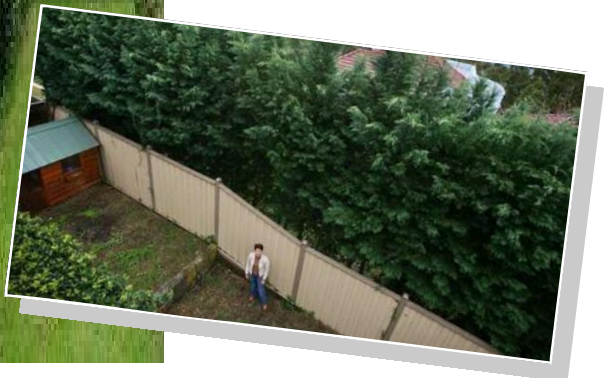


A Guide to the High Hedges Procedures

*introduced by the
Anti Social Behaviour Act 2003*



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1. INTRODUCTION AND GENERAL INFORMATION

The Regulations were made by the Welsh Assembly Government on 8th December 2004 and came into force on 31st December 2004. The Enforcement Unit of the Planning and Transportation Division will administer complaints under this legislation.

Complaining to the Council about someone else's high hedge should always be a last resort. Accordingly it is the policy of the Council to suggest that affected parties must first try to settle the matter through negotiation and the following advice has been provided to help guide you through the correct procedure. In the event of a formal complaint being submitted and accepted, a fee will be payable.

Guidance and information on the legislation relating to high hedges and how to make a complaint to the Council is also available at www.communities.gov.uk/treesandhedges

There is also further information available in the following publications:

- "High Hedges: Complaining to the Council"
- "Over the garden hedge"

Both are available to download at www.communities.gov.uk/treesandhedges

2. WHAT IS A HIGH HEDGE?

The legislation only relates to a high hedge, which is a barrier to light formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs to a height of more than 2 metres above ground level. The 2 metres height should be measured from the ground where the hedge is growing - that will usually be the owner's side. Normally, therefore, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs.

When considering whether a particular hedge can be the subject of a complaint under the Act, the following should be considered:

- The hedge must act, to some degree, as a barrier to light or access - even though it might have gaps in it;
- It must have two or more trees or shrubs in it, with interlocking canopies, which are roughly in a line;

- The hedge must be comprised of wholly or predominantly evergreen or semi-evergreen trees or shrubs;
- It must be over 2 metres high; and because of its height, adversely affect the complainant's reasonable enjoyment of their home or garden;
- The Act applies not only to Leyland Cypress or conifers but also includes other evergreen trees or shrubs, such as laurel. The term semi-evergreen is not separately defined in the Act, but normally means that the hedge retains some green or live foliage throughout the year. This could include privet. However beech and hornbeam hedges are excluded, as although they may retain some foliage for most of the year, this is brown and dead foliage.

3. RESOLVING HIGH HEDGES PROBLEMS

First Steps

The Act makes it clear that where the height of a neighbouring hedge is a concern, the best way to deal with the issue is to discuss it amicably and to agree a solution. For this reason, the law requires people to take reasonable steps to try to settle their hedge dispute before complaining to the local Council. You should note that the Community Legal Service leaflet '*Alternatives to court*'¹ includes information on a variety of procedures for resolving disputes, short of going to court. Not all of those mentioned will be suitable for settling neighbour problems. Negotiation or mediation is considered most likely to offer the best chances of success.

It may be daunting to tackle neighbours about a problem. Advice on how to deal with neighbours in a way that is more likely to lead to an agreed solution is provided in the leaflet '*Over the garden hedge*'². It is of course appreciated that solutions are more likely to be found where people have good relations with their neighbours.

Where people do not get on, or if the dispute over the hedge is long running, the Act suggests mediation as a next step. Community mediation is particularly effective in this type of dispute. It involves an independent and impartial person (the mediator) helping those in dispute to work together to reach a settlement. From there, the parties can move forward to think about how they could put matters right and to agree a plan of action. If mediation is to work, people must go into it willingly.

Further information about local community mediation services can be found at www.ukmediation.net. People can also locate their nearest community mediation service through this site. Community mediation is usually free of charge.

Other organisations that will provide advice on resolving neighbour disputes and offer help in putting together their side of the case are shown below. They will not, however, usually arbitrate or mediate.

¹ '*Alternatives to court*' is available free on the Community Legal Service website at www.communitylegaladvice.org.uk

² '*Over the garden hedge*' is available from the National Assembly for Wales - telephone 029 2082 3883.

Community Legal Service

The Community Legal Service is a public organisation that helps people to find the right legal information easily. They maintain the Community Legal Service Directory. The Directory is accessible through the Community Legal Service website at www.justask.org.uk and through local libraries.

Citizens Advice Bureaux

Citizens Advice Bureaux give free, confidential, impartial and independent advice on a range of subjects. They will be able to put people in touch with their local community mediation service or help someone to work out what they might say, or put in a letter, to their neighbour. They also run an online advice guide at www.adviceguide.org.uk, you can locate their nearest Citizens Advice Bureau through this site, as well as through the local telephone book.

Other help

Some firms of solicitors offer a set amount of initial free advice, either by email, over the telephone or through personal interview. You may be able to obtain advice by contacting a telephone legal advice service often included in insurance policies, such as household or motor insurance and also organisations representing older people (e.g. ARPO50 or Saga) may also include a legal advice service for their members.

No Agreement

Where people cannot agree a solution to their hedge problems, under the new complaints system they may ask the Council to review their case, acting as an independent and impartial third party. The owner and occupier of the land in question should have been forewarned by the complainant that failure to negotiate a solution would lead to the matter being referred to the Council, so the complaint should not come as a surprise. It should also be noted that any complainant is required to pay a fee to the Council, which is set at £320. You will also be required to complete the relevant form (which is available on the Council's Web Site and in the reception of the Council's Docks Offices), provide a site plan indicating the hedge in question and also provide photographs of the affected hedge. You should however note that if the Council thinks more could be done to resolve the dispute amicably, it will require further steps to be undertaken such as mediation etc.

If it thinks it is justified, the Council may order the hedge owner to remedy the problem by, for example, reducing the height of the hedge and maintaining it at the lower level. However the Council will only entertain such complaints if the complainant has made a full and reasonable attempt at mediation in the first instance.

4. COMMON QUESTIONS

Q1. *Can we go straight to the council with our hedge problem?*

A1. No. Involving the council should be a last resort if you really can't agree a solution. The council can refuse to intervene if they think you haven't done everything you reasonably could to settle your dispute amicably.

Q2. *What will the council expect us to have done to sort this out between ourselves?*

A2. This will depend on how well you get on with your neighbours. But, before you contact the council, you should have tried the following:

- Discuss your concerns with your neighbour.
- Write to your neighbour to outline your concerns and request that they contact you to resolve the problem.
- Follow this up by asking them to meet with you so that you can try to resolve the problem.
- If this doesn't work or they refuse to meet you, invite them to talk to independent mediators who will help you find a way forward.

Further information on settling your hedge differences is in the separate leaflet *Over the garden hedge*.

Keep a record of what you've done as you will be required to provide evidence of at least two written attempts that you have made to settle your dispute with your neighbour if you wish to make a complaint to the Council. If nothing works, you should let your neighbours know that you will be making a formal complaint to the council.

Q3. *My hedge dispute has been running for years. Am I really expected to go through all this again?*

A3. The council will expect evidence of at least two recent attempts to settle your dispute with your neighbour. If you rely on an approach you made more than, say, 4 months ago, you could be asked to raise the issue with your neighbours again.

You never know, your neighbour could have had a change of heart. They might not welcome the council getting involved and could be ready to compromise.

Q4. *What sorts of complaint can the council look at?*

A4. If you've been through all the steps set out in A2 AND can answer 'yes' to ALL the points listed below, the council should be able to look at your complaint:

- When you look at the hedge as a whole, does it screen out light or would it get in the way of someone seeing or something passing through (see A5 for example) it?
- Are there at least 2 trees and/or shrubs roughly in line?
- Are the trees and/or shrubs in the hedge all, or mostly, evergreen or semi-evergreen?
- Are they over 2 metres tall?
- Are the specific problems you have with the hedge to do with its height?
- Do these problems prevent you getting some of the practical benefits from your home or garden that you might realistically expect?
- Are you the owner or occupier (e.g. tenant) of the property affected by the hedge?

Q5. *The hedge has got some gaps in it that allow light through. Does this mean that I can't complain to the council about it?*

A5. Not necessarily. It depends whether the gaps mean it's really a line of individual trees rather than a hedge.

This isn't easy to judge. As a general guide, if there's enough space between them for someone to kick a ball through, or there are strips of sunlight in the shadow they cast, then it's probably not a high hedge. If in doubt, check with the council.

Q6. *So I can't complain to the council about individual trees?*

A6. No, you can't. Follow the steps in the leaflet "Over the garden hedge" to try to settle your dispute.

Q7. *Does the hedge have to be on the boundary line or in next door's garden?*

A7. No, it doesn't matter where the hedge is growing. Though the further away it is from your house or garden, the less troublesome it is likely to be.

Q8. *What is a semi-evergreen tree or shrub?*

A8. It's something that keeps some live or green leaves all year round. This could include privet. It doesn't include beech or hornbeam hedges, as the leaves that they keep in the winter are dead and brown.

Q9. *Where is the 2 metres measured from?*

A9. It's measured from the ground where the hedge is growing. This could make a difference if your own land is higher or lower.

Q10. *What sort of problems can I complain about?*

A10. You can complain about practical problems that you face because the hedge is too tall. Because each case is different, it's not possible to produce a list of potential grievances that you can choose from. You need to think about the particular difficulties that you have with the hedge, whether these are to do with its height and the seriousness of the situation.

The council won't be able to consider things that you're worried about but haven't actually happened. For example, fears that the hedge will break or fall. In addition they cannot take account of points that are not connected with the hedge itself. For example, the fact that other hedges in the area are kept at a lower height.

Q11. *I'm worried that the hedge will cause subsidence in my home. Can I complain about this?*

A11. No. This isn't to do with the height of the hedge but its roots taking moisture from soils that shrink. The Act specifically says that councils can't deal with problems caused by roots. There are other means of resolving these problems.

Q12. *I'm still not sure if the council can help with my hedge problem. Should I put in a complaint anyway?*

A12. You will probably have to pay a fee to make a formal complaint (see Q15). So, if you have doubts, it is better to talk it through with a council officer first. If you explain your circumstances, they should be able to say whether they will be able to investigate your case. They will not however, be able to advise you on the likely outcome of your complaint.

Q13. *Who do I complain to?*

A13. You should contact the Planning Enforcement Unit of the Planning and Transportation Division of the Vale of Glamorgan Council. Full details are provided at the end of the advice note.

Q14. *How do I make a complaint?*

A14. The council will send you a form to fill in. It will save time later if you provide full information now. Think carefully about your grounds of complaint. Explain as clearly as you can the practical problems you face because the hedge is too tall and why these are serious.

The completed form can be sent by post or email to the council. It's a good idea to send a copy to your neighbours so they know what you've done. If you don't send it to them, the council will. So bear this in mind when you complete the form.

Remember to include the right fee. The council can't consider your complaint without it.

Q15. *Do I have to pay the council to consider my complaint? If so, how much?*

A15. Yes, you will have to pay the council for this service. The fee has been set at £320.

Q16. *Will I get my money back if the council uphold my complaint?*

A16. No, there is no obligation to refund your fee, whatever the circumstances.

Q17. *Can the council help me get it back from my neighbours?*

A17. No, the council can't get involved and certainly can't force your neighbours to pay you.

Q18. *The form provided by the council asks a lot of questions. Why do I have to provide all this information?*

A18. The form gives the council the information they need to check that certain legal tests are met (see A3 above) and that they can, therefore, deal with your complaint. It is up to you to prove this. If you're having trouble filling in the form, your local Citizens Advice Bureau may be able to help.

Q19. *What will the council do with my complaint?*

A19. Once the council are satisfied that your complaint meets the legal tests, they will invite your neighbour to set out their case. After they have received the necessary information from all parties, an officer of the council will visit the site to see the hedge and surroundings for themselves. Council officers will also collect any other information they need to help them decide your complaint. They may, for instance, need to measure the size of your garden or how far the hedge is from windows in your house.

Once they've got all this information together, the council will decide whether the hedge prevents you getting some of the practical benefits from your home or garden that you might realistically expect and what - if anything - should be done about it.

If they decide action is necessary, they will issue a formal notice to your neighbour which sets out what they must do to the hedge and a time period for compliance. This is known as a remedial notice. It can also require your neighbour to keep the hedge trimmed to its new reduced size.

Q20. *Why do we have to go through this process? Surely all it needs is for the council to go and get evidence to show the hedge is a problem and order the offender to cut it down?*

A20. That's not the way the law works. There is no offence for having a tall hedge. So it's not up to the council to prove the hedge is a nuisance.

The role of the Council, according to the Act, is to decide whether the hedge is adversely affecting your reasonable enjoyment of your property and, if so, what action - if any - should be taken to

remedy the situation or to prevent it happening again. The use of the word 'reasonable' is important. It means that the council cannot just consider your grievances. They must also consider your neighbours' comments and any other comments from other interested parties.

Collecting written evidence from you and your neighbour, and visiting the site, will make sure that the council have the information they need to make the right decision.

Q21. *What possible reason could there be for the council not requiring something to be done about it if they decide the hedge is causing problems?*

A21. The hedge could have positive benefits. For example, it may positively contribute to the appearance of your neighbourhood.

Alternatively, the problems may not in the council's opinion be serious and might be resolved by lightly pruning the hedge. The council may decide to issue your neighbour informal advice to keep the hedge trimmed and maintained, rather than impose a formal order.

Q22. *So I could pay the council to consider my complaint and still get nowhere?*

A22. Yes, it's possible that you won't get the answer you want.

Q23. *How do I know whether it's going to do me any good to complain to the council?*

A23. You can't be certain what the result will be. That's why it is important to think carefully about your reasons for complaining to the council before you return your form (see A14). You may find it worthwhile looking at the detailed guide "**Solving hedge problems**".

Q24. *How long will I have to wait for the council to decide my complaint?*

A24. There is no set deadline for the council to provide you with a decision. Remember it will take time for the council to get statements from you and your neighbour, and to arrange to visit the site. So you shouldn't expect to get an answer for at least 8 weeks.

Q25. *What if I don't like the council's decision?*

A25. If you don't like the council's decision, you can send an appeal to the Planning Inspectorate. You must get your appeal to them within 28 days from the date of decision letter issued by the council. The Planning Inspectorate has issued advice that explains how you can appeal and how your appeal will be handled (see web site).

You should be aware that your neighbour can also appeal if they don't agree with the council's decision.

Q26. *If the council uphold my complaint, will the hedge have to be removed?.*

A26. No, the Act specifically says that the council can't order that the hedge be removed entirely. Nor can they require it to be cut down below 2 metres. The council can only require your neighbour to reduce the hedge to a height that will remedy the problems - or prevent the problem re-emerging.

In addition, there is nothing in the Act that says all hedges must be cut down to 2 metres.

Q27. *How long will the council give my neighbour to cut down the hedge?*

A27. This will vary but it could well be months rather than weeks. The council must be realistic about how long it will take your neighbour to carry out the works. They might also have to allow extra time to make sure that any birds nesting in the hedge are not disturbed. Your neighbour can appeal if they think the council haven't allowed enough time.

Q28. *What is there to make sure my neighbour keeps the hedge at its new height? Surely I don't have to complain again, and pay a fee?*

A28. The council can require your neighbour to take action to prevent the problems with the hedge reoccurring. This could include keeping the hedge at its new height for as long as it is present at the site. You wouldn't, therefore, have to make repeated complaints to the council to seek compliance with action previously taken by the council.

Q29. *Does the council's order allow me to cut my neighbour's hedge?*

A29. No, it doesn't give you any right to cut the hedge. If you do anything more than trim branches that hang over your land, your neighbour could progress legal action against you.

Q30. *What happens if my neighbour doesn't cut down the hedge when they're meant to?*

A30. Failure to carry out the works required by the council is an offence. Your neighbour could be prosecuted and, if found guilty in the magistrates court, could be fined up to £1,000. However it is up to the council whether they prosecute and it's unlikely to be the first step that will be taken given that negotiation and discussion often resolves such matters.

Q31. *Will the council cut down the hedge instead?*

A31. The council can go onto your neighbour's property and cut the hedge if there is a repeated failure of your neighbour to comply with the requirements of the council. But it's up to the council whether they step in. They are not obliged to do so.

Q32. *What happens if the hedge is owned by the council?*

A32. You should still send your complaint to the council.

5. USEFUL CONTACTS

Arboricultural Association - for a list of approved contractors to carry out work on hedges, search www.trees.org.uk or Tel: 01794 368717

Citizens Advice Bureaux - offer free, confidential, impartial and independent advice. You can find your local office in Yellow Pages

Community Legal Service (CLS) - helps people to find the right legal advice. There are CLS Information Points in local libraries. Or search www.communitylegaladvice.org.uk or Tel: 0845 608 1122 for your nearest Community Legal Service provider

Gardening Which? helps its members with their gardening problems Tel: 01992 822 800

Hedgeline - help those affected by problem hedges, drawing on the experience of their members Tel: 01455 890649

Royal Horticultural Society - helps its members with their gardening problems Tel: 01773 822222

To find your nearest community mediation service you should contact the **National Mediation Helpline** at 0845 6030 809 or www.nationalmediationhelpline.com (external link) or **UK Mediation** at www.ukmediation.net, or Tel. 01173 822222

You may be able to obtain advice by contacting a telephone legal advice service often included in insurance policies, such as household or motor insurance.

Organisations representing elderly people (e.g. ARP50 or Saga) may also include a legal advice service for their members.

6. FURTHER INFORMATION

Anti-social Behaviour Act 2003 - text of Part 8 of the Act is available on www.opsi.gov.uk/acts/acts2003/ukpga_20030038_en_1

An explanation of how to appeal against the council's decision on your hedge complaint, is available from the Welsh Assembly Government's Planning Inspectorate at www.planning-inspectorate.gov.uk

Further information and downloadable literature is also available at www.communities.gov.uk/treesandhedges and on the Welsh Assembly Government Website new.wales.gov.uk

USEFUL CONTACTS IN THE COUNCIL

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Principal Planning Officers

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