

# HIGH HEDGES – General Information for Bromsgrove District

From 1<sup>st</sup> June 2005, Bromsgrove Council has powers to deal with complaints about a high hedge under Section 8 of the Anti-social Behaviour Act 2003.



**bromsgrove council**  
www.bromsgrove.gov.uk

## 1. Introduction

From 1 June 2005, provided they have tried and exhausted all other avenues for resolving their hedge dispute, people will be able to take their complaint about a neighbour's evergreen hedge to the District Council.

The role of the Council is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act - the hedge is adversely affecting the complainant's reasonable enjoyment of their property. In doing so, the Council must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

## 2. Cutting the tall stories down to size

- The legislation does not require all hedges to be cut down to a height of 2 metres
- You do not have to get permission to grow a hedge above 2 metres
- When a hedge grows over 2 metres the local authority does not automatically take action.
- If you complain to your local authority, it does not automatically mean that they will order your neighbour to reduce the height of their hedge. They have to weigh up all the issues and consider each case on its merits
- The legislation does not cover single or deciduous trees
- The local authority cannot require the hedge to be removed
- The legislation does not guarantee access to uninterrupted light
- There is no provision to serve an Anti-social Behaviour Order (ASBO) in respect of high hedge complaints.

## 3. How the legislation works

**Who can complain ?** - The owner or occupier of a domestic property.

**What can they complain about ?** - That the reasonable enjoyment of their property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person.

**Is "high hedge" defined ?** -Yes. It is defined as "so much of a barrier to light or access as- (a) is formed wholly or predominantly by a line of two or more evergreens or semi-evergreen trees or shrubs; and (b) risers to a height of more than two metres above ground level"

**So can a complaint be made if the hedge is less than 2 metres tall ?** - NO.

**What if there are gaps between the evergreens ?** - The Act says that a line of evergreens is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect at heights of more than two metres above ground level.

**Does "high hedge" include the roots ?** - NO. Roots are expressly excluded from this legislation.

**Who do they complain to ?** – The Planning Department of Bromsgrove District Council.

**Does it cost anything to make a complaint ?** - YES. Bromsgrove Council have set a fee of £500 (or £200 where the complainant is in receipt of benefits).

**Is the Council obliged to accept a complaint ?**

No. We may decline to accept the complaint if we consider that the complainant has not taken all reasonable steps to resolve the matters themselves, or that the complaint is frivolous or vexatious.

**If the Council accepts the complaint as valid, what do they do next ?**

We will investigate the complaint, and decide whether or not it is justified, i.e. whether the height of the hedge specified in the complaint actually is adversely affecting the complainant's reasonable enjoyment of their domestic property. Whether the decision is positive or negative, we will notify our decision to the complainant and to the hedge-owner, and explain the reasons for it.

**What happens if the hedge-owner refuses to co-operate with the Local Authority investigation ?**

The Council has legal power of entry into a property in order to investigate a high hedge complaint. It is an offence to obstruct an officer of the Council exercising a power under this Act, and is punishable by a fine of up to £1000.

**Will the Council's investigating officer just make a personal assessment of the situation, or will he have to follow specific guidelines ?**

The Council will follow national guidance notes and advice, in an attempt to ensure a standardised assessment of whether a hedge is "too high".

### **If it is decided that the hedge is too high, what happens next ?**

The Council will then issue a "Remedial Notice" to the hedge owner, specifying (i) initial action to be taken by him;, (ii) any preventative action to be taken, (iii) The penalties for failing to comply with the notice.

The initial action is the action to be taken by him to reduce all or part of the hedge to the height calculated to be reasonable. The preventative action is the action deemed necessary to maintain the hedge at or below the height calculated to be reasonable. This notice is valid as a "local land charge" on the deeds of the property, even if the property changes ownership.

### **How long has the hedge-owner got to carry out the necessary work ?**

The Remedial Notice will be stamped with its issue date. The notice will cite an operative date. This is a date at least 28 days after the issue date, and is the date on which the notice takes effect. The notice will also cite a compliance period, which is the time considered sufficient for the work to be carried out.

### **Is there an appeals procedure ?**

Yes. Any party to the dispute may appeal against the decision of the Council. An appeal must ordinarily be lodged with the Planning Inspectorate within 28 days of the issue of the Council's decision.

### **What action can the Council take if the hedge-owner refuses to comply with a Remedial Notice ?**

The Act creates an offence of failing to comply with a remedial notice. On conviction for such an offence at a Magistrates Court, the offender may be fined up to £1000. The court may also order the offender to carry out the works originally directed, and if he still fails to comply, without reasonable excuse, he may be fined at a rate of £50 per day that the work remains uncompleted. Alternatively, the Council may simply send in workmen to carry out the work, and then charge the hedge-owner for the full costs. The costs are recoverable as a local land charge on the property, so would be binding on successive purchasers of the property.

## **4. Fees**

### **Why should the person who is suffering the hedge problems have to pay the Council to intervene?**

The Anti-social Behaviour Act 2003 states that complainants must pay a fee to the local authority when they submit their hedge complaint. There are several reasons why the government thinks this is fair and reasonable:

- Most people who responded to questions about fees in the 1999 consultation thought it was fair that the complainant should pay something for the local authority to intervene in their hedge dispute.
- Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the local authority really is a last resort.
- A fee will also help to deter frivolous or vexatious complaints.
- It is common practice for local authorities to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general.

### **But the complainant is the innocent party in this dispute.**

It is important to understand the way the legislation works. It allows local authorities to review these cases, as independent and impartial third parties. Authorities are not investigating any offence - none has been committed, even if a complainant 'wins' their case - and so the legislation does not deal in innocent or guilty parties. As a result, the fee is a payment for a service - not a penalty.

### **Can I reclaim the fee from the hedge owner?**

There is no procedure under the Anti-social Behaviour Act 2003 for the complainant to obtain re-payment of the fee, either from the local authority or from the hedge owner.

You may be able to take your neighbours to the small claims court. It can be used for most claims for £5,000 or less and so, on the face of it, the procedure may apply to reimbursement of the fee for making a complaint about a neighbour's high hedge. Further information is available from the county court and at [www.courtservice.gov.uk](http://www.courtservice.gov.uk).

## **5. Deciduous Trees and Hedges**

### **Why can't I complain to my local authority about deciduous trees and hedges that cause problems?**

The government decided to restrict the legislation to evergreen hedges because they had evidence that they were a widespread problem - from *Hedgeline*, the campaign group, and other letters received from all over the country. Both the problem and possible solutions, were the subject of public consultation and the results indicated overwhelming support for new laws to deal with evergreen hedges. The consultation revealed little support for legislation to deal with all problem hedges.

## **6. Further information**

If you don't find the answer here, you can contact the following about high hedge matters:

Office of the Deputy Prime Minister at [hedges@odpm.gsi.gov.uk](mailto:hedges@odpm.gsi.gov.uk)

Trees Section of Bromsgrove Council at [trees@bromsgrove.gov.uk](mailto:trees@bromsgrove.gov.uk) or by phone on 01527 881320 or 881321.