

TURNING TENSIONS INTO TRUST: A NEW MEDIATORY APPROACH TO PARTY WALLS, RIGHTS OF LIGHT AND OTHER NEIGHBOUR CONFLICTS

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JOHN PUGH-SMITH *Barrister, 39 Essex Chambers*



John's practice is now divided between acting as retained counsel dealing with town and country planning matters, with related environmental, real estate and local government work, and his increasing appointments as an experienced alternative dispute adviser and resolver in his various roles as an arbitrator, independent expert and mediator.

As an active promoter of conflict resolution, particularly in the public sector, he has been one of the specialist advisers to the All-Party Parliamentary Group on Alternative Dispute Resolution, a former Design Council Expert (in which capacity he acted as a member of its Highways England Design Review Panel) and the co-ordinator of the Department for Levelling Up, Housing and Communities' Pathfinder Mediation Initiative.

He continues to serve on several professional committees and is a Fellow of the Chartered Institute of Arbitrators. John receives regular appointments from the President of the Royal Institution of Chartered Surveyors (RICS) in respect of arbitration, expert determination and mediation on all non-rent review matters though with a focus on development related disputes. He also welcomes direct instructions and appointments.

WELCOME & INTRODUCTION





STUART COBBOLD *Director, Schofield Surveyors*

Stuart is a Director at Schofield Surveyors having joined in 2017 from Jones Lang Lasalle. From the commencement of his career at Delva Patman Redler, Stuart has maintained a focus on neighbourly matters including acting for building owners and adjoining owners on party wall matters under the Party Wall etc. Act 1996, providing strategic advice on light as part of planning and environmental impact assessments as well as rights of light issues. Stuart also provides guidance on boundaries, easements and scaffolding/crane oversail licences. In addition Stuart undertakes traditional building surveying work including surveys, dilapidations, contract administration and pathology. Stuart is a member of the Pyramus and Thisbe Club and part of their educational committee. Stuart provides advice to the RICS on Party Wall related disciplinary matters.

RIGHTS OF LIGHT, PARTY WALL & BOUNDARY DISPUTES

The Surveyor's Role

Why the technical discussion gets stuck — and how mediation moves it

- Surveyors supply the measurements, reports and valuation evidence every negotiation is built on — but that expertise is technical.
- In correspondence, that input is deployed defensively — report against report, each side's professional team entrenching around its own position.
- In mediation, the same expertise works dynamically — explained live, translating evidence into a settlement range with context both parties can work with.

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BEYOND THE TECHNICAL QUESTION

Rights of light: a negotiation nobody asked for

The technical framework

- The strict legal issue is light to defined apertures — windows, glazed doors, skylights.
- Argued by correspondence, that narrow frame is all the neighbour is offered — a professionalised figure for a right they never chose to sell.

What mediation opens up

- The lived concerns — privacy, outlook, disruption, home — finally have somewhere to go, alongside the legal and valuation evidence, in one room.
- The question shifts from "what's the number?" to "what package resolves the risk for both parties?"

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UNLOCKING THE PROCESS

What mediation delivers

- In boundary or party wall disputes, the same pattern repeats: a survey or statutory process settles the technical point, but rarely the grievance beneath it.
- Mediation is the one process that holds the technical and the human threads together — at the same table, at the same time.

1 process for every dimension of the dispute, technical and human

↓ months of correspondence compressed to days

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NIRAJ MODHA *Barrister, 39 Essex Chambers*



Niraj is a property, commercial, and construction law specialist. His cases frequently involve issues relating to and crossing over with civil fraud, insolvency, professional negligence, and disputes between shareholders, partners, and joint venturers. He acts for a range of clients, including property developers, landowners, investors, local authorities, contractors, employers, and multinational conglomerates.

Niraj appears as sole counsel in trials and application hearings in the Business and Property Courts (Chancery and King's Bench Divisions) and in the appellate courts. He also acts as counsel in international arbitration proceedings (both institutional and ad hoc) and represents clients at mediation.

Niraj accepts appointments as an arbitrator. He is a Fellow of the Chartered Institute of Arbitrators and a member of several panels including the CI Arb Business Arbitration Scheme and the Law Society President's Panel. Niraj has been appointed as an arbitrator on more than 30 occasions in the past three years. He is a contributor to *Pleading in Arbitration: A Practitioner's Guide* and *Arbitrator's Handbook* and frequently speaks at arbitration conferences and events.

THE APPROACH TAKEN BY THE COURTS TO NEIGHBOUR CONFLICTS (1)

- Typically, judges are disapproving
 - Wilkinson v Farmer [2010] EWCA Civ 1148
 - Right of way reserved in an 1898 conveyance of land in Ludlow
 - Mummery LJ at [4]-[5]: *“uncomfortable experience”*
 - Durden v Aston [2012] EWCA Civ 636
 - Boundary dispute between neighbouring homeowners in Solihull
 - Patten LJ at [2]: *“particularly depressing piece of litigation”*

THE APPROACH TAKEN BY THE COURTS TO NEIGHBOUR CONFLICTS (2)

- Quite often, neighbour disputes will involve additional claims which rack up further costs without added benefit
 - Naish v Vassili & Patel [2025] EWHC 1619 (Ch)
 - Another boundary dispute
 - At [4] per Sir Anthony Mann: ‘ridiculous piece of litigation’

THE APPROACH TAKEN BY THE COURTS TO NEIGHBOUR CONFLICTS (3)

- Courts do try to discourage neighbour disputes reaching trial, although all too often it is too late
 - McGill v Stevens [2020] EWHC 3387 (QB)
 - ROW over land in Buckinghamshire
 - Master McLoud at [54]: *“one hopes that such fallings-out will be less painful when resolved away from formal court settings”*
 - Courts do take other steps during the course of litigation, but judicial practices are variable

WHAT OUTSIDE-OF-THE-BOX OPTIONS ARE THERE? (1)

- Overview of Non-Court Dispute Resolution (NCDR) or Alternative Dispute Resolution (ADR)
 - Determinative
 - Expert determination; arbitration; med-arb
 - Non-determinative
 - Early Neutral Evaluation (ENE)
 - Collaboration/roundtable discussion
 - Mediation
 - Facilitative (most common form)
 - Evaluative; transformative

WHAT OUTSIDE-OF-THE-BOX OPTIONS ARE THERE? (2)

- **Property Boundaries (Resolution of Disputes) Bill**
 - Private Members' Bill, 2015-2021
 - A missed opportunity, but a practical way forward
- **Adopting or re-purposing the Professional Arbitration on Court Terms (PACT)**
 - RICS & Law Society joint initiative currently applying to lease renewal terms

MARK DUCKWORTH *Managing Director, Martin & Mortimer*



Mark originally trained in farm management followed by jobs in farm accountancy, production management as well as sales. He finally found his vocation later in life as a building surveyor qualifying as a Chartered Building Engineer (FCABE) as well as a RICS evaluative mediator'.

His responsibilities now include mentoring, public speaking plus acting CEO of Martin & Mortimer building consultancy based north of Cambridge (Ely). Clients include Cambridge University although most are London based via a network of property professionals. The work includes 'neighbourly matters' (encompassing party wall awards, boundary matters, settlement agreements, as well as general property dispute resolution work). Also detailed damp and timber (i.e. building pathology) investigations/reports, in addition to acting as an expert witness providing reports for the court.

Mark's company ethos is 'providing technical competence with emotional intelligence'.



THE PARTY WALL ETC. ACT 1996 – STEPS TO A MORE ‘ADROIT’ RESOLUTION

By Mark Duckworth MRAC MPTS C.BUILD E FCABE CSRT AssocRICS

Accredited RICS Mediator & Valuer

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FIRST OF FOUR KEYS: THE IMPORTANCE OF ‘THE APPROACH’ OR ‘MIND SET’

- **Key no 1** (It is not what we do it is how we do it that makes the difference and turns the dial)
- The Party Wall Act as a **preventative (ADR) mechanism**
- The type of intentional ‘**approach**’ makes the difference
- Many disputes can be avoided by an **initial mediated approach** before a notice is dissented to. E.g. encouraging ‘investment in the bank of neighbourly good will’ re Onibango vs Pearson
- For high-risk or high-stake projects, a **constructive** and **collaborative** approach between surveyors is far more effective for all concerned and enhances the surveyor’s reputations.

THE CAPACITY AS WELL AS ABILITY TO BUILD TRUST

Key no 2 (If we cannot build trust we cannot build or resolve any thing successfully)

- Perhaps encapsulated best by the phrase: ***'people simply do not care who you are or what you know, until they know that you care [for them].'***
- Trust is based upon our ability to demonstrate reliability and consistency. Requires a capacity to listen, comprehend and reflect what is being conveyed. Also, to meet and or manage expectations whereby we meet **security criteria** in the others we deal with.
- It also rests on our ability to effectively assert ourselves as well as well as display diplomacy.

CULTIVATE A CULTURE OF MUTUAL RESPECT

KEY NO 3 (THE CONCEPT OF THE BANK ACCOUNT OF NEIGHBOURLY GOODWILL)

- Develop a **microclimate of respect** i.e. by our consistent actions and behaviours
- We cannot assume respect will be given, it is fostered by active consideration and clear intent
- Onus of responsibility upon surveyors plus the opportunity to establish the tone
- Take the lead and collaborate e.g. to invest in the neighbourly bank account of goodwill, especially in terms of the potential dividends that such an approach so often produces.

COMMUNICATION (IT IS ONE THING TO TALK BUT ANOTHER THING TO REALLY COMMUNICATE)

- It all hinges on our ability as well as our capacity to communicate effectively
- Do we invest in this skill ? (Direct affect on our levels of effectiveness)
- Handling the natural tension between a building owner and an adjoining owner
- The potential to convey significant benefits to our appointing owners
- Put more simply, how we engage is as important than what we know

CELINA COLQUHOUN *Barrister, 39 Essex Chambers*



Celina Colquhoun specialises in all aspects of planning and environmental law, including in particular highways, DCO, and CPO matters and has experience in licensing as well. Her practice also involves a considerable degree of wider Administrative and Local Government Law.

Celina is consistently recognised by The Legal 500 and in Chambers Guide for Planning and is rated by Planning Magazine's Legal Survey as amongst the UK's top planning juniors. She was chosen by Planner Magazine as a Women of Influence in March 2022. She was the winner of the Legal 500 Planning and Land Use Junior Award 2024.

She appears extensively as an advocate in public inquiries and hearings as well as in the High Court and Court of Appeal. She also has experience of wider major public inquiry work including the Post Office Horizon IT Inquiry.

Celina acts for and advises a very wide range of public bodies and private parties in relation to the to all forms of development, from application stage to appeal as well as planning enforcement matters and the promotion of or objection to development related Orders. She also advises on matters of local government and public law.

THE DEVELOPMENT ASSEMBLY CONTEXT

❑ Considerations

- Land assembly: freehold; leasehold; licensed
- Existing rights: registered and prescriptive
- Potential ransom factors e.g. access; claimed rights to light; support etc



THE DEVELOPMENT ASSEMBLY CONTEXT

❑ Considerations

- The deployment of planning objections
- What is a true material consideration
- What is dressed up as one: the concept of “amenity”
- Compensation or practical resolution, or, both?



THE DEVELOPMENT ASSEMBLY CONTEXT

❑ Risk minimisation

- Assembling the right professional team
- When to be facilitative?
- When to be confrontational: necessity or tactically desirable ?



THE DEVELOPMENT ASSEMBLY CONTEXT

❑ Risk minimisation

- Pre-litigation and ADR Protocols
- Deployment of ADR mechanisms and techniques



THE DEVELOPMENT ASSEMBLY CONTEXT

□ Outcomes



HOW TO ACHIEVE “AN OUTCOME” ?



QUESTIONS



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