

Claim No:

In the County Court of Chesterfield

v

**CPR Part 35 Expert Report
by SJM Butler, MRICS**

On the single instruction of Mr and Mrs

Dispute in respect of dampness at Avenue, Chesterfield,

CONTENTS

1. Instruction

2. Qualifications

3. Background

4. The Inspection

5 Conclusion

Statement of truth

Appendix 1 – Photographs.

1. Instruction

- 1.1.1 To prepare an expert report on the single instruction of Mr and Mrs with a view to resolving a dispute in connection with damp ingress at the adjoining property 19 Avenue occupied by Mr and Mrs

2. Qualifications

- 2.1 I am Steven John Macgregor Butler, a Member of the Royal Institution of Chartered Surveyor trading as a sole practitioner. I qualified in 1992 and have in excess of twenty years' experience of surveying residential properties and preparing reports on defective workmanship, dampness and drainage issues.

3. Background

- 3.1 The properties are adjoining detached houses constructed about 1980 that appear to have been almost identical when constructed. They form part of a development of several similar properties. The garage of 19 Avenue is constructed behind that property and adjacent to the boundary with Number 17 which is to the north of Number 19.
- 3.2 A dispute has arisen as to whether dampness that is claimed to have manifested in a garage at 19 Avenue has been caused by the neglect of the defendants or their contractors.
- 3.3 It has apparently been claimed that the dampness is caused by the defendants constructing a block paved patio in their rear garden that is above the damp proof course of the adjacent garage at 19 Avenue. It has also been claimed that a conifer tree, flowerbed and dwarf wall near to the boundary are contributing to the dampness.

4. The Inspection

- 4.1 The properties was inspected at lunchtime of 27th January 2014
- 4.2 Inspection of the rear gardens at the rear of 15 and 17 Avenue suggests that the rear gardens are constructed at the natural ground level or as left by the developer when constructed in about 1980. A photograph of the properties is attached as Appendix 1. The patio at 17 Avenue is apart from drainage contours approximately flat.
- 4.3 Inspection of the outer face of the wall of the garage at 19 Avenue that is adjacent to the boundary with number 17 revealed:
 1. The garage at 19 Avenue has been constructed below the natural ground level of 15 and 17 Avenue.
 2. There is an approximately 300mm wide trench between the block paved patio and flowerbed, and line of the boundary to Number 19. A dwarf wall projects into the trench but does not touch the wall of the garage at 19 Avenue. Photographs 2 and 3.

3. That the trench is 150mm deeper than the plastic damp proof course of the garage at 19 Avenue. The trench cannot be any deeper without destroying what appears to be the foundation of the garage at 19 Avenue.
4. That that base of the trench is lower than the floor slab and damp proof course of the garage was also proved by measurement.
5. A block paved patio that has been constructed in the grounds of 17 Avenue has been sloped to ensure that water drains away from the boundary with 19 Avenue.
6. There was no evidence of a mechanism for the block paving and supporting ground, dwarf wall, flowerbed or conifer tree to transfer dampness to the adjacent wall of the garage.
7. The external face of the brick wall of the garage at 19 Avenue is in a condition consistent with its age. There is a small amount of lichen growing consistent with a north facing wall. There is no evidence of erosion of the pointing or loss of brick faces that would be consistent with long exposure of a damp wall to frost.

4.4 Inspection of the interior of the garage at 19 Avenue revealed.

1. That the plastic damp poof course that can be seen to be 150mm above the base of the trench at 17 Avenue is level with the surface of the floor in the garage. Photograph 4
2. The wall abutting the boundary is in a condition typical of its type and age. There is no erosion of the pointing consistent with a damp wall having been exposed to frost over a long period. Photograph 5.
3. A small area of paint that has been applied to the surface of the garage floor has eroded. There is no evidence to link this to dampness of the wall. There are many other potential possible causes. Photograph 5.
4. That the garage is very full with stored materials which could increase the risk of condensation due to the stored materials preventing proper ventilation.

5. Conclusion

- 5.1 There appears to have been an inherent failure when designing and constructing the garage at 19 Avenue to allow for it abutting the higher ground level of 17 Avenue.
- 5.2 It would have been readily foreseeable that there could be a risk of damp penetration particularly if the natural water table changed or nature of the use of the ground at 17 Avenue changed.

- 5.3 The construction of the trench at 17 Avenue now makes the transfer of dampness from that property to 19 Hoylake Avenue impossible.
- 5.4 Inspection reveals that there has been no damage to the wall of the garage at 19 Hoylake Avenue and there can thus have been no compensable loss.
- 5.5 There is no evidence to relate the loss of the masonry paint on the floor surface to any dampness of the wall.

Statement of Truth

This report is prepared in accordance with the Royal Institution of Chartered Surveyors Expert Witness Practice Statement.

I, Steven John MacGregor Butler, declare that:

- i. I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party who has engaged me, or the party who has paid or is liable to pay me. I confirm that I have complied with this duty and will continue to comply with this duty.
- ii. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- iii. I have endeavoured to include in my report those matters which I have knowledge of or which I have been made aware that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
- iv. I confirm that I am aware of the requirements of Civil Procedures Rule 35, Practice Direction 35, of the Civil Justice Protocol for the Instruction of Expert to Give Evidence in Civil Claims and the Practice Direction on Pre-Action Conduct.
- v. This report has been prepared in accordance with the Code of Practice for Experts.
- vi. I have indicated the sources of all information I have used.
- vii. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others (in particular my instructing lawyers).

- viii. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction of qualification.
- ix. I understand that:
 - a. my report, subject to any corrections before swearing as to its correctness, will form the evidence be given under oath or affirmation.
 - b. I may be cross-examined on my report by a cross-examiner assisted by an expert.
 - c. I am likely to be the subject of public adverse criticism by the Judge if the Judge concludes that I have not taken reasonable care in trying to meet the standards set out above.
- x. I confirm that I have not entered into any arrangements where the amount or payment of my fees is in any way dependant upon the outcome of the case.

Signed

SJM Butler

Dated

27th January 2014

Appendix 1 – Photographs



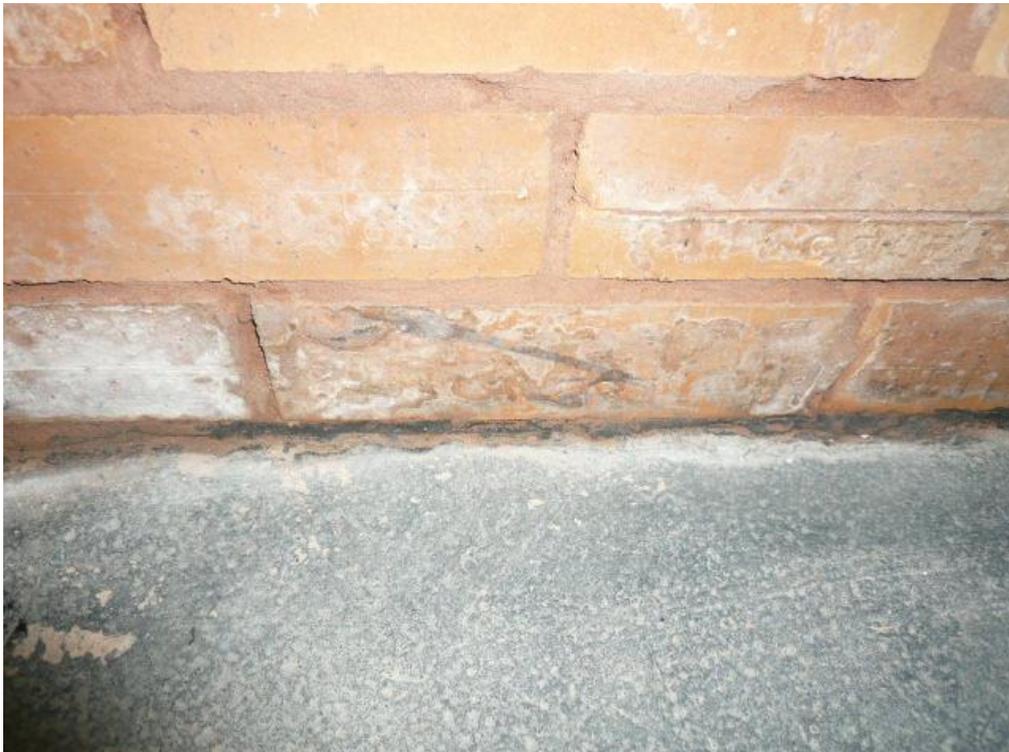
Photograph 1 – Ground levels at 15 and 17 Avenue.



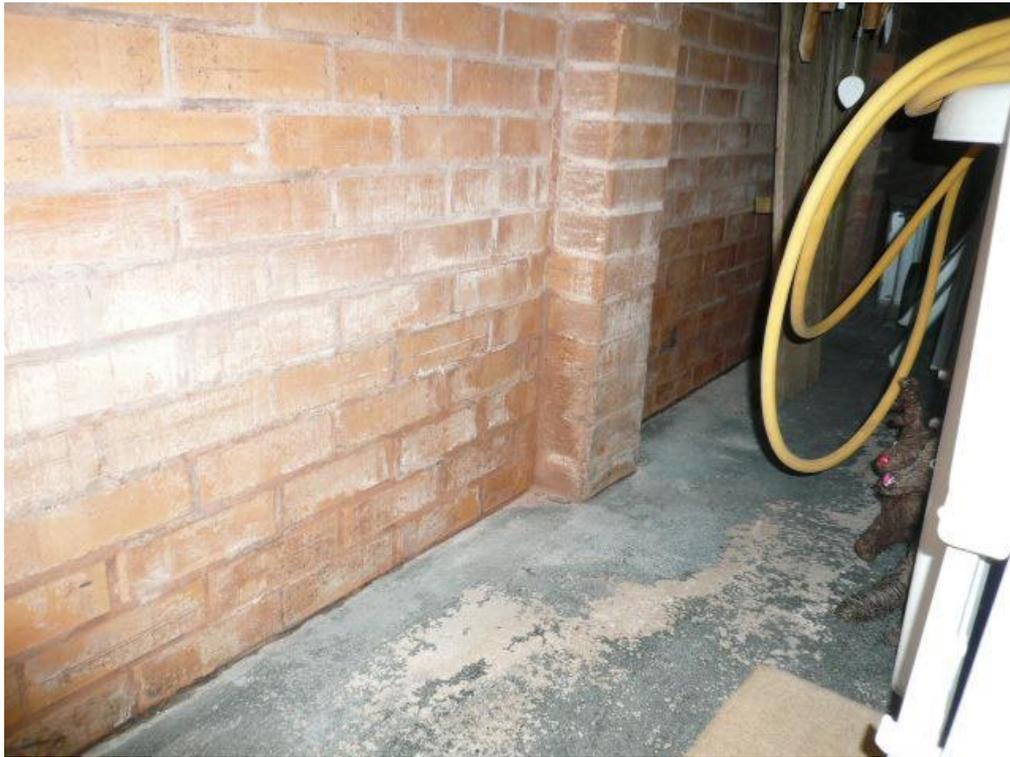
Photograph 2 – The trench adjacent to the block paved patio at 17 Avenue. Also shows that there has been no damage to the brickwork of 19 Avenue. Base of trench is below floor slab of garage at 19 Avenue.



Photograph 3 – The trench adjacent to the flower bed at 17 Avenue. Measurement proved it to be lower than the damp proof course and slab of the garage at 19 Avenue. There is no evidence of damage to the brickwork of the garage. Note the gap at the end of the dwarf wall.



Photograph – 4 The plastic damp proof course of the garage at 19 Avenue the outer edge of which is 150mm above the level of the trench at 17 Avenue.



Photograph – 5. A general view of the brickwork in the garage at 19 Avenue showing it to be in good condition.