

# The high tree risk twilight zone

A 'high-risk' because it happened?  
(photo: Chris Whiteoak)

## Don't call 'high-use' zones 'high-risk' zones

David Evans

**Duty holders are unwittingly fashioning a stick which they can be beaten with during legal proceedings or enforcement action. How? Simply by the language they're using when zoning in their tree risk management strategies.**

There's much to be troubled about with the UK's *Cavanagh v Witley Parish Council* Judgment. I'll explore more of these concerns in a later piece about the expert evidence the court had to work with. To recap, in *Cavanagh*, a mature lime (*Tilia*) tree fell onto

a high-use road and severely injured the driver of a bus that was passing at the time. In the Judgment, the road is described as being a 'high-risk' zone. Since the Judgment, I've seen several tree risk management strategies that have been influenced by *Cavanagh* where zones of high-use are being categorised as 'high-risk' zones. Why's this a problem? Well, it's a problem because 'high-risk' zones are 'begging the question'.

### What's begging the question?

Begging the question is what's called a logical fallacy, or cognitive bias. It's a type of circular reasoning where the *premise* assumes the *conclusion*. That's a bit of baffle-gab that requires some thought and unpacking. Let's break it down to find out why it's a problem.

The *premise* is the 'high-risk' zone. The assumed *conclusion* is that the risk is therefore *high*.

We can see how a begging-the-question fallacy might cloud clear thinking and create an unconscious bias in a judge's decision-making with this example. A tree has failed in a 'high-risk' zone and it has severely injured somebody. To resolve what's called 'cognitive dissonance\*', the easiest *conclusion* to *assume* is that because the incident happened in a 'high-risk' zone the risk must've been *high*. After all, something terrible happened in a *high-risk* zone, so the risk couldn't have been low, right? As the risk was self-evidently *high*, then the duty holder should've done something about the tree beforehand. They were negligent. No matter the actual risk, the duty holder is already on the back-foot – and they've shot themselves in it – because they've 'begged the question' with their zoning category by describing it as 'high-risk'.

### Doubling down on the fallacy – a tree risk word salad

To make matters worse, the begging-the-question fallacy is used again in the *Cavanagh* Judgment to describe the lime tree. The tree is labelled as a 'high-risk' tree because of its size alone. By this definition, every large tree is a 'high-risk' tree, no matter how low the likelihood of occupancy. Or how low the likelihood of failure. Or, indeed, how low the risk.

Back to *Cavanagh*. The judge is now faced with a *high-risk* zone and a *high-risk* tree,



*Cognitive dissonance – a mental tax on clear thinking.*

\* *Cognitive dissonance* is when your head hurts because you're trying to accept two contradictory ideas. The most common way to resolve cognitive dissonance, and stop your head from hurting, is to dump one of the ideas. Often, we'll abandon the idea that's most difficult to take in and accept the easiest one. In this case, the easiest idea to accept is that the risk was high because someone was severely injured. The most difficult idea to accept is that the risk was low and someone was severely injured.



An avenue of 'high-risk' trees in a 'high-risk' zone.

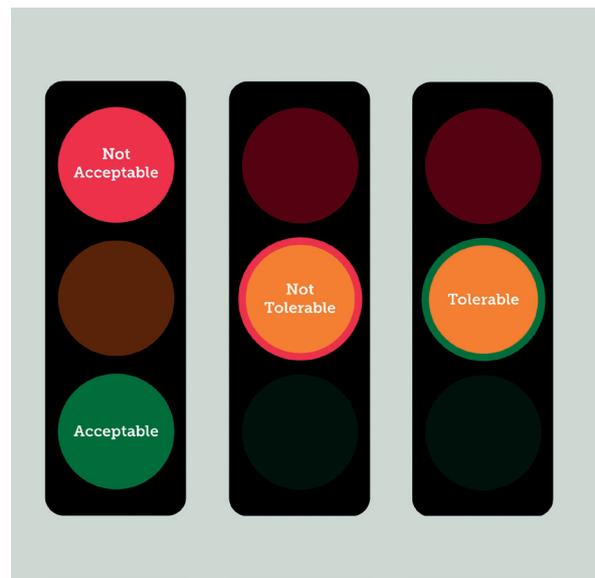
and a severely injured bus driver. Judges are smart people. But there's a wealth of social and behavioural psychological evidence that demonstrates they're just as vulnerable as the rest of us to logical fallacies and cognitive biases, like begging the question.

Here's another easy-to-grasp way of breaking down what's fundamentally wrong with describing high-use as *high-risk*. To work out the risk from tree failure you need three ingredients: the likelihood of occupancy, the likelihood of failure, and the consequences. The risk is the combined output of all three of these ingredients, not just one or two of them. In the same way that you can't reasonably call a bag of flour a loaf of bread, it makes no sense to call the likelihood of occupancy the likelihood of failure, or the consequences the risk.

### Mind your language

Zoning, and assessment frequency based on usage and tree population, is a sensible approach to tree risk management. We should be focusing our resources on these zones of 'high confluence' (high-use + mature trees) because that's where we're most likely to find risks that are Not Acceptable or Not Tolerable. The easiest way to avoid a begging-the-question trap when zoning is to be careful with the language you use. Simply don't use the word 'risk' when you're only talking about one component of the risk: the likelihood of occupancy or the consequences.

The way we've dealt with begging the question in VALID is to design it out by using a different



The 'high-risk' question can't be begged with these risk ratings.

vocabulary for risk inputs than for risk outputs. That way the question can't be begged and the fallacy can't happen. The words used for the risk inputs range from Very High to Very Low. The four risk output ratings are completely different words.



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The risk is the output, not one of the inputs.

We know the overall risk from trees failing is extremely low. Here's another example of cognitive dissonance with our 'high-risk' labels, which should make you scratch your head and think, 'Eh?' The overall tree risk in 'high-risk' zones, from 'high risk' trees, is extremely low.



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