

MANAGING THE ENVIRONMENT PDG

12 July 2016

High Hedges Policy

Cabinet Member: Cllr Neal Davey

Responsible Officer: Nick Sanderson, Head of Housing and Property Services

Reason for Report: This policy is due for renewal in the current municipal year and Members are invited to review the existing High Hedge policy.

RECOMMENDATION(S): To continue to adopt the current High Hedge policy and processes outlined in Annex A.

Relationship to Corporate Plan: This report has no bearing on the Corporate Plan.

Financial Implications: Detailed in 6.1.

Legal Implications: None.

Risk Assessment: None.

1.0 Introduction

1.1 The law giving Local Councils power to deal with complaints about high hedges came into force on the 1st June 2005 and is contained in Part 8 of the Anti-social Behaviour Act 2003 (“the Act”) and the High Hedges (Appeals) (England) Regulations 2005. This provides local Councils to determine complaints by the owners/occupiers of domestic property adversely affected by evergreen hedges over two meters high.

1.2 The Council are aware of one high hedge intervention that took place between 2012 and 2016.

1.3 The law, however, does not require all hedges to be reduced to, or maintained at, a height of 2 meters.

1.4 Part 8 of the Act allows Councils to authorise officers to exercise powers of entry onto private land in connection with this legislation.

2.0 Role of the Council

2.1 The role of the District Council is to act as an independent and impartial third party in the event of a dispute. The Act does not intend Councils to negotiate or mediate between individuals but adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant’s property. Account also needs to be taken of views and relevant factors that include the hedge owner’s amenity and that of the wider neighbourhood.

- 2.2 It is intended that complaining to the Council would always be the last resort and neighbours would be expected to have made every effort to resolve the issue amicably. The Council may reject the complaint if it is considered that insufficient effort has been made to resolve the matter amicably.
- 2.3 The Council are able to charge a fee for this service that is to be paid by the complainant. The fees set in 2012 are still seen to be reasonable charges for this service.
- 2.4 The Council may issue a notice requiring the owner or occupier of the land where the hedge is situated to take action to remedy the problem and to prevent it recurring. This remedial notice may be enforced through criminal prosecutions and/or by the Council entering the land and carrying out necessary work if the owner or occupier fails to do so.
- 2.5 The Act does not specify which service within the Council should carry out this function (such as Planning or Estates Management) and this currently lies within the Estates and Property Services team. It would, however, be necessary for the Council to adopt a multi-discipline approach which would encompass control, administration, monitoring and enforcement, if required.

3.0 Appeals

- 3.1 Under the regulations, the complainant and the owner or occupier of the land where the hedge is situated can appeal against:
- The issue of a remedial notice,
 - The withdrawal of a remedial notice;
 - The waiver of relaxation of its requirements.
- 3.2 In addition, the complainant can appeal against:
- A decision by the Council that the height of the hedge is not adversely affecting their reasonable enjoyment of their property;
 - A decision not to require remedial action even though the height of the hedge is causing problems.
- 3.3 Although the right of appeal for the above items is to the Secretary of State, all his appeals functions are carried out by the Planning Inspectorate (PINS).
- 3.4 There is no right of appeal for any other circumstance and the decision is not considered a case or complaints about the length of time to determine a case would be dealt with through the Councils' complaint system or the Local Government Ombudsman.
- 3.5 Annex A attached details the process of determining a complaint.

4.0 Resources

- 4.1 The requirements of these regulations are being met by the Estates and Property Services team but will continue to require a multi-disciplined approach across the Council with input from other services such as Legal and Planning Enforcement.
- 4.2 The Government advice proposed prevention rather than cure and, therefore, puts an emphasis on amicable settlement of disputes. There are several organisations that will provide advice on the most suitable means for resolving neighbour disputes and offer people practical help in putting together their side of the case such as the Citizens Advice Bureau and Devon Mediation Service. Officers will, therefore, exchange information and work in partnership with these other agencies.
- 4.3 The cost of this mediation would need to be borne by the complainant and would not form part of the fee payable to the Council.

5.0 Financial Implications

- 5.1 The Act allows Councils to charge a fee for determining a complaint about a high hedge. The Secretary of State has not, at present, used his powers to prescribe, through regulations, a maximum fee. Each Council is free, therefore, to charge for this service as required.
- 5.2 It is for each authority to decide whether to require a fee; how much this should be; whether to set different rates for different groups of people (for example, those on low incomes or benefits).
- 5.3 It is also for Councils to decide whether or not to provide refunds. In certain circumstances, Councils might wish to return any fee paid, for example if the matter is subsequently settled without Council intervention.
- 5.4 All formal complaints must be accompanied by the right fee. As a general rule, each complainant will pay one fee, irrespective of the number of hedges or hedge owners that might be involved.
- 5.5 The Act does not prescribe the length of time to determine a complaint, however depending upon the number of complaints received a period of 12 weeks would not be unreasonable.

6.0 Fees

- 6.1 It is not proposed to increase the level of reasonable fees detailed in Table 1 and approved in 2012.

Table 1

Fee for determining a complaint about a high hedge	£350
Fee for persons receiving benefit	£175
Refund if complaint has been processed but subsequently settled	No refund
Refund if complaint and fee had been received but not yet processed and subsequently withdrawn	75% refund

- 6.2 We have also looked at fees in other areas for comparison and these are detailed in Table 2.

Table 2

	MDDC	EDDC	NDDC
Fee for determining a complaint about a high hedge	£350	£350	£350
Fee for persons receiving benefit	£175	£350	£350
Refund if complaint has been processed but subsequently settled	No refund	No refund	Partial refund (case by case basis)
Refund if complaint and fee had been received but not yet processed and subsequently withdrawn	75% refund	No refund	Full refund

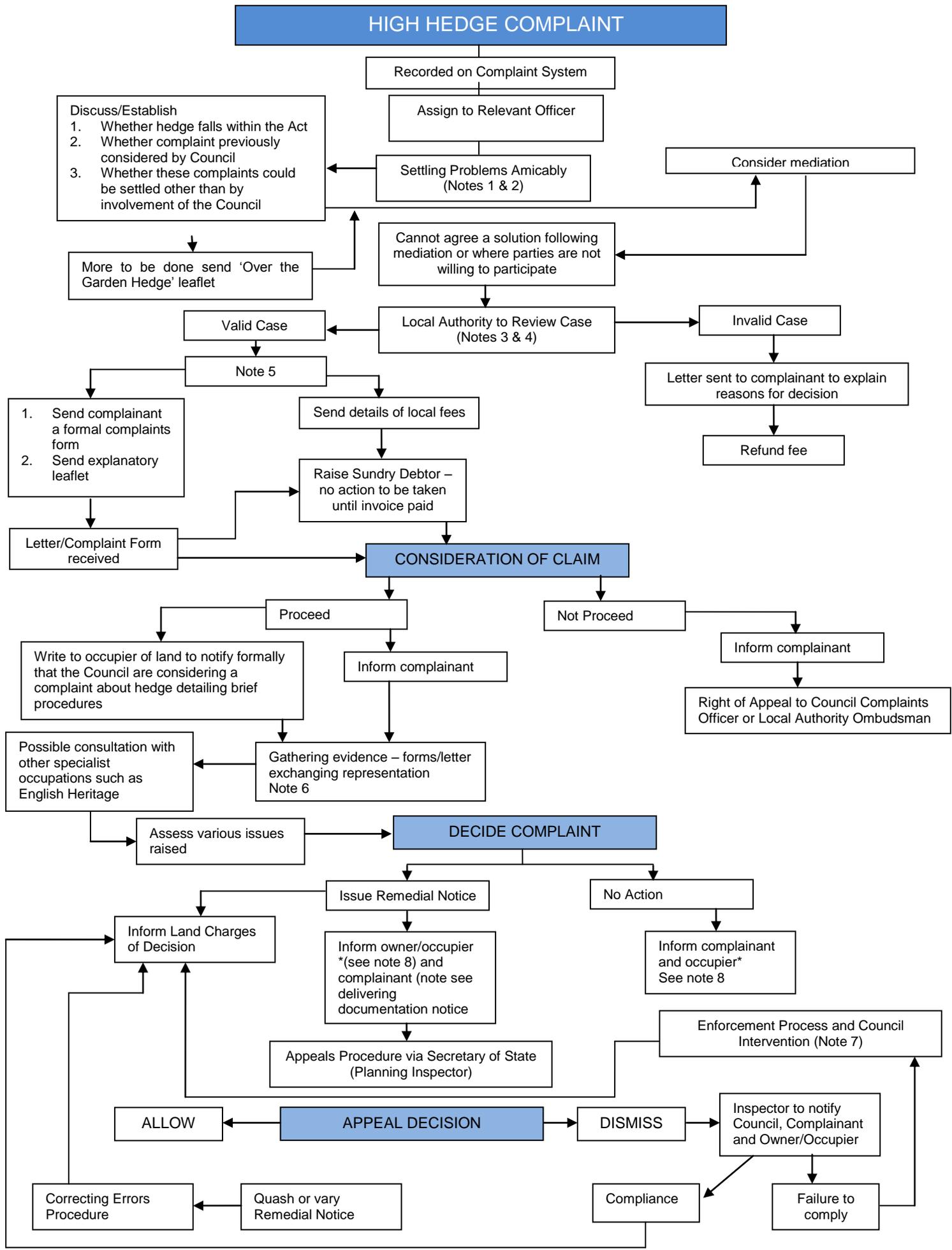
Contact for more Information: Andrew Busby, Estates Manger, Tel: 01884 234948
abusby@middevon.gov.uk

Circulation of the Report: Management Team and Councillor Neal Davey

Annex A

High Hedge Complaint Flowchart

1. The law requires people to have taken reasonable steps to try to settle their disputes for themselves before complaining to the Council.
2. Officers should advise on how to deal with neighbours in a way that is more likely to lead to an agreed solution.
3. Act as an independent and impartial third party.
4. Any complaint must relate to a high hedge and meet the definition.
5. When approached by someone wishing to make a formal complaint under the Act, provide the person with policy guidelines and a complaints form.
6. It is necessary to ask the owner/occupier to comment on the points raised and to provide additional information.
7. Councils have the power to enter land where the hedge is situated and carry out the works specified under the remedial notice and recover costs.
8. The Act requires the Council to notify the complainant and the owner of the land where the hedge is situated of their decision and the reasons for it, as soon as it is reasonably practicable. If they decide to issue a remedial notice, this must be copied to all parties. The Council should explain the rights of appeal against their decision and provide the contact details for the Planning Inspectorate.



HIGH HEDGE COMPLAINT

Recorded on Complaint System

Assign to Relevant Officer

Settling Problems Amicably
(Notes 1 & 2)

Consider mediation

- Discuss/Establish
- Whether hedge falls within the Act
 - Whether complaint previously considered by Council
 - Whether these complaints could be settled other than by involvement of the Council

More to be done send 'Over the Garden Hedge' leaflet

Cannot agree a solution following mediation or where parties are not willing to participate

Valid Case

Local Authority to Review Case
(Notes 3 & 4)

Invalid Case

Letter sent to complainant to explain reasons for decision

Refund fee

Note 5

- Send complainant a formal complaints form
- Send explanatory leaflet

Send details of local fees

Raise Sundry Debtor – no action to be taken until invoice paid

Letter/Complaint Form received

CONSIDERATION OF CLAIM

Proceed

Not Proceed

Write to occupier of land to notify formally that the Council are considering a complaint about hedge detailing brief procedures

Inform complainant

Inform complainant

Right of Appeal to Council Complaints Officer or Local Authority Ombudsman

Possible consultation with other specialist occupations such as English Heritage

Gathering evidence – forms/letter exchanging representation
Note 6

Assess various issues raised

DECIDE COMPLAINT

Issue Remedial Notice

No Action

Inform Land Charges of Decision

Inform owner/occupier *(see note 8) and complainant (note see delivering documentation notice)

Inform complainant and occupier*
See note 8

Appeals Procedure via Secretary of State
(Planning Inspector)

Enforcement Process and Council Intervention
(Note 7)

ALLOW

APPEAL DECISION

DISMISS

Inspector to notify Council, Complainant and Owner/Occupier

Correcting Errors Procedure

Quash or vary Remedial Notice

Compliance

Failure to comply