

2. The Law

Under both the civil and statute law, the council has duties to manage its tree stock in order to reduce the risk of injury to persons or property being caused by a tree on or near council owned land.

Under common law the council has a duty to take reasonable care to avoid acts or omissions that may cause a reasonably foreseeable risk of injury to persons or property.

It is likely that a robust programme of inspection and maintenance would be held to be reasonable in the discharge of legal duties. In order to discharge these duties, the council has developed a balanced and proportionate tree risk management process outlined in this policy.

Additionally, where works are carried out to trees, this will be sympathetic to animals and their habitat in accordance with the Wildlife and Countryside Act 1981. However, where trees present a public safety hazard, these will be dealt with accordingly.

*1 - What will be considered an actionable nuisance is outlined further under Section 3.

3. Nuisance

The council has a finite budget to carry out works to its trees. As such, it will carry out works to its trees in order to maintain them in a safe and healthy condition. This will be carried out on a risk based approach as outlined in section 7. Where a member of the public reports a safety concern relating to a council owned tree, the tree will be inspected formally for defects and appropriate action taken in line with the council's tree risk management strategy.

The timeframe for inspection is laid out below:

Report:	Timescale:
Dangerous tree (cracked, large branch snapped out and hung up etc.) or damage caused by fallen tree	As soon as reasonably practicable, what is reasonably practicable will depend on the circumstances, the tree location and other risks. For example, in inclement weather the council will have to make best use of resources based on known risks and consider any risks to officer's safety.
Dead, dying or diseased tree, dead branches, fungal growths, damage to trees (vandalism or struck by vehicle) and fallen trees and branches already on the ground with no damage to property	Within five working days
Minor alleged damage being caused to property	Within one month

All council owned trees growing in zones one and two (see explanation of zones below) will be inspected at least every five years. This inspection process will identify potential defects and these will be assessed and action taken accordingly.

However, the council will not carry out work on trees to abate nuisance associated with trees as a natural organism such as falling leaves, fruit, honeydew, pollen or large trees and branches which are not obviously defective. Likewise, the council will not automatically carry out work to its trees which are causing shading to an adjacent property. The only exception to this is where it can be shown that a council owned tree is causing damage to an adjacent property as this is an actionable nuisance. What the council will consider to be an actionable nuisance and what it will consider an inconvenience is tabled later in this section.

Where council owned trees and branches are crossing the boundary of an adjacent property, the landowner has the right to prune the tree back to the property boundary. However, if the works are larger than what can be accomplished using hand tools residents are advised to seek the services of a competent arborist to avoid causing damage to the tree. Additionally, residents are strongly advised to

	<p>reasonable person would be expected to accept.</p> <p>The council's contractors will remove these items from paths and the highway, but not from private property</p>
Tree is dropping honeydew or sap	<p>This is a seasonal problem caused by aphids which are almost impossible to remove. Pruning is likely to exacerbate the problem in the long run as new growth would be more prone to aphid infestation.</p>
There are insects or pests in the tree	<p>Bees are a protected species and no action can be taken to control bees.</p> <p>The council's contractor will assess the practicality of removing a wasp nest when it is reported.</p> <p>Other pests such as brown tailed moths cannot be removed from a mature tree practically. However, this will be assessed when reported.</p>
Tree is affecting my television signal	<p>The council will not carry out work on trees to improve television reception.</p> <p>The satellite dish or aerial could be repositioned and you could seek assistance from your television provider or aerial specialist.</p>
Birds' nests and bird droppings	<p>The Council will not fell or prune trees to prevent birds from nesting or bird droppings.</p> <p>Birds and their eggs and nests are protected by the Wildlife and Countryside Act.</p>
Tree is blocking light or causing shade	<p>The council will not prune or fell trees that are blocking direct sunlight or causing shade. There is no right to direct sunlight, only daylight.</p> <p>The council may take action where the loss of light is substantial or there is an impact on a resident's livelihood.</p>
Tree is blocking or spoiling my view	<p>The council will not prune or fell a tree to improve a view from a property.</p>
Tree or tree branch is touching my building	<p>This may be a nuisance. If a tree is causing damage to a property or is likely to in the near future the council will take action to prune back or to remove the</p>

	<p>tree as soon as it is reasonably possible to do so.</p>
<p>Subsidence claims relating to trees</p>	<p>This may be a nuisance. If you suspect that a council owned tree is causing subsidence damage to your property, please report this to us so that it can be investigated.</p> <p>You will also need to notify your insurer as evidence will be required that a council owned tree is to blame before any action is taken.</p> <p>The council will take advice from a suitably competent person on the best course of action.</p>
<p>Tree roots in residential property</p>	<p>This may be a nuisance. The council will not prune roots or fell a tree because of roots in a neighbouring property.</p> <p>You have a common law right to prune roots back to your boundary providing it doesn't affect the safety or health of the tree. Please report this matter so the council can advise on a suitable specification for the works.</p> <p>If the roots of a council owned tree have caused damage to your property, please report this so it can be investigated.</p> <p>You will also need to notify your insurer as evidence will be required that a council owned tree is responsible before any action is taken.</p>

(Occupancy Risk Level)	
1 (High)	<ul style="list-style-type: none"> • Children's play areas • Parks • Footpaths and obvious thoroughfares in populated areas (including designated seating / fishing areas) • Council owned land adjacent to A roads • Council owned land adjacent to railways • Council owned land near schools • Sports pitches
2 (Medium)	<ul style="list-style-type: none"> • Car Parks • Council owned land adjacent to B roads • Rural footpaths • Council owned land adjacent to private dwellings
3 (Low)	<ul style="list-style-type: none"> • Dense woodland

This zoning has been carried out on a generic basis, following initial inspection (described further in section 6), re-inspection will be carried out on an individual risk basis, with all trees or groups of trees in zones 1 and 2 being inspected at least every five years.

The law recognises that there are limited financial and staff resources available. Consequently, all trees cannot be inspected at once, or every year. In order to use resources effectively, it is necessary to prioritise inspections to concentrate on potentially higher risk areas.

Inspection:

Trees will be inspected for defects according to the priority zone. For the purposes of expedience and record keeping, it may be appropriate to group a particular cluster of trees, particularly where no significant defects have been detected or in zone 2 areas. Where defects or significant hazards are detected, trees will be assessed in line with Quantified Tree Risk Assessment (QTRA) technique detailed under section 7.

All tree inspectors will hold a recognised certificate of competence in tree inspection and will be registered users of the QTRA system. Where a tree inspector is unsure of

the nature or severity of a defect identified or where invasive methods are required, third party support should be sought without delay.

Managing Risk at an Acceptable Level:

Risk will generally be regarded as acceptable when it falls into the broadly acceptable level. However, risk may be tolerated when the risk posed is ALARP, proportionate control measures are in place and subject to continued review.

Depending on the location and value of the tree, managing the risk may not mean undertaking remedial works on the tree. The council may consider restricting access to the tree, deterring access to the areas where the tree may fall by using fencing or by allowing the grass to grow in the area beneath the canopy or in the likely fall area.

Additional information and interpretation may be provided to the public in order to increase public understanding of the issue and chosen management options.

Appropriate Records:

All tree inspections will be recorded. That is not to say that each tree owned by the council will have detailed inspection records recorded against it, it may be appropriate to group a particular cluster of trees, particularly where no significant defects have been detected or in zone 2 areas.

However, where a defect is detected or significant risks are noted by an inspector, a record will be made. Where quantified tree risk assessment is carried out on a particular tree, a full record of the assessment, the risk of harm and what (if any) proportionate controls are required.

The council is currently using specific software designed to facilitate the inspection process. If this software were to change, the transfer of data must be arranged as part of any system migration project.

6. Inspection Process

The inspection process will fall into one of three categories:

- Informal observations;
- Formal inspections; and
- Detailed inspections

Informal Observations:

Carried out by grounds maintenance staff with knowledge and experience of each site they are routinely working on and observing the features of the site such as trees. They are not tree specialists, but they understand the way that the site is used and the potential dangers of an obviously defective tree. These observations are not recorded, staff know to report obvious tree defects so that management action can be taken by way of a formal inspection and an assessment of any significant risks. Staff will receive regular refresher training in the identification of site defects and the reporting process via toolbox talks.

Formal Inspection:

Someone visiting a tree or a group of trees for the purpose of inspecting the tree for defects. Where defects are identified, they are noted and recorded on the council's tree inspection software. For the purposes of expedience and record keeping, it may be appropriate to group a particular cluster of trees, particularly where no significant defects have been detected or in zone 2 areas. Where significant hazards are detected, trees will be assessed in line with Quantified Tree Risk Assessment (QTRA) technique.

Detailed Inspections:

For individual high value trees which have been identified as defective and are in a higher risk area, a detailed inspection will be required. This is a ground level visual inspection by a competent person looking for signs of structural failure. All detailed inspections will include QTRA as part of the process.

In a few special cases, further investigation may be required to carry out soil and root condition assessments, other invasive assessments and aerial inspections to evaluate suspected defects and decay. This is typically unusual and will be reserved for trees with a high heritage, amenity or habitat value and posing a higher level of risk. These additional detailed inspections will be carried out by a suitably competent third party.

Initial inspection:

For the purpose of the initial inspection, these will be undertaken as a formal inspection.

The zones will be visited on a timed basis as follows:

- Zone 1 areas will receive an initial inspection within 12 – 18 months
- Zone 2 areas will receive an initial inspection within 18 – 24 months
- Zone 3 areas will receive no formal inspection, with issues dealt with on an as reported basis

Competency Requirements for Tree Inspection:

- Informal observations will be carried out by members of staff that routinely visit sites, with an understanding of their use and the potential dangers of obviously defective trees.
- Formal inspections will be carried out by someone who has completed tree inspection training (VTA / LANTRA Basic Tree Assessment as a minimum standard) and is a registered user of the QTRA system.
- Detailed inspections will be carried out by someone who has completed a more advanced tree inspection training than VTA / LANTRA Basic Tree Assessment and registered user of the QTRA system.
- Additional detailed inspections will only be carried out by third parties with demonstrable competence for the assessment they are being commissioned to perform.

7. Quantified Tree Risk Assessment (QTRA)

Quantified Tree Risk Assessment (QTRA) is the methodology which has been adopted by the council for assessing the risk of harm posed by defective trees.

The methodology calculates a risk of harm from a tree (or a group of trees) taking account of land use and occupancy by pedestrians and vehicles (the target), the relevant tree or branch size and the probability of failure. Risk of harm is scored and managed as per the table below.

Remedial works will be prioritised according to risk.

Risk of harm	Action required
<1:1,000,000 Broadly acceptable	<ul style="list-style-type: none">• No specific action required
1:1,000,000 – 1:10,000 Tolerable where ALARP	<ul style="list-style-type: none">• Assess costs and benefit of control• Control where significant benefit is achieved at a reasonable cost• Review risk periodically
1:10,000 – 1:1,000 Unacceptable / Tolerable by agreement	<ul style="list-style-type: none">• Control the risk unless there is broad stakeholder agreement to tolerate the risk or the tree is of exceptional value• Review the risk periodically
>1:1,000 Unacceptable	<ul style="list-style-type: none">• Control the risk

8. Tree Works

Tree works will be undertaken by the council's directly employed arboricultural unit. Staff will hold the appropriate NPTC / LANTRA certification for the operations being undertaken and for equipment used. All lifting equipment will have been subject to a thorough examination under regulation 9 of the Lifting Equipment and Lifting Operations Regulations (LOLER) 1998. Where appropriate, work equipment will also have been inspected independently under regulation 6 of the Provision and Use of Work Equipment Regulations (PUWER) 1998 and equipment will be subject to a suitable regime of inspection and maintenance.

Where contractors are used, they will have been vetted in line with the grounds maintenance department's procedure on vetting contractors. Contractor's staff will hold the appropriate NPTC / LANTRA certification for the operations being undertaken and for equipment used. Appropriate maintenance regimes will be in place for work equipment and all lifting equipment will have been subject to a thorough examination under regulation 9 of LOLER 1998.

9. Inventory of Trees and Replanting

The tree inspection programme will allow the collection of data on numbers of trees by species, size and age to be collected. This inventory data will be used to inform future tree planting strategy, ensuring that what is planted in future is sustainable given current tree stock, climate change and future aspirations.

Given the council's pledge to be carbon neutral by 2030, significant tree planting is envisaged over the coming years to contribute towards the council's carbon offsetting. Data is needed on current tree stock to ensure that the trees planted as part of this programme are appropriate.

Trees planted will be of native species and will be planted at the appropriate time of year between November and March. Due consideration must also be given to utility services (both overhead and subterranean) and future land use in terms of species characteristics and likely future occupancy by pedestrians and vehicles.

10. The Council's Role as a Local Planning Authority (LPA)

Tree Preservation Orders:

Important trees in the council's area can be protected by making Tree Preservation Orders (TPOs). This means that any pruning or other work done to the tree must be agreed by the council's Planning and Development Service before any work is carried out. Trees in Conservation Areas are also similarly protected. Details of tree protection may be found at <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>.

A TPO is an order, made by the council, giving legal protection to either single trees, groups of trees or woodland areas. By law, trees with a TPO cannot be cut down, uprooted, lopped (cut/trimmed) or topped, and no part of the tree, including its roots can be wilfully damaged or destroyed without first gaining permission from the council for specific works

Anyone who wants the council to consider serving a TPO should email tpotrees@ashford.gov.uk setting out why it is important to protect a particular tree. The council will consider requests against three main criteria:

- The tree's particular importance in terms of size, form, rarity, screening value or contribution to the character or appearance of a conservation area
- The significance of the tree(s) in their local surrounding and wider impact on the environment
- Whether the tree is at risk or could be at risk in the future

You can find out if a tree is protected by using the council's [interactive maps](#) (please note that some maps are limited in Google Chrome). These will also show you the conservation areas in the borough.

Alternatively, you can [access records of Tree Preservation Orders made since 1999 online](#).

If a protected tree is dead or dangerous then you do not have to make a normal application, but you must give the council five working days' notice of your intention to carry out the work, demonstrating the risk. Guidance on the regulations surrounding dangerous trees and branches may be found at <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#dangerous-trees-and-branches>.

If the tree is causing an immediate danger, for example, it is about to fall and could cause damage or injury, then you can carry out work without giving notice. However, it is strongly advised for you to collect evidence as the council will require you to provide proof at a later date that the tree was either dead, dying or causing a danger.

The proof should include either photographs, a tree surgeons report and/or independent witness statements.

It is an offence to work on a protected tree without permission. If a protected tree is damaged or destroyed without permission, the owner or person carrying out the work

may be prosecuted and on summary conviction a significant fine may be levied and in addition a replacement tree will also have to be planted.

If, without putting yourself at risk, you are able to obtain information such as photographs or details of the contractor or landowner, this will help the council consider necessity in any enforcement action.

Conservation Areas:

Trees in Conservation Areas are protected and you may not be able to just carry out works to them. There are many conservation areas in the borough and you can see where they are on the council's [interactive maps](#) (please note that some maps are limited in Google Chrome).

You can carry out work on a tree in a conservation area but there are two things that you have to check first:

Check that the tree is not protected by a (TPO). These are also shown on the council's [interactive map](#).

Check the size of the tree - if the tree has reached a certain size you must give six week's notice to the council's Development Control team before you start any work. The specified size of the tree is different depending on whether the tree is standing alone or is part of a group of trees. Trees standing alone - measure the diameter of the tree at 1.5 metres above the ground. If the diameter is 7.5 centimetres or more you must give six week's notice of your intention to carry out works.

Trees standing within a group of trees - measure the diameter of the tree at 1.5 metres above the ground. If the diameter is 10 centimetres or more, you must give six week's notice of your intention to carry out works. Please check the [Gov.UK website section 211 Notice for tree size](#).

Please complete the [online application](#) for tree works.

The council will then:

- Acknowledge your application
- Visit the site to inspect the tree (if deemed necessary), and
- Write to you to tell you its decision within six weeks

You can see how your application is being processed and other applications on the council's [Tree Application search](#) pages.

If the council is happy for you to do the works you will be notified quickly and certainly within 6 weeks.

11. Communication

The council will maintain web pages relating to the management of trees and forthcoming projects.

If you see a damaged, diseased or dying tree, please report it to the council immediately so that appropriate action can be taken. This can be done by following **this link**.

12. References

Arboricultural Association (1997) *Arboricultural Practice Note 11 – Trees and Hedges in Dispute*. Available at: <https://www.trees.org.uk/Trees.org.uk/files/19/19efe78e-aadb-4465-9377-e978626957f6.pdf> (Accessed 12 February 2020)

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Forestry Commission (2011) *Common Sense Risk Management of Trees*. Available at: <https://www.forestresearch.gov.uk/research/common-sense-risk-management-of-trees/> (Accessed: 10 February 2020)

Lifting Operations and Lifting Equipment Regulations 1998 (SI1998/2307). Available at: <http://www.legislation.gov.uk/uksi/1998/2307/contents/made> (Accessed: 11 February 2020)

The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) Available at: <https://www.legislation.gov.uk/uksi/1999/3242/contents/made> (Accessed: 10 February 2020)

Occupiers' Liability Act 1957, c.31. Available at: <http://www.legislation.gov.uk/ukpga/Eliz2/5-6/31/contents> (Accessed: 10 February 2020)

The Provision and Use of Work Equipment Regulations 1998 (SI1998/2306) Available at: <http://www.legislation.gov.uk/uksi/1998/2306/contents/made> (Accessed: 11 February 2020)

Quantified Tree Risk Assessment (n.d.) *What is QTRA?* [Online]. Available at: <https://www.qtra.co.uk/cms/index.php?section=4> (Accessed: 11 February 2020)