

# Churchyard trees and the law

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# The Law – cheerful and fun 😊

- There to protect people
- There to protect other things of value, e.g. trees
- There to bring in independent wisdom
  1. Protecting trees
  2. Protecting other things of value
  3. Protecting people
  4. Tree planting

# 1: Protecting trees

The screenshot shows the homepage of the Ancient Yew Group (AYG). The header is black with a 'Yew Map' icon on the left, the 'AYG Ancient Yew Group' logo in the center, and a 'Make A Donation to the AYG' link with a 'DONATE' button on the right. Below the header is a navigation menu with links for 'ABOUT US', 'YEW ARTICLES', 'CHURCH OF ENGLAND', 'CHURCH IN WALES', 'WHATS NEW', and 'LIST OF YEW SITES'. The main content area features a large photograph of an ancient yew tree with a stone path leading through a forest. A text box in the bottom right of the image reads 'Preen Manor, Shropshire'. Below the image is a footer with four links: 'HELP FIND AN OLD YEW', 'LOOKING AFTER ANCIENT YEW', 'LOST YEWS', and 'SEARCH THE AYG WEBSITE'. At the very bottom, a light green bar contains the text 'The Ancient Yew - Information for members of the public'.

Yew Map

AYG  
Ancient Yew Group

Make A Donation to the AYG  
DONATE

ABOUT US | YEW ARTICLES | CHURCH OF ENGLAND | CHURCH IN WALES | WHATS NEW | LIST OF YEW SITES

Preen Manor, Shropshire

HELP FIND AN OLD YEW | LOOKING AFTER ANCIENT YEW | LOST YEWS | SEARCH THE AYG WEBSITE

The Ancient Yew - Information for members of the public

# 1: Protecting trees

How significant are your trees?

- Write a *Statement of Significance*
  - Inventory: species, size, health, life expectancy, photos, map
  - Evidence: local authority orders, tree inventories, designations, old photos and maps
    - TPOs and Conservation Areas
  - Evaluation: age, landscape history and aesthetics, biodiversity, commemorations, environmental and health benefits

Care for your trees

**2015 No. 1568**

**ECCLESIASTICAL LAW, ENGLAND**

The Faculty Jurisdiction Rules 2015

List A8. Trees

- (1) The felling, lopping or topping of a tree the diameter of any stem of which does not exceed 75 millimetres (measured over the bark at a height of 1.5 metres above ground level)
- (2) The lopping or topping of any tree—
  - (a) that is dying or dead; or
  - (b) has become dangerous
- (3) The removal of dead branches from a living tree

Conditions:

The works do not relate to any tree in respect of which a tree preservation order is in force or which is in a conservation area

Regard is had to ***guidance issued by the Church Buildings Council*** as to the planting, felling, lopping and topping of trees in churchyards

List B6. Trees

- (1) The planting of trees
- (2) The felling of a tree—
  - (a) that is dying or dead; or
  - (b) has become dangerous
- (3) All other works to trees (whether or not prescribed in List A) except felling

# The three Ds

## **A 'dying' tree**

is one that is in rapid decline and is expected to be dead within one or two years.

An old tree, in slow decline, is not a 'dying' tree under the *Rules*.

## **A 'dead' tree**

has no life in it.

Even if defoliated, however, it may not be dead; take time to monitor and ascertain the state of the tree.

## **A 'dangerous' tree**

poses an immediate and serious danger, which may mean that there is not the time to go through the full faculty process before dealing with any threat.

# Emergency: immediate and substantial risk of harm

- First contact the archdeacon and the LPA,
  - if at all possible – must notify them afterwards at least
- Compile evidence (photos) and leave evidence on site (tree parts)
- Make the setting safe: fencing before surgery!
- Use a professional arboriculturist
- Doing more than the minimum to make things safe would be unlawful

# Archdeacon's notice for List B

## Sources of advice via DAC

- Local authority
- Ancient Tree Forum and the Woodland Trust;
- Ancient Yew Group;
- Arboricultural Association;
- Municipal Tree Officers Association;
- Tree Council;

## Things to check in an application

- TPO/Conservation Area consent
- Other secular law
- Tree dead, dying, dangerous
- Significance of the tree
- Need for the work
- Competence of contractor
  - Qualifications, membership and experience
  - BS 3998; method statement
  - Safety and insurance

## 2: Protecting other things



©Hugh Clark/www.bats.org.uk

Micro guide to surveying for  
bats in trees and woodland

# 2: Protecting other things

## **Landscape**

- Setting of listed building
  - Designed landscapes
- Registered Park or Garden
- Scheduled Ancient Monument
- Hedgerow Regulations
- Highways and watercourses

## **Biodiversity**

- Site of Special Scientific Interest
- Nesting birds
- Badgers
- Standing dead wood
- Bats

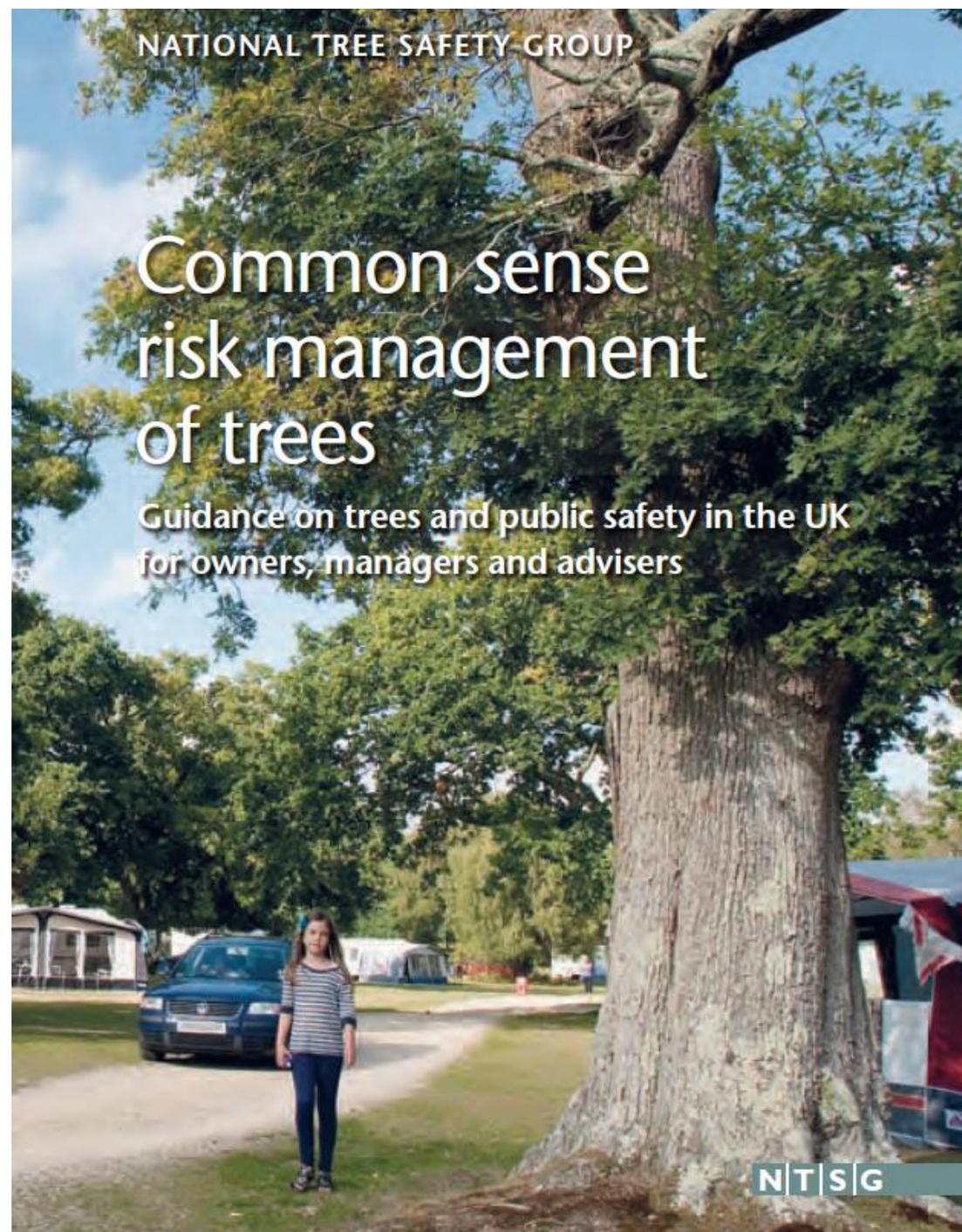
# Bats – BS 8596

- Bats better outside than in
  - Recent work on bats in churches shown how they move about
  - Perhaps require confirmation from contractor that BS will be complied with
- Scoping survey of Potential Roosting Features:
  - Holes and cavities
  - Crossing branches and Y-forks
  - Partially detached bark
  - Thick ivy
  - Bird and bat boxes
- Secondary survey
  - Close inspection at height by arborist with bat training
  - OR close inspection by bat specialist

# Buildings

- Judicious pruning to keep trees and buildings apart
- Subsidence: require evidence that trees are really the cause
- Extensions: apply BS 5837 BUT!:
  - Tree categorisation method:
    - Paras 4.5.6 and 4.5.7 apply:
    - Cultural value very important in churchyards
    - Even very unhealthy trees may be significant and so not in Category U
    - Lifespan thresholds should be ignored for significant trees
  - Root protection areas very important
- Burials not too close to trees

# 3: Protecting People



NATIONAL TREE SAFETY GROUP

## Common sense risk management of trees

Guidance on trees and public safety in the UK  
for owners, managers and advisers

N|T|S|G

# 3: Protecting People

- On average six people killed by trees each year
- Do not want to fell all trees to avoid this
  - Especially for significant trees
- No simple legal advice – but concern for safety not back-protection courts generally ask:
  - Was the tree inspected at an appropriate interval and competence?
  - Was a risk of failure reasonably obvious and spotted?
  - Was timely and appropriate action taken?

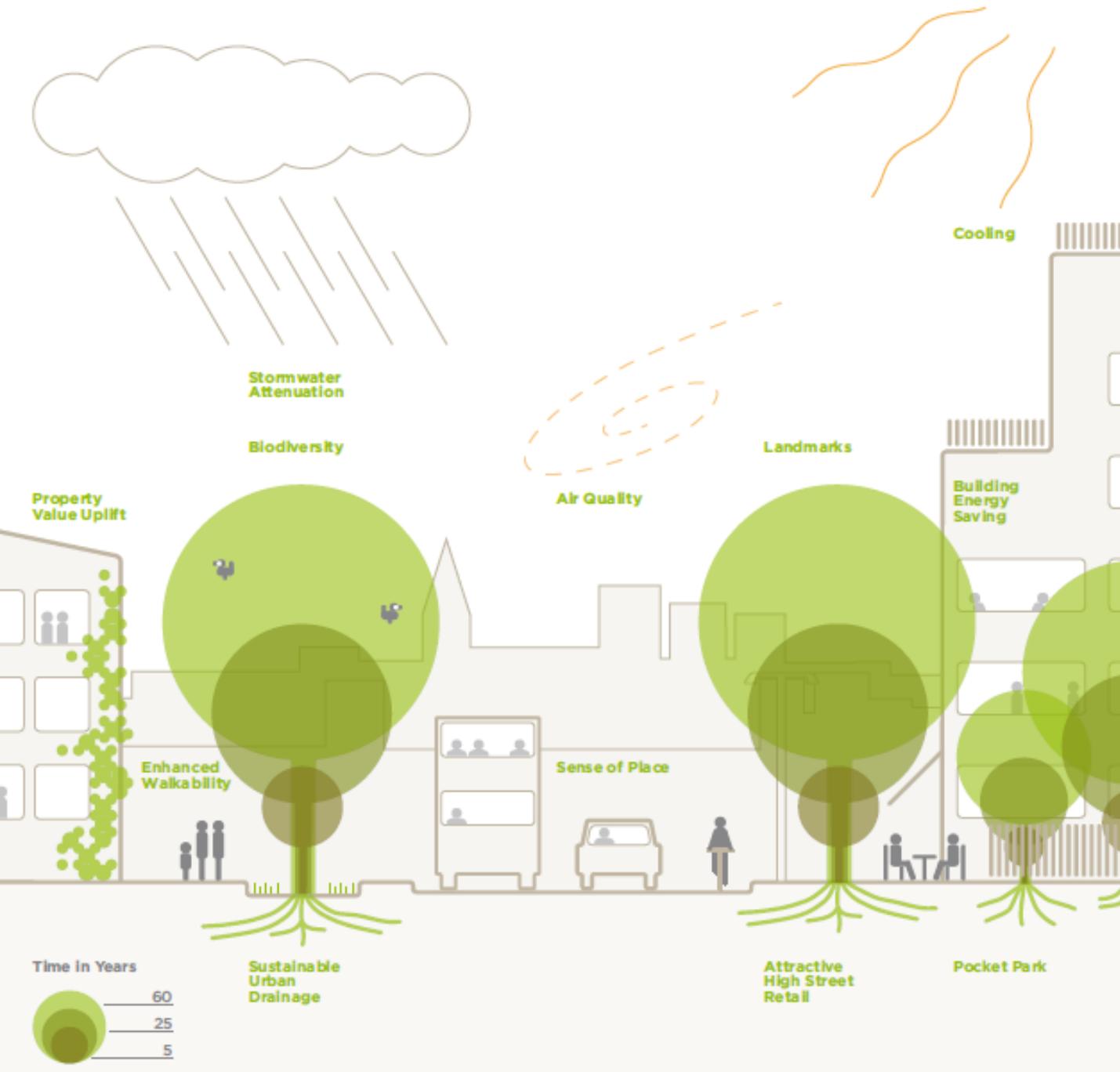
# Trees in a PCC Risk Management Policy.

- Include: an assessment of the public's frequency of proximity to trees
  - zoning a complex churchyard
- A frequency of inspection by a qualified person; perhaps alongside the QI
  - With more frequent inspection of the more hazardous trees that are retained for their significance
    - Separate the roles of inspector and contractor to avoid over-specification of work
- Record keeping of inspections and works undertaken
- Between formal inspections and where the local authority is responsible for trees:
  - PCC members to keep an eye out for any deterioration in the trees or other problems developing, especially after storms, and report these
  - e.g. die-back in the crown; fungal growths on or around a tree; 'bleeding' from a trunk; cracks, splits or breaks in the trunk or branches; leaning trees or ground lifting.

# Safety of tree work

- Arboriculture is highly dangerous; safety paramount
- The PCC has a statutory duty of care as the top employer.
  - The scale of this responsibility will reflect the scale of the contract.
- The PCC and its officers must employ contractors competent to do the work safely
  - Worth paying for quality – but check work is not over-specified
- The contract or agreement should cover safety provisions and the PCC should keep an eye on work to make sure these are being followed.
  - If in doubt, contact the LA officer responsible for enforcing the Health and Safety at Work Act in respect of religious organisations
- It is always important to notify the contractors of any known churchyard hazards – including any underground services – and work closely with them to ensure safety on site.

# 4: Planting



# 4: Planting

- Adopt a landscape plan for your churchyard and get it approved
  - Seek help from landscape architect and DAC
  - This can guide bereaved people who wish to plant a tree
- Things to consider:
  - need to retain room for future burials and, maybe, a church extension
  - growing trees can shade out rare lichens on tombs and flower-rich grassland
  - they can also damage archaeological evidence
  - they seriously threaten the survival of a veteran or ancient tree in the vicinity
  - keep well away from the church and neighbours' buildings, the highway and overhead or underground services and away from existing trees.
- Use best planting practice and aftercare
  - Remove stakes and loosen ties!!!!!!!!!!!!!!



**Guidance to parochial church councils on the planting, felling, lopping and topping of trees in churchyards.** *This guidance is given by the Church Buildings Council to all Parochial Church Councils (PCC) under section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.*

**For further advice, begin with the Guidance to PCCs and to archdeacons on ChurchCare**

Advice on trees for archdeacons

ChurchCare

