

Your Ref.
Our Ref. **JPT/JW/5393**
Date **March 2012**

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HUGH COSTER

-and-

HAREFIELD ESTATE (MIDDLETON) MANAGEMENT LIMITED

SECOND

REPORT OF

J.P. TUPPER

DATED

22nd March 2012

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



VAT Reg. No. 193 2565 47

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1. EXPERT'S DECLARATION

(As per Civil Procedure Rules, 1998)

I, JACK PHIPPS 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 37 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 addition, I regularly act for the West Sussex County Council on various matters and in particular, hazards to footways and roads whereby a claim arises because the Claimant has tripped over some projection.
- 1.01.5 In this matter I am instructed by Mr. Hugh Coster.

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 crossing between the carriageway and the Garage.
- 1.02.3 In addition reference should be made to the initial Report for Mr. Coster of the 12th September 2002.

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.
- 1.03.3. To comment on work undertaken pursuant to the Report of the 12th September 2002.

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 21st March 2012.

1.06 LIMITATION

- 1.06.1 No limitations were imposed save that apart from an excavation to establish the works undertaken, no detailed examination was carried out.
- 1.06.2 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 original crossing was generally finished in concrete, probably 50 years of age and extended from the carriageway to the Garage.
- 1.08.2 Overall the drive measures approximately 8.23 meters long and 4.9 metres wide.

1.08.3 The front section of the original concrete driveway, shown damaged in the previous Report has been replaced with rolled scalplings or MOT base material on a fabric.

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 inspection and the original untouched negatives are retained upon the file.

1.10.4 No photographs are digital.

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 overall 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 i.e. the full width of the highway, but I understand the plot Owner is responsible for maintenance of the grass verges but not the trees thereon.

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 continuing damage to the 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 the 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 crossing to the Garage of Phoenix House, 15, East Avenue, Middleton-on-Sea.

3.01.2 The roots appear to be those causing the initial problem.

3.02 FINDINGS

3.02.1 Documentation

3.02.1.1 I have seen no further documentation.

3.03 THE CONSTRUCTION OF THE DRIVEWAY AND CROSSING

3.03.1 The driveway is in two sections ie. rear concrete on the front section on a membrane.

3.03.2 Insofar as it is possible to ascertain, the membrane has been cut to fit around the roots which now project through the surface of the scalplings. (See Photograph A)

3.03.3 In the area examined the scalplings were approximately 100mm thick and have been consolidated. This would be a normal and adequate base for a crossing of this type on a private road.

3.03.4 It would be normal to provide a surface dressing of some sort.

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 as before.

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 scalplings and it does not appear that the membrane covers the roots. (See Photographs A & C)
- 4.04 Some parts of the roots are well above the original level of the drive.
- 4.05 It is understood that there is a proposal to provide additional scalplings to raise the level to cover the projecting roots. This is not an acceptable solution because the outer edge abutting the carriageway could not be restrained and the scalplings will crumble away.
- 4.06 This would also raise the level of the crossing higher than the carriageway.
- 4.07 The accepted hazard on a footway (although this is relating to a public footway and the footway does not exist) is a projection in excess of 19mm above the general grade.
- 4.08 The main root is well above this projected level. (See Photograph C)
- 4.09 As stated there is no footway to the road and therefore persons walking along the road will be on the edge and close to the projecting roots.
- 4.10 The road is not provided with lighting.

5.00 REMEDIAL WORKS

- 5.01 It is normal and accepted at Law that a tree may be cut back to the boundary and 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, it should be possible to provide a concrete barrier to prevent re-growth in the future causing the same problem.
- 5.04 If the roots cannot be cut back then there is the necessity for the tree to be felled.
- 5.05 To repair the driveway to the 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 hardcore base plus surface finish.

- 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 crossing which is the ownership of Phoenix House in the form of a Right of Way.
- 6.03 In the earlier Report I stated that whatever surface is used to replace the existing driveway, gravel, concrete, tarmac or Geogrid, unless the roots are removed, will all suffer damage. This damage has taken place. Although it is not possible to give an accurate figure, the main root has raised above the surface to a higher level than it was in 2002 and will continue to do so.
- 6.04 I understand it is claimed that repairs to the driveway have been completed. This is correct insomuch that the concrete has been removed and replaced by scalping. In it's condition as inspected the repairs cannot be considered as complete as the roots continue to project and present a potential trip hazard to persons walking nearby.
- 6.05 There is no way of realigning the driveway to avoid the current root action.
- 6.06 I previously stated that 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 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.

- 6.07 As before, this is in keeping with Development Plan Policies G5, DEV1, EVT7 and GEN7 and follows advice in Department 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 ...".
- 6.08 The total failure to address the roots has caused the current problem.
- 6.09 The raised level of the root(s) constitutes a hazard and all those involved should check that any insurance is not compromised and a claim not met.

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., I.R.R.V.,
J. P. Tupper Associates,
Chartered Surveyors,
20, Sudley Road,
Bognor Regis,
West Sussex.

Date..... 28th March 2012

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 39 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 and Sweet and Maxwell Expert Witness Directory.
- 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



A. Root projection through surface. Roll of projecting membrane left of centre



B. Excavation to establish base

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Phoenix House, 15, East Avenue, Middleton-on-Sea
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C. Root projection