

REPORT TO COUNCIL

REPORT OF: NICK GODDARD
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OFFICER)

REPORT NO. DLS24

DATE: 28th April 2005

TITLE:	HIGH HEDGES LEGISLATION – ANTI SOCIAL BEHAVIOUR ACT 2003 – OPERATIONAL ISSUES
FORWARD PLAN ITEM:	NOT APPLICABLE
DATE WHEN FIRST APPEARED IN FORWARD PLAN:	NOT APPLICABLE
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	NOT

COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	COUNCILLOR JOHN SMITH DEVELOPMENT CONTROL ENFORCEMENT
CORPORATE PRIORITY:	CORPORATE GOVERNANCE
CRIME AND DISORDER IMPLICATIONS:	HIGH
FREEDOM OF INFORMATION ACT IMPLICATIONS:	HIGH This report is available via the Local Democracy link on the Council's website www.southkesteven.gov.uk
BACKGROUND PAPERS:	ANTI-SOCIAL BEHAVIOUR ACT 2003 AND DRAFT GUIDANCE

1. PURPOSE OF REPORT

To outline the new statutory duty imposed upon the District Council in relation to complaints about high hedges and to put in place the necessary procedures, fees, delegations and authorisations in order to implement the requirements when brought into force. ODPM has indicated that this is likely to be within the next few months.

2. INTRODUCTION – THE NEW ACT

Part 8 of the Anti-social Behaviour Act 2003 (The Act) contains the framework within which the District Council must consider complaints from owners or occupiers of domestic property, alleging that their reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person. The Act does not apply to non-residential properties.

3. NEW REGIME

An owner or occupier of a domestic property may make a complaint under Part 8 on the ground that the reasonable enjoyment of his domestic property (or part of it) is being adversely affected by the height of a hedge growing on neighbouring land. It is intended that making such a complaint to the local authority should be a last resort; reasonable attempts should first be made to resolve the problem by negotiating with the neighbour.

4. WHAT THE COMPLAINT MUST INCLUDE

- 4.1 The complaint must relate to a “high hedge” which is defined in the Act as 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. 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.
- 4.2 The local authority can reject the complaint if they consider it to be frivolous or vexatious or if reasonable steps have not been taken to resolve the dispute amicably.
- 4.3 A complaint cannot be made about single trees or shrubs, whatever their size or the effect of roots of a high hedge.

5. PROCEDURE

- 5.1 If the Council consider that negotiation will not resolve the dispute then it should provide the complainant with a formal complaints

form and explanatory leaflet. Regulations will prescribe a maximum fee.

- 5.2 The complainant completes the form and sends a copy (together with the relevant fee) to the council and a copy to the owner and occupier of the land where the hedge is situated.
- 5.3 The council decides whether or not to proceed with a complaint. It may not proceed if it considers that the complainant has not taken all reasonable steps to resolve the matter without involving the council or that the complaint is frivolous or vexatious. In either event the complainant must be notified of the council's decision. If the council decide not to issue a remedial notice then consideration should be given to providing practical advice on how the hedge might be maintained so that it does not cause problems in the future.
- 5.4 If the council decide to proceed with a complaint, it must decide whether or not to issue a Remedial Notice with a view to remedying the adverse effect of preventing its reoccurrence. The procedures for issue, service, effective dates, compliance periods and appeals to the Secretary of State are similar to those for Planning Enforcement Notices, except that appeals may also be made against a decision not to issue a Remedial Notice by the complainant. Notices are registerable as Local land Charges.
- 5.5 There is some flexibility in relation to the remedial notice in that there is nothing in the Act that says hedges must be reduced to 2 metres. Remedial action cannot involve reducing the height of the hedge below 2m from ground level nor require the hedge to be removed.

6. POWERS OF ENTRY

The Council may authorise "a person" (i.e. not necessarily an Officer of the Council) to enter land to obtain information relevant to a complaint or Remedial Notice upon 24 hours prior notice (Section 74). Obstruction of an authorised person is a Level 3 offence (currently attracting a maximum fine of £1,000).

7. OFFENCES

Failure to comply with any local authority remedial notice will constitute an offence that is liable, on conviction in the magistrates' court, to a fine of up to £1000. The court may also issue an order requiring the hedge owner to carry out the required work within a prescribed time.

8. WORKS IN DEFAULT

The council will also have default powers to enter onto the land (upon 7 days prior notice) and carry out the works required by a Remedial Notice. Costs of carrying out the works in default may be recovered from the owner. Any unpaid expenses will be registered as a local land charge and be binding on successive owners.

9. PROCEDURAL MATTERS

The Act is to be supplemented by Regulations and detailed guidance including the recommended methodology for calculating the height of a hedge that is likely to cause significant loss of light to a garden or house nearby (see below). The new duty to consider complaints and decide whether or not to issue a Remedial Notice is considered to be Regulatory and it is therefore appropriate that the function falls under Development Control Committee. It is anticipated that complaints will, in the main, proceed by way of written representations, however in some cases a hearing may be appropriate.

10. GUIDANCE

- 10.1 The draft Guidance contains 14 pages of formulae and diagrams for calculating the “action hedge height”. Hedges higher than 1 metre above this line are likely to already be causing a substantial loss of light and should be trimmed to at least 1 metre below it.
- 10.2 The “action hedge height” is calculated having regard to:

- Loss of daylight to main house windows – these calculations take account of the geographical orientation, distance, window positions, type of room inside the property, whether the hedge is directly opposite or to one side or oblique to the window and whether the window is ground floor or not. Sloping ground also has to be taken into the calculation.
- Loss of sunlight to nearby gardens – as well as orientation there is a formula to allow for the relative size of the affected part of the garden to the whole, and whether the hedge is on or set back from the boundary. Again, calculations need to be revised to take account of sloping ground.
- In both cases summer and winter variations will also have to be taken into consideration.

11. OTHER RELEVANT FACTORS

In reaching a decision as to whether to issue a Remedial Notice other relevant factors are to be taken into account such as:-

- Extent to which a high hedge affords privacy to adjoining occupier
- Contribution of hedge to the amenity of the neighbourhood
- Any legal obligation in relation to the hedge
- Hedge on more than one side of a garden
- History e.g. whether hedge has remained as present height for a number of years, previous complaints, was hedge as present height when complainant purchased or his property built.
- Other options such as thinning, crown lifting, etc.
- Proximity of a building behind the hedge blocking as much light as the hedge itself
- Partial obstruction of window only
- Topiary hedges
- Trees in hedges
- Acoustic screen hedges
- Protection of wild life, such as nesting birds

12. **RECOMMENDATIONS**

12.1 **In order to accommodate the new duties imposed by the Act it is recommended to the Council that:**

The following functions be added to the Development Control Committees' remit:-

"Functions relating to high hedges pursuant to Part 8 of the Anti-Social Behaviour Act 2003."

12.2 **The following powers be delegated to the Development Control Services Manager:-**

- (i) **to deal with all complaints in relation to high hedges made pursuant to Part 8 of the Anti-Social Behaviour Act 2003 and any regulations issued thereunder;**
- (ii) **to authorise persons to exercise the power of entry pursuant to Section 74 and 77 of the Anti-Social Behaviour Act 2003.**

12.3 **That a member panel of not less than three members be created to determine complaints requiring a hearing pursuant to Part 8 of the Anti-Social Behaviour Act 2003. The member panel to be drawn from members of the Development Control Committee.**

12.4 **That the Council recommends to the Cabinet that it determines the maximum fee for dealing with High Hedge complaints under Section 68 of the Anti-Social Behaviour Act 2003 to be at the same level as the fee applicable to householder planning applications and to remain in line with any future householder application fee increases.**

13. CONTACT OFFICER

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