



Regulations on the Control of High Hedges

RECOMMENDATION

- 1.1 To recommend to Council that the fee level be set at £400 per application, increasing annually by the rate of inflation.
- 1.2 To recommend to Council that the determination of applications be delegated to the Assistant Director – Development.
- 1.3 To recommend to Council that the future fixing of fees and any changes to procedure be delegated to the Planning Control Committee.

SUPPORTING INFORMATION

- 2.1 Last year I reported to the June meeting on the emerging legislation about high hedges. This report updates that report. In late 2003 the Anti-Social Behaviour Act became law. Part 8 of the Act allowed for regulations to be introduced under which Local Authorities could be approached to arbitrate between neighbours when there was disagreement over the height of an evergreen hedge.
- 2.2 After long discussion, an Order to enact the legislation and guidance to explain it have been produced by the Office of the Deputy Prime Minister. It takes effect on 1 June and after this date applications from aggrieved neighbours can be made to the Council.
- 2.3 This report sets out for Members a general procedure for dealing with applications under the legislation. At this stage, as I also reported last year, it is very difficult to determine the degree to which people will use the legislation to approach the Council seeking this arbitration; however, it could well have significant staff resource and workload implications, and I will keep these under review.

Summary of the legislation

- 2.4 To be covered by the legislation the “hedge” has to be over 2m in height and consist of a line of at least two shrubs or trees which are predominantly evergreen eg. Cypress or other Conifers. The problem they cause must affect a domestic property. The “hedge” must be on neighbouring land: it does not necessarily have to be a boundary hedge, so could be some distance away; it could even include trees or shrubs on Council-owned land.

- 2.5 The Government guidance explains that, from the date the legislation comes into force, “provided they have tried and exhausted all other avenues for resolving their hedge dispute, people will be able to take their complaint to their local authority. The role of the authority is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether, in the words of the Act, “the hedge is adversely affecting the complainant’s reasonable enjoyment of their property.”
- 2.6 In making a determination, the authority must “take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community”. The Regulations also allow Authorities to charge a fee and this is discussed below.
- 2.7 If it is determined that the complaint is well-founded, the Council can, after investigation, issue a formal notice to the hedge owner which will set out what they must do to the hedge to remedy the problem, and when by. This notice cannot seek the hedge’s removal or cutting below 2m in height. This notice becomes a Local Land Charge. Depending on the nature of the notice, either party has a right to appeal against its terms to the Secretary of State. Failure to carry out the works required by the authority is an offence which, on prosecution, could lead to a fine of up to £1,000.

Fees

- 2.8 The legislation and regulations allow Authorities to set their own level of fees for determining applications. In producing the current regulations, the Government make the following comments in favour of charging fees;

“Most people who responded to questions about fees in the 1999 consultation *“High hedges – possible solutions”* thought it was fair that the complainant should pay something for the local authority to intervene in their hedge dispute.

Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the local authority really is a last resort.

A fee will also help to deter frivolous or vexatious complaints.

It is common practice for local authorities to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general”.

- 2.9 Unlike the draft Regulations issued in 2004, no maximum or minimum fee is set in the final Regulations. In 2004 a maximum fee of £320 was proposed, but ODPM have now left decisions on fees to be determined locally.

- 2.10 In preparing the Regulations the Government have made various estimates of possible costs of dealing with cases (including any subsequent appeals), based on responses to consultations. These estimates vary widely depending on assumptions made, but range from a median minimum (based on a very simplified handling procedure with no public involvement) of £234 to a maximum of £561. This averages at £397.50. Authorities locally are still setting up procedures for dealing with these applications and a variety of fees is being proposed by them. Generally these have the aim of seeking to recover costs involved and propose fees of between £320 and £600.
- 2.11 I would support the approach of seeking to recover all costs because, as noted above, the matters about which the authority are asked to arbitrate on, are ones that are entirely private in nature and not for the benefit of the general public, so the full costs should be recovered for applications. It is, though, very difficult to estimate what this would mean in recovery of costs of officer time, but I feel a figure of £400 seems a reasonable one, and in line with other authorities locally. However, I feel that we should review this in the light of experience and, in the meantime, allow automatic upgrade for inflation.

Procedures

- 2.12 It is clear that the legislation is not going to be easy to administer, given the contentious nature of the subject and the fine judgements the Council is being asked to make. I have sought to set up a system to allow applications of complaints efficiently, with forms and guidance notes produced for applicants, which will also be available online. The government has also produced more general guidance on the subject.

Who should determine applications

- 2.13 Under the relevant Regulations, these matters cannot be dealt with by the Executive (Cabinet). I therefore suggest that the determinations are delegated by Council to the Assistant Director – Development.

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IMPLICATIONS

Financial

1. As set out in the report (paragraphs 2.8 – 2.11)

Legal

2. As set out in the report (paragraph 2.7)

Personnel

3. As set out in the report (paragraph 2.3)

Equalities

4. None arising from this report.

Corporate objectives and priorities for change

5. The procedures would take forward part of the objective of providing “integrated and cost effective services”.