

# Tree site survey:

3 Sparrowhawk Close

Ewshot

Surrey

GU10 5TJ

## 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 Mr Dave Holden, who is the property owner.

This is due to the request of an arboricultural site survey and concerns regarding the condition of the trees within the garden of 3 Sparrowhawk close, Ewshot, Surrey, GU10 5TJ, 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)

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## 1.0 Instructions

I am instructed by Mr Dave Holden 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 04/02/2024 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 overcast. The time of my visit was early afternoon.

## 3.0 Description of the site

The property is residential with neighbouring residential properties adjacent. The trees are spread across both the front and rear garden. The occupancy of the site is constant with the probability of impacting a high value target being high.

## 5.0 Conclusion from site visit

A site visit has been conducted and formed part of a negative survey, whereby all trees on the property have been visually inspected but only the trees that require mitigation work have been identified to manage the trees to as safe as reasonably practicable. A number of the trees identified are dead and have a high probability of failure and are within 1x the height of the property or neighbouring property. All the trees that require mitigation work have been identified with a yellow number tag which is referenced to the site plan.

It is recommended that this is the first stage to manage the trees on the property. Once this work is completed it would be prudent to carry out a reinspection in 36 months in order to form part of a proactive management plan.

### Replacement trees

With the removal of trees identified from this survey it is recommended to replant the removed trees. Below is a selection of suitable trees for the property to enhance the landscape and diversity.



*Acer campestre* (field maple)

*Carpinus betulus* (common hornbeam)

*Tilia cordata* (small leaf lime)


Sycamore (*Acer pseudoplatanus*)

## Appendix 1 tree survey

Ref.	Species	Survey Notes	Condition	Risk Rating	Recommendations	Photo
T0173	Scots pine ( <i>Pinus sylvestris</i> )	Dead	Dead	Moderate	Remove tree	
T0174	Scots pine ( <i>Pinus sylvestris</i> )	Dead	Dead	Moderate	Remove tree	
T0175	Scots pine ( <i>Pinus sylvestris</i> )	Tree has been significantly damaged at the base to 3m by bonfire damage. Significant decay is now present for over 50 percent of diameter	Poor	Moderate	Remove tree	
T0176	Scots pine ( <i>Pinus sylvestris</i> )	Tree has been significantly damaged at the base to 2m by bonfire damage. Significant decay is now present with large area of dead bark	Poor	Moderate	Remove tree	




T0177	Scots pine ( <i>Pinus sylvestris</i> )	Tree has been significantly damaged at the base to 2m by bonfire damage. Significant decay is now present with large area of dead bark	Poor	Moderate	Remove tree	
T0178	Common beech ( <i>Fagus sylvatica</i> )	Tree has been significantly damaged at the base to 3m by bonfire damage. Significant decay is now present with large area of dead bark. Reaction wood to the margins of the wound Ivy on stem	Poor	Moderate	Remove tree	
T0179	Scots pine ( <i>Pinus sylvestris</i> )	Large diameter Deadwood throughout canopy	Good	Moderate	Remove Deadwood	
T0180	Sycamore ( <i>Acer pseudoplatanus</i> )	Minor Deadwood throughout canopy and dense ivy on stem	Good	Low	Sever ivy	
T0181	Sweet chestnut ( <i>Castanea sativa</i> )	Large diameter Deadwood throughout canopy Canopy spread over boundary into neighbouring property. Dense ivy on stem	Good	Low	Sever ivy and remove Deadwood	
T0182	Common beech ( <i>Fagus sylvatica</i> )	Large diameter branch in contact with neighbouring pine tree. Which has now caused sapwood damage.	Good	Low	Reduce branch to give 1m clearance from neighbouring pine tree	

T0183	Pedunculate oak (Quercus robur)	Large diameter Deadwood throughout canopy	Good	Low	Remove Deadwood	
T0184	Common birch (Betula alba)	Tree in significant decline Poor height to stem diameter ratio	Poor	Moderate	Remove tree	
T0185	Common birch (Betula alba)	Tree in significant decline Poor height to stem diameter ratio Tree leaning over boundary into neighbouring property.	Poor	Moderate	Remove tree	
T0186	Sycamore (Acer pseudoplatanus)	Tree in significant decline Poor height to stem diameter ratio Tree leaning over boundary into neighbouring property. Dense ivy on stem	Poor	Moderate	Remove tree	
T0187	Common birch (Betula alba)	Tree in significant decline Poor height to stem diameter ratio Completely ivy covered	Poor	Moderate	Remove tree	
T0188	Scots pine (Pinus sylvestris)	Large dead tree	Dead	High	Remove tree	
T0189	Common birch (Betula alba)	Tree in significant decline Poor height to stem diameter ratio Completely covered in ivy	Poor	Moderate	Remove tree	
T0190	Common birch (Betula alba)	Dead	Dead	Moderate	Remove tree	
T0191	Scots pine (Pinus sylvestris)	Large open cavity at 2 to 3m with brown rot, signs of adapted growth. Stem to height ratio increasing load on the defect.	Fair	Moderate	Remove tree	

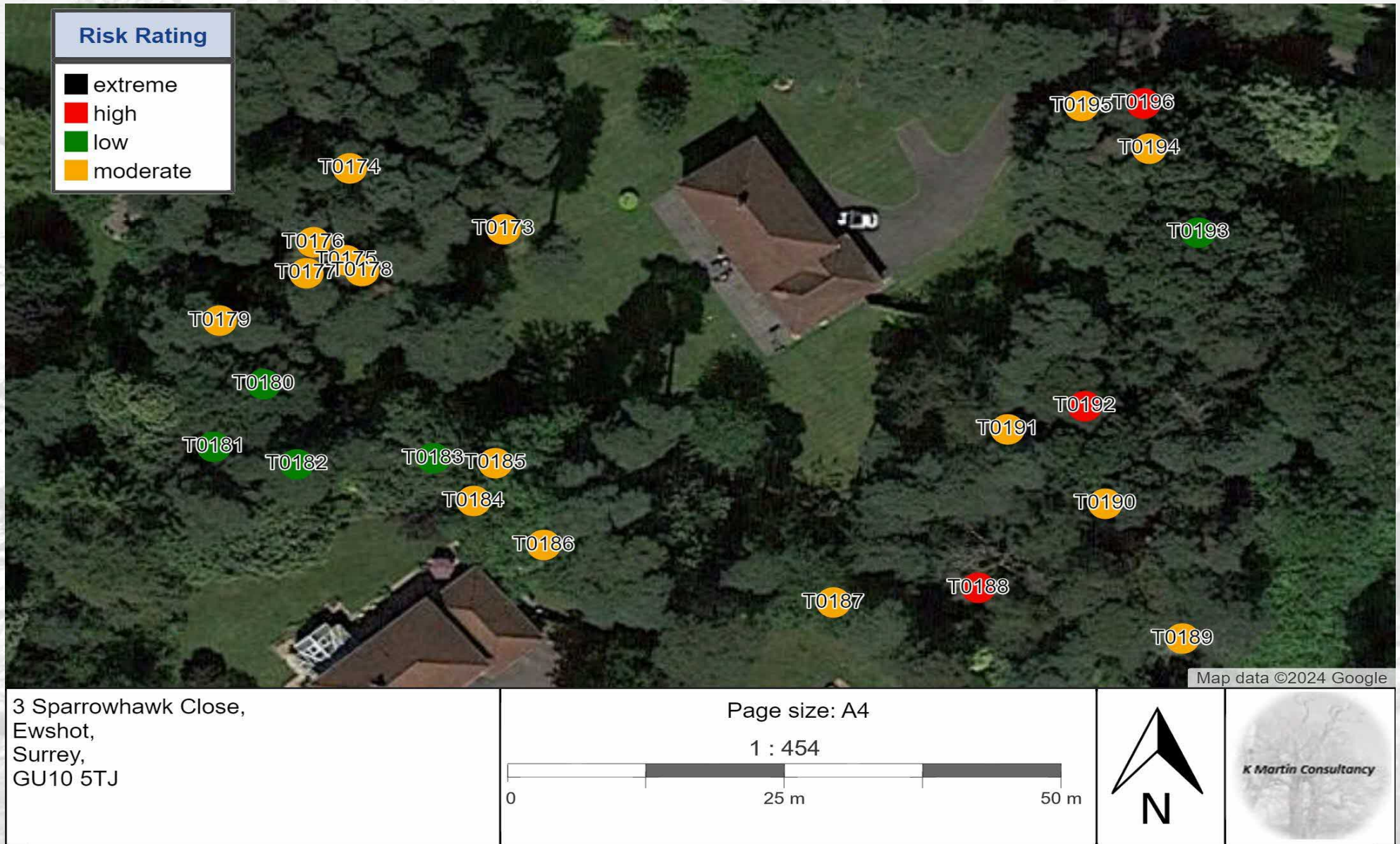


T0192	Scots pine (Pinus sylvestris)	Large dead	Dead	High	Remove tree	
T0193	Sycamore (Acer pseudoplatanus)	Large diameter Deadwood throughout	Fair	Low	Remove Deadwood	
T0194	Common birch (Betula alba)	Dead tree	Dead	Moderate	Remove tree	
T0195	Scots pine (Pinus sylvestris)	Large open cavity at 2 to 3m with brown rot, signs of adapted growth. Stem height ratio increasing load on the defect.	Fair	Moderate	Remove tree	
T0195	Scots pine (Pinus sylvestris)	Dead	Dead	High	Remove tree	

T0196	Scots pine ( <i>Pinus sylvestris</i> )	Dead tree	Dead	High	Remove tree	
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# Appendix 2 Site Plan





## 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 out work 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			Occupancy rate 0 = none 1 = occasional 2 = frequent 3 = constant	Practical to move target?	Restrictions practical?
		Target within drip line	Target within 1 x dbh	Target within 1.5 x dbh			
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  UCR \_\_\_\_\_ %  
 Dead twigs/branches  \_\_\_\_\_ % overall Max. dia. \_\_\_\_\_  
 Broken/hangers Number \_\_\_\_\_ Max. dia. \_\_\_\_\_  
 Over-extended branches   
 Pruning history  
 Crown cleared  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 viable  Depth \_\_\_\_\_ Stem girdling   
 Dead  Decay  Conks/Mushrooms   
 Gase  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



Risk Categorization																					
Condition number	Tree part	Conditions of concern	Part size	Fall distance	Target number	Target protection	Likelihood								Consequences			Risk rating of part (from Matrix 2)			
							Failure				Impact				Failure & Impact (from Matrix 1)				Consequences		
							Improbable	Possible	Probable	Imminent	Very low	Low	Medium	High	Unlikely	Somewhat likely	Very likely		Negligible	Minor	Significant
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 \_\_\_\_\_  
 Date  Final  Preliminary Advanced assessment needed  No  Yes-Type/Reason \_\_\_\_\_  
 Inspection limitations  None  Viability  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"<sup>2</sup>. 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<sup>3</sup>. 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*<sup>4</sup>. 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”<sup>5</sup>.

In individual cases, the courts have sought to apply this general standard to the facts of each case<sup>6</sup>. 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<sup>7,8,9,10&11</sup>. 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”<sup>12</sup>. 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<sup>13</sup>. 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<sup>17</sup>. 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<sup>18</sup>, 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.<sup>20</sup> 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)<sup>21</sup>.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.

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

Kind regards,



Mr Kevin Martin *MArborA*

