

THE EXECUTIVE

13 DECEMBER 2005

REPORT FROM THE ACTING DIRECTOR OF REGENERATION AND ENVIRONMENT

PART 8 OF THE ANTI-SOCIAL BEHAVIOUR ACT 2003 (NUISANCE/HIGH HEDGES) NEW CHARGES AND CHANGE TO THE CONSTITUTION	FOR DECISION
<p>Summary</p> <p>Part 8 of the Anti-Social Behaviour Act 2003 (the Act) was introduced in July 2005. The Act enables the Council to become involved in neighbour disputes arising from nuisance caused by high hedges. The Act stipulates, however, that the Council should only become involved as a last resort and that neighbours should first attempt to resolve disputes themselves. The Council can refuse to intervene if it is believed that individuals have not done everything they reasonably could to settle the dispute.</p> <p>The Act enables the Council to charge a fee for it's involvement in the dispute.</p> <p>The Office of the Deputy Prime Minister (ODPM) have produced a series of booklets giving advice and guidance to the public. Two are attached as appendices. "Over the Garden Hedge" is a guide to the public on seeking agreements with neighbours and "High Hedges: Complaining to the Council explains, by way of Frequently Asked Questions (FAQ's) how the Council can become involved.</p> <p>This report outlines the role of the Council under part 8 of the Anti-Social Behaviour Act 2003.</p> <p>The Report recommends a fee to be charged and also seeks an amendment to the Council's Constitution to enable the Director of Regeneration and Environment to deal with all necessary procedures under delegated authority.</p> <p>Wards Affected - All</p> <p>Implications:</p> <p>Financial: The report recommends a charge be made in line with the recommendations of the fees and charges Policy Commission. At present no data exists to assess the appropriate level of charges. It is recommended that a national average charge of £350:00 be adopted and subsequently reviewed once true costs become known.</p> <p>Legal: The report concerns the implementation of a new piece of legislation. This will result in additional work for Legal Services, including the issuing of remedial notices, any subsequent appeals and, potentially prosecutions through the Magistrates Court</p> <p>Risk Management The Act requires the Council to respond to bona fide requests for intervention.</p> <p>Social Inclusion and Diversity</p>	

None

Crime and Disorder:

None

Recommendation

The Executive is recommended to agree:

1. A charge of £350.00 be levied for the Council's involvement under Part 8 of the Anti-Social Behaviour Act 2005.
2. Recommend to the Assembly that the Council's Constitution be amended to enable the Director of Regeneration and Environment to deal with all necessary procedures under delegated authority.

Reason

To assist the Council achieve its Community Priorities of Community Safety and Development; Regeneration; Environment and Sustainability; Housing and Public health

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1. **Background**

Part 8 of the Anti-Social Behaviour Act 2003 (the Act) came into effect in July 2005. This part of the Act deals with Nuisance caused by high hedges. The Act empowers Local Authorities, as a last resort, to intervene in neighbour disputes involving high hedges and issue notices requiring remedial action to be taken. The Act allows a charge to be made for the Council's involvement.

This report outlines the role of the Council under part 8 of the Act .

The Report recommends a fee to be charged and also seeks an amendment to the Council's Constitution to enable the Director of Regeneration and Environment to deal with all necessary procedures under delegated authority.

2. **What Complaints can the Council Consider**

The Act carries a set of legal tests which must be met for the Council to become involved. Below is a summary.

- The Complaint must relate to a "hedge" (see Section 3).
- The hedge must be on land 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.
- It must be brought by the owner or occupier of that property.

3. **What is a “Hedge”**

The Act’s legal test also carries a very specific definition of what constitutes a hedge. In summary:

- It must be made up of a line of two or more trees or shrubs.
- The Act does not apply to single trees.
- It must be mostly evergreen or semi evergreen.
- It must be more than 2 metres high.
- Even though there may be gaps in the foliage or between the trees, the hedge is still capable of obstructing light or views.

4. **Involving the Council – The Last Resort**

The Act is quite specific in stating that the role of the Council is as an arbiter of last resort. The Act states that the Council will expect residents to have exhausted all other opportunities and can turn away a complaint if it believes that insufficient effort has been made. Examples of the processes required are contained in the appendix “Over the Garden Hedge”.

5 **What will the Council Do?**

Applications to the Council must be submitted on forms which will be available either from ODPM or from the Planning and Transportation Division. On receipt of the correct forms and fee, checks will be made to ensure that the complaint meets the legal tests outlined above. The Council will then invite the neighbour who owns the hedge to set out their case. Council officers will visit the site to assess the situation. This is likely to be a combined visit of the Planning and Arboricultural Services. Officers will then make a recommendation for action.

At present, there is no decision making process for this new piece of legislation within the Council’s Constitution. Equally, this function does not sit easily with any of the Council’s Regulatory Board Structures. This report recommends that delegated authority be given to the Director of Regeneration and Environment to deal with all necessary procedures. This will require an amendment to the Council’s Constitution.

If appropriate, the Council can issue a formal notice to the owner of the hedge setting out what must be done and a timescale for action. This is called a Remedial Notice.

The Act specifies that the Council cannot require the complete removal of the

hedge. Equally, the Act does not specify that hedges must be cut down to two metres. However, once a Remedial Notice has been served, the Council can require the owner to keep the hedge under control.

Failure to carry out works ordered under a Remedial Notice is an offence which could lead to a prosecution. If found guilty in a magistrates court, a fine of up to £1,000.00 can be made.

6. **Appeals**

Both the Complainant and the owner of the hedge can appeal against the Council's Remedial Notice. Appeals are to the Planning Inspectorate and the process closely resembles that of Town Planning Enforcement appeals. As such, the appeals process is expected to be lengthy.

The Local Government Ombudsman can hear complaints from both parties against the Council's handling of the complaint process.

7. **Financial Implications**

Fees and Charges

The Act allows the Council to make a charge for its Services. The Council's fees and charges Policy Commission advise that charges should always seek to recover the full cost of the service. At present, it is not possible to assess the full cost. However, a survey of 58 Authorities across the Country reveals an average charge of approximately £350.00. This report recommends that this charge be adopted initially. It can then be reviewed as part of the annual review process once any specific cases have been handled.

8. **Consultation**

8.1 **Councillors**

Portfolio Holders

The following Portfolio Holders have been consulted on the proposals

Regeneration – Cllr Kallar
Community Development and Safety – Cllr Geddes
Environment and Sustainability – Cllr McKenzie
Housing and Public Health – Cllr L Smith

Ward Councillors

All Ward Councillors were invited to attend a DRE briefing on the subject held 21 September 2005.

8.2 **Officers**

The following Officers have seen this report and are happy with it as it stands.

DRE

Finance

Alexander Anderson, Head of Finance (DRE)

CS

Muhammad Saleem, Solicitor to the Council

Robin Hanton, Corporate Legal Manager

Bill Coomber, Corporate Equalities and Diversity Adviser

H and H

Jeff Elsom, Crime and Anti Social Behaviour Unit Manager

Background Papers -

- Over the Garden Hedge – ODPM
- High Hedges – Complaining to the Council - ODPM
- Fees and Charges survey of 58 local authorities