

Amended 23 November 2023

MIDDLESBROUGH COUNCIL TREE POLICY

Policy Criteria

1. This policy sets out the criteria for the inspection regime and Planning Considerations which Middlesbrough Council will adopt in respect of those trees for which it has a legal responsibility. The policy also explains how the Council will deal with complaints in respect of those trees, details the legislation on which the policy criteria is based and sets out how disputes in terms of complaint resolution will be dealt with.

Legislation

2. The Forestry Act (1967) require certain permissions and licenses to be granted where the felling of trees is proposed and such felling is deemed to require such permissions or licenses. The Council will ensure that any proposed felling is fully compliant with the requirements of the Forestry Act.
3. Tree Preservation Orders (TPO's) 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.
4. In addition to those trees protected by a Tree Preservation Order, the Town and Country Planning Act (1990) also makes special provision for trees in conservation areas.
5. 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.
6. In addition to the above legislation, bats and their roosts are also protected by the The Conservation of habitats and Species Regulations 2010.
7. The Hedgerows Regulations (1997) introduced new arrangements for local planning authorities in England and Wales to protect important hedgerows in the countryside. Part 8 of the Anti-social Behaviour Order Act (2003) gives Local Authorities the powers to deal with complaints or disputes about high hedges affecting residential properties.

Planning Considerations

8. The Government's national town planning policy originates from the 2012 National Planning Policy Framework (NPPF). Therein, section 11 sets out how the planning system should enhance the natural environment by protecting valued landscapes and recognising the benefits of the ecosystem and biodiversity, sustainability and the need to protect important trees.
9. The Middlesbrough Local Plan (2014) incorporates the Government's stance in the Council's planning policies for new development. The principal development policies, DC1, CS4 and CS5, require all new development to minimise the effect on the environment, protect landscape character and achieve quality of design.

The Council's Planning service will:

- Seek, wherever possible, to retain appropriate trees on any new development.
- Seek to retain preserved (TPO) or protected (conservation areas) trees unless there are overriding reasons for their removal.
- Ensure appropriate replanting takes place to replenish a site in the event of the need to remove trees.

Inspection Regime

Trees on the Adopted Highway

10. The Council will inspect all individual 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.
11. These inspections will be carried out in order to establish the condition of the individual trees and to identify any urgent remedial treatments.

Trees on Public Open Spaces and Play Areas

12. Trees on public open spaces and play areas, that are not within falling distance of the adopted highway, will also be inspected using the same criteria as trees on the adopted highway in order to establish their condition and identify any urgent remedial treatments.

Trees within Parks, Cemeteries and Woodlands

13. Middlesbrough has some large and extensive Parks, Cemeteries and Woodland areas that are the responsibility of the Council.
14. Trees within Parks, Cemeteries and Woodlands that are on or within falling distance of footpaths, public rights of way or clearly defined publicly accessed areas will be individually inspected using the same methodology for trees on adopted highways and trees on open spaces.
15. As many of the trees in these locations are in wild areas, not easily accessed by the public, an increased risk should be understood by users and accepted by the Council. Individual inspections of these trees will not be necessary, practical or desirable and a general visual inspection of these areas will be carried out.
16. All of the above inspections will be carried out as part of a rolling five-year inspection programme and/or on a reactional basis.

Hedges and Hedgerow inspection

17. Hedges and Hedgerows do not form part of the Tree Policy five year inspection regime but will be inspected on an Ad-Hoc basis.

Criteria for Tree Felling

18. 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.
19. 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.
20. Bats and their roosts are also protected by the Conservation of habitats and Species Regulations 2010. A roost is any structure or place used by bats for shelter or protection. Bats tend to reuse the same roost year after year so the roost is protected whether the bat is present or absent. Bats use a variety of roost that can include trees.
21. It is illegal to intentionally kill, injure or disturb bats, destroy or obstruct access to roosts, to intentionally or recklessly disturb a bat while it is occupying a structure or place which it uses for

that purpose and to damage or destroy a breeding site or resting place of a bat.

22. The Council will carry out surveys to check for the nesting of birds and the presence of bats or bat roosts prior to any tree management or maintenance work. It is unlikely that any felling or work would be carried out, unless in exceptional circumstances, between the end of March and the beginning of September.

23. Felling may be considered where a tree is:

- Dead, dying or infected by a disease that has a significant detrimental impact on the host.
- A danger to public safety.
- Causing an obstruction to a public highway, right of way, access to property or footpath.
- Proven as a major contributor to serious structural damage to buildings or infrastructure.
- Clearly of a size and species deemed by the Authority to be inappropriate to their situation.
- In an area which is designated for development or redevelopment.

24. Any proposals for the removal of trees will take full account of all of the relevant legislation mentioned earlier in this document.

Tree Planting

25. Where any future Tree Planting is proposed, consideration must be given to the species, size and location to ensure that the tree is suitable, throughout its life, for the chosen location. 5

Criteria for Pruning of Trees

26. The Council will not fell or prune trees due to falling leaves, blossom, fruit, sap or mildew. This is a seasonal occurrence that is considered an inconvenience and not a nuisance.

27. 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 and over gardens or open spaces where the public has access.
- A tree may be contributing to structural damage.
- A tree restricts repairs and maintenance to property or infrastructure.
- A tree which is growing close to and obstructing / interfering with street lighting and other service equipment.
- Trees which are obstructing the highway, highway signage or sight lines at road junctions / access points.
- Trees require pruning to shape or train them during their formative years.
- Trees which restrict routine maintenance of Council owned areas.
- Dead or diseased material is being removed in order to make the tree safe

28. The criteria for birds and bats, as described above, will apply equally to tree pruning works. The Royal Horticulture Society guidelines require that deciduous trees should be pruned in either autumn or late winter. Certain trees, i.e. Prunus are best pruned in early spring whilst the sap is rising as they can suffer from silver leaf disease, and pruning after the winter is advantageous in attacking the disease.

29. Evergreen trees should not require pruning but diseased and dead branches are best pruned in late summer or early autumn. These criteria will be applied to all proposed pruning works where

possible.

Criteria for Trees under Tree Preservation Orders

30. Tree Preservation Orders (TPO's) are created by the Local Planning Authority, in respect of trees or woodland that 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 TPO.
31. Landowners must formally apply for the consent of the Local Planning Authority before undertaking any works to a tree protected by a TPO. The Council may prosecute any individual found to have contravened a TPO.
32. The Senior Area Care Manager (Arbor) will provide advice to the planning officer on the condition of such trees and the decisions on any proposal to fell. As part of the inspection process veteran trees or examples of rare species that are of interest biologically, culturally or aesthetically will be identified and consideration will be given as to the creation of TPO's for such trees.

Criteria for Trees in Conservation Areas

33. In addition to those 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.
34. This notice allows the Planning Authority time to consider whether the creation of a TPO is appropriate for the subject trees. Again, The Senior Area Care Manager (Arbor) would provide the necessary advice on the specific tree(s) and advise as to whether the creation of a TPO is appropriate.

Criteria for Right to Light

35. Where trees within an urban environment are blocking light into a property there is no legal 'right to light'. The tree owner is not by law obliged or required to carry out work to the tree for the benefit of level of light inclusive of solar panels. This is the position adopted by the Council.

Criteria for Television, Satellite and Telecommunications Reception

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

Criteria for Hedges and Hedgerows (Urban and Rural)

37. Hedgerows provide valuable habitats in their own right and act as wildlife corridors and therefore should be maintained to ensure their conservation value. Where hedges are to be cut this will take place outside the bird nesting season and seeds / fruit will be left as a winter food source.
38. Hedges may be managed by gapping up where appropriate, allowing for a diverse species mix and permit tree growth within the hedge. Diverse Wildlife and Fauna will be encouraged at the base of hedges. To encourage this, the Hedge base vegetation may be left unmanaged
39. The Hedgerows Regulations (1997) mainly relate to hedgerows that are used for agriculture or forestry, 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 Senior Area Care Manager (Arbor) will provide advice to the planning officer in these cases.

40. Where hedges, which are not the Council's responsibility, are causing damage to or overhanging Council property, the Council may take action using the appropriate 7 legislation to ensure the landowner carries out remedial action to rectify the problem.

Criteria for High Hedges (Residential)

41. In accordance with Part 8 of the Anti-social Behaviour Order Act (2003), the act states that on the proviso that they have tried and exhausted all other avenues for resolving their dispute, householders can take their complaint about a neighbour's hedge to their Local Authority.
42. 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.
43. The Council's role is to act as an independent and impartial adjudicator in those cases where people cannot settle the dispute for themselves. The Council cannot therefore negotiate or mediate between two disputing neighbours.
44. If a solution cannot be agreed the Council can provide further information about the procedure for making a formal complaint. The Council does, 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 Senior Area Care Manager (Arbor) may provide advice to the planning officer on such disputes.
45. As with rural hedgerows, where residential hedges that are not the Council's responsibility are causing damage to or overhanging Council property, the Council may take action using the appropriate legislation, to ensure the landowner carries out remedial action to rectify the problem.

Criteria where Trees or Hedges are causing damage to property

46. Trees or hedges may cause damage if they are too close to buildings and infrastructure, therefore, all cases of alleged damage will need to be investigated by a qualified independent Structural Engineer at the expense of the claimant to ascertain whether the tree or hedge is the actual cause of the damage. Claims against the Council should be accompanied by an independent Structural Engineers report.
47. Where trees or hedges, which are the responsibility of the Council, are identified as causing damage to property or infrastructure appropriate remedial action will be taken in accordance with this policy.

Criteria for Disputes

48. The Council will not accept presumption of damage. Members of the public who have concerns in respect of trees or hedges causing damage to their property or infrastructure will be required to obtain an independent 'Structural Engineers Report' at their own expense to ascertain whether the tree or hedge is actually causing damage.
49. In cases where a member of the public is dissatisfied with the Council's decision in relation to a specific tree or hedgerow problem the complainant can obtain and 8

provide the Council with a qualified arborist's report at their own expense in relation to the specific issue which will then be further considered by the Council who reserve the right to make the final decision.

50. The above reports may inform the decision as to whether to allow tree or hedgerow works to take place, however, in all cases the tree or hedge will be retained if at all possible.
51. 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 and without any detriment to the tree stock, wildlife, or the amenity value in the local area, then the Council will give consideration to an application from the complainant to undertake such works at their own expense.
52. Where consent is given such works can be undertaken, by a suitably qualified contractor, with written agreement from the Council and at the complainant's expense.
53. In cases where a member of the public remains dissatisfied with the Council's decision, in relation to a specific tree or hedgerow problem, a challenge to the decision can be made to the Director of Environment.
54. In all cases where an individual or an organisation is deemed to have removed, damaged, or carried out works to a tree or hedge without the required permission, or damaged a wildlife habitat, the Council will take appropriate action against that individual or organisation using the relevant legislation.

55. Supporting Information:

- • Middlesbrough Council Arboricultural Specification (link to the website location)
- • Middlesbrough Council Tree Planting Specification (link to the website location)