

Our Ref: 366854368 /AF

Your Ref: 12192124439

Date: 14th November 2020

Sent via email; Vimbai.muhoove@uk.zurich.com



3rd Floor, Latham House,
Paradise Street,
Birmingham
B1 2BJ
Tel: 0121 231 4000
public.sector@davies-group.com

TREE ROOT LIABILITY REPORT

POLICY NO: YLL-122019-3773

**NAME AND ADDRESS
OF INSURED:** Meopham Parish Council

INSURED REF: Not advised

**THIRD PARTY
CLAIMANT:** Mr & Mrs Witten
Buildings insurer - Nat West Insurance Services
C/o Sedgwick Loss Adjusters

**TIME, DAY AND
DATE OF LOSS:** Circa 31st December 2018

SUPPOSED CAUSE: Root induced clay shrinkage - subsidence

LOCATION OF LOSS: 12 Edmunds Close
Meopham
Gravesend
DA13 0NB

LIABILITY: Under consideration

RESERVE: £10,000 (inclusive of our full fixed fee)

We refer to your instructions and confirm that we have visited the claimant's property. For the purposes of this report, all references to left and right assume that the property is being viewed from the street.

BACKGROUND: From our review of the documents provided by the claimant's representatives, We note that Oriel Services Ltd have been appointed by Sedgwick Loss Adjusters on behalf of the Insurers for the Claimant, Mr &

Mrs Witten, to investigate alleged subsidence damage at the risk address - property recorded as 12 Edmund Close, Meopham, Gravesend, Kent DA13 0NB.

Oriel Services Ltd has indicated that the main area of damage has been identified to the detached garage situated to the South of the house.

They advise that the damage was first noted in late 2018 and the timing is consistent with vegetative cause.

Site investigations arranged by Sedgwick indicate that the subsoil is clay and susceptible to volume change due to moisture content.

Beech roots were recovered beneath the foundations and based on a survey carried out by an Arboricultural consultant, they consider that the group of Beech trees owned by Meopham Parish Council is the most likely source of these roots and they have recommended that the two closest trees to the property should be removed.

A further Walnut tree and mixed shrub group belonging to a neighbour have also been implicated and management work recommended. Oriel Services Ltd advise that they have also written to the owner seeking their cooperation.

Oriel Services Ltd indicate that the cost of repairs with mitigation is approximately £19,000, but this could increase to £35,000 if the vegetation remain in situ.

Oriel Services Ltd has provided copies of their site investigation data, Arboricultural assessment of the nearby vegetation and level monitoring readings.

Mr & Mrs Witten have owned the property since 2017. Reviewing online media, Zoopla records the period as September 2017.

DESCRIPTION OF BUILDING

The risk address is a two bedroom semi-detached house of traditional construction comprising masonry cavity elevations beneath a timber pitched roof with tile covering. The property is arranged over two storeys and is believed to have been constructed circa 1975.

There is a detached garage situated to the south end of the property that appears to have been constructed with the property. The garage comprises single skin brick walls with a timber flat roof with felt covering. There is metal up and over door to the front of the structure. The garage appears to be constructed off a concrete slab. The garage is attached to another identical neighbouring garage.

There is a retrospective timber frame conservatory attached to the rear of the property, date of construction is not known at this juncture

The property occupies a site and that slopes gently from left to right at the end of a cul-de-sac in an established residential area with other properties of a similar age and construction.

SITE INVESTIGATION

The BGS drift map for the postcode suggests that the property is underlain by soils from the Lewes Nodular Chalk Formation, Seaford Chalk Formation and Newhaven Chalk Formation (undifferentiated). There is no record of any clay soil in the local area.

We have reviewed the documents provided by Oriel Services Ltd and comment as follows:-

Site investigations have been carried out by CET dated 12th June 2019 comprising one trial pit and borehole adjacent to the front wall of the garage and another trial pit and borehole adjacent the rear wall of the garage.

The results of trial pit/borehole 1 indicate that the walls are supported by a 250mm thick concrete slab foundation bearing onto a stiff silty clay soil with gravel and chalk nodules down to a depth of 90mm, where it changes to a white chalk for the remaining depth of the borehole, which was terminated at 2.20m.

The ratio of moisture content to the liquid limit indicate the onset of desiccation to the band of clay soil at the underside of the concrete slab.

Roots were encountered within trial pit/borehole 1 and identified as belonging to Fagus species (which includes common beech and copper beech).

The results of trial pit/borehole 2 indicate that the walls are supported by a 290mm thick concrete slab foundation bearing onto a stiff silty clay soil with gravel and chalk nodules down to a depth of 80mm, where it changes to a stiff, very silty clay down to a depth of for the remaining depth of the borehole, which was terminated at 1.90m.

The ratio of moisture content to the liquid limit indicate the onset of desiccation to the band of clay soil at the underside of the concrete slab.

Roots were encountered within trial pit/borehole 2 and identified as belonging to Juglans species (which includes walnut) and Corylus species (which includes hazels).

Review of the Arboricultural Report prepared by Property Risk Inspection dated 20th August 2019 has identified the following vegetation as a primary influence;

- T1-Walnut tree situated in the garden of 93 Ediva Road (removal recommended).
- HG1 –mixed species of hedge (ownership to be confirmed) (removal of section closest to the garage)

- TG1 - Beech owned by Meopham Parish Council (removal of x 2 trees closest to the property).

The Beech trees owned by Meopham Parish Council are subject to tree preservation orders.

A Level monitoring exercise has been instigated to the main house and garage and we are in receipt of readings carried out between the period from May 2019 and October 2019. The readings indicate a marginal recovery of up to 4mm to the stations situated to the rear of and right hand of the main house during the period from May 2019 to October 2019.

By contrast a downward movement of up to 6mm has been recorded to the station situated on the rear left corner during the period from May 2019 to September 2019, followed by a slight recovery of approximately 1.9mm during the period from September to October 2019.

NATURE AND EXTENT OF DAMAGE

From our inspection of property, we noted crack damage to the garage principally to the rear wall. We also noted a crack to the concrete slab running from the front to rear of the garage. Crack widths up to 10mm were recorded to the cracking to both the walls and concrete slab.

The damage can be classified as Category 3 – Moderate (5mm to 15mm) in accordance with Table 1 of the BRE Digest No. 251.

CAUSE

Based on the investigation results and level monitoring regime, we consider that there is sufficient evidence to demonstrate that the crack damage to the property has been caused by clay shrinkage subsidence, influenced by the nearby vegetation belonging to 93 Ediva Road; a third party that has yet to be established and your customer - Meopham Parish Council.

CLAIM

The claim is being pursued by consultants, Oriel Services Ltd and the initial notification of the damage to your customer was by letter, dated 04th October 2019.

Basis of the claim is that subsidence has been caused as a result of root trespass by a street tree under your customer's control. Evidence of encroachment beneath the property by roots from a tree under your customers control has been supplied.

LIABILITY

We consider the following cases to be relevant in this instance and have therefore chosen to include within this report.

The legal position is that an action for nuisance for root encroachment lies against the *controller* of the trees (*L E Jones (Insurance Brokers) Ltd -v- Portsmouth City Council (2002)*).

The organisation responsible for the control and maintenance of the trees must be reasonably able to foresee that damage would result from the action of roots from their trees. A Local Authority, Public Body or Housing Association is deemed to have such knowledge for foreseeability not generally to be an issue. (*Solloway -v- Hampshire County Council (1981)*; *Paterson -v- Humberside County Council (1995)*; and *Kirk -v- London Borough of Brent (2005)*).

Tree root encroachment is a continuing nuisance, and limitation is not a defence, except from the date upon which the nuisance is abated (this does not mean pruning, only underpinning or tree removal generally abate root encroachment). The person suffering damage must, however, give notice to allow the controller of the vegetation reasonable time to take action (around 4 months (*Jones -v- Portsmouth*)) to abate the nuisance, otherwise the cost of any subsequent underpinning is irrecoverable. If notice is given, underpinning of a structure to negate the effect of roots from vegetation within Local Authority control is recoverable. (*Delaware Mansions -v- Westminster City Council (2002)*).

In *Loftus-Brigham -v- London Borough of Ealing (2003)*, the Court of Appeal held that the only question for the Court was whether the defendant's tree roots materially contributed to the damage, and awarded full damages without any reductions to the claimant's home owner. Contribution could only be sought from a *negligent* party. A material contribution was anything other than de minimus. However, in *Gerard-Reynolds -v- London Borough of Brent (2005)*, the court decided that the Local Authority was only responsible for that proportion of the damage that was as a direct result of the nuisance from their tree. It followed the Court of Appeal decision in *Holtby -v- Brigham & Cowan (Hull) Limited (2000)*. Negligence is not a prerequisite on the part of the other contributors to the damage.

Nuisance - whilst the roots emanating from the trees owned by Meopham Parish Council have been encountered beneath the foundations of the garage, there are other third party trees in closer proximity to the garage and principal area of damage.

Insofar as foreseeability, we note online BGS drift map deposits determines no superficial records, however we are not aware at this juncture as to settled root induced clay shrinkage claims within 0.5 miles radius of the claimants risk address within the last 15 years in conjunction with maintenance records for your customers vegetation and therefore a defence surrounding foreseeability is in question.

Two roots from the neighbours Walnut tree are implicated noting positive for starch whereby your customers vegetation-beech trees root samples were dead and at this juncture factual evidence has not been provided. This is not to say that the proximity and Should the Walnut tree be felled or be felled shortly will merely serve to shine the limelight on your customer's vegetation.

Your customers vegetation note is protected by means of a tree protection order and therefore subject to the local planning authority consideration subject to TPO application which we would consider to be issued by the third party Sedgwick should they continue to consider said are implicated.

RESERVE

Oriel Services Ltd indicated repair cost in the region of £19,000 to £35,000 depending on the extent of the repair works i.e. superstructure repairs or superstructure repairs together with foundation stabilisation and they have indicated that this will be depend on removal of the vegetation.

We have been provided with no schedule of works, rates or quotations to substantiate the repair costs.

Based on the quantum forming this claim we recommend in accordance with our front sheet that a precautionary reserve of £10,000 is held against this claim at this juncture insofar as damage to the garage.

We are not aware of a claim for damages to the main house at this juncture, although note this was being monitored by means of level monitoring, with no site investigations pertaining in this regard.

ACTION PLAN

We recommend that Insurers deny liability at this stage and on the basis that the Beech trees owned by Meopham Parish Council are subject to a Tree Preservation Order.

We should recommend that T1 - Walnut under the control of a neighbour and as recommended by third party arborist should be felled.

We note HG1 – mixed species whereby third party arborist recommends, *“Remove section of hedge group and treat stumps to allow a minimum clearance of 3m from the rear and left side of the Garage. No work to remaining hedge in group. (Total 5m in length to remove).”* However, we are not clear at this juncture whom has control of this and have therefore referred to you customer for their comment in this regard.

We would ask whether the Council has a cyclical inspect and maintenance regime on their trees in this instance and the date that the trees were last pruned. Should not inspection and maintenance regime exist then we would recommend that the council seek arboricultural advice on the management of the trees moving forwards.

We would request a copy of the further level monitoring readings carried out post October 2019.

We would request a schedule of works with rates or quotations to substantiate the repair cost.

Copy of the pre-purchase report from 2017

Andrew Ferguson BSc MCIOB AssocRICS Tec.Dew

Senior Manager

Apendices

Photographic template

Site plan

Photo'sas forwarded by third party Sedgwick