

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Development Control & Conservation Committee.  
**AUTHOR/S:** Director of Development Services

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13<sup>th</sup> May 2005

### ANTI-SOCIAL BEHAVIOUR ACT 2003 – IMPLEMENTATION OF HIGH HEDGES PROVISIONS.

#### Purpose

1. To advise members of the implications of the enactment of Section 8 of the Anti-Social Behaviour Act relating to High Hedges control and enforcement and to outline a protocol for dealing with such complaints, until the full resource implications can be determined.

#### Effect on Corporate Objectives

2.	Quality, Accessible Services	The High Hedges regulations are due to be enacted from 1 <sup>st</sup> June 2005 and will require the Council to implement the service, funded by a fee.
	Village Life	N/a
	Sustainability	N/a
	Partnership	N/a

#### Background

3. The Anti-Social Behaviour Act 2003 includes provisions for addressing perceived problems caused to neighbours by High Hedges by authorising local authorities to take enforcement action in certain circumstances. These provisions commence from 1<sup>st</sup> June 2005. The ODPM has indicated that training on the implementation of the new powers will be available during May 2005.
4. Section 8 of the Act sets out the main provisions with respect to High Hedges. In essence these are :
  - (a) A definition of a high hedge as being formed wholly or predominantly of a line of two or more evergreens, that rise to a height of more than 2 metres above ground level.
  - (b) The right for someone to make a formal complaint to the Council that their reasonable enjoyment of domestic premises are adversely affected by a high hedge.
  - (c) The right for the authority to dismiss a complaint if they feel it is frivolous or vexatious; or if they feel that the complainant has not taken all reasonable steps to resolve the complaint through other means.
  - (d) The power for the authority to decide whether or not action should be taken in response to a complaint.

- (e) If the authority determines that action should be taken, a remedial notice is issued that specifies the action that must be taken to remedy the complaint and also what action must be taken in future to prevent a recurrence.
  - (f) A right of appeal to the Planning Inspectorate, against all or part of the Council's decision.
  - (g) The right for the authority to set fees at a level that may be self-financing, but no greater than any sum determined by the Regulations.
  - (h) The power for the authority to withdraw a remedial notice and to relax or waive a requirement of a remedial notice.
  - (i) The power to take direct action to secure compliance with remedial notice, after the compliance period has expired, and to recover the costs of the direct action. The costs may be made as a charge against the property.
  - (j) Failure to comply with the provisions of a remedial notice constitutes an offence which, on summary conviction, brings liability for a fine not exceeding level 3 scale (currently £1,000) and the court may order steps to secure compliance with the remedial notice.
  - (k) In the case of a continuing failure to comply, following conviction, a person is guilty of a further offence, which carries a fine not exceeding one-twentieth of a level 3 fine (£50), for each day on which the failure has so continued.
5. It will be noted that this authority does not have specific staff to focus on the implementation of this legislation, without diverting resources from other key tasks. It will be evident from the above that the skills required by the local authority officers in intervening in such cases will largely be those of the ability to determine facts related to the very specific criteria of the 'nuisance' and then to make a judgement or recommendation based upon those facts. The focus of the act is on those fast growing evergreen, non-native conifers which are unlikely to be protected by a Tree Preservation Order or be considered to contribute positively to a Conservation Area or the district's natural heritage. The task requirement is largely one of enforcement.
6. It is also impossible to determine the potential impact of the imposition of this legislation on the authority, as the number of potential complaints is unknown and extremely difficult to estimate.
7. The legislation does, however, make it clear that the authority's involvement should only be seen as a "*last resort*" and, therefore, gives a requirement to a potential complainant to document a series of attempts to resolve the issue between neighbours over a period of at least three months. The proposed protocol for dealing with High Hedge Complaints, outlined below, is therefore, proposed as initially a temporary measure to enable the likely extent of complaints to be determined and the impact on staff resources to be established.
8. In the event that a significant number of complaints are being received, resulting in at least one case per week, it may be necessary to appoint a specific "*High Hedges Enforcement Officer*" to manage the scheme of delegation and carry out this function on a part-time basis, reporting to the Director of Planning and based within the Development Services Department. The intention of the act is that the procedure would be self-financing by setting fees on a cost recovery basis. A suitable fee will therefore need to be set (see below).

9. Given the above an initial protocol for dealing with High Hedge complaints under the provisions of the Anti-Social Behaviour Act 2003 needs to be established. The following sets out the proposed details of the procedure.

### **Considerations**

10. Members are asked to consider the proposed initial protocol for dealing with High Hedges Complaints. This is suggested as an initial procedure only, until such time as the full implications on staff resources can be determined.
11. **Initial Inquiries.**  
Initial inquiries by telephone, fax, e.mail or letter should be channelled through the Contact Centre, who should be able to direct complainants to initial advice and be able to provide guidance notes and complaint forms. The ODPM web page has extensive documentation and have produced a guidance booklet on this issue.
12. Formal complaints should then be submitted to the Director of Development services for the allocation of staff resources.
13. **Receipt of complaints.**  
Complaints that are received should be verified by an administrative officer, in the Planning Section, to ensure that the complaints are valid. This will involve assessment of the Complaint form and documentation to determine that the submitted complaint includes :
- (a) the appropriate forms and includes copies of relevant plans and dated photographs to clearly identify the site and 'nuisance hedge' and all signed by the applicant.
  - (b) Documentary evidence that reasonable attempts have been made to resolve the complaint with the hedge owner over a minimum three month period.
  - (c) The relevant fee.
14. The 'High Hedge' which is subject to the complaint must meet the definition of a nuisance hedge, defined by Section 66 of the Act as a hedge which :
- (a) Is evergreen or semi-evergreen.
  - (b) is formed by a line of 2 or more evergreen or semi-evergreen trees or shrubs.
  - (c) rise to more than 2 metres above ground level.
  - (d) forms a barrier to light or access.
15. If the 'high hedge' comprises trees which are subject to the protection of a Tree Preservation Order or Conservation Area control then any decision made by the Council must have regard to this as when considering works to such protected trees in relation to other Acts. It is considered unlikely that there will be many if any such instances in South Cambridgeshire, given the focus of the High Hedges legislation on evergreen or semi-evergreen trees and shrubs (essentially Leylandii).
16. Formal high hedge complaints should only be made when all other attempts to resolve the dispute have failed. This may include ensuring that both parties have

had the option to consider undertaking formal mediation before they are accepted as complaints by the authority. The requirements will be for the complainant to demonstrate that reasonable attempts have been made to resolve the issue with the hedge owner before making the complaint. This should include documentary evidence of at least three pieces of correspondence with the hedge owner, over at least a three month period, commencing with the date of the imposition of the legislation on 1<sup>st</sup> June 2005.

17. The requirement to demonstrate a period during which attempts were made to resolve the issue between neighbours from the 1<sup>st</sup> June 2005 will :
  - a. Enable both neighbours to fully consider the implications and cost associated with a complaint being taken forward by the local authority, in the light of the published legislation.
  - b. Enable the authority to undertake an initial assessment of staff resource implications.

It will, therefore, also mean that full applications for consideration of a High Hedges Complaint will not be investigated by the authority until this initial 3 month period of focused neighbour discussion has elapsed.

18. The legislation makes it clear that a complaint to the Council should be viewed as the *last resort*. An incentive to ensure that neighbours are fully exploring appropriate resolution will be to make a fee allowance where evidence is produced that formal mediation has been entered into by the parties. This will be only appropriate where a recognised firm of mediators registered with Mediation UK (an umbrella organisation with a database of recognised mediation organisations) has been used and the reduction in the fee will be given equivalent to the costs incurred by that mediation, up to a maximum of £150. (The minimum fee advised by the ODPM is £300).
19. Where a complaint has been considered and rejected, within a six month period a further complaint will not be entertained. In these cases the complaint form and fee will be returned.
20. **Assessment of valid complaints.**

Once a complaint has been accepted as valid, a site visit will be made by an appropriate officer. This would probably have to be an enforcement officer in the first instance. However, if it is clear that the number of complaints results in a significant diversion from other duties, by means of having to spend more than one-half day in a week, making a site visit and making a report, then the appointment of a specific 'High Hedges Enforcement Officer', funded by the receipt of fees will need to be considered. It is considered that the receipt of an average of 1 case per week (52 in the year) would require the addition of a specific High Hedges Officer to be employed on a part-time basis, funded by the fee.
21. The site visit will be to make an assessment of the hedge and report on :
  - (a) its impact on the complainant's reasonable enjoyment of their property. The ODPM provide detailed guidance on how to measure this issue.
  - (b) The contribution of the hedge to the wider amenity value of the area.

- (c) If necessary, a technical assessment, by an arboricultural officer will be made to determine the species and health of the hedge.
  - (d) The consequences of a proposed height reduction on the health and long-term survival of the hedge.
  - (e) Whether the hedge contains any species worthy of a Tree Preservation Order. If this is the case, then the complaint will be determined on this basis and the full fee returned.
22. It should be noted that the Council does not have the power to require the *removal* of the hedge. It, therefore, follows that the Council cannot require a reduction in its height that will cause the hedge to die.
23. Once an assessment has been made, a report will be presented to an appropriate senior officer, setting out the recommended decision (see Appendix 1). A draft report outlining the circumstances of the case will then be sent to the local ward member before a decision is confirmed by the Director of Development Services, or in the event that the local ward member disagrees with the recommendation, by the Development Control & Conservation Committee, in accordance with the list of delegations in Appendix 1.
24. If the High Hedge complaint is upheld by the Council a “Remedial Notice” (see below) will be issued to the hedge owner, setting out what they must do to the hedge and the timetable in which it must be implemented. This may also require the hedge owner to keep the hedge trimmed on a regular basis. This action will be recorded as a Local Land Charge against the property in question, while it has effect.
25. Once the decision has been made and notified, both parties have the right of appeal to the Planning Inspectorate.
26. ***Consultation on received applications.***  
No external consultations are required or proposed to be undertaken and notice of applications or decisions will not be placed on the Council’s web-site. Parish Councils will not be informed.
27. The local ward member (s) will be informed when an application is received and they will be sent a draft report setting the intended decision.
28. Whilst no external consultation is proposed, the Freedom Information Act (FOIA) will require most information kept on files to be made available to anyone who requests it, unless the information falls into one of the statutory exemptions as defined by that act. A data base will need to be set up in order to maintain a record of complaints and their outcome.
29. In accordance with the proposed list of delegations (Appendix 1), the local ward member will be able to refer a High Hedges complaint to the Development Control & Conservation Committee, where they express a contrary view. Only the Ward Member will be able to make such referrals and will be required to request this within 10 working days of the report of the intended decision of Officers being issued.

**30. Appeals**

Unlike other planning appeals, in the case of High Hedges both parties have the right of appeal if aggrieved by the Council's decision within 28 days of the decision. There is no right of appeal against non-determination.

31. Appeals will be made to the Planning Inspectorate and will a simplified procedure with the exchange of the case file and a questionnaire. This is considered unlikely to involve significant officer time. It will, however, involve the planning appeals administration teams to make modest revisions to existing internal procedures to accommodate the necessary monitoring of appeal submissions.

**32. Remedial Notices.**

The following recording procedure is proposed.

- (a) If a complaint is rejected a letter will be issued to the complainant setting out the reasons for this decision.
- (b) If a complaint is upheld a *Remedial Notice* will be served by the Head of Legal Services, as instructed by the Director of Development Services.
- (c) A copy of the *Remedial Notice* will be sent to the complainant and all owners and occupiers of the neighbouring land. This Remedial Notice will set out : the reasons for the decision; the works that are required to be undertaken; and the timescale for these works to be completed.
- (d) A *Remedial Notice* will be recorded as a Local Land Charge against the property in question while it has effect.
- (e) If the date for compliance with the *Remedial Notice* passes without compliance, the Council will have two options, either to prosecute or to take direct action.

33. It is considered that there should be a presumption in favour of officers taking direct action, rather than prosecute as this is likely to be the most cost effective way of securing the purposes of the legislation. Direct Action will only be undertaken following consultation with the Head of Legal Services, in accordance with the list of delegations (See Appendix 1).

**34. Fees**

The Council has the right to set fees on a cost recovery basis. To date the Office of the Deputy Prime Minister has not issued guidance imposing an upper limit. Research carried out by the ODPM suggests that a fee range of £380 to £468 would be realistic to allow for the cost of a proportion of complex cases which may go to appeal. On this basis, and in line with similar rural district authorities, it is proposed that the normal fee charged with effect from 1<sup>st</sup> June 2005 should be £450. This would enable a specific "*High Hedges Enforcement Officer*" to be appointed should there prove to be the need by reason of demand reaching an average of 1 per week.

35. There are resource and cost advantages to the Council in encouraging complainants to use a formal mediation service prior to seeking resolution through the authority's action. Formal mediation can be relatively expensive. It is, therefore, proposed that the fee should be reduced by the cost of the mediation, up to a maximum of £150.

This will take place where the complainant is able to produce evidence that formal mediation involving payment of a fee has been tried, but failed.

36. The level of fee charged should not only recover the Council's reasonable costs, but also act as a practical deterrent to frivolous or vexatious complaints. It would however, not be reasonable to take a rigid approach that disadvantaged persons on a limited income. Therefore, in accordance with the Council's corporate charging policy, it is proposed to allow that the scheme of delegation should allow for the discretion to waive all or part of the fees charged. Such discretion will need to be delegated to the Director of Finance and Resources on receipt of appropriate evidence.
37. Where a complaint made about a high hedge leads to a decision to place a Tree Preservation Order on the 'hedge', and therefore no further action is to be taken to reduce the height of the 'hedge' in question, a full refund of the fee will be made.

### **Options**

38. The following options are relevant :
- (a) To consider and confirm the above proposed protocol, fee level and Scheme of Delegation (Appendix 1) as the Council's initial approach to dealing with High Hedge Complaints, until the extent of the impact on resources can be fully determined.
- Or
- (b) Not to confirm the proposed protocol as the Council's approach to dealing with High Hedge Complaints, suggesting amendments to the outlined scheme to enable these complaints to be considered using existing resources.

### **Financial Implications**

39. The full financial implications can not be determined at this stage, other than that the ODPM expect the scheme to be "self-financing" by imposition of a relatively high fee (which also has the purpose of discouraging frivolous and vexatious complaints). A fee of £450 is being set by similar rural district authorities and is deemed to be appropriate for this authority. This fee could enable a specific officer to be employed should the number of cases average 1 per week.
40. In the event that the received complaints are deemed to be absorbing and diverting existing officer resources a new post of "High Hedge Enforcement Officer" will need to be created, financed by the receipt of fees.

### **Legal Implications**

41. The Anti-Social Behaviour Act 2003 has largely been implemented and enacted. The measures relating to High Hedges, was announced in April to be coming into force on 1<sup>st</sup> June 2005.

### **Staffing Implications**

42. There may be significant staff resource implications resulting from this potential new requirement to implement Part 8 of the Anti-Social Behaviour Bill. The full

extent is, as yet unknown and will only be determined by monitoring received complaints during the proposed 3 month initial assessment period. This initial assessment period will enable the demand to be determined and clarity be given to the need to recruit a specialist High Hedges Enforcement Officer.

43. The focus of the act is on those fast growing evergreen, non-native conifers which are unlikely to be protected by a Tree Preservation Order, or be considered to contribute positively to a Conservation Area or the district's natural heritage. It also appears evident that the consideration of the implications on the district's valued tree stock, requiring detailed arboricultural expertise would be necessarily limited to exceptional cases. In these circumstances the case officer would seek the advice of the Trees & Landscape Officer, the Trees and Landscape Assistant or the Landscape Design Officer.
44. It will be evident from the above that the assessment of High Hedge Complaints will involve intervening in disputes neighbours, requiring the skills of : tact; diplomacy; objectivity; and a methodological approach to fact gathering. It is therefore, considered that the key site assessment and reporting role is best suited to the Planning Enforcement Team, as their quasi-legal role is closely reflected by the proposed High Hedges assessment procedures reflect the current method of resolution of such disputes.
45. However, should the number of complaints become a significant drain on resources, requiring allocation of staff resources for the equivalent of 1 working day a week, a new post of "*High Hedges Enforcement Officer*" may need to be created, funded by the fees received and able to undertake other enforcement duties if necessary. It will be noted that some of the more sub-urban local authorities, who anticipate a considerable workload in this area are already establishing such posts, with the intention of creating such a post. The above South Cambs. arrangements are proposed as 'temporary measures' to enable the Council determine whether such a post will need to be established in SCDC.

### **Risk Management Implications**

46. High Hedges are a potentially sensitive issue that can cause great distress and anxiety to the parties involved. It is important, therefore, that officers are not put in a position which would generate significant stress or danger, by focusing on the objective assessment of the nuisance caused by the hedge. The proposal is, therefore, to encourage the resolution of these complaints by neighbours, backed by the knowledge that the Council 'could' intervene if an accord can not be reached by agreement.
47. If a complaint is accepted officers' will need to focus efforts on the objective collection of information to determine whether a Remedial Notice should be issued or not. It is not any part of the Council's role to undertake any form of mediation between neighbours.

### **Consultations**

48. The Comments of the Head of Legal Services and Director of Finance and Resources will be reported to committee.

## Conclusions/Summary

49. The full implications of the enactment of Part 8 of the Anti-Social Behaviour Bill can not be determined at this point. However, it is evident that should the number of cases exceed more than 1 a week, over a sustained period, then it is likely that the appointment of a "*High Hedges Enforcement Officer*" would be justified by the time resources and financed by the receipt of fees at the proposed rate.

## Recommendations

50. That the protocol for dealing with complaints about High Hedges, under Section 8 of the Anti-Social, as outlined above is adopted and approved and :
- (a) That the scheme of delegation of powers to officers, as set out in Appendix 1 to this report is approved.
  - (b) That the fee charged in respect of complaints under these provisions be a fee of £450, to be charged, if there has been no formal mediation.
  - (c) In the event that formal mediation has been undertaken there will be a reduction in the fee, equivalent to the costs incurred by attempting formal mediation, upto a maximum reduction of £150. Evidence will need to be provided that formal mediation has been tried and failed and the cost of this exercise.
  - (d) A full refund will be given of the fee paid where a Tree Preservation Order is place on the hedge in questions.
  - (e) That in event of the number of received cases exceeding the equivalent of 1 day per week, assessed during an initial three month period, that Cabinet is recommended to authorise the establishment of a new post of a "*High Hedges Enforcement Officer*", financed by the receipt of fees.

**Background Papers:** the following background papers were used in the preparation of this report: Reports on the Anti-Social Behaviour Act 2003 – High Hedges. May 2005. Office of the Deputy Prime Minister. [WWW.ODPM.Gov.uk](http://WWW.ODPM.Gov.uk)

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**ANTI-SOCIAL BEHAVIOUR ACT 2003 – HIGH HEDGES  
DELEGATION OF POWERS**

<b>SOURCE</b>	<b>POWER DELEGATED</b>	<b>DELEGATION TO</b>
Anti-Social Behaviour Act 2003 s68 (2)	To determine whether or not to proceed with a complaint.	Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers; or Planning Policy Manager; or Conservation Manager.
Anti-Social Behaviour Act 2003 s 6 (3) (4) and (5)	To decide whether a high hedge is affecting the complainant’s reasonable enjoyment of a domestic property and, if so, what action (if any) should be taken to remedy the adverse effect or prevent its recurrence.  To issue such notifications, other than remedial notices, required by these sections to give effect to that decision.	Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers; or Planning Policy Manager; or Conservation Manager in consultation with the local SCDC ward councillor(s) *  * Where the ward Member disagrees with the assessment by officers, the matter will be referred to the Development Control & Conservation Committee.
Anti-Social Behaviour Act 2003 s 68 (4) and s 69	To issue Remedial Notices.	Head of Legal and Services, or Solicitors, or Employed Barrister as instructed by the Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers.
Anti-Social Behaviour Act	To determine the level of	Director of Finance &

2003 s 68 (1)	fee to be charged.	Resources.
Anti-Social Behaviour Act 2003 s 68 (8)	To refund the fee paid when a Tree Preservation Order is placed on the hedge subject of the complaint.	Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers.
Anti-Social Behaviour Act 2003 s 70	To withdraw a Remedial Notice , waive or relax a requirement of a remedial notice.	Head of Legal and Democratic Services, or Solicitors, or employed barrister in consultation Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers; or Planning Policy Manager; or Conservation Manager.
Anti-Social Behaviour Act 2003 s 75	To institute proceedings where action has not been taken to comply with a remedial notice	Head of Legal Services, or Solicitors, or employed barrister as instructed by Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers; or Planning Policy Manager; or Conservation Manager.
Anti-Social Behaviour Act 2003 s77	To execute works required by a remedial notice	Director of Development Services or; Deputy Director of Development Services; or Development Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; or Area Planning Officers; or Planning Policy manager; or Conservation Manager in

		consultation with Head of Legal Services, or Solicitors, or employed barrister.
Anti-Social Behaviour Act 2003 s77	To take appropriate action to recover costs reasonably incurred by the Council in securing compliance with a remedial notice	Head of Legal Services, or Solicitors, or employed barrister.

### **AUTHORISATION TO ENTER PREMISES**

Anti-Social Behaviour Act 2003 s 70	To enter land for the purposes of the Act and any amending statutes or regulations made pursuant to the Acts	Director of Development Services or; Director of Planning; or Deputy Director of Development Services; Control Quality Manager; or Area Planning Officers; or Senior Enforcement Officer; Enforcement Officer; or Area Planning Officers, Enforcement Officers, Tree & Landscape Officers, Landscape Design Officer; High Hedges Officer, Planning Officers, Assistant Planning Officers.
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