

OBJECTION TO TREE PRESERVATION ORDER NO. 23/04 LAND OF HILLYFIELD, BARNES LANE, MILFORD-ON-SEA

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- # 1.1 Tree Preservation Order (TPO) No.23/04 was made on 24 March 2004. The TPO plan and first schedule are attached.
- # 1.2 The Order was served following notification on 20 February 2004, from OCA UK Ltd (Arboricultural Consultants) of their intent to fell three Oak trees on or after 5 April. The notification is attached as Appendix 2.
The reason given was that it was the view of chartered engineers that the property had suffered differential movement and damage consistent with clay shrinkage subsidence and the tree removals were proposed as a remedy to the current damage and to address and ensure the long-term stability of the building. No supporting evidence was provided with the notification.
- 1.3 The Council's Tree Officer inspected the site and considered that six trees provided significant public amenity although one, an Oak, had advanced decay in the stem. This view was supported by Milford Parish Council and, accordingly, Tree Preservation Order 23/04 was made to include five trees, these being three Oak, one Ash and one Sycamore. Consent to fell two of the Oaks that had been the subject of the OCA UK Ltd notification was subsequently refused, though no objection was made to the removal of the third with advanced decay.
- # 1.4 On 19 April OCA UK Ltd formally objected to the inclusion of two Oaks, T1 and T5 of the Order. The objection is attached as Appendix 3.
- # 1.5 On 14 June OCA UK Ltd submitted an application under the TPO to fell two Oak trees. The application was supported by the results of site investigations contained in a report by Capita McLarens. Representations were received from Hillyfield Rest Home Ltd who supported the application and from Milford Parish Council, Milford Environment Group and Marion Howard of 2 Dacres Walk, Milford, who opposed the application. The application and representations are attached as Appendix 4.

1.6 The District Council sought the advice of Dr P. G. Biddle O.B.E, an Arboricultural Consultant specialising in tree root damage to buildings. OCA UK Ltd were also invited to submit further evidence to enable a better informed consideration of the impact of the trees but this was not forthcoming. In light of Dr Biddle's subsequent report consent to fell the trees was refused on 6 August 2004. Dr Biddle's report and the refusal of consent are attached as Appendix 5.

2. THE TREES

2.1 The trees in question are two Oaks (T1 and T5 of the TPO). They are mature specimens, being approximately 15-17m in height and with stem diameters of approximately 0.5m.

2.2 The trees appear to be in a sound and healthy condition, with no significant defects.

2.3 Oak T1 of the TPO is adjacent to the south west flank of the building and is a prominent feature of Barnes Lane. Oak T5 is in the north eastern part of the site and is clearly visible from the adjacent footpath and The Orchard, a cul-de-sac to the north.

3. THE OBJECTION

A copy of the objection and associated correspondence is included as Appendix 3.

3.1 OCA UK Ltd's grounds for the objection, contained in their letter of 19 April, are:

- The objection questions whether the assessment of the amenity benefit of the trees was carried out in a structured way, taking into account their visibility and individual and wider impact. The objection also questions the expediency of the Order and whether any analysis of the wider site circumstances had been carried out.

- The objection refers to an appendix containing the results of site research carried out by Capita McLarens in 2002, including positive Oak root identification to support the view that the trees are causing damage to the property. Although the appendix was not attached it was later supplied with a subsequent application to fell the trees (included as appendix 4).

- It is alleged that the Council appear to have wholly failed to consider the impact of the trees in terms of subsidence issues and that a refusal of consent to fell will almost inevitably result in the need for underpinning the property. Costs incurred would be likely to form the basis of a compensation claim against the Council.

- Consideration of objections to the Order by the Local Authority rather than an independent body might be considered incompatible with the Human Rights Act in respect of a person's right to have a free, fair and impartial hearing regarding matters which affect peaceful enjoyment of their land or property.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

4.1 The Council's Tree Officer considers that the amenity value of the trees, and their suitability for inclusion on a TPO, is readily apparent and that a detailed analysis at the time would have been an academic exercise. Nevertheless, the importance of the trees was also recognised by Milford Parish Council who opposed their removal and who represent local residents. Such a consensus of opinion is an entirely appropriate guide to evaluating a subjective issue such as amenity value. The current objection procedure, at which the Appeals Panel will further consider the degree of public benefit provided by the trees, provides further opportunity for analysis of amenity value and consensus of opinion.

4.2 Had the Tree Preservation Order not been served the trees could legitimately have been removed six weeks after OCA UK Ltd's notification to the Council of their intent. No supporting evidence had been given. Serving of the Order was therefore manifestly expedient.

4.3 The report by Capita McLarens contains soil analyses from two trial pits and two bore holes in the same positions. The analyses provided details of soil type, moisture content and plasticity. Roots taken from trial pit 1 were identified as Oak. The Council instructed a desk top assessment of the evidence from Dr Biddle who responded by letter on 20 July (appendix 5). Dr Biddle commented that:

#

- No information had been given about the extent of damage, its history or significance.
- The soil was of low plasticity and the risks low.
- The data provided no evidence of soil desiccation.
- There are surprising discrepancies between the borehole logs and the soil descriptions with no explanation.
- Soil below foundations is described as very soft which may account for damage.
- Foundations at trial hole 1 are 0.9m deep and the root sample taken at 0.8m and thus of no direct relevance. Fibrous roots were observed to 1m and even if these were Oak, root activity over 0.1m would not produce sufficient movement to induce damage.
- No evidence was provided to implicate Oak T1 of the TPO which is some distance from the damaged part of the building and from Trial Pit 1 where root samples were obtained.

- Dr Biddle concluded that the application to fell the trees should be refused but that the applicant be advised that a new application supported by proper evidence would be considered.
- 4.4 The Council treats alleged subsidence damage by protected trees very seriously and gives careful consideration to applications before reaching a decision.
- 4.5 The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol as being in the public interest (the amenity value of the tree) and subject to the conditions provided for by law (Town and Country Planning Act 1990) and by the general principles of international law. In so far as the trees are on or serve private residential property the making or confirmation of a Tree Preservation Order could interfere with the right of a person to respect for his family life and his home but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

5. FINANCIAL IMPLICATIONS

- 5.1 If TPO 23/04 is confirmed, there will be the cost of administering the service of the confirmed TPO and any subsequent tree work applications.
- 5.2 If TPO 23/04 is confirmed, compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonably foreseeable.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 Uncontrolled cutting or the premature removal of this tree at this time and the lack of controls to plant a suitable replacement will be detrimental to the appearance of the area.

7. CRIME AND DISORDER IMPLICATIONS

- 7.1 There are no crime and disorder implications arising from this report.

8. RECOMMENDATION

- 8.1 It is therefore recommended that TPO 23/04 is confirmed without amendment.

Further Information:

John Hearne
Arboriculturist

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 23/04
Associated correspondence

APPENDIX 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Oak	On grass verge adjacent to Barnes Lane and near south west flank of Hillyfield
T2	Ash	On or adjacent to boundary between Hillyfield and the footpath on the eastern side, near Barnes Lane
T3	Sycamore	On or adjacent to boundary between Hillyfield and the footpath on the eastern side, north of T2
T4	Oak	On or adjacent to boundary between Hillyfield and the footpath on the eastern side, north of T3
T5	Oak	On or adjacent to boundary between Hillyfield and the footpath on the eastern side, near north east corner of the property grounds

Trees specified by reference to an area:
(within a dotted black line on the map)

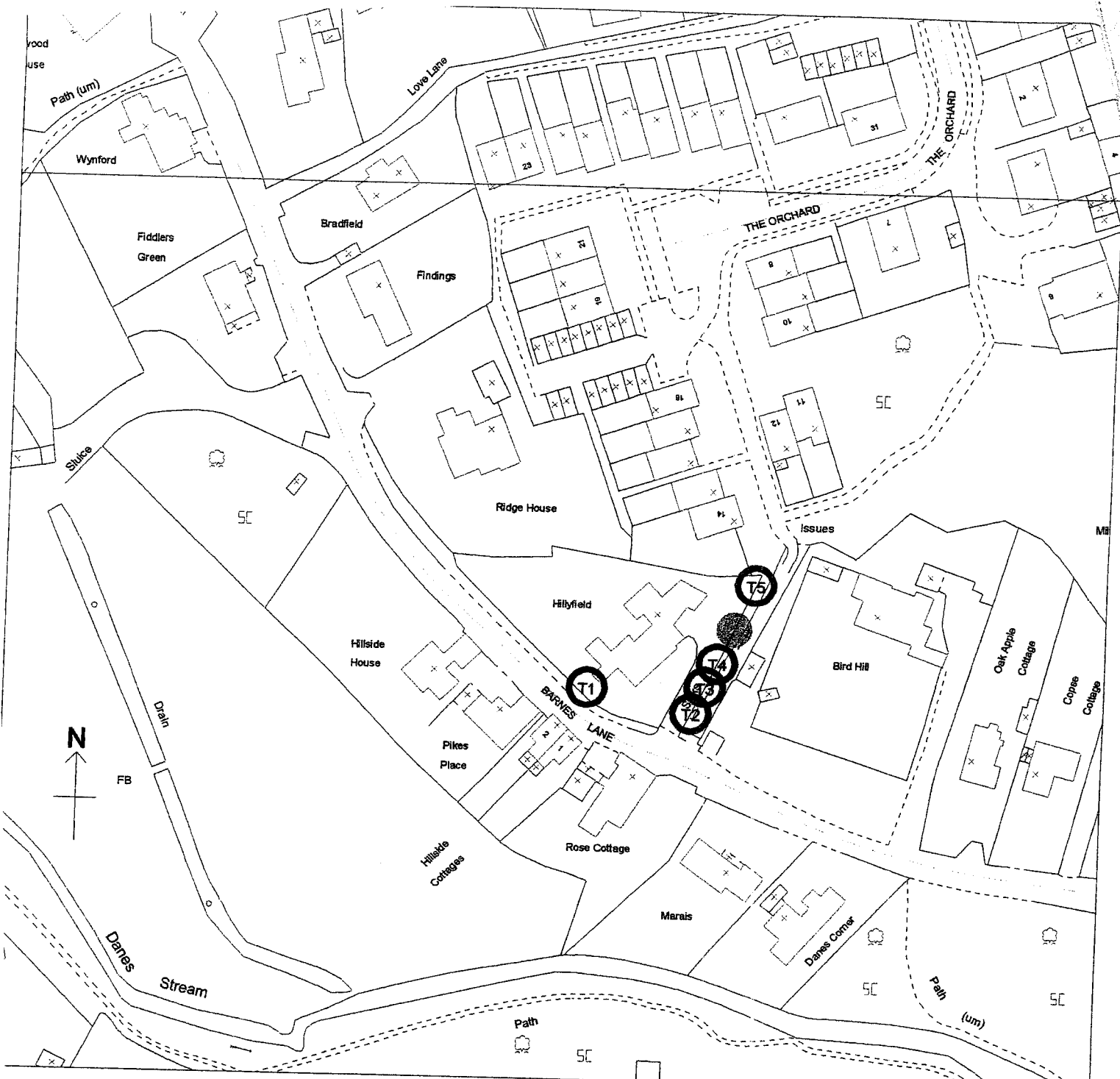
No. on Map	Description	Situation
None		

Groups of Trees
(within a broken black line on the map)

No. on Map	Description	Situation
None		

Woodlands
(within a continuous black line on the map)

No. on Map	Description	Situation
None		



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 23/04
Approximate Scale: 1250
Date Printed: 22nd March 2004

John Ward BSc, MCD, MBA, MRTPI, MIMgt
 Head of Policy, Design & Information
 Community Services Directorate
 Coppletree Court
 Windhurst
 SO43 7PA

- Key**
- Individual Trees Covered by TPO
 - Area of Trees Covered by TPO
 - Groups of Trees Covered by TPO
 - Woodland of Trees Covered by TPO
 - Trees Noted but not Worthy of Preservation

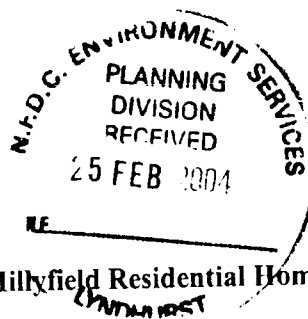


John Ward

 AN AUTHORISED SIGNATORY

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APPENDIX 2



M-O-S Cons area
2004/128



Nat park - NO.

20 February 2004

Our Ref: R1037 / 1875835 / Harmer – Hillyfield Residential Home

Chief Planning Officer
Policy, Design & Information
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
SO43 7PA

PARK HOUSE
17 HEADLEY ROAD
WOODLEY
READING
BERKSHIRE RG5 4JB
Tel **0118 901 4646**
Fax **0118 901 4458**
Accounts **0151 494 1525**
Email info@oca-arb.co.uk
Visit www.oca-arb.co.uk

Dear Sir

**Re: Tree Related Subsidence to Hillyfield, Barnes Lane, Milford-On-Sea,
Lymington SO41 0RP
Notice under s.211 of the Town and Country Planning Act 1990 of intent to
fell trees on site listed above**

We are arboriculturists appointed on behalf of building insurers of Hillyfield, Barnes Lane, Milford-On-Sea, Lymington SO41 0RP. It is the view of chartered engineers that the property has suffered differential movement and subsequent damage consistent with clay shrinkage subsidence.

We understand that the trees referenced within our report as T1, T2, T6 within a designated Conservation Area.

Please accept this letter as our formal notice that the works detailed below will commence on or after 5th April 2004.

Tree No. (as per OCA plan)	Species	Works applied for
T1	Oak	Fell to ground level and treat stump
T2	Oak	Fell to ground level and treat stump
T6	Oak	Fell to ground level and treat stump

ALSO AT
VALLEYFIELD, 1A STRATFORD ROAD
AIGBURTH, LIVERPOOL L19 3RE
Tel 0151 494 1108
Fax 0151 427 4541

4 THE COURTYARDS, PHOENIX SQUARE
SEVERALLS PARK, WYNCOLLS ROAD
COLCHESTER, ESSEX CO4 9PE
Tel 01206 751626/751632
Fax 01206 855751

New Forest District Council

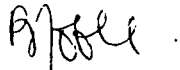
Reasons

The above tree removal works are proposed both as a remedy to the current subsidence at the above address and to ensure the long-term stability of the building.

Please provide your formal acknowledgement of this notice.

We trust that the above information is of assistance but should you have any queries please do not hesitate to contact us.

Yours faithfully

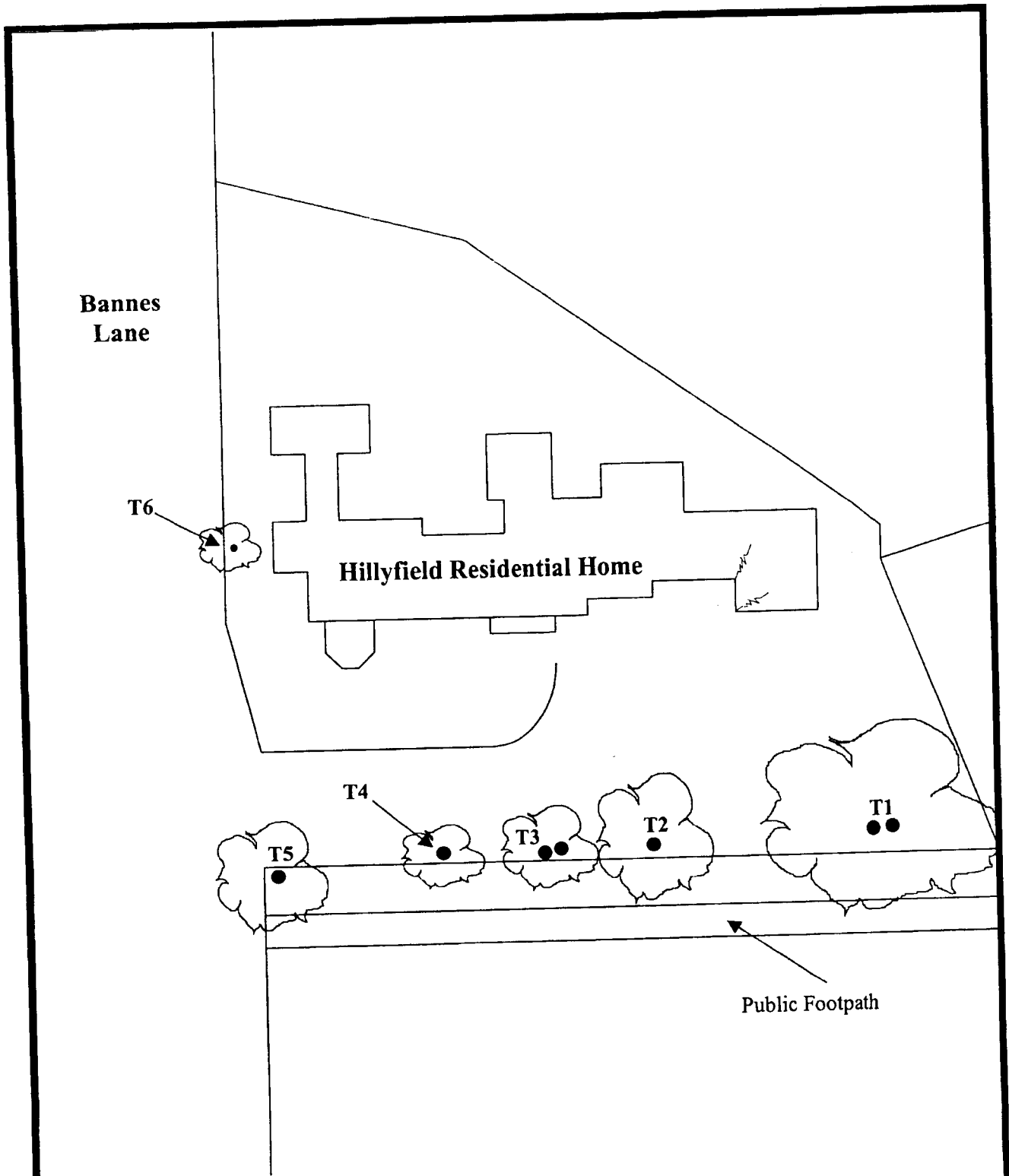


**Barbara Noble
National Insurance Office
OCA UK Limited**

Encl. OCA site plan

Copy: Sharon Phillip, Cunningham Lindsey, Solent
Mr Harmer

Ref: R1037



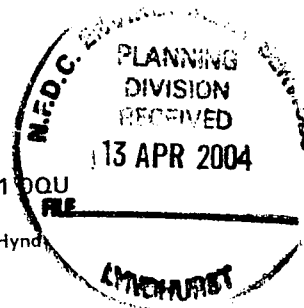
(NB: This plan identifies the trees considered implicated in the subsidence event and may not be a comprehensive record of site features.)

<p>Name: Hillyfield Residential Home Insurer: Norwich Union Ref: R01037 / 1875835 / Harmer - Hillyfield Residential Home</p>	<p>Scale: N T S Drawn Date: 28/01/2004</p>	<p>OCA <small>Consulting Arboriculturists</small> Park House, 17 Headley Road, Woodley Reading, Berkshire RG5 4JB Tel.No: 0118 9014646: Fax.No: 0118 9014458</p>
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MILFORD-ON-SEA PARISH COUNCIL
Milford Village Hall ~ 2 Park Road ~ Milford-On-Sea ~ Hampshire ~ SO41 0QU

Parish Clerk: Keith Metcalf Tel No: 01590 644410 Asst. Parish Clerk: Lynda Hynd

e-mail address: milfordparishcouncil@lds.co.uk



Mr C Elliott
Head of Development Control
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
SO43 7PA

8th April 2004

Dear Chris,

PARISH COUNCIL PLANNING COMMITTEE
OBSERVATIONS FROM THEIR MEETING
HELD: 5th April 2004

Please find enclosed our detailed Observation Sheets for the following Planning Applications.

We provide a brief summary of our observations:

04/128	Hillyfield, Barnes Lane	OBJECT
04/130	Within garden of 38 Kivernell Rd	SUPPORT
04/159	Front garden of 26 Knowland Drive	OBJECT
080813	Cliff Rd opposite De La Warr Rd - south side	OBJECT
080814	Cliff Rd opposite Cornwallis Rd	OBJECT
080815	Cliff Rd opposite Whitby Rd	OBJECT
080819	Cliff Rd opposite De La Warr Rd - north side	OBJECT
080895	Cherrytree House, Shorefield Rd	SUPPORT
080969	76 Swallow Drive	SUPPORT
080979	57 Shorefield Way	OBJECT
080980	Beach hut 319, Hordle Cliff	SUPPORT
080998	Bramblewood, Blackbush Road	SUPPORT
081007	De La Warr House, De La Warr Road	OBJECT

Yours sincerely,

Lynda Hynd
Asst Parish Clerk

Response from Milford-on-Sea Parish Council.

PLANNING APPLICATION NUMBER: 04/128

SITE: Hillyfield, Barnes Lane

APPLICATION DETAILS: Fell 3 Oaks



Our views on the above application are:

mark appropriate response

1. We recommend PERMISSION, for the reasons listed below, but would accept the decision reached by the District Council's officers under their delegated powers.
2. We recommend REFUSAL, for the reasons listed below but would accept the decision reached by the District Council's officers under their delegated powers. X
3. We recommend PERMISSION, for the reasons listed below, and WILL NOT support an officer delegated decision if it is contrary to the Parish Council Planning Committee's observations.
4. We recommend REFUSAL, for the reasons listed below, and WILL NOT support an officer delegated decision if it is contrary to the Parish Council Planning Committee's observations.
5. We are happy to accept the decision reached by the District Council's officers under their delegated powers

REASONS FOR RECOMMENDATION or COMMENTS:

Signed

Lynda Hynd
Asst Parish Clerk

Date 8.4.04.

NEW FOREST DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

OCA UK Limited
Park House
17 Headley Road
Woodley
Reading
Berkshire
RG5 4JB

Application Number: 2004/128

Tree Preservation
Order Number: 23/04

Re: Proposed Tree Works -

Hillyfield, Barnes Lane, Milford On Sea.

In pursuance of their powers under the above Act and Regulations, the decision of the Council, as the Local Planning Authority is:

<p>Refuse consent to fell 2 x Oaks (numbered T1 and T6 on the application plan and T1 and T5 on Tree Preservation Order 23/04 plan). Reason: These trees provide a valuable visual amenity to this part of the Milford Conservation Area. Tree Preservation Order 23/04 has been made to protect these trees. Raise no objection to the removal of 1 x Oak (numbered T2 on the application plan and circled grey on the Tree Preservation Order plan). Reason: This tree has extensive decay in the main stem and limbs and is unsuitable for long term retention.</p>
--

in accordance with the plans and particulars submitted with your application received on 25/02/04, subject to compliance with the conditions on the following page.

The reason for the decision of the Local Planning Authority to refuse consent (where applicable) is:

The two Oak trees provide a valuable amenity to this part of the Milford Conservation Area. Inadequate information has been given in support of the reasons for the proposed tree felling. Further consideration would be given to any further application in the light of evidence implicating the trees in the alleged clay shrinkage subsidence of the structure.

... Continued

NEW FOREST DISTRICT COUNCIL
CONDITIONS ATTACHING TO TREE WORK DECISION

Application Number: 2004/128

Site Address: Hillyfield, Barnes Lane, Milford On Sea.

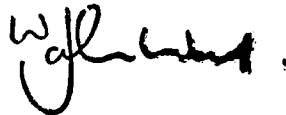
CONDITIONS:

All works hereby approved shall be carried out within one year of the date of this consent. Please note however that between April and August special care should be taken not to disturb wild bird nests which are protected by the Wildlife and Countryside Act 1981. Contact English Nature on 023 8028 3944 for further details.

N.B. This consent does not grant the applicant the right to carry out work over property other than his / her own without the agreement of the owner. All terms contained in this decision are as defined in British Standard 3998: 1989 - Recommendations for Tree Work - and work should be carried out in accordance with recent arboricultural research as recommended by the Arboricultural Association and Forestry Commission.

Appletree Court
Lyndhurst
Hampshire
SO43 7PA

Tel: 023 8028 5327



Head of Policy Design and Information

Date **16 APR 2004**

N.B. See notes overleaf

APPENDIX 3

John Has
original

19 April 2004

Your Ref: JH/mac/TPO 23/04
Our Ref: R1037/1875835/Harmer

Mr John Ward,
Head of Service
Policy, Design and Information
Community Services Directorate
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
SO43 7PA



4 THE COURTYARDS
PHOENIX SQUARE
SEVENHILLS PARK
WYNCOLLS ROAD
COLCHESTER
ESSEX CO1 9PE
Tel 01206 751028/751632
Fax 01206 855751
Accounts 0151 494 1525
Email info@ocash.co.uk
Visit www.ocash.co.uk

By Fax and Recorded Delivery

Dear Sir

**Re: Town and Country Planning Act 1990
Town and Country Planning (Trees) Regulations 1999
Tree Preservation Order No 23/04
Land of Hillyfield, Barnes Lane, Milford-on-Sea in Hampshire**

We are arboriculturists appointed by Cunningham Lindsey on behalf of building insurers of Hillyfield Residential Home, Barnes Lane, Milford-on-Sea in Hampshire.

Thank you for your letter dated 24 March received by us on 25 March. We detail below our **formal objections** to the above Order. For purposes of clarification may I first distinguish between the tree numbering on the OCA plan and the numbering used on the Council's TPO plan.

Council Numbering:	OCA Numbering
T1	T6
T5	T1
Tree noted but not worthy	T2

We therefore deduce that we are able to fell our T2. This would reflect the assessment in our surveyor's notes which identified this Oak as being storm damaged. Clearly, the Council now recognise the tree as not being sufficiently worthy to include in the Order.

Our formal objections to the service of the Order therefore only relate to Council numbers T1 and T5

ALSO AT
VALLEYFIELD, 1A STHAIFORD ROAD
ALBURTH, LIVERPOOL L19 3RT
Tel 0151 404 1108
Fax 0151 427 4541

PARK HOUSE, 17 HEADLEY ROAD
WOODLEY, READING, BERKSHIRE RG5 4JF
Tel 0118 901 4646
Fax 0118 901 4598

TPO Objection Hillyfield Residential Home

Procedural Issues

We recognise that Local Planning Authorities may make a TPO if it appears to be expedient in the interests of amenity to make provision for the preservation of the trees. In this instance no details of the structured way in which the visibility, individual and wider impact of the trees have been assessed have been provided. Furthermore even if the trees merit protection it may still not be expedient to make an Order. What analysis has been made of the wider site circumstances before the decision to serve the Order was made?

Amenity & Public Benefit

Our reasons for wanting to fell the two preserved Oaks directly relate to the consequences of the location of the trees to the property. We provide as an appendix earlier site research carried out by Capita McLarens in 2002, including positive Oak root identification which supports our view that the identified trees are causing damage to the policy holder's property.

The Council appears to have wholly failed to consider the impact of the trees in terms of subsidence issues, not least the damage they are causing to the policyholders property. We will be making an application under the Order to fell the two Oaks as a remedy to the subsidence damage. A possible refusal of consent to fell will almost inevitably result in the need for underpinning the property. All costs incurred in consequence of any refusal of consent are therefore likely to form the basis of a compensation claim against the Council under Regulation 9 of the Order and s.203 of the Town and Country Planning Act 1990. This would represent a poor use of public funds. In addition, a great deal of inconvenience and disruption to the homeowner.

Human Rights

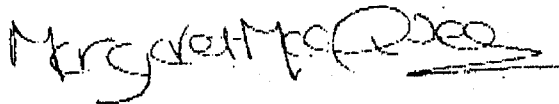
In respect of the a person's right to have a free, fair and impartial hearing regarding matters which affect the peaceful enjoyment of their land or property, the consideration of our objections to the Order by the Local Authority rather than an independent body might be considered incompatible with the Human Rights Act 1998. This is especially in view of the fact that access to judicial review is outside of the financial capabilities of most landowners.

TPO Objection Hillyfield Residential Home

For the above reasons we **formally object** to the Tree Preservation Order No 23/04 [land of Hillyfield, Barnes Lane, Milford-on-Sea] and we trust that you will now consider these objections before deciding whether to confirm the Order.

Once prepared, please supply us with a copy of the officer's report to committee regarding confirmation of the order. Please also supply details of your procedures for objectors making verbal representations to the committee and advise us of the dates and time of the relevant committee once it has been scheduled. We hope that the Council will consider an early appeal against the service of the Order.

Yours faithfully



**Margaret MacQueen
Planning Officer
For and on behalf of
National Insurance Office
OCA UK Limited**

Encl:

Copy: Mr Harmer, Hillyfield Residential Home.
Sharon Philip, Customer Support, Cunningham Lindsey

APPENDIX 4

Nat Pl - No - 23/04



2004/301

14th June 2004

Our Ref:R1037/1875835/Harmer

Tree Officer
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
SO43 7PA



4 THE COURTYARDS
PHOENIX SQUARE
SEVFRILLS PARK
WYNCOLES ROAD
COX CHESTER
ESSEX CO4 6PE
Tel 01206 751626/751632
Fax 01206 855751
Accounts 0151 494 1525
Email info@oca-arb.co.uk
Visit www.oca-arb.co.uk

Dear Sir / Madam

**Re: Tree Preservation Order Application
Trees at Hillyfield Residential Home,
Barnes Lane, Milford-on-Sea Lyminster SO41 0RP**

We are arboriculturists appointed on behalf of building insurers of the above address.

It is the view of chartered engineers appointed to investigate damage that the above property has suffered differential movement and subsequent damage consistent with tree related clay shrinkage subsidence. We enclose copies of the relevant technical reports, as itemised below:

1. The Factual report of Investigations, including laboratory soil test results and root identification certificates.
2. A site plan, which locates vegetation including the trees the subject of this application.

We understand that the trees referenced below are covered by a Tree Preservation Order number 23/04.

Please accept this letter as our formal application to undertake the works detailed below:

Tree Number (as per OCA plan)	Common name	Specification
T1	Oak	Fell to ground level and treat stump
T2	Oak	Not worthy of new TPO
T6	Oak	Fell to ground level and treat stump

ALSO AT
VALLEYFIELD, 1A STRATFORD ROAD
AIGBURTH, LIVERPOOL L19 3RE
Tel 0151 494 1108
Fax 0151 427 4541

PARK HOUSE, 17 HEADLEY ROAD
WOODLEY, READING, BERKSHIRE RG5 4JB
Tel 0118 901 4646
Fax 0118 901 4458

New Forest DC

Reasons for this application

1. The above tree works are proposed as a remedy to the differential foundation movement at the above address and to ensure the long-term stability of the building.
2. The above tree works are proposed to limit the extent and need for expensive and disruptive engineering repair works.
3. The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner his right to the peaceful enjoyment of his property.
4. It is the case that an alternative to felling such as pruning or significant pollarding of the trees would not provide a reliable or sustainable remedy in this case. We do not consider that any other potential means of mitigation, such as root barriers, would be effective or appropriate in the circumstances.

Please provide your formal acknowledgement of this application, indicating the date of its registration and the date that any decision would in your view be due.

The attached informative gives guidance to Councils in respect of tree related subsidence and handling applications, which you may find useful.

Should you wish to visit the property, please contact us in order that we may arrange suitable access. We trust that the above information is of assistance but should you have any queries please do not hesitate to contact us.

Yours faithfully



Margaret MacQueen
Planning Officer
National Insurance Office
OCA UK Limited

Enc: As listed
Informative

Copy: Project Engineer, Cunningham Lindsey (1875835)
Mr Harmer, Policyholder

Locate where saved

Trees and Subsidence of Low Rise Buildings & The Tree Preservation Order

The Planning Officer's Policy Perspective

The TPO

The Tree Preservation Order is a land charge affecting land and landowners, which seeks to maintain amenity trees by controlling the space that those trees occupy and any cultural treatments that might impact on continuity of tree cover.

Amenity and Continuity of Tree Cover

Amenity is defined as "advantages that accrue" from the presence of a thing. These advantages can be the community's visual amenities, strategic landscape amenities (Local Plan and policy reasons) or landscape character reasons (including Conservation and Heritage). The TPO is a planning tool for maintaining tree cover (note: not maintaining individual trees in perpetuity) and ensuring that continuity of tree cover might exist at a particular location all other (Local Plan, policy or legal) considerations being equal.

Applications

Information to be submitted as required by the Regulations

To be registered as an application the proposal must be by reference to a plan, by reference to clear "reasons" and by reference to a proposal, (i.e. fell T1, as indicated on the attached plan, as it is a poor specimen severely depressing the growth of other more important trees).

Key issue: Council officers must register applications in line with the relevant TCPA, the specific TPO and the Regulations in force for that particular TPO. If the application submitted meets the requirements of the Regulations the application **must be registered**.

Decisions

The ODPM Blue Book Guidance States at 6.45 In considering applications the LPA are advised (1) to **assess the amenity** of the tree(s) and (2) in the light of their assessment at (1) above, to consider whether or not the proposal is justified, **having regard to the reasons put forward in support of it**.

Granting Consent

ODPM Guidance states specifically at 6.50 that the LPA must determine the application before them, they should not issue a decision that substantially alters the work applied for.

Granting Consent with Conditions

ODPM Guidance states specifically at 6.52 that conditions should always relate to the authorised work and be fair and reasonable. At 6.51 it states that the LPA must make it **absolutely clear** what is being authorised.

Refusing Consent with Conditions

ODPM Guidance states specifically at 6.61 When the LPA decides to refuse consent (or grant consent subject to conditions) they should: (1) Give their reasons for the decision. These should relate to each of the applicant's reasons for making the application. (2) Explain the applicant's rights of appeal and (3) Explain the applicant's rights of compensation.

Key issue: Council Officers should make decisions in line with the relevant Regulations, Act, or Order and seek to comply with Guidance issued by ODPM.

The Legal Test

The applicant's reasons need not in any way be limited and a "reasonableness test" is unnecessary. It is the Council in determining the application who must act "reasonably" and in a fair and balanced manner. Applicants may be concerned about matters which may seem to an officer unreasonable, i.e. lack of light to rooms or outdoor seating and eating areas, leaves blocking gutters, slipping or tripping on wet leaves or exposed roots, aphids and honeydew coating cars. However every reason must be considered on its own merits and applying a reasonable probability test and an objective issue v impact test. It is critical to note that applicants need not demonstrate a criminal level of evidence in an application to carry out works (although this may become more important for notifications under any presumed exemption). The applicant only need apply a civil level test of evidence and an officer need only consider the application by this civil test.

The civil test addresses any reasonable probability and the likelihood that it might be presumed that a tree is a **contributory** cause of any problems faced by the applicant. The applicant, the Council officer or any Council committee should not conclude that something has or might happen "beyond all reasonable doubt" but rather, that something has or might happen as a "**reasonable probability**". The Council or Officer must then demonstrate that they have considered what has or might happen and with due regard to balancing this against the impact on amenity and must then clearly communicate in their decision why they have reached that decision. If damage has occurred, the owner must be able to rectify, by action, by appeal or by judicial review. This allows a full consideration by the applicant of whether giving regard to reasons and any informative in a decision notice, that they might or might appeal the decision to the Secretary of State.

Key issue: Council officers must ensure decisions are clear, address all of the reasons cited in the application and give their own reasons why the decision was made. (i.e. "*In the interests of amenity*" will not help the applicant consider if they should appeal or not).

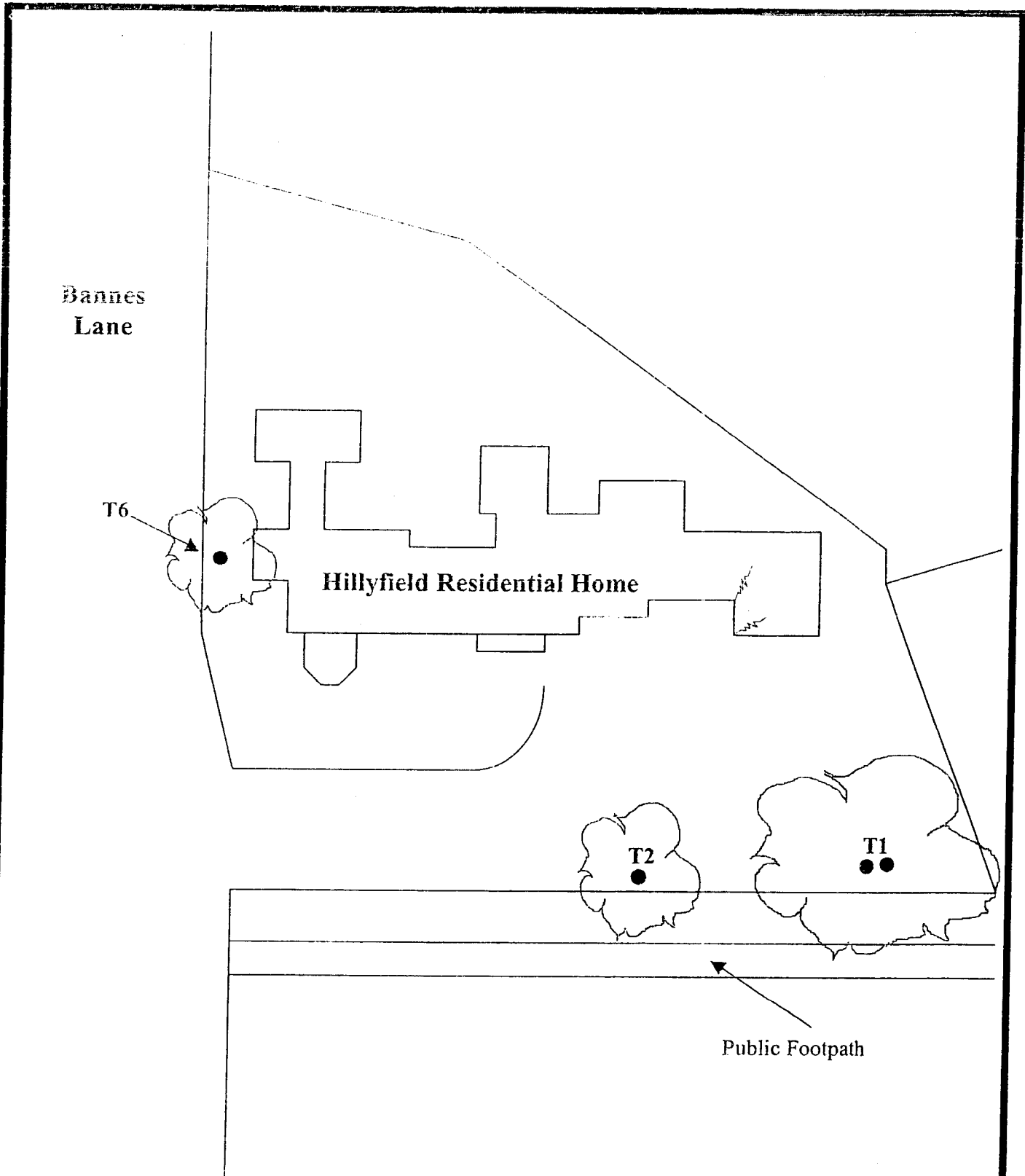
Compensation

The applicant does have a legal right to make a claim in compensation directly to the Council and, if challenged by the Council, to the Lands Tribunal for any loss or any reasonably foreseeable loss resulting from the decision. Council officers should therefore report fully or consider carefully if any of the reasons given by the applicant contains within it the likelihood that an applicant will make a claim for losses if a refusal of consent is given. This is particularly the case when a decision would lead to rebuilding, repairs or engineering works to stop the ongoing problem from recurring or if the decision will lead to a diminution in the value of the land.

Article 5 Certificates and Compensation

The right of Councils to certify trees as special or outstanding is now removed for post 1999 TPOs and is severely restricted by legal precedents and the attitude of Inspectors acting for the ODPM. The certificate's ability to remove a Council's exposure is no longer broadly compatible with modern Human Rights legislation and rights of individuals.

Key issue: Recent case law suggests that Councils are unlikely to succeed at Appeal in the issuing of an Article 5 Certificate with a decision.



(NB: This plan identifies the trees considered implicated in the subsidence event and may not be a comprehensive record of site features.)

<p>Address: Barnes Lane, Milford on Sea</p>	<p>Scale: N T S</p>	<p>OCA <small>UK Limited</small> Consulting Arboriculturists</p>
<p>Insurer: Norwich Union</p>	<p>Drawn Date: 28/01/04</p>	
<p>Ref: R01037 / 1875838 / Harmer – Hillyfield Residential Home</p>	<p>Park House 17 Headley Road, Woodley, Reading, Berks, RG5 4JB Tel.No: 0118 901 4646: Fax.No: 0118 901 4458a</p>	

FASTRACK GEOTECHNICAL SERVICES

Site Plans and Logs

Site Plans and Logs

Hillyfield, Barnes Lane, Milford-on-Sea,
Lymington, Hants. SO41 0RP

Report No (Claim): 0285 (182/02005803/FJH)

Date: 26 February 2002

Client: Capita McLaren

For: Norwich Union Insurance

Director: TJ Ayres IEng AMICE MIWHM
Senior Geologists: J Woodward BSc (Hons) FGS
GD Peace BSc (Hons) FGS
Contracts Manager: M. Pickering FGS
Laboratory Managers: P. Fether (SE)
M. Hibberd (SW)

FASTRACK GEOTECHNICAL SERVICES

Churchill House Sopwith Crescent Hurricane Way
Wickford Essex SS11 8YU

Tel: 01268 573777
Fax: 01268 560935

Tamar Science Park 1 Davy Road Derriford
Plymouth Devon PL8 5BX

Tel: 01752 764247
Fax: 01752 772227

Appendix No. 1

Sheet No. 1

Job No. 0286

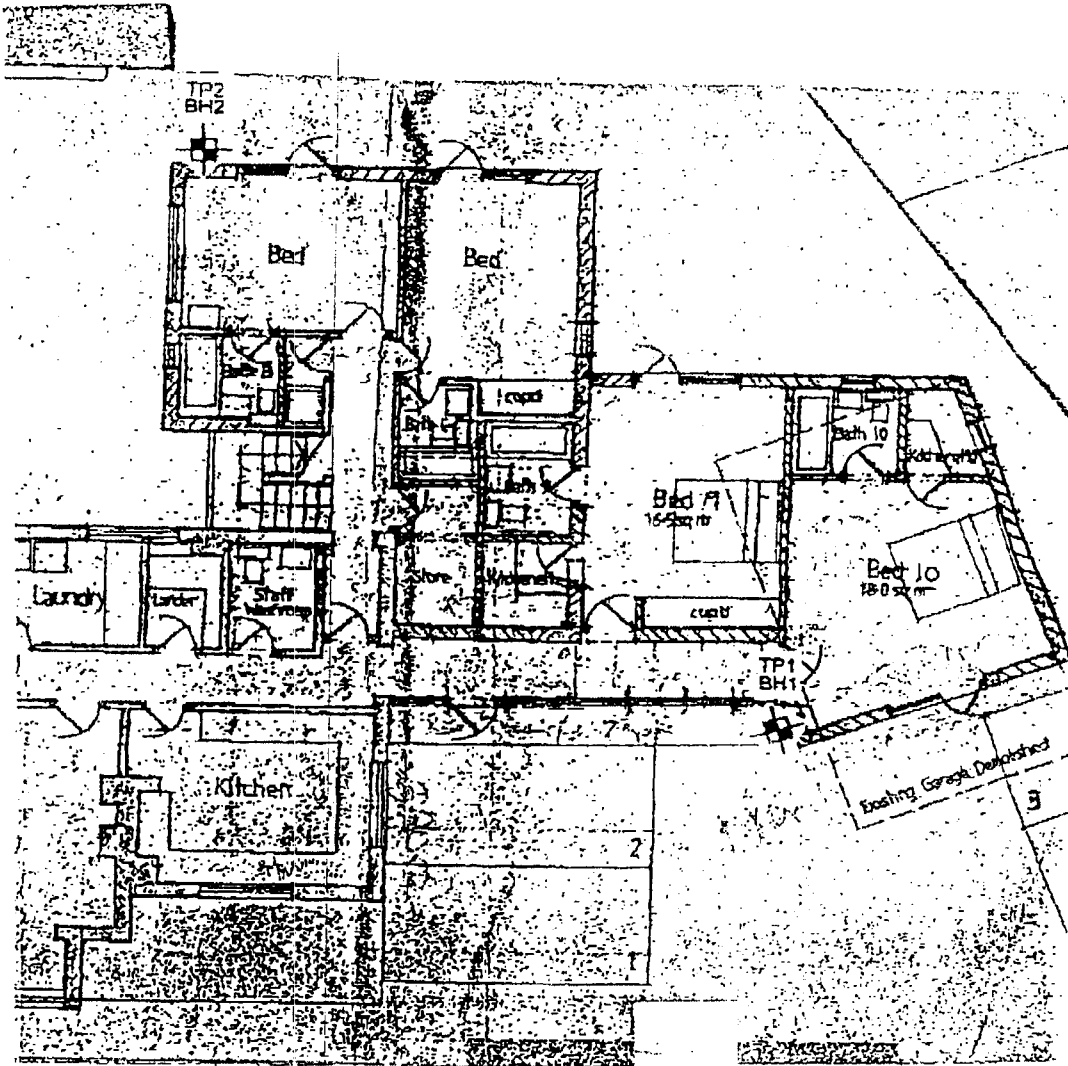
Date. Feb 2002

LOCATION Hillyfield, Barnes Lane, Milford-on-Sea, Lymington, Hants.

Scale. 1:125

Hillyfield, Hants (15/02/00/0303/FCH)

Site Plan



FASTRACK GEOTECHNICAL SERVICES

Churchill House Sopwith Crescent Hurricane Way
Wickford Essex SS11 8YU

Tel: 01268 573777
Fax: 01268 560935

Tarnet Science Park 1 Davy Road Demiford
Plymouth Devon PL6 8BX

Tel: 01752 764247
Fax: 01752 772227

Appendix No. 2

Sheet No. 1

Job No. 0285

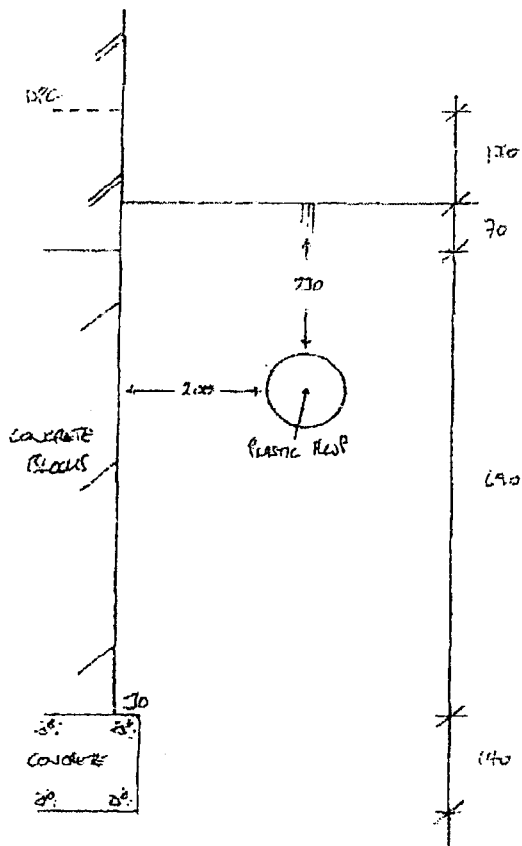
Date Feb 2002

LOCATION Hillyfield, Barnes Lane, Milford-on-Sea, Lymington, Hants.

Scale: 1:10

Policyholder: Harmer (182/0200450575 Ltd)

Trial Pit 1



D1 @ F.L. (0.90m)
V= 100-116 kPa

Founding Strata: Stiff, green/grey mottled orange, silty, sandy CLAY.

D= small disturbed sample, E= large bulk sample, U= Undisturbed sample, MP= Mackintosh probe blow counts, V= Shear Vane Reading (kPa)



FASTRACK GEOTECHNICAL SERVICES

Churchill House Sopwith Crescent Hurricane Way
 Wickford Essex SS11 6YU
 Temer Solance Park 1 Devy Road Dufford
 Plymouth Devon PL8 8BX

Tel: 01288 573777
 Fax: 01288 769882
 Tel: 01752 764247
 Fax: 01752 772227

Appendix No: 2
 Sheet No. 2
 Job No. 0285
 Date Feb 2002

Borehole 1

Location Willyfield, Barnes Lane, Milford-on-Sea, Lynton, Hants.

Method: Hand Auger

Description of Strata	Reduced Level	Legend	Depth	Samples		Tests		Field Observations
				Type	Depth	Type	Value	
Termac. (0.09)			0.09					Rapid inflow following heavy rainfall.
Hardcore. (0.16)			0.25					
Brown, moist, silty, sandy, clay FILL with bricks and flint gravel. (0.65)			0.85					2mm roots to 0.80m.
Stiff, green/grey mottled orange, silty sandy CLAY. (1.15)				D1	0.90	V	100-116	Fibrous roots to 1.00m.
				D2	1.50	V	140+	
				D3	2.00	V	140+	
Base of Borehole			2.00					

Remarks
 Borehole closed at 2.00m due to excessive water suction.
 Water level standing at 1.00m on completion of drilling.

Scale 1:20

Client: Capite McLarens

KEY

- U Undisturbed Sample
- D Small Disturbed Sample
- B Bulk Disturbed Sample
- W Water Sample
- N Standard Penetration Test
- V Vane Test (Shear strength in kN/m²)
- MP Mackintosh Probe (Blows/0.3m)
- BL Number of blows to obtain U100 sample

All depths and reduced levels are in metres.

FASTRACK GEOTECHNICAL SERVICES

Churchill House Sopwith Crescent Hurricane Way
Wickford Essex SS11 8YU

Tel: 01268 573777
Fax: 01268 580935

Appendix No. 2

Sheet No. 3

Job No. 0285

Tamar Science Park 1 Day Road Derriford
Plymouth Devon PL6 8BX

Tel: 01752 764247
Fax: 01752 772227

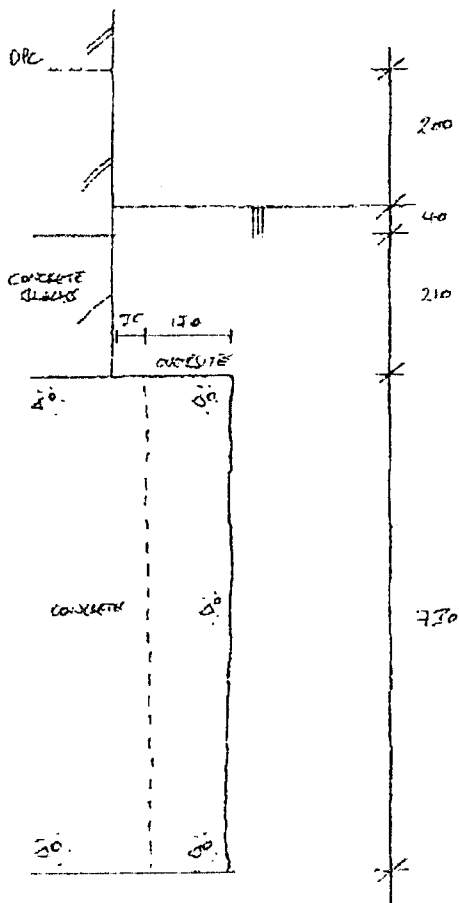
Date: Feb 2002

LOCATION Hillyfield, Barnes Lane, Milford-on-Sea, Lymington, Hants.

Scale: 1:10

Pollicino/John Warner (0820005803/FJH)

Trial Pit 2



D1 @ F.L (0.98m)
V= 105-118 kPa

Founding Strata: Stiff, green/grey, silty, sandy CLAY containing rare medium flint gravel.

D= small disturbed sample, E= large bulk sample, U= Undisturbed sample, MP= Miskintosh probe blow counts, V= Shear Vane Reading (kPa)



FASTRACK GEOTECHNICAL SERVICES

Churchill House Sapwith Crescent Hurricana Way
 Wickford Essex SS11 8YU
 Tamar Science Park 1 Davy Road Denford
 Plymouth Devon PL6 8BX

Tel: 01268 573777
 Fax: 01268 788682
 Tel: 01752 784247
 Fax: 01752 772227

Appendix No. 2

Sheet No. 4

Job No. 0285

Date Feb 2002

Borehole 2

Location Hillyfield, Farnas Lane, Hilford-on-Sea, Lymington, Hants.

Method: Hand Auger

Description of Strata	Reduced Level	Legend	Depth	Samples		Tests		Field Observations
				Type	Depth	Type	Value	
Gravel (0.05) Clayey, sandy, brack. (0.05) (1.00) (1.00)			0.05					No roots encountered within borehole. Rapid inflow following heavy rainfall. Could not bail water from trial pit due to existing foundation wall. All samples contaminated by inflow
Stiff, green/grey, silty, sandy CLAY containing rare medium flint gravel. (1.35)			0.95	D1	0.98	V	106-116	
				D2	1.50	V	140+	
				D3	2.00	V	140+	
Case of Borehole			2.30					

Remarks Scale 1:20
 Borehole closed due to excessive water suction.
 Water level standing at 1.00m on completion of drilling.

Client: Capita McLarens

KEY

- U Undisturbed Sample
- D Small Disturbed Sample
- B Bulk Disturbed Sample
- W Water Sample
- N Standard Penetration Test
- V Vane Test (Shear strength in kN/m²)
- MP Mackintosh Probe (Blows/0.3m)
- BL Number of blows to obtain U100 sam

All depths and reduced levels are in metres.

Capita McLarens Laboratory (Maidstone)

Results of Moisture Content & Soil Classification Test

Address :	Hillyfield, Barnes Lane, Milford on Sea, Lymington, Hants, SO41 1LD			Office :	Portsmouth
Insured :	Mr Harmer			Date :	05/03/02
Job No :	182/02005803/FJH/pxh			Our Ref :	196/02001216/JEC/JD

Borehole/ Trial Pit	Sample Depth (m)	Moisture Content %	Liquid Limit %	Plastic Limit %	Plasticity Index %	<425 μ (%)	BS 1377 Class	N.H.B.C Class
BH1	0.90	28.2	42.4	15.6	26.8	87%	CU	MED
	1.50	21.6						
	2.00	20.3						
BH2	0.98	21.2	33.6	14.2	19.4	95%	CS	LOW
	1.50	20.4						
	2.00	19.4						

Capita McLarens Laboratory (Maidstone)

Soil Description

Address :	Hillyfield, Barnes Lane, Milford on Sea, Lymington, Hants, SO41 1JG	Office :	Portsmouth
Insured :	Mr Harmer	Date :	05/03/02
Job No :	182/02005803/FJH/pxh	Our Ref :	196/02001216/JEC/JD

Borehole/ Trial Pit	Sample Depth (m)	SOIL DESCRIPTION:
BH1	0.90	Moist very soft grey mottled orange/brown fine sandy silty clay with occasional stone fragments
	1.50	Soft grey/orange brown mottled fine sandy silty clay
	2.00	Soft to firm grey mottled orange brown fine sandy silty clay
BH2	0.98	Soft grey mottled pale brown sandy silty clay with occasional stone fragments
	1.50	Soft grey mottled pale brown sandy silty clay
	2.00	Firm grey mottled orange brown sandy silty clay with orange sand pockets

Capita McLarens Laboratory (Maidstone)

NB. Soil Samples described as received in laboratory



Richardson's Botanical Identification

Root identification
Vegetation surveys
Tree/Building investigations
Plant taxonomy

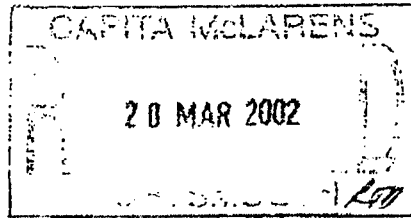
Dr Ian B K Richardson
BSc, PhD, CBiol, MIBiol, MIHort, FLS

Capita McLarens
Shore House
Compass Road
PORTSMOUTH
PO6 4PR

Enterprise House
49-51 Whiteknights Road
Reading
RG6 7BB

Tel: (0118) 986 9552 (Direct line)
Fax: (0118) 986 9553
E-mail: richardsons@botanical.net

19/03/02



Your ref:

182/02005803/FJH

Our ref:

60/3701

Dear Sirs

Hillyfield, Barnes Lane, Milford-on-Sea, Lymington, Hants

The roots you sent in relation to the above on 12/03/02 have been examined.¹ The structure was referable as follows:

TP1 0.8m: 1 root *Quercus* (Oak). A further root, not examined in detail, appeared similar under low magnification.

I trust this is of help. Please call us if you have any queries; our invoice is enclosed.

Yours faithfully

Dr Ian B K Richardson

¹ Identified with no information on vegetation, on or off site.



Andrea & David Harmer
Jane Harmer-Manning
Louise Harmer

BARNES LANE
MILFORD-ON-SEA
HANTS SO41 0RP

01590 642121

HILLYFIELD

Rest Home Ltd

Tree Officer
NFDC
Appletree Court
Lyndhurst
SO43 7PA

29 June 2004

Dear Sirs

TREE PRESERVATION ORDER/PLANNING APPLICATION

Further to the letter you have received from OCA UK Ltd dated 14 June 2004, I would like you to consider the following matters in relation to this application.

The damage to our building was first noted in August 1995. The loss adjuster appointed by our insurers (McLarens) along with their arboriculturalists (Marshal Thompson & Co) identified trees to the side of the building as the cause. The oak trees were the primary culprits but, in order to retain these, a number of sycamores were felled and the oak trees were merely crowned. Other parts of the building were strengthened by underpinning. This undertaking inevitably caused major disruption to those residents whose rooms were affected and less serious inconvenience to the remaining residents who experience the noise and dirt from the piling operations.

However, movement in the rooms adjacent to the car park continued and once again, to avoid damaging the oak trees, walls within the affected rooms were strengthened with steel rods grouted in. Movement continued.

New loss adjusters, Cunningham Lindsey, have now been appointed along with new arboriculturalists, O.C.A. Again, the oak trees have been confirmed as the cause of the problem and it appears that unless you agree to the removal of these trees, we shall have to endure another lot of piling.

Throughout this nine-year period cracks (particularly to room 10) have continually opened and closed spoiling the appearance of the rooms. I really feel that every reasonable action has now

been taken to preserve these trees and it would be unreasonable now to expect us to endure more underpinning to save them.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'D.C. Harmer', written in black ink.

D.C. Harmer

Copies:

Margaret McQueen, OCA UK Ltd

Mark Hatchett, Cunningham Lindsey

Response from Milford-on-Sea Parish Council.

PLANNING APPLICATION NUMBER: 04/301

SITE: Hillyfield Residential Home, Barnes Lane

APPLICATION DETAILS: Fell 3 Oaks

MILFORD-ON-SEA
PLANNING
COMMISSION
22 JUL 2004
LH 28.8.03

Our views on the above application are:

mark appropriate response

1. We recommend PERMISSION, for the reasons listed below, but would accept the decision reached by the District Council's officers under their delegated powers.
2. We recommend REFUSAL, for the reasons listed below but would accept the decision reached by the District Council's officers under their delegated powers.
3. We recommend PERMISSION, for the reasons listed below, and WILL NOT support an officer delegated decision if it is contrary to the Parish Council Planning Committee's observations.
4. We recommend REFUSAL, for the reasons listed below, and WILL NOT support an officer delegated decision if it is contrary to the Parish Council Planning Committee's observations.
5. We are happy to accept the decision reached by the District Council's officers under their delegated powers

X

REASONS FOR RECOMMENDATION or COMMENTS:

The loss of these trees would harm the character of Barnes Lane as they are significant trees. With regard to the trees being the cause of subsidence, the Parish Council did not find the report from OCA UK Ltd persuasive.

(In order to alleviate any potential problem a gravel barrier could be put in place to protect the building from the tree roots.)

Signed

Lynda Hynd
Asst Parish Clerk

Date 21.7.04.

MILFORD ENVIRONMENT GROUP



The Farm Lodge
Newlands Manor Farm
Everton, LYMINGTON
SO41 1JH

Tel: 01590 644895

Planning Applications New Forest West
New Forest District Council
Appletree Court
Lyndhurst, Hants

14th July 2004

Dear Sirs

Application 2004/301 – TPO 23/04
Application to fell three oaks at Hillyfield Residential Home, Milford on Sea

I am writing to express the views of the Committee of the above Environment Group in respect of the above application.

The three oak trees in question are all fine specimens and although we are not arboriculturalists they appear to be in good health. They are all very significant trees in terms of the street scene and local rural environment and relate very well to the adjacent conservation area of the Pleasure Grounds. We understand the reason for the request to fell these trees is related to the surveyor's report of clay subsoil and movement of the building. The suggestion is that that the tree roots are also implicated in this damage. We think it is likely that *if* there is damage due to subsidence related to clay subsoil, it is likely the trees will have been important in taking up water and in fact, reducing the problem. There will be a significant increase in water in the soil and further damage to the property from ground heave if these very large trees are removed.

When building in close proximity to large oak trees the builders should have taken them into account and foundations should have been greater than normal. They would also have insisted on root barriers to prevent any problem.

I am sure that the Tree Group are fully aware of the importance of oak trees to wildlife, harbouring as they do about 280 different species of insects and butterflies which are important to our bird population and we are very concerned that these trees should be retained. We therefore wish to register our strong objection to the removal of these trees.

Incidentally we note that there are in fact five oak trees on the Hillyfield site, three alongside the footpath, one on the verge of Barnes Lane and one in the rear garden of the residential home. All of these trees are important trees and we feel they should be the subject of a Tree Preservation Order (if they are not already included in TPO 23/04).

Yours faithfully,

Phil Gossling
Chairman

PP

Copy to Milford Parish Council

(9)

2 Acres Walk

19th July 2004

Dear Chairman + Council

Re. TPO Appn. 2004/301 TPO 23/04

04

I wish to object ^{to} the above in the strongest possible terms. It is absolutely essential that these lovely mature oak trees, that add so much to the Milford "green scene", are allowed to remain.

I do not believe there is a sound case for felling these trees + if there is a problem with the building extension then the felling would definitely make matters worse.

It is now well known that the felling of large trees causes serious problems of heave + water rising - (this has happened near Greenbanks where large beech trees were felled).

The Tree Group advise people to dig narrow gravel filled trenches to encourage tree roots to go away from buildings, however if there is no room for these, it would still be far safer to retain the trees. I hope

that the Council will agree with these
comments.

Yours sincerely

Marion Howard

APPENDIX 5

NEW FOREST DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

OCA UK Ltd
4 The Courtyards
Phoenix Square
Severalls Park
Wyncolls Road
Colchester
Essex

Application Number: 2004/301
Tree Preservation
Order Number: 23/04

Re: Proposed Tree Works -

Trees at Hillyfield Residential Home, Barnes Lane, Milford on Sea.

In pursuance of their powers under the above Act and Regulations, the decision of the Council, as the Local Planning Authority is:

Refuse consent to fell two Oak trees identified as T1 & T6 on the application plan and schedule, at Hillyfield Residential Home, Barnes Lane, Milford On Sea (Trees T1 and T6 of Tree Preservation Order 23/04).

Informative:

The District Council would give consideration to a new application to remove these trees if supported by further evidence that is sufficient to enable a full and unambiguous assessment of any effect the trees may have on building foundations. In this instance such supporting evidence should include:

1. Level monitoring over the remainder of this summer and early winter to demonstrate a pattern of foundation movement consistent with the influence of vegetation.
2. Evidence to establish that the trees are the cause of such movement by root activity below or within the zone of influence of the area of foundation movement.
3. Evidence that implicates the Oak tree T6 of the Tree Preservation Order, in any such foundation movement.
4. A level monitoring survey, ideally over a six week period, and sufficient to demonstrate significant foundation movement.

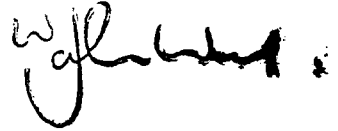
in accordance with the plans and particulars submitted with your application received on 15/06/04.

The reason for the decision of the Local Planning Authority to refuse consent is:

1. The trees make an important contribution to the amenity and character of this part of the Milford On Sea Conservation Area. Their removal at this time would result in a permanent loss of the significant public benefit that they provide.
2. Evidence submitted with the application that relates to the alleged structural damage to buildings is inadequate to implicate the trees as causal or contributory factors. It has therefore not been demonstrated that the works are necessary to remedy alleged differential foundation movement, or to limit the extent or need of engineering repair works, or to limit the duration of any consequent claim period.

Appletree Court
Lyndhurst
Hampshire
SO43 7PA

Tel: 023 8028 5327

A handwritten signature in black ink, appearing to be 'W. Johnson', written over a horizontal line.

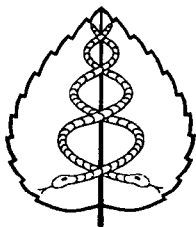
Head of Policy Design and Information

6 AUG 2011

Date

N.B. See notes overleaf

P.G. Biddle



Arboricultural Consultant

Dr P.G. Biddle, O.B.E., M.A., D.Phil., F.Arbor.A.
Registered Consultant of the Arboricultural Association
Honorary Fellow, Institute of Chartered Foresters

WILLOWMEAD, ICKLETON ROAD, WANTAGE, OXON OX12 9JA ~ Telephone: Wantage (01235) 762478
Fax: 01235 768034 Mobile 07074 762478

20th July 2004

Mr J. Hearne
Policy Design & Information
New Forest District Council
Appletree Court
Lyndhurst
Hants SO43 7PA

RECEIVED
DIVISION
22 JUL 2004
NEW FOREST DISTRICT COUNCIL

Your ref: JH/TPO 23/04
Our ref: 2562

Dear Mr Hearne,

Hillyfield Residential Home, Barnes Lane, Milford-on-Sea

I refer to your recent (undated) letter which I acknowledged prior to my recent departure on holiday.

I have noted the information provided by OCA in support of the application to fell the 3 oak trees, namely:

- i) Application letter of 14th June and associated site plan.
- ii) Fastrack Geotechnical services report of 26th February 2002, together with trial pit and borehole logs, soil descriptions and classification tests.
- iii) Root identification by Richardson Botanical Identifications, dated 19th March 2002.

Even by their usual standards, I find this information provided by OCA to be woefully inadequate, but note detailed comments below.

1. The problems have apparently existed since at least 2002. There has been ample time for proper investigations.
2. There is no description of the alleged damage to the building, beyond some squiggly lines on the OCA site plan. There is no information on the extent of damage, its history, or significance.
3. The soil classification tests show the soil to be of only low plasticity. The risks associated with this soil are low.
4. The moisture content of the samples is high compared with the values for plastic and liquid limit. I can see not evidence of desiccation, but perhaps this is not surprising as the soil samples were taken in February, at which time of year the soil is likely to have recovered fully.
5. I note surprising discrepancies between the soil descriptions in the borehole logs (stiff) and in the soil descriptions (very soft to soft). No explanation is provided. As the soil below the foundations in Trial hole 1 was described as 'very soft' this might account for the damage.
6. The foundations at trial pit 1 (in the area of assumed damage) were 0.9m deep. The identified root sample was taken from a depth of 0.8m (i.e. above the base of foundations), and is thus of no direct relevance. Fibrous roots were only observed to 1.0m. Even if it is assumed that these fibrous roots are from the oak trees, root activity over a depth of 0.1m would not produce sufficient soil movement to induce damage.

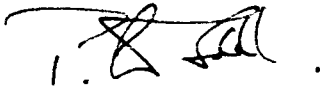
7. OCA allege that chartered engineers consider that the property has suffered 'damage consistent with clay shrinkage subsidence'. I do not see how any such conclusion can be reached on the basis of the information submitted

8. In these circumstances I recommend that the application is refused on the grounds that the evidence provided in support is totally inadequate to establish that the trees are involved. At the same time indicate that you would be pleased to consider a fresh application if supported by proper evidence. This might include:

- i) level monitoring over the remainder of this summer and early winter to demonstrate a pattern of foundation movement consistent with the influence of vegetation.
- ii) evidence to establish that the trees are the cause of such movement (i.e. oak root activity in the soil below the area of foundation movement). This might not be necessary if the oak trees are the only potential vegetation.
- iii) Evidence should also be included to implicate T3.

I trust these comments are of assistance, and as requested enclose a note of my fees for consideration of this matter.

Yours sincerely,



Dr P.G. Biddle OBE

Dr P.G.Biddle
Arboricultural Consultant
Willowmead
Ickleton Road
Wantage
Oxon
OX12 91A

JH/TPO 23/04

5205

Dear Dr Biddle

Alleged tree related subsidence at Hillyfield Residential Home, Barnes Lane, Milford-on-Sea: Tree Preservation Order 23/04.

Please find attached tree work application to remove oak trees subject to the above Tree Preservation Order, which are alleged to be contributing to subsidence of the above property.

Could you please carry out a desktop study of the information submitted. If further details are needed please indicate the exact nature of the data required so that I can request it from the applicants.

You will note that the TPO was originally served in response to a Conservation Area notification that gave no evidence whatsoever to support the proposed removal of the trees. Consent was refused. OCA UK Ltd have objected to The TPO and have also submitted an application to fell trees, this time with the information enclosed.

I have estimated the tree dimensions as:

Numbered as per OCA plan	T1	Oak	15m high x 600mm diam
	T2	Oak	15m x 900mm
	T3	Oak	9m x 950mm
	T4	Sycamore	15 x 400
	T5	Ash	15x 400
	T6	Oak	17 x 450

T2 Oak was noted to have significant decay and was omitted from the TPO.

Finally, I confirm that the council will as usual meet your normal fee for this service.

Yours sincerely

John Hearne
Arboriculturist

Ms M MacQueen
OCA UK Ltd
4 The Courtyards
Phoenix Square
Severalls Park
Wyncolls Road
Colchester
Essex CO4 9PE

My ref: JH/TPO 23/04
Your
ref:R1037/1875835/Harmer
5 May 2004

Dear Ms MacQueen

**TREE PRESERVATION ORDER 23/04 – LAND OF HILLYFIELD, BARNES LANE,
MILFORD-ON-SEA.**

I refer to your letter objecting to the above Tree Preservation Order dated 19 April, with enclosed copy reports of soil and root sample analyses.

Your objection will be considered by an 'Appeals Panel' composed of elected Members. You will be notified of the time and location of the meeting which follows a site visit to appraise the trees in the context of their surroundings. Any interested party may attend and make representations if they wish. I confirm that I will forward a copy of my department's report to the Panel before the meeting takes place.

You will have noted from the Council's decision letter dated 16 April 2004, that further consideration would be given to any future applications to remove the trees in the light of any evidence supporting your statement that the trees were implicated in subsidence damage. You have now kindly supplied some detail of soil and root analyses but I still have no detail of the location, nature, extent or pattern of damage. You will appreciate that in the absence of such information it will be difficult for the Council to fully and properly consider the impact of the trees in terms of the alleged subsidence. You make reference to the importance of this in your statement of objection. If this information is available and you would like it to be considered as part of your objection, I would be grateful if you could forward copies to me as soon as possible.

Yours sincerely

John Hearne
Arboriculturist

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