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MIDDLESBROUGH COUNCIL

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AGENDA ITEM 9

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OVERVIEW AND SCRUTINY BOARD

3 JULY 2012

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FINAL REPORT **- MAINTENANCE OF HIGHWAY** **TREES AND NATURAL WOODLAND**

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PURPOSE OF THE REPORT

1.   To present the Environment Scrutiny Panel's findings, conclusions and recommendations following its investigation of the topic of maintenance of highway trees and natural woodland.

BACKGROUND

2.   Trees confer many benefits. They enhance both the natural and built environments by providing shelter, shade and colour. They also provide extensive habitats for wildlife, filter pollutants from the air, absorb carbon dioxide and produce oxygen.

3.   The scrutiny panel sought to investigate the Council's responsibilities and involvement with trees adjacent to highways and also in respect of natural woodland. During the course of the panel's work, the topic under investigation was widened to include issues relating to the authority's tree strategy, protection of trees and the involvement of the development control process.

4.   The panel investigated this topic over the course of one meeting held on 5 March 2012. A second panel meeting, on 15 May 2012, considered a draft final report, following which a final panel meeting was held on 11 June 2012 to resolve queries raised by the panel. A Scrutiny Support Officer from Legal and Democratic Services co-ordinated and arranged the submission of written and oral evidence and arranged witnesses for the investigation. Meetings administration, including preparation of agenda and minutes, was undertaken by a Governance Officer from Legal and Democratic Services.

5.   A record of discussions at panel meetings, including agenda, minutes and reports, is available from the Council's Committee Management System (COMMIS), which can be accessed via the Council's website at www.middlesbrough.gov.uk.

6.   This report has been compiled on the basis of information submitted to the scrutiny panel by officers from the Council's Department of Adult Social Care and Environment.

7.   The membership of the scrutiny panel was as follows:

Councillors Kerr (Chair); Clark (Vice-Chair), Davison, C Hobson, Lancaster, McPartland, Saunders and P Sharrocks.

THE SCRUTINY PANEL'S FINDINGS

8.   Information was considered by the scrutiny panel in respect of the following:

a) The Council's responsibilities.
b) Middlesbrough Council's Tree Policy.
c) The Council's TreeWise System.
d) The Trees in Towns 2 study.
e) Trees and the planning process.

The Council's responsibilities

9.   The 1990 Town and Country Planning Act, and 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 Borough.

10.   Middlesbrough Council is responsible for a wide range of trees. These range from attractive wooded areas, to trees in parks, cemeteries and open spaces and highway trees. Although the scrutiny investigation was principally concerned with highway trees and natural woodland, reference is also made in this report to the Council's involvement with trees in general.

11.   As Highway Authority, Middlesbrough Council is responsible for ensuring that all roads (except trunk roads and private roads) are safe for normal use. This includes pavements, footways and verges beside the road, including any associated trees and vegetation - which may affect road safety if not properly maintained. Accordingly, trees and vegetation are monitored to check for the following potential problems:

*   Growth causing physical or visual obstruction to the highway.
*   Roots that are damaging nearby roads, pathways or structures
*   Problems such as root defects or fungi that may cause a tree to become unsafe in future.
*   Tree growth that could threaten the stability of nearby buildings or structures.
*   Damage caused by high winds or vehicle impacts.

12.   The Council will take action to deal with:

*   Broken, hanging, fallen and low branches.
*   Trees that have fallen or collapsed.
*   Trees that are obstructing the highway or footpath for normal use.
*   Trees that obscure sight lines at road junctions.
*   Trees that obstruct street lights, pedestrian crossings or road signs.
*   Trees that threaten to interfere with nearby buildings and structures.

13. Trees on private land next to roads are the responsibility of the relevant land owner. However if these trees are a danger to vehicles or pedestrians, local authorities have the power to serve an enforceable notice on the owner requiring them to carry out work to make the tree safe.

14. The Council's Tree Policy, which was approved by The Executive in June 2010, sought to provide clarification in respect of some of the above areas and is covered in more detail in the following section of the report.

Middlesbrough Council's Tree Policy

15. Although the exact figure is not known, it is estimated that Middlesbrough Council is responsible for more than 45,000 trees. The authority's tree policy sought to clarify and highlight the Council's responsibilities, as well as providing guidance in respect of a number of areas. The policy was made available to the scrutiny panel.

16. As stated above, there are a large number of trees in 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 in parks, cemeteries and woodland areas.

17. The policy recognises that 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. At the time of the tree policy's adoption, it was highlighted that:

    • Although the Council inspected trees on the adopted highway, no formal arrangements were in place for trees in other areas.
    • The absence of a formal tree policy and inspection regime needed to be addressed.

18. Accordingly, the tree policy sets out criteria for tree inspections, as shown below.

19. *Trees on the Adopted Highway* - 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 in 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 was introduced as part of the tree policy.

20. *Trees on Public Open Spaces and Play Areas* - Prior to adoption of the tree policy, trees on public open spaces and play areas that were not within falling distance of the adopted highway did not have a regular inspection regime. However, as these trees are in well-used public areas, the policy indicates that they will be inspected using the same criteria as highways trees, in order to establish their condition and identify any urgent remedial treatments.

21. *Trees in Parks, Cemeteries and Woodlands* - Middlesbrough has some large and extensive parks, cemeteries and woodland areas, which are the responsibility of the Council. The tree policy indicates that it would not be feasible, desirable or necessary to implement such an inspection regime for all trees in these areas. 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.

22. The tree policy therefore indicates that a general visual inspection of these areas will be sufficient to satisfy the requirement for those areas within parks, cemeteries and woodland that are generally not accessed by the public.

23. 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. The policy indicates that that these trees should be inspected using the same methodology as highway trees and trees on open spaces

24. The policy also contains guidance and clarification in a number of other areas, including:

- Tree removal/felling (eg where trees are dead/dying/diseased, dangerous, causing damage or an obstruction)
- Pruning
- Right to light
- Television and satellite reception
- Bird nesting
- Hedges and hedgerows
- High hedges (residential)
- Trees covered by Tree Preservation Orders
- Trees in conservation areas
- Tees causing damage to property
- Trees which are not the Council's responsibility
- Disputes

The Council's TreeWise System

25. At present the Council inspects all trees that are either on the public adopted highway, or are on 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. The Council's Tree Policy indicates that a rolling five-year inspection programme for these trees was to be devised.

26. Most recently, the Council has introduced the TreeWise system, which is a Geographic Information System (GIS) and data management software system. This is used to map and inspect trees and for managing the data for proactive planning. The system incorporates the standard risk assessment methodology that is used throughout the arboricultural industry. This assesses the risks from tree failure and facilitates proportionate tree safety management.

27. TreeWise uses existing Council Ordnance Survey digital map data. Once trees are mapped on the system, this can be used for future surveys and inspections, which will significantly reduce the cost of future inspections.

28. The system comprises two main elements, as follows:

- TreeWise PC - This is the full database, which can be installed on a single computer, or on a number of computers across a network.
- TreeWise Mobile - This is used to collect and record data in the field via tablet PCs. Its principal functions are to plot tree locations, record tree details, undertake inspections and carry out risk assessments.

29. The scrutiny panel heard details of the risk assessment process, which comprises risk identification, risk analysis and risk evaluation. The methodology used assesses the risk from falling trees or branches and provides a cost-effective means of evaluating and treating risk. This involves consideration of the following factors:

- Risk - Which assesses the likelihood of a tree falling and the possible consequences.
- Risk of significant harm - Which is a measure of the likelihood of tree failure combined with the consequence in terms of possible loss of life or something of comparable value.
- ALARP *('As low as reasonably practicable')* - This is a measure used to determine that risk is a low as possible, taking into account issues such as financial constraints.
- Cost and benefit - This strikes a balance between removal of trees and the benefits that trees have for people and the environment.
- Acceptable and tolerable risks - This acknowledges that, irrespective of any reduction measures that are put in place, there will always be an element of risk. A Tolerability of Risk Framework is used to determine 'unacceptable' risk (annual death-rate risk of 1/1,000) at one end of the scale to 'broadly acceptable' (annual death-rate risk of 1/1,000,000) at the other.

The Trees in Towns Study

30. The scrutiny panel considered details of the *Trees in Towns 2* study which was published by the Governmenrt's Department for Communities and Local Government in 2008.

31. This assessed the quality and quantity of trees in urban areas in England and how this had changed since the first Trees in Towns report was published in 1993. Some of the report's key findings were highlighted as follows:

a) The highest tree and shrub densities were recorded in the South West (79.5 per hectare) and east (74.7/ha). The lowest densities were in Yorkshire and the Humber (39.8/ha), the North Eeast (42.3/ha) and East Midlands (44.9/ha).
b) Two thirds of all trees and shrubs were on private property (mainly in gardens) or on less accessible public land (e.g. schools, churchyards, allotments, etc.). Almost 20% were located in public parks and open space. Around 12% were street or highway trees.
c) The number of different species recorded in each region ranged from 148 in the North East to 196 in the South West.
d) The six most frequently recorded species, in order, were: Leyland cypress (12.3% of all trees and shrubs), hawthorn (6.3%), sycamore (5.7%), silver birch (4.6%), common ash (4.1%) and privet (3.7%). Other common species included cypress, oak, apple, Japanese cherry, holly, rowan and beech.
e) Most trees were estimated to be between 10 and 50 years old. The North East and South East had the highest proportions of trees and shrubs over 25 years-old (approximately 60%). In the North East a relatively high proportion (20%) were estimated to be at least 50 years old. Numbers of 10-25 year-old trees were relatively high in the East. The North East and South East also had the highest numbers of trees over 100 years old.

f) Comparisons with data from the 1992 survey show a big reduction in the percentages of trees in the youngest age bands and a corresponding increase in the percentage of trees aged 10-50 years. These results indicate that the high rates of urban tree planting undertaken in the 10 year period from 1983 to 1992 were not maintained in the 1995-2004 period. This reduction in new planting, and the threats to older trees in urban areas, have resulted in an unsatisfactory age structure - an issue that needs to be urgently addressed.

g) The North East and South West had relatively low proportions (approximately 50%) of trees in good condition, although apparent regional differences may have been due in part to some differences in the subjective views of different surveyors.

h) The West Midlands and North East regions had the lowest proportions of trees adjudged to have either outstanding or considerable value and the highest proportions with either neutral or negative impact.

i) Only 19% of local authorities had an accurate record of the percentage of their district covered by trees and woodlands. Only 8% of the authorities had an accurate record of the percentage of the total area of trees and woodland in their district that was either publicly or privately owned.

j) Some 52% of local authorities had some type of existing strategy that was relevant to trees and woodland and embraced the entire authority district. Only 28% had an existing and specific tree strategy while 36% of authorities were preparing a specific tree strategy. However, the extent of existing tree strategies had increased significantly since a 1997 survey.

32. The scrutiny panel heard that the exact amount of tree cover in Middlesbrough is not known, although, in due course the TreeWise system will assist in determining and mapping tree cover. In terms of natural woodland, however, the 2007 Council publication *Green Spaces Public Places* stated that 'Middlesbrough currently has aproximately 1% covering of woodland and as such is ten times worse off than the national average.'

Trees and the Planning Process

33. The scrutiny panel queried the position concerning development sites in Middlesbrough. Reference was made to sites granted planning permission and whether developers could then remove any trees that they chose. Members sought to determine whether the Council has development control policies that are applied in the case of all planning applications - in particular, whether the possible impact of developments on trees is assessed for all planning applications.

34. The panel also queried the position concerning the utilities companies - particularly in respect of the companies' works on site prior to main site development taking place.

35. Members heard that the protection of trees involves close working between the Council's development control officers and the authority's arborist. Information was submitted to the scrutiny panel in respect of the following:

- Guidance and planning law
- The position in Middlesbrough
- The planning application process and development stage

Guidance and Planning Law

36.   The National Planning Policy Framework (2012) sets out general guidance on biodiversity (paragraphs 109-118), refers to 'good developments' and biodiversity but is not specific to trees. Local planning policy is set out in the Local Development Framework (2008) and this indicates the Council policy on trees in relation to planning legislation. The following policies are relevant:

- DC1 - General Development - This provides generalised statements on good principles for new development.
- CS4 - Sustainability - These are generalised statements including protection of landscape character.
- CS5 - Design - This statement requires high standards of design.
- CS20 - Green Infrastructures - This statement requires high quality in the natural environment.

37.   A Supplementary Planning Document on Design is presently being finalised. This embodies the principles of One Planet Living and retention of landscaping wherever possible in new development. The document is currently in draft form but could include more prominence on trees and the need to better incorporate trees in new development and protect them as part of the development process.

38.   Part VIII of the Town and Country Planning Act 1990 sets out the duty of the Local Planning Authority to provide for trees and to protect them as part of the planning process. In addition, the Town and Country Planning Tree Preservation Regulations 2012 provide machinery which sets out the measures to enable tree protection. These regulations do not provide any protection for dead or dangerous trees which can be removed at any time. The publication Tree Preservation Orders (TPOs): A Guide to the Law and Good Practice (2000) is also used in relation to tree protection. The scrutiny panel was advised that there are presently over 90 TPOs in force throughout the town and that these cover major areas of tree cover throughout Middlesbrough.

39.   In addition, Middlesbrough has seven Conservation Areas, with a further area currently proposed for Albert Park and the immediate locality. Conservation areas are designated to conserve the character or appearance of those parts of the built environment which are of special historic or architectural interest. Various factors contribute to the special character of a Conservation Area, including the quality of the public realm and contribution made by trees and green spaces

The Position in Middlesbrough

40.   Historically, the position in Middlesbrough has been to promote the merits of pre-application discussion. This has been promoted over the years through the Building Control Forum and all developers and architects know well the Middlesbrough approach to problem solving with prospective planning applications. In the pre-application meeting, one of the basic questions by officers is to ask the developer whether there are trees on the site. This is also one of the standard questions in the new Planning Portal national planning application form. The question then leads to the requirements for a Tree Survey, which is used to identify the worth of any tress on the development site. It was explained that where trees on a development site are well removed from the footprint of the proposed building work, this would not necessitate the need for a survey.

The Planning Application Process and Development Stage

41.   In overview, the planning process is one that seeks to achieve a compromise between good developments/regeneration and protecting the environment. The tree survey deals with the principles of good trees and bad trees and the necessity for protection. It therefore involves a balancing process of removal of trees and replanting to achieve an overall good design.

42.   Planning conditions attached to the planning permission require replanting if specimens fail to take on the site and measures for protecting trees during or after the construction process.

43.   One of the main issues that arises during building work is the need to protect existing trees on the site. As building work progresses a development scheme may need to be varied to account for the difficulties of construction. Constant monitoring can often be required.

44.   Following development, planning conditions usually require replanting of trees after five years if specimens fail. However, once the condition is discharged, no more permissions are required by the developer to take out trees which they have originally planted.

Utility Companies

45.   The scrutiny panel heard that utility companies enjoy permitted development rights through the General Development Order. They are all permitted to lay cables, pipes and conduits without the need for planning permission. This right does not, however, permit them to remove trees in protected areas - ie covered by Tree Preservation Orders and in Conservation Areas.

CONCLUSIONS

46.   Based on the evidence gathered in the scrutiny investigation, the Panel concluded that:

1. Trees enhance both the natural and built environments by providing shelter, shade and colour. They also provide extensive habitats for wildlife, filter pollutants from the air, absorb carbon dioxide and produce oxygen. The Council has a major responsibility for maintaining and protecting local trees. Although the scrutiny panel's findings investigation related to highway trees in particular, its findings are applicable to trees in general across Middlesbrough. The panel's conclusions and recommendations reflect that fact.
2. The Council's Tree Policy was approved by The Executive in April 2010 as a result of recommendations made by the Environment scrutiny Panel in February 2009. In conjunction with the recently introduced TreeWise data recording system for trees, it will provide a better assessment of the extent, condition and characteristics of Middlesbrough's tree population and, in conjunction with the Tree Policy - which introduced a five year rolling programme of tree inspections - will encourage higher standards of tree management. The scrutiny panel envisages that this will be the starting point for a long overdue, pro-active approach to tree management, resulting in a more efficient and effective tree programme and a comprehensive audit of tree cover. It is noted, however, that it is envisaged that completion of data gathering for the TreeWise system will take a number of years.

3. A neglected tree population could leave the authority exposed to the risk of potentially costly insurance claims. TreeWise will address any concerns about a lack of data, records and surveys and the associated risk management will ensure that the Council can adopt a legally defensible position in respect of insurance claims. However, it is also important to ensure the continuation of a population of mature highway trees in urban areas and the Council must balance risk management and public safety against a responsibility for protecting and enhancing the environment.
4. The north east of England has a low density of tree cover in comparison to the rest of the country. Nationally, the high rates of tree planting undertaken between 1983 and 1992 have not been maintained since that time. In this context, it is likely that Middlesbrough would benefit from increased tree cover, which would be welcomed by the scrutiny panel.
5. The Council's development control processes take into account the effect of potential developments and building works on trees. Comprehensive measures are in place, in conjunction with the authority's arborist, to consider the impact of development on trees affected by development, or to replace such trees where appropriate. There is an opportunity to further strengthen this process by including more prominence on trees in the Draft Supplementary Planning Document on Design that is currently in preparation.

RECOMMENDATIONS

47.   Following the submitted evidence, and based on the conclusions above, the scrutiny panel's recommendations for consideration by the Overview and Scrutiny Board and the Executive are as follows:

1. That, in order to ensure against a permanent loss of mature trees for future generations, the TreeWise recording/information system is used as the basis of a more proactive approach to highway tree management through a regular, scheduled, inspection and maintenance programme.
2. That decisions to remove mature highway trees should be based on reasonable and realistic risk assessments, with the initial presumption being for protection of the tree, rather than removal.
3. That, in order to maintain its effectiveness, the Council's Tree Policy is reviewed and revised/updated at least every five years.
4. That every effort should be made to encourage increased tree cover in Middlesbrough. This should involve a judicious approach to planting by the Council and developers and - in order to facilitate more efficient future tree management - ensuring the use of appropriate species in appropriate areas.
5. That the draft Supplementary Planning Document on Design is amended to include more prominence on trees and the need to better incorporate trees in new development and protect them as part of the development process.

ACKNOWLEDGEMENTS

48.   The Panel is grateful to the following officers, who presented evidence during the course of this investigation:

K Garland - Neighbourhood and Area Care Manager, Streetscene Services
A Mace - Operations Manager, Environment
E Vickers - Development Control Manager
R Ward - Arborist, Streetscene Services

BACKGROUND AND REFERENCE MATERIAL

49.   The following sources were consulted or referred to in preparing this report:

-    Report to and minutes of the Environment Scrutiny Panel meeting held on 5 March 2012.
-    Middlesbrough Council's Tree Policy - As approved by The Executive on 22 June 2010.
-    Department for Communities and Local Government Trees in Towns 2 Study - February 2008.

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