IN THE COUNTY COURT AT CENTRAL LONDON Claim No.C20CL080

TECHNOLOGY AND CONSTRUCTION LIST

His Honour Judge Edward Bailey

BETWEEN

IOURI CHLIAIFCHTEIN

Appellant

- and -

WAINBRIDGE ESTATES BELGRAVIA LIMITED
(A company incorporated under the law of the Bailiwick of Jersey)

Respondent

JUDGMENT

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1. This judgment is given on the Appellant's appeals against the sixth and seventh Party Wall Awards made in respect of the works undertaken by the Respondent building owners of 11-15 Grosvenor Crescent, London SW1X 7EE.

2. The Respondent is a company incorporated under the law of the Bailiwick of Jersey. It is the freehold owner of 11-15 Grosvenor Crescent, London SW1X 7EE. The Appellant, the adjoining owner, is the long leasehold owner of no.10 Grosvenor Crescent, London SW1X 7EE. The Appellant's leasehold interest is for a term of 999 years from 29 September 2011 and was granted by a lease dated 21 December 2012 on the conclusion of a substantial scheme of redevelopment of 3-10 Grosvenor Crescent by Grosvenor Crescent Development LLP. The Appellant has been in occupation of the Property since the grant of the lease.

3. The Appeals relate to works carried out at no.11 Grosvenor Crescent by the Respondent as part of an extensive redevelopment of 11-15 Grosvenor Crescent. There is no party wall between No.10 and No.11. The Party Wall etc Act 1996 was engaged because the depth of excavation for a basement construction at 11-15 Grosvenor Crescent required the service of a notice under s 6(1) and (2) of the 1996 Act. Each property has an independent flank wall on

its own side of the boundary.

4. By the 5th Award the party-nominated party wall surveyors, Mr. Alistair Redler, nominated by the building owner, and Mr. Simon Levy by the adjoining owner, dealt with a request by the Appellant that the Respondent be required to provide security under the 1996 Act. The appeal against this award was compromised by a Tomlin Order dated 7 September 2015 recording the parties' agreement that the sum of £2,000,000, deposited with the Respondent's solicitors, was "specifically appropriated towards payment of any liabilities the Respondent may incur to the Appellant under the [1996] Act". The 6th Award, made on 30 June 2016, authorised the Respondent's solicitors to release all but £100,000 of this security to the Respondent. The Appellant appeals the 6th Award on the basis that the £100,000 sum remaining from the amount held as security was insufficient to provide security for the sums likely to be due to the Appellant from the Respondent in connection with the works. In the event £1,900,000 was released to the Respondent under the 6th Award, but £300,000 was replaced at the invitation of the Court at a directions hearing on 22 September 2017. Accordingly the sum of £400,000 is currently held as security.

5. During the course of the Respondent's work at 11-15 Grosvenor Crescent damage was occasioned to the Property. By their 7th Award the party-nominated party wall surveyors considered this damage, identified the repairs which the surveyors considered were required to rectify the damage which they found had been caused by the Respondent's works, and considered but rejected the Appellant's claim for alternative accommodation and storage to be provided at the Respondent's expense during the carrying out of the repair works. The issues arising in the appeal against the 7th Award relate therefore to the extent and cost of remedial work, the need for alternative accommodation, and whether valuable possessions should be stored away from the Property during the currency of the repair work.

6. It is appropriate to consider the Appeal against the 7th Award before that against the 6th Award. The determination of the 7th Appeal will inform the determination of the Appeal against the 6th Award.

Factual Background

7. Grosvenor Crescent Development LLP, the freeholders of the terrace at 3-10 Grosvenor Crescent, carried out extensive development and refurbishment works to the entire terrace, including No.10, between about 2008 and 2010. The properties date back to the 1820s or 30s and were constructed as a terrace of substantial town houses. Over the years rear extensions were added to the original houses. The development works in 2008 involved the demolition of rear extensions to No 3-10 and the construction of new extensions to the back of the original houses at 3-10 Grosvenor Crescent. The works included excavation for and construction of a 3-storey basement. The excavation allowed the creation of both individual property and communal basement areas, including a car park with a lift from street level. Refurbishment work was also undertaken within the original buildings of the terrace. This included the removal of walls and floors in the ground floor and basement of No.10, together with part of the façade. This enabled access to a piling rig used in the course of the works.

8. No.10 Grosvenor Crescent is a substantial building on five floors. The façade faces east. The boundary wall adjacent to No.11 is to the north. The demise to the Appellant ('the Property') comprises most but not all of the building at no.10 Grosvenor Crescent. The floor plans in the bundle show that the Property comprises the following principal rooms, from front to rear:

(1) Basement:

(a) Staff quarters/ironing room (including kitchenette & en suite bathroom)
(b) Cinema room/children's playroom
(c) Basement hall

(2) Ground floor:

(d) Living room
(e) TV room
(f) Atrium/dining room – double height with a roof-light
(g) Kitchen/family room
(h) Ground floor hall
(i) A terrace at the rear of the kitchen/family room

(3) First Floor:

(j) Master bedroom
(k) Dressing rooms (x 2: his and hers)
(l) Master bathroom
(m) Bedroom 2 with en suite bathroom

(4) Second floor:

(n) Bedroom 3 with en suite
(o) Bedroom 4 with en suite

(5) Upper landings:

(p) Hobby landing/sewing landing
(q) Study/storage landing

The floors are connected by staircases and landings.

9. The party wall surveyors have identified four rooms as requiring remedial works, rooms (b),(e),(f), and (j) together with works to the basement hall floor tiles, and to some areas of the staircases and landings.

10. The works at Respondent's works at No.11-15 included excavation for and construction of a basement (2-storey rather than the 3-storey basement at No.10) at the rear of the terrace. The excavation at No.11-15 does not extend so far to the front of the properties as does the basement at No. 3-10. The front of No.11's basement is on a line approximately half-way between the front and rear of the atrium at No.10, about two-thirds of the distance into the Property.

11. The basement construction works were completed by about April 2016. Schedules of condition were prepared prior to and subsequent to the Works. It is common ground both that the Respondent's works caused some damage to the Property, and that this damage is essentially decorative in nature.

12. The Appellant has expressed concerns that additional damage has been caused by the works at No.11 after the completion of the Respondent's basement construction works. The party wall surveyors have considered this additional damage and concluded that, in the main, it was not caused by the Respondent's works. The surveyors did however make a further award on 20 March 2018 (the 8th Award), by which they awarded the sum of £30 to re-mastic a skirting/floor joint seal in the TV room (near north-west corner) together with £500 as the cost of decoration required as a result of damage caused by removing a movement monitor from an internal wall. The 8th Award has not been appealed. Mr. Simon Levy, who in addition to acting as the party-nominated party wall surveyor for the Appellant also acts in

this capacity for the freeholders of 3-10 Grosvenor Crescent, is investigating other reports of damage said to arise from the Respondent's post-basement excavation works. Mr. Levy's evidence is that it is very unlikely that any such damage extends to the Property.

The 7th Award

13. Mr Redler and Mr Levy made the 7th Award on 25 August 2017. By this Award the surveyors determined:
    a. The scope of the remedial works required: see paragraph 1 of the Award and the Schedule of Repair prepared by Mr Levy appended to the Award.
    b. That the appropriate payment which should be made to Appellant in respect of the cost of remedial works is £103,566.91: see paragraph 2 or the Award. (The cost of the remedial works was arrived at with the assistance of a quantity surveyor. The Schedule of Repair was not submitted to contractors for estimates or tender.)
    c. That alternative accommodation was not required: see paragraph 4 of the Award.
    d. That no provision was required in relation to storage of chattels except as provided for in the Award, namely storage within the Property, see paragraph 4 of the Award.

14. Although there is disagreement as to the scope of remedial works, it is common ground that there is timber shrinkage throughout No.10 which is not connected to the Works. It is also common ground that there is no damage to the Property rear of the east wall of the atrium at any level.

15. The grounds of Appeal against the 7th Award are as follows:
    Ground 1: the surveyors erred in failing to make provision for alternative accommodation.
    Ground 2: the surveyors erred in failing to take account of the cost of adjusting house management systems.
    Ground 3: the surveyors erred in failing to make adequate provision for protection & storage of Appellant's possessions.
    Ground 4: the surveyors wrongly failed to identify damage caused by the Respondent's works and so excluded this damage from the priced Schedule of Works.
    Ground 5: the surveyors awarded too little by way of compensation or damages in lieu.

16. It is logical to consider first the extent of the damage to the Property, Ground 4 of the Appeal.

17. The works identified by the party wall surveyors required to remedy damage caused by the Respondent's works are:
    a. Basement Cinema Room: rake out and fill plaster cracks and redecorate whole.
    b. Basement entrance hall: replace (3) broken tiles if they can be matched. Otherwise replace all tiles and redecorate.
    c. Ground floor TV room: rake out and fill plaster cracks; carry out some limited re-plastering; decorate. Also adjust misalignment to French doors and apply mastic to skirting/floor junction.
    d. Atrium/dining room: rake out and fill plaster cracks in east wall; paint whole, including bathroom window in the east wall.
    e. Master bedroom: repair cornice and filling cracks in ceiling plaster; repaint ceiling.
    f. Staircase: fill cracks and open joints in apron, underside of staircase, stone treads and landings.

18. The party wall surveyors' view as to the extent of the damage caused by the Respondent's works is supported by the expert surveyor instructed by the Respondent, Mr David Reynolds MRICS, who gave evidence at the appeal. Indeed Mr. Reynolds identifies two items, the door misalignment and skirting floor gap in the TV Room and the tiling to the basement hallway, where he holds the view that Mr Redler and Mr Levy were over-generous to Appellant in their inclusion in the Schedule of Repair.

19. In contrast Mr. David Bowden FRICS, the expert surveyor instructed by the Appellant, not only confirms the entirety of the Schedule of Repair, he has identified four further items of damage which he considers should have been included in the Schedule. These items are:
    (1) Cracks to the staircase wall.
    (2) Cracking to tiles in the entrance hall on the ground floor.
    (3) Cracking in ground floor living room at the junction of front wall and stud wall adjacent to hall.
    (4) Damage to skirting board in kitchenette of basement staff quarters. This is very minor damage, and, realistically, the item was not pursued by the Appellant at the hearing of the appeal.

It is right to record that there are other areas to the walls in the Property where cracks have

worsened since the 7th Award was made. The fact that there has been such worsening does not bear on the question as to the cause of the cracking, and does not impact on the cost of carrying out the remedial works already agreed by the party-appointed surveyors. It is not necessary therefore to consider the matter further.

20. Before considering the additional damage items individually it is appropriate here to comment on the argument that where any damage is sustained to the adjoining property during the course of the building owner's works, as demonstrated by reference to the Schedule of Condition, there is a presumption that the damage is caused by those works. Mr. Isaac put this at the forefront of his submissions with respect to the additional items. Damage which is shown to exist in the adjoining property after the works which was not recorded on the Schedule of Condition should be presumed to have been caused by the works. In the case of dispute the onus is on the building owner to demonstrate otherwise. I accept that this must be the general approach. But this presumption should never be allowed to become a short-cut for a busy surveyor. The party wall surveyor is expected to use his expertise to satisfy himself that any item of damage in respect of which the building owner has to make good under s 2, or make a payment in lieu under s 11(8), or pay compensation under s 7(2), really has been caused by the building owner's works.

21. I return to the additional items of damage which Mr. Bowden suggests should have been attributed to the works, with the cost of repair allowed for the Schedule of Works. It is common ground that these items are indeed items of damage which manifested themselves during the currency of the Respondent's works. The three items, cracks to the staircase wall, cracking to entrance hall tiles in the entrance hall, and cracking at the junction of the front wall and the stud wall adjacent to the hall in the living room, do not appear in the Schedule of Condition prepared on 23 September 2014, but are present on the 'List of Apparent Changes' prepared on 15 June 2016. The issue between the parties is whether these items of damage were caused by the Respondent's works.

22. With regard to the third of these items, the cracking at the junction of the front wall to the Property and the stud wall adjacent to the hall in the living room, it is to be noted that the stud wall in question was placed tight up against the structural wall which separates the living room and the hall when the refurbishment of the Property took place in 2008 to 2010. The surface of this wall internal to the living room was apparently in an uneven condition, and

rather than hack off and re-plaster the wall a further wall, in effect a lining of plasterboard, was applied. The addition of the plasterboard may also have been a convenient way to provide wall light fittings and flush wall sockets. As in the case of all of the three disputed items of cracking, and of the items of repair generally, they are decorative items and disruptive investigation of the underlying cause of the cracking is not warranted. Accordingly, for instance, in the case of the front wall / living room wall junction cracking it is not known whether or not there is cracking to the structural wall behind the plasterboard.

23. The presence of the structural wall in this position, that is a wall a right angles to the front wall running into the Property alongside the entrance hall and beyond, parallel to the wall adjoining 9 Grosvenor Crescent, is central to the case advanced by Mr. Bowden that all three items of additional damage arose from the Respondent's works. This wall, a 'spine wall' typical of construction in 1820s and 1830s when the Property was built, would have been raised on a foundation. This foundation might in some instances be to the same specification as the foundation to the external walls, but in practice is more likely to be to a lesser specification. In either case, but more particularly where the internal structural wall is less well founded than the external walls, there may be differential movement between the spine and external walls when the overall structure is subject to ground movement. It is Mr. Bowden's evidence that areas in which cracking damage has been found, including the areas of the disputed damage, do indicate that there has been differential movement between the external walls and the spine wall, and that this movement may be attributed to the Respondent's works.

24. In presenting his theory Mr. Bowden suggests the following analogy. The four sides of a cardboard box, that is a box with the base removed, is placed on a sandy beach. If sand is removed from under one side of the box only the box would tend to drop towards the excavated area. Were there to be a cardboard insert in the box, vertically separating the box in two, but not joined to either of the sides to which it abutted, the insert would have the capacity to move separately from the box when the box moved. It is Mr. Bowden's theory that when the works of excavation took place at 11-15 Grosvenor Crescent ground movement was generated which caused cracking to the internal surfaces of the Property generally, but with particular cracking damage to surfaces connected with the spine wall which moved differentially to the external walls. It is apparent that all three areas of disputed cracking are connected with the spine wall. As Mr. Bowden points out there are also areas of cracking

connected with the spine wall which the party wall surveyors have included in the Schedule of Repair.

25. Counsel for the Respondent, Mr. Howard Smith, very properly and thoroughly investigated this theory with Mr. Bowden. An important point of challenge is that although items of damage may be connected to the spine wall, it is plain that there is no line of damage along the length of the spine wall. What is found may be described as occasional areas of damage, and it is suggested that these areas cannot reasonably be seen together as indicating spine wall movement. Additionally, the walls of the Property were monitored throughout the Respondent's excavation and very little movement was detected. Mr. Bowden's own summary is that "monitoring has shown that movement to the external walls of No 10 has been generally within 5 mm, ending at about 2mm horizontally to the front elevation, 2mm horizontally and 1.5mm to the rear elevation". There may have been both positive and negative displacement within the overall 5mm movement, (although one 4mm negative displacement reading was dismissed by the monitoring team as an anomaly). All in all, only minor movement.

26. Mr. Bowden suggests that there should be no surprise that there is no line of damage along the length of the spine wall, and rejects the suggestion that the absence of such a line is a safe indication that there has been no spine wall movement. The damage is in any event slight, "decorative cracking", without any suggestion that significant structural movement has taken place. At this (low) level of potential damage the quality of the materials used, and possibly the workmanship employed in their use, will be the more important than otherwise in determining whether damage resulting from differential spine wall movement occurs at any particular point. As Mr. Bowden explained, the bricks for the construction will have been brought by horse and cart and then tipped out:

> "…So all the bricks then fall in a heap. The good ones get put in the front, the mediocre ones in the middle, and the really poor ones are used in the hidden-away parts. You always end up with different qualities of construction…"

It is perfectly possible therefore that cracks appear adjacent to poorer quality materials and not adjacent to better quality materials despite all areas being subject to the same movement in the spine wall. It is the case that there was no monitoring of the spine wall, and so the possibility that there was differential movement between that wall and the external walls can neither be shown nor discounted. Had there been no differential movement, of course, there would have been no cracking for the cause suggested by Mr. Bowden.

27. The argument is plausible and was advanced by Mr. Bowden with some force. But it is necessary to consider what other causes there may have been for the items of damage concerned. With regard to the entrance hall tiles Mr. David Reynolds suggested that the cracking to these tiles, seven in number in addition to the tile which was found to be cracked in 2014, might be the result of insufficient support. Both white and black tiles are used in the hallway, the white being Carrara Marble from Tuscany and the black, 'Belgian Black Marble' which is actually a hard limestone. The tiles have been securely in place for almost 200 years. However Mr. Reynolds opined that there was repair work involving the lifting and re-laying of the tiles in the course of the refurbishment, and that there was a risk that the substrate on which the tiles were re-laid was insufficient allowing these few tiles to crack. Mr. Reynolds also points out that the entrance hall is a 'trafficked area', and that there is always a risk that a really heavy object is allowed to fall onto a tile and damage it. This may indeed be the cause of the cracked tile found in September 2014.

28. While Mr. Reynolds' suggestions cannot be wholly discounted the possibility that the seven tiles cracked because of insufficient support after re-laying or because of external force applied directly to the tiles individually appears unlikely. It is not clear that the entire tiled floor was lifted and re-laid and even it if were, there is no sound basis for supposing that the work was not done properly. It is not suggested that the 3-10 Grosvenor Crescent refurbishment works were generally of a poor quality, rather the reverse, and no evidence suggesting that any tiling contractors employed were not competent. Additionally, Mr. Bowden points out that the cracking in the tiling is predominantly parallel to and a foot or so away from the spine wall. This is a pointer in support of his theory, although, it must be accepted, such a pattern of cracking is also consistent with a linear section of poor quality support left after re-laying.

29. As for the wall surface or joint cracking Mr. Reynolds suggests that this is the result of seasonal movement. Decorative cracking can be caused directly by differences in humidity and temperature, as well as indirectly by minor movement in the structure caused by seasonal differences in the moisture content of the sub-soil. The temperature in the Property is carefully controlled but neither the temperature nor the humidity can be so maintained as to ensure that there can be no differential movement over the seasons. But again, seasonal movement as a cause of the cracking is less likely than the differential spine wall movement

advanced by Mr. Bowden. The Property was the subject of extensive refurbishment between 2008 and 2010, and shrinkage cracks are not uncommon following such work. Much if not all the cracking found in September 2014 for the purpose of preparing the Schedule of Condition may be attributed to post-works shrinkage, on the basis that such cracking had manifested itself with a couple of years of the work. Whether, had additional cracks appeared through seasonal movement in 2013 and 2104, they would have been noted is rather uncertain, but there is no clear reason to attribute cracking recorded in September 2014 to seasonal movement as opposed to post-works shrinkage.

30. The cracking at the junction between the front wall and the living room stud wall could be the result of shrinkage in the stud timbers and in particular the timber immediately adjacent to the junction. There is timber shrinkage elsewhere in the Property and the Respondent suggests that the cracking at this junction should be explained in this manner. Mr. Bowden's evidence however was that while there was plenty of evidence of shrinkage to applied bits of timber trim such as architraves, linings around window openings, and so forth, there is no evidence of shrinkage of structural timber. The type of timber used for a stud wall would be of different quality to that used for trim. Furthermore, if a timber stud were to shrink it is far more likely to shrink along its length and not its width, and it is shrinkage to the width that is required to produce the cracking found at the junction.

31. Pulling all the above considerations together I find, on a clear balance of probability, that Mr. Bowden's explanation for the disputed cracking is to be relied on. Accordingly, these three areas of cracking are to be added to the Schedule of Repair.

Quantification of damage

32. The 7th Award provides that the Respondent should pay the Appellant the sum of £103,566.91 'as payment in lieu of repairs under Section 11(8) of the Act'. Strictly the Award should have been as compensation for damage under Section 7(2) of the Party Wall etc Act 1996, but nothing turns on that distinction. The figure is however clearly important to both parties whether paid as compensation or payment in lieu. The figure of £103,566.91 is the price put on the Schedule of Works by the party wall surveyors in reliance on advice given to them by a quantity surveyor Mr. Ron Coll of Coll Associates with an address in Curzon

Street. The Appellant considers that this is a substantial under-pricing of the works and suggests that the appropriate figure is at least £227,634.

33. It was not encouraging for the Appellant to learn during the course of the hearing both that Ron Coll had been suggested as a quantity surveyor to price the schedule by the Respondent, and that Mr. Robinson of the Respondent had been in communication with Mr. Coll while the work was being undertaken.

34. There can be no objection whatever to party wall surveyors seeking assistance from a quantity surveyor when pricing a schedule of works for the purposes of an award. Neither can there be any rooted objection to the surveyors asking the parties to suggest a quantity surveyor who might be chosen for this task. Mr. Coll was apparently proposed as a quantity surveyor familiar with costings in Belgravia, and was instructed on the basis that he was to give independent impartial advice to the party wall surveyors. But it is unfortunate that the surveyors did not make it clear to Mr. Coll that there should be no private communication with either owner, and in particular the Respondent. The e-mail traffic between Mr. Coll, Mr. Robinson and Mr. Redler in the hearing bundle shows that Mr. Coll's initial 'indicative budget estimate' at £89,170.04 was reduced to £64,522.92 (at which figure it was forwarded to Mr. Levy) after Mr. Robinson asked him to 'please review and omit costs for replacing stone to LGF and just have repair to match. Can we also consider the overhead from 20% to 15%..". The Respondent may not, however, have had much influence on the final figure. After Mr. Levy's involvement, and presumably further discussion with Mr. Redler, the figure in the award was £86,305.76 plus vat. Nonetheless party wall surveyors are performing a quasi-arbitral function and Mr. Coll should have been told more firmly that he should not be running initial figures past the Respondent, nor amending those figures at, or apparently at, the Respondent's request.

35. In the event the party wall surveyors did not have the Schedule of Works priced by a contractor. Mr. Redler did arrange for a contractor to attend the property but the contractor concerned declined to quote. The court understands that it is not a straightforward matter to arrange for a contractor to price a schedule where there will be doubt in the contractor's mind that he may obtain a job as a result of his work. Mr. Bowden found this to be the case when he endeavoured to obtain contractors' quotations or estimates for the purposes of this appeal. Only two contractors were prepared to cooperate at all. Hare & Humphreys did not engage

with the Schedule of Works. Rather they gave a standard form estimate in the sum of £206,940 with a price for each room or area of the Property which was not broken down into its constituent parts. Heritage Building Conservation (South) Ltd provided a priced quotation on a specification of works, but it is not the party wall surveyors Schedule of Works and a sufficient number of items are included from outside the specification to make a direct comparison with Ron Coll's priced schedule impossible. The Heritage quotation totals £148,299.33 not including vat, a quotation which is to be increased by 10% if they are not given unrestricted access to the site.

36. The party wall surveyors were satisfied that the figure inserted in the award was in the correct bracket, and the evidence from Hare & Humphreys and Heritage Building Construction is too uncertain to found the basis for allowing a substantially greater figure on appeal. The court is left with no option but to proceed on the Ron Coll priced Schedule keeping in mind that quantity surveyors rarely price generously, and the experience of Mr. Redler and Mr. Bowden which suggests that it may prove a difficult task to find a contractor willing to take on a decoration contract at the Property without a significant mark-up on more usual prices. Item 9.03, the redecoration of the Atrium walls requires mention. This is priced at £1,320 for the redecoration of one wall only, as only one wall requires cracking repair. The fact that it is usually unacceptable to redecorate only one of four walls is acknowledged by the fact that a further £4,224 needs to be added if all four walls are to be redecorated. The argument was made that one wall could be repainted and if the result was not acceptable the surveyors could make a further award covering the remaining three walls. So they could, but that would be an absurd way of proceeding. In the hope that in a room where the walls have not been painted since (at least) 2012 the cost of redecorating three walls might be saved by only painting one, the substantial risk is run that the remaining three walls have to be repainted at an appreciable additional cost and inconvenience to the occupier after the works as a whole have been completed. The additional £4,224 should have been added from the start, making a total of £13,244 for item 9 on the summary sheet, a total of £90,529.76 which with vat gives a revised figure for the Schedule before the addition of the three disputed items of £108,635.71.

37. As for the disputed items the difficult price is that for the entrance hall tiling. The filling of the crack in the junction of the living room wall and front wall is safely covered by £350, and the additional work on the staircase by a further £650 given that no additional access plant has to be provided. In a letter to Mr. Bowden dated 8 March 2018, Mr. Gladwell of Heritage

Building Conservation stated that it would be feasible to replace the individual cracked tiles but with the likelihood that the new tiles would be readily identifiable as new.

> "The existing floor has been in place for many years. Carrara gains a patina with age and acquires a slight yellowing which can not be replicated artificially. In addition, being a naturally variable material the background colour and level of veining varies from block to block. We could take a piece of the original material to a marble yard and select a slab of new marble which is the closed possible match currently available, but for the reasons outlined above it is unlikely to be the same. The alternative option of replacing the whole floor is viable, and will result in a harmonious appearance, but will need listed building consent."

38. The cost of replacing the whole floor is quoted at £36,103.50 plus vat. There is no indication of the cost of replacing seven cracked tiles, a task that, presumably, is far from straightforward. To visit the cost of a complete new floor on the Respondent would seem inappropriate in the circumstances and disproportionate. As for replacing the cracked tiles, a figure of £1,000 per tile might be thought to be generous, but if the resulting £7,000 also includes some leeway to allow for a contractor's price rather than a quantity surveyor's together with the passage of time since the making of the 7th Award, the resulting price of £118,235.71 is reasonable. I observe that it was not argued before me that the compensation award should be reduced to take into account the chance that the repair works will be carried out at the same time as a general redecoration. That was not of course the approach of the party wall surveyors and would have been a considerable over-complication.

39. An additional item to the preliminaries to the Schedule of Repair claimed by the Appellant is that of the provision of welfare and storage facilities. The party wall surveyors did not include this as item involving expense because they proceeded on the basis that such facilities would be provided by Grosvenor Crescent Management Limited ('GCML') on behalf of the landlord free of charge. The party wall surveyors were conscious that providing toilet and other welfare facilities to the workforce would be a very considerable problem in Grosvenor Crescent. However, in giving oral evidence, Mr Levy said he spoke to Mark Bloxham of GCML and he said it was "fine", the workforce could use the facilities in the basement of 3-10 Grosvenor Crescent provided they left them in a clean and tidy state. Mr. Bloxham's generosity also extended to storage facilities, a room about 10 feet by 5 feet, small but sufficient for a decorating job reached via what Mr. Levy described as the 'catacombs'. Unfortunately Mr. Levy (perhaps because he is a surveyor not a lawyer) did not think to obtain written confirmation of this offer from Mr. Bloxham leaving Mr. Isaac rather concerned that his client might find himself in the position of having to fund the facilities

should Mr. Bloxham, or his successor, have a change of heart.

40. Mr. Levy was entirely confident that the offer was made, and I do not doubt him. That there is a risk of a change of heart cannot be denied. But, looking at the matter objectively with all the advantages of having no evidence whatsoever as to Mr. Bloxham's nature, his previous dealings if any with other contractors, and his approach to workmen in general and the Appellant's in particular, it seems to me that GCML would recognise that the basement areas involved are part of the overall block in respect of the cost of which the Appellant has to pay service charges. It would be entirely appropriate that the facilities in the basement areas should be made available to workmen engaged in carrying out work for one of the tenants in the tenant's property. Accordingly I do not consider it appropriate to make an allowance for the cost of providing facilities, a cost incidentally on which the Appellant has put a figure of circa £50,000, see paragraph 44 of his statement of 9 March 2018, in reliance on information provided to Mr. Bowden by Heritage Building Construction. If necessary, of course, the Appellant could always call upon the surveyors to make a further award to cover the apparently not inconsiderable cost of providing facilities.

Length of time to complete works

41. Mr. Bowden's opinion as to the length of time it will take to complete the works is 10 weeks if the Property is unoccupied, and 20 weeks if the property is occupied. In the latter event the plan is that the contractors redecorate one room at a time with the furniture and effects from the room being redecorated being stored in one other room so as to leave the maximum amount of space available to the Appellant, his wife and their children. In arriving at this opinion Mr. Bowden has relied on the views of the two contractors from whom he obtained estimates, and in particular Heritage Building Conservation. Mr. Reynolds is not impressed with the contractor's timescales, making the point that the estimates do not follow the Schedule of Repair and contain items not within that Schedule. Mr. Reynolds suggests 10-12 weeks would be a reasonable duration for the works, presumably while the Property is occupied, but he gives no alternative figure for the time the works would take if the Property was unoccupied.

42. The Appellant is a demanding client, and, given the nature and cost of the Property, he is entitled to be. It is very understandable that Heritage Building Conservation should express a

distinct preference for carrying out the works with the property unoccupied, and raise concern that there may be children at the premises. I would assess a reasonable time for carrying out the works at 8-10 weeks if unoccupied and 16-18 weeks if occupied.

Alternative Accommodation

43. The party wall surveyors rejected the Appellant's submission that the Respondent be required to pay for alternative accommodation during the currency of the works. The 7th Award records the three points made by the Appellant in support of his claim for alternative accommodation:

"(a) Although [the Appellant] was planning to carry out fairly extensive internal works at 10 Grosvenor Crescent, there is no immediate prospect of any such works being carried out, as the permission he had obtained from Grosvenor and Westminster have now expired.

(b) [The Appellant] has already had to occupy 10 Grosvenor Crescent in its increasingly damaged state for two or more years. 10 Grosvenor Crescent is a luxury apartment finished to a very high standard. He expects his apartment to be in pristine condition, he has paid a great deal of money for it to be in such a condition. He wants it returned to that condition as soon as possible.

(c) In any event, whilst he does personally spend quite a lot of time travelling for business, the same cannot be said for his wife, staff, daughter, grandchildren and a dog, who use 10 Grosvenor Crescent on a daily basis. He requires 10 Grosvenor Crescent to be available to him at all times, as his plans tend to change all the time, and sometimes at the last minute."

In rejecting the claim for the cost of alternative accommodation the party wall surveyors give a number of 'primary' reasons. The Appellant and his family spend long periods of time abroad, so the works can be carried out under appropriate supervision in the Appellant's absence. They, the surveyors, have been informed by the Appellant that he proposes to undertake various changes to the interior of the Property on the ground floor which will disturb the interior decorations and finishes in any event. The damage does not affect amenity

or usage of the Property. There is sufficient room in the Property to enable the works to be carried out without causing the occupants unnecessary inconvenience. It is disproportionate and unreasonable to make financial allowance for temporary accommodation for works that have to be carried out from time to time in any event. Finally the Schedule of Repairs has been prepared so as to enable the works to be phased on a 'contained room-by-room' basis to enable occupation during the works.

44. The claim for alternative accommodation itself is not insubstantial. The Appellant seeks the cost of an alternative property comparable both in terms of location and size to 10 Grosvenor Crescent. The evidence of Messrs Knight Frank is that such a property will cost £25,000 per week to rent, with a minimum letting period of six months. A lesser period will attract a premium of 30% to 40%. In addition to a six month rental of £650,000 the Appellant is seeking £85,281.10 (inc.vat) for the removal and storage of his more valuable possession, and a further £10,841 (inc vat) for shutting down or isolating the household management systems, that is the security alarm system and the air conditioning system.

45. There will be times where the adjoining owner does have to move out and live in alternative accommodation while works of repair are carried out to his property consequent on damage caused by the building owner's works. I agree with the formulation of the appropriate test effectively agreed by both counsel: 'Viewed objectively, is alternative accommodation reasonably necessary in all the circumstances'. Mr. Isaac offers a more precise formulation: "Is alternative accommodation reasonably necessary in the all the circumstances, in particular taking into account, on the one hand, the extent, complexity, period and cost of the remedial works, and, on the other hand, the impact upon the general amenity and living conditions of the adjoining owner which the carrying on of work with him occupation would have". This formulation adds nothing overall. It has the advantage however of drawing attention to the main circumstances to which the party wall surveyor must have regard, at the risk though of suggesting that other, relevant, circumstances which may arise in individual cases need not be taken into account. Whatever the precise formulation of the test to be applied an award of damages must meet the general principle of proportionality. No award of damages should be made which is out of all proportion to the loss suffered.

46. On any footing this is an unusual case. The Appellant has purchased an extremely expensive beautifully appointed residence in a very up-market location. The Property is appointed and

decorated to a very high standard over four floors, something which is very important to the Appellant. There is basement parking with concierge service. Although the Property is occupied, in every day terms, solely by the Appellant, his wife, and their dog, both the Appellant's children live very close by and their grandchildren frequently visit after school, often staying over after family dinner which is held twice a week. The Appellant has staff who, in the usual course of events, live out but who can when required sleep in the basement. The Appellant and his wife entertain regularly. The Appellant and his wife are concerned that there will be dust arising in the works which will be trailed around what is a "shoe-free" house if they have to share occupation with the decorators. The Appellant is also concerned that his wife does not usually rise before 10.00am and her sleep may be disturbed by workmen in the Property. In the main however the Appellant has an objection of principle:

> "My primary point is that I do not see why I should have to compromise my lifestyle in what, it should be obvious, are very major ways, simply in order to make it cheaper and easier for the Respondent to repair the damage it caused to 10GC with its works".

47. There may indeed be occasions where an Adjoining Owner does have to compromise his lifestyle as a result of the activities of a Building Owner. There is a public interest aspect to enabling property owners to carry out such works to their properties that are reasonably required within the scope of the 1996 Act, the planning legislation and the requirement to comply with building regulations. Nevertheless the Act quite properly proceeds on the basis that the works being undertaken by the Building Owner are for his benefit and the Adjoining Owner's interests should be properly protected. No court will lightly require an Adjoining Owner to compromise his lifestyle, but what the Adjoining Owner and the court may see as an unreasonable compromise in lifestyle may be two different things.

48. It is necessary for the court to enquire what, if any, compromise will in fact be required. Two matters arise here for consideration. First, the possibility that the Appellant and his wife will spend sufficient time away from the Property as to allow the works to be carried out without inconvenience to them. Second, the possibility that the Appellant will carry out his own works, whether of improvement or redecoration, such that the repair works necessitated by the Respondent's works may be carried out at the same time without any, or with minimal, additional inconvenience to the Appellant and his wife as occupiers.

49. Spending time away from the property. The Appellant's submission to the party wall

surveyors was that while he himself spent a fair amount of time away from the Property travelling on business, the same cannot be said for his wife, staff, daughter, grandchildren and a dog who use the Property on a daily basis. In oral evidence the Appellant explained that his residence qualification now enabled him to remain in the UK longer than he had previously. Nevertheless he expected to be out of the country for about six months. As for his wife the Appellant explained that the previous year she had been abroad for about nine months because she needed to be with her disabled mother. This year the Appellant expected his wife to be here, in England, for nearly half a year.

50. There is no time restriction on when the Appellant carries out the work repairing the damage caused by the Respondent. It is by no means obvious why he cannot arrange for the works to be carried out in his absence provided that suitable arrangements are made to protect his valuable property and for the works to be properly supervised.

51. Carrying out his own works. The 'fairly extensive internal works' referred to by the party wall surveyors in the 7th Award comprised the installation of a lift, the lift shaft being built, essentially, up from the storeroom on the other side of the corridor passing the atrium, and the reformulation of the WC and corridor in that area, together with extending the children's playroom in the basement. Although the planning permission from Westminster City Council had expired the Appellant has had it renewed. Nevertheless in oral evidence the Appellant indicated that he would not carry out the work, at least not until he was more sure about the economy and the tax position in the UK. Renewing the permission should not be seen as a settled intention to carry out the works. As the Appellant pointed out, renewing the planning permission was of benefit to the value of the Property should he decide to sell. I accept that the Appellant has no immediate plans to carry out internal structural works at the Property.

52. The works of repair the subject of the 7th Award are not of course structural works, but works of redecoration. The Appellant has made it plain that he wishes his home to be decorated to the highest standard, and the present decoration is now over 5, very possibly over 6 years old. It might reasonably be anticipated that the Appellant would wish to have the Property redecorated. Furthermore, the Appellant is under an obligation to redecorate. Rather surprisingly, in a lease of a property for 999 years, the Appellant is subject to a tenant's covenant to redecorate of the sort commonly found in a lease of a much shorter duration. Clause 3.17 of the Lease dated 21 December 2012 provides:

> "As often as necessary (but at least once in every consecutive period of five years) and in the last year of the Term:
>
> 3.17.1 to prepare and paint with at least two coats of top quality gloss paint all parts of the Premises as shall have previously been or should be painted
>
> 3.17.2 to paper and colour with good quality materials all parts of the Premises as shall have previously been or should be papered or coloured respectively."

Strictly, the Appellant's lease is liable today to be forfeited under the provisions of clause 6.1 of the Lease. The lessor has however no particular interest in enforcing the covenant to redecorate, and it is most unlikely that any action will be taken against the Appellant. The Appellant, who was unaware of this covenant to redecorate before he gave evidence, has every reason to be sanguine about his being in breach. But where the Appellant is under an immediate obligation to redecorate the entirety of the Property it is difficult to justify an order that the Respondent pay some £750,000 to provide the Appellant with alternative accommodation and storage of his valuables while minor works of decorative repair are carried out to small parts of the Property.

53. In the light of the above, whether because the Appellant and his wife will be out of the country this year for well over the ten weeks required to carry out the works of repair, a pattern which is likely to be repeated year on year, or whether because the Appellant will carry out works of redecoration in any event, under his obligation to do so or otherwise, I consider that the party wall surveyors were correct not to make any allowance for alternative accommodation in the 7th Award. This aspect of the appeal is rejected.

54. One further observation. Where it is appropriate for an adjoining owner to move out during the course of repair works consequent upon the building owner's works, and accordingly an award for alternative accommodation falls to be made, it does not necessarily follow that the adjoining owner should be provided with alternative accommodation that is exactly similar in all respects. It is perfectly reasonable for an adjoining owner who lives in Belgravia to require alternative accommodation in an equivalent location, whether that be Belgravia itself or perhaps Mayfair. But an adjoining owner entitled to be given somewhere else to live is to be provided with alternative accommodation which is reasonable for his purposes. No 10 Grosvenor Crescent is an extensive property with four bedrooms with en suite facilities, the master bedroom having two adjoining dressing rooms. In addition to a kitchen and three

living rooms there are staff quarters and a children's playroom. Were it reasonably necessary to provide the Appellant with alternative accommodation for a period of up to 10 weeks I would have thought that a three bedroom flat, with en suite facilities, and with a good size kitchen and a commodious living area would be sufficient.

Storage of valuable possessions

55. I proceed on the basis that the Appellant and his wife will be away when the works of repair are carried out, presumably as part of a larger redecoration project. This is the first of the two reasons given in paragraph 53 above for refusing an allowance for alternative accommodation. I appreciate that the second of those two reasons, carrying out redecoration works in any event, would preclude and award for storage of valuable possessions. However, on balance, I consider it appropriate to proceed on the basis that the works will be carried out while the Appellant and his family will be away from the Property. The Appellant has jewellery, artwork and vintage wine at the Property with a value in excess of £2,200,000. The Appellant was understandably reluctant to answer detailed questions about these valuables during his cross-examination. He has a state-of-the art household management system with a high-grade security system, but this is an area where discretion is warranted. The result however was a deal of uncertainty as to which possessions are stored where, both in the Property and outside. The Appellant has a security vault and another property in London, although much smaller than the Property and one of insufficient size to provide alternative accommodation during the currency of building works.

56. For the purposes of the present appeal I accept that the Appellant has high value possessions which cannot realistically be left in the Property during the course of a building contract. The Appellant has obtained a quotation for the removal and storage of artwork and other valuables from Cadogan Tate, fine art removal and storage specialists, in the sum of £85,281.10 including vat. The difficulty facing the court is that the Cadogan Tate quotation covers the removal of every possession in the Property, a measure which I consider quite unnecessary, and there is no alternative quotation for the removal and storage of the valuable items only. An award should be made in this connection, and, in the circumstances, it will have to be on the basis of the Court "doing the best it can". The valuable items will form a relatively small proportion of the cubic capacity of the items as a whole, but their value will make their removal and storage much more expensive than 'ordinary' items of furniture and

effects. This is where the real cost of removal and storage is to be found. I will allow £75,000 inclusive of vat under this head.

57. In this connection however the Appellant should not be expected to hand over possession of the Property to a firm of decorating contractors, even a firm with a Royal Warrant, without having a suitable supervisor, that is a surveyor who can both ensure that the work is carried out to the required standard and who can be alive to the need for the security of those items of furniture and effects that are not reasonably capable of being put into storage. The sum awarded for the works by the party wall surveyors included a 15% management charge which meets this requirement.

Household management systems

58. The Appellant claims the sum of £10,841 (inclusive of vat) for shutting down or isolating the household management systems, that is the security alarm system and the air-conditioning system. This is dealt with at paragraph 31 of the Appellant's statement of 9 March 2018, and proceeds on the basis that it will be necessary to make arrangements to shut down the security and air-conditioning systems on a room by room basis. I am not persuaded that this is a proper or necessary item for an award.

Loss of amenity

59. A claim for loss of amenity is made under three separate heads; (a) the loss immediately arising from two incidents arising in the works, the noise and vibration caused by a vibrating roller for a few hours on a single day in March 2015 and the breaking of the atrium glass roof on 9 September 2015 when the outer of a double-glazed panel was broken by an unidentified object, (b) the presence of the cracking the subject of the Schedule of Repair from its appearance in 2016 during the course of the works through to today, and (c) the need to have the works of repair carried out at all.

60. Mr. Smith objects that a claim for loss of amenity is not expressly raised in the Appeal against the 7th Award. He makes the point that the Appellant could apply to the party wall

surveyors for a further award. Mr. Isaac suggests that the loss of amenity of claim is the lesser claim arising within the greater claim for alternative accommodation. That could only be true with respect to claim (c) above. While there is force in Mr. Smith's submission it surely makes sense to deal with the matter now and save the costs of a further award, and the almost inevitable appeal. I will deal with the matter now.

61. The three separate heads noted above represent three distinct claims. The vibrating roller incident is a relatively minor matter, certainly in terms of compensation. The atrium roof damage is more serious because although the breakage did not result in water penetration, it required both a temporary repair, with which the family had to live for some months, and a permanent repair which involved a scaffold being raised in the atrium. The sum of £1,500 adequately compensates the Appellant and his wife for these incidents.

62. With regard to the second head of claim, the Appellant and his wife have indeed had to live with the cracking caused by the Respondent's works over a period of some two years or a little more. The effect of the cracking may, from time to time, have reasonably caused some minor irritation, but it has to be set against the context of the damage recorded in the Schedule of Condition. This was not a property where every wall was in absolute pristine condition before the Respondent's works began. This was additional cracking, and while I have no doubt that the Appellant was annoyed at its presence, an element of this annoyance would have been as a consequence of the Respondent doing work at all. A further award of £1,500 amply compensates the Appellant and his wife for having to live with this cracking, an award which takes into account that both the Appellant and his wife were away from the Property for significant periods.

63. Finally the loss of amenity in having to have the works of repair carried out. If the works are indeed to be carried out while the Appellant and his wife are away from the property, and carried out as part of a more extensive redecoration, there is little by way of loss of amenity for which the Appellant might be compensated. There has been no evidence directed at the length of time either the Appellant or his wife are away from the Property, as opposed to the time away spent each year, and I have had to assume that they would be away, or be prepared to be away, from the Property for a continuous period of at least 10 weeks to enable the works to be carried out without any significant loss of amenity. In my judgment a modest award needs to be made to compensate the Appellant and his wife in this respect. In all the

circumstances an award of £3,000 in this regard is sufficient. The loss of amenity claim therefore amounts to £6,000.

64. In the light of the above I propose to vary the 7th Award to provide that the Respondent should make the following payments to the Appellant:

(1)	Compensation for items of damage	£118,235.71
(2)	Alternative accommodation	(nil)
(3)	Storage of valuable possessions	£75,000.00
(4)	Isolating household management systems	(nil)
(5)	Loss of amenity	£6,000.00
	Total	£199,235.71

Appeal against 6th Award

65. I can deal with this shortly. It is understandable that the Respondent wished to have released a substantial portion of the security deposited with Child & Child. In reducing the security to only £100,000 however the party wall surveyors overlooked the settlement agreement reached between the parties in the appeal against the 5th Award and embodied in the Tomlin Order dated 7 September 2015. This provided that the funds deposited were security for appropriation towards "payment of any liabilities the Respondent may incur to the Appellant under the Act." These will include professional fees. I do not accept the submission that the fact that the funds were deposited as 'security for expenses under section 12 of the Party Wall etc Act 1996' restricts the interpretation of the agreement to purely section 12 liabilities, even if we are to proceed on the basis that section 12 security cannot cover professional fees, which, I suggest, remains an open question. The words of the agreement are quite clear, and "any liabilities under the Act" not only clearly states the parties' intention, it may be contrasted with 'security for expenses under section 12' indicating that the parties intended the agreement to encompass more than simply section 12 security.

66. The amount remaining on deposit should therefore cover not only the sums now awarded under the 7th Award in the light of this appeal, £199,235.71, but also the professional fees and expenses of the adjoining owner's surveyor. Mr. Levy was not in a position to give a definite

figure at the hearing. He has prepared a spreadsheet and including expenses, including in particular the fees of other professionals, Mr. Levy advises that the figure will be in the order of £100,000. To allow for contingencies it seems appropriate to vary the 6th Award to provide that £350,000 be retained pending further award.

67. I will accordingly make an Order varying the 6th and 7th Awards in accordance with the above.