

MIDDLESBROUGH COUNCIL

Report to Overview and Scrutiny

Tree Policy

Executive Member for Streetscene - Councillor Paul Thompson

Mike Robinson Director of Environment

PURPOSE OF THE REPORT

1. The purpose of this report is to seek scrutiny support for the introduction of a Middlesbrough Council Tree Policy.

SUMMARY OF RECOMMENDATIONS

2. It is recommended that the Scrutiny Panel recommend the adoption of a Middlesbrough Council Tree Policy by the Executive, based upon the draft policy criteria detailed within this report, and taking into account the comments from the Scrutiny Panel.

BACKGROUND AND CURRENT POSITION

Middlesbrough's trees

3. Middlesbrough Council is responsible for a wide range of trees. These range from attractive wooded areas, to trees within parks, cemeteries and open spaces, and Highway trees. Middlesbrough's Trees enrich our environment by providing shelter, shade and colour. They provide extensive habitat and filter pollutants from the air and absorb Carbon Dioxide and produce Oxygen.
4. The 1990 Town and Country Planning Act and its associated regulations and circulars impose a number of duties on the Council as the Local Planning Authority. This legislation protects trees in the interests of visual amenity, ensures such trees are managed correctly and requires planting of new trees as part of new development in the town.
5. The overall tree coverage of Middlesbrough is not known at present and needs to be calculated as part of the introduction of this policy. However, it is estimated that Middlesbrough Council is responsible for in excess of 45,000 trees.

Middlesbrough's Tree Inspection Regime

6. As stated above, there are a large number of trees within Middlesbrough. In terms of an inspection regime, these can be grouped into three broad areas. Firstly, those that are on the adopted highway, secondly, those on public open spaces and play areas, and thirdly, those that are within parks, cemeteries and woodland areas.

7. The Council would be placed at significant risk where damage or injury was caused by a tree within Council responsibility, where a clear inspection, management and maintenance regime could not be demonstrated.
8. Whilst the Council currently inspects trees on the adopted highway, no formal arrangements are currently in place for trees in other areas.
9. It is therefore very apparent that the absence of a formal tree policy and inspection regime now needs to be addressed, and the following criteria for the formulation of the policy are presented for the consideration of the Scrutiny Panel.

TREE POLICY CRITERIA – DRAFT PROPOSALS

Criteria for tree inspections

i. Trees on the Adopted Highway

9. At present the Council inspects all trees that are either on the public adopted highway, or are within public open space but within falling distance of a public adopted highway, this includes street trees within the Town Centre. These inspections have been carried out in order to establish the condition of the trees, and to identify any urgent remedial treatments. A rolling five-year inspection programme for these trees is being introduced.

ii. Trees on Public Open Spaces and Play Areas

10. Trees on public open spaces and play areas that are not within falling distance of the adopted highway do not presently have a regular inspection regime. However, as these trees are in well used public areas, it is clear that they do require a similar inspection regime to that of highways trees.
11. It is proposed that trees within public open spaces and play areas should be inspected using the same criteria as highways trees, in order to establish their condition and identify any urgent remedial treatments.

iii. Trees within Parks, Cemeteries and Woodlands

12. Middlesbrough has some large and extensive parks, cemeteries and woodland areas, which are the responsibility of the Council. It would not be feasible, desirable or necessary to implement such an inspection regime for all trees within these areas.
13. Many of the trees in these locations are in wild areas, not easily accessed by the public, and therefore an increased risk should be understood by users and accepted by the Council.
14. It is therefore proposed that a general visual inspection of these areas would be sufficient to satisfy the requirement for those areas within parks, cemeteries and Woodlands, which are generally not accessed by the public.

15. The exception to this would be trees that are on or within falling distance of footpaths, public rights of way or clearly defined publicly accessed areas. It is proposed that these trees should be inspected using the same methodology suggested above for highway trees and trees on open spaces.

Criteria for tree removal

16. Trees are an important part of the Middlesbrough environment, and provide enjoyment, visual attractiveness and important wildlife habitats. The Council will not fell or prune any tree without good reason. The Council will avoid felling trees unless it is absolutely necessary, and each case will be carefully judged on its merits.
17. Felling may be considered where a tree is:
- Dead, dying or diseased.
 - A danger to public safety.
 - Causing an obstruction to a public highway, right of way, access to property or footpath.
 - A major contributor to serious structural damage to buildings or infrastructure.
 - Clearly of a size and species inappropriate to their situation.
 - In an area which is designated for development or redevelopment.

Criteria for pruning of trees

18. Pruning can weaken the structure of trees, and should be avoided unless absolutely necessary. The Council may undertake, or permit the pruning of trees where:
- Tree branches cause an obstruction by growing low over a public highway, public right of way, footpath or access to a property, over gardens or open spaces where the public have access.
 - A tree may be contributing to structural damage to adjacent buildings.
 - A tree restricts repairs and maintenance to property or infrastructure.
 - Trees are growing close to and likely to obstruct / interfere with street lighting, CCTV and other service equipment, highway and other signage and obstruct sight lines at road junctions and accesses.
 - Trees require pruning to shape or train them during their early growing years.
 - Dead or diseased material is being removed in order to make the tree safe, or to shape and balance the crown.

19. Advice on tree felling and the pruning of trees can be obtained from the Council's Planning Department and / or the Council's arborist, who is employed in Environment Department.

Criteria for right to light

20. A common complaint from members of the public is that trees within an urban environment are blocking light into a property. Where trees are concerned, there is no legal 'right to light'. The tree owner is not by law obliged or required in any respect to carry out work to the tree for the benefit of level of light. This is the position adopted by the Council

Criteria for television and satellite reception

21. The Council will not prune or remove trees due to poor TV or satellite reception. In most cases the situation can be significantly improved by relocating the aerial or satellite dish or having a booster to improve the reception.

Criteria for bird nesting

22. The Wildlife & Countryside Act 1981, (as amended CROW Act 2000),) states that it is illegal to intentionally or recklessly damage or destroy the nest of a wild bird while that nest is in use or being built. The Council will carry out surveys for nesting birds prior to any tree management or maintenance work. It is unlikely that work on trees would be carried out, unless in exceptional circumstances, between the end of March and the beginning of September.

Criteria for hedges and hedgerows

24. The Hedgerows Regulations 1997 were made under section 97 of the Environment Act 1995 and came into operation in June 1997. They introduced new arrangements for local planning authorities in England and Wales to protect important hedgerows in the countryside.
25. The regulations relate to hedgerows that are used for agriculture or forestry amongst others, however garden hedges are not affected by these Regulations. The Council will adhere to these regulations at all times in respect of requests for works on, or removal of protected hedges, and the Council's arborist would provide advice on any such requests.
26. Where hedges which are not the Council's responsibility, are causing damage to, or overhanging Council property, the Council may take appropriate action using the appropriate legislation, to ensure the landowner carries out appropriate remedial action to rectify the problem.

Criteria for high hedges (residential)

27. Part 8 of the Anti-social Behaviour Order Act 2003 gave Local Authorities powers to deal with complaints about high hedges affecting residential properties. In accordance with the act, on the provision that they have tried and exhausted all

other avenues for resolving their hedge dispute, householders can take their complaint about a neighbour's evergreen hedge to their Local Authority.

28. To constitute a valid complaint, the subject hedge must have a height greater than two metres, be made up of two or more evergreen trees or shrubs and be located on land owned by someone else.
29. The Council's role is to act as an independent and impartial adjudicator in those cases where people cannot settle for themselves. The Council cannot, therefore, negotiate or mediate between two disputing neighbours.
30. Ultimately, if a solution cannot be agreed, the Council can provide further information about the procedure for making a formal complaint. The Council do, however, reserve the right to reject a complaint if it is considered that not everything has been done to negotiate a solution to a particular hedge problem. The Council's arborist would again provide advice on the problem hedge.
31. As with rural hedgerows, where residential hedges which are not the Council's responsibility, are causing damage to, or overhanging Council property, the Council may take appropriate action using the appropriate legislation, to ensure the landowner carries out appropriate remedial action to rectify the problem.

Criteria for trees under Tree Preservation Orders

32. Tree Preservation Orders are created by the local planning authority, in respect of trees or woodland which are considered to have a significant impact on the amenity of a local area. It is a criminal offence to cut down, uproot, top, lop, wilfully damage or wilfully destruct any tree protected by a Tree Preservation Order.
33. It is a requirement, therefore, for landowners to formally apply for the consent of the Local Planning Authority before undertaking any works to a tree protected by a Tree Preservation Order. The Council's arborist is a key consultee in the process of understanding the condition of such trees and decisions on any proposals to fell.

Criteria for trees in conservation areas

34. As well as trees protected by a Tree Preservation Order, the Town and Country Planning Act 1990 also makes special provision for trees in conservation areas. Under section 211 of the Act, anyone proposing to carry out work on a tree in a conservation area is required to give the Local Planning Authority six weeks notice.
35. This notice allows the Planning Authority to consider whether a Tree Preservation Order is appropriate for the subject trees. Again, the Council's Arborist would provide the necessary advice on the specific tree(s) and advise whether a TPO is appropriate.

Criteria where trees are causing damage to property

36. Trees may cause damage if they are too close to buildings and infrastructure, therefore all cases of alleged damage will need to be investigated to ascertain whether the tree is the actual cause of the damage, or could cause potential damage in the future. Where trees which are the responsibility of the Council are

identified as causing damage to property or infrastructure, appropriate action may be taken in accordance with this policy.

Criteria for trees which are not the Council's responsibility

37. The Council receives many enquiries and requests in respect of trees for which they have no legal responsibility. These trees could be the responsibility of private landowners, or of organisations such as Erimus Housing.
38. In all such instances, the Council will provide appropriate advice, and work with the relevant organisations in order to ensure such enquiries and requests receive the appropriate attention.
39. Where trees which are not the Council's responsibility, are causing damage to Council property, the Council may take appropriate action using the appropriate legislation, to ensure the landowner carries out appropriate remedial action to rectify the problem.

Criteria for disputes

40. The Council will not accept presumption of damage, and Members of the public who have concerns in respect of trees causing damage to their property or infrastructure may be required to obtain an independent 'Structural Engineers Report' to ascertain whether the tree roots are actually causing damage.
41. The Council will consider any such report which is commissioned by a complainant, in accordance with this policy, however in all cases the tree will be retained if at all possible.
42. In other cases, where a member of the public is dissatisfied with the Council's decision in relation to a specific tree or hedge / hedgerow problem, the complainant can obtain and provide the Council with a qualified arborist report in relation to the specific issue. This may inform the decision on whether to allow tree or hedgerow works to take place.
43. Where such a report demonstrates that tree or hedgerow work could be carried out, over and above that which would be undertaken by the Council for those reasons outlined within this policy, without any detriment to the tree stock in the local area, or risk of any future structural damage, shrinkage etc, such works can be undertaken by written agreement, at the residents expense.
44. The Council's decision in any such case will be final.

EQUALITY IMPACT ASSESSMENT

45. There are no equality implications as a result of the introduction of the tree policy.

FINANCIAL, LEGAL AND WARD IMPLICATIONS

46. **Financial** – The implementation of the tree policy will require an additional 25K per annum revenue funding, to fund an additional inspector / arborist.

47. **Ward Implications** – All wards are affected
48. **Legal Implications** – This policy formalises the Council's approach to tree management.

RECOMMENDATIONS

49. It is recommended that the Scrutiny panel recommend the adoption of a tree policy by the Executive, based upon the draft policy criteria within this report, and taking into account the comments from the Scrutiny Panel.

REASONS

50. The Council need to introduce a formalised tree policy to mitigate the risk to which it could be exposed by not effectively managing it's tree stock

BACKGROUND PAPERS

51. No background papers were used in the preparation of this Report.

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