

## Council – 15 January 2007

### Anti-Social Behaviour Act 2003 - Section 8 - High Hedges

**Service Area:** Environmental Regeneration

**Wards:** All

#### Summary of report

This report sets out, for council's information, arrangements for dealing with complaints between neighbours under provisions within section 8 of the Anti-Social Behaviour Act 2003, and seeks approval for a set of delegations.

#### Recommendations

- (1) That council approve the arrangements for dealing with requests made under section 8 of the Anti-Social Behaviour Act 2003, including a set of delegations to officers set out in **appendix 2**.

#### Resource and legal considerations

In accordance with the recommendations of a report to Cabinet, officers have developed a procedure for dealing with complaints brought to the council's attention relating to high hedges, where a neighbour may have concerns about the impact on his/her quality of life of an evergreen or semi-evergreen hedge situated on the property of an adjacent or nearby property. These arrangements are set out in **appendix 1**. This includes, as agreed by cabinet, a fee of £120 per application, based on the costs of site visits, the production of a technical report and, in relevant cases, preparation of a remedial notice and possible use of enforcement powers. The fee is set at a low level, with provision for a reduced fee (50%) in cases of proven limited means.

Councils are legally required to provide this service. Procedures focus on local settlement of complaints wherever possible, including use of independent mediation (at no charge to either party), as the parties will continue to be neighbours and an informal amicable solution may often be best in the longer term. Since the commencement of this legislation, the council has received a significant number of preliminary enquiries about the new rules, and has provided advice and the official leaflets to numerous residents; information is also available on the council's web site. Only a small proportion of these enquiries have moved on to further stages, reflecting the emphasis placed on local settlement between neighbours, including use of mediation. 3 complaints received in 2005 were pursued to a conclusion by the council; of the 5 complaints received during 2006, 4 are on-going, the fifth has been resolved informally. The details in **appendix 1** have been updated from those within the earlier cabinet report to reflect organisational changes.

#### Citizen impact

The legislation gives redress to citizens whose neighbours have grown high semi and evergreen hedges which adversely affect the reasonable enjoyment of their property. Owners of high hedges may be compelled under the legislation to reduce the height of

their hedges. Where neighbour disputes over hedges are entrenched, the legislation is unlikely to provide outcomes satisfactory to both sides: as many citizens may be dissatisfied by the operation of the legislation as believe they have benefited from it. The public profile of these provisions means that will be instances where residents would want the council to intervene but where the limited nature of the regime means that the council cannot act. Government guidance and information on the council website have been designed to answer the most frequently asked questions and to offer other local remedies including mediation where appropriate.

### **Environmental impact**

The legislation allows for the removal of an environmental nuisance blighting neighbouring residential property. However, reduction of high hedges may sometimes have an adverse visual impact on a neighbourhood where views of unsightly features are opened up. High hedges can also provide cover for birds and there are invertebrates which are specialist feeders on cypress. Consideration of these factors is an integral part of the official guidance to councils dealing with this legislation.

### **Performance and risk management issues**

In some cases neighbours may have been concerned about a hedge for some time before contacting the council. In others the adjudication of complaints will result in differing perceptions of the council's decision in each case. Therefore, the council will be judged by the residents concerned in terms of timescales taken, the quality of its procedures and correspondence, and the fairness of its decisions. Complainants and owners of hedges can appeal to the Planning Inspectorate; failure to deliver the service may result in complaints and referrals to the Local Government Ombudsman.

### **Equality implications**

The service is available to all citizens.

### **Consultation**

The council's arrangements have been developed mindful of government guidance.

### **Background papers:**

Government guidance produced by the former Office of the Deputy Prime Minister

### **Signed:**



**Carole Evans**  
**Executive Director**  
**3 January 2007**

**Author: John Pryce-Jones**

### Process for administering High Hedges legislation.

#### Context

The High Hedges legislation is contained in section 8 of the Anti-Social Behaviour Act, 2003. It stems from concerns about the severe nuisance caused by high evergreen hedges and the lack of legal redress for people adversely affected. At the root of the problem is the anti-social behaviour of people who plant or refuse to maintain such hedges to antagonise their neighbours. Some hedge owners undoubtedly use their hedge to annoy, frustrate and upset their neighbours. Others have planted an unsuitable hedge and lack the resources to manage it effectively. Although the legislation covers all evergreen hedges, the main species causing problems are Leyland and Lawson cypress.

The legislation allows any owner or occupier of a domestic property whose reasonable enjoyment of their property is adversely affected by a neighbour's evergreen hedge to bring a complaint to the local authority to adjudicate.

#### Mediation.

The process below describes the statutory process introduced in respect of high hedges. However, it would be preferable if such neighbour disputes over high evergreen hedges could be resolved without the need to resort to the legislation. The Council therefore can offer a mediation service to neighbours who have a dispute and wish to come to an agreement prior to considering use of the new legislation. The Council's Anti-Social Behaviour Unit currently offers a mediation service to neighbours in dispute, and is able to extend this to cover high hedge disputes, in appropriate cases.

#### Complaints Process

The process if mediation is unsuccessful is set out below.

1. **Pre-complaint advice.** Walsall citizens intending to make a complaint will expect some level of pre-complaint advice from officers before paying a significant fee. This can be achieved by offering information in writing, by providing information on the Council website and answers to the most frequently asked questions.
2. **A request for the mediation service.** The complainant requests the mediation service and the service writes to both parties seeking agreement on mediation prior to any complaint.
3. **Making a complaint.** The complainant must demonstrate that they have taken reasonable steps to resolve the problem with the hedge's owner. The complaint must provide detailed information (e.g. location of hedge, name and address of applicant etc.) and copies of all relevant correspondence. The complainant should address why mediation has not been used or if it has been unsuccessful. The fee must also be paid at this stage. The local authority may reject any complaint where there is insufficient information, or the complaint is vexatious or frivolous and no

action will be taken without the minimum fee being received or agreement on payment arrangements.

4. **Assessing the complaint.** Any complaint that is not rejected is assessed by the local authority who will visit the site and assess whether the hedge is adversely affecting the complainant's enjoyment of his/ her property. The local authority has to decide what, if any, action is required to remedy the adverse effect and prevent it recurring. This assessment has to be carried out in accordance with official government guidance. The local authority must inform both the complainant and the owner of the hedge of the decision it has reached and the reasons for their decision. Such assessment work will be carried out by the Natural Environment Team and their Report provided to the Corporate Performance Manager responsible for coordinating complaints about council services through the Tellus system.
5. **Issuing a Remedial Notice.** If work is required to reduce the hedge, the local authority must issue a remedial notice specifying the work required and the date by which it must be done. This work must be completed by the hedge owner at their expense. Any reduction specified cannot result in a hedge below 2 metres in height or in works likely to kill the hedge. This work must be completed by a specific date or an appeal registered.
6. **Rights of appeal in relation to a Remedial Notice.** Both hedge owner and complainant have rights of appeal against a remedial notice or the failure of the council to issue such a notice. Appeals will be dealt with by the Government's Planning Inspectorate. The local authority will have to provide relevant documents to the Planning Inspectorate. All appeals will be dealt with through the written representations procedure.
7. **Enforcement.** If no appeal is registered, or if no action is taken following the Remedial Notice, the local authority has powers to enter on to land to implement the works set out in a remedial notice. The costs of the works can be recovered from the owner. Anyone who fails to comply with a remedial notice commits a criminal offence punishable by a fine.

## Appendix 2: Delegations to Officers

Action	Delegations	Section of Antisocial Behaviour Act 2003
Determining the level of fee to be charged for deciding a complaint.	Cabinet	Section 68(1)
Deciding whether to accept a High hedges complaint.	Corporate Performance Manager	Section 68
Producing high hedges complaints reports.	Head of Environmental Regeneration	Section 68
Issuing remedial notices and communicating decisions on complaints.	Corporate Performance Manager	Section 69
Withdrawing a remedial notice or waiving or relaxing the requirements of a remedial notice.	Corporate Performance Manager	Section 70
Responding to appeals to the planning inspectorate arising from a complaint.	Corporate Performance Manager	Section 71
Entry on to land to ascertain whether: <ul style="list-style-type: none"> <li>• A complaint can be considered by the Council;</li> <li>• To issue or withdraw a remedial notice;</li> <li>• To waive or relax the requirements of a remedial notice;</li> <li>• A notice has been breached.</li> </ul>	Executive Director (Corporate Services) or their nominee	Section 74
Enforcement action against people who fail to comply with a remedial notice.	Executive Director (Corporate Services) or their nominee	Section 75
Entry on to land to carry out work specified in remedial notice.	Executive Director (Corporate Services) or their nominee	Section 77
Recovering costs from people who fail to comply with a remedial notice.	Executive Director (Corporate Services) or their nominee	Section 77