Tree site survey:

28 Corkran Road,

Surbiton,

KT6 6PN.

K Martin Tree Consultancy

This report describes an inspection that has been carried out on trees listed within this report, with regards to the condition of the trees for the public safety under the duty of care, under the Occupiers Liability Act 1984.

Introduction

This report has been produced to give advice that was requested by Mrs Amanda Le Poer Trench who is the Property owner.

This is due to the request of an arboricultural site survey and concerns regarding the condition of the trees at 28, Corkran Road, KT6 6PN and if any work is recommended to be carried out in order to render the trees safe.

The enclosed tree safety report has been compiled by the author regarding two statutory laws: the duty of care under the Occupiers Liability Act 1954, and the Health and Safety at Work Act 1974.

The Owner is responsible to maintain the tree population as safe as reasonably practicable (ALARP). 'Reasonably practicable' is a narrower term than 'physically possible' … a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them. (Court of Appeal in its judgment in Edwards v. National Coal Board, [1949] 1 All ER 743)

Contents

1.0 Instructions

This site inspection was instructed by Mrs Amanda Le Poer Trench to carry out a site safety survey of the trees on site, with any recommendations necessary to render the trees in a safe condition.

I visited the site on the 10/4/2021 to carry out this instruction.

2.0 Data collection

To collect the data on the condition of the trees, I will be using the ISA Basic Tree Risk Assessment Form. I have gained competence in its use on completion of the TRAQ Qualification.

2.2 Limitation of this report and inspection

This inspection is a ground based visual assessment of the trees at the quoted address of this report. To carry out this action I used basic tools used in the assessment: a sounding mallet, probe, and binoculars.

Trees are dynamic organisms, which are in a constant state of development and change. The comments and recommendations of this report will remain valid for a period of twelve months from its completion.

It is perfectly normal for trees to occasionally break without anyone or anything being to blame. The breakage is the natural price the tree must pay for achieving an energy-saving, lightweight structure.

2.3 The weather condition on the day of my site visit

On the day of my site visit, the weather conditions were bright and sunny. The time of my visit was early afternoon.

3.0 Description of the site

The site is a residential property with mature Douglas Fir trees at the front of it. There is a drive and public footpath and highway within the canopy line. In the rear garden, a number of tree canopies encroach the neighbouring property. For the purposes of risk assessment, the site is classed as a high target area with an occupancy rate of constant.

4.0 Findings after site visit

From conducting a site visit, one tree is of high risk, and 6 trees are of moderate risk. Therefore, a mitigation option is required in order to reduce the risk to as low as reasonably practicable (ALARP). There are three trees, T005, T006 and T007 that have been described below due to their impact on the neighbouring property.

Mitigation options are listed in Appendix 3 Work schedule.

Figure 1 image of actual damage caused by T005 trunk

Figure 2image of distorted fence

T005 Western Red Cedar *(Thuja plicata)*

T005 is a mature tree which has outgrown the space. The roots have started to cause heave to the paving slabs, and the trunk is causing actual damage to the wall which forms part of the security of the property. The gate is distorted and not able to be closed. The boundary fence is also being distorted by the tree trunk and buttress roots.

Recommendations

To remove T005 and grind the stump. This will allow for the fence to be replaced and the rebuilding of the wall.

Figure 3image of T006

T006 Weeping Willow (Salix babylonica)

T006 is a mature tree which has been topped. However, the canopy which overhangs the neighbouring property has not been pruned and therefore, the canopy has become severely unbalanced. The main scaffolds and trunk have dense ivy growth.

Risk assessment

The probability of failure of T006 (possible), as well as the probability of impacting a target (s) (residential property and occupants) is high. The occupancy of the site is constant. Also, the result of the failure would be severe, due to the proximity of the targets. Then the size of the part (the stem/branches) which is likely to fail, and the distance of fall of the failing part; All this taken into consideration using the ISA TRAQ formula to assess risk, concludes the risk with T006 being moderate risk.

With the level of risk of T006 rated as moderate, it is necessary to action a mitigation option to reduce the risk to as low as reasonably practicable (ALARP).

Recommendations

From the site assessment, there are two management options available to continually manage T006 risk to as low as reasonably practicable (ALARP).

Option 1

To reduce the canopy which overhangs the neighbouring property to rebalance the canopy and sever the ivy. This will reduce the load over the defect.

Option 2

To remove tree and replant with a suitable replacement tree.

T007 Eucalyptus (Eucalyptus sp.)

Figure 4image of T007

T007 is an early mature tree growing in a neighbouring property therefore, the tree in under third-party ownership (Vasanthi Sebastian, 30 Corkran Road, Surbiton Hill, Surbiton KT6 6PN). The canopy overhangs the client's property. Below the canopy is children's play equipment. The tree has been reduced in the past and has now formed large regrowths.

Risk assessment

The probability of failure of T007 (possible), as well as the probability of impacting a target (s) (residential property and occupants) is high. The occupancy of the site is constant. Also, the result of the failure would be severe, due to the proximity of the targets. Then the size of the part (the stem/branches) which is likely to fail, and the distance of fall of the failing part; All this taken into consideration using the ISA TRAQ formula to assess risk, concludes the risk with T007 being moderate risk.

With the level of risk of T007 rated as moderate, it is necessary to action a mitigation option to reduce the risk to as low as reasonably practicable (ALARP).

Recommendations

In order to reduce the risk to as low as reasonably practicable (ALARP), It would be prudent to reduce the tree to the previous reduction points and rebalance the canopy.

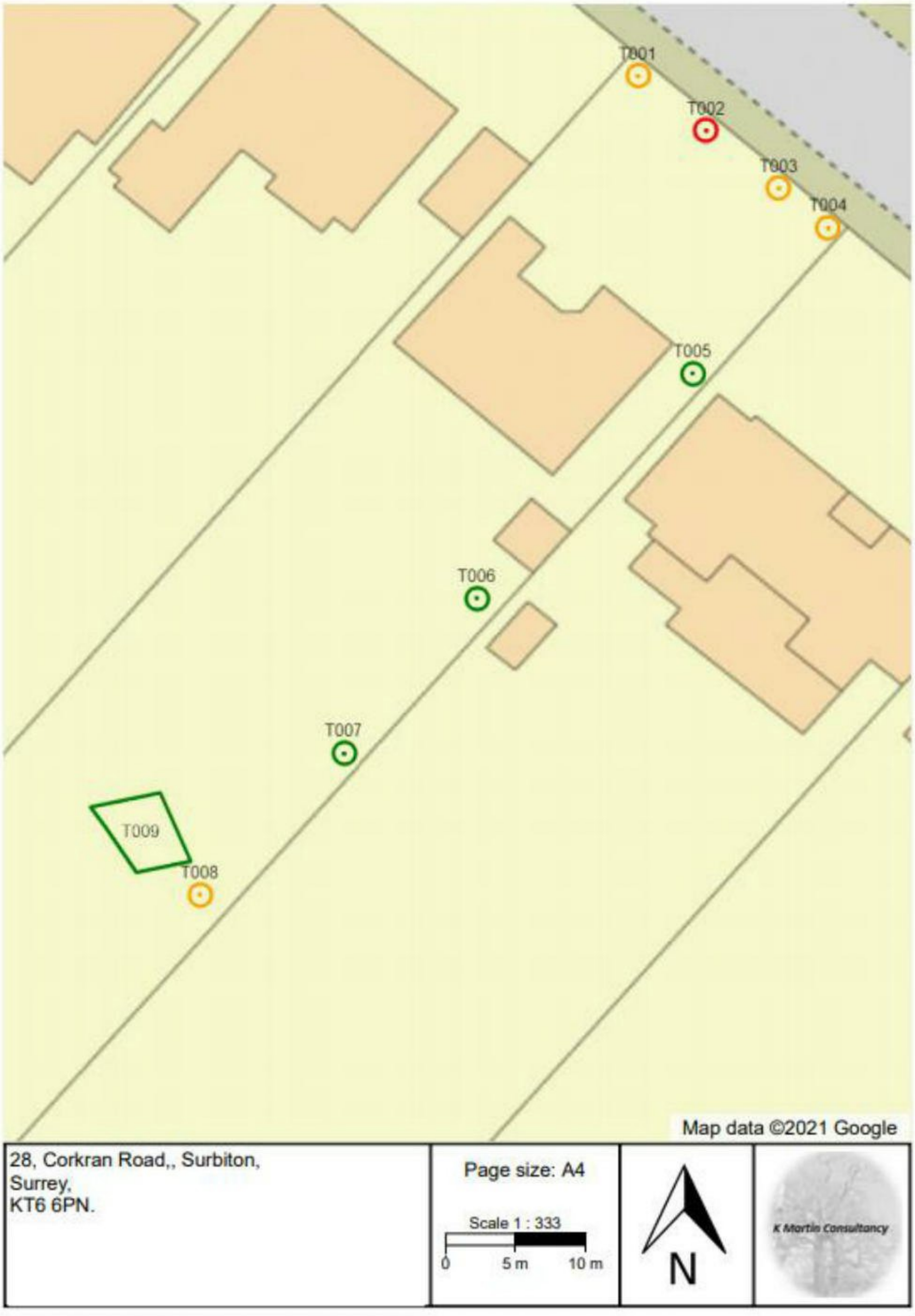
One must have agreement with the tree owner before any work is to be undertaken.

Appendix 1 tree survey

Tree. No	Species	Life Stage	Survey Notes	Condition	Risk Rating
T001	Douglas Fir (Pseudotsuga menziesii)	Early Mature	Wind Exposure: Full. Interior Branches: Normal. Over-extended branches present. large diameter deadwood throughout ivy on stem	Fair	Moderate
T002	Douglas Fir (Pseudotsuga menziesii)	Mature	dead tree	Dead	High
T003	Douglas Fir (Pseudotsuga menziesii)	Early Mature	Wind Exposure: Full. Interior Branches: Normal. Over-extended branches present. deadwood throughout ivy on stem	Fair	Moderate
T004	Douglas Fir (Pseudotsuga menziesii)	Early Mature	Wind Exposure: Full. Interior Branches: Normal. Over-extended branches present. deadwood throughout ivy on stem	Fair	Moderate
T005	Western Red Cedar (Thuja plicata)		outgrown space actual damage to brick wall, distortion to gate, fence distortion	Fair	Low

T006	Weeping Willow (Salix babylonica)	Mature	Wind Exposure: Protected. Crown Size: Medium. Crown Density: Normal. Interior Branches: Normal. Over-extended branches present.	Crown dominance over neighbouring property	Moderate
T007	Eucalyptus (Eucalyptus sp.)	Early Mature	tree has been reduced in the past Large reaction growths at pruning points	Good	Moderate
T008	Goat Willow (Salix caprea)	Semi Mature	tree has severe lean south west over neighbouring property with signs of ground movement/ heave	Fair	Moderate
T009	Leyland Cypress x3 (Cupressocyparis leylandii X)		previous topped hedge	Fair	Low

Appendix 2 Site Plan



Appendix 3 Work schedule

Tree. No	Species	Recommendation	Timescale	Work Due	Work Timescale
T001	Douglas Fir (Pseudotsuga menziesii)	remove deadwood, sever ivy, reduce over extended branches over driveway	6 Months	10-Oct-2021	10-Oct-2021 (6 Months)
T002	Douglas Fir (Pseudotsuga menziesii)	remove tree	6 Months	10-Oct-21	10-Oct-2021 (6 Months)
T003	Douglas Fir (Pseudotsuga menziesii)	remove deadwood, sever ivy	6 Months	10-Oct-2021	10-Oct-2021 (6 Months)
T004	Douglas Fir (Pseudotsuga menziesii)	remove deadwood, sever ivy	6 Months	10-Oct-2021	10-Oct-2021 (6 Months)
T005	Western Red Cedar (Thuja plicata)	remove tree	6 Months	10-Oct-2021	10-Oct-2021 (6 Months)

T006	Weeping Willow (Salix babylonica)	reduce tree to form a balanced canopy	6 Months	10-Oct-21	10-Oct-2021 (6 Months)
T007	Eucalyptus (Eucalyptus sp.)	reduced canopy to previous reduction points and re balance canopy	1 Year	10-Apr-2022	10-Apr-2022 (1 Year)
T008	Goat Willow (Salix caprea)	remove tree	1 Year	10-Apr-2022	10-Apr-2022 (1 Year)
T009	Leyland Cypress x3 (Cupressocyparis leylandii X)	to reduce hedge by approximately 2m and trim sides	1 Year	10-Apr-22	10-Apr-2022 (1 Year)

6.0 Town and Country planning, England (Tree preservation Regulations 2012).

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. This prevents you as a tree owner to

- cutting down
- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

any tree protected by a TPO on your property without written consent from the local planning authorities. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

7.0 Trees in a conservation area.

Paragraph: 116 Reference ID: 36-116-20140306

Trees in a conservation area that are not protected by an TPO are protected by the provisions in section 211 of the Town and Country planning Act 1990. These provisions require people to notify the local planning authority, using a 'section 211 notice' six weeks before carrying out any arboricultural works, unless an exception applies. The work may go ahead before the end of the six-week period if the local planning authority gives consent. This gives the local authority a notice period to consider whether to make an order on the tree.

8.0 Exceptions relating to section 211 notices

Paragraph: 131 Reference ID: 36-131-20140306

A section 211 notice is not required to be submitted to the local planning authority for –

- The cutting down, topping or lopping or uprooting of a tree whose diameter does not exceed 75mm; or
- The cutting down or uprooting of a tree, whose diameter does not exceed 100mm for the sole purpose of improving the growth of other trees. (e.g. for example, in forestry thinning)

In either case, the diameter of the tree is not to be measured over the bark of the tree at 1.5 meter above ground level. These exemptions do not apply in circumstances where a tree has more than one stem at the point above 1.5 meters above the natural ground level.

8.1.1.1 Is a section 211 notice required for work to dead or dangerous trees in conservation areas?

Unless there is an immediate risk of serious harm, anyone proposing to carry outwork on a tree in a conservation area on the grounds that it is dead must give the local planning authority five days' notice before carrying out the proposed work. Where such a tree requires urgent work to remove an immediate risk of serious harm, written notice is required as soon as practicable after the work becomes necessary.

8.1.2 As a tree owner your responsibilities:

As an Owner of protected trees, you must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

As a tree owner you have a legal duty of care to maintain your tree in a safe condition. For more information on the legal duty care see appendix 3.

Appendix 4

ISA Basic Tree Risk Assessment Form

Client _____ Date _____ Time _____

Address / Tree location _____ Tree no. _____ Sheet ____ of ____

Tree species _____ dbh _____ Height _____ Crown spread dia. _____

Assessor(s) _____ Time frame _____ Tools used _____

Target Assessment

Target number	Target description	Target zone: Target within drip line	Target zone: Target within 1 x ht.	Target zone: Target within 1.5 x ht.	Occupancy rate (3 = frequent, 2 = occasional, 1 = rare)	Practical to move target?	Restriction practical?
1							
2							
3							
4							

Site Factors

History of failures _____ Topography Flat ☐ Slope ☐ _____% Aspect _____

Site changes None ☐ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe _____

Soil conditions Limited volume ☐ Saturated ☐ Shallow ☐ Compacted ☐ Pavement over roots ☐ _____% Describe _____

Prevailing wind direction _____ Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe _____

Tree Health and Species Profile

Vigor Low ☐ Normal ☐ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal _____% Chlorotic _____% Necrotic _____%

Pests _____ Abiotic _____

Species failure profile Branches ☐ Trunk ☐ Roots ☐ Describe _____

Load Factors

Wind exposure Protected ☐ Partial ☐ Full ☐ Wind funneling ☐ _____ Relative crown size Small ☐ Medium ☐ Large ☐

Crown density Sparse ☐ Normal ☐ Dense ☐ Interior branches Few ☐ Normal ☐ Dense ☐ Vines/Mistletoe/Moss ☐ _____

Recent or planned change in load factors _____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☐ LCR _____%

Dead twigs/branches ☐ ____% overall Max. dia. _____

Broken/Hangers Number _____ Max. dia. _____

Over-extended branches ☐

Pruning history

Crown cleaned ☐ Thinned ☐ Raised ☐

Reduced ☐ Topped ☐ Lion-tailed ☐

Flush cuts ☐ Other _____

Cracks ☐ _____ Lightning damage ☐

Codominant ☐ _____ Included bark ☐

Weak attachments ☐ _____ Cavity/Nest hole ____% circ.

Previous branch failures ☐ _____ Similar branches present ☐

Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐

Conks ☐ Heartwood decay ☐ _____

Response growth _____

Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐ _____

Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐ _____

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐

Codominant stems ☐ Included bark ☐ Cracks ☐

Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐

Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐

Cavity/Nest hole _____ % circ. Depth _____ Poor taper ☐

Lean _____° Corrected? _____

Response growth _____

Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐

Likelihood of failure

Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth _____ Stem girdling ☐

Dead ☐ Decay ☐ Conks/Mushrooms ☐

Ooze ☐ Cavity ☐ _____% circ.

Cracks ☐ Cut/Damaged roots ☐ Distance from trunk _____

Root plate lifting ☐ Soil weakness ☐

Response growth _____

Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐

Likelihood of failure

Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

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Risk Categorization

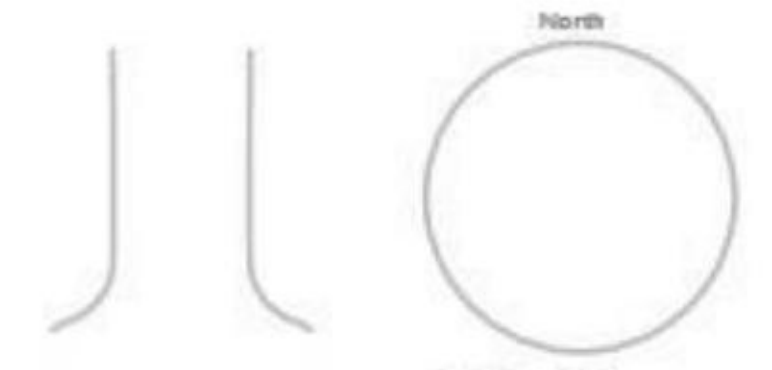
Condition number	Tree part	Conditions of concern	Part size	Fall distance	Target number	Target protection	Likelihood: Failure: Improbable	Failure: Possible	Failure: Probable	Failure: Imminent	Impact: Very low	Impact: Low	Impact: Medium	Impact: High	Failure & Impact (from Matrix 1): Unlikely	Somewhat	Likely	Very likely	Consequences: Negligible	Minor	Significant	Severe	Risk rating of part (from Matrix 2)
1																							
2																							
3																							
4																							

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impacting Target			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low



Notes, explanations, descriptions _____

_____

_____

_____

Mitigation options _____ Residual risk _____

_____ Residual risk _____

_____ Residual risk _____

_____ Residual risk _____

Overall tree risk rating Low ☐ Moderate ☐ High ☐ Extreme ☐ Work priority 1 ☐ 2 ☐ 3 ☐ 4 ☐

Overall residual risk Low ☐ Moderate ☐ High ☐ Extreme ☐ Recommended inspection interval _____

Data ☐ Final ☐ Preliminary Advanced assessment needed ☐ No ☐ Yes-Type/Reason _____

Inspection limitations ☐ None ☐ Visibility ☐ Access ☐ Vines ☐ Root collar buried Describe _____

Appendix 5

The following information is taken from the National Tree Safety Group (NTSG) Common Sense risk management of trees (ISBN 978-0-85538-840-9) Published by The Forestry Commission December 2011.

Tree owners have a legal duty of care

The law in respect of an owner's liabilities for injury to others caused
By the fall of a tree or branch in England, Scotland, Wales, and Northern Ireland. There are slight differences in terms of how the law in each country deals with trees and liabilities with respect to safety and the duty of care arising from tree-related incidents. Generally, due to a lack of case law in Scotland and Northern Ireland, much of the case law cited is English.

The role of this guidance

This document, supported by a wide range of stakeholders involved in the ownership and management of trees, seeks to provide guidance for the inspection and maintenance of trees that is reasonable and proportionate to the low risk posed by trees, to the benefits of trees, and to the health and safety obligations of those who are responsible for trees. This document may be presented to a court for consideration as supporting documentation in any case involving death or personal injury caused by a falling tree or branch. Reported judgments already demonstrate that courts will consider publications of this nature when addressing the duty of care. It must, however, be appreciated that the guidance in this document will not in itself determine a court's judgment in an individual case. First, all cases are sensitive to their own facts. Second, a court will always reserve to itself the decision as to whether a tree owner has acted as "a reasonable and prudent landowner". This guidance can, however, inform the court in the making of that decision.

The legal framework:

Under both the civil law and criminal law, an owner of land on which a tree stands has responsibilities for the health and safety of those on or near the land and has potential liabilities arising from the falling of a tree or branch. The civil law gives rise to duties and potential liabilities to pay damages in the event of a breach of those duties. The criminal law gives rise to the risk of prosecution in the event of an infringement of the criminal law.

The civil law

The owner of the land on which a tree stands, together with any party who has control over the tree's management, owes a duty of care at common law to all people who might be injured by the tree. The duty of care is to take reasonable care to avoid acts or omissions that cause a reasonably foreseeable risk of injury to persons or property. If a person is injured by a falling/fallen tree or branch, potential causes of action arise against the tree owner in negligence for a breach of the duty of care, in the tort of nuisance and, where the injured person was on the land of the tree owner at the time of the injury, under the occupiers' Liability acts of 1957 or 1984 (oLa 1957, oLa 1984), (for Scotland see the occupiers' Liability (Scotland) act 1960, for Northern Ireland see the occupiers' Liability act (Northern Ireland) 1957 and Occupiers' Liability (Northern Ireland) order 1987).
Some regulations under the Health and safety at Work etc act 1974 may also give rise to liability under the civil law as well as under the criminal law (for which see page 36). However, a discussion of the applicable regulations is beyond the purview of this guidance.

The duty holder

This is the person who has control of the tree's management whether as owner, letter, licensee, or occupier of the land on which the tree stands. The relevant highway authority is responsible for trees on land forming part of the highway.

The person to whom the duty is owed

This is any person who can be reasonably foreseen as coming within the tree's vicinity and being injured by a fall of the tree or a branch from the tree. Those using highways, footways, public footpaths, bridleways, railways, and canals are likely to come within striking distance of trees on adjacent land. In public spaces, and semi-public spaces such as churchyards and school grounds, those working in or visiting them can be expected to come within the vicinity of trees. On private land, visitors and employees can also be expected to come within the reach of trees. Trespassers may also, in certain circumstances, be expected to come within the vicinity of trees on private land.

The duty owed

This can be stated in general terms as being a duty to take reasonable care for the safety of those who may come within the vicinity of a tree. The courts have endeavoured to provide a definition of what amounts to reasonable care in the context of tree safety and have stated that the standard of care is that of "the reasonable and prudent landowner"[2]. The tree owner is not, however, expected to guarantee that the tree is safe. The owner must take only reasonable care such as could be expected of the reasonable and prudent landowner.

The duty owed under the tort of nuisance is owed by a tree owner to the occupier of neighbouring land. The duty, however, is no different to the general duty owed under the tort of negligence.

A highway authority has a potential liability for fallen trees and branches for which it is responsible by virtue of section 41(1) of the Highways act 1980, which gives rise to a duty "to maintain the highway". It is open to question whether the duty extends to the maintenance of highway trees[3]. However, assuming the duty does so extend, the highway authority may, by section 58, defend itself by proving "that the authority had taken such care as in all the circumstances was reasonably required to secure that part of the highway to which the action relates was not dangerous for traffic". The duty under section 41(1) is, therefore, little different to that which arises under the common law in negligence. Similarly, the duty to maintain trees planted under section 96 of the Highways act 1980 requires the highway authority to take only "reasonable" care. A highway authority also has the power under section 154(2) of the Highways act 1980 (see also s.91 roads (Scotland) act 1984) to require trees growing on land adjacent to the highway that are dead, diseased, damaged or insecurely rooted, to be removed by those responsible for the trees and, in default of removal, to take action itself to have the trees removed. A failure to utilise the power in any case is unlikely to give rise to liability in the light of *Stovin v Wise*[4]. similarly, it will not assist a person responsible for a tree growing adjacent to a highway to blame the highway authority for failing to require him to remove a tree that is found to have been dangerous.

It is the duty holder's fundamental responsibility, in taking reasonable care as a reasonable and prudent landowner, to consider the risks posed by their trees. The level of knowledge and the standard of inspection that must be applied to the inspection of trees are of critical importance. It is at this point that the balance Between the risk posed by trees in general terms, the amenity value of trees and the cost of different types of inspection and remedial measures becomes relevant.

the standard of inspection.

The courts have not defined the standard of inspection more precisely than the standard of "the reasonable and prudent landowner". It has been recognised that this test sounds simpler than it really is: "it postulates some degree of knowledge on the part of landowners which must necessarily fall short of the knowledge possessed by scientific arboriculturists but which must surely be greater than the knowledge possessed by the ordinary urban observer of trees or even of the countryman not practically concerned with their care"[5].

In individual cases, the courts have sought to apply this general standard to the facts of each case[6]. However, there is no clear and unambiguous indication from the courts regarding the extent of the knowledge about trees a landowner is expected to bring to tree inspection in terms of type and regularity of inspection. Generally, the courts appear to indicate that the standard of inspection is proportional to the size of and resources available (in terms of expertise) to the landowner [7,8,9,10&11]. It is of note that the Hse states in the Hse sector information minute *Management of the risk from falling trees* (Hse 2007), that: "for trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice".

In general terms, a landowner must identify those trees which might, if they fell, pose a risk to people or property. He should then inspect such trees and identify any obvious defects in the trees. If the landowner does not have sufficient knowledge of trees to enable him to identify such obvious defects, he should engage someone who has. Having identified a defect, the landowner (if sufficiently knowledgeable), or someone with appropriate knowledge and expertise, should assess the risk posed by the defect and take appropriate action, which might mean further monitoring of the defect, pruning of the tree or felling (see chapter 4). several commonly encountered obvious defects are illustrated in figure 3 in chapter 4 general features to look out for when assessing a tree.

The Occupiers' liability act 1957

The occupiers' Liability act 1957 provides for the liability of an occupier of land when an accident occurs on the land to a person who is a "visitor" to the land (for Scotland see the occupiers' Liability (Scotland) act 1960, for Northern Ireland see the occupiers' Liability act (Northern Ireland) 1957). The occupier owes a duty to the visitor to "take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he/she is invited or permitted by the occupier to be there"[12]. The duty of care under the act is effectively the same as that at common law in respect of the torts of negligence or nuisance.

A person visiting land by virtue of the national Parks and access to the countryside act 1949, the countryside and rights of Way act 2000 (croWa) or the marine and coastal access act 2009 is not classed as a "visitor" within the meaning of oLa 1957[13]. The person cannot, therefore, bring a claim under the oLa 1957.

However, he/she may still potentially bring a claim in negligence or, if appropriate, under oLa 1984.sufficient to absolve an occupier from liability in that they may, by such notice, have taken all reasonable care for the visitor's safety in the circumstances[17]. However, in general, a landowner should not rely upon warning signs alone to protect against a danger. A business occupier cannot by reference to any contract term, or to a notice, exclude or restrict his liability for death or personal injury resulting from negligence or a breach of duty under oLa 1957[18], save where the access to the land is given for educational or recreational purposes (unconnected with the purpose of the business

The criminal law

the Health and safety at Work etc act 1974 places a duty on employers to ensure, so far as is reasonably practicable, that in the course of conducting their undertaking, employees and members of the public are not put at risk (sections 2(1) and 3(1) respectively, see also section 3(2) in respect of self-employed persons). The acts of felling or lopping a tree clearly fall within the scope of this duty. It is also likely that the growing and management of trees on land falls within the scope of the duty if such operations fall within the employer's undertaking. The duty is subject to the words "so far as is reasonably practicable". This proviso

Requires an employer to address the practical and proportionate precautions which can be taken to reduce a risk. The courts have generally been unwilling to take in Account environmental or aesthetic values when considering whether a step is reasonably practicable, confining the consideration to whether a precautionary step can "practically" be undertaken[20]. Nevertheless, in *HSE v North Yorkshire County Council* (20.5.10) Willkie J., when directing the jury as to the meaning Of "reasonably practicable", identified as a material consideration "the benefits of conducting the activity" .He said (NTSG emphasis):the management of Health and safety at Work regulations 1999 require employers, and self-employed persons, by regulation 3 to "make a suitable and sufficient assessment of the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking". This requires an employer, and a self-employed person, to undertake a risk assessment of the tree stock on the land which forms part of the undertaking. breach of the duty under the act, or the regulations derived from the act, can give rise to a criminal prosecution against the employer. Enforcement of the act is vested in the Hse and, in some instances, local authorities. The Hse has provided guidance for its inspectors and local authority enforcement officers in connection with the inspection of trees in the sector information minute *Management of the risk From falling trees* (Hse 2007)[21].the responsibilities under criminal law primarily arise in respect of employers, self-employed persons and those who control a business undertaking. However, responsibilities under criminal law can also, in exceptional circumstances, arise in respect of manslaughter by corporate undertakings or individuals, leading to a police investigation and possible prosecution (see the Work-related Death Protocol 2003). There has been no prosecution for manslaughter in respect of falling trees.

Experience & qualifications of the author

16 years of climbing arborist experience

PROFESSIONAL MEMBER OF ARBORICULTURAL ASSOCIATION *(MArborA)*

FOUNDATION DEGREE IN ARBORICULTURE
MYERSCOUGH COLLEGE

LEVEL 3 CERTIFICATE IN THE THOROUGH EXAMINATION OF ARBORICULTURAL EQUIPMENT (LOLER)
LANTRA AWARDS

ABC DIPLOMA LEVEL 4 IN ARBORICULTURE
MERRIST WOOD COLLEGE

TRAQ
ISA

PROFESSIONAL TREE INSPECTION (PTI)
LANTRA AWARDS

IOSH MANAGING SAFELY
IOSH

NATIONAL CERTIFICATE IN ARBORICULTURE
SPARSHOLT COLLEGE
COMPETENCIES GAINED IN THIS COURSE:
Level 2 Award (CS30) - Chainsaw maintenance and Crosscutting
Level 2 Award (CS31) - Felling & Processing Trees up to 380mm
Level 3 Award (CS32) - Felling & Processing Trees over 380mm
Level 2/3 Award (CS38) - Tree climbing (2) & Aerial Rescue
Level 3 Award (CS39) - Aerial Cutting of Trees Using Free Fall Techniques
Level 2 Award (PA1-PA6) Safe Use of Pesticides
Level 2 Award Brushwood Chipper Operation
Level 2 Award Tractor Driving and Related Operations

PROFESSIONAL LECTURES
I have presented at the following lectures

- Expert question time 3 (CAS) Tree risk management (2014)
- ICF SE England Group Gets to Grips with Risk Management in Oxford (2016)
- Tree risk management day (CAS) (2016)
- LTOA winter lecture (2016)
- Bartlett tree experts Tree management (The Bartlett Tree Research Laboratories and Arboretum USA) (2017)
- Tree monitoring and treatment – the holistic approach (plant network, 2018)
- LTOA winter lecture (2019)

I hope the information I have provided helps you to make an informed decision on the future management of the trees.

Kind regards,

[redacted]

Mr Kevin Martin *MArborA*

Arboricultural ASSOCIATION
Professional Member