

Report to Executive Board - 30th November 2004

High Hedges Complaints

<p>Report of: <i>Michael Crofton Briggs</i> <i>Business Manager,</i> <i>Planning Services</i></p> <p>Report Author: Michael Crofton Briggs ☎ 01865 252360 E-mail: mcrofton-briggs@oxford.gov.uk</p> <p>Lead Member Responsible: <i>Councillor Mary Clarkson</i></p> <p>Overview and Scrutiny Responsibility: Environment</p> <p>Key Decision: No</p>	<p>WARDS AFFECTED</p> <p>ALL</p>
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SUMMARY

This report recommends how the City Council should take on the new mandatory responsibility to determine High Hedges complaints as established by Part 8 of the Anti-social Behaviour Act 2003.

The report considers which Business Unit should be given the responsibility and a number of other procedural matters.

The report supports the Council's vision through improving the environments where we live and work.

Staffing and financial implications are discussed in the body of the report.

RECOMMENDATION

The Executive Board is asked to RECOMMEND to Council the following:

- 1) The Planning Business Unit should handle the new responsibility.
- 2) In the Constitution, the Planning Services Business Manager is given full delegated powers to handle all high hedges complaints. However, if a complaint relates to hedges or shrubs on the Council's own land or that of a Council Member or employee then the complaint will be notified to the Monitoring Officer and put before the relevant Area Committee for determination.

3) The maximum fee permissible by the regulations is levied, with no refund if the complaint is withdrawn. However, a 50% reduction is allowed for complainants who are pensioners, disabled or on benefit.

1. INTRODUCTION

- 1.1 Concern had been growing for a number of years about the detrimental impact of cypress leylandii hedges, which grow very rapidly on residential amenity. Whilst planning permission is required to erect a boundary fence over 2 metres in height no such controls existed to control leylandii hedges planted along a boundary (other than through landscaping conditions connected with any planning consent) and potentially left to grow to very substantial heights.
- 1.2 Provisions have now been included within the Anti-social Behaviour Act 2003 to give local authorities new powers to deal with complaints about high hedges. At the time of writing this report the necessary regulations have not been laid before Parliament to bring these new powers into force. This report is based on the draft guidance and regulations published earlier in the year.
- 1.3 Indications are that Section 8 will be in force early in the New Year, therefore it is considered expedient to bring this report to Members to decide how the City Council is going to handle these new powers. The necessary decisions should be made by Council on 10th January 2005
- 1.4 The office of the Deputy Prime Minister has advised recently that:

“As you know the public consultation closed on 30 June. The responses to that threw up a number of issues which we are having to take into account as we finalise the Regulations and guidance - the whole question of fees and a streamlined appeals process which places less of a burden on local authorities and the Planning Inspectorate.

We are aiming to have the legislation operative in early 2005. Ideally, we will notify authorities and provide leaflets, model letters/forms, and the final guidance at the same time as we place the Regulations in Parliament, which should give you a little breathing space before it all comes into force.”

2. SUMMARY OF THE ACT

- 2.1 The Annex to this report provides some additional information on the provisions in the Act, definitions and information from the draft guidance published by the Government.

- 2.2 The Act defines a High Hedge as a barrier to light or access formed wholly or predominantly by a line or two or more evergreen or semi-evergreen trees or shrubs and that rises to a height of more than 2 metres above ground level.
- 2.3 The Act enables people in domestic properties to ask their local council to act as an independent third party and review a disagreement between neighbours. If justified by the adverse impact on residential amenity the Council may order the hedge owner to reduce the height of the hedge and maintain it at a lower level. However, the Council might also decide that no action is necessary.
- 2.4 A key provision in the Act is that a potential complainant must have taken reasonable steps themselves in an attempt to settle a dispute by negotiation with their neighbour before the Council will intervene. The complainant will need to provide evidence of this before the Council will register a complaint.
- 2.5 There is a right of appeal to the planning inspectorate by both the hedge owner and the complainant against the decision of the Council, including over any remedial action specified.
- 2.6 Enforcement of a decision falls to the normal procedures including giving the Council the powers to either prosecute or enter the land itself to carry out the necessary remedial works.

3. BUSINESS UNIT RESPONSIBLE

- 3.1 This new responsibility could be performed by a number of business units within the Council. One option is the CANACT team in Neighbourhood Renewal as the process is essentially the resolution of a neighbour dispute. However, this section is responsible for dealing with matters of serious anti-social behaviour. Another option is Leisure and Parks as the public themselves have been contacting Parks officers so far in the main. However, this section does not have the ability to handle regulatory type processes. The Government itself suggests that it could be Environmental Health as the process is one of assessing the environmental impact of a high hedge. However, this section is already going to have its work cut-out coping with the new licensing regulations.
- 3.2 It is recommended that the new responsibility, therefore, should be handled by Planning. The Planning business unit already has:
 - the administrative systems and processes capable of handling such a new type of application that requires determination.
 - the professional planning staff who can assess the impact of a high hedge on light and outlook as well as the professional tree officer who can advise on technical arboricultural matters.
 - an officer who is responsible for administering appeals and liaising with the planning inspectorate.
 - an established enforcement team.

- a working relationship with other business units, especially Legal, when their professional advice or help on such matters as enforcement notices, prosecution or direct action is required.
- 3.3 Other Council's contacted are also proposing to handle the new powers in Planning.
- 3.4 The new process is not going to be easily absorbed into the Planning Control Section. It will fall to the already hard-pressed staff to handle the new system. In particular it is likely that the junior professional planning officers will act as the case officers, with the necessary support from their Team Leaders, who themselves will be responsible for validating a complaint.
- 3.5 In addition there will need to be technical advice from the Tree Officer. The Enforcement Officers will be responsible for ensuring that hedge management works are undertaken in accordance with the Council's decisions. It is expected that staff in all these areas will have significant additional responsibilities.
- 3.6 In the, hopefully unlikely, event that the Council has to enter land and do work, this will need to involve Legal Services & Parks Services. There is a similar situation when the Council enters land to remove dangerous trees/parts of trees whilst exercising the powers the Council is given under the Local Gov't (Misc Provisions) Act.
- 3.7 At this stage it is not known how many complaints will be received in a year. It has been calculated that the Council receives about 600 enquiries a year about high hedges. If it can be assumed that some 50% of these could be resolved amicably through negotiation and mediation the remainder would be received as formal complaints. However, it is anticipated that there will be an initial flurry of activity when the Act comes into force, with the number settling down after that, albeit with a seasonal pattern.
- 3.8 As stated above staff in Planning will have significant additional duties and responsibilities, nevertheless there is an insufficient basis upon which to justify creating an additional post or posts. So it is not proposed to recruit any new staff at first but to use existing staff in the first instance. Temporary staff may need to be employed but this would mainly be to assist with the administrative support responsibilities. This assessment may need to change once the settled pattern and number of applications has been assessed.
- 3.9 The Planning business unit will need to draw on the services of other business units as consultees. Again the nature and scale of this is not known, but is likely to include Legal and Environmental Health in particular. It may also be necessary to seek assistance with the workload from the Leisure and Parks business unit, for example if the single Tree Officer in Planning is unable to handle the volume of work.

3.10 Whilst the professional skills in assessment are already available there may be a need for additional training to ensure staff have an appreciation of the new regulations and Government guidance together with some training in arbitration, mediation and conflict resolution. Whilst the Council's consideration of a complaint does not require such arbitration, such skills may prove useful.

4. DELEGATED POWERS

4.1 It is recommended that the Planning Services Business Manager be given full delegated powers to handle all high hedges complaints together with any subsequent enforcement action or prosecution.

4.2 The Government guidance suggests that there is a considerable technical part to any assessment of a complaint and the subsequent decision on the remedial action. The room for subjective judgement is more limited. Essentially it is an assessment of the impact of the high hedge on light and access as an independent third party because neighbours cannot agree. The guidance indicates that there is no need for public consultation although the views of specialist organisations might be sought.

4.3 Therefore, the Government guidance is that this is a process that elected Members should not become involved in. However, as with the other planning delegated powers, it would remain open to any four Members to call-in an application to an Area Committee if it were considered that there were wider neighbourhood issues relating to a particular hedge. In other words its impact went beyond effecting a limited number of individuals.

4.4 If a complaint relates to hedges or shrubs on the Council's own land or that of a Council Member or employee then the complaint will need to be notified to the Monitoring Officer and be put before the relevant Area Committee for determination.

5. FEES

5.1 The Act enables a fee to be levied. The Government will be setting the maximum fee level, which is anticipated to be about £300. However there is discretion on a local council whether to levy a fee, how much, whether to apply different rates and whether to give a refund if the application is withdrawn.

5.2 It is recommended that a fee be levied, at the maximum permissible by the regulations and this is not refunded if the application is withdrawn. However, there should be a 50% reduction of the fee for complainants who are pensioners, disabled or on benefit. Charging the maximum fee could help act as an incentive to a potential complainant to resolve the issue amicably rather than resort to the local authority to decide. This level of fee, as with planning application fees will not cover the Council's costs.

6. NEXT STEPS

- 6.1 The Government will be issuing guidance and draft forms to local councils and summary information for the public when the regulations come into force. In addition, officers have been in touch with other Councils and, drawing on the work of both the Government and others have prepared, a number of documents will be required to be drafted:
- A letter to encourage potential complainants to talk to their neighbours and seek mediation.
 - An explanatory leaflet
 - A complaint form, fee schedule and guidance to accompany them
 - Web versions of the above
- 6.2 Members will be notified once the date that the legislation will be operative is announced.

This report has been seen and approved by: Councillor Mary Clarkson – Portfolio Holder, Kate Chirside – Legal Services, John Copely – Environmental Health, Val Johnson – Neighbourhood Renewal, Tony Stephens – Leisure and Parks. No comments had been received from Financial Services at the time of printing - any comments received subsequently will be reported orally at the meeting.

Background papers:

High Hedges Complaints, Prevention and Cure, consultation draft from ODPM
High Hedges Consultation, Implementing Part 8 of the Act, from ODPM
Correspondence with Guildford Borough Council

High Hedges Complaints - Part 8 of the Anti-social Behaviour Act

1. DEFINITIONS IN THE ACT

A High Hedge: 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.

Affected Property: Must be domestic – dwelling or any associated garden or yard. But excludes effect on garage, shed, barn or other outbuilding (unless used for living accommodation)

Location of hedge: Must be on neighbouring land. But does not have to be next door. Does not have to be on a domestic property, could be on parkland.

Grounds of complaint: Adversely affecting reasonable enjoyment of property – range of problems; obstruct sunlight, daylight, loss of view, outlook even make garden feel claustrophobic. Includes damage to plants attributable to height

Roots: Specifically excluded

2. PROCESS

Informal action: When Council first approached – does not send out complaint form- sends out guidance on negotiation, and explores with person nature of problem

People are encouraged to discuss with the Council what action they might take to try to settle by negotiation

A formal complaint: Authorised form used, fee provided and complainant should send a copy to the hedge owner and occupier

Decision by Council to proceed or not: Council can decline to proceed with a complaint– but should give reasons:

- because it falls outside scope of Act
- because not taken all reasonable steps to resolve before lodging complaint
- because it is frivolous or vexatious

One option to put complaint on hold why additional steps as specified are taken. No specific right of appeal against this decision – other than to ombudsman

Decision on complaint:

1st - is the hedge, because of height, adversely affecting complainant's reasonable enjoyment of his/her property

2nd – what action, if any, should be taken to remedy and prevent recurring

No time limit (e.g. 6 weeks) has been set to making a decision. Idea flexibility to resolve dispute even after lodged without stopping and starting clocks. If can be resolved through negotiation, formal complaints procedure should be halted. If fails no need to restart at beginning.

Complainant may withdraw at any time before final decision

Remedial notices:

- Separate from decision notice
- Run with the land
- Remain in force for as long as hedge remains on site
- Contents carefully specified in Government guidance

Remedial Action;

Government guidance to help decide – balance between relief to complainant and other factors e.g. local setting, other parties, etc.

- Step 1 - taking care of the problem
- Step 2 - allowing for re-growth
- Step 3 - ongoing maintenance

Excluded works – removal of hedge or reduction below 2 metres.
Register decision as a land charge

3. AFTER THE COUNCIL'S DECISION

Appeals: To Planning Inspectorate, by either party and indeed both parties (2 appeals considered together), to any part of Council decision, no charge for appeals, majority by written representations

Enforcement:

Councils able to evaluate and determine priorities for enforcement action

Follow normal procedures, investigation, formal warning.

Liable to prosecution- Failure to comply requirements of remedial notice, including maintenance, offence punishable by a fine (Magistrates Court) (£1000)

Courts can set fresh period

Council intervention:

Powers to enter land and carry out works specified in remedial notice

No requirement or obligation to intervene

Burden of compliance not shifted to Council – so Government says should not be a general expectation Councils will step in.