

DEVELOPMENT CONTROL ENFORCEMENT PROCEDURE 2008

HIGH HEDGES

CONTENTS

1. Objectives
2. Legislation & Government Guidance
3. Actions and Investigation
4. Human Rights
5. Options for Action
6. Appeals
7. Enforcement

1. OBJECTIVES

The Development Control Enforcement Team aims to provide clear guidance on the investigation procedure and the options available for action if a high hedge is adversely affecting a complainant's reasonable enjoyment of their property. The role of the Council is to take account of the competing interest of the complainant and the hedge owner, as well as the interests of the wider community.

This procedure guide follows the Government guidance produced for dealing with high hedge complaints in ***High Hedge Complaints: Prevention and Cure***. Reference should also be made to other Government guidance documents listed in the Bibliography at the end of this procedure guide.

2. LEGISLATION AND GOVERNMENT GUIDANCE

Part 8 of the Anti-Social Behaviour Act 2003

High Hedges (Appeals) (England) Regulations 2005

The legislation came into operation on 1st June 2005 and makes provision for local Councils to determine complaints by the owners/occupiers of domestic property adversely affected by evergreen hedges over 2 metres high. The Council charge a fee for this service which is to be paid by the complainant. The Council may also reject a complaint if it is considered that insufficient effort has been made to resolve the matter amicably, or that the complaint is frivolous or vexatious.

Please note the following:

- A high hedge is defined in Section 66 of the Act as 'a line of two or more evergreen trees or shrubs which rise to a height of over two metres above ground level'. The legislation does not cover single or deciduous trees.
- Section 68 of the Act allows the Council to charge a fee for investigating a complaint.

- The law does not require all hedges to be reduced to, or maintained at, a height of 2 metres. It is often misconstrued that 2 metres is the 'official height' a hedge can reach.
- The Act only applies to problems experienced because the hedge is too high. It does not deal with the width of a hedge.
- The Council cannot require a hedge to be removed.
- The following is not considered; fear that the hedge will break and fall, problems associated with the width of the hedge and subsidence.
- There is no provision for serving Anti-social Behaviour Orders (ASBOs) for high hedge complaints.
- If a valid complaint is investigated, the Council acts as an independent third party. The process is open and transparent with the main parties receiving copies of all documents.
- Complaints about the effects of the roots of a high hedge are specifically excluded.
- Beech and hornbeam hedges are excluded (although they retain some foliage for most of the year, this is brown and dead).
- Climbing plants such as ivy and bamboo are excluded.

3. ACTIONS AND INVESTIGATION

WITHIN 3 WORKING DAYS OF RECEIPT OF THE REGISTERED COMPLAINT (i, ii, iii and iv)

- i. Validate the complaint by ensuring compliance with the following:
 - The hedge and/or trees are evergreen or semi-evergreen
 - The hedge and/or trees are higher than 2 metres from ground level
 - The complainant's property is residential and not commercial
 - The complainant has made every effort to discuss the problem with the hedge owner and reach an amicable solution e.g. time log of all verbal discussions, copy of letters over a reasonable period of time and evidence that mediation has been offered
 - Payment of the correct fee: £465 (£100 if the complainant is on Housing or Council Tax benefit). The fee will be receipted by the Planning Support Team.
 - There are valid reasons for the loss of enjoyment of the complainant's property e.g. loss of light, overhanging branches, too high to cut, oppressive etc.

- ii. Issue an acknowledgement letter to the complainant:
The letter contains details of the case reference number, the Officer investigating, the validation of the complaint, that the hedge owner has been consulted to comment on the complaint, that neighbouring properties have been consulted to comment on the complaint, confirmation that copies of all documents will be passed to the complainant and notification that a site meeting will be arranged once the consultation responses have been received.

- iii. Issue a notification letter and questionnaire to the hedge owner:
The letter informs the hedge owner that a complaint has been received under the Act, contains details of the case reference number, the Officer

investigating, a questionnaire is enclosed to be completed by the hedge owner and returned with any supporting information within 21 days, that neighbouring properties have been consulted to comment on the complaint, a request that copies of all documents be passed to the complainant and notification that a site meeting will be arranged once the consultation responses have been received.

iv. Issue a letter to neighbouring properties that may be affected by the high hedge.

Invite the neighbours to send us any comments they may have on the points raised in the complaint and provide any further information they may want us to take into account within 21 days. Attach a copy of the complaint form. Advise the neighbours that a copy of their reply will be sent to the complainant and hedge owner. They may wish to bear this in mind when framing their comments.

DIARY THE CASE FOR 21 DAYS FOR RECEIPT OF THE COMPLETED QUESTIONNAIRE AND ANY NEIGHBOUR COMMENTS.

v. Obtain from Land Registry www.landregistrybusiness.gov.uk a copy of the register and title plan in relation to freehold and leasehold estate.

vi. Check GGP Overlays to establish if there are any Tree Preservation Orders on the site and whether the site is within a Conservation Area.

vii. Issue a letter to the complainant with a copy of the completed questionnaire and a copy of any neighbour comment letters or detail the content of any telephone discussions with neighbours. Propose a site meeting with the complainant for within the next 10 working days.

viii. Issue a letter to the hedge owner acknowledging receipt of the completed questionnaire and provide a copy of any neighbour comment letters or the content of any telephone discussions with neighbours. Propose a site meeting with the hedge owner within the next 10 working days. The site meeting with the hedge owner can be immediately before or after the site meeting with the complainant as the process is open and transparent for the main parties.

ix. Gather the following evidence at the site meetings:

- Photographs of the hedge and surroundings
- Record the height and length of the hedge
- Its position within the property
- Its species content
- Measure the size of the garden, the distance between the hedge and the windows and the site levels (Refer to ***Hedge Height and light loss 2005*** guidance which provides an objective method for assessing whether high hedges block too much daylight and sunlight to adjoining properties, and to provide guidance on hedge heights to alleviate these problems. Website link: www.communities.gov.uk/treesandhedges).

N.B. Under Section 74 of the Act, Officers have powers to enter land where the hedge is growing in order to carry out the investigations required under the Act. They can also take away samples from the hedge.

x. Refer the file to the Tree Team to visit the site and comment on the:

- Species content
- Assessment of growth habit and condition
- Evidence of past management
- Method of how to reduce in height
- Frequency of trimming
- Margin for re-growth
- Timing of trimming
- Wildlife

DIARY THE CASE FOR 21 DAYS FOR A RESPONSE FROM THE TREE OFFICER

xi. Refer the file to Legal for advice on the Investigating Officer's decision and supporting evidence.

DIARY THE CASE FOR 21 DAYS FOR A RESPONSE FROM LEGAL

xii. Issue the decision letter to the Hedge Owner and Complainant. Enclose a copy of the leaflet ***High Hedges: appealing against the Council's decision*** to both parties. If a remedial notice has been issued, the Investigating Officer will hand serve the letter and notice and complete a certificate of service form.

DIARY THE CASE FOR 28 DAYS TO CHECK IF AN APPEAL HAS BEEN SUBMITTED AND/OR DIARY FOR COMPLIANCE WITH THE REMEDIAL NOTICE

HUMAN RIGHTS ACT 1998

Article 6: Right to a fair trial

Article 8: Right to respect for private and family life

When the Council investigates a complaint, we need to carry out a balancing exercise that is central to safeguarding human rights. This involves trying to secure a reasonable balance between the interests of the complainant, on the one hand, with those of the hedge owner and the wider community (e.g. public amenity) on the other.

A high hedge complaint relates to a matter which is prescribed by law. Any action recommended is in pursuance of a legitimate aim and is considered necessary in the public interest of a democratic society. The steps required by the Council to resolve the complaint must be proportionate and will not seek to impose more of a burden on the hedge owner/occupier than is necessary to resolve the situation in the public interest.

5. OPTIONS FOR ACTION

When assessing and weighing the evidence the Council will take account of all relevant factors and strike a balance between the complainant and the hedge owner as well as the interests of the wider community. It is important to weigh up the harm caused by the hedge against its amenity value to the hedge owner and the wider community.

Factors to consider (not exhaustive):

- Privacy
- Shelter
- Noise, smell, smoke
- Damage to plants
- Overhanging branches
- Litter dropped by the hedge
- Obstruction of light: windows
- Obstruction of light: gardens
- Visual amenity
- Public amenity
- Protected trees
- Planning conditions
- Historic, wildlife and landscape value
- Covenants
- Case law
- Previous Appeal decisions (these do not set a precedent; each case should be considered on its own merit. However, there may be comparable factors)

Excluded:

- Fears the hedge will break or fall
- That the problems with the hedge have caused worry, concern or depression, leading to health problems
- That other hedges in the area are maintained at a lower height
- That the hedge was there before the affected property was built or before the complainant moved into it
- That cutting down the hedge is too costly and beyond the means of the person who owns or occupies the site where it is growing

There are three options when deciding the complaint:

1. Issue a remedial notice on the hedge owner/occupier which sets out what action is required to remedy the problem.
(A remedial notice runs with the land and will specify the height for the hedge to be cut back to and the future maintenance required to maintain the specified height.)
2. Take no action if it is considered the hedge has little adverse effect and any remedial action would be minimal.
3. Take no action if it is considered the hedge has little adverse effect.
Provide advice for the management of the hedge if it is decided that the

hedge is not significantly causing an adverse affect on the enjoyment of the complainant's property but arboriculture advice could assist with the maintenance of the hedge.

6. APPEALS

Under Section 71 of the Act the complainant and the hedge owner/occupier can appeal if they are unhappy with the Council's decision.

The complainant and hedge owner can appeal against:

- The issue of a remedial notice
- The withdrawal of a remedial notice
- The waiver or relaxation of its requirements

In addition, the complainant can appeal against:

- A decision by the Council that the height of the hedge is not adversely affecting their reasonable enjoyment of their property
- A decision not to require remedial action even though the height of the hedge is causing problems.

Refer to the High Hedge appeal guidance on the Planning Inspectorate website:
www.planninginspectorate.gov.uk/pins/environment/high_hedges

The High Hedges Appeals Team
Room 4/04 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0117 372 8812

7. ENFORCEMENT

Failure to comply with a remedial notice is an offence punishable, on conviction in a magistrates' court, to a level 3 fine (£1,000). Offences are committed when the hedge owner/occupier does not comply with the initial one-off action as specified in the remedial notice within the time specified; and where any continuing maintenance works are not carried out in accordance with the requirements set out in the notice.

Informal action:

- Contact the hedge owner to ensure they are aware of the requirements of the remedial notice and to encourage them to comply. Allow time to comply and advise the hedge owner that failure to act may result in formal action.

When considering a prosecution:

- Review the evidence with an evaluation of the strengths and weaknesses of the cases for both prosecution and defence to determine whether there is a realistic prospect of conviction.
- Decide if a prosecution is in the public interest?

The evidence must show 'beyond reasonable doubt' that a requirement in the remedial notice has been contravened (criminal standard of proof).

BIBLIOGRAPHY

The Government legislation and policy advice on administering complaints can be found in the following documents:

Part 8 of the Anti-Social Behaviour Act 2003

High Hedges (Appeals) (England) Regulations 2005

High Hedge Complaints: Prevention and Cure 2005

Over the garden hedge 2005

High hedges: Complaining to the Council 2005

Hedge height and light loss 2005

Matters Relating to High Hedges (Notes to Local Authorities) 2008

View the guidance documents at:

www.communities.gov.uk/treesandhedges

Date:	December 2008
Contact Officer:	Caroline Thomas (Enforcement Team Leader)
Telephone:	02380 688246
E-mail:	Caroline.Thomas@Eastleigh.gov.uk

High Hedge Complaint Checklist

Action	Target date	Date of action
Receipt fee Register case	day 1	
Validate the complaint Acknowledgement to complainant Notification and questionnaire to hedge owner Neighbour/s consultation Diary for response in 21 days	3 days after receipt	
Land Registry GGP check TPO/conservation area	10 days of receipt	
Letter to hedge owner with copy of neighbour letters/emails and/or content of telephone discussions + requesting site meeting Letter to complainant with copy of neighbour letters/emails and/or content of telephone discussions + copy of the questionnaire + requesting site meeting Diary for a response in 10 days for acceptance of site meetings proposed	3 days after expiry of 21 day deadline	
Site meeting with hedge owner Site meeting with complainant		
Referral to Tree Officer Diary for a response within 21 days	3 days after the site meetings	
Referral to Legal Diary for a response within 21 days	3 days after receipt of Tree Officer response	
Decision letter to hedge owner Decision Letter to complainant	3 days after receipt of Legal response	
Diary date for compliance with a remedial notice (if applicable) and/or diary date to check if appeal submitted against our decision	Refer to remedial notice for compliance date	

n.b. the target days referred to are working days. Maximum time scale for a decision is 18 weeks.