

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 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', 'WHAT'S NEW', and 'LIST OF YEW SITES'. The main content area features a large photograph of an ancient yew tree with a thick, gnarled trunk and a stone staircase leading up to it. A text box in the bottom right of the image reads 'Preen Manor, Shropshire'. Below the image is another navigation menu with links for 'HELP FIND AN OLD YEW', 'LOOKING AFTER ANCIENT YEW', 'LOST YEWs', and 'SEARCH THE AYG WEBSITE'. The footer is a light beige bar with the text 'The Ancient Yew - Information for members of the public'.

AYG
Ancient Yew Group

Make A Donation to the AYG
DONATE

ABOUT US **YEW ARTICLES** **CHURCH OF ENGLAND** **CHURCH IN WALES** **WHAT'S 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

2019 No. 1184

ECCLESIASTICAL LAW, ENGLAND

The Faculty Jurisdiction (Amendment) Rules 2019

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 local planning authority,
 - 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

Information needed for List B

1. **Map of the churchyard** showing its important features, including trees, and with the trees marked that are the subject of the application.
2. **Photographs of the trees** in question,
 - a. to show how they fit into the landscape of the churchyard and
 - b. to show any specific features, e.g. broken branches, that are relevant. Please avoid taking these against a bright sky so that they are mere silhouettes.
3. **A report from an arboriculturalist** (tree surgeon) setting out what work is being proposed, the reasons for it and, if it is tricky, how they propose to undertake the work.

4. It is important for several reasons that **your arboriculturalist is a true professional**, so please also provide evidence that you have checked their status, their insurance and their health and safety competence. Their specification should be to BS 3998:2010. You are encouraged to use an Arboricultural Association Approved Contractor <https://www.trees.org.uk/ARB-Approved-Contractor-Directory>.

5. You must also check that **the local planning authority approves the work** if the tree is in a Conservation Area or has a Tree Preservation Order and provide a copy of their reply.

6. Please ask your arboriculturalist explain **how birds and bats will be protected** during the work.
7. If major work is proposed, **please report how significant the tree is**, e.g. its age, size, local knowledge, or contribution to landscape design.
 - a. Also check if it is listed in the major national lists of significant trees at: <http://www.ancient-yew.org/gazetteer.php>; <http://www.ancient-tree-hunt.org.uk/>; <http://www.ancienttreeforum.co.uk/>
8. If work is proposed because of the tree's impact on the building, please supply **evidence of this from your architect.**

9. If you are planning to **plant trees**,
- a. has enough room been left for future burials, potential extensions, and sufficient distance from buildings and walls?
 - b. Please explain how the proposal enhances the landscape design of the churchyard.

10. Please confirm you have **read the guidance** published by the Church Buildings Council,

2: Protecting other things



©Hugh Clerk/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

- Ancient tree for saproxylic insects etc
- Site of Special Scientific Interest
- Nesting birds
- Badgers
- Standing dead wood
- Bats

Bats – BS 8596

- Bats better outside than in
- Scoping survey of Potential Roosting Features:
- 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 “Trees in relation to design, demolition and construction” BUT!:
 - Tree categorisation method must be adapted
 - Root protection areas very important
- **Burials not too close to trees**

3: Protecting People



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 appropriate competence?
 - **Was a risk of failure reasonably obvious and spotted?**
 - **Was timely and appropriate action taken?**

Trees in a PCC Risk Management Policy.

- Assess the public's frequency of proximity to trees
- Frequency of inspection by a qualified person
- 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

Ash-dieback disease (“Chalara”)

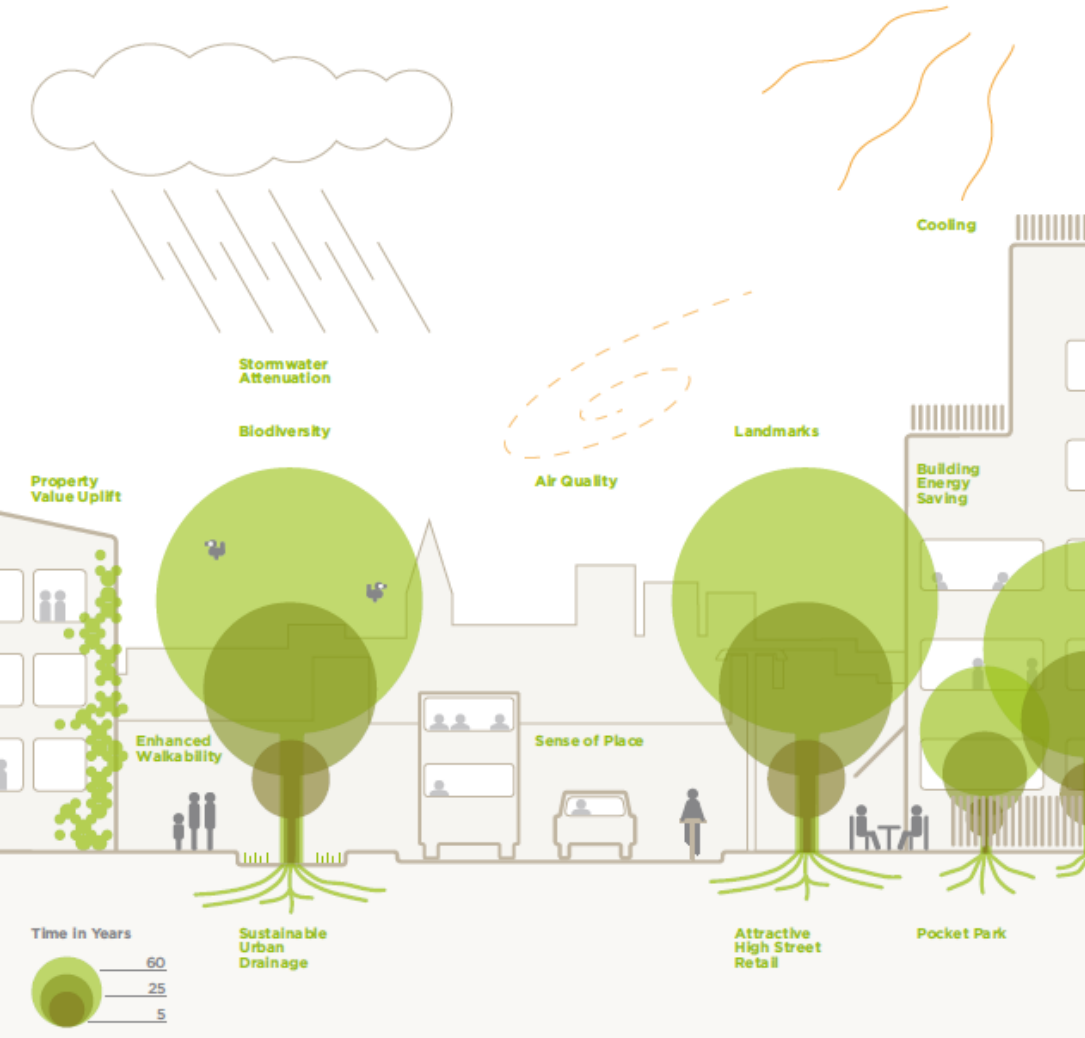
- It is predicted that up to three quarters of our ash trees will die in the next ten years
- Affected trees become brittle and so pose a special danger
- This also makes felling them more dangerous, and so expensive
- PCCs need to keep a special watch for the disease
- And budget for the extra work



Safety of tree work

- Arboriculture is highly dangerous
- The PCC has a statutory duty of care as the top employer.
- The PCC and its officers must employ contractors competent to do the work safely
- The contract or agreement should cover safety provisions
- It is always important to notify the contractors of any known churchyard hazards – including any underground

4: Planting



4: Planting

- Needs List B permission
 - Queen's Green Canopy project
- Adopt a landscape plan for your churchyard and get it approved
- Things to consider:
 - retain room for future burials and buildings
 - growing trees can shade out rare lichens on tombs and flower-rich grassland
 - they can also damage archaeological evidence
 - they seriously threaten ancient trees in the vicinity
 - keep well away from the church and neighbours' buildings, the highway and overhead or underground services and away from existing trees.

Planting and aftercare

- **Small specimens.**
- Choose **good planting conditions.**
- Dig a wide enough hole with a fork and **don't plant the tree too deep**
- Maintain a **weed free area** of a square metre
- **Water often** after planting to prevent wilting.
- If necessary **prune**
- **Remove stakes, ties and shelters when no longer necessary** (often within 3 years)



**[www.churchofengland.org/resources/
churchcare/advice-and-guidance-
church-buildings/trees](http://www.churchofengland.org/resources/churchcare/advice-and-guidance-church-buildings/trees)**