

SCRUTINY COMMITTEE REPORT

Date Written	9 th February 2021
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Service Area	Neighbourhood Services (Parks)
Committee Date	1 st March 2021

To: Chair, Ladies and Gentlemen

Tree Policy

1.0 SUMMARY OF THE REPORT

- 1.1 Merthyr Tydfil County Borough Council is responsible for the management of all trees growing on its land including street trees, trees on public open spaces and in woodlands. By law, the Council is required to manage and undertake work to any tree which constitutes a statutory nuisance and, to discharge this duty, has a programme of inspection and maintenance works aimed at keeping the population safe from harm and preserving the health and future wellbeing of its tree stock.
- 1.2 Trees are an important part of the environment bringing many health and social benefits to the district and the Council is committed to maintaining – and where possible increasing – the level of tree cover across Merthyr Tydfil. There are, however, a number of conflicts which may arise where the Council's trees are located close to neighbouring properties and the aim of this policy is to set out the Council's stance in dealing with these conflicts and to clarify the Council's legal obligations.
- 1.3 Once adopted the tree policy (see Appendix 1) will ensure that all tree related queries are dealt with in a fair, transparent, and consistent way and will aid the resolution of conflicts between the public and the local authority. It will act as a framework for Officers and Councillors alike and will ensure efficient use of the Council's resources.

2.0 RECOMMENDATION(S)

- 2.1 That the scrutiny committee notes the contents of this report.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 Many local authorities across the United Kingdom have their own individual tree policies which dictate what tree works they are legally bound to investigate and what they will react to.
- 3.2 The policy will be a guide to individuals/Officers and Councillors and state the legal requirements of works for the local authority and clearly indicate whether the tree work should be undertaken.
- 3.3 The local authority receives many complains/requests about trees each year, many are neither a legal requirement nor a priority. This in turn dilutes available resources and is effectively allowing unnecessary works to be completed and priority safety works being left unchecked.

4.0 WHERE WE WERE

- 4.1 MTCBC has always responded to complaints on a reactive basis and these have not always been dealt with by fully assessing the individual issues or merits of each case. The emphasis was on trying to deal with the complaint without fully assessing the priority or legal responsibility of the Council. This on occasions has led to inefficient use of the Council's limited resources and has not been in the interests of the Council's priorities or protection of the environment.

5.0 WHERE WE ARE NOW

- 5.1 MTCBC currently receives a high number of public complaints regarding trees reported through various means. A proportion of these requests/complaints are not justified or a legal responsibility of the local authority. The volume of these unvalidated complaints significantly affects the level of service due to time spent responding to correspondence, assessing, and sometimes completing the works. Thus, taking time away from priority or safety issues.

6.0 WHERE WE WANT TO BE

- 6.1 MTCBC would like a publicly available tree policy which will inform and guide the public and Councillors alike on many of the common issues relating to trees. By having this guide readily available it is hoped many of the queries can be dealt with at source without the need for an officer to intervene. This will allow officers more time to deal with the more dangerous trees and priority situations and promote a proactive management strategy.

7.0 WHAT WE NEED TO DO NEXT

- 7.1 Once approved the policy will become the 'go to' guide when dealing with problematic trees. It will provide a free readily available framework for Staff, Officers, and Councillors as well as a useful information source to the public.

It will be made available via the Council's web site and to Staff and Councillors via the intranet pages.

8.0 CONTRIBUTION TO WELLBEING OBJECTIVES

8.1 Environmental wellbeing: -

Environmental damage is minimised by preventing pollution. This objective is supported by the protection of trees which has a significant effect on pollution levels. Merthyr Tydfil has good quality biodiverse and connected green infrastructure and open spaces. The protection of our existing tree stock and planting for the future will ensure that future generations enjoy the benefit of our green spaces.

**JUDITH JONES CHIEF OFFICER
PLANNING & NEIGHBOURHOOD
SERVICES**

**COUNCILLOR D HUGHES
PLANNING AND NEIGHBOURHOOD
SERVICES.**

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
List the Background documents which have been relied on in preparing the report. E.g. previous minutes of relevant committees		
Does the report contain any issue that may impact the Council's Constitution?		

Copy of proposed Tree Policy and Guidance.

Merthyr Tydfil County Borough Council

Tree Policy



**Guidance on problems associated with
council owned trees**

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INTRODUCTION

Merthyr Tydfil County Borough Council is responsible for the management of all trees growing on its land including street trees, trees on public open spaces and in woodlands. By law, the Council is required to manage and undertake work to any tree which constitutes a statutory nuisance and, in order to discharge this duty, has a programme of inspection and maintenance works aimed at keeping the population safe from harm and preserving the health and future wellbeing of its tree stock.

Trees are an important part of the environment bringing many health and social benefits to the district and the Council is committed to maintaining – and where possible increasing – the level of tree cover across Merthyr Tydfil. There are, however, a number of conflicts which may arise where the Council's trees are located close to neighbouring properties and the aim of this guide is to set out the Council's policies in dealing with these conflicts and to clarify the Council's legal obligations to deal with these issues.

1. Common Law Rights

In the British legal system, Common Law refers to laws that have been developed through precedent set by similar cases as opposed to being created through legislative statutes. Under British Common Law Rights, you have a right to remove (abate) the nuisance associated with trees encroaching onto your property. The following advice with respect to encroaching trees is given for general guidance only. You are advised to obtain independent legal advice before acting:

- a) You can only consider removing those parts of the tree from the point where they cross the boundary of your property. You must not go beyond your property boundary without the permission of the tree owner. You have no legal right to cut or remove any part of a tree that does not overhang your property. Any work which you do carry out must be done at your own expense and without unauthorised access to council land. Merthyr Council has no liability to reimburse any associated costs. If your actions render a tree to be unsafe you may be liable for any subsequent damage that results from tree failure.
- b) You are strongly advised to consult a professional tree surgeon for guidance on how best to prune back encroaching trees, unless the works are trivial meaning you could do the works with hand secateurs or similar.
- c) You are strongly advised to tell the owner of the trees what you plan to do. You can find out if the trees are owned by the Council sending an email to estates.department@merthyr.gov.uk
- d) Before you consider doing any works to the trees you should find out if they are protected by a Tree Preservation Order or if they are in a Conservation Area. If trees are protected, then you will need to gain consent by making an application / give notice to the Council. For guidance on how to check if the trees are protected and how to make an application visit <https://www.merthyr.gov.uk/resident/planning-and-building-control/tree-preservation-orders/>

2. Maintenance of Council trees

The importance of trees as a component of green Infrastructure cannot be understated, The Council has a duty under the Environment (Wales) Act 2016 to maintain and enhance for biodiversity, therefore the maintenance of trees is more than simply to reduce the risk of harm to people and property it is also to maintain their health as living, functioning contributors to a clean and natural environment. While it is important maintain acceptable level and to discharge the Councils duties under law in dealing with a statutory nuisance, the health and likely longevity of trees should be of equal importance. Tree maintenance may on occasions be undertaken for other reasons but this is at the discretion of the Council's Parks department.

The Council adheres to environmental and ecological policy as the law requires specifically relating to the Wildlife & Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017.

Further information regarding the Councils environmental policies can be found <https://www.merthyr.gov.uk/media/5642/replacement-ldp-written-statement-final-composite-version-140120.pdf>

2.1 Street Trees

Street trees are a valuable part of our urban landscape, and the Council will maintain and enhance this urban forest for the benefit of present and future generations.

Many of our street trees are now mature and each year some are lost due to age, condition and as a result of highway and infrastructure improvements. Many of these are not replaced, but where resources are available, the Council will replant new trees to reverse the decline of our urban tree population – more often in grassed verges which are more suited to tree growth.

2.2 Parks and public open spaces

Trees in parks and public open spaces are managed to reflect the circumstances of the site and their type, age and condition. Trees in parks generally have more room to grow compared to street trees and usually grow to their full height and spread.

Ongoing maintenance includes removing dead wood, formative pruning (to remove problems in tree form when the tree is young so avoiding expensive problems later), removing low branches from pathways and removing trees when they come to the end of their safe and useful life. Available resources will be used to plant new trees where a need has been identified. Where management plans do not exist, trees will be selected and sited to complement and enhance the park or green space and to maintain tree cover in these areas.

2.3 Tree Felling

Tree removal is regrettable, but necessary under a number of circumstances. The decision to remove a tree is not taken lightly. Trees are usually felled because it is best option to reduce the risk of harm to an acceptable level (e.g. dead, dying or diseased trees).

There are other circumstances where trees may be felled and these are mostly at the discretion of the Council's Parks department, such as where:

- A tree has been proven to be causing subsidence
- The removal of a tree would benefit surrounding trees
- It is the requirement of a management plan to enhance the development of neighbouring trees.

If a removal and replacement programme is planned for street trees, residents on the street will be consulted. New trees will be replanted that are suitable to the location.

2.4 Tree Pruning

Substantial pruning of a tree can often weaken its structure, and should therefore be avoided for reasons other than reducing risk of harm to people or property. Pruning for any other reasons would be exceptional and at the discretion of the Council's Parks department.

3. Unsafe Trees

3.1 Unsafe Trees - Requiring Immediate Action

If a Council owned tree is in such a condition that it poses a very high risk to people or property, the Council will attend the site as an emergency as soon as is reasonably practicable. If work cannot be completed, areas at risk will be cordoned off until resources are available.

Signs to look for which may mean that a tree is in such condition to warrant immediate emergency action include:

- a) Tree is snapped or blown over
- b) Tree uprooted but held up by another tree or building
- c) A large branch has broken off or is hanging off the tree
- d) Tree or branch is blocking the road or footpath
- e) Tree or branch is blocking access to property
- f) Tree may, or has fallen onto house or car

Signs to look out for which may mean that a tree is a risk to people or property but the risk does **not** require an emergency response:

- a) Tree is dead
- b) Tree is dying - few leaves in summer or dieback in the crown
- c) Bark is loose and falling off
- d) Mushrooms or fungi growing on or near the tree
- e) Old splits and cracks in the trunk or large branches
- f) Smaller branches or twigs falling from the tree

Trees can be made safe via pruning or felling. Typically we would employ the most cost effective approach. But, for certain high value trees we would consider other options to reduce risk to an acceptable level including options to reduce the likelihood of the tree failing or the likelihood of persons being close to the tree if it did fail.

3.2 Trees - Not Requiring Immediate Action

Trees that are perceived as high risk but present no immediate risk to the public will be made safe depending on the level of risk identified at the time of inspection.

3.3 Unsafe trees in Private Ownership

3.3.1 Trees NOT within falling distance of the public highway

Danger posed by trees between private parties is principally a matter for such parties to resolve. The Local Authority has powers to require a private individual to make safe a tree which poses an imminent danger via the Local Government (Miscellaneous Provisions) Act 1976. It is expected that private parties will take care of their own responsibilities and hence the Council should not be considered as the first point of contact in attempting to resolve concerns about the danger posed by trees in private ownership. However, the Council may intervene according to the powers given in the Act if an owner of such trees fails to act in a reasonable timescale (timescales depend upon the degree of risk presented) and may recover from the tree owner the expenses reasonably incurred by it in so doing.

3.3.2 Trees WITHIN falling distance of the public highway

If a tree in private ownership is shown to be a danger to the highway it will be identified for work to make it reasonably safe. The land owner will be contacted and instructed to make the tree safe under the Highways Act 1980. If it is necessary that the Council undertakes this work then the Council may intervene according to the powers given in the Act if an owner of such trees fails to act in a reasonable timescale (timescales depend upon the degree of risk presented) and may recover from the tree owner the expenses reasonably incurred by it in so doing.

4. General works to Council Trees which are NOT required by Law

Merthyr Council follows the following policies when considering requests for work which it is not required to undertake by law;

4.1 Tree Touching a Building

If a tree that is owned or managed by the Council is touching private property (dwelling, house, garage etc.) the Council will take action to remove the nuisance by the most appropriate means.

In many cases the solution will be for the Council to prune the tree, but in some circumstances it may be more appropriate to fell the tree. If pruning is appropriate we will endeavour to undertake works to stop the problem re-occurring within three years.

4.2 Tree Overhanging Property

MTCBC will not prune or fell a tree that is owned or managed by the Council to alleviate the nuisance of branches overhanging private property (see section 1).

Non-statutory nuisance caused by overhanging branches may be considered as part of our general tree work programme. However, this programme is discretionary and subject to the availability of funding.

4.3 Tree Roots and Drains

MTCBC will not prune, fell or cut the roots of a tree that is owned or managed by the Council to prevent roots entering private drains that are already broken or damaged. Tree roots typically enter drains that are already broken or damaged. Trees themselves very rarely break or damage the drain in the first place. Tree roots found in a drain are usually symptomatic of an underlying problem requiring repair of the broken pipe. If you are concerned about the condition of your drains then you are advised to contact your water and sewerage company. Householders are often responsible for the maintenance of the drains within or on their property.

4.4 Trees Blocking Natural Light

MTCBC will not prune or fell a tree owned or managed by the Council to improve natural light to private property unless it is required by a court order to do so.

Where trees growing naturally within the 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(s) for the benefit of level of light to a third party, unless the third party has brought a successful action through the courts demonstrating that a “right to light” exists.

If natural light is being blocked by the growth of a predominantly evergreen hedge then action may be taken to reduce the problem under the High Hedges Act, Part 8 of the Antisocial Behaviour Act, 2003.

Further information should be sought through the Council’s Planning department on Planning@merthyr.go.uk

4.5 Trees Blocking Views

MTCBC will not prune or fell a tree, or group of trees owned or managed by the Council to improve the view from private property (including properties managed by Merthyr Housing or MVH).

4.6 Leaf Fall from Trees

MTCBC will not prune or fell a tree owned or managed by the Council to remove or reduce leaf fall or remove fallen leaves from private property.

The loss of leaves from trees in the autumn is part of the natural cycle and cannot be avoided by pruning. The falling of leaves onto a neighbouring property is not regarded in law as a statutory nuisance.

4.7 Sap from Trees

MTCBC will not prune or fell a tree owned or managed by the Council to prevent or reduce honeydew or other sticky residue falling onto private property. Honeydew is caused by greenfly (aphids) feeding on the sap from the leaves and excreting their sugary, sticky waste. Unfortunately there is little that can be done to remove the aphid which causes the problem and pruning the tree may only offer temporary relief and any re-growth is often more likely to be colonised by greenfly thereby potentially increasing the problem. Some trees, such as Limes, are more prone to attack by greenfly and in some years greenfly are more common especially following a mild winter. Honeydew is a natural and seasonal problem. Where new trees are planted we try to choose trees that are less likely to have

this problem. Where honeydew affects cars, warm soapy water will remove the substance, particularly if you wash the car as soon as possible.

4.8 Blossom from Trees

MTCBC will not prune or fell any tree owned or managed by the Council to remove or reduce blossom fall from trees or remove fallen blossom from private land.

Tree blossom usually heralds the start of spring. Blossom is a natural occurrence, which cannot be avoided by pruning and is not regarded in law as a statutory nuisance.

4.9 Bird Droppings from Trees

MTCBC will not prune or fell any tree owned or managed by the Council to remove or reduce bird droppings from the tree, or remove bird droppings from private land or property.

Bird droppings may be a seasonal nuisance but the problem is not considered to be a sufficient reason to prune or remove a tree. Nesting birds are protected under the Wildlife and Countryside Act 1981 (and other related wildlife law). Warm soapy water will usually be sufficient to remove the bird droppings.

4.10 Fruit, Berries & Nuts from Trees

MTCBC will not prune or fell any tree owned or managed by the Council to remove or reduce the occurrence of fruit, berries or nuts falling onto footways or private land.

Fruit trees such as apple, cherry and pear are welcomed in many locations with the added benefit of providing free food. When considering what tree to plant we do take account of the likelihood of such problems. Equally, where fruit trees are established but there is a significant anti-social behaviour problem caused by the throwing of fruit or nuts we may consider phased removal and replacement with more suitable species.

4.11 Wildlife and Insects in Trees

MTCBC will not prune or fell any tree owned or managed by the Council to remove or reduce incidence of Bees, Wasps and other insects or wild animals.

Bees are protected species and advice should be taken before considering their removal. You may be able to dispose of individual wasps using an aerosol insect-repellent spray, but this will not control or eliminate the nest itself. Ideally the whole nest should be destroyed. This can be achieved with great caution but it is far safer to use pest control experts. The Council provides a charged service for removing certain pest species. Please telephone Merthyr Council Direct on 01685 725482 to talk to Environmental Health.

4.12 Satellite, Television and Other Communications Reception Blocked by Trees

MTCBC will not prune or fell any tree owned or managed by the Council to enable or ease installation or improve reception of satellite or television receivers.

It maybe that your satellite or TV provider will be able to suggest an alternative solution to the problem, for example relocating the aerial/dish or means to boost the signal. Please note that MTCBC will not reimburse costs associated with relocating a TV aerial or satellite dish.

4.13 Security Cameras/Sensors Blocked by Trees

MTCBC will not prune or fell any tree owned or managed by the Council to improve the range or vision of security cameras or similar sensor equipment unless requested to do so by an appropriate statutory authority e.g. the Police, on the grounds of public safety.

Security of premises is the responsibility of the owner and any system should be installed in such a way as to avoid interference from or with adjoining trees.

4.14 Solar Collectors and Panels Obscured by Trees

MTCBC will not prune or fell any tree owned or managed by the Council to improve the performance of Solar Water Heating Collectors or Solar Panels such as Photovoltaic Cells.

Whilst the Council appreciates that there is a need to provide renewable energy resources. Trees have an important role in maintaining and improving local amenity, in addition to contributing to local and national targets in tackling climate change. The presence of trees must be fully appreciated when considering a suitable location for the placement of solar collectors and panels.

4.15 Wires and Trees

MTCBC will not fell any tree owned or managed by the Council to remove or reduce interference with telephone wires. However, there may be instances where the Council will undertake works to prune trees and reduce interference where pruning would be an effective measure.

Your telephone service provider may be able to suggest an alternative solution to the problem. However, wires do and can run through trees with little or no effect. Service providers will often install the wires after the tree has been planted.

Power cables are not maintained by the local Authority and therefore works will not be actioned upon trees interfering with power lines. Instead the provider should be contacted, MTCBC falls under the provider for south Wales which at present is Western Power.

4.16 Tree Considered Too Large

MTCBC will not prune or fell any tree owned or managed by the Council because it is considered to be 'too big' or 'too tall'.

A tree is not dangerous simply because it may be considered too big for its surroundings. Other problems would need to be present, such as those described in earlier sections in order for the Council to consider it to be dangerous. Merthyr Council does not recognise "Crown reduction" "lopping" "topping" or "pollarding" as a general form of management of its trees. Such work can be detrimental to the health and future safety of trees and are only undertaken in exceptional cases.

4.17 Vandalism to Trees

MTCBC will investigate any reports of vandalism to any tree owned or managed by the Council and use enforcement and legal action to bring about the prosecution of offenders. Vandalism includes wanton damage of newly planted trees and any unauthorised pruning felling or similar work to mature trees.

You are not allowed to remove living material from Council land without consent and unauthorised persons are not allowed to use a chainsaw of any type in parks, public open spaces or other Council land. If you see someone who may be removing living material without consent (i.e. a person not associated with a relevant sign written vehicle and / or without clothing that clearly identifies who they are) or they are using a chainsaw, please telephone Merthyr Council Direct on 01685 725000.

4.18 Anti-social Behaviour and Trees

Where any tree owned or managed by the Council is associated with criminal activity or anti-social behaviour, measures to reduce the problem will be considered on a site by site basis.

Where a tree is associated with criminal activity and/or anti-social behaviour, steps to reduce the problem will typically require the coordination of a number of agencies including the police. Just pruning or felling a tree is not always the answer to the problem. Some research shows that areas with lots of trees actually help to make places safer. But, neglected spaces with overgrown trees and untidy areas can encourage criminal activity and/or anti-social behaviour. The Council's tree and grounds maintenance programme tries to improve these areas by making the local environment cleaner, greener and safer.

4.19 Claims of Subsidence Caused by Tree

MTCBC will rigorously identify and defend any claims which are presumed to be either bogus or false.

If you believe that your property is legitimately suffering subsidence damage due to the action of trees owned or managed by the Council (or that you are concerned about potential damage) you are advised to contact your property insurer (private ownership) or Merthyr Housing or relevant department (Council Tenants) in the first instance so that you may discuss your concerns and agree an appropriate course of action. Should you, or those acting on your behalf, wish to make a claim for damages against the Council, alleging that a Council owned/managed tree is causing subsidence damage, then you will be required to submit an independent report to the Council's insurance department directly via email to customer.care@merthyr.go.uk.

5. Trees affecting the Public Highway

5.1 Tree obstructing the Highway

MTCBC will undertake work to trees owned or managed by the Council to maintain a minimum 5.2 metres height clearance over the carriageway (associated with a street, road or highway) or at a height deemed suitable by the Highway Authority for the road conditions.

If a privately owned tree is causing an obstruction to a road, powers exist under the Highways Act to make the owner of the tree remove the obstruction. If they do not, the Council could enforce this work and recharge the owner.

5.2 Line of Sight Obscured by Trees

MTCBC will undertake work to trees owned or managed by the Council to maintain clear lines of sight for traffic and pedestrians at junctions and access points (associated with a street, road or highway).

Standards for visibility vary according to the class and speed limit in force. If a privately owned tree is causing an obstruction to the visibility at a road junction (sight line), powers exist under the Highways Act to make the owner of the tree remove the obstruction. If they do not, the Council may enforce work and may subsequently recharge the owner of the tree. The shoots that grow from the base of some trees in Council ownership such as lime trees are removed as part of our tree maintenance programme, The removal of basal shoots for aesthetic reasons is done as and when funds allow or when it is necessary to inspect the base of a tree.

5.3 Signal and Signage Obscured by Trees

MTCBC will undertake work to trees owned or managed by the Council to maintain clear lines of sight for traffic signals and street signage (associated with a street, road or highway).

A tree should not obstruct the vision of an approaching driver. If a privately owned tree is causing an obstruction to a traffic signal or street sign, powers exist under the Highways Act to make the owner remove the obstruction. If they do not, the Council will do the work and recharge the owner.

5.4 Street Light Obscured by Trees

MTCBC will undertake work to trees owned or managed by the Council to ensure that street lights are not substantially blocked by the presence of trees.

If a privately owned tree is causing an obstruction to street light, powers exist under the Highways Act to make them remove the obstruction. If they do not, the Council will do the work and recharge the owner.

5.5 Pavement Obstructed by Tree

MTCBC will undertake work to trees owned or managed by the Council to maintain a minimum 2.5 metres height clearance over a footpath associated with a street, road or highway, and 3 metres where there are cycling rights. Any works necessary to prevent an obstruction to the width of a footpath associated with the highway due to the presence of a Council owned tree will be considered on a case-by- case basis.

If a privately owned tree is causing an obstruction to a footpath associated with the highway, powers exist under the Highways Act to make the owner of the tree remove the obstruction. If they do not, the Council will do this work and re-charge the owner. The majority of trees alongside public rights of way (PROW) will be on private land; where there is a bridleway the clearance required is 4m.