

MR PETER WHITE

MRS OLGA WHITE

Appellants

And

MR STEPHEN LITTLE

MRS MICHELLE LITTLE

Respondents

AUTHORISED JUDGMENT - 9.2.17

1. The Appellants appeal against a Party Wall Award, dated 6.10.16, made by the two party wall surveyors engaged by the parties: Mr J McAllister on behalf of the Appellants, the building owner, and Mr B Vincent on behalf of the Respondents, the adjoining owner. The appeal is brought pursuant to s. 10(17) of the Party Wall Act 1996.
2. The Appellants own 23G Royal Crescent, Bath. The Respondents own the adjoining property, 22 Royal Crescent, Bath. The Appellants refurbished and extended their property between 2013 and 2016. A party wall separated no. 23G from no. 22 (“the Party Wall”).
3. The Party Structure and Adjacent Excavation Notice issued by the Appellants and amended by the agreement of both parties on 17.10.13 (“the Notice”) set out the works that were to be carried out to the Party Wall.
4. Subsequently the Respondents raised complaints concerning the works being carried out to the Party Wall by the Appellants. By an Award, dated 18.11.15, (“the First Award”) it was recorded:

“10. The Adjoining Owner’s solicitor wrote to the Building Owner on 27th July 2015 to complain about a number of matters, notably that the Works were not being executed in accordance with the Notice in that a Schedule of Condition had not been undertaken and footings adjacent to the Party Fence Wall had not been exposed for inspection to establish the level of the footings and a method of construction agreed to ensure the integrity of the wall. Production of a schedule of works and working practice code had also not been supplied

by Building Owner to Adjoining Owner. Conditional consent to the Notice had been given by the Adjoining Owner subject to the project being completed in accordance with Planning and Listed Building Consents dated 19th and 30th October 2012 with the upward extension of the Party Fence Wall having a random stone finish. The Adjoining Owner considered, therefore, that a dispute had arisen under the Act.

.....

21. *We, the Two Surveyors, have found that certain notifiable work in pursuance of the Act has been carried out by the Building Owner without being the subject of notice, and that such work is deemed to be in breach of the Act and, therefore, 'unlawful'. However, we, the Two Surveyors, determine that the minor deviation in the Works being the subject of the Notice shall hereby be regularised by this Award as 'lawful' and being part of the Works desired by the Building Owner in pursuance of the Act on the following conditions:*
- 21.1 *The Works shall be carried out to a high standard of materials and workmanship and as set out in the drawings signed by the Two Surveyors and attached to this Award in Appendix 1;*
- 21.2 *The Works shall be completed to the entire satisfaction of the Local Authority Listed Building Officer and any subsidiary heritage or conservation bodies with an interest in the execution of the Works;*
- 21.3 *The Works shall be completed in accordance with the Building Owner's granted planning and listed building consent and any supplemental conditions attached thereto;*
- 21.4 *The Works shall be completed in accordance with any Building Regulations approval and any supplemental directions of the Local Authority Building Control Officer;*
- 21.5 *The Works shall be undertaken in accordance with the Building Owner's structural engineer's design and calculations;*
- 21.6 *That no deviation from the Works shall be made without the prior written agreement of the owners, or surveyors/architects acting on their behalf and with their express authority, or in the event of a dispute determined by the Two Surveyors in accordance with section 10 of the Act;"*

5. The First Award was not appealed.
6. By the Award of 6.10.16 ("the Second Award") the Surveyors decided two substantive issues relevant to this appeal. First, that the Party Wall in the vicinity of the orangery should have been raised in rubble / random stone walling rather than dressed and coursed walling. Second, that the zinc upstand to the rear of the orangery did not comply with the planning drawings. There was a third issue which is not now being pursued in this appeal.

7. The Appellants have appealed the Second Award. By the end of the Appeal hearing the only issue on which I was asked to reach a determination was the first issue which related to the determination of the Surveyors that the “Building Owner shall ensure the Works are completed as required by the 2015 Award and in full satisfaction of the conditions therein contained to ensure the lawful regularisation of the Works”. This determination related to the complaint by the Adjoining Owner that the Building Owner had not undertaken the Works in accordance with an earlier Award made by the Surveyors in 2015 in the following respects:

“13.1 The wall has been constructed in cavity construction with an inner leaf of blockwork and an outer leaf of dressed reclaimed Bath stone ashlar with concrete coping stones and not random coursed rubble capped with Bath stone copings as shown in drawing rcdroof8A31/B contained at Appendix 1 of the 2015 Award and as required by clause 21.1 of the 2015 Award.

13.2 The construction of the raised section of Party fence wall does not comply with the original planning consent as required by clause 21.3 of the 2015 Award.

13.3 The construction of the raised section of Party fence wall does not comply with the requirements of Bath Preservation Trust as required by clause 21.2 of the 2015 Award.

13.4 The pointing to the raised section of Party fence wall is poor and has not been carried out to a satisfactory standard as required by clause 21.1 of the 2015 Award.”

8. The area of wall which was the subject of this part of the Award was the end of the party wall at the bottom end of the gardens in the vicinity of the orangery.

9. The Surveyors made various findings at paragraph 15 of the Award in respect of the party wall as follows:

“15. The Two Surveyors have made the following findings:

15.1 The 2015 Award regularised certain unlawful works making them lawful subject to certain clear provisions contained in clauses 21.1 to 21.10 inclusive;

15.2 The Building Owner has not provided evidence that the conditions of the original planning consent have been met, only that Bath & North East Somerset Local Authority (“BANES”) have decided not to take enforcement action against the Building Owner over the matter. This is evident in an email from BANES to the Adjoining Owner dated 23 March 2016 [Appendix B];

- 15.3 *The requirements of Bath Preservation Trust have not been met. This is evident in an email from Bath Preservation Trust to BANES dated 25 February 2016 [Appendix C];*
- 15.4 *Whilst the Building Owner has contended that the Bath Preservation Trust have no authority and can only express an opinion, the 2015 Award made clear, at clause 21.2, that the regularisation of the unlawful works was conditional on the works being undertaken to the ‘entire satisfaction of the Local Authority Listed Building Officer and any subsidiary heritage or conservation bodies with an interest in the execution of the Works’ [emphasis added];*
- 15.5 *The Two Surveyors find that the absence of entire satisfaction by Bath Preservation Trust contravenes the condition contained at clause 21.2 of the 2015 Award irrespective of their level of authority;*
- 15.6 *The Two Surveyors find that the Works comprise an unauthorised deviation from the 2015 Award and the appended drawings contained therein in contravention of the condition contained at clause 21.6 of the 2015 Award;*
- 15.7 *The Two Surveyors find that the Works have not been carried out to a high standard of materials and workmanship in contravention of clause 21.1 of the 2015 Award;*
- 15.8 *The Two Surveyors find that the replacement of coping stones is yet to be completed by the Building Owner and shall be reviewed on completion to ensure compliance with the conditions imposed by the 2015 Award.*

- 16. *The Two Surveyors hereby determine that the Building Owner shall ensure the Works are completed as required by the 2015 Award and in full satisfaction of the conditions therein contained to ensure the lawful regularisation of the Works.*
.....
- 21. *The Two Surveyors hereby determine that the Building Owner shall ensure the Works are completed as required by the 2015 Award and in full satisfaction of the conditions therein contained to ensure the lawful regularisation of the Works.”*

10. In respect of the zinc upstand to the rear of the Orangery the surveyors found:

- “17. *The Adjoining Owner claims that the zinc upstand to the rear gutter of the Building Owner’s property has not been formed in accordance with drawing rcdroof8A31/B contained in Appendix 1 of the 2015 Award and is touching the Adjoining Owner’s garage.*
- 18. *The Adjoining Owner claims that the zinc upstand to the rear gutter of the Building Owner’s property should be trimmed to finish close to but not touching the Adjoining Owner*

19. *The Building Owner contends that the upstand is not touching the Adjoining Owner's garage.*
 20. *The Two Surveyors, having reviewed photographic evidence of the zinc upstand gutter detail, find that it has not been formed in accordance with the 2015 Award and the appended drawings contained therein in contravention of the condition contained at clause 21.6 of the 2015 Award. The Two Surveyors also find that the zinc gutter detail is trespassing over the Adjoining Owner's property notwithstanding the fact it may not be touching the Adjoining Owner's property as contended by the Building Owner.*
 21. *The Two Surveyors hereby determine that the zinc upstand gutter detail shall be modified by the Building Owner to ensure any trespass over the Adjoining Owner's property is removed and to ensure it is constructed as required by the 2015 Award and in full satisfaction of the conditions therein contained to ensure the lawful regularisation of the Works”*
11. It is clear that the First Award, at para. 10, identified that the Notice provided that the upward extension of the Party Fence Wall was to have a random stone finish. No distinction was made between the wall by the orangery and the wall by the conservatory.
 12. The Appellants appeal against the Award on the grounds that: *“Drawing rcdroof8A31/B show the wall constructed with an inner leaf of blockwork and an outer leaf of 150mm rubble stone (same as the Award ie coarsed Lime Stone Rubble). There is no mention of the material type of the copings other than existing copings to be cut and relaid (note original copings were made of concrete with photos to prove)”*; that the works have been carried out in accordance with planning and listed building consents which have been discharged; and that the Bath Preservation Trust is wrong in requiring the raised section of wall to be constructed from rubble stone. During the appeal hearing it also became clear that Mr White's primary argument was that the agreement made at the time of the Notice between the Appellants and the Respondents was to the effect that the parties had expressly agreed that the raised wall should be of rubble stone by the conservatory but of dressed and coursed Bath stone by the orangery, and that he was simply giving effect to that agreement.
 13. The Appellants expressly stated during the appeal hearing that they were not pursuing the third issue of the Appeal. It was also agreed between the parties that the second issue (the zinc upstand to the orangery) need not be resolved by the Court because it would be subject to discussion and agreement between the parties. However, given my uncertainty about whether such agreement will be achieved, I have reached a conclusion in respect of that issue which I will give if agreement has not been reached. Which I assume it has not.

Procedure

14. The appeal has suffered from a surfeit of documents which have been filed in an ad hoc manner. It has, accordingly, been difficult for the court to identify those documents which are material and those which are not. The Respondents have also been faced with late service of documents and a failure on the part of the Appellants to copy them in when emailing and filing documents at court. Communication and co-operation between the parties has been sadly lacking.
15. The history of the appeal process is as follows:
- (i) 20.10.16 The Appellants filed a Notice of Appeal which included a Background commentary, Grounds and Arguments of Appeal and various photographs and drawings.
 - (ii) 4/5.12.16 Witness statements of Mr White and Mr Davies, with various attachments running to two ring files, filed by the Appellants electronically in anticipation of the hearing on 12.12.16. The Respondents complain that they did not receive these documents in a format and at a time which enabled them to properly digest the contents.
 - (iii) 12.12.16 The Appellants, on the morning of the appeal hearing, handed in a Skeleton Argument with a number of further attachments (photographs, emails and drawings) running to one ring file. Again, the Respondents complain that they did not receive these documents in reasonable time before the hearing.
 - (iv) 12.12.16 Hearing of the appeal which was concluded with judgment to be handed down and with my asking for the parties to agree and file a bundle of documents containing the two planning consents, the relevant drawings identified in those consents, and the relevant drawings listed in the Notice as agreed.
 - (v) 13.12.16 The Appellants filed numerous further documents without seeking agreement with the Respondents which extended beyond those I had requested to be provided by the parties.
 - (vi) The Respondents sought to adduce further documents in response to the Appellants documents and evidence. I required an application to be made by any party seeking to adduce further documents or evidence beyond that which I had ordered on 12.12.16. The Respondents filed an application dated 19.12.16 so as to admit some further documents which responded to the evidence given by Mr White on 12.12.16.
 - (vii) 16.1.17 Hearing of the Respondent's application to adduce further documents. The Appellants agreed the documents relied on by the Respondents could be placed before the Court providing the Appellants could also rely upon drawing nos. 15 and 18B and the Design and Justification

Statement dated 19.6.12. The Appellants agreed that they did not wish to rely upon any of the documents they had sought to place before the Court following the hearing on 12.12.16. It was agreed that the documents provided to the court by the Respondents and dated 19.12.16 contained all the relevant documents requested by myself at the end of the hearing on 12.12.16. The Respondents' application was allowed.

(viii) At the hearing on 16.1.17 Mr White sought to make further submissions seeking, amongst other things, to make comments upon the documents filed by the Respondents with their application on 12.12.16. I refused permission to the Appellants to raise further submissions or evidence beyond the documents which it had been agreed could be considered by the Court. I refused such permission because the Respondent in filing some documents was responding to the late service of documents by the Appellants prior to the hearing on 12.12.16 when I had allowed the Appellants to rely on such documentation and witness statements in spite of the late service. I also refused permission because the evidence and submissions had been closed at the end of the hearing on 12.12.16 and I was not prepared to allow yet further argument which had not been the subject of any application by the Appellants.

(ix) 23.1.17 The Appellants applied for permission to adduce further evidence in response to the documentation relied upon by the Respondents and adduced under the Respondents application of 19.12.16. I permitted Mr White to address me on 9.2.17 about the string of emails preceding the Notice which was relied on by the Respondents. Mr White said that there was nothing else in his application which responded directly to the Respondents' evidence adduced at the hearing on 16.1.17. I refused permission to the Appellants to rely on further evidence and to re-argue issues that had already been addressed at the appeal hearing. I adjourned the case for judgment to be given later on 9.2.17.

16. The Respondents argued on 12.12.16 that no oral evidence should be permitted on what should be a review of the decision appealed against. Since the Appellants were in person I permitted oral evidence as a means of fully understanding the case which the Appellants sought to advance and thereby giving the Appellants every opportunity to advance their case. I had fully in mind the judgment of Sir Peter Gibson in the case of *Zissis v Lukomski* [2006] 2 EGLR 61 at paragraph 41. In the circumstances I exercised my discretion under CPR 52.21 to receive oral evidence and documentary evidence which may not have been before the Party Wall Surveyors. Given that there had been no prior service of documents by the Appellants in good time before the hearing, the Respondents were at a disadvantage which I attempted to ameliorate during the hearing and then subsequently when allowing the respondents application of 19.12.16.

Evidence

17. Since the Appellants were litigants in person for whom Mr White spoke, I asked the Appellants to first call Mr Davies who had been responsible for the design of the Works and who had visited the site on numerous occasions. He explained the layout of the site. He said that drawing RC13p/A showed that coursed limestone was intended, and that photograph PW1 showed the wall by the conservatory constructed of random stone rubble on both sides. He had seen this himself. He said that Mr White had been requested to build the wall in random rubble and so it was done in random rubble. He said that the copings were originally specified to be the original copings but they are now in Ashlar.
18. I was informed that no complaint was made by either party concerning the copings having been constructed of Ashlar.
19. He was cross-examined and said that when he had last visited the site in September 2016 the wall at the bottom of the garden was built of coursed stone. It was not pointed and finished at that time. He said that he was not aware of the First Award detail and that the wall was to be of random stone rubble by the orangery. He said the finish was in coursed stonework. He criticised the Bath Preservation Trust for requiring rubble finish, saying that traditionally they were not rubble. He said the Party Wall Surveyors were wrong to conclude that the wall should have been rubble finish. He said that the Listed Building Officer was satisfied with the completed works to the wall.
20. Mr White gave evidence. He agreed that a Party Structure Notice had been agreed and signed by the parties, dated 17.10.13. He said that Mr Little had wanted an amendment to the proposed Notice, wanting rubble finish for both the conservatory and the bottom of the garden. He said, however, that it was agreed that there would be rubble for the conservatory and coursed ashlar for the bottom of the garden. He contended that the agreed Notice set out that agreement.
21. He contended that the drawing 8A/31/B refers to the raised part of the wall in the vicinity of the orangery as 150mm stone rubble which, he says, means coursed limestone. He says the original lower part of the wall is random rubble.
21. Mr White also contended that the Second Award gave permission to retain the raised wall that had been built by the time of the Second Award.
22. Mr White accepted that the zinc upstand at the rear of the orangery was a breach, but he said that it was a non-material breach and a matter of degree. He accepted it was not a good finish as it stood but that there was no easy alternative given that the roof was now higher than had originally been intended.
23. The Respondents did not call any oral witnesses to give live evidence. They did, however, rely on the documentation before the Court.

Party Structure and Adjacent Excavation Notice

24. The Notice served by the Appellants, pursuant to s. 3 of the Party Wall Act 1996, initially stated that the proposed works included “5. *To raise the party fence wall by half its width, by the addition of Bath stone ashlar coursing and to finish the raised section of the party wall with a Bath stone coping (a) – see Conservatory drg. RCD8/C Proposed Section A – Roof to Conservatory & link & drg. RCD10/D.*

6. To raise the party fence wall by half its width, by the addition of stone ashlar coursing and to finish the raised section of the party wall with a Bath stone coping (a) see Extension to Summerhouse drg. RCD17/A”.

25. The Notice also stated that “*All works are to be carried out in accordance with the following drawing numbers: (relevant drawings)*

RCD29/A Perspective

RCD10/D Raised party wall elevation – section E

RCD15/A Party wall elevations from next door

RCD16/A Orangery elevations from next door

RCD17/A Orangery cross section through party walls

RCD18/A Orangery Plan & main elevation”

26. The drawings listed in the Notice contained the following relevant information:

- (i) RCD 29/A shows a rubble stone wall on the eastern face of the western party wall (the side facing into 23G).
- (ii) RC15/A and / or RC13p/A identifies “stone rubble boundary wall to rear garden” behind the conservatory on the side facing no. 22.
- (iii) RCD16/A identifies “Bath stone parapet, cornice and copings with ashlar walls built up on top of the existing stone rubble boundary walls” in a section viewed from the garden of no. 22.
- (iv) RCD17/A identifies the inner skin of the cavity wall to the orangery built upon the top of the existing garden wall as “100mm reclaimed stone squared and laid in uniform courses to internal and external parts of cavity wall”. The outer skin of the same wall shows “external wall to be built up on top of existing wall with the existing copings cut and relaid to suit”. The existing garden wall requires “remove all organic growth from existing garden wall and rake out & repoint defective mortar throughout”.

27. The combined effect of these drawings showed that the Conservatory raised party wall was to be constructed of ashlar stone on top of the existing rubble stone wall, and the bottom of the garden raised wall was to be constructed in the same manner.

28. The Notice then included the following:

“Note: It has been further agreed that:-

1. *The upward extension of the east side of the Conservatory wall will be built from random stone.*
2.
3.
4.
5. *Consent is given subject to the project being completed in accordance with Planning & Listed Building Consents 12/02656/FUL & 12/02657/LBA dated 19th October 2012 and 30th October 2012 respectively (with the minor alteration of the upward extension of the wall having a random stone finish).”*

29. It was agreed between the parties that an agreement was made between them which was set out in the Notice and that the wall was to be constructed in accordance with that agreement.

30. The dispute between the parties centres on whether or not the agreement for rubble / random stone for the upward extension of the garden wall, made on 17.10.13, was limited to the rear of the conservatory or applied to the whole of the garden wall including that part at the rear of the garden.

Other drawings

31. Mr White has also asked me to look at drawing no. RCD18/B. This is not a drawing referred to in the Notice or in the Planning Consents of October 2012. Drawing no. RCD18/A is referred to in the Notice but I have not been provided with a copy of that drawing. It is not apparent from revision B what changes were made from revision A. However, RCD18/B identifies the outer skin of raised wall as being “100mm reclaimed stone squared and laid in uniform courses to internal and external parts of cavity wall which is to be built up on top of existing wall to extension both sides with existing copings cut and re-laid”. The date of RCD18/B is 9.8.13 which predates the Notice, and therefore would be subject to any alterations agreed in the Notice on or about 17.10.13.

32. Mr White has put before me various other drawings which are not listed in the Notice or the Planning Consents of October 2012, many of them postdating the Notice. I have also seen the Design and Justification Statement, dated 4.6.12, which

substantially predates the Notice and records that the raised sections of wall are to be dressed stone. These drawings and the Statement do not assist me in deciding the terms of the agreement made at the time of the Notice.

33. The Planning and Listed Building Consents and the drawings attached to those consents contained the following relevant information:
- (i) The Notifications of Decision did not provide any relevant information, other than to show that the external stone walls of the conservatory and summer house / orangery were to be of natural ashlar stone (consent 19.10.12).

Drawings listed in consent of 19.10.12

- (ii) RC29p/A identifies “existing stone rubble garden wall” to the east elevation of the orangery.
- (iii) RC13p/A identifies “stone rubble boundary wall to rear garden” to the rear of the conservatory with a raised wall above constructed of ashlar.

Drawings listed in consent of 30.10.12

- (iv) RC17e/A identifies an existing stone rubble boundary wall on the east side of the orangery.

Respondent’s Case

34. The Respondents contend that the Notice as agreed on 17.10.13 is clear when it states that the upright wall extensions should be constructed in a random stone finish, rather than coursed Ashlar as carried out. They say that subsequent applications for changes to the planning permissions are irrelevant to what was agreed in the Notice.
35. The Respondents also rely upon emails passing between Mr White and Mr Little at the time which, the Respondents say, show that Mr Little made clear his requirement that the upward extensions of the party wall should be random stone / rubble and that Mr White agreed to this, which agreement was subsequently set out in the Notice. The emails relied upon are as follows:
- (i) 11.10.13 Mr Little to Mr White – “We also suggested that the work to be done on the orangery extension should be included in the notice. We requested that the east side of the upward extension of the wall should be random stonework so as to be less incongruous with the existing wall”.
 - (ii) 11.10.13 Mr White to Mr Little – “I can confirm the following:- I will forward on to you an amended Party Wall Agreement to include the summerhouse extension at the rear of the garden & an annex covering the following points:-

- The upward extension of the east side of the wall will be built from random stone
- Following complete removal of the ivy and immediately prior to carrying out any works we will organise for a condition report to be carried (out) on both sides of the wall and the adjoining bedroom.
-
-

Please confirm that if the conditions proposed above are annexed to the modified Party Wall Agreement which includes the Summerhouse extension

- (iii) 17.10.13 Mr Little to Mr White – “The notice should state that you will provide a condition report of the wall and adjoining bedroom from a qualified surveyor and that consent is to be given subject to the project being completed in accordance with the planning and listed building consent you have received (with the minor alteration of the east side of the upward extension of the wall having a random stone finish)”.
- (iv) 20.10.13 Mr Little to Mr White – “I have signed the Agreement with consent and returned it. There are a few minor points to make: Note 1; the random stone finish should be on the east sides of both upward extensions to the wall.”
- (v) 20.10.13 Mr White to Mr Little – “Thanks for returning the Agreement. Note 1 is agreed.”

36. In response to the alleged agreement set out in these emails, Mr White says that the agreement only related to the conservatory and that if one reads the whole string of emails it is clear that it relates only to the conservatory. He says that the orangery was added to the dialogue but only so that it was covered by the party wall agreement. He said that the dialogue was solely about what was to happen at the conservatory end.

Terminology

37. The documents use a number of different terms to describe different types of walling. The Notice and the emails referred to above refer to “a random stone finish”. What was understood by that term can be gleaned from what was actually constructed to the rear of the conservatory, which was rough cut and irregular stone, which contrasts with the dressed Bath stone or Ashlar stone. In drawing RC15/A this was referred to as “stone rubble boundary wall”. I am satisfied that the parties, when variously referring to random and rubble stone walling, were referring to walling constructed of rough cut and irregular stone.

38. I note that the Grounds of Appeal submitted by the Appellants append 2 photographs showing the lower “random rubble boundary wall”. The photographs show rubble stone laid in horizontal layers but in an irregular manner which might well be described as “random”. The terminology shows that the Appellants use the words rubble and random to describe the same thing.

Discussion

39. At the appeal hearing it became clear that the primary ground of appeal was rooted in the contention that the parties had agreed that the raised section of wall beside the orangery was to be dressed Bath stone / Ashlar. Although the Appellants first ground of appeal in its Notice of Appeal appears to confirm that the raised section of walling was to be rubble stone walling. The ground of appeal stated: “*Drawing rcdroof8A31/B show the wall constructed with an inner leaf of blockwork and an outer leaf of 150mm rubble stone (same as the Award ie coarsed Lime Stone Rubble). There is no mention of the material type of the copings other than existing copings to be cut and relaid (note original copings were made of concrete with photos to prove)*”. Drawing rcdroof8A31/B is dated 9.11.15 and was attached to the First Award as recited at para. 21.1 of the First Award. The drawing states that the raised section of the party wall alongside the orangery was to be “150mm stone rubble to external part of cavity wall which is to be built up on top of existing wall to extension both sides with existing copings cut and re-laid”. The term “stone rubble” is to be contrasted with the reference to “dressed bath stone” in the same drawing. What the Appellants have erected is reclaimed dressed Bath Stone. It is not stone rubble walling, and it is not random rubble walling, such as one can see in the original walling beneath the raised walling (see photographs at PW4). It is of note that in a letter to Mr McAllister, dated 22.11.15, Mr White referred to the raised section of wall as being “coursed squared limestone rubble”, which is, in my judgment, a contradiction in terms since coursed limestone is not random and squared limestone is not rubble.
40. I found Mr White to be a witness who was prepared to manipulate the terminology to suit his own purposes. I was also struck by the disorganised but persistent manner in which Mr White advanced the Appellants’ case. It gave an impression of someone who was committed to succeeding in making his case rather than in giving a considered and accurate account of what had occurred.
41. The Respondents contend that there was an express agreement that the raised wall should be of rubble / random stone.
42. There is a consistent history of reference to the raised section of the party wall as being of rubble / random stone. The emails immediately preceding the Notice do so; as does the Notice itself, the First Award at para. 10, and drawing rcdroof8A31/B which was annexed to the First Award. The contents of the First Award and drawing rcdroof8A31/B were never challenged by the Appellants at the time the Award was

issued. It is also reasonable to conclude, as argued by the Respondents, that they wanted continuity in the walling. The original party wall by the orangery was random rubble walling. One can well see why they would have wanted the same type of walling in the raised section, and a type of walling that was also the same as that to the rear of the conservatory.

43. Most importantly, however, the string of emails, in my judgement, make it quite plain that the parties did agree that “the random stone finish should be on the east sides of both upward extensions to the wall”. That makes it clear that the parties were agreeing to the summerhouse end, which referred to the orangery end in contrast to the conservatory end, of the party wall being in random / rubble stone walling, which was the same that was agreed, and subsequently constructed, for the conservatory end.
44. I am satisfied that where the terms “rubble stone” and “random stone” have been used they have been used to refer to the same thing, namely rough cut natural stone.
45. I am satisfied, on the balance of probability, that the Notice and the First Award intended that the raised section of the Party Wall adjacent to the orangery should be constructed of rubble / random stone walling, and that those documents reflected the agreement that had been reached between the parties immediately before the signing of the Notice.
46. Given that I am entirely satisfied that the raised section of the Party Wall in the vicinity of the orangery was to be constructed of rubble / random stone walling, it follows that the surveyors correctly required in the Second Award that the section of wall should be constructed in such a manner. The first ground of appeal, therefore, fails.
47. Whether or not the wall as constructed failed to comply with a planning consent, or failed to satisfy Bath Preservation Trust does not take the matter any further given that the wall is in breach of the Notice and must be corrected in any event as a result of that breach.
48. It is clear, as admitted by Mr White when giving evidence, that the zinc upstand to the rear of the orangery does not comply with the requirements of the First Award or the drawings annexed to the Notice. The non-compliance occurred because the orangery roof was not constructed in accordance with planning drawings (which showed a flat roof as opposed to a pitched roof). The appeal on this issue (the second ground of appeal) must, therefore, fail. The Surveyors were correct to require the rectification of this item of work.
49. The third ground of appeal is not pursued by the Appellants.
50. The appeal is dismissed.

Recorder Stead

9.2.17