

CABINET - 1 JUNE 2005

PLANNING DEVELOPMENT CONTROL COMMITTEE - 22 JUNE 2005

NUISANCE HIGH HEDGES – EXPLANATION OF NEW DUTIES

REPORT OF DIRECTOR OF DEVELOPMENT

Contact Officer: Lesley Wells Tel No: 01962 848564, Email: lwells@winchester.gov.uk

RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

On 1 June 2005 Part 8 of the Anti-Social Behaviour Act 2005 comes into force. This creates a new duty on local authorities to implement a mechanism to resolve conflicts arising from disputes over high hedges between owners/occupiers of residential properties.

This report sets out briefly how this new duty will be implemented and advises Members of the potential financial and staffing implications of implementing this legislation.

RECOMMENDATIONS:

1. That the content of the report and the possible implications of the new duties be noted.
2. That officers assess the impact of the new legislation over a 3 month period and report again if additional resources are required to properly fulfil the Council's responsibilities.
3. That the fee levels set by the Director under delegated powers as set out in the report be endorsed.
4. That any complaints involving land owned by the City Council, County Council, or a Parish Council, Members of the City or County Councils, or City Council officers, be dealt with by the Planning Development Control Committee, rather than under delegated powers.

5. That it be recommended TO COUNCIL that the Council's Constitution be amended as follows:-

a) Part 3, Section 4 Responsibility for Functions (paragraph 4.1) be amended by the addition of the following:

Function	Provision of Act or Statutory Instrument
32. Power to determine complaints for high hedges where they relate to hedges owned by the Council, District Councillors, and Council staff.	Part 8, Anti-Social Behaviour Act 2003

b) That in Part 3 of the Constitution, Section 6 (Scheme of Delegation to Officers) the authority of the Director of Development be amended as follows:-

Under "Planning Matters", amend paragraph 7 by the addition of the wording in brackets:

"An action required in relation to High Hedges under the Anti-Social Behaviour Act 2003 or regulations (other than complaints involving land owned by the City Council, County Council, or a Parish Council, Members of the City or County Councils, or City Council officers)."

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DETAIL:

1.0 Introduction

1.1 On 1 June 2005 Part 8 of the Anti-Social Behaviour Act 2003 ('the Act') comes into force. This creates a new duty that requires local authorities to provide a mechanism for resolving conflicts arising from disputes between the owners or occupiers of residential properties about the impact of high hedges. A hedge is defined by a line of two or more evergreen or semi evergreen trees or shrubs that rise to a height of more than two metres above ground level.

1.2 The Director of Development has responsibility for dealing with any action required by the Council in relation to high hedges under the Act or regulations under 'The Scheme of Delegation to Officers' contained in the Council's Constitution. The purpose of this report is to outline the requirements of the legislation and the potential for an impact on the Council's establishment and budget.

2.0 Complaints about High Hedges

2.1 Section 65 of the Act enables a complaint to be made by the owner or occupier of a domestic property who alleges that the reasonable enjoyment of that property is being adversely affected by the height of a hedge situated on land owned or occupied by another person.

2.2 A 'high hedge' requiring action is defined as one spoiling the enjoyment of a property or forming a barrier to light or access and which itself is formed wholly or predominantly by a line of two or more evergreen or semi evergreen trees or shrubs that rise to a height of more than two metres above ground level. The Act further provides that a line of plants is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect as a barrier at heights of more than two metres above ground level. Individual trees and shrubs will be outside the scope of the legislation.

3 Processing/Determining Complaints

3.1 The process is started by way of a formal complaint to the local authority that a hedge is adversely affecting the enjoyment of the complainant's domestic property and requesting that the hedge be reduced in size. The local authority has to decide if the complaint is justified and if so makes an order on the owner or occupier that the offending hedge must be reduced in size. This order can be appealed against. The person upon whom the order is served must pay the cost of having the necessary work done. A fee is payable by the person making the complaint. Local authorities have been given the power to set fees locally and further comments on this are set out below. Detailed guidance to local authorities on the implementation of the

legislation arrived on 19th May 2005 and is contained in the document 'High Hedges Complaints: Prevention and Cure'.

- 3.2 The complainant must show that they have taken all reasonable steps to resolve matter amicably, and that the complaint is not frivolous or vexatious. Such steps could include the complainant having approached a Mediation Service to try and resolve the problem. There is, however, no requirement in the legislation that the complainant must use a mediation service before approaching the Council.
- 3.3 As mentioned above, the Director of Development has delegated powers to deal with all matters relating to high hedges. It is proposed that all decisions will be made by officers. This is because, as stated in the guidance to local authorities, complaints are almost always private matters between individuals with no wider public interest to be represented. The guidance suggests that no consultations take place unless there is a specific technical matter at issue and advises against involving third parties who might lobby on behalf of one or other parties to the complaint. It is recommended that Members should deal with complaints where the hedge belongs to the Council, the County Council, a parish council, a district or county councillor or a member of the City Council's staff. To ensure accountability the Planning Development Control Committee (PDC) should determine such applications. The Council's Constitution will need to be amended to enable the Committee to determine these complaints.
- 3.4 The Council's Planning Enforcement team will be responsible for dealing with complaints relating to high hedges. There will also be a need for input from other officers. This will primarily be the Landscape Team to assess the impact of possible remedial measures such as the effect of reducing the height of the hedge to a particular level. The City Secretary and Solicitor will also be involved in drafting/serving remedial notices; when a legal definition is required on whether the complaint relates to a hedge for the purposes of the legislation; and in legal proceeding if the notice is not complied with.
- 3.5 The Government has issued guidance on procedure, but there are no specific time limits that authorities must follow in determining the matter. The legislation does not require any consultation to be undertaken on high hedges complaints received (in fact the guidance issued advises against consultation except in rare circumstances where a hedge has some public as well as private context), nor is there a requirement to keep a public register of complaints. However, the Freedom of Information Act (FOIA) will require most information kept on files to be made available to anyone who requests it unless it falls into one of the statutory exemptions.
- 3.6 As stated above, it is likely that most complaints will only affect those parties directly involved (i.e. the complainant and the owner of the hedge). As it is considered that there will be limited public interest the relevant parish council (if any) and ward Member(s) will be notified of the complaint in their area for information purposes only. There will be no formal consultation with parish councils or ward Members because the complaints will almost always be essentially private matters to be determined in accordance with the detailed guidance. It should be noted that at any time the owner of the hedge could remove or lop it without consulting neighbours or obtaining consent from a third parties, unless the hedge includes a protected tree (i.e. a TPO tree or a tree within a Conservation Area). If the complaint affects a protected tree(s), the parish council and ward Member(s) will be notified accordingly to enable representations to be made.

3.7 Once the complaint is accepted, the Council must take into account all relevant factors and assess each case on its merits. Information will need to be gathered on the hedge, its effect on the complainant and hedge-owner, and its wider contribution to the amenity of the area. The Act provides for a number of options but in every case where a complaint is accepted, a written notice of a decision to all the interested parties is required. The guidance to local authorities is explicit that it is not the role of the Council to mediate between the parties involved once a complaint is made but to decide one way or the other without negotiation.

3.8 If appropriate, the Council may serve a remedial notice requiring works to be carried out to the hedge, which must include what initial action is necessary to remedy harm to amenity, but also detail any additional preventative action following the end of the compliance period. The notice is a charge on the property and its legal obligations pass to any subsequent owner.

4.0 Appeals

4.1 Both the hedge owner and the complainant will have a right of appeal against the Council's decision to the Planning Inspectorate. All appeals will be conducted in writing. Evidence to enable the Inspector to determine the appeal will be supplied from the Council's case file. However, there may be occasions when other information/evidence is required by the Planning Inspectorate. For example, the views of the parties would be sought on any new issue raised in the appeal, which had not been considered at the complaint stage.

5.0 Enforcement

5.1 Section 75 provides that failure to carry out work in a remedial notice will be an offence and those convicted will be liable to a financial penalty (up to £1,000). A continuing offence may lead to the Court imposing an order for securing compliance with the notice and also provides for a continuing daily penalty.

5.2 The Council also has the power to take direct action and recover expenses.

6.0 Level of Fees and Staffing Implications

6.1 Local authorities have the power to determine what fee they charge for determining the complaint. The fee is payable by the complainant, when the application is lodged. It is not recoverable from the owner of the hedge in question even if the complaint is upheld. In carrying out its regulatory impact assessment the Government concluded that the average cost to a local authority of determining an complaint would be £280 - £320. However, this made no allowance for the extra work of appeals (which are considered very likely in many cases), and the general administration of the service – such as dealing with non-case related enquiries and producing publicity. The Government has provided no additional resources for the work and expects this to be covered by fee income.

It is also important that the fee level represents a significant commitment on the part of the complainant which they are unlikely to wish to incur until all other mechanisms have failed. There is no benefit to the general taxpayer from dealing with high hedge complaints and it is therefore reasonable to expect that the service operates on a cost neutral basis. That is to say, the fee income generated should cover the cost of dealing with the complaint and everything arising from it.

- 6.2 Taking all these factors into account a fee of £450 has been determined which, based on the current information available, should reflect the cost of the amount of work involved in such complaints. A fee set at this level will mean that, should complaints start to run into tens or more there will be sufficient income to provide some additional staffing resource to the Enforcement team. However, it is recognised that setting this level of fee could exclude some potential complainants. In accordance with the Council's Social Inclusion policy it is therefore proposed that where the applicant is in receipt of council tax benefit, housing benefit or job seekers allowances, the fee is reduced to £100. Where a complaint is settled between the parties after a complaint has been made but before it has been determined the fee will not be refunded. Significant costs may already have been incurred by the Council in investigating the complaint even if it does not finally have to reach a decision. However, fees will be refunded if, after reviewing a complaint, it is determined that the complaint is not valid and cannot be pursued.
- 6.3 Since no local authority knows what its case load is likely to be, it is impossible to make any objective assessment of what costs are likely to be incurred. If there are only one or two complaints in a year, there would be no need to make any adjustments to the Enforcement team. If there are many then additional staff will be required unless other work is to suffer. On average Winchester receives 4 – 5 queries a week about neighbours' hedges. It seems reasonable to assume that once any backlog of complaints have been dealt with, the number of new complaints will steadily decline.
- 6.4 Whatever the number of complaints there are a number of systems to be established to deal with the new legislation. A temporary member of staff will be employed in the Enforcement Team for 3 months to provide administrative cover, during which time an existing member of staff will deal with complaints and appeals. If it is found at the end of this period that an additional member of staff is needed to deal with the workload, a further report will be brought back to Cabinet. Even with an additional temporary member of staff if there is an influx of applications and enquiries regarding the new legislation there is likely to be an effect on response times within the Enforcement Team in dealing with new complaints and existing workload.

7.0 Conclusion

- 7.1 The new high hedges legislation will be welcomed by those who now have a mechanism to seek relief from a problem that may have had a significant impact on the enjoyment of their property. There is no practical difficulty in the City Council meeting this new duty provided resources are available to do so and the only source for this is the fees charged. Whilst these will be considered high, they will reflect the actual cost of providing the service. Adjustments to the fee level may be necessary in the light of experience.

OTHER CONSIDERATIONS:

8.0 CORPORATE STRATEGY (RELEVANCE TO):

- 8.1 Implementation of the new legislation is a duty with which the Council must comply. A reduction in the number of unsightly and over-height private hedges may have a minor beneficial impact on the public realm. It may also have a minor impact on the real and perceived levels of crime due to a reduction of overshadowing and potential places for criminals to hide.

9.0 RESOURCE IMPLICATIONS:

- 9.1 The resource implications are outlined in the body of the report. The principle adopted in setting a fee level has been to ensure that as the volume of work increases so the funding available to fund additional staff time will also increase. In the absence of any data regarding the number of complaints or the time each will take to resolve a precautionary approach has been adopted so as to reduce the risk that other services or the cost to the tax payer will be adversely affected.

10.0 BACKGROUND DOCUMENTS:

High Hedges Complaints: Prevention and Cure (ODPM May 2005)

11.0 Appendices

Appendix 1 ODPM leaflet 'High Hedges: complaining to the Council'