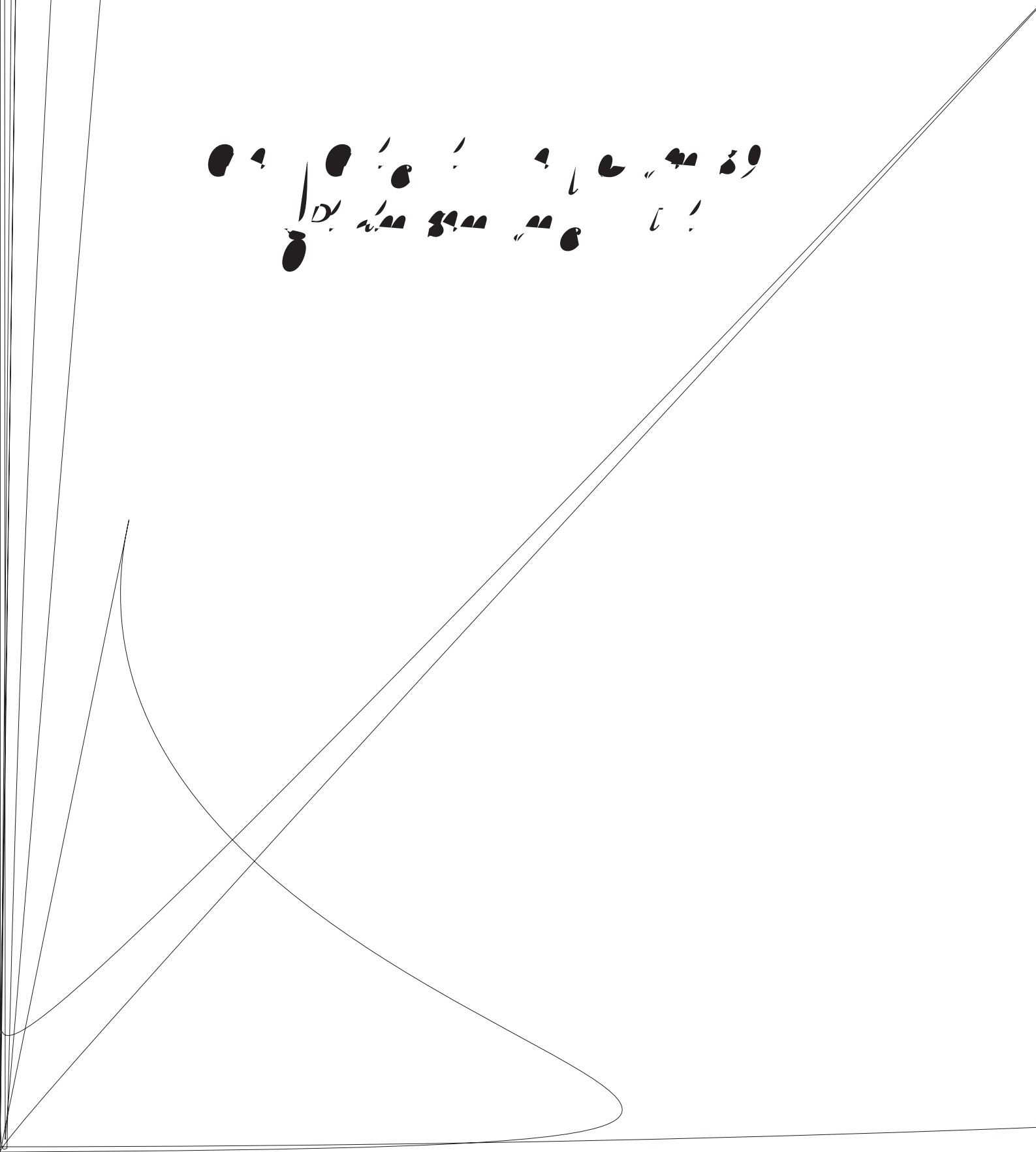


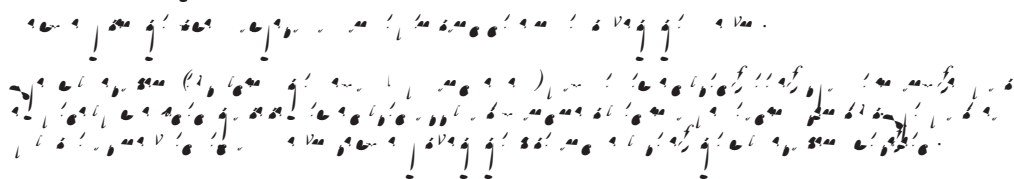


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CONTENTS

Preface	5
Chapter 1: Preventing hedge problems	6
Good Design	6
Planning Conditions	8
Covenants	8
Better Information	9
Chapter 2: Settling problems amicably	10
Negotiation	10
Mediation	10
Sources of Help and Advice	10
Chapter 3: Complaining to the Council: introducing the law on high hedges	12
The Law	12
Role of Local Councils	12
Chapter 4: What complaints Councils can consider	14
High Hedges	14
Location of the Hedge	17
Affected Property	18
Grounds of Complaint	18
Who Can Complain	20
Invalid Complaints	21
Chapter 5: Dealing with complaints	22
Informal Action	22
Making a Formal Complaint	22
Whether or Not to Proceed with a Complaint	25
Gathering the Evidence	27
Assessing and Weighing the Evidence	29
Other Relevant Factors	32
Deciding the Complaint	36
Change in the Main Parties	39
Withdrawing a Complaint	39
Delivering Documents	39
Chapter 6: Remedial notices	42
Contents of the Notice	42
Remedial Works	45
Duration of Remedial Notice	50
Chapter 7: Withdrawing and relaxing remedial notices	51
Correcting Errors	51
Extending the Compliance Period	53
Main Parties Agree a Different Solution	54
Material Change in Circumstances	55
Case Beyond the Scope of the Act	57
Exceeding the Requirements of a Remedial Notice	60

Chapter 8: Appeals	61
Rights of Appeal	61
Grounds of Appeal	61
Before Making an Appeal	65
Submitting an Appeal	65
The Parties to an Appeal and their Role	66
Appeals Procedure	68
Appeal Decision	70
Withdrawal of Appeal	70
Review of Appeal Decision	70
Chapter 9: Enforcement	72
Offences	72
Defences	73
Enforcement Procedures	74
Documenting the Case	75
Investigations	75
Enforcement Action	76
Entry to Land	79
Appendix: Sample forms and letters	80
Flow charts	
Fig. 1 Whether, or not, to proceed with a complaint	15
Fig. 2 Weighing the evidence	35
Fig. 3 Request to withdraw or relax a remedial notice	52
Fig. 4 Overview of process	58
Fig. 5 Appeal process	62
Fig. 6 Options for enforcement	73

Preface

This Guide sets out the Government's policy advice on administering complaints about high hedges in England, under Part 8 of the Anti-social Behaviour Act 2003. It outlines the law and suggests ways in which Councils can run the system in line with good administrative practice. In addition, it offers advice on the steps people can take to avoid more hedge problems in the future and, where they do arise, how they might settle the matter amicably.

When using this Guide, two points need to be borne in mind. First, Councils and others are not required to follow the advice given. Secondly, it should not be relied on as a definitive statement of the law. The law is contained in the relevant primary and secondary legislation; this document is for guidance only. Anyone unsure of their legal rights or obligations should consult a solicitor.

Any questions about the Guide should be addressed to the Trees and Hedges Team, Zone 3/C5, Eland House, Bressenden Place, London SW1E 5DU or emailed to hedges@odpm.gov.uk.

Chapter 1: Preventing hedge problems

- mitigating the impact on them of what might otherwise be perceived as intrusive

- 1.13 If vigorous hedges are essential, the adverse impact on neighbours can be reduced by:
- close spacing of the individual trees or shrubs that make up the hedge. Competition between the plants will help to limit their eventual size, compared to more widely planted hedges;
 - planting well within boundaries, so that growth does not spread into neighbouring properties and to aid all-round maintenance.

Planning Conditions

- 1.14 Local planning authorities may enforce this good design practice by attaching suitable conditions to planning permissions that they grant for new developments – including development of existing properties, such as extensions.
- 1.15 Guidance on the use of conditions in planning permissions is set out in Department of the Environment circular 11/95. This indicates that planning conditions should be imposed only where they are necessary or reasonable, and should be precise, enforceable and relevant both to planning and to the development in question.
- 1.16 The circular recognises that the use of conditions may be necessary to secure a high quality of design if a development is to make a positive contribution to its surroundings. This includes the

Chapter 2: Settling problems amicably

- 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. For this reason, the law requires people to have taken reasonable steps to try to settle their hedge dispute for themselves before complaining to the local Council (see Chapter 5: [Neighbourhood Disputes \(Anti-social Behaviour\) Act 2014](#)).
- 2.2 The Community Legal Service leaflet [How to deal with neighbour problems](#)³ includes information on a variety of procedures for resolving disputes, short of going to court. Not all of those mentioned will be suitable for settling neighbour problems. Negotiation or mediation are likely to offer the best chances of success.

Negotiation

- 2.3 It is often daunting to tackle neighbours about a problem, and best not done in the heat of the moment. Advice on how to deal with neighbours in a way that is more likely to lead to an agreed solution is in the leaflet [How to deal with neighbour problems](#)⁴.

Community Legal Centre

- 2.10 The Community Legal Service is a public organisation that helps people to find the right legal information easily. They maintain the Community Legal Service Directory, which lists lawyers and advice centres that meet certain quality standards. The entry for each organisation in the Directory provides information on whether services are generally free or whether there is a charge.
- 2.11 The Directory is accessible through the Community Legal Service website at www.clsdirect.org.uk and through local libraries.

Citizens Advice Bureau

- 2.12 Citizens Advice Bureaux give free, confidential, impartial and independent advice on a range of subjects. They will be able to put people in touch with their local community mediation service or help someone to work out what they might say, or put in a letter, to their neighbour.
- 2.13 They also run an online advice guide containing up to date and practical information, at www.adviceguide.org.uk. People can locate their nearest Citizens Advice Bureau through this site, as well as through the local telephone book.

Other help

- 2.14 The Community Legal Service website describes, and has links to, other sources of help and advice. In addition, some firms of solicitors offer a set amount of initial free advice, either by email, over the telephone or through personal interview. Some membership organisations, such as the Country Land and Business Association or Saga, are also able to provide members with advice on legal issues.

Chapter 3: Complaining to the Council: introducing the law on high hedges



3.1 People normally do not need permission to plant a hedge in their garden. And there are no

account of all views and relevant factors – including the hedge owner’s amenity and that of the wider neighbourhood. They will assess each case on its particular merits.

- 3.10 If they think it is justified, the Council may order the hedge owner to remedy the problem by, for example, reducing the height of the hedge and maintaining it at the lower level. The Council can only require works to the hedge that address any problem it is causing. There is nothing in the Act that says nuisance hedges must be cut down to 2 metres.

Line of trees or shrubs

- 4.7 A complaint cannot be made under the Act about single trees or shrubs, whatever their size. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single tree or shrub and so falls outside the scope of the Act. This is the position even though the multiple stems might result in a considerable spread.
- 4.8 The two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. It is unlikely, therefore, that the definition will catch groups of trees, copses or small woodlands – unless they have a row of trees bounding them.

Types of trees and shrubs

- 4.9 The Act applies not only to Leyland cypress or conifers but also includes other evergreen trees or shrubs, such as laurel. It does not include climbing plants, such as ivy, or bamboo – which is classed as a grass.
- 4.10 The term semi-evergreen is not separately defined in the Act but normally means that the hedge retains some live foliage throughout the year. Depending on geographical location, this could include privet. The further north, the more likely that a privet hedge will lose its leaves over the winter and so would not be covered by this definition.
- 4.11 Beech and hornbeam hedges are excluded. Although they may retain some foliage for most of the year, this is brown and dead.
- 4.12 Reference works such as *Field Book of Trees and Shrubs* or the *Wildflower Field Guide* may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.
- 4.13 A hedge does not have to comprise wholly evergreen or semi-evergreen trees or shrubs to fall within the definition. The Act applies to hedges that are predominantly evergreen or semi-evergreen. Whether a particular hedge is mostly evergreen or semi-evergreen is a matter of judgement. It does not necessarily require a set number or proportion of the trees or shrubs in the hedge to meet this description.
- 4.14 The effect of including predominantly evergreen or semi-evergreen hedges is to bring mixed hedges – that include some deciduous species – within the scope of the definition. Thus deciduous trees that are located within a predominantly evergreen hedge might be the subject of a complaint under the Act.

Measurement of height

- 4.15 The 2 metres should be measured from the ground where the hedge is growing – that will usually be on the hedge owner's side. Even if the property affected is on a lower (or higher) level than the land where the hedge is situated, the 2 metres should still be measured from the ground where the hedge is growing.
- 4.16 For these purposes, ground level means the natural level of the ground where the hedge is situated. Normally, therefore, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge. An exception might be where the hedge has been planted on a mound, or in a bed or other container that is raised above the ground. In such a case, the measurement should be from the natural ground area rather than of the hedge alone.

Barrier to light or access

- 4.17 The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, are a barrier to light or access. This is about the physical appearance of the trees and shrubs in question – and whether or not they form what we might commonly consider to be a hedge. Only what they look like above 2 metres counts. This is consistent with the fact that complaints cannot be brought against 2 metre high hedges. It effectively takes anything below this height outside the scope of the Act.
- 4.18 Whether a particular hedge meets this criterion is a matter of judgement, depending on its composition, form, growth habit, and past management. The key question is whether – even though there might be gaps in the foliage or between the trees or shrubs – the hedge is capable of obstructing light or views.
- 4.19 The trees or shrubs in the hedge may have been closely planted and become so entangled that they appear as a solid green wall. In such circumstances, the matter is straightforward: the hedge is evidently capable of blocking light or views. Other cases may be more difficult to judge. The trees or shrubs may be more widely spaced so their branches are not touching. Branches might have fallen off or been removed so the canopy is lifted. Or the growth might be straggly and foliage sparse. Such cases must be assessed individually, on their particular merits. But, if individual trees or shrubs are so widely spaced, or the gaps in the foliage are so extensive, that it is possible to see what lies behind them, then the hedge might fall outside the Act.
- 4.20 If someone were to remove every other tree from their hedge, whether or not it would still be caught under the definition would depend on what the hedge looks like afterwards. If, despite any gaps, the hedge still acts as a barrier to light or access; and it comprises wholly or predominantly a line of two or more evergreen or semi-evergreen trees or shrubs; and it is over 2 metres high – then it would meet the definition of a high hedge. Insofar as parts of the hedge meet the definition, they could be considered as individual hedges.
- 4.21 This first step looks at the structure of the hedge and its potential to obstruct light or access. Whether or not the hedge actually obstructs light or access to the complainant's property is not relevant here. This criterion cannot be used, therefore, to filter out complaints where the hedge is considered to have little adverse impact on the complainant's property. Whether any gaps in the hedge make a material difference to its effect on the complainant's reasonable enjoyment of their property is a separate issue, to be taken into account in determining the complaint (see Chapter 5: *What to do if you have a complaint*).

Location of the Hedge

- 4.22 The Act⁸ says that the hedge must be on land that is owned by someone other than the complainant. Otherwise, there is no restriction on where the hedge is situated. It is the effect of the hedge on a domestic property that is important, rather than where it is located.
- 4.23 Although the Act describes where the hedge is growing as “neighbouring land”, the use of the word neighbouring has no special significance here. In particular, the hedge does not have to be next door. It could, in theory, be several gardens down the road. Though, in practice, the farther away a hedge is, the less its impact and the less chance that a complaint will be successful. Nor does the hedge have to be wholly on a neighbour's property. It could extend over several properties.
- 4.24 In addition, the offending hedge does not have to be growing in someone else's garden. It could, for instance, be on parkland that backs onto a garden or yard, or on commercial premises.

⁸ Section 65.

Hei h

- 4.35 The Act applies only to problems experienced because the hedge is too tall. This includes obstruction of daylight and sunlight, jointly or as separate issues, as well as the visual impact of the hedge.
- 4.36 Problems associated with the width of the hedge, where it overhangs and intrudes on the complainant's property, will not normally be considered. The exception might be where the height of the hedge is a contributory factor. For example, a hedge might be so high that the complainant could not reasonably be expected to trim overhanging branches, and so cannot alleviate the problems it is causing.
- 4.37 Grounds of complaint that are unrelated to the hedge that is the subject of the complaint will also generally be disregarded. For example, claims that other hedges in the area are maintained at a lower height.

Invalid Complaints


4.48 If a Council reject a complaint because it does not meet the requirements set out in this Chapter and so falls outside the scope of the Act, they should inform the complainant as soon

Fee

5.13 The Act¹⁶

5.24 Councils should not, however, use this provision to turn away complaints where limited evidence has been provided of the problems caused by the height of the hedge. They should instead ask the complainant for additional information so that they can consider the matter further.

Rea _o_a l_e e _o_e _b_e h_e t _e a_m_m a l

5.25 What steps people should have taken before approaching the Council will vary from case to case, depending on the circumstances. It will not be enough, however, for people to claim that their neighbour is unapproachable. Further information on how people might settle their hedge dispute is in the leaflet 

5.26 In some cases the people concerned might be encouraged to try mediation. This is a quick and informal means of resolving disputes – with a high rate of success. But it works best where people willingly participate. For this reason, it is not a compulsory part of the process.

5.27 In other cases, where communication has completely broken down, a couple of exchanges of letters might be all the Council can reasonably expect.

5.28 For some people, their hedge problems will be long-standing and date back to well before the Act came into operation (1 June 2005). During this time they may have made several attempts to settle the matter through negotiation and been repeatedly rebuffed. Nevertheless, they should make a fresh approach to the person living where the hedge is situated before making a formal complaint to the Council. Circumstances will have altered significantly as a result of this new law. The person with the hedge might not welcome the Council's involvement and so might be more inclined to co-operate. If communication has broken down, or people are nervous of approaching their neighbour, they might prefer first to write to the person with the hedge to inform them of the change in the law and asking to discuss the problem. If the approach is rejected or there is no response, it would be advisable to warn the person that a formal complaint would be made to the Council.

5.29 As noted in paragraphs 5.1 to 5.5, people are encouraged to discuss with the Council – before submitting a formal complaint – what action they have taken to try to settle matters by negotiation and what other avenues might be open to them.

5.30 If, nevertheless, Councils receive a formal complaint, with the right fee, but think the people concerned could do more to settle the dispute themselves, they should explain what additional steps the complainant should take. The Council would put the case on hold while further action is taken to resolve the matter. They would re-activate the original complaint should these steps prove unsuccessful. It will be for Councils to consider whether they should refund fees in cases where the further action taken by the complainant leads to the successful resolution of the complaint.

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5.31 The requirements to take prior steps to resolve the dispute through negotiation and (depending on the terms of the local scheme) to pay a fee up-front when making a complaint should help to discourage frivolous or vexatious complaints reaching the Council in the first place.

5.32 Whether a complaint is frivolous or vexatious will turn on its particular circumstances and so needs to be considered on a case by case basis.

5.33 The most obvious example is where someone repeatedly complains (unsuccessfully) to the Council without there having been any significant change in circumstances that would affect the Council's decision.

Gathering the Evidence

- 5.34 The Act does not specify the procedure that Councils must follow in determining complaints. But they should take into account all relevant factors and should assess each case on its particular merits. They will need, therefore, to gather information about the hedge and its effect on both the complainant and the person occupying the land where the hedge is situated. It is suggested that the necessary information is collected through an exchange of representations and a visit to the site.
- 5.35 The following section on *Main parties* offers advice on how Councils might assess the various issues raised. This has a direct bearing on the information they will need to collect.

Main parties

- 5.36 The main parties to a complaint about a high hedge are:
- everyone who is a complainant; and
 - every owner and every occupier of the land where the hedge is situated.
- 5.37 The Act²⁰ requires all these people to be notified of the decision on a complaint, and so they should all play an equal part in the process leading to that decision. References to the main parties in the rest of this and subsequent Chapters include all the above. In particular, **it is important that the main parties are given copies of all submissions made to the Council so that the process is open and transparent.**
- 5.38 Where the hedge is located on a property containing flats or houses in multiple occupation, everyone living there, as well as the owner of the lease or freehold, would be a party to the complaint and should see all relevant papers.

Exchange of representations

- 5.39 Having satisfied themselves that the complaint is one they can deal with, the Council should normally send a letter of acknowledgement to the complainant giving the name and contact details of the officer dealing with the case. The letter should also explain briefly the procedure that the Council will follow. In particular, it should make clear that comments will be sought from the owner and occupier of the land where the hedge is situated and that the Council intends to visit the site. A sample letter is in the Appendix.
- 5.40 The Council should then write to everyone who owns and occupies the land where the hedge is situated, notifying them formally that the Council are considering a complaint about their hedge. The complainant should have sent them a copy of the complaint at the same time as it was submitted to the Council and so the approach from the Council should not come as a surprise.
- 5.41 The letter should explain briefly the procedure that the Council will follow, including that the Council intends to visit the site. In particular, it should invite the owner and occupier of the land where the hedge is situated to comment on the points raised by the complainant and to provide any additional information that they wish the Council to consider. Copies of these papers should be sent to the complainant at the same time as they are submitted to the Council. The Council might wish to seek confirmation this has been done.

²⁰ Section 68(6).

- 5.42 Councils might wish to use the sample letter and questionnaire in the Appendix to ensure information is provided in a consistent format. As noted above, where the property comprises flats or houses in multiple occupation, this letter should be sent to everyone living there, as well as the owner of the lease or freehold.
- 5.43 The section below on [tracing owners and occupiers](#) provides advice on the steps that Councils might reasonably take where they are having difficulty in tracing the names and addresses of owners and occupiers of land, to try and ensure they receive key documents and so are aware of what is happening.

In the area

- 5.44 Most cases are unlikely to raise wider neighbourhood issues and so Councils should not normally publicise these complaints in the same way that they do with planning applications. An exception might be where the trees in the hedge are protected by a tree preservation order, or it is situated in a conservation area.
- 5.45 Councils might wish to seek views from the occupiers of properties, other than the complainant's, that might be affected by the hedge and so could potentially be affected by the Council's decision on the complaint. For example, properties that lie between the complainant's and the land with the hedge, or where a single hedge borders several adjoining properties.
- 5.46 Otherwise, representations from people not directly involved in the dispute (eg petitions or other expressions of support from neighbouring properties) should be discouraged. Their

5.60 The size of the garden that is protected by the hedge will, therefore, be one factor in considering what is reasonable in any particular case. Other topographical features and local climatic conditions may also be relevant. For example, a higher hedge height might be justified where the garden is in an exposed position or in an area where high winds occur frequently.

5.70 The exception might be where the hedge is so high that someone could not reasonably be expected to trim branches that overhang their property. And, as a result, they are unable to

Passive solar properties would normally be characterised by a main window wall facing within 30 degrees of due south, significantly larger windows on the south facing wall compared to the

- 5.86 Factors that might be taken into account include how close the hedge is to buildings; the height and length of the hedge; its bulk and mass; and the area that it covers compared with that of the garden. The immediate surroundings, especially what else borders the property, and the general characteristics of the area might also be relevant. For example, the presence of other hedges and their impact; other buildings or features which, without the hedge, might be visually intrusive; whether the area is characterised by a sense of openness. Just because trees in the hedge are taller than neighbouring buildings will not necessarily be material.
- 5.87 The importance of these factors, and their effect on the reasonable enjoyment of the property, will vary according to the circumstances. As a general rule, however, it is not reasonable for someone to expect to see beyond the hedge to a particular landscape, seascape or object, such as an attractive building. On the other hand, it might be reasonable to expect that a property should not suffer serious visual intrusion, which has an oppressive effect on living conditions. Equally, if the surrounding development is characterised by openness, it might be reasonable to expect that the property should not be unduly enclosed by a high hedge.

Effect of gaps

- 5.88 When assessing these or other factors, the effect of any gaps in the hedge should – where relevant – be taken into account. The extent of any gaps and their position in the hedge could be material. In some cases, the depth of the hedge might mean that gaps have little appreciable effect. In others, especially where the canopy is raised, the impact could be significant.

Factors that may not be relevant to the impact of the hedge

- 5.89 As noted in Chapter 4: *Factors that may not be relevant to the impact of the hedge*, some points might arise that are not directly related to the impact of the hedge and so should be discounted. Such points might include:
- fears that 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.

Other Relevant Factors

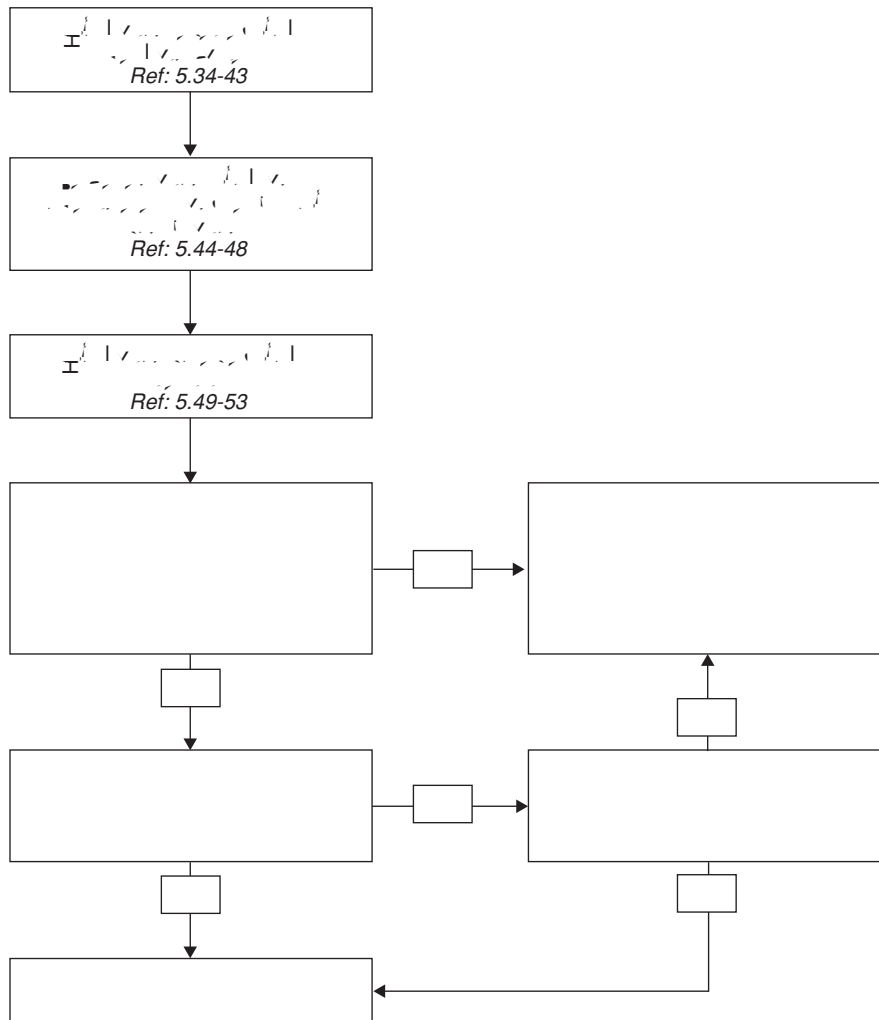
- 5.90 In assessing high hedge complaints, Councils should take account of all relevant factors. This will include not only points raised by the parties in their representations but also the interests of the community as a whole. In so doing, Councils might need to have regard to other legal restrictions – intended to protect the wider public interest – that could apply.

Private amenity

- 5.91 In all cases, Councils should consider the contribution that the hedge makes to the amenity of the area, and the impact of possible works to the hedge. There are various systems or methods for assessing the amenity value of trees in a structured and consistent way. Local landscape character assessments or development frameworks might also be relevant.

Covenants

- 5.98 Some properties have legal covenants that stipulate the size or type of hedge than can be grown. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. These are private rights or restrictions which are normally enforceable through the civil courts.



- 5.99 The terms of a covenant could, nevertheless, be relevant to a complaint, though they would not necessarily be decisive: it is possible that other factors, including the wider public interest, could have greater weight and importance. How long ago the restriction was introduced, its original purpose and whether circumstances remain the same or have changed significantly might be material in considering the continuing relevance of any covenant.
- 5.100 A remedial notice would not override the requirements of a covenant. In the event of a conflict between the two sets of requirements, it would be open to the hedge owner to apply to the Lands Tribunal to discharge or modify the covenant³¹. The existence of a covenant could also be a mitigating factor in any prosecution for failure to comply with the terms of a remedial notice. It is possible, however, that where a covenant gives rise to a clear nuisance, the courts might attach little weight to it.

Deciding the Complaint

5.101 If a Council proceed with a complaint, the Act³² requires them to decide two matters:

- in the first place, they must decide whether the hedge is, because of its height, adversely affecting the complainant's reasonable enjoyment of their property; and
- if they find that the height of the hedge is causing problems, the Council must then consider what action (if any) should be taken to remedy the situation and prevent it from recurring.

The sorts of action that might be taken to remedy the problems caused by a high hedge and to prevent them recurring are considered in Chapter 6:

Main heading

5.102 In reaching their decision, the Council should consider all relevant factors and assess each case on its particular merits. They should seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, to produce a proportionate response to the complaint. It will normally be a question of weighing up the harm caused by the hedge, on the one hand, against its amenity value – to the hedge owner and the wider community – on the other.

5.103 In carrying out this balancing act, Councils might wish to ask themselves:

- is the hedge, because of its height, adversely affecting – to some degree – the enjoyment that the complainant might reasonably expect to get from their property, having regard in particular to the grounds cited in the complaint;
- how severe is the impact of the hedge on the complainant's property;
- is this sufficient to justify action b 1 0 Ou3en to remedy the prtters:]TJ18 0 0 18 119.0551 380.5991 m0 T

Complaints in hedge cases

- 5.105 Councils are advised to keep a clear record of how they reach their decision, to inform the decision letter and for use in any subsequent appeal. They might wish to prepare a report, in a standard format, which could be appended to the decision letter. This would help to provide assurance to the main parties that their representations and other information provided have been fully considered and demonstrate how they have been assessed. Such a report might include the following:
- a description of the hedge and its surroundings;
 - relevant policies or other legislation that might apply (eg tree preservation order, conservation area, local Biodiversity Action Plan);
 - case for the complainant;
 - case for the owner or occupier of the land where the hedge is situated;
 - representations received from anyone else and the results of any consultations carried out;
 - appraisal of the evidence;
 - conclusions and recommendation.
- 5.106 The Act³³ requires the Council to notify the complainant and every owner and every occupier of the land where the hedge is situated of their decision, and the reasons for it, as soon as is reasonably practicable. If they decide to issue a remedial notice, this must also be copied to all the main parties. The remedial notice, and any notification of the reasons for issuing it, are the only documents referred to in the Act that cannot be sent electronically.
- 5.107 The Council should also explain the rights of appeal against their decision, enclosing a copy of the explanatory leaflet 'Your Rights of Appeal' and providing the contact details for the Planning Inspectorate. Chapter 8: 'Your Rights of Appeal' explains the grounds on which such an appeal can be made.
- 5.108 A sample decision letter is in the Appendix. The reasons for the decision should be clear, precise and as full as possible to help the main parties assess the merits of an appeal.
- 5.109 A copy of the Council's decision letter should be sent to any other interested parties who have been involved in the case (see section above on 'Interested Parties').
- 5.110 Where the Council decide not to issue a remedial notice because any action to remedy the adverse effect would be minimal, they should consider providing practical advice on how the hedge might be maintained so that it does not cause problems in the future.

Uncommon cases

- 5.111 Some complaints might result in more than one decision letter or remedial notice being issued:
- a. **Multiple complainants, single hedge, one owner** require multiple decisions. As indicated previously, each complaint should be considered separately and individually and so separate decision letters and remedial notices should be issued. Each notice would need to specify the section of hedge in relation to which action should be taken to deal with the effects on the property that is the subject of the particular complaint. The practical implications for the

³³ Section 68(4), (5)(b) and (6).

hedge owner in terms of compliance with the various remedial notices are discussed in Chapter 6:

- b. **One complainant, single hedge, multiple owners.** Although included here, nevertheless the Council would issue a single decision letter and remedial notice and send copies to every owner and occupier of the properties where the hedge is situated, as well as to the complainant.
- c. **One complainant, multiple hedges, one owner.** A single decision letter would be sent to the complainant and the owner and occupier of the land where the hedge is situated but separate remedial notices would need to be issued in respect of each hedge or part of hedge that meets the legal definition and is affecting the complainant's property.
- d. **One complainant, multiple hedges, multiple owners.** As before, a single decision letter would be sent to the complainant and every owner and every occupier of the land where the hedges are situated but separate remedial notices would need to be issued in respect of each hedge or part of hedge that meets the legal definition and is affecting the complainant's property.

Officer of the Council

- 5.112 Under the Local Government (Functions and Responsibilities) (England) Regulations 2000 as amended³⁴, responsibility for all functions relating to high hedges rests with the full Council and not with the Executive, where such arrangements exist.
- 5.113 Most complaints are likely to deal with private matters that are of concern only to the people involved and so Councils might wish to delegate the decision to officers. A committee or subcommittee of the Council might wish to decide those cases that raise wider neighbourhood issues and are locally sensitive.

Complaints about the Council

- 5.114 There are no special procedures laid down in the Act for dealing with complaints in which the Council is directly involved as one of the main parties. The hedge might, for example, be on land owned by the Council.
- 5.115 It is important that the process for deciding such complaints is seen to be fair and impartial. Councils should, therefore, consider setting up internal procedures to ensure that the complaint is considered by a committee or officers who do not have responsibility for managing the land or trees in question. This should avoid any potential conflict of interest.
- 5.116 If someone believes that the Council did not make the decision in the right way, they can refer the matter to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.
- 5.117 If they disagree with the decision on a complaint, they have a right of appeal to the Secretary of State.

Timeline

- 5.118 The Act sets no timetable for the Council to reach a decision on these complaints. The leaflet

³⁴ Statutory Instrument 2000 No. 2853, to which relevant amendments have been made by Statutory Instrument 2005 No. 714.

decision on their complaint for at least 12 weeks. If the Council take too long, someone could complain to the Council's own complaints officer or to the Local Government Ombudsman.

- 5.119 The absence of statutory time limits provides flexibility so that other means of resolving the dispute can be pursued even after a complaint has been lodged with the Council – and without the complication of stopping and starting clocks.
- 5.120 It is important that, once a complaint has started, people do not find themselves locked into a rigid process. If, at any time, the main parties and the Council consider that the dispute might be resolved through negotiation or by reference to any local community mediation service, the formal complaints procedure should be halted.
- 5.121 Should any attempt to settle matters in this way fail, there is no need to restart the process from the beginning. But the Council would normally need to agree with the main parties how the threads should be picked up. It might, for example, be advisable to allow a further round of representations so that the Council have up to date information, even if the exchange of representations had previously been completed.

Change in the Main Parties

- 5.122 It is possible that one or more of the main parties to the complaint might change while it is being considered by the Council.
- 5.123 In these circumstances, there is no legal bar to the complaint proceeding. However, Councils might consider suggesting a breathing space to allow the people concerned an opportunity to settle the dispute by negotiation.
- 5.124 Where this fails, Councils should ensure that the new people have all relevant papers and give them a chance to submit further representations. If it is the complainant who has changed, the Council should also obtain confirmation from them that they wish the complaint to proceed.

Withdrawing a Complaint

- 5.125 The complainant may withdraw their complaint at any time before the Council issue their final decision and any remedial notice. Discussion and negotiation between the people involved in the dispute can continue all the time that the Council are considering a formal complaint. If the people concerned can agree a way forward, the complaint should be withdrawn.

Delivering Documents

- 5.126 The Council's decision letter, and other documents or notices mentioned in the Act and Appeal Regulations, must be delivered in one of the following ways³⁵:
- by putting the papers in the hands of the person in question;
 - by leaving the documents at the person's usual or last known address;
 - by sending them by post to that address.
- 5.127 Under the Interpretation Act 1978, documents sent through the post are, unless the contrary is proved, deemed to have been delivered in the ordinary course of the post – providing they were properly addressed and postage had been paid.

³⁵ Section 79(1) and (2).

- 5.128 In the case of an incorporated company or body, the documents may be delivered to the company's secretary or clerk at the registered or principal office, using the methods mentioned above³⁶.
- 5.129 When a document or notice is to be sent to someone as the owner or occupier of land and the name or address of that person cannot – after reasonable enquiry – be found, the document or notice will be regarded as having been delivered if³⁷:
- it is left in the hands of some person who appears to be living, or employed, at those premises; or
 - it is conspicuously fixed to some building or object on the land in question.
- 5.130 These arrangements apply to the following documents or notices:
- complaint form and accompanying documents;
 - Council's decision on the complaint;
 - remedial notice;
 - Council's decision to withdraw a remedial notice, or to waive or relax its requirements;
 - appeal form and accompanying documents;
 - preliminary information supplied by the Council in connection with an appeal;
 - appeal questionnaire;
 - other information or documents submitted in connection with an appeal;
 - appeal decision;
 - notice of intended entry to land (see Chapter 9: " s 16 ").

Electronic delivery

- 5.131 Apart from a remedial notice and the Council's decision letter explaining why one has been issued, all the other documents mentioned above can be sent electronically³⁸. This includes sending by fax and by email and making documents available on a website, such as through a web-based portal³⁹. There are, however, certain conditions that must be met before documents can be delivered through these means.
- 5.132 Before documents can be sent electronically, such as by fax or by email⁴⁰:
- the person receiving the documents must agree to them being sent in this way;
 - the documents must be sent to an electronic address provided by the recipient and in the format they have specified.

³⁶ Section 79(3).

³⁷ Section 79(7).

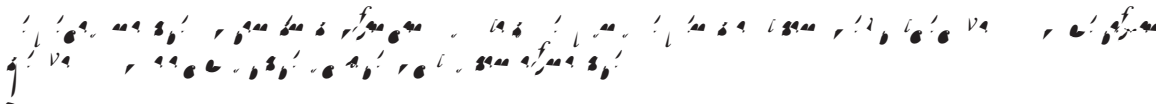
³⁸ Section 80(1).

³⁹ Section 80(2).

⁴⁰ Section 80(3).

- 5.133 Before documents can be made available on a website, such as through a web-based gateway or portal⁴¹:
- the person receiving the documents must agree to them being delivered in this way;
 - notice must be given to the recipient, in a manner agreed with them, informing them:
 - when the document in question has been placed on the website; and
 - the website address, and where within that site, it can be found.
- 5.134 Documents sent through these means will, unless there is evidence to the contrary, be treated as having been delivered at 9.00 am on the next working day after they have been transmitted electronically (such as by fax or email) or after the recipient has been informed that they have been made available on a website (such as through a web-based portal)⁴². For these purposes, a working day does not include Saturdays and Sundays, Christmas Day, Good Friday or any other Bank Holiday in England⁴³.
- 5.135 Thus, if a document were sent electronically on Christmas Eve, it would be treated as if it had been delivered at 9.00 am on 27 December, unless this was a Saturday or Sunday. Such matters become critical only where there are statutory time limits for the submission of documents. This applies primarily to appeals (see Chapter 8).

Chapter 6: Remedial notices



- 6.1 Remedial notices define how the hedge should be managed in order to give effect to the Council's decision and so restore a suitable balance between the amenity enjoyed by the complainant and the hedge owner, having regard also to the needs of the wider community. They run with the land in question and are binding on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the notice is issued, but also their successors. Remedial notices are not, therefore, served on or addressed to a particular person.
- 6.2 In these circumstances, a remedial notice should normally be a separate document, issued with the Council's letter notifying the main parties of their decision on the complaint. Remedial notices must be delivered by one of the methods described in paragraph 5.126. They cannot be sent electronically.

Contents of the Notice

- 6.3 The Act⁴⁴ requires that a remedial notice include the following information:
- it must describe the hedge it relates to and where it is situated;
 - state that a complaint has been made to the Council about the hedge and that the Council have decided that the height of the hedge is adversely affecting the complainant's reasonable enjoyment of their property;
 - it must specify the property affected by the hedge;
 - explain what action must be taken in relation to the hedge in order to remedy the adverse effect and, if necessary, to prevent it recurring ("initial action") and by when ("the compliance period");
 - what further action, if any, is required to prevent longer-term recurrence of the adverse effect ("preventative action");
 - what date the notice takes effect ("the operative date"); and
 - the consequences of failure to comply with the requirements of the notice.
- 6.4 A sample remedial notice is in the Appendix.

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- 6.5 The hedge should be described in sufficient detail so that there is no doubt what the notice relates to.
- 6.6 It will not normally be enough to give the address of the property where it is located. While it might be the only hedge on the site when the remedial notice is issued, this could change. The position of the hedge within the property should, therefore, be specified or should be shown on a plan attached to the notice.

⁴⁴ Section 69(2).

6.7 A general description of species in the hedge should also be included. This will help to differentiate it from any new hedge that might be planted as a replacement for the original one. It should be enough to identify the predominant species. It will not normally be necessary – or advisable – to specify the precise number of trees or shrubs that are contained in the hedge, or to list exact botanical species.

Affected Property

6.8 The full address of the property that is affected by the hedge is likely to be the best means of identifying it.

Initial Action

6.9 The initial action covers the one-off works that must be carried out to the hedge to alleviate the problems it is causing. It can include:

- action to remedy the adverse effect (“remedial action”); or
- action to prevent the problems recurring (“preventative action”); or
- a mixture of both.

over a period of years. The Act⁴⁵, however, makes no provision for a timetable to be set for each stage of the works: only for a compliance period within which the initial works must be

appeal. He has powers under the Act⁴⁸ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

Remedial Works

6.23 Under the Act⁴⁹, the action specified in a remedial notice cannot involve:

- the reduction of a hedge to less than 2 metres above ground level; or
- the removal of a hedge.

6.24 Removal includes action that would result in the death or destruction of the hedge. This will depend on the species of the shrubs or trees in the hedge, their age and health. For example, healthy Leyland cypress hedges will usually respond well to a reduction of up to one-third of their height. On the other hand, taking too much from the top of such a hedge might result in the death of older or less vigorous trees. Care also needs to be taken with conifers not to cut back into older leafless branches, as new growth will not appear from bare wood. Councils are, therefore, advised to obtain arboricultural input when framing the requirements of a remedial notice.

6.25 Councils should also ensure that the works specified in a remedial notice:

- relate to the hedge itself. Works other than to the hedge (eg to any bank it might be growing on) are not allowed;
- are directly related to the adverse effect found to be caused by the hedge; and
- do not exceed what is necessary to remedy the adverse effect of the hedge, or to prevent it recurring.

6.26 Within these constraints, Councils have flexibility to tailor the management solution to the particular problem. The Act does not necessarily require hedges to be reduced to a height of 2 metres. Nor will it always be necessary to reduce a hedge to a single height along the whole of its length. Different heights might be applied to different sections of the hedge. Other remedies, such as crown lifting or thinning, or retaining selected trees in an otherwise reduced hedge, may also be considered.

6.27 In determining the extent of any works to be specified in the remedial notice, Councils might wish to adopt a three stage approach.

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6.28 First, decide what action is necessary to remedy the adverse effect of the height of the hedge on the complainant's reasonable enjoyment of their property

The same principles apply when determining what remedial action might be appropriate in a particular case.

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Multiple complainants, single hedge one owner

- 6.42 Where Councils are dealing with more than one complaint in respect of a single long hedge, they must consider each case on its particular merits. And they must issue a separate remedial notice in respect of each complaint.
- 6.43 By following the process set out above, this could produce several different solutions in respect of one length of hedge. Thus it is possible that separate remedial notices could be issued requiring one section of the hedge to be reduced to a certain height while another portion should be cut lower, with the rest of the hedge left intact.
- 6.44 Under the terms of the Act, it is not open to the Council to amend the remedial action required in one case to take account of the impact of the hedge on another property that is the subject of a separate complaint, even though this might produce a more workable solution. They cannot, therefore, resolve these different outcomes through the terms of the remedial notices.
- 6.45 Instead, such matters must be left to good practice advice. Where cases are linked in this way, therefore, Councils are advised to highlight the apparent inconsistencies to the owner or occupier of the land where the hedge is situated and suggest ways in which the various requirements might be met.

One complainant, single hedge, multiple owners

- 6.46 In such cases, the Council would issue a single remedial notice. A notice may not necessarily require that the hedge be reduced to, and maintained at, a single height along the whole of its length. It could specify different heights for different sections, or include other hedge management solutions. In such circumstances, it is important that it is clear to each hedge owner what they need to do in order to comply with the requirements of the notice. Councils might explain the practical consequences in a covering letter or any good practice advice.

One complainant, multiple hedges, one owner

- 6.47 Even though they are owned by one person, a separate remedial notice must be issued in respect of each hedge or part of hedge that meets the legal definition of a high hedge and is affecting the complainant's property.
- 6.48 As noted in paragraph 5.19, the Council should consider the effect of each hedge individually as well as their cumulative impact. This might suggest that no remedial action should be taken in relation to one or more of the hedges. Alternatively, it might point towards different action to be taken in respect of different hedges. In addition, the cumulative impact of the hedges might justify more extensive remedial works than would be suggested if each hedge was assessed separately and individually.

One complainant, multiple hedges, multiple owners

- 6.49 Similar considerations apply to those discussed in the above example. Care should be taken to ensure that hedge owners receive the correct remedial notice and that they are clear about what action they need to take to meet the requirements of the notice.

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- 6.50 Both the initial action and preventative action need to be carefully specified in the remedial notice so that it is clear what must be done to comply with the notice and when enforcement action could be taken. This might best be achieved by concentrating on the end result rather than the method to be used. Vague forms of words should be avoided.

- 6.51 Examples of how different management solutions might be specified are in the Appendix.
- 6.52 Councils cannot attach conditions to remedial notices, such as requiring works to be carried out in accordance with good arboricultural practice or with relevant British Standards.

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- 6.53 Councils should, however, consider attaching to remedial notices practical advice on how the hedge might be cut safely and maintained so that it remains attractive. This would be for information only and would not be enforceable. The paragraphs below suggest other possible items for inclusion in any advice note.

Good arboricultural practice

- 6.54 Councils might recommend that all works are carried out in accordance with BS 3998: [www.bsigroup.com/Products/BS-3998-2013-Tree-work-recommendations](#). Reference might be made to publications that offer advice on specific management and pruning techniques for particular species of tree or shrub.

Safety

- 6.55 Councils should encourage safe working on and around trees. The Arboriculture and Forestry Advisory Group set up by the Health and Safety Commission has published a number of tree safety guides which are available at www.hse.gov.uk/pubns/forindex.htm. [www.hse.gov.uk/pubns/forindex.htm](#) illustrates what can happen if safety procedures are not followed or work is undertaken by unskilled people. If Councils consider that specialist equipment or professional help is likely to be needed, particularly where work at height or with chainsaws is involved, good practice advice might encourage hedge owners to use qualified/skilled contractors. It might also usefully refer to the Arboricultural Association's list of approved contractors which is available on their website at www.trees.org.uk.

Birds and other wildlife

- 6.56 As well as setting the compliance period to avoid the hedge having to be cut during the bird nesting season, good practice advice might encourage the hedge owner to take special care not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that are nesting or roosting in trees.

Removal/replacement hedge

- 6.57 Where drastic action is called for which might leave an unsightly feature, good practice advice might suggest that the owner consider removing the hedge. It might be accompanied by a leaflet (such as [www.trees.org.uk/leaflets/leaflet11.htm](#)) to help them choose a suitable replacement hedge. Councils cannot, however, require a replacement hedge to be planted.
- 6.58 If removal of the hedge is suggested, Councils should – where appropriate – warn that prior permission might be required under other legislation. In particular, the Council's consent will be needed to fell any trees in the hedge that are protected by a tree preservation order. If the hedge is located in a conservation area or is caught by the Hedgerows Regulations 1997⁵¹, the Council would normally need to be notified of the proposed removal so that they can consider

whether to protect the hedge – either by making a tree preservation order or by issuing a hedgerow retention notice. In other cases, a felling licence might need to be obtained from the Forestry Commission⁵².

Duration of Remedial Notice

- 6.59 The remedial notice remains in force until it is formally withdrawn. It would have no practical effect, however, if the hedge was removed or there was some other change in circumstances which took it outside the scope of the Act. For example, if the property affected by the hedge ceased to be used for domestic purposes.

Chapter 7: Withdrawing and relaxing remedial notices



- 7.1 The Act⁵³ gives Councils powers to withdraw a remedial notice that they have issued, or to waive or relax some of its requirements. Apart from the need to notify the complainant – or their successors – and the owner and occupier of the land where the hedge is situated of what they have done, the Act does not set out the procedure that Councils must follow before taking such a step.
- 7.2 The procedure is likely to vary according to the circumstances.

Correcting Errors

- 7.3 As indicated in paragraph 6.21, if the Council make a mistake in the remedial notice, they should withdraw it and issue a new one as soon as the error comes to their attention. This can be done before or after the remedial notice comes into effect, but is best done before the original 28 day appeal period expires.
- 7.4 Any alteration of the contents of the notice will usually require consequential changes to the operative date and to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.

Procedure

- 7.5 Given the importance of acting quickly, the Council would not normally consult the main parties to the original complaint before making the necessary changes to the remedial notice. But they should write to them, enclosing the revised remedial notice and explaining how this differs from the original and the reasons for the changes. It is good practice to send a copy of this letter to any other interested parties who were informed of the Council's earlier decision (see paragraph 5.109).
- 7.6 Councils are encouraged to issue the replacement remedial notice at the same time as they notify the main parties of the withdrawal of the original notice. If they cannot be done together, the letter informing the main parties that the original notice has been withdrawn should make clear that a replacement notice will be issued shortly.

Appeal

- 7.7 Councils should also inform the main parties of the effect of this action on their appeal rights. They will have 28 days from the date that the new remedial notice is issued in which to appeal against the revised remedial notice as a whole – not just against the alterations. This applies whether or not they appealed against the original remedial notice, and even if the requirements of the notice are unaffected by the changes.
- 7.8 If an error comes to light after an appeal has been lodged against the original remedial notice, the matter should be drawn to the attention of the Inspector appointed to determine the appeal. He has powers under the Act⁵⁴ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

⁵³ Section 70.

⁵⁴ Section 73(3).

Extending the Compliance Period

- 7.9 Councils should not normally entertain requests to extend the compliance period in order to give the owner or occupier of the land where the hedge is situated extra time to carry out remedial works to the hedge.
- 7.10 This should not usually be necessary. Councils are advised that, in setting the time allowed for completion of the initial one-off works to the hedge, they should take account of what can reasonably be achieved (see paragraph 6.13). In addition, if they think they have not been given enough time to comply with the requirements of the notice, the owner or occupier of the land where the hedge is situated can appeal (see paragraph 8.8).
- 7.11 There may, however, be exceptional circumstances which have prevented the owner or occupier of the land where the hedge is situated from complying with the requirements of the remedial notice. For example, extended and enforced absence, say, on business or in hospital could mean that the remedial notice was received late in the compliance period or that the time available has been significantly shortened. A key consideration will be not just the amount of time available but whether it is practicable to carry out the required works within it.

Procedure

- 7.12 If the Council consider that the circumstances justify altering the remedial notice to extend the compliance period – and if time allows – it is good practice to inform the complainant of their intentions and to invite comments within a set period. Any comments received should be taken into account before the Council makes its final decision.
- 7.13 The Council must notify the main parties of any decision to relax the requirements of the remedial notice by extending the compliance period. It is good practice to send a suitably annotated version of the remedial notice. The Council might, however, want to make clear – in a covering letter – when the extended period expires and spell out the consequences of failure to comply with the requirements of the notice.

Appeal

- 7.14 In theory, a complainant could appeal against the decision to relax the requirements of a remedial notice by extending the compliance period, on the grounds that there has been no material change in circumstances since the notice was issued. In practice, this is unlikely to arise as an appeal would prolong matters further and so would be unlikely to benefit the complainant.

Compliance Period

- 7.15 Once it has expired, the compliance period cannot be extended by relaxing the requirements of a remedial notice. The notice would have to be withdrawn and a new one issued, which would trigger fresh appeal rights. Councils would need strong justification before contemplating such a significant step. In particular, they are advised not to proceed without securing the written agreement of the main parties.
- 7.16 Expiry of the compliance period will not, however, generally lead to automatic and immediate prosecution of the hedge owner for breaching the requirements of the remedial notice. Chapter 9: *Appeals and Enforcement* gives advice on action – falling short of prosecution – that Councils might take to ensure works specified in a remedial notice are carried out. This includes allowing more time and/or issuing a formal warning.

version of the remedial notice. The annotations should include specifying a date when the changes to the notice come into operation. The Council should also ensure that the record held by the local land charges register is amended (see paragraph 6.61).

Appeal

- 7.29 Given that the Council would simply be implementing the parties' wishes, there are no rights of appeal against the Council's decision in these cases.

Material Change in Circumstances

- 7.30 Over time, circumstances might change to the extent that keeping to the requirements of the remedial notice adversely affects the reasonable enjoyment of their property by the complainant – or their successors – or the owner or occupier of the land where the hedge is situated. This relates primarily to any requirements in respect of longer-term maintenance of the hedge (preventative action).
- 7.31 It is most unlikely that circumstances will have changed to such a degree that any relaxation or waiver of the initial one-off works (remedial or initial action) would be justified.

Material Change

- 7.32 A material change in circumstances is something that significantly affects the Council's decision on the original complaint. If the circumstances had been known to the Council at the time, it might have caused them to reach a different conclusion.
- 7.33 Examples of what might constitute a material change in circumstances include:
- development on either the affected property or the land where the hedge is situated which means that the hedge is no longer an adequate screen or does not sufficiently safeguard privacy. This might be small-scale development within permitted development rights. Or it could involve new higher density housing, or other buildings, on the site;
 - change of use or increased activity on either the affected property or the land where the hedge is situated which the hedge does not adequately screen out. In the case of the complainant's property, part of it would still have to be used for domestic purposes, otherwise the Act would no longer apply. For example, someone might live in and work from the property.
- 7.34 A change in ownership of either the affected property or the land where the hedge is situated is unlikely to represent a material change in circumstances for these purposes. This is unrelated to the effect that the hedge has on anyone's reasonable enjoyment of their property.

Procedure

- 7.35 If the Council are approached by someone who wishes to apply for a remedial notice to be withdrawn, or for certain of its requirements to be waived or relaxed, they are advised to follow a similar process to that used when dealing with the original complaint – as set out in Chapter 5.

Revised Remedial

- 7.36 This includes encouraging the applicant to try to reach agreement with the other main parties on the alterations sought to the notice. If they can agree a way forward, a joint application

should be submitted under the simplified procedure set out in the section above on

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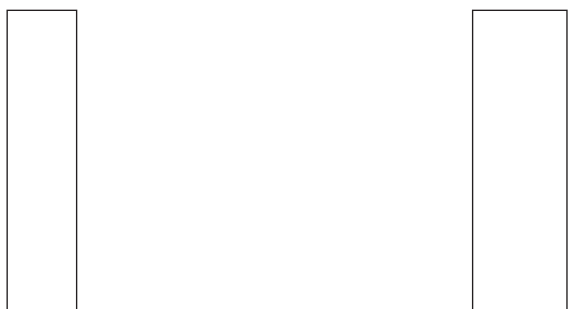
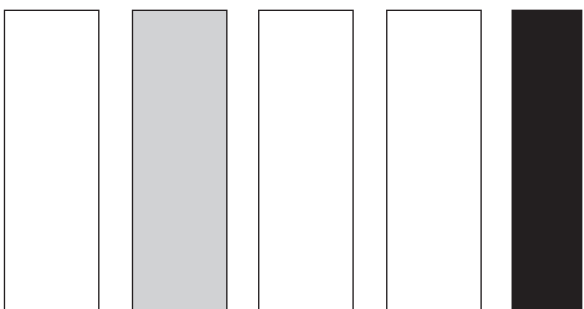
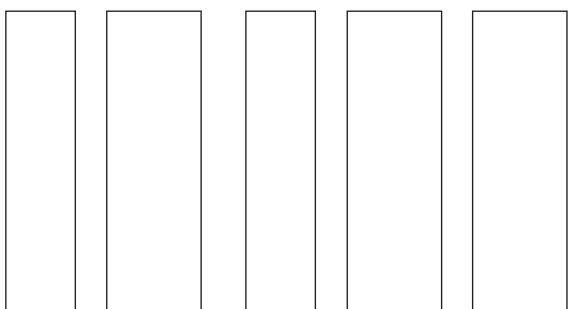
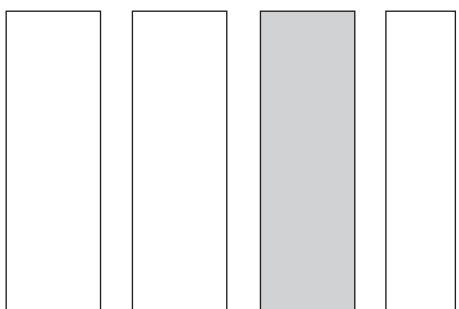
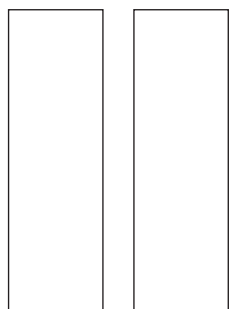
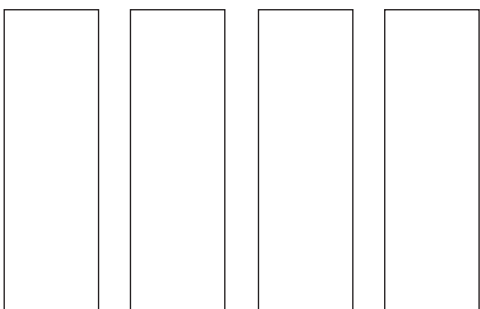
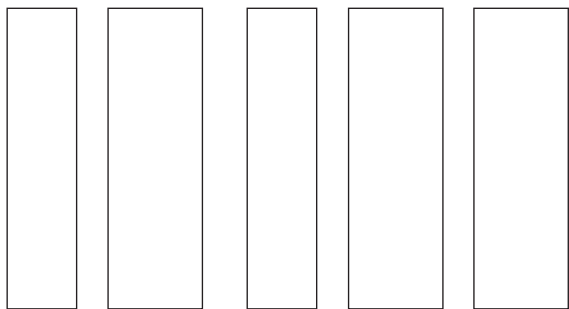
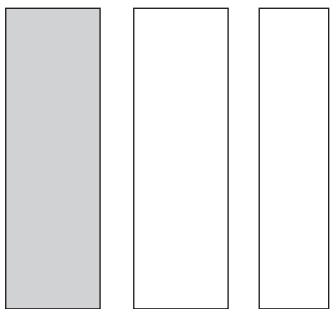
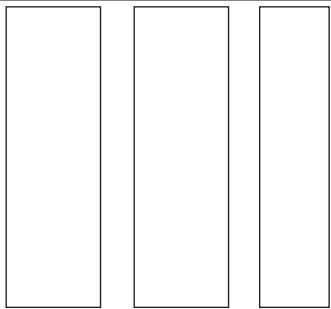
- 7.37 If the other main parties do not agree to the alterations, a formal application should be made to the Council for the remedial notice to be amended or withdrawn. This should include the following information:
- the applicant's name, address and other contact details;
 - the name and address of whichever of the complainant – or their successors – or the owner or occupier of the land where the hedge is situated is not the applicant;
 - a copy of the original remedial notice;
 - whether the applicant seeks withdrawal of the notice or for certain requirements to be waived or relaxed. It will help the Council if the applicant explains what requirements they wish to see altered;
 - details of the steps taken to settle the matter by negotiation, with copies of relevant correspondence or other papers;
 - reasons in support of the application. This should include:
 - what has changed since the original complaint was considered to justify re-opening the matter;
 - details of how maintaining the hedge in accordance with the terms of the notice is adversely affecting the applicant's reasonable enjoyment of their property. It will help the Council if this does not just list the problems caused by the hedge but explains their severity and their impact, in factual terms.
- 7.38 The applicant should send a copy of their application to the other main parties involved in the original complaint – or their successors – at the same time as they submit it to the Council.

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- 7.39 On receipt of an application, the Council should follow the steps outlined in Chapter 5: for exchanging representations between the main parties and consulting other relevant interests. A visit to the site is also likely to be necessary. All relevant papers should be seen by the main parties so that the process is open and transparent.

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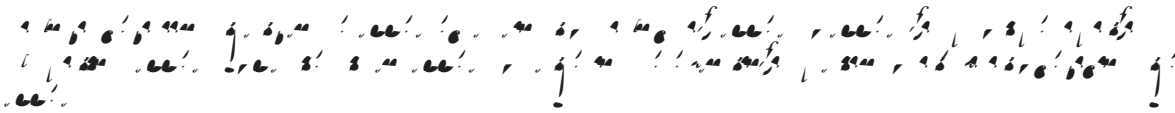
- 7.40 As described in Chapter 5, in reaching their decision, the Council should consider all relevant factors and assess each application on its particular merits. It will normally come down to a question of balance between the various arguments for and against continuing with the current management regime for the hedge.
- 7.41 In carrying out this balancing act, Councils should ask themselves:
- does maintaining the hedge in its current state adversely affect the reasonable enjoyment of their property by either the complainant – or their successors – or by the owner or occupier of the land where the hedge is situated;



Exceeding the Requirements of a Remedial Notice

- 7.50 As noted in paragraph 7.18, if the owner or occupier of the site with the hedge wishes to carry out works that go further than the remedial notice requires, it is open to them do so at any time – unless other legal restrictions apply.
- 7.51 On the other hand, if the owner or occupier of the affected property – the complainant or their successors – wants to see a more drastic management regime implemented, they should in the first place seek to negotiate a solution with the owner or occupier of the land where the hedge is situated.
- 7.52 Where such negotiations fail, the owner or occupier of the affected property would need to make a fresh complaint to the Council following the procedure set out in Chapter 5 – provided that the hedge continues to meet the definition of a high hedge (see Chapter 4) and the affected property remains in domestic use.
- 7.53 This would include payment of a fee and provision of evidence that reasonable steps had been taken to resolve the matter without involving the Council. As with any application to relax the requirements of a remedial notice, the complainant would need to show there had been some change in circumstances since the Council last considered the case that justifies re-opening the matter. Without this, the Council could reject the complaint as frivolous or vexatious. They would also take account of the time that has elapsed since the original remedial notice was issued.

Chapter 8: Appeals



- 8.1 Although the right of appeal is to the Secretary of State, all his appeals functions are carried out by the Planning Inspectorate (PINS). They handle all matters related to appeals, from submission to appeal decision.
- 8.2 A separate leaflet *Appeals: What you need to know* is available for potential appellants.

Rights of Appeal

- 8.3 Under the Act⁵⁵, the complainant and the owner and occupier of the land where the hedge is situated can appeal against:
 - the issue of a remedial notice;
 - the withdrawal of a remedial notice;
 - the waiver or relaxation of its requirements.
- 8.4 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 problems⁵⁶.

Grounds of Appeal

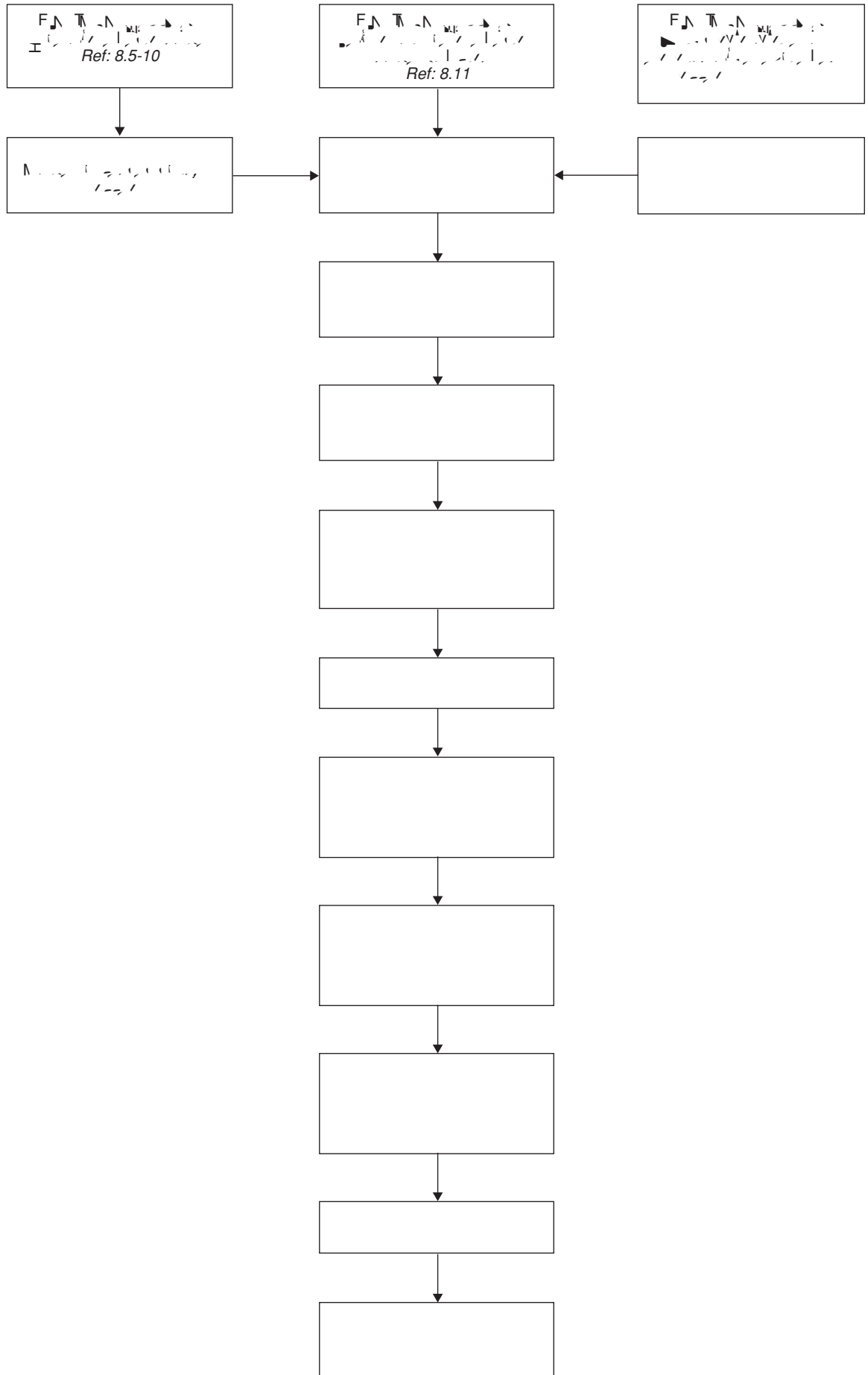
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- 8.5 The Appeal Regulations⁵⁷ specify that appeals relating to the issue of a remedial notice can be made by the complainant on the grounds that the remedial action or preventative action specified in the remedial notice (or both) fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring. The appeal may, therefore, be against the initial action (ie one-off works) and/or against the preventative action (ie longer-term management) specified in the notice.
- 8.6 Reasons for appealing on such grounds might include:
 - that, in determining a suitable management solution, the Council have attached insufficient weight to the problems that the complainant experiences with the hedge;
 - that the Council have overestimated the contribution that the hedge makes to the amenity of the neighbourhood;

⁵⁵ Section 71(1).

⁵⁶ Section 71(3).

⁵⁷ Regulation 3(b) of the Appeals Regulations.



- that the extensive works can be carried out without affecting the amenity of the people occupying the property where the hedge is situated;
- that the extensive works can feasibly be undertaken, without being detrimental to the health of the hedge;
- that alternative works would be more effective in remedying the problems caused by the hedge or in preventing them recurring.

8.7 The remedial notice is suspended while the appeal is being determined.

8.8 Complainants cannot appeal on the grounds that too much time has been allowed to carry out the works specified in the remedial notice. An appeal is likely to prolong the timetable and so is unlikely to be of any advantage to the complainant.

1. The issue of a remedial notice: the grounds for appeal

8.9 Appeals against the issue of a remedial notice can be made by the owner or occupier of the land where the hedge is situated on the following grounds⁵⁸:

- a. that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant’s reasonable enjoyment of their property. Reasons for appealing on such grounds might include the following:
 - that the Council have overestimated the problems experienced by the complainant;
 - that the Council have attached insufficient weight to the contribution that the hedge makes to the amenity of their property or to the neighbourhood.
- b. that the remedial action or preventative action specified in the remedial notice (or both) exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring. Reasons for appealing on such grounds might include the following:
 - that the works to the hedge specified in the remedial notice would adversely affect the amenity of their property or of the neighbourhood;
 - that the works could lead to the death of the hedge;
 - that alternative works provide a more effective remedy.
- c. that not enough time has been allowed to carry out the works set out in the notice.

8.10 The remedial notice is suspended while the appeal is being determined.

2. The issue of a remedial notice: the grounds for appeal

8.11 The complainant can, in addition, appeal against a Council’s decision that the height of the hedge is not adversely affecting their reasonable enjoyment of their property; or not to require remedial action. Such an appeal can be made on the following grounds⁵⁹:

- a. that, contrary to the decision of the Council, the hedge in question is adversely affecting the complainant’s reasonable enjoyment of their property; and/or
- b. that the adverse effect warrants action being taken in relation to the hedge.

⁵⁸ Regulations 3(a), (c) and (d).

⁵⁹ Regulation 5.

h a d _ o a e m e i a n a e

Before Making an Appeal

8.20 There is no charge for appeals. Nevertheless, appeals are expensive to administer and time

8.35 Other people or organisations who made representations to the Council about the decision that is the subject of the appeal have no direct role in the appeals process. Their original representations will be supplied to the Planning Inspectorate and taken into account in deciding the appeal.

1 n am a e

- 8.57 The Inspector has the same rights to enter the land where the hedge is situated as the Council officer who dealt with the original complaint⁷⁴. The Inspector is also subject to the same obligations in respect of prior notice (see Chapter 9: “*6.3.1*”).

Appeal Decision

- 8.58 In determining appeals, the appointed Inspector may allow or dismiss an appeal, either in total or in part⁷⁵.
- 8.59 The Act⁷⁶ requires the Inspector to notify the Council, the complainant (or their successors) and the owner and occupier of the land where the hedge is situated of their decision as soon as is reasonably practicable. He must also notify the appeal parties, in writing, of the reasons for his decision⁷⁷.
- 8.60 The Inspector will also copy to all the appeal parties, with the decision letter, any new or revised remedial notice, as follows:
- if he allows an appeal against a Council decision **not** to issue a remedial notice in response to the original complaint, the Inspector will issue a new notice⁷⁸;
 - if he decides to allow an appeal relating to a remedial notice, he will vary the requirements in the notice to reflect his decision⁷⁹;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the notice to correct any defect, error or misdescription in the original, provided this will not cause injustice⁸⁰;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the date when it comes into effect (“the operative date” – see paragraph 6.12). This will be either the date of the Inspector’s decision or such later date as he may set. The compliance period (see paragraph 6.13) will start again from the revised operative date.
- 8.61 The Inspector’s decision is binding on the complainant (or their successors) and on the owner or occupier of the site where the hedge is located, even if they did not bring an appeal.

Withdrawal of Appeal

- 8.62 The appellant may withdraw their appeal at any time. In these circumstances, the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements, would take effect from the date that the appeal is withdrawn.

Review of Appeal Decision

- 8.63 There is no separate right of appeal against an appeal decision. The only recourse is by applying to the High Court to challenge the decision by judicial review. Such a review is designed to ensure that the powers laid down in the Act and the Appeal Regulations have been

⁷⁴ Section 74(2).

⁷⁵ Section 73(1).

⁷⁶ Section 73(4).

⁷⁷ Regulation 13.

⁷⁸ Section 73(2)(c).

⁷⁹ Section 73(2)(a) and (b).

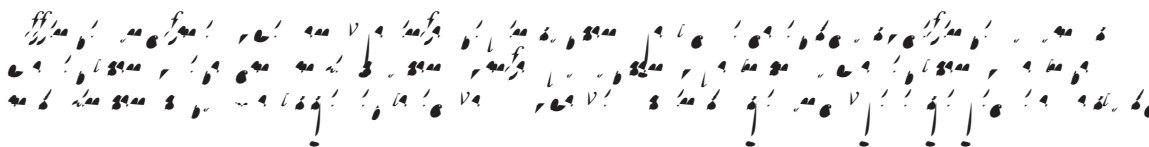
⁸⁰ Section 73(3).

exercised properly and in accordance with good administration. It can be used, therefore, only to challenge the way the decision was made. It does not consider the merits of the appeal decision.


- 8.64 Permission is needed to bring an application for judicial review. This will only be granted where an applicant is able to satisfy the court that they have both sufficient interest in the matter and an arguable case. Anyone considering applying for judicial review would be well advised to seek specialist legal help. Community Legal Service (CLS) can help people to find the right legal advice⁸¹. An adviser can tell them whether they have a good case and can help with practical matters such as filling in court forms and preparing for hearings.

⁸¹ Search www.clsdirect.org.uk or telephone 0845 345 4 345.

Chapter 9: Enforcement



Offences

- 9.1 Failure to comply with the requirements of a remedial notice is an offence punishable, on conviction in the magistrates' court, to a level 3 fine (up to £1,000)⁸².
- 9.2 The court might then – in addition to, or in place of, a fine – issue an order for the offender to carry out the required work within a set period of time. Failure to comply with the court order would be another offence, liable to a level 3 fine. From this point, the court would also be able to set a daily fine of up to one twentieth of a level 3 fine for every day that the work remained outstanding⁸³.
- 9.3 This means that offences are committed:
- where someone does not complete the initial one-off action 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.
- 9.4 A separate action may be brought against each contravention of a remedial notice. For example, someone could be prosecuted for failure to carry out the initial action specified in the remedial notice. They might then cut the hedge but subsequently fail to maintain it as required. This would be a separate offence for which they could also be prosecuted. Equally, if they then trimmed the hedge but did not do so again, as specified in the remedial notice, a new offence would be committed.
- 9.5 Where the requirements of a remedial notice are breached, whoever is the owner or occupier of the land where the hedge is situated at the time when the offence takes place could be liable to prosecution. This includes not only the owner and occupiers of the site who originally received copies of the remedial notice but also their successors (but see the section below on ).
- 9.6 Where there is both an owner and an occupier (eg landlord and tenant), Councils should initially direct enforcement action at the person who has legal responsibility for managing the hedge. However, general provisions in the Public Health Act 1936 (relating to the power of the courts to require an occupier to permit work to be done by an owner) apply so as to give the owner the right to comply with a remedial notice. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge. Ultimately, therefore, the landowner is responsible for ensuring the requirements of a remedial notice are implemented.
- 9.7 If, after reasonable enquiry, the Council are unable to trace the owner or occupier of the land where the hedge is situated, they effectively have no-one who can be charged with an offence, or against whom enforcement action can be taken⁸⁴. In these circumstances, Councils might

⁸² Section 75(1) and (2).

⁸³ Section 75(7) to (10).

⁸⁴ Ownerless property, under common law, passes to the Crown. The Treasury Solicitor, on behalf of the Crown, administers the estates of people who die intestate or without known kin and collects the assets of dissolved companies and failed trusts. Further information is on their website at www.bonavacantia.gov.uk. As a general rule, the Treasury Solicitor does not undertake any management responsibilities in respect of properties that it holds.

wish to consider using their power to enter the land and carry out the works specified in the remedial notice, in default of the owner or occupier (see the section below on *1.11.1* *1.11.1* *1.11.1*).

- 9.8 Where offences are committed by bodies corporate, proceedings can, in certain circumstances, be taken against individual officers as well as the body corporate.

Defences

- 9.9 A person will be able to defend themselves against prosecution under the Act if they can show that⁸⁵:

- they did all that could be expected of them to meet the requirements of a remedial notice.

- they were not aware of the existence of the remedial notice at the time that the offence took place.

This last defence can be used only where the person was not sent a copy of the original remedial notice and could not be expected to know about it. Someone would normally be expected to know about the remedial notice if they own the site and the notice is registered as a local land charge.

- 9.10 These defences provide important safeguards against wrongful prosecution. But if allegations of any contravention of the Act are fully investigated before the case is brought to court and if any prosecution is focused on the person who has responsibility for the hedge, it should not be necessary for people to have to resort to them.
- 9.11 Other mitigating factors or explanation put forward by the person allegedly responsible for the offence (eg lack of financial or physical resources to carry out the works to the hedge, existence of restrictive covenant) would need to be taken into account in determining whether prosecution would be appropriate. Ultimately, it is for the person accused of the offence to prove their case to the court. As noted in paragraph 5.100, it is possible that, where a covenant gives rise to a clear nuisance, the courts might attach little weight to it.

Enforcement Procedures

- 9.12 It is for each Council to determine their policy and approach to enforcing remedial notices, depending on available resources. Most enforcement activity is, however, likely to be reactive – mainly responding to neighbours' complaints of alleged failure to comply with the requirements of a remedial notice.
- 9.13 Enforcement action is nearly always labour-intensive. Even if Councils adopt a reactive approach, it would still be necessary to consider establishing a set of priorities to help them manage these cases effectively. The degree of harm caused by the alleged failure might be one

Documenting the Case

- 9.15 Throughout the enforcement process it is essential to maintain a complete, accurate and up to date record of all investigation carried out and assessment of the results. This is important even in those cases where the initial decision is not to take formal enforcement action. If it is necessary to return to the case in the future, officers dealing with it will be able quickly to establish the relevant facts and history.
- 9.16 The case record should contain the following information:
- the alleged contravention of a remedial notice, as notified to the Council;
 - the date of this first notification;
 - the identity of the person making the claim;
 - the address of the land where the hedge is situated;
 - the identity of the owner and any separate occupier of the land in question;
 - brief description of the hedge, including any relevant photographs (see paragraph 9.20);
 - the alleged contravention, as established by the Council's officers following initial investigations;
 - summary of the factual evidence;
 - summary of the case history;
 - summary of recommendations on enforcement action;
 - details of implementation of the Council's decision. These will vary according to the circumstances but – where they fall short of prosecution – might include:
 - date that the owner and occupier of the land where the hedge is situated are notified of the Council's decision;
 - summary of required steps;
 - time limit set for compliance;
 - result of the action taken by the Council;
 - legal action;
 - exercise of default powers;
 - recovery of costs;
 - summary of any subsequent monitoring of the situation.

Investigations

- 9.17 On receiving a complaint that the actions required under a remedial notice have not been carried out, the Council should investigate the allegations. They may wish to visit the site to collect and verify information.

9.27 Several of these principles might, depending on the circumstances of the particular case, be

- 9.33 It is for Councils to consider whether they use these powers to carry out the works specified in the remedial notice; if so, when they employ them; and whether this is done instead of, or alongside, a prosecution. There is no requirement or obligation on Councils to intervene. As a result, there should not be a general expectation that Councils will step in, nor that they will do so immediately after a breach of a remedial notice occurs.
- 9.34 Where the Council decide to intervene, their action should be planned, organised and implemented with the utmost care. The owner or occupier of the land where the hedge is situated might strongly resent, and possibly try to prevent, the Council carrying out the necessary works. Anyone who wilfully obstructs an officer, or other person authorised by the Council, from entering the site in question and taking the necessary action is guilty of an offence⁸⁹. On conviction in the magistrates' court, they could be liable to a level 3 fine (up to £1,000).
- 9.35 Among the practical matters that Councils would need to consider when preparing to intervene are:
- what exactly needs to be done in order to enforce the requirements of the remedial notice;
 - what equipment will be needed;
 - the physical characteristics and constraints of the site;
 - the risks to operatives carrying out the work and how to ensure compliance with relevant health and safety regulations;
 - whether a breach of the peace is expected and whether the co-operation of the local police should be sought;
 - how long the work is likely to take and what is the best time of day to do it;
 - who has the necessary skills – the Council's own staff or a private contractor.
- 9.36 Councils are required to give 7 days' notice of their intention to go in and do the necessary work⁹⁰. If they anticipate that the owner or occupier of the land where the hedge is situated might attempt to obstruct them, it is good practice for the Council to warn those concerned that they could face criminal prosecution.
- 9.37 Where necessary, the Council may also use a vehicle to enter the land⁹¹. Otherwise, the general powers relating to " s. 84 (2) " (see below) apply.
- 9.38 The costs of this work can be recovered from the owner or occupier of the land⁹². This includes the cost of dealing with any waste removed from the site at the owner or occupier's request. Otherwise, waste may be left on the site, though Council operatives should ensure it is suitably stacked so that it does not present a hazard.
- 9.39 Any unpaid expenses would (until recovered) be registered as a charge on the property. This means that the Council should get their money back when the property is sold, if not before.

⁸⁹ Section 77(9).

⁹⁰ Section 77(5).

⁹¹ Section 77(7).

⁹² Section 77(3) and (4).

Entry to Land

- 9.40 Councils may authorise their officers to enter the land where the hedge is situated in order to obtain information that will help them decide⁹³:
- whether the complaint is one that can be considered under the legislation;
 - whether to issue or withdraw a remedial notice;
 - whether to waive or relax the requirements of a remedial notice; or
 - whether a notice has been breached.
- 9.41 At least 24 hours' notice of the intended entry must be given to all occupiers of the land⁹⁴. The Council might, in particular, need to gain quick access in order to establish whether or not the requirements of a remedial notice had been met. These might relate not only to the works that must be carried out to the hedge but also the timescale within which action must be taken. Timing of a site visit could, therefore, be critical.
- 9.42 Council officers entering land under these powers would be able to take with them other people, equipment or materials as necessary⁹⁵. They might, for example, need someone else to help them measure a hedge. In extreme cases, they might need to be accompanied by the Police. Council officers would also be able to take samples of a hedge to assist, for instance, in species identification.
- 9.43 Besides giving prior notice of their intentions, there would be other conditions that officers would have to meet when exercising these powers⁹⁶. In particular, they would – if asked – have to produce evidence of their authority to enter the land in question. If the land was unoccupied, they must leave it as effectively secured as they found it.
- 9.44 Intentionally obstructing any person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale (up to £1,000)⁹⁷.
- 9.45 Where a person exercising their rights of entry under these provisions causes damage, the owner or occupier of the property would be able to make a claim through the civil courts. The fact that they were operating under statutory powers would not be sufficient to defend Councils against liability for such damage. They would need to demonstrate that the damage was reasonable in the exercise of their statutory functions.

⁹³ Section 74(1).

⁹⁴ Section 74(3).

⁹⁵ Section 74(5).

⁹⁶ Section 74(4) and (6).

⁹⁷ Section 74(7).

Appendix: Sample forms and letters

This Appendix offers examples of forms and letters for use in dealing with complaints about high hedges. Councils are not required to follow them. Where they do, it must be stressed that Councils should adapt the wording to the individual circumstances of the particular case.

In addition, these letters will need to be adapted if sent by email. Rather than sending copies of leaflets Councils might refer to relevant web addresses. The following are all available on the ODPM website at www.odpm.gov.uk/treesandhedges:




FIRST CONTACT

To be sent to the enquirer/potential complainant

COMPLAIN ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under Part 8 of the Anti-social Behaviour Act 2003.

The Council can only intervene once you have tried and exhausted all other avenues for resolving your hedge dispute. I am enclosing a copy of the leaflet  which sets out some steps that you should consider trying.

COMPLAINT FORM: COVER LETTER

To be sent to the complainant

COMPLAIN ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under Part 8 of the Anti-social Behaviour Act 2003. You said that you had discussed the problem with your neighbour but had been unable to agree a solution.

I enclose our complaints form together with some guidance notes to help you complete it. Before filling it in, I recommend that you read the enclosed leaflet. It explains what complaints we can consider and how we will deal with them.

The leaflet also sets out what we expect you to have done to try to settle your hedge dispute. If you have not exhausted all the avenues mentioned, you should consider giving them a try. If you don't, you will need to explain why not. Otherwise, we might not proceed with your complaint.

The complaint form constitutes your statement of case as to why you consider the hedge is adversely affecting the reasonable enjoyment of your domestic property. It will be an important document in the Council's consideration of the complaint, as well as in any subsequent appeal against our decision. In setting out your grounds of complaint, therefore, you should describe fully the problems caused by the hedge, their severity and the impact on you. Please also send us any supporting information that you want us to take into account.

Please return the completed form to me at the above address. You must also send a copy to the owner and occupier of the land where the hedge is situated. [These are the people listed in sections 5.4 and 5.5 of the form.]

When we receive your formal complaint, we will run some checks to make sure that it meets the requirements set out in Part 8 of the Anti-social Behaviour Act 2003 and that we can, therefore, deal with it.

If we cannot proceed with the complaint, we will tell you why not. Otherwise, we will acknowledge that we have received it and explain what happens next.

Complaint form: high hedges

Use this form to submit a complaint to the Council about a high hedge, under Part 8 of the Anti-social Behaviour Act 2003. It should be completed by the person making the complaint or their representative.

Before completing this form, please read the guidance notes sent with it and the leaflet *Hedge Disputes: A Complaint to Council*. Please use BLOCK CAPITALS and black ink.

YOU MUST PAY A FEE WHEN YOU SEND IN THIS FORM. The current fee is £x.

The Council will rely on the information you provide so please make sure it is clear and accurate.

1. Attempts to resolve the complaint

Please describe what you have done to try to settle this matter. Give dates and say what the result was. Please provide copies of any letters that you mention.

1.1 Approached neighbour/hedge owner and asked to discuss problem

1.2 Asked neighbour/hedge owner to try mediation

1.3 Informed neighbour/hedge owner of intention to complain to Council

If you have not tried all the above steps, the Council might not proceed with your complaint.

1.4 Anything else

2. **Criteria for making a complaint**

Ab d

2.1 Is the hedge – or the portion that is causing problems – made up of a line of 2 or more trees or shrubs?

Yes

No

2.2 Is it mostly evergreen or semi-evergreen?

Yes

No

5. Who's who/The parties

5.1 Complainant's contact details

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

Is the complainant content for us to contact them by email, at the address provided?

Yes No

5.2 Address of the property affected by the hedge and name of the person living there, if different to 5.1

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

5.3 Contact details of Agent or other person acting on behalf of the complainant (if any)

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

Is the Agent, or other person named above, content for us to contact them by email at the address provided?

Yes No

5.4 Address of the site where the hedge is growing and name of person living there, if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address or description of location	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

5.5 Name and address of the person who owns the property where the hedge is situated, if different to 5.4 and if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

6. Supporting documents

6.1 Have you enclosed the following:

	Tick box
A photo of the hedge	<input type="checkbox"/>
A location plan of the hedge and surrounding properties	<input type="checkbox"/>
Copies of correspondence with your neighbour about the hedge	<input type="checkbox"/>
Copies of any other documents that you mention (<i>le a e l r h e e e a a d</i>)	<input type="checkbox"/>

7. Sending the complaint

7.1 I confirm that I have completed as much of this form as I can and that, to the best of my knowledge, the information provided is accurate.

Tick box

7.2 I enclose the fee of £x.

Tick box

Name Date

7.3 **PO OR EMAIL HI FORM AND ALL ENCLOSURES:**

Council to insert name and address of contact. Include an email address.


7.4 **P** **h** **h** **5** **.**

Tick the box to show you have done this

You can also download this complaint form from our website at [\[insert\]](#)

GUIDANCE NOTES FOR COMPLETING THE COMPLAINT FORM

General notes

These guidance notes are to help you fill in the form to make a complaint about a neighbouring high hedge. You should also read the leaflet 

Consideration of your complaint will be delayed if you do not complete the form properly or do not provide the information requested.

If you are still unsure how to answer any of the questions, please contact [x department] on [y telephone number] or [z email address].

You can obtain translations and large print versions of this guidance and the form through the council.

Section 1: Attempts to resolve the complaint

Please keep the descriptions brief but say how you made the approach (eg face to face, phone, letter) and what the result was.

Example 1

- 12 March 2005 – phoned neighbour [Mr Bloggs of 12 High Street] to ask if we could discuss hedge. Met on 19 March but we couldn't agree a solution;
- 15 April – mediators visited;
- 29 April – met neighbours [Mr Bloggs] and mediators. But still couldn't find an answer we were both happy with;
- on 14 May – wrote to inform neighbours [Mr Bloggs] would be complaining to council.

Example 2

- 12 March 2005 – wrote to neighbours [Mr Bloggs of 12 High Street] to ask if we could discuss hedge. 2 weeks later still no reply;
- 9 April – wrote to ask if he would speak to mediator. 2 weeks later still no reply;
- 7 May – wrote to inform neighbours [Mr Bloggs] would be complaining to council.

Example 3

- 12 March 2005 – saw neighbours [Mr Bloggs of 12 High Street] in their garden and asked if we could discuss hedge. Neighbours [Mr Bloggs] 12 March 2005 10:15 AM. Left it.

It is not necessary to send copies of all correspondence with your neighbour about the hedge – especially if the dispute is a long-running one. You need only provide evidence of your latest attempts to settle it.

Section 2: Criteria for making a complaint

Who can complain

Q2.6 You must be the owner **or** occupier of the property affected by a high hedge in order to make a formal complaint to the Council.

If you do not own the property (eg because you are a tenant or a leaseholder), you can still make a complaint. But you should let the owner (eg landlord or management company) know what you are doing.

Q2.7 The property does not have to be wholly residential but must include separate living accommodation otherwise we cannot consider the complaint.

Section 3: Grounds of complaint

It will help if you provide as much information as you can but keep it factual. Remember that a copy of this form will be sent to the person who owns the property where the hedge is growing, and to the person who lives there if they are different people.

Concentrate on the hedge and the disadvantages you experience because of its height.

We cannot consider problems that are not connected with the height of the hedge. For example, if the roots of the hedge are pushing up a path.

Nor can we consider things that are not directly about the hedge in question. For example, that other people keep their hedges trimmed to a lower height; or that the worry is making you ill.

Please also provide a photo of the hedge and a plan showing the location of the hedge and surrounding properties.

When drawing your plan, please look at the example below and make sure that you:

- Mark and name surrounding roads.
- Sketch in buildings, including adjoining properties. Add house numbers or names.
- Mark clearly the position of the hedge and how far it extends.

If you are complaining about the hedge blocking light, please also show on your plan:

- Which way is north.
- The position of windows that are affected by the hedge (eg whether they are located on the front, side or rear of the house).
- Relevant measurements (eg size of garden, distance between the hedge and any windows affected).

All measurements must be in metres (m).

[Insert example of typical plan]

Section 6: Supporting documents

Please make sure you have ticked all the relevant boxes.

COMPLAINT REJECTION: INVALID COMPLAINT

To be sent to the complainant

COMPLAINANT ABOUT A HIGH HEDGE IN A RESIDENTIAL ADDRESS
REFERENCE NUMBER

I refer to your complaint of [date] about the high hedge situated at [address].

I am sorry to tell you that, under the terms of Part 8 of the Anti-social Behaviour Act 2003, the Council is unable to deal with your complaint and so will be taking no further action on it.

The reasons for our decision are as follows:

[EXPLAIN WHY THE REQUIREMENTS OF THE ACT ARE NOT MET – FOR EXAMPLE:

- The hedge is not over 2 metres high at any point.

•

COMPLAINT REJECTION: INSUFFICIENT EFFORTS TO RESOLVE BY NEGOTIATION

To be sent to the complainant

COMPLAINANT ABOUT A HIGH HEDGE INVESTMENT ADDRESS

REFERENCE NUMBER

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE

COMPLAINT REJECTION: FRIVOLOUS OR VEXATIOUS

To be sent to the complainant

COMPLAINANT ABOUT A HIGH HEDGE IN A RESIDENTIAL ADDRESS
REFERENCE NUMBER

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE, ...]

[EXPLAIN REASONS – FOR EXAMPLE, ...]

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

There is no specific right of appeal if you disagree with our decision. But if you consider the Council has not applied the legislation properly or has treated you unfairly, you should write to the Council's complaints officer [name and contact details]. Alternatively, you may apply to the High Court to challenge the decision by judicial review. If you are considering applying for judicial review, you are advised to seek specialist legal help. Community Legal Service (CLS) [insert local contact details] can help you to find the right legal advice.

ACKNOWLEDGEMENT OF COMPLAINT

To be sent to the complainant

Under the Act, the Council is required to decide two things:

- whether the hedge, because of its height, is adversely affecting your reasonable enjoyment of your property; and
- if so, what action (if any) should be taken to remedy the situation or prevent it from recurring.

In reaching their decision, the Council will take account of all relevant factors and will seek to strike a balance between the competing interests of you and your neighbour, as well as the interests of the wider community.

We aim to issue a decision on your complaint within [number] weeks from the date of the site visit. We will send a copy of our decision, and the reasons for it, to you, [your agent,] the owner and occupier of the land where the hedge is situated [and anyone else who sends us comments on your complaint].

NOTIFICATION OF COMPLAINT: OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED

To be sent to the occupier of the property where the hedge is situated

COMPLAINANT ABOUT A HIGH HEDGE IN A ROAD ADDRESS

REFERENCE NUMBER

We have received the enclosed complaint, made under Part 8 of the Anti-social Behaviour Act 2003, that a hedge on your property is adversely affecting your neighbour at [address]. I understand your neighbour has discussed this with you previously but you have been unable to agree a solution.

I also enclose a copy of the leaflet *Leaflet: Dealing with High Hedges* which explains how the Council deals with such complaints.

The complaint has been given the reference number: [insert].

It is being dealt with by [name, address and other contact details of the case officer].

You will probably need to attend the visit as the officer will need to gain entry to your property. But please bear in mind that, although the Council officer might wish to ask questions to clarify factual points, they will not be able to discuss the merits of the case with either party. We will also be contacting the complainant so that the officer can view both sides of the hedge.

Under the Act, the Council is required to decide two things:

- whether the hedge, because of its height, is adversely affecting the complainant's reasonable enjoyment of their property; and
- if so, what action (if any) should be taken to remedy the situation or prevent it from recurring.

In reaching their decision, the Council will take account of all relevant factors and will seek to strike a balance between the competing interests of you and your neighbour, as well as the interests of the wider community.

We aim to issue a decision on the complaint within [number] weeks from the date of the site visit. We will send a copy of our decision, and the reasons for it, to you, [the owner of your property,] the complainant [and anyone else who sends us comments on the complaint].

QUESTIONNAIRE: TO BE COMPLETED BY THE OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

1. Your name and contact details

Name:

Telephone No. (daytime):

Email address:

Do you prefer to be contacted by email?

2. Contact details for the owner of the property (if different)

Name:

Address:

Telephone No. (daytime):

Email address:

3. Legal restrictions

As far as you know:

- Was the hedge planted under a condition attached to a planning permission?
- Does a condition attached to a planning permission specify that the hedge must be retained?

NOTIFICATION OF COMPLAINT: OWNER OF THE LAND WHERE THE HEDGE IS SITUATED (if different to the occupier)

To be sent to the owner of the property where the hedge is situated. This letter should be issued as soon as the relevant contact details are provided to the Council – either on the complaint form or the occupier’s questionnaire.

COMPLAIN ABOUT A HIGH HEDGE IDENTIFIED AT ADDRESS
REFERENCE NUMBER

I enclose a copy of a letter sent to [name and address of the occupier of the land where the hedge is situated] notifying them that the Council has received a complaint about a hedge on the property.

I understand that you own the land in question and so have an interest in this matter.

To help us consider this complaint further, you are invited to send us any comments you might have on the points raised in the complaint and to provide any further information that you want us to take into account. This should reach us no later than [date]. [Please also let us have answers to any items of the questionnaire that the occupier of the property has been unable to deal with.]

You should send a copy of these papers to the person who has made the complaint and to the occupier of your property, at the same time as you submit them to the Council. You might wish to bear this in mind in framing your comments. The complainant’s name and address is on the complaints form. Please send us confirmation that you have done this.

We will send you a copy of our decision, and the reasons for it, in due course.

DECISION LETTER: NO REMEDIAL ACTION (illustrates short decision letter for use where case report is appended to the decision)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

COMPLAINANT ABOUT A HIGH HEDGE IDENTIFIED AT ADDRESS
REFERENCE NUMBER

I refer to the complaint, made under Part 8 of the Anti-social Behaviour Act 2003, about the high hedge situated at [site address/description]. The complaint alleged that the hedge is adversely affecting the enjoyment of the domestic property at [address]. In particular, it was alleged that the hedge [summarise main grounds of complaint].

The Council have taken into account:

- representations and other information submitted by the complainant and by the [owner/occupier] of the land where the hedge is situated;
- [representations received from [number] other interested parties;]
- the contribution that the hedge makes to the character and amenity of the area. [We have paid special attention to the fact that the hedge is situated in a conservation area/the trees in the hedge are protected by a tree preservation order.]

An officer of the Council visited the site on [date].

Main Considerations and Conclusion

I enclose a copy of the case report which summarises the representations and other information before the Council and explains how we have assessed and weighed the various issues raised by the complaint.

The Council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

As the report indicates, the main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is situated and on the wider area. [DEAL CONCISELY WITH THE MAIN ISSUES. THESE WILL NORMALLY RELATE TO THE DEGREE OF HARM CAUSED BY THE HEDGE AND WHETHER THIS IS OUTWEIGHED BY ITS AMENITY VALUE TO BOTH THE HEDGE OWNER AND THE WIDER COMMUNITY. FOR EXAMPLE:



Formal Decision

For the reasons given [above/in the case report], the Council have decided that [the height of the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property/no action should be taken in relation to the hedge to remedy its adverse effect or to prevent its recurrence].

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

Right of Appeal

The complainant, [name], can appeal to the Planning Inspectorate against the Council's decision. Further information is in the leaflet [redacted], a copy of which is enclosed. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
Planning Inspectorate
Regus House
Room 2/15
1 Friary
Temple Quay
Bristol BS1 6EA
Telephone: 0117 344 5687.

The complainant can appeal on either of the following grounds:

- that, contrary to the decision of the Council, the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property; and/or
- that the adverse effect warrants action being taken in relation to the hedge.

Advice

[OFFER PRACTICAL ADVICE ON HOW THE HEDGE MIGHT BE MANAGED SO THAT IT DOES NOT CAUSE PROBLEMS IN THE FUTURE. FOR EXAMPLE:



I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated. [Copies also go to other interested parties who commented on the complaint].

DECISION LETTER: REMEDIAL ACTION (illustrates longer decision letter for use where there is no separate case report)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

COMPLAINANT ABOUT A HIGH HEDGE IDENTIFIED AT ADDRESS
REFERENCE NUMBER

I refer to the complaint, made under Part 8 of the Anti-social Behaviour Act 2003, about the high hedge situated at [site address/description]. The complaint alleged that the hedge is adversely affecting the enjoyment of the domestic property at [address].

The Council gathered evidence and information in relation to the complaint by inviting the [owner/occupier] of the land where the hedge is situated to submit a statement [and by consulting selected organisations that appeared to the Council to have an interest in the matter]. In addition, an officer of the Council visited the site on [date].

This letter summarises the evidence and information gathered by the Council and explains how we have assessed and weighed the various issues raised by the complaint.

The Hedge and its Surroundings

[BRIEF DESCRIPTION OF THE HEDGE AND ITS SETTING. INCLUDE THE HEIGHT AND LENGTH OF THE HEDGE AND GENERAL SPECIES CONTENT; ASSESSMENT OF ITS GROWTH HABIT AND CONDITION (EG GAPS); EVIDENCE (IF ANY) OF PAST MANAGEMENT; ITS POSITION IN RELATION TO THE COMPLAINANT'S PROPERTY, WITH RELEVANT MEASUREMENTS, AND IN RELATION TO OTHER FEATURES ON THE LAND WHERE IT IS GROWING (EG THE HEDGE OWNER'S HOUSE). OTHER RELEVANT FACTORS MIGHT INCLUDE ORIENTATION, SIZE OF GARDENS, ANY DIFFERENCES IN LEVELS BETWEEN THE TWO PROPERTIES, OTHER TREES AND VEGETATION. IN ADDITION, DESCRIBE THE GENERAL CHARACTER OF THE AREA AND ANY SPECIAL FEATURES (EG CONSERVATION AREA).]

Relevant Policies or Legislation

[DRAW ATTENTION TO ANY POLICIES, OR LEGAL RESTRICTIONS, THAT APPLY AND COULD BE MATERIAL TO THE COUNCIL'S CONSIDERATION OF THE COMPLAINT. THESE PROVIDE EVIDENCE OF THE COMMUNITY/PUBLIC INTEREST IN THE MATTER. THEY MIGHT INCLUDE LOCAL LANDSCAPE CHARACTER ASSESSMENTS, PLANNING POLICIES, EXISTENCE OF A TREE PRESERVATION ORDER OR A PLANNING CONDITION.]

Case for the Complainant

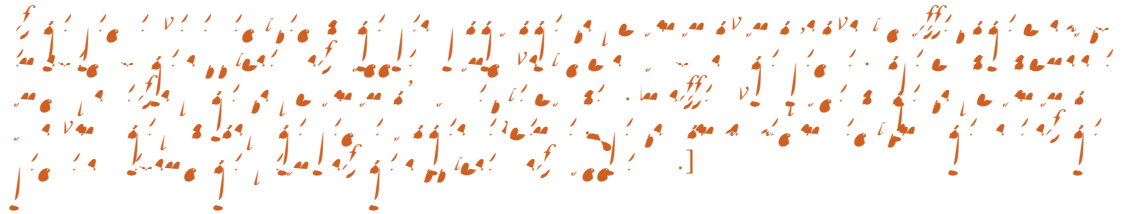
[SUMMARISE THE MATERIAL POINTS FROM THE COMPLAINT FORM AND OTHER INFORMATION SUBMITTED. FOR EXAMPLE:



Case for the Owner/Occupier of the Land where the Hedge is Situated

[SUMMARISE THE MATERIAL POINTS FROM THE STATEMENT AND OTHER INFORMATION SUBMITTED.

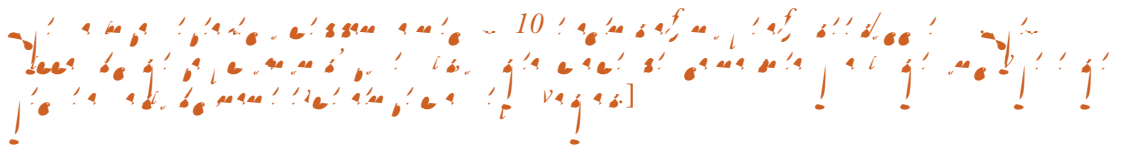
FOR EXAMPLE:



Case for Other Interested Parties/Results of Consultation

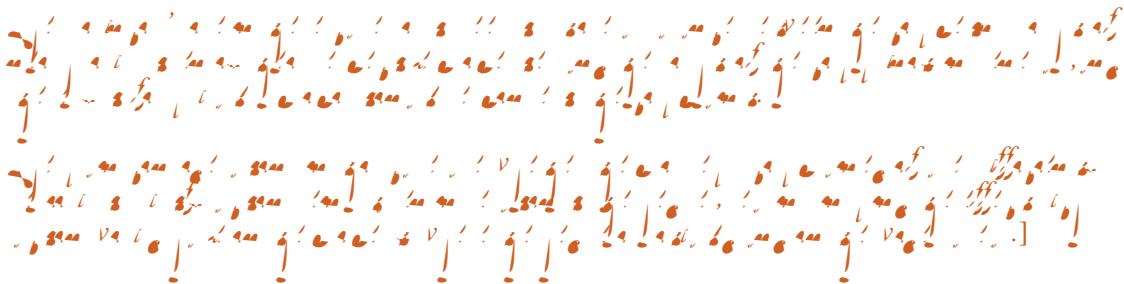
[STATE THE NATURE OF ANY REPRESENTATIONS RECEIVED AND SUMMARISE THE MATERIAL POINTS.

FOR EXAMPLE:



Main Considerations

[SET OUT THE ROLE OF THE COUNCIL AND THE MAIN ISSUES TO BE CONSIDERED. FOR EXAMPLE:



Appraisal of the Evidence

[DRAWING ON THE ADVICE IN CHAPTER 5:1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100], ASSESS THE HARM

Plant growth, litter

Formal Decision

For the reasons given [above/in the case report], the Council have decided that the height of the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property and hereby issue the enclosed remedial notice specifying the action that must be taken in relation to the hedge to remedy its adverse effect [and to prevent its recurrence].

Summary of Requirements of Remedial Notice

[SUMMARISE, IN PLAIN LANGUAGE, THE MAIN REQUIREMENTS OF THE REMEDIAL NOTICE SO THAT IT IS CLEAR WHAT ACTION NEEDS TO BE TAKEN. FOR EXAMPLE:




Person Responsible for Taking Remedial Action

Under the Act, the owner or occupier of [address of the land where the hedge is situated] is obliged to carry out the works specified in the remedial notice, within any timescale set there. Failure to do so, may result in prosecution and a fine.

The remedial notice does not give the complainant any right to intervene and take the necessary action themselves.

Right of Appeal

The complainant and everyone who is an owner or occupier of the land where the hedge is situated, that is [names], can appeal to the Planning Inspectorate against the issue of the remedial notice. Further information is in the leaflet , a copy of which is enclosed. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
Planning Inspectorate
Regus House
Room 2/15
1 Friary
Temple Quay
Bristol BS1 6EA
Telephone: 0117 344 5687.

An appeal can be made on any one or more of the following grounds:

- that the action specified in the remedial notice falls short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
- that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property;

- that the action specified in the remedial notice exceeds what is reasonably necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring;
- that not enough time has been allowed to carry out the works set out in the notice.

The remedial notice will be suspended while any appeal is being determined.

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated. [Copies also go to other interested parties who commented on the complaint].

REMEDIAL NOTICE

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

IMPORTANT NOTICE AFFECTING THE PROPER ENJOYMENT OF THE LAND WHERE THE HEDGE IS SITUATED

ANTI-SOCIAL BEHAVIOUR ACT 2003

REMEDIAL NOTICE

ISSUED BY: [Council name]

1. THE NOTICE

This Notice is issued by the Council under section 69 of the Anti-social Behaviour Act 2003 pursuant to a complaint about a high hedge situated at [address]. The Council has decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at [complainant's address] and that action should be taken in relation to the hedge with a view to remedying the adverse effect [and preventing its recurrence].

2. THE HEDGE TO WHICH THE NOTICE RELATES

[THIS WILL NORMALLY BE THE HEDGE, OR PART OF IT, THAT MEETS THE LEGAL DEFINITION AND IS THE SUBJECT OF THE COMPLAINT.]

The hedge [in the rear garden] at [address] and marked red on the attached plan. [COMPLAINT RELATES TO WHOLE HEDGE]

OR

The portion of hedge [in the rear garden] at [address] marked red on the attached plan. The portion is [10] metres in length, measured from the end of the hedge that is closest to the house at this address. This point is marked X on the plan. [COMPLAINT RELATES TO PART OF A LONGER HEDGE, THE REST OF WHICH IS NOT A HIGH HEDGE]

AND

The [portion of] hedge is formed predominantly of [name eg cypress] trees [and shrubs].

3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE

Initial Action

The Council requires the following steps to be taken in relation to the hedge before the end of the period specified in paragraph 4 below: [SPECIFY THE ACTION NECESSARY TO REMEDY THE PROBLEMS CAUSED BY THE HEDGE, PLUS A GROWING MARGIN TO FORESTALL FURTHER PROBLEMS IN THE SHORT TERM]

out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Dated:

Signed: [Council's authorised officer] on behalf of

[Council's name and address]

REMEDIAL NOTICE: SPECIFYING THE ACTION

Initial Action



- (i) reduce the hedge to a height not exceeding [3] metres above ground level.



- (i) reduce the hedge to a height not exceeding [6]

OF THE NOTICE BY ANNUAL PRUNING TO A HEIGHT THAT ALLOWS THE HEDGE TO RE-GROW BETWEEN CUTS. ALTERNATIVELY, THEY MIGHT CARRY OUT MORE FREQUENT LIGHT TRIMMING TO ACHIEVE THE SAME EFFECT.

- (i) maintain the hedge so that at no time does it exceed a height of [4] metres.

THE EXAMPLE BELOW WOULD REQUIRE THE OWNER OR OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED TO CARRY OUT ANNUAL PRUNING TO A HEIGHT THAT ALLOWS THE HEDGE TO RE-GROW BETWEEN CUTS. THE MARGIN ALLOWED FOR RE-GROWTH WOULD VARY ACCORDING TO THE SPECIES OF TREES/SHRUBS IN THE HEDGE.

- (i) at any time that the hedge reaches a height of [4] metres above ground level, reduce it to a height not exceeding [3] metres above ground level.



- (i) maintain the section of hedge to which the initial action specified above relates so that at no time does it exceed a height of [4] metres above ground level.



- (i) maintain the hedge so that – other than the trees identified above – at no time does it exceed a height of [4] metres above ground level.

