



OPINION REPORT

Dispute over Boundary Wall reconstruction

I Brief contract details

Contract; RIBA Concise Building Contract 2014

Employer; [REDACTED]

Contractor; [REDACTED]

Contract Administrator; [REDACTED]

Drawings issued [REDACTED]

Progress meetings ; Monthly

Start date; [REDACTED]

Completion date ; [REDACTED]

Liquidated damages [REDACTED]

Defects period 24 months i.e. to [REDACTED] (subject to delays)

Contract sum fixed price £ [REDACTED]

Interim payments 1st of the Month payable within 14 days

Final date for payment 30 days after the due date

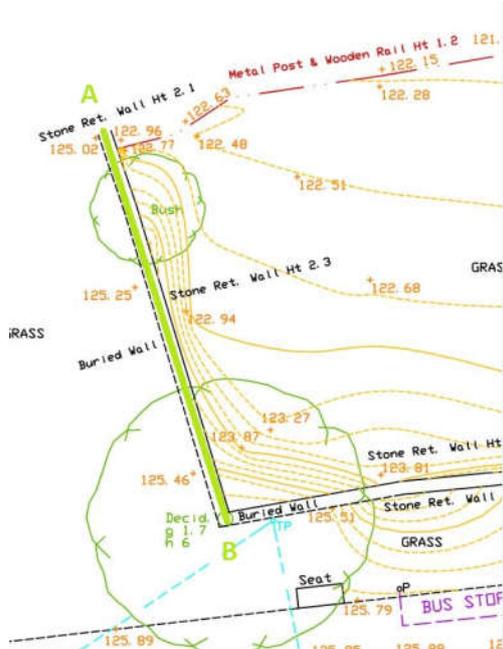
Rate of interest; left blank

Contractor design; left blank

Payment on completion of the works ; does not apply

II The Dispute

The dispute is about who is responsible for the costs of reconstruction of a boundary wall. The wall is identified and labelled A to B on the image below.





III The Contract Arrangements

These are the extracts from the contract relating to matters relevant to this dispute.

A. Clients rights and obligations

- 1) Providing a description of the work required
- 2) Paying the Contractor for work completed
- 3) Appointing the Architect/ Contract Administrator
- 4) Making any other appointments required by law (for example, those required under the Construction (Design and Management Regulations) and/ or that are necessary for the Works such as cost consultants and structural engineers.
- 5) Collaborating with the Contractor to resolve any events that may delay the completion or add to the cost of the Works.

B. The Contractor's obligations:

- 1) Carrying out and completing the work in accordance with the Contract and by the date agreed. This could include designing part of the Works if a mandate is determined at the outset within the contract.
- 2) Complying with instructions from the Architect/Contract Administrator.
- 3) Maintaining health and safety on the Site.
- 4) Taking out insurance policies as specified in the contract.
- 5) Collaborating with the client to resolve any events that may delay the completion or add to the costs of the Works.

The Contractor's main rights are:

- 6) The right to suspend its obligations under the contract because the client has failed to pay an amount due under the contract.
- 7) The right to terminate its employment because of a material breach of contract or other default by the Employer.

C. Contract Administrator

The Contract Administrator is not a party to the contract but administers the Contract issuing instructions and certificates and making decisions

D. Clients Liability

In so far as the event has not been caused by the contractor or its employees or agents in carrying out the works the clients liability includes;

- 1) Damage to existing structures and fixtures
- 2) Damage to neighbouring property caused by the carrying out of the work

E. Contractor Design

Optional section U has not been selected; therefore the agreement with the contractor does not include any responsibility for designing any part of the works.



IV The issues and Opinion

- 1) The named Contract Administrator is a Conflict of Interest to the contract
The contract created is frustrated as the Contract Administrator needs to be impartial.

I enclose a code albeit issued by the RICS relating to the role of the Contract Administrator. This code is likely to be taken into account by a court or tribunal.

“The role involves managing the contract between the employer and building contractor. The CA will act as the agent of the employer in some circumstances but will be required to make impartial decisions.

Despite the seemingly conflicting agency function, the decision-making function should always be impartial where parties to the building contract may have conflicting interests. The decision-making will reflect the professional expertise of the CA. A major benefit of this impartiality for the employer and contractor is that either party may challenge the decision of the CA.

The contract administrator may be the project architect, but could also be the lead consultant, the cost consultant, a specialist consultant, a client representative or employer's agent, the project manager or an engineer.

Contract administrators are appointed by the client, but when certifying or giving an assessment or decision, they should act honestly and reasonably and their decisions are open to challenge via the dispute resolution procedure unless the contract makes their decisions final and conclusive.”

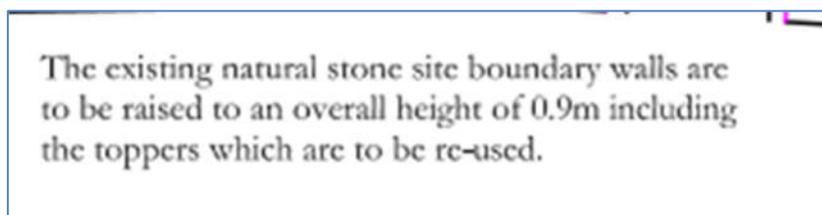
The above applies to the RIBA contract.

The employer appointing itself as the Contact Administrator frustrates the contract and creates a conflict of interest to the detriment of the contractor.

- 2) The work specified to be carried out to the existing stone wall
The drawings indicate the top of the stone wall is to be raised to 900mm.
Drawing 16A instructs that “the wall is to be raised by 0.3m”

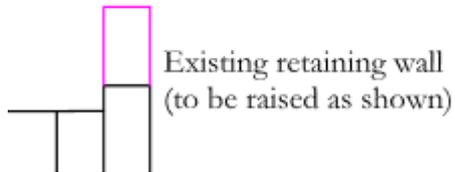
Extracts and comments from the drawings supporting this are;

A

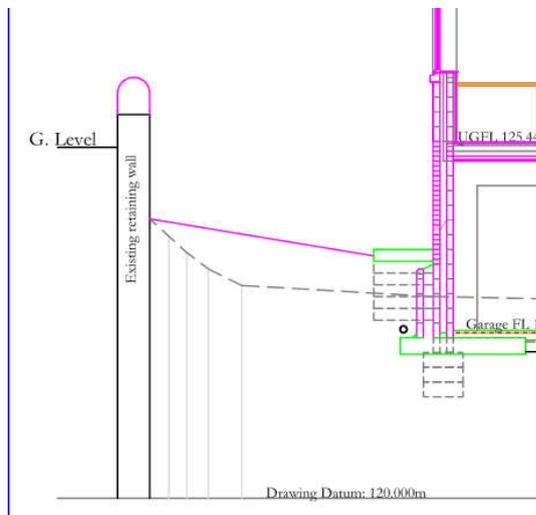




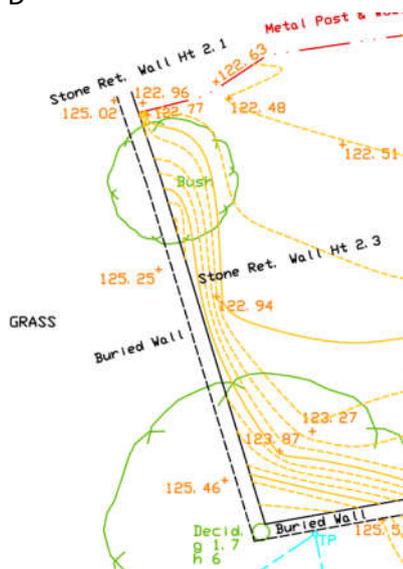
B



C



D



- 3) Contractor responsibility to make the Employer aware of the revised wall support requirements.
No requirement. The drawings are clear, detailed, and specific enough for him not to do that or make comments.
- 4) Was the contractor instructed to repair the wall with a ramp.
Yes. The employer's instruction to the contractor was confirmed by copy of a third party letter quote
"to the authorities in which I state land that" I have instructed my builder to construct a suitable ramp to retain this higher area of land."
- 5) Responsibility for the design of the ramp.
This lies with the employer. The quoted statement in previous item 4 does not state the contractor was liable for design only that a suitable ramp would be provided. It was addressed to the local authority not the builder. The default position is the contractor is not liable for design as agreed within the contract.
- 6) Was the ramp a part of the contract?
Yes as it was a variation to raising the stone wall.
- 7) Quality of construction of the ramp.
Clear instructions on the construction of the ramp were not issued. The contractors assumptions are reasonable. In hindsight they were not successful. Responsibility for the design rests with the employer as per item 5.
- 8) Responsibility for the stone gabion replacement wall?
This lies with the house owners or the employer. A stone gabion wall was not included on the drawings and the contractor was not provided with an instruction to provide one, therefore, the contractor is not responsible.
- 9) Does the failure of the ramp require the contractor to provide a replacement structure?
The contractor was not responsible for design of the ramp so he has no responsibility for its failure.
- 10) Did the wall delay the contract?
It was not the contractor's duty to incur time exploring the ownership of the new ramp. The work specified as previously stated in item 2 was found later to be inadequate. The timing of the instruction to the contractor rested with the employer and any consequent delays should have been requested by the contractor.



My opinion therefore is that the employer or the house owners take responsibility for the cost of the new proposed bank gabion wall.

To save further conflict I suggest both parties accept this opinion in writing by exchanging signatures. Any outstanding payments rectified. Then work to complete the project by agreements confirmed in writing or email to fulfil their obligations.

Queries or further information submitted to me concerning this opinion will be answered at my discretion and a cost charged in advance of providing any further opinion. This opinion may be used in court should any party exercise their right to proceed with or make defence by way of a legal action. I do not guarantee a court will accept the opinion or take it into account. A court may alternatively rely on the opinion completely. Only a court can make legally binding judgments. Either of the parties or the court may seek further opinion.

Yours sincerely



Stephen Hodgson BSc MRICS