



OUTER HOUSE, COURT OF SESSION

[2019] CSOH 88

P571/18

OPINION OF LADY CARMICHAEL

In the petition of

MCCALLS LIMITED

Petitioners

for Judicial Review

of a decision of Aberdeen City Council as roads authority dated 6 March 2018 in respect
of Bridge Street, Aberdeen

Petitioners: Cormack QC (sol adv); Pinsent Masons LLP

Respondents: Burnett; Morton Fraser LLP

12 November 2019

Introduction

[1] The petitioners are the heritable proprietors of parts of the premises formed by numbers 11, 11A, 15, 17 and 19 Bridge Street and 2-4 and 6 Windmill Brae, Aberdeen. The other parts of those premises are owned by Iain and Kathleen Hawthorne who are described as the petitioners' principals. The petitioners operate a business from those premises. Bridge Street runs along a bridge which is thought to have been constructed originally by a railway company to provide access to the railway station. The lower parts of the premises are located within the arches of that bridge. Neither the petitioners nor the respondents

have been able to identify the owner of the bridge. The respondents are the roads authority with responsibility for Bridge Street.

[2] There is a long history of water ingress into the lower parts of the premises. It has been the subject of correspondence between the parties over many years. The petitioners aver that in 2005 a membrane was installed under the surface of the road; that that appeared to remedy the water ingress, but that they believe the effectiveness of the measure diminished over the years as the membrane came to be penetrated for works to utilities under the road surface.

[3] The petitioners maintain that the water ingress results from failures on the part of the respondents to comply with their duty under section 1 of the Roads (Scotland) Act 1984 ("the 1984 Act"). Section 1(1) provides:

"Subject to subsection (10) below, a local roads authority shall manage and maintain all such roads in their area as are for the time being entered in a list (in this Act referred to as their 'list of public roads') prepared and kept by them under this section; and for the purposes of such management and maintenance (and without prejudice to this subsection's generality) they shall, subject to the provisions of this Act, have power to reconstruct, alter, widen, improve or renew any such road or to determine the means by which the public right of passage over it, or over any part of it, may be exercised."

[4] "Road" includes any bridge over which the road passes: section 151.

[5] By letter of 30 August 2017 the petitioners' agents wrote to the respondents in the following terms:

"... we formally call upon you to implement your duty of maintenance under section 1 of the Roads (Scotland) Act 1984 by installing additional gulley provision as recommended by Robertson Slater, by cleaning and keeping clean and otherwise well-maintained all gulleys serving the bridge, whether new or existing, and by installing a waterproof membrane also as recommended by Robertson Slater. Should you fail to do so, you are hereby placed on notice that our client intends to apply to the Court of Session for judicial review to compel you."

[6] The respondents replied by letter of 6 March 2018. That letter contains the decision complained of in the present petition. In summary, the position of the respondents as expressed in that letter is that their statutory duty extends only to what is required to keep the road in a safe state for use as a road, and that none of the works called for by the petitioners was necessary for that purpose as at 6 March 2018. The letter contains the following passages:

“Neither the road nor the bridge are in such a state of disrepair that would cause a safety issue to road users. Against that background, the Council has fulfilled its obligations as a roads authority.

...

The purpose of Roads Authority inspections is to ensure the safety of road users and not to determine the suitability of the arches for use as business premises.

The most recent inspection took place on 3 May 2016. ... Prior to the 2016 inspection our inspector spoke with Mr Hawthorne, of your client, at length regarding water penetration.

...

The 2016 inspection report concluded, on the basis of what the inspection disclosed, that the bridge was ‘in relatively good condition with no signs of structural movement or distress’. The inspector noted ‘evidence of high water ingress through the arch’ and reported that ‘this should be monitored at each inspection to assess the effect on the stability of the arch.’ The inspector did not consider that the water ingress through arch [sic] rendered the bridge or the road unsafe.

...

If the bridge became structurally unsound (for example liable a weight restriction) then the Council would be obliged to take action. This is because the primary concern of the 84 Act is that structures supporting adopted roads are maintained in adequate condition to prevent the safety of adopted roads being compromised. The present water ingress is not detrimental to the structure of the bridge and by extension does not cause a safety issue in respect of either the bridge or the road.

...

Full responsibility for maintenance of the arches rests with the owners of the arches. It is the position of the Council that there is no obligation on the Roads Authority to

keep the arches watertight, or in a condition fit for occupation. That is a duty that falls on the owner of the arches.

As noted in previous correspondence, the percolation of water through the ground is a natural phenomenon which the lower proprietor must accept. The Council, as Roads Authority, would only intervene where the state of the bridge presents a risk to members of the public using the road.

...

In the circumstances I consider that the Council has discharged its responsibility as a Roads Authority under the 84 Act"

[7] In the same letter, the respondents referred to the outcome of an inspection in 2016, which was to the effect that the bridge was in relatively good condition, with no signs of structural movement or distress. The inspector had noted evidence of high water ingress through the arch, and had reported that it should be monitored at each inspection to assess the effect on the stability of the arch. The inspector had not considered that the water ingress rendered the bridge unsafe, and no remedial work had been considered necessary at the time. The respondents had responded in the letter to a report by the Robertson Slater Partnership ("RSP") produced by the petitioners. The respondents indicated that they regarded the report as inconclusive as to the cause of the water ingress. They commented that the recommendation that additional gulleys be installed was flawed, because it was based on the Design Manual for Roads and Bridges ("DMRB"), which applied to trunk roads and motorways. The letter continued:

"Even if the DMRB (or any other modern design standard) did apply to the bridge, which it does not, the Council would not be obliged to bring the bridge up to these modern standards."

Summary of submissions

Petitioners

[8] The petitioners characterised the letter as a decision by the respondents to refuse to do the work that the petitioners say requires to be done in the exercise of the respondents' statutory duty. They contended that the decision was vitiated by error as to the proper construction of section 1 of the 1984 Act. The respondents erred in regarding the scope of the duty referred to in that provision as limited to ensuring the safety of road users. While keeping in good order encompassed the safety of road users, it also encompassed effects of the condition of the road on premises in the vicinity of the road. The roads authority did not merely have a power to act in the way that the petitioners had asked them to, they had a duty to do so by reason of their duty to manage and maintain the road.

[9] The petitioners sought a number of declarators and other orders, including one for the production and reduction of the decision dated 6 March 2018. Mr Cormack, however, recognised that he could not succeed to any extent unless he were successful in relation to the proposition reflected in the declarator sought in statement 5.1 of the petition, which is:

“that in making the decision complained of, dated 5 March 2018, the respondent erred in law and misconstrued the duty imposed by section 1(1) of the [1984] Act, and thereby failed to take into account the actual or potential impact of the condition of the road on the premises and on the petitioner as part owner and as occupier of the premises as the respondent was required to do.”

[10] The declarators sought at statements 5.2 and 5.3 represent further articulations of the arguments as to the respondents' misconstruction of section 1 of the 1984 Act. In statement 5.4 the petitioners sought declarator that the respondents had not been entitled to disregard the evidence tendered by the petitioners (the RSP report).

[11] The petitioners did not insist on the declarator sought at statement 5.5, which was that in making the decision the respondents were, on the material before them, not entitled

to conclude that the water ingress was not detrimental to the structure of the bridge. The petitioners did, however, seek a declarator that an inspection carried out on 11 May 2018 was not conducted in accordance with the respondents' statutory duty because it was not carried out on the basis of a proper understanding of the scope of the duty to manage and maintain the road. They sought also an order for specific implement requiring the respondent to carry out a further inspection of the bridge.

[12] In submitting that the respondents erred in law by construing the duty imposed by that provision - one to "manage and maintain" too narrowly, the petitioners sought support in other provisions in the statute, sections 31, 66, 79 and 151. They also sought support in the reasoning in *Transco plc v Glasgow City Council* 2005 SLT 958. The respondents had referred to *Transco* in the decision, but had misunderstood it, and wrongly represented that it related to the safe condition of a bridge.

[13] The petitioners framed the issues as being whether, as a matter of statutory interpretation, the duty imposed by section 1(1) of the 1984 Act requires the respondent to have regard to the actual or potential impact of the condition of a road on premises in the vicinity of the road and on the owners and occupiers of such premises as a relevant matter and whether, in a situation which concerns the vaults and cellars under a road, the actual or potential impact of the condition of the road upon the condition of the vaults and cellars is a relevant matter to which the respondent must have regard in the implement of that duty.

[14] The statutory provisions on which the petitioners relied were, so far as material, the following.

"31 (1) The roads authority may, for the purpose of draining a public road or proposed public road or of otherwise preventing surface water from flowing onto it—

- (a) construct or lay, in it or in land adjoining or lying near to it, such drains as they consider necessary;
- (b) erect and maintain barriers in it or in such land as aforesaid to divert surface water into or through any existing drain;
- (c) scour, cleanse and keep open all drains in it or in such land as aforesaid;
- (d) drain surface water from it into any inland waters (whether natural or artificial) or tidal waters.

“66 (1) As regards any road, the following things shall be kept in good condition and repair by their owners or occupiers or by occupiers of the premises to which the things belong—

- (a) every vault, arch, cellar and tunnel under the road;
- (b) every opening into any such vault, arch, cellar or tunnel from the surface of the road;
- (c) every door or cover (whether fixed or removable) to any such opening;
- (d) every pavement light in the surface of the road; and
- (e) every wall or other structure supporting any such vault, arch, cellar, tunnel, door or cover.

(2) Where an owner or occupier is in contravention of subsection (1) above the roads authority may by notice to him require him within 28 days of the date of service of the notice to replace, repair or put into good condition the thing in respect of which the contravention arises.

(3) A person upon whom a notice has been served under subsection (2) above may, within the 28 days mentioned in that subsection, refer the matter by summary application to the sheriff; and the decision of the sheriff on the matter shall be final.

(4) A local roads authority may, if they think fit, pay the whole or any part of any expenditure incurred by a person in complying with subsection (1) or (2) above.

“79 (1) Without prejudice to section 14(1) of this Act, the roads authority may agree with the owner of a bridge—

(a) for the payment by the authority of contributions towards the cost of the maintenance, improvement or reconstruction of the bridge, or the road carried thereby, or the approaches thereto;

(b) for the transfer to the authority of the responsibility for the maintenance and improvement of the road carried by the bridge or the approaches thereto;

(c) that the bridge, or the road carried thereby, or the approaches to the bridge, shall heritably vest in the authority;

and it shall be lawful for the owner of the bridge, notwithstanding that the bridge was constructed under statutory powers, to enter into and carry into effect any such agreement.

“151(1) In this Act, unless the context otherwise requires—

...

“improvement”, in relation to a road, means the doing of anything for the benefit of road users, or any class of road users, beyond that which is essential to placing the road in a proper state of repair, and includes the improvement of the amenity —

(a) of the road; and

(b) of land abutting on, or adjacent to, the road;”

[15] The petitioners submitted that management and maintenance of a road “encompassed” improvement. That construction was fortified by reference to other provisions in the statute. Section 31 makes provision as to certain things that the roads authority may do for the purpose of draining a public road. The petitioners submitted that the reference to laying or constructing drains in land near to a road supported their construction of section 1. In relation to section 151, they submitted that the phrase “beyond that which is essential to placing the road in a proper state of repair” and the reference to the amenity of land abutting on, or adjacent to, the road supported their construction of the duty in section 1(1). They submitted that the reference to the improvement of the amenity of land abutting on or adjacent to the road was not qualified by any requirement that it be done for the benefit of road users or any class of road user. The powers conferred on the roads authority in relation to vaults, arches, cellars, and tunnels to require their owners to keep them in good condition and to pay the expenses of the owner in complying again supported the contention that the duty of the respondents to manage and maintain should be given an expansive interpretation. The powers of the authority to pay for the maintenance, improvement or reconstruction of a bridge, and, further to take responsibility for these matters, or to agree that a bridge and associated structures should vest heritably in the authority should be regarded in a similar light.

[16] Mr Cormack sought to derive support from some passages in the Opinion of Lord Hodge in *Transco plc v Glasgow City Council*. The pursuers in that case had statutory duties in relation to the provision and maintenance of gas pipelines. A bridge carried two pipelines. There had been concerns about the condition of the bridge for a number of years,

and the pursuers carried out works on two occasions to mitigate a risk to public safety.

They thereafter sought to recover the costs, which they characterised as having unjustifiably enriched the defenders, the roads authority. Recompense was a subsidiary remedy, and the defenders argued that it would have been open to the pursuers to bring a petition for judicial review requiring the authority to carry out its statutory duties as roads authority.

They had not done so, and the action for recompense failed. He submitted that the decision in *Transco* supported the proposition that the duties of a roads authority went beyond securing the safety of the public. It did so because Lord Hodge must have envisaged a situation in which the roads authority could in principle have had responsibility for the works carried out by the pursuer, and which were carried out to mitigate risk to the public in general and in relation to the security of the gas pipelines, rather than to secure the safety of road users.

[17] In relation to a submission by the respondents about the decision in *Macdonald v Aberdeenshire Council* 2014 SC 114, Mr Cormack responded that the petitioners were not asserting that there was a duty to maintain the road in a watertight state for the benefit of the occupiers of the vaults, but merely that their interests ought to be taken into account. These were public law proceedings in which the petitioners sought to secure the performance of a statutory obligation, and should be distinguished from attempts in cases such as *Syme v Scottish Borders Council* 2003 SLT 601 to construct a right to damages in private law from the existence of a statutory duty: *Syme*, paragraphs 6, 16; *AXA General Insurance Company Ltd v Lord Advocate* 2012 SC (UKSC) 122, paragraph 162.

Respondents

[18] Mr Burnett submitted that because a roads authority had a power to undertake repairs to a road, it did not imply that it had a duty to do so. Section 1 of the 1984 Act did not impose an obligation on the roads authority to a person using the road, and liability to a user of the road must be found in the general law of negligence: *Macdonald*, paragraph 55. Similarly, any duty to a neighbouring proprietor must lie in the law of nuisance or negligence.

[19] Section 66 of the 1984 Act imposed the duty to keep in good repair arches, vaults, cellars and tunnels under a road on the owners and occupiers of those structures. If they did not do so the roads authority could do the work and recover the cost from the owner: *Perth and Kinross Council v Scott* 2005 SLT 89; section 141 of the 1984 Act. The discretionary power in section 66(4) to pay for the whole or part of expenditure undertaken by an owner or occupier might be used where it was in the interests of the condition of the road and the road users that that be done. It did not imply a duty to maintain the road for the benefit of the occupier of a vault below the road.

[20] The respondents had not made any error in construing section 1 of the 1984 Act. The statutory duty to maintain the road was concerned with the condition of the road, and not with the condition of the premises or the vault beneath. In relation to *Transco*, although it was not explicit in the judgement, it fell to be inferred that if the bridge was unsound, its condition was unsafe for users of a road. The hazard in the present case was not a hazard to road users.

[21] The respondents had been entitled to take the approach that they had to the RSP report and the DMRB. They were not required to apply modern standards retrospectively to the structure: *Christopher Edwards v London Borough of Sutton* [2016] EWCA Civ 1005.

Decision - statutory interpretation

[22] As Mr Cormack correctly recognised, he could not succeed unless he demonstrated that the respondents had erred in their construction of section 1 of the 1984 Act and had thereby made an error as to the scope of their statutory duty that was material to their rejection of the call placed on them by the petitioners in the letter of 30 August 2017. For the reasons set out below, I concluded that he had not demonstrated any such error.

[23] It is important to recognise that the reference to “improve” in section 1, with “improvement” as defined in section 151, is in providing one of a series of powers to roads authorities to enable them to comply with the duty to manage and maintain. It empowers the authority to do more than may be strictly required to manage and maintain the road. It does not follow that the content of the duty to manage and maintain is to be ascertained by reference to that which the council is empowered to do in order to comply with the duty.

[24] Contrary to the petitioners’ submission, the definition of improvement tends to support the respondents’ position. The reference to what “may be strictly required to keep the road in a proper state of repair” suggests a recognition on the part of the legislature that, absent the provision in question, it might be thought that the roads authority only had power to do what was required in order to fulfil the duty to manage and maintain. It suggests that what is required in order to fulfil the duty is to keep the road in a proper state of repair. It is also unhelpful to the petitioners insofar as it refers to the benefit of road users. That does not support the existence of a duty to do something for the benefit of someone not a road user, such as the proprietor of property adjacent to the road.

[25] The petitioners sought to suggest that the phrase “and includes the improvement of the amenity of the road and of land abutting on or adjacent to the road” could be severed

entirely from the reference to doing anything for the benefit of road users. They submitted that it was difficult to envisage in what circumstances a roads authority might improve the amenity of land abutting on or adjacent to a road for the benefit of road users, where what was done went beyond what was necessary for putting the road into a proper state of repair. Unless the reference to the “improvement of the amenity of the road ... etc” were severed from the reference to the benefit to road users, it would have no content.

[26] I reject that argument. The use of the word “includes” indicates clearly that something which improves the amenity of land abutting on or adjacent to the road must also be something which is for the benefit of road users or any class of road users. The plain language of the provision has that effect. Further, it is possible to envisage works to neighbouring land carried out for the benefit of road users, which can be regarded as improving the amenity of that land as distinct from the amenity of the road itself.

[27] For similar reasons the terms of section 31 do not assist the petitioners. The provision here makes it clear that the roads authority has power to carry out works other than on or to the road itself. It does not follow that the duty to manage and maintain roads involves a duty to do anything that is not required to keep the road itself in a proper state of repair.

[28] Section 66 in the first instance requires the owners and occupiers of vaults, arches, cellars and tunnels under the road to keep them in good condition and repair. It also empowers the roads authority by notice to require the owner to replace, repair or put into good condition the relevant structure, and, if they think fit to pay the whole or part of any expenditure incurred by a person in complying with a requirement of this sort. As the respondents pointed out in their submissions, a roads authority may itself carry out work, and then recover the costs from the owners. Section 66 is, again, an example of a provision

seeking to provide a range of powers to enable the roads authority to manage and maintain roads. It does not assist in identifying the scope of the duty to manage and maintain roads. It specifically places the duty to keep the structures in good repair on the owners and occupiers. The respondents cannot be criticised for saying, as they did in the letter of 6 March 2018, that responsibility for maintenance of the arches rested with the owners of the arches. That statement reflects the content of the statute.

[29] Section 79 makes provision specifically in relation to bridges. It is similar to section 66 in that it empowers the roads authority to make financial outlays in respect of structures which they do not own. Vaults, arches, cellars, tunnels and bridges under a road may be necessary for the support of a road. If their condition deteriorated, that might compromise the condition of the road. The roads authority is given the powers provided in sections 66 and 79 to ensure that if another party owns structures of these types, steps can be taken to require him to keep them in good condition. The authority can provide funds to secure that they are kept in good condition. A lack of funds on the part of the proprietor of the underlying structure will not, therefore, be a bar to the authority's keeping the road in a proper state of repair. All of these powers are with a view to ensuring that the roads authority is in a position to secure that the road itself is kept in a proper state of repair. They are not there for the benefit of the proprietors of the structures in question. That they have been provided does not support the proposition that the local authority must exercise them for the benefit of the proprietors where there is no need to do so to keep the road in a proper state of repair for use as a road.

[30] Mr Cormack sought to derive support from some passages in the Opinion of Lord Hodge in *Transco plc v Glasgow City Council*. The pursuers in that case had statutory duties in relation to the provision and maintenance of gas pipelines. A bridge carried two

pipelines. There had been concerns about the condition of the bridge for a number of years, and the pursuers carried out works on two occasions to mitigate a risk to public safety.

They thereafter sought to recover the costs, which they characterised as having unjustifiably enriched the defenders. Recompense is a subsidiary remedy, and the defenders argued that it would have been open to the pursuers to bring a petition for judicial review requiring the authority to carry out its statutory duties as roads authority. They had not done so, and the action for recompense failed.

[31] As I have already mentioned, Mr Cormack submitted that the decision in *Transco* supported the proposition that the duties of a roads authority went beyond securing the safety of the public. The reasoning in *Transco* does not support that contention. Lord Hodge referred at paragraph 16 to the Opinion of Lord Fraser in *Varney (Scotland) Ltd v Lanark Town Council* 1974 SC 245 at 259, which is in the following terms:

“The pursuers had a legal remedy by raising an action of declarator, or with other suitable conclusions, before carrying out the work. If they now find themselves in the position of being unable to raise an action on a strict legal basis, that position is one of their own making, because they failed to raise an action when they could have done so. If the pursuers were entitled to succeed in the present action, it would open the door very wide for any party to short-cut proper procedure, by undertaking a duty which rested upon a local authority and then turning round and claiming reimbursement from the local authority. In principle, of course, the possibility would not stop at local authorities but could extend to other persons. That would introduce quite novel and, in my opinion, undesirable possibilities.”

The concern in *Transco* was that a party should not be able to incur expense at his own hand and then seek to recover it from a public authority without having first tried to compel the public authority to do the work. One of the reasons that it was important that steps should first be taken to compel the public authority was to provide the authority with an opportunity to demonstrate that it did not have any duty to do the work. In *Transco*, for example, the authority could have responded by removing the bridge from the list of roads:

paragraph 18. Lord Hodge referred at paragraph 17 to the Opinion of Lord Johnston in *Commissioners of Northern Lighthouses v Edmonston* (1908) 16 SLT 439. A party could not intervene at his own hand to do work and then recover the cost from a defender, depriving the court and the defender of the opportunity of ascertaining whether the work fell within the scope of the defender's obligation. Lord Hodge continued:

“Similar considerations may apply in this case where the works carried out by the pursuers to protect their gas pipelines may not have been co-extensive with what the defenders would have required to undertake to protect the bridge, if they had wished to maintain it as a public road.”

[32] While the pursuers in *Transco* failed because they had not brought judicial review proceedings seeking to compel the roads authority to comply with its statutory duties, it does not follow that any such proceedings would have succeeded. It is in part precisely because they might well have failed - because the roads authority might have delisted the bridge, or because the roads authority's statutory duty was not coterminous with the works regarded as necessary by the pursuers - that they should have been brought. There is nothing in the decision in *Transco* that illuminates the question of what does and does not fall within the duty of a roads authority to manage and maintain a road.

[33] The petitioners characterised the principal issue in the case as being whether the duty imposed by section 1(1) of the 1984 Act required the respondent to have regard to the actual or potential impact of the condition of a road on premises in the vicinity of the road and on the owners and occupiers of such premises as a relevant matter. The duty is to manage and maintain the roads. The issue is as to the scope of that duty. The question is whether the authority has a duty to do anything other than that which is necessary to keep the road itself in a proper state of repair so that it may safely be used as a road. In my view, it does not.

[34] The petitioners criticised the respondents for referring to “safety issues” and “risk to members of the public using the road”. That criticism is not well-founded. The purpose of maintaining the road by keeping it in a proper state of repair must be to try to secure that it can be used safely as a road. That is in accordance with the analysis of the public and private law duties of roads authorities by Lord Drummond Young in *Macdonald* at paragraph 65.

[35] Where something requires to be done to keep a road in a proper state of repair so that it may safely be used as a road, there may be a number of different ways in which the duty can be complied with. The authority may often have a number of different means open to it of complying with the duty, and will then have a discretion as to the means it employs. It has the power, for example, when complying with the duty, to go further, and carry out improvements to the road. It may even do so in a way that improves the amenity of land abutting a road. The effect on neighbouring proprietors may in some cases be a relevant consideration as to how a discretion ought to be exercised. Those questions do not arise, however, unless it be established that something requires to be done to put the road in a proper state of repair.

[36] The petitioners did not seek declarator that the respondents had not been entitled to conclude that the present water ingress was not detrimental to the structure of the bridge. They did not seek to establish in these proceedings that particular work needed to be done to put the road, including the structure of the bridge, in a proper state of repair.

[37] It follows that the petitioners have failed to establish any material error of law on the part of the respondents.

RSP report and DMRB

[38] The matter raised in statement 5.4 of the petition, namely the lawfulness of the respondents' approach to the RSP report and the DMRB, does not require to be determined. If the respondents did not err as to the scope of their duty, then the material relating to the cause of the water ingress and what required to be done to remedy it was irrelevant. I therefore record my opinion briefly. The respondents are a roads authority, and must be regarded as having some expertise in the assessment of reports and standards of these kinds. The RSP report relied upon water sample analysis carried out by the James Hutton Institute. The analysis is reproduced as an appendix to the RSP report. The RSP report read:

"From the [James Hutton Institute] report it appears to be fairly clear that surface water from the road is entering the McCall's building. While it is not possible to be conclusive, it seems to me to be probable that this is caused at least in substantial part by the issues I have identified in this report as regards the provision and maintenance of gulleys."

The water sample analysis report itself includes the following passages:

"Analysis of the water cannot conclusively prove whether the water is run off from the road or elsewhere and the only way of doing that would be to use a tracer chemical such as fluorescein. The largest indicator that the water has run off from the road is the sodium chloride content which particularly under the west side of the arch is high.

...

The ingress of water into the property is likely to be from runoff on the road although the analysis cannot conclusively prove that."

Against that background, the respondents were entitled to take the view that the report was inconclusive, and that the author was not able to reach a firm conclusion about the cause of the water ingress.

[39] So far as the DMRB is concerned, the petitioners did not, as I understand it, dispute that it was intended to relate to trunk roads and motorways. The petitioners' complaint was that the respondents should not have rejected it as a potential source of solutions for that

reason, or because following recommendations based on it would involve bringing the bridge up to “modern standards”. That the DMRB provided standards for trunk roads and motorways rather than an urban street is on the face of it a legitimate matter for comment by a roads authority. The respondent was also entitled to take the view that it would not be obliged to bring the bridge up to modern standards. As a matter of principle, that must be correct, unless doing so was the only available means to comply with its statutory duty. I do not consider that the respondents erred in law in their approach to either the RSP report or the DMRB.

Disposal

[40] I therefore refuse the petition.