SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Leader and Cabinet	9 June 2005
AUTHOR/S:	Development Services Director	

ANTI-SOCIAL BEHAVIOUR ACT 2003 IMPLEMENTATION OF HIGH HEDGES PROVISIONS

Purpose

1. To seek members approval for the process of administering the High Hedges Provisions of the Anti-Social Behaviour Act 2003 and to determine the appropriate fee.

Effect on Corporate Objectives

2.

Quality, Accessible Services	The High Hedges regulations were enacted from 1st 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. A report was presented to the 13 May 2005 Development Control and Conservation Committee to consider and agree the Council's approach to the administration of the High Hedges regulations, summarised below. These provisions commenced from 1 June 2005.

4. The legislation makes it clear that high hedge complaints should only be made as a *last resort*. The authority does not have to accept complaints that do not demonstrate that both parties been able to consider the implications of Council's intervention.

5. Complainants should provide documentary evidence of:

- At least three pieces of correspondence with the hedge owner,
- A minimum of a three month period of communication between neighbours.

6. The complainant's evidence gathering period to *commence* with the date of the legislation on 1st June 2005. This will mean that completed complaints will not be accepted until September 2005. This will demonstrate that a minimum 3 month period has passed, during which attempts were made to resolve the issue between neighbours and 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.

7. **Appendix 1** is a summary of the administrative process to be established.

8. The legislation enables the Council to set its own fees with the intention of making the process 'self-financing'. The fee proposed is £450, which is comparable to other rural districts in the 'premier league' and could enable a *"High Hedges Enforcement Officer"* to be appointed, should demand require such a post.

9. 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

10. It is proposed that the fee could be reduced:

    (a) up to a maximum of £150, when the complainant is able to produce evidence that formal mediation has been undertaken
    (b) at the discretion of the Director of Finance & Resources in the case of appropriately documented financial hardship.

Options

11. The following options are relevant:

    (a) To consider and confirm the above proposed fee level, administration process (Appendix 1) and Scheme of Delegation (**Appendix 2**) 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

12. The full financial implications cannot be determined at this stage. A fee of £450 is deemed to be appropriate. This fee could enable a specific officer to be employed if demand from received complaints diverts existing resources, requiring a new post of *"High Hedge Enforcement Officer"* to be created, financed by the receipt of fees.

Legal Implications

13. The Anti-Social Behaviour Act 2003 requires the authority to implement these measures from 1 June 2005.

Staffing Implications

14. The full extent is, as yet unknown. The 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*.

Risk Management Implications

15. Hedges are a potentially sensitive issue that can cause great distress and anxiety to the parties involved. 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.

16. If a complaint is accepted, officers' will focus efforts on the objective assessment of 'nuisance' to determine whether a Remedial Notice should be issued. It is ***not*** the Council's role to undertake any form of mediation between neighbours.

Consultations

17. A more detailed report on this matter was considered by the 13 May 2005 Development Control & Conservation Committee, who agreed the above general approach.

18. The Head of Legal Services and Director of Finance and Resources were consulted.

Conclusions/Summary

19. The full implications of the enactment of Part 8 of the Anti-Social Behaviour Bill cannot be determined at this point. However, it is evident that, should the number of cases require more than 1 day a week, being devoted to dealing with these cases, over a sustained period, then it is likely that the appointment of a *"High Hedges Enforcement Officer"* would be justified. The post would be financed by the receipt of fees at the proposed rate.

Recommendations

20. That the protocol for dealing with complaints about High Hedges, under Section 8 of the Anti-Social, as outlined above is adopted and:

    (a) That the proposed administration process (Appendix 1) is adopted.
    (b) That the scheme of delegation of powers to officers (Appendix 2) is approved.
    (c) That the fee charged in respect of complaints under these provisions is initially established at £450, where there has been no formal mediation.
    (d) In the event that formal mediation has been undertaken there will be a reduction in the fee, equivalent to the costs of the mediation, upto a maximum reduction of £150, subject to provision of evidence that formal mediation has been tried and failed and the cost of this exercise.
    (e) That in event of the number of received cases exceeding the equivalent of 1 day per week, assessed during an initial six month period, that authorisation is given to the establishment of a new part-time 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:

1. Reports on the Anti-Social Behaviour Act 2003 – High Hedges. May 2005. Office of the Deputy Prime Minister. WWW.ODPM.Gov.uk
2. Report to the 13th May 2005 – Development Control & Conservation Committee.

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Appendix 1

PROPOSED - HIGH HEDGE ADMINISTRATION PROCEDURE May 2005

No.	Task	Action
1.	**Response to initial inquiries** (by tel, fax, e.mail. letter etc). Send out information pack inc.: (i) Standard SCDC (ii) ODPM guidance booklets (iii) Application (iv) ODPM appeal guidance booklet.	Contact centre staff. Planning Administration
2.	**Applications received.** (a) Standard acknowledgement within 3 days. (b) Applications checked for validity (c) Invalid applications returned. (d) Valid applications acknowledged – standard letter to complainant, hedge owner & local member noting : (i) consideration - approx. 12 weeks. (ii) 28 days for hedge owner to view file and respond. (iii) 28 days for local member to respond. (iv) Site visit *after* 28 day period has elapsed. (v) Outline process for making decision. (e) Case file made up for enforcement officers. (f) Fee banked in specific "High Hedges" account. (g) Case passed to Enforcement officer (h) Case entered on monitoring system.	Planning administration.
3.	**Case assessment .** (a) Desk based assessment to initially check whether hedge meets definition of nuisance. And whether specialist arboricultural or ecological advice is required. (b) Site visit arranged to inspect from both properties. (c) Report on site assessment drafted, recommendation to either : (I) serve Remedial Notice . (ii) take no further action. (e) Report considered by Senior Officer for confirmation of recommendation. ***or*** (f) Report presented to 2nd Delegation meeting for discussion and referral to DCCC Chairs Delegation, where local member disagrees with case officer's recommendation.	Enforcement officers Enforcement officers Enforcement officers Conservation Manager or Development Control Quality Manager or Deputy Director of Development Services or other. Enforcement Officers.

	(g) Standard memo to Head of Legal Services to serve Remedial Action Notice once recommendation confirmed, copied to: complainant and local member.	Enforcement Officers
	Or	
	(h) Letter to complainant to advise that no further action to be taken, copied to hedge owner and local member.	Enforcement Officers.
	(i) Date for implementation of works monitored. If no action then advise hedge owner that prosecution may be commenced.	Enforcement Officers
	(j) If complainant or applicant appeal, decision to Planning Inspectorate then appeal process to be handled by Appeal Officers.	Appeal Officers.

APPENDIX 2

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

SOURCE	POWER DELEGATED	DELEGATION TO
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 may be referred to the DCCC Chair's Delegation Meeting.
Anti-Social Behaviour Act 2003 s 68 (4) and s 69	To issue Remedial Notices.	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 68 (1)	To determine the level of fee to be charged.	Director of Finance & 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.
Anti-Social Behaviour Act 2003 s 70	To withdraw a Remedial Notice , waive or relax a	Director of Development Services or; Deputy Director

	requirement of a remedial notice.	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	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.
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.