
ADMINISTERING HIGH HEDGES COMPLAINTS

**Responsible Cabinet Member(s) - Councillor David Lyonette,
Regeneration and Planning Portfolio**

Responsible Director(s) - John Buxton, Director of Development and Environment

Purpose of Report

1. The purpose of this report is:
 - (a) to seek Members approval for the level of fees proposed to cover the administration of the recently introduced High Hedges Complaints procedures;
 - (b) to seek delegated authority for officers to decide High Hedges Complaints.
2. These recommendations have been considered by Cabinet on 12 July 2005, which agreed to recommend them to Council.

Background

3. People normally do not need permission to plant a hedge in their garden and there are no general restrictions on how high you can grow a hedge. While common law rights entitle neighbours to cut overhanging branches back to the boundary line, they cannot reduce the height of a hedge unless the owner agrees. Where people cannot agree a solution to their hedge problem, they may be able to ask the Council to consider their complaint.
4. The law giving Local Councils the powers to deal with complaints about high hedges (Part 8 of the Anti Social Behaviour Act 2003) came into force on 1 June 2005. From this date, people have been able to take their complaint to the Council, provided they have tried and exhausted all other avenues for resolving their hedge dispute, including attempts at mediation. The Act makes provision for Local Councils to determine complaints by the owners/occupiers of domestic property adversely affected by evergreen hedges over 2 metres high.
5. The role of the Council is to act as an independent and impartial third party. It does not negotiate or mediate between individuals but will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property. In doing so, it will take account of all views and relevant factors – including the hedge owner's amenity and that of the wider neighbourhood. Each case will be assessed on its particular merits. If circumstances justify it, the Council will issue a formal notice to the hedge owner which would set out what they must do to the hedge to remedy the problem and by when. Failure to carry out the works required by such a notice is an offence which, on prosecution, could lead to a fine of up to £1,000. The Council also has the power to carry out the required

works in default of the hedge owner and recover its costs.

6. The ODPM document 'High Hedges Complaints: Prevention and Cure' provides detailed advice and good practice on administering complaints about high hedges. A copy is available for inspection in the Planning Services Section or can be accessed via the ODPM website.

Guidance on Fees

7. The Act allows Councils to charge a fee for determining a complaint about a high hedge. The Secretary of State has not used his powers to prescribe a maximum fee. Each Council is free, therefore, to charge for this adjudication service as it thinks fit bearing in mind the likely costs to be incurred. Should this Council so wish, it may provide the service free or, in certain circumstances it might wish to offer the service at a reduced fee – for example to the unemployed, those on low incomes or benefits.
8. It is also for the Council to decide whether or not to provide refunds. In certain circumstances, the Council may wish to return any fee paid, for example, if the matter is quickly settled without its full intervention. There is no requirement, however, to offer refunds. In particular, complainants should not expect the Council to return money where the complaint has been formally determined, whether or not the outcome has been favourable to them.
9. It is good practice for Councils to publish details of their local fees scheme for dealing with High Hedges Complaints so that it is clear to people what the cost of making the complaint will be. As a general rule, each complainant will pay one fee, irrespective of the number of hedge owners that might be involved. However, in any case of a complaint involving multiple hedges the Council should reserve the right to charge multiple fees.

Proposed Fees

10. It is proposed that a fee be introduced to cover the costs of providing the High Hedges Complaint service.
11. Most people who responded to questions about fees in the 1999 consultation 'High Hedges - Possible Solutions' thought it was fair that the complainant should pay something for the Local Authority to intervene in their hedge dispute.
 - (a) Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the Local Authority really is a last resort.
 - (b) A fee will also help to deter frivolous or vexatious complaints.
 - (c) It is common practice for Local Authorities to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general.

12. In setting the fee level, Members should consider:
 - (a) what proportion of the costs of providing the service should be paid by complainants via the fee;
 - (b) what proportion should be paid, in effect, by the Council;
 - (c) whether there should be concessionary fees for those complainants on low incomes;
 - (d) whether refunds should be provided where appropriate.
13. It is difficult at this stage to estimate accurately how much it will cost to provide the high hedges service. The number of potential complaints is currently unknown, but could be extensive, particularly at first. We will be dealing with situations where there is already a history of dispute about a hedge. Dealing with such complaints will be difficult and demand large amounts of staff time. It is likely, therefore, to be an expensive service to provide.
14. The service will involve some or all of the following stages:
 - (a) responding to requests for information from the public by telephone, letter and in person;
 - (b) checking the validity of formal complaints;
 - (c) checking land ownership details (including land registry searches);
 - (d) notifying interested parties of complaints;
 - (e) considering the details of complaints;
 - (f) consultation where hedges affect the setting of historic buildings or are protected;
 - (g) arranging and carrying out site visits at complainants' and neighbours' properties;
 - (h) determining complaints;
 - (i) serving notices;
 - (j) advising interested parties of decisions;
 - (k) registering notices as land charges;
 - (l) responding to appeals from either party to a disputed hedge;
 - (m) checking on site whether remedial notices have been complied with;
 - (n) taking administrative and legal steps to secure compliance with remedial notices;

15. The nature of the process will require the Council to continue to respond to requests for information and informal complaints about a particular hedge long after the initial formal complaint has been dealt with. No additional fee can be charged for these requests:
16. Provision of this service will require staff with a range of skills including:
 - (a) administrative staff;
 - (b) technical and professional planning staff;
 - (c) enforcement officers;
 - (d) legal officers.
17. Members will therefore understand that it will not simply be a case of making a decision on a complaint. The process will be much more demanding and require careful management in order to be effective and efficient.
18. The appropriate fee level has been discussed with the other Tees Valley Planning Officers. Authorities have set fees ranging between £100 - £350. I would suggest that a £100 fee (lower than a householder planning application fee) is not adequate given the amount of potential work and the need to involve various officers. I therefore propose that £350 is set as the standard fee for handling a High Hedges Complaint. I also propose a review after 12 months of operation of the procedure, to assess what proportion of actual costs are covered by the fee.
19. Whilst £350 may seem expensive for householders, Members may wish to bear in mind that the current alternative of pursuing a hedge dispute through the civil courts is likely to be more expensive.

Concessions for those on Low Incomes

20. In order to assist people on low incomes, Members can consider a reduction in the fee. Options introduced by other Councils include a concession for the unemployed and for those who receive housing benefits and/or Council Tax benefit. Offering concessionary fees on this basis would be a way of assisting those on low incomes without requiring further means testing.
21. Members will realise that these concessions will mean that a greater proportion of overall costs for running the service will be paid by the Council. It should also be pointed out that there is no concessionary fee for planning applications. It would not be appropriate for the Council to charge no fee. A concessionary fee of £200 is proposed as being reasonable.

The Decision Process

22. Under the Local Government (Functions and Responsibilities) (England) Regulations 2000 as amended, responsibility for all functions relating to high hedges rests with the full Council and not with the executive, where such arrangements exist.

23. Most complaints are likely to deal with private matters that are of concern only to the people involved and so Councils are advised that they might wish to delegate the decision to officers. Where cases raise wider neighbourhood issues or are locally sensitive the guidance explains that a committee might be used to make the decision.
24. In addition, where the Council is directly involved, for example the hedge is on Council land, to ensure the process is seen to be fair, the Council should consider setting up internal procedures for the case to be considered by Committee or officers who do not have responsibility for managing the land or hedge in question.
25. It is recommended therefore that members delegate authority to decide High Hedges Complaints, including the issue of all relevant notices, enforcement and works in default to the Director of Development and Environment or such officer as he nominates in writing. Where the Council is directly involved, complaints should be decided by the Planning Applications Committee.

Outcome of Consultation

26. No consultation was required in the production of this report.

Financial Implications

27. The implementation of this report will generate income for Planning Services through fee charging procedures. The annual income will depend on the number of High Hedges Complaints submitted, which is impossible to estimate at this stage. At £350 (£200 for people on low income) the fees are expected to cover officer costs but a review will be carried out next year to quantify the costs more accurately and adjust if necessary.

Legal Implications

28. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

29. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

30. The issues contained within this report represent a change to Council policy.

Conclusion

31. The introduction of controls over high hedges will not be funded by Central Government. Handling of complaints is likely to be a complex and expensive process which will be funded by the Council and those making complaints. It is for Members to decide where the appropriate balance should be struck.
32. In the interests of efficient decision taking, and given that most decisions on high hedges will affect only two parties, it is suggested that decisions are normally delegated to officers.

Recommendation

33. It is recommended that:-
 - (a) the standard fee for handling a High Hedges Complaint be set at £350 for the current financial year;
 - (b) those complainants who are currently unemployed or, receive either housing benefit or Council tax benefit, be eligible to a concessionary fee of £200 for the current financial year;
 - (c) the fee levels be reviewed after 12 months of operation when more information is available on the actual costs incurred and the demands made on the service;
 - (d) the Scheme of Delegation to officers, included in the Council's Constitution, be revised in respect of planning matters to grant the Director of Development and Environment, or his/her nominated officer, delegated powers to decide High Hedges Complaints under Part 8 of the Anti-social Behaviour Act 2003;
 - (e) High Hedge Complaints involving Council-owned land be decided by the Council's Planning Applications Committee.

Reasons

34. The recommendations are supported by the following reasons :-
 - (a) to cover the costs of administering and processing High Hedge Complaints;
 - (b) to assist people on low incomes to pay for the High Hedge Complaint service;
 - (c) to identify the true costs of the complaint service and suggest a revised fee scheme;
 - (d) to establish an efficient and fair decision making process;
 - (e) to ensure a fair and transparent decision making process

John Buxton
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Background Papers

High Hedges Complaints: Prevention and Cure (ODPM 2005)

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