

IN THE CENTRAL LONDON COUNTY COURT

Case No: OWL00094

Date: 09/07/2013

Before :

HHJ DIANA FABER

Between :

**JOHN BATTLEY
- and -
WYCOMBE DISTRICT COUNCIL**

Claimant

Defendant

MR CHRISTOPHER RUSSELL (instructed by **Sue Tuck & Co**) for the **Claimant**
MR ANDREW DAVIS (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 19th, 20th March 2013

JUDGMENT

HHJ Diana Faber :

1. This is a judgment on the issue of liability for Mr Battley's serious injuries suffered when he was struck by a falling tree at about 13.30 on 18th January 2007. The tree was on the Defendant's land and it has accepted that it should have known of the tree, inspected it and that it did not do so. The main issues between the parties relate to the extent of the inspection and/or testing which the Defendant should have undertaken, what such inspection and/or testing would have revealed and whether what would have been revealed was causative of the fall.
2. There was a paginated trial bundle, a spiral bound bundle of photographs, and a ring binder of photographs submitted by the Defendant. In the course of the trial a number of copy photographs were marked by witnesses. I called them Exhibits 1-7 (exhibit 1 consisted of three photographs).
3. I heard evidence from Mr Cunningham who is an arboricultural and planning officer employed by the Defendant and read his witness statement [58-64]. I also heard evidence from arboriculturalists Dr Hope, expert for the Claimant , and Dr Dobson, expert for the Defendant and read their reports. I also read other documents to which I was specifically referred.
4. During the trial I refused the Claimant permission to adduce evidence as to enquiries made by Mr Hope. I also ruled during re-examination of Dr Dobson that he could not rely on Swedish publications evaluating end uses of trees.
5. Closing submissions were made in writing and the last was on the 12th April 2013. I apologise to both parties for missing the two-month deadline for a reserved judgment.
6. I have carefully considered the evidence and submissions but make reference here only to those points which were most important to the decision making process.

UNCONTROVERSIAL FACTS ESTABLISHED BY THE STATEMENTS OF CASE [3-7] AND [16-18]

7. The Defendant owned the land near a small park known as May Balfour Gardens on which grew a mature Lombardy Poplar measuring approximately 27 metres high, with a spread of about 7 metres and a stem of about 1.25 metres. It was shrouded in ivy up to a height of about 9 metres which significantly increased its weight. The land on which the tree grew was adjacent to property known as Regal House, which included a block paved car park and also adjacent to land known as Marlow Place. The construction of the parking area in 1986, which was pursuant to planning permission granted by the Defendant, would have required excavation and included a heavy concrete strip on its edge and very close to the tree. The Defendant knew or ought to have known, that such construction or installation could damage or sever the roots and adversely affect the anchorage and stability of the tree.

ISSUES ON THE PLEADINGS

8. One pleaded issue which was not pursued in front of me was whether it was the poplar which fell on the Claimant or whether the poplar fell and pushed another tree onto the Claimant.
9. There are 10 particulars of negligence [5/8]. The first particular was that the Defendant failed, until after the tree had fallen, to recognise that it owned and was responsible for the tree. This was denied in the Defence but was admitted at the outset of the trial. The second particular was that the Defendant failed to inspect, maintain or monitor the tree and its condition, in particular its anchorage and stability. This allegation was admitted in part at the outset of the trial. The Defendant admitted that as a result of not knowing that it was responsible for the tree it was negligent in not inspecting it. However the extent of the admitted negligence was only as to a failure to visually inspect it.
10. The other particulars which on the statements of case the Claimant was required to prove were in summary as follows : failure to consider the threat posed to the anchorage/ stability by the excavation and installation of the heavy concrete strip; failure to carry out steps to ascertain the stability /anchorage of the tree; failed in the first four particulars when it knew that it did not have a tree protection system; failed to investigate by using resisograph or ultrasound tomography the presence of issues in the root plate; failed to remove the tree; caused it to remain despite its compromised anchorage/ stability; failed to heed that the ivy increased the vulnerability of the tree to wind and failed to remove the ivy.
11. The Claimant was put to proof that inspections before 18th January 2007 should have revealed that the tree was dangerous.
12. Positive averments on which the Defendant relied originated from Mr Cunningham's inspection and were as follows: prior to the fall the tree was apparently healthy and there were no visible signs of unsafety; after the fall inspection showed that bud and shoot growth were normal, breakages and fractures were consistent with healthy wood that was subjected to extreme forces, that is wind, with no shattered detachments of rotten or decayed timber; there was no visible evidence of decay pockets or other pathogens; there was no evidence of any significant defects and the visible root buttress was typical in size and form of a wind-blown tree. The Defence pleaded that the fall was caused by the extreme winds experienced on 18th January.
13. The summary of the case for the Defendant in the closing submissions was that the duty on the Defendant is to take such care as is reasonable in the circumstances. Those include their very sizeable tree stock and fixed and limited resources. There should have been a properly conducted visual inspection (which might have included a tap with a mallet) which would have revealed nothing out of the ordinary and the tree would have been earmarked for a repeat inspection in the future. No further investigations would have been warranted and the accident would not have been avoided [Defence close 43,47]. Hence any breach of duty lacks causative effect [Defence close 4].

EVIDENCE

14. THEORY AS TO EFFECT OF 1986 EXCAVATION AND INSTALLATION OF THE HEAVY CONCRETE STRIP ON THE ANCHORAGE /STABILITY OF THE TREE.
15. There was agreement between the experts that all roots to the depth of formation of the kerb between 400mm and 450mm would have been severed during construction works for the car park and that any decay identified in roots growing towards or under the car park and edging is likely to be as a consequence of root severance. [Joint report 10,12].
16. There is an issue as to the effect of severance of the roots which turns in part upon root growth pattern of trees. See in particular pp510-511, paragraphs 22,23,27 of the joint report.
17. In 1995 Dr Dobson published an authoritative article on this topic [520-525] which was drawn to the court's attention by Dr Hope who was of the opinion that Dr Dobson's theory in relation to this case contradicted his own article.
18. It said "over 90% of all roots and virtually all the large structural supporting roots are in the upper 60cm of the soil. Soil disturbance within the rooting area should be avoided, as this can significantly affect tree stability and moisture uptake". In paragraph 2 it said "It is uncommon for trees to have roots deeper than about 2m, though exceptionally some small (a few mm in diameter) roots can extend to 5 m or more." In paragraph 8 he said that "All trees can develop a deep root system (2-3m) if soil conditions allow. Apparent differences in rooting ability depend on the genetically determined capacity of roots to tolerate difficult soil conditions such as poor aeration and compaction." In paragraph 16 he said "The main structural roots are usually found in the upper 30cm, ...**any soil disturbance within the rooting zone will damage tree roots and should be avoided.If roots greater than 20cm are cut within 2-3 m of the trunk, stability may be affected and the tree made dangerous.**"
19. In the joint report for this case Dr Dobson expresses the opinion that severance of some tree roots to a depth of 400-450mm would not have resulted in destabilisation because there would have been a significant number below that depth and because there would have been rapid regeneration. He also relies on his knowledge of Lombardy poplars as often having roots to a depth of 3.5 metres. [Joint report 22, 27]. He relied in support of his approach on the photograph at page KK in which he said that it can be seen that the after effect of the fall was that the root plate was vertical and that its thickness was 1.5 to 2 metres. [JR 511/24].
20. Dr Hope pointed to a more recent authoritative publication than Dr Dobson's which said that most roots will be within 1.0 metre of the surface. He rejected the proposition that new roots would have been produced from decaying roots said that an accurate assessment of the root plate thickness cannot be made

from the photographs. I am of the view that using photographs is not a satisfactory method of assessing distances and sizes even by comparing the size of one item to another in the same photograph because appearances vary a great deal depending upon the angle and height from which the picture is taken.

REQUIRED INSPECTION AND PROTECTION SYSTEM.

21. The experts agreed that a tree inspector should have appreciated that the installation of the kerb and block paving would have severed some roots and that in this situation a yearly inspection would have been appropriate using visual assessment. The ivy grew to the height of a fork in the trunk into two major stems. The inspection would have been impeded by the ivy and thus the inspector would have had it removed. Tapping with a mallet is a routinely used technique to support such an inspection. They would not have expected digging up of roots to form part of a normal visual inspection. A more detailed inspection should have been carried out if hazardous signs were detected in the tree. The nature of the inspection would depend on the hazard detected, if decay was suspected due to percussion testing with a mallet, the inspection should have involved internal inspection using equipment such as Pressler corers, Resistographs or Tomographs. [Joint 13, 15, 18, 19, 20,]
22. Mr Cunningham said in an unsigned witness statement that if the Defendant had been informed of the proposed construction of the parking area it would have recommended a tree protection system [56/12]. But in cross-examination he said that such a system was not standard in 1985 as BS5837 was not yet in effect. He explained that the system would have involved getting in an arboriculturalist because of the risk of root damage.
23. Dr Hope said that BS 5837 sets out how to calculate the safe distance to carry out excavations close to trees. It is done by multiplying the trunk diameter by 12. That would produce a safe distance in this case of 12 metres. He said that this kerb was fully right up against the tree so that anyone who knew anything about BS5837 would know it was a major problem, not a possible problem. The inspector should have looked around the base of tree to see if there were signs of damage, then tapped around the base of the tree and the buttress roots to see if they indicated decay. He would have moved the soil between the kerb and the tree and inspected the condition of the roots between the kerb and the base of the tree. This is because he and Dr Dobson agreed that all roots between 400 and 450mm where kerb was put would have been severed.
24. Dr Dobson said that the severance would not cause undue concern because it had happened more than 20 years previously. Dr Hope said that decay would have taken years to have developed to the extent that the tree became unstable, and that it would have been unreasonable of an inspector to have assumed that no continued decay of the roots had taken place.
25. WERE THERE EXTERNAL FEATURES OF THE TREE WHICH INDICATED LACK OF HEALTH?

26. Under this head it is appropriate to consider the trunk (including the base) and the crown.
27. Mr Cunningham who was the only one of the three witnesses who saw the tree found no external signs of decay. But he said of photograph 53 of the ring binder of supplemental photographs [Annex 3 of the joint report] that one trunk showed bark occlusion and that the other, where a vertical dark line is to be seen, is a split but that it could be due to the wood having been cut and drying out.
28. Dr Hope in reliance on the photographs at 53 and 54 of the ring binder of supplemental bundle of photographs [Annex 3 of the JR] [10.3-10.4 of his report] pointed to external fissures and said that they would have indicated during a normal visual inspection that internal decay was present. They should have triggered a detailed internal inspection which would have confirmed the dangerous state of the tree. Use of a tapping mallet would have made the decay evident. He explained in oral evidence that the external fissure on the left fork which had a kidney shape was hollow, which is what would have been picked up by the mallet test.
29. In the joint report [30] Dr Dobson said that the feature possibly indicates included bark or a crack but he did not believe that it would have been visible externally because it was not discernible on the photographs in Annex 3. Further the feature was 8-10 metres off the ground if Mr Cunningham was correct as to the height of the fork and would be extremely hard to detect from the ground level. But Mr Cunningham said when answering questions about photograph 53 that it was taken about 2-3 metres out from the root plate.
30. Dr Dobson did accept in his report that “included bark” is a potential hazard sign [129-130/4.2].
31. Dr Hope also noted [JR 32] that there is no evidence as to the condition of the base of the trunk because Mr Cunningham, did not take any photographs of it. He said that Mr Cunningham would have known the importance of such photographs.
32. Dr Hope was cross-examined about whether the external view of the trunk in photograph FF of the spiral bound bundle showed any decay. He said that it did not. He agreed that it did show the basal trunk but that it was covered in ivy.
33. As to the condition of the crown of the tree, Dr Hope said in his report that on the available photographic evidence there was no significant decay in the tree branches but that it would take an inspection when the tree was in leaf to assess the degree of stress [104-105 12.3-12.5].
34. Aerial photographs 1S and 2S were relied on by the Defendant, in support of Mr Cunningham, as showing a healthy tree 20 years after the car park was built. I can see different colours in the foliage but the pictures are insufficiently clear to tell whether or not there was die back in the crown such as to indicate decayed roots. Counsel’s proposition that 2S showed a “green

blob” and Dr Hope’s agreement is, perhaps not surprisingly, unhelpful to the decision making process.

35. However Dr Hope did agree that the photographs of the tree after it had fallen showed no apparent crown die back.

CONDITION OF THE ROOTS AS FOUND

36. Both experts agreed that the decayed roots had an impact on the stability of the tree [Joint report 508/8].
37. Mr Cunningham said in his witness statement “Examination of the underside of root plate found some areas where decay was present. In particular, those roots that were growing towards or within the blocked paved area of the car park within the private adjoining land of Marlow House” [61/17]. He confirmed in oral evidence that by “Marlow House” he had meant Regal House, that is the area including the car park, he was mistaken in calling it “Marlow House”.
38. He found that the visible root buttress or shear plate was typical in size and form of a wind blown tree. The decay was limited to a significant root stem which is growing in the opposite direction of the falling direction. The installation of the block paving may be a contributing factor for the decay within the roots that are located within the areas close to the parking area including the concrete edging [63/24].
39. Dr Hope interpreted that observation as saying that the root was growing in the opposite direction of the falling direction, not vertically downwards. His opinion was that the root buttress (the flare at the base of the trunk where roots originate) would have been above ground prior to the tree failure and would have been visible during a normal inspection. The decay would not have been directly beneath the root plate. But Dr Dobson thought that the above comment related to a “root stem”, that is a lateral root within the root plate which would thus have been below ground and not visible during a normal inspection [507-508/7].
40. Mr Cunningham’s opinion was that to see the decayed root it would have been necessary to break open the paving because the damaged area was under concrete block. He did not think that would have been a reasonable inspection even though this was, so far as the Defendant was concerned, a high target area, that is an area where there were many people and things which could be hit by a falling tree.
41. There is a significant difference between the parties as to the extent of the decay which can be seen in the roots. Mr Cunningham said that he found a small amount of decay in one root and in another and that the majority were in good health. He said in re-examination that he checked some with his hands and some were ripped apart by the forces of falling. He said his picture page 64 of the ring binder “Supplemental bundle of photographs” was the main area of decay he found on 19th January 2007. At Exhibit 1 he has marked certain areas: page 64 he has ringed that area of decay in red; page 27 that area again

towards the top and a lower red ring (2); that latter is shown again on page 26. That is all he admitted as decayed.

42. On Exhibit 4, page 26 Dr Hope marked 6 different areas of root decay. That is 5 more than Mr Cunningham with one overlap between the two witnesses. On Exhibit 5, page 27, he marked 3 areas of decay. That is one more than Mr Cunningham, again with one overlap. On exhibit 6, page 31, he has marked 4 areas and on exhibit 7, page 64 the same area as Mr Cunningham.
43. Dr Hope agreed that carrying out a site inspection of the tree and roots was by far the best way of seeing its condition because photographs do not always give the full story.
44. He said in his report [106/13.5] it would have been reasonable during a normal visual inspection to have investigated the condition of the roots adjacent to the kerb that is to identify the presence of any decay in the severed roots. He said that inspection down the side of the kerb would have shown the decayed roots shown on page 31 and did not accept that they were deep. It was put to him that the surface roots were those shown in the photographs of the root plate standing proud in the sky. Dr Hope responded by referring to the absence of regenerated roots. He said when asked what happened to the old roots that they must have been left in the ground, they were decayed and would not have pulled out but would have snapped.

CONDITION OF THE WOOD AS FOUND

45. There is a significant issue as to what can be seen in the internal part of the tree on Annex 3. I have dealt above with the external features on these photographs.
46. Mr Cunningham did not identify any evidence of decay pockets or pathogens or evidence of significant defects. He was asked about the branch to be seen on his photograph at page E of the spiral bound bundle, Annex 5 to the joint report, and said that it was healthy because it had darker heart wood, nice and white sap wood and no fissures. He agreed that it was very different from the sections at pages 53/54, Annex 3 of the joint report, page C of the spiral bound bundle.
47. Dr Dobson said that Mr Cunningham was best placed to assess the discolouration on pages 53-54 (Annex 3). Mr Cunningham said that it was staining where the bark included on itself which is not unusual on sectioning. The dark heartwood was because of the age of the tree. The vertical dark internal crack was a split but it might be due to the wood having been cut, cracks emerge as the wood dries out. As to the smaller pieces shown on the photographs the dark patch was an old pruning wound. When it was put to him that the heartwood was decayed he said it was lignified not functional, the outer white area was the functional area.
48. From his examination of the photographs Dr Dobson said that the grain was still visible and had lost none of its structure as one would expect with decay.

That would make the wood stringy/ pulpy / mushy and the centre of the tree would most likely be hollow [512/28].

49. Dr Hope considered that “massive internal decay” was to be seen on both the larger cross sections.
50. In cross-examination Dr Dobson accepted that the description of what healthy poplar wood should look like is “uniform white, yellowish white, pale brown or greyish when freshly felled. The heartwood and sapwood are usually same colour though the former is sometimes slightly darker in shade”. He also accepted that the smaller piece of wood shown at Annex 5 was a lot closer to that description than 53 and 54 but insisted that the latter also showed healthy wood.
51. He agreed that it was likely, if there was massive internal decay, that the decay would come up from the bottom of the tree. But said that one would not necessarily see it on the outside of the tree.
52. FALL CAUSED BY EXTREME WINDS.
53. The experts agreed that the tree failed as a combination of root decay and gale force winds with gusts of up to 55-70 mph [Joint report 21].
54. The Met Office data show that in the period from 11am to 2pm there were gusts of 43 and 48 knots [387]. Mr Battley said that the incident happened at about 1.30 pm [45-46/2].
55. Dr Hope said in his report that “the climatic conditions were probably exceptional” [114/19.2].
56. Mr Cunningham agreed in cross-examination that the tree did not fall in direction wind was blowing that is due east but south east and that it broadly reflected the point at which the tree roots had failed as can be seen in the upturned root plate.
57. Mr Cunningham told the court that on the day of the incident a number of other trees failed and that there were also some branches which failed, not all of them were the Defendant’s trees. He said, on being asked “why”, that it was because it was a windy day. But as Dr Hope pointed out, we have no information as to the condition of those other trees.

IVY

58. It was conceded in the Defendant’s closing submissions [46] that the ivy ought to have been removed before an inspection.
59. Under cross-examination Dr Hope agreed that the weight of the ivy was irrelevant to the tree’s fall.

RECOMMENDATIONS AS TO FURTHER INSPECTION

60. Dr Hope considered that a normal inspection should have prompted an inspector to carry out a detailed internal inspection [JR 31] because an inspection would have revealed the following: decay in the visible buttress root on the opposite side of the direction of tree failure; internal decay in the trunk because a crack would have been visible and tapping the trunk and buttress roots with a mallet would have indicated the internal decay.
61. Dr Dobson saw no evidence to indicate that there was any internal decay and therefore was of the opinion that tapping with a mallet or carrying out an internal inspection would have revealed the trunk to be sound [JR 31].
62. Dr Hope would have recommended removal of the tree because he considered that an appropriate inspection would have confirmed that it was dangerous. Dr Dobson would not have recommended felling as an inspection would not have revealed an unreasonable danger. Further, in his opinion the principal decay identified by Mr Cunningham was underneath the root plate and not open to inspection.

LACK OF DISCLOSURE

63. Mr Cunningham confirmed that he had written his interim report [51-52] as an administrative reaction to the police and other reports after there had been damage to a lot of property and serious injury to the Claimant. He said that there was no final report and that his interim report was the only disclosure made by the Defendant in relation to this incident. Thus it does seem to me that the Defendant's disclosure is unlikely to have been complete.

RELIABILITY OF MR CUNNINGHAM

64. Dr Hope did not cast doubt on Mr Cunningham's competence to carry out the inspections and accepted that Mr Cunningham was in general looking for the right things.
65. Mr Cunningham was asked whether his statement beginning at page 53 was all his own words and he accepted that it was. The difference between Dr Cunningham's unsigned statement and his signed one as to the height of the tree was relied upon as demonstrating his unreliability. It is to be noted that the alleged height in the Particulars of Claim of about 27 metres is admitted, that is in accordance with the unsigned statement [54/7] but contradicted in the signed statement [60/14]. Mr Cunningham could not explain how the change came about.
66. That is not the only important issue on which there is divergency between the two statements. His unsigned statement said that "if the block paving work had compromised the roots then I would expect overtime to see some decay in the tree" but when those words were put to him he disagreed with them, saying it depended where the root was cut.
67. He did however make an admitted error mixing up Regal House and Marlow Place.

68. There was an odd answer to the question “Q reason this tree fell in fresh and more highly gusting wind is because its root system had been compromised A *that I cant prove beyond doubt*. Can’t see that being case. Cos roots may have been damaged before this incident and this gust may have caused it to fall.”
69. The phrase “that I can’t prove beyond doubt” strongly suggested that that was the most likely cause in his own mind and having said that he sought to row backwards from it by referring to the joint causes.
70. He definitely changed his evidence on another occasion when he realised that he had given an answer that was unfavourable to the Defendant’s case as follows: Q should have been a matter of concern because large concrete strip near it and roots would have been severed by that construction. A reasonable to look at its surroundings. Q had block paving and heavy concrete strip near by. A that is one factor, have to see what is nearby, here two car parks etc so high target, so more careful, “target” is what could be struck. Q you found tree roots decayed particularly where concreted strip A did find that decay. Q competent inspector would look for decay before it fell A if can get access would sound it” then he changed his evidence to “could do that test”.
71. So I have to say that I did not find Mr Cunningham to be a reliable witness in this case.

RELIABILITY OF DR HOPE

72. Dr Hope was frank in admitting that seeing the tree was the best way of assessing its condition. Neither he nor Dr Dobson saw the tree. There was a dispute as to what was said between the experts about a bracket fungus. I discount that evidence because the two versions could be accounted for by a misunderstanding between them.
73. Dr Hope did not carry out his own investigations into wind speed but accepted that the climatic conditions were “probably exceptional” [114/19.2]
74. Nor did he carry out investigations into whether other trees had fallen that day.
75. There is nothing to suggest that he did not fulfil his duties to the court to the best of his ability.

RELIABILITY OF DR DOBSON

76. It is not fair to criticise Dr Dobson for failing to mention root decay as a possible cause of the fall since he does contemplate it in his report [132/6.4].
77. As to how he dealt with the wind reports, again there is unfair criticism of paragraph 3.6 of his report. It is said that he equated Beaufort scale measurements and descriptors to gusts. But what he said about the gusts namely that the peak gusts reached Force 10 or 11 was in accordance with the evidence.
78. He also clearly explained the difference between his article about root depth and his experience of poplars having deeper roots.

79. His willingness to change his conclusions following discussion with Dr Hope is more a matter for praise than criticism because it showed him to be an open minded witness.
80. There is nothing to suggest that he did not fulfil his duties to the court to the best of his ability. However his opinion is not as influential on me as that of Dr Hope because, at least during expert discussions, Dr Dobson was persuaded by Dr Hope's opinions on a number of important points.

FINAL FINDINGS

81. The agreements between the experts are of significant assistance. The works in 1986 would have severed all the roots within 400-450 mm of the surface. There was root decay which had an impact on instability and, together with the wind, was causative of the failure. The wind was exceptional. Included bark is a potential hazard. The feature which could have been included bark was less than 3 metres from the ground. A normal inspection would have included removing the ivy. Healthy wood is "uniform white, yellowish white, pale brown or greyish when freshly felled. The heartwood and sapwood are usually the same colour although the former is sometimes slightly darker in shade.
82. Taking first the agreements as to the destruction of the roots in 1986 and that the decayed roots had an impact on stability. Those agreements thoroughly undermine Dr Dobson's conclusion that the severance of the roots would not have destabilised the tree. This is because he has offered no other cause for the decay and instability in the roots than the 1986 works.
83. Further his evidence that the potential included bark feature could not have been seen is undermined by page 53 itself which shows clearly that an abnormality in trunk structure would have been visible from outside the trunk. As to its height, the change in Mr Cunningham's evidence to it being only 2-3 metres from the base has the effect that it would have been visible from the ground. If the ivy was covering it, that would not have been the case but the experts are agreed that on a normal inspection the ivy would have been cut. So a visual inspection would have revealed a sign of a potential hazard.
84. Taking that together with the location of the tree, right up against the car park, would have caused an inspector to at least tap the tree and it is likely that the sound would have indicated an abnormality. That would have led to an internal investigation. That would have revealed the significantly abnormal colours of the tree that can be seen in both left and right side of the fork in photograph 53 of the ring binder of photographs. It would have led to the tree being cut down and the hazard removed and would have prevented the accident.
85. As to whether the root buttress could have been seen and would have revealed decay to a normal inspector. For the reasons stated above, I prefer the evidence of Dr Hope that the root buttress would have been visible above ground and would have revealed the decayed root. This, either alone, or in conjunction with the bark inclusion would have led a reasonable inspector to make further investigations as to the internal condition of the tree. The roots

would have been shown to be subject to the extent of decay as found by Dr Hope. Investigation of the trunk would have taken place, it would have been found unhealthy and the tree would have been felled.

86. Thus the following particulars of negligence have been admitted or proved against the Defendant: failure to recognise the tree as owned, failure to inspect it, failure to consider the threat posed to its anchorage / stability by the excavation and installation of the heavy concrete strip, failure to use equipment to investigate the internal condition of the root plate and failing to cut it down before this incident occurred.
87. There will be judgment for the Claimant on liability.