



APPEALS PANEL: 10 MARCH 2005.

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER
88/04
LAND OF FLETCHWOOD HOUSE, FLETCHWOOD LANE, TOTTON**

1.0 INTRODUCTION

1.1 This meeting of an Appeals Panel has been convened to hear an objection to the making of a Tree Preservation Order.

2.0 BACKGROUND

2.1 Tree Preservation Orders (TPOs, or Orders) are made under Sections 198, 199 and 201 of the Town and Country Planning Act 1990 (the Act). This legislation is supported by guidance issued by the Office of the Deputy Prime Minister on 17 April 2000 called "Tree Preservation Orders A Guide to the Law and Good Practice". This is commonly referred to as the "Blue Book".

2.2 This Council follows a procedure that ensures that as soon as an Order is made it gives immediate protection to the specified tree or trees. The owners and occupiers of the land on which the tree or trees are situated, together with all the owners and occupiers of the neighbouring properties, are served with a copy of the Order. Other parties told about the Order include the Town or Parish Council and District Council ward members. The Council may also choose to publicise the Order more widely.

2.3 The Order includes a schedule specifying the protected trees, and must also specify the reasons for protecting the trees. Normally this is on the grounds of their amenity value.

2.4 The procedures allow that any person who wishes may make representations to the Council, in writing, within 28 days of the Order being made. The Council must have a procedure for considering those representations.

2.5 Where an objection is made to the Order, in the first instance, the Tree Officers will negotiate with the objector to see if it can be resolved. If it cannot, then the objection is referred to a meeting of the Appeals Panel for determination.

2.6 The Order, when first made, has a life of 6 months. Within that period of 6 months, the Council must decide whether or not to confirm the Order, with or without amendment. The Order ceases to exist if it is not confirmed.

3.0 CRITERIA FOR MAKING A TREE PRESERVATION ORDER.

3.1 A local planning authority may make an Order if it appears to them to be:

“expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

4.0 TYPES OF TREE PRESERVATION ORDER

4.1 The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.

4.2 As a general rule, an individually specified tree must meet the criteria for protection in its own right.

4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.

4.4 A woodland order would be imposed over a more significant area of trees, where it is not practical, or indeed perhaps even desirable, to survey or specify individual trees or groups of trees. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees, that will not be interspersed with buildings.

4.5 An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees. This process has been underway in this District, with the review of a number of older area orders that were imposed some years ago in response to proposed significant development. An area order is a legitimate tool for the protection of trees. It is not grounds for an objection that the order is an area order.

5.0 THE ROLE OF THE PANEL

5.1 While objectors may object on any grounds, the decision about whether the Order should be confirmed may only take into account strictly limited criteria.

5.2 *The only issues before members of the Panel, in considering whether or not to confirm the Order, are the amenity value of the tree or trees, and the expediency of making the Order.*

5.3 Amenity value

This term is not defined in the Act, but there is guidance in the Blue Book. The guidance says:

- TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.
- The benefit may be present or future.
- The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.
- The value of trees may be enhanced if they are scarce.
- Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.

It is not appropriate to protect a tree that is dead, dying or dangerous. As a general rule, officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.

5.4 Expediency

Again, this is not defined in the Act, but some guidance is given in the Blue Book. In essence, the guidance says:

- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
- It may be expedient to make a TPO if the local authority believe there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
- A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.

5.5 Issues that may not be taken into account.

The question of whether or not the protected tree may influence the outcome of a planning application is not relevant to your decision. If a TPO is in place on an application site, it is a material consideration in determining the application. That is however an issue that may be addressed solely through the development control process.

The principle of whether or not the landowner wishes a TPO to be imposed is also not relevant. The test is the public amenity value of the trees.

6.0 THE EFFECT OF THE ORDER.

- 6.1 Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Council. This is done through a Tree Work Application. There is no fee charged for making a Tree Work Application.
- 6.2 If consent is refused, the applicant has the right of appeal to the Secretary of State.

7.0 CONSIDERATION

- 7.1 Members are requested to form a view, based on the evidence before them, of the amenity value of the trees, and the expediency of confirming the TPO. Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape.

- 7.2 The written evidence that is attached to this report is as follows:

Appendix 1 The schedule and map from the Order, which specifies all the trees protected.

Appendix 2 The report of the Council's Tree Officer, setting out all the issues he considers should be taken into account, and making the case for confirming the Order.

Appendix 3 The written representations from the objectors to the making of the Order, including a report from OCA in support of their tree works application to fell the trees

Appendix 4 The written representations from supporters of retaining the trees.

Appendix 5 The report from Dr Biddle assessing the evidence submitted to support the claim that the trees are causing subsidence damage to the property.

Members will hear oral evidence at the hearing, in support of these written representations. The procedure to be followed at the hearing is attached to the agenda.

8.0 FINANCIAL IMPLICATIONS.

- 8.1 There are some relatively minor administrative costs associated with the actual process of serving and confirming the TPO. There are more significant costs associated with the need to respond to any applications to do works (lopping, topping or felling). The officers will normally visit the site and give advice on potential works to the trees.
- 8.2 The Council does not become liable for any of the costs of maintaining the tree or trees. That remains the responsibility of the trees' owners.

8.3 The Council does not automatically become liable for any damage that may be caused by the protected tree or trees. The only situation in which the Council may become liable is where consent has been sought, through a Tree Work Application, to do works to the tree, consent is refused, and the consequent damage caused by the tree could, reasonably, have been foreseen.

9.0 ENVIRONMENTAL IMPLICATIONS

9.1 The trees must have significant value within their landscape to justify the confirmation of the TPO.

10.0 CRIME AND DISORDER IMPLICATIONS

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

11.0 OTHER IMPLICATIONS

11.1 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.

11.2 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).

12.0 RECOMMENDED:

12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 88/04 relating to land of Fletchwood House, Fletchwood Lane, Totton with, or without, amendment.

For further information contact:

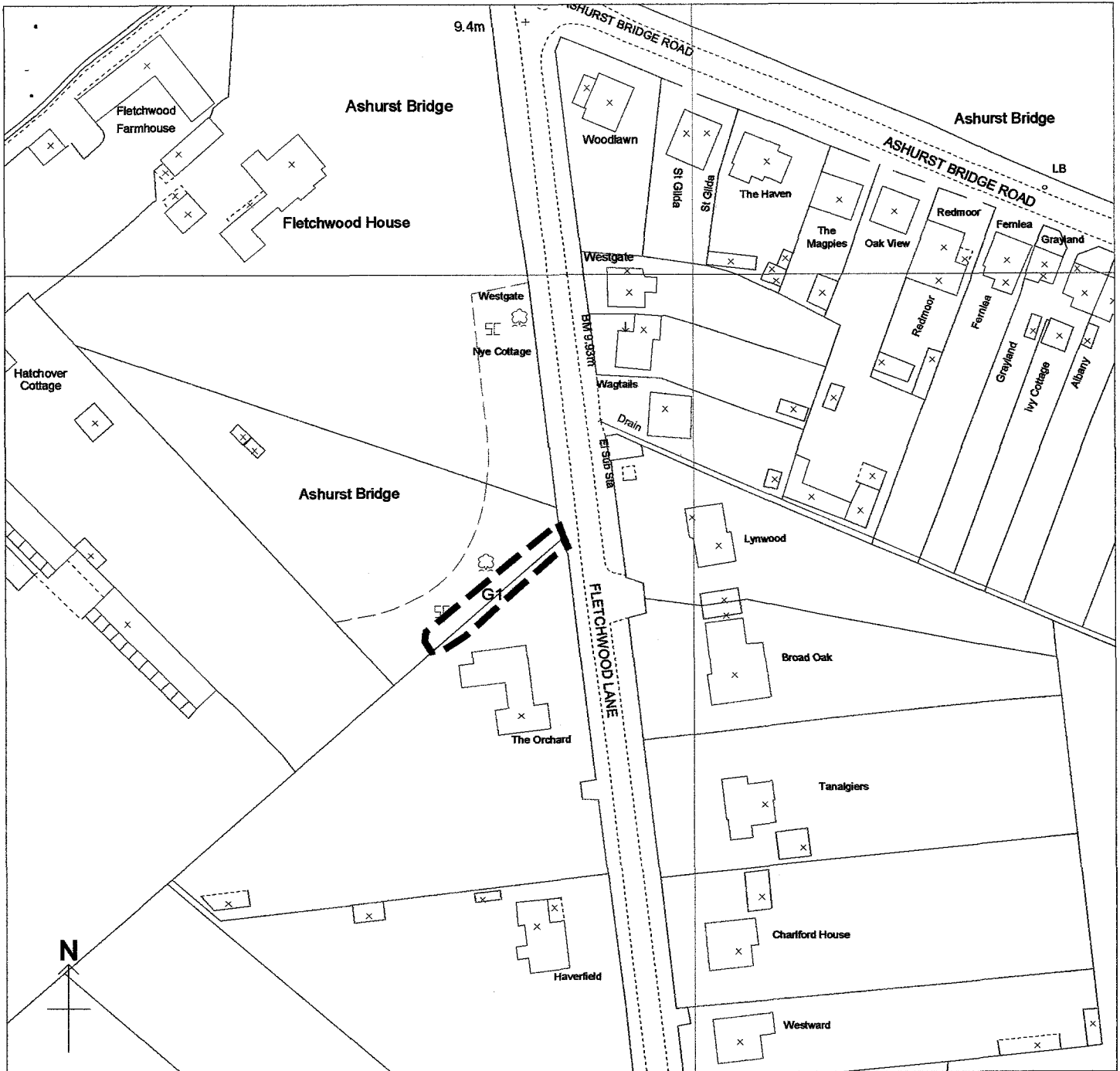
Jan Debnam, Committee Administrator
Tel: 023 8028 5389
e-mail: jan.debnam@nfdc.gov.uk

Julia Mutlow, Solicitor
Tel: 023 8028 5149
e-mail: julia.mutlow@nfdc.gov.uk

Background Papers:

Attached

APPENDIX 1



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 88/04

Approximate Scale: 1:1250

Date Printed: 15/09/2004

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



New Forest
 DISTRICT COUNCIL

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



[Handwritten Signature]

 AN AUTHORISED SIGNATORY

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SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
None		

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
G1	5 Oak	Situated on southern boundary of Fletchwood House, Fletchwood Road, Totton

Woodlands
(within a continuous black line on the map)

No. on Map	Description	Situation
None		

APPENDIX 2

**OBJECTION TO TREE PRESERVATION ORDER NO. 88/04
LAND OF FLETCHWOOD HOUSE, FLETCHWOOD ROAD, TOTTON.**

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No. 88/04 was made on 20 September 2004. The TPO plan and first schedule are attached as Appendix 1. The Order protects a group of five oak trees (G1).
- 1.2 The order was made following a request from OCA UK Ltd, seeking to confirm the presence of statutory controls with regard to the oaks now included within the TPO. Given this enquiry an assumption was made that these trees were under threat either from premature removal or substantial pruning that would therefore potentially have a detrimental impact on localised amenity.
- 1.3 At the time of notification, the trees were not subject to statutory protection but given the assumed concern the Council's tree officer inspected the site and took the view that five oaks made a positive contribution to the public amenity of the area and that their removal at this time would be detrimental to the appearance of the local environment. As such it was deemed expedient to make them subject to TPO.

2. OBJECTION

- 2.1 On 22 September 2004 Mr and Mrs Ings, the occupiers of The Orchards, wrote to the Council formally objecting to the TPO on the basis that the trees were the cause of severe and ongoing subsidence to their property. Subsequent correspondence between this Council and Mr and Mrs Ings is attached as Appendix 3.
- 2.2 On 9 November 2004, the Council's tree officer wrote back acknowledging the issues raised and offered to meet with them and to discuss the matter further in order to clarify the situation and process.
- 2.3 On 22 November 2004 this meeting took place and in addition to both Mr and Mrs Ings being present with the Council's Tree Officer; a representative from Cunningham Lindsey Loss Adjusters was present acting on behalf of Mr and Mrs Ings building insurers. During this meeting discussions were held regarding the implication of the TPO and potential avenues of progression. It was emphasised by the Council's tree officer that any claims relating to a link between the trees and structural damage to the property would need to be substantiated with evidence either within a formal application or at a future Appeals Panel meeting.

2.4 On 24 December 2004 an application from OCA Ltd seeking to fell four of the five oak trees was formally registered. Given that this application contained a substantial level of technical detail in support of the felling proposal, it was decided by the Council's Tree Officer to seek a technical appraisal from Dr. P. G Biddle, a recognised expert in the field of tree related subsidence.

2.5 Dr Biddle's report is attached as Appendix 4 and concludes;

- The 1.05m of sandy made ground beneath the foundations of the dwelling provides a potential mechanism for the damage.
- Lack of evidence of soil desiccation would imply that the trees are not involved.
- There is no demonstrated cyclical pattern of movement of the cracks, although Cunningham Lindsey have claimed it is occurring.

Consequently he concluded that the submitted evidence failed to conclusively implicate the trees as causal factors in the incidence of subsidence.

2.6 Further to the advice contained within Dr. Biddle's appraisal it was deemed appropriate to refuse the application on 18 February 2005.

3. THE TREES

3.1 The five oak trees subject to TPO 88/04, form part of a boundary hedgerow of mixed species trees and shrubs, typical of the New Forest. The five trees included in the TPO are readily visible to the public from Fletchwood Lane.

3.2 On inspection it was clear that little maintenance has been undertaken in recent times, although there was evidence that some historical pruning had taken place. The presence of deadwood was noted throughout the canopies of all five trees, however this was considered to be directly linked to the lack of recent maintenance and not as a sign of abnormal decline in health. The removal of such material would not necessitate the submission of a formal application.

3.2 No significant defects were noted in the structure or health of any of the five protected trees.

APPENDIX 3

((2;C,1))
Mr & Mrs Ings
The Orchard
Fletchwood Lane
Totton
Southampton
S040 7DZ

My ref: PB/TPO88/04
Your ref:
18/02/2005

Dear Mr & Mrs Ings

Tree Preservation Order 88/04 & Treeworks Application 2005/9 - Fletchwood Lane, Totton

Further to my letter dated 26 January 2005, I am again contacting you in respect of your current objection to TPO 88/04. As I am sure you are aware an application (2005/9) seeking to fell four of the five oaks listed within the Order was submitted by OCA Ltd on behalf of Cunningham Lindsay on the basis that these trees have been implicated in an alleged incident of subsidence at your property.

I can now confirm that this application has been duly considered by this Local Planning Authority (LPA) and a decision to refuse the application has been made. The reasons for refusal are based both on an amenity assessment and independent technical assessment of the evidence submitted.

The formal paperwork relating to this decision has been dispatched to OCA Ltd, who I assume will be contacting you in due course. However in the interim I have taken the liberty of enclosing of a copy of this paperwork for your information.

Following our ongoing discussions it is clear that you wished to maintain your objection on the basis that the trees are causing damage to your property. It would be my assumption that you will draw on information as produced by Cunningham Lindsey and OCA Ltd in support of this claim.

However if this information is the same as the evidence submitted by OCA Ltd in support of the felling application, then it would be unlikely that Appeal Panel Members would be able to support this evidence given that an independent assessment of this information found it to be inconclusive in implicating the four oaks as causal factors.

In this instance I believe it is therefore likely that members would move to confirm the TPO in order that a future application with fresh supporting evidence could be made. I would add that as with any planning application that is refused there is an option for the applicant to appeal to the Planning Inspectorate.

If in this instance an appeal was made and subsequently upheld, then the felling of the four oak trees would be uncontested by this LPA. However as this option is at the discretion of OCA Ltd I would suggest you liaise with them directly.

With these recent developments in mind, I would be interested to know your continued view on this situation, as I am sure you would not wish to continue in a TPO Objection Appeal procedure which is unlikely to result in a constructive outcome.

Regards

Phillip Brophy
Arboriculturalist

Tel: (023) 8028 5329
Fax: (023) 8028 5223
Email: phillip.brophy@nfdc.gov.uk

Enc.



THE ORCHARD
Fletchwood Lane
Totton
Southampton SO40 7DZ
United Kingdom

19 January 2005

Dear Sirs

Re: Your Ref: PB/TPO88/04
Fletchwood House, Fletchwood Lane, Totton

I refer to your letter of 06.01.2005 regarding the Tree Preservation Order No: 88/04, application number 2005/9. I apologise for the delay in replying but have been away. We understood that OCA were making the claim and have since been advised that they have done just that, we are in receipt of a copy. We wish this appeal to continue as it stands with the contents of our original letter, structural damage and also the fact that these trees have never been attended to, trimmed, lopped etc, since we moved into the Orchard which is now almost 8 years ago.

This matter has been going on since the first damage appeared in August 2003 and our agents have carried out tests which concluded that the trees were the problem. Mr Trant in Fletchwood House has now decided that the trees belong to him, or Trant Holdings and therefore refuses to deal with the matter and solve our problems by felling the trees whose roots are causing the damage.

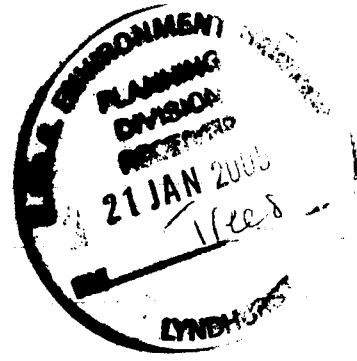
We await hearing from the council regarding this matter as soon as possible with a view to rectifying the problems which will reoccur as soon as we experience another dry spell. Unless the 4 trees in question are felled sooner rather than later, then the costs will escalate considerably due to the fact that some form of underpinning will need to take place if refusal to remove the order is granted. The insurance company will then look to the council and Mr Trant to recover the extortionate and unnecessary costs which will be considerable just for the sake of a few trees.

Yours faithfully


Brenda J and Mr J P Ings

MR. P. BROPHY
New Forest District Council
Policy Design & Information
Appletree Court
Lyndhurst
Hants SO43 7PA

38339
↓
Phil



Yous Ref: 2005/9

The Orchard
Flowerbed house
Tollan
Southampton
SO40 7DZ
19-01-2005

Dear Sirs

I write with reference to your letter of 12/1/05 regarding the works at the above property, T.P. Order 88/04. As we own & reside at The Orchard we were aware of this order as the trees are causing structural damage to the property & are a thorough nuisance due to the fact that these trees have never been maintained, cut back or made safe in the 8 years we have lived at the property. Dead wood is forever falling off & hitting the roof & the leaves are a big problem this time of year. The clog up the gutters & down pipes & it becomes a tiresome job cleaning these out on a weekly basis.

Our Agents have requested the Council to instigate the felling of these trees. Matters are going ahead & we are subsequently appealing against this TPO & a letter has gone to Mr Bishop in these terms following our original letter to him.

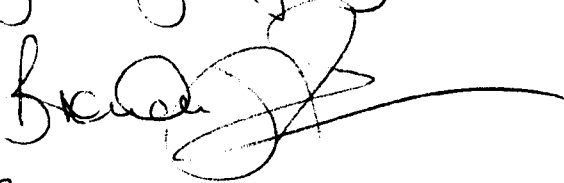
This matter has been going on since August 2003 when the damage first appeared & our Agents subsequently carried out tests, which concluded that the trees were the problem. Mr Trant has now refused to have anything to do with this problem & to agree to the trees being felled.

We await hearing from the Council regarding this matter as soon as possible with a view to

rectifying these problems which will continue to occur as soon as we experience another dry spell. Unless these trees are felled sooner rather than later, then costs to put matters right will escalate considerably due to the fact that unclipping will need to be done if refusal to lift the TPO is not granted. Our Insurance Company will then look to yourselves & Mr Trout to recover the exorbitant costs incurred just for the sake of a few trees. It will also mean added inconvenience to ourselves whilst this extensive work is carried out.

Your comments are awaited.

Yours faithfully



BRENDA J. INGS.

c.c. to Mr. Brophy N.F.D.C.
Mr. Isaacs, Cunnigham Lindsey

Mr & Mrs Ings
The Orchard
Fletchwood Lane
Totton
Southampton
S040 7DZ

My ref: PB/TPO88/04
Your ref:
06/01/2005

Dear Mr & Mrs Ings

Tree Preservation Order 88/04 - Fletchwood House, Fletchwood Lane, Totton

I write with reference to our meeting of 22 November 2004 at your address with both yourselves and Mr Isaacs of Cunningham Lindsey Loss Adjusters. You may recall that during that meeting that we discussed the current situation and in particular the context of your current objection.

Sadly since that time I can confirm that no correspondence specific to your situation has been received either from Cunningham Lindsay or their designated agents. I am now in a position whereby a decision needs to be taken as to whether or not, to proceed to confirm the existing tree preservation order (TPO). As discussed during the meeting the determining factors that will dictate this decision are; is it expedient to retain the trees and do they have prescribed public amenity.

If you wish to sustain your current objection to the order on grounds that one or more of the included trees are damaging your property then a TPO Appeal Panel will need to be arranged. However I would reaffirm that in the absence of quantifiable evidence in support of your present objection it is unlikely that panel members would be able to make a considered judgement in support of this view.

If you were to withdraw your objection to the TPO and it was subsequently confirmed, then the potential involvement of the protected trees in these structural matters could be explored, within the context of a formal tree work application. In light of the present involvement of Cunningham Lindsay it is likely that such an application would stem directly from them or their designated arboricultural agent.

Please remain assured that these comments are not intended to disregard your current concerns in regard of the ongoing structural problems at your property. But a decision on the future of the TPO needs to be made and hence I would ask if you could advise me as to your intentions before the 28th January 2005.

Regards

Phillip Brophy
Arboriculturalist

Tel: (023) 8028 5329
Fax: (023) 8028 5223
Email: phillip.brophy@nfdc.gov.uk

FOR TREE WORK APPLICATION

TPO: 88104
PARISH: Netley Marsh
NATPARK: Yes
PRESENCE: Totton

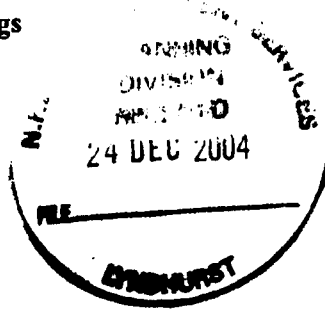


SENT BY RECORDED DELIVERY

23 December 2004

Our Ref: R467/1849132/Ings

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



4 THE COURTYARDS
PHOENIX SQUARE
SEVERALLS PARK
WYNCOLLS ROAD
COLCHESTER
ESSEX CO4 9PE
Tel **01206 751626/751632**
Fax **01206 855751**
Accounts **0151 485 7272**
Email info@oca-arb.co.uk
Visit www.oca-arb.co.uk

Dear Sir / Madam

**Re: Tree Preservation Order Application
Oak trees on land between Fletchwood House, Fletchwood Lane, Totton and the
Damaged property at: The Orchard, Fletchwood Lane, Totton, Southampton**

We are arboriculturists appointed on behalf of building insurers of the damaged property. We are aware that the Council has served an Order covering five Oak trees on 20 September 2004, four of which we believe are implicated in tree root related damage to the property known as The Orchard. Furthermore we understand Mr and Mrs Ings, owners of The Orchard, have quite properly objected to the service of the Order.

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 engineer's report describing the nature and extent of damage.
2. The Factual report of Investigations, including laboratory soil test results and root identification certificates.
3. A site plan, which locates vegetation including the trees the subject of this application.
4. Monitoring.

We believe, from the evidence supplied detailed above, we have demonstrated our two evidential tests, namely:

- 1 **Tree roots have encroached onto the insured's land because:**
Positive Oak root ID with depth of roots in TP/BH / 1 to 2500mm were found
- 2 **Damage to the insured's property has resulted from that encroachment:**
Pattern of damage relative to the trees is a downward movement at the front right hand corner towards the adjacent trees

We understand that the trees referenced below are covered by the recently issued Tree Preservation Order.

GOODLASS HOUSE, GOODLASS ROAD
SPEKE, LIVERPOOL L24 9HJ
Tel 0151 485 7200
Fax 0151 485 7171

UNIT 6, PARKSIDE, 15 HEADLEY ROAD,
WOODLEY, READING, BERKSHIRE RG5 4JB
Tel 0118 901 4646
Fax 0118 901 4458

New Forest District Council

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

Tree Number (as per OCA plan)	Common name	Specification
T2 to T5	4 x Oaks	Fell to ground level and treat stumps

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.
5. Costs will vary between £10,000 and £18,000 depending on whether the trees can be removed or have to remain.

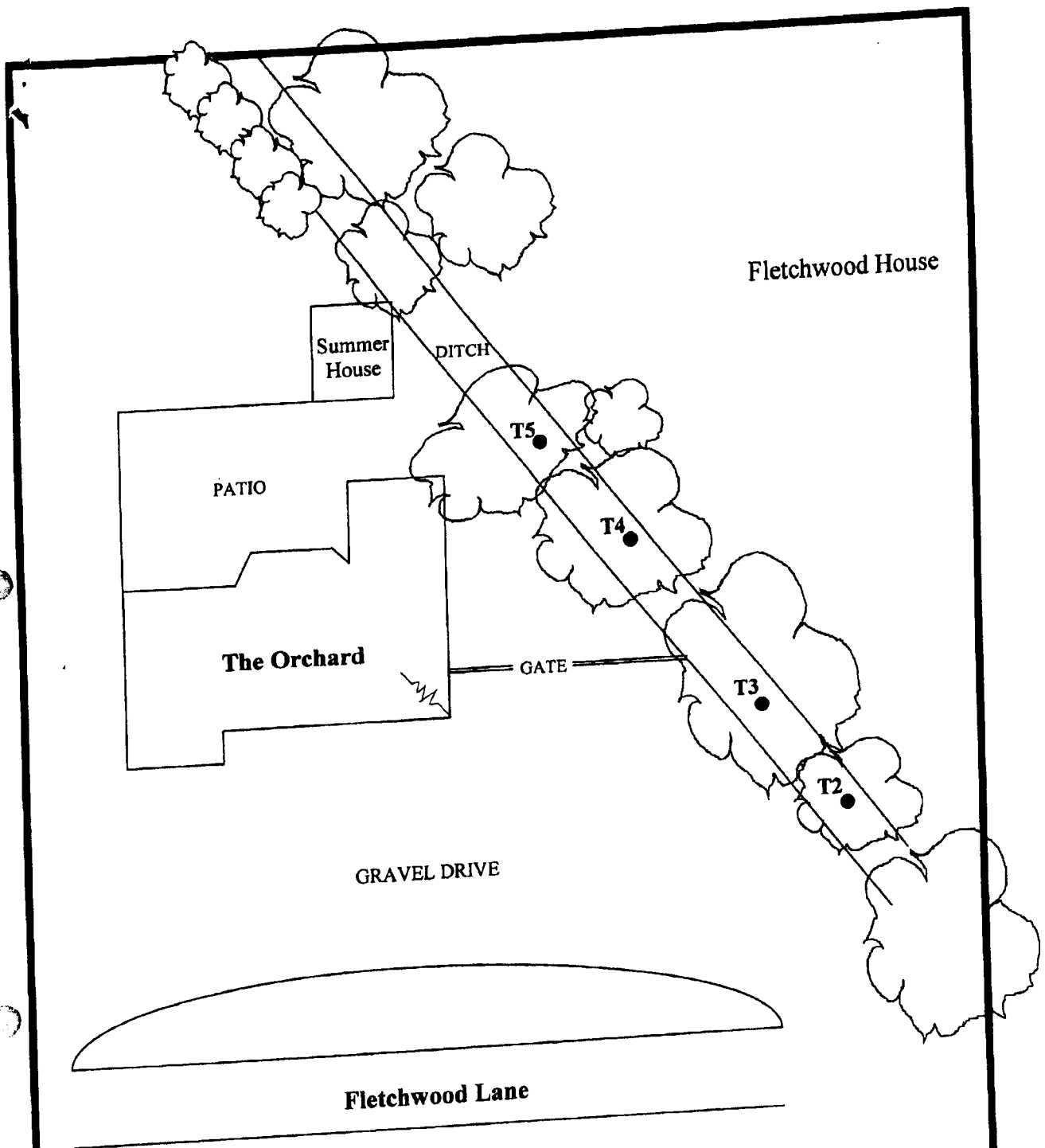
Please provide your formal acknowledgement of this application, indicating the date of its registration and the date that any decision would in your view be due.
Please quote our reference number R467/1849132/Ings in all correspondence.

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

PP 
Margaret MacQueen
Planning Officer
National Insurance Office
OCA UK Limited

Copy: Project Engineer, Cunningham Lindsey (1849132)
Mr and Mrs Ings, Policyholder's
Mr Trant, Neighbour



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

<p>Address: The Orchard, Fletchwood Lane, Totton, Southampton, SO40 7DZ</p> <p>Insurer: Norwich Union</p> <p>Ref: R00467 / 1849132 / Ings</p>	<p>Scale: N T S</p> <p>Drawn Date: 06/08/04</p>	<p>OCA <small>UK Limited</small> Consulting Arboriculturists</p> <p>Park Side 15 Headley Road Woodley, Reading Berkshire RG5 4JB Tel.No: 0118 901 4646 Fax.No: 0118 901 4458</p>
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Mrs B Ings
The Orchard
Fletchwood Lane
Totton
Southampton
SO40 7DZ

My ref: BRW/vmw/TPO 88/04
Your ref:

4 November 2004

Dear Mrs Ings

**TREE PRESERVATION ORDER(TPO) 88/04
LAND OF FLETCHWOOD HOUSE, FLETCHWOOD LANE, TOTTON**

Thank you for your letter faxed to the Council dated 4 November 2004 in which you state your continued concerns about the effect the trees may be having on your property and the recent TPO.

I apologise for the previous delay in responding to your earlier letter, 22 September. Unfortunately this delay is a reflection of the large amount of correspondence that we have to deal with in no way reflects upon the consideration we give to your concerns.

I will ensure that your letter is presented to Mr Brophy upon his return to the office next week.

Yours sincerely

Bryan Wilson
Tree Group Leader

Tel: (023) 8028 53330
Fax: (023) 8028 5223
Email: pdi@nfdc.gov.uk



BRENDA & JOHN INGS

The Orchard
Fletchwood Lane
Totton
Southampton
SO40 7DZ

Your Ref: PB/vmw/TPO 88/04
Date: 4 November 2004

Dear Mr Wilson

Re: Tree Preservation Order (TPO) 88/04

I refer to my letter of 22 September 2004 raising objections with regard the TPO mentioned above, addressed to Mr Brophy. I received an acknowledgement to this letter dated 22 October 2004, exactly one month later stating that Mr Brophy was on leave for two weeks. Was this 2 weeks during the one month it took to reply to my letter or two weeks from the date of your letter? Please explain. I understand our Insurance Company's agents have also objected to this TPO as the trees in question are causing substantial structural damage to The Orchard. It is therefore necessary that this TPO is considered and rescinded as a matter of urgency please as it is now almost 15 months since the structural damage was first detected, during the very hot summer of 2003. The trees/roots need to be dealt with sooner rather than later before further damage is caused and obviously the longer it takes the more the repairs are going to cost. There is also the great inconvenience this has caused to date. Please pass this letter to Mr Brophy on his return, hopefully by the time this letter is received, and await his reply by return please.

Yours sincerely

Brenda Ings (Mrs)

Mr Bryan Wilson
New Forest District Council
Appletree Court
Lyndhurst
Hants SO43 7PA

BY FAX AND BY FIRST CLASS POST



Mr & Mrs Ings
The Orchard
Fletchwood Lane
Totton
Southampton
S040 7DZ

My ref: PB/TPO88/04
Your ref:
09/11/2004

Dear Mr & Mrs Ings

Tree Preservation Order 88/04 - Fletchwood House, Fletchwood Lane, Totton

Firstly may I apologise for the delay this response further to your original letter dated 22 September. You may recall that I spoke to you on the telephone following this letter and we mentioned that a site visit would be beneficial in the circumstances. Such a meeting would not only allow me to view the trees from your property but also allow me to further explain the TPO process and the potential future options.

Once again I apologise for the delay in response but hope to hear and indeed meet with you in the very near future.

Regards

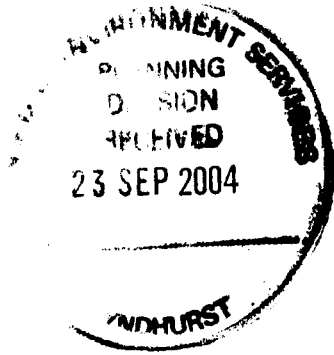
Phillip Brophy
Arboriculturalist

Tel: (023) 8028 5329
Fax: (023) 8028 5223
Email: phillip.brophy@nfdc.gov.uk



BRENDA & JOHN INGS

The Orchard
Fletchwood Lane
Totton
Southampton
SO40 7DZ



Your Ref: PB/mac/TPO 88/04
Date: 22 September 2004

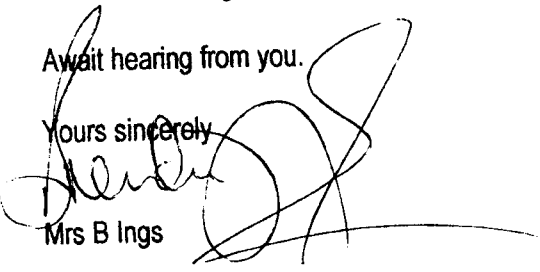
Dear Mr Brophy

Your communication dated 20 September 2004 has been received with may I say rather a surprise. We discussed this yesterday in our telephone conversation and have, as instructed, contacted Cunningham Lindsey who were aware of the situation. We have expressed our dissatisfaction to them and advised them that we intend to take legal action against OCA for negligence and all the inconvenience they have put us through over the last 13/14 months since this problem first arose and they came to our property to survey the damage. we were told that they were contacting our neighbour and the Council to establish ownership of the trees. Apparently this was not done until some 12 months later. Cunningham Lindsey have now decided that they will be passing the file to another agent who hopefully will get the matter moving a lot quicker and we can finally sort the matter out and get all the repairs done to both the outside and inside the property.

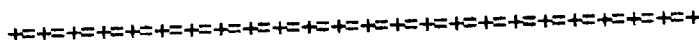
We therefore write to you now to advise you that in view of all the damage caused to our property from the roots of the trees in question, we are objecting most strongly about the TPO's and action needs to be taken as a matter of urgency regarding this. Perhaps you could contact us by return please to maybe arrange for an on site visit to establish the amount of damage caused and why it is essential these trees have to come down urgently.

Await hearing from you.

Yours sincerely

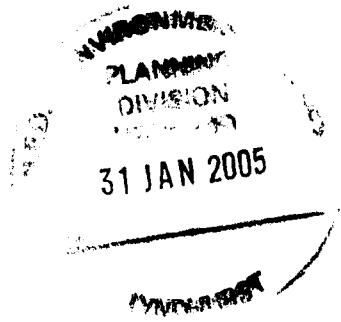

Mrs B Ings

Mr Brophy
Tree Team (New Forest District Council)
Appletree Court
Lyndhurst
Hants SO43 7PA



APPENDIX 4

Our Reference: JPT/77/LW
Your Reference: 2005/9
Date: 28 January 2005



Mr J Trant
Fletchwood House
Fletchwood Road
Totton
Southampton
SO40 7DX

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

Dear Sir/Madam

RE: TREE PRESERVATION ORDER NO. 88/04
APPLICATION NUMBER: 2005/9

With regard to the above, it would be a great travesty to fell these four oak trees that have been standing so strong for many years.

Surely professionally pruning of these trees on a regular basis would reduce the water absorption required by the trees. This would vastly reduce the likelihood of any further structural complications to the neighbouring property.

It is rather confusing when a professional Arboriculturist (OCA UK Ltd) who represent the owner of The Orchard, Fletchwood Lane, the property neighbouring the trees, firstly recommended on the 30 April 2004 to remove one Tree T1, as stated in the attached documentation, "fell and treat stump". This tree (T1) actually belongs to the owner of The Orchard, who they represent.

After being made aware of this, OCA then recommend the removal of four other Oaks and T1 seems to be spared according to your reference above and the last paperwork received from OCA. Further confusion has been caused by OCA, as the trees have been re-identified. Tree T2 was originally across Fletchwood Lane (Drawing 14.11.03) and now appears adjacent The Orchard (Drawing 06.08.04).

Clarification of the number and position of Oaks to be pruned must be sorted out. Has T1 been saved from felling? If this is the case the other four Oaks can be saved.

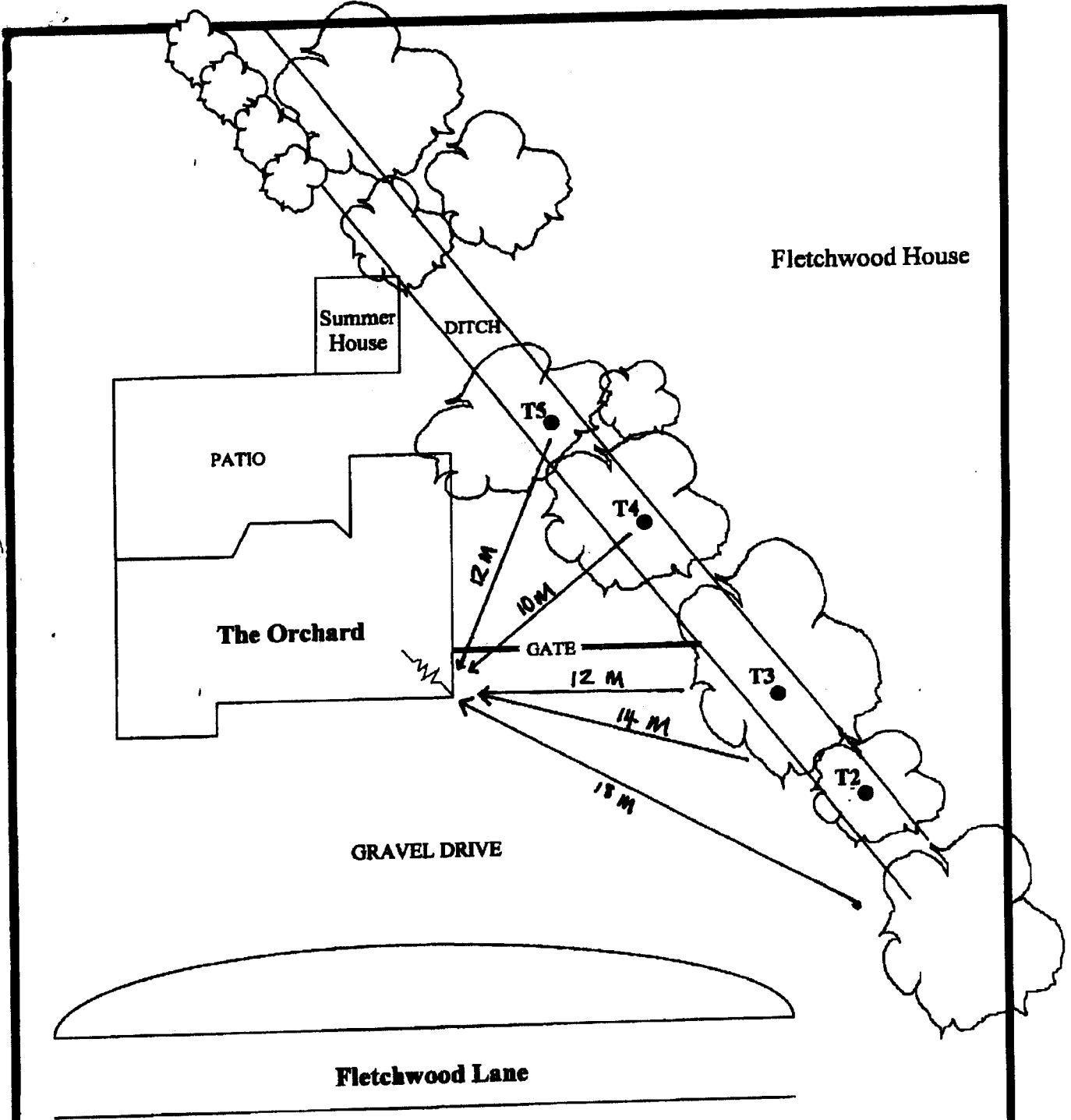
A DNA test on the roots would ascertain the Oak tree which is causing this absorption problem.

We hope that the Council sustains the Tree Preservation Order but allows the professional pruning of the trees.

Yours faithfully

Mr J P Trant

2005/9.

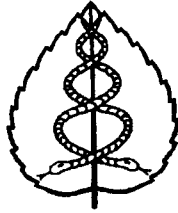


(NB: This plan identifies the trees considered implicated in the subsidence event and may not be a comprehensive record of site features.)

<p>Address: The Orchard, Fletchwood Lane, Totton, Southampton, SO40 7DZ</p> <p>Insurer: Norwich Union</p> <p>Ref: R00467 / 1849132 / Ings</p>	<p>Scale: N T S</p> <p>Drawn Date: 06/08/04</p>	<p>Park Side 15 Headley Road Woodley, Reading Berkshire RG5 4JB Tel.No: 0118 901 4646: Fax.No: 0118 901 4458</p> <p>OCA UK Limited Consulting Arboriculturists</p>
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APPENDIX 5

P.G. Biddle



Arboricultural Consultant

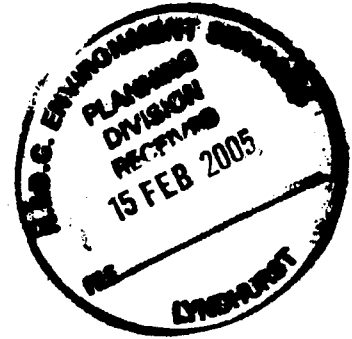
Dr P.G. Biddle, O.B.E., M.A., D.Phil., F.Arbor.A.
Registered Consultant of the Arboricultural Association
Honorary Fellow, Institute of Chartered Foresters

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

14th February 2005

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

Your ref: PB2005/9
Our ref: 2611



Dear Mr Brophy,

Alleged subsidence ~ The Orchard, Fletchwood Lane, Totton.

I refer to your letter of 12th January enclosing details of an application by OCA for the felling of four oak trees which are alleged to be the cause of damage to the above property. As background information you have provided me with:

- i. Application by OCA, dated 23 December 2004
- ii. Engineering Appraisal report by Cunningham & Lindsey, dated 25 Oct. 2003
- iii. Report on site investigations undertaken on 1st October 2003
- iv. Tree Root Investigation Ltd, dated 4 October 2003
- v. Crack monitoring results by Cunningham & Lindsey over period 27 Oct. to 14 Dec. 2004.

I understand you would like my comments in respect of the evidence in support of the application; these are noted below.

1. Cunningham & Lindsey state that cracking was discovered in mid August 2003. Development of damage at that time of year is consistent with the involvement of trees, but other factors can also cause damage at that time.
2. Cunningham & Lindsey describe "diagonal tapering cracks of up to 3mm" and place this into category 3 of the BRE classification. This appears to be an exaggeration, as category 3 indicates cracks of 5 - 10mm, unless there are a number of cracks up to 3mm. However, if the direction of cracking is correctly described, it is potentially consistent with the involvement of the trees.
3. The site investigations describe 1.05m of sandy made ground below the shallow foundations. Of this, 0.55m is described as 'loose'. Although any initial settlement should have occurred long ago, this made ground provides a potential mechanism for the damage, particularly as there was some damage to the drains.
4. Cunningham & Lindsey allege that there is evidence of significant desiccation down to 1.5m. This is in the sandy made ground, and thus of no relevance. They further allege that it is on the 'boundary of desiccation' at 2.5m. As the information provided does not allow any reliable method for assessing desiccation, I cannot agree with their assessment. If one uses the crude method of comparing moisture content with 0.4 x liquid limit, or with Plastic limit +2, the soil at 2.5m shows no desiccation. As the soil tests were undertaken at the optimum time of year for demonstrating desiccation, and in a particularly dry summer, the lack of evidence of desiccation implies that trees are not involved.
5. Most significantly, Cunningham & Lindsey anticipated that damage "will continue to occur on a cyclical basis if no action is taken". For some reason they did not start any monitoring for 12 months, but

since the monitoring started in October 2004, it has not shown any clear pattern. One crack closed by 0.14mm, but another has opened by 0.12mm and another by 0.05mm. It should be noted that these movements are very small.

6. In the light of the soil investigations and the monitoring results, it is my opinion that the evidence does not reasonably establish the involvement of the trees. More definitive evidence is required to prove the cyclical nature of the foundation movement. Level monitoring would be more effective for this than the crack monitoring.


7. OCA seek the felling of 4 trees, some of which are close to the rear corner and others more distant from the front corner, where the damage is said to have occurred. It is unlikely that all 4 trees are involved. Level monitoring would show exactly which parts of the building are subject to any movement, and thus help to indicate which tree or trees are involved.

I therefore recommend that the application be refused, at the same time indicating that you would be pleased to consider a fresh application, if supported by evidence to demonstrate the cyclical nature of the foundation movement, and which parts of the building are subject to such movement. You might wish to indicate that level monitoring would be the most effective way to demonstrate this.

It is my understanding that these trees are on the neighbouring property. If so, consent is not required so far as may be necessary for the prevention or abatement of a nuisance. For this reason you might wish to point out to OCA that an application is not necessary provided they have the evidence to support any action which they might take, but that they risk prosecution unless then can prove that the works were exempt. This would put the ball back in their court.

I trust this provides the information you require, but please let me know if you have any queries. In the meantime, may I take this opportunity to enclose a note of my fees.

Yours sincerely,



Dr P.G. Biddle OBE