

A GUIDE TO DEALING WITH HIGH HEDGES





A GUIDE TO DEALING WITH HIGH HEDGES

What legislation covers the issue?

For some time now, public pressure has demanded that parliament seek a statutory solution to the problems caused by high hedges. Part 8 of the Anti-social Behaviour Act 2003 came into force on December 31st 2004. It creates new procedures to enable local authorities in Wales and England to deal with complaints about high hedges.

What is the basis of any Complaint?

The basis of any complaint is where it is alleged by an owner or occupier of a domestic property, that a hedge which is situated on land owned or occupied by another party, is as a result of its height, acting (to some degree) as a barrier to light or access to the extent that the complainants reasonable enjoyment of their property is being adversely affected.

What is classed as a 'High Hedge'?

A 'High Hedge' is defined as a line of 2 or more evergreen or semi-evergreen trees or shrubs, which are over 2m in height. Individual shrubs and trees will NOT come within the scope of the legislation.

What can be done if the roots of hedges are causing damage?

This is a civil matter not covered by the Act. Problems such as this cannot be dealt with by the Enforcement Unit of the Planning Service.

Will the Council charge a fee to investigate the complaint?

Yes, a fee of £320 should accompany the application for investigation. This fee is non-refundable and no investigation will take place without receipt of cleared funds. The Council reserves the right to carry out a review of this fee at any time.

Is the Council obliged to investigate all complaints about high hedges?

No. The Council may decline to accept any complaint it considers to be frivolous or vexatious or if it considers that the complainant has failed to take all reasonable steps to resolve the issue prior to attempting to involve the Council.

What 'reasonable steps' need to have been taken before the Council will investigate?

The Council will require that the complainant demonstrates that before they approached them, they had tried to reach an agreement with the hedge owner as to a reasonable height for the hedge. A record must accompany the application for investigation, which details verbal or written requests made to the hedge owner by the complainant, together with their responses or absence of response.

The Hedge owner is not an individual, but a Company. Can action be taken against a company?

Yes. The complainant should take the same reasonable steps before approaching the Council, as they would in the case of individual hedge owners.

If the Council agrees to investigate what first steps will they take?

An exchange of representations and a site visit will take place. The Act gives the Council a legal power of entry onto a property to investigate a complaint. The Council will decide whether or not the complaint is justified, in that the height of the hedge is indeed adversely affecting the complainants' reasonable enjoyment of their property. There will be no time limit within which the Council must reach a decision. The resultant decision, together with the reasons for that decision, will be sent to both the complainant and the hedge owner.

If the Council decides that the hedge is too high, what happens next?

If considered appropriate, the Council will issue a 'remedial notice' to the hedge owner. This will set out what works should be carried out to the problem hedge, what preventative action needs to be taken to ensure that it is maintained at a reasonable height in future and finally, the penalties they will incur if they fail to comply with the notice. The notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners.

Does the Act give the Council power to require the hedge owner to reduce the height of the hedge to less than 2 metres in height?

No. However, the height to which it will be appropriate to reduce specific hedges will depend on the circumstances of each case.

Does the Hedge owner have a time limit to comply?

Yes. The notice will contain its 'issue date' and a date at least 28 days later will be cited as its 'operative date'. It will also cite a 'compliance period', which will be a reasonable period, which allows the hedge owner the opportunity to enlist the services of a contractor (if necessary) and to make the arrangements for the work to be carried out. It is recommended that hedge cutting does not take place between March and August, as disturbance of nesting birds may contravene wildlife protection legislation. Only after the expiration of the compliance period may the Council commence proceedings for non-compliance with the notice.

What do proceedings for non-compliance achieve?

The Act creates an offence of failing to comply with a remedial notice. The implications of this are that if the hedge owner is convicted by a Magistrates court, he may be fined up to £1000. The court may also decide to order the hedge owner to carry out the requisite works. Furthermore, it is also an offence to obstruct an officer of the council exercising a power under this Act and if it occurs, this too is punishable by a fine of up to £1000.

What may the Council do if the hedge owner still refuses to comply with a notice?

If he still fails to comply (without reasonable excuse), he may be fined further at a rate of £50 per day that the work remains uncompleted. The Council may make arrangements to get the requisite work carried out and then charge the hedge owner for all costs involved. These costs would be registered as a local land charge and consequently any prospective buyers would buy subject to them.

Is there a right of appeal?

Yes. Any appeal by the hedge owner against a remedial notice must be made in writing and sent to the Welsh Assembly Government, within 28 days of the notice being served. Similarly, the complainant may appeal to the Assembly, if the Council decides not to issue a remedial notice or if it issues and then subsequently withdraws a notice. Either party may appeal to the Assembly against a notice on the grounds that it either goes too far or not far enough.

BE SURE OF YOUR FACTS!

THE APPLICATION FEE IS NON-REFUNDABLE

For further information please contact the Enforcement Unit of the Planning Service by:

- E-mailing using the electronic forms on the Council website
- Writing to Planning Service, Regulatory Department, Council Office, Ffordd y Cob, Pwllheli, LL53 5AA.
- Phoning (01766) 771000