

## **1. Introduction**

The procedures introduced by the above Act are intended to provide an effective means of resolving disputes where a high hedge is blocking light to a residential property.

The procedures are only to be used only **as a last resort** when other contacts, mediation and attempts to resolve the matter amicably has failed. Where the issue has not been able to be resolved amicably, home owners and occupiers now have the right to apply to the Council for a **High Hedge Notice**.

Upon receipt and registration of a High Hedges Notice application, the Council will check the information provided, and will (a) consider if the application is vexatious or frivolous; (b) if it is the applicant has made sufficient attempts, before making the application, to resolve the matter amicably; and (c) may undertake an initial site visit. If criteria (a) or (b) apply then the application may be dismissed at this stage.

When considering a valid application, the Council will consider all of the information provided, will consult with the hedge owner and will then make its decision. It is not the role of the Council to mediate between the parties, but rather to act as an impartial decision maker.

If the Council decide to serve a Notice, the hedge owner may be required to reduce the height of the hedge or even remove it altogether. The Council may also impose a requirement on the owner regarding the maintenance of the hedge in the future. Both the applicant and the hedge owner have a right of appeal if they are unhappy with the decision made.

These Notes for Guidance are only a summary of the procedures and laws involved. The [Act](#) itself provides the definitive legal situation. The Scottish Government has also produced [Guidance to Local Authorities](#) which provides fuller guidance than is contained in this Note.

## **2. What is a High Hedge?**

The Act defines a 'high hedge' as a hedge that is:

- formed wholly or mainly by a row of two or more trees or shrubs;
- rises to a height of more than 2 metres above ground level; and
- forms a barrier to light.

The Act concerns hedges and is not designed to impact on woodlands and forests which as a general rule are not planted as hedges. A single tree with multiple stems from the same trunk or root plate remains a single tree and outwith the scope of the Act. A row of established mature trees that have good separation distance between their trunks with high coalescing crowns is unlikely to be considered a hedge.

## **3. What needs to be done before making an application for a high hedges notice?**

As stated above, making an application to the local authority for a high hedge notice should be a last resort. First and foremost, an applicant must have made serious and concerted efforts to resolve the issue with their neighbour themselves before an application is made. Any application that a local authority receives where there is insufficient evidence of this having been attempted must be dismissed.

Records should be kept of all attempts to resolve the issue and should be included with the application. As an absolute minimum we would expect you to undertake the following (although in many cases more mediation will be appropriate):

- a) to try to speak to your neighbour about the matter, in which case you should give us details of the dates on which you spoke and a summary of the discussions; and
- b) to write to your neighbour on at least two occasions, one of which should be either by recorded delivery or a letter sent by your lawyer. This should demonstrate at least two occasions of attempted correspondence to the hedge owner in the six months prior to the making of a formal application to the Council for a High Hedge Notice. You should include copies of these letters and the responses from the hedge owner (if any) with your application.

Claiming your neighbour is unapproachable will not be sufficient. Please also be aware that this evidence will be sent to the hedge owner for their comments, so they will have the opportunity to refute your attempts to resolve the matter. Attempting to resolve the matter over a timescale extending into months would be expected. Long-standing issues dating long back before the Act came into operation will require an updated or fresh approach before a formal application is made to the local authority.

If you are a hedge owner, and your neighbour approaches you about a problem related to your hedge, we would advise you to engage positively with them to get an amenable solution. If you can agree a solution with them, then that is likely to be the end of the matter. If you do not get an amenable solution and you end up receiving a High Hedge Notice, you may be faced with having to take more action than you may have been able to negotiate, as well as having an on-going obligation for future maintenance actions to prevent recurrence (all at your expense). Additionally, the Notice will remain in force against the property, even if you sell it in the future. We therefore suggest that it is in your interests to resolve the matter before it gets to the stage of your neighbour applying to the Council for a Notice.

#### **4. Making an application for a High Hedge Notice**

You should apply for a High Hedge Notice using the form attached (also available from our website). Applications will be checked for competency and content, and will be immediately dismissed if you have failed to demonstrate reasonable attempts to resolve the matter amicably or if the application is considered to be frivolous or vexatious.

Please submit all information that you think is relevant with your application, as you will not get the chance to submit further information at a later stage. You must submit a plan (preferably to scale 1:500 or 1:200) showing the location of the hedge in relation to your house and garden and indicating relevant dimensions e.g. the length of the hedge that is causing the problems and the distance from the hedge to your house. The plan should include a north point. You should also submit photographs of the hedge.

The requisite fee for the application (which at the time of writing this note is set at £465) must also be submitted. In uncommon cases such as where there are multiple applicants applying with respect to one hedge in one ownership, the Council may use its discretion to reduce the fee to 75% of the standard fee for each applicant.

#### **5 Determining an application for a High Hedge Notice**

On the receipt and registering of a valid application for a High Hedge Notice the Council will acknowledge receipt to the applicant and will notify the hedge owner, advising them of the application and explaining the process involved. Copies of the application and supporting information will be sent to the owner with this notification, and they will have 28 days from the notification to make comment on the application.

Should the Council receive any comments from the owner/occupier, these comments will be copied to the applicant for their information. Please note that this is not an opportunity for a further round of responses from the parties, but is for information only. Occasionally consultations may be undertaken with other interested parties.

## 6. Making a decision

An additional more thorough site visit will be undertaken by a Council officer to see the situation on the ground and consider the effects of the hedge before the decision is made. The comments made by the applicant and the hedge owner (and any other parties consulted) will be taken into account. The Council must consider all circumstances of the case, including the amenity value of the hedge. The Council can only consider the nuisance caused by the hedge forming a barrier to light. Impacts caused for instance by overhanging branches or roots growing into your garden cannot be considered by the Council.

There is not a specified time period for the Council to make its decision, although it will always be after the 28 day notification period to the owner has elapsed. The Council will thereafter seek to determine the application as soon as possible.

## 7. The High Hedge Notice

If it is decided that there is an adverse effect on the applicant's property and that a High Hedge Notice should be served, the Council will decide what initial action the hedge owner should take to remedy the adverse effect and if relevant what future actions they need to take to prevent recurrence. It will also specify a reasonable timescale within which the actions should be taken.

In that case the Council will issue a High Hedge Notice on the owner (and/or property occupier) of the hedge. The applicant and other relevant parties will be notified of that decision. The Council will also prepare a report that will be issued with the High Hedge Notice explaining the reasons for the decision. Subject to the right of appeal, the Notice is binding on the owner (and future owners) of the hedge, although the Council may vary or withdraw the Notice in certain circumstances.

## 8. Appeals

All appeals are to be made to the Scottish Ministers within 28 days of the decision being notified to the parties. The parties will be informed of how to appeal once the decision is made.

If an application for a High Hedge Notice is not approved because the Council has decided that it has no adverse effect or that no action should be taken, the parties will be informed of the decision and the reasons for it, and the applicant has a right of appeal.

If an application for a High Hedge Notice is approved, there are the following rights of appeal:

- a) The owner of the hedge (or occupier of the land where the hedge is located) may appeal, and/or
- b) The applicant may appeal if they think that steps required by the High Hedge Notice are not sufficient.

A High Hedge Notice will not take effect while an appeal is in progress.

Please note that there is no right of appeal should the Council decide to dismiss an application either because they consider that reasonable steps have not been taken to resolve the matter or because the application is considered frivolous or vexatious.

## 9. Enforcement

A High Hedge Notice will specify the action that is needed to address the adverse effects, and set a reasonable compliance period within which the action should be taken.

It is the responsibility of the person on whom the Notice is served (the hedge owner or property occupier) to undertake these actions at their expense. If the required action is not taken within the time period specified, the Council can, if necessary (and with appropriate notification), enter the land to carry out the required works and recover all expenses that have been reasonably incurred (including administrative expenses and interest) from the owner.

## Summary of Council procedures upon receipt of a High Hedge Notice Application

STAGE 1

Allocate the application a reference number.  
Is it a complete application? including:  
a) all sections of the form completed,  
b) appropriate boxes ticked 'yes',  
c) signed/dated,  
d) plans/photographs included,  
e) fee paid.

No

Get missing sections completed. If matters are not completed the application will be returned along with the full fee.

Contact the applicant to get all the sections completed.

Yes

If the trees/bushes clearly (from looking at the paperwork) do not meet the definition of a hedge – then return the application and the full fee to the applicant.

STAGE 2

Send acknowledgement to the applicant.

Carry out site visit.

Is the application competent?  
1. Check that it is not frivolous or vexatious, and  
2. Check that the application has demonstrated that there has been adequate attempts to resolve the matter between the parties.

No

If the trees/bushes do not meet the definition of a hedge (following site visit), return the application and 75% of the fee.

Dismiss the application and return it to the applicant.  
- No right of appeal.  
- Return 75% of the fee.

Yes

Note: if the application is resubmitted within 1 year of the initial submission, the application will be registered upon receipt of payment of the fee (minus the amount that was initially retained by the Council). This applies once per application only.

STAGE 3

Proceed to determine the application.  
Write out to the owner of the hedge (and/or occupier of the property concerned) enclosing the application and asking for their comments within 28 days.  
Also write to any other interested parties.

If any comments are received from the owner/ occupier or other interested parties, copy these comments to the applicant.

Assess the application.  
Make the decision on the application.  
Write report explaining the decision.

Advise all parties of the decision.  
If a High Hedges Notice is to be served, send it to the owner/occupier.  
Advise all parties of their right of appeal.

Following the serving of a High Hedge Notice, and any appeal outcome, monitor the site for compliance.  
If the specified actions are not undertaken, then initiate enforcement action.

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