps laid down in the Act should be scrupulously followed throughout and shortcuts are not desirable."
>
> "I am not concerned with any question of the extent to which irregularity is capable of being waived or cured by estoppels."

29. That, one might think, would have been all the authority that Mr Murch needed for this part of his case. To put it in my own terms, his contention was that the structure of the Act is to set off a domino series of events and developments in relation to appointments of surveyors and their awards and the consequences. They only follow from an initial first domino, i.e. a notice properly given under the Act. He took me to a range of other authority but I do not think any of that takes me further than his fundamental proposition of law.

30. In his reply for the respondent, Mr Power began to develop an argument that the notice was not invalid at all because the second limb of the requirement of section 6(5) could be satisfied by the absence of any reference to proposed work to the foundations, building and structure of the adjoining owner. Taken with the inclusion of the diagram that was, he submitted tentatively, sufficient compliance with the statutory provision. I cannot accept that submission. It seems to me quite clear, not least by the use of the words "and stating whether", that a section 6(5) notice requires an explicit indication by the building owner of what, if anything, he proposes to do in relation to the adjoining property. In those circumstances, I proceed on the premise that the notice is on its face an invalid notice.

31. It is right to say that, in addition to developing the argument that the notice was valid, Mr Power also tentatively advanced by way of his skeleton argument the proposition that the point on invalidity was not open to Mr Murch within ground one of the grounds of appeal. He sensibly abandoned any such contention whilst on his feet.

32. In any event, Mr Power accepted that the question of the validity or otherwise of the section 6(5) notice had already been subject to a determination, namely, the determination of the third surveyor, Mr Goddard, delivered in March 2015. Mr Power accepted that the decision of the third surveyor was an award on that point for the purposes of the statute and if his clients wished to pursue the proposition that it contained an error of law it had been open to them to appeal the award. In those circumstances he quickly moved away from a positive case that the section 6(5) notice, if I can call it that, was proper and valid.

33. He took, however, a rather different tack. He advanced the proposition that in equity the building owner was debarred from relying on the invalidity of a notice he himself had served and had rendered invalid by his own deficiency. Lawyers would describe the propositions arising from that assertion as invoking the law relating to waiver and estoppel. From the layperson's perspective it is quite clear what happened. The recipients of the notice in due course waived any defect and appointed a surveyor under the Act. For his part the giver of the notice, the building owner, seeks to assert an invalidity which Mr Power contends he is estopped from asserting.

34. 'Waiver' is the term usually used when the question is whether the recipient of a notice is prevented on equitable grounds from disputing its validity. 'Estoppel' tends to be the term used in relation to reliance on a deficiency by the giver of the notice. Mr Power therefore asserts that this is a case of estoppel by convention. The requirements of that estoppel, he accepts, are threefold. Firstly, it must be established that there is a representation made by the person sought to be estopped. Secondly, there must be reliance upon that representation by the other party. Thirdly, the other party must have suffered detriment by virtue of the representation and the reliance upon it. Mr Power submits that this is a case in which the appellant, the building owner, is estopped from relying on his own notice's invalidity.

35. I turn to the first limb, 'representation'. I am quite satisfied that the representation made in this case was a representation by the building owner that the works upon which he was set to embark were works triggering the provisions of the Party Wall etc Act 1996. That is a representation of fact as to his state of mind and it is a representation to the recipient of the notice that this is work within the purview of the statute.

36. I move on to the second requirement, 'reliance'. Mr Power submits that there was express reliance on the notice by the recipients of it. They gave consent expressly to the works in that document, acting in response to it. The fundamental difficulty, it seems to me, of advancing a case on estoppel in an appeal such as this is that ordinarily questions of reliance and detriment are questions involving factual evidence to be given by the recipient of the representation. In this case, however, HHJ Saggerson in giving directions for the appeal to proceed on these preliminary points ordered, at paragraph 5 of his order of 19th October 2015 that: "No factual evidence shall be relied upon at the hearing of this part of the appeal." The learned judge's order, not having been the subject of any review or variation, stands. That excludes either party from advancing factual evidence based on detriment or reliance beyond that appearing from the body of the award itself.

37. One cannot, of course, be party to what must have been in the mind of HHJ Saggerson, but the situation becomes tolerably clear when the award is read. The award contains,

not least in paragraph 6, a finding that the adjoining owner responded to the notice, and I emphasise by underlining, the words "responded to the notice accompanied by an approved drawing, by way of a letter addressed to Hackney Borough Council stating that there were no objections to the building owner's proposed development". Further, there is a finding of fact that the adjoining owner communicated verbal acceptance of the notice to the building owner at the same time.

38. Those are findings of fact made by the adjudicating body. They are not subject to any ground of appeal. In those circumstances I hazard that HHJ Saggerson was satisfied from reading the award, and reading the grounds of the appeal that there was no issue but that the recipients had relied on the notice.

39. Can it be said without factual evidence that they relied on these notices to their 'detriment'? Mr Power says that that can be shown here. They relied on the notice in the sense that, although they did not immediately appoint their party wall surveyor they might well have done to have protected their interests, they did in due course appoint such a surveyor. They were relying on the fact that the provisions of the Act were applicable. That was the very representation that had been made to them. Moreover, Mr Power says, one does not need to go into factual evidence because it is plain from the context and content of the award itself that the building owner himself had accepted that there was a determination required under the Act. That is recorded at paragraph 19 of the award in which it is recounted that on 19th March 2015 the building owner contacted the third surveyor, by telephone and subsequently by email, in accordance with section 10(11) of the Act, requesting a determination as to whether a dispute existed and whether the appointment of the two experts was valid. So, says Mr Power, it does not now lie in the building owner's mouth, as a matter of the application of equitable principles, to say that his own notice is invalid and therefore the provisions of the Act are disapplied.

40. Mr Power relies in support of his submissions on a judgment delivered at this court by Her Honour Judge Hazel Marshall QC on 23rd July 2007 in the case of *Manu v Euroview Estates Limited [2008] 1 EGLR 165*. In that case, the learned judge found that the equitable principles of waiver/estoppel could be in play in this class of case, in particular in relation to a statutory notice under the 1996 Act. The rules of equity operated to prevent the recipient from disputing the validity of the notice. It does seem to me that, on the facts of this particular case, the giver of the notice is just as much debarred by the principles of equity from seeking to undermine the validity of the notice he gave. Indeed, one might describe it as an *a fortiori* case.

41. This is not to say that the important provisions of the Party Wall etc Act 1996 should as a matter of practice be reduced into satellite disputes about the operation of equitable principles. It is right that the statutory provisions of the Act and the requirements of their notices should be complied with. I note that HHJ Hazel Marshall QC made precisely that point in paragraph [118] of her own judgment. It seems to me that I should echo that proposition. But that proposition must even more keenly operate where it is the giver of the notice himself, the giver of a *prima facie* deficient notice, who is then seeking to rely on its own invalidity.

42. It is lastly said by Mr Power on this part of his case that it is important to note that the attempt to resile from the validity of the notice given in July 2014 was not advanced until as late as March 2015, that is to say, after the recipients had themselves relied

upon its validity for the purpose of appointing their own surveyor. In all the circumstances of this case, I am satisfied that the operation of equitable principles deprives the building owner of the ability to rely on the invalidity of his own notice.

43. That would appear to deal with ground one of the grounds of appeal relating to jurisdiction, but in the event that I am wrong as to the operation of equitable principles, it is said by Mr Power that in any event the surveyors making the award in this case had jurisdiction. That is because even if the section 6 notice was invalid, and even if the building owner was entitled to rely on its invalidity, a dispute within the purview of the statute was before those who gave the award.

44. He puts the matter succinctly but broadly. He submits that once the position is that the building owner is undertaking works within the purview of the statute or, as he would have it, works with which the statute engages, then any subsequent dispute between the adjoining property owners in relation to those works, or matters ancillary to those works, are within the jurisdiction of the two surveyors, or surveyors appointed under the jurisdiction of the Act.

45. The decision of the Court of Appeal in the case of *Woodhouse v Consolidated Property Corporation Ltd [1993] 1 EGLR 174*, speaks against Mr Power's proposition. That was a decision of a two judge division comprised of Lord Justice Glidewell sitting with Lord Justice Simon Brown. They were concerned with a different statutory provision, the London Building (Amendments Etc) Act 1939. In a paragraph that appears on page 177 of the report the Court of Appeal set out that the determination of disputes for the purposes of section 55 of that Act was very much confined to matters within the purview of the notice given under that Act. Mr Murch contends that *Woodhouse* is authority for the proposition that, absent a proper notice, there is no jurisdiction for the determination of disputes.

46. Even if I had found that the statutory notice was unanswerably invalid, I would have found that there was jurisdiction under the terms of the new 1996 statute sufficient to embrace the award that was made by the surveyors in this case. It seems to me that sections 10 and 11 of the Act, read together with section 7, provide more than sufficient scope for the determination of disputes relating to works which fall within the purview of the Act or with which, in the language of Mr Power, the Act engages.

47. The high water mark of the submissions of Mr Murch was that the jurisdiction of the surveyors was constrained by their powers under section 10(12) as to what an award may determine. It reads:

> "An award may determine:
>
> (a) the right to execute any work;
>
> (b) the time and manner of executing any work; and
>
> (c) any other matter arising out of or incidental to the dispute, including the cost of making the award."

48. In my judgment the language of the opening words of sub-section (12) is important. It describes what an award may determine. It is not intended to be exhaustive or

exclusive. That much appears from the immediately preceding sub-section (10) which reads:

> "The agreed surveyor, or as the case may be, the three surveyors, or any two of them, shall settle by award any matter which is connected with the work to which this Act relates, or which is in dispute between the building owner and the adjoining owner."

49. It is submitted by Mr Murch that the work being described in the sub-sections I have just read is limited to that work which the statute gives the building owner the right to carry out. In the context of section 6 that is the right to go onto the neighbour's land to undertake certain works. I do not accept that submission. It seems to me that section 6 and the other provisions of the Act are concerned not merely with rights of building owners but also with the protection of rights of those who adjoin their land. Where the provisions as to proximity, for example, in section 6(1) and 6(2) of the Act, apply even in relation to the building owner's own works on his own land, then those works constitute 'works' for the purposes of the provisions of the Act.

50. This broad and very general approach to the provisions of the 1996 Act reflects the approach taken by His Honour Judge Birtles in *Onigbanjo v Pearson [2008] BLR 507*. He took a much more expansive approach to the jurisdictional framework of the statute than that taken by the Court of Appeal in *Woodhouse*. Mr Murch submits that in doing so the learned judge was acting *per incuriam*, i.e. he was acting in ignorance of binding authority. I disagree. He was construing a modern statute in relation to questions of its extent and jurisdiction which were not, in my judgment, as fettered in their language as those of section 55 of the 1939 Act.

51. However, it seems to me that there is another reason why I cannot accept the submissions of Mr Murch in relation to the question of whether there was a 'dispute' within the purview of the Act and that is because that question has been determined already by Mr Goddard as the third surveyor. That matter, as I have previously indicated in this judgment, was expressly decided against the building owner in that award. Mr Murch's rejoinder is that that award was as much a nullity as the ultimate award and it can therefore be entirely disregarded. I could not more fundamentally disagree with that proposition. If the award of the third surveyor was a bad award it should have been subject to an appeal, not least based on the absence of jurisdiction. It was not appealed. It was left extant until the final determination of the two surveyors. In my judgment it is not open to Mr Murch to criticise the final judgment of the two surveyors on a jurisdictional point which had been expressly determined earlier and which his client did not appeal.

52. I am therefore satisfied that even if the purported section 6 notice is invalid and even if the building owner is not estopped from relying on that invalidity then nevertheless there was a 'dispute' within the meaning of the Act in relation to the jurisdiction of the surveyors.

53. That does not quite exhaustively deal with the second' limb' of the grounds of appeal. Mr Murch in advancing the second ground covered much of the work in relation to 'dispute' and 'jurisdiction' which I have just reviewed in the context of ground one. But his ground 2 is: "Further and alternatively the two surveyors lacked jurisdiction to determine the specific dispute which they purported to consider."

54. The specific dispute related to what had been constructed, primarily on the building owner's own land. If it had stopped at that it might have been possible for Mr Murch to assert that the surveyors had no business determining any dispute, be it on the grounds of aesthetics, size or anything else, in relation to what the building owner had built on his own land.

55. I take the view that that is a misconstruction of the statute. What is built on the building owner's own land is a proper subject for 'dispute' provided it is within the purview of section 6 i.e. it encroaches within the proximity guidelines set out in that provision. But even if that is wrong, on the facts of this case, the two surveyors specifically found that the works included the construction of a party wall, that is to say, a wall which encroached into and over the boundary into the adjoining land. On any view that is the sort of matter which is within the purview of the Act.

56. Mr Murch further submitted that the surveyors were quite wrong to engage in the resolution of this dispute because the works had already been carried out. If there was disgruntlement on the part of the adjoining occupiers about that then they should be left to their own remedies in the civil courts. He submitted that there was no power in the party wall surveyors to deal with such consequential matters in relation to completed works as the damage that had been caused by or in the course of the works or the question of the diminution in value to the adjoining owner's property that had been caused by the building owner's works. All of that was shut out, he submitted, by the terms of the statute and he reminded me again by reference to the *Woodhouse* case of the narrow confines of the statutory scheme of the 1939 Act. He submitted that they had been imported into the modern statutory framework and that similar inhibitions applied.

57. In my judgment those submissions are misconceived. The new statutory regime deliberately sets out a dispute resolution mechanism for disputes relating to works within the purview of the Act. Nothing, it may be thought, could have been clearer than the content and header of section 10 which is "Resolution of Disputes". That selection, in very broad terms, gives jurisdiction for the resolution of disputes: "in respect of any matter connected with any work to which this Act relates." Those words are more than sufficient, in my judgment, to embrace the matters addressed in this award.

58. Of course, I acknowledge that grounds 3, 4, 5 and following of the grounds of appeal take issue with the specific determinations made by the surveyors, but on the two questions of jurisdiction which are raised before me by the building owner's appeal I have no hesitation in holding that those grounds are unfounded and that the surveyors did have ample jurisdiction.

[End of Judgment]