

Select Committee on Environment – 18th September 2006

Report of the Director of The Urban Environment

High Hedges Legislation

Purpose of Report

1. To provide the Committee with further information regarding the implementation of the Anti Social Behaviour Act 2003 (Part8) with regard to High Hedges Legislation.

Background

2. The Anti Social Behaviour Act 2003 (Part 8) came into force on the 1st June 2005. The purpose of the Legislation was to give local authorities powers to deal with complaints about high hedges. The regulations and associated guidance provided detail as to how Local Authorities should assess complaints and implement detailed procedures with regard to appeals.
3. High hedges are defined for the purposes of this legislation as so much of a barrier to light or access as is formed wholly or predominantly by a line or two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level.
4. Reports were presented to Brierley Hill Area Committee on the 1st September and 27th October 2005 respectively detailing matters with regard to the implementation of the new legislation. Members of the Committee referred specific issues to this Committee for their consideration and a report was presented on the 30th March, 2006.
5. It was resolved that a further report be brought to the Select Committee on the Environment following a review of the implementation of the legislation following the first 12 months of service.
6. The key issues highlighted related to the process undertaken throughout the life of a complaint including the role of mediation, matters relating to complainants who are Council house tenants and the cost of providing the service in relation to the income received through the receipt of fees for formal complaints. Detailed guidance was provided to Local Authorities by the Office of the Deputy Prime Minister (ODPM) on how to implement the Act. The local authority can only consider a complaint if the following criteria are satisfied:
 - The hedge must be on land that is owned by someone other than the complainant
 - The complaint must be made on grounds that the height of the hedge is

adversely affecting the reasonable enjoyment of the domestic property in question

- The complaint must be brought by the owner/occupier of that property, and
 - It must relate to a 'high hedge' as defined by the Act.
7. The Act allows the Council not to proceed with a complaint if they consider it to be either vexatious or frivolous or the complainant has not taken all reasonable steps to resolve the matters complained about without involving the Council.
 8. The Service provided includes providing a potential complainant in the first instance with an explanatory letter and an information leaflet 'Over the Garden Hedge', which sets out the initial steps to be taken before a complaint can be accepted. These steps include demonstrating that all reasonable steps have been taken by the affected person to resolve matters with their neighbour. In some instances it is recommended by the Government Guidance that the parties go to mediation. In all cases before a formal complaint can be received, the Council must satisfy itself that every possible action has been taken by the affected owner/occupier.
 9. Although it is recommended that mediation is considered, Government did not establish a service to support this. The Housing Service in the Directorate of Adult, Community & Housing Services operates a mediation service called 'Time to Talk'. This service is aimed at tackling low level anti social behaviour and work to prevent homelessness. To assist, Housing agreed to mediate in the case of High Hedge Disputes. To date there have been no referrals. If mediation is chosen by neighbours it is evidence that all reasonable steps have been taken, even if no resolution is achieved. The experience of housing in other areas of their work is that the courts would have expected mediation to be explored prior to any court action.
 10. Acting in the role of Council social landlord, the Housing Manager would advise and support a tenant according to the circumstances of each case. There is no specific budget identified to assist with the costs identified should a tenant wish to proceed with legal action as outlined in this report.
 11. If the informal process has failed to resolve matters, a second contact is made to the Council (Tree Preservation Order Support Officer) and a set of formal complaint forms are sent out together with the leaflet 'High Hedges complaining to the Council' It must be noted that the authority's role in dealing with the complaint is as an impartial third party. It is not their role to negotiate, only to adjudicate on whether the hedge will adversely affect the reasonable enjoyment of the complainants property. Resort to the Council via a formal complaint is viewed as a last resort. Appendix 1 details the actions to be taken once a formal complaint is received for initial investigation through to enforcement.
 12. No government funding is provided to support this service. Consequently, any formal complaint is required to be accompanied by a fee determined by the Local Authority. The guidance issued by the ODPM suggested a fee of £405. The fee is non-returnable and no remuneration is required of the owner of the offending hedge. In the case of Council tenants, if mediation has not resolved the matter and there is no alternative but to pursue a formal complaint, the fee is the responsibility of the tenant submitting the complaint.

13. Dudley MBC determined that the fee would be £405, and the Council agreed that the initial charge would be at a reduced rate of £300 for a period of 3 months to allow an assessment of the actual cost of service delivery. The local authority reserved the right of discretion in relation to cases of hardship.
14. In the first 12 months of the service from June 2005 to June 2006 data was recorded to enable the costs of providing the service to be determined. During this period the authority received 135 informal enquiries. In addition a total of 8 formal complaints have been received, a number of which have been determined. It must be noted however that to date no complaint has been through the prosecution / or appeal stage and therefore estimates of costs based on similar enforcement activities have been used in relation to this exercise.
15. Income received during the first year of operation was £2505 compared to an estimated cost of service provision of £7660. The majority of these costs are related to staff time, and this has affected the ability to meet other service demands. Fees are determined annually prior to the start of each financial year by the Cabinet Member for Economic Regeneration, in accordance with the Council's procedures, which will include reviewing criteria for determining cases of hardship.

Finance

16. Section 68 of the Anti Social Behaviour Act 2003 requires that complaints are accompanied by such a fee as the Local Authority determines.
17. The financing of this service is discussed in the background to the report. As the scheme progresses, associated fee income and costs will need to be monitored closely to determine the effect of this new activity on other areas of service delivery.

Law

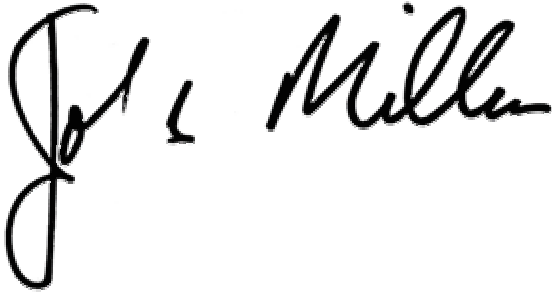
18. Part 8 of the Anti Social Behaviour Act 2003 brought into force by virtue of Statutory Instrument 2005 No 711 ('The High Hedges (Appeals) (England) Regulations, places a statutory duty on local authorities to determine complaints made against high hedges.

Equality Impact

19. The report takes into account the Council's Equal Opportunity Policy

Recommendation

20. It is proposed that the Committee considers and notes the content of the report.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is fluid and cursive, with the first name 'John' written in a large, stylized 'J' and the last name 'Millar' in a more standard cursive script.

John Millar
Director of Urban Environment

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List of Background Papers

22. ▪ Brierley Hill Area Committee Reports on High Hedges 1st September 2005
and 27th October 2005
- Select Committee Environment Report on High Hedges 30th March, 2006-
08-22 High Hedges Complaints – Prevention and Cure
- Regulatory Impact Assessment: High Hedges – Implementing Part 8 of
the Anti Social Behaviour Act 2003

HIGH HEDGES - FORMAL COMPLAINT PROCESS

