



Matters Relating to High Hedges

Notes to Local Authorities



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Email: communities@capita.co.uk
Online via the Communities and Local Government website: www.communities.gov.uk

July 2008

Product Code: 08 COMM 08415

ISBN: 978 1 4098 0251 8

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Notes to Local Authorities

The purpose of these notes is to:

- provide new guidance on the role of the Local Government Ombudsman and where work may be required to deciduous parts of high hedges
- clarify some issues, in the light of experience, relating to the issue of remedial notices and the proposed review of the legislation in 2010
- remind councils of the importance of accurately:
 - defining the hedge
 - calculating the height of the hedge to be required by the remedial notice and
 - specifying the works in the notice.

These notes should be considered as a supplement to the existing guidance contained in *High Hedges Complaints: Prevention and Cure* issued by the Office of the Deputy Prime Minister in 2005 and the frequently asked questions on the Department's website (see below).

A number of acronyms are used through these notes to refer to key sources of information as follows:

- Part 8 Anti-social Behaviour Act 2003 (**ASBA 2003**)
- *High Hedges Complaints: Prevention and Cure*. ODPM, 2005. (**P&C**)
- *Hedge Height and Light Loss*. ODPM 2004 (**HH&LL**) This was amended by a supplement issued in November 2005.
- Frequently asked questions (**FAQs**)

All these can be accessed at: www.communities.gov.uk/treesandhedges

Administration

Planning Inspectorate address

Please note that the address for sending appeals to the Planning Inspectorate (PINS) has been changed since P&C was published. When issuing decisions parties should be advised that if they wish to appeal they should contact PINS at:

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

Tel: 0117 372 8812

e-mail: environment.appeals@pins.gsi.gov.uk

Further information can be found at:

http://www.planning-inspectorate.gov.uk/pins/environment/high_hedges

Copying correspondence to all parties

To ensure that the complaint process is open and transparent, it is important to ensure that copies of all papers are provided to the main parties (see 5.37 P&C). The complainant should provide the hedge owner with a copy of his original complaint; however it is the council's responsibility to ensure that both the complainant and the hedge owner have copies of all relevant papers. Failure to do so causes further aggravation for the parties and can cause endless rounds of correspondence at appeal stage.

At appeal stage, councils must ensure that the list of documents recorded on the questionnaire is comprehensive. Care needs to be taken to ensure that libellous comments are not accepted as transmitting them to others might be unlawful.

After the issue of an appeal decision

Once an appeal decision has been issued, PINS has no jurisdiction in the case and they cannot offer interpretation of an Inspector's decision. Any resulting new or revised remedial notice is 'owned' by the council, who will be responsible for any enforcement action.

Local Government Ombudsman (LGO)

High hedge complaints by their nature, as essentially civil disputes, can be quite involved. Some councils have received criticism from parties about their handling of complaints. This has been followed in some cases to a complaint being made to the LGO. And this is often coupled with an appeal against the decision made by the council on the complaint.

It should be noted that the LGO will only accept a complaint against the **way** a council responds to a high hedge complaint (eg if it delays unreasonably in investigating the initial complaint or in taking enforcement action after a Notice has been issued), not about the council's decision or the content of any Notice. This is because most of the contents of the Notice in terms of required action carry clear and separable appeal rights to PINS. Where there are aspects of the contents of the Notice which do not have associated appeal rights to PINS, it is assumed that it was Parliament's intention that there should be no appeal on these aspects to PINS or complaint to the Local Government Ombudsman.

This has caused some disillusionment for those who wish to appeal the decision and at the same time, complain about the council's actions. It would be helpful if the main parties were made aware of this limitation to help manage their hopes and expectations of the process.

Data for five-year review in 2010

When Part 8 of the Anti-social Behaviour Act 2003 came into effect in 2005, we asked councils to maintain records of complaints and their outcome, to inform future review of the process. We have a commitment to carry out a five-year review in 2010. For each year of operation, the following information was suggested as being appropriate:

- numbers of enquiries about the legislation
- numbers of formal complaints received
- number determined
- number of remedial notices issued
- number of complaints about failure to comply with the requirements of a remedial notice (enforcement cases)
- number resolved informally
- number of prosecutions and outcome
- number of occasions that the authority used its default powers to carry out works to the hedge.

Your contribution to this review will be enhanced if this information is available. We have found recently sampled data from councils most useful.

Defining the hedge

Plans or maps of the hedge

Frequently, cases include discussion as to what constitutes the hedge under appeal, for example where there is a specimen tree in or at the end of an evergreen hedge. Councils should agree a location plan of the hedge, including measurements, with the parties at an early stage whether or not a remedial notice is to be issued.

Confusion arises where one party (council, complainant or hedge owner) did not expect or intend specific elements of a hedge to be included in or omitted from a remedial notice. It is important for the council to clarify and identify those species or specific trees that are being considered as part of the hedge in determining a complaint (see 6.5-7 P&C). Examples of appropriate wording are contained in the sample decision letter and remedial notice in the Appendices of P&C.

All this information will help to identify the extent of the appeal hedge and clear up any misunderstanding between the parties about which trees were dealt with at the complaint stage and those that are included in the remedial notice.

It is also important that North is marked on plans (including any produced by the council) to assist in assessing site orientation, particularly in respect of HH&LL calculations.

Protected trees

Occasionally trees protected by a tree preservation order (TPO) or which are growing in a conservation area are included in a hedge. TPOs identify trees of important amenity value and this should be a factor that is considered when dealing with a complaint (see 5.91, 5.93, 5.97 P&C).

Any work required by a remedial notice to such protected trees will override the protection afforded by the TPO. Work specified in a remedial notice does not require separate consent through conservation area controls or the TPO legislation (see 5.92 P&C).

Work to deciduous trees and shrubs

Where a hedge is predominantly evergreen, the deciduous trees and shrubs within the hedge may be included in the work specified in the remedial notice. However, the council has great flexibility when specifying the required actions (see 6.25-7 P&C). It can exclude specific trees or require different work to certain trees. But the overall effect of the work required by the remedial notice must aim to address the adverse effect of the hedge. If the council decides to require action to specific trees, their location in the hedge must be made very clear in the decision and remedial notice.

Hedge height and light loss

Hedge Height and Light Loss

In November 2005 revisions were made to *Hedge Height and Light Loss (2004)*. These were made to paragraph 4.2 – *Hedge Height and Garden Size* and Section 7 – *Other relevant factors* to clarify the garden calculations where the hedge grows only along part of the boundary. The revised version is available on our website at:

<http://www.communities.gov.uk/publications/planningandbuilding/hedgeheight>

Action hedge height calculations

The calculations using the HH&LL methodology have formed the basis of many appeals. This is understandable as both parties will be seeking to ensure that any decision to reduce the height of the hedge is based on sound information and accurately calculated figures. It is therefore important that the dimensions of the hedge are identified – and that where HH&LL is used – all measurements are taken and calculations are made as stated in that guidance. There is additional information available in the FAQs on our website (see above).

It is good practice to include the calculations with the decision letter to make the parties aware of the basis on which the complaint has been determined.

Defining the remedial work

Removal or destruction of a hedge

A remedial notice cannot require the removal of a hedge (s69(3) ASBA 2003).

However, there was some initial confusion regarding paragraph 6.24 of P&C, which deals with the effect of remedial work that councils may require, particularly where it might result in the death or destruction of a hedge. In our view, works that would result in the death or destruction of a hedge amount to the same as removing it and so are not permitted under the 2003 Act. Baroness Andrews wrote to all local authority chief executives on 20 April 2006 to clarify the position on this point and to stress that councils should consider each case on its merits and obtain arboricultural advice when judging whether or not a hedge will tolerate the remedial works proposed in a particular case. This letter can be found at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/letterhighhedges>

Compliance periods and staged cuts

It may be decided that a hedge needs to be cut in stages (e.g. over a period of 3 years to address the risk of major cutting destroying the hedge). You should note that compliance with the individual stages cannot be enforced. It is only the final outcome required by the initial action that can be enforced if it is not

completed by the end of the compliance period. It is therefore important that councils discuss staged cutting with the hedge owner to agree a programme of work. (See 6.14 P&C.)

Growing margins

Councils often issue remedial notices without specifying growing margins (see 6.33-9 P&C). These accommodate a year's regrowth between the initial and preventative action. In some cases the wording of the initial and preventative action has not been clear. Stating the same height for both has caused confusion, even resulting in appeals. The inclusion of a growing margin (or buffer zone) will help to avoid frequent technical breaches of the notice every time that a shoot grows above the maximum height stated in the notice. These problems may be overcome by referring to the suggestions for wording contained in the last appendix (*Remedial Notices: Specifying the Action*) of P&C.

Remedial notices

Preventative action

Several enquiries have been received regarding the possibility of requiring only preventative action in a remedial notice. The legislation states that the council must decide that the hedge "is adversely affecting the complainant's reasonable enjoyment" of his property before proceeding to issuing a remedial notice (see s65 ASBA 2003; 4.34 P&C). Remedial action would then be required to deal with that problem. Preventative action to create a growing margin could be required as part of the initial work. Preventative action may also be required on a regular basis to keep the hedge within defined dimensions. It is our view that if the hedge is not having an adverse effect then there is no initial action required and so a remedial notice cannot be issued. It follows that a notice cannot be issued that requires only preventative action.

Remedial notices

If the council considers that work is required to a hedge about which a complaint has been made under Part 8 of the Anti-social Behaviour Act 2003, they will provide an open and transparent service by issuing **separate** decision letters and remedial notices. Examples of both these documents can be found on pages 105-114 of P&C. It would also be useful to include any calculations, for example from HH&LL, which may have been used to inform the council's decision.

Birds

The Wildlife and Countryside Act 1981 makes it an offence to kill, injure or take any wild bird or to take, damage or destroy any nest that is either in use or being built. Similarly it is an offence to intentionally or recklessly disturb a bird listed in Schedule 1 of the Act while it is building a nest, is on or near a nest containing eggs or young, or disturbs the dependent young birds. There are a

number of exceptions to the offences including the provisions for licences to be issued under Section 16 of the Act.

As conditions cannot be included in a remedial notice, councils are advised to add an informative note regarding the Wildlife and Countryside Act 1981 (see sample remedial notice in the Appendices of P&C).

The operative date should also take into account that where birds are nesting in a hedge work should not be carried out between March and August. Where necessary the operative date should either be delayed or the compliance period extended to accommodate the bird nesting season (see 6.56 of P&C). Further information can be found on the Royal Society for the Protection of Birds website at www.rspb.org.uk/birdlaw.

Operative date

Some councils are making the operative date (the date on which the notice becomes effective) the same as their decision date. The Act and P&C state it should be at least 28 days later (see 6.12 P&C) to allow the parties time to appeal.

Compliance periods

The compliance period is the time within which the initial action must be carried out. Compliance periods stated within remedial notices should be periods of time (X weeks/months) and not a specific date (see s69(6) ASBA 2003). Examples of appropriate wording are contained in the sample remedial notice in the Appendices of P&C. This approach also removes the need to change the dates defining compliance periods when notices are varied or revised by the council, or PINS on appeal.

When does a remedial notice become ineffective?

A remedial notice requires work to a hedge which is adversely affecting a neighbouring domestic property. It is issued to the hedge owner and must be registered as a local land charge. The notice will remain effective until it is removed from the land charges register. (See 6.59-62 P&C.)

Councils should withdraw a notice where it is clear that a hedge has been removed or destroyed or is no longer a 'high hedge' as defined in the legislation (i.e. trees/shrubs have been removed so that there are no longer two or more evergreen trees or shrubs in a line, over 2m high, which are a barrier to light or access - see 7.47-49 P&C). The council should also consider paragraphs 4.17-4.21 of P&C where the remaining parts of the hedge continue to have an adverse effect on the complainant's property or where preventative action is still required. The remedial notice may still be enforceable or its requirements waived or relaxed (see s70 ASBA 2003; Chapter 7 P&C).

Where the hedge owner has only cut the hedge below 2m but has not killed it, the remedial notice may still be enforceable in the future. If the hedge has the capacity to grow over the maximum height allowed in the notice, the notice may still be required. It should not be automatically withdrawn.

ISBN: 978 1 4098 0251 8

ISBN 978-1-4098-0251-8



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