ARCHITECTS AND BUILDING DISPUTES

It is not easy being an architect these days. In the past, architects were protected by mandatory (later, 'recommended') fee scales, and obtaining planning permission for a building and then successfully getting it built was somehow much simpler than it is now. Today, everyone considers themselves to be experts in the field of architecture, by virtue of having watched a few episodes of *Grand Designs* and other aspirational television programmes. As with most professionals, architects are bombarded with information overload. Apart from basic construction skills, contemporary architects are expected to possess an adequate working and up to date knowledge of Planning Regulations, the Building Regulations, Building Contracts and Construction Law, hundreds of British Standards and Codes of Practice, Party Wall legislation, Rights of Light, Health and Safety, energy performance and sustainability, building economics, and a host of other complex issues. Architects are expected to be masters of all aspects of their craft and it is not altogether surprising that they sometimes fail to meet one or more of the obligations placed upon them.

The architect is an easy target. He or she is still perceived to be the leader of the building team and, when things go wrong, the architect will invariably find himself in the firing line. He will often be joined in a claim by other professionals, such as the structural engineer or the quantity surveyor, and/or by the building contractor.

In my role as an architect expert witness, I have come across numerous examples of my fellow professionals who have failed to meet the appropriate standards. But what are these standards? As with all professional persons, architects are expected to exercise reasonable skill and care in the performance of their duties. In judging if an architect has complied with this standard, the courts will assess whether the architect has met the standard of the average competent architect and whether his actions are likely to be supported by a significant body of opinion within the architectural profession, i.e. whether his peers are likely to have acted in a similar manner. If not, the architect may well be found to be negligent.

I have dealt with claims from architects for unpaid fees and for alleged copyright infringement, but the majority of building disputes involving architects are generally initiated by the client. The common thread of these disputes is that, rightly or wrongly, the client considers that he has been let down by the architect. The client's aspirations have not been met in some way. Sometimes the reason for this is obvious – perhaps the building leaks and the client sees the architect as being responsible for the defect, either because the design and/or specification is seen to be faulty or it is alleged that the architect has failed to carry out his inspection duties with due diligence. But occasionally, the client will make more obscure claims. In the early part of my career as an architect, I had to respond to a threatened claim from a client after a project had been completed that it was not as large as he had been expecting. Since this was a loft conversion and thus an existing structure and it had been constructed fully in accordance with my design drawings (that the client had approved), this was not an easy claim to sustain and, fortunately, it soon dissipated and my fees were paid.

Another common feature of the cases that I have been involved with is confusion regarding the terms of engagement and the roles that the various parties involved considered that they were performing. Despite the fact that it is a code requirement of both the Architects Registration Board (ARB) and the Royal Institute of British Architects (RIBA) that the terms of any appointment are clearly set out in writing and agreed by both parties, it is astonishing how many of the disputes I have been involved with have imprecise or ambiguous terms of engagement (or none at all) at the core of the dispute. Unless the appointment is precise and the roles and responsibilities are clearly defined at the outset of a project, misunderstandings are likely to occur. This is particularly prevalent in small projects where the architect does not wish to frighten the client with reams of legalistic conditions and where the overall finances available are such that the client is often reluctant to engage specialist consultants. In an effort to please the client and move the project forward, many architects will take on roles for which they are not properly qualified. Thus I have seen examples of architects thinking that they were structural engineers or quantity surveyors or party wall surveyors and making major errors as a consequence.

Many building disputes are concerned with building defects. Building design is an increasingly complex skill and it is becoming more and more specialised. The individual elements that make up a construction have to satisfy a plethora of performance criteria and possess the ability of working effectively in combination. Depending on the particular context, a construction detail may have to be structurally sound, adequately fixed, thermally efficient, sound and fire resistant, secure and vandal resistant, water and draught resistant, durable, maintenance friendly, economic and, of course, aesthetically pleasing. Increasingly, the individual components also have to have been obtained from a sustainable source. Often, it is the interface between materials and components that causes a failure. Despite the advent of 3D CAD design and Building Information Modelling (BIM), the junctions between components are frequently ill considered and left to be ‘sorted out on site’.

With so many often conflicting criteria to satisfy, architects occasionally get it wrong. What enables them to sleep at night in the face of all this is the professional indemnity insurance that all architects are required to maintain. However, the very presence of their PI insurance means that they represent tempting targets for clients and their solicitors.

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