

PART 8: ANTI-SOCIAL BEHAVIOUR ACT 2003 HIGH HEDGES CRITERIA FOR RESOLVING DISPUTES

This note sets out the matters that may be taken into account in assessing a complaint made under the legislation, but this should not be considered as an exhaustive list. Not all of these factors will be relevant in every case. All issues will be judged on the circumstances of each particular case and the importance of each factor will vary with circumstances. The note should be read in conjunction with the Council's guidance notes on the procedure which will be followed when considering a complaint.

The Council will gather information about the hedge and its effect on the main parties to a complaint and on any wider amenity value provided by the hedge. The Council will take account of all relevant factors and assess each case on its particular merits so that a balanced and impartial decision can be taken. The Council's duty is to take a decision on the complaint, not to arbitrate between the parties and seek an amicable solution.

The Council will assess the weight which should be given to the relevant issues. Objectivity will be applied wherever possible but inevitably an element of subjective assessment may be called for. The assessment will determine what if anything should be done about the hedge. The decision will primarily be based on submissions made by the parties to a complaint and on a visit to the site.

The legislation does not empower a Council to require the complete removal of a hedge or any section of the hedge. The Council may only require a hedge to be reduced to a height of not less than two metres. The Government has made clear that it would be inappropriate to require a reduction in the height of a hedge to a level that would result in the death of the plants. Therefore the long term health of the hedge will always be a consideration in determining any complaint.

This note is based on guidance issued by the Government and a list of publications is attached to this note. These publications will be material to the Council's decision on a high hedges complaint

Factors that will not be taken into account:

- fears about the safety of a hedge
- health-related problems attributed to a hedge (e.g. depression)
- the cost of cutting a hedge
- history (e.g. whether or not a hedge was there before a complainant moved in)
- problems related to the roots of a hedge
- problems not related to the height of a hedge

- problems not directly about the hedge in question (e.g. unrelated development by your neighbour to which you are opposed)

Factors that may be relevant in weighing the evidence

• Obstruction of daylight or sunlight to windows or solar panels

The Building Research Establishment (BRE) has published guidelines, '*Hedge height and light loss*' (March 2004) which provides an objective means for assessing whether a hedge is obstructing daylight or sunlight to windows or solar panels. The document introduces the concept of 'action hedge height' above which a hedge is likely to block too much light. A hedge that is taller than the height derived from these guidelines may well result in an unreasonable loss of light to windows and have an adverse effect on someone's reasonable enjoyment of their property. A hedge below the suggested limit is far less likely to have such an effect.

• Obstruction of daylight or sunlight to gardens

BRE guidelines contained within the above document provide the best available means for assessing the impact of a high hedge on daylight or sunlight to a garden. However, these will not be definitive as there are many untypical situations. A small garden enclosed on all sides by high hedges for example, produces a completely different situation to a much larger garden affected by hedges of the same height.

• Privacy

A hedge of two metres is usually considered to provide an acceptable level of privacy for most urban or sub-urban situations. However, a higher hedge may be justified depending on the circumstances e.g. where related to levels of privacy from first floor windows or if there are differences in land levels.

• Shelter

Good shelter from wind is usually provided for a distance of eight to ten times the distance of the hedge height. Thus a two metre high hedge is likely to provide good shelter to a garden with a depth of 16 to 20 metres and will be adequate in many situations.

• Overhanging branches

The overhanging branches of a hedge may cause problems if they cannot easily be trimmed without specialist equipment. This generally applies to overhanging branches at a height of 2.5 metres or above. Beneath this height, problems caused by the width of a hedge or its overhanging

branches may not be considered because people have the right to cut a hedge back to the boundary.

- **Visual amenity**

Visual amenity means what people look onto from their home and /or garden. Visual amenity includes whether a hedge causes visual intrusion, mainly by being dominant or overbearing. Visual amenity may also include whether a hedge prevents unsightly views. However, it is generally not considered reasonable for a person to expect to see beyond a hedge to a particular view or certainly across someone else's property.

Factors that may be considered in assessing visual amenity include:

- How close a hedge is to buildings
- The height, length, bulk and mass of a hedge and how these compare with the size of the garden
- The impact of any other hedges
- The general characteristics of the area

- **Protected trees**

Special considerations apply where trees in a hedge are protected by a tree preservation order or are subject to controls relating to conservation areas.

- **Planning conditions**

If a hedge is expected to be retained at a certain height under the terms of a planning permission, the reason(s) why the condition was attached will be most relevant. Regard must also be given to any changes in the circumstances of the site since the condition was imposed.

- **Historic, wildlife, landscape and public amenity value**

The contribution that the hedge makes to local amenity will be considered. If protected plants, animals or nesting birds are present within a hedge, account will be taken of how they would be affected by any potential action. Other factors may be taken into account where relevant e.g. if the hedge is within the boundaries of a listed building and is considered to enhance its setting.

- **Covenants**

If there is a legal covenant stipulating that a hedge of a particular size or type should be retained, the terms of the covenant will almost certainly need to be considered. However, material changes in circumstances since the covenant was introduced can also be taken into account. Covenants raise issues of a legal nature: it is therefore difficult to

generalise and in most cases the facts of each case will determine the correct course of action.

- **Litter dropped by the hedge**

In the majority of circumstances this is likely to be assessed as a minor irritant only and is unlikely to represent a substantial interference with a complainant's enjoyment of their property.

- **Noise, smell and smoke**

In most circumstances it is not considered reasonable to expect a hedge to provide protection from noisy neighbours, smells or smoke.

- **Plant damage**

Damage caused by roots is not covered under the Act. Although the height of a high hedge may also cause plant damage through excessive shade, it is difficult to be definitive about the cause of poor plant growth. It is not usually considered reasonable to expect to grow particular plants in specific locations.