

## **HIGH HEDGES**

**EXECUTIVE MEMBER:** Cllr A Holliday  
**LEAD OFFICER:** Keith Parker, Head of Leisure and Environmental Services  
**REPORT AUTHOR:** Marlene Jewell, Senior Legal Services Officer

**Summary:** To advise Members of the implementation of legislation relating to high hedges and to deal with procedural issues arising from that legislation

**Recommendation:** That a recommendation be made to Council that

- (a) the Planning Panel be allocated responsibility for high hedges controls and issues arising from Part 8 of the Anti-Social Behaviour Act 2003;
- (b) that the Head of Leisure and Environmental Services be delegated power with regard to high hedge controls as set out in paragraph 4.2 of the report;
- (c) that a fee as set out in paragraph 4.1 of the report be approved.

**Resource Implications:** There will be a staffing cost to dealing with applications which should be recoverable through the fee charged.

**LA 21 Implications:** None.

**Rural Implications:** None.

**Crime & Disorder Act Implications:** None.

### **Key Decision Status**

- **Financial:** None.  
- **Ward:** None

**Other Ward Implications:** None.

## **1. BACKGROUND**

- 1.1 Trees and hedges are a key element of our countryside but they also have a major part to play in urban areas in England where more than 80% of the population live. Trees and hedges in private gardens parks and streets are of great importance to people particularly in residential areas. However where plants get out of hand problems can occur such as where a high hedge restricts someones use or enjoyment of their property.
- 1.2 The 1999 consultation procedure entitled "High Hedges: Possible Solutions" estimated that there might be around 17,000 unresolved neighbour disputes over problems caused by overgrown hedges.
- 1.3 The most common concerns related to light obstruction and loss of visual amenity and existing procedures were found to be ineffective in settling these disputes. Common law rights entitle people only to cut overhanging branches and do not allow them to reduce the height of a

neighbouring hedge. People have also been reluctant to take action through the civil courts not only because of the time and costs but also because the outcome was uncertain.

- 1.4 The 1999 consultation paper considered several possible solutions for dealing with these hedge problems and sought views on four options ranging from doing nothing, through voluntary action to legislation. The majority of respondents to the consultation favoured legislation to allow local authorities as a last resort to determine hedge complaints.
- 1.5 Provisions were accordingly included in Part 8 of the Anti-Social Behaviour Act 2003 to allow local authorities in England and Wales to deal with complaints about problem high hedges where neighbours were unable to agree a solution and this will come into operation in England on 1<sup>st</sup> June 2005.

## **2. POSITION FROM 1<sup>ST</sup> JUNE 2005**

- 2.1 If someone is troubled by a neighbouring hedge the best way to deal with the issue is to discuss it amicably and to agree a solution. From 1<sup>st</sup> June 2005 people will be able to take a complaint about a neighbour's evergreen high hedge to the Council provided that they have tried and exhausted other avenues for resolving their hedge dispute. A "high hedge" for the purposes of the legislation means "so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreens and rises to a height of more than 2 metres above ground level." The legislation only applies to domestic properties.
- 2.2 The role of the Council is not to mediate or negotiate between the complainant and the hedge owner, it is to act as an independent and impartial third party and to adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property.
- 2.3 If it is considered that the circumstances justify it, the Council will issue a formal notice (a Remedial Notice) to the hedge owner which will set out what they must do to the hedge to remedy the problem and give a period of time for doing this. The remedial notice remains in force for as long as the hedge remains on site. It must be registered as a local land charge and will be binding on whoever owns or occupies the land and this includes not only whoever occupies or owns the land at the time the notice is issued but also their successors.

Failure to carry out the works required by the Council in the remedial notice is an offence which on prosecution could lead to a fine of up to £1,000.

- 2.4 The following points should however be noted: -
  - The legislation does not require all hedges to be cut down to a height of 2 metres.
  - When a hedge grows over 2 metres the Council does not automatically take action unless a justifiable complaint is made.
  - If a person complains to the Council it does not automatically follow that the Council will order that persons neighbour to reduce the height of their hedge. The Council will have to weigh up all the issues and consider each case on its merits.
  - The legislation does not cover single Leylandis etc (there must be a 'line of two or more') or deciduous trees.
  - The Council cannot require the hedge to be removed.

- The legislation does not guarantee access to uninterrupted light – the existence of gaps in a line of trees may 'significantly affect the overall effect as' as a barrier to light.

### **3. MAKING A COMPLAINT TO THE COUNCIL**

- 3.1 People cannot go straight to the Council with a hedge problem. They should involve the Council only as a last resort and the Council will expect that any complainant will have "taken all reasonable steps to resolve the matters complained of without proceeding by way of complaint." 'Reasonable steps' are likely to include: -
1. Being clear what the problem is and what they would like done to sort it out.
  2. Agreeing a time and place to discuss the hedge problem with the neighbour face to face rather than pushing a note through the door.
  3. Talking to the neighbour and also listening to their point of view.
  4. Looking at and discussing all the options and try to find the option that suits both parties.
  5. Putting the agreed answer into practice.
  6. Telling the hedge owner in writing that you are making a complaint to the Council.
- 3.2 The Council can charge a fee for dealing with high hedge complaints but there are no regulations that determine the maximum fee that local authorities can charge and therefore all Councils in England will be free to decide whether and at what level it is appropriate to charge for this service. The fee may be refunded in such circumstances and to such extent as the Council may determine. Anyone wishing to make a complaint must do so on the official complaint form and this will specify the fee payable.
- 3.3 If the complainant or the hedge owner does not agree with the Council's decision then they can appeal to the Secretary of State/Planning Inspectorate.
- 3.4 There is no set deadline for the Council to decide the complaint as it will take time to get a statement from the neighbour and to arrange a site visit and it is expected that the process will take at least 12 weeks.

The Council also has the power to carry out the required works in default of the hedge owner and recover their costs.

### **4. RECOMMENDATIONS**

- 4.1 After receiving a valid complaint the Council must decide whether the high hedge adversely affects the complainant's reasonable enjoyment of his property, which action should be taken and, if appropriate to serve a remedial notice. An appeal can be made by the recipient of the notice. Each complaint could involve between 4 and 10 hours work. Assuming an average time per complaint of 7 hours and an average hourly rate of £25 it is recommended that a fee of £175 is set. In respect of those receiving council tax and/or housing benefits it is recommended that the fee be reduced by 50%.
- 4.2 The Regulations issued under part 8 of the Anti-Social Behaviour Act in respect of functions relating to complaints about high hedges are not to be the responsibility of the Council's

Executive and it is suggested that delegated powers be given to Head of Leisure and Environmental Services to deal with functions relating to complaints about high hedges under part 8 of the Anti-Social Behaviour Act 2003. Such functions include power to determine complaints concerning high hedges as defined by Part 8 of the Anti-Social Behaviour Act 2003, power to pursue enforcement action, entering land and carrying out works to secure compliance with remedial notices and any other actions which are reasonably necessary to enforce any breaches of the law and to deal with appeal issues. As the Executive is not permitted to deal with the matter it is recommended that any policy or other issues arising from the legislation is delegated to the Planning Panel.

### **List of Appendices**

None

**List of Background Documents:** None

**List of Consultees:** Keith Parker, Head of Amenity and Environmental Services  
Richard Mellor, Landscape Technical Officer  
Vic Emmerson, Environmental Health Manager  
Sue Borwick, Head of Finance and Business  
Tony Pomfret, Principal Planning Officer