

---

**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 24 MAY 2005

**SUBJECT:** HIGH HEDGES LEGISLATION

**REPORT FROM:** BOROUGH PLANNING & ECONOMIC DEVELOPMENT OFFICER

**CONTACT OFFICER:** JOHN HODKINSON

---

**TYPE OF DECISION:** FOR INFORMATION

**REPORT STATUS:**

---

**PURPOSE/SUMMARY:**

To inform Members of new legislation that comes into effect on 1<sup>st</sup> June.

**OPTIONS AND RECOMMENDED OPTION (with reasons):**

---

**IMPLICATIONS -**

**Financial Implications and  
Risk Considerations**

**Additional staff time**

**Corporate Aims/Policy Framework:**

Do the proposals accord with the Policy Framework? Yes No

Are there any legal implications? Yes  No  (see paragraph  
.....)

**Considered by Monitoring Officer:** Yes  This will have an impact on  
Legal Services, particularly if a significant number of notices have to be issued.

**Statement by Director of Finance  
and E-Government:**

---

**Staffing/ICT:** Additional work covered by existing staff and computer systems

**Wards Affected:** All

**Scrutiny Interest:** N/A

**TRACKING/PROCESS**

**DIRECTOR:**

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Panel	Executive	Committee	Council

**1.0 BACKGROUND**

Legislation comes into effect on 1 June, 2005, to control high hedges as part of the Anti-social Behaviour Act 2003. The report outlines the new legislation and how it will be implemented by this Authority.

**2.0 ISSUES**

**2.1 The High Hedges Law**

Part 8 of the ASB Act defines a high hedge as “so much of 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”. It is not regarded as a barrier to light or access if there are significant gaps in the hedge at a height of over 2 metres.

A formal complaint can be made by an owner or occupier of a domestic property to the Local Authority and the complaint must be investigated.

**2.2 Solving the Problem**

Fast growing plants such as Leylandii provide a quick and effective screen but they can soon become a nuisance if not kept under control. Planning permission is required for walls and fences exceeding 2 metres in height (one metre adjacent to a highway) but not for hedges. The best way to deal with any problems is by negotiation and the new law actually requires people to have taken reasonable steps to settle a dispute before making a formal complaint. This would include approaching the neighbour concerned and

possibly using the services of a mediator. Leaflets are available to assist neighbours in resolving disputes.

The legislation allows the Council to set a fee for any complaint and work has been carried out on the government's behalf estimating the amount of staff time which a complaint may generate. It is not possible to estimate how many complaints will be received each year but it is likely that there will be an initially high number of complaints when the legislation comes into force. Other Authorities have set fees ranging between £100 and £600. It is felt that this Council's fee should be £350 which is likely to cover the cost in staff time of dealing with a typical complaint but not the cost of any subsequent appeals.

Complaints will be processed by the Development Control Team within the Department of Environmental & Development Services in a similar manner to a planning application. Advice will be sought from other relevant Council officers including Environmental Services, Wildlife and Countryside and Landscape Practice together with Legal Services if necessary. The Office of the Deputy Prime Minister has issued explanatory leaflets which will be made available to members of the public.

A potential complainant will be issued with an application form for submission and an explanatory leaflet. The complainant will also be required to send a copy of the complaint to the owner/occupier of the land where the hedge is situated.

A complaint can only be brought if it adversely affects enjoyment of a domestic property and specifically the dwelling itself and the garden or yard. It could include obstruction of daylight or sunlight or impact on the growing of plants because of the height of the hedge. The Act specifically includes the effects of roots such as subsidence or damage to drains or pipes.

The Council has the right to refuse to deal with a complaint if the complainant has not taken all reasonable steps to resolve the matter without involving the Council, the complaint falls outside the scope of the Act, the complaint is frivolous or vexatious or the complaint is withdrawn.

The ODPM has issued detailed guidance based on measurements with the aim of providing an objective method for assessing whether high hedges affect daylight or sunlight to main house windows or gardens. The guidance may prove difficult to implement.

## **2.3 Procedure**

A complaint will be registered on the computer system and acknowledged and the owner/ occupier of the land where the hedge is situated will be invited to comment and to provide any additional information if they wish. Both parties and the Council will have access to the same information.

It is not required to carry out any additional neighbour consultation.

The application will be allocated to a case officer who will visit the site. The Act gives the Council powers of entry if access is denied.

The case officer will assess the impact of the hedge based on the ODPM's guidance and including points raised by both parties and advice from other Council officers. Whether or not the complaint is justified will depend on the assessment of various factors including loss of daylight or sunlight, privacy, impact on the growing of plants, overhanging branches, noise, smell and smoke, blocking of views, whether the hedge is oppressive or disproportionate to the site, protected trees and other legal restrictions.

Factors unrelated to the impact of the hedge include fears that the hedge will break or fall, health problems related to worry about the hedge, that other hedges in the area are maintained at a lower height, that the hedge was there before the affected property was built or the complainant moved in or that cutting down the hedge is too costly.

The Act sets no timetable for the Council to reach a decision on a complaint but it is suggested that a decision should be reached within three months. A decision will be a question of balance between the various issues raised during the course of the complaint. The Council will need to decide whether the height of the hedge is adversely affecting the complainant's reasonable enjoyment of his property; if the impact is sufficient to justify action being taken to remedy the situation; and if there are any reasons why action should not be taken or should be moderated having regard to representations received, the amenity of the area and wildlife issues.

After considering the evidence, the Council will make a decision and determine what action should be taken, if any, to rectify the problem and to prevent it recurring. Under the Council's delegation procedure, the decision will be delegated to the Borough Planning and Economic Development Officer.

If the Council decides that the hedge is having an adverse affect on the amenity of any neighbouring properties it is required to serve a "**Remedial Notice**". If a remedial notice is to be served both parties must be informed. They must also be informed if a notice is not being issued. A remedial notice is a statutory enforcement document and is legally binding on whoever owns or occupies the property where the high hedge is situated. The Act specifies what needs to be included in the notice including what action must be taken and dates for compliance.

The Local Authority cannot require reduction of the hedge to below 2 metres or its removal and the work should not lead to the death of the hedge.

Failure to comply with a notice is a criminal offence punishable on conviction in the Magistrates Court with a maximum £1000 fine. Unlike a planning enforcement notice, the magistrates can order work to be carried out if the offence continues and a daily penalty can be imposed. The Local Authority also has a right to enter a site and carry out the work required by the remedial notice.

Both the complainant and the owner and occupier of the land supporting the hedge have a right of appeal to the Planning Inspectorate on various grounds. For example, a complainant can appeal against a decision by the Council not to require remedial action or that the remedial action is insufficient. The owner/occupier of the land with the hedge can appeal on the grounds that the height of the hedge does not affect amenity, that remedial action is excessive or that the compliance period is too short.

The appeal process is free of charge and would be a written procedure. It is anticipated that a high proportion of cases would result in appeals.

### 3.0 CONCLUSION

The government has issued regulations for the appeal procedure but not for the application process although guidelines have been issued. Even at this stage more information is being produced by the ODPM's office. A protocol will be produced for dealing with High Hedges applications including a timescale for different parts of the process. It is unlikely that officers would investigate informal complaints about hedges and complainants would be encouraged to resolve problems with their neighbour before resorting to the formal process.

The legislation is unwieldy and it is not clear at this stage how many applications would be submitted and how much staff time would need to be devoted to each application. It is intended to report back to Planning Control Committee in six months time on the success or otherwise of implementing the legislation and the implications for the Council's resources.

**BRIAN DANIEL**  
**BOROUGH PLANNING & ECONOMIC DEVELOPMENT OFFICER**

---

#### **List of Background Papers:-**

#### **Contact Details:-**

John Hodkinson  
Principal Planning Officer (North)  
Planning & Economic Development Division  
2<sup>nd</sup> Floor  
Craig House  
5 Bank Street  
Bury BL9 0DN

Tel: 0161 253 5323

e-mail: [J.C.Hodkinson@bury.gov.uk](mailto:J.C.Hodkinson@bury.gov.uk)