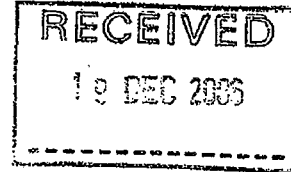


Our Ref: JHB-ACI105-0456205 – Jonathan Bingham
 Your Ref:
 15 December 2006



birmingham
 bristol
 brussels
 leeds
 london
 manchester
 winchester

Pembertons Property Management
 Station House
 9-13 Swiss Terrace
 London
 NW6 4RR

Dear Sirs

Claimant: Country Estates Management Limited
Property: 26 – 28 Warrington Crescent, London
Your Client: Formosa Amenity Limited

We write further to our previous correspondence in respect of the above matter and enclose the Supplemental Reports by H. Paul Arnold dated 10 October 2006 and 14 December 2006.

You will note that Mr Arnold considers that the latest set of monitoring readings support the evidence that your clients' trees are causing a nuisance to our clients' property. Further, the most appropriate arboricultural solution is for the trees to be removed. Although the previous application to the local planning authority was rejected, at the date of application this further evidence was not to hand. The law in this area has also been clarified following the case of *Perrin and Ramage v Northampton Borough Council (2006)* in which it was held that where a tree is causing an actionable nuisance, it is exempt from a Tree Preservation Order pursuant to section 198(6) of the Town and Country Planning Act 1990. We shall be referring these issues again to the local authority and in the meantime recommend that you take independent legal advice.

In terms of the existing damage, a schedule of repairs is being prepared for our clients' property in the anticipation that should further vegetation management be undertaken and the property shows further signs of stability, repairs can be commenced as soon as possible. Please confirm your position on liability and whether your clients will accept responsibility for the costs of repairs. In order to protect our clients' position, and to comply with the Civil Procedure Rules, General Pre-Action Protocol (Practice Direction), we shall be sending a formal letter of claim to your clients registered office.

We look forward to hearing from you shortly.

Yours faithfully

Beachcroft LLP

Beachcroft LLP

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 Beachcroft LLP
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 jbingham@beachcroft.co.uk DX: 13057 Birmingham 1

H.Paul Arnold

Batchwood Cottage, Batchwood Hall, St.Albans, Herts. AL3 5XA

Telephone: St.Albans [01727] 866911

Landscape and Arboricultural Consultant

December 14th 2006

Beachcroft I.L.P
9 Brindleyplace,
4 Oozells Square,
Birmingham.
B1 2HE UK.

My reference: Warrington/HPA/005

Your reference: JHB-AC1105-Jonathan Bingham.

**Second Supplemental Report on Trees Associated with Subsidence
at 26-28 Warrington Crescent W9 Following Completion of Crack
Monitoring Records from December 2004 to November 2006**

Second Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 14/12/06

1.0 Terms of reference

I am instructed by Mr. Jonathan Bingham of Beachcroft LLP to consider the completion of the crack monitoring records in November 2006 which now show that stability has been achieved from June to November 2006.

2. I will refer to the following documents in the course of this report.

2.1 Crack monitoring readings and graphs from December 2004 to November 2006.

2.2 My report dated August 12th 2005 including appendices.

2.3 F. Wibaut Invoice number 345 September 17th 2005 addressed to Pemberton Residential:

'To tree surgery as agreed' in the sum of £14120.00 and the estimate dated July 7th 2005 which describes the proposed work as:

'To pollard 52 No. London Plane trees and reduce 2 Horse Chestnuts 1 Lime and 1 Sycamore by 40%.

2.4 Application to remove T3, T4, T5 and T6 Plane dated July 5th 2006.

2.5 City of Westminster Notice of refusal dated September 5th 2006

3.0 Further consideration of Westminster's notice of refusal.

3.1 Paragraph two of the notice states that 'The removal of the London plane trees is not considered justified on the basis of the information provided'.

3.2 It is quite true that crack monitoring can in some cases show a late summer reaction which persists into October and very occasionally November. On this basis our case was not entirely proved by the monitoring records which ended in June 2006 and were given to Westminster at our joint inspection on August 3rd 2006. They did show a clear period of recovery and a short period of stability until the June reading but we lacked the mid and late summer readings.

3.3 We now have a complete record for the entire 2006 growing season extending until November which would catch any latent reaction.

Second Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 14/12/06

3.4 The current monitoring records confirm that in spite of the exceptionally hot summer, the critically low aquifers, the continuing hose pipe ban and the confirmed threat of global warming, the crack monitoring graphs show post pollarding recovery followed by nearly six months stability.

3.5 This strongly supports the view that either annual pollarding or complete removal and replacement are the only tree measures available.

3.6 I strongly recommend removal and replacement as originally requested. I suggest that the cost of annual pollarding the four trees, in the region of £760 per year, may persuade the tenants to support our proposal.



H. Paul Arnold.

H.Paul Arnold

Batchwood Cottage, Batchwood Hall, St.Albans, Herts. AL3 5XA

Telephone: St.Albans [01727] 866911

Landscape and Arboricultural Consultant

October 10th 2006

Beachcroft LLP
9 Brindleyplace,
4 Oozells Square,
Birmingham.
B1 2HE UK.

My reference: Warrington/HPA/005

Your reference: JIIB-AC1105-Jonathan Bingham.

**Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9.**

Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

1. Terms of reference

I am instructed by Mr Jonathan Bingham of Beachcroft LLP to consider the implication of the City of Westminster's notice of refusal to our application to remove four London Plane trees at the rear of 26-28 Warrington Crescent.

2. I will refer to the following documents in the course of this report.
 - 2.1 My report dated August 12th 2005 including appendices.
 - 2.2 Crack monitoring readings and graphs from December 2004 to September 2006.
 - 2.3 F. Wibaut Invoice number 345 September 17th 2005 addressed to Pemberton Residential:
 - 'To tree surgery as agreed' in the sum of £14120.00 and the estimate dated July 7th 2005 which describes the proposed work as:
 - 'To pollard 52 No. London Plane trees and reduce 2 Horse Chestnuts 1 Lime and 1 Sycamore by 40%.
 - 2.4 Application to remove T3, T4, T5 and T6 Plane dated July 5th 2006.
 - 2.5 City of Westminster Notice of refusal dated September 5th 2006
- 3.0 Pruning history of the trees since my site survey on July 25th 2005.
 - 3.1 I inspected the site in the company of Westminster Tree Officers, Paul Ackers and Barbara Milne on August 3rd 2006. The plane trees had been pollarded in September 2005 as described in F. Wibaut's estimate and carried almost one season's regrowth which corresponds with the date of the invoice dated September 17th 2005. Vision was obscured by the dense regrowth but typically they showed Maximum growth from early June 2006, they were in full vigour and likely to peak in August 2006 and decline by the end of September. I would expect the leaves to remain on the trees until early November but the winter buds will have formed and by then the trees will be dormant. There can of course be climatic variations which influence this general pattern. Unobstructed vision of the pollard points will be available in the winter

Supplemental Report on Trees Associated with Subsidence at
26, 28 Warrington Crescent, London W9, 10/10/06

4.0 Crack monitoring readings and graphs from December 2004 to September 2006 relative to the active and dormant periods of the plane trees.

4.1 Maximum soil desiccation tends to peak in August when minimum rainfall has coincided with maximum crown size or leaf area during the growing season. Soil rehydrates throughout the winter and early spring when deciduous trees are dormant until 'field capacity' or maximum soil moisture content is reached in late spring.

4.2 Level monitoring and to a lesser extent crack monitoring graphs tend to follow this general pattern of peaks and troughs but will be affected by soil structure or mechanical intervention, For instance by tree reduction or removal.

4.3 While in the present case we have two summer crack monitoring reading ie June to August 2005 and June to September 2006, and we have two theoretical field capacity readings ie April to June 2005 and April to June 2006, we only have one entirely reliable pollarding date which is September 2005.

4.4 Given that Pembertons were pollarding the Formosa Amenity Garden trees on a three year cycle then repollarding in September 2005 would have removed the previous three year old growth. Most of the winter buds will have been removed and the initial vigorous regrowth in the spring of 2006 would have to draw on stored energy reserves until the new shoots and leaves develop in May when the normal process of photosynthesis can gradually take over.

4.5 Regrowth and soil moisture extraction by trees will largely stop from late September to the following May consequently cracks will usually close from autumn to late May with or without repollarding. This process can be seen in the December 2004 to June 2005 monitoring graphs. The same could apply to the September 2005 to May 2006 readings.

4.6 Severe repollarding in September 2005 based on a three year cycle not only removed most of the winter buds but in the present case will have reduced the total crown height from 16.0m to 11m, ie back to the previous pollard point of the trees. The effect of this repollarding will show in the 2006 growing season.

4.7 The graph shows not only a continual fall or closing of cracks from September 2005 but a levelling off during the peak growing period, ie from June to September 2006.

Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

5.0 Climatic conditions.

5.1 Complete monthly rainfall records for 2006 will not be available until the end of the year but the depletion of the aquifers, the drying of reservoirs and the heat wave of 2006 are still national media issues. At a domestic level the reality of global warming was bought home by the hose pipe ban which was imposed in May 2006 and is still in force.

X

5.2 Given the critical lack of ground water one would normally expect seasonal desiccation of clay soils by tree roots to result in increased foundation movement with a correspondent peak in crack monitoring graphs. The latest available reading in September 2006 shows no such response.

X

5.3 The immediate conclusion is that this levelling off from June to September 2006 is due to the repollarding of the trees. I understand that crack monitoring will continue at least until October which may show further recovery or continuing stability. At the moment it seems unlikely that the October reading will show significant opening.

X

5.4 The possibility has also been considered that the current levelling off could be due to a combination of late summer rainfall and the repollarding of the plane trees. While it is true that August rainfall exceeded the previous thirty year average my own local observation of dried up planting sites has been that the surface run off in August was too rapid to allow deep penetration. Furthermore, similar stability has not been achieved this year on two other monitored sites where the suspect trees have remained in position or have not been reduced.

X

6.0 Conclusion

6.1 The crack monitoring which has followed the pollarding in September 2005 strongly supports paragraph 6 of my August 12th Report, ie T3, T4, T5 and T6 Plane are the principal cause of the current active damage.

6.2 Removal and replacement of T3, T4, T5 and T6 Plane remains the most reliable and in the long term the cheapest solution.

This is what we said no.

Supplemental Report on 'Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

7.0 The option of alternative remedial tree work.

7.1 The trunk and crown structure of the plane trees shows that for many years they were pollarded on an annual or biennial rotation. While the girth increment of the main stem was severely restricted by this treatment the actual lineal extension of the new shoots was not greatly diminished. Those who can remember this traditional form of husbandry will be familiar with the dense mop headed crowns in the summer extending between 1 and 2 metres from the knuckles which were starkly revealed after the annual or biennial winter pruning. The result of this now unfashionable treatment was a crown of fresh branches of strictly limited size above a sometimes imposing trunk which was of course well able to withstand accidental damage.

7.2 Given that complete removal of the four plane trees has been refused by Westminster City Council and that at the moment pollarding appears to have achieved stability for the first year then the option remains of shortening the three year pollarding cycle to annual or at very least biennial pollarding, examples of both systems can be seen in the London area.

7.3 There is no doubt that plane trees can withstand severe pollarding and the only valid objection to shortening the pruning cycle is likely to be based on ascetic or subjective opinion. Indeed this is part of Westminster's reason for refusal, ie that removal and replacement '*would be detrimental to the visual amenities of Formosa Amenity Garden.*' Annual pollarding of these misshapen trees does produce an harsh outline every year until regrowth develops in the spring. This problem has itself been caused by allowing the old pollard framework to out grow its situation.

7.4 As far as structural damage is concerned cyclic pruning leaves the properties vulnerable to a period of neglected pruning or prolonged drought, indeed the present problem has arisen because the the third season of regrowth followed a very dry winter. The aquifers have still not recovered, hence the continuation of the hose pipe ban. The limited crack monitoring graphs from December 2004 to September 2006 clearly shows the amplitude of movement in the third growing season, there is no reason why the same imbalance between soil moisture supply and moisture uptake by the trees will not recur while the three year pruning rotation remains in place.

Supplemental Report on Trees Associated with Subsidence at
 26-28 Warrington Crescent, London W9, 10/10/06

8.0 Further consideration of Westminster's notice of refusal.

8.1 Paragraph two of the notice states that 'The removal of the London plane trees is not considered justified on the basis of the information provided'. The last monitoring reading at the time of our application and later joint inspection was June 2006, this reading could have shown a fall from September 2005 to June 2006 with or without pollarding, see my paragraph 4.5 above. It is only the levelling off from June to September and possibly October which will confirm the involvement of the plane trees, particularly when this is compared with the June to August 2005 readings.

8.2 Our application specifically includes the following matters under the heading 'REASON' in the printed application form provided by Westminster: To remove the cause of subsidence and avoid underpinning isolated section within the terrace plus abating a nuisance being caused to the property.

8.3 As I understand Westminster's response, it appears that they have only addressed the issue of causation, I think this should be answered on our part by providing the full monitoring records, ideally to the end of the year but initially as soon as the October readings become available.

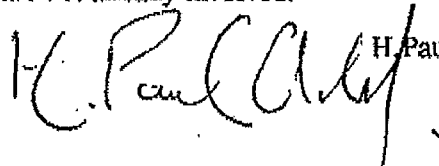
8.4 The remaining two issues are not entirely within my discipline and I suggest that they should both be considered against the case of Perrin and Ramage v Northampton Borough Council and others September 26th 2006.

9.0 Provisional recommendation

9.1 I suggest that a second application to remove the trees should be made in the light of the full monitoring readings which were not available at the time of our first application.

9.2 The option of annual pollarding followed by further monitoring should be discussed but this should not override the main application to remove and replace the four plane trees. This may well be opposed by the tenants but given that Westminster have already undertaken a revised pruning system with some of their own trees then it would be reasonable at least to discuss the options.

9.3 I also repeat my original recommendation that level monitoring should be put in place as soon as possible. This would demonstrate the vertical displacement caused by the trees and the problems that would be caused by underpinning a small section of the terrace. Number 30 should be included in level monitoring but permission will be required to extend monitoring to properties that are not already involved.

 H. Paul Arnold.

Second Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 14/12/06

1.0 Terms of reference

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Second Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 14/12/06

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Telephone: St.Albans [01727] 866911

Landscape and Arboricultural Consultant

October 10th 2006

Beachcroft LLP
9 Brindleyplace,
4 Oozells Square,
Birmingham.
B1 2HE UK.

My reference: Warrington/HPA/005

Your reference: JIB-AC1105-Jonathan Bingham.

Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9.

Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

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Supplemental Report on Trees Associated with Subsidence at
26.28 Warrington Crescent, London W9, 10/10/06

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Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

5.0 Climatic conditions.

5.1 Complete monthly rainfall records for 2006 will not be available until the end of the year but the depletion of the aquifers, the drying of reservoirs and the heat wave of 2006 are still national media issues. At a domestic level the reality of global warming was bought home by the hose pipe ban which was imposed in May 2006 and is still in force.

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6.0 Conclusion

6.1 The crack monitoring which has followed the pollarding in September 2005 strongly supports paragraph 6 of my August 12th Report, ie T3, T4, T5 and T6 Plane are the principal cause of the current active damage.

6.2 Removal and replacement of T3, T4, T5 and T6 Plane remains the most reliable and in the long term the cheapest solution.

Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/05

7.0 The option of alternative remedial tree work.

7.1 The trunk and crown structure of the plane trees shows that for many years they were pollarded on an annual or biennial rotation. While the girth increment of the main stem was severely restricted by this treatment the actual lineal extension of the new shoots was not greatly diminished. Those who can remember this traditional form of husbandry will be familiar with the dense mop headed crowns in the summer extending between 1 and 2 metres from the knuckles which were starkly revealed after the annual or biennial winter pruning. The result of this now unfashionable treatment was a crown of fresh branches of strictly limited size above a sometimes imposing trunk which was of course well able to withstand accidental damage.

7.2 Given that complete removal of the four plane trees has been refused by Westminster City Council and that at the moment pollarding appears to have achieved stability for the first year then the option remains of shortening the three year pollarding cycle to annual or at very least biennial pollarding, examples of both systems can be seen in the London area.

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Supplemental Report on Trees Associated with Subsidence at
26-28 Warrington Crescent, London W9, 10/10/06

8.0 Further consideration of Westminster's notice of refusal.

8.1 Paragraph two of the notice states that 'The removal of the London plane trees is not considered justified on the basis of the information provided'. The last monitoring reading at the time of our application and later joint inspection was June 2006, this reading could have shown a fall from September 2005 to June 2006 with or without pollarding, see my paragraph 4.5 above. It is only the levelling off from June to September and possibly October which will confirm the involvement of the plane trees, particularly when this is compared with the June to August 2005 readings.

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9.0 Provisional recommendation

9.1 I suggest that a second application to remove the trees should be made in the light of the full monitoring readings which were not available at the time of our first application.

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9.3 I also repeat my original recommendation that level monitoring should be put in place as soon as possible. This would demonstrate the vertical displacement caused by the trees and the problems that would be caused by underpinning a small section of the terrace. Number 30 should be included in level monitoring but permission will be required to extend monitoring to properties that are not already involved.

H. Paul Arnold.
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