IN THE LIVERPOOL COUNTY COURT
CLAIM NUMBER [redacted]

BETWEEN

[redacted] **Claimant**

-and-

[redacted] **Defendant**

EXPERT WITNESS REPORT ON THE PROVISION OF

ARCHITECTURAL SERVICES PROVIDED BY

[redacted]

in relation to

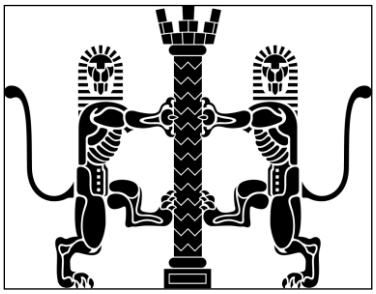
A PROPOSED COMMERCIAL DEVELOPMENT AT

[redacted]

Report undertaken for

[redacted] **(Instructing Solicitors)**

EXPERT WITNESS REPORT



Prepared by William Bates, Chartered Architect **July 2012**

William P Bates, BSc (Hons), Dip Arch, RIBA, ACIArb
Martins Farm Oast, Collier Street, Tonbridge, Kent TN12 9SB

Section 1: Introduction

Credentials

01. I am William Bates, Chartered Architect, Member of the Royal Institute of British Architects and Associate Member of the Chartered Institute of Arbitrators.

02. My professional training was undertaken at the Bartlett School of Architecture, University College London. The degree of Bachelor of Science (Honours) was conferred upon me in 1976. I was awarded a Diploma in Architecture in 1978 and I qualified as an Architect in 1980.

03. I initially worked for a medium sized practice in London before forming my own practice in Wimbledon in 1984, since when I have operated as an independent consultant. The practice was transferred to my current location in Kent in 1989.

04. I have been appointed to act both as a party appointed expert witness and as a single joint expert to provide evidence and opinion on a variety of issues associated with building design and construction. I am listed with the *UK Register of Expert Witnesses, Expert Witness, Waterlow Legal, X-Pro* and in the publication, *Expert Witness, Expert Consultant*. I have appeared at both informal and formal hearings and I have High Court (Technology and Construction Court) experience.

05. With more specific reference to this dispute, I have personally been responsible as a practising architect for the design of several hundred building projects in the private sector. I also have extensive experience in the administration of building works under standard form construction contracts.

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Introduction and Instructions

06. This dispute concerns a claim by [redacted], a company of architects, (hereinafter referred to as [redacted]) against Mr [redacted] in connection with the redevelopment of land owned by Mr [redacted] at [redacted]. [redacted] claims damages in the form of unpaid professional fees amounting to £[redacted] plus VAT, together with interest and costs. Mr [redacted] denies that [redacted] are entitled to payment, for the reasons set out in their Amended Defence. [redacted] have issued proceedings against Mr [redacted].

07. By way of an order dated 17 May 2012, District Judge [redacted], sitting at Liverpool County Court, granted permission for each party to obtain an expert report from a consulting architect. The reports are to be served by 31 July 2012. If the reports are not agreed, the experts are to lodge and serve their joint report by 31 August 2012. A Case Management Conference is to be held on 20 September 2012, at which the court will consider any request for oral expert evidence and list the claim for trial.

08. My formal instructions in this matter comprise a letter dated 12 June 2012 from [redacted], acting on behalf of Mr [redacted]. I will refer to the substance of these instructions together with the specific questions asked of me during the course of this report.

09. I am asked to give my opinion as to whether [redacted] were negligent in their dealings with Mr [redacted]. My task is therefore to examine the performance of [redacted] in relation to the standards that would be expected of a reasonably competent architect, namely whether [redacted] have exercised reasonable skill and care. I do so from the position of a practising architect who has expert witness experience.

Documentation

10. Alongside my instructions, I have received from [redacted] copies of the following documents:

a) Particulars of Claim.
b) Amended Defence.
c) Reply.
d) Witness statement of Mr [redacted].
e) Witness statement of Mr [redacted].
f) Drawings prepared by [redacted].
g) Correspondence relating to this dispute.
h) Notes of meetings prepared by Mr [redacted].
i) Ordnance Survey Plan.
j) Notes made by [redacted].
k) The order of 17 May 2012.
l) Three photographs of the old boundary wall of Mr [redacted]' building.
m) A topographic survey drawing prepared by [redacted] Surveys in July 2005.

11. I have also downloaded various documents from [redacted] Council's website.

Reference Sources

12. The following sources have been referred to during the preparation of this report:

'Architect's Legal Handbook': Anthony Speaight QC and Gregory Stone QC, Architectural Press (9th Edition, 2010).

'The Architect's Guide to Running a Job', Ronald Green, Architectural Press (6th Edition 2006).

'A Client's Guide to Engaging an Architect', RIBA Publications (April 2004 edition)

'Standard Form of Agreement for the Appointment of an Architect' (SFA/99) RIBA Publications (April 2004 edition).

'Conditions of Engagement for the Appointment of an Architect' (CE/99), RIBA Publications (April 2004 edition).

'Getting Paid: An Architect's guide to fee recovery claims', Nicholas J. Carnell and Stephen Yakeley, RIBA Enterprises (2003)

'BRE Building Elements: Walls, Windows and Doors': H.W. Harrison and R.C. de Vekey, BRE Publications (1998)

'A Guide to Sound Practice': Stanley Cox, RIBA Enterprises (2002)

'*Expert Witness'*: (Case In Point Series), Ellis Baker and Anthony Lavers, RICS Books (2005).

'Rights of Light (and how to deal with them)', John Anstey, Surveyors Publications, (1988).

'The Building Regulations, Approved Document B: Fire Safety', DOE, 2006 edition.

'Guide to the Building Regulations', Huw M A Evans, RIBA Publishing, (2011 edition).

'*Design for Fire Safety'*, Paul Stollard and Lawrence Johnston, (1996)

'*Professional Liability'*: Ray Cecil, Architectural Press (1984)

Status of this Report

13. This is a formal expert report within the terms of Part 35 of the Civil Procedure Rules. Whilst it represents a truthful and accurate opinion based upon the documents made available to me, it must be emphasised that this report may be based upon restricted or limited information and that its content may be subject to further investigation or enquiry pending the release of further documentation.

Section 2: Chronological Framework

Introduction

14. It is often helpful to view a construction dispute within a chronological framework. I do so in the following pages using the documents that have been made available to me. I have largely and deliberately restricted any significant comments regarding the various issues as they evolved until the next section of this report.

The Site

15. According to his witness statement, Mr [redacted] purchased the property at [redacted] in 1974. The building housed a branch office of Mr [redacted]' insurance brokerage. I understand from my instructing solicitors that it was a traditional late 19th century brick building consisting of three storeys plus a basement and that there were no windows at all on the south wall of this original building.

16. To the north of the site (at [redacted]) stood The [redacted] Theatre. During the course of the demolition of the theatre in 2002, Mr [redacted]' building was structurally compromised to the extent that it was compulsorily demolished by order of [redacted] Council in November 2002.

17. The original site was roughly triangular in shape, tapering at the rear. As a consequence of an agreement made in October 2002 between Mr [redacted] and the developers of the theatre site, a small area of land was transferred to Mr [redacted], thus partially squaring off the site and enabling the construction of a more conventional (in shape) rectangular building.

Original Architect

18. Mr [redacted] asked his solicitor, [redacted], to recommend to him a firm of architects to prepare plans for a replacement building. A firm of architects based in [redacted], [redacted], was contacted in September 2004.

19. Mr [redacted]'s letter to Mr [redacted] dated 28 September 2004[1] confirms his willingness to prepare a design. In relation to fees, he states:

> "Our fee would be charged out in accordance with the RIBA *recommended* fee scales on a percentage of the building cost for new works." (My italics).

20. Mr [redacted] goes on to say that, for the purpose of indicating a fee, he has taken the building cost from the [redacted] Report figure of £540,000, and then calculated a total fee of £35,100 on the assumption that the percentage rate applicable would be 6.5%, based upon a Class 3 type building, in accordance with a graph which is said to be attached to the letter.

21. I have not seen the Report referred to in this letter. Nor have I seen the graph, but I assume that it is one of the many RIBA percentage fee scale

[1] Doc 000003 / Doc 2 ADCH1 Bundle of Documents

graphs that have been in widespread use over the years. I will discuss the issue of RIBA fee scales in due course.

22. Mr [redacted] also states that the fee up to Planning Application Stage would be based upon 35% of the full fee, or £12,285 (assuming a building cost in line with the Report).

23. In a letter dated 7 December 2004[2], Mr [redacted] responded that, "our client's instructions are to proceed in this matter."

24. Mr [redacted] held a meeting with Mr [redacted] on 20 December 2004. According to hand-written notes of this meeting[3] made (I assume) by Mr [redacted], "I explained to him how our fees were made up and he agreed them." Mr [redacted] also explained that he was now only doing consultancy work, but that he would prepare the initial design and then hand over the project to a colleague for the detailed design.

25. However, it appears from the documents that nothing was finalised at this stage, and it was nearly a year later (on 9 December 2005)[4] that Mr [redacted] reactivated the project by writing to Mr [redacted] (by e-mail) stating that, "the project has not yet proceeded due to terms not being agreed and I am now in the process of instructing a firm such as your own to proceed." He added, "before doing this, will you confirm if you are still interested and if so, I would like to discuss your fees to ensure that we agree on the final costs."

26. Mr [redacted] responded to Mr [redacted] on 13 December 2005[5], suggesting that a further meeting be arranged to finalise the fees. This meeting was held on 21 December 2005 and again we have the hand-written notes of that meeting prepared by Mr [redacted].[6]

27. Mr [redacted] wrote to Mr [redacted] on 14 February 2006[7] informing him that he had "appointed [redacted] of [redacted] to assist me in the architectural work." The following day, Mr [redacted] responded by asking him to send the information he had asked for and adding, "I could then instruct you if the fees are agreeable."

Falconer Chester Hall / Other Consultants

28. Following the receipt of fee quotations from the other consultants[8], Mr [redacted] wrote to Mr [redacted] on 27 February 2006[9] setting out a fee proposal for all the professional services. Still based upon the project cost of £540,000 presented in the [redacted] Report, these were given as follows:

Architect ([redacted]?)	6.5%	£35,100
Structural Engineer ([redacted])	1.75%	£ 9,450
Quantity Surveyor ([redacted])	Feasibility Study	£ 2,000

[2] Doc 000005 /Doc 3 ADCH1 Bundle of Documents
[3] Doc 4 ADCH1 Bundle of Documents
[4] Doc 000006
[5] Doc 000007 /Doc 5 ADCH1 Bundle of Documents
[6] Doc 6 ADCH1 Bundle of Documents
[7] Doc 000008
[8] Doc 000009
[9] Doc 000014 /Doc 7 ADCH1 Bundle of Documents

	1.85%	£ 9,990
Planning Supervisor ([redacted])	0.5%	£ 2,700

29. In liaising with the consultants, [redacted] wrote to [redacted] on 28 March 2006[10] stating, "Roy [redacted] and I both feel it might be prudent if we each set out a proposal to take the scheme forward in stages to enable Mr [redacted] to monitor progress without a full up front financial commitment."

Outline Proposals

30. [redacted] prepared sketch proposals for the site and by way of their covering letter dated 11 May 2006[11], they forwarded alternative outline proposals to Mr [redacted], one for commercial offices and one for a mixed development comprising four x two bedroom flats and some commercial space. I take these drawings to be those numbered 200_OP1, 260_OP1, 200_OP2 and 260_OP2, all dated 10 May 2006, although I am unable to confirm this to be the case.

31. On 18 July 2006[12], [redacted] forwarded examples of fully glazed facades and timber louvres. It is therefore apparent that, at some point prior to this, an idea was floated that the replacement building should be a contemporary styled steel framed building with some form of glazed (or timber and glazed) facade. It is not clear from the evidence I have seen precisely when the idea to abandon the original intention of constructing a traditional brick building was made, or who raised the concept.

32. On 24 July 2006, Mr [redacted] wrote to Mr [redacted] by e-mail[13] (with a copy to [redacted]) confirming that, "you may proceed to planners, to determine if they will accept a glass frontage." Mr [redacted] expressed a strong preference for a fully glazed facade.

33. This was emphasised by Mr [redacted] in his e-mail to [redacted] dated 31 July 2006[14], which confirmed his instructions not to have any timber in the design.

Initial Consultation with the Council

34. Mr [redacted] and [redacted] had a meeting with a planning officer from [redacted] Council on 16 August 2006. The minutes of that meeting[15] show that the Council were agreeable, in principle, to the concept of a contemporary commercial (i.e. office) replacement building on this site. In their covering letter to Mr [redacted] the following day[16], attaching the minutes, [redacted] enclosed an image of a 3D rendering of the frontage (drawing number 270_OP4), showing a series of vertical louvres. [redacted] acknowledged that Mr [redacted] had "reservations on this arrangement", but they were clearly still attempting to persuade their client to accept a more articulated fenestration profile.

[10] Doc 000019
[11] Doc 000022
[12] Doc 000023
[13] Doc 000024 /Doc 8 ADCH1 Bundle of Documents
[14] Doc 000025
[15] Doc 000028
[16] Doc 000027

35. [redacted] Council followed up this meeting with their letter dated 14 September 2006[17] (actually sent 18 September[18]). I understand that the advice relates to [redacted] drawings numbered 200, 201, 250, 251, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269 and 401_OP5. As with the previous drawings referred to above, these drawings are all dated 10 May 2006.

36. In terms of the use of the site, the Council advised that, whilst the relevant development brief allocates this site for mixed-use development (residential, retail and food and drink), it does not necessarily preclude office development, although an 'active' street frontage would be required (by shops, restaurants and the like).

37. In relation to design, the Council advised that, whilst the site lies within a Conservation Area, an innovative contemporary design may be appropriate. Some concern is expressed as to the proposed height (five stories), but the Council advised that the relevant policy allows for the creation of 'landmark' features of a similar height, and provided that the details are carefully considered, the proposal should not appear overly prominent in their opinion.

38. The planning officer concludes his letter by commenting that 'I note that the proposals are at an early stage and therefore I cannot provide detailed comments on the design. The only comments I would offer relate to the suitability of timber louvres and whether it is possible to design more interest into the roofline.'

Cost Appraisal

39. [redacted] forwarded their Draft Construction Cost Appraisal[19] to [redacted] on 17 August 2006. This suggested a building cost of £1,295,000, based upon [redacted]'s outline scheme drawings, which I take to be the May 2006 scheme referred to above. The size of the scheme had increased from the 4,500 square feet (418 square metres) of the original proposal set out in the [redacted] Report, to around 6,530 square feet (607 square metres), representing an increase in gross floor area of some 45 percent.

40. There then appears to be a delay whilst formal valuations for the site were awaited. Mr [redacted] was seeking an historical value of the land as at November 2002 (i.e. at the time of its demolition), its current value, and also some guidance as to build prices. Mr [redacted]' e-mail to Mr [redacted] dated 3 October 2006[20] (copied to [redacted]) states, "As regards to the QS Cost Appraisal, it was agreed that we would wait for the valuer to provide his valuations before committing..."

Development of Design

41. In the same e-mail, Mr [redacted] again made it clear that he did not wish to see any timber elements incorporated into the design. He repeated the instruction in his e-mail to [redacted] dated 6 November 2006[21], saying, "I still want

[17] Doc 000039 / Doc 13 ADCH1 Bundle of Documents
[18] Doc 000057
[19] Doc 000030 / Doc 11 ADCH1 Bundle of Documents
[20] Doc 000064 / Doc 15 ADCH1 Bundle of Documents
[21] Doc 000071 / Doc 16 ADCH1 Bundle of Documents

to pursue the glass build construction without wooden features and await final designs, to allow the QS to finalise estimated construction costs." Rather confusingly, he nevertheless says that he might reconsider his decision if [redacted] can locate a building with similar timber features to those proposed by [redacted], although he expresses a preference for a steel design feature.

42. Mr [redacted] goes on in this e-mail to say that his neighbours would need to give their consent to a glazed building and he points out the need to determine who will make the approach and how it should be done. He also reminded [redacted] that there was a trespass problem at the front of the building caused by a flower bed having been built by the adjacent developer onto what was thought to be Mr [redacted]' land. He asked [redacted] whether the new wall to the building will be built next to the existing boundary wall or actually on the boundary wall (which was where the original building was located).

43. [redacted]'s response dated 14 November 2006[22], acknowledges that they will abandon the timber features and perhaps use metal features instead.

44. With regard to Mr [redacted]' point about the necessity of obtaining the permission of the neighbours to a glazed building, [redacted] stated "I can certainly help with the privsion [provision] of visuals and a description of the development. Can your sloictor [sic] assist with providing me with the names of whom to contcat [sic]." [redacted] confirmed that "we are building on the line of the old building footprint and therefore your solicitors [sic] assistance in negotiations regarding the boundary condition are very useful."

45. Mr [redacted] responded the following day by e-mail[23], giving [redacted] details of the owners of the adjoining property whose permission he considered would have to be sought to allow the construction of a glazed building. He added, "This aspect of gaining permission now seems to be the most urgent priority, as a glass design may not be possible. I have advised [redacted] that this should of [sic] been sought a lot sooner than now." Mr [redacted] goes on to mention the boundary trespass situation, making the point that Mr [redacted] had considered that it was better to secure an agreement with the adjoining owner with regard to rights of light, rather than aggravating the neighbour by accusing him of trespassing onto Mr [redacted]' land at front of the property.

46. [redacted] wrote to the adjoining owners, [redacted]), the following day (16 November 2006)[24], enclosing details of the proposed scheme, and pointing out that the proposal includes glazing to the return gable abutting their building, with an aspect onto the apron of their land which extends in front. [redacted] asked whether [redacted] had any concerns with this proposal. This was followed up by a further letter dated 22 December 2006[25] and a fax dated 17 January 2007[26].

[22] Doc 000078 / Doc 17 ADCH1 Bundle of Documents
[23] Doc 000078 / Doc 17 ADCH1 Bundle of Documents
[24] Doc 000081
[25] Doc 000084
[26] Doc 000085

47. [redacted] responded on 22 January 2007[27], asking [redacted] for full details of the proposals, "particularly bearing in mind the close proximity of your clients proposed building." In connection with this, [redacted] expected to see foundation details and the like.

48. There is a reference to structural engineering drawings having been sent to [redacted] on 2 March 2007 in [redacted]'s follow up letter dated 26 March 2007[28]. [redacted] were absorbed within [redacted] and [redacted] duly wrote to them on 11 April 2007[29]. In turn, a further letter was sent by [redacted] on 10 May 2007[30] to [redacted] Limited, with reminders sent on 23 May[31], and 15 June 2007[32].

49. Mr [redacted] e-mailed Mr [redacted] on 9 July 2007[33], expressing his concern that no progress was being made with (a) obtaining the consent of the adjoining owner, and (b) obtaining a finalised costing from the QS for a glazed design build. Mr [redacted] made the following comment, "I have to say that even before this time last year, I was disappointed that we had not moved sooner to obtain this permission, i.e. when the glass design build was first mentioned, but instead the whole project has been put on hold pending the other side giving us a decision and you will appreciate that time is going on."

50. Mr [redacted] responded by contacting [redacted] himself by telephone and following this up with a reminder letter dated 26 July 2007[34]. Nevertheless, he had to report back to Mr [redacted] on 21 August 2007[35] that he had been no more successful in obtaining a response from the adjoining owners than [redacted] had been. Mr [redacted] added that, whilst he appreciated that Mr [redacted] wished to await a final resolution on the matter of the compensation for the enforced demolition of the original building, he felt that the scheme should be finalised and submitted for planning approval as soon as possible.

51. However, Mr [redacted] was clearly reluctant to instruct [redacted] to progress the scheme to planning application stage without having first obtained the consent of the adjoining owners and having reached some conclusion of the compensation issue. Mr [redacted]' e-mails to Mr [redacted] dated 19 October 2007[36] and 19 November 2007[37] show that these matters were still unresolved at that time. There is also mention in these e-mails of Mr [redacted]'s account reference W35/1, but I believe that this was in connection with work at another property at [redacted] and not relevant to this dispute.

52. In the meantime, progress with obtaining a valuation was equally frustrating. Knight Frank, who had been requested to provide this information, finally responded on 30 November 2006[38], stating that they were unable to do so since they considered that a more locally based and specialist valuer would

[27] Doc 000086
[28] Doc 000088
[29] Doc 000089
[30] Doc 000090
[31] Doc 000091
[32] Doc 000092
[33] Doc 000093 / Doc 18 ADCH1 Bundle of Documents
[34] Doc 000094
[35] Doc 000096 / Doc 19 ADCH1 Bundle of Documents
[36] Doc 000097
[37] Doc 000098
[38] Doc 000082

be better placed to deal with the valuation. Mr [redacted] advised that he would engage the services of a local valuer. I have seen no mention in the documents of this matter having been progressed beyond this point.

Development of Fee Dispute

53. On 20 May 2008[39], the structural engineers, [redacted], forwarded their account in the sum of £[redacted] (plus VAT), addressed directly to Mr [redacted].

54. On 23 May 2008[40], [redacted] forwarded a draft of their proposed fee statement 'for works to date' to Mr [redacted]. I have not seen a copy of this draft fee statement. [redacted] mentioned that they had obtained similar fee notes from [redacted] and [redacted].

55. On 20 June 2008[41], the quantity surveyors, [redacted], forwarded their account in the sum of £[redacted] (plus VAT), addressed directly to Mr [redacted].

56. On 25 June 2008[42], [redacted] forwarded their fee note 1426 in the sum of £[redacted] (plus VAT) to Mr [redacted]. [redacted] explained that they had based their charges on Mr [redacted]'s letter of 28 September 2008, although the relevant percentage rate had been reduced to 6.25% to reflect the increased construction cost from the original proposal. They then apportioned the overall fee up to what they termed the planning application stage, which they claimed amounted to 35%.

57. Mr [redacted] wrote to Mr [redacted] on 14 November 2008[43] advising that his solicitors had now issued proceedings 'against the other side'. I assume that this related to the demolition compensation issue. He also made reference to the fee accounts issued by [redacted] and the other consultants, saying that he had only recently received them having been abroad for the previous 12 months and had experienced significant problems with his e-mail communications. Mr [redacted] added that he considered the accounts to have been issued prematurely in view of the fact that the project was ongoing, stating, "I wish to reassure all parties concerned that this matter is pressing ahead."

58. [redacted] made reference to Mr [redacted]' letter in their letter to Mr [redacted] dated 24 November 2008[44]. They state that they do not believe that the fee requests are premature, since they, "are now in a position to make an application for planning permission on behalf of Mr [redacted]" and that it is only because they had not heard from Mr [redacted] for so long that they felt it necessary to request payment 'on account'.

59. [redacted] wrote to Mr [redacted] on 13 March 2009[45] mentioning a meeting that had taken place with Mr [redacted] and requesting payment of their invoice by return.

[39] Doc 000102
[40] Doc 000103
[41] Doc 000106
[42] Doc 000107
[43] Doc 000111 / Doc 21 ADCH1 Bundle of Documents
[44] Doc 000112
[45] 000113

60. Mr [redacted] responded by e-mail on 19 March 2009[46]. He disputed the various accounts and said that invoices should only be raised once planning approval had been obtained. In what is a somewhat confusing paragraph, Mr [redacted] appears to say that Mr [redacted] had made clear that no application could be made until consent had been obtained from the adjoining owner in respect of the proposed glazed facade in terms of rights of light. Mr [redacted] advised that a Mr [redacted] had been contacted in an effort to resolve this matter. Mr [redacted] added that he had made clear at the outset that the project was to be funded from the compensation claim and asked [redacted] to put a hold on their account until all the various issues had been resolved.

61. Efforts by [redacted] to arrange a meeting with Mr [redacted][47] proved unsuccessful. In his email to [redacted] dated 3 April 2009[48], Mr [redacted] made any meeting conditional upon [redacted] agreeing to hold over their account for the time being. He asked [redacted] to set out the terms and the basis on which their fee account had been issued. [redacted] did so in their letter to Mr [redacted] dated 27 April 2009[49].

62. A further letter from [redacted] to Mr [redacted] dated 21 May 2009[50] again requested a meeting. Mr [redacted] responded by e-mail on 29 May 2009[51], stating that the planning application stage had not been reached because consent had not been obtained from the adjoining owner for a glazed building. Mr [redacted] also made the point that the letter from Mr [redacted] dated 28 September 2004, upon which [redacted] were relying, made no mention of dispute resolution procedures.

63. [redacted] responded to these comments in their letter to Mr [redacted] dated 16 June 2009[52]. In this letter, [redacted] claimed (a) that the proposals were sufficiently detailed for a planning application to be made, awaiting only the planning application fee, (b) that the adjoining owners would have the opportunity to comment upon the scheme during the normal course of the planning application, and (c) that, should negotiations break down, alternative dispute resolution procedures were available, such as the RIBA Mediation Service, or by an arbitrator, or in the courts.

64. In responding to an e-mail from Mr [redacted] dated 18 June 2009 (which I have not seen in the bundle of documents), [redacted] wrote further to Mr [redacted] on 22 July 2009[53], expanding on the points (a), (b) and (c) above, in relation to the planning application, adjacent neighbours and dispute procedures, respectively. Notice is given that proceedings will be issued unless full remittance is received by 31 July.

65. Mr [redacted] set out his position in his e-mail response to [redacted] dated 24 July 2009[54]. Amongst other comments, Mr [redacted] claimed that no terms and conditions were ever agreed and that, at one of the meetings with [redacted], he

[46] 000114
[47] 000116 and 000117
[48] 000118
[49] 000120
[50] 000123
[51] 000124
[52] 000125
[53] 000127
[54] 000131

had a clear recollection that [redacted] had agreed to take over from Mr [redacted] in obtaining the consent of the adjoining owners. Mr [redacted] claimed that he had made it clear that he would not be able to proceed with a glazed building without this consent.

66. Finally, a letter of claim was sent by [redacted], solicitors acting for [redacted] on 18 September 2009[55]. I understand that no alternative resolution procedures were attempted and proceedings were issued late in December 2010.

[55] 000135

Section 3: Discussion of Issues

The Client

67. According to his witness statement, Mr [redacted] is a semi-retired insurance broker. Mr [redacted] is not a property developer, he is an individual private client. As far as my instructing solicitors are aware, he has never in the past undertaken any significant construction projects.

68. In short, the role of client in a construction context was wholly unfamiliar to Mr [redacted]. As a starting point to any analysis of this dispute, it must be borne in mind that, as such a private consumer, Mr [redacted] was entitled to receive a full explanation and negotiation of any terms of engagement, and entitled to expect that the construction professionals involved would guide him throughout and go out of their way to ensure that each step of the process was fully explained to him. From the evidence that I have seen, I do not believe that this was entirely the case here.

The Architects

69. I have carried out an online search of the membership registry of both the Architects Registration Board (ARB) and the Royal Institute of British Architects (RIBA). Membership of the ARB is necessary in order to legally practice as an architect in the UK. Membership of the RIBA is voluntary.

70. Neither of these professional bodies have any current record of Mr [redacted], either as an individual architect, or under his practice name of [redacted]. Unfortunately, I was unable to obtain any historical membership information, but I can only assume that Mr [redacted] fully retired from practicing as an architect at some point after 2007.

71. [redacted] is registered with the ARB with the membership number [redacted]. His address is given as [redacted]). Mr [redacted] is also a member of the RIBA and [redacted] are registered as a RIBA Chartered Practice. I understand that Mr [redacted] is a director of [redacted].

72. [redacted] are a fairly large practice (by comparison with architects generally) and they are well established and well respected. Their website records that they have recently entered the list of the top 100 architectural firms in the UK, as compiled by The Architect's Journal. [redacted] were winners in 2011 of the [redacted] in the Best [redacted] category. The website features a series of largely contemporary styled buildings and their tagline reads "design intelligence, commercial flair."

An Architect's Duty of Care

73. Since I am asked by my instructing solicitors to explore allegations of negligence on the part of [redacted], it is necessary to consider the general legal framework, in terms of contract and tort, within which a construction professional must practice. Whilst disputes involving construction professionals may also be concerned with an alleged failure to comply with very specific terms of the contract, it is the more general claim that the

professional has failed to exercise 'reasonable skill and care' that will frequently be applied. This term requires further explanation.

74. An architect shares with any other professional person a responsibility to act honestly and obediently and to exercise reasonable skill and care. The usual test for professional negligence was laid down in a medical negligence case *Bolam v Friern Hospital Management Committee*[56]. The "Bolam test" can be summarised as: Professionals are not negligent if they act in accordance with a practice accepted as proper by a responsible body of people in that particular profession. Hence, the standard of 'reasonableness' in this case is the standard the architectural profession expects of an average trained and experienced architect, exercising reasonable skill and care. In the case of *Eckersly v Binnie & Partners,*[57] in a dispute concerning consulting engineers, in a passage which could be applied equally to any construction professional, Bingham LJ commented thus on the required standard:

> "He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members would bring but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet."

What is reasonable depends, of course, upon the particular circumstances of the case. Negligence only occurs if he or she makes an error that an average professional in the same circumstances would not have made, and if the aggrieved party relied upon the faulty design or information.

75. Focusing more on the responsibilities of an architect, the judge in the case of *Sutcliffe v Chippendale and Edmondson (1971)*[58] summed up the general duties of an architect thus:

> "When a person engages an architect in relation to the building of a house, he is entitled to expect that the architect will perform his duties in such a manner as to safeguard his interest and that he will do all that is reasonably within his power to ensure that work is properly and expeditiously carried out, so as to achieve the end result contemplated by the contract."

76. I have examined the Codes of Professional Conduct issued by the ARB and RIBA to ascertain whether a higher duty is imposed by these bodies. An architect is required to regulate his professional actions in accordance with these Codes, which prescribe a general standard of professional ethics for all practising architects. These requirements are in addition to any obligations placed upon a professional person under the law. Having conducted this analysis, my conclusion is that there is no specific higher standard of care expected of its members than would be the case with any other professional

[56] (1957) 1 WLR 582 at 586.
[57] (1988) 18 Con LR 1.
[58] 18 Building Law Reports 149

person. The ARB Code, for example, states the following: "Architects should perform their work with due skill, care and diligence."[59]

77. The wording of the "duty of care" clause in the RIBA Code of Professional Conduct varies with each edition. The Code that was in place at the time of this dispute is equally straightforward as that of the ARB, in that, under Clause 2.1, architects should "apply high standards of skill, knowledge and care in all their work". Finally, there is a similar wording contained in the RIBA publication, "A Client's Guide to Engaging and Architect" where it is stated that the architect undertakes to "use reasonable skill and care in performing the services required, in conformity with the normal standards of the architect's profession."

78. Thus the standard to be applied here is that, in the performance of their duties, [redacted] need to be able to demonstrate that they have exercised reasonable skill and care of a standard to be expected of a reasonably competent architect.

Terms of Engagement

79. Both the ARB and the RIBA Codes of Professional Conduct contain clauses relating to the terms of any engagement.

80. ARB Code of Professional Conduct (2002 Edition):

> Standard 11
> Architects should organise and manage their professional work responsibly and with regard to the interests of their clients.
>
> 11.1 Architects should not undertake professional work unless the terms of the contract have been recorded in writing as to:
> – the scope of the work;
> – the fee or method of calculating it;
> – the allocation of responsibilities;
> – any limitation of responsibilities;
> – the provisions for termination;
> – any special provisions for dispute resolution;
> and they have informed the client that Architects are subject to the disciplinary sanction of the Board in relation to complaints of unacceptable professional conduct or serious professional incompetence.

81. The wording of the RIBA Code of Conduct is similar but less detailed:

> Principle 2.3
> Members should ensure that their terms of appointment, the scope of their work and the essential project requirements are clear and recorded in writing. They should explain to their clients the implications of any conditions of engagement and how their fees are to be calculated and charged. Members should maintain appropriate records throughout their engagement.[60]

82. The RIBA Code is supported by nine guidance notes which provide additional detail and which its members are also required to adhere to. Guidance Note 4 which relates to appointments reads as follows:

[59] ARB Code: Standard 4.2
[60] Current Code of Conduct (in force since 1 January 2005)

4.1 Terms of Appointment

When proposing or confirming an appointment, a member should ensure that its terms and scope of works are clear and recorded in writing.

4.2 When contracting to supply architectural services, the terms of appointment should include:

- a clear statement of the client's requirements;
- a clear definition of the services required;
- the obligation to perform the services with due skill and care;
- the obligation to keep the client informed of progress;
- the roles of other parties who will provide services to the project;
- the name of any person(s) with authority to act on behalf of the client;
- procedures for calculation and payment of fees and expenses;
- any limitation of liability and insurance;
- provisions for protection of copyright and confidential information;
- provisions for suspension and determination
- provisions for dispute resolution

4.3 Any variation to a standard form of appointment (standard forms of appointment are outlined in the Annex) should be agreed with the client and clearly stated in the contract documentation. Members should take care that non-standard terms and conditions are:

- legally acceptable,
- compatible with other provisions,
- will not lead to excessive liabilities, and
- do not create conflicts of interest.

4.4 When accepting an appointment members should not undertake to provide services which they know, or ought to know, are beyond their competence or resources.

4.5 At the outset of any project, Members should provide the client with their terms and conditions of appointment. Members should ensure that the client understands that any work they undertake on the client's behalf will be according to those terms and conditions (including the method of calculating and paying fees). Members should also make it clear to the client whether they will:

- charge for their initial visit, or
- undertake it speculatively (no fee), or
- undertake it 'at risk' (no fee unless the project proceeds)

The instruction to proceed with the work must be clearly understood by both parties. Where this is not in writing from the client (which may include an e-mail or text message), Members should make a note of the date and time, and what was said, when they receive the instruction orally, and keep that note in the project records. It is recommended that whenever an oral instruction is received from the client, Members should subsequently confirm it in writing back to the client (i.e. by letter, meeting notes or email).

4.6 Covering Absences

Members should make arrangements with an appropriately qualified person to run their office(s), administer their contracts and cover any other ongoing work during a period of planned absence. When this will affect current projects, clients should be informed of those arrangements.

4.7 Transfers of responsibilities

Members should not transfer or sub-contract their agreed responsibilities without first obtaining the written consent of the client.

4.8 Suspension and determination of an appointment

Members should not evade their contractual obligations by abandoning a commission without due reason or notice. Members should inform the client in writing of their intention to suspend or determine an appointment, explain their reasons for doing so, and confirm whether or not the client has a licence to use any information, including drawings, specifications, calculations and the like, prepared by the architect.

4.9 Professional Indemnity Insurance

Members practising as Architects in the United Kingdom must be registered at the Architects Registration Board and are obliged under the terms of the ARB's Code to hold professional indemnity insurance (PII).
When accepting an appointment members should:
• ensure that they hold appropriate PII cover;
• consult their insurer if there are any doubts about the terms of the policy in relation to the appointment; and
• confirm to the client that such insurance is held and the amount of cover available under the contract.
Further guidance on professional indemnity insurance is given in Guidance Note 5.

4.10 Taking over a previous appointment
Before accepting an appointment to continue a project started by someone else, members should ascertain from the potential client:
• that the previous appointment has been properly determined; and
• the client holds a licence to use any information, including drawings, specifications, calculations and the like, prepared by the preceding appointee;
and
• that there are no outstanding contractual or other matters, which would prevent the member from accepting the appointment.
If there are any doubts, a suitable indemnity should be obtained from the client.
Further guidance on taking over someone else's work is given in Guidance Note 7.

4.11 Fee Quotations
When invited to quote for architectural or other services, members should ensure that they have sufficient information about the commission for the calculation of their fee. Any fee quotation should clearly indicate the type and extent of the services (a defined scope of works) to be undertaken for that fee, and will also enable any subsequent changes to be identified.
Members should ensure that they have adequate and appropriate financial and technical resources and professional expertise to deliver the services offered.

83. All architects practising in the UK are therefore obliged to ensure that their terms of appointment and the scope of the work they are expecting to undertake are unambiguous and recorded in writing. They must explain to their clients the implications of any conditions of engagement and how their fees are to be calculated and charged and the circumstances in which additional fees may be payable. They have to set out the provisions for termination of the agreement and the options available for dispute resolution.

84. In addition, all architects who are RIBA members are obliged to comply with all the requirements set out above under Guidance Note 4.

85. I would also point out that with a project of this nature, I would have expected to find some reference to the client's obligations under the Party Wall, etc Act 1996 and under the Construction and Design Management (CDM) Regulations 1994. These works would undoubtedly have come under the requirements of both of these pieces of legislation and it is surprising that there is no mention of them.

86. In relation to the terms of appointment that are applicable in this dispute, [redacted] are placing reliance upon the letter from Mr [redacted] to Mr [redacted] dated 28 September 2004. This document appears to me to be nothing more than an initial fee proposal. There are no terms of any substance set out in this letter and it falls well short, in my view, of the requirements set out above.

87. Similarly, Mr [redacted]'s letter to Mr [redacted] dated 27 February 2006 takes us no further forward in relation to the terms of appointment, other than providing an indication of what fees the other consultants were likely to charge.

88. Mr [redacted] maintains that any agreement with Mr [redacted] was in any event terminated by mutual consent before any significant work was undertaken.[61] This is disputed by the Claimant[62] and this will no doubt be a matter for the court to determine.

89. Irrespective of any possible termination of the agreement with Mr [redacted], there is, in my view, intense confusion as to as to the respective roles of Mr [redacted] and [redacted]. It appears from the documents that the original intention was that Mr [redacted] himself would prepare the initial scheme. Under this arrangement, Mr [redacted] would essentially have designed the building and then [redacted] (or others) would have stepped in for the detailed design. Perhaps he did prepare some drawings, but I have not seen any. It therefore seems to be the case that this arrangement was largely abandoned in favour of [redacted] taking the lead role in the design. Perhaps this was due to the time lag between 2004 and the spring of 2006 when the main design work was undertaken, by which point Mr [redacted] may have been wishing to retire from his practice, but I do not really know.

90. With [redacted] as the lead architect, this new arrangement leaves two questions in my mind. Firstly, what role was Mr [redacted] intended to play in this process? Was he supposed to act as an intermediary between the design team and the client – a sort of project manager, perhaps? Or was he merely to act as an external consultant, only called upon when required?

91. Secondly, what were the terms of engagement between Mr [redacted] and [redacted]? This is not at all clear to me. I can only say that I have been unable to find in the documents any form of agreement between Mr [redacted] and [redacted] that would satisfy the requirements of the ARB and the RIBA. There should be no ambiguity about this. The fact that there is confusion regarding the respective roles of the parties and the terms of any appointment is, in my view, a significant factor in this dispute.

92. The RIBA recommends that all fee agreements are confirmed using one of the standard forms produced for this purpose. At the time of this dispute, this would have meant the "Standard Form of Agreement for the Appointment of an Architect" (SFA/99) or the "Conditions of Engagement for the Appointment of an Architect" (CE/99), both updated in April 2004.[63] Both these documents seek to schedule the services that an architect commonly performs as defined in what the RIBA refers to as a "Plan of Work". The satisfactory completion of such a schedule acts as a checklist of the tasks that the architect has agreed to carry out in return for a specified fee.

93. Use of the RIBA standard forms offers the architect important additional protection in the event of disputes arising. SFA/99, for example, contained

[61] Amended Defence, Para 1
[62] Reply Para b.1
[63] These were superseded by a new suite of RIBA Appointment documents in 2007

(amongst other provisions) clauses relating to the right to suspend work for non-payment of fees, a prohibition against set-off, the right to charge interest for late payments, together with options for adjudication or arbitration as methods for settling disputes. SFA/99 also included the obligation that clients must indemnify the architect in respect of their legal and other costs, including the reasonable cost of time spent by the architect in chasing a bad debt if the architect secures a judgement in their favour.

94. The absence of a detailed and precise agreement as to the terms of engagement does not necessarily mean that the architect will be unable to recover his fees, since he will be protected to a certain extent by the common law, whereby the general rule is that where one party instructs another to carry out work or perform services, they are obliged to pay a reasonable sum for what is done. There are also important provisions concerning payment contained within the 'Housing Grants, Construction and Regeneration Act' (HGCRA) 1996, and the 'Late Payment of Commercial Debts (Interest) Act' 1998. Nevertheless, it is important to dispel the illusion that work done automatically entitles the architect to payment. If there is uncertainty over the precise terms of the appointment, the architect will be placed at a considerable disadvantage in the event of a client disputing payment of fees.

RIBA Fee Scales

95. The letter from Mr [redacted] to Mr [redacted] dated 28 September 2004 sets out the fee calculation based upon RIBA Fee Scales. Some explanation of this topic may be helpful to the court.

96. The RIBA operated a mandatory minimum fee scale from 1872 to 1982. In later years this was shown as sliding scale graphs for different building types, whereby a private residence, for example, would attract higher fees than a municipal car park. The higher the total building cost, the lower the percentage rate applicable.

97. In the late 1970's, the Monopolies and Mergers Commission (MMC), bowing to pressure from the new EU pro-competition rules, decided that mandatory fee scales were anti-competitive and ordered them to be withdrawn by all UK professional bodies within three years. As a consequence, from 1982 to 1992, the RIBA changed to recommended fee guides that architects could use to negotiate their fees. Due to further rulings from the MMC, recommended fee scales had to be abandoned and the RIBA Standard Form of Appointment, SFA/92, did not incorporate any fee scales at all.

98. However, there continued to be a demand from both clients and architects for some form of fee guidance. Thus, between 1994 and 2003, the RIBA published indicative fees in the form of percentage scales. In 2003, the Office of Fair Trading (OFT) ruled that even indicative fee scales were no longer allowable, since they could be seen as non competitive. In the same year, the RIBA bowed to further pressure from the OFT to drop rules 3.1 and 3.3 of the Code of Professional Conduct, which prevented practices from

offering discounts and from undercutting another architect's fee bid for the same project.

99. The desire for some form of fee information did not disappear and the RIBA managed to negotiate an agreement with the OFT to publish fee information from 2003 in the form of fee survey data that had been independently collected by Mirza & Nacey (now The Fees Bureau). From this point up to 2009, RIBA guidance was based upon actual fees received, rather than from what the profession thought it was worth, and the survey data gave significantly reduced fee levels from the previous indicative fees.

100. Thus, recommended fee scales have not been authorised by the RIBA since 1992 and even indicative fee scales had been abandoned by the date of Mr [redacted]'s letter. There was nothing wrong with Mr [redacted] quoting a fee of 6.5%. However, it was wrong of him to state that he had arrived at that rate in accordance with the RIBA recommended fee scale. If he was going to base his fee upon anything, it should have been the guidance applicable at that time. This was the RIBA publication 'A Client's Guide to Engaging an Architect', a revised version of which was introduced in April 2004 (it has now been withdrawn).

101. This document made clear that the fee is a matter for negotiation between architect and client, that there were no longer any 'recommended' scale of fees and no standard or recommended method of calculation. The publication reflected the fact that, historically, very few architects have managed to achieve fees in line with the RIBA indicative rates. Instead, the revised fee information is based upon an annual survey of architects' fees collected between July 2002 and July 2003 by Mirza & Nacey Research (now The Fees Bureau), who, since mid 1997, have produced an annual survey of the fees charged by private architectural practises, compiled using data obtained quarterly from a sample of about 300 practices. The information is presented in the form of a graph showing a broad range of average fees for new works, applicable to a traditional contract.

102. This graph (reproduced below) gives a range of between 9 and 12 percent for a construction cost of about £50,000 to a range of between 3.8 and 7.1 percent for a construction cost of £3 million. It will be seen that the separate graphs for each building type, as presented in previous fee scales, have been abandoned, although there is some guidance in the text relating to the degree of complexity for each building type, now divided into 'simple', 'average' and 'complex'. One assumes from this (although it is not stated as such) that a 'simple' project would normally be positioned toward the bottom of the range whereas a 'complex' project would lie toward the top of the range.

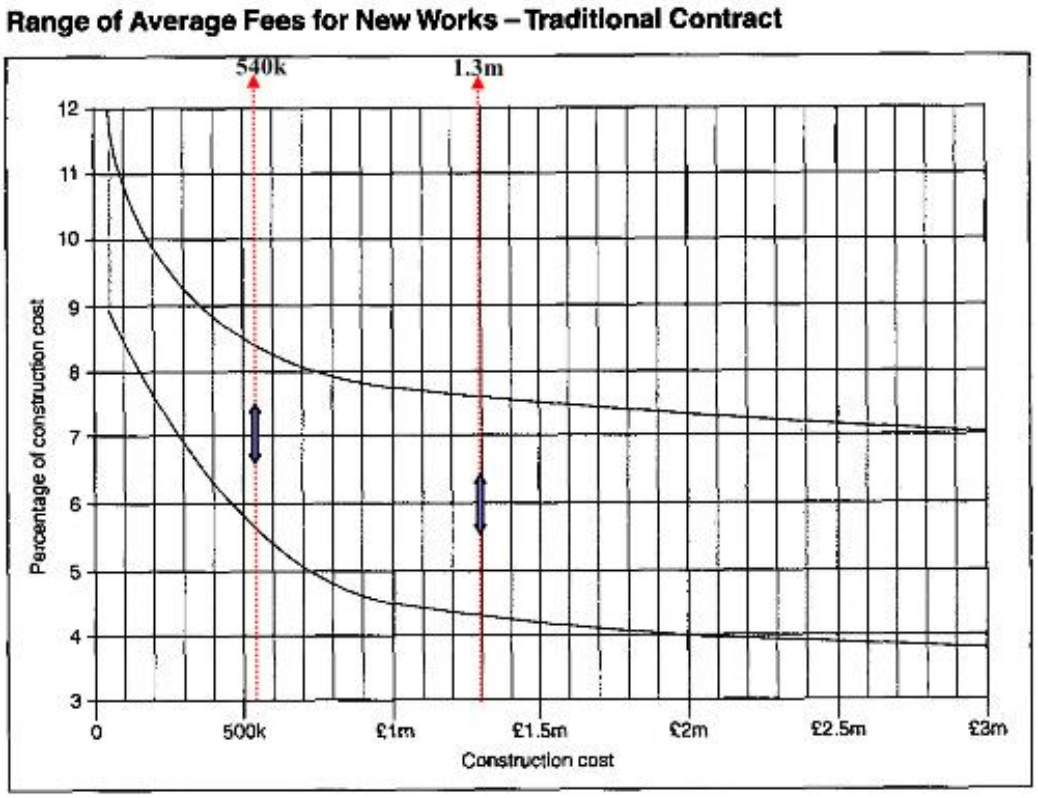


Figure 1 from 'A Client's Guide to Engaging an Architect', May 2004

103. In order to make use of this graph, one therefore first has to establish the degree of complexity of the project. In relation to this project, office developments and apartment blocks are described as 'average', whereas speculative retail projects are deemed to be 'simple'. Overall, I would suggest that the appropriate measure of complexity would be slightly below average.

104. The second task is to establish a contract value. This is far from easy, but, for the purposes of this exercise, I propose to assume (a) the value of £540,000 presented in the [redacted] Report, and (b) the value of £1,295,000 presented by [redacted] in August 2006. I have marked these values on the graph illustrated above. It will be seen that, in relation to the original building cost of £540,000, the applicable rate would be in the range of about 5.7 percent to about 8.4 percent. The mean figure within this range is 7.05 percent. Bearing in mind the previous paragraph, this probably needs to be reduced a little to, say, 6.7 to 6.9 percent. At first sight, therefore, the 6.5 percent proposed by Mr [redacted] seems to represent something of a bargain, but I would point out that, in my experience, the reality is that few architects (except perhaps the 'signature' names) feel that they can aspire to these published rates, so they tend to discount their rates slightly. It seems to me therefore that 6.5 percent is a perfectly reasonable rate in relation to the original building cost. I would emphasise that this relates to the provision of a normal full architect involvement in the project from inception to completion.

105. Performing a similar calculation in relation to [redacted]' building cost of £1,295,000 gives an applicable rate in the range of about 4.3 percent to about 7.7 percent, the mean figure being 6.0 in this instance. Making an adjustment, as above, for building complexity produces a rate of between 5.6

to 5.9, and I would suggest that this is rounded down to 5.5 percent as a more realistic discounted rate.

106. I have noted that [redacted] recognised the need to reduce the percentage rate to reflect the increased cost of the building. However, they have only reduced the rate by 0.25 percent, from 6.5 to 6.25 percent. In my view, this reduction is insufficient and, based on the exercise set out above, I would expect a more significant reduction. I suggest that a revised rate of 5.5 percent would be more in line with the RIBA guidance that was applicable at the time.

RIBA Work Stages and Fee Apportionment

107. Having discussed the percentage rates, I now need to address the question of fee apportionment. Both Mr [redacted] and [redacted] use the apportionment of 35% in their fee calculations, on the assumption that the work stage reached was equivalent to planning application stage. Leaving to one side for the moment this significant assumption, where does this rate of 35% come from?

108. Again, it is somewhat disingenuous to suggest that this is based upon RIBA guidance. This requires some explanation. As mentioned previously, the RIBA have for many years suggested that projects be divided into what the RIBA terms 'Work Stages'. The precise definition of what work should fall into which work stage has varied over the years, as has the suggested apportionment. The work stages applicable at the time of this dispute are reproduced below (in outline):

Feasibility

Work Stage A:	Appraisal
Work Stage B:	Strategic Brief

Pre-construction

Work Stage C:	Outline Proposals
Work Stage D:	Detailed Proposals
Work Stage E:	Final Proposals
Work Stage F:	Production Information
Work Stage G:	Tender Documentation
Work Stage H:	Tender Action

Construction

Work Stage J:	Mobilisation
Work Stage K:	To Practical Completion
Work Stage L:	After Practical Completion

109. Each of these headings is further defined by reference to the type of work that is likely to be undertaken at each particular stage. By way of example, Work Stage D is defined thus:

- Completion of development of the Project Brief.
- Preparation of detailed proposals.
- Application for detailed planning approval.

110. [redacted] claims that they had reached the end of Stage D. They substantiate this claim by stating that the scheme was sufficiently developed for an application for planning permission. I do not believe that this is the case. I have examined [redacted]'s drawings. I shall deal in due course with possible issues of rights of light, overlooking, boundary treatments, and whether this was actually what the client had asked for in due course, but, for the present, I am concerned merely with the level of detail that I would expect to see in a set of drawings that were intended to be submitted for a full planning application.

111. The drawings prepared by [redacted] constitute five options. Putting these into a chronological context is made more difficult by the fact that, somewhat confusingly, all the drawings are dated 10 May 2006. However, I assume that the option one scheme preceded the option five scheme, and certainly one sees some development in the design over the five schemes, in that, for example, a steel framework is shown in what I assume to be the more recent scheme drawings. Nevertheless, these are all what I would term concept schemes, rather than fully developed and detailed proposal drawings suitable for a planning application.

112. Mention has already been made in the previous section of this report to the meeting held with the senior planning officer at [redacted] Council on 16 August 2006, and the Council's subsequent letter to [redacted] dated 14 September 2006. As I have set out previously, I have assumed that the drawings discussed at this meeting were the option five scheme drawings, since copies of these drawings were stapled to the Council's letter and they bear sequential numbers in the bundle of documents. I should add that, whilst these particular copies are reduced in scale and of a poor reproductive quality, I have also been sent full size (A3) fair copies of these drawings.

113. These therefore appear to be the drawings about which the Council stated, "I note that the proposals are at an early stage and therefore I cannot provide detailed comments on the design. The only comments I would offer relate to the suitability of timber louvres and whether it is possible to design more interest into the roofline."

114. I am therefore not alone in believing that these drawings had not been developed in sufficient detail for a valid planning application to be made. It should be remembered that this was a dense city location, lying on a key route between the station and the city centre, and in a Conservation Area with nearby listed buildings. The planning officers were therefore perfectly entitled to expect a fully detailed project, so that a proper assessment might be made of the impact of the proposed building.

115. I would contrast these drawings with those prepared for the planning application for the adjoining site at [redacted] (the old theatre site), which I have viewed on the Council's website under the planning reference 07/00125/FUL. Despite being a significantly larger site, the drawings for [redacted] are drawn at twice the scale (1:100, rather than 1:200) on A1 sized drawings (rather than A3). I appreciate that increasing the scale does not necessarily increase the level of detail (particularly with CAD produced projects), but there is generally more detail and more information on these

drawings. The elevations, for example, are fully developed, whereas [redacted]'s elevation drawings are little more than concept proposals. What is missing here (in terms of the proposed elevational treatment) is a typical bay detail, preferably in 3D, showing precisely how the various components are put together so that a planning officer can make a proper assessment of the visual impact of the scheme.

116. Thus, whilst the option five set of drawings were perfectly suitable for an initial discussion with the planning officer, I do not believe that they were suitable for a valid planning application to have been made. I have seen no other drawings prepared by [redacted] that respond to the comments of the planning officer or, indeed, which progress the scheme any further at all.

117. Returning now to the apportionment issue, I started this topic by raising the question of where the 35% stated in the fee statements is derived from. I have made the point that the RIBA has altered their apportionment percentages over the years, and I have established that the relevant guidance at the time of this dispute was the RIBA publication 'A Client's Guide to Engaging an Architect', April 2004 edition. The relevant proportions are set out in the following table that has been reproduced from this document:

Architects' fees and expenses

Proportion of fee by work stage

Clients often require architects' services for only selected work stages from the *RIBA Plan of Work*. The typical proportions of the total fee for Work Stages C to L are shown in the following table. Work Stages A and B (Appraisal and Strategic Brief) are normally carried out on a time charge basis and are therefore not included in the following percentage figures.

RIBA Plan of Work Stage		Proportion of 100% fee
C	Outline proposals	10% – 15%
D	Detailed proposals	15% – 20%
E	Final proposals	20%
F	Production Information	20%
G–L	Tender and Construction	25% – 35%

118. By reference to this table, it will be seen that, by the end of Stage D, a proportion equating to between 25% and 35% of the total fee is deemed appropriate by the RIBA. 35% is thus at the very top end of this range.

119. It is generally recognised that a fee based on construction cost alone is likely to give the architect an inflated return if the extent of services provided is limited, because the scale fee arrangement is deliberately front loaded. I am sure that it would surprise most clients to learn that the RIBA recommendations are that anything up to 75% of the fee should be paid to the architect before the project even gets to site.

120. To conclude this particular topic, I therefore do not consider that [redacted] should be entitled to claim 35% of the total fee (whatever that might be), in view of

the fact that (a) I do not believe that the project reached Stage D, and (b) they have selected the very top of a range of percentages that most construction professionals would acknowledge in any event to be deliberately front loaded.

Site Appraisal

121. One of the very first tasks that an architect should undertake when presented with a commission for a new project is a thorough assessment of the site. He cannot design in a vacuum – he needs to make an appraisal of all the factors that might influence the design. This should start with the site itself. The extent of the legal ownership of the site needs to be established with absolute precision, before any design works are undertaken.

122. It is foolhardy, in my experience, to base a design upon an enlarged version of an Ordnance Survey (OS) map, because these are notoriously inaccurate in terms of outlining buildings. In a project of this value, I would expect a full topographic survey to have been carried out prior to any design works.

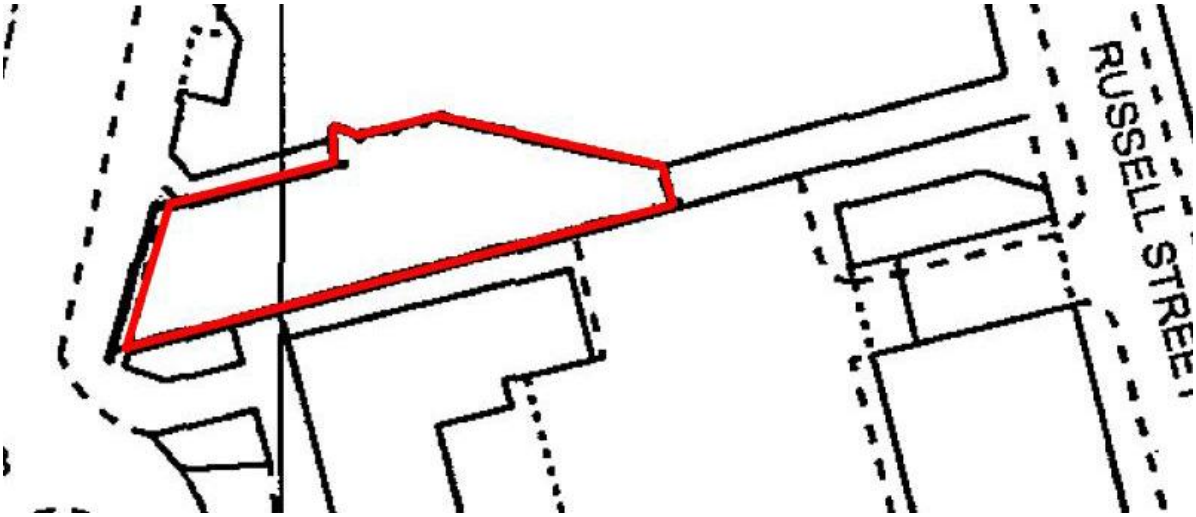
123. I have seen a topographic survey relating to this site, but this was carried out by the developers of the old theatre site to the north of Mr [redacted]' property. This is an A3 sized drawing prepared by [redacted] Surveys in July 2005 and it shows in some detail all the boundary conditions applicable to [redacted] (as they were in July 2005), with the exception of the northern boundary. Levels are indicated on a grid throughout the area. I do not know whether Mr [redacted] or [redacted] had access to this survey drawing, or whether either party carried out any survey themselves.

124. However, I do find it surprising that, amongst all the drawings prepared by [redacted] that I have seen, there is no existing site plan. Surely, this should be the starting point of any design, with all the boundaries and the relationships with all adjoining buildings clearly shown. This is, after all, a narrow city centre site where every square metre of space has a significant value.

125. This leads me to question whether [redacted]'s design drawings are accurate in terms of correctly identifying the site boundaries. My instructing solicitors have forwarded to me a current OS location map with Mr [redacted]' property outlined in red. This is reproduced on the following page, and I have also enlarged the site area for greater legibility.

126. I must caution against taking any measurements directly off these reproduced maps since they are not to scale. I must also point out that the maps show the situation as it is currently, rather than as it was in 2005-2007, with the new [redacted] hotel to the north and a new block of flats to the south.

127. I have to say that I have some difficulty in reconciling the OS map with the drawings prepared by [redacted]. It is clear that [redacted]'s design places the proposed building precisely on the boundary line to the south, a point to which I will return shortly, but the relationship with the northern boundary is rather different than the OS map.



128. It will be appreciated that, in comparing [redacted]'s drawings (for example drawing 200_op5) with the OS map extract reproduced above, the relationship with the property to the north is different. On the OS map, there is a clear gap between the buildings at the [redacted] frontage, whereas [redacted]'s drawing appears to show the proposed building aligning precisely with the site boundary to the north (until the set back at the rear of the staircase element).

129. As I have said, it is somewhat dangerous assuming building profiles and taking measurements from OS maps. Nevertheless, as an exercise, I have scaled the width of the site from the OS map, using the <u>original</u> map that I know to be true to scale because the grid lines are accurately set out at 100m intervals. Across the front (road side) part of the site, the width is approximately 6.8 metres up to the gap. At the widest point towards the rear of the site, the width is in the order of 8.0 metres. In contrast, [redacted]'s drawing 200_op5 scales at 5.8 metres across the building at its widest point (more like 5.9 metres on [redacted]'s drawing 201_op5.

130. This exercise appears to indicate that the building as designed by [redacted] does not accurately reflect the site boundaries and that it could have been about one metre wider. This could of course be explained by inaccuracies with the OS map. On the other hand, it does raise doubts in my mind that [redacted] have perhaps not properly attended to what is a fundamental aspect of design, namely accurately determining the extent of the site in which to place the building.

131. In order to better appreciate the site context, and at my request, I viewed [redacted] on 29 June 2012, in the company of Mr [redacted] and my instructing solicitors. The site is boarded up and overgrown and looks forlorn and neglected. My immediate impression was of a very tight and restricted site, sandwiched as it now is between the new hotel and the new block of flats (see photos shown below).

Photo 3: Fla **Photo 4: Flank wall of new block of flats**

Photo 1: Site viewed from [redacted]

Photo 2: Site viewed from [redacted]

132. There are no windows facing directly

ither the hotel or the block of flats. What appear to be glazing panels to the flank wall of the hotel (see photo 3) are in fact metal panels framed up to resemble glazing. The flank wall to the block of flats is finished in unrelieved fair-faced brickwork, rising six stories in height. This block of flats is just over one metre away from the boundary with Mr [redacted]' site. On the other side, the tarmac margin (see photo 5) indicates the site boundary. As a consequence, this site really is dominated by its neighbours on each side.

Photo 5: View of site looking towards [redacted]

133. There is a significant slope to the site running from [redacted] down to [redacted] at the rear of the site, the latter being some 1.9 metres below [redacted]. Access to the site is available from [redacted] by way of a narrow passageway, over which I understand Mr [redacted] enjoys a right of way (see photos 5 and 6).

Photo 6: Rear passageway viewed from [redacted] Street

Photo 7: Rear passageway viewed from site

Overlooking and Rights of Light

134. There appears to be much confusion in the documents about rights of light and overlooking issues. The Amended Defence claims at paragraph 1A.a. that it was an express and/or implied term of the agreement between Mr [redacted] and Mr [redacted] that, prior to commencing the scheme design drawings, Mr [redacted] would obtain the approval of the adjoining property owner to any glazed building "as the proximity of [redacted]'s property to the premises raised obvious issues relating to right of light and overlooking which required to be addressed before significant expense was incurred". The Reply denies that such an obligation existed and maintains that there were no issues relating to loss of light, or that, if there were issues, they would have been considered by an expert in rights of light and not by the architect.

135. The two issues of overlooking and rights of light are completely different and need disentangling. I am certainly not a rights of light expert and I will leave it to others to determine whether (a) the adjoining property had acquired any rights of light, and (b) if so, whether the proposed development was likely to adversely affect those rights of light. It seems to me that it is irrelevant whether the new building is fully glazed or not in terms of its impact upon any right of light that may have existed. What matters here is the bulk and height of the proposed building, not whether the walls are glazed. Since the proposed building was intended to be significantly larger and, particularly, higher than the original building that stood on the site, the issue would be to what extent that increase in the height and bulk of the proposed building adversely affected the amount of light reaching the existing windows of the adjoining property. A specialist rights of light consultant would be able to calculate the extent of any diminution of light (and it is daylight, not direct sunlight, that is the issue here).

136. The extent of glazing is, however, of crucial importance in terms of the overlooking issue. I understand that the original building that stood on this site had no windows to its southern facade. The overlooking issue therefore did not arise until it was proposed to erect a replacement building, not just with isolated windows, but with a fully glazed facade. Furthermore, the replacement building was intended to be sited directly on the boundary and be significantly higher than the original building. Of course, overlooking issues arise from this – how could it be otherwise? As I have already pointed out, it is interesting to note that the new hotel building (sited on the far side of Mr [redacted]' property), contains no windows to its southern flank.

137. There is a link between these two issues to the extent that the neighbouring site was likely to be particularly sensitive to both rights of light issues and overlooking issues since it was in residential use, and it is generally accepted that residences need greater protection in these matters than, say, offices or shops.

138. An architect is not expected to be a rights of light or loss of privacy expert (although some are), but he is expected to be aware of the general principles applying to both. It is not sufficient, in my view, to leave it to the planning authority to make their assessment, because, whilst these are certainly valid planning concerns, the planning officers are unlikely to be experts

themselves, and I understand that there have been cases where planning permission has been granted for a development, but where building work has been forced to cease due to an injunction being granted for an infringement of an adjoining owner's rights of light.

139. The point I wish to make here is a very simple one. In my opinion, it should have been obvious to any reasonably competent architect from his very first viewing of the site that there may well be issues of rights of light and issues of overlooking that needed to be addressed before commencing any design. Accordingly, I consider that the architect should have advised his client in writing that he should engage the services of a rights of light expert to determine whether there was likely to be an issue with this matter, and that there would certainly be issues of overlooking were the client to persist with the idea of a fully glazed building facade. I would add that it seems to me a little perverse to have a fully glazed building looking onto a blank brick wall only about one metre away.

140. Initially, this would have been the responsibility of Mr [redacted], but when [redacted] inherited the project, they should, in my view, have revisited these two factors and initiated a proper discussion with their client, well before being specifically instructed to open a dialogue with the neighbouring owner by Mr [redacted]. With the benefit of hindsight, we now know that this proved to be a fruitless and very frustrating process, in that the adjoining owner failed to respond, but I consider that the correct way to proceed would have been to first obtain the advice of an expert and then, if necessary, negotiate a suitable arrangement with the adjoining owner. Since these matters are outside of the normal expertise of a practicing architect, I consider that Mr [redacted] and [redacted] should have made it very clear to Mr [redacted] that the project could not proceed until these matters were fully resolved.

Boundary Conditions

141. Related to the previous topic, at least in part, is the consideration of the boundary condition. I would first make the general point, which I have already expressed, that I am surprised that I have not seen any mention in the documents of either Mr [redacted] or [redacted] making Mr [redacted] aware of his obligations under the Party Wall, etc Act 1996. This is despite the fact that the new building was intended to extend right up to the boundaries at both the north and the south side of the site. In such circumstances, party wall negotiations would certainly have needed to be undertaken with both adjoining owners and concluded well before building work could commence, and it is generally advisable to consider such matters at a very early stage of the design. Once again, this is not within the normal expertise of an architect, but I would have expected an architect to advise his client of the need to engage the services of a party wall surveyor to progress this issue.

142. The boundary situation with the adjoining property to the south is complicated by the fact that the owners of this property have constructed a large flower bed at the front of their property, but in doing so, it is alleged that they have encroached onto Mr [redacted]' property (see photo 8). As a consequence, relationships between the two neighbours have become somewhat strained. It will be recalled from the previous section of this report

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that this alleged trespass was pointed out to [redacted] by Mr [redacted] in his email dated 6 November 2006.

143. This ongoing dispute illustrates very well that relationships between neighbours are not always as smooth as one would like. I mention this because [redacted] actually needed a great deal of understanding and co-operation from this neighbour to the south of Mr [redacted]' property in order to construct the building that they had designed.

144. Bearing in mind that the new building was intended to extend right up to the boundary, how was it proposed to construct its southern facade? I do not see how it could have been fabricated without erecting scaffolding of some sort, together with a continuous protective hoarding, on the neighbouring property and, of course, the consent of the adjoining owner would have been necessary in order to achieve this.

145. Similarly, there are issues of maintenance associated with building right up to a boundary. I have seen no evidence that these were properly considered by [redacted]. How, for example, was it proposed to clean all the glazing to this southern facade? I would suggest that one would either need to clean the glazing by means of a 'cherry picker' type of extendable hoist, or by some form of gantry device suspended from the roof. In either scenario, the consent of the adjoining owner would have been necessary in order to avoid a possible claim for trespass.

146. Furthermore, it appears from [redacted]'s drawings that they were proposing a series of projecting fins to this facade (and to the front and rear elevations). Judging by the elevations, these fins were intended to run, intermittently, the full height of the building. I do not know know whether these fins were intended to serve any particular function or whether they were merely

decorative devices to enliven the elevations, but the point is that they are clearly shown on the drawings as extending over the boundary by about 500mm. This would have presented a clear trespass over the neighbouring property. It is of course entirely possible that, at some later point, a license might have been negotiated between the two neighbours to permit this transgression, but I consider that [redacted] were being very presumptuous in merely assuming that this would all be resolved amicably.

Fire Spread

147. Following on from this is the consideration of fire spread between neighbouring properties. This is fundamental in relation to this dispute since (a) it was intended to build directly up to the boundary, and (b) it was intended to fully glaze the facade.

148. Standard glazing behaves very poorly in a fire situation, since it exhibits the unfortunate characteristic of breaking into small and dangerous fragments due to the thermal stresses involved. Tests carried out by Pilkingtons demonstrate that 8mm thick standard float glass in a frame will crack after about 1 minute in a fire situation, and fall out between 12 and 19 minutes later. 6mm glass survives for even less time, about 14 minutes. Contrary to what one might think, double glazing performs even worse and it is thought (although disputed by some experts) that this is due to pressure between the panes causing thermal shock.

149. It is for this reason that, for very many years, the Building Regulations have sought to limit the amount of glazing in the external walls of a building, where the wall in question is sited at or close to a boundary. The concern here is external fire spread from one building to another. The relevant part of the Building Regulations is set out in 'Approved Document B (Fire Safety)'. We are concerned with 'Volume 2 – Buildings other than dwellinghouses', part B4 of which deals with external fire spread.

150. The requirement reads as follows:

> **External fire spread**
>
> **B4.** (1) The external walls of the building shall adequately resist the spread of fire over the walls and one building to another, having regard to the height, use and position of the building.
>
> (2) The roof of the building shall adequately resist the spread of fire over the roof and from one building to another, having regards to the use and position of the building.

151. This then is the actual Building Regulations requirement, and we are really only concerned here with B4.(1).

152. The Secretary of State has amplified this requirement by stating that the requirements of B4 will be met:

> a. If the external walls are constructed so that the risk of ignition from an external source and the spread of fire over their surfaces, is restricted, by making provision for them to have low rates of heat release;

b. if the amount of unprotected area in the side of the building is restricted so as to limit the amount of thermal radiation that can pass through the wall, taking the distance between the wall and the boundary into account;
c. [is concerned with roofs and is not relevant to this discussion]

153. As with all Building Regulations, the remainder of the document then provides guidance as to some of the more common ways of satisfying the requirement. However, it is important to note that there is no obligation to adopt any particular solution if one can demonstrate that the relevant requirement can be met in some other way.

154. The principle behind the regulation is that the envelope of the building must offer protection to both the surrounding properties and people (from a fire within the building) and the building itself and its occupants (from a fire in any adjoining property). The external walls need careful consideration since heat radiated through them from a burning building might ignite adjoining buildings if they are too close. The traditional method of limiting the danger of radiant heat is control the fire resistance of external walls and to restrict the amount of openings, or what are termed 'unprotected areas', if the external wall is close to the boundary.

155. The Part B4 guidance states at clause 13.13 that external walls within 1000mm of the relevant boundary should only contain very minor unprotected areas and that the rest of the wall needs to be fire-resisting from both sides. To all practical purposes, therefore, there should be no windows in an external wall where it is within 1000mm from the boundary, according to this part of the guidance.

156. In order to determine what period of fire resistance is required, reference needs to be made to Table A2 in the Appendix of Part B. This divides buildings into uses, or what are termed 'purpose groups'. This project would presumably fall into purpose group 2, which is classified as 'office', although it is arguable that it should be within group 3, which is classified as 'shop and commercial'. One then needs to take into account the height of the building. Although [redacted]'s design is over 18 metres high (18.6 metres measured from pavement level), the critical issue is the height of the top floor level above ground level and therefore my understanding is that this building would fall within the 'not more than 18m' category. A group 2 building is required to achieve a minimum period of fire resistance of 60 minutes, reduced to 30 minutes if a the building is fitted throughout with an automatic sprinkler system (although this is increased back up to 60 minutes in the case of compartment walls separating buildings). A group 3 building is required to achieve a minimum period of fire resistance of 60 minutes, whether or not it is sprinklered. The external wall would also need to achieve Class O in terms of surface spread of flame.

157. We are therefore considering a fire resistance requirement for this external wall of 60 minutes, possibly reduced to 30 minutes if the building is fully sprinklered (although I could find no reference to a sprinkler system within the cost plan prepared by [redacted]). Remember that this requirement is from both sides of the wall.

158. The unprotected areas are only classified as such if they cannot meet the relevant fire resistance standard. There is no restriction on the amount of glazing as such. It is only relevant because standard glazing cannot even achieve the minimum standard of fire resistance (for an external wall) which is 30 minutes, let alone 60 minutes.

159. It is of course possible to utilise fire resisting glazing which can meet the relevant performance requirements in terms of integrity and insulation. There are various trade names of fire resistant glass, such as 'Pyrostop', Pyranova', 'Pyroguard', or 'Pyrotech'. The problem is that it is very expensive. 'Pyrostop', for example, costs roughly £1,000 per square metre. This is simply the supply only price of the glass itself and does not include the frame or any fixing costs.

160. The other problem is that fire resistant glazing may solve the fire problem, but it will not on its own satisfy the thermal insulation requirements of Part L of the Building Regulations. Some form of secondary glazing would be required, and, because the fire resistance needs to be achieved from the inside as well, this presumably means that this secondary glazing would also need to be fire resisting.

161. I asked the 'Wholesale Glass Company' to provide me with a budget cost comparison. We first looked at the supply cost of a double glazed unit to current thermal regulation requirements. I have assumed here that the glass would need to be toughened safety glass because it was intended to be full height. For an insulated toughened double glazed unit 6:12:6 with thermal spacers and argon gas fill and a low E coating, he quoted me a price of £144.39 (plus VAT) per square metre. By way of comparison, Pyrostop 60/60 was quoted at £969.66 (plus VAT) per square metre for a single sheet. He was unable to provide me with a price for a 60/60 fire resistant double glazed unit which would satisfy both the thermal and the fire requirements.

162. I am not familiar enough with the specialist fire resistant glazing market to know whether any manufacturer offers a fully tested product that would satisfy both these requirements. If no such product is available, a full assembly of glazing unit, frame, gaskets etc, would need to be assembled and then tested in a fire laboratory. This is all possible, but it is fraught with problems, and it is time consuming and very expensive.

163. As I have already made clear, it is not necessary to follow the guidance set out in Part B if one can demonstrate that the actual requirement can be met in some other way. It may therefore be the case that a specialist fire safety engineer would be able to persuade Building Control that, in the particular circumstances of this case, it would be unnecessary to insist upon fire resisting glazing for this facade. Perhaps by offering a combination of sprinklers, sophisticated fire detection and / or fire compartmentation, a relaxation might be forthcoming from Building Control. Perhaps [redacted] have already done this and they have a report from a reputable fire engineer stating that there is no particular problem with erecting a fully glazed building right up to the boundary. But, if so, I have not seen it.

164. To ensure that I was not totally misreading Part B4 of the Building Regulations, I discussed the matter over the telephone with [redacted], who is the senior Building Control Officer for [redacted] Council, and whose area of responsibility is [redacted]. Without specifying this particular site, I explained that the intention was to erect a five storey office building with a fully glazed facade immediately next to a flanking boundary. He confirmed that the glazing would normally have to be 60 minute fire resistant from both sides, but that sprinklers and a fire safety engineer might just be able to resolve the problem.

Summary and Conclusions

165. In respect of the various topics discussed in this section, I would summarise my opinions as follows:

166. The starting point of any analysis of the performance of Mr [redacted] and [redacted] should be that their client, Mr [redacted], was a private individual with no experience of significant construction work.

167. At the time of this dispute, Mr [redacted] was (I assume) registered with the ARB and a member of the RIBA. [redacted] are still registered with the ARB and they are still members of the RIBA. As such, both architectural practices were obliged to comply with the Codes of Professional Conduct applicable at the time when the work was carried out.

168. Both Mr [redacted] and [redacted] were obliged to exercise reasonable skill and care, of a standard to be expected of a reasonably competent architect, in their professional dealings with Mr [redacted].

169. The terms of engagement of both Mr [redacted] and [redacted] fall well short of the relevant Code requirements of both the ARB and the RIBA.

170. The fee of 6.5% of building cost quoted by Mr [redacted], and later relied upon by [redacted], does not relate to RIBA 'recommended' fee scales, since they had long since been abolished. RIBA guidance applicable at the time would suggest that 6.5% is probably about right for a full service involvement in a project with the build value originally assumed. However, when the build value increased to £1.3m, the percentage rate should have been reduced by more than 0.25%. I have suggested that 5.5% would be a more reasonable rate.

171. I do not agree with the 35% apportionment fee set out in [redacted]'s fee invoice. Firstly, I do not believe that the project had reached anything like Stage D (application for Planning Permission). Secondly, 35% would be at the very top of the range in the relevant RIBA guidance, which, it is generally accepted, is in any event front loaded in favour of the architect. On balance and viewed overall, if I had to recommend a suitable apportionment, I would favour around 20%.

172. In terms of possible negligence claims, I have considered various issues relating to site appraisal, overlooking, rights of light, boundary conditions and fire spread.

173. In relation to the site appraisal, I am not convinced that this was carried out in a professional manner and I am doubtful that the building designed by [redacted] is properly related to the actual site profile. As a consequence, the entire design must be considered to be suspect and will, I believe, require checking by a land surveyor, before any reliance is placed upon it. In this connection, I have noted that I have not seen any existing site plan, which I find very unusual, and that I have seen no mention of party wall negotiations.

174. I consider that it should have been obvious to Mr [redacted] and [redacted] from the very outset that there were likely to be issues with rights of light in connection with the neighbouring property, in view of the fact that the replacement building was intended to be larger, and more specifically, higher, than the original building on the site. In such circumstances, it was, in my view, incumbent upon Mr [redacted] and [redacted] to advise Mr [redacted] that he needed to seek the assistance of a rights of light specialist, and that this needed to be done before the scheme could be progressed.

175. I consider that it should have been obvious to Mr [redacted] and [redacted] from the very outset that there would almost certainly be issues with overlooking in connection with the neighbouring property. Accordingly, I believe that they should have advised Mr [redacted] to think again as soon as a fully glazed facade was proposed.

176. I am not at all convinced that [redacted] properly considered practical issues of buildability and ongoing maintenance in relation to building right up to the boundary. They also designed a building that included features that projected beyond the boundary by some 500mm.

177. I consider that it should have been obvious to Mr [redacted] and [redacted] from the very outset that there would almost certainly be issues with Part B of the Building Regulations, in terms of fire spread, were they to persist with a fully glazed facade immediately adjacent to the site boundary. Accordingly, I believe that they should have advised Mr [redacted] to reconsider as soon as a fully glazed facade was proposed.

178. To my mind, all these issues stem from a failure to properly consider the site context at the outset of the project. I do not mean by this that [redacted] failed to take note of the surrounding buildings. On the contrary, they evidently went to considerable lengths to photograph the surroundings and even produce a 3D model. Having gone to all this trouble, it seems to me very surprising that they then produced a design that did not, in my opinion, take account of the existing site constraints.

179. I fully appreciate the desire to erect a contemporary design for this site. Clients frequently express desires that are really not practical and it is up to the professional design team to bring the client back down to earth. Whilst I do not have any significant issues with either the front or rear facades being fully glazed, as proposed by [redacted], I consider that it was a significant error to seek to extend that glazing treatment to the flank wall.

180. I acknowledge that architects are rarely likely to agree about anything related to design. For what it is worth, my own personal view is that, taking into account the issues of overlooking and fire resistance, and bearing in mind that there was no view to speak of, I believe that a more appropriate solution for the flank wall would have been a solid wall of some sort (not necessarily brick) with perhaps isolated bands of fire resistant glass blocks to provide interest and light, glass blocks being translucent rather than transparent.

181. The question of whether the conduct of [redacted] in relation to these issues, either individually or collectively, amounts to professional negligence is a matter for the court to decide. My own opinion is that their conduct falls below the standard that I would expect of a reasonably competent architect acting with reasonable skill and care.

Section 4: Statement of Truth

Statement of Truth

I understand that my overriding duty is to the Court and I have complied with that duty and I will continue to comply with that duty. I am aware of the requirements of CPR Part 35, its practice direction and the Protocol for the Instruction of Experts to give Evidence in Civil Claims.

I confirm that I have made clear which facts and matters in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed:

William Bates, Chartered Architect *26 July 2012*