

COBURNS PARTY WALL

Party Wall and Neighbourly Matters

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www.coburnspartywall.co.uk

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GUIDANCE NOTE

SHOULD I APPEAL A PARTY WALL AWARD

SHOULD I APPEAL A PARTY WALL AWARD - GUIDANCE NOTE

The Question

How can you decide whether or not you should consider appealing an award?

This note is intended to provide guidance to assist you in making a decision.

Costs and litigation risk

You may believe that in litigation the loser pays the winner's costs and that because you are confident that your case is strong that you will win and the loser, your neighbour, will pay all your costs.

But if you are appealing on multiple grounds, the court may rule in your favour on some points and against you on others.

So no matter how confident you are, your chances of success should rarely be considered as 100%. Even the best lawyers advise that your chances are no higher than around 70%.

There is always a risk associated with legal action. There are variables you cannot control or sometimes foresee including:

- You may not be in possession of the full facts
- A legal argument you are not aware of
- The other side may have a better lawyer
- The judge may be unpredictable

This suggests that you are at some risk of cost whatever the outcome.

You should also be aware that, even where you are wholly successful on all grounds of your appeal, the courts may not agree that all your costs should be met by the losing party.

So, it is prudent to expect that you will recover around 65% of your legal costs. That leaves you to foot the bill for the remaining 35%.

It is therefore important that your costs are carefully managed and lawyers are not given free reign to incur time and costs unnecessarily. Legal costs can vary widely depending on the complexity of the matter and the ability of your legal team.

If defended, you can expect the costs of your appeal to start from around £15,000 but beware, it can cost many times that.

You can of course appeal an award yourself and represent yourself. Although your costs will be lower, so might your chances of success. Get ready to do lots of reading.

It is unlikely your appointed surveyor will be able offer much assistance in your appeal. Very few have any experience of such matters and even fewer any discernible competence.

Where you instruct a solicitor and (they instruct a barrister) the assumed range of costs should be £50,000 to £100,000.

Before you instruct a solicitor you might consider a direct access barrister. Your costs should be lower but you will have to take a significant administrative role in the matter.

Clearly, appeals are not 'cheap' so the risk of cost cannot be overlooked.

In most cases, the appeal process is prohibitively expensive and offers little obvious value for money. And therefore most of the issues you might have with an award should probably be seen as too minor to appeal.

An appeal, whether successful or not, can very easily cost you more than a bad award.

Our advice is that your decision should take into account risk and the potential reward. And probably not the principle unless you have very deep pockets.

And don't forget, appeals aren't quick. It is reasonable to expect a hearing to take place around 9-15 months after you issue proceedings. Is it practical or sensible to wait that long to resolve what might be relatively minor issues? And the hearing itself will require your further time input.

Of course, there are good reasons and circumstances where appeal is the right course.

Our advice...proceed with caution.

Always take the advice of a specialist lawyer as soon as you can. It is unlikely to be free but could save you tens of thousands of pounds.

And finally, you should always be wary of a surveyor who readily encourages you to appeal an award. What is their motivation? Is it your interest or the pursuit of a fee?

In reality an appeal is unlikely to cost the surveyors a penny. They have no risk when you appeal an award. But you do.