

JPT/JW/5393
September 2002

HUGH COSTER

and

HAREFIELD ESTATE (MIDDLETON) MANAGEMENT LIMITED

REPORT OF

J P TUPPER

DATED

12th SEPTEMBER 2002

Specialist Field : Chartered Surveyor (Building)

On behalf of : Mr. Hugh Coster

On Instruction of : Mr. Hugh Coster

**Subject Matter : Tree Root Damage to the Driveway
Phoenix House,
15, East Avenue,
Middleton-on-Sea.**

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1. EXPERT'S DECLARATION

(As per Civil Procedure Rules, 1998)

I, Jack P. Tupper DECLARE THAT

- 1.1 I understand that my duty in providing written Reports and giving evidence is to the Court, and that this duty overrides any obligation to the party who has engaged me. I confirm that I have complied with my duty.
- 1.2 I believe that the facts I have stated in this Report are true and that the opinions I have expressed are correct.
- 1.3 I have endeavoured to include in my Report those matters, which I have knowledge of or of which I have been made aware, that might adversely affect the validity of my opinion.
- 1.4 I have indicated the source of information I have used.
- 1.5 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others (in particular those instructing me).
- 1.6 I will notify those instructing me immediately and confirm in writing, if for any reason, my existing Report requires any correction or qualification.
- 1.7 I understand that;
 - a). my Report, subject to any corrections before swearing as to its correctness will form the evidence to be given under oath or affirmation.
 - b). may be cross-examined on my Report assisted by an Expert.
 - c). I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- 1.8 My Report complies with the requirements of:
 - a). the Royal Institution of Chartered Surveyors, as set down in *Surveyors Acting as Expert Witnesses: Practice Statement*;
 - b). Law Society Expert Witnesses.
- 1.9 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

1.00 INTRODUCTION

1.01 FORMAL DETAILS

- 1.01.1 I am Jack Phipps Tupper, the Principal of J P Tupper Associates, a firm of independent Chartered Surveyors established in Bognor Regis in 1970.
- 1.01.2 The firm is a mixed practice of Building Surveying, Architectural Services, Valuations and Ancillary matters relating to land and buildings.
- 1.01.3 In addition my own specialist field, developed in the last 30 years in litigation relating to the building industry and professional negligence, I have provided Reports as an Expert in building, Surveys, Valuations and general claims of professional negligence.
- 1.01.4 In this matter I am instructed by Mr. Hugh Coster, the Claimant.

1.02 SYNOPSIS

- 1.02.1 There is a Scots pine tree in the verge area adjacent to the driveway to the Garage serving Phoenix House, 15, East Avenue, Middleton-on-Sea.
- 1.02.2 The root action is projecting through the sub-soil, cracking and damaging the concrete crossing between the carriageway and the Garage.

1.03 INSTRUCTIONS

- 1.03.1 To inspect the area of the crossing and assess the root action.
- 1.03.2 To confirm the alleged damage to the concrete crossing.

1.04 DISCLOSURE OF INTERESTS

- 1.04.1 I confirm I have no connection with any of the Parties, Witnesses or Advisors, known to date and involved in this matter.

1.05 INSPECTION

- 1.05.1 The inspection was carried out on Tuesday 2nd July 2002.

1.06 LIMITATION

- 1.06.1 No limitations were imposed save that no excavations or detailed examination was to be undertaken.
- 1.06.2 Some of the loose and cracked concrete was turned back for examination purposes.
- 1.06.3 I am not required, nor qualified, to comment on the pine tree itself.

1.07 ORIENTATION

- 1.07.1 For this Report only, it has been assumed that the driveway faces North onto the road.

1.08 DESCRIPTION

- 1.08.1 The crossing is generally finished in concrete, probably 50 years of age and extends from the carriageway to the Garage.
- 1.08.2 Overall the drive measures approximately 8.23 metres long and 4.9 metres wide.
- 1.08.3 The second driveway is also surfaced in concrete, immediately adjacent to the east and forming a double width drive.
- 1.08.4 The Scots pine is on the West side of the driveway 1M from the carriageway and 300mm from the driveway measured to the face of the tree.

1.09 Appendix 1

- 1.09.1 Appendix 1 contains details of my experience, qualifications and specialist field.

1.10 Appendix 2

- 1.10.1 Appendix 2 contains photographs of various parts of the property referred to in this report.
- 1.10.2 The photographs were taken on the inspection of the driveway and tree.
- 1.10.3 The photographs were taken by myself during the inspections and the original untouched negatives are retained upon the file.
- 1.10.4 No photographs are digital.
- 1.10.5 There is a sketch plan at Appendix 2 which is for identification purposes only and not to scale.

2.00 THE BACKGROUND OF THE DISPUTE AND THE ISSUES

2.01 THE RELEVANT PARTIES

2.01.1 The Relevant Parties referred to in the Report are as set out hereunder:

i) Hugh Coster, Phoenix House, 15 East Avenue, Middleton-on-Sea, Bognor Regis PO22 6EG.

ii) Harefield Estate (Middleton) Management Limited.
Squirrel House, 4 East Avenue, Middleton-on-Sea

2.02 THE ASSUMED FACTS

2.02.1 The concrete crossing is part of the access to the Garage to Phoenix House.

2.02.2 The Estate Company is responsible for all land between the frontages ie. the full width of the highway, but I understand the plot owner is responsible for maintenance of the grass verges.

2.02.3 There is a Right of Way for all purposes including vehicles at the point where the crossing is provided together with a Right to provide a durable surface.

2.02.4 Such Rights may have been granted initially or have become implied at Law by time.

2.03 THE ISSUES TO BE ADDRESSED

2.03.1 I am required to give an opinion in writing as to the damages to the concrete crossing.

2.03.2 I am to advise if this is due to the root action of the adjacent pine tree.

2.03.3 I am also required to advise as to a satisfactory and lasting repair.

3.00 THE ENQUIRY

3.01 Alleged Defects

- 3.01.1 The roots of the pine tree have extended and damaged the concrete crossing to the Garage of Phoenix House, 15, East Avenue, Middleton-on-Sea.

3.02 FINDINGS

3.02.1 Documentation

- 3.02.1 I have seen no documentation but assume that the details at Section 2.02 above are correct.

3.03 THE CONSTRUCTION OF THE DRIVEWAY

- 3.03.1 The driveway is in two sections (See Sketch and Photograph A).
- 3.03.2 The western section of the driveway is constructed of concrete approximately 50mm thick on a limited hardcore/brick gravel base. An area at the northern end has been lifted and broken.
- 3.03.3 There are some minor cracks not associated with any root action.
- 3.03.4 Second driveway is also in concrete and lies to the East of the damaged concrete driveway. It is also affected to some degree by root action (See Photograph A).

4.00 THE FACTS UPON WHICH THE EXPERTS OPINION IS BASED

- 4.01 The size and location of the tree roots under the damaged concrete can be traced to the pine tree.
- 4.02 Root extension and action of this type is common and will cause damage to property, foundations, drains, garden walls and paving.
- 4.03 It is clear that the root extension and action has forced up the concrete causing cracking. (See Photographs B & C).
- 4.04 Some parts of the roots are at or above the original level of the concrete drive.
- 4.05 One of the roots is at (or immediately adjacent to) the junction of the drive with the road, making it impossible to feather off any driveway surface to form the junction with the road surface.

5.00 REMEDIAL WORKS

- 5.01 It is normal and accepted at Law that a tree may be cut back to the boundary any branches and roots.
- 5.02 This can only be done as far as the roots are concerned, if such action will not destabilise the tree thereafter.
- 5.03 If the roots are cut back, replacement concrete should be reinforced, as they will re-grow.
- 5.04 If the roots cannot be cut back then there is the necessity for the tree to be felled.
- 5.05 To repair driveway to original level it will be necessary to remove damaged sections, excavate to an appropriate depth removing all root and organic material and provide a compacted hard-core base plus surface finish. With use of reinforcement or Geogrid the minimum excavation necessary would be to 260mm depth from final surface level.
- 5.06 It is not practical or desirable to consider raising the level of the driveway in order to attempt a repair without removing the roots. The driveway function would be compromised and the repair would not be effective.

6.00 CONCLUSIONS

- 6.01 Whilst remedial works stated can be implemented in normal circumstances the criteria only applies to adjacent properties, ie. differing ownerships either side of a boundary line.
- 6.02 In this case all the land is in the same ownership but I believe that the same detail would apply as there should be an uninterrupted Right of Way and damage has been caused to the concrete driveway which is the ownership of Phoenix House in the form of a right of way.
- 6.03 Whatever surface is used to replace the existing driveway, gravel, concrete, tarmac or Geogrid, unless the roots are removed, will all suffer damage.
- 6.04 There is no way of realigning the driveway to avoid the current root action.

- 6.05 If the tree were to be felled and replaced by a sapling it is my opinion that taking into account the considerable number of trees on this estate, and that this tree is of no special merit, there would be no materially adverse effect on the amenity or character of the area. In fact this will be beneficial as the sapling will help to rejuvenate the area, growing to a reasonable size before other nearby pines of similar age to the tree in question have to be felled due to their age and condition.
- 6.06 This is in keeping with Development Plan Policies G5, DEV1, EVT7 and GEN7 and follows advice in Dept. of Environment Circular 36/78, paragraph 58. It also complies with PPG1, General Policy and Principles 5-011 paragraph 31 which states that "...Local Authorities should have the aims of...reducing conflicts between neighbouring land uses..."

I confirm that insofar as the facts stated in my Report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

.....
J. P. Tupper M.A.(Cantab) Est Man
F.R.I.C.S., A.C.I.Arb., A.R.V.A.,
J. P. Tupper Associates,
Chartered Surveyors,
20, Sudley Road,
Bognor Regis,

APPENDIX I

1.0 FORMAL DETAILS

- 1.01 I am Jack Phipps Tupper, the Principal of J P Tupper Associates of 20 Sudley Road, Bognor Regis, West Sussex.
- 1.02 J P Tupper Associates are an independent Firm of Chartered Surveyors.
- 1.03 I have the following qualifications :
- A. I have a Master of Arts Degree in Estate Management of the University of Cambridge, extended from a Bachelor of Arts Degree awarded in 1959.
 - B. I am a Fellow of the Royal Institution of Chartered Surveyors granted in 1979.
 - C. I am an Associate of the Institute of Chartered Arbitrators granted in 1979.
 - D. I am an Associate of the Institute of Revenue and Rating Valuers from 1961.
- 1.04 I have been in practice since 1959 and in Bognor Regis for nearly 40 years. I consider I have a good working knowledge of properties of all types and this firm provides a full building service.
- 1.05 I have gained considerable experience developed over the last 30 years in litigation relating to the building industry and professional negligence. I have provided reports as an expert in building surveys, valuations and general claims of defective workmanship.
- 1.06 I appear regularly in court to give expert evidence.
- 1.07 I am included in the Law Society Register of Expert Witnesses and listed on the UK Register of Expert Witnesses.
- 1.08 I understand my duty to the court and confirm that, to the best of my knowledge, this report includes all matters relevant to the issue on this my evidence as a Chartered Building Surveyor is given.
- 1.09 I consider that the report complies with the requirements of the Royal Institution of Chartered Surveyors as set down in the Institution's publication "Surveyors Acting as Expert Witnesses: Practice Statement".
- 1.10 I have lectured in valuations and building construction at Chichester College of Technology.

APPENDIX 2
Schedule of Photographs
Phoenix House, 15 East Avenue, Middleton on Sea

Job No. 5393
Cassette No. 994-961



A. General view of twin drive from East Avenue. Severely damaged concrete.



B. Area of damaged driveway.



C. Root of pine tree approximately 63mm in diameter forcing up the concrete.



D. As C nearer pine tree - root 75-80mm diameter.

NOT TO SCALE

JOB No. 5393

SKETCH PLAN OF DRIVEWAY PHOENIX HOUSE

