

# MIDDLESBROUGH COUNCIL TREE POLICY

## Policy Criteria

1. This policy sets out the criteria for the inspection regime, 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 Conservation Regulations (1994).
7. The Hedgerows Regulations (1997) introduced new arrangements for local planning authorities in England and Wales to protect important hedgerows in the countryside.
8. 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.

## Inspection Regime

### **i. Trees on the Adopted Highway**

9. 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.
10. These inspections will be carried out in order to establish the condition of the individual trees and to identify any urgent remedial treatments.

### **ii. Trees on Public Open Spaces and Play Areas**

11. 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.

### **iii. Trees within Parks, Cemeteries and Woodlands**

12. Middlesbrough has some large and extensive Parks, Cemeteries and Woodland areas that are the responsibility of the Council.
13. 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.
14. 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.

15. All of the above inspections will be carried out as part of a rolling five year inspection programme.

#### **iv. Hedges and Hedgerow Inspection**

16. Hedgerows need to be inspected and, depending on their purpose, may be maintained to an agreed height and thickness. The Council will undertake to carry out mapping and inspection of all hedges in the borough as part of the rolling five- year inspection programme and will identify ancient hedgerows for special protection measures.
17. As part of the above inspection regime a detailed survey of hedges in Middlesbrough will be undertaken to determine the condition, species and mix of the hedgerow and to identify the appropriate future maintenance regime to protect the biodiversity value, landscape value and heritage of the hedgerow.
18. This would include working in partnership with landowners and outside organisations where hedges are not the responsibility of the Council.

### **Criteria for Tree Felling**

19. 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.
20. 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.
21. Bats and their roosts are also protected by the Conservation Regulations 1994. 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

22. 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.
23. 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.
24. 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.

25. Any proposals for the removal of trees will take full account of all of the relevant legislation mentioned earlier in this document.
26. The Council will replace any felled trees with an appropriate specimen in a suitable location on a minimum of a one for one basis.

## Criteria for Pruning of Trees

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 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 access points.
- 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.

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.

## 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 Council's Arborist will provide advice on the condition of such trees and decisions on any proposals 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 examples.

## 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 Council's Arborist 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. This is the position adopted by the Council.

## Criteria for Television and Satellite Reception

36. The Council will not prune or remove trees due to poor TV or satellite 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

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. The creation of beetle banks should be encouraged at the base of hedges.

## Criteria for Hedges and Hedgerows (Rural)

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 Council's Arborist will provide advice on any such requests.
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 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 Council's Arborist will provide advice 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 to ascertain whether the tree or hedge is the actual cause of the damage or could cause potential damage in the future.
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 Trees or Hedges that are not the Council's responsibility**

48. The Council receives many enquiries and requests in respect of trees or hedges for which they have no legal responsibility. These trees or hedges could be the responsibility of private landowners, or of organisations such as Erimus Housing.
49. 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.
50. Where trees or hedges that are not the Council's responsibility, are causing damage to Council property, the Council will take action using the appropriate legislation, to ensure the landowner carries out remedial action to rectify the problem.

## Criteria for Disputes

51. 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 may be required to obtain an independent 'Structural Engineers Report' to ascertain whether the tree or hedge is actually causing damage.
52. 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 provide the Council with a qualified arborist's report in relation to the specific issue.
53. 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.
54. 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, or risk of any future structural damage, shrinkage etc, then the Council will give consideration to an application from the complainant to undertake such works.
55. Where consent is given such works can be undertaken, either by the Council or by a suitably qualified contractor, in either case, with written agreement from the Council and at the complainant's expense.
56. In cases where a member of the public remains dissatisfied with the Council's decision, in relation to a specific tree or hedgerow problem, the complainant can progress the matter through the Council's Corporate Complaints Procedure.
57. 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.

