

# DEALGA'S TREE CONSULTANCY

## Expert arboricultural advice concerning tree failure

Trees are viewed as great symbols of the environment and there is often public outcry when plans are made to remove them.

Trees bring many benefits; from their aesthetic properties to biodiversity - providing oxygen, absorbing carbon and cleaning the atmosphere by absorbing pollution. However, when problems do develop, trees are difficult to deal with.

Dr Dealga O'Callaghan has practised as an Arboricultural Consultant for over 25 years and provides quality advice, guidance and services on all matters relating to trees.

Dr O Callaghan's strength lies in effective communication with home/land owners, local authorities, developers, architects, engineers and allied professionals in regards to claims made for, and against, the impact that trees have had in extenuating circumstances.

Trees can cause personal injury and sometimes, but very rarely death. Perhaps, as these incidents are low in volume, the press view them as highly newsworthy and sensationalism often blows the story out of proportion.

The chances of an individual being injured by a tree, including fatalities figures at just 1 in 150 million when discussing mature trees, whereas this figure is represented as 1 in 10 million in built-up areas.

If in the unlikely event that an incident of this nature does occur, it is vitally important to the case to instruct the advice of a

specialist arboricultural expert. This experience and expertise can be provided by Dr O'Callaghan's Liverpool based, Dealga's Tree Consultancy Ltd.

The questions that need to be asked during an investigation are commonly, '*What caused the tree failure?*' '*Was it reasonably foreseeable?*' ...and '*Could it have been prevented?*'; only a specialist chartered arboricultural consultant can provide proper and reliable advice.

### **Poll versus Bartholomew (2006):**

A case involving a motorcyclist colliding with a fallen tree on one of the roads surrounding a farming estate in Frome in the county of Somerset.

The defendants were the owners of the farm and responsible for the maintenance of the trees on their land. As land owners, the defendant owed a duty of care to regularly inspect the trees on their land and take measures to ensure that they did not intrude, or cause danger to members of the public using the roads or bridle paths surrounding the estate.

The court decided that the estate did not have an adequate system for the inspection and management of its trees. The judgement was awarded in favour of the claimant.

The National Tree Safety Group (NTSG) was formed in the UK in 2007 to help balance the risks posed by trees with the environmental benefits that they provide; avoiding uncertainty and many trees being unnecessarily felled.



### Felbrigg National Trust (2007):

The National Trust site of Felbrigg Hall in Suffolk is a large estate which includes the Great Wood in which there are close to 250,000 mature trees. The site is of special scientific interest due to the large stock of ancient trees it contains and is a popular location for schoolchildren undertaking outdoor educational activities.

In June 2007, one such group were using the Great Wood when a terrible event occurred.

Supervised by a teacher, a group of schoolchildren were following a trail using orienteering skills, when it began to rain, the group took shelter beneath the canopy of a large post mature Beech tree which was probably between 160-180 years old. Beeches can live for 250-300 years.

Entirely without warning, a large branch of the tree fractures at the point where it joined the stem of the tree and fell on the group. One of the children was killed, three suffered fractures or serious injury and all, will undoubtedly have been severely traumatised by the terrifying experience.

### The Occupiers' Liability Act 1957 s. 2 (2) reads:

*"The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there."*

Beech trees are known to have a high resistance to bending due to the hardness of their wood and in relative terms have a high

propensity to form weak forks which fail through decay as compared with other types of tree. They are the second most likely species so to fail.

*Risk is the level of likelihood that a hazardous tree will cause damage.*

Risk is related to the location of the tree. It reflects the intensity of use of the immediate surroundings of the tree and the proximity of the tree to buildings and other structures.

Ancient and decaying trees are often beautiful and uniquely valuable as habitat for wildlife, and however poor the physical condition of the tree remedial action is only necessary where there is a clearly perceptible risk to life or property...

The following examination of the tree and branch revealed that where the branch met the stem there was a large depression which would have been visible from the ground. However, the Tree Inspector instructed by the National Trust acted, as requested in hindsight of any incident taking place and overlooked the damage, due largely to the young age of the tree.

His inspection was carried out to instructions and requirements set out by the National Trust and NTSG. Therefore the defendant was found not to be in neglect / breach of its duty in respect of the tragedy.

### Subsidence

Dr O' Callaghan became involved in tree-related subsidence issues and has dealt with thousands of cases.





Subsidence is the damage caused to low rise buildings from the roots of nearby trees. The roots abstract water from the clay soil underneath the building's foundations and ultimately, the clay shrinks; the foundation moves downwards and cracks occur in the building.

Insurance companies take action against tree owners or the local authorities that have effective control over the trees and this form of subsidence can, understandably cause major problems for home owners, insurers and councils. The investigation of such instances requires extremely specialised arboricultural advice.

#### **Loftus Court Appeal (1997):**

A claim was made by the freehold owners of a dwelling-house built in the 19th Century in the London W13 area. The house was situated along an attractive residential street lined with mature trees, which were the responsibility of the local authority in the London Borough of Ealing. Until they were removed in July 1999, four of the trees were placed directly adjacent to the claimants property.

In August 1995, cracks began to appear within the exterior walls of the claimants property, or more precisely, minor cracks developed to become sufficiently obtrusive.

The claimant was then advised that the subsidence may have been caused by desiccation of the clay sub soil and the issue attributed to the root activity of the Council's trees. Consequently, the owners claimed for damages and repairs to the house.

Upon investigation, it became apparent that an extension to the rear of the house had caused the exterior walls of the building to move 'en masse' due to moisture extraction and that the Council's trees were not the only contributing factor and, due to their location, could only be seen to cause reasonable cracking to the front of the house.

The Judge found that the defendant was not liable in law for any part of the damage and the claim was approved by the court for handing down.

Dr Dealga O'Callaghan continually advises developers who are attempting to obtain planning permission. He undertakes arboricultural impact studies, prepares tree constraints and, if

the system fails, acts as an expert witness at appeals and public inquiries.

Dr O'Callaghan has advised during many large public inquiries including the development of the second runway at Manchester Airport; the S146 inquiry at Woodford Aerodrome in Cheshire; and the Beaconsfield Motorway Services at Junction 2 of the M40 motorway.

Dealga's Tree Consultancy Ltd are ideally placed to provide expert or consultant services in the core business areas of planning and development, including the key areas of:

- tree risk assessment and hazard evaluation
- tree related subsidence
- tree risk management
- tree health care and tree management
- tree valuation
- woodland management
- local government services
- utility Arboriculture

The UK features the some of the most sophisticated and complex legal framework that protects trees. Due to his knowledge and experience, Dr Dealga O'Callaghan is a much sought after Expert Witness for civil cases in personal injury and tree related subsidence; and as a witness in planning appeals and public inquiries.

He has given expert evidence in civil and criminal court cases in England, Wales, the Isle of Man and the Republic of Ireland.

Dr Dealga O'Callaghan is registered with the Institute of Chartered Foresters (ICF) and listed on its Register of Consultants at [www.charteredforesters.org](http://www.charteredforesters.org)

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