



CIL A Subsidence SIG

Conservatories, subsidence and defective design.

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The problem.....



The problem.....



The problem.....



22/08/2006



The problem.....

Conservatories are (usually) exempt from Building Regulations when:

- *They are built at ground level and are less than 30 square metres in floor area*
- *At least half of the new wall and three quarters of the roof is either glazed or translucent material*
- *The conservatory is separated from the house by external quality door(s).*

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The problem.....

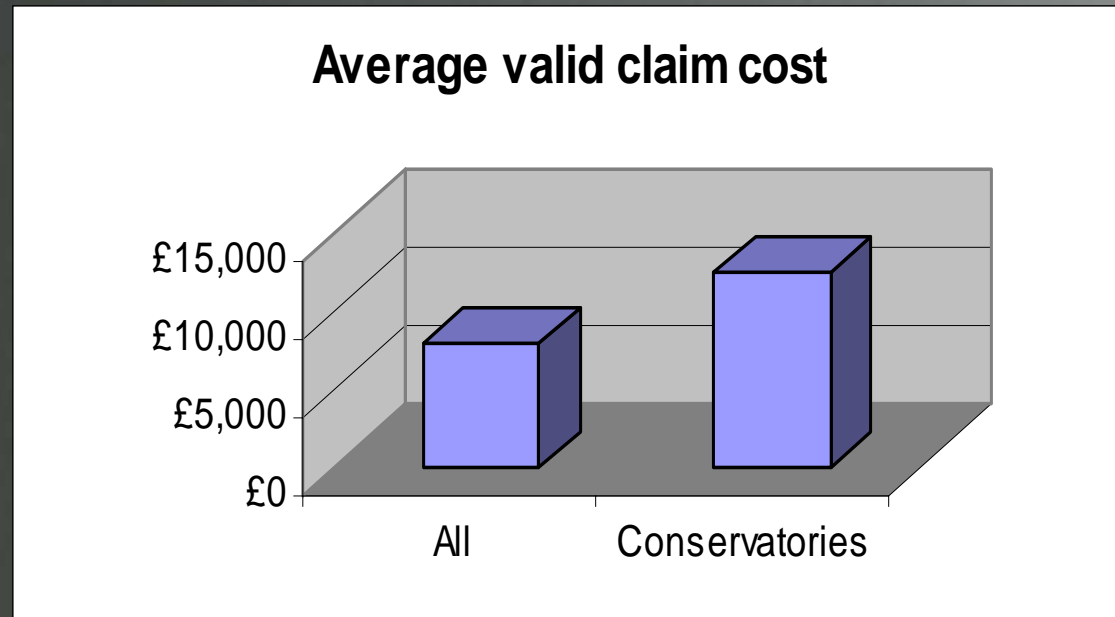
- Frequently conservatory installers demonstrate limited knowledge of subsidence:
- *‘Except where foundations are founded on rock, strip footings should have a minimum depth of 450mm.....In clay soils...not less than 750mm.’*

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The problem.....

- Expensive repairs:



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The problem.....

- ‘Loose’ and variable policy wordings:

Loss or damage...resulting from the use of defective materials or faulty workmanship.

Loss or damage....caused by faulty design, faulty workmanship or using faulty materials.

Loss or damage caused by or from poor workmanship, poor design or faulty materials.

Loss or physical damage...other than from faulty workmanship or faulty design.

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The result.....

- We are obliged to deal with claims that perhaps should not be covered.....

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Case example

- House built in 1960's. P/h has owned from new
- Underlying soil is highly shrinkable clay. Large mature deciduous tree in the vicinity
- In 2001 p/h employs local builder to construct conservatory
- Builder provides shallow strip footing foundation for conservatory

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Case example

- Conservatory subsides in Sept 2003
- Policy contains an exclusion for ‘*damage arising from defective design, faulty workmanship or the use of defective materials*’
- Site investigation shows foundation depth of 0.55m, desiccated clay, and roots to 2.3m
- Claim accepted

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Case example

- P/h buys house in 2001, and is told house is on piled foundations, due to soft marshy subsoil
- In 2003 p/h employs local builder to construct conservatory
- Builder provides shallow strip footing foundation for conservatory
- Conservatory subsides in 2004.
- Policy contains an exclusion for '*damage caused by faulty design...*'

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Case example

- Claim repudiated on the basis of the defective design exclusion
- P/h contests and claim referred to FOS
- Complaint upheld by Adjudicator – there was no formal design of foundations, therefore exclusion clause cannot apply.....
- Decision overturned by Ombudsman – design exists, even if only in the mind of the man with the shovel.
- *‘..a builder – particularly a local builder – should have basic knowledge of soil conditions and/or should ensure that the construction’s foundations are fit for purpose...’*

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Other factors

- What if there is a change of ownership (ie – conservatory built, and any defective design, undertaken prior to p/h purchase)??
- Recoveries (against parties responsible for defective design) are problematic
- Porches and garages also affected

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Possible solutions

- Change wording of defective design exclusion, eg:- defective design in respect of foundations, as measured against.....
- Extend external features exclusion to encompass conservatories (and porches, garages)
- Lobby for amendment to Building Regulations – conservatories no longer to be exempt

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Possible solutions

- Refine underwriting processes. Ask more specific questions and set premium accordingly
- CILA Subsidence SIG and/or The Subsidence Forum to liaise with FOS to remove areas of ambiguity

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...and finally,

- *‘Wisdom is the daughter of experience’*

Leonardo da Vinci

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