

LIST OF APPENDICES

- A. High Hedges Complaints System: Guidance (Welsh Government 2005)
- B. Hedge Height and Light Loss (Building Research Establishment - BRE)'
- C. High Hedge Remedial Notice Authorisation Report

APPENDICES

APPENDIX A



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

HIGH HEDGES COMPLAINTS SYSTEM

GUIDANCE

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CONTENTS

Introduction	4
Chapter 1: Preventing hedge problems.....	5
Good Design	5
Planning Conditions	7
Covenants.....	7
Better Information	8
Chapter 2: Settling problems amicably	10
Negotiation.....	10
Mediation	10
Sources of Help and Advice.....	11
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.....	13
High Hedges	13
Location of the Hedge.....	15
Affected Property	16
Grounds of Complaint.....	17
Who Can Complain.....	18
Invalid Complaints.....	19
Chapter 5: Dealing with complaints.....	20
Informal Action.....	20
Making a Formal Complaint	20
Whether or Not to Proceed with a Complaint.....	24
Gathering the Evidence.....	26
Assessing and Weighing the Evidence	28
Other Relevant Factors	33
Deciding the Complaint.....	35
Change in the Main Parties.....	38
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.....	52
Correcting Errors.....	52
Extending the Compliance Period.....	53
Main Parties Agree a Different Solution	54
Material Change in Circumstances	55
Case Beyond the Scope of the Act	58
Exceeding the Requirements of a Remedial Notice.....	58
Chapter 8: Appeals.....	59
Rights of Appeal.....	59
Grounds of Appeal	59
Before Making an Appeal.....	62
Submitting an Appeal.....	63
The Parties to an Appeal and their Role	64
Appeals Procedure	66
Appeal Decision	73
Withdrawal of Appeal.....	73
Review of Appeal Decision	73
Chapter 9: Enforcement.....	75
Offences.....	75
Defences.....	76
Enforcement Procedures	76
Documenting the Case.....	77
Investigations	78
Enforcement Action.....	79
Entry to Land.....	82

Introduction

1. A good hedge has many benefits as a garden boundary. It is a useful weather and dust filter, is inexpensive to create and long-lasting, can encourage wildlife and can be a feature of beauty and interest in its own right. It also offers privacy and security but problems can occur if a hedge is allowed to grow unchecked.
2. People do not normally need permission to plant a hedge in their garden and there are no general restrictions on how high a hedge can be grown. The rules that govern the height of boundary walls and fences do not apply to hedges. Existing common law rights entitle people to cut overhanging branches back to the boundary line, but they do nothing about hedge height. The provisions contained in section 198(6)(b) of the Town and Country Planning Act 1990 may apply, particularly to overhanging parts of protected trees i.e. trees in a Conservation Area or the subject of a tree preservation order.
3. If someone is troubled by a neighbour's hedge, the best way to deal with the issue is to talk to them about it and to try to agree a solution.
4. Where negotiation fails, local authorities in Wales have powers to deal with complaints about high hedges under Part 8 of the Anti-social Behaviour Act 2003 ("the Act").
5. This Guide sets out the Welsh Assembly Government's policy advice on administering complaints about high hedges in Wales under the Act. 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 as amicably as possible.
6. When using this Guide, three points need to be borne in mind. Firstly, local authorities and others are not required to follow the Guide and, 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 and its interpretation is ultimately a matter for the Courts. This document is strictly for guidance only and anyone, including Councils, unsure of their legal rights or obligations should obtain their own independent legal advice.
7. Thirdly, it is a basic principle that every person is entitled to the peaceful enjoyment of his/her possessions, and those possessions will clearly include any property they have. Furthermore, people are entitled, subject to any relevant provisos or restrictions, to carry out any lawful activity on their property. With this in mind, a hedge owner is perfectly within his/her rights to grow a hedge on their property. Consequently the determination of any complaint must necessarily be an exercise in balancing the rights of both parties.
8. Any questions about the Guide should be addressed to Planning Division 1(A), Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ, or e-mail:- planning.division@wales.gsi.gov.uk

Chapter 1: Preventing hedge problems

1.1. Many of the problems associated with hedges occur because fast-growing plants have been used for quick results but, through them being used in the wrong location or sited inappropriately, produce hedges that are difficult to maintain. Choosing more suitable hedging plants, identifying the most appropriate location for them, or finding another way of achieving the effect that is wanted can, therefore, help avoid outsize hedges and prevent future problems.

1.2. Better information is important but - especially in new developments - good design, planning conditions and restrictive covenants can play a part. Local planning authorities, house builders, landscape architects and contractors, growers and retailers all have a role.

Good Design

1.3. In growing tall hedges most people are, generally, seeking to create privacy and to prevent others looking into their property. They will sometimes replace or fortify existing barriers to ensure they are at least head height. People employ these additional safeguards even where housing densities are low and they have generously-sized gardens. In some cases people will plant against existing barriers to soften their impact and to provide seasonal interest and to encourage wildlife into their gardens.

1.4. To secure privacy and so deter people from constructing unsuitable defences or inappropriate planting against existing barriers, new developments should pay attention to what happens in those parts of a property that might be away from public view but not necessarily from the gaze of neighbours. This is not just a matter of the physical separation of properties and it is not enough to rely on established rules of thumb relating to, for instance a minimum 'back to back' distance. It requires careful thought about

- sight lines into rooms at the rear of the house and into any private garden or yard, taking account of changes of level within and between sites, such as a steeply terraced garden, balcony or roof garden;
- orientation which might affect use of the indoor and outdoor space, such as the location of a patio or other seating area;
- landscaping and boundary treatment.

1.5. Consideration also needs to be given to the relationship with properties neighbouring the development and, in that respect, when planning the layout and design of new development, regard should be had to

- safeguarding a reasonable degree of privacy for neighbouring properties;
- mitigating the impact on them of what might otherwise be perceived as intrusive development;
- the likely effect on the proposed development of existing trees, shrubs and hedges on adjacent properties.

1.6. Design solutions might include

- providing walls or solid fences to at least head height – boundary markers that have a temporary air about them or that you can see through might encourage people to introduce unsuitable screening;
- retaining existing single trees or planting new ones as a means of breaking up sight lines;
- retaining existing groups of trees and woodland, or planting new ones, to act as a buffer zone between the development and neighbouring properties;
- locating buildings in the new development to minimise the impact from trees, shrubs and hedges on properties surrounding the site.

1.7. The key is thoroughness and completeness, ensuring that all elements – buildings, landscape and the interface between them, both within the development and in relation to surrounding properties – have been considered in detailed design terms.

1.8. There are many good reasons for planting hedges and, where they are incorporated in new development:

- use plants that will not grow too large. Slower-growing varieties include yew, holly, berberis, hornbeam;
- think about the maintenance burden. Most hedge plants need to be trimmed at least once a year. Vigorous species that require more frequent pruning include hawthorn, Lawson and Leyland cypress, privet etc. In addition, some species take more kindly to pruning than others, for instance hornbeam can withstand hard pruning whereas the structure and re-growth of conifer hedges will be severely affected the harder they are cut back;
- lessen the temptation to interweave fast-growing species into a newly planted hedge by adding a temporary screen alongside the hedge, to improve security, privacy and shelter while it grows to a useful size.

1.9. Further information on choosing suitable hedging plants for domestic situations is in the leaflet '*The right hedge for you*'¹. Help on garden hedges, including plant selection, is also available through the advice pages of the Royal Horticultural Society's website at www.rhs.org.uk. and for instance, from Hillier Gardener's Guide to Trees and Shrubs.

1.10. Fast-growing hedges may be planted specifically to afford shelter in exposed locations or to provide a quick and effective screen for new or newly developed buildings as a means of protecting neighbours' amenity. If not kept under control, however, such hedges might soon overwhelm neighbours and alternative design solutions may be more appropriate.

¹ '*The right hedge for you*' is available at www.odpm.gov.uk/treesandhedges or from the Assembly, telephone 029 2082 3883.

1.11. If circumstances are such that a vigorous hedges is required, 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

1.12. 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.

1.13. Guidance on the use of conditions in planning permissions is set out in Welsh Office Circular 35/95. 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.

1.14. 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 appearance and treatment of spaces between and around buildings.

1.15. Local planning authorities should, therefore, consider imposing conditions to:

- secure suitable boundary treatments;
- ensure any hedges are of species suitable for the location and require their long-term maintenance at a particular height;
- provide suitable screening of the development.

1.16. Local planning authorities should also consider using conditions to control future alterations to buildings that might affect the privacy of neighbours. For example, adding or enlarging windows or converting a flat-roofed extension to a first floor balcony or roof garden. Such changes might cause neighbours to grow a high hedge to prevent being overlooked. Although these minor alterations can usually be made without the need to apply for separate planning permission, these rights may be restricted or removed where the local planning authority considers it necessary or reasonable to do so by attaching a suitable condition to the original planning permission. Suggested models of suitable conditions, for use in appropriate circumstances, are contained in Appendix A to Circular 35/95.

Covenants

1.17. Once a development is completed planning conditions cannot affect new hedges subsequently planted by the occupiers. Such matters can, however, be covered by covenants - legal restrictions on properties that are specified in the title deeds. Covenants can last indefinitely and can make long-term or permanent provision for maintaining hedges. They may also be enforced through the Courts where the covenanter is absent (e.g. no longer in business) or unwilling to take action.

1.18. To help prevent future hedge problems, developers could consider introducing legal covenants for new residential developments that:

- set out the arrangements that apply to maintenance of boundaries or screens, including the responsibilities of neighbours on either side of the boundary;
- place limits on the size or type of hedge which may subsequently be planted on the property.

Better Information

1.19. Many outsize hedges are the result of mismanagement and neglect and Leyland and Lawson cypress have been particular culprits because they are vigorous, widely available and inexpensive. People do not realise that they also need frequent and substantial trimming to keep them within bounds.

1.20. Helping people to understand the commitment that they would be taking on with fast-growing hedges and the alternatives available might assist them to make the right choice and avoid future problems. This requires the active participation of growers, retailers, developers, landscapers and advisers.

1.21. Growers and retailers should

- have alternatives to Leyland and Lawson cypress available and promote them actively;
- provide information, such as growth characteristics and maintenance requirements of different species, to help customers choose appropriate plants;
- clearly label plants to indicate growth rates and ultimate size;
- spell out to potential hedge owners the need for maintenance and the consequences of neglect;
- ensure staff are able to provide accurate advice to customers on choosing, siting, planting and caring for hedges;
- advise customers to discuss with their neighbours their choice of hedge and its future maintenance requirements.

1.22. Developers, landscapers and advisers should

- always consider, or offer, alternatives to hedging where space is limited and people are looking for low-maintenance solutions – carefully positioned trees or plants within the garden, or use of trellis panels, pergolas or other frames with climbers may be as effective in preventing overlooking as tall boundary hedges;
- choose, or recommend, appropriate hedges, taking account of potential size and the time people are willing – or able – to spend on maintenance;
- spell out to new and potential hedge owners the need for maintenance and the consequences of neglect;

- provide information for new house buyers to help them choose suitable hedging;
- advise on the siting of hedges within the boundary of the garden, to assist in maintenance and reduce problems with neighbours;
- advise consultation with neighbours on the siting and maintenance requirements before planting a hedge.

Chapter 2: Settling problems as amicably as possible

2.1. If someone is troubled by a neighbouring hedge the best way to deal with the issue is to discuss it amicably with the owner and seek to agree a solution. For this reason, the law requires people to have taken reasonable steps to try to settle their hedge dispute before complaining to the local Council (see Chapter 5: *Reasonable steps to resolve the dispute*).

2.2. The Community Legal Service leaflet '*Alternatives to court*² 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 but negotiation or mediation are likely to offer the best chances of success.

Negotiation

2.3. It may be daunting to tackle neighbours about a problem and it's 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 set out in the leaflet '*Over the garden hedge*³.

2.4. This will clearly work best where people have good relations with their neighbours and can discuss matters in a friendly manner.

Mediation

2.5. Where people do not get on or the dispute over the hedge is long-running, mediation might be the answer.

2.6. Community mediation can be effective in this type of dispute. It involves an independent and impartial person (the mediator) helping those in dispute to work together to reach a settlement. The mediator's job is not to make a decision but to help the people concerned to understand each other's point of view - dealing with how they feel about the situation as well as the facts - without apportioning blame. From there the participants can move forward to think about how they could put matters right and to agree a plan of action. If mediation is to work all parties must go into it willingly.

2.7. Further information about local community mediation services is on the Mediation UK website at www.mediationuk.org.uk. People can also locate their nearest community mediation service through this site. Community mediation is usually, but not always, free of charge. There are also a number of specialist companies offering mediation and other dispute resolution services for a fee.

2.8. Using mediation is an option and is not mandatory. Where the owner or occupier of the land where the hedge is situated refuses to participate, the Mediator can be asked to provide written confirmation of this as evidence to show that the complainant had tried this course of resolving the matter, albeit without success.

² '*Alternatives to court*' is available free on the Community Legal Service website at www.clsdirect.org.uk.

³ '*Over the garden hedge*' is available at www.odpm.gov.uk/treesandhedges or from the Assembly, telephone 029 2082 3883.

Sources of Help and Advice

2.9. There are several organisations that will provide advice on the most suitable means for resolving neighbour disputes and offer people practical help in putting together their side of the case. They will not usually, however, arbitrate or mediate.

Community Legal Service

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 Bureaux

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.

2.15. In addition, some firms of solicitors offer a set amount of initial free advice, either by email, over the telephone or through personal interview.

2.16. Some membership organisations, such as the Country Land and Business Association, Saga or a trade union, are also able to provide members with advice on legal issues. Such assistance may also be obtained from a telephone legal advice service often included in household or motor insurance policies.

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

3.1. Where owners/occupiers of domestic property adversely affected by hedges over 2 metres high which are predominantly evergreen or semi-evergreen cannot agree a solution, they may ask their Council (i.e. the relevant county, or as the case may be, county borough council) to consider their complaint.

The Law

3.2. The law giving local authorities powers to deal with complaints about high hedges is contained in Part 8 of the Anti-social Behaviour Act 2003 ("the Act"), the High Hedges (Appeals) (Wales) Regulations 2004 – SI No 3240 (W.282) ("the Appeal Regulations") and the High Hedges (Fees) (Wales) Regulations 2004 – SI No 3241 (W.283).

3.3. The law makes provision for County or County Borough Councils to determine complaints by the owners/occupiers of domestic property adversely affected by hedges which are predominantly evergreen or semi-evergreen and over 2 metres high. The Council are able to charge a fee for this service, to be paid by the complainant. They may also reject the complaint if they consider that insufficient effort has been made to resolve the matter or that the complaint is frivolous or vexatious.

3.4. The Council may, if they consider the circumstances justify it, issue a notice requiring the owner or occupier of the land where the hedge is situated to take action to remedy the problem and to prevent it recurring. This is known as a "remedial notice". Any remedial notice may be enforced through criminal prosecutions and/or by the Council entering the land and carrying out the necessary work if the owner or occupier fails to do so. In such cases the owner/occupier will be liable to pay the Council's costs of the action.

Role of Councils

3.5. Responsibility within Councils for all functions relating to the high hedges legislation rests with the Executive, rather than the full Council, of each County and County Borough Council in Wales.

3.6. The Act does not specify which department within the Council should carry out this function (such as environmental health or planning). It is for each Council to decide which part of their organisation should be responsible for dealing with high hedge complaints. It is good practice to inform relevant bodies and organisations, such as, community councils, the local Citizens Advice Bureau, Community Legal Service Partnership, Hedgeline and the community mediation service.

3.7. The role of the Council is to act as an independent and impartial third party. They do not negotiate or mediate between individuals but will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property. In doing so, they will take account of all views and relevant factors - including the hedge owner's amenity. They will assess each case on its particular merits.

3.8. 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 and they may not require a reduction in the height of the hedge to less than two meters above ground level or the removal of the hedge.

Chapter 4: What complaints Councils can consider

4.1. Under the terms of the Act, Councils can only consider a complaint if it satisfies the following criteria:

- it must relate to a high hedge as defined in the Act;
- the hedge must be on land that is owned by someone other than the complainant;
- it must be affecting a domestic property;
- the complaint must be made on the grounds that the height of the hedge is adversely affecting the reasonable enjoyment of the domestic property in question; and
- it must be brought by the owner or occupier of that property.

High Hedge – definition

4.2. A high hedge is defined in the Act⁴ as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level; but, for these purposes, a line of evergreens or semi-evergreens is not to be regarded as forming a barrier to light or access if gaps significantly affect its overall effect as such a barrier at heights of more than 2 metres above ground level.

4.3. When considering whether a particular hedge can be the subject of a complaint under the Act, people should ask themselves the following series of questions:

- is the hedge - or the portion that is causing problems - made up of a line of two or more trees or shrubs;
- is it mostly evergreen or semi-evergreen;
- is it more than 2 metres above ground level;
- even though there are gaps in the foliage or between the trees, is the hedge still obstructing light or access;

If the answer to all these questions is 'yes', then it is likely to be a high hedge for the purposes of the Act.

4.4. It is not necessary for the whole of the hedge to fall within the definition. If some parts of it qualify they can be considered as individual hedges under the Act.

4.5. The following additional information might help when people are considering the answers to the questions set out above.

⁴ Section 66.

Line of two or more trees or shrubs

4.6. 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.

4.7. The two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, when viewed from the complainant's property, 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.

Mostly evergreen or semi-evergreen

4.8. The Act applies not only to Leyland cypress, Lawson 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).

4.9. 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.

4.10. Beech and hornbeam hedges are excluded. Although they may retain some foliage for most of the year, this is brown and dead during the winter.

4.11. Reference works such as *'Hillier Gardener's Guide to Trees and Shrubs'* or the *'RHS A-Z Encyclopaedia of Garden Plants'* may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.

4.12. 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. It may not simply be a matter of counting the number of trees or shrubs. To meet the definition in the Act however, at least two of the trees or shrubs in a hedge must be evergreen or semi-evergreen.

4.13. 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 would be caught within a complaint under the Act.

More than 2 metres above ground level

4.14. 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.

4.15. 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. 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 level rather than from the top of the mound, bed or container.

Barrier to light or access

4.16. 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, insofar as to 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.

4.17. 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 above 2 metres - the hedge obstructs light or access.

4.18. 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 access. 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. 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.

4.19. 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 might still meet the definition of a high hedge. Insofar as parts of the hedge meet the definition they could be considered as individual hedges – although this will be a question of fact and degree to be examined in each situation.

4.20. 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.

Location of the Hedge

4.21. The Act⁵ 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. Example: It is possible some trees in a line may be on two or more different properties. If

⁵ Section 65.

they form a line in accordance with the legislation, such a hedge can be subject to the Act. It will be necessary to include details of the owners and occupiers of those properties in the complaint.

4.22. 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 (on an adjoining property). 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.

4.23. In addition, the offending hedge does not have to be growing in someone else's garden. It could, for instance, be on parkland or on commercial premises that backs onto a garden or yard.

Crown land

4.24. The Act applies to Crown land⁶. This means that Councils are able to investigate and determine complaints about high hedges on land owned by the Crown. For example, a hedge on land owned by a Government Department or NHS Trust might be adversely affecting a neighbouring domestic property.

4.25. The Crown itself is not liable to prosecution under the Act, though its employees might be.

Affected Property

4.26. A person can bring a complaint under the Act if a domestic property is affected. The Act⁷ defines domestic property as a dwelling or any associated garden or yard. It defines dwelling as any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

4.27. This excludes properties that are in a residential area but are wholly occupied by, say, a dental practice or other commercial use.

4.28. A complaint cannot be brought under the Act if a hedge is affecting a garage, barn, summerhouse, greenhouse, shed or other outbuilding that might be used for storage or for purposes other than as living accommodation.

4.29. Where a property contains a mix of domestic and commercial uses the Act will apply to protect the living quarters from the effects of a neighbouring high hedge.

4.30. Sometimes the division between domestic and commercial elements will be clear, e.g. the doctor's surgery that operates out of an extension to a home, or the flat above a shop or pub. In such cases a complaint could be brought under the Act only if the doctor's home or the flat over the shop or pub were adversely affected.

⁶ Section 84.

⁷ Section 67.

4.31. Where the boundaries between the business and living quarters are less clear, the question of whether or not a complaint may be brought under the legislation will turn on the facts of the particular case.

4.32. A garden or yard does not have to be attached to the dwelling, as long as it is linked legally, rather than physically, with a domestic property.

Grounds of Complaint

4.33. The Act⁸ says someone can complain if the height of the hedge is adversely affecting reasonable enjoyment of a domestic property. Anyone making a complaint to the Council must, therefore, show that:

- the problems with the hedge are related to its height; and
- the hedges are adversely affecting the reasonable enjoyment of their property.

Height

4.34. 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.

4.35. 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.

4.36. Grounds of complaint that are unrelated to the hedge that is the subject of the complaint will also generally be disregarded e.g. claims that other hedges in the area are maintained at a lower height.

Roots

4.37. The Act⁹ specifically excludes complaints about the effects of the roots of a high hedge. The Council will not, therefore, deal with complaints made under this legislation about such matters as:

- root-related property damage, including subsidence;
- roots taking moisture and nutrients from the soil, so creating difficult growing conditions for plants;
- roots blocking drains or invading pipes.

Reasonable enjoyment of property

⁸ Section 65.

⁹ Section 65(4).

4.38. The Act states that the hedge must be adversely affecting the complainant's reasonable enjoyment of their domestic property.

4.39. Grounds of complaint must, therefore, relate to the impact of the hedge on the complainant's property, that is, their home and garden. The following grounds will not normally be considered:

- the effect of the hedge, or the dispute over it, on the complainant personally. For example, that the problems with the hedge have caused worry, concern or depression, leading to health problems;
- factors relating to the complainant's feelings about, or perceptions of, the hedge e.g. fears that the hedge will break or fall;
- the effect of the hedge on particular activities that the complainant engages in on the property. An example is where the hedge interferes with a greenhouse, a vegetable patch, the growing of competition plants or annual bedding; or affects television reception, including any receiving aerial such as a satellite dish.

4.40. The reference to 'reasonable' enjoyment of the property is also significant as it affects the way that Councils determine complaints. It requires them to:

- assess the impact of the hedge on the enjoyment that a reasonable person might expect from their home and garden, thereby introducing a degree of objectivity to the decision-making process. This may differ from the complainant's expectations. For example, the complainant might attach particular importance and weight to the loss of winter sunlight. The Council will, however, have regard to what is a reasonable amount of sunlight for people to get in their property at this time of year. They will also take into account the fact that the effect lasts for a limited time;
- consider what is reasonable in the circumstances. This means they must:
 - ❖ take account of all relevant factors, including the opinions of the hedge owner. They will not look solely at the complainant's concerns;
 - ❖ look at each case on its particular merits. A problem that leads to the issue of a remedial notice in one complaint might not, because of the different circumstances, necessarily produce the same outcome in another case.

4.41. Potential complainants should have regard to these points in framing their grounds of complaint and substantiating their case. Further information on how Councils will assess whether a high hedge is adversely affecting the reasonable enjoyment of a property is in Chapter 5: *Assessing and Weighing the Evidence*. This should help complainants to assess the strengths and weaknesses of their case before they submit their complaint.

Who Can Complain

Owner or occupier

4.42. A complaint can be brought under the Act by the owner or occupier of the affected domestic property¹⁰. Where there is both an owner and an occupier (e.g. landlord and

¹⁰ Section 65(1)(a).

tenant), each is entitled to complain to the Council. Each could complain about their own enjoyment of the property but not each others e.g. an owner could not cite the tenant's enjoyment of the property as the grounds for the owner's complaint.

4.43. A person does not have to live at the address for a set period before they can make a complaint. Even if the high hedge was there when they moved in, they are still entitled to complain under the Act. It is unlikely, however, that someone would be in a position to complain to the Council shortly after taking over a property. They may need to have some experience of the adverse effects of the high hedge and would need to have tried to negotiate a solution with their neighbour.

4.44. Although the Act does not require an occupier (e.g. tenant) to get permission from the owner of their property before making a complaint, this might be a condition in their tenancy agreement. People should, therefore, check the terms of any such agreement before contacting the Council.

4.45. Even if there is no requirement to obtain the property owner's consent, it is good practice for the occupier to inform the owner before a complaint is submitted to the Council. This is particularly important if someone is occupying a property for only a short time - especially where the owner is temporarily absent and intends to return to the property.

Unoccupied property

4.46. There is special provision for the owner of an empty property to bring a complaint under the Act¹¹. They might, for example, have moved out but be unable to sell the house because of the high hedge or they may be a landlord with no tenant in the property. If the reasonable enjoyment of the property by a prospective occupier would be adversely affected a complaint by the owner can be made.

Invalid Complaints

4.47. If a Council rejects a complaint because it falls outside the scope of the Act, they should inform the complainant as soon as possible and explain the reasons for the decision. The Council should also return any fee.

4.48. There is no specific right of appeal against a Council's decision that a complaint is invalid. If the complainant considers that the Council have not applied the legislation correctly they can refer the matter to the Council's own complaints officer – the Monitoring Officer - or to the Public Services Ombudsman for Wales. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

¹¹ Section 65(2).

Chapter 5: Dealing with complaints

Informal Action

5.1. As explained in Chapter 2, complaining to the Council about someone else's high hedge should be a last resort. When a Council is first approached by someone with high hedge problems they should not automatically send out a complaints form and leaflet about the procedure. It is good practice to establish with the enquirer the nature of the problem and what has been done to try to settle the matter through negotiation and to guide them through the terms of the Act and the complaints procedures.

5.2. Early communication can help to establish whether the complaint is one that the Council can consider, in particular:

- whether the hedge in question and the problems encountered fall within the scope of the Act;
- whether there is more that the complainant can do to try to resolve the matter without involving the Council e.g. have they tried direct negotiations, mediation and have they informed their neighbour about the complaints system?;
- where the Council have considered an earlier complaint, how much time has elapsed and whether there has been a significant change in circumstances that affects the Council's earlier decision.

5.3. If the Council think more could be done to resolve the dispute amicably they should explain what further steps the person should take. Depending on the extent of contact with the owner of the hedge the Council might consider providing information on alternative dispute resolution methods - including the leaflet '*Over the garden hedge*' and details of any local community mediation service.

5.4. Councils should offer factual information only - they should not give anyone advice on the merits of their case or the likelihood of success. If asked for such an estimate Councils might refer potential complainants to the section below on *Assessing and Weighing the Evidence* which explains how their grounds of complaint will be assessed; and, where available, to previous decisions issued by the Council or, following an appeal, by the Planning Inspectorate.

5.5. Similarly, Councils should not mediate directly in high hedge disputes. Given their role in these complaints is to act as an independent and impartial third party, they could prejudice their position in determining any subsequent formal complaint if they seek to act as a go-between. The Council can refer such negotiation with the people concerned to any local community mediation service or similar organisation.

Making a Formal Complaint

5.6. When a Council is approached by someone in a position to make a formal complaint under the Act they should normally provide the person with:

- a copy of a complaint form for completion, with appropriate guidance notes, or a checklist of information to be provided;
- details of the fee payable; and

- the explanatory leaflet 'High hedges: complaining to the Council'¹².

5.7. It is also good practice for the Council to provide the name and contact details of the officer who will be dealing with the complaint.

Complaint Form

5.8. A complaint does not have to be in a particular format, though completing a standard form will help the Council to obtain the information they need in a consistent way. A complaint can be submitted in writing or electronically (see the section below on *Delivering Documents*). It can be submitted by a relative or other agent acting for the complainant.

Essential information

5.9. The person making a complaint will normally need to supply the following information:

- their name, address, status (e.g. owner or tenant) and other contact details;
- confirmation that the address relates to a domestic property;
- the name and address of the occupier of the land where the hedge is situated, together with these details for the owner of the land in question (if different and if known);
- a location plan showing the hedge and the property & garden that is/are affected;
- photos of the hedge, preferably with a figure for scale;
- confirmation that the hedge is more than 2 metres above ground level and comprises predominantly evergreen or semi-evergreen trees or shrubs;
- outline of the steps taken to settle the dispute by negotiation, with copies of relevant correspondence or other papers;
- details of how the height of the hedge is adversely affecting the reasonable enjoyment of the affected property.

5.10. If any of the above information cannot be supplied, the complaint should not be automatically rejected. Efforts should be made to obtain the missing detail. The complainant would need to explain why information has not been included e.g. why they have difficulty supplying a plan and photos for example.

5.11. In practice, the application constitutes the complainant's statement of case. It will be a key document in the Council's consideration of the complaint as well as in any subsequent appeal. It is important, therefore, that the complainant, in setting out their grounds of complaint, does not just list the problems caused by the hedge but explains their impact and their severity in factual terms (e.g. the hedge blocks light to our living room which means that

¹² 'High hedges: complaining to the Council' is available at www.odpm.gov.uk/treesandhedges or from the Assembly, telephone 029 2082 3883.

there is a need to keep electric lights on all day during the winter). They should also submit any supporting information they wish to be taken into account.

5.12. A sample form, with guidance notes for its completion, is in the Appendix.

5.13. The person making the complaint should send a copy of the completed form to the owner and occupier of the land where the hedge is situated at the same time as they submit it to the Council. The owner and occupier of the land in question should have been forewarned that failure to negotiate a solution would lead to the matter being referred to the Council and so the complaint should not come as a surprise.

Fees

5.14. The Act¹³ allows Councils to charge a fee for determining a complaint about a high hedge. The National Assembly has used its powers¹⁴ to prescribe, through Regulations, a maximum fee of £320. Each Council is free, therefore, to charge up to that amount in respect of each complaint.

5.15. Should they so wish, Councils may provide this service for free, or charge different amounts up to this maximum. In certain circumstances, Councils might wish to offer the service at a reduced fee, or for free – e.g. for people who are disabled, unemployed, or on low incomes or benefits - while making a charge to others based on the cost of providing the service.

5.16. It is also for each Council to decide whether or not to provide refunds or part-refunds. In certain circumstances Councils might wish to return any fee paid or part of it – e.g. if the matter is subsequently settled without their intervention (after the complaint was submitted). There is no requirement however to offer refunds. In particular, complainants should not expect Councils to return money where the complaint has been formally determined, or the formal procedure has been invoked, whether or not the outcome is favourable to them.

5.17. Nor is it appropriate for Councils to get involved in any attempts by the complainant to seek reimbursement of their fees from the hedge owner, other than to inform the main parties that the legislation does not provide for such a demand to be made. It would be entirely for the hedge owner to decide whether to reimburse the fee, perhaps to maintain or restore goodwill with the complainant.

5.18. It is good practice for Councils to publish details of their local fees scheme for dealing with high hedge complaints so that it is clear to people what the cost of making a complaint will be. An advisory note on fees can be issued with the complaints form.

5.19. All formal complaints must be accompanied by the correct fee. As a general rule, each complaint will generate one fee.

Submitting the complaint

5.20. Complaints must be submitted to the Council in whose area the hedge is situated. Thus, where the hedge is on land within the boundaries of Council A but the complainant lives in the area of Council B, the complaint should be sent to Council A.

¹³ Section 68(1)(b).

¹⁴ Section 68(7) (b).

Uncommon cases

5.21. Complaints may not always involve one complainant, one hedge and one hedge owner. Councils are advised to deal with complaints involving multiple parties or hedges as follows:-

5.21.1. Multiple complainants, single hedge, one owner. For example, where there has been infill development a hedge that bounds a large garden could affect several smaller neighbouring properties.

Councils must consider separately and individually the impact of the hedge on each property that is affected. Separate complaints should, therefore, be submitted by the owner or occupier of each of the affected properties, together with the requisite fee. If they are submitted at the same time, the Council are advised to link the complaints as they are processed so that the relationship between them and the practical implications for the hedge owner can be considered. There may also be savings made in dealing with several complaints together and, in these circumstances, the Council has the freedom to decide whether to reduce the fees or refund them in part. Section 65(5) of the Act however, includes wording that suggests complaints may be put forward by more than one person - "references to the complainant include references to one or more of the complainants". If several neighbours join together to submit one complaint, the Council could only charge one fee, but may charge a higher fee, up to the £320 maximum, to reflect the extra work involved in dealing with several complainants. If the complainant changes during the processing of the complaint, another fee should not be charged, as it will not be necessary for the process to re-start from the beginning – see 5.124 below under *Change in the Main Parties*.

5.21.2. One complainant, single hedge, multiple owners. In the reverse of the above example, following infill development incomers may have all planted hedges which form a continuous barrier to light or access when viewed from the larger property.

In these circumstances every owner and occupier of the properties where the hedge is situated would be a party to the complaint. Councils should, therefore, seek comments from every owner of the hedge and take these into account in determining the complaint. They would also notify all parties of their decision and send them a copy of any remedial notice that might be issued. The fact that the hedge is in multiple ownership is, in itself, unlikely to be relevant to the Council's consideration of the impact of the hedge on the affected property. In processing such a complaint Councils might wish to satisfy themselves that the complainant has attempted to negotiate a solution with every owner of the hedge.

5.21.3. One complainant, multiple hedges, one owner. The hedges in question might be parts of a longer hedge that does not, in its entirety, meet the legal definition. Alternatively, they might be separate hedges in different locations on the neighbouring land.

A single complaint may cover more than one hedge that affects the complainant's property. The Council, in determining the complaint, should consider the effect of each hedge individually as well as their cumulative impact.

5.21.4. One complainant, multiple hedges, multiple owners. For example, a garden with hedges on three sides.

This would also be a single complaint but every owner and occupier of the properties where the hedges are situated should be invited to participate as a party to the complaint and should be notified of the outcome.

5.22. Further advice on how such cases might be considered is given later in this Chapter in *Communication the Decision* and in Chapter 6: *Remedial Works*.

Whether or not to proceed with a complaint

5.23. On receipt of a completed complaint form and the correct fee the Council should, as a first step, check whether the complaint meets the requirements set out in Chapter 4, and thus whether it is one that they can consider under the terms of the Act. They should inform the complainant as soon as possible if they are unable to deal with the complaint and return any fee (see Chapter 4: *Invalid Complaints*).

5.24. The Act¹⁵ also allows the Council not to proceed with a complaint if they consider either:

- that the complainant has not taken all reasonable steps to resolve the matters complained of without involving the Council; or
- that the complaint is frivolous or vexatious.

5.25. If the Council decide not to proceed with a complaint for either of the above reasons they must inform the complainant as soon as they can and explain the reasons for the decision¹⁶. There is no requirement on Councils to refund fees in such circumstances. This however does not prevent a Council from refunding the fee, if they consider it appropriate. Whether a refund is made or not, a new fee is payable if the complaint is re-submitted.

5.26. There is no specific right of appeal against a Council's decision not to proceed with a high hedge complaint - whether on one of the above grounds or because they consider it falls outside the scope of the Act but, if someone feels that the Council have not applied the legislation correctly or dealt properly with their case, they can complain to the Council's complaints officer - the Monitoring Officer or to the Public Services Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

5.27. 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.

Reasonable steps to resolve the dispute

5.28. 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 Chapter 2 and the leaflet '*Over the garden hedge*'.

¹⁵ Section 68(2).

¹⁶ Section 68(5)(a) and (6)(a).

In some cases the people concerned might be encouraged to try mediation. While this is a quick and informal means of resolving disputes, with a high rate of success, it can only work where people participate willingly. For this reason mediation is not a compulsory part of the process.

5.29. Councils will require proof/evidence that reasonable steps have been taken to try to resolve the dispute. Where communication has completely broken down, copies of letters sent or exchanges of correspondence might be all the Council can reasonably expect.

5.30. For some people their hedge problems will be long-standing and date back to well before the Act came into operation in Wales (31 December 2004). 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 who owns/occupies the property where the hedge is situated before making a formal complaint to the Council.

5.31. Circumstances will have altered significantly as a result of this new law. The person with the hedge may not welcome the Council's involvement and so may be more inclined to co-operate. If communication has broken down, or people are nervous of approaching their neighbour directly, they might prefer first to write to the owner and/or occupier of the land upon which the hedge is situated 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 within 14 days, it would be advisable to warn the person in writing that a formal complaint would be made to the Council if no progress is made within the next 14 days. The recorded delivery service may be used to provide proof of attempts to resolve the problem.

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

5.33. If, nevertheless, Councils receive a formal complaint, with the correct 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 could put the case on hold while further action is taken to resolve the matter. The original complaint can be reactivated should these steps prove unsuccessful. It will be for Councils to decide whether they should refund fees in cases where further action taken by the complainant leads to the successful resolution of the complaint.

Frivolous or vexatious

5.34. 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.

5.35. 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.

5.36. 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

5.37. The Act does not specify the procedure that Councils must follow in determining complaints. They should, however, take into account all relevant factors and assess each case on its particular merits. They will, therefore, need 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 between the parties and a visit to the site.

5.38. The following section on *Assessing and Weighing the Evidence* offers advice on how Councils might assess the various issues raised.

Main parties

5.39. 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.

5.40. The Act¹⁷ 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.

5.41. 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, is an occupier and would therefore be a party to the complaint and should see all relevant papers.

Exchanging representations

5.42. 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 briefly explain 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.

5.43. The Council should then write to everyone who owns and occupies the land where the hedge is situated to notify 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 so the approach from the Council should not come as a surprise.

5.44. The letter should briefly explain the procedures that the Council will follow and state 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 may wish to seek confirmation this has been done.

¹⁷ Sections 68(4), (5) and (6).

5.45. 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.

5.46. The section below on *Delivering Documents* 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 are aware of what is happening.

Interested parties

5.47. 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 if it is situated in a conservation area or if it is at the front of a property and is a feature of the street scene.

5.48. 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, where a single hedge borders several adjoining properties.

5.49. Otherwise, representations from people not directly involved in the dispute (e.g. petitions or other expressions of support from neighbouring properties) should be discouraged. Their comments are unlikely to be material to the Council's consideration of the complaint, which turns on the facts and circumstances of the particular case.

5.50. The Council should send a copy of all comments from interested parties to the main parties. If the Council receive unsolicited representations they should inform the people concerned that - unless withdrawn within a specified timescale - their comments will be forwarded to the main parties.

Consultation

5.51. Similarly, Councils are advised to confine their consultations to those specialist organisations or individuals whose expert input will help inform the decision on the complaint. For example Cadw might be consulted if the hedge is associated with or affects a listed building. Arboriculture, horticultural, ecological, landscape or conservation advice might need to be sought as appropriate.

Site visit

5.52. After the exchange of representations has been completed the Council should arrange to visit the site. This allows the officer dealing with the case to see the hedge and surroundings at first hand so that he can properly consider the written information and evidence already provided. The purpose of the visit is not to facilitate mediation or negotiation between the people in dispute and so there should be no discussion of the merits of the complaint.

5.53. It may be necessary for the complainant and the person who occupies the land where the hedge is situated to attend so that the Council officer can gain access to the site and see the hedge from both sides.

5.54. Where it is necessary to enter the land where the hedge is situated that should be achieved, wherever possible, with the agreement of the owner or occupier of the land. Where that agreement is withheld or is not forthcoming, the Act empowers the Council to enter the land in order to obtain information required by the Council in its investigation of the complaint, which includes taking away samples of the hedge.

5.55. Where such access is required the Council must give at least 24 hours' notice of the intended entry to all occupiers of the land and should produce, if asked, evidence of their authority to enter the land in question. Further information about Councils' powers of entry under the Act is in Chapter 9: '*Entry to Land*'.

5.56. What information should be collected during the site visit will vary from case to case. In most cases, however, Councils are likely to need to record the height and length of the hedge, its position within the property and, in general terms, its species composition so that it can be accurately described in any remedial notice (see Chapter 6: '*Description of the hedge*'). They might also need to measure the size of the garden; the distance between the hedge and windows in the complainant's property; or note site levels. They might make a plan and take photos, especially in cases where these have not been supplied for a genuine reason. Even if they have been supplied, the Council may wish to make their own plan or take photos to illustrate a particular point about the hedge which is not apparent in the information provided by the main parties.

Assessing and Weighing the Evidence

5.57. Having gathered information about the hedge and its effect on both the complainant and the owner/occupier of the land where the hedge is situated, the Council should assess whether there is a problem, how serious it is and thus what weight to give the matter when making their decision.

5.58. The following advice should help Councils to carry out this assessment in an impartial and consistent manner. It should be borne in mind that Councils are required to look at things not from the personal viewpoint of the people involved in the dispute but from the objective position of what a reasonable person might expect.

5.59. The list (below) of factors that Councils might need to consider is not exhaustive. Issues might occur that are not covered here. Equally, not all these factors will be relevant in every case.

Privacy

5.60. On a level site a hedge height of 2 metres will usually provide privacy from a neighbouring ground floor or garden while 3½ to 4 metres will normally be enough to prevent overlooking from first floor to ground floor or garden, although this depends on whether the hedge is an equal distance from both properties.¹⁸

¹⁸ See paragraph 5.1 of '*High Hedges, daylight and sunlight: Final Report*', BRE 2001. The report is available on the ODPM website at www.odpm.gov.uk/treesandhedges.

5.61. In general, the level of privacy provided by a 2 metre high hedge is what might reasonably be expected in most urban and suburban situations. A higher hedge height might be justified in special cases where a property can be seen into more easily than the other, for instance, if one of the gardens is steeply terraced or if the complainant has a balcony or roof garden and the hedge owner does not.

Shelter

5.62. A hedge can be an effective windbreak and will usually provide good shelter from the wind for a distance of 8 to 10 times its height.¹⁹ A 2 metre high hedge should thus provide good shelter throughout a garden with a depth or width of 16 to 20 metres.

5.63. 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 – a higher hedge height might be justified where the garden is in an exposed position or in an area where high winds occur frequently.

5.64. In addition, it might not be reasonable to expect to use a hedge to provide full protection from the wind if it would have a disproportionate effect on neighbouring properties.

Noise, smell, smoke

5.65. Noise will normally pass through hedges. While it is possible to design a hedge as an acoustic screen it will usually need to incorporate a special type of fence as well as planting. This is likely to be a rare occurrence in domestic situations. Hedges are also largely ineffective in stopping smells and smoke as such pollutants can make their way over or through a hedge.²⁰

5.66. In general, therefore, it is not reasonable to expect a hedge - whatever its height - to provide protection from noisy neighbours or from the smell and smoke of bonfires or barbecues. People may however perceive that any adverse effect is reduced if they are unable to see the source of the noise or fumes and this might help to ameliorate their concerns.

Damage to plants

5.67. It may be difficult to isolate the effects of the height of a hedge when assessing the possible cause of problems of poor plant growth. The roots of a high hedge might also be a contributory factor as they will draw water and nutrients from the soil, reducing what is available to other plants. Under the terms of the Act, however, the effects of the roots of a high hedge cannot be taken into account.

5.68. Where it is considered that a tall hedge could be preventing light reaching plants, Councils might wish to have regard to the advice on light obstruction below. They might also wish to take into account that, in general, it is not reasonable to expect to grow particular plants in specific locations or situations. As noted in Chapter 4: *Reasonable enjoyment of property* the Act does not serve to protect particular activities that the complainant engages in on their property or specific uses they make in their garden. Whether the hedge interferes with a green house, a vegetable patch, the growing of

¹⁹ See paragraph 5.2 of *'High Hedges, daylight and sunlight: Final Report'*, BRE 2001. (see also note 22 below)

²⁰ See paragraphs 5.3 and 5.4 of *'High Hedges, daylight and sunlight: Final Report'*, BRE 2001.

competition plants or annual bedding will not, therefore, normally be a relevant consideration. In addition, there is a wide range of plants that are suitable for a variety of conditions and situations, offering alternative solutions to any adverse effects of a hedge.

5.69. On the other hand, more weight might be given to these problems if the height of the hedge affects the growth of plants across a substantial portion of the garden, thereby affecting overall enjoyment of the property.

Overhanging branches

5.70. The Act deals only with complaints that relate to the height of the hedge. Problems associated with the width of the hedge will normally not be considered, as people in neighbouring properties have the right to cut overhanging branches back to the boundary.

5.71. 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 mitigate the adverse effects of the hedge. A person would probably not be able to trim any part of a hedge over 2.5 metres high without specialist equipment or professional help. Whether or not the problem could be solved by cutting back overhanging branches up to this height would, therefore, be relevant in assessing the impact of the hedge.

5.72. While problems caused by a hedge blocking a path or other means of access which could be mitigated by trimming branches to just above head height would be discounted, a large overhang that significantly restricts access or a useable area of the garden, with a consequent effect on enjoyment of it, would be given more weight.

Debris from a hedge

5.73. Whether debris from an evergreen hedge (e.g. needles, berries) is caused by the excessive height of the hedge will depend on the particular circumstances. For example, the branches of a high hedge might hang over the roof of a bungalow, depositing debris in the gutters and possibly blocking them. In other cases, the debris could be wind-borne and might not even come from the hedge in question.

5.74. In any event, the volume of debris falling from the hedge is likely to be low. Any resulting problems may not, therefore, represent a substantial interference with a complainant's enjoyment of their property. Normal garden maintenance to clear the debris may be the more appropriate means of dealing with this problem, even though this may be regarded as irritating and inconvenient, rather than reducing the height of the hedge, but if the height is to be reduced for other reasons, this may co-incidentally help to reduce any debris problem.

Algae and moss

5.75. Much the same comments as in the previous paragraph can be applied to algae and moss formed because of shading by high hedges making paths slippery.

Obstruction of light: windows

5.76. The British Standard '*Lighting for buildings: Code of practice for day lighting*' (BS 8206 Part 2) sets the standard for what is a reasonable amount of daylight and sunlight for people to get in their houses. It works on the basis that properties should receive sufficient

natural light during daylight hours to enable normal domestic tasks to be carried out without eyestrain.

5.77. In their guidelines on '*Hedge height and light loss*' (March 2004)²¹, the Building Research Establishment (BRE) have devised a method for calculating what height an evergreen hedge should be in order to deliver to the windows of a house the amount of daylight and sunlight recommended in the British Standard. They are intended for use in analysing the effect on the main rooms of a house (including living rooms, dining rooms, kitchens and bedrooms) and apply whether the hedge is opposite or to one side of the window or at an angle to it. The guidelines also suggest suitable adjustments if the land is sloped or if the hedge is set back from the boundary.

5.78. Based on accepted good practice standards the BRE guidelines provide an objective means for assessing whether a hedge is obstructing light to windows. A hedge that is taller than the height derived from the BRE guidelines is likely, therefore, to result in an unreasonable loss of light to windows and so have an adverse effect on someone's reasonable enjoyment of their property. A hedge below the limit is unlikely to have such an effect.

5.79. The British Standard includes recommendations in respect of winter sunlight which, in turn, are incorporated in the BRE guidelines. The hedge heights derived from the BRE guidelines should, therefore, generally be sufficient to secure reasonable access to winter sunlight.

5.80. A lower hedge height might be justified in some circumstances. For example, special consideration might need to be given to properties that have been specifically designed to harness passive solar energy, rather than those which happen to have large windows. 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 north facing one, provision of thermal mass to store heat, and heating controls to make sure the solar energy is utilised.²² Loss of solar radiation to solar panels for water or space heating or the generation of electricity might also be taken into account. Normally these panels will be roof mounted.

5.81. In other circumstances, a higher hedge height than that derived from the BRE guidelines might be reasonable. For example, if there are gaps in the hedge.

Obstruction of light: gardens

5.82. The British Standard '*Lighting for buildings: Code of practice for day lighting*' (BS 8206 Part 2) does not apply to gardens. The BRE guidelines on '*Hedge height and light loss*', therefore, include a new method for calculating whether an evergreen hedge is likely to cause a significant loss of light to a nearby garden. The approach is based on the daylight and sunlight received in the garden as a percentage of that on unobstructed ground over the whole year. The BRE guidelines apply to any type of garden, including small back yards with no lawn. Allowance is made for existing obstructions, such as the house and boundary fences, which could increase the relative impact of a hedge. Suitable adjustments are suggested to take account of sloping sites or where the hedge is set back from the

²¹ P J Littlefair '*Hedge height and light loss*', BRE, 2004.

²² For further information on hedges and solar heating see Annex 4 of the BRE guidelines on '*Hedge height and light loss*' and '*A Review of the BRE Guidance on Hedge Height and Light Loss*', BRE 2004. Both are available on the ODPM website at www.odpm.gov.uk/treesandhedges.

boundary. The BRE guidelines have been refined and revised in the light of consultation and field-testing. They provide the best available means for assessing the impact of a high hedge on light to a garden.

5.83. In most situations, therefore, a hedge that is taller than the height derived from the BRE guidelines is likely to result in an unreasonable loss of light to a garden and so have an adverse effect on someone's reasonable enjoyment of their property. A hedge below the limit is unlikely to have such an effect.

5.84. A different height might be justified in some circumstances. For example, where hedges cover more than one side of the garden; if there is a building behind, and close to, the hedge; or if there are gaps in the hedge. The BRE guidelines offer some suggestions on how such situations might be dealt with.

5.85. It should be emphasised that the BRE guidelines on '*Hedge height and light loss*' do not take account of factors beyond light obstruction and so do not produce general, all-purpose recommended hedge heights.

Visual amenity

5.86. Visual amenity is about what people look out at, either from their home or garden, and the environmental quality that they experience. It includes such issues as views, access to the skyline, whether the hedge is dominant and overbearing or, conversely, whether it is preventing unsightly views. Councils should be aware that the Act does not define what is meant by "access" and it is for each Council to therefore consider whether it could permit consideration of the visual amenity of the complainant. Ultimately, the decision whether such issues can or should include a consideration of visual amenity will be one for the courts.

5.87. Visual amenity is likely to be an important consideration for both the complainant and the owner or occupier of the land where the hedge is situated. There is, however, no objective method for assessing the impact of a hedge on the visual environment and, if it is a relevant consideration, it would be a matter of judgement based on the circumstances of the particular case.

5.88. 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; or other buildings or features which, without the hedge or even if the height of the hedge were reduced, might still impede visual amenity; whether the area is characterised by a sense of openness. Just because trees in the hedge are taller than neighbouring buildings and other features will not necessarily be material.

5.89. 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.

Effect of gaps

5.90. 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 unrelated to assessing the impact of the hedge

5.91. As noted in Chapter 4: *Grounds of Complaint*, 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 reducing the height of 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

5.92. 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.

Protected trees

5.93. Special considerations might apply where the trees in a hedge are protected by a tree preservation order or are subject to special controls that operate in conservation areas. These normally require people to get permission from the Council before carrying out certain works to the trees or to give prior notice of their intentions. They do not, however, have to go through this process if they are obliged to carry out the works under the terms of a remedial notice issued under the Act²³.

5.94. When considering a high hedge complaint which involves protected trees, the Council should also assess the case as they would an application or notification under the relevant tree protection legislation²⁴. Under that legislation, trees can be protected by planning conditions, tree preservation orders or because they are situated in a Conservation Area. An assessment of the effect of any works proposed under a remedial notice on the amenity value of the trees to the area, which means the impact of the works on the environment and

²³ See section 198(6)(b) of the Town and Country Planning Act 1990 and regulation 10 of the Town and Country Planning (Trees) Regulations 1999 (Statutory Instrument 1999 No. 1892).

²⁴. Town and Country Planning Act 1990: Sections 197 to 214.

the public's enjoyment of the trees, needs to be carried out. If the amenity value is high, the extent of the proposed works may need to be adjusted, or it may be decided not to issue a remedial notice at all. If the Department of the Council dealing with high hedge complaints is not the same Department which deals with tree preservation, it would be advisable to contact the latter Department for advice.

5.95. Councils might also wish to bear in mind that, in some situations, occupiers may need to obtain a felling licence from the Forestry Commission if they wish to remove the trees concerned.

Planning conditions

5.96. Some hedges must be retained under the terms of a condition attached to a planning permission. In such circumstances, when determining whether the hedge adversely affects the complainant's reasonable enjoyment of their property Councils should take account of the reasons why the condition had been attached to the original planning permission. The age of the planning permission and the extent to which circumstances on the ground have altered since the condition was imposed would also be material considerations.

5.97. Any remedial notice issued under the Act would not over-ride a planning condition - these can be removed or varied only by following the application procedure set out in section 73 of the Town and Country Planning Act 1990. If a Council is considering issuing a remedial notice that would conflict with a planning condition, they should advise the owner or occupier of the land where the hedge is situated that they should make a formal application for variation or removal of the planning condition in question and should offer them appropriate advice and assistance.

Historic, wildlife and landscape value

5.98. Other factors that Councils might wish to take into account, where relevant, include whether the hedge is within the boundaries of a listed building or a garden or other site of historic importance; whether it has historic associations or contains veteran trees; whether it is situated in a National Park or Area of Outstanding Natural Beauty, or forms an important link with other landscape features; whether it is within a designated nature conservation site such as a Site of Special Scientific Interest.²⁵ Whether any protected birds, animals or plants are present in the hedge²⁶ and how they would be affected by any works to it would also be relevant considerations, having regard not only to relevant legislation but also to any local Biodiversity Action Plan policies.

Covenants

5.99. Some properties have legal covenants that stipulate the size or type of hedge that 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.

5.100. 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

²⁵ For further information see www.defra.gov.uk/wildlife-countryside/index.htm.

²⁶ See the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats etc) Regulations 1994 (Statutory Instrument 1994 No. 2716).

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.

5.101. 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 covenant²⁷. 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

5.102. If a Council proceeds with a complaint the Act²⁸ requires them to decide two matters:

- first, they must decide whether the hedge, because of its height, is adversely affecting the complainant's reasonable enjoyment of his/her property; and
- second, 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.

5.103. Actions that might be taken to remedy the problems caused by a high hedge and to prevent them recurring are considered in Chapter 6: *Remedial Works*.

Making the decision

5.104. 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, where appropriate, to produce a proportionate response to the complaint. It will normally be a question of weighing up any adverse effects of the hedge, on the one hand, against its amenity value to the hedge owner.

5.105. In carrying out this balancing act Councils should take into account, among other things, the following considerations:

- is the hedge, because of its height, adversely affecting 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 the impact of the hedge is on the complainant's property;
- is this sufficient to justify action being taken to remedy the matter;
- if so, are there any reasons why such action should not be taken, or should be moderated, having regard in particular to:

²⁷ Section 84 of the Law of Property Act 1925.

²⁸ Section 68 (3).

- any interference with the hedge owner/occupier's enjoyment of their property, taking into account any representations received from them; and
- the impact on the enjoyment of each property, taking into account other legal restrictions, such as protection of any trees included in the hedge, that might apply and the results of any consultation with interested bodies.

5.106. In general, if the Council consider that a hedge has little adverse effect and any remedial action would be minimal, they may decide not to issue a remedial notice. On the other hand, the greater the impact of the hedge on the complainant's amenity the stronger the mitigating factors need to be to justify a remedial notice not being issued. Alternatively, they could order lesser work to mitigate, rather than remove, the adverse effect.

Communicating the decision

5.107. Councils are advised to clearly document and record how they reach their decision in order 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 apply (e.g. 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.

5.108. The Act²⁹ 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.

5.109. The Council should also explain the rights of appeal against their decision, enclosing a copy of the explanatory leaflet '*High hedges: A guide for appellants*', and provide the contact details for the Planning Inspectorate. Chapter 8: *Grounds of Appeal* explains the grounds on which such an appeal can be made.

²⁹ Section 68(4), (5) and (6).

5.110. A sample decision letter is in the Appendix. The reasons for the decision should be clear, precise and as detailed as possible to help the main parties consider the merits of an appeal.

5.111. A copy of the Council's decision letter should be sent to any other interested parties who have been involved in the case.

5.112. 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.

5.113. Some complaints might result in more than one decision letter or remedial notice being issued:

- Multiple complainants, single hedge, one owner. As indicated previously, each complainant 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 hedge owner in terms of compliance with the various remedial notices are discussed in Chapter 6: *Remedial Works*.
- One complainant, single hedge, multiple owners. 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.
- 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.
- One complainant, multiple hedges, multiple owners. As before, a single decision letter would be sent to the complainant and every owner and 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.

Executive Decision

5.114. Within local authorities in Wales the responsibility for all functions relating to the high hedges legislation rests with the Council Executive rather than the full council.

Council as a party to the complaint

5.115. 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's Housing Department and let to a tenant; or it may be on Council occupied property. Where possible, the Council will try and settle the matter without recourse to the formal complaints procedure.

5.116. Should it be necessary to invoke the formal complaints procedure, it is important that the process for deciding such complaints is seen to be fair and impartial. Councils should, therefore, consider setting up formal internal procedures to ensure that the complaint is considered by officers who do not have responsibility for managing the land or trees in question. This should avoid any potential conflict of interest.

5.117. If someone believes that the Council did not act correctly in the way it reached the decision, they can refer the matter to the Council's own Complaints or Monitoring Officer, or to the Public Services Ombudsman for Wales. Alternatively, they may apply to the High Court to challenge the decision by judicial review

5.118. If they disagree with the decision on a complaint, a main party has a right of appeal to the National Assembly for Wales.

Time limits

5.119. Although the Act sets no timetable for the Council to reach a decision on these complaints, if someone believes that the Council have not issued a decision in a timely fashion, they could complain to the Council's own Complaints or Monitoring officer or to the Public Services Ombudsman.

5.120. 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 procedural clocks.

5.121. 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 can be halted.

5.122. Should any attempt to settle matters in this way fail there is no need to restart the process from the beginning. The Council would, however, 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 has up to date information, even if the exchange of representations had been completed previously.

Change in the main parties

5.123. It is possible that one or more of the main parties to the complaint could change while it is being considered by the Council.

5.124. In these circumstances there is no legal bar to the complaint proceeding. Councils might, however, consider suggesting a break in the proceedings to allow the people concerned an opportunity to settle the dispute by negotiation.

5.125. 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 the new complainant that they wish to continue the formal complaint procedure.

Withdrawing a Complaint

5.126. The complainant may withdraw their complaint at any time before the Council issues its final decision and any remedial notice. Discussion and negotiation between the people involved in the dispute can continue throughout the entire period the Council are considering a formal complaint. If the people concerned can agree a way forward the complaint should be withdrawn.

Delivering Documents

5.127. The Council's decision letter and other documents or notices mentioned in the Act and Regulations must be delivered in one of the following ways³⁰:

- 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.

5.128. 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.

5.129. 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 any of the methods mentioned above³¹.

5.130. 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 if³²:

- it is left in the hands of any 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.

5.131. These arrangements apply to the following documents or notices:

- complaint form and accompanying documents;
- Council's decision on the complaint;
- remedial notice;
- a Council's decision to withdraw a remedial notice, or to waive or relax its requirements;

³⁰ Section 79(1) and (2).

³¹ Section 79(3).

³² Section 79(7).

- 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 (e.g. representations, hearing statements etc);
- appeal decision;
- notice of intended entry to land (see Chapter 9: *Entry to Land*).

Electronic communication

5.132. The remedial notice and the Council's decision letter explaining why one has been issued **cannot be sent electronically**. All the other documents mentioned above, however, can be sent electronically³³. This includes sending by fax and by e-mail and making documents available on a website, such as through a web-based portal³⁴. There are, however, certain conditions that must be met before documents can be delivered through these means.

5.133. Before documents can be sent electronically, such as by fax or by e-mail³⁵:

- 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 intended recipient and in the format they have specified.

5.134. Before documents can be made available on a website, such as through a web-based gateway or portal,³⁶:

- the person receiving the documents must agree to them being delivered in this way;
- notice must be given to the intended 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.

5.135. 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 e-mail) or after the recipient has been

³³ Section 80(1) and (2).

³⁴ Section 80(2).

³⁵ Section 80(3).

³⁶ Section 80(5).

informed that they have been made available on a website (such as through a web-based portal).³⁷ For these purposes a working day does not include Saturdays and Sundays, Christmas Day, Good Friday or any other Public Bank Holiday in Wales.³⁸

5.136. Thus, if a document were sent electronically on Christmas Eve it would be treated as if it had been delivered at 9.00 a.m. on 27 December (i.e. the next working day), 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).

³⁷ Section 80(4) and (6).

³⁸ Section 80(7).

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. A remedial notice is registered as a local land charge - it runs with the land in question and is 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 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 5.127. They cannot be sent electronically.

Contents of the Remedial Notice

6.3. The Act³⁹ requires a remedial notice to 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 his/her 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");
- the date on which 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.

Description of the hedge

6.5. The hedge should be described in sufficient detail so that there is no doubt what the remedial notice relates to.

6.6. It will not normally be enough to give the address of the property where the hedge 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 and/or shown on a plan attached to the remedial notice.

³⁹ Section 69(1), (2) and (5).

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.

6.10. This enables Councils to specify that the hedge be cut below what is necessary to remedy its adverse effect if this will help to prevent problems recurring. Further advice on what, in practical terms, such action might involve is given in the section on *Remedial Works* below.

Preventative action

6.11. Preventative action covers continuing works to ensure that the hedge does not cause problems again in the future. The initial action specified in the notice - the one-off works to the hedge - is likely to provide only short-term relief from its adverse effects. If the remedial notice is to deliver a lasting solution it will normally need to include longer-term action to prevent the problems caused by the hedge recurring. (e.g. regular pruning)

Operative date

6.12. The operative date is when the remedial notice formally takes effect and marks the start of the compliance period. It must be set at least 28 days after the date on which the remedial notice is issued by the Council. This is to allow people time to lodge an appeal. The remedial notice is suspended while any appeal is considered.

Compliance period

6.13. The remedial notice must set a time limit for carrying out the initial action. This should start from the date when the notice takes effect ("the operative date"). Even though there may be pressure from the complainant for early action the compliance period needs to reflect what can reasonably be achieved. The owner or occupier of the land where the hedge is situated can appeal if they do not think they have been given enough time to comply with the requirements of the remedial notice.

6.14. In setting the compliance period Councils should take account of the extent of the work involved and whether specialist equipment or professional help will be needed. If a drastic reduction of the hedge is required it might be preferable to carry this out in stages, perhaps over a period of years. The Act⁴⁰, 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 completed. In these circumstances Councils might wish to set a long compliance period and use any accompanying good practice advice (see below) to encourage the hedge owner to discuss and agree with the Council a suitable timetable for the staging of works.

6.15. Councils should also bear in mind that it is against the law to kill, injure or disturb nesting wild birds⁴¹. The compliance period might, therefore, need to be set to avoid cutting the hedge between March and August.

6.16. Any continuing preventative action, such as regular trimming to keep the hedge to within a reasonable margin of its reduced size, would need to be specified in the remedial notice.

Failure to comply

6.17. As remedial notices are not addressed to a particular person they should include a clear statement that the owner or occupier of the land where the hedge is situated - or their successor - is responsible for implementing the requirements of the notice and for meeting the cost of such works.

6.18. So that there is no doubt on the matter the letter informing the main parties of the decision on the complaint might also usefully explain that the remedial notice does not give the complainant any rights to step in and take action themselves.

6.19. Under the Act⁴² both the owner and occupier of the land where the hedge is situated could be prosecuted for failure to comply with the requirements of a remedial notice, subject to certain defences. In practice, whether the owner or occupier (assuming they are different people) would normally be expected to carry out the works specified in the remedial notice will depend on who is legally responsible for managing the hedge according to the contractual arrangements between them. General provisions in the Public Health Act 1936 apply however (relating to the power of the courts to require an occupier to permit work to be done by an owner) 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.

6.20. The notice should make clear that failure to comply with its requirements could lead to a prosecution and a fine and that the Council could also enter the land, carry out any works required and recover expenses reasonably incurred. Enforcing remedial notices is discussed in more detail in Chapter 9.

Correcting errors

6.21. If the Council make a mistake in the notice they should withdraw it and issue a new one - using their powers under section 70 of the Act - as soon as the error comes to their

⁴⁰ Section 69.

⁴¹ See the Wildlife and Countryside Act 1981.

⁴² Section 75(1).

attention (see Chapter 7: *Correcting Errors*). This will usually require consequential changes to the operative date and, possibly, to the compliance period. The appeal period would also re-start from the date that the new notice is issued.

6.22. Once an appeal has been made against a remedial notice the notice is held in abeyance until the appeal has been decided. If an error or omission comes to light while an appeal is being considered it should be drawn to the attention of the Inspector appointed to determine the appeal. He has powers under the Act⁴³ 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 Act⁴⁴ 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 (as stated above) 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 the height whilst 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 arboriculture advice 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 (e.g. to any bank it might be growing on) are not allowed;
- are directly related to the adverse effect found to be caused by the height of the hedge; and
- do not exceed what is necessary to remedy the adverse effect of the high 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.

⁴³ Section 73(3).

⁴⁴ Section 69(3).

Step 1: taking care of the problem

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. This is called "remedial action" in the Act⁴⁵.

6.29. As noted in Chapter 5: *Making the decision*, determining "reasonable enjoyment" means striking a balance between any adverse effect of the hedge and its possible amenity value to the hedge owner, to produce a proportionate response to the complaint. The same principles apply when determining what remedial action might be appropriate in a particular case.

6.30. Nevertheless, Councils might find it helpful to start by looking at just one side of the hedge and developing some initial ideas on what would provide relief for the complainant. They should then stand back to consider the impact of their proposal on other parties, making adjustments - as necessary - to strike a balance between the different needs.

6.31. In doing so Councils might consider:

- what works are needed to provide relief for the complainant from the adverse impact found to be caused by the excessive height of hedge. Points to consider include:
 - ❖ the severity of the problems it is causing;
 - ❖ whether this is simply a matter of reducing the height of the hedge or whether other remedies would be more effective. These might include reducing the height of selected trees forming the hedge to open up gaps. Alternatively, the lower branches of the hedge might be removed (known as crown lifting) or the branches might be thinned out, provided they are above 2 metres from the ground. In some cases an appropriate remedy might well include reducing the width of the hedge as well as its height;
 - ❖ whether action needs to be taken along the entire length of the hedge or whether works to a section of it would provide the necessary relief. In particular, it might only be necessary to require action in relation to part of a long hedge that borders other properties besides that of the complainant;
 - ❖ whether there are likely to be any side effects from the proposed works on the growth of the hedge which have the potential to harm the complainant's amenity and so might require additional action. For example, reducing the height of some species might result in them putting on more lateral growth (bushing out). Action might be needed to keep this under control.
- what would be the impact of such works on other parties to the complaint. Points to take into account, where relevant to the case, include:
 - ❖ issues or concerns raised, in the course of consideration of the complaint, by the owner or occupier of the land where the hedge is situated. As a general

⁴⁵ Section 69(9).

rule, the likely cost of remedial action or the means of the owner or occupier of the site where the hedge is growing are unlikely to be relevant considerations;

- ❖ representations submitted by other residents;
- ❖ other legal restrictions that might be relevant;
- what adjustments, if any, need to be made to the proposed works in order to mitigate these impacts.

6.32. General factors such as the impact of the works on the appearance of the hedge or on the health of the trees should be considered only insofar as they may be relevant to the particular case. Otherwise, they might more appropriately be dealt with through good practice advice.

Step 2: allowing for re-growth

6.33. Having established what action is required to remedy the adverse effect of the hedge Councils should then consider whether anything more needs to be done to prevent the problems recurring. This is called "preventative action" in the Act. Councils should think about what preventative action might be needed both in the short term (to allow for any re-growth) and over a longer period (to provide for ongoing maintenance).

6.34. In deciding what, if any, action is needed to avoid the problems caused by the hedge growing back again in the short term Councils might ask:

- whether the remedial action on its own is enough to forestall further problems over, say, a period of around 12 months - before any longer-term maintenance requirement kicks in;
- if not, how should the remedial action be adjusted to cater for this.

6.35. This is likely to be particularly relevant where the hedge comprises fast-growing varieties. If, in these cases, the height of the hedge was reduced to the level necessary to remedy the adverse effect it could soon grow back and cause problems again. In such circumstances, Councils might require that the hedge be further reduced - to create a buffer zone or growing margin – which allows the hedge to grow between annual (or more frequent) trimming and still not cause significant problems.

6.36. A suitable margin would normally be equivalent to a year's growth for the species concerned.

6.37. For example, the Council might consider that the problems caused by the hedge would be remedied if it were no more than 3 metres tall. They might, however, require the hedge to be reduced initially to a height of 2 metres so that it has room to grow. This combination of remedial and preventative action is called "initial action" in the Act.

6.38. In the above example the Council would also need to consider requiring ongoing maintenance to ensure that the hedge is never again allowed to grow above 3 metres.

6.39. The Council cannot require a hedge to be reduced to below 2 metres in height. If the buffer zone or growing margin would take it below this limit the Council might use good

practice advice to suggest where the initial cut should be made or to recommend a more frequent trimming regime to achieve the same effect.

Step 3: ongoing maintenance

6.40. Thirdly, Councils should determine whether long-term maintenance of the hedge is needed in order to stave off future problems. They might consider:

- how the initial action (proposed to remedy the adverse impact) will affect the future growth of the hedge (see Steps 1 and 2 above);
- is there likely to be a recurrence of the problems caused by the hedge;
- if so, what action would help to ensure that the hedge is preserved in its revised state over the longer term and so help to avoid further problems;
- is this action reasonable in the particular circumstances of the case.

6.41. The management regime imposed will depend on the nature of the remedial or initial action. It will, however, usually involve continuing maintenance of the hedge to preserve it as near as possible to its new height or shape by regular trimming.

Uncommon cases

6.41.1. Multiple complainants, single hedge, one owner

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 issue a separate remedial notice in respect of each complaint.

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.

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 notice.

Such matters should, instead, 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.

6.41.2. One complainant, single hedge, multiple owners

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.

6.41.3 One complainant, multiple hedges, one owner

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.

The Council should consider the effect of each hedge individually as well as their cumulative effect. This might suggest that no remedial action 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.

6.41.4 One complainant, multiple hedges, multiple owners

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.

Specifying the action

6.42. 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.

6.43. Examples of how different management solutions might be specified are in the Appendix.

6.44. Councils cannot attach conditions to remedial notices, such as requiring works to be carried out in accordance with good arboriculture practice or with relevant British Standards.

Good practice advice

6.45. 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 and healthy. 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 arboriculture practice

6.46. Councils might recommend that all works are carried out in accordance with BS 3998: '*Recommendations for Tree Work*'. Reference might be made to publications that offer advice on specific management and pruning techniques for particular species of tree or shrub.

Safety

6.47. 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. *'Tree work accidents: an analysis of fatal and serious injuries'* 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

6.48. 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

6.49. 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 *'The right hedge for you'*) to help them choose a suitable replacement hedge. Councils cannot, however, require removal or that a replacement hedge to be planted.

6.50. 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 1997⁴⁶ 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 Commission.⁴⁷

Duration of Remedial Notice

6.51. 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.

⁴⁶ Statutory Instrument 1997 No. 1160. The Hedgerows Regulations do not apply to residential hedges. Hedges on agricultural land that are affecting neighbouring domestic property however might be caught and so require prior notification to the Council before being removed. Further information is available through the farmland conservation pages of the Defra website at www.defra.gov.uk.

⁴⁷ Further information, including the leaflet *'Tree Felling - Getting Permission'*, is available in the grants and licences pages of the Forestry Commission's website at www.forestry.gov.uk/wales

6.52. If the original hedge specified in the remedial notice is replaced by another evergreen hedge which, in time, grew to such a height that it adversely affected a neighbouring property a fresh complaint would have to be made.

Local Land charge

6.53. As long as the remedial notice is in force it must be registered as a local land charge. In this way prospective buyers of the property should be alerted to any commitment that they would be taking on.

6.54. If the Council is notified that the hedge has been removed, or that a change of circumstances means the Act no longer applies and so the remedial notice is unenforceable, they should withdraw the notice and delete the relevant entry from the local land charges register after following the procedure recommended in Chapter 7: *Withdrawing a Notice (Case Beyond the Scope of the Act)*.

Chapter 7: Withdrawing and relaxing remedial notices

7.1. The Act⁴⁸ 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 remedial 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 remedial 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. They should, however, write to them enclosing the revised remedial notice and explaining how this differs from the original and giving 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 5.108).

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 simultaneously the letter informing the main parties that the original remedial notice has been withdrawn should make it clear that a replacement notice will be issued shortly.

Appeal rights

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.

Inspector's powers

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 Act⁴⁹ to correct any defect, error or misdescription in

⁴⁸ Section 70.

⁴⁹ Section 73(3).

the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

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 as 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 6.14). 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 8.10).

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 rights

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 it could be pointed out that an appeal would prolong matters further and so would be unlikely to benefit the complainant.

Compliance period expired

7.15. Once the compliance period has expired it 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: *Informal Action* 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.

Main parties agree a different solution

7.17. It is possible that the complainant - or their successors - and the owner or occupier of the land where the hedge is situated might agree different one-off works (remedial or initial action) or different longer-term maintenance (preventative action) to that specified in the remedial notice.

7.18. If this goes further than the requirements of the notice (e.g. keeping the hedge trimmed to a lower height than that specified) there is no need to formalise the arrangement with the Council, but they may wish to formalise the arrangement between themselves. It is open, at any time, to the owner or occupier of the site with the hedge to do more than the notice requires - unless other legal restrictions apply.

7.19. If the agreed solution is less exacting than the remedial notice requires (e.g. allowing a higher screen) an application should be submitted to the Council for the notice to be withdrawn or its requirements relaxed.

Procedure

7.20. The aim of the Act is to take the heat out of hedge disputes and to encourage communication and negotiation between the people concerned. It should not normally work, therefore, so as to frustrate implementation of an agreed solution.

7.21. If the Council receive an application (single or joint) requesting that a remedial notice be withdrawn or certain of its requirements relaxed or waived they should write to the main parties inviting their comments within a reasonable period.

7.22. Depending on the circumstances of the case the Council might also need to seek arboriculture, horticultural, ecological, landscape or conservation advice or consult specialist bodies (see paragraph 5.51).

7.23. If any of the main parties indicate at any time that they no longer wish to proceed with the application or they object to it, it should automatically fall. In these circumstances the Council should inform all the main parties of the position and state that they will be taking no further action.

7.24. If one person still wants to pursue the matter and believes they can make a case for withdrawal of the remedial notice or the waiver or relaxation of certain of its requirements on the grounds that there has been a material change of circumstances since the Council last looked at the matter, they should make a new, separate, application. This should be dealt with under the procedure described in the section below on *Material Change in Circumstances*.

7.25. If objections or representations are received from other consultees the Council must consider these before withdrawing the remedial notice or relaxing or waiving any of its requirements. This might necessitate a visit to the site and its surroundings.

7.26. As noted above, the wishes of the people involved in the dispute should normally prevail. Where the main parties to the complaint are happy to proceed, therefore, objections or representations from other consultees would need to be significant.

7.27. In any event, the Council should notify the main parties, plus anyone who submitted representations, of their decision on the application.

7.28. Where they decide to withdraw the remedial notice or to relax or waive any of its requirements the Council should send to the main parties a suitably annotated/endorsed 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 6.53).

Appeal rights

7.29. Given that the Council is simply 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 could change to the extent that keeping to the requirements of the remedial notice could adversely affect 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 will most likely relate to any requirements in respect of longer-term maintenance of the hedge (preventative action).

7.31. It is 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) could be justified.

Material change

7.32. A material change in circumstances is something that significantly affects the Council's decision on the original complaint to the extent that, 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:

- a 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. (e.g. someone might live and work at 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 as the Council would have been concerned with the impact of the hedge on the enjoyment that

a reasonable person might expect from their home and garden rather than on a specific person.

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 *Dealing with Complaints*.

Resolving the dispute amicably

7.36. This includes encouraging the applicant to try to reach agreement with the other main parties on the alterations sought to the remedial 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 *Main Parties Agree a Different Solution*.

Application

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 remedial 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 remedial 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.

Exchanging representations and site visit

7.39. On receipt of an application the Council should follow the steps outlined in Chapter 5: *Gathering the Evidence* 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.

Deciding the application

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 take into account, among other things, the following considerations

- does maintaining the hedge in its current state adversely affect the reasonable enjoyment of their property by either the complainant or by the owner or occupier of the land where the hedge is situated (or by either of their successors);
- how severe is the impact of the hedge and is this sufficient to justify withdrawing the original remedial notice or waiving or relaxing some of its requirements;
- what, if any, adjustments need to be made to the original remedial notice to remedy these problems and to prevent them from recurring;
- are there any reasons why such alterations should be moderated or the current requirements retained, having regard in particular to all representations received.

7.42. The Council must notify the main parties of their decision and the reasons for it. The Council should also explain the rights of appeal against their decision, enclosing a copy of the explanatory leaflet '*High hedges: A guide for appellants*' and providing the contact details for the Planning Inspectorate.

7.43. Where they decide to withdraw the remedial notice or to relax or waive any of its requirements the Council should send to the main parties a suitably annotated/endorsed version of the remedial notice. They should also ensure that the record on the local land charges register is amended (see paragraph 6.53).

7.44. The decision letter should specify a date when the changes to the remedial notice come into operation. This should be set at least 28 days after the date of the Council's decision to allow time for the main parties to appeal against the decision. The decision in question will be held in abeyance while any appeal is determined and the requirements of the original remedial notice will continue to apply.

Appeal rights

7.45. There is no specific right of appeal under the Act if the Council rejects an application for a remedial notice to be withdrawn or for some of its requirements to be waived or relaxed, and decides in favour of retaining the current arrangements. If someone believes the Council did not act correctly in the way it reached its decision, they can refer the matter

to the Council's own complaints officer or Monitoring Officer or to the Public Services Ombudsman for Wales. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

7.46. Any of the main parties may appeal against the Council's decision to withdraw a remedial notice or to waive or relax any of its requirements. Chapter 8: *Grounds of Appeal* explains the grounds on which such an appeal can be made.

Case beyond the scope of the Act - withdrawing a notice

7.47. Changes might arise that take the case outside the scope of the Act with the result that the remedial notice can no longer be enforced. For example, if the hedge is removed or the affected property is no longer classed as domestic use. Although the remedial notice would have no practical effect it remains a local land charge until the Council removes it.

7.48. If Councils are asked formally to withdraw a remedial notice for these reasons it is good practice to notify the main parties of their intention to withdraw the notice and to invite comments within a set period. This will help provide assurance that the hedge has been removed or other change has taken place.

7.49. Provided that any comments received do not identify a problem the Council should send to the main parties a copy of the remedial notice, endorsed to verify its withdrawal. They should also confirm that the relevant record on the local land charges register has been deleted.

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 stringent management regime implemented they should initially 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: *High Hedges*) and the affected property remains in domestic use.

7.53. The new complaint should include the correct fee and evidence that reasonable steps had been taken to resolve the matter. 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 National Assembly for Wales all their appeal functions are carried out by the Planning Inspectorate (PINS). They handle all matters related to appeals, from submission to appeal decision.

8.2. Planning Inspectors are impartial professional tribunals duty bound to use all their experience and expertise to assess the substance of the evidence put before them and come to a reasoned, impartial decision taking into consideration all representations submitted as well as visiting the sites.

8.3. A separate explanatory leaflet '*High Hedges Appeals – A guide for Appellants*' is available from PINS. The contact details are outlined at paragraph 8.28.

Rights of appeal

8.4. Under the Act⁵⁰ 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.

8.5. 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 problems.⁵¹

Grounds of appeal

Issue of a remedial notice: complainant

8.6. The Appeal Regulations⁵² 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 (i.e. one-off works) and/or against the preventative action (i.e. longer-term management) specified in the notice.

⁵⁰ Section 71(1).

⁵¹ Section 71(3).

⁵² Regulation 3(2) .

8.7. 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 more extensive works can be carried out without affecting the reasonable enjoyment of the people occupying the property where the hedge is situated;
- that more 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.

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

8.9. Complainants cannot appeal on the grounds that too much time has been allowed to carry out the works specified in the remedial notice.

Issue of a remedial notice: owner or occupier of the land with the hedge

8.10. 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 grounds⁵³:

- that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property, or even if it is no action should be taken. 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.
- 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;
 - ❖ that the works could lead to the death of the hedge;
 - ❖ that alternative works provide a more effective remedy.
- that not enough time has been allowed to carry out the works set out in the notice.

⁵³ Regulations 3(1)(a), (b), (c) and (d).

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

Refusal to issue a remedial notice: complainant

8.12. 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 grounds⁵⁴:

- 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.

Withdrawal of a remedial notice

8.13. There may be no obvious advantage to the owner or occupier of the land where the hedge is situated in appealing against the withdrawal of a remedial notice. The grounds of appeal in the Appeal Regulations⁵⁵ envisage, therefore, that only complainants - or their successors - would wish to exercise the right of appeal against a decision to withdraw such a notice.

8.14. Before a complainant - or their successors - can appeal against the withdrawal of a remedial notice the following conditions must be met:

- that the complainant - or their successors - did not agree to the withdrawal of the remedial notice; and
- that the Council have not issued a new remedial notice relating to the same hedge.

8.15. These conditions effectively either rule out appeals against:

- a Council decision to withdraw a remedial notice where they immediately replace it with a new one (e.g. to correct an error or omission). In such cases an aggrieved complainant or owner or occupier of the land where the hedge is situated would exercise their right of appeal against the issue of the new remedial notice. (see Chapter 7: *Correcting Errors*);
- a Council decision to withdraw a remedial notice where they are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).

8.16. Provided the two conditions described above are met, the complainant or their successors may appeal against a decision to withdraw a remedial notice on the grounds that there has been no material change in circumstances since the original notice was issued that would justify its withdrawal.

⁵⁴ Regulation 5.

⁵⁵ Regulations 4(1) and (3).

8.17. The decision to withdraw a remedial notice is suspended while the appeal is being determined. The original notice therefore remains in force until the appeal is decided or is withdrawn.

Waiver or relaxation of the requirements of a remedial notice

8.18. The Appeal Regulations specify that an appeal can be made in relation to a decision to waive or relax the requirements of a remedial notice only if the person wishing to appeal did not agree to the change⁵⁶. This rules out appeals in cases where the Council are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).

8.19. Provided this condition is met the complainant - or their successors - and the owner or occupier of the land where the hedge is situated may appeal against a decision to waive or relax the requirements of a remedial notice on the following grounds:

- (a) that there has been no material change in circumstances since the notice was issued that would justify waiving or relaxing its requirements;
- (b) that the revised requirements fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
- (c) that, conversely, the revised requirements exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring.

8.20. The decision to waive or relax the requirements of a remedial notice is suspended while the appeal is being determined. The requirements of the original notice, therefore, remain in force until the appeal is decided or is withdrawn.

Before making an appeal

8.21. There is no charge for appeals. Nevertheless, they are expensive to administer and time consuming for all those involved and so should not be made lightly.

8.22. Communication between the people involved in the dispute is to be encouraged at all stages of the process, including during the period for making an appeal. In particular, if the people concerned agree a different solution to that specified in the remedial notice they should consider submitting a joint application to the Council to waive or relax the requirements of the notice under the simplified procedure set out in Chapter 7: *Main Parties Agree a Different Solution* rather than go through the appeals process.

8.23. In addition, complainants - or their successors - and the owner or occupier of the land where the hedge is situated should use the appeal period to seek additional information from the Council if they are uncertain of the reasons for the Council's decision.

8.24. Potential appellants should note that the National Assembly for Wales (or the Inspector) dealing with the appeal will have regard to this guidance, especially the advice in Chapter 5 on *Assessing and Weighing the Evidence* and on *Deciding the Complaint*.

8.25. In addition, they should bear in mind that the other party to the complaint or the decision in question could also appeal. In these circumstances the cases will be considered

⁵⁶ Regulation 4(2).

together and it is possible that one party could find they are worse off as a result of the appeal decision.

8.26. For example, the complainant might appeal against a remedial notice because they consider its requirements are not tough enough. At the same time the owner or occupier of the land with the hedge might appeal to have the remedial notice removed. It is possible that the National Assembly for Wales (or the Inspector) could decide to dismiss the complainant's appeal but allow that from the owner or occupier of the site in question and quash the remedial notice. Alternatively, they could decide to allow the complainant's appeal and dismiss that from the owner or occupier of the site in question and make the requirements of the remedial notice more onerous.

8.27. It is important, therefore, that potential appellants carefully assess the merits of their case and the prospects of success of any appeal.

Submitting an Appeal

Appeal form

8.28. Appeals should be submitted on the official form provided by the Planning Inspectorate⁵⁷. The form is available on the Planning Inspectorate website at http://www.planning-inspectorate.gov.uk/cymru/wal/forms/documents/hh_app_form_v1_e.pdf or from:

The Team Leader
High Hedges Appeals Team
Planning Inspectorate Wales
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

Telephone: 029 2082 3308
Fax: 029 2082 5150
Email: wales@planning-inspectorate.gsi.gov.uk

8.29. The appeal form should be completed accurately, including the full grounds of appeal, and should be accompanied by all the relevant documents. These will normally include a copy of the Council's decision letter and any remedial notice in question. Appellants should not merely list the grounds of appeal that are relevant to their case. They should explain why they disagree with the reasons given by the Council in support of their decision. Where the appeal is against the issue of a remedial notice, appellants should make clear what action specified in the notice (remedial action or preventative action or both) is the subject of the appeal.

8.30. The completed appeal form and enclosures should be sent or emailed to the Planning Inspectorate. See Chapter 5: *Delivering Documents* for more information about how to deliver documents.

8.31. The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question⁵⁸.

⁵⁷ Regulation 8(1).

⁵⁸ Regulation 8(2).

Time limits

8.32. The procedures put in place a regime of discipline for all the parties involved in the appeal process. To achieve fairness and to prevent the parties from gaining advantage over one another, the procedures require strict adherence to timescales. All parties to the appeal process have a responsibility to meet the deadlines set and to co-operate with the Inspectorate in agreeing dates offered for site visits and hearings. Comments or representations received after the due dates will normally be disregarded.

8.33. The completed appeals form and other documents must be received by the Planning Inspectorate within 28 days, starting from:

- the date the remedial notice is issued;
- the date of the Council's notification to the main parties that it has decided to take no action in relation to the hedge; or
- the date that the Council notifies the main parties it has decided to withdraw a remedial notice or to waive or relax its requirements⁵⁹.

8.34. Although there is discretion to allow extra time⁶⁰ this will normally be exercised only in exceptional circumstances. For example, where appeal rights were not properly explained in the Council's decision letter or where personal circumstances (such as enforced or unforeseen absence) meant that the appellant received the decision late in the appeal period or after it had run out.

The parties to an appeal and their role

8.35. The parties to an appeal relating to a high hedge are⁶¹:

- the appellant;
- the Council; and
- every person, other than the appellant, who is:
 - (a) a complainant - or who has succeeded them as owner or occupier of the domestic property that is affected by the high hedge; or
 - (b) an owner or occupier of the land where the hedge is situated.

8.36. References to the appeal parties in the rest of this chapter include all the above. All play an equal part in the process, seeing all relevant papers and having the same entitlement and opportunities to comment and to participate in any hearing that might be held. All must be notified of the appeal decision.

8.37. Other people or organisations who made representations to the Council about the decision that is the subject of the appeal have a more limited role. These are known as

⁵⁹ Section 71(4)(a) and (5).

⁶⁰ Section 71(4)(b).

⁶¹ See Regulation 2.

interested persons. Their original representations and anything they add to them will be taken into account by the Planning Inspectorate in deciding the appeal. These people will not normally see other parties' arguments and their participation in any hearing will be at the discretion of the Inspector running it.

Uncommon cases

8.38. As noted above, appeals against a remedial notice, or against a Council decision to withdraw such a notice or to waive or relax its requirements, may be brought by both the complainant and the owner or occupier of the land where the hedge is situated. There could, therefore, be multiple appeals against a single notice or decision of the Council. In these circumstances the Planning Inspectorate will consider the appeals together and will issue a single decision notice informing all the appeal parties of the outcome.

8.39. Where a Council has issued more than one remedial notice in response to a complaint then, as a general rule, each notice may be appealed individually. In these and other cases that involve multiple hedges or hedge owners the Planning Inspectorate will normally adopt a similar approach to that used by Councils in dealing with the original complaints.

8.40.1 Multiple complainants, single hedge, one owner

The Council would have issued separate remedial notices in respect of each complaint. While the owner or occupier of the land where the hedge is situated has a right of appeal against all or any of the notices the complainant can appeal only against the notice relating to the section of hedge that affects their property.

Appeals against a particular remedial notice will need to be considered on their individual merits and separate decisions will be issued in respect of each remedial notice. The cases will, however, be linked as they are processed so that the relationship between them and the practical implications for the hedge owner can be considered.

8.40.2 One complainant, single hedge, multiple owners

Both the complainant and every owner or occupier of the land where the hedge is situated have a right of appeal against a single remedial notice issued by the Council. All such appeals will be considered together and a single decision notice issued.

8.40.3 One complainant, multiple hedges, one owner

Both the complainant and the owner or occupier of the land where the hedge is situated can appeal against all or any remedial notices issued in response to the original complaint. The complainant may also appeal against a Council decision not to require remedial action in relation to any hedge.

As the Council did beforehand the Planning Inspectorate will need to look at the effect of each hedge that is the subject of an appeal individually as well as considering their cumulative effect. The Planning Inspectorate will, therefore, consider the cases together and issue a single decision notice.

8.40.4 One complainant, multiple hedges, multiple owners

In these circumstances the complainant has the right of appeal against all or any remedial notices issued by the Council as well as any decision not to require remedial action in relation to any hedge affecting their property. The owner or occupier of the land where the hedge is situated can appeal only against any remedial notice issued in respect of their hedge.

As in the previous example the effect of each hedge that is the subject of an appeal will need to be considered individually as well as looking at their cumulative impact. As a result the appeals will need to be considered together and a single decision notice issued, even though different people might be involved in the appeals in question.

Appeals Procedure

8.41. Although the appeal function is vested in the National Assembly it will actually be exercised by the Planning Inspectorate. Consequently, for ease of understanding references in the remainder of this Chapter will be to the Inspectorate rather than to the Assembly. The majority of cases are likely to be decided on the basis of an exchange of written representations, followed by a visit to the site by the appointed Inspector. This is the most common procedure and normally offers the quickest and simplest way of determining appeals.

8.42. Alternatively, a round-table discussion, known as a hearing, might be held.

Written representations

8.43. Written representations have to be submitted within time limits set down in the Regulations. The Planning Inspectorate can fix later time limits in particular cases. It must notify all those involved in the appeal if it decides to do this.

8.44. It is the parties' responsibility to ensure that the Planning Inspectorate receives representations within the deadlines. Although each case will be considered on its particular facts, late representations will normally be disregarded unless there are special circumstances.

8.45. In addition, written representations should be as short and succinct as possible and should avoid repetition. Care should also be taken not to duplicate arguments or information that may be contained in the appeals form/questionnaire and relevant background papers.

Preliminary information

8.46. As soon as possible after receiving their copy of the appeal form and accompanying documents, the Council must provide the Planning Inspectorate and the appellant with the names and addresses of everyone - other than the appellant - who is a party to the appeal (see paragraph 9.6).

8.47. The appellant is responsible for ensuring all these people receive a copy of the appeal form and accompanying documents.

Start date

8.48. When the Planning Inspectorate has received a properly completed appeals form, all the relevant documents, and the preliminary information set out in paragraph 8.46 it will notify the main parties of the formal start date for the appeal. This date is the point from which all other procedural steps are calculated.

8.49. The Inspectorate will also provide the name and contact details of the officer who will be handling the case and to whom all correspondence should be sent.

What the Council must do

8.50. Within **2 weeks** of the start date, the Council is required to:

- notify interested persons of the appeal (that is, everyone - other than the main parties - who made representations to the Council about the decision that is the subject of the appeal). It must include the following:
 - ❖ the name of the appellant and the address of the site where the hedge is located;
 - ❖ details of the appeal and the grounds on which it has been made;
 - ❖ confirmation of the procedure to be used to determine the appeal (written representations or hearing);
 - ❖ a statement that all representations submitted in connection with the original Council decision will be forwarded to the Planning Inspectorate and copies sent to the other main parties to the appeal;
 - ❖ a statement that such representations will be taken into account in determining the appeal unless the person who made them notifies the Planning Inspectorate within [6] weeks of the start date that they wish to withdraw them;
 - ❖ an invitation to submit additional representations for receipt by the Planning Inspectorate not later than [6] weeks after the start date, who will send copies to the main parties to the appeal;
 - ❖ contact details for the Planning Inspectorate, including any appeal reference to be quoted in correspondence;
- submit the completed questionnaire, together with background papers relevant to the appeal, for receipt by the Planning Inspectorate within 2 weeks and send copies to the other main parties;
- indicate whether they intend to submit any further statement to explain the reasons for their decision.

8.51. Within **6 weeks** of the start date, the Council must ensure the Planning Inspectorate receives:

- any further statement, that adds to the questionnaire and background papers. The Inspectorate will send copies to the other main parties as soon as practicable.

8.52. Within **9 weeks** of the start date, the Council must ensure the Planning Inspectorate receives:

- any final comments on the representations submitted by the other main parties and on any further representations sent in by interested persons.

What the appellant must do

8.53. Within **6 weeks** of the start date, the appellant must ensure the Planning Inspectorate receives:

- any further representations, that add to the completed appeals form and background documents already supplied. The Inspectorate will send a copy to the other main parties as soon as practicable.

8.54. Within **9 weeks** of the start date, the appellant must ensure the Planning Inspectorate receives:

- any final comments on the representations submitted by the other main parties to the appeal, and on any further representations sent in by interested persons.

What everyone else who is a party to the appeal (besides the appellant and the Council) must do

8.55. Within **6 weeks** of the start date, other main parties to the appeal (that is, everyone - other than the appellant - who is a complainant or the owner or occupier of the land where the hedge is situated) must ensure the Planning Inspectorate receive:

- any representations, that add to the documents already supplied by the Council and the appellant. The Inspectorate will send a copy to the other main parties.

8.56. Within **9 weeks** of the start date, these parties must ensure the Planning Inspectorate receive:

- any final comments on the representations submitted by the other main parties to the appeal, and on any further representations sent in by interested persons.

The role of interested persons

8.57. Anyone who made representations about the complaint which is the subject of the appeal will be notified of the appeal by the Council. Their original comments will automatically be forwarded by the Council to the Planning Inspectorate who will copy them to the main parties.

8.58. They should notify the Planning Inspectorate if they do not want their original comments to be taken into account in determining the appeal. Alternatively, they may submit further representations about the appeal to the Planning Inspectorate. These must be received within **6 weeks** of the start date.

8.59. The Planning Inspectorate will send a copy of these further representations to the main parties to the appeal whose comments should be received in the Planning Inspectorate within **9 weeks** of the start date.

Site Visit

8.60. After the exchange of written representations, the Planning Inspectorate will arrange for an Inspector to visit the site of the hedge. The Inspector, who is impartial, is responsible for determining the appeal.

8.61. No discussion of the merits of the appeal is allowed at a site visit. It will, however, normally be necessary for the main parties to attend so that the Inspector can gain access to the site of the hedge and to the affected property. For example, where there is no side/rear access the Inspector may need to go through someone's home in order to reach a hedge that is situated in a back garden.

8.62. In these circumstances, the Inspector would generally be accompanied by all the main parties to the appeal. This would include the complainant and the owner or occupier of the land where the hedge is situated as well as the Council.

8.63. The Inspector has the same rights to enter the land where the hedge is situated as the Council officer who dealt with the original complaint⁶². The Inspector is also subject to the same obligations in respect of prior notice (see Chapter 10: *'Entry to Land'*).

8.64. As on-site discussion is not allowed, it is not necessary for the Council to be represented by the officer who dealt with the original decision. Site visits therefore need not be delayed because of the unavailability of this individual.

Hearings

8.65. In some cases, the Planning Inspectorate might arrange for an Inspector to hold a hearing into the appeal. Any hearings will be conducted in accordance with the High Hedges (Appeals) (Wales) Regulations 2004.

8.66. The Council will normally arrange the hearing venue. Everyone involved in the original decision will have the opportunity to participate.

8.67. It is important that the Inspector is fully apprised of the relevant issues and arguments before the hearing opens so that the Inspector can properly lead the discussion. The procedures, therefore, require the main parties to submit statements, background documents and other comments within the time-limits specified before the hearing.

Preliminary information

8.68. As with written representations cases, as soon as possible after receiving its copy of the appeal form and accompanying documents, the Council must provide the Planning Inspectorate and the appellant with the names and addresses of everyone - other than the appellant - who is a party to the appeal (see paragraph 9.6).

8.69. The appellant is responsible for ensuring all these people receive a copy of the appeal form and accompanying documents.

⁶² Section 74(2).

Start date

8.70. When the Planning Inspectorate has received a properly completed appeals form, all the relevant documents, and the preliminary information set out in paragraph 8.46, it will notify the appellant and the Council of the formal start date for the appeal. This date is the point from which all other procedural steps are calculated.

8.71. The Inspectorate will also provide the name and contact details of the officer who will be handling the case and to whom all correspondence should be sent.

What the Council must do

8.72. Within **2 weeks** of the start date, the Council should:

- notify interested persons of the appeal (that is, everyone - other than the main parties - who made representations to the Council about the complaint which is the subject of the appeal). A model notice may be found at www.planning-inspectorate.gov.uk/cymru
- It must include the following:
 - ❖ the name of the appellant and the address of the site where the hedge is located;
 - ❖ details of the appeal and the grounds on which it has been made;
 - ❖ confirmation of the procedure to be used to determine the appeal (written representations or hearing);
 - ❖ a statement that all representations submitted in connection with the original Council decision will be forwarded to the Planning Inspectorate and copies sent to the other main parties to the appeal;
 - ❖ a statement that such representations will be taken into account in determining the appeal unless the person who made them notifies the Planning Inspectorate within **6 weeks** of the start date that they wish to withdraw them;
 - ❖ an invitation to submit additional representations to the Planning Inspectorate not later than **6 weeks** after the start date, who will send copies to the main parties to the appeal;
 - ❖ contact details for the Planning Inspectorate, including any appeal reference to be quoted in correspondence;
- submit the completed questionnaire - an example of a questionnaire may be found at www.planning-inspectorate.gov.uk/cymru - together with background papers relevant to the appeal, to the Planning Inspectorate and send copies to the other main parties.

8.73. Within **6 weeks** of the start date, the Council must ensure the Planning Inspectorate receives:

- its hearing statement. This contains the details of the case that the Council wishes to make at the hearing. It should concentrate on the main issues that are the subject of the appeal, setting out the key facts, reasoning and conclusions. Further advice on the content of statements is at www.planning-inspectorate.gov.uk/cymru. The Inspectorate will send copies of the Council's statement to the other main parties to the appeal.

8.74. If the Planning Inspectorate requires further information about matters covered in the hearing statement, this must be received within such period as the Inspectorate specify.

8.75. Within **9 weeks** of the start date, the Council should ensure the Planning Inspectorate receives:

- any final comments on the hearing statements submitted by the other main parties to the appeal and on any further representations sent in by interested persons. The Inspectorate will send a copy of these comments to the other main parties.

What the appellant must do

8.76. Within **6 weeks** of the start date, the appellant must ensure the Planning Inspectorate receives:

- their hearing statement (see paragraph 8.73). The Inspectorate will send a copy to the other main parties to the appeal.

8.77. If the Planning Inspectorate require further information about matters covered in the hearing statement, this must be received within such period as the Inspectorate specifies.

8.78. Within **9 weeks** of the start date, the appellant should ensure the Planning Inspectorate receives:

- any final comments on the hearing statements submitted by the other main parties to the appeal and on any further representations sent in by interested persons. The Inspectorate will send a copy of these comments to the other main parties.

What everyone else who is a main party to the appeal (besides the appellant and the Council) must do

8.79. Within **6 weeks** of the start date, other main parties to the appeal (that is, everyone - other than the appellant - who is a complainant or the owner or occupier of the land where the hedge is situated) must ensure the Planning Inspectorate receives:

- their hearing statement (see paragraph 8.73). The Inspectorate will send a copy to the other main parties to the appeal as soon as practicable.

8.80. If the Planning Inspectorate requires further information about matters covered in the hearing statement, this must be received within such period as the Inspectorate specifies.

8.81. Within **9 weeks** of the start date, these parties should ensure the Planning Inspectorate receives:

- any final comments on the hearing statements submitted by the other main parties to the appeal and on any further representations sent in by interested persons.

The role of other interested persons

8.82. Anyone who made representations about the complaint in question will be notified of the appeal by the Council. Their original comments will automatically be forwarded by the Council to the Planning Inspectorate who will copy them to the main parties.

8.83. They should notify the Planning Inspectorate if they do not want their original comments to be taken into account in determining the appeal. Alternatively, they may submit further representations about the appeal to the Planning Inspectorate. These must be received within **6 weeks** of the start date.

8.84. The Planning Inspectorate will send a copy of these further representations to the main parties to the appeal whose comments should be received in the Planning Inspectorate within 9 weeks of the start date.

What happens at the hearing

8.85. The Planning Inspectorate will give the main parties at least **4 weeks'** notice of the date, time and venue fixed for the hearing. The Council is responsible for notifying interested persons of the arrangements for the hearing.

8.86. The main parties to the appeal are entitled to attend and participate in the hearing, either personally or through a representative. The hearing can, however, proceed in the absence of one or more of the main parties. Other interested persons may also attend. Their participation in the discussion is at the Inspector's discretion.

8.87. The procedure to be followed at a hearing will be determined by the appointed Inspector. Normally however the Inspector will begin by summarising his/her understanding of the case and outlining what he considers to be the main issues.

8.88. Discussion should stick to the point and should proceed in an orderly manner. Repetitious debate may be ruled out and, if anyone behaves in a disruptive manner, the hearing may be adjourned for a cooling-off period.

8.89. It may appear to the Inspector during the hearing that some matters might be more satisfactorily resolved if the hearing was adjourned to the site, and discussions continued there. Everyone at the hearing will have the opportunity to attend the site visit.

Site visit

8.90. The Inspector will want to visit the site of the hedge at some point during his/her deliberations, usually immediately after the hearing has closed. Discussion may continue at the site at the Inspector's discretion.

8.91. The Inspector should not be accompanied at any stage of his/her visit by one of the main parties to the appeal without the others also having the opportunity of being present. This includes the complainant and the owner or occupier of the land where the hedge is situated as well as the Council.

Appeal Decision

8.92. In determining appeals the appointed Inspector may allow or dismiss an appeal, either in total or in part⁶³.

8.93. The Act⁶⁴ 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 main parties, in writing, of the reasons for his/her decision⁶⁵.

8.94. The Inspector will also copy to all the main 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 notice⁶⁶;
- if he decides to allow an appeal relating to a remedial notice he will vary the requirements in the notice to reflect his/her decision⁶⁷;
- 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 injustice⁶⁸;
- 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.

8.95. 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

8.96. An appellant may withdraw their appeal at any time. In these circumstances the original decision by the Council will stand and the remedial notice or any waiver or relaxation of its requirements would take effect from the date that the appeal is withdrawn^{68a}.

Review of Appeal Decision

8.97. 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

⁶³ Section 73(1).

⁶⁴ Section 73(4).

⁶⁵ Regulation 21.

⁶⁶ Section 73(2)(c).

⁶⁷ Section 73(2)(b).

⁶⁸ Section 73(3).

designed to ensure that the powers laid down in the Act and the Appeal Regulations have been 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.

8.98. 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 is strongly advised to seek specialist legal help. Community Legal Service (CLS) can help people to find the right legal advice⁶⁹. 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.

^{68a} Section 73(6)

⁶⁹ 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 (currently up to £1,000)⁷⁰.

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 outstanding⁷¹.

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: and
- where there is a failure to comply with a court order.

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 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 *Defences*).

9.6. Where there is both an owner and an occupier (e.g. landlord and tenant) Councils should initially direct enforcement action at the person who has legal responsibility for managing the hedge. General provisions in the Public Health Act 1936 apply however (relating to the power of the courts to require an occupier to permit work to be done by an owner) so as to give the owner the right to comply with a remedial notice. The Council 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

⁷⁰ Section 75(1).

⁷¹ Section 75(7) to (10).

an offence or against whom enforcement action can be taken.⁷² In these circumstances Councils might 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 *Council intervention*).

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 that⁷³:

- they did all that could be expected of them to meet the requirements of a remedial notice. This is relevant where there is both an owner and an occupier of the land in question and a prosecution is brought against the person who does not have control of the hedge; and/or
- they were not aware of the existence of the remedial notice at the time that the offence took place.

9.10. 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.

9.11. These defences provide important safeguards against wrongful prosecution. It should not be necessary for people to have to resort to them, however, provided that allegations of any contravention of the Act are fully investigated before the case is brought to court and any prosecution is focused on the person who has responsibility for the hedge.

9.12. Other mitigating factors or explanation put forward by the person allegedly responsible for the offence would need to be taken into account in determining whether prosecution would be appropriate (e.g. lack of financial or physical resources to carry out the works to the hedge, existence of restrictive covenant). 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

9.13. 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.

⁷² 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.

⁷³ Section 75(3) to (5).

9.14. Enforcement action is usually 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 effect of the alleged failure might be one criterion that could be used. For example, failing to carry out the initial one-off works necessary to remedy the adverse effect of the hedge within the time allowed might be considered more serious than allowing the hedge to grow just above the specified height between trims.

9.15. The general steps to be taken in evaluating and determining enforcement action should be to:

- acknowledge the complaint of the alleged failure to comply with the requirements of a remedial notice;
- investigate the current facts and the case history;
- prepare a situation report, including any legal advice on issues raised by the investigation;
- submit to the relevant decision-maker within the Council a considered recommendation on the enforcement action to be taken;
- record and implement this decision;
- report the outcome to the person who brought the matter to the Council's attention;
- monitor the practical effect of implementing the decision;
- review the need for possible further enforcement action.

Documenting the case

9.16. 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 to quickly establish the relevant facts and history.

9.17. 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;
- a brief description of the hedge, including any relevant photographs;

- the alleged contravention, as established by the Council's officers following initial investigations;
- a summary of the factual evidence;
- a summary of the case history;
- a 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:
 - ❖ the date that the owner and occupier of the land where the hedge is situated are notified of the Council's decision;
 - ❖ a summary of required steps;
 - ❖ the time-limit set for compliance;
- the result of the action taken by the Council;
 - ❖ legal action;
 - ❖ exercise of default powers;
 - ❖ recovery of costs;
- a summary of any subsequent monitoring of the situation.

Investigations

9.18. 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.

9.19. If the results of these initial investigations suggest that an offence has occurred the Council should contact the owner and occupier of the land where the hedge is situated, inform them of the alleged breach and seek their comments.

9.20. Under the Police and Criminal Evidence Act 1984 any officers - not just the police - who are responsible for investigating offences or charging offenders must have regard to the code of practice issued under the Act⁷⁴. The code sets out when it is necessary to caution people suspected of committing an offence and how a caution should be given. The Council's legal department should be able to advise officers how the code should be applied in practice to possible offences under this Act.

9.21. A complete documentary record of all investigations is essential (see the section above on *Documenting the Case*). Wherever possible it should include photographic records which are signed and dated by the person taking the photographs. All photographic

⁷⁴ Police and Criminal Evidence Act 1984: Code C '*Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers*', available on the Home Office website at www.homeoffice.gov.uk.

records should be accompanied by a location plan showing where each photograph was taken from.

9.22. It is good practice for Councils to inform the person who made the complaint what, if any, action they are taking to enforce the requirements of the remedial notice and the reasons for their decision.

Enforcement action

9.23. What enforcement action, or combination of actions, Councils pursue will depend on the particular circumstances of the case. The main aim of any enforcement action should be to put right the adverse effects of the hedge. This means identifying the measures most likely to ensure that the owner or occupier of the land in question carries out the required works to the hedge.

Informal action

9.24. In some cases Councils might wish to hold an informal interview with the person to encourage them to comply with the remedial notice; or send them a formal warning letter detailing the consequences of their continuing failure to act.

9.25. Where investigations show that the owner or occupier was unaware of the existence of a remedial notice the Council should provide them with a copy and should normally give them more time to comply.

Prosecutions

9.26. The decision to prosecute an individual is a serious step. Each case must be considered on its facts and merits.

9.27. The Code for Crown Prosecutors (issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985) sets out a two stage test for use in deciding whether to mount a prosecution. The first stage involves consideration of the evidence, involving an evaluation of the strengths and weaknesses of the cases of both the prosecution and defence, to determine whether there is a realistic prospect of conviction. If this test is satisfied the next stage is to look at whether a prosecution would be in the public interest. The Code identifies some common public interest factors both in favour of, and against, prosecution.

9.28. Several of these principles might, depending on the circumstances of the particular case, be relevant to the high hedges cases – for example:

- among the public interest factors in favour of prosecution:
 - the defendant's previous convictions or cautions are relevant to the present offence;
 - there are grounds for believing that the offence is likely to be continued or repeated, eg by a history of recurring conduct;
 - a prosecution would have a significant positive impact on maintaining community confidence.

- among the public interest factors militating against prosecution:
 - the offence was committed as a result of a genuine mistake or understanding;
 - the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
 - the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated;
 - the defendant has put right the loss or harm that was caused.

9.29. Although the Code was written for Crown Prosecutors Councils might wish to consider applying the same principles and approach to any potential prosecutions under the Act.

9.30. If the Council consider that prosecution is the most appropriate way to secure compliance with a remedial notice they will need evidence to show "beyond reasonable doubt" - the criminal standard of proof - that a requirement in the notice has been, or is being, contravened and so an offence has occurred (see the sections above on *Offences* and *Defences*).

9.31. The magistrates' courts are likely to have little practical experience of such cases and so it will be helpful for the Council's prosecutor to explain fully to the court the context in which the alleged offence has occurred.

9.32. Depending on the circumstances the following approach might help the court to appreciate the strength of the prosecution's case:

- explain that the provisions of section 77 of the Act make it an offence to contravene the requirements of a remedial notice;
- describe the nature of the particular offence in factual terms;
- outline the actions taken by the Council to secure compliance with the remedial notice.

Council intervention

9.33. Councils have the power to enter the land where the hedge is situated and carry out the works specified in the remedial notice if the owner or occupier of the land fails to comply with its requirements.⁷⁵ Unlike the owner or occupier of the site with the hedge the Council cannot exceed the requirements set out in the remedial notice.

9.34. 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.

⁷⁵ Section 77(1) and (2).

9.35. 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 offence⁷⁶. On conviction in the magistrates' court they could be liable to a level 3 fine (currently up to £1,000).

9.36. 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.

9.37. Councils are required to give 7 days' notice of their intention to go in and do the necessary work⁷⁷. 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.

9.38. Where necessary the Council may also use a vehicle to enter the land⁷⁸. Otherwise, the general powers relating to *Entry to Land* (see below) apply.

9.39. The costs of this work can be recovered from the owner or occupier of the land⁷⁹. 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.

9.40. 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.

⁷⁶ Section 77(9).

⁷⁷ Section 77(5).

⁷⁸ Section 77(7).

⁷⁹ Section 77 (2).

Entry to Land

9.41. Councils may authorise their officers to enter the land where the hedge is situated in order to obtain information that will help them decide whether:⁸⁰

- the complaint is one that can be considered under the legislation;
- to issue or withdraw a remedial notice;
- to waive or relax the requirements of a remedial notice; or
- a notice has been breached.

9.42. At least 24 hours' notice of the intended entry must be given to all occupiers of the land⁸¹. 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 requirements 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.

9.43. Council officers entering land under these powers would be able to take with them other people, equipment or materials as necessary⁸². 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 (e.g. for species identification).

9.44. Besides giving prior notice of their intentions there would be other conditions that officers would have to meet when exercising these powers⁸³. 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.

9.45. 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 (currently up to £1,000)⁸⁴.

9.46. 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.

⁸⁰ Section 74(1).

⁸¹ Section 74(3).

⁸² Section 74(5).

⁸³ Section 74(4) and (6).

⁸⁴ Section 74(7).

APPENDIX B



Office of the
Deputy Prime Minister

Creating sustainable communities

Hedge height and light loss





Office of the
Deputy Prime Minister

Creating sustainable communities

Hedge height and light loss

Revision Edition October 2005

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Office of the Deputy Prime Minister: London

The findings and recommendations in this report are those of the consultant authors and do not necessarily represent the views or proposed policies of the Office of the Deputy Prime Minister.

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Contents

Summary	4
1. Introduction	5
2. Hedge heights	6
3. Procedure for calculating action hedge height	7
4. Loss of light to gardens	8
4.1 Introduction	8
4.2 Hedge height and garden size	8
4.3 Special cases for gardens	11
4.3.1 Hedge set back from boundary	11
4.3.2 Garden sloping or stepped	12
5. Loss of light to windows	13
5.1 Introduction	13
5.2 Hedge is directly opposite window	13
5.3 Hedge is to one side of window and at right angles to window wall	13
5.4 Hedge is at 45° to window	15
5.5 Special cases for windows	16
6. Example of full calculation procedure	17
7. Other relevant factors	19
8. Further reading	22
9. Acknowledgments	23
Annex 1: Measuring hedge height	24
Annex 2: Explanatory notes	25
Glossary	25
Annex 3: Spreadsheet to calculate action hedge height	26
Annex 4: Solar energy	28
References.	29

Summary

This guidance note has been produced by BRE as part of a contract 'Review of hedge height and light loss' for the Office of the Deputy Prime Minister. It supersedes an earlier guidance note produced in October 2001 for the then Department for Transport, Local Government and the Regions.

The aim of this document is to provide an objective method for assessing whether high hedges block too much daylight and sunlight to adjoining properties, and to provide guidance on hedge heights to alleviate these problems.

The document introduces the concept of 'action hedge height' above which a hedge is likely to block too much light. It then gives a procedure to calculate this height both for a garden, and for windows to main rooms in a dwelling. The minimum action hedge height is 2 metres.

The procedure is intended to be simple enough for householders to use. It involves multiplying the distance from a window to the hedge, or the depth of the garden, by a factor; for gardens this factor depends on hedge orientation. Corrections can be made for site slope or where the hedge is set back from a garden boundary.

A simple technique cannot cover every situation, and a section discusses other relevant factors which might need to be considered. Of course the hedge owner is free to trim the hedge below the height proposed in these guidelines, or remove it altogether, if it is easier or safer to do so.

1. Introduction

Hedges have many benefits; they can provide privacy and wind shelter and encourage wildlife. A hedge can also be an attractive feature in its own right.

However, very high hedges can cause problems. Often the worst of these is the loss of sunlight and daylight to neighbouring gardens and houses.

This Guidance Note provides a way of calculating the height of a hedge that is likely to cause significant loss of light to a garden or house nearby. This method could be used by a hedge owner, or by an affected neighbour, to find out if a hedge is likely to block too much light to the neighbour's house or garden.

The Note may be used to help resolve cases arising under the Anti-Social Behaviour Act 2003. However the advice given here is not mandatory, and is only one of the factors a local authority will need to take into account. A discussion of the other factors which may be addressed is given in an ODPM guidance document 'High hedges complaints: prevention and cure'.

In the Anti-Social Behaviour Act, "high hedge" means 'so much of a barrier to light or access as:

- (a) is formed wholly or predominantly by a line of two or more evergreens; and
- (b) rises to a height of more than two metres above ground level.'

Consequently, these guidelines apply to evergreen hedges. They have not been designed to be applied to individual trees, groups of trees or woodlands.

2. Hedge heights

This Note gives a method to calculate the ‘action hedge height’ H. A hedge higher than this is likely to be already causing a significant loss of light. Reduction of the height of the hedge is then recommended.

Where reduction in height is deemed necessary, it is advisable for the hedge to be cut below the action hedge height. This will allow the hedge to grow in between annual (or more frequent) trimmings, and still remain below the action hedge height. For most hedge types, between 600mm and one metre below the action hedge height would give a suitable margin for growth.

However there may be other reasons why a local authority may require a hedge to be cut lower, in some case substantially lower, than this height. This could happen if the hedge is causing adverse effects other than loss of light.

If the hedge is somewhere within the buffer zone or growing margin, it may cause significant loss of light as it grows. In this case future trimming will be needed.

If the hedge is already below the buffer zone or growing margin, it could cause a noticeable loss of light. However it is unlikely to cause significant over shading and no action need be taken. Of course this situation may change in the future as the hedge grows.

Figure 1 summarises this. Advice on measuring heights of hedges can be found in Annex 1.

Figure 1. The action hedge height



3. Procedure for calculating action hedge height

To calculate the action hedge height, follow this procedure.

- a) Calculate the hedge height for loss of light to the nearby garden (Section 4).
- b) Calculate the hedge height for loss of daylight to main house windows (Section 5).
- c) Take the **lower** of these 2 heights.
- d) If this height is less than 2 metres, round it up to 2 metres.
- e) The resulting number is the action hedge height.

4. Loss of light to gardens

4.1 Introduction

A hedge will create an area of shade next to it. The extent of this area of shade will depend on the height and orientation of the hedge (whether it is north or south of the obstructed garden). The impact on the amenity value of the garden will depend on its size, relative to the size of the shaded patch.

These guidelines apply to any type of garden, even small back yards with no lawn. They are intended to protect light to the garden as a whole rather than particular features within it.

The procedure for calculating action hedge height is as follows:

- i. find the effective depth of the garden (for a rectangular garden the effective depth is the distance between the hedge and the opposite end of the garden)
- ii. multiply the effective depth by a factor (which will vary with the orientation of the hedge) to get the basic action hedge height
- iii. make a further correction if the hedge is set back from the boundary
- iv. correct for site slope if any.

4.2 Hedge Height and Garden Size

The basic action hedge height is calculated from the effective depth of the garden.

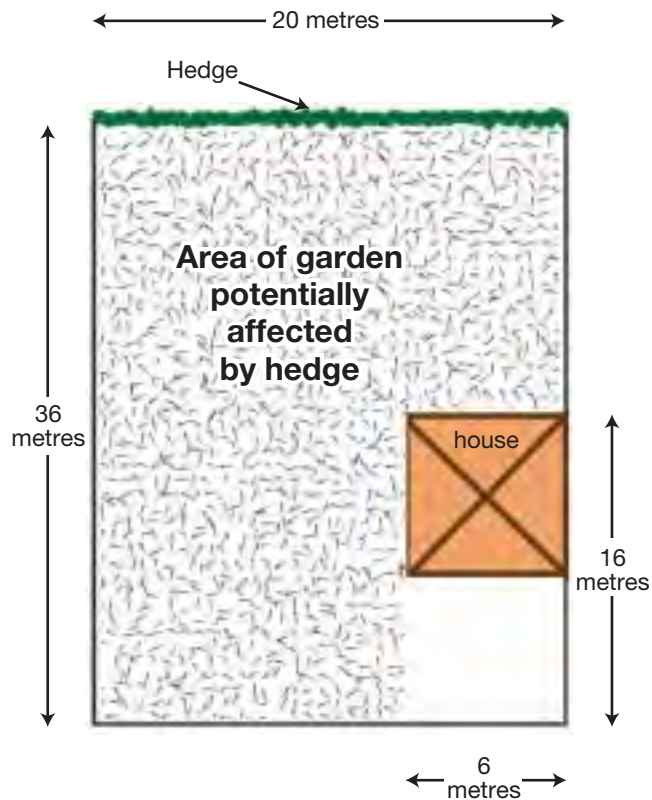
The equation for non-rectangular gardens is:

$$\text{Effective depth} = \frac{\text{Area of garden}}{\text{Effective length of hedge}}$$

For a rectangular garden, where the hedge grows along the whole length of a boundary, the effective depth is the distance between the boundary by the hedge and the opposite end of the garden. Where the length of the hedge is less than the length of the boundary it grows on, then the formula for non-rectangular gardens (see above) should be used.

In all cases, the area of the garden includes outhouses, greenhouses, sheds, patio and yard areas, and paths within the garden itself. However it does not include garages, or narrow access ways (less than 3m wide) for example pathways and driveways to the side of a house. For gardens which go round the side of a house, the area of garden should be that which has a direct view of most of the hedge (see figure 2). The impact of trees and screens within the obstructed garden is not taken into account here. Areas behind such a screen still count in the garden area.

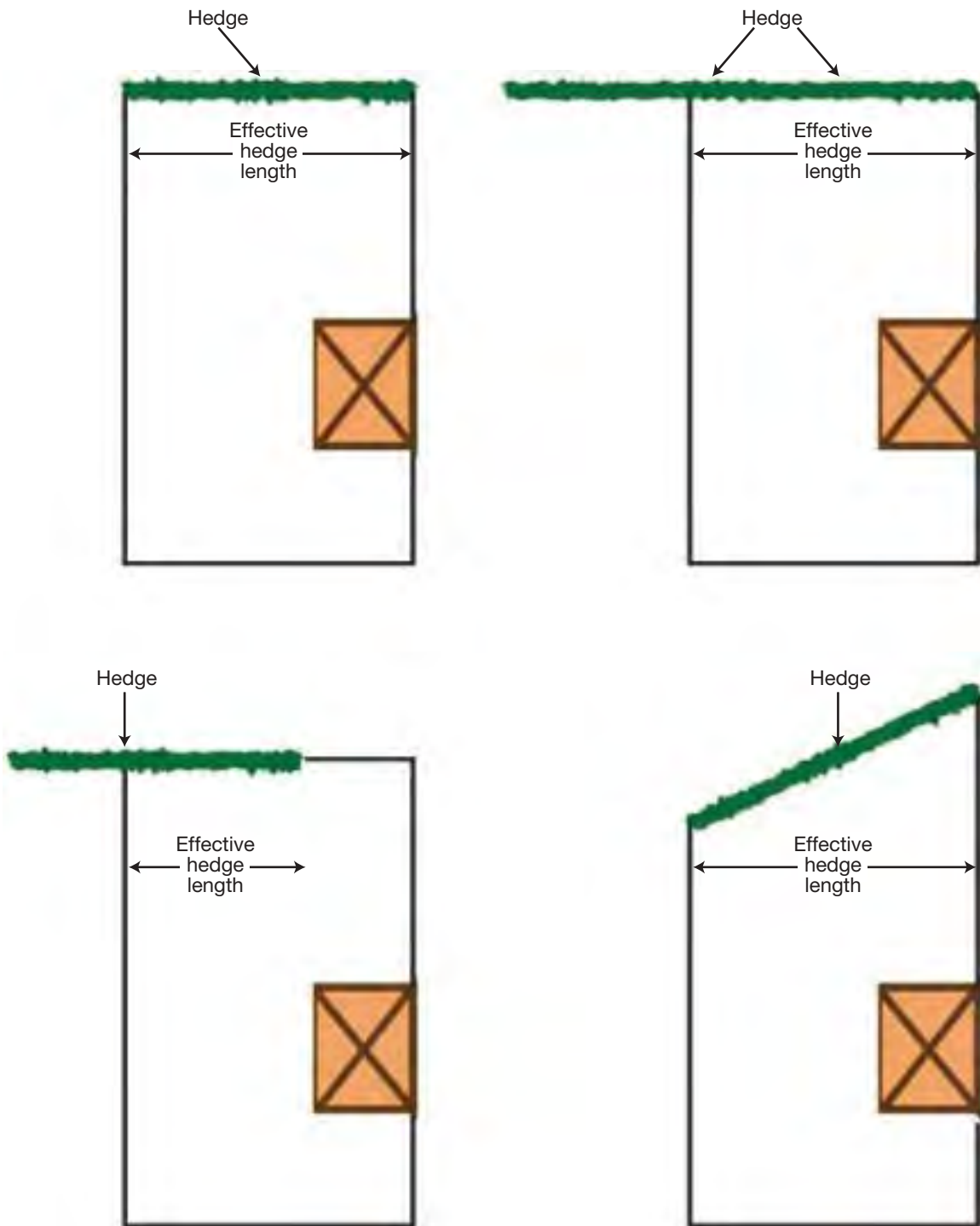
Figure 2. Only the hatched area is included in the calculation of effective garden depth



In the example shown in Figure 2, the area of the garden (the hatched area) is $(20 \times 36) - (6 \times 16) = 720 - 96 = 624 \text{ m}^2$. The effective depth of the garden is this area divided by the effective length of the hedge, in this case 20 metres. So the effective depth of the garden is 31.2 metres.

The effective length of the hedge is the length of the hedge that runs parallel to the garden boundary (see figure 3). The effective length of the hedge cannot be more than the width of the garden boundary.

Figure 3. Examples of the measurement of effective hedge length



Once the effective depth of the garden is obtained, multiply it by the relevant factor in Table 1 to get the basic action hedge height.

Table 1

Orientation	Factor
North	0.65
North East	0.55
East	0.4
South East	0.3
South	0.25
South West	0.25
West	0.35
North West	0.5

Factors for other orientations may be obtained by interpolation. The orientation in Table 1 is the direction faced when looking from the obstructed garden to the hedge. So if the hedge is by the western boundary of the obstructed garden, multiply the effective garden depth by 0.35. If the hedge is to the south east of the garden, multiply the effective garden depth by 0.3.

4.3 Special Cases for Gardens

4.3.1 Hedge Set Back from Boundary

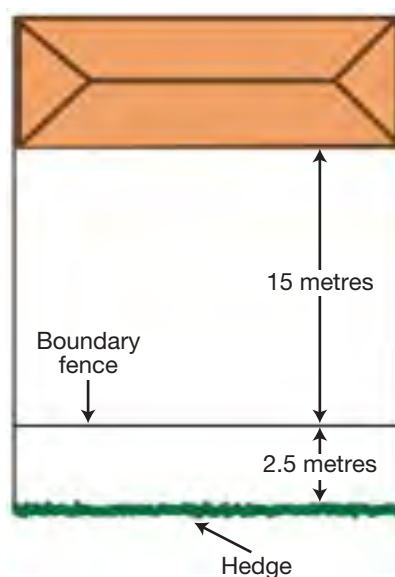
Sometimes the hedge may not be immediately adjacent to the boundary of the affected garden, but some distance away from it. For example, there may be a driveway between the hedge and the boundary. Or the hedge might be at the far side of the hedge owner's garden.

Where the hedge is more than 1 metre from the boundary, the shortest distance between the boundary and the nearest part of the hedge should be added to the action hedge height.

Figure 4 shows an example. The effective depth of the garden is 15 metres, and the hedge is to the south of the garden. This gives a basic action hedge height of $15 \times 0.25 = 3.75$ metres.

The hedge is set back 2.5 metres from the boundary. So the corrected action hedge height is $3.75 + 2.5 = 6.25$ metres.

Figure 4. Hedge set back from boundary



4.3.2 Garden Sloping or Stepped

Where the base of the hedge is above or below the level of the obstructed garden, or the obstructed garden is sloping or terraced, the action hedge height needs to be corrected.

This applies only if the level of the obstructed garden changes as you walk away from the hedge, at right angles to it (see for example figure 5). Where the slope is along the line of the hedge, so that the hedge runs up or down the slope, no correction need be made.

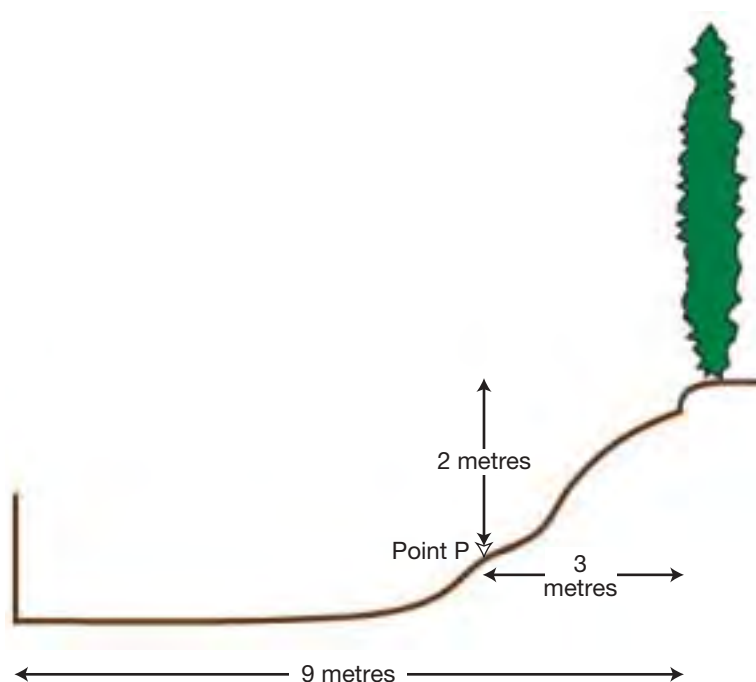
The procedure is as follows:

- a. Measure the effective depth of the garden in metres (see (i) above).
- b. Divide by 3.
- c. Take a point this distance away from the boundary nearest the hedge.
- d. Estimate the vertical height difference between this point and the base of the hedge opposite it.
- e. If the base of the hedge is higher, subtract this height difference from the action hedge height. If the base of the hedge is lower than the point in the garden, add this height difference to the action hedge height.

Figure 5 shows an example. The effective garden depth is 9 metres, and the hedge is west of the garden. So the action hedge height is $9 \times 0.35 = 3.15$ metres.

Now we correct for site slope. The garden depth divided by 3 is 3 metres, so we choose a point P 3 metres from the boundary next to the hedge. P is 2 metres below the base of the hedge, so the action hedge height is $3.15 - 2 = 1.15$ metres. This is less than 2 metres, the minimum action hedge height, so it would be rounded up to 2 metres (see section 3).

Figure 5. A hedge and a sloping garden



5. Loss of light to windows

5.1 Introduction

High hedges can obstruct daylight to windows. Even if a window faces north, significant loss of diffuse sky light can occur. The extent of the loss of light will depend on the distance from the hedge to the window as well as the height of the hedge.

The guidelines given here are intended for use for the main rooms of a house. These include living rooms, dining rooms, kitchens and bedrooms. Glazed doors can be counted as windows if they form a major source of light to the room.

Loss of light to toilets, bathrooms, storerooms and circulation areas (hall, stairs and landing) is deemed less important and such windows need not be analysed. These guidelines apply to dwellings, and not to outbuildings such as sheds, greenhouses, summer houses, garages or workshops. Windows to these structures need not be taken into account.

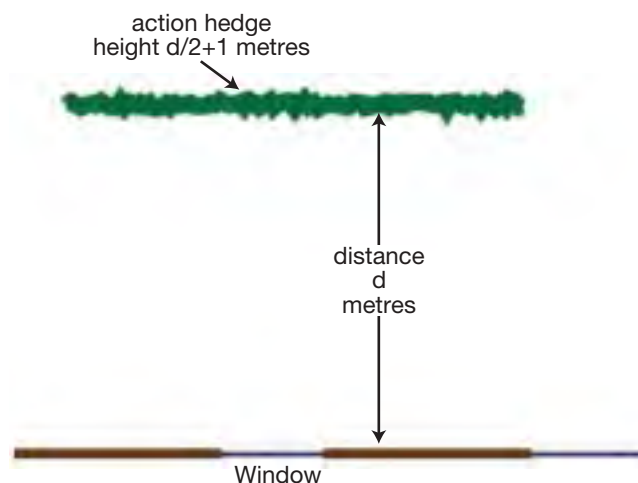
Where a dwelling has a conservatory, the opening between it and the house, not the front or side faces of the conservatory, is taken as the window position.

5.2 Hedge is directly opposite window

Where the line of the hedge is parallel to the window wall (figure 6), measure the horizontal distance between the outside window wall and the boundary on which the hedge stands. (If the hedge is set back from the boundary, follow the guidance in ‘Special cases’ at the end of this section). Halve it and add 1 metre. This gives the action hedge height.

Example: the hedge is eight metres away. The action hedge height is $(8 \div 2 = 4) + 1 = 5$ metres.

Figure 6. Hedge opposite a window



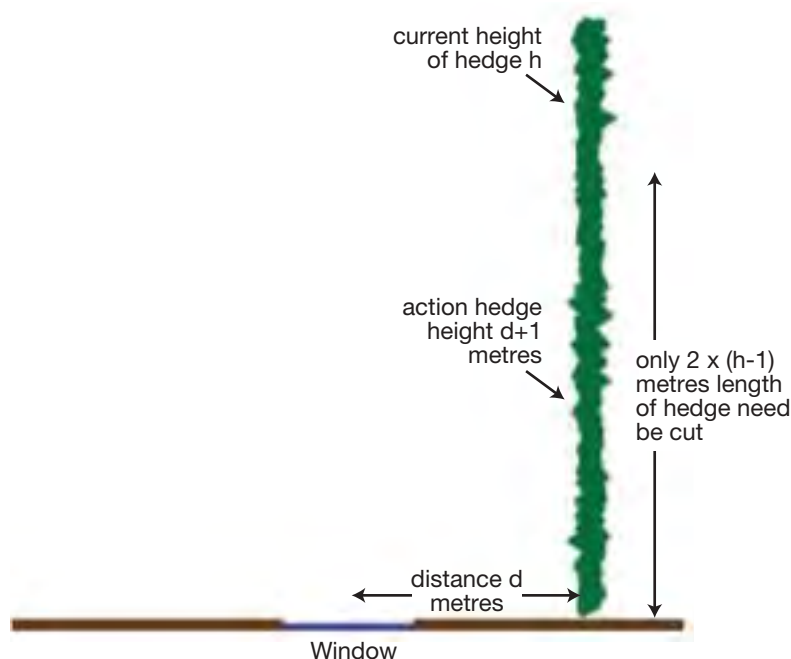
5.3 Hedge is to one side of window and at right angles to window wall

This is normally the case if the hedge separates the gardens of two adjoining houses. Measure the horizontal distance between the centre of the window and the boundary on which the hedge stands. Add one metre to get the action hedge height.

Example: the hedge is two metres to the right of the centre of the window (figure 7). The action hedge height is $2 + 1 = 3$ metres.

Most of the light loss to the window will be caused by the portion of the hedge nearest to it. Only this part need be reduced in height. To find the length of hedge that needs trimming, take the current height of the hedge, subtract 1 metre and then double this number. So in Figure 7, if the hedge is currently 7 metres high, the length that needs cutting is $(7 - 1 = 6) \times 2 = 12$ metres.

Figure 7. Hedge to one side of window



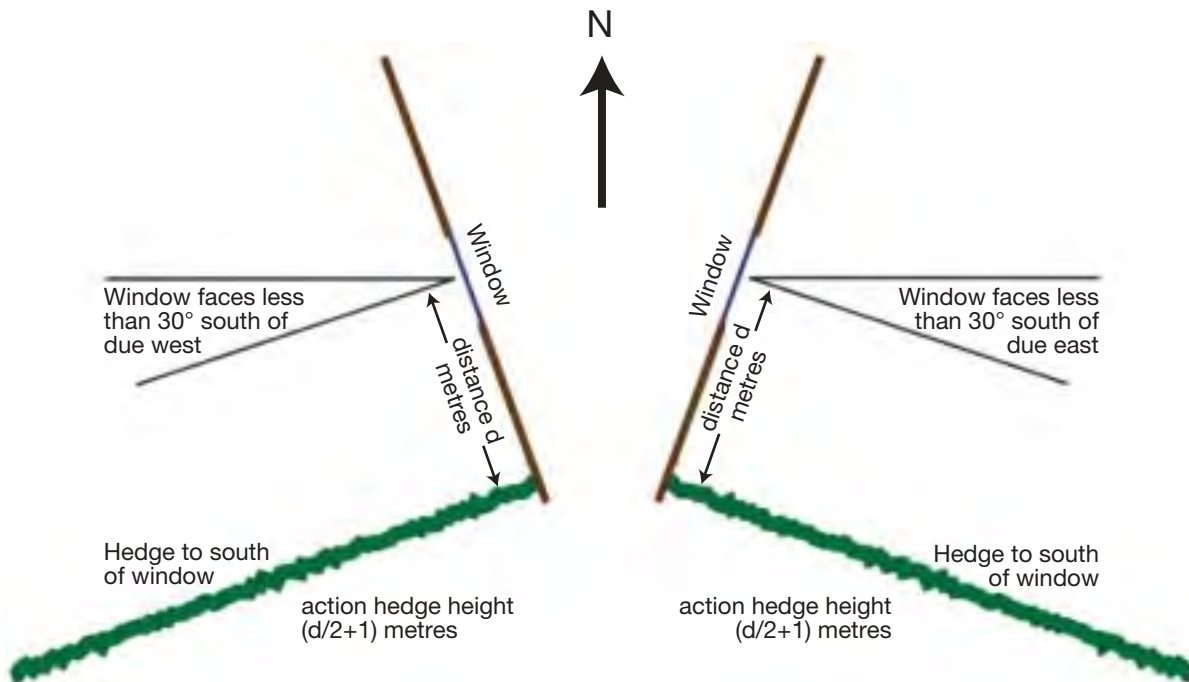
In certain cases the hedge can block significant amounts of sunlight as well as daylight, particularly in the winter. Particular problems can occur if the window faces less than 30° south of due east or west, for example between east and east south east, or between west south west and west (figure 8), and the hedge is to the south of the window.

In these cases the action hedge height is found by taking the horizontal distance between the centre of the window and the boundary on which the hedge stands, dividing this by two and then adding one metre to get the action hedge height.

Example: the hedge is six metres south of the centre of the window (figure 8). The action hedge height is $(6 \div 2 = 3) + 1 = 4$ metres.

The length of hedge that needs trimming is found as described above (take the current height of the hedge, subtract 1 metre and then double this number).

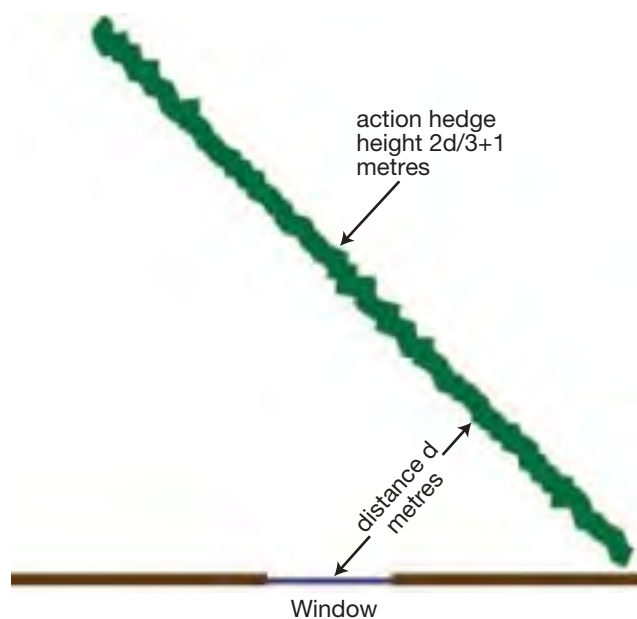
Figure 8. Examples of hedges that could block substantial amounts of winter sunlight. The window faces within 30° south of due east or west and the hedge is to the south of the window



5.4 Hedge is at 45° to window

This can sometimes happen if the hedge is on a corner plot (figure 9). Take the closest distance d from the boundary on which the hedge stands to the centre of the window (this will be measured along a line at right angles to the hedge and 45° to the window). Multiply this distance by two, divide it by three and add one metre. So if the distance d were 6 metres, the action hedge height would be $(6 \times 2 \div 3 = 4) + 1 = 5$ metres.

Figure 9. Hedge at 45° to window



Where the window faces less than 30° south of due east or west, eg between east and east south east, or between west south west and west, extra sunlight may be blocked in winter if the hedge begins to the south of the window (compare figure 8).

In these cases the action hedge height is found by taking distance *d* in figure 9, dividing this by two and then adding one metre to get the action hedge height.

Example: the distance *d* (figure 9) is ten metres. The action hedge height is $(10 \div 2 = 5) + 1 = 6$ metres.

5.5 Special cases for windows

If the lowest affected window is at first floor height or above, add the height above ground of the floor level of the affected room to the action hedge height. For example, a flat above a shop might have a floor level three metres above ground. The action hedge height, as calculated above, should be increased by 3 metres.

Sometimes the same hedge may obstruct main windows in more than one wall. This can happen if there is a rear extension to a house, for example. In this case the action hedge height is calculated separately for each window wall, and the lowest value taken.

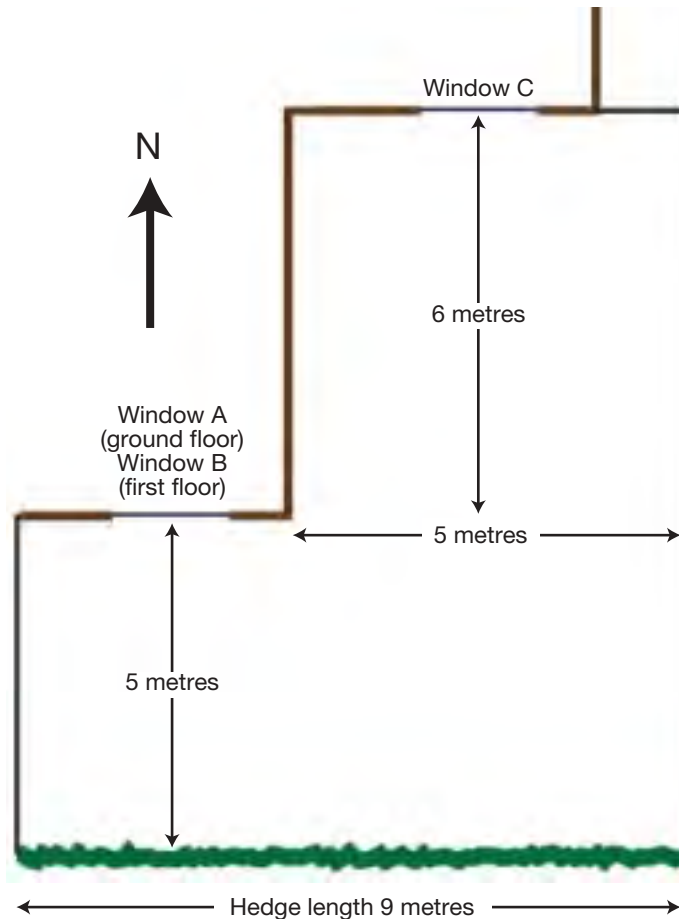
If the land slopes or is stepped from window wall to hedge, the action hedge height needs to be modified to take account of this. If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height. If the base of the hedge is lower, add the height difference to the calculated action hedge height.

Where the hedge is set back from the boundary by at least one metre, the distance from the window should be measured to the hedge itself, not the boundary. From the affected window, look towards the hedge and estimate which part of it appears highest. For a hedge that has not been trimmed in the past, this may be the centre of the hedge above the trunks. Where a hedge has previously been trimmed and grown thick and bushy, the part that appears highest from the window may be closer than the centre of the hedge. In each case, measure the distance from the window to the part of the hedge that appears highest when viewed from it. The distance is always measured at right angles to the line of the length of the hedge (see figures 6-9).

6. Example of full calculation procedure

Figure 10 is a plan of Axel Otoff's small garden. The garden is flat, not sloping or stepped. On the south boundary is a 6m high evergreen hedge owned by Laurel Riot.

Figure 10. Plan of example situation



First we calculate loss of light to the garden. The area of the garden is $(5 \times 9) + (6 \times 5) = 75 \text{ m}^2$. We exclude the small side passage. The effective length of the hedge is 9 metres, the full width of the garden in this case. So the effective depth of the garden is $75 \div 9 = 8.33$ metres. According to section 4.2, we then multiply by the factor in Table 1 to get the action hedge height. As the hedge is to the south, this is 0.25. So the action hedge height is $8.33 \times 0.25 = 2.08$ metres.

Axel's house is a Victorian villa built with an original rear extension. He is also concerned about three windows that face the hedge. On the ground floor, window C lights his dining room. At ground floor level window A lights a bathroom, loss of light to which need not be taken into account (see section 5.1). However, the window directly above at first floor level (window B) lights a bedroom/study. This window, as well as the dining room window, should be analysed.

Next we calculate the action hedge height as far as the windows in the house are concerned. For window B, the distance from the centre of the hedge is 5 metres. As the hedge is opposite the window (section 5.2), we halve this distance and add one metre, to get an action hedge height of 3.5 metres. But because the window is at first floor level, we add on the height of the first floor above the ground. In this particular case this is 2.7 metres, giving an action hedge height for window B of 6.2 metres.

Window C is 11 metres from the centre of the hedge, and hence the action hedge height is $(11 \div 2 = 5.5) + 1 = 6.5$ metres.

We take the lower of the two action hedge heights, namely 6.2 metres for window B.

The next stage is to compare the two action hedge heights (for windows and garden) and take the lowest one. In this case the value for the garden is the lower of the two, 2.08 metres. The local authority could require Laurel to cut the hedge down to 2 metres high, and keep the hedge pruned so that it does not cause future problems related to its height.

Annex 3 of this report gives the calculation of action hedge height in spreadsheet form, and includes as an example figures from the above case.

7. Other relevant factors

As Section 1 explained, this Note is intended as a guide only. A simple technique cannot cover every situation and there are circumstances which may mean a different action hedge height is chosen.

These include:

- i. Where hedges cover more than one side of the garden, normally different action hedge heights will be calculated for each side individually. However, to allow for the cumulative impact of the hedges a lower action hedge height could be chosen in some circumstances. One way of doing this would be to trim all the hedges to the lower of the two (or three) calculated action hedge heights.
- ii. If there is a building behind, and close to, the hedge, the hedge might not be blocking any extra light. For windows, the extra light the hedge blocks could be assessed using the techniques in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice'.
 - ii.a When calculating the action hedge height for a garden where a hedge only covers part of the boundary use the calculation stated in 4.2. If a building is up against part of the boundary of the garden, and the hedge the rest of the boundary, then this may give an unfairly high action hedge height if this method is applied rigidly. It may be more appropriate to choose a lower action hedge height, although this should not be lower than the action hedge height that would have resulted if the hedge occupied the whole of the boundary.
- iii. If a hedge opposite a window only covers a part of the field of view (figure 11), or if there are gaps in the hedge (figure 12) the action hedge height may be raised. For a hedge opposite a window, a very rough rule of thumb is that $x\%$ gaps will lower the effective height of the hedge above the window by $x\%$. Suppose the centre of the window is 1.5m above ground and opposite a hedge 5.5m high. The height of the hedge above the window is 4m. If the hedge had 25% gaps, it would have a similar effect to that of a hedge $4 \times 25\% = 1\text{m}$ lower, in other words a 4.5m high hedge. If the hedge had 50% gaps, it would have a similar effect to a hedge $4 \times 50\% = 2\text{m}$ lower, a 3.5m high hedge. This rule of thumb only works well where the hedge is opposite the window and not too close to it. Figure 1 shows how gaps in a hedge viewed from an oblique angle tend to disappear and have little effect on light. So for a window with a hedge to one side, the effect of gaps in the hedge is much less. Where a hedge is a very irregular shape or has large gaps which may or may not be opposite the window, the light loss to the window may be calculated using the methods in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice'.

Figure 11

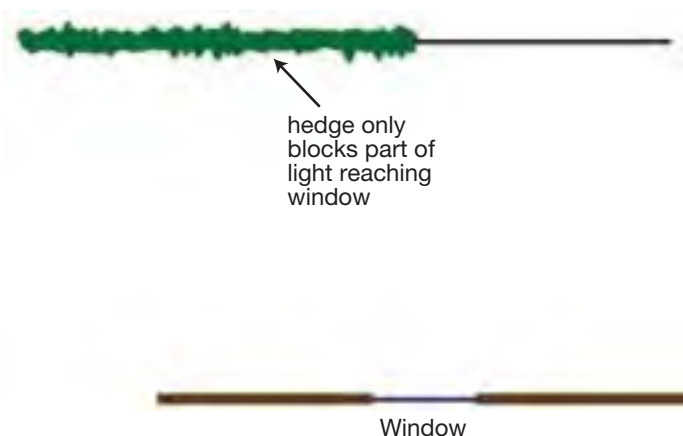
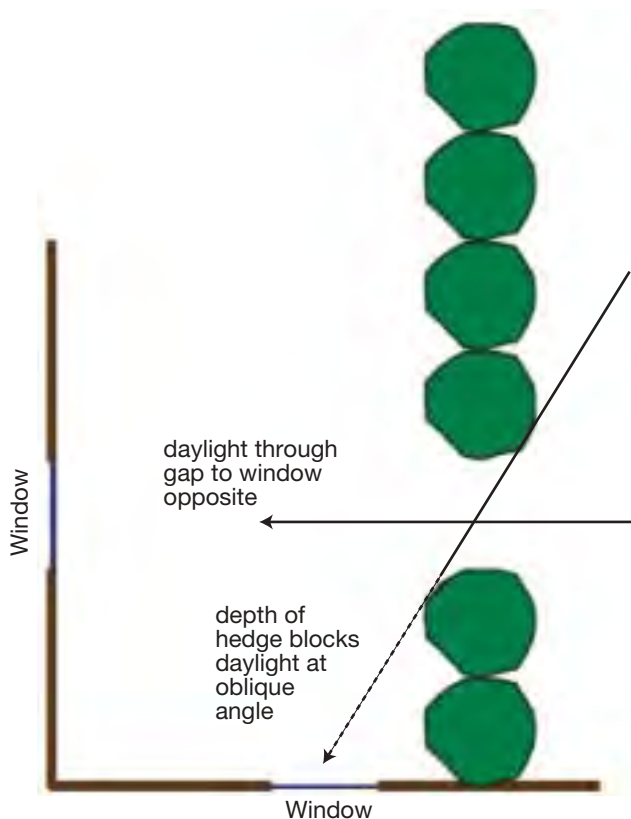


Figure 12. The effect of gaps in the hedge. Where the window is opposite the gap, it can receive daylight through it. A window at an oblique angle may receive little or no light through the gap because of the depth of the hedge



- iv. Where the hedge is deliberately being trimmed to, and managed at, a non-uniform height (for example topiary) a higher action hedge height could be set to avoid the top of the design being removed.
- v. Single trees growing above a lower hedge should be considered separately. More selective and sensitive pruning should be possible.

Of course the hedge owner is free to trim the hedge below the height proposed in these guidelines, or remove the hedge altogether, if it is easier or safer to do so and the hedge is not protected by a tree preservation order or by growing in a conservation area. High and overgrown hedges often need specialist equipment or professional help to remove them altogether, reduce their height or trim their sides. Where the work required is beyond the skills and resources available to the individual then engaging the services of a reputable tree work contractor is recommended. A hedge that has substantial value as a refuge for wildlife may receive special consideration. If birds are nesting in the hedge, trimming should be delayed until after the nesting season.

A local authority may also require a hedge to be cut lower than the height proposed in these guidelines. This could happen if the hedge is causing adverse effects other than loss of light.

8. Further reading

'The right hedge for you' DETR, London, 1999.

'Hedges: suitable trees, shrubs and conifers' Horticultural Advisory Leaflet no. 182, Royal Horticultural Society, Wisley, 2000.

'Leyland's cypress hedges' Horticultural Advisory Leaflet no. 222, Royal Horticultural Society, Wisley, 1999.

'Evergreen hedges' Leaflet no. 5, Arboricultural Association, Romsey, 1991.

P J Littlefair 'Site layout planning for daylight and sunlight: a guide to good practice' BRE Report, CRC, Garston, 1991.

J F Barlow and G Harrison 'Shaded by trees?' Arboricultural Practice Note 5, Arboricultural Advisory and Information Service, Farnham, 1999.

The Arboricultural Advisory and Information Service runs a Tree Helpline offering advice on trees and hedges. Telephone 09065 161147. Premium rate charges apply.

9. Acknowledgments

This project was carried out for the Office of the Deputy Prime Minister. I would like to thank Julie Richardson, Peter Annett and Steve Clark of ODPM and Derek Patch of the Tree Advice Trust for their help and guidance. Emma Dewey of BRE carried out a series of site visits to test out these guidelines; I would like to thank all those people who allowed access to their gardens and co-operated with the surveys, Alan Bridgman of Hedgeline, for co-ordinating sites for visiting, and Barbara Milne of the London Borough of Bromley, for her help with the four site visits there.

I would also like to thank the following people for the time they gave in discussing the proposals and giving advice and information: Guy Barter, Colin Crosby and Paul Goacher of the Royal Horticultural Society; Richard Nicholson of East Dorset District Council; Clare Hinchliffe, Derek Glew and Alan Bridgman of Hedgeline; Alistair Redler of Delva Patman Associates and the Royal Institution of Chartered Surveyors; Becky Hesch of the London Tree Officers' Association; Chris Colwell of the Royal Borough of Kensington and Chelsea; Barbara Milne of London Borough of Bromley; Jim Smith of Islington London Borough Council; and David Hall of Envirobods Limited. A large number of individuals and organisations also provided comments on an earlier version of this note. Their help is gratefully acknowledged, but the guidelines in this report are not necessarily in accordance with their views or those of their organisations.

The characters in the Example are entirely fictitious.

Annex 1: Measuring hedge height

It is sometimes difficult to estimate the height of an existing hedge. The following techniques can be used. The hedge height is normally taken as the height of the highest shoot.

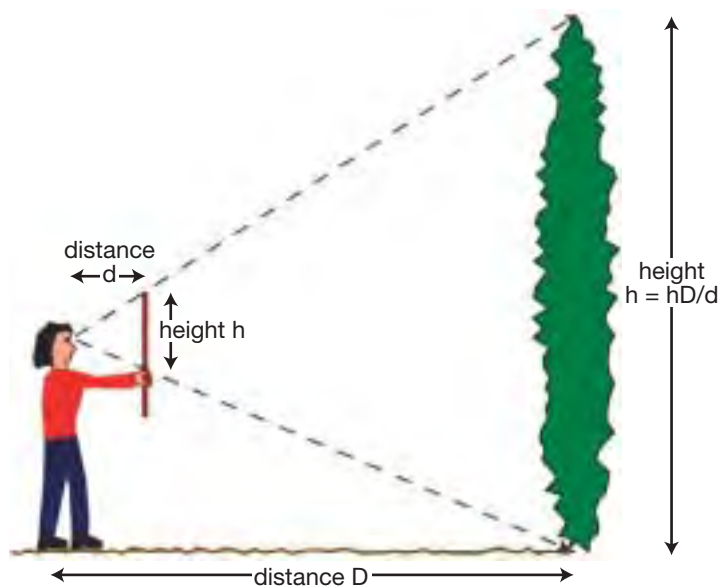
If the hedge is less than 4-5m high, a measuring stick or tape (the stiff metal kind) can be used to find its height. From a fixed point, measure downwards towards the base and upwards to the top, and add the two heights together. It can be hard to tell if the tape or stick is at the top of the hedge; get someone else to stand back from the hedge to help judge when it is.

If the hedge is next to a house, you can assess its height by counting the bricks of the house up to the top of the hedge and multiplying by the height of a brick (with mortar bed).

Alternatively, take a straight stick and stand some distance away from the hedge. Hold the stick vertically at arms length (get someone else to check it is vertical). Keeping the stick vertical, hold it so the top of the stick is aligned with the top of the hedge and the top of your fist is aligned with the base of the hedge (figure 13). Then the height of the hedge is given by the horizontal distance between you and the hedge trunk, multiplied by the length of the stick above your fist, divided by the horizontal distance between your eye and the stick (get your assistant to measure this).

Tree experts use an instrument called a hypsometer or clinometer to measure heights. Further details are given in 'Measuring trees and forests' by M S Philip (CAB International, Wallingford, 1994).

Figure 13. Estimating hedge height using a vertical rod



Annex 2: Explanatory notes

These notes are intended to provide more detail on the basis for the guidelines.

In gardens the guidelines are based on the loss of sunlight and diffuse daylight. The corrections for orientation are based on light blocked by the hedge between 0900 (clock time) and sunset, which is why the values for east and west are not the same. The factors in Table 1 form a central part of the guidelines; roughly speaking they correspond to up to a quarter of the garden losing at least half its light.

For daylight to windows of dwellings, the guidelines are based on those in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice', except that the angular criteria have been replaced by spacing to height ratios for ease of application. The aim here has been to concentrate on daylight provision on cloudy days. Where the hedge is opposite a window that faces within 90° of due south, it can be shown that there is little obstruction to sunlight if the guidelines are followed.

Glossary

Action hedge height. The height above which a hedge is likely to block too much light.

Buffer zone. A distance up to 1 metre below the action hedge height (defined above). Hedges within this range of heights could cause a significant loss of light as they grow.

Centre of the hedge. This is the centre of the thickness of the hedge. For most plant types it will lie in a plane through the main trunks of the individual trees or shrubs.

Daylight. The combination of skylight and sunlight.

Diffuse daylight. Light from the sky (skylight).

Effective depth. For a rectangular garden the effective depth is the distance between the boundary by the hedge and the opposite end of the garden. For non-rectangular gardens:

$$\text{Effective depth} = \frac{\text{Area of garden}}{\text{Effective length of hedge}}$$

Effective length. The length of the hedge that runs parallel to the garden boundary. The effective length of the hedge cannot be more than the width of the garden.

Garden. A garden or yard which is used wholly or mainly in connection with a dwelling.

Height of a hedge. The vertical distance from the base of the trunk to the topmost shoot.

Orientation. The compass direction of a line on plan from the obstructed garden to the hedge and at right angles to the line of the hedge.

Annex 3: A Spreadsheet to calculate action hedge height

Measure distances in metres	Quantities you measure/ look up	Quantities you calculate
<p>GARDEN <i>If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -</i></p> <p>Area of garden (see section 4.2 and 7.ii.a)</p> <p>Effective hedge length (see Figure 3)</p> <p><i>and calculate the effective garden depth.</i> <i>Otherwise enter -</i></p> <p>Effective garden depth</p>	<p><input type="text"/> A</p> <p><input type="text"/> B</p>	<p>$(A \div B)$</p> <p><input type="text"/> C</p>
<p><i>Orientation</i></p> <p>Factor from Table 1 (section 4.2) (depends on compass direction of hedge from garden)</p> <p>Uncorrected action hedge height</p>	<p><input type="text"/> D</p>	<p>$(C \times D)$</p> <p><input type="text"/> E</p>
<p><i>Hedge set back from boundary (section 4.3.1)</i></p> <p>If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge else enter zero.</p>	<p><input type="text"/> F</p>	
<p><i>Slopes (section 4.3.2)</i></p> <p>Distance between hedge and reference point for slope calculation</p> <p>If garden slopes, enter height that a point in the garden G metres away from hedge is above the base of hedge (negative number if hedge is higher). If flat enter zero</p>	<p><input type="text"/> H</p>	<p>$(C \div 3)$</p> <p><input type="text"/> G</p>
<p>Corrected action hedge height for garden</p>		<p>$(E + F + H)$</p> <p><input type="text"/> J</p>
<p>WINDOWS <i>Measurements</i></p> <p>Closest distance from hedge to centre of window (section 5)</p> <p>If hedge opposite window (or to south side of a window that faces within 30 degrees S of E or W) write 2 here If hedge at right angles to window, write 1 here If hedge at 45 degrees to window, write 1.5 here</p> <p>Uncorrected action hedge height for windows</p>	<p><input type="text"/> K</p> <p><input type="text"/> L</p>	<p>$(K \div L) + 1$</p> <p><input type="text"/> M</p>
<p><i>Amendments</i></p> <p>Enter height of floor above ground, else enter zero</p> <p>If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher) else enter zero</p> <p>Corrected action hedge height for windows</p>	<p><input type="text"/> N</p> <p><input type="text"/> P</p>	<p>$(M + N + P)$</p> <p><input type="text"/> Q</p>
<p>OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater)</p>		<p><input type="text"/></p>

EXAMPLE CALCULATION (Section 6, Figure 10)

Measure distances in metres	Quantities you measure/ look up	Quantities you calculate
GARDEN <i>If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -</i> <p style="text-align: right;">Area of garden (see section 4.2 and 7.ii.a)</p> <p style="text-align: right;">Effective hedge length (see Figure 3)</p> <i>and calculate the effective garden depth.</i> <i>Otherwise enter -</i> <p style="text-align: right;">Effective garden depth</p>	<input type="text" value="75"/> A <input type="text" value="9"/> B	$(A \div B)$ <input type="text" value="8.33"/> C
<i>Orientation</i> <p style="text-align: right;">Factor from Table 1 (section 4.2) (depends on compass direction of hedge from garden)</p> <p style="text-align: right;">Uncorrected action hedge height</p>	<input type="text" value="0.25"/> D	$(C \times D)$ <input type="text" value="2.08"/> E
<i>Hedge set back from boundary (section 4.3.1)</i> <p style="text-align: right;">If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge else enter zero.</p>	<input type="text" value="0"/> F	
<i>Slopes (section 4.3.2)</i> <p style="text-align: right;">Distance between hedge and reference point for slope calculation</p> <p style="text-align: right;">If garden slopes, enter height that a point in the garden G metres away from hedge is above the base of hedge (negative number if hedge is higher). If flat, enter zero</p>	<input type="text" value="0"/> H	$(C \div 3)$ <input type="text" value="2.78"/> G
<p style="text-align: right;">Corrected action hedge height for garden</p>		$(E + F + H)$ <input type="text" value="2.08"/> J
WINDOWS <i>Measurements</i> <p style="text-align: right;">Closest distance from hedge to centre of window (section 5)</p> <p>If hedge opposite window (or to south side of a window that faces within 30 degrees S of E or W), write 2 here If hedge at right angles to window, write 1 here If hedge at 45 degrees to window, write 1.5 here</p> <p style="text-align: right;">Uncorrected action hedge height for windows</p>	<input type="text" value="5"/> K <input type="text" value="2"/> L	$(K \div L) + 1$ <input type="text" value="3.5"/> M
<i>Amendments</i> <p style="text-align: right;">Enter height of floor above ground, else enter zero</p> <p style="text-align: right;">If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher) else enter zero</p> <p style="text-align: right;">Corrected action hedge height for windows</p>	<input type="text" value="2.7"/> N <input type="text" value="0"/> P	$(M + N + P)$ <input type="text" value="6.2"/> Q
OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater)		<input type="text" value="2.08"/>

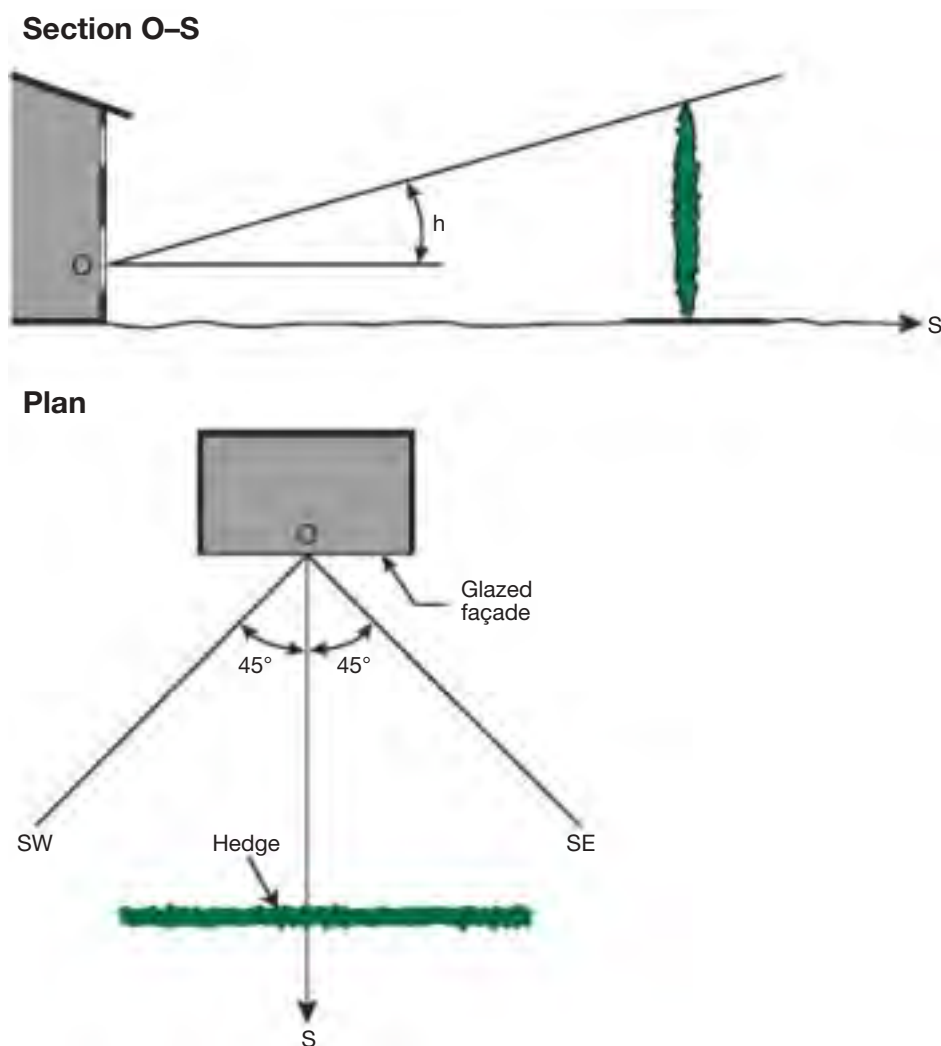
Annex 4: Solar energy

If a hedge might block sunlight to solar features in a specially designed or modified dwelling, a lower action hedge height may be necessary.

Passive solar houses can exploit the sun's heat to give energy savings. These 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 north facing one (or a collecting device like a Trombe wall or thermosyphon (ref 1)), provision of thermal mass to store heat, and heating controls to make sure the solar energy is utilised. To be classed as a passive solar dwelling rather than one which happens accidentally to have large windows, some evidence of design intent would be helpful (for example guidance to homeowners on the operation and maintenance of the solar features).

The BRE Reports 'Site layout planning for daylight and sunlight: a guide to good practice' (ref 2) and 'Environmental site layout planning' (ref 3) give guidance on obstruction of passive solar dwellings. This is summarised in figure 14.

Figure 14. For passive solar access, the area of sky between south east and south west is important. Obstructions in this zone should not exceed the critical angle h . For UK latitudes, $h = (70^\circ - \text{latitude})$



Reference 3 explains that the key area for solar access in winter lies within 45° of due south. This means that hedges to one side of the window are unlikely to have a substantial effect. Hedges opposite the window, however, will block solar access if they subtend more than the critical angle h to the horizontal measured from the centre of the window. A value of $h = (70^\circ - \text{site latitude})$ (ref 3) is recommended. This would give an obstruction angle of 18.5° in the London area and 14° in Edinburgh or Glasgow.

Example. A passive solar dwelling is situated in Manchester (53.5°N). It has a 'solar wall' facing due south. The centre of the solar collecting glazing is 1.5 metres above the ground. The boundary on which the hedge stands is 15 metres away. The action hedge height would be $1.5 + 15 \tan (75^\circ - 53.5^\circ) = 1.5 + 15 \tan (16.5^\circ) = 5.94$ metres.

If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height. If the base of the hedge is lower, add the height difference to the calculated action hedge height.

Where the hedge is set back from the boundary by at least one metre, the distance from the window should be measured to the hedge, not the boundary. Section 5.5 'Special cases' explains how to measure this distance.

Active solar thermal installations use solar collectors with pumps or fans to provide water or space heating. A typical example is the roof mounted solar panel filled with water, usually used to provide water heating. Photovoltaic panels generate electricity directly from the sun's radiation.

Where a roof mounted solar panel is provided, or a solar heating system serves a swimming pool and the solar collector cannot be easily relocated, the action hedge height should be set so that the hedge does not cast a shadow over the solar panel during the hours between one hour after sunrise and one hour before sunset. For an outdoor swimming pool this would apply only to the period between 21 March and 21 September. A sunpath diagram such as the BRE sunlight availability protractor (ref 4) can be used to check this.

References.

1. J R Goulding, J O Lewis and T C Steemers, 'Energy in architecture' Batsford/CEC, London, 1992.
2. P J Littlefair 'Site layout planning for daylight and sunlight: a guide to good practice' BRE Report BR 209, CRC, Garston, 1991.
3. P J Littlefair et al 'Environmental site layout planning' BRE Report BR 380, CRC, Garston, 2000.
4. 'Sunlight availability protractor' CRC, Garston, 2000.

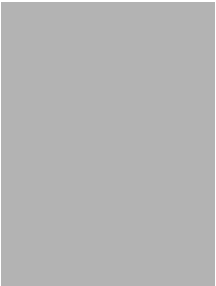
The aim of this document is to provide an objective method for assessing whether high hedges block too much daylight and sunlight to adjoining properties, and to provide guidance on hedge heights to alleviate these problems.

This guidance introduces the concept of 'action hedge height' above which a hedge is likely to block too much light. The procedure is intended to be simple enough for all householders to use.

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APPENDIX C



SITE AND CONTEXT

This report relates to a complaint made under Part 8 of the Anti-social Behaviour Act 2003 in respect of a high hedge. The hedge subject of this complaint is located along the eastern boundary of Hedd Fan, Sully Road, Penarth, and forms the boundary along the rear of the adjacent properties, including Lyncroft, Cherry and Sunbury, which are also accessed off Sully Road. The hedge is located on land that is not under the control of the complainant.

The complaint has been made by the occupier of Lyncroft and it is alleged that the hedge adversely affects the reasonable enjoyment of the complainant's property and restricts sunlight to that property. The hedge subject of this report is located to the West of the complainant's property.

DESCRIPTION OF HEDGE

As mentioned above, the hedge subject of this complaint is located along the eastern boundary of the rear garden of Hedd Fan, abutting Lyncroft, Cherry, Sunbury and Green Bank. The hedge also forms part of a larger hedge which stretches around the curtilage of Hedd Fan. The hedge consists of several interlocking trees. The height of the hedge was estimated to exceed 11 metres in 2016, it has increased in height since. The overall length of the hedge is approximately 27 metres.

The hedge subject to this application constitutes a 'high hedge' as defined by the section 66 of the Act as it is formed wholly by a line of more than two evergreens and rises to a height of more than two metres above ground level. Accordingly, under the provisions of section 69 of the Act, the hedge is liable to formal action in the form of a Remedial Notice should it be considered expedient to issue such a notice.

PLANNING HISTORY

No relevant planning history exists for the site

ATTEMPTS MADE TO RESOLVE THE MATTER WITH THE HEDGE OWNER

The complainant states that they have made a number of efforts to discuss issues relating to the height of the hedge with the owner of the property and requested that the hedge be reduced in height. The complainant has provided copies of the letters, dating back as far as February 2016, relating to these requests as evidence to attempt to resolve the matter between the two parties.

No works have been carried out to remedy the complainant's objections to the hedge, and this formal complaint is the result.

A High Hedge Remedial Notice was first served in March 2017 and a second was served in October 2018. Both of these notices were not complied with. However, as a result of consultation with the legal department, it was concluded that legal proceedings would not be taken against non-compliance with these notices as they were not served on all of the correct persons. It was therefore deemed appropriate to serve a new High Hedge Remedial Notice to enable the Council to pursue legal

proceedings, in the event of non-compliance with the Notice.

SUMMARY OF THE COMPLAINT

The complainant has raised issues of:

- Hedge adversely affecting enjoyment of the garden.
- The Hedge preventing sunshine reaching garden in winter and restricting sunshine in Spring and Autumn.
- Hedge taking up moisture from ground preventing other plants growing.
- Hedge is intimidating and overbearing.
- Hedge has potential to cause considerable damage in high winds.

REPRESENTATION FROM THE HEDGE OWNER

The owner of the hedge has not responded to the letter and questionnaire that has been sent to him regarding the complaint. A letter was received from the person that the 2017 notice was served upon claiming that he had not received that notice and stating that the works would leave him liable to prosecution for disturbing wildlife.

REPORT

Guidance and Legislation

This report has been prepared in accordance with Part 8 of the Anti-Social Behaviour Act 2003 and the guidance provided in the Welsh Government (formally Welsh Assembly) document 'High Hedges Complaints System: Guidance', ODPM documents 'Hedge Height and Light Loss' and 'High Hedges, Daylight and Sunlight: Final Report', and BRE 'Site Layout Planning for Daylight and sunlight'.

Well Being of Future Generations (Wales) Act 2015

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Issues

Paragraph 5.102 of the 'Welsh Assembly Government's High Hedges Complaints System: Guidance' provides advice on how the Council should decide a complaint. It states:

'If a Council proceeds with a complaint the Act requires them to decide two matters:

- *first, they must decide whether the hedge, because of its height, is adversely affecting the complainant's reasonable enjoyment of his/her property; and*

- *second, 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.'*

Paragraph 4.40 of the Guidance documents suggests that the reference to 'reasonable' enjoyment requires an assessment of the impact of the hedge on the enjoyment that a reasonable person might expect from their home and garden, thereby introducing a degree of objectivity to the decision-making process.

It is accepted that the hedgerow in question is only along a small section of the complainant's rear boundary and that the remainder of the complainant's rear boundary is either clear of vegetation or adjoined by a single tree and outbuilding within the garden of Hedd Fan. The stand-alone tree cannot be taken into account when considering the complaint. Nevertheless, the hedge (in excess of 11 metres high) is a substantial feature within the immediate context of the complainant's property.

Whilst the hedge will cast a shadow over the rear facing windows of the property at Lyncroft, this shadow would be cast in the latter part of the day. As such, it cannot reasonably be considered to have an unacceptable impact on the sunlight and daylight delivered to the rear facing rooms of the complainant's property. However, when appreciated from the complainant's garden the hedge is considered to be somewhat overbearing by virtue of its scale and mass. In addition to this, the hedge casts a shadow over almost the entirety of the complainant's garden, particularly in the afternoon (and evening during the summer months). The most western section of the garden is most affected, being in shadow for the vast majority of the day. By virtue of the overbearing height and mass of the hedge and the shadow that it casts over the complainant's garden, the hedge at its current height is considered to have an unacceptable impact on the reasonable enjoyment of the garden serving Lyncroft.

In considering what action should be pursued to remedy the harm identified, paragraph 5.77 refers to further guidance contained in the Building Research Establishment's Hedge height and light loss, which includes the recommended methodology used to assess the impact of the hedges. This involves the concept of an 'action hedge height' above which a hedge is likely to block too much light. It includes methods of calculating whether a hedge is likely to result in an unreasonable loss of light to a main room in a dwelling or cause a significant loss of light to a nearby garden. It requires the use of the lowest action hedge height as calculated for the relevant window and the garden.

In addition to the method of calculating the 'action hedge height' suggested above, the Council have recently been involved in an appeal where the hedge subject of the complaint was in an unusual position in relation to the complainant's garden. As with that appeal case, the hedge subject of this current complaint is only adjacent to a small section of rear boundary of the complainant's garden and extends in a southern direction along the rear boundary of the adjoining property at Croft (also known as Cherry) and Sunbury to the south of the complainant's property. In that appeal case the Inspector recommended the use of the BRE standard for Site Layout Planning for Daylight and Sunlight. It suggests that no obstruction, measured in a vertical section perpendicular to the main face, from a point 2 metres above

ground level, subtends an angle of more than 25° to the horizontal.

Both methods of calculation have been applied to the hedge in question in terms of its relationship to, and impact on the complainants dwelling and garden.

Using the first method of calculation, considering that the complainant's garden is a rectangle with a uniform depth of approximately 15.5 metres and that the hedge is to the west of the garden, albeit for a small section of the rear boundary, using 'west' as a compass direction in the calculation the correction height was calculated as being 5.43 metres. However, noting that the vast majority of the hedge is to the south west of the complainant's garden, using 'south west' as the compass direction the correction height was calculated as being 3.88 metres.

Turning to the second method of calculation, and having considered the impact of the hedge at various points within the garden, the correction height of the hedge varies from 4 metres when considered at the westernmost end (adjacent to the rear boundary) of the usable garden to 8.5 metres when considered at the most eastern part of the garden, on the patio area adjacent to the conservatory windows at Lyncroft.

As a comparison to the results of the above assessment, the correction height when calculated using the dimensions of the adjoining property at Croft (also known as Cherry), the correction height is 4.9 metres.

Taking into account the various calculations undertaken in respect of the complainant's garden, the fact that the vast majority of the complainant's garden (and the westernmost section in particular) is in use by the complainant (as opposed to being occupied by outbuildings and other such domestic structures), and the current height of the hedge in question it is considered appropriate to impose a correction height of 5 metres with a maintenance height of a maximum of 5.5 metres allowing for regrowth in between maintenance cuts.

In terms of the wider impact, the hedge is read within a semi-rural context noting its position on the edge of the settlement. When viewed from Sully Road the hedge is also a dominant feature, although set within a context of other substantial vegetation. The hedge at its current height is not considered to be particularly harmful within the wider context. Similarly, its reduction to the corrected height suggested above is not considered to harm the wider amenity of the area.

The recommend reduction is considered to be reasonable and, if carried out in the method and stages recommended, is not considered to jeopardise the health of the trees or the natural habitat provided by the hedge. A standard informative should be applied relating to the Wildlife and Countryside Act 1981.

CONCLUSION

Having undertaken a robust assessment of the impact of the hedge on the complainant's property, at its current height the hedge it is considered to cause harm to the reasonable enjoyment of the complaint's property. Accordingly, it is recommended that a remedial notice be served requiring the height of the hedge be

reduced to 5 metres allowing growth to a maximum height of 5.5.

The recommended height to which the hedgerow should be reduced, as given above, has been calculated within best practice guidance. This recommended reduction is considered to be reasonable and, if carried out in the method and stages recommended, is not considered to jeopardise the health of the trees or the natural habitats provided by the hedgerows.

In terms of compliance period, one of the individuals responsible for the site has been under a requirement to reduce the height of the hedge since a High Hedge Remedial Notice was first served upon them in March 2017. In view of this, and taking into account the upcoming 2020 wild bird nesting season from March-August, a Notice that requires compliance in Autumn 2020 would not be unreasonable.

It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well Being of Future Generations (Wales) Act 2015.

RECOMMENDATION

That a Remedial Notice be served on the owner of the hedge under section 69 of Part 8 of the Anti-social Behaviour Act 2003 requiring the reduction in the height of the hedge to 5 metres with a maintenance height of a maximum of 5.5 metres allowing growth.

A Remedial Notice is issued subject to the following requirements:

1. The reduction in the height of the hedge to 5 metres with a maintenance height of a maximum of 5.5 metres allowing growth.

A handwritten signature in black ink, appearing to be 'VPR', written over a horizontal line.

05.02.20