



PROPERTY RISK CASE STUDY

CONSIDERING RISKS IN THE LIGHT OF FUTURE EVENTS

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This case study looks at a landslip, where part of the subject property's garden slipped into the neighbouring garden.

It is a complicated and unusual case. However, it demonstrates the need for surveyors to be vigilant about the risks to the property that 'may' occur in the future, even if they are not wholly obvious at the date of the inspection, something that is more critical with the increased chance of extreme weather events caused by climate change.

Background

This case study is based on a real claim against a surveyor. Due to the confidentiality of all the parties involved we cannot give the location of the property and will be using fictional names for all the parties involved.

The property and its location

The subject property is a Victorian building adjacent to a substantial Victorian house. It was probably originally built as either a coach house or servants' quarters. (If it was converted from a coach house, the date of conversion is not known, and the exact purpose of the original construction is difficult to determine from the building now on site, however original construction was probably around the 1880s.)

There is a 1970s extension on the western end of the property, adjacent to the western boundary. For the purposes of this case study, we shall refer to the property as 'The Stables'. The Victorian house is now converted into several flats.

'The Stables' is a three bed two storey property, with a kitchen diner, dining room and sitting room on the ground floor. There is also a utility room and 'workshop' which, although part of the main building, are accessed from the patio (presumably this is the 1970s extension).

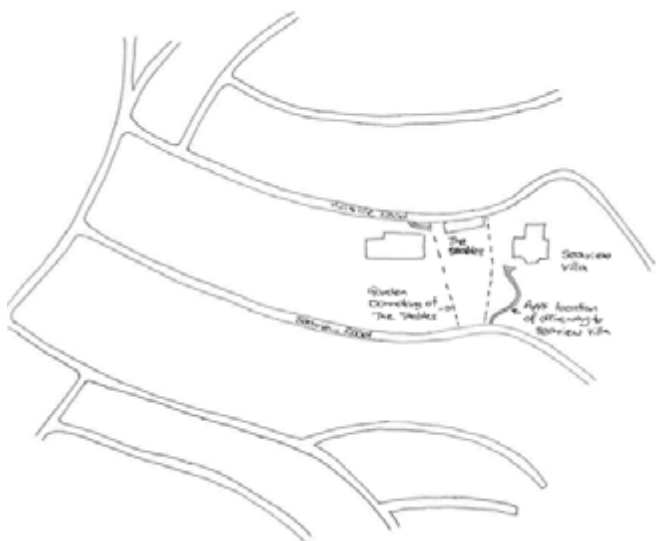
'The Stables' is located in a seaside town. The immediate area is dominated by Victorian villas (many now divided). The area is hilly and the immediate location slopes down towards the sea. The roads in the vicinity have created a

series of what are in effect ‘terraces’, and the houses tend to have sloping gardens affording sea views.

The address of ‘The Stables’ is Hillside Road. Both The Stables and the converted Victorian villa are accessed from Hillside Road.

However, the immediate neighbour on the other side, which we will call ‘Seaview Villa’, is actually accessed from Seaview Road, the lower road at the bottom of the garden of ‘The Stables’ (see plan 1).

It is also worth noting, though not specifically relevant for this case study, that the back wall of the ground floor of ‘The Stables’ is a retaining wall for Hillside Road – it abuts right against it – and that the first floor can actually be accessed from Hillside Road, though the main front door is at ground floor level.



Plan 1

Sales history

The property was listed for sale in 2014 and the sales particulars specifically referenced “... stunning views within beautiful, landscaped gardens, which offer a high degree of privacy”.

The Rightmove logbook shows it was surveyed in 2003 and again 2009 and listed twice in 2014 with HMLR data for 2015. Therefore, it can be presumed that the previous owners lived there from at least 2003.

The desktop research

The property is in an area with Meadfoot slate geology of mudstones, siltstones and sandstones with limestone beneath. The geology of the wider area is relatively complicated compared to that of some of the neighbouring towns. The British Geological Survey map shows much faulting and some folding. The complications are to be expected because much of the area consists of strata below the Permian (a geologic period and which spans 47 million years starting appx 290 million years ago to the beginning of the Triassic Period) so was therefore caught

up in a notable geological event when significant land masses shifted. This is known as the Variscan orogeny which impacted Portugal and Spain, southern Ireland, Cornwall, Devon, Pembrokeshire, the Gower Peninsular and the Vale of Glamorgan.

While the underlying bedrock may be complicated, this slate rarely gives cause for concern, although on a sloping site, the layers of slate can form a slip plane if angled sloping downhill and sometimes houses can slip.

The flood mapping shows no particular problem of water running down the hill, but of course that will be occurring to some extent both above ground and, unseen, below ground.

However, as we have seen, this is an area dominated by Victorian villas and ‘terraced’ roads; therefore, it is likely that these terraces are man-made from the Victorian era when stone rubble ‘gravity’ retaining walls were used to create the terraces up the hillside in a ‘cut and fill’ fashion. The earth behind the retaining wall is very likely to be ‘made ground’ so consequently less compact than under the actual house.

Because of this, the increasingly heavier vehicles create compression and lateral force which can damage and push over walls. This would be something to look out for specifically on-site.

In conditions with built-up ground as in this case study, ‘soil creep’ can occur. This is the most common form of UK landslide. This will also push against walls.

We are experiencing more rainfall and soggy ground creates more ‘over-turning force’ behind retaining walls. Climate change will cause more of these problems. Imagine made ground behind a wall becoming ever more saturated and slumping down - at the same time it will push outwards against the wall.

Rubble walls are naturally quite water permeable so hydrostatic pressure is relieved by water passing through the wall quite readily (so usually no weep holes or land drains), but this is not always the case - capillaries can get blocked (with the local clays for example). And if a wall is overgrown with vegetation the plants expand and start to cause damage to the exposed outer face. A rubble wall provides good compressive strength but not much resistance to lateral force after a certain point. Once the outer face loses strength the rest can go suddenly; rarely is the inner face of a rubble wall well bonded to the outer, let alone to the ground behind the wall. Ground anchors are a good option if you notice the signs of failure early enough.

The inspection and report

In March 2015, the surveyor, S, inspected the property and produced a report for his clients Mr and Mrs T.

S undertook a level 2 inspection and report (this was discussed as part of the claim, but we are not going to

debate the issue of whether this should have been a level 3 inspection and report. The issues would still have arisen. Also, this was before the publication of the RICS Home Survey Standard).

S completed a detailed site plan and specifically noted:

- That the site was generally south sloping down to Seaview Road
- That there was a section of retaining wall visible immediately adjacent to Hillside Road (at this section of the wall the land was higher on the side of Seaview Villa.)
- That the whole garden was 'mature' with trees and mature hedging along the boundary with Seaview Villa

Although not specifically mentioned in the site plan, it is obvious from Google Maps that it is impossible to see the boundary wall between The Stables and Seaview Villa from Seaview Road. The driveway curves away from the boundary wall and the wall is not visible without trespassing.

When viewed from Hillside Road only the roof line of Seaview Villa is visible – no mention of the different ground level was noted in the report. See Picture 1 showing the roofline of Seaview Villa.



How the claim arose

Mr and Mrs T went on to purchase the property and moved in at some point later in 2015 (likely spring).

Three years later, in January 2018, there was a significant landslide affecting the garden of 'The Stables' and the neighbouring property 'Seaview Villa', accessed as we know from the road below – Seaview Road. In effect, part of the garden of 'The Stables' fell into the garden belonging to 'Seaview Villa'.

The initial course of action on the part of Mr and Mrs T was to turn to the neighbour, Mrs U, in 'Seaview Villa' on the basis that they had a right of support. This happened in May 2018, appx 4 months after the landslip.

Now, this is conjecture, but it is our guess that Mr and Mrs T were underinsured with their buildings insurance policy. We doubt that it covered retaining walls and cliffs. Most standard policies will not, and it is incumbent on the insured to make sure all potential risks are covered by the policy. We suspect that they first turned to the insurers and when that course of action failed, they instructed a solicitor to

help them.

Mr and Mrs T claimed a right of support but Mrs U in turn, claimed that at some point in the past the predecessors of Mr and Mrs T had banked soil against an inadequate block wall. In turn, Mr and Mrs T maintained that the terracing was in place at least 33 years previously when their predecessors acquired 'The Stables'.

Mrs U had clearly been in residence at Seaview Villa for some considerable time and apparently had records of what had happened over the previous years, which included the removal of trees adjacent to the boundary. There turned out to be a fairly detailed history of what had been going on. However, the wall on the Seaview Villa side was high, and Mrs U 'was not aware of the activity on the other side of the garden wall' (i.e. the banking up of soil as she had claimed) since she could not see over it.

In essence, Mrs U claimed that the banking of the soil against an inadequate wall led to the collapse, that Mr and Mrs T have no right of support and that rather Mrs U should be looking to them to remove the terraces and make good the retaining wall etc.

The summary of this is as follows:

- Date of Report – March 2015
- Land collapse – January 2018
- Letter before Action sent by solicitors appointed by Mr and Mrs T was sent to Mrs U of 'Seaview Villa' in May 2018
- Email from Solicitors acting for Mrs U was sent to the solicitors acting for Mr and Mrs T in July 2018
- Letter of claim from solicitor acting for Mr and Mrs T received by the surveyor in August 2018

What we now know about the wall between The Stables and Seaview Villa

It turned out that there was an "upper" and "lower" wall (it is assumed that the upper wall marked the actual boundary between the properties) which were separated in elevation by a narrow tract of land. Apart from the very southern tip of this tract of land, none of this was visible from the entrance to Seaview Villa and could only be seen within its grounds.

The narrow tract of land varied in width and slope along the extent of the boundary. At the southern limit, the tract is 1.6m wide and virtually flat. It gradually increases to 2.6m wide towards the northern end of the boundary and the slope is as much as 60 degrees.

The lower wall was also a retaining wall and enabled a flat driveway to cut through to Seaview Villa.

Over the years, several trees had grown along this tract of land and at some point been cut down. There were several stumps, and correspondence seen by the surveyor's solicitor talks of this work being commissioned by Mrs U of Seaview Villa.

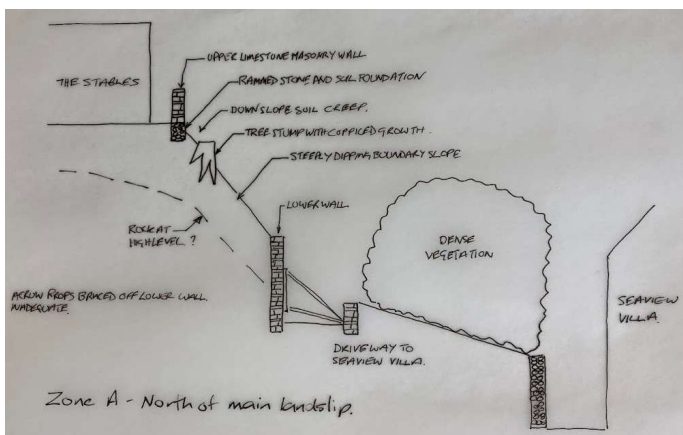
An engineer appointed as part of the litigation process

estimated that the upper wall had been modified within the previous 50 years and that the land on which Seaview Villa was constructed was itself also modified, presumably in the mid-1800s when Seaview Villa was built.

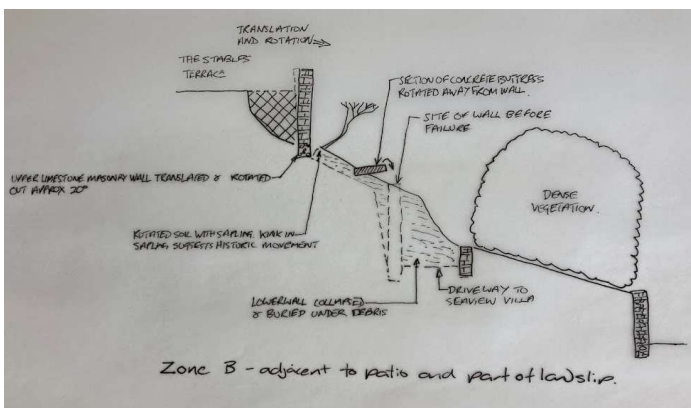
The landslip

For the purposes of discussing the landslip, the boundary between the two properties was divided into 4 zones:

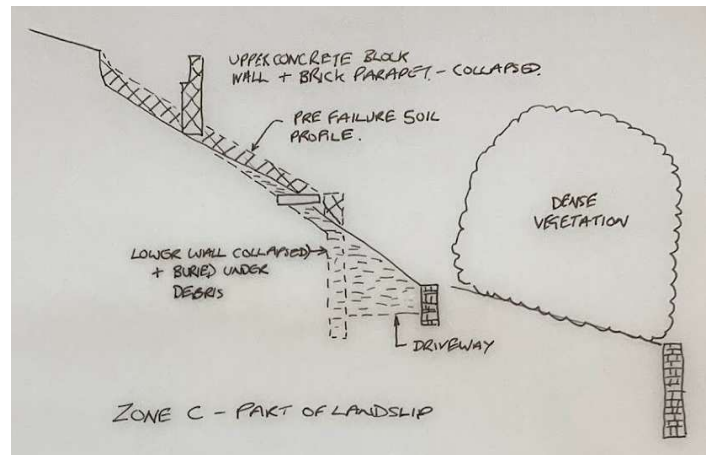
- Zone A – this was north of the main landslip – the upper wall is a limestone rubble wall and leans towards The Stables and has in the past been buttressed. The surveyor could see and noted this in his report.



- Zone B – 5-6m section which formed part of the landslip and borders the patio of The Stables. The upper wall here is also a limestone rubble wall covered with thick vegetation and with planters in front. The surveyor could not see this wall clearly.



- Zone C – 7m section which formed part of the landslip. The upper wall here was a concrete block wall, built on top of the limestone rubble wall of Zones A and B, approximately 15 blocks (2.3m) high at the southern end of Zone C and extending to appx 2.9m high at the northern end of Zone C, having been heightened further by the use of good quality red bricks. There was considerable ivy growth over the wall in this Zone. (For clarity, the height is from within the grounds of Seaview Villa, not The Stables). The mature flower beds in front of this section of the wall meant the surveyor could not see this clearly.



- Zone D – south of the landslip. Within the grounds of The Stables after the landslip, there was evidence of repairs.

Along all zones, the “lower” limestone rubble wall runs along the side of the driveway and within the grounds of Seaview Villa. As mentioned above, this lower wall also acts as a retaining wall supporting the tract of land existing between it and the upper wall. It varied in height from 2.1m to the south of the landslip to 3.6m.

Although not visible by the surveyor from within the grounds of The Stables or from Seaview Road, parts of this lower wall were supported by acro props at the time of the landslip. It is not known how long those props had been in situ, but photographs suggest that they had been there for some time.

This engineer noted in his report that “given the extent of the vegetation present in the pre-purchase photographs it is unlikely that the upper wall of the slope beyond would have been sufficiently accessible or visible to make an informed decision”. They also noted evidence of the removal of trees from the tract of land and evidence of some previous movement.

The basis of the claim against the surveyor

The claim stated that the surveyor was negligent for the following reasons:

- That he should have notified the purchasers that a home condition survey of this type was inadequate in scope to assess a period property of this nature, particularly one standing as it does on an elevated site adjacent to a significant drop to the east. (This related to the then RICS guidance on when a Building Survey should be offered.)
- That the surveyor, having accepted instructions, should have commented upon and noted the condition of all retaining walls.
- That the surveyor should have followed the trail of evidence which ought to have put him on notice that the eastern boundary wall had suffered movement in past years and noted the substantial drop in ground level.
- That the surveyor should have identified any risks to

the building or boundary features which could affect the value of the property (even though this was only a condition report and not a valuation and Mr and Mrs T were clear on that point).

- That the surveyor should have advised in detail in respect of the inherent risks involved with period stone or block walls of this nature, which are not designed to act as retaining walls, particularly so given the size of the wall in question, its proximity to the dwelling and the extent of the drop to the land below.
- To advise in relation to the risks posed by the large number of large trees surrounding the building, and those that have fallen, which are in sufficient proximity to the building and boundary walls so as to present a risk to the building or structures upon the land.
- To make clear the limitations of inspection in respect of the external parts to include commentary with regard to all walls which form the boundary with adjacent properties, and which are not fully visible from any public areas or from within the grounds of the property.
- To recommend further investigations be carried out in respect of boundary walls in the “Further Investigations” section of the survey at page 9 if you did not consider yourself sufficiently equipped to provide commentary in respect of the same.
- To complete the “Legal Issue” section at page 10 in respect of boundaries - this had been left blank.
- In the “Grounds” section of the survey, to advise on any limitations of inspection and to recommend any “follow on inspection” necessary in respect of the retaining wall; for instance, the appointment of a structural engineer.
- To provide advice in regard to ongoing repairs and maintenance of period retaining walls, the relative importance of the buttresses already installed, the risk of large adjacent trees and root systems and the risk associated with period retaining walls on steeply sloping sites.

What the surveyor reported

The surveyor described the walls that he could see.

Paved Areas:

There are paved areas and paths to the front consisting of block pavers that are in good condition. The parking area to the front of the garage is concrete slabs some of which are cracked. The rest of the drive is tarmac and in fair condition. The steps leading down to the terraced garden are a mix of stone and paving slabs – easy to walk on and in good condition.

Boundary and retaining walls:

The stone boundary wall to the road is leaning outwards. It has reinforcing metalwork strapping the wall. I was advised that the council are responsible for the wall and recently excavated out the foot of the wall for a

considerable length of the road and poured reinforced concrete. The upper end of the east boundary is also a leaning stone wall which has been buttressed. The rest of the east and west boundaries narrow down to form a triangle with post and wire netting and hedging. All are stock proof.

Grounds:

The grounds at the top of the garden are level with a large paved patio area with a pergola supporting a wisteria. Some of the timbers of the pergola have rot but the timbers are largely supported on brick piers and braced with metalwork. Beyond the paving is the lawn then the garden slopes downhill with some terracing by some low walls and shrubs.

Refuting the complaint:

The first issue to address was if a level 2 inspection and report was appropriate for the subject property and if a building survey had been delivered then the risks would have been reported differently. (It is worth noting that one of the experts appointed confirmed that they thought a level 2 inspection was appropriate.)

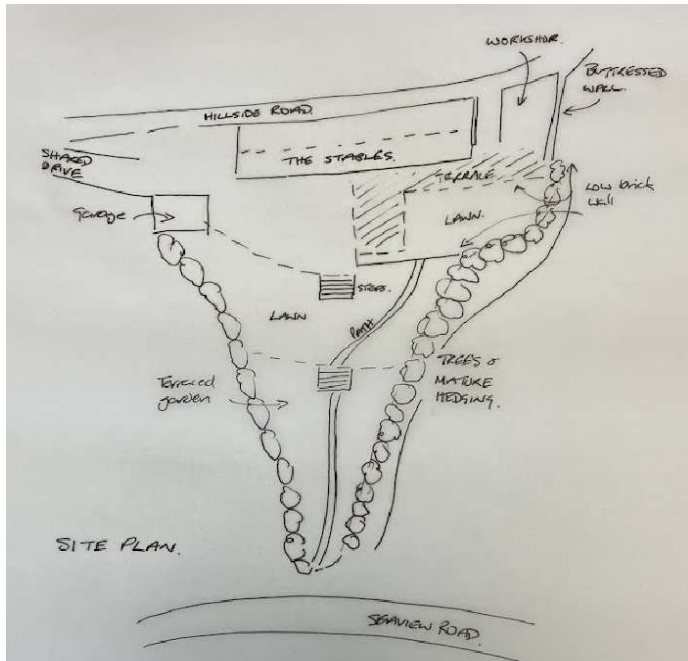
RICS standard terms for building surveys at the time stated :

“Outside the property - The surveyor inspects the condition of boundary walls, fences, permanent outbuildings and areas in common (shared) use. To inspect these areas, the surveyor walks around the grounds and any neighbouring public property where access can be obtained. Where there are restrictions to access (e.g. creeper plant, these are reported), and advice is given on any potential underlying risks that may require further investigation. “

It was argued that even if a building survey had been commissioned the surveyor would not have reported any differently as there was no way the surveyor could see the drop over the boundary wall without trespassing on the neighbouring property (indeed the engineer made it clear in his report that the detail of the two walls and the tract of land within the grounds of Seaview Villa were not visible.) Also, it is not possible to determine a difference in ground level from Google Earth. There was nothing to suggest other than a continuous slope.

In addition, there was nothing on the day of inspection to suggest the ground was unstable in any way.

The next point addressed was if the surveyor should have commented more on the condition of the retaining walls. But (and again the engineer’s report confirmed this) it was not possible from within the curtilage of The Stables to even determine that the other walls were retaining walls along the boundary with Seaview Villa, never mind the construction, appropriate design and condition of them. The site notes included an excellent site plan that clearly shows mature trees along the boundaries on either side. (see plan 2).



Turning to the trees and vegetation at the boundary, should the surveyor have given more advice “in relation to the risks posed by the large number of large trees surrounding the building, and those that have fallen, which are in sufficient proximity to the building and boundary walls so as to present a risk to the building or structures upon the land”?

Again, the site notes record the mature gardens, and we know from the later engineer’s report that the owner of Seaview Villa had felled some trees along the ‘tract of land’ between the two retaining walls within the curtilage of Seaview Villa. While large trees overhanging the property could have posed a risk to the structure there were no such trees present at the date of inspection and no evidence of felled trees from the garden of The Stables.

Finally, should the surveyor have made the limitations of inspection clearer in the report?

In retrospect, this is possibly a fair question. The surveyor could have made reference to the shrubs at the border limiting the inspection, although there was nothing at the date of the inspection to give cause for concern, which is also why the surveyor did not recommend further investigation relating to the boundaries – there was nothing on site to indicate a potential problem at the date of the inspection. The terms of the report itself make it clear that the surveyor will not trespass on property when carrying out the inspection.

In essence, the argument was that since the surveyor could not see the retaining wall (or even identify it as such from within the gardens of The Stables – assuming just a sloping site down to Seaview Villa) he did not follow the trail (there was none to follow), report on the boundaries in the legal section (there was nothing to suggest retaining walls or any potential for who was liable to who) and report on maintaining historic retaining walls (he did not know they were retaining.)

What happened next?

Communication with the claimants went quiet for almost 18 months, but in early 2021 the solicitors acting for Mr and Mrs T again made contact indicating that they wished to proceed with the claim against S, the surveyor.

The claimants would have had six years in which to issue any claim. The clock started ticking at the date when the ‘cause of the action’ started – the date of the survey in March 2015. This meant that the limitation would expire in March 2021.

Because time was getting tight the claimants suggested the parties enter into a Standstill Agreement to suspend the limitation date to give the parties time to enter into mediation rather than going straight to issuing proceedings. The claimants were also trying to persuade Mrs U to take part in a mediation, therefore it made sense to agree to the standstill.

It is worth noting several relevant points at this stage:

- The period of quiet was likely due to the claimants getting detailed advice on the diminution in value of The Stables because of the landslip. However, it might also have been down to the fact that the claimants refocused their attention on Mrs U of Seaview Villa and only when that was obviously not going to get anywhere did they decide to pursue the claim against the surveyor, S. This is only conjecture but in the light of the ‘messy nature’ of the whole situation a feasible suggestion.
- Although the cost of repairing the retaining wall was estimated at over £300,000, the way the claim against the surveyor would proceed was based on the diminution of value of the property, even though the original report did not include any comment on valuation.
- Despite agreeing to mediation, it was always the surveyor’s position that the failure by Mrs U to maintain the walls and the tract of land adequately at Seaview Villa lead to their ultimate failure.
- Although the expert instructed on the surveyor’s side did not consider the surveyor was negligent, the claimants’ expert believed the surveyor did not meet the standards expected of a reasonably competent surveyor when advising on the Grounds and Boundaries section of the report.
- The surveyor’s insurers had indicated that they would be open to mediation – generally insurers are much happier to negotiate a claim rather than going to law due to costs and uncertainties involved with this, particularly when the expert’s evidence contradict each other; a pragmatic approach is usually taken.

Mr and Mrs T and the surveyor did go to mediation (unfortunately, despite efforts on the claimants’ side, Mrs U did not attend the mediation) and a settlement between the surveyor and claimants was negotiated. The figure agreed, though substantial, was below the full quotes for repair and less than the full diminution in value.

Conclusion

There is much about this case that suggests 'a perfect storm'. We do not know and can only speculate that:

- Mr and Mrs T were not fully insured via their building policy for landslip and retaining walls.
- Mrs U next door was probably in a similar position – though on the face of it she was an 'affluent' individual she was possibly not 'cash rich'.
- The ownership and alterations to the boundary walls were lost in history.

While pursuing the surveyor might seem unfair and his defence sound, in practice there was little Mr and Mrs T could do.

On reflection, the surveyor could have protected themselves further if:

- They had recommended the conveyancer check the ownership of the boundaries or if any modifications had ever been undertaken to the boundary walls.
- They had treated the obvious sloping site as a 'risk' (even though they could not see the problem walls) and advised the client appropriately, including making sure their insurance covered land slip and

retaining walls.

- They had considered the geography of the area more generally, the evidently 'made up' terracing of the local roads, the clear drop in land between The Stables and Seaview Villa.
- They had consideration to the potential impact on a sloping site and made up ground with potentially more extreme weather events triggered by the changing climate.



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