Branching out

Vivien King considers some cases concerning damage caused by trees

Obtaining a property that contains high alumina cement, sea-dredged aggregates or, in Cornwall, mundic (iron pyrite) blocks will set alarm bells ringing, and the presence of substances such as asbestos should also lead to further inquiries. But what about a property that contains trees? Trees, beautiful as they are, can be a nuisance, and have over the years led to numerous court actions.

Highway hazard
For instance, in the case of Delaware Mansions Ltd and others v Westminster City Council [2001] 44 EG 150, the House of Lords considered trees along a highway, for which the local authority was responsible and whose roots were encroaching on a nearby property, causing damage. The claimant, who purchased its property interest after the damage was inflicted, conducted necessary remedial works. The council had refused to remove the trees, and was held liable for the damage in the form of a private nuisance.

In Chapman v Barking and Dagenham London Borough Council [1997] 2 EGLR 141, a falling tree branch caused injury to a person using the highway. The tree-owning council had previously had pruning works carried out to the tree but failed to inspect again at any later date, when inspection would have revealed the tree was a potential hazard. Recognising the heavy commitment the court was placing on local authorities in respect of trees along the highway, the judge nevertheless found that a nuisance had been proven.

It was possibly because of the need to inspect and act highlighted by Chapman that Sheffield City Council resolved to have trees in its jurisdiction felled – a resolution that local people sought to be reviewed by the courts in The Queen (on the application of David Dillner) v Sheffield City Council and another [2016] EWHC 945 (Admin). Giving a lengthy and detailed judgment, Mr Justice Gilbart held that the council had statutory duties with regard to the upkeep of its highways and had acted properly in ordering the removal of trees. He refused the application for an injunction to protect the trees and for judicial review of the council’s resolution.

Do others, too, have a duty to inspect their trees and to act in light of a potential hazard? In Quinn v Scott [1965] 1 WLR 1004, decay of a tree was “there to be seen” and its owner, the National Trust, should have had it felled. The court held that: “The duty of the Trust is to take such care as a reasonable landowner – and that means a prudent landowner – would take to prevent unnecessary danger to users of the highway adjoining the Trust’s land.

“There is not to be imputed in the ordinary landowner the knowledge possessed by the skilled expert in forestry … But, in my opinion, there may be circumstances in which it is incumbent on a landowner to call in somebody skilled in forestry to advise … and I have no doubt that a landowner on whose land this belt of trees stood, adjoining a busy highway, was under a duty to provide himself with skilled advice about the safety of the trees”. 

Damage to trains
In Stagecoach South Western Trains v Kathleen Hind and another [2014] EWHC 1891 (TCC), an ash tree in private ownership fell on a railway line causing damage to a train. The train company sought damages from not only the tree owner, Ms Hind, but a tree surgeon whom she had instructed. Giving an extensive and interesting review of the law relating to liability for one’s trees, the judge concluded: “I find that Ms Hind’s duty extended no further than the carrying out of periodic informal or preliminary observations/inspections of the Tree. I find that she was capable of performing that duty and that she complied with that duty.

“There was nothing that should have alerted her, or put her on notice, that the tree was anything other than healthy, or required a closer inspection by an arboriculturalist. The claim in tort against her therefore fails.” He further held the tree surgeon had a duty of care to Ms Hind, a duty he had not breached and which did not extend to a third party.

So, if you or your clients have trees in the vicinity of a boundary and in particular a boundary marked by a highway or other right of way, do inspect them and, if in any doubt about safety, take expert advice.

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