

From: UKLawAdvisor
Sent: 25 February 2022 11:16
To: Nick Bell; Planning
Subject: APPLICATION 2022/0419/T

Dear Mr Nick Bell

I submitted these comments on the 11th and again on the 24th of February, supporting EES.

Please may they appear on the website with an explanation as to me why the comments supporting EES have not been shared?

Very kind regards

Mary

The trees are beautiful and valuable but the harm and danger they cause is significant and sadly must be weighed against consideration of other worthy factors, please see below:

EGYPT EXPLORATION SOCIETY SUBMISSIONS TO CAMDEN COUNCIL IN THE MATTER OF TWO TREES

The case of Pharoah

V

The Two Trees

SECTION A BACKGROUND FACTS

I CURRENT AND FUTURE DAMAGE CAUSED BY THE TWO TREES

PARAGRAPH 1.3 OF: Subsidence Tree Report For The Egypt Exploration Society

"1.3 2 mature London Plane trees are in direct contact with the rear wall of the property causing displacement damage to the wall of the building. This is not a 'typical' subsidence claim as a result but due to direct physical contact damage." The report further states that the trees are not subject to a protection order even though they are in a conservation area.

Further details re the damage caused by the trees is found in paragraph 5.3 of said report: "5.3 Subsidence from vegetation and trees occurs when the vegetation dries the underlying soil and if this contains clay it can shrink in size and the building subsides. The soil then rehydrates during the wet winter months giving classic cyclical movement profiles. In this claim damage is being advised as being due to the direct physical contact of the stems of the 2 trees against the rear elevation." Furthermore, there is physical evidence of future

damage as per soil conditions here at paragraph 5.8: “5.8 Soil testing is inconclusive given the underlying soil type but there can be no doubt given the size of T1 & T2 relative to the property that the trees will be depleting soil moisture levels below foundation level.” This assessment proves future damage which is reasonably foreseeable. Further damage is at paragraph 5.9: “5.9 No monitoring is available, but the overall engineering opinion is one of direct physical displacement damage of the rear wall being caused by long standing direct contact of an expanding lower stem. This is pushing the rear wall of the property out of line.”

More evidence of deep future damage is cited here: “5.12 The proximity of the trees is such that large structural roots likely extend below the footing and there is a risk that as they decay voids are created but this would be unusual in resulting in actual further damage to the building as the general rate of decay of such roots is generally slow. The alternative is to not remove the trees but the issue will progress as the trees continued to expand in size.” However, the decay is taking place. There are two sources of damage: 1. Physical damage, and 2. Damage to the soil. They invoke the legal principle of reasonable foreseeability because they are now known and have been made known to the Council.

II PRECEDENCE OF THE BUILDING OVER TREES

As per the quoted report, the building was erected before the trees were planted:

“5.11 The buildings appear to date from circa 1890 and both T1 & T2 are of the same size and located either side of what would likely have been a door to stabling originally. This suggests they were planted after the buildings were constructed. A highly shrinkable clay soil is not present suggesting (when considered in the context of tree age) the risk of heave in the event of the trees being removed would appear low.”

III CONSERVATION AREA

The trees are large but not accessible to the public. In terms of conservation, the trees are therefore not significant and do not give a significant benefit or amenity to the area, in this case, in fact, worse than that, they cause harm and should not be protected. Please see paragraph 5.13 of report that states they are not accessible. Sadly, they add no value to the public.

SECTION B APPLICATION OF THE RELEVANT LAW TO THE FACTS

I ENGLISH LAND LAW CASES

In the case of *Donoghue V Stephenson* [1932], the judge held that neighbours (and this thus applies to tree owners) have a duty of care to avoid acts or omissions which if allowed to persist can harm a neighbour. In this case, the trees are on neighbouring land which border meets the building of the Egypt

Exploration Society.

Rylands V Fletcher [1868] held the person who for his own purpose brings on his lands and collects and keeps there anything likely to do mischief, if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. Here, the mischief is in the form of the two trees which are encroaching and an argument can be made that they have escaped their boundaries by physically leaning against the building with such force that they have caused structural damage (mischief) to the building and are causing it to lean in.

Kent V Marquis [1940] upheld this precedent. In the case of Chapman V Barking [1997], the court held that there is a duty for a follow up inspection that the tree is not causing an unreasonable danger to the target zone underneath, and a duty to remedy the damage, in this case to remove the trees. In this case, the two trees have already been proved to be causing unreasonable danger to the soil which will manifest in a matter of time, in addition to physical danger to the building so the case of Chapman applies. It is unreasonable danger because it is causing harm to the building and to the soil under the building which has ramifications for the building.

In Leakey V National Trust [1980], the judge held there is a general duty to ensuring that natural hazards do not stem from the land and affect the neighbouring land. That case concerned land of a status similar to this case in which the trees are on a conservation area so the case facts parallel in this regard. Moreover, the Counsel has a duty to act now that the trees have become a natural hazard to their neighbouring land.

In Khan v London Borough [2013], the court held that the duty of care arises when the damage is known. In this case, the tree report has exposed three known factors of damage; the physical leaning of the trees on the building, the soil damage, and future physical and soil damage which are undoubtedly going to happen if this continues. Moreover, this case employs the objective test of what ought to have been known to the reasonable owner. Therefore, since the tree report verifies that the current and future damage is known, this case applies.

Quinn V Scott [1965], argued that since the clear hazard was visible, the tree should have been felled. This applies to our case because the hazard is conclusively proved by the experts and thus the tree should be removed. The trees are visibly leaning on and pushing into the building and have clearly caused physical damage to the structural integrity of the building.

In Kennedy v Bournemouth Borough Council, 17.09.12, Bournemouth County Court held that by the spring of 2009 it was reasonably foreseeable to D that the maple tree's roots could cause blockages to the drains to C's property. D

was then under a duty to consider what, if anything, would be reasonable to do about this. Here, again, the reasonably foreseeable test was applied and upheld and again, the Council is now under a duty to give planning permission to remove the trees because it is reasonable foreseeable that if it does not act or if it fails to act, further hazards, damage, and mischief will occur.

In *Berent v Family Mosaic Housing* (Court Circular, September 2012), the Court of Appeal held that if a tree creates a 'real risk' of property damage, consideration should be given to what action, if any, should be taken to address that risk. In this case the risk to property damage is real because it has already occurred and expert evidence shows it will continue.

To summarise, on the merits of these facts alone, the body of case law authority and precedent shows a strong favourable view in removing these trees, even if they are on a conservation area.

II INTERNATIONAL HUMAN RIGHTS LAW PROTECTIONS ON WORLD HERITAGE
Cultural rights fall under international human rights instruments and are available to everyone. Within cultural rights are protections that are relevant to this case.

1. UNESCO

The constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) was ratified by the United Kingdom in 1946. This means that the United Kingdom has bound itself to the obligations enshrined therein.

2. Resolution A/HRC/RES/37/17

On 22 March 2018, the Human Rights Council adopted Resolution A/HRC/RES/37/17. This resolution calls upon all states to respect, promote and protect the right of everyone to take part in cultural life, including the ability to access and enjoy culture heritage, and to take relevant actions to achieve this. Thus, the council of London is duty bound to uphold this provision in the context of the valuable and rare cultural heritage records and artefacts held at the Egypt Exploration Society library and buildin.

3. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Two Protocols

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Two Protocols are designed to protect cultural property from destruction and looting during conflict. These include monuments, archaeological sites, work of arts and important artefacts. This further cements the UK's position as a world leader in cultural heritage protection and sends out a clear message on our commitment to protecting cultural property during conflict. The UK signed this in 2017.

Although we are not in war time, this is still absolutely relevant because the UK

has made itself a world leader in the protection of world cultural heritage and therefore to allow two trees to damage rare holdings goes against the principle of the international obligations that the UK has signed up for as a leader. It is incumbent upon the UK to demonstrate leadership and a precedent in the protection of such rare and valuable world and cultural heritage items.

4. The Granada convention 1985

First entitled the European Charter of the Architectural Heritage, it became the "Convention for the Protection of the Architectural Heritage of Europe."

It defines 'architectural heritage' and each signatory promises to maintain an inventory of it and to take statutory measures to protect it. There is also a promise to provide funding, but only within budgetary limitations, and to promote the general enhancement of the surroundings of groups. Signatories (including the UK) also promise to adopt integrated conservation policies in their planning systems and other spheres of government influence that promote the conservation and enhancement of architectural heritage and the fostering of traditional skills. Thus, here, in this case there is the need to conserve and protect cultural heritage above and beyond protecting the building as a physical property but also as a cultural footprint and as a sanctuary for housing cultural artefacts of great historical importance and significant value. This need outweighs the need to protect these two particular dangerous trees. The fact that the tree is leaning is an indication of its instability and foreseeable danger.

III Criminal Law

An argument can be made that the trees are causing damage to the building and this can be construed as the trees causing criminal damage to the building. Moreover, if in future a person is in the building and is harmed by the building as a result of the impact of one or both of these trees, it could incur criminal liability. The case law authority for this is the case of the Birmingham Ash, Stagecoach South Western Trains Ltd v Hind and another [2014], where the defendant was ordered to pay £150 K and could have been found criminally liable. Here, the court held that the resources of the landowner would be taken into account when assessing whether they had done all that could be expected of them, and a local body or corporation may be held to a higher standard than the one given to Mrs Hind. In this case, it means that the Council can be held to a high standard of liability given the seriousness of the damage and the fact that it is affecting a charity which serves the public. The matter of reasonable foreseeability in the case of the Council is also important.

IV INTERNATIONAL HUMAN RIGHTS LAW ON THE PROTECTION OF PROPERTY.

There are international human rights laws that protect property, many which derive their authority from the Universal Declaration of Human Rights of 1948

and in this case both the building and the records constitute property that is protected on its own merits and even more so on the merits of its cultural and world heritage value. In addition to this there are international human rights instruments that protect African property such as the African Charter on Human and Peoples' Rights and this is relevant here because the records reference sites that no longer exist in Egypt and Sudan. In the case of Sudan this is even more vital that the building that houses rare records on lost Sudanese sites is ever more important especially in the light of Sudanese history where conflict has led to such losses that what does remain of its heritage is even more rare and valuable as part of world heritage.

SECTION C ARCHEOLOGICAL WITNESS OF THE EXTREME VALUE OF THE LIBRARY HOLDINGS.

The Egypt Exploration Society archive contains a unique record of British-Egyptian relations since 1882 as well as some of the only records pertaining to sites now lost in Egypt and northern Sudan. The building itself was once the home of renowned Argentinian Egyptologist, Ricardo A Caminos who lived there from the 1980s until his passing in 1992, and is used as a library of rare records vital to world cultural heritage.

The fact that the library contains the only records pertaining to sites lost in Egypt and Northern Sudan makes these records extremely valuable as part of humanity's cultural heritage. From an archaeological and Egyptological perspective, these records are absolutely protected items. In 2004 I worked in the UNHCR Cairo office with Sudanese refugees who crossed into Egypt through the Southern border of Egypt and can attest first to the fact that Northern Sudan was part of the Sudanese war; as I interviewed Asylum Seekers awaiting refugee claims on details of their war experiences. The fact that these sites currently documented in these records no longer exist make these extant records extremely valuable. I can further attest that archaeological sites are also vital primary data sources and that records of lost sites are as valuable as the original sites, because they are all that remain of world and cultural heritage. The building itself holds cultural significance as a foundational part of the history and footprint of the Egypt Exploration Society and should have the protected status of a museum.

Because this library holds world heritage items, the London Council of Camden bound to uphold the spirit of the provisions when the United Kingdom ratified UNESCO's provisions. These records are vital to humanity's world heritage. The functioning and day to day operations of the Egypt Exploration Society are absolutely vital to the preservation and conservation of world heritage.

SECTION D PLEA FOR RELIEF

I NO PROTECTION ORDER

We therefore respectfully request that the Council not grant a protection order for the two trees; T1 and T2 and that the Council respectfully weight the value of the archeological records and artefacts as outweighing the value of these two trees in question; T1 and T2 and that the Council cuts down the trees due to expert testimony of established current and foreseeable future damage to world heritage, and even beyond that that the Council provides financial compensation for the damages already incurred by the two trees which were planted after the building in question was build.

II NO COST TO THE SOCIETY

We plea that the Council grants written permission for the trees to be removed without costing the Society, and in accordance with legal standards by paying for a tree surgeon to carry out the work.

III FINANCIAL COMPENSATION

In fact, when the trees were planted, they were negligently planted too close to the building in the first instance and as such are legally considered a nuisance which is a legal term due to the roots and to the heavy weight of the trunk leaning and pushing against the building, as well as due to the impact on the soil which in turn affects the building foundationally. This gives rise to a civil liability claim which under the objective test is that the harm caused is indeed reasonably foreseeable and which gives rise to liability because no steps at the time were taken to prevent the now current and future harm. This liability implies financial damages caused to the building and to the Society due to harm and ought to be compensated for, particularly as the Egypt Exploration Society is a valuable charity.

SECTION E CONCLUDING REMARKS

The loss or risk of loss of these records is tantamount to a loss of human history. These records constitute the subject matter of human memory and as such are classed as documentary heritage by UNESCO. We have a duty to preserve these original, unaltered documents in their current format. These documents and their accessibility is essential to the collective memory of humanity. By definition these records and the building that houses them are protected cultural property.

Comments made by Dr Mary Boulos Ayad of Collegiate
Preferred Method of Contact is Post

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