

Dear David

I refer to your email below. I understand that the Town Council wishes to know what its liability might be to adjoining properties both above and below its garden in which there is slippage and retaining walls are showing signs of failure. That brings into play the following.

1. Natural rights of support, which every landowner has. An occupier of land owes a general duty of care to a neighbouring occupier, in relation to a hazard occurring on his land, whether natural or man-made, to take whatever steps are reasonable in all the circumstances to prevent or minimise the risk of any injury or damage to the neighbour or the neighbour's property, of which the occupier knew or ought to have known. What is reasonable in all the circumstances will depend, among other things, on the cost of the steps which might usefully be taken and, viewed broadly, the resources available to the occupier and the neighbour (Leakey v National Trust 1980).

In *Holbeck Hall Hotel Ltd v Scarborough Borough Council* 2000, the court said that the duty of the owner of the supporting land or building should be seen as extending, in some circumstances, to a duty to take positive steps to maintain and to continue support. An occupier's duty to prevent a potential hazard to the adjoining claimant's land arose if the defect was patent and was or should have been observed. In the case of a latent defect, the occupier would not be liable merely because the occupier would have discovered the defect on further investigation. If they had not foreseen a danger of anything like the magnitude of what had occurred then it was neither just, fair nor reasonable to impose liability for damage which was greater in extent than anything foreseen or foreseeable without further geological investigation. The occupier's duty was to take care to avoid damage which it ought to have foreseen without such investigation. That duty might also have been limited to warning the adjoining occupiers of such risk as it was aware of or ought to have foreseen rather than carrying out expensive and extensive remedial work itself.

2. Easements. The right to have buildings supported by land or by other buildings can be acquired as an easement (*Dalton v Angus & Co* 1881), either expressly such as in a deed, or by prescription (i.e. at least 20 years support).

Please come back to me if you have any questions.

Kind regards

Andrew

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