

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING BY WAY OF WRITTEN REPRESENTATIONS

Case of

Colin Moors MRICS

Poynton SK12 1UT

On

Monday 12 February 2018 at 10.00

Via telephone conference

Panel

John Anderson (Chair)

Gillian Seager (Lay Member)

Ian Hastie (Surveyor Member)

CHARGES HEARD

The Formal Charges against Colin Moors are:

1. When preparing and submitting a bat survey report of a property at Pine Ridge, Liphook, GU30 7EH, dated 21 January 2016 you failed to avoid an actual, potential or perceived conflict of interest and/or act with integrity.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Particulars

- a. You were instructed by a company, Architectural Homes, of which you were an owner
- b. You knew that the report would be submitted to the local planning authority in support of a planning application made by Architectural Homes.
- c. You relied upon your membership of RICS to present that report as reliable
- d. You failed to disclose your interest in Architectural Homes within that report, or to ensure that such disclosure was made by Architectural Homes when submitting the application

You may therefore be liable to disciplinary action in accordance with Bye-law 5.2.2 (c)

2. You prepared and submitted a bat survey report of a property at Pine Ridge, Liphook, GU30 7EH, dated 21 January 2016 in circumstances where you had no prior experience of, or training in the preparation of bat survey reports or specialist ecological surveys and in doing so you failed to carry out your professional work with due skill, care and diligence and with proper regard for the technical standards expected of you.

Contrary to Rule 4 of the Rules of Conduct for Members 2007

You may therefore be liable to disciplinary action in accordance with Bye-law 5.2.2 (a) and/or (c)

1. Documents

2. The Panel received a bundle of case papers numbered pages 1 to 128.

3. Preliminary matters

4. On 29 January 2018, on the application of the parties, the Chair of the Panel made a direction under Rule 31(b) of the Disciplinary, Registration and Appeal Panel Rules 01 April 2009 (Version 7, 01 January 2017) ("the Rules") for the case to be considered on the papers alone, in the absence of the parties. Both parties had consented to this process.
5. The Chair noted in his written decision that Mr Moors had referred in correspondence with RICS to a health condition, but he had confirmed he did not wish to request an adjournment of the case and that he wished the matter to proceed on the papers and to be resolved.

6. The Panel also noted that RICS' case summary referred to a charge contrary to Rule 3 of the Rules of Conduct for Firms 2007, when it should refer to the Rules of Conduct for Members 2007. This had been drawn to the attention of Mr Moors and he made no objection to the amendment being made.

7. **Response**

8. Mr Moors had admitted the facts alleged in Charges 1 and 2 and had admitted that he is liable to disciplinary action. The Panel had sight of a letter from Mr Moors to RICS dated 6 January 2018 confirming his admissions. The Panel also noted the confirmation of the admissions in an RICS Listing Questionnaire signed by Mr Moors and dated 8 January 2018.
9. The Panel received an agreed Statement of Facts signed by Mr Moors and by Mr J Lynch, Solicitor For RICS, dated 26 January 2018, the content of which is set out below:

“Statement of Facts 26 January 2018

1. *Mr Colin Moors MRICS has been a member of RICS since January 2001.*
2. *In January 2016, the period of time to which the charges relate, Mr Moors was a director of the business Architectural Building Company Ltd (“Architectural Homes”). The Firm is not regulated by RICS.*
3. *On 26 February 2016, the firm submitted a planning application to develop a property at ‘Pine Ridge, The Wheatsheaf Enclosure, Liphook, GU30 7EH’. Submitted in support of that application was a ‘bat survey report’ prepared by Mr Moors and dated 21 January 2016.*
4. *The purpose of that report was to ascertain whether any bats were nesting in the property and if so, whether protective measures were required before the property could be developed.*
5. *Neither Mr Moors, nor Architectural Homes, disclosed to the planning authority that Mr Moors was a director of Architectural Homes.*
6. *The report of 21 January 2016 was rejected by Chichester District Council as being of insufficient value due to the dates when the survey was undertaken.*

7. *A further report was commissioned by Architectural Homes and completed by Arbortech Consultancy on 27 May 2016. This report was submitted with the Firm's planning application on 7 July 2016. The report is attached at pages 49-78 of the bundle provided to the Panel.*
8. *That updated report concluded that there was some bat activity and a number of protective measures were recommended (pages 46-57 of the bundle)*

Competence

9. *Whilst there are no formal qualifications required to undertake a 'bat survey' or ecological survey, Mr Moors had no prior experience of undertaking surveys of that type, nor had he undergone any training in that area.*
10. *Even where there are no formal criteria for a Member to meet in order to undertake a particular survey, RICS still expects its members to only undertake work that they are suitably qualified to complete.*
11. *Mr Moors accepts that as a result of his lack of experience and training in the area that he was not suitably competent to undertake a survey of that nature and that he should not have done so.*
12. *Mr Moors accepts that in the absence of particular expertise in the subject area, he relied upon his status as a Member of RICS to lend credibility to the report, in the hope that it would withstand initial scrutiny from the planning authority.*
13. *Mr Moors therefore accepts the facts of the second charge and that he failed to undertake his work with due skill, care and diligence and with proper regard for the technical standards expected of him.*

Conflict of Interest and Integrity

14. *The fact that Mr Moors held an interest in Architectural Homes did not impact upon the validity of the report. There is no evidence that the planning authority would have rejected the application had they known that Mr Moors was a director of Architectural Homes.*

15. *Mr Moors accepts that his interest in Architectural Homes did impact upon whether the planning authority could reasonably place reliance upon it as an independent expert report. He accepts that by failing to disclose his involvement with Architectural Homes, he compromised the planning authority's ability to make a fully informed decision on whether or not to place reliance upon his report.*
16. *The decision to withhold details of his interest in Architectural Homes and submit a report that was not fully fit for purpose was a strategic decision based upon the amount of time that it takes for an application to be determined by the Local Authority. Mr Moors wanted to ensure that the application was 'in the system' in order to minimise delay.*
17. *Mr Moors did not at any stage deny having any involvement with Architectural Homes, nor did he make any statements that were untrue or misleading. Instead he failed to be as transparent as one would expect of a professional member of RICS when dealing with a planning authority.*
18. *Mr Moors accepts that the business, of which he was a director, stood to gain financially if the project was successful. Avoiding delay in the planning application was a means of avoiding disruption that may have a negative impact upon the project and/or the wider business.*
19. *Mr Moors accepts upon reflection that by behaving in that manner, he failed to avoid a conflict of interest and act with integrity."*

10. Liability to disciplinary action

11. In the written submissions, it was noted on behalf of RICS noted that Mr Moors had admitted liability to disciplinary action, but this was still a matter for the judgment of the Panel.
12. In respect of Charge 1, it was submitted that there had been a conflict of interest in Mr Moors failing to disclose his relationship with Architectural Homes. It was submitted Mr Moors had purposefully withheld this from the planning authority in order to expedite the application and ultimately to benefit himself and Architectural Homes. Although Mr Moors did commission an appropriate survey at a later date, this was only when his report was rejected by the planning

authority. RICS submitted that Mr Moors' conduct caused a significant risk to the reputation of the profession and he had acted without integrity. This rendered Mr Moors liable to disciplinary action.

13. In relation to the Charge 2, it was submitted that it was incumbent upon RICS members to ensure that they only undertake work for which they are competent. Mr Moors' conduct was aggravated by his having relied upon his RICS membership to lend credibility to the quality of the report. The abuse of MRICS status represented a risk to the reputation of the profession. It was submitted that Mr Moors was also liable to disciplinary action in respect of Charge 2.

14. Legal Advice

15. The Panel received and accepted the advice of the Legal Assessor. The Panel was mindful that the burden of proof of facts in RICS proceedings is upon the RICS which brings the charges. The standard of proof in RICS disciplinary proceedings is the civil standard of proof, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.

16. The Panel was advised that it was able to take account of the admissions made by Mr Moors. The factual basis of the charges was set out in the agreed Statement of Facts and the Panel was entitled to find the facts proved on this basis.

17. The Panel was invited to note that Mr Moors accepted there was liability to disciplinary action, but this was ultimately a matter for the Panel's judgment. Before finding liability established, the Panel should be satisfied that the failings in question were of a serious nature such that there was a serious falling short of the standards expected.

18. DETERMINATION

19. Panel decision on facts

20. The Panel accepted the admissions of fact made by Mr Moors. It found the facts of Charges 1 and 2 proved on the factual basis as set out in the agreed Statement of Facts dated 26 January 2018.

21. **Panel decision on Liability to Disciplinary Action**

22. The Panel applied its own judgment to the issue of whether the facts proved established liability to disciplinary action under Bye-law 5.2.2(a), conduct liable to bring RICS into disrepute, and Bye-law 5.2.2(c), failure to adhere to the Bye-laws or to Regulations or Rules governing members' conduct.

23. The Panel noted that the agreed Statement of Facts (as set out above) referred to the parties agreed position on the issue of liability to disciplinary action and took account of this in its consideration.

24. The Panel was of the view that Mr Moors had not been open and transparent in submitting the bat survey. It noted the report stated that he had been appointed "on behalf of" Architectural Homes. It made no mention of the firm's address. Mr Moors did stand to gain in terms of the progression of the building project by submission of his survey and ultimately this was likely to be to his financial benefit. He also included his RICS status to give credibility to his report. In preparing the report with no previous experience or training, he had exceeded his area of competence.

25. The Panel considered that these actions fell seriously short of the standards of integrity which RICS expects of its members. The conduct brought the profession into disrepute. The Panel accepted the admission of liability to disciplinary action and was also satisfied in its own judgment that there was liability to disciplinary action in respect of both Charges 1 and 2.

26. **Submissions on sanction**

27. The Panel noted from RICS' written submissions that there were no previous disciplinary findings against Mr Moors.

28. The Panel took into account Mr Moors' submissions in mitigation in a document attached to his letter of 6 January 2018. Mr Moors stated that he has been a member of RICS for 17 years with no previous disciplinary history. He stated he values his membership of RICS and apologises for his actions in this case.

29. Mr Moors stated he had no intention to mislead the planning authority, but accepted that his actions could be construed as "less than open" and perceived as a conflict of interest.

30. Mr Moors stated he had always intended to obtain a further report on the bat activity the appropriate time of year and that he did in fact commission such a report in April/May 2016, before any complaint was made.

31. In relation to the competence charge, Mr Moors stated that although he had no formal qualifications in the subject of bats, he had been involved in property acquisition and renovation for the whole of his working life. He was aware of bat roosting and the protected status of bats. He stated that on his review of the property he had found no evidence of bat roosting and submitted that the activity identified in the report later obtained from the consultancy of 27 May 2016 was minimal.

32. Mr Moors accepted that he had mishandled this matter, but said he had no intention to profit, only to get the project moving. He stated that he would never repeat his conduct or prepare a bat report again.

33. **Decision as to sanction**

34. The Panel accepted the advice of the Legal Assessor and referred to RICS' Sanctions Guidance and its supplements.

35. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

36. The Panel was mindful that if it decided a sanction was required, it must commence its consideration at the lowest sanction, and only if it decided that sanction is not appropriate should it move to the next level of sanction. Having arrived at a sanction that it is minded to impose, the Panel should then review the next sanction above so as to satisfy itself that this would be too severe a sanction.

37. The Panel considered very carefully all the information it had read, including the evidence presented in mitigation, and the submissions of the parties.

38. The Panel identified the following matters as aggravating factors:

- There was benefit to Mr Moors as a result of his actions – in terms of his wish to deal with matters quickly to progress the project and ultimately, this was to his financial benefit;

- Had the project proceeded on the basis of Mr Moors' report stating that there was no bat activity, and had the appropriate protective measures not been put in place, a criminal offence may have been committed.

39. The Panel identified the following mitigating factors:

- Mr Moors' long period of 17 years of RICS membership;
- The absence of any previous disciplinary findings against him;
- Mr Moors had co-operated with RICS' process;
- He had made full admissions in respect of the charges and apologised for his conduct;
- The conduct in question related to an isolated set of circumstances.

40. The Panel first considered whether it should exercise its discretion to impose any disciplinary order upon Mr Moors. The Panel determined that its findings, involving matters of conflict of interest and lack of competence, were of a sufficiently serious nature that a sanction was required to protect the public interest and to maintain confidence in the surveyors' profession.

41. The Panel first considered whether to impose a caution, but considered that such a sanction would not be adequate. Referring to the Sanctions Guidance, it took the view that this matter was not minor, although the Panel did consider it was highly unlikely to be repeated.

42. The Panel proceeded to consider the imposition of a Reprimand and concluded that this was the appropriate and proportionate sanction, as the conduct in question was serious and had posed a risk of harm to the public and a risk that public confidence in the profession would be undermined. The Panel decided that in addition to a Reprimand, the gravity of the matter should also be marked by the imposition of a fine of £600.

43. The Panel had proceeded to consider whether it was necessary to impose an undertaking upon Mr Moors that he should not undertake bat surveys in future. The Panel decided this was not necessary or proportionate: this was a one-off occasion and the Panel acknowledged Mr Moors' acceptance that he did not have any formal qualifications in this area and his assurance that he would not undertake such activity again. The Panel concluded that to impose an undertaking would

be disproportionate and it considered there was very low risk that Mr Moors would repeat this conduct in the future.

44. The Panel therefore determined that a Reprimand and a fine of £600 should be imposed on Mr Moors.

45. **Costs**

46. RICS had served notice upon Mr Moors that it would claim costs on behalf of RICS in the sum of £600.00, in accordance with Supplement 2 to RICS' Sanctions Policy.

47. The Panel had received no information as to Mr Moors' financial circumstances or submission on the costs claimed.

48. The Panel noted that in accordance with Rule 34 of the Rules, it could impose a costs order which it considered fair and reasonable and decided that Mr Moors should pay RICS's costs in the sum claimed.

49. The Panel orders that Mr Colin Moors pay costs in the amount of £600.

50. **Publication**

51. The Panel directs publication in accordance with Supplement 3 to the Sanctions policy, on RICS' website and in Modus.

Appeal Period

Mr Colin Moors has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.