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Our ref: B1030655/Matthew Flin

Your ref: 191021/62486

Date: 5 November 2010

PRELIMINARY REPORT

CLAIM No.....: 191021/62486
POLICY No.....: Not known
NAME & ADDRESS OF INSURED.....: Cambridge City Council
2nd Floor
Lion House
Lion Yard
Cambridge
CB2 3NA
TRADE/BUSINESS.....: Local Authority
POLICY COVER.....: Public Liability
DEDUCTIBLE.....: Please advise
TIME, DAY & DATE OF INCIDENT.....: Originally discovered May 2004
LOCATION OF INCIDENT.....: 13 Holland Street
Cambridge
CB4 3DL
CLAIMANT / OCCUPATION.....: [REDACTED] / Home Owner
CLAIMANT'S ADDRESS.....: 13 Holland Street
Cambridge
CB4 3DL
VAT STATUS OF CLAIMANT.....: Not known
NATURE OF CLAIM.....: Subsidence - Alleged tree root trespass
RESERVE FOR INSURERS.....: [REDACTED] - provisional
REMARKS.....: We received our original instructions directly from
Cambridge City Council. We refer to our recent
telephone conversation of 13 October 2010. Please
see attached continuation sheets.

GENERAL DESCRIPTION

INSURED

Your Insured here is Cambridge city Council (CCC) of 2nd Floor, Lion House, Lion Yard, Cambridge, CB2 3NA.

The activities of CCC as a Local Authority will be well known to you.

CLAIMANT AND REPRESENTATIVES

The Claimants in this instance are [REDACTED] who are the owners of 13 Holland Street, Cambridge, CD4 3DL

It is understood that original damage was discovered in or around May 2004 and that the Goodmans submitted a claim to their own Insurers who instructed Loss Adjusters to deal with the matter.

We believe that repairs totalling approximately £13,000 were undertaken during the Summer of 2006 although shortly thereafter further cracking damage appeared.

CONTRACTUAL SITUATION

There is no contractual relationship between CCC and the Claimant on this occasion.

CIRCUMSTANCES

The Claimants' representatives wrote to the Council in 2008 advising that there was further structural damage to the property and furthermore they have implicated some London Plane trees growing under CCC'S ownership in contributing to or causing the subsidence damage.

EXTENT OF DAMAGE/LOSS

Our engineer has had the opportunity to attend at the property and has conducted her own inspection of the damage.

The property concerned is a three bedroomed two storey, end of terrace dwelling with a two storey rear projection of traditional construction.

A small conservatory has been added to the rear left hand corner of the terrace which is of half brick construction with a glazed timber framework.

The property has a small front garden which is accessed from Holland Street and a small rear yard which is accessed from Carlyle Road which faces Alexandra Gardens where the Council owned trees are situated.

The property was constructed in the 1890s and was noted to be in good condition throughout. We attach photographs taken by our engineer under **Appendix 1** for your attention.

The damage would currently be classified as Category 1-2 (slight) in accordance with BRE Digest 251. The primary relates to hairline cracks along the left hand external wall and internal partition wall.

Externally there is a 1mm wide vertical crack through the brickwork where the rear extension joins the original house. There are also 1mm wide cracks below the ground floor kitchen window and below the first floor bedroom window, above the conservatory. There is also 1mm wide vertical crack at the junction of the conservatory wall and the gable wall of the house. This crack has previously been re-pointed and it is evident that Helibars have been installed in this repair.

A repair schedule has not to date been provided although we imagine that the opposing adjusters will wish to establish site stability before concluding the extent of repairs required. We understand that superstructure repairs will be minimal although the opposing adjusters are looking to underpin the property at a considerable expense given the history of problems at the property.

ALLEGATIONS

To date, we have not been provided with any formal paperwork that has been received in this matter and we believe this is currently with Karl Tattam of the CCC. We are endeavouring to obtain relevant copies of correspondence and site investigation notes. We believe our engineer had sight of these during a recent meeting with the council.

INVESTIGATION

As indicated, our engineer has had the opportunity to attend on site. Furthermore, she has met with Karl Tattam at the Council offices. We can report to you as follows.

As indicated there was a previous subsidence claim submitted in May 2004 where repairs were completed at a cost of £13,000. However, shortly after this further cracks reappeared and a separate claim has been presented.

Our Engineer advises that in May 2008, Infront Innovation contacted CCC advising that the trees may be a significant influencing factor for the subsidence damage. Site investigations were carried out in December 2008 and February 2009 the Council received further evidence that the trees were implicated.

In March 2009, the trees were reduced by 30% of their volume. The Council advised that the work would be repeated bi-annually and asked for the confirmation that this would be sufficient.

The Council received further correspondence in November 2009 advising that continuing monitoring over the Summer and Autumn had shown further seasonal movement and recommended removal of the London Plane trees.

In February 2010, the Council sought the advice of Independent Structural Engineers who concluded that the trees were implicated and advised that either one of the trees was removed and the other two to be reduced, all the property to be underpinned.

In May 2010 the opposing adjuster responded by advising that if the trees remained the property would be underpinned, or if the trees were removed no underpinning works would be required.

Subsequently a meeting was held in June 2010 during which the property owner and acting Loss Adjuster advised they would only consider either the removal of one tree and substantial reduction of the other two failing which the property would be underpinned.

The Council subsequently planned to remove the trees, however, there was an overwhelming response from the Public who are opposed to the trees being removed.

Our engineer has appointed independent Arboriculturist and their report is currently awaited. We will update you as soon as this is received.

We understand that the Council have been aware of the situation for around six years and no significant action has been taken apart from biannual pollarding which clearly is not working

Our engineer has had the opportunity to view some site investigation documentation. We believe that roots belonging to London Plane trees were formerly identified and found below the foundations to the property. Furthermore, we understand the soil analysis showed that the clay subsoil with gravel and chalk.

The Soil Analysis Report apparently indicated that soils were only slightly desiccated. However, the samples were taken in December, by which time the soils would have re-hydrated.

Our engineer has concluded that from the site investigations and laboratory analysis reports that there is clear positive identification of roots belonging to the Council owned London Plane trees which have encroached beneath the foundations of the left-hand elevation of the property and conservatory.

We are told that the trees are not subject to TPOs.

A precise level monitoring exercise was undertaken at eight weekly intervals between 9 June 2008 and 15 December 2008. We believe the results of this survey showed seasonal movement as would be expected.

Our engineer does not feel that the extent of severity of the damage warrants underpinning works. However, given the size and proximity of the trees it is believed that if they remain at their current size there is a high probability that the property will suffer further subsidence in the event of a dry, warm Summer.

LEGAL LIABILITY

The law of nuisance, which applies to tree root cases, was established by the case of *Solloway v Hampshire County Council* and suggest that the Claimant needs to establish the following to prove their case.

Causation – Roots from the defendant's tree must have caused damage or at least a substantial part.

Foreseeability – The defendant should have foreseen that the roots were likely to cause damage if nothing was done to prevent it.

A failure to exercise reasonable care -- the defendant could reasonably have taken steps to limit the growth of the tree and incursion of the tree roots and that this would have prevented the damage.

The Council would not be able to utilise the defence found in the case of *Greenwood v Portwood (1985)* given their status as a Local Authority.

This is a case that has been ongoing for several years during which the Council had been well aware of the problems with the London Plane trees and it would appear that causation has been proven and the matter has become foreseeable.

Ultimately, we suggest that liability will attach to the council although the extent of damage at this stage would appear to be minimal and certainly would not warrant significant underpinning.

POLICY CONSIDERATIONS

We understand that you issue a public liability policy and would be grateful if you could provide us with a note of any applicable deductible. We would anticipate the policy will respond in the event of legal liability ultimately being found to attach to CCC on this occasion.

We are mindful that you will probably not be providing indemnity for any underpinning works.

RESERVE

We recommend you maintain a provisional reserve of ██████ against the claim at this stage.

FURTHER ACTION

We are currently awaiting sight of the Arboriculturist Report and will update you when this is received.

There are ongoing meetings with the Council and the Public and we will keep you updated here.

REMARKS

We trust you would find this report to be of assistance and look forward to receiving your further comments and instructions in due course.

GAB Robins

GAB Robins

Enclosures

Appendix 1 Photographs