

Cambusbarron Community Development Trust

Gillies Hill Community Woodland

Tree Safety Plan

Draft 1 | 23 April 2023



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1. Introduction

1.1 Purpose of this Document

CCDT has a duty of care for tree safety in Gillies Hill Community Woodland for users of the woodland and neighbours. This plan sets out a framework and plan which the Trust can implement as part of the ongoing management of the woodland to help them discharge their duty of care.

The Trust believes that, in the unlikely event of an accident involving one of the trees on CCDT-controlled land, the system it is putting in place is sufficient to demonstrate 'the conduct to be expected from a reasonable and prudent landowner'

1.2 Background

The Plan is based on the main guidance available which is provided by the National Tree Safety Group in particular **Common sense risk management of trees (FCMS024)** and **Common-sense risk management of trees - landowner summary (FCMS025)** published by the Forestry Commission (1st Edition 2011 and currently under review as a 2nd Edition check).

The NTSG guidance offers a framework for landowners to manage their trees reasonably, enabling them to establish a proportionate approach to practical tree management for the reasonable safety of visitors and passers-by. This approach is based on achieving a balance between the benefits that trees provide and the risks they pose to public safety. A proportionate approach will not require excessive risk management or undue intervention. Tree owners and duty holders are responsible for their trees and management strategies need to be specific to each location.

CCDT, as the owner of the Gillies Hill woodland on which trees stand, together with any other party who has control over the trees management, owes a duty of care at common law to all people who might be injured by the trees. 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 may arise against the owner or occupier of the land on which the tree was standing at the time of the incident – where the injured person was on that land, in Scotland see the Occupiers' Liability (Scotland) Act 1960 or, otherwise, in negligence, for a breach of the general duty of care, and in the tort of nuisance.

Safety management does not necessarily require all trees to be inspected and/or treated, such as for example in remote and unfrequented areas. It is generally accepted that tree safety management should aim to manage risk as low as reasonably practicable, which does not require the elimination of all tree-related risk or even to reduce risks to the lowest level possible, but rather involves striking a reasonable balance between the costs and the benefits of risk reduction.

In order to arrive at a reasonable balance, risk controls should take account of the level of risks on the one hand and, on the other hand, the potential costs - in time, effort and money – and the effectiveness of risk reduction measures. What constitutes good practice, hinges on how rational judgements are made about assessing and managing risk in a reasonable and responsible way within the framework of the law.

An understanding of tree-related risk, the elements of risk exposure and reasonable safety practice is required to assist the duty holders in making sound, cost-effective risk control decisions without undue detriment to the natural asset. An approach that is reasonable, balanced and proportionate should provide a sufficient measure of confidence in achieving good practice.

The document is intended to provide a framework for tree safety which the Trust can implement overview of the woodland management strategy, and key works/projects that are proposed/underway.

1.3 Limitations

The document does not relate to any areas outside of the CCDT land other than immediately adjacent boundaries and property; and it does not provide a risk assessment/method statement for any works.

2. The Local Context

Scenario applicable to CCDT Gillies Hill/Polmaise Community Woodland (Adapted from NTCG FCMS 024 Scenario 7: Large private estate with public access 8: Scenario Large open space open to the general public)

2.1 General Description

Gillies Hill Woodland comprises 64ha of community woodland in the ownership of CCDT. The woodland comprises mixed aged plantation and amenity woodland, naturally regenerated woodland, some grassland, small watercourses and areas of open water, the site of a former castle and its gardens including walled garden and other related features, access tracks and footpaths and a small car park and timber stacking area. There is a locked small shed and a locked shipping container for materials storage used for CCDT woodland and garden voluntary management.

Public access is largely unrestricted. The woods contain some ancient/veteran trees and landscape trees that were planted during the 19th century. During the year, CCDT offer volunteer days to assist with woodland management, informal walks for families and others, and provide access to other groups, e.g. (accompanied) nursery and school groups and other specific groups, and the area is used by walkers, families, dog-walkers, runners, orienteers and mountain bikers. Unauthorised vehicular access is not permitted by CCDT; entrances at Walled Garden and Castle Drive have locked gates but there are no other physical barriers at access points elsewhere.

2.2 Ownership/Control of Management Responsibility

The CCDT has overall management responsibility via its Trustees. There is a woodland management group which includes volunteers who meet monthly and organize and carry out day to day management activities and assist in Trust procurement of external contractors e.g. forestry contractors and tree surgeons. There is a core group of volunteers who regularly carry out physical woodland management tasks (often weekly) including one person with chainsaw (small trees) certificate and others with contract management, landscape contracting, engineering and land management experience including woodland and conservation. This experience and expertise is considered sufficient for the Trust to carry out its own H&S Risk Assessments in generic form and for specific activities.

Specific responsibility for tree safety is not currently delegated by the Trustees. Tree-related issues are generally managed internally but the Trust is in contact with CWA and attends its events and also FS in relation to the current WIAT Woodland Management Plan approved in 2022.

2.3 Arboricultural Competence

The woodland management group (WMG) members include those who can identify the most common trees and can recognise the obvious signs that a tree may be hazardous. A suitably qualified external forester or arboriculturist are commissioned for specific tree inspections on the recommendation by the WMG.

The chainsaw certificate holder (volunteer) carries out tree safety work identified by the WMG which is within his competence. This is restricted to small trees (less than 35cm) which are straightforward, but not complex felling tasks or large volumes. External specialist contractors carry out more complex or larger scale work.

2.4 The Benefits of Trees

The trees and woodlands form a Community Woodland as an amenity, habitat and education resource mainly for the local community but also used more widely. The importance of public access to semi-naturalised open space including trees and woodlands close to an urban environment cannot be overstated. Management of deadwood on living and dead trees, alongside other conservation works, actively contributes to increased biodiversity on site. Interest and family groups, tree professionals and members of the public regularly use the site to share learning opportunities.

2.5 Natural Living Organisms

The Trust and WMG are aware that trees and woodlands are dynamic adapting organisms. They have experienced some of the cycles of planting, ageing, decline, decay and death that all organisms undergo and the value they provide to people and wildlife in all their life stages. Experience elsewhere has demonstrated that while all tree failures cannot reasonably be prevented, a balanced and proportional approach to tree risk management can provide an acceptably safe natural environment for the public to learn and enjoy. In recent times, the management of new pests and diseases, particularly Phytophthora Ramorum and ash dieback, has become increasingly important and have significantly impacted on the woodland.

2.6 Reasonable, Balanced Tree Risk Management

It is proposed that Risk sequence zones are defined to ensure that areas are inspected proportionally to the level of usage. A database will log the formal inspections and types of tree failure that occur and their management. As well as formal inspections, the WMG and other volunteers team perform many unrecorded ad hoc checks throughout the year both while performing woodland visits and activities and after significant weather events reporting failures and obviously defective trees.

A system will be set up to record the results of the formal checks along with the results of any forest safety or arboriculturist's report and a note of any remedial work carried out. The core volunteers report to the WMG on a monthly basis accompanying the Minutes of new hazard identification or management carried out. Entries and mapping in MyForest software may assist with this.

The Trust believes that, in the unlikely event of an accident involving one of the trees on CCDT-controlled land, the system it is putting in place is sufficient to demonstrate 'the conduct to be expected from a reasonable and prudent landowner'.

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3. Woodland Management Projects

This follows the Tree Safety Group recommendations publication FCM 024 adapted to the local context (see above)

3.1 Description of the Woodland

The Urban Woodland Management Plan (approved by Scottish Forestry on 13/10/2022) is in place (reference no. 21FGS56483) which provides the overall woodland management framework for the Gillies Hill Community Woodland and general descriptions of woodland type and compartments and mapping of these. This Tree Safety Plan should be read alongside the UWMP. MyForest software is being increasingly used to map and record the woodlands and plan for woodland management purposes. Geo-referenced mapping can be produced for in-field use and field information can be captured electronically and uploaded.

3.2 Zoning

The Community Woodland has been zoned according to CCDT experience of public and volunteer use into High, Medium and Low usage zones. They are not definitive and can change but provide a reasonable basis for tree safety management. Refer to Appendix A for a map showing these zones. They should be kept under periodic review by WMG/external specialist consultants.

High usage - Areas and routes used daily and where access by all is actively encouraged, or where used as specific access to neighbouring properties or as boundaries to these. Are used intensively at times over an extended period of the day.

1. Access road to residential houses of Whinneyknowe and Garden Cottage and Walled garden.
2. Boundaries next to neighbouring residential houses (Whinneyknowe, Garden Cottage, Polmaise Lodge and Gillies Hill homes).
3. Path from primary school (and Old Drove Road) to garages then on to walled garden (Lindas Path),
4. Walled garden to dark wids route i.e. mud kitchen/play benches area
5. Walled Garden area/perimeter, Woodland Base and car park
6. Dark Wids area and main paths through to Castle area, incl Castle Pond path
7. Castle Gardens area
8. Tennis Courts picnic area
9. Castle Drive access route
10. Seven Winds main core path from garages entrance up the hill.
11. Path alongside Polmaise Road.

Medium Usage - Areas and routes used frequently by the public but less intensively than above eg on a transient basis by walker, dog-walkers, runners, MTB bikers.

12. Other defined paths and regular MTB routes
13. Lily pond area
14. Boundary woodland including Council woodland and woodland next old Drove Road.

Low Usage. Areas and routes visited less frequently and then on a mainly transient basis.

- Includes all other areas including internal areas of most woodland compartments.

3.3 Inspection Regime and actions

Tree safety will be a standing item at woodland management group meetings and recorded in the minutes

Informal inspections

- These can be carried out at any time, during recreational walks and other activities, during volunteer days and other visits. Especially valuable to note recently fallen trees or fallen branches or significantly damaged trees or disease.
- Anyone can carry these out, but CCDT volunteers may be more systematic or knowledgeable about the woodlands and tree defects so are invited to keep an eye out during their visits. They would be encouraged to make an inspection of high risk areas after high wind/storm events.
- The Tree Safety Plan and current zoning map will be published on CCDT media.
- A facility will be set up for anyone to easily make a note or report to CCDT woodland group, which will be read and acted upon as appropriate by WMG. CCDT woodland email address - woodland@ccdt.ord.uk.
- Notifications via this route, or more directly (e.g. by regular volunteers from CCDT), will be considered by the woodland management group (this may range from immediately if it appears to be posing an immediate risk to the public, to being considered at the normally monthly WMG meeting where likely to be less urgent).
- Actions may range from:
 - Immediate tree safety work e.g. barrier tape to demarcate an exclusion zone in the short term; or
 - Direct chainsaw or winching safety work within a short time period (normally a week). This will be primarily by CCDT volunteers; or
 - A formal inspection either in-house or by external expertise (see below); and
 - The degree of urgency recorded as Orange, brown or yellow – then green when actioned successfully to adequately control the risk.

Formal Inspections

- Carry out a formal inspection using in-house resources from WMG. This would be more specific to the tree/area in question and would be recorded via a simple form for this purpose including initial recommendations for action. It would be considered at the next WMG meeting or before if considered urgent.
- Carried out quarterly for High Usage Zones but this may vary (eg after storm events or windblow or for a specific reason); 6 monthly for Medium Zones; annually as a general overview for Low Zones.
- Actions from above might be to carry out direct work (as above) either in-house or via external specialist contractors or to commission an external assessment (see below) in complex or sensitive cases (eg veteran trees). Urgency categories as above.
- Commission an external specialist to assess and make recommendations for action to CCDT. This would be a qualified arborist as a minimum or more normally a professional arboricultural or forestry consultant suitable experienced qualified and insured to carry this out.
- WMG to consider and decide actions including reference to Trustee Board and wider consultations with the community.
- The Tree Safety Plan will be audited/reviewed by an independent tree safety consultant to reflect current best practice legislation and guidance.

Reporting and recording

Via WMG meeting minutes; MyForest entries on a periodic basis; CCDT AGM reporting.

Appendix A

Tree Safety Inspection Zoning Map

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Gillies Hill Community Woodland

0 100 200 m



Scale: 1:5500

GHCW Tree Safety Zones

	Main path		CCDT Boundary
	Minor path		Fence
	Side path		Wall
	Track		Contour (15m)
	Points of Interest		Crags
	Ponds		Daffy Valley
	Watercourses		

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KEY - High Usage Zones

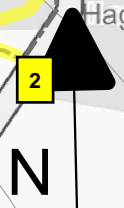
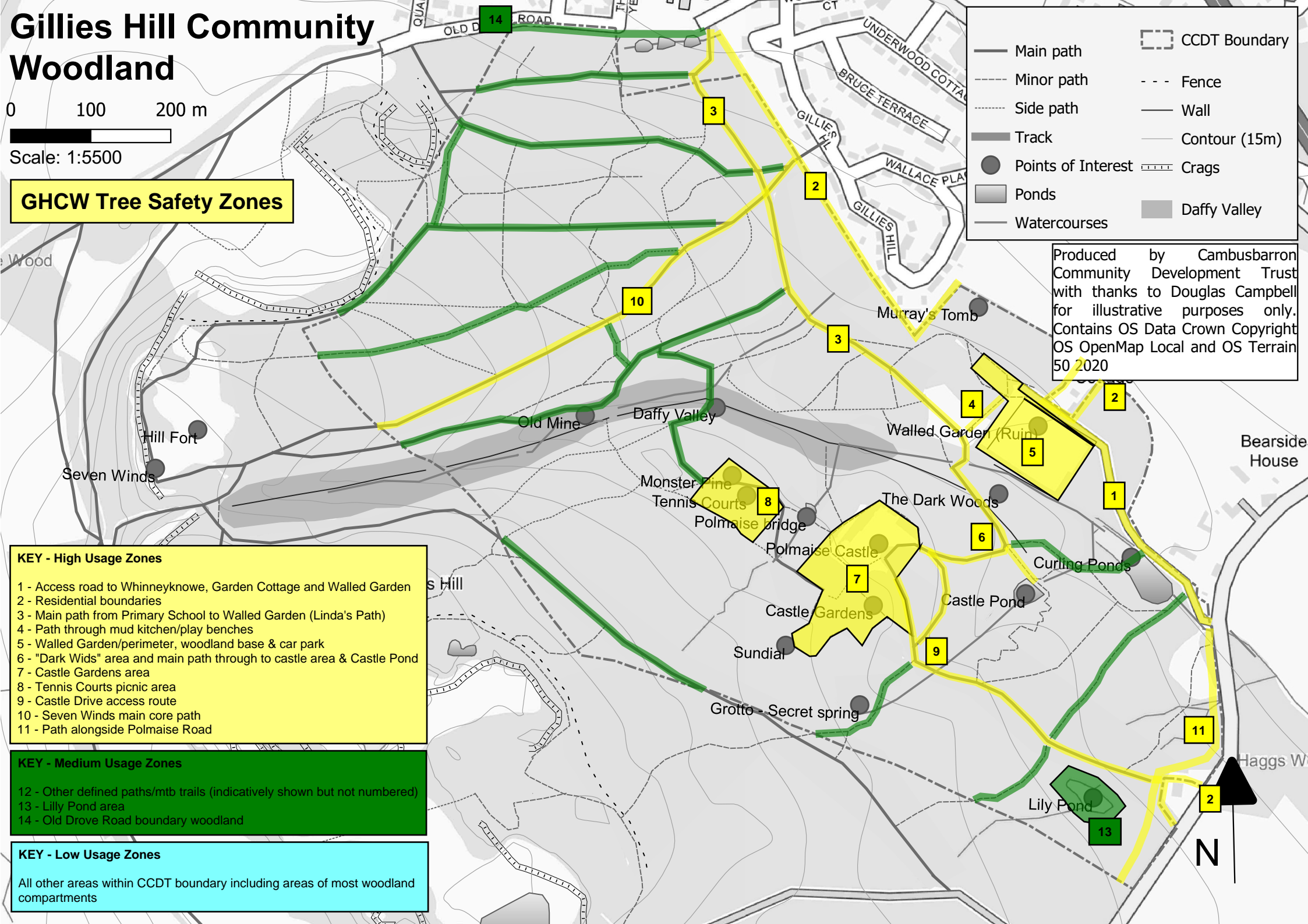
- 1 - Access road to Whinneyknowe, Garden Cottage and Walled Garden
- 2 - Residential boundaries
- 3 - Main path from Primary School to Walled Garden (Linda's Path)
- 4 - Path through mud kitchen/play benches
- 5 - Walled Garden/perimeter, woodland base & car park
- 6 - "Dark Wids" area and main path through to castle area & Castle Pond
- 7 - Castle Gardens area
- 8 - Tennis Courts picnic area
- 9 - Castle Drive access route
- 10 - Seven Winds main core path
- 11 - Path alongside Polmaise Road

KEY - Medium Usage Zones

- 12 - Other defined paths/mtb trails (indicatively shown but not numbered)
- 13 - Lilly Pond area
- 14 - Old Drove Road boundary woodland

KEY - Low Usage Zones

All other areas within CCDT boundary including areas of most woodland compartments



Appendix B

References

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B.1 References

The National Tree Safety Group has three publications that have been produced by the Forestry Commission. The three documents provide guidance on trees and public safety in the UK for owners, managers and advisers. They can be downloaded from the webpages of the NTSG.

- **Managing trees for safety (FCMS026) leaflet** Managing trees for safety is a leaflet for tree owners to help them understand the issues around tree safety and come to a balanced conclusion.
- **Common sense risk management of trees (FCMS024) This main document** provides guidance for inspecting and maintaining trees; guidance that is reasonable and proportionate to: the low risk from trees, the benefits of trees, and the health and safety obligations of those responsible for trees. As a national guidance document produced by an authoritative and representative group, its content and recommendations, if followed, should assist trees owners involved in personal injury or compensation claims when presented to the court as supporting documentation.
- **Common sense risk management of trees - landowner summary (FCMS025)** This landowner summary document provides a summary of the full guidance document - Common sense risk management of trees (FCMS024). It is intended for landowners of estates and smallholdings and all those who manage, advise and work on them. The summary does not contain references, notes, detailed discussion, contacts or acknowledgements.

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Appendix C

Summary of NTSG Guidance for Landowners

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C.1 NTSG Guidance for Landowners

(adapted from FCMS 025 to which reference should be made for the full summary)

C.1.1 Introduction

This is the summary of the NTSG's full guidance document Common sense risk management of trees. it is intended for landowners of estates and smallholdings and all those who manage, advise and work on them. ***It is considered applicable to CCDT Gillies Hill Community Woodland.***

This summary does not contain references, notes, detailed discussion, contacts or acknowledgements. if required, please refer to the main document for these and for more detailed information on the context and rationale of guidance given below.

The guidance document provides advice for the tree owner that is succinct, comprehensive but most of all practical in its application. the broad spectrum of member organisations of the NTSG is reflected in the scope of the advice within the document which covers trees growing in forests and estates in remote areas, through land that has occasional public access to land and individual properties where there is frequent public access and with land adjacent to roads. The NTSG believes that one fundamental concept should underlie the management of risks from trees. It is that the evaluation of what is reasonable should be based upon a balance between benefit and risk. This evaluation can be undertaken only in a local context, since trees provide many different types of benefit in a range of different circumstances. the NTSG position is underpinned by a set of five key principles: • trees provide a wide variety of benefits to society • trees are living organisms that naturally lose branches or fall • the overall risk to human safety is extremely low • tree owners have a legal duty of care • tree owners should take a balanced and proportionate approach to tree safety management managing the risk from trees is the responsibility of the owners and managers of the land on which they grow.

The Objectives of Tree risk management

the management of risk, when properly organised, enables an organisation, among other things, to: • increase the likelihood of achieving its objectives

- identify and control the risk 4 common sense risk management of trees
- comply with relevant legal and regulatory requirements
- improve stakeholder confidence

Human safety is one part of that management. risk management can be undertaken only by understanding the trees and their value to people in the context within which they grow. the requirement under health and safety legislation is to have a suitable and sufficient risk assessment, and to apply measures that are reasonable and practicable. this guidance shows an integrated approach to that process within the wider context of land ownership and management.

C.1.2 Risk Management Process

Context What benefits do these trees give to this land?

Risk identification is there likely to be any risk to human safety from these trees?

Trees: species, age, condition... People: location, numbers, road/rail etc.

Risk identification is it useful to establish zones?

Example Zones: no inspection, informal observation, formal observation, Detailed observation

Risk analysis What is the actual level of risk?

Carry out regimes of evidence gathering appropriate to zones

Risk Evaluation - is this risk acceptable?

Risk Treatment What action, if any, needs to be taken to treat the risk and preserve as many of the benefits as possible - eg tree removal, tree surgery, increasing frequency and intensity of inspections, reducing access?

C.1.3 Understanding the risks from trees

The overall risk to human safety is extremely low

Research by the Centre for decision analysis and risk management (Darm), commissioned by the NTSG, has addressed the risk to people from trees. It demonstrates that the overall risk to the public from falling trees is extremely low, representing about a one in 10 million chance of an individual being killed by a falling tree (or part of a tree) in any given year. so far as non-fatal injuries in the uk are concerned, the number of accident and emergency cases attributable to being struck by trees (about 55 a year) is exceedingly small compared with the roughly 2.9 million leisure-related A&E cases per year. footballs (262,000), children's swings (10,900) and even wheelie bins (2,200) are involved in many more incidents. The research also shows that there is limited societal concern about risks of this type (although there may be adverse publicity in the immediate aftermath of an individual incident). The analysis indicates that it would be unlikely that adjustments to the current overall management regime would reduce the risk to health and safety in any significant way.

Real risks and public concerns

Trees grow in many different situations, and within areas of widely varying levels of public access or other human activity. Where it is appropriate to manage trees, this management should seek to enhance their significance (in terms of value, access and other benefits) and all the other ecosystem service, biodiversity and social benefits they provide, and to manage the undesirable impacts they can have (such as damage to property and risks to human safety). Considerable concern and uncertainty about managing trees for safety has arisen in the last few years. this has largely been stimulated by a number of court cases and other responses to rare incidents where a falling tree or branch has killed or injured a person. Addressing these concerns requires information about the "real" risk involved and the level of public concern. hazards Very simply, a hazard is something that can cause harm and here, the hazard is a tree. risk is characterised by reference to potential events and consequences, or a combination of the two. It is often expressed as a combination of an event's consequences and the likelihood of it occurring. in this case, a potential consequence is death or serious injury. Levels of risk are judged against a baseline, which is usually the current overall maintenance or control regime for that hazard (the tree). When assessing trees, owners and managers need to judge whether the management measures they adopt will fulfil society's reasonable expectations. "reasonableness" is a key legal concept when considering the risks of trees to the public and tree owners' obligations. Deciding what is reasonable can be undertaken only with regard to the trees' place within the wider management context and how that context influences decisions locally. The Health and safety executive (HSE) has identified that an individual risk of death of one in one million per year for both workers and the public corresponds to a very low level of risk. It points out that this level of risk is extremely small when compared with the general background level of risk which people face and engage with voluntarily in the course of everyday life.

Significance of the identified risks

The individual risk of death attributable to trees is 10 times less than the threshold of one death in one million per year that the Hse says people regard as insignificant or trivial in their daily lives. Because trees present a very low risk to people, owners and managers should be able to make planning and management decisions by considering how trees fit into a particular local context and avoid unnecessary intervention, survey and cost. This approach will help them ensure that any management is proportionate and strikes an appropriate balance between the real risks and benefits. managing

The risk from Trees

Tree management or the lack of it should not expose people to significant likelihood of death, permanent disability or serious injury. accidents are on occasions unavoidable. such risk is acceptable only in the following conditions:

- the likelihood is extremely low
- the hazards are clear to users

- there are obvious benefits
- further reducing the risks would remove the benefits
- there are no reasonably practicable ways to manage the risks in its position statement, the NTSG argues that it is reasonable that sufficiently large organisations that own or manage trees develop a management strategy (in line with practice in other sectors). This strategy may strike a balance between risks present and benefits accrued. An organisation that publishes and maintains a tree strategy or management plan, part of which includes information on their risk management plan for the trees they own, is much better placed to demonstrate they have fulfilled their duty of care.

C.1.4 What the law says

The role of this Guidance

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.

The Duty Holder

This is the person who has control of the tree's management whether as owner, lessee, 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". The tree owner is not, however, expected to guarantee that the tree is safe. They have to 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. 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 or other values 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". In individual cases, the courts have sought to apply this general standard to the facts of each case. However, there is no clear and unambiguous indication from the courts in regard to 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.

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".

C.1.5 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 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 into 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. Nevertheless, in *HSE v North Yorkshire County Council* (20.5.10) Wilkie 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): "Now, in this context what does 'reasonably practicable' mean? Well, as you have been told correctly, it is a narrower concept than what is physically possible. It requires a computation to be made by the employer in which the amount of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk, whether in terms of money, time or trouble, or the benefits of conducting the activity, are placed in the other. If there is a gross disproportion between them where the risk to health and safety is insignificant in relation to the sacrifice and/or loss of benefit involved in averting that risk then the defendant discharges the onus upon him and is entitled to be acquitted, but if the defendant does not persuade you of that on the balance of probabilities then you would convict."

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.

C.1.6 Reasonable, balanced tree risk management

Responsible management

landowners who already sensibly manage their trees can be reasonably confident that there is no need for any radical change driven by a fear of the law, though they may find this guidance useful when reviewing management practice. No tree can be guaranteed to be safe. As long as we retain trees, we cannot achieve zero risk. A disproportionate response to the actual risks posed by trees leads to unnecessary intervention, particularly alongside roads and public places. Disproportionately responding to risk itself runs the risk of

diminishing the landscape and depriving the whole community of the enjoyment of trees and their wider benefits.

Legal requirements

The law requires only that people should take reasonable care to avoid acts or omissions which cause a reasonably foreseeable risk of injury to persons or property. The generally agreed standard to be achieved is that of a reasonable and prudent landowner.

Low risks and Common Sense

Generally speaking, the existing tree management regimes in the uk's towns, cities and countryside contribute to the acknowledged low risk of anyone being killed or injured by a fallen or falling tree or branch. The normal practices that have prevailed over the past decades have, in large measure, been reasonable and proportionate. These management regimes have worked in conjunction with people's common sense approach to appraising risk from trees.

Defendable Practice

Defendable management is consistent with a duty of care based on reasonable care, reasonable likelihood and reasonable practicability. Landowners and managers who know how important their trees are tend to take an interest in them; including their setting and how people use their land and the benefits that trees bring. It is reasonable that decisions regarding tree safety are considered against a background of the general low risk from falling trees. Being reasonable involves taking actions proportionate to the risk. Reasonable tree management has both reactive and proactive elements. While the owner or manager may need to react to events involving dangerous trees as they arise, it is also prudent to have forward-looking procedures to keep tree-related risks at an acceptable level. These procedures need not be complicated and may be incorporated into a tree strategy or management plan where applicable.

C.1.7 Key steps in tree safety management

The Essentials

A reasonable and balanced approach forms the basis of a tree safety strategy for sensible tree safety management. By a "strategy", we mean a plan that guides management decisions and practice, in a reasonable and cost-effective way, typically covering three essential aspects:

- zoning: appreciating tree stock in relation to people or property
- tree inspection: assessing obvious tree defects
- managing risk at an acceptable level: identifying, prioritising and undertaking safety work according to level of risk a tree safety strategy may not necessarily be supported by extensive records. It may be self-evident through general prudent practice and behaviour. Alternatively, a strategy may be explicitly formulated and expressed through documents relating to management practice. If reasonably carried out, the strategy should meet the duty of care required by law, without the need for an overly bureaucratic approach or excessive paperwork. In the event of an accident, documents may provide supporting evidence that reasonable care has been taken.

Keeping Records

Records, including maps, provide the basis for safety management reviews and, in the extremely rare event of an accident, can support evidence of reasonable tree management. It is not necessary to record every tree inspected. However, records of trees presenting a serious risk and requiring treatment are useful, as is a record of how they have been treated. When inspections are carried out, records can demonstrate that the owner or manager has met a key component of their duty of care. Other useful ways of demonstrating reasonable assessment and management of trees include recording recommendations for work and when tree work has been carried out.

Zoning

Zoning is a practice whereby landowners and managers define areas of land according to levels of use. This practice prioritises the most used areas, and by doing so contributes to a cost-effective approach to tree inspection, focusing resources where most needed. It contributes to sensible risk management and a defensible position in the event of an accident. It may be a reasonable outcome of the zoning process to decide that no areas require inspection. Classifying levels of use in this way common sense risk management of trees requires only a broad assessment of levels of use. typically, two zones, high and low use, may be sufficient. High use zones are areas used by many people every day, such as busy roads, railways and other well-used routes, car parks and children's playgrounds or where property may be affected. Low use zones are used infrequently and may only require irregular inspection if at all. While owners and managers may deem it appropriate to use a more sophisticated approach, designating three or more zones, in the event of an accident whichever system is adopted may require justification according to the standard set.

Normally, the best person to do an initial assessment is someone familiar with the land, how it is used and what trees are present. Typically, this could be the landowner, occupier or land manager. it does not require a tree specialist to zone a site.

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