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PARTY WALL MEDIATION SCHEME

## 'Special Foundations' in Party Wall works

1. Special foundations are an important aspect of most Basement Extension design, and have caused, and continue to cause, a deal of controversy. The Party Wall etc. Act 1996 ('the Act') defines special foundations as 'foundations in which an assemblage of beams or rods is employed for the purpose of distributing any load'. That definition originated in the London Building Act (Amendment) Act 1939, but essentially it simply means reinforced concrete.
2. Reinforced concrete is in common use in basement extension design. It enables the designer to provide for thinner walls or foundations than would be required were concrete alone to be used. Where only concrete is used for the sub-ground structure this is usually referred to as a 'mass concrete' foundation.
3. A building owner constructing a basement extension has no right in law or under the Act to build on land belonging to his neighbour. A basement extension construction may not therefore extend beyond the outer line of the party wall (from the building owner's perspective). It might be suggested that the adjoining owner has no real interest in whether the construction under the party wall is of mass concrete or reinforced concrete. True, the subsoil under the party wall will either comprise land belonging in part to the building owner and in part to the adjoining owner (or in rare cases will belong to both of them jointly) but both owners have a very real interest in the party wall being properly supported and so if a basement extension goes deeper than the depth of the original foundation (the usual case) it is essential that the entirety of the party wall is supported from below. An award under the Act may permit the building owner to extend the party wall by underpinning or raising the wall, and so enable the building owner to build on that part of the land directly under the party wall that belongs to the adjoining owner.
4. However, for historical reasons, s 7(4) of the Act provides that special foundations may not be placed on land of an adjoining owner without his previous consent in writing. Accordingly, a basement extension design employing special foundations may be effectively vetoed by an adjoining owner. These historical reasons stem from the introduction of steel-framed buildings in London in the first decade of the twentieth century, of which Selfridges in Oxford Street was the first. The reasons for the veto are

discussed in the judgment in the case of *Chaturachanda and Ng v Fairholme and Fairholme* (23 September 2015) Central London County Court<sup>1</sup>.

5. In the *Chaturachanda* case the question arose whether a basement design incorporating a reinforced concrete box supported by mass concrete rails under that part of the box which lay under the party wall comprised special foundations and therefore required the consent of the adjoining owner, a consent which would not be forthcoming. The 'walls' of the basement extension were below ground level and constructed of reinforced concrete, and the adjoining owner argued that these walls were foundations and the mass concrete rail underneath the walls merely a device to enable the building owner to seek to avoid the consequences of s 7(4) of the Act and the adjoining owner's veto.
6. The building owner argued that the mass concrete rails were no device but an important part of the construction process. The mass concrete was poured in a series of metre long pads, enabling the builder to raise a reinforced wall on the mass concrete once it had cured, metre strip by metre strip, so as to complete the reinforced concrete box construction<sup>2</sup>. The concrete pads were a temporary works measure, and became a rail at the end of the construction process. The mass concrete rail necessarily remained in place after the works were completed but continued to form a foundation being an 'artificially formed support resting on solid ground on which the footings of the wall rests' within the definition of foundation in s 20 of the Act.
7. While observing that a thin layer of mass concrete under a reinforced concrete structure might well be seen as a device or artifice to avoid the consequences of s 7(4), the Learned Judge held that the mass concrete rails in the case were not a device, but formed the foundation of the basement as constructed. The importance of the mass concrete rail may have been primarily for the temporary (construction) works phase but it remained in place after completion and continued to act as a foundation, whether it continued to be required for engineering purposes or not. The reinforced structure resting on the mass concrete comprised a wall not a foundation, there being no reason under the Act to restrict walls to vertical structures above ground level. Accordingly, the adjoining owner did not have a veto on the basement extension construction.

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<sup>1</sup> A copy of this decision may be found at [www.boundariesbook.co.uk](http://www.boundariesbook.co.uk)

<sup>2</sup> The method of construction is described in paragraph 38 of the judgment.