

MHT Tree safety policy

Revised August 2019

Introduction

Malvern Hills Trust currently has over 1200 hectares (3000 acres) of land under its jurisdiction and management. A large proportion of this land has tree cover including woodland (totalling around 350 hectares (30 %)), tree avenues, in-field trees, and boundary trees.

Trees make a huge contribution towards the landscape character, wildlife and cultural heritage of the Malvern Hills and Commons and also make a positive, wider contribution in delivering ecosystem services such as carbon dioxide sequestration. The decay and collapse of trees is a natural process as with all organisms.

Trees, through total or partial structural failure, can also be a potential hazard to people, vehicles and property although the overall risk of serious harm from trees in the UK is extremely low. Land owners/managers, especially those with land open to the public, have a legal duty of care in relation to trees. Tree safety is, however, but one of many considerations relating to the management of trees.

The aim of this policy is to maintain our tree resource whilst bringing the level of risk posed by trees as low as reasonably practicable. It has been reviewed by MHT's insurers Aviva and is written with reference to Health & Safety Executive guidance, the National Tree Safety Group (NTSG), specifically their publicly available document 'Common Sense Risk Management of Trees, 2011', and Aviva's own guidance (Appendix 1).

Legal framework and responsibilities

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 (NTSG, 2011). This duty arises under the Occupiers Liability Acts (1957 & 1984).

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. The owner has to take only reasonable care such as could be expected of the reasonable and prudent landowner. 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.

A key objective for most owners and managers is to maintain a defensible position at the lowest cost while avoiding undesirable loss of valued trees. (NTSG, 2011).

The NTSG consider that large organisations which own or manage trees should develop a management strategy and in doing so are much better placed to demonstrate they have fulfilled their duty of care.

Tree diseases, such as Ash Dieback, are becoming more prevalent in the UK and this furthers the need for a robust and proactive tree safety strategy.

Tree safety strategy

In order to maintain our tree resource and meet our duty of care, the following steps are proposed:

1. to assess the broad levels of tree-related risk across the whole holding
2. to identify zones of differing levels of risk
3. to identify actual risks and undertake appropriate control measures to reduce that risk, and
4. to reassess the risk at an appropriate frequency.

Hazard – a potential source of harm to a person(s) or damage to property.

Risk – is the likelihood that a hazard will cause injury/damage (based on likelihood of event x severity of outcome).

Control measures – the steps to be taken to remove or reduce a hazard to acceptable levels.

Target – a person or property at risk from a hazard.

To assess the broad levels of risk (step 1) it is notable that the risk posed by trees across MHT land is not uniform but varies according to location and the level of public use. British Camp car park for example is heavily tree covered and can receive hundreds of visitors per day, Knell Coppice in contrast is heavily wooded but receives a handful of visitors per year making the risk there much lower.

In order to focus resources on the most appropriate areas, a zoning of all MHT land is used as follows:

ZONE	DESCRIPTION	RISK LEVEL
Zone 1	High target occupancy (e.g. high-use footpaths, beside railways & roads, buildings, car-parks.	High
Zone 2	Moderate target occupancy (e.g. often-used rights of way, paths, open areas, tracks.	Medium
Zone 3	Low target occupancy (e.g. infrequently occupied areas; little used paths, 'wild' habitats.	Low

A risk zone map must be drawn up based on the above zoning (step 2).

In order to identify any actual hazards present, the zones should be inspected by a competent person at an appropriate frequency. Said person will assess any risk and, where appropriate, recommend control measures (step 3). Assessment will need to consider the amount of time a target is present, the size of the tree/branch hazard and the likelihood that a tree/branch will fail.

These zoned assessments will happen as per the following table (step 4):

ZONE	INSPECTION METHOD	FREQUENCY
Zone 1 (high)	Formal inspection walkover and report by qualified arboriculturalist with advanced techniques/ detailed inspection if necessary.	Every 3 years
	Plus informal survey by relevant staff especially following storm / snow events.	Every year
Zone 2 (medium)	Formal inspection walkover by relevant staff. Record made. Defer to arboriculturalist if necessary.	Every 3 years
Zone 3 (low)	Informal observations made as relevant staff are present. All staff to be vigilant to tree hazards at all times.	When staff are present.
All zones	Informal observations as relevant staff are present.	When staff are present.

3 years is deemed a suitable time frame in which to re-inspect trees in high-medium risk areas where no specific issue is known. This seems prudent, especially with increasing tree disease in the UK.

Training / competency

The arboriculturalist shall be suitably experienced, qualified and preferably registered with the UK Arboricultural Association.

Relevant staff members shall have undertaken an accredited basic course in tree inspection and be experienced in countryside management.

Requirements of the tree inspections

A written record will be made of both zone 1 and 2 tree inspections by the person responsible. This record will include the time, date, author, area covered, detail of trees of concern, detail of trees that require remedial works and how urgently. All such records will be retained by MHT for a minimum of 10 years.

The arboriculturalist's inspection and report will need to meet professional requirements and be of a type/format to be as useful as possible for MHT staff. The report will provide tree and spatial data, details of any recommended remedial tree works, and a priority rating/required timescale. A Brief detailing the full requirements of the zone 1 tree inspection will be drawn up.

Zone 3 inspections are made informally as and when qualified staff are present. A record of any concerns will be made and forwarded either for further inspection or remedial works.

Staff responsibilities

CEO

- Overall responsibility for the tree safety policy and works.

Conservation Manager (CM)

- Draw up and reviews the risk zone map with CEO and OM.
- Ensure the appropriate zone 1 inspection takes place, receives and reviews the inspection report. Seeks further clarifications from the arboriculturalist if needed.
- Jointly, with the OM, consider all recommended tree works and assign to a contractor or to MHT field staff.
- Oversee the production of works specification to both contractor (via annual tender process) and field staff.
- Ensure the recommended tree works are undertaken in a suitable timescale and before breeding bird season (starts 1 March).
- Ensure the budget is updated as necessary.
- Inspect and action any other potential tree safety hazards as they occur throughout the year.
- Report at all stages to CEO.

Operations Manager (OM)

- Ensure the appropriate zone 2 inspections are adequately carried out and recorded.
- Jointly, with the CM, consider all recommended tree works and assign to a contractor or to MHT field staff.
- Oversee delivery of the recommended tree works by contractor and field staff in a suitable timescale and before breeding bird season (starts 1 March).
- Ensure adequate survey of zone 1 following storm/snow events.
- Inspect and action any other potential tree safety hazards as they occur throughout the year.
- Report at all stages to CEO.

Finance and Administration Manager

- Liaise with MHT insurance body over tree safety matters and any claims.
- Inform the OM and CM of any changes in tree safety advice/requirements.

All staff

- To be vigilant to potential tree safety hazards and immediately report any of concern to the OM or CM.
- To protect the public from any new immediate hazard, promptly put in place appropriate safety precautions, e.g. use of safety tape, closing a car park etc.
- To forward asap any reports from the public of dangerous trees/branches on MHT land to the OM or CM.

Works to trees – some further guiding principles

- Remedial action need not necessarily involve undertaking work to a tree, but could for instance mean re-routing a path or relocating a bench in order to reduce the risk posed. It could also include noting a tree for repeat inspection.
- Attention should also be given to young trees that are highly likely to become problematic in the future. These too should be highlighted for work.
- Standing dead and dying wood is an important ecological resource and should be retained wherever possible. Crown reduction of dead trees should be done ahead of removal of the tree entirely.
- Consideration should be given to leaving felled wood in situ where this does not create a new problem.
- The presence of fungal bodies nor the hollowing of tree trunks are part of natural processes and are not, unequivocally, signs of a hazardous tree.
- The planning of tree works must take protected species and associated key features into account, such as bats and bat roosts. The animals themselves and certain habitats/features are protected by law.
- MHT shall be responsible for identifying those trees on its land protected by Local Authority Tree Preservation Orders/conservation areas and may obtain any permissions required ahead of any works.
- What to do with timber and brash shall be decided by MHT on a case by case basis.
- Whenever a tree must be felled for safety reasons, if appropriate a tree of similar type will be planted nearby to ensure no net loss.

Injuries and/or damage caused by MHT trees

Even with an appropriate inspection regime in place, healthy trees and branches can fail, especially in storm conditions. If a person sustains injury or property is damaged by a tree under the care of MHT, the party involved should contact MHT as soon as possible with full details of the date and time of the event, the location and the alleged damage sustained.

Following any reported incident, a formal procedure to investigate and report the matter will be used. Any potential claims will be passed on to MHT's insurance company and staff will not express any view upon MHT's liability.

Policy Review

This policy will be reviewed every 5 years. The risk maps will be updated after any new land acquisition, significant building construction or other relevant change.



Loss Prevention Standards

Hazardous Trees

Introduction

The owner and/or occupier of land upon which trees stand may be held liable for any loss or damage resulting from falling branches or from a fall of the tree itself. The number of instances when people are struck by falling branches or trees is relatively low.

The National Trees Safety Group commissioned research which determined that from January 1999 to 2009 there had been 64 deaths resulting from falling branches or trees. Non-fatal injuries from such causes give rise to around 55 cases each year, which is much lower than other everyday causes of accidents, such as, footballs 262,000 cases, children's swings 10,900 cases and wheelie bins 2,200 cases.



Anyone with responsibility for land or trees should put in place procedures to identify and manage the risk. If there is any doubt about the status or ownership of land containing trees, landowners are strongly advised to clarify the situation as a matter of urgency. In the meantime it would be sensible to assume ownership and responsibility and take action as necessary in order to minimise potential future liabilities.

Liability of Tree Owners

Occupiers and anyone with responsibility for trees, e.g. a tenant, must take reasonable steps to manage and reduce risk and including identifying and inspecting those trees that might cause injury or place property at risk. When hazardous trees are identified, suitable remedial action must be taken to reduce risk.

In addition to existing statutory requirements the Courts expect those in control of places to which the public has access, such as parks and gardens, to take greater care than those in control of more remote woodland. Consideration should also be given to the possible increase in risks arising from the placing of seating or benches around or under trees. The Courts expect occupiers to be prepared for children to behave less carefully than adults, and thus consideration must be given to whether children might suffer injury from climbing trees which may have weak or damaged branches.

It is necessary to have in place a strategy which will include suitable and sufficient systems and procedures to ensure that the risks are identified, assessed and controlled. Such systems and procedures need only be reasonable, as it is not necessary to reduce risks to zero and completely eliminate the chance that a branch could fall and injure a person. A suitable strategy will include the following:

Zoning

A high risk area may be:

- Located near to or adjacent to roads, parking, etc.
- Easy to access with made-up paths suitable for buggies, pushchairs and wheelchairs
- In regular daily use

In contrast a low risk area may:

- Be remote
- Not possess clear footpaths
- Have no obvious visitor attractions or facilities
- Be little used apart from specialist groups such as birdwatchers and mountain bikers

Inspections and Risk Assessments

It is essential that systems and procedures are documented and that inspection records are retained. Inspections must only be undertaken by a suitably experienced and competent person and should lead to the carrying out of a risk assessment.

Current custom and practice includes three types of inspection:

- **Informal Observation:** which can be undertaken by persons who are not necessarily tree specialists but who possess an understanding of trees and have local knowledge
- **Formal Inspection:** dedicated surveys comprising a mix of walk-through inspections and close examination of trees from ground level
- **Detailed Inspection:** carried out by a tree specialist and which will involve access to and close examination of all parts of the tree

There are various sources of guidance for the exact nature and frequency of inspections.

The [Arboricultural Association](#) recommends:

- Frequency of inspection to be related to the tree's condition and the risk of failure
- Annual inspection, as a minimum
- Additional inspections following storms or severe weather events

Those trees located in the highest risk locations should be inspected more regularly, such as:

- In parks or places with high public 'footfall' such as recreation grounds or playing fields
- Adjacent to roads
- Overhanging third party property
- Species more liable to disease or decay

A risk assessment will help establish what needs to be done and should consider the following:

- Location of the tree(s) in relation to people, property and adjacent thoroughfares
- The age and condition of the tree(s)
- Species; some trees are better able to withstand decay
- Nature and type of any damage, decay or fungal attack

Inspections should concentrate on those areas where there is a significant risk to persons or property.

Assessing Competence

A person is generally regarded as competent if they possess a suitable mix of both formal qualifications and practical expertise. There are a number of relevant qualifications including Examinations and Certificates offered by City & Guilds and the Royal Forestry Society, BTEC and Foundation Degrees/BSc (Hons) Degrees. In addition, individuals should also be required to demonstrate their expertise.

Using Contractors

Whilst it is possible to carry out both inspections and remedial work using your own employees, there are times when it may be preferable to use contractors. Contractors must be competent and hold adequate Public Liability insurance that covers both the contractor and their employer, i.e. the occupier against any unforeseen consequence of the work. In the event of an accident the occupier may be held liable if the contractor does not have suitable or sufficient insurance.

Case law has confirmed and clarified the responsibilities regarding the liabilities of the employer (Poll v Viscount Asquith 2006) in respect of the maintenance of trees. A motorcyclist suffered serious injuries when he collided with a fallen tree. The landowner was found liable even though they had hired a forestry inspector, as it was held that the contractor was not sufficiently experienced. He had relied on 'drive-by' inspections and not carried out a closer inspection of the tree that clearly should have received one.

Local Authorities

Local authorities have certain powers to deal with dangerous trees which overhang the highway, including providing notice to the owner requiring them to cut or prune the tree. If the owner fails to comply the authority may carry out the work and charge the owner. Local authorities retain control of trees that are covered by Tree Preservation Orders.

Management of the Risk

There are several methods that can be used to reduce the risk:

- Modifying usage, e.g. by re-routing paths and walkways or relocating car parking areas or recreational facilities
- Removing seating or play equipment that might encourage people to linger under trees
- Changing mowing practice, underplanting with shrubs or leaving brushwood or logs under/around trees to keep people at a safe distance
- Fencing or barriers to prevent people accessing the area close to the tree/under the canopy
- Tree surgery
- Bracing or propping
- Felling

The most appropriate action will depend upon the circumstances.

Overhanging Branches

It is established in law that neighbours have a legal right to trim overhanging branches, and roots, however they must return the cut branches. However, they are under no obligation to consider any effect of the tree from their pruning, e.g. unbalancing the tree.

Thus occupiers are strongly advised to liaise with neighbours and offer to prune so as to avoid the risk of inappropriate action being taken.

Tree Felling

It is a criminal offence to fell a tree without first having obtained the necessary licence from the Forestry Commission. There are certain exceptions to this requirement which include small trees (as defined), trees

in gardens, trees in certain locations such as designated open spaces and trees that need to be felled to prevent danger.

Legislation

Under the Health and Safety at Work etc. Act 1974, all occupiers have responsibilities to ensure the safety of those not in their employment. 'Occupier' is generally taken to mean any person occupying or having control of premises, in this case land. Thus there are clear legal responsibilities to assess risks which arise from trees and take suitable and sufficient steps to control these risks. In addition, occupiers have duties under the Occupiers Liability Act 1984. This states (s2) that the occupier owes a 'common law duty of care' to visitors and those who enter his land or premises and this duty of care extends to trespassers. In Scotland there is no such distinction in the law.

Key Action Steps

If you are in control of land that contains trees then you should:

- Secure competent advice
- Develop a procedure to identify those trees that present the greatest risk
- Set up a regular programme of inspections
- Take remedial action as necessary
- Keep suitable and sufficient records of all that you have done

Additional Information

- [City & Guilds](#)
- [Royal Forestry Society](#)
- [Forestry Commission](#) – This site also includes details of the National Tree Safety Group (NTSG) which is a partnership of bodies with an interest in and experience of tree management
- *Hazards from Trees – General Guide*: Published by the Forestry Commission and available to download from their website above
- *Tree Felling – Getting Permission*: Published by the Forestry Commission and available to download from their website above
- [Guide to Trees and the Law](#): Published by the Arboricultural Association
- [Institute of Chartered Foresters](#)

Further risk management information can be obtained from [Aviva Risk Management Solutions](#)

Please Note

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