

EAST RENFREWSHIRE COUNCIL

CABINET

10 April 2014

Report by Director of Environment

HIGH HEDGES (SCOTLAND) ACT 2013

PURPOSE OF REPORT

1. The purpose of this report is to advise the Cabinet of the enactment of the “High Hedges (Scotland) Act 2013”; to ask Cabinet to agree the fee for applications under this Act; and to update the Scheme of Delegated Functions so that all matters under the Act can be dealt with by the Director of Environment or Head of Environment (Planning, Property and Regeneration).

RECOMMENDATIONS

2. The Cabinet is asked to approve:
- (a) the proposed fee of £420 for applications under the High Hedges (Scotland) Act 2013; and
 - (b) an update to the East Renfrewshire Council Scheme of Delegated Functions to allow applications, enforcement and all related actions under the High Hedges (Scotland) Act 2013 to be undertaken by the Director of Environment or Head of Environment (Planning, Property and Regeneration).

BACKGROUND

3. The Bill for the High Hedges (Scotland) Act 2013 (the “Act”) was passed by the Scottish Parliament on 28 March 2013 and received Royal Assent on 2 May 2013. Councils across Scotland were advised on the 28 February 2014 that the Act will come into force on the 1 April 2014. The Scottish Government has also published some guidance to Local Authorities.

4. The Act introduces new powers to local authorities to issue a notice in respect of hedges that are considered to impact on the enjoyment of a domestic property. The Act empowers the homeowner or occupier to apply for a High Hedge Notice whereby the Local authority must assess the impact of the hedge and determine whether work is required to address the impact. These applications for a High Hedge Notice will be handled by the Planning Service.

5. The Act is intended to address the problems of high hedges ‘which interfere with the reasonable enjoyment of domestic property’. A ‘high hedge’ is defined as a hedge that is formed wholly or mainly by a row of 2 or more trees or shrubs, is over 2 metres in height and forms a barrier to light. Where the definition applies, an owner or an occupier of a domestic property may apply to the Council for a High Hedge Notice.

REPORT

6. An application for a High Hedge Notice may be made by an owner or occupier of a domestic property where they consider that the height of a high hedge situated on land owned or occupied by another person adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

7. The Act acknowledges that the individuals involved have the primary responsibility for resolving disputes over high hedges. Therefore, prior to making any application, the applicant must firstly take, in accordance with the guidance “all reasonable steps” to resolve matters. The guidance makes it clear that making an application to the Local Authority for a High Hedge Notice should be a last resort.

8. Applications must be accompanied by a fee. It is for each local authority to set its own fee for such applications. On receipt, the Council may dismiss an application if the applicant has not already taken reasonable steps to resolve matters with the hedge owner or if the application is considered frivolous or vexatious.

9. If an application is not dismissed, the Council will progress to fully assess the proposal. As a first step, the Council will notify the owner and occupier of the site where the hedge grows, allowing a period of 28 days for a representation, and copy any such representations to the applicant. The representations must be taken into account in deciding the application. The application is to be determined on the basis of whether the hedge affects the enjoyment of a domestic property which an occupant could reasonably expect to have and, if so, whether any action should be taken by the owner to remedy the adverse effect and to prevent the reoccurrence of that adverse effect.

10. In reaching a decision the Council must take into account all the relevant circumstances of the case including loss of light to neighbours, representations from the owner and the effect of the hedge on the general amenity of the area including any cultural or historic significance. It should be noted that if there is no loss of light, then the hedge is not covered by the Act regardless of what other amenity issues that the applicant may have. The Council must have regard to the Scottish Government Guidance in assessing applications. Councils can also produce their own guidance. If a hedge is covered by a Tree Preservation Order, any decision to serve a High Hedge Notice takes precedent.

11. All parties are to be notified of the decision and, if a High Hedge Notice is served, it must be copied to all parties. A High Hedge Notice will:

- a) identify the high hedge which is the subject of the notice and the land on which it is situated;
- b) identify the domestic property that the Council has decided is adversely affected;
- c) state the date on which the notice is to take effect (which is to be not earlier than 28 days after service of the notice);
- d) state the initial action that is to be taken by the owner of the land on which the hedge is situated and period for compliance;
- e) state any preventative action that is to be taken by the owner of the neighbouring land e.g. to keep the hedge below a certain height in future;
- f) inform the recipient that there is a right to appeal to the Scottish Ministers;

- g) inform the recipient that the Council is entitled to authorise a person to take action where there is a failure to comply with the notice and that the Council may recover the expenses of that action; and
- h) inform the recipient that it is an offence to intentionally prevent or obstruct a person authorised to take action from acting in accordance with this Act.

12. The Notice is binding on the owner although the Act gives the Council the scope to withdraw or vary it. If varied, the Council must issue a revised Notice. It should be further noted that the withdrawal of a Notice does not prevent the issuing of a further Notice at a later date in respect of the same hedge.

13. The applicant may appeal to the Scottish Ministers if the Council decides to issue a Notice if terms are unacceptable to the applicant; or if the Council considers that there is no adverse effect, determines there should be no action taken, or decides to vary or withdraw a Notice. The owner of the hedge may appeal to the Scottish Ministers if the Council decides to issue a Notice or vary or withdraw a Notice. This means that both parties have a right of appeal, and given that these applications by their nature will be contentious (as earlier mediation will have failed), it is possible that virtually every decision could be the subject of an appeal (to the DPEA).

14. Finally, in the event of a High Hedge Notice not being complied with, the Council will have enforcement and cost recovery powers.

15. The Scottish Parliament have (within the Act) undertaken to review the implementation of the High Hedges Scotland Act 2013. This review is to be undertaken after a minimum period of five years from the 1st April 2014.

FEES

16. The introduction of the Act is intended by the Scottish Government to be cost neutral to Local Authorities. Local Authorities are to set fees which must accompany an application for a High Hedge Notice. No upper limit on fees has been set by the Bill but fees must not exceed an amount which the local authority considers represents the reasonable costs that it incurs in coming to a decision on the application.

17. A Financial Memorandum accompanied the Bill which considered procedures in England and Wales where similar powers are already in place. Consultation was also undertaken with the National Association of Tree Officers across England and Wales. Eleven authorities were engaged directly and a range of fees from none to £600 was identified. The majority of the fees however were between £350 and £420 per application in 2011. The Financial Memorandum assessed that information, and estimated costs associated with the consideration and determination of applications for High Hedge Notices. These costs extended across administration, land checks, necessary site visits, specialised consultations etc. and identified a likely range of costs from £325 to £500.

18. Taking account of this research, the contentious nature of such applications, the likelihood of appeal and the potential staffing resource associated with enforcement action, it is proposed that a fee of £420 be set as the fee in East Renfrewshire Council for an application for a High Hedge Notice. This fee will be reviewable annually.

SCHEME OF DELEGATION

19. The current Scheme of Delegation was updated and approved by the Council on 22 January 2014. As this scheme does not extend to this new scope of powers, it is considered that it would be appropriate for the determination of applications for a High Hedge Notice and related actions to be undertaken by the Director of Environment or Head of Environment (Planning, Property and Regeneration).

20. Accordingly, it is recommended that the Scheme of Delegation be updated by adding that the Director of Environment or Head of Environment (Planning, Property and Regeneration) is authorised "*To determine applications for a High Hedge Notice (including varying or withdrawing such a notice) and to undertake any resulting enforcement, intervention or cost-recovery actions in accordance with the High Hedges (Scotland) Act 2013*".

FINANCE AND EFFICIENCY

21. The introduction of the High Hedges Act 2013 has cost and staff time implications for the Council. It is not yet known how many applications will be made in any year, but it is anticipated that there will be a number of enquiries and applications when the Act is introduced, but the numbers may thereafter drop to a relatively low number per year. It is also anticipated that there will be a lot of work in validating, administering, consulting, processing and deciding applications as well as dealing with appeals and enforcements. The fee has been set at a level which will attempt to make the process cost-neutral to the Council, but this will need to be monitored. Fee levels will not be sufficient to allow the Council to take on any extra staff, so it is inevitable that planning staff currently processing planning applications will be diverted from that work in order to process High Hedges Applications. This could result in slower planning application processing times, but this position will be monitored.

CONSULTATION

22. Consultation has been undertaken with the Democratic Services Manager (regarding the Scheme of Delegated Functions), the Council's Parks Service (regarding assistance with assessments, implications for Council owned trees and implications for the Council taking direct action) and the Council's Legal and Finance Services (with regards to recovery of costs should direct action be necessary).

PARTNERSHIP WORKING

23. There will continue to be partnership working with the services referred to in paragraph 22 above as the Act is implemented.

IMPLICATIONS OF THE PROPOSALS

24. There are no other staffing, IT, equalities or other implications associated with this report.

CONCLUSIONS

25. The introduction of this Act gives residents an opportunity to resolve long-standing disputes between neighbours over high hedges that might have been causing concern. The High Hedge process however should only be necessary as a last resort when mediation has failed. From the Council's perspective, the processes will be time consuming to administer, and will inevitably involve dealing with cases which are contentious.

RECOMMENDATIONS

26. The Cabinet is asked to approve:

- (a) the proposed fee of £420 for applications under the High Hedges (Scotland) Act 2013; and
- (b) an update to the East Renfrewshire Council Scheme of Delegated Functions to allow applications, enforcement and all related actions under the High Hedges (Scotland) Act 2013 to be undertaken by the Director of Environment or Head of Environment (Planning, Property and Regeneration).

Director of Environment

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KEY WORDS

High hedges, trees, legislation, act, neighbour, dispute