



Office of the
Deputy Prime Minister

Creating sustainable communities

High Hedges Complaints: Prevention and Cure

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Preface

This Guide sets out the Government's policy advice on administering complaints about high hedges in England, under Part 8 of the Anti-social Behaviour Act 2003. It outlines the law and suggests ways in which Councils can run the system in line with good administrative practice. In addition, it offers advice on the steps people can take to avoid more hedge problems in the future and, where they do arise, how they might settle the matter amicably.

When using this Guide, two points need to be borne in mind. First, Councils and others are not required to follow the advice given. Secondly, it should not be relied on as a definitive statement of the law. The law is contained in the relevant primary and secondary legislation; this document is for guidance only. Anyone unsure of their legal rights or obligations should consult a solicitor.

Any questions about the Guide should be addressed to the Trees and Hedges Team, Zone 3/C5, Eland House, Bressenden Place, London SW1E 5DU or emailed to hedges@odpm.gov.uk.

Chapter 1: Preventing hedge problems

How to prevent hedge problems – good design – planning conditions – covenants – better information

- 1.1 A good hedge has many benefits as a garden boundary. A hedge is a useful weather and dust filter, is inexpensive to create and long-lasting, can encourage wildlife and can be a feature of beauty and interest in its own right. It also offers privacy and security.
- 1.2 Many of the problems associated with hedges occur because fast-growing plants have been used for quick results, producing hedges that are difficult to maintain and have become too large. Choosing more suitable hedging plants or finding another way of achieving the effect that is wanted can, therefore, help avoid outsize hedges and prevent future problems.
- 1.3 Better information is important but – especially in new developments – good design, planning conditions and restrictive covenants can play a part. And local authorities, housebuilders, landscape architects and contractors, growers and retailers all have a role.

Good Design

- 1.4 In growing tall hedges most people are seeking to create privacy and to prevent others looking into their property. Advice on designing for privacy is contained in *Better places to live by design: a companion guide to PPG3*¹.
- 1.5 This relates largely, however, to the relationship between the house and public areas, such as the street. But research shows that people also want their garden, patio or yard to be fully screened so that neighbours cannot easily see in. And so they will often replace or fortify existing barriers to ensure they are at least head height. Bushes and trees may also be planted to give extra privacy. People employ these additional safeguards even where housing densities are low and they have generously-sized gardens.
- 1.6 To secure privacy and so deter people from throwing up unsuitable defences, new developments should pay attention to what happens in those parts of a property that might be away from public view but not necessarily from the gaze of neighbours. This is not just a matter of the physical separation of properties. It is not enough, therefore, to rely on established rules of thumb like a minimum ‘back to back’ distance of 20 metres. It requires careful thought about:
 - sight lines into rooms at the rear of the house and into any private garden or yard, taking account of changes in levels within and between sites, such as a steeply terraced garden, balcony or roof garden;
 - orientation which might affect use of the indoor and outdoor space, such as the location of patio or other seating area;
 - landscaping and boundary treatment.
- 1.7 Consideration also needs to be given to the relationship with properties neighbouring the development. In planning the layout and design of the new development, regard should be had to:
 - safeguarding a reasonable degree of privacy for neighbouring properties;

¹ *Better places to live by design: a companion guide to PPG3* is available through the planning guidance pages of the ODPM website at www.odpm.gov.uk.

- mitigating the impact on them of what might otherwise be perceived as intrusive development;
- the likely effect on the proposed development of existing trees, shrubs and hedges on adjacent properties.

1.8 Design solutions might include:

- providing walls or solid fences to at least head height. Boundary markers that have a temporary air about them or that you can see through (eg chain link fences or railings) might encourage people to introduce unsuitable screening;
- retaining existing single trees or planting new ones as a means of breaking up sight lines;
- retaining existing groups of trees and woodland, or planting new ones, to act as a buffer zone between the development and neighbouring properties;
- locating buildings in the new development to minimise the impact from trees, shrubs and hedges on properties surrounding the site.

1.9 The key is thoroughness and completeness, ensuring that all elements have been considered in detailed design terms. This includes buildings, landscape and the interface between them, both within the development and in relation to surrounding properties.

1.10 As noted in paragraph 1.1, there are many good reasons for planting hedges. Where they are incorporated in new developments:

- use plants that will not grow too large. Slower growing varieties include yew, holly, berberis, hornbeam;
- think about the maintenance burden. All hedge plants need to be trimmed at least once a year. Vigorous species that require more frequent pruning include hawthorn, Lawson's and Leyland cypress, privet. In addition, some species take more kindly to pruning than others. For instance, hornbeam can withstand hard pruning. On the other hand, the structure and re-growth of conifer hedges will be severely affected the harder they are cut back;
- lessen the temptation to interweave fast-growing species into a newly planted hedge by adding a temporary screen alongside the hedge, to improve security, privacy and shelter while it grows to a useful size. This may take three to seven years.

1.11 Further information on choosing suitable hedging plants for domestic situations is in the leaflet *The right hedge for you*². Help on garden hedges, including plant selection, is also available through the advice pages of the Royal Horticultural Society's website at www.rhs.org.uk.

1.12 Fast-growing hedges may be planted specifically to afford shelter in exposed locations. They might also be used to provide a quick and effective screen for new or newly developed buildings, as a means of protecting neighbours' amenity. If not kept under control, however, such hedges might soon overwhelm neighbours. Alternative design solutions suggested in paragraph 1.8 might be considered. Other options include a trellis or frame with climbers – though if a trellis raises the height of a boundary wall or fence above 2 metres, a planning application may be necessary.

² *The right hedge for you* is available at www.odpm.gov.uk/treesandhedges or from ODPM Free Literature, telephone 0870 1226 236.

- 1.13 If vigorous hedges are essential, the adverse impact on neighbours can be reduced by:
- close spacing of the individual trees or shrubs that make up the hedge. Competition between the plants will help to limit their eventual size, compared to more widely planted hedges;
 - planting well within boundaries, so that growth does not spread into neighbouring properties and to aid all-round maintenance.

Planning Conditions

- 1.14 Local planning authorities may enforce this good design practice by attaching suitable conditions to planning permissions that they grant for new developments – including development of existing properties, such as extensions.
- 1.15 Guidance on the use of conditions in planning permissions is set out in Department of the Environment circular 11/95 *The Use of Conditions in Planning Permissions*. This indicates that planning conditions should be imposed only where they are necessary or reasonable, and should be precise, enforceable and relevant both to planning and to the development in question.
- 1.16 The circular recognises that the use of conditions may be necessary to secure a high quality of design if a development is to make a positive contribution to its surroundings. This includes the appearance and treatment of spaces between and around buildings.
- 1.17 Local planning authorities should, therefore, consider imposing conditions to:
- secure suitable boundary treatments;
 - ensure any hedges are of species suitable for the location and require their long-term maintenance at a particular height;
 - provide suitable screening of the development.
- 1.18 Local planning authorities should also consider using conditions to control future alterations to buildings that might affect the privacy of neighbours. For example, adding or enlarging windows or converting a flat-roofed extension to a first floor balcony or roof garden. Such changes might cause neighbours to grow a high hedge to prevent being overlooked. Although these minor alterations can usually be made without the need to apply for separate planning permission, these rights may be restricted or removed where the local planning authority consider it necessary or reasonable to do so by attaching a suitable condition to the original planning permission. Suggested models of suitable conditions, for use in appropriate circumstances, are contained in Appendix A to circular 11/95 (see numbers 52 and 62).

Covenants

- 1.19 Planning conditions cannot affect hedges planted by occupiers of the development, after it has been completed. Such matters can, however, be covered by covenants – legal restrictions on properties that are specified in the title deeds. Covenants can last indefinitely and can make long-term or permanent provision for maintaining hedges. Covenants may be enforced through the courts where the covenantor is absent (eg is no longer in business) or unwilling to take action.
- 1.20 To help prevent future hedge problems, developers should consider introducing legal covenants for new residential developments that:

- set out the arrangements that apply to maintenance of boundaries or screens, including the responsibilities of neighbours on either side of the boundary;
- place limits on the size or type of hedge which may subsequently be planted on the property.

Better Information

1.21 As noted in paragraph 1.2, many outsize hedges are the result of mismanagement and neglect. Leyland cypress has been a particular culprit because it is vigorous, widely available and inexpensive. People have not, however, realised that it also needs frequent and substantial trimming to keep it within bounds.

1.22 Helping people to understand the commitment that they would be taking on with fast-growing hedges and the alternatives available might assist them to make the right choice and avoid future problems. This requires the active participation of growers, retailers, developers, landscapers and advisers.

1.23 Growers and retailers, in particular, should:

- always have alternatives to Leyland cypress available, and promote them actively;
- provide information, such as growth characteristics and maintenance requirements, to help customers choose appropriate plants;
- clearly label plants to indicate growth rates and ultimate size;
- spell out to potential hedge owners the need for maintenance and the consequences of neglect;
- ensure staff are able to provide accurate advice to customers on choosing, siting, planting and caring for hedges;
- advise customers to discuss with their neighbours their choice of hedge and its future maintenance requirements.

1.24 Developers, landscapers and advisers should:

- always consider, or offer, alternatives to hedging where space is limited and people are looking for low-maintenance solutions. Carefully positioned trees or plants within the garden, or use of trellis panels, pergolas or other frames with climbers may be as effective in preventing overlooking as tall boundary hedges;
- choose, or recommend, appropriate hedges, taking account of potential size and the time people are willing to spend on maintenance;
- spell out to new and potential hedge owners the need for maintenance and the consequences of neglect;
- provide information for new house buyers to help them choose suitable hedging;
- advise on the siting of hedges within the boundary of the garden, to assist in maintenance, and reduce problems with neighbours;
- recommend consultation with neighbours on the siting and maintenance requirements before planting a hedge.

Chapter 2: Settling problems amicably

Settling hedge problems – negotiation – mediation – sources of help and advice

- 2.1 If someone is troubled by a neighbouring hedge, the best way to deal with the issue is to discuss it amicably and to agree a solution. For this reason, the law requires people to have taken reasonable steps to try to settle their hedge dispute for themselves before complaining to the local Council (see Chapter 5: *Reasonable steps to resolve the dispute amicably*).
- 2.2 The Community Legal Service leaflet *Alternatives to court*³ includes information on a variety of procedures for resolving disputes, short of going to court. Not all of those mentioned will be suitable for settling neighbour problems. Negotiation or mediation are likely to offer the best chances of success.

Negotiation

- 2.3 It is often daunting to tackle neighbours about a problem, and best not done in the heat of the moment. Advice on how to deal with neighbours in a way that is more likely to lead to an agreed solution is in the leaflet *Over the garden hedge*⁴.
- 2.4 This will work best where people have good relations with their neighbours.

Mediation

- 2.5 Where people do not get on or if the dispute over the hedge is long-running, mediation might be the answer.
- 2.6 Community mediation is particularly effective in this type of dispute. It involves an independent and impartial person (the mediator) helping those in dispute to work together to reach a settlement. The mediator's job is not to make a decision. Instead, they help the people concerned to understand each other's point of view – dealing with how they feel about the situation as well as the facts – without apportioning blame. From there, the participants can move forward to think about how they could put matters right and to agree a plan of action. If mediation is to work, people must go into it willingly.
- 2.7 Further information about local community mediation services is on the Mediation UK website at www.mediationuk.org.uk. People can also locate their nearest community mediation service through this site. Community mediation is usually free of charge.
- 2.8 There are also a number of specialist companies offering mediation and other dispute resolution services, for a fee.

Sources of Help and Advice

- 2.9 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. They will not, however, usually arbitrate or mediate.

³ *Alternatives to court* is available free on the Community Legal Service website at www.clsdirect.org.uk.

⁴ *Over the garden hedge* is available at www.odpm.gov.uk/treesandhedges or from ODPM Free Literature, telephone 0870 1226 236.

Community Legal Service

- 2.10 The Community Legal Service is a public organisation that helps people to find the right legal information easily. They maintain the Community Legal Service Directory, which lists lawyers and advice centres that meet certain quality standards. The entry for each organisation in the Directory provides information on whether services are generally free or whether there is a charge.
- 2.11 The Directory is accessible through the Community Legal Service website at www.clsdirect.org.uk and through local libraries.

Citizens Advice Bureaux

- 2.12 Citizens Advice Bureaux give free, confidential, impartial and independent advice on a range of subjects. They will be able to put people in touch with their local community mediation service or help someone to work out what they might say, or put in a letter, to their neighbour.
- 2.13 They also run an online advice guide containing up to date and practical information, at www.adviceguide.org.uk. People can locate their nearest Citizens Advice Bureau through this site, as well as through the local telephone book.

Other help

- 2.14 The Community Legal Service website describes, and has links to, other sources of help and advice. In addition, some firms of solicitors offer a set amount of initial free advice, either by email, over the telephone or through personal interview. Some membership organisations, such as the Country Land and Business Association or Saga, are also able to provide members with advice on legal issues.

Chapter 3: Complaining to the Council: introducing the law on high hedges

The law on high hedges – role of local Councils

- 3.1 People normally do not need permission to plant a hedge in their garden. And there are no general restrictions on how high you can grow your hedge. The rules that govern the height of boundary walls and fences do not apply to hedges.
- 3.2 While common law rights entitle neighbours to cut overhanging branches back to the boundary line (unless other legal restrictions, such as a tree preservation order, apply), they cannot reduce the height of a hedge unless the owner agrees. Where people cannot agree a solution to their hedge problems, they may be able to ask their local Council to consider their complaint.

The Law

- 3.3 The law giving local Councils powers to deal with complaints about high hedges is contained in Part 8 of the Anti-social Behaviour Act 2003 (“the Act”) and the High Hedges (Appeals) (England) Regulations 2005 (“the Appeal Regulations”)⁵.
- 3.4 It makes provision for local Councils to determine complaints by the owners/occupiers of domestic property adversely affected by evergreen hedges over 2 metres high. The Council are able to charge a fee for this service, to be paid by the complainant. They may also reject the complaint if they consider that insufficient effort has been made to resolve the matter amicably, or that the complaint is frivolous or vexatious.
- 3.5 The Council may, if they consider the circumstances justify it, 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 is known as a “remedial notice”. Any remedial notice may be enforced through criminal prosecutions and/or by the Council entering the land and carrying out the necessary work if the owner or occupier fails to do so.
- 3.6 The law does not require all hedges to be reduced to, or maintained at, a height of 2 metres.

Role of Local Councils

- 3.7 Complaints under this legislation are administered by unitary and district councils (“the Council”). Under the Local Government (Functions and Responsibilities) (England) Regulations 2000 as amended⁶, responsibility for all functions relating to high hedges rests with the full Council and not with the Executive, where such arrangements exist.
- 3.8 The Act does not specify which department within the Council should carry out this function (such as, planning or environmental health). It is for each Council to decide which part of their organisation should be responsible for dealing with high hedge complaints. When they have done so, it is good practice to inform relevant bodies, such as parish councils, the local Citizens Advice Bureau, Community Legal Service Partnership, and community mediation service.
- 3.9 The role of the Council is to act as an independent and impartial third party. They do not negotiate or mediate between individuals but will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant’s property. In doing so, they will take

⁵ Statutory Instrument 2005 No. 711.

⁶ Statutory Instrument 2000 No. 2853, to which relevant amendments have been made by Statutory Instrument 2005 No. 714.

account of all views and relevant factors – including the hedge owner’s amenity and that of the wider neighbourhood. They will assess each case on its particular merits.

- 3.10 If they think it is justified, the Council may order the hedge owner to remedy the problem by, for example, reducing the height of the hedge and maintaining it at the lower level. The Council can only require works to the hedge that address any problem it is causing. There is nothing in the Act that says nuisance hedges must be cut down to 2 metres.

Chapter 4: What complaints Councils can consider

Scope of the Act – definition of a high hedge – barrier to light or access – location of hedge – domestic property – grounds of complaint – reasonable enjoyment of property – complainant – invalid complaints

4.1 Under the terms of the Act, Councils can only consider a complaint if it satisfies the following criteria:

- it must relate to a high hedge as defined in the Act;
- the hedge must be on land that is owned by someone other than the complainant;
- it must be affecting a domestic property;
- the complaint must be made on the grounds that the height of the hedge is adversely affecting the reasonable enjoyment of the domestic property in question; and
- it must be brought by the owner or occupier of that property.

High Hedges

4.2 A high hedge is defined in the Act⁷ as so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level. But, for these purposes, a line of evergreens or semi-evergreens is not to be regarded as forming a barrier to light or access if gaps significantly affect its overall effect as such a barrier at heights of more than 2 metres above ground level.

4.3 When considering whether a particular hedge can be the subject of a complaint under the Act, people should ask themselves the following series of questions:

- is the hedge – or the portion that is causing problems – made up of a line of two or more trees or shrubs;
- is it mostly evergreen or semi-evergreen;
- is it more than 2 metres above ground level;
- even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light or views.

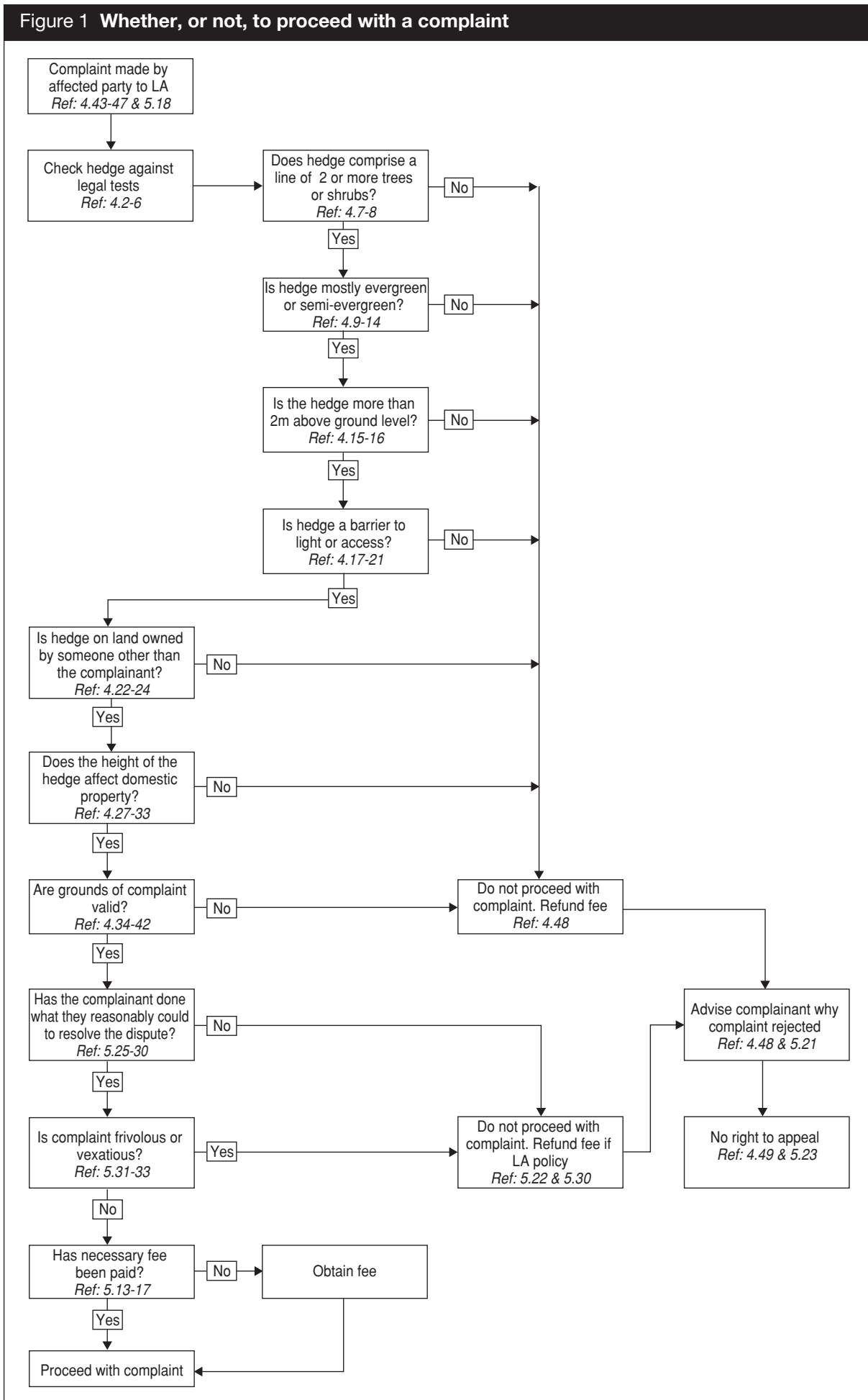
4.4 If the answer to all these questions is ‘yes’, then it is likely to be a high hedge for the purposes of the Act.

4.5 It is not necessary for the whole of the hedge to fall within the definition. If some parts of it qualify, they can be considered as individual hedges under the Act.

4.6 The following additional information might help when people are considering the answers to the questions set out above.

⁷ Section 66.

Figure 1 Whether, or not, to proceed with a complaint



Line of two or more trees or shrubs

- 4.7 A complaint cannot be made under the Act about single trees or shrubs, whatever their size. A tree or shrub that has multiple stems, all growing from the same trunk or root plate, remains a single tree or shrub and so falls outside the scope of the Act. This is the position even though the multiple stems might result in a considerable spread.
- 4.8 The two or more trees or shrubs do not have to form a straight line. As long as they are roughly in line, they will be caught. It is unlikely, therefore, that the definition will catch groups of trees, copses or small woodlands – unless they have a row of trees bounding them.

Mostly evergreen or semi-evergreen

- 4.9 The Act applies not only to Leyland cypress or conifers but also includes other evergreen trees or shrubs, such as laurel. It does not include climbing plants, such as ivy, or bamboo – which is classed as a grass.
- 4.10 The term semi-evergreen is not separately defined in the Act but normally means that the hedge retains some live foliage throughout the year. Depending on geographical location, this could include privet. The further north, the more likely that a privet hedge will lose its leaves over the winter and so would not be covered by this definition.
- 4.11 Beech and hornbeam hedges are excluded. Although they may retain some foliage for most of the year, this is brown and dead.
- 4.12 Reference works such as *Hillier Gardener's Guide to Trees and Shrubs* or the *RHS A-Z Encyclopedia of Garden Plants* may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.
- 4.13 A hedge does not have to comprise wholly evergreen or semi-evergreen trees or shrubs to fall within the definition. The Act applies to hedges that are predominantly evergreen or semi-evergreen. Whether a particular hedge is mostly evergreen or semi-evergreen is a matter of judgement. It does not necessarily require a set number or proportion of the trees or shrubs in the hedge to meet this description.
- 4.14 The effect of including predominantly evergreen or semi-evergreen hedges is to bring mixed hedges – that include some deciduous species – within the scope of the definition. Thus deciduous trees that are located within a predominantly evergreen hedge might be the subject of a complaint under the Act.

More than 2 metres above ground level

- 4.15 The 2 metres should be measured from the ground where the hedge is growing – that will usually be on the hedge owner's side. Even if the property affected is on a lower (or higher) level than the land where the hedge is situated, the 2 metres should still be measured from the ground where the hedge is growing.
- 4.16 For these purposes, ground level means the natural level of the ground where the hedge is situated. Normally, therefore, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge. An exception might be where the hedge has been planted on a mound, or in a bed or other container that is raised above the ground. In such a case, the measurement should be from the natural ground area rather than of the hedge alone.

Barrier to light or access

- 4.17 The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, are a barrier to light or access. This is about the physical appearance of the trees and shrubs in question – and whether or not they form what we might commonly consider to be a hedge. Only what they look like above 2 metres counts. This is consistent with the fact that complaints cannot be brought against 2 metre high hedges. It effectively takes anything below this height outside the scope of the Act.
- 4.18 Whether a particular hedge meets this criterion is a matter of judgement, depending on its composition, form, growth habit, and past management. The key question is whether – even though there might be gaps in the foliage or between the trees or shrubs – the hedge is capable of obstructing light or views.
- 4.19 The trees or shrubs in the hedge may have been closely planted and become so entangled that they appear as a solid green wall. In such circumstances, the matter is straightforward: the hedge is evidently capable of blocking light or views. Other cases may be more difficult to judge. The trees or shrubs may be more widely spaced so their branches are not touching. Branches might have fallen off or been removed so the canopy is lifted. Or the growth might be straggly and foliage sparse. Such cases must be assessed individually, on their particular merits. But, if individual trees or shrubs are so widely spaced, or the gaps in the foliage are so extensive, that it is possible to see what lies behind them, then the hedge might fall outside the Act.
- 4.20 If someone were to remove every other tree from their hedge, whether or not it would still be caught under the definition would depend on what the hedge looks like afterwards. If, despite any gaps, the hedge still acts as a barrier to light or access; and it comprises wholly or predominantly a line of two or more evergreen or semi-evergreen trees or shrubs; and it is over 2 metres high – then it would meet the definition of a high hedge. Insofar as parts of the hedge meet the definition, they could be considered as individual hedges.
- 4.21 This first step looks at the structure of the hedge and its potential to obstruct light or access. Whether or not the hedge actually obstructs light or access to the complainant’s property is not relevant here. This criterion cannot be used, therefore, to filter out complaints where the hedge is considered to have little adverse impact on the complainant’s property. Whether any gaps in the hedge make a material difference to its effect on the complainant’s reasonable enjoyment of their property is a separate issue, to be taken into account in determining the complaint (see Chapter 5: *Assessing and Weighing the Evidence*).

Location of the Hedge

- 4.22 The Act⁸ says that the hedge must be on land that is owned by someone other than the complainant. Otherwise, there is no restriction on where the hedge is situated. It is the effect of the hedge on a domestic property that is important, rather than where it is located.
- 4.23 Although the Act describes where the hedge is growing as “neighbouring land”, the use of the word neighbouring has no special significance here. In particular, the hedge does not have to be next door. It could, in theory, be several gardens down the road. Though, in practice, the farther away a hedge is, the less its impact and the less chance that a complaint will be successful. Nor does the hedge have to be wholly on a neighbour’s property. It could extend over several properties.
- 4.24 In addition, the offending hedge does not have to be growing in someone else’s garden. It could, for instance, be on parkland that backs onto a garden or yard, or on commercial premises.

⁸ Section 65.

Crown land

- 4.25 The Act applies to Crown land⁹. This means that Councils are able to investigate and determine complaints about high hedges on land owned by the Crown. For example, a hedge on land owned by a Government Department or NHS Trust might be adversely affecting neighbouring domestic property.
- 4.26 The Crown itself is not liable to prosecution under the Act, though its employees might be.

Affected Property

- 4.27 A person can bring a complaint under the Act if a domestic property is affected. The Act¹⁰ defines domestic property as a dwelling or any associated garden or yard. And it defines dwelling as any building or part of a building occupied, or intended to be occupied, as a separate dwelling.
- 4.28 This would exclude properties that might be in a residential area but wholly occupied by, say, a dental practice or other commercial use.
- 4.29 A complaint could not be brought under the Act if a hedge was affecting a garage, barn, summerhouse, greenhouse, shed or other outbuilding that might be used for storage or for purposes other than as living accommodation.
- 4.30 Where a property contains a mix of domestic and commercial uses, the Act would apply to protect the living quarters from the effects of a neighbouring high hedge.
- 4.31 Sometimes the division between domestic and commercial elements will be clear, eg the doctor's surgery that operates out of an extension to a home, or the flat above a shop or pub. In such cases, a complaint could be brought under the Act only if the doctor's home or the flat over the shop or pub were adversely affected.
- 4.32 Where the boundaries between the business and living quarters are more blurred, the question of whether or not a complaint may be brought under the legislation will turn on the facts of the particular case.
- 4.33 A garden or yard does not have to be attached to the dwelling, as long as it is linked – legally rather than physically – with a domestic property.

Grounds of Complaint

- 4.34 The Act¹¹ says someone can complain if the height of the hedge is adversely affecting reasonable enjoyment of a domestic property. Anyone making a complaint to the Council must, therefore, show that:
- the problems with the hedge are related to its height; and
 - they are adversely affecting the reasonable enjoyment of their property.

⁹ Section 84.

¹⁰ Section 67.

¹¹ Section 65.

Height

- 4.35 The Act applies only to problems experienced because the hedge is too tall. This includes obstruction of daylight and sunlight, jointly or as separate issues, as well as the visual impact of the hedge.
- 4.36 Problems associated with the width of the hedge, where it overhangs and intrudes on the complainant's property, will not normally be considered. The exception might be where the height of the hedge is a contributory factor. For example, a hedge might be so high that the complainant could not reasonably be expected to trim overhanging branches, and so cannot alleviate the problems it is causing.
- 4.37 Grounds of complaint that are unrelated to the hedge that is the subject of the complaint will also generally be disregarded. For example, claims that other hedges in the area are maintained at a lower height.

Roots

- 4.38 The Act¹² specifically excludes complaints about the effects of the roots of a high hedge. The Council will not, therefore, deal with complaints made under this legislation about such matters as:
- root-related property damage, including subsidence;
 - roots taking moisture and nutrients from the soil, so creating difficult growing conditions for plants;
 - roots blocking drains or invading pipes.

Reasonable enjoyment of property

- 4.39 The Act says that the hedge must be adversely affecting the complainant's reasonable enjoyment of their home.
- 4.40 Grounds of complaint must, therefore, relate to the impact of the hedge on the complainant's property, that is their home and garden. The following grounds will **not** normally be considered:
- the effect of the hedge, or the dispute over it, on the complainant personally. For example, that the problems with the hedge have caused worry, concern or depression, leading to health problems;
 - the effect of the hedge on particular activities that the complainant engages in on the property. For example, that the hedge interferes with a greenhouse, a vegetable patch, the growing of competition plants or annual bedding; or affects television reception, including any receiving aerial such as a satellite 'dish';
 - factors relating to the complainant's feelings about, or perceptions of, the hedge. For example, fears that the hedge will break or fall.
- 4.41 The reference to "reasonable" enjoyment of the property is also significant. It affects the way that Councils determine complaints. It requires them to:
- assess the impact of the hedge on the enjoyment that a reasonable person might expect from their home and garden, thereby introducing a degree of objectivity to the decision-making

¹² Section 65(4).

process. This may differ from the complainant's expectations. For example, the complainant might attach particular importance and weight to the loss of winter sunlight. The Council will, however, have regard to what is a reasonable amount of sunlight for people to get in their property at this time of year. They will also take into account the fact that the effect lasts for a limited time;

- consider what is reasonable in the circumstances. This means they must:
 - take account of all relevant factors, including the views of the hedge owner and the contribution that the hedge makes to the wider amenity of the area. They will not look solely at the complainant's concerns;
 - look at each case on its particular merits. A problem that leads to the issue of a remedial notice in one complaint might not necessarily produce the same outcome in another case – because of the different circumstances.

4.42 Potential complainants should have regard to these points in framing their grounds of complaint and substantiating their case. Further information on how Councils will assess whether a high hedge is adversely affecting the reasonable enjoyment of a property is in Chapter 5: *Assessing and Weighing the Evidence*. This should help complainants to assess the strengths and weaknesses of their case before they submit their complaint.

Who Can Complain

Owner or occupier

- 4.43 A complaint can be brought under the Act by the owner or occupier of the affected property¹³. Where there is both an owner and an occupier (eg landlord and tenant), each is entitled to complain to the Council.
- 4.44 A person does not have to live at the address for a set period before they can make a complaint. In addition, even if the high hedge was there when they moved in, they are still entitled to complain under the Act. It is unlikely, however, that someone would be in a position to complain to the Council shortly after taking over a property. They would need to have some experience of the adverse effects of the high hedge and to have taken steps to try to negotiate a solution with their neighbour.
- 4.45 Although the Act does not require an occupier (eg tenant) to get permission from the owner of their property before making a complaint, this might be a condition in their tenancy agreement. People should, therefore, check the terms of any such agreement before getting in touch with the Council.
- 4.46 Even if there is no requirement to obtain the property owner's consent, it is good practice for the occupier to inform them before a complaint is submitted to the Council. This is particularly important if someone is occupying a property for only a short time – especially where the owner is temporarily absent and intends to return to the property.

Unoccupied property

- 4.47 There is special provision for the owner of an empty property to bring a complaint under the Act¹⁴. They might, for example, have moved out but be unable to sell the house because of the high hedge.

¹³ Section 65(1)(a).

¹⁴ Section 65(2).

Invalid Complaints

- 4.48 If a Council reject a complaint because it does not meet the requirements set out in this Chapter and so falls outside the scope of the Act, they should inform the complainant as soon as possible and explain the reasons for the decision. The Council should also return any fee.
- 4.49 There is no specific right of appeal against a Council's decision that a complaint is invalid. If the complainant considers that the Council have not applied the legislation correctly, they can refer the matter to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

Chapter 5: Dealing with complaints

Complaints procedure – initial contact – complaint form – fees – reasonable steps to resolve problems – exchange of representations – publicity and consultation – site visit – assessing and deciding the complaint – delivering the decision

Informal Action

- 5.1 As explained in Chapter 2, complaining to the Council about someone else's high hedge should be a last resort. When Councils are first approached by someone with high hedge problems, they should not automatically send out a complaint form and leaflet about the procedure. It is good practice to establish with the enquirer the nature of the problem and what has been done to try to settle the matter through negotiation; and to guide them through the terms of the Act and the complaints procedures.
- 5.2 Early communication can help to establish whether the complaint is one that the Council can consider, in particular:
- whether the hedge in question and the problems encountered fall within the scope of the Act;
 - whether there is more that the person can do to try to resolve the matter without involving the Council;
 - where the Council have considered an earlier complaint, how much time has elapsed and whether there has been a significant change in circumstances that affects the Council's earlier decision.
- 5.3 If the Council think more could be done to resolve the dispute amicably, they should explain what further steps the person should take. Depending on the extent of contact with the owner of the hedge, the Council might consider providing information on alternative dispute resolution methods – including the leaflet *Over the garden hedge* and details of any local community mediation service.
- 5.4 Councils should offer factual information only: they should not give anyone advice on the merits of their case or the likelihood of success. If asked for such an estimate, Councils might refer potential complainants to the section below on *Assessing and Weighing the Evidence* which explains how their grounds of complaint will be assessed; and, where available, to previous decisions issued by the Council or, following an appeal, by the Planning Inspectorate.
- 5.5 Similarly, Councils should not mediate directly in high hedge disputes. Given their role in these complaints is to act as an independent and impartial third party, they could prejudice their position in determining any subsequent formal complaint if they seek to act as a go-between. The Council should normally refer such negotiation with the people concerned to any local community mediation service or similar organisation.

Making a Formal Complaint

- 5.6 When Councils are approached by someone in a position to make a formal complaint under the Act, they should normally provide the person with:
- a copy of a complaint form for completion or a checklist of information to be provided;
 - details of the local fees scheme; and

- the explanatory leaflet *High hedges: complaining to the Council*¹⁵.

5.7 It is also good practice for the Council to provide the name and contact details of the officer who will be dealing with the complaint.

Form

5.8 A complaint does not have to be in a particular format, though completing a standard form will help the Council to obtain the information they need in a consistent way. A complaint can be submitted in writing or electronically (see the section below on *Delivering Documents*). It can also be submitted by a relative or other agent acting for the complainant.

5.9 The person making a complaint will normally need to supply the following information:

- their name, address and other contact details;
- confirmation that the address relates to a domestic property;
- the name and address of the occupier of the land where the hedge is situated, together with similar details for the owner of the land in question (if different and if known);
- a location plan showing the hedge, the garden and the property that is affected;
- photos of the hedge, preferably with a figure for scale;
- confirmation that the hedge is more than 2 metres above ground level and comprises predominantly evergreen or semi-evergreen species;
- outline of the steps taken to settle the dispute by negotiation, with copies of relevant correspondence or other papers;
- details of how the height of the hedge is adversely affecting the reasonable enjoyment of the affected property.

5.10 In practice, the application constitutes the complainant's statement of case. It will be a key document in the Council's consideration of the complaint, as well as in any subsequent appeal. It is important, therefore, that the complainant, in setting out their grounds of complaint, does not just list the problems caused by the hedge but explains their impact and their severity in factual terms (eg the hedge blocks light to our living room which means that we need to keep electric lights on all day during the winter). They should also submit any supporting information that they wish to be taken into account.

5.11 A sample form, with guidance notes for its completion, is in the Appendix.

5.12 The person making the complaint should send a copy of the completed form to the owner and occupier of the land where the hedge is situated, at the same time as they submit it to the Council. The owner and occupier of the land in question should have been forewarned that failure to negotiate a solution would lead to the matter being referred to the Council and so the complaint should not come as a surprise.

¹⁵ *High hedges: complaining to the Council* is available at www.odpm.gov.uk/treesandhedges or from ODPM Free Literature, telephone 0870 1226 236.

Fees

- 5.13 The Act¹⁶ allows Councils to charge a fee for determining a complaint about a high hedge. The Secretary of State has not, at present, used his powers¹⁷ to prescribe, through regulations, a maximum fee. Each Council is free, therefore, to charge for this service as they think fit.
- 5.14 Should they so wish, Councils may provide this service for free, or charge different amounts to different groups of people. In certain circumstances, Councils might wish to offer the service at a reduced fee, or for free – eg to the disabled, the unemployed, those on low incomes or benefits – while making a charge to others based on the cost of providing the service.
- 5.15 It is also for each Council to decide whether or not to provide refunds. In certain circumstances, Councils might wish to return any fee paid – eg if the matter is subsequently settled without their intervention. There is no requirement, however, to offer refunds. In particular, complainants should not expect Councils to return money where the complaint has been formally determined, whether or not the outcome is favourable to them. Nor is it appropriate for Councils to get involved in any attempts by the complainant to seek reimbursement of their fees from the hedge owner.
- 5.16 It is good practice for Councils to publish details of their local fees scheme for dealing with high hedge complaints so that it is clear to people what the cost of making a complaint will be.
- 5.17 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.

Submitting the complaint

- 5.18 Complaints must be submitted to the Council in whose area the hedge is situated. Thus, where the hedge is on land within the boundaries of Council A but the complainant lives in the area of Council B, the complaint should be sent to Council A.

Uncommon cases

- 5.19 Complaints may not always involve one complainant, one hedge and one hedge owner. Councils are advised to deal with complaints involving multiple parties or hedges as follows:
- a. **Multiple complainants, single hedge, one owner.** For example, where there has been infill development, a hedge that bounds a large garden could affect several smaller neighbouring properties.

Councils must consider separately and individually the impact of the hedge on each property that is affected. Separate complaints should, therefore, be submitted by the owner or occupier of each of the affected properties, together with the requisite fee. If they are submitted at the same time, Councils are advised to link the complaints as they are processed so that the relationship between them, and the practical implications for the hedge owner, can be considered.
 - b. **One complainant, single hedge, multiple owners.** In the reverse of the above example, following infill development, incomers may have all planted hedges which form a continuous “barrier to light or access” when viewed from the larger property.

¹⁶ Section 68(1)(b).

¹⁷ Section 68(7).

In these circumstances, every owner and occupier of the properties where the hedge is situated would be a party to the complaint. Councils should, therefore, seek comments from every owner of the hedge and take these into account in determining the complaint. They would also notify all parties of their decision and send them a copy of any remedial notice that might be issued. The fact that the hedge is in multiple ownership is, in itself, unlikely to be relevant to the Council's consideration of the impact of the hedge on the affected property. In processing such a complaint, Councils might wish to satisfy themselves that the complainant has attempted to negotiate a solution with every owner of the hedge.

- c. **One complainant, multiple hedges, one owner.** The hedges in question might be parts of a longer hedge that does not, in its entirety, meet the legal definition. Alternatively, they might be separate hedges in different locations on the neighbouring land.

A single complaint may cover more than one hedge that affects the complainant's property. The Council, in determining the complaint, should consider the effect of each hedge individually as well as their cumulative impact.

- d. **One complainant, multiple hedges, multiple owners.** For example, a garden with hedges on three sides.

This would also be a single complaint but every owner and occupier of the properties where the hedges are situated should be invited to participate, as a party to the complaint, and should be notified of the outcome.

- 5.20 Further advice on how such cases might be considered is given later in this Chapter in *Communicating the Decision* and in Chapter 6: *Remedial Works*.

Whether or Not to Proceed with a Complaint

- 5.21 On receipt of a completed complaint form and the correct fee, the Council should as a first step check whether the complaint meets the requirements set out in Chapter 4, and thus whether it is one that they can consider under the terms of the Act. They should inform the complainant as soon as possible if they are unable to deal with the complaint, and return any fee (see Chapter 4: *Invalid Complaints*).

- 5.22 The Act¹⁸ also allows the Council not to proceed with a complaint if they consider either:

- that the complainant has not taken all reasonable steps to resolve the matters complained of without involving the Council; or
- that the complaint is frivolous or vexatious.

If the Council decide not to proceed with a complaint for either of the above reasons, they must inform the complainant as soon as they can and explain the reasons for the decision¹⁹. There is no requirement on Councils to refund fees in such circumstances.

- 5.23 There is no specific right of appeal against a Council's decision not to proceed with a high hedge complaint – whether on one of the above grounds or because they consider it falls outside the scope of the Act. But, if someone feels that the Council have not applied the legislation correctly or dealt properly with their case, they can complain to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

¹⁸ Section 68(2).

¹⁹ Section 68(5)(a) and (6)(a).

- 5.24 Councils should not, however, use this provision to turn away complaints where limited evidence has been provided of the problems caused by the height of the hedge. They should instead ask the complainant for additional information so that they can consider the matter further.

Reasonable steps to resolve the dispute amicably

- 5.25 What steps people should have taken before approaching the Council will vary from case to case, depending on the circumstances. It will not be enough, however, for people to claim that their neighbour is unapproachable. Further information on how people might settle their hedge dispute is in the leaflet *Over the garden hedge*.
- 5.26 In some cases the people concerned might be encouraged to try mediation. This is a quick and informal means of resolving disputes – with a high rate of success. But it works best where people willingly participate. For this reason, it is not a compulsory part of the process.
- 5.27 In other cases, where communication has completely broken down, a couple of exchanges of letters might be all the Council can reasonably expect.
- 5.28 For some people, their hedge problems will be long-standing and date back to well before the Act came into operation (1 June 2005). During this time they may have made several attempts to settle the matter through negotiation and been repeatedly rebuffed. Nevertheless, they should make a fresh approach to the person living where the hedge is situated before making a formal complaint to the Council. Circumstances will have altered significantly as a result of this new law. The person with the hedge might not welcome the Council's involvement and so might be more inclined to co-operate. If communication has broken down, or people are nervous of approaching their neighbour, they might prefer first to write to the person with the hedge to inform them of the change in the law and asking to discuss the problem. If the approach is rejected or there is no response, it would be advisable to warn the person that a formal complaint would be made to the Council.
- 5.29 As noted in paragraphs 5.1 to 5.5, people are encouraged to discuss with the Council – before submitting a formal complaint – what action they have taken to try to settle matters by negotiation and what other avenues might be open to them.
- 5.30 If, nevertheless, Councils receive a formal complaint, with the right fee, but think the people concerned could do more to settle the dispute themselves, they should explain what additional steps the complainant should take. The Council would put the case on hold while further action is taken to resolve the matter. They would re-activate the original complaint should these steps prove unsuccessful. It will be for Councils to consider whether they should refund fees in cases where the further action taken by the complainant leads to the successful resolution of the complaint.

Frivolous or vexatious

- 5.31 The requirements to take prior steps to resolve the dispute through negotiation and (depending on the terms of the local scheme) to pay a fee up-front when making a complaint should help to discourage frivolous or vexatious complaints reaching the Council in the first place.
- 5.32 Whether a complaint is frivolous or vexatious will turn on its particular circumstances and so needs to be considered on a case by case basis.
- 5.33 The most obvious example is where someone repeatedly complains (unsuccessfully) to the Council without there having been any significant change in circumstances that would affect the Council's decision.

Gathering the Evidence

- 5.34 The Act does not specify the procedure that Councils must follow in determining complaints. But they should take into account all relevant factors and should assess each case on its particular merits. They will need, therefore, to gather information about the hedge and its effect on both the complainant and the person occupying the land where the hedge is situated. It is suggested that the necessary information is collected through an exchange of representations and a visit to the site.
- 5.35 The following section on *Assessing and Weighing the Evidence* offers advice on how Councils might assess the various issues raised. This has a direct bearing on the information they will need to collect.

Main parties

- 5.36 The main parties to a complaint about a high hedge are:
- everyone who is a complainant; and
 - every owner and every occupier of the land where the hedge is situated.
- 5.37 The Act²⁰ requires all these people to be notified of the decision on a complaint, and so they should all play an equal part in the process leading to that decision. References to the main parties in the rest of this and subsequent Chapters include all the above. In particular, **it is important that the main parties are given copies of all submissions made to the Council so that the process is open and transparent.**
- 5.38 Where the hedge is located on a property containing flats or houses in multiple occupation, everyone living there, as well as the owner of the lease or freehold, would be a party to the complaint and should see all relevant papers.

Exchanging representations

- 5.39 Having satisfied themselves that the complaint is one they can deal with, the Council should normally send a letter of acknowledgement to the complainant giving the name and contact details of the officer dealing with the case. The letter should also explain briefly the procedure that the Council will follow. In particular, it should make clear that comments will be sought from the owner and occupier of the land where the hedge is situated and that the Council intends to visit the site. A sample letter is in the Appendix.
- 5.40 The Council should then write to everyone who owns and occupies the land where the hedge is situated, notifying them formally that the Council are considering a complaint about their hedge. The complainant should have sent them a copy of the complaint at the same time as it was submitted to the Council and so the approach from the Council should not come as a surprise.
- 5.41 The letter should explain briefly the procedure that the Council will follow, including that the Council intends to visit the site. In particular, it should invite the owner and occupier of the land where the hedge is situated to comment on the points raised by the complainant and to provide any additional information that they wish the Council to consider. Copies of these papers should be sent to the complainant at the same time as they are submitted to the Council. The Council might wish to seek confirmation this has been done.

²⁰ Section 68(6).

- 5.42 Councils might wish to use the sample letter and questionnaire in the Appendix to ensure information is provided in a consistent format. As noted above, where the property comprises flats or houses in multiple occupation, this letter should be sent to everyone living there, as well as the owner of the lease or freehold.
- 5.43 The section below on *Delivering Documents* provides advice on the steps that Councils might reasonably take where they are having difficulty in tracing the names and addresses of owners and occupiers of land, to try and ensure they receive key documents and so are aware of what is happening.

Interested parties

- 5.44 Most cases are unlikely to raise wider neighbourhood issues and so Councils should not normally publicise these complaints in the same way that they do with planning applications. An exception might be where the trees in the hedge are protected by a tree preservation order, or it is situated in a conservation area.
- 5.45 Councils might wish to seek views from the occupiers of properties, other than the complainant's, that might be affected by the hedge and so could potentially be affected by the Council's decision on the complaint. For example, properties that lie between the complainant's and the land with the hedge, or where a single hedge borders several adjoining properties.
- 5.46 Otherwise, representations from people not directly involved in the dispute (eg petitions or other expressions of support from neighbouring properties) should be discouraged. Their comments are unlikely to be material to the Council's consideration of the complaint, which turns on the facts and circumstances of the particular case.
- 5.47 The Council should send a copy of all comments from interested parties to the main parties. If the Council receive unsolicited representations, they should inform the people concerned that – unless withdrawn within a specified timescale – their comments will be forwarded to the main parties.

Consultation

- 5.48 Similarly, Councils are advised to confine their consultations to those specialist organisations or individuals whose expert input will help inform the decision on the complaint. For example, English Heritage might be consulted if the hedge is associated with or affecting a listed building. Arboricultural, horticultural, ecological, landscape or conservation advice might need to be sought.

Site visit

- 5.49 After the exchange of representations has been completed, the Council should normally arrange to visit the site. This enables the officer dealing with the case to see the hedge and surroundings at first hand, so that he can properly consider the written information and evidence already provided. The purpose of the visit is not to facilitate mediation or negotiation between the people in dispute, and so there should be no discussion of the merits of the complaint.
- 5.50 It may be necessary for the complainant and the person who occupies the land where the hedge is situated to attend so that the Council officer can gain access to the site and so see the hedge from both sides.
- 5.51 Councils should, wherever possible, enter the land where the hedge is situated with the agreement of the owner or occupier. But where the voluntary approach does not work, and Councils cannot obtain the information in any other way (eg from the complainant's property),

the Act²¹ gives Councils powers to enter the land where the hedge is growing in order to carry out their functions under the Act. They can also take away samples from the hedge.

- 5.52 Where such access is required, the Council must give at least 24 hours' notice of the intended entry to all occupiers of the land and should produce – if asked – evidence of their authority to enter the land in question. Further information about Councils' powers of entry under the Act is in Chapter 9: *Entry to Land*.
- 5.53 What information should be collected during the site visit will vary depending on the issues that have been raised during the exchange of representations. As a minimum, however, Councils are likely to need to record the height and length of the hedge, its position within the property and, in general terms, its species composition so that it can be accurately described in any remedial notice (see Chapter 6: *Description of the hedge*). They might also need to measure the size of the garden; the distance between the hedge and windows in the complainant's property; or note site levels.

Assessing and Weighing the Evidence

- 5.54 Having gathered information about the hedge and its effect on both the complainant and the person occupying the land where the hedge is situated, the Council should assess whether there is a problem, how serious it is and thus what weight to give the matter when making their decision.
- 5.55 The following advice might help Councils to carry out this assessment in an impartial, and broadly consistent, manner. It should be borne in mind that Councils are required to look at things not from the personal viewpoint of the people involved in the dispute but from the objective position of what a reasonable person might expect.
- 5.56 The list (below) of factors that Councils might be called on to consider is not exhaustive. Issues might occur that are not covered here. Equally, not all these factors will be relevant in every case.

Privacy

- 5.57 On a level site, a height of 2 metres will usually provide privacy from a neighbouring ground floor or garden. 3.5 to 4 metres will normally be enough to prevent overlooking from first floor to ground floor or garden, although this depends on whether the hedge is an equal distance from both properties²².
- 5.58 In general, the level of privacy provided by a 2 metre high hedge is what might reasonably be expected in most urban and suburban situations. A higher hedge height might be justified in special cases, where one property can be seen into more easily than the other. For instance, if one of the gardens is steeply terraced or if the complainant has a balcony or roof garden and the hedge owner does not.

Shelter

- 5.59 A hedge can be an effective windbreak and will usually provide good shelter from the wind for a distance of 8 to 10 times its height²³. A 2 metre high hedge should thus provide good shelter throughout a garden with a depth of 16 to 20 metres.

²¹ Section 74.

²² See paragraph 5.1 of *High Hedges, daylight and sunlight: Final Report*, BRE 2001. The report is available on the ODPM website at www.odpm.gov.uk/treesandhedges.

²³ See paragraph 5.2 of *High Hedges, daylight and sunlight: Final Report*, BRE 2001.

- 5.60 The size of the garden that is protected by the hedge will, therefore, be one factor in considering what is reasonable in any particular case. Other topographical features and local climatic conditions may also be relevant. For example, a higher hedge height might be justified where the garden is in an exposed position or in an area where high winds occur frequently.
- 5.61 In addition, it might not be reasonable to expect to use a hedge to provide full protection from the wind if it would have a disproportionate effect on neighbouring properties. For example, if the hedge owner's garden is much larger than the complainant's, perhaps as a result of infill development.

Noise, smell, smoke

- 5.62 Noise will normally pass through hedges. While it is possible to design a hedge as an acoustic screen, it will usually incorporate a special type of fence as well as planting. This is likely to be a rare occurrence in domestic situations. Hedges are also largely ineffective in stopping smells and smoke. Such pollutants can make their way over or through a hedge²⁴.
- 5.63 In general, therefore, it is not reasonable to expect a hedge – whatever its height – to provide protection from noisy neighbours or from the smell and smoke of bonfires or barbecues.
- 5.64 However, people might perceive that the nuisance is reduced if they are unable to see the source of the noise or fumes. A hedge that is high enough to prevent overlooking (see advice on *Privacy* above) might, therefore, help to ameliorate these neighbour nuisances.

Damage to plants

- 5.65 It could be difficult to isolate the effects of the height of the hedge when assessing the possible cause of problems of poor plant growth. The roots of a high hedge might also be a contributory factor. They will draw water and nutrients from the soil, reducing what is available to other plants. Under the terms of the Act, however, the effects of the roots of a high hedge cannot be taken into account.
- 5.66 Where it is considered that a tall hedge could be preventing light reaching plants, Councils might wish to have regard to the advice on light obstruction below.
- 5.67 They might also wish to take into account that, in general, it is not reasonable to expect to grow particular plants in specific locations or situations. As noted in Chapter 4: *Reasonable enjoyment of property*, the Act does not serve to protect particular activities that the complainant engages in on their property or specific uses they make of their garden. Whether the hedge interferes with a greenhouse, a vegetable patch, the growing of competition plants or annual bedding will not, therefore, normally be a consideration. In addition, there is a wide range of plants that are suitable for a variety of conditions and situations, offering alternative solutions to any adverse effects of a hedge.
- 5.68 On the other hand, more weight might be given to these problems if the height of the hedge affects the growth of plants across a substantial portion of the garden, thereby affecting overall enjoyment of the property.

Overhanging branches

- 5.69 The Act deals only with complaints that relate to the height of the hedge. Problems associated with the width of the hedge will normally not be considered.

²⁴ See paragraphs 5.3 and 5.4 of *High Hedges, daylight and sunlight: Final Report*, BRE 2001.

- 5.70 The exception might be where the hedge is so high that someone could not reasonably be expected to trim branches that overhang their property. And, as a result, they are unable to mitigate the adverse effects of the hedge. A person would probably not be able to trim any part of a hedge over 2.5 metres high without specialist equipment or professional help. Whether or not the problem could be solved by cutting back overhanging branches up to this height would, therefore, be relevant in assessing the impact of the hedge.
- 5.71 Thus problems caused by a hedge blocking a path or other means of access which could be mitigated by trimming branches to just above head height might be discounted. On the other hand, a large overhang that significantly restricted the useable area of the garden, with a consequent effect on amenity, might be given more weight.

Litter dropped by the hedge

- 5.72 Whether litter from an evergreen hedge (eg needles, berries) is caused by the excessive height of the hedge will depend on the particular circumstances. For example, the branches of a high hedge might hang over the roof of a bungalow, depositing litter in the gutters and possibly blocking them. In other cases, the debris could be wind-borne and might not even come from the hedge in question.
- 5.73 In any event, the volume of litter falling from the hedge is likely to be low. Any resulting problems are unlikely, therefore, to represent a substantial interference with a complainant's enjoyment of their property, though they may be regarded as irritating and inconvenient.

Obstruction of light: windows

- 5.74 The British Standard *Lighting for buildings: Code of practice for daylighting* (BS 8206 Part 2) sets the standard for what is a reasonable amount of daylight and sunlight for people to get in their houses. It works on the basis that properties should receive sufficient natural light during daylight hours to enable normal domestic tasks to be carried out without eyestrain.
- 5.75 In their guidelines on *Hedge height and light loss* (March 2004)²⁵, the Building Research Establishment (BRE) have devised a method for calculating what height an evergreen hedge should be in order to deliver to the windows of a house the amount of daylight and sunlight recommended in the British Standard. They are intended for use in analysing the effect on the main rooms of a house (including living rooms, dining rooms, kitchens and bedrooms) and apply whether the hedge is opposite or to one side of the window, or at an angle to it. The guidelines also suggest suitable adjustments if the land is sloped or if the hedge is set back from the boundary.
- 5.76 Based on accepted good practice standards, the BRE guidelines provide an objective means for assessing whether a hedge is obstructing light to windows. A hedge that is taller than the height derived from the BRE guidelines is likely, therefore, to result in an unreasonable loss of light to windows and so have an adverse effect on someone's reasonable enjoyment of their property. A hedge below the limit is unlikely to have such an effect.
- 5.77 The British Standard includes recommendations in respect of winter sunlight which, in turn, are incorporated in the BRE guidelines. The hedge heights derived from the BRE guidelines should, therefore, generally be sufficient to secure reasonable access to winter sunlight.
- 5.78 A lower hedge height might be justified in some circumstances. For example, special consideration might need to be given to properties that have been specifically designed to harness passive solar energy, rather than those which happen to have large windows.

²⁵ P J Littlefair *Hedge height and light loss*, BRE, 2004.

Passive solar properties would normally be characterised by a main window wall facing within 30 degrees of due south, significantly larger windows on the south facing wall compared to the north facing one, provision of thermal mass to store heat, and heating controls to make sure the solar energy is utilised²⁶. Loss of solar radiation to solar panels for water or space heating or the generation of electricity might also be taken into account. Normally these panels will be roof mounted.

- 5.79 In other circumstances, a higher hedge height than that derived from the BRE guidelines might be reasonable. For example, if a hedge opposite a window obscures only part of the field of view; or if there are gaps in the hedge.

Obstruction of light: gardens

- 5.80 The British Standard *Lighting for buildings: Code of practice for daylighting* (BS 8206 Part 2) does not apply to gardens. The BRE guidelines on *Hedge height and light loss*, therefore, include a new method for calculating whether an evergreen hedge is likely to cause a significant loss of light to a nearby garden. The approach is based on the daylight and sunlight received in the garden as a percentage of that on unobstructed ground, over the whole year. The BRE guidelines apply to any type of garden, including small back yards with no lawn. Allowance is made for existing obstructions, such as the house and boundary fences, which could increase the relative impact of a hedge. Suitable adjustments are suggested to take account of sloping sites or where the hedge is set back from the boundary. The BRE guidelines have been refined and revised in the light of consultation and field testing. They provide the best available means for assessing the impact of a high hedge on light to a garden.
- 5.81 In most situations, therefore, a hedge that is taller than the height derived from the BRE guidelines is likely to result in an unreasonable loss of light to a garden and so have an adverse effect on someone's reasonable enjoyment of their property. A hedge below the limit is unlikely to have such an effect.
- 5.82 A different height might be justified in some circumstances. For example, where hedges cover more than one side of the garden; if there is a building behind, and close to, the hedge; or if there are gaps in the hedge. The BRE guidelines offer some suggestions on how such situations might be dealt with.
- 5.83 It should be emphasised that the BRE guidelines on *Hedge height and light loss* do not take account of factors beyond light obstruction and so do not produce general, all-purpose recommended hedge heights.

Visual amenity

- 5.84 Visual amenity is about what people look out onto, either from their home or garden, and the environmental quality that they experience. It includes such issues as views, whether the hedge is dominant and overbearing or, conversely, whether it is preventing unsightly views.
- 5.85 Visual amenity is likely to be an important consideration for both the complainant and the owner or occupier of the land where the hedge is situated. There is, however, no objective method for assessing the impact of a hedge on the visual environment. It is a matter of judgement, based on the circumstances of the particular case.

²⁶ For further information on hedges and solar heating see Annex 4 of the BRE guidelines on *Hedge height and light loss* and *A Review of the BRE Guidance on Hedge Height and Light Loss*, BRE 2004. Both are available on the ODPM website at www.odpm.gov.uk/treesandhedges.

- 5.86 Factors that might be taken into account include how close the hedge is to buildings; the height and length of the hedge; its bulk and mass; and the area that it covers compared with that of the garden. The immediate surroundings, especially what else borders the property, and the general characteristics of the area might also be relevant. For example, the presence of other hedges and their impact; other buildings or features which, without the hedge, might be visually intrusive; whether the area is characterised by a sense of openness. Just because trees in the hedge are taller than neighbouring buildings will not necessarily be material.
- 5.87 The importance of these factors, and their effect on the reasonable enjoyment of the property, will vary according to the circumstances. As a general rule, however, it is not reasonable for someone to expect to see beyond the hedge to a particular landscape, seascape or object, such as an attractive building. On the other hand, it might be reasonable to expect that a property should not suffer serious visual intrusion, which has an oppressive effect on living conditions. Equally, if the surrounding development is characterised by openness, it might be reasonable to expect that the property should not be unduly enclosed by a high hedge.

Effect of gaps

- 5.88 When assessing these or other factors, the effect of any gaps in the hedge should – where relevant – be taken into account. The extent of any gaps and their position in the hedge could be material. In some cases, the depth of the hedge might mean that gaps have little appreciable effect. In others, especially where the canopy is raised, the impact could be significant.

Factors unrelated to assessing the impact of the hedge

- 5.89 As noted in Chapter 4: *Grounds of Complaint*, some points might arise that are not directly related to the impact of the hedge and so should be discounted. Such points might include:
- fears that the hedge will break or fall;
 - that the problems with the hedge have caused worry, concern or depression, leading to health problems;
 - that other hedges in the area are maintained at a lower height;
 - that the hedge was there before the affected property was built or before the complainant moved into it;
 - that cutting down the hedge is too costly and beyond the means of the person who owns or occupies the site where it is growing.

Other Relevant Factors

- 5.90 In assessing high hedge complaints, Councils should take account of all relevant factors. This will include not only points raised by the parties in their representations but also the interests of the community as a whole. In so doing, Councils might need to have regard to other legal restrictions – intended to protect the wider public interest – that could apply.

Public amenity

- 5.91 In all cases, Councils should consider the contribution that the hedge makes to the amenity of the area, and the impact of possible works to the hedge. There are various systems or methods for assessing the amenity value of trees in a structured and consistent way. Local landscape character assessments or development frameworks might also be relevant.

Protected trees

- 5.92 Special considerations might apply where the trees in a hedge are protected by a tree preservation order or are subject to special controls that operate in conservation areas. These normally require people to get permission from the Council before carrying out certain works to the trees, or to give prior notice of their intentions. They do not, however, have to go through this process if they are obliged to carry out the works under the terms of a remedial notice issued under the Act²⁷.
- 5.93 When considering a high hedge complaint which involves protected trees, the Council should assess the case as they would an application or notification under the relevant tree protection legislation. Further advice on assessing and weighing the issues is given in paragraph 6.45 of *Tree Preservation Orders: a Guide to the Law and Good Practice*²⁸.
- 5.94 Councils might also wish to bear in mind that, in some situations, occupiers may need to obtain a felling licence from the Forestry Commission if they wish to remove the trees concerned.

Planning conditions

- 5.95 Some hedges must be retained under the terms of a condition attached to a planning permission. In such circumstances, when determining whether the hedge adversely affects the complainant's reasonable enjoyment of their property, Councils should take account of the reasons why the condition had been attached to the original planning permission. The age of the planning permission, and the extent to which circumstances on the ground have altered since the condition was imposed would also be material considerations.
- 5.96 Any remedial notice issued under the Act would not override a planning condition: these can be removed or varied only by following the application procedure set out in section 73 of the Town and Country Planning Act 1990. If a Council is considering issuing a remedial notice that would conflict with a planning condition, they should advise the owner or occupier of the land where the hedge is situated that they should make a formal application for variation or removal of the planning condition in question, and should offer them suitable assistance.

Historic, wildlife and landscape value

- 5.97 Other factors that Councils might wish to take into account, where relevant, include whether the hedge is within the boundaries of a listed building, or a garden or other site of historic importance; whether it has historic associations or contains veteran trees; whether it is situated in a National Park or Area of Outstanding Natural Beauty, or forms an important link with other landscape features; whether it is within a designated nature conservation site such as a Site of Special Scientific Interest²⁹. Whether any protected birds, animals or plants are present in the hedge³⁰ and how they would be affected by any works to it would also be relevant considerations, having regard not only to relevant legislation but also to local Biodiversity Action Plan policies.

²⁷ See section 198(6)(b) of the Town and Country Planning Act 1990 and regulation 10 of the Town and Country Planning (Trees) Regulations 1999 (Statutory Instrument 1999 No. 1892).

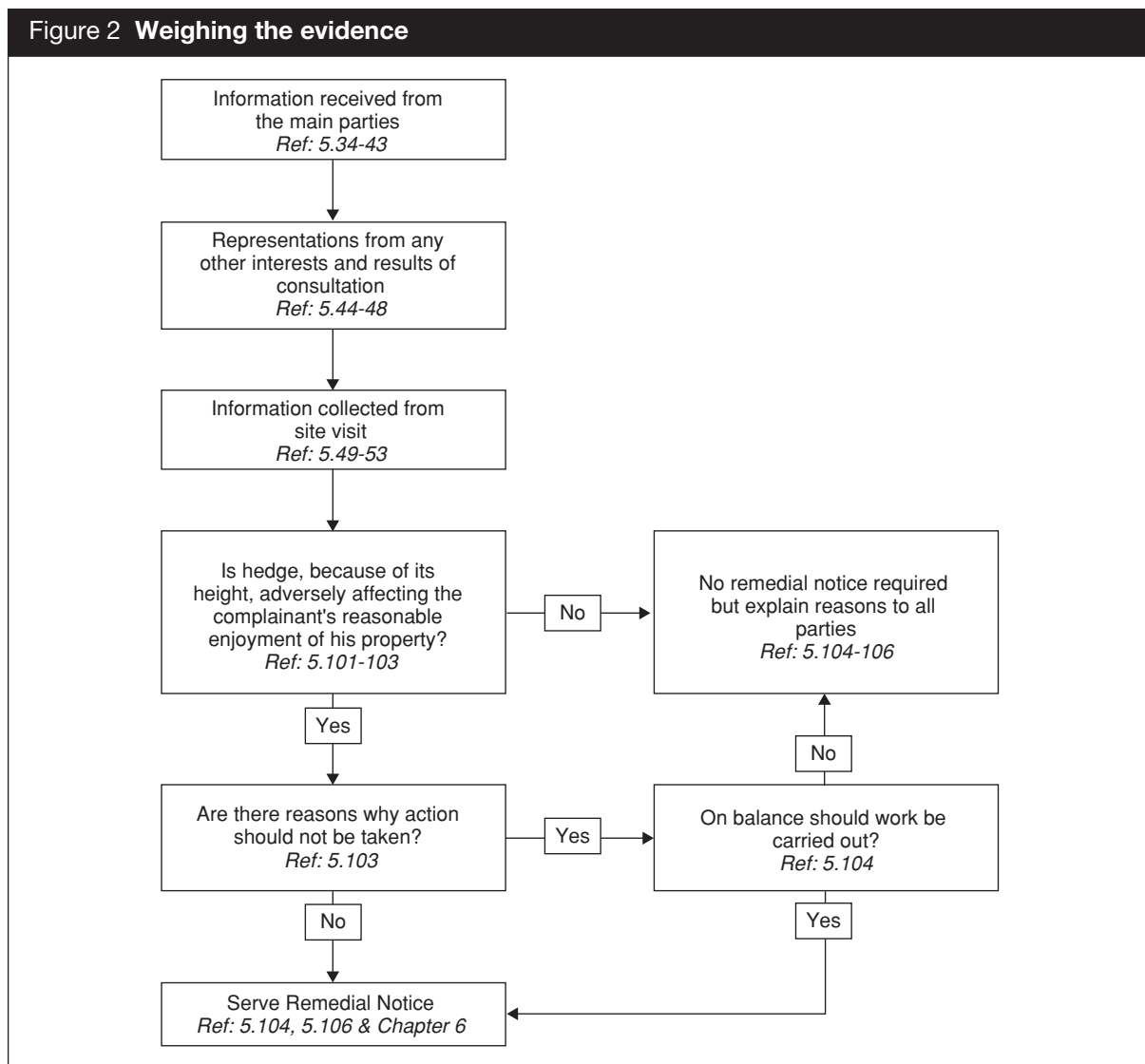
²⁸ *Tree Preservation Orders: a Guide to the Law and Good Practice*, DETR, 2000 is available on the ODPM website at www.odpm.gov.uk/treesandhedges.

²⁹ For further information see www.defra.gov.uk/wildlife-countryside/index.htm.

³⁰ See the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats etc) Regulations 1994 (Statutory Instrument 1994 No. 2716).

Covenants

- 5.98 Some properties have legal covenants that stipulate the size or type of hedge than can be grown. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. These are private rights or restrictions which are normally enforceable through the civil courts.



- 5.99 The terms of a covenant could, nevertheless, be relevant to a complaint, though they would not necessarily be decisive: it is possible that other factors, including the wider public interest, could have greater weight and importance. How long ago the restriction was introduced, its original purpose and whether circumstances remain the same or have changed significantly might be material in considering the continuing relevance of any covenant.

- 5.100 A remedial notice would not override the requirements of a covenant. In the event of a conflict between the two sets of requirements, it would be open to the hedge owner to apply to the Lands Tribunal to discharge or modify the covenant³¹. The existence of a covenant could also be a mitigating factor in any prosecution for failure to comply with the terms of a remedial notice. It is possible, however, that where a covenant gives rise to a clear nuisance, the courts might attach little weight to it.

³¹ Section 84 of the Law of Property Act 1925.

Deciding the Complaint

5.101 If a Council proceed with a complaint, the Act³² requires them to decide two matters:

- in the first place, they must decide whether the hedge is, because of its height, adversely affecting the complainant's reasonable enjoyment of their property; and
- if they find that the height of the hedge is causing problems, the Council must then consider what action (if any) should be taken to remedy the situation and prevent it from recurring.

The sorts of action that might be taken to remedy the problems caused by a high hedge and to prevent them recurring are considered in Chapter 6: *Remedial Works*.

Making the decision

5.102 In reaching their decision, the Council should consider all relevant factors and assess each case on its particular merits. They should seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, to produce a proportionate response to the complaint. It will normally be a question of weighing up the harm caused by the hedge, on the one hand, against its amenity value – to the hedge owner and the wider community – on the other.

5.103 In carrying out this balancing act, Councils might wish to ask themselves:

- is the hedge, because of its height, adversely affecting – to some degree – the enjoyment that the complainant might reasonably expect to get from their property, having regard in particular to the grounds cited in the complaint;
- how severe is the impact of the hedge on the complainant's property;
- is this sufficient to justify action being taken to remedy the matter;
- if so, are there any reasons why such action should not be taken, or should be moderated, having regard in particular to:
 - any interference with the hedge owner's enjoyment of their property, taking into account any representations received from them; and
 - the impact on the character and amenity of both the immediate locality and the wider area, taking into account other legal restrictions that might apply and the results of any consultation with interested bodies.

5.104 In general, if the Council consider that a hedge has little adverse effect and any remedial action would be minimal, they may decide not to issue a remedial notice even though the arguments in favour of the hedge are weak. On the other hand, the greater the impact of the hedge on the complainant's amenity, the stronger the mitigating factors need to be to justify a remedial notice **not** being issued. Even if the Council find that a hedge is adversely affecting the complainant's property, it is open to them to conclude that, on balance, the amenity it affords others is more important than the amenity it takes away from the complainant and so not to issue a remedial notice. Alternatively, they could order lesser work to mitigate, rather than remove, the adverse effect.

³² Section 68(3).

Communicating the decision

- 5.105 Councils are advised to keep a clear record of how they reach their decision, to inform the decision letter and for use in any subsequent appeal. They might wish to prepare a report, in a standard format, which could be appended to the decision letter. This would help to provide assurance to the main parties that their representations and other information provided have been fully considered and demonstrate how they have been assessed. Such a report might include the following:
- a description of the hedge and its surroundings;
 - relevant policies or other legislation that might apply (eg tree preservation order, conservation area, local Biodiversity Action Plan);
 - case for the complainant;
 - case for the owner or occupier of the land where the hedge is situated;
 - representations received from anyone else and the results of any consultations carried out;
 - appraisal of the evidence;
 - conclusions and recommendation.
- 5.106 The Act³³ requires the Council to notify the complainant and every owner and every occupier of the land where the hedge is situated of their decision, and the reasons for it, as soon as is reasonably practicable. If they decide to issue a remedial notice, this must also be copied to all the main parties. The remedial notice, and any notification of the reasons for issuing it, are the only documents referred to in the Act that cannot be sent electronically.
- 5.107 The Council should also explain the rights of appeal against their decision, enclosing a copy of the explanatory leaflet ‘*High hedges: appealing against the Council’s decision*’ and providing the contact details for the Planning Inspectorate. Chapter 8: *Grounds of Appeal* explains the grounds on which such an appeal can be made.
- 5.108 A sample decision letter is in the Appendix. The reasons for the decision should be clear, precise and as full as possible to help the main parties assess the merits of an appeal.
- 5.109 A copy of the Council’s decision letter should be sent to any other interested parties who have been involved in the case (see section above on *Interested parties*).
- 5.110 Where the Council decide not to issue a remedial notice because any action to remedy the adverse effect would be minimal, they should consider providing practical advice on how the hedge might be maintained so that it does not cause problems in the future.

Uncommon cases

- 5.111 Some complaints might result in more than one decision letter or remedial notice being issued:
- a. **Multiple complainants, single hedge, one owner** require multiple decisions. As indicated previously, each complaint should be considered separately and individually and so separate decision letters and remedial notices should be issued. Each notice would need to specify the section of hedge in relation to which action should be taken to deal with the effects on the property that is the subject of the particular complaint. The practical implications for the

³³ Section 68(4), (5)(b) and (6).

hedge owner in terms of compliance with the various remedial notices are discussed in Chapter 6: *Remedial Works*.

- b. **One complainant, single hedge, multiple owners.** Although included here, nevertheless the Council would issue a single decision letter and remedial notice and send copies to every owner and occupier of the properties where the hedge is situated, as well as to the complainant.
- c. **One complainant, multiple hedges, one owner.** A single decision letter would be sent to the complainant and the owner and occupier of the land where the hedge is situated but separate remedial notices would need to be issued in respect of each hedge or part of hedge that meets the legal definition and is affecting the complainant's property.
- d. **One complainant, multiple hedges, multiple owners.** As before, a single decision letter would be sent to the complainant and every owner and every occupier of the land where the hedges are situated but separate remedial notices would need to be issued in respect of each hedge or part of hedge that meets the legal definition and is affecting the complainant's property.

Officer or committee decision

5.112 Under the Local Government (Functions and Responsibilities) (England) Regulations 2000 as amended³⁴, responsibility for all functions relating to high hedges rests with the full Council and not with the Executive, where such arrangements exist.

5.113 Most complaints are likely to deal with private matters that are of concern only to the people involved and so Councils might wish to delegate the decision to officers. A committee or subcommittee of the Council might wish to decide those cases that raise wider neighbourhood issues and are locally sensitive.

Council as a party to the complaint

5.114 There are no special procedures laid down in the Act for dealing with complaints in which the Council is directly involved as one of the main parties. The hedge might, for example, be on land owned by the Council.

5.115 It is important that the process for deciding such complaints is seen to be fair and impartial. Councils should, therefore, consider setting up internal procedures to ensure that the complaint is considered by a committee or officers who do not have responsibility for managing the land or trees in question. This should avoid any potential conflict of interest.

5.116 If someone believes that the Council did not make the decision in the right way, they can refer the matter to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, they may apply to the High Court to challenge the decision by judicial review.

5.117 If they disagree with the decision on a complaint, they have a right of appeal to the Secretary of State.

Time limits

5.118 The Act sets no timetable for the Council to reach a decision on these complaints. The leaflet *High hedges: complaining to the Council* advises people that they should not expect to get a

³⁴ Statutory Instrument 2000 No. 2853, to which relevant amendments have been made by Statutory Instrument 2005 No. 714.

decision on their complaint for at least 12 weeks. If the Council take too long, someone could complain to the Council's own complaints officer or to the Local Government Ombudsman.

- 5.119 The absence of statutory time limits provides flexibility so that other means of resolving the dispute can be pursued even after a complaint has been lodged with the Council – and without the complication of stopping and starting clocks.
- 5.120 It is important that, once a complaint has started, people do not find themselves locked into a rigid process. If, at any time, the main parties and the Council consider that the dispute might be resolved through negotiation or by reference to any local community mediation service, the formal complaints procedure should be halted.
- 5.121 Should any attempt to settle matters in this way fail, there is no need to restart the process from the beginning. But the Council would normally need to agree with the main parties how the threads should be picked up. It might, for example, be advisable to allow a further round of representations so that the Council have up to date information, even if the exchange of representations had previously been completed.

Change in the Main Parties

- 5.122 It is possible that one or more of the main parties to the complaint might change while it is being considered by the Council.
- 5.123 In these circumstances, there is no legal bar to the complaint proceeding. However, Councils might consider suggesting a breathing space to allow the people concerned an opportunity to settle the dispute by negotiation.
- 5.124 Where this fails, Councils should ensure that the new people have all relevant papers and give them a chance to submit further representations. If it is the complainant who has changed, the Council should also obtain confirmation from them that they wish the complaint to proceed.

Withdrawing a Complaint

- 5.125 The complainant may withdraw their complaint at any time before the Council issue their final decision and any remedial notice. Discussion and negotiation between the people involved in the dispute can continue all the time that the Council are considering a formal complaint. If the people concerned can agree a way forward, the complaint should be withdrawn.

Delivering Documents

- 5.126 The Council's decision letter, and other documents or notices mentioned in the Act and Appeal Regulations, must be delivered in one of the following ways³⁵:
- by putting the papers in the hands of the person in question;
 - by leaving the documents at the person's usual or last known address;
 - by sending them by post to that address.
- 5.127 Under the Interpretation Act 1978, documents sent through the post are, unless the contrary is proved, deemed to have been delivered in the ordinary course of the post – providing they were properly addressed and postage had been paid.

³⁵ Section 79(1) and (2).

- 5.128 In the case of an incorporated company or body, the documents may be delivered to the company's secretary or clerk at the registered or principal office, using the methods mentioned above³⁶.
- 5.129 When a document or notice is to be sent to someone as the owner or occupier of land and the name or address of that person cannot – after reasonable enquiry – be found, the document or notice will be regarded as having been delivered if³⁷:
- it is left in the hands of some person who appears to be living, or employed, at those premises; or
 - it is conspicuously fixed to some building or object on the land in question.
- 5.130 These arrangements apply to the following documents or notices:
- complaint form and accompanying documents;
 - Council's decision on the complaint;
 - remedial notice;
 - Council's decision to withdraw a remedial notice, or to waive or relax its requirements;
 - appeal form and accompanying documents;
 - preliminary information supplied by the Council in connection with an appeal;
 - appeal questionnaire;
 - other information or documents submitted in connection with an appeal;
 - appeal decision;
 - notice of intended entry to land (see Chapter 9: *Entry to Land*).

Electronic communication

- 5.131 Apart from a remedial notice and the Council's decision letter explaining why one has been issued, all the other documents mentioned above can be sent electronically³⁸. This includes sending by fax and by email and making documents available on a website, such as through a web-based portal³⁹. There are, however, certain conditions that must be met before documents can be delivered through these means.
- 5.132 Before documents can be sent electronically, such as by fax or by email⁴⁰:
- the person receiving the documents must agree to them being sent in this way;
 - the documents must be sent to an electronic address provided by the recipient and in the format they have specified.

³⁶ Section 79(3).

³⁷ Section 79(7).

³⁸ Section 80(1).

³⁹ Section 80(2).

⁴⁰ Section 80(3).

- 5.133 Before documents can be made available on a website, such as through a web-based gateway or portal⁴¹:
- the person receiving the documents must agree to them being delivered in this way;
 - notice must be given to the recipient, in a manner agreed with them, informing them:
 - when the document in question has been placed on the website; and
 - the website address, and where within that site, it can be found.
- 5.134 Documents sent through these means will, unless there is evidence to the contrary, be treated as having been delivered at 9.00 am on the next working day after they have been transmitted electronically (such as by fax or email) or after the recipient has been informed that they have been made available on a website (such as through a web-based portal)⁴². For these purposes, a working day does not include Saturdays and Sundays, Christmas Day, Good Friday or any other Bank Holiday in England⁴³.
- 5.135 Thus, if a document were sent electronically on Christmas Eve, it would be treated as if it had been delivered at 9.00 am on 27 December, unless this was a Saturday or Sunday. Such matters become critical only where there are statutory time limits for the submission of documents. This applies primarily to appeals (see Chapter 8).

⁴¹ Section 80(5).

⁴² Section 80(4) and (6).

⁴³ Section 80(7).