

WARDS: Brierley Hill

DUDLEY METROPOLITAN BOROUGH COUNCIL

BRIERLEY HILL AREA COMMITTEE – 1st SEPTEMBER 2005

REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT – HIGH HEDGES LEGISLATION

Purpose of Report

1. To inform Committee of the background to the implementation of High Hedges legislation and the process of dealing with complaints.

Background

2. Permission is not normally required to plant hedges in domestic gardens and there are no general restrictions as to how high you can grow your hedge. While common law rights entitle neighbours to cut overhanging branches back to the boundary line (unless other legal restrictions such as a Tree Preservation Order apply), they cannot reduce the height of the hedge unless the owner agrees.
3. Where neighbours cannot agree a solution The Anti Social Behaviour Act 2003 (Part 8) gives local authorities powers to deal with complaints about high hedges. It is estimated that thousands of people could be adversely affected by overgrown garden hedges and if neighbours are unwilling to co-operate, prior to this legislation and it coming into force on 1st June 2005 there was little they could do to obtain relief.
4. Whilst the 2003 Act established the scope and the main framework of the complaints system, regulations in the form of “The High Hedges Appeals (England) Regulations” (2005) and other guidance cover the finer points of detail as to how Local Authorities should assess complaints and the appeals procedure.
5. High hedges are defined for the purposes of this legislation (s66) 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. But for these purposes, a line or two or more evergreen or semi-evergreen trees or shrubs is not 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.

6. The Council 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.
 - 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,
 - 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 term reasonable enjoyment means that grounds of the complaint must therefore relate to the impact of the hedge on the complainants property, (their home and garden). De facto grounds of complaint such as the impact on the complainant personally (i.e. their health), the impact on activities the complainant engages in (i.e. vegetable patches, greenhouse television reception etc), and factors relating to the complainants feelings about the hedge are not material. The term reasonable enjoyment introduces a degree of objectivity to the decision making process.
8. The Act allows the Council not to proceed with a complaint if they consider it to be either; -
 - i) Vexatious or frivolous, or
 - ii) The complainant has not taken all reasonable steps to resolve the matters complained about without involving the Council.
9. A flowchart of the procedure of whether or not to proceed with a complaint is appended at Appendix 1.
10. The local authority’s role is as an impartial third party. It is not their role to mediate or negotiate and this course of action is to be viewed as a last resort.
11. In assessing an application the Local Authority will take into account all the views and relevant factors, including the hedge owner’s amenity and that of the wider neighbourhood. Each case will be assessed on its merits. Material considerations include the impact upon privacy, shelter, obstruction of light (to windows and gardens), visual amenity, public amenity, any protection afforded the trees though a TPO, extant planning conditions relating to the trees/hedge and the effect of gaps.
12. If, having taken all views into account the Local Authority finds the hedge to be adversely affecting the complainant’s property, they are enabled to order the hedge owner to take action to remedy the problem and/or to prevent it reoccurring. This is done in the form of a remedial notice, which may include details of the reduced hedge height and maintenance at a lower level. The Local Authority can only require works to the hedge that address any problem it is causing and there is nothing in the Act that says nuisance hedges must be cut down to 2 metres in height.

13. 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. Prosecution may result in a fine of up to £1,000.
14. Both parties have a right to appeal against a remedial notice and appeals will be administered by the Planning Inspectorate.

Finance

15. There are some direct financial consequences arising from this report.
16. Section 68 of that Act requires that complaints are accompanied by such fee as the Local Authority determines. Whilst, the Government has a discretionary power to set a ceiling on what local authorities can charge for this service, through Regulations, they have not prescribed a maximum fee.
17. The ODPM document “Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-Social Behaviour Act 2003” states that there is no reliable data available on the number of outstanding hedge disputes that might fall to be considered by local authorities. However, it does look at the costs associated with a range of potential caseloads.
18. The fee to be charged is £405, reduced for the first three months of operation to £300, to allow the true cost of delivering the service to be measured.

Law

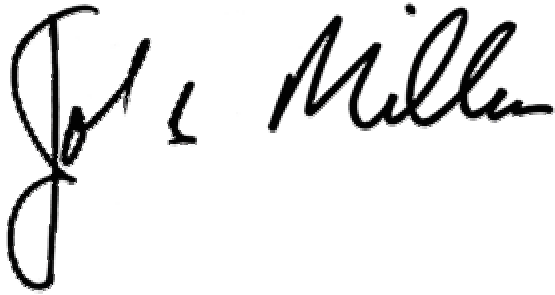
19. Part 8 of the Anti-social Behaviour Act 2003, brought into force by virtue of Statutory Instrument 2005 No. 711 (The High Hedges (Appeals) (England) regulations), places a statutory duty on local authorities to determine complaints made against high hedges.

Equality Impact

20. The proposals take into account the Council’s Equal Opportunities Policy.

Recommendation

21. It is proposed that Committee considers and notes the contents of the report.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is written in a cursive style with a large, stylized initial 'J'.

John Millar
Director of the Urban Environment

Contact Officer: Mrs. H. Brookes Martin
Telephone 01384 814077
Email: helen.brookes-martin@dudley.gov.uk

List of Background Papers

High Hedges Complaints: Prevention & Cure.
Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-social Behaviour Act 2003.
The Anti-social Behaviour Act 2003.

Figure 1 Whether, or not, to proceed with a complaint

