

Subterranean Development Bill [HL]

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TO

Make provision for the regulation of subterranean development work; to establish a code of practice for subterranean development work; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Subterranean development works

- (1) This Act applies to any subterranean development works as defined in this section.
- (2) Subterranean development works are those of excavation for and construction of building or engineering works to form new or additional accommodation for any purpose below ground level. 5
- (3) This Act shall not apply to works exclusively for the purpose of repairing, strengthening or supporting an existing building or structure.

2 Application

Any owner of a property intending to undertake subterranean development works shall— 10

- (a) submit a Subterranean Development Application (“SD Application”) to the relevant local planning authority;
- (b) provide in the SD Application all relevant information required by the code of practice established under Schedule 1; and 15
- (c) serve notice for any subterranean development in the manner set out in section 6(5) (adjacent excavation and construction) of the 1996 Act as if the distance of six metres is replaced by a distance of nine metres.

3 Approval

- (1) The accommodation to be provided through any proposed subterranean development shall be considered for approval under the following categories—
 - (a) new or additional accommodation comprising a downward extension not exceeding four metres in total depth within the existing building footprint; 5
 - (b) new or additional accommodation which incorporates any area of the site outside the existing building footprint; and
 - (c) new or additional accommodation which extends more than four metres in total depth below the ground floor of an existing building. 10
- (2) Before granting any approval, the local planning authority shall send notice to all properties within a radius of fifty metres of any part of the proposed subterranean development.
- (3) For applications under subsection (1)(c) the local planning authority must also consult the Secretary of State before granting any approval. 15
- (4) Upon approval of an SD Application, the local planning authority shall—
 - (a) impose a condition that the Subterranean Development shall be commenced in the same timescale as applies to planning approvals generally; and 20
 - (b) instruct, at the cost of the building owner, Her Majesty’s Revenue & Customs Valuation Service to determine the present day value of the property to be increased in size through the proposed subterranean development.
- (5) The local planning authority shall determine SD Applications in the same timescale as it determines planning applications in general. 25

4 Notice to adjoining owners and disputes

- (1) Not less than one month before commencing any works, the building owner shall serve on any adjoining owner notice (a “Subterranean Development Notice”) of his or her intention to excavate stating—
 - (a) the name and correspondence address of the building owner;
 - (b) the nature and particulars of the proposed work including its address, description and purpose together with location plans and sections showing the relationship between the works and the structures of any adjoining owners and the position and depth of the proposed excavation; 35
 - (c) the date on which the works will begin;
 - (d) the planned duration of the works;
 - (e) the measures proposed to be taken to avoid unreasonable disturbance and loss of amenity to adjoining owners; and 40
 - (f) whether the building owner proposes at his or her own expense to underpin or otherwise strengthen or safeguard the building or structure of the adjoining owner so far as may be necessary.
- (2) Where an adjoining owner does not notify the building owner in writing within 14 days that the works notified under this section are agreed, or agreed subject to conditions that are acceptable to the building owner, a dispute is 45

deemed to have arisen and is to be settled in accordance with subsection (3) and section 10 of the 1996 Act (resolution of disputes).

- (3) Where for the purposes of this Act any surveyor is appointed in accordance with section 10 of the 1996 Act (resolution of disputes) the surveyor shall –
- (a) be an independent person not being a party to the matter in dispute; 5
 - (b) be qualified by examination and experience in building surveying or construction matters;
 - (c) be a member of a recognised professional body associated with construction and regulating the surveyors' professional standards and conduct; and 10
 - (d) hold a current and adequate policy of professional indemnity insurance.
- (4) If a building owner fails to serve notice before commencing subterranean development works, he or she shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or 10 per cent of the contract value reasonably to be expected in relation to the notifiable works, whichever shall be the greater and which, in the absence of agreement, shall be determined by surveyors appointed in accordance with subsection (3) or as otherwise directed by the Court. 15

5 Suspension of works and access 20

- (1) Where a building owner commences work on a subterranean development and the work is suspended for a period of six months or more, an adjoining owner may by a notice in writing require the building owner to –
- (a) replace any temporary weatherings protecting exposed party structures or other parts of the adjoining owner's property with permanent durable weather proofing construction; 25
 - (b) complete any works of underpinning of an adjoining owner's building or of any party structure; and
 - (c) replace any temporary propping or shoring safeguarding an adjoining owner's building with permanent durable construction. 30
- (2) If a building owner does not consent to such a notice within 14 days of receipt, he or she shall be deemed to have dissented from the notice and a dispute shall be deemed to have arisen between the parties.
- (3) Where a dispute has arisen under this section it shall be settled in accordance with section 4(2). 35
- (4) Where for the purposes of this section a dispute is settled by the appointment of surveyors in accordance with section 4(2), the surveyors may award a right of access to the building owner's premises for the purpose of implementing any works they deem are required in pursuance of this section; in every such case the provisions of section 8 of the 1996 Act (rights of entry) shall apply as if "building owner" in that section is substituted by "adjoining owner". 40

6 Security for expenses

In any case where the security for expenses is determined in accordance with 4(2) by the appointment of surveyors, the sum held as security for expenses shall – 45

- (a) reasonably reflect the risk of damage to the adjoining owner's building likely to occur in consequence of the works for which the building owner has given notice, or as the case may be are the subject of an award made by the appointed surveyors;
- (b) reasonably reflect the likely cost of completing the works for which the building owner has given notice, or as the case may be are the subject of an award by the appointed surveyors, sufficiently to safeguard the adjoining owner's building and to leave it weathertight if those works are suspended leaving them incomplete; and
- (c) be held in a manner to be determined by the appointed surveyors and be administered by them.
- 7 Liability**
- Any liability arising from works shall remain with the owner of the land or buildings being the address of the premises for which notice under section 4 was served, or if more than one such owner then any one of them, and may be registered as a charge against the property for the purposes of the Land Registration Act 2002.
- 8 Code of practice for subterranean development works**
- (1) The Secretary of State shall approve from time to time a code of practice (hereinafter referred to as 'the code') in accordance with the provisions of Schedule 1.
- (2) The Secretary of State may from time to time amend the code for the purposes of this Act, subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In discharging any development control duties required by statute, a local planning authority in whose area the works are proposed shall ensure that consents are made subject to the code.
- (4) A building owner desiring to carry out works shall comply with the provisions of the code.
- 9 Building owner responsibilities**
- In addition to other provisions of this Act, building owners shall comply with the requirements in Schedule 2.
- 10 Council Tax valuation**
- Upon completion of the subterranean development, Her Majesty's Revenue & Customs Valuation Service shall determine the added value created in order that a suitable adjustment may be made to Council Tax banding of the property.
- 11 Application of Party Wall etc. Act 1996**
- Unless addressed elsewhere in this Act, the following provisions of the 1996 Act apply to Subterranean Development works –
- (a) section 7(1), (2) and (5) (compensation etc);
- (b) section 11(1), (2) and (8) (expenses);

- (c) section 12(1) (security for expenses);
- (d) section 13 (account for work carried out); and
- (e) section 15 (service of notices etc).

12 Definitions

In this Act—

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“the 1996 Act” means the Party Wall etc. Act 1996; and

“owner”, “adjoining owner” and “building owner” shall have the meanings ascribed to them under the 1996 Act.

13 Commencement and short title

- (1) This Act shall come into force on the day on which it is passed.
- (2) This Act may be cited as the Subterranean Development Act 2011.

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SCHEDULES

SCHEDULE 1

Section 8

CODE OF PRACTICE

- | | | |
|---|--|----|
| 1 | The code of practice for subterranean development shall include consideration of the— | 5 |
| | (a) stability of structures and avoidance of unnecessary risk to their subsoil support; | |
| | (b) proper investigation of relevant factors and preparation of impact studies prior to the commencement of works; | |
| | (c) adequacy of technical skills for investigation of subsoil conditions and design of the works; | 10 |
| | (d) adoption of best practice in the execution of the works in terms of construction and supervision standards and the avoidance of unreasonable inconvenience to adjoining owners; | |
| | (e) provision of adequate information to adjoining owners before, during and after the works; | 15 |
| | (f) protection of adjoining owners from the risks associated with defective investigation or design and the interruption of the contract of works once commenced; | |
| | (g) limitation of the effects of ground movements on third party property to damage capable of repair by decoration and the repair of minor cracking; | 20 |
| | (h) protection of the subsoil environment including hydrological and hydrogeological conditions; | |
| | (i) provision of such security for expenses, warranties and guarantees as are necessary to protect third parties in the event of damage or loss; | 25 |
| | (j) adequacy of a contractor's third party liability insurance; and | |
| | (k) adequacy of standards of post-construction monitoring. | |
| 2 | A building owner wishing to carry out works shall ensure that the proposals for, and execution of, the works accord with this Schedule and that the contractor appointed to undertake the works is a member of a considerate contractors scheme and shall observe any relevant code of considerate practice. | 30 |

SCHEDULE 2

Section 9

BUILDING OWNER RESPONSIBILITIES

- 1 Prior to commencement of subterranean development works, the building owner shall –
- (a) ensure that suitable studies and, if necessary, intrusive investigation are carried out to examine factors related to the works which may affect the ground around the proposed subterranean development and structures and services supported on it or in it. 5
 - (b) studies carried out further to paragraph (a) shall include the –
 - (i) layout and geometry of the existing buildings and surface and buried services, 10
 - (ii) ground conditions, including parameters to define earth pressures, strengths and stiffness,
 - (iii) water conditions below ground and how these may vary with time, 15
 - (iv) surface water conditions,
 - (v) method of ground support of existing structures, and
 - (vi) condition of the existing buildings and services and their sensitivity to any disturbance;
 - (c) identify how the proposed development will affect the local environment, including whether the modified structure –
 - (i) will affect the long term stability of the ground, or
 - (ii) have a significant effect on the flow of ground water or surface water within the general area; 20
 - (d) provide a specification of the proposed works taking account of the –
 - (i) safety requirements,
 - (ii) potential adverse effects upon the surroundings,
 - (iii) difficulties of working on a congested site with limited access, 30
 - (iv) need to control the environment in terms of noise, dust and vibration,
 - (v) need to maintain an acceptable working environment,
 - (vi) likely effect of each construction operation on the ground and ways of controlling that effect, and 35
 - (vii) need to provide adequate support to the ground and structures at all times;
 - (e) provide where necessary –
 - (i) a detailed method statement identifying how the work will be undertaken, 40
 - (ii) designs of structural elements of the new structure to demonstrate that they are adequate,
 - (iii) a design of the internal structure with regard to the requirements to maintain an acceptable environment for the proposed usage, 45
 - (iv) documentary evidence of the adequacy of temporary works, and

- (v) an estimate of the amount of ground movement that may occur as a result of the proposed construction and the likely effect on the structures and services; and
- (f) establish a monitoring regime before work is commenced.

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Lord Selsdon

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