Information Report on High Hedges and Trees

Report by: Borough Planning Officer

1.0 SUMMARY

1.1 The purpose of this report is to give an outline of the new ‘High Hedges’ legislation and a review of the procedures relating to works to individual trees and hedgerows not affecting a residential property.

1.2 Members’ comments will be reported back to the Sustainable Development Committee and to the Executive in due course.

High Hedges

2.1 The law giving Councils powers to deal with complaints about high hedges is contained in Part 8 of the Anti-Social Behaviour Act 2003 ("the Act"), and the High Hedges (Appeals)(England) Regulations 2005 ("the Appeal Regulations"). These powers to deal with complaints about high hedges came into operation in England on 1 June 2005.

2.2 This legislation makes provision for Councils to determine complaints by the owners or occupiers of domestic properties who are adversely affected by evergreen (or semi-evergreen) hedges over 2m in height. The complainant will have had to have first tried and exhausted all other avenues to resolve the issue before submitting the complaint to the Council. The role of the authority is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act – “the hedge is adversely affecting the complainant’s reasonable enjoyment of their property”. In doing so, the authority must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

2.3 If the Council consider the circumstances justify it, they may issue a formal notice to the hedge owner which would set out what the hedge owner must do to the hedge to remedy the problem, and when by. The hedge owner and complainant both have the right of appeal to the Planning Inspectorate against the Council’s decision to either issue or not to issue a Notice as well as appealing due to the requirements of the Notice being not enough or too much.

2.4 Failure to carry out the works required by the authority is an offence, which on prosecution in the Magistrates’ Court, could lead to a fine of up to £1,000. The Council also have the power to carry out the required works in default if the hedge owner does not carry out the works and to recover their costs.

2.5 Under the Local Government (Functions and Responsibilities) (England) Regulations 2000 as amended, responsibility for all functions relating to high hedges rests with the full Council and not with the Executive, where such arrangements exist.

2.6 The Act does not specify which department within the Council should carry out this function. It is for each Council to decide which part of their organization should be responsible for dealing with high hedge complaints.
3.0 What complaints Councils can consider

3.1 Under the terms of the Act, councils can only consider a complaint if it satisfies the following criteria:

a) it must relate to a high hedge as defined in the Act;
b) the hedge must be on land that is owned by someone other than the complainant;
c) it must be affecting a domestic property;
d) 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; and
e) it must be brought by the owner or occupier of that property.

3.2 A high hedge is defined in the Act 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.

3.3 The Act defines a domestic property as a dwelling or any associated garden or yard and it defines dwelling as any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

3.4 The complaint to the Council must relate to the height of the hedge and that it is adversely affecting the reasonable enjoyment of their property.

3.5 If the complaint is frivolous or vexatious it should not be considered.

4.0 Fees

4.1 The Act allows councils to charge a fee for determining a complaint about a high hedge. However, there is no advice under section 68 of the Anti-Social Behaviour Act 2003 to prescribe in regulations the maximum fee that local authorities can charge for dealing with high hedges complaints. Under the Act, any such fee, if applicable, must be paid by the complainant at the time the complaint is submitted to the Council. As a result of this decision, local authorities are free to decide whether, and at what level, it is appropriate to charge for this service, taking account of local circumstances and local taxpayers' wishes. Should they so wish, authorities may provide this service for free, or charge different amounts to different groups of people. This is in line with the Government's general policy of allowing such decisions to be made at the local level.

4.2 The Regulatory Impact Assessment on high hedges published alongside the regulations listed above, includes an estimate of what it might cost a local authority, on average between £250 and £405, to deal with a high hedge complaint. It also contains, as an Annex, a summary of the responses to last year’s consultation on how the high hedges legislation should be implemented in England.
4.3 Other Authorities that have been surveyed will charge:

<table>
<thead>
<tr>
<th>Authority</th>
<th>Fee</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>Richmond</td>
<td>£300 (likely)</td>
<td>Tree Department dealing with complaints</td>
</tr>
<tr>
<td>Ealing</td>
<td>No fee set</td>
<td>Tree Department dealing with complaints</td>
</tr>
<tr>
<td>Runnymede</td>
<td>£400</td>
<td>Reduced to £50 for people on income support</td>
</tr>
<tr>
<td>Kennet - Wilts</td>
<td>£300</td>
<td></td>
</tr>
<tr>
<td>Blaby - Leics</td>
<td>£300</td>
<td>Concessions £250</td>
</tr>
<tr>
<td>Rochford - Essex</td>
<td>£320</td>
<td>Concessions £100</td>
</tr>
<tr>
<td>Tameside – Gtr Manchester</td>
<td>£300</td>
<td></td>
</tr>
<tr>
<td>Elmbridge</td>
<td>No fee set</td>
<td>Outside consultant will deal with complaints</td>
</tr>
<tr>
<td>Hillingdon</td>
<td>No fee set</td>
<td>Likely to be in region of £300</td>
</tr>
<tr>
<td>Kirklees – W. Yorks</td>
<td>£100</td>
<td>Concessions £20, if complaint upheld money back.</td>
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<tr>
<td>Guildford</td>
<td>£400</td>
<td></td>
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<tr>
<td>Woking</td>
<td>£450</td>
<td></td>
</tr>
<tr>
<td>South Holland - Lincs</td>
<td>£400</td>
<td>£250 back if no action needed or no appeal in 28 days</td>
</tr>
<tr>
<td>Burnley - Lancs</td>
<td>£500</td>
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<tr>
<td>East Hampshire</td>
<td>£500</td>
<td></td>
</tr>
<tr>
<td>Cotswold District Council</td>
<td>£550</td>
<td></td>
</tr>
<tr>
<td>Canterbury</td>
<td>£350</td>
<td>Concessions £175</td>
</tr>
</tbody>
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4.4 The proposed charge for High Hedges Complaints to cover all administration costs including adjudication and possible appeals by this Authority is £300.

5.0 Resource implications

5.1 The Government estimates that cases will each take between 12 and 15 hours to resolve and that there are potentially 17,000 outstanding complaints in England. It is unknown how many complaints will be received by this Authority, but the likelihood is that there will be an initial influx of complaints falling off to a lesser degree. This does not take account of any possible complaints that go to appeal and will incur further officer time to resolve.

5.2 Following the receipt of a valid complaint an officer will need to carry out a site inspection of both the complainants’ property and the hedge owner’s property to assess the offending hedge. There is guidance produced by the ODPM in the document “Hedge Height and Light Loss” which gives detailed technical advice on determining what the action hedge height should be for the hedge being complained of, which relates to length and height of the hedge, distance from dwellings, size of garden, location of windows and orientation of hedge and dwelling. However the reference to “reasonable” enjoyment of the property introduces a degree of subjectivity to the decision making process as the Council have to assess the impact of the hedge on the enjoyment that a reasonable person might expect from their home and garden. The Council’s decision may therefore differ from the complainant’s expectations.
5.3 Complaints do not have to be determined within 8 weeks or any set timescale, but clearly they have to be determined within a reasonable period.

5.4 Both the complainant and hedge owner have the right of appeal against the Council’s decision, which will take up more officer time and thereby increase the cost of determining the case.

5.5 The proposal for dealing with High Hedges Complaints is that the complaints are handled by the Planning Department, the most obvious place being Planning Enforcement. The additional work, which results from these complaints could impact on the already stretched current resources in enforcement and are likely to result in a reduction of our present and potential performance of the Enforcement Section.

5.6 Due to the uncertainty regarding the number of cases that will be received it is unknown what the true impact of this legislation will be on this Authority.

5.7 The Regulatory Impact Assessment indicates that the ODPM intends to review how the high hedges legislation is working after 5 years. This timescale has been selected so that it is possible to assess whether the predicted decline in new high hedge complaints, after the outstanding cases have been resolved, has happened. Such a review will include a survey of local authorities.

5.8 To inform the review process, therefore, authorities are advised to maintain records of complaints and their outcome. In particular, it would be helpful if, for each year of operation, the following information were kept:

- Numbers of enquiries about the legislation;
- Numbers of formal complaints received;
- Number determined;
- Number of remedial notices issued;
- Number of decisions appealed to the Planning Inspectorate;
- Number of complaints about failure to comply with the requirements of a remedial notice (enforcement cases);
- Number resolved informally;
- Number of prosecutions and outcome;
- Number of occasions that the authority used its default powers to carry out works to the hedge.

6.0 For the public, two free explanatory leaflets have been issued by the ODPM. ‘Over the garden hedge’ is a revision of the previous leaflet of this name and offers advice on how people can settle these disputes for themselves. Negotiation is a necessary precursor to submitting a formal complaint to a local authority. Authorities can reject a complaint if they consider the complainant has not done everything they reasonably could to settle the matter themselves. The second leaflet ‘High hedges: complaining to the Council’ explains what complaints local authorities can consider and how they will deal with them.
7.0 Trees in Conservation Areas

7.1 Under the 1990 Town and Country Planning Act all trees in Conservation Areas are protected provided that the diameter of the tree is greater than 75mm measured at 1.5m above ground level.

7.2 Any works to a tree(s) within a Conservation Area must be made in writing to the Local Authority and include a specification of the works to be done and identification of the tree(s) concerned.

7.3 If no decision is made by the Local Authority within six weeks of the date of receipt of an application to carry out the works requested, then the applicant is entitled to carry out the works without further notice. If however, the Local Authority consider that the works to the tree are unnecessary and the tree is worthy of a Tree Preservation Order then the Local Authority can refuse the application and seek authority to put the tree(s) under a Tree Preservation Order, which would mean that they could not carry out any works to the tree(s) without further applying to the Local Authority for consent.

7.4 There is no fee required for the consideration of the application for works to a tree(s) within a Conservation Area.

7.5 If any person carries out work to a tree within a Conservation Area then they shall be liable on summary conviction to a fine up to a maximum of £1000 and if it is removed, uprooted or destroyed then the owner can be requested to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

7.6 If the tree is dead, dying, dangerous or causing a nuisance then the tree can be removed without the need for the consent of the Local Authority.

8.0 Tree Preservation Orders

8.1 Under the Town and Country Planning Act 1990 the Local Authority has the power if it appears expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. The Secretary of State if s/he deems it expedient may also make a Tree preservation Order or amend or revoke such an order.

8.2 Anyone who wishes to carry out any works to a tree covered by a TPO, needs to apply in writing to the Local Authority to carry out those works.

8.3 There is no fee payable for a Local Authority to consider an application for consent for works to a tree covered by a TPO.

8.4 If the owner can prove that the tree is dead, dying dangerous or causing a nuisance then the tree can be removed.

8.5 If the owner of the tree willfully carries out work to a tree covered by a TPO then s/he shall on summary conviction be guilty of an offence and on conviction could be fined up to a maximum of £20000 as well as being requested to plant a replacement tree.
8.6 A provisional Tree Preservation Order can be made by the Local Authority if there is a perceived threat to remove or threaten a tree of value. If the provisional order is not confirmed within six months of its service then the TPO becomes invalid and the tree owner can carry out the works.

8.7 Tree preservation orders do not cover orchards or fruit trees in gardens that were specifically grown for their fruit. However TPO’s made since 1999 only exempt fruit trees grown in the course of business or trade. Trees on Crown land are also exempt from TPO’s unless the Government Department occupying it specifically seeks or agrees to a TPO being made. Local Authority land is treated in a similar way because public ownership is expected to confer a responsible attitude towards trees.

9.0 Hedgerows not affecting residential properties

9.1 The Hedgerow Regulations 1997 apply to any hedgerow growing in, or adjacent to, any common land, protected land, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, if it has a continuous length of, exceeding, 20 metres or it has a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.

9.2 These Regulations do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of a dwellinghouse.

9.3 The removal of any hedgerow to which these Regulations apply is permitted if:
   a) a new opening is created in substitution for an existing opening, which gives access to land.
   b) for obtaining temporary access to any land in an emergency.
   c) For obtaining access to land where another means of access is not available or is available only at a disproportionate cost.
   d) for the purposes of national defence.
   e) it is part of a development for which planning permission has been granted or is deemed to have been granted.
   f) In connection with works under the Land Drainage Act 1991, the Water Resources Act 1991 or the Environment Act 1995 for the purpose of flood defence or land drainage.
   g) for preventing the spread of, or eradication of any plant pest within the meaning of the Plant Health (Great Britain) Order 1993.
   h) it is in respect of the Secretary of States functions in respect of any highway for which he is the highway authority by virtue of the Highways Act 1980.
   i) it is work required under the Electricity Act 1989 to prevent obstruction of or interference with electric lines and plant or to prevent danger.
   j) for the proper management of the hedgerow.

9.4 A person who intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow is guilty of an offence and could on summary conviction be liable to a fine and a replacement hedge be planted.

10.0 Recommendation

10.1 That Members note the procedure for the carrying out of works to trees and the new provisions of the High Hedges legislation as well as the proposed fee for dealing with High Hedges Complaints at £300 in the first instance, subject to review and provide comments, to Sustainable Development Committee and the Executive.