

# Planning Committee

10.00am Monday 15 June 2015

## High Hedges – Review of Fees

Item number	7.1
Report number	
Executive/routine	
Wards	All

### Executive summary

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The High Hedges (Scotland) Act 2013 came into effect on 1 April 2014. Guidance for local authorities on the implementation of the provisions has been released. Additional information regarding the processing of High Hedge applications is being prepared by the planning service and will be available online. A review of the fee structure has been carried out and will be made publicly available.

### Links

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Coalition pledges	None applicable
Council outcomes	CO19
Single Outcome Agreement	SO4

## High Hedges – Review of Fees

### Recommendations

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- 1.1 It is recommended that the Planning Committee:
  - a. notes that guidance for the general public will be updated in accordance with this report and made available on the Council's web-site; and,
  - b. agrees that the scale of fees for a submission, and criteria for refunds, under this legislation will be as detailed in Appendix 3 of this report and will be made available online.

### Background

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- 2.1 The High Hedges (Scotland) Act 2013 (the Act) came into effect on 1 April 2014. The legislation is intended to provide a solution to problems caused by hedges (referred to in the Act as a "high hedge"), which interfere with the reasonable enjoyment of domestic property.
- 2.2 A high hedge is defined by the Act as one which is wholly or mainly formed by a row of two or more trees or shrubs, which is over two metres in height, and forms a barrier to light.
- 2.3 The Act emphasises that the parties must take all reasonable steps between themselves to resolve the issues of the high hedge. The Council must only be contacted as a last resort where disputes have not been able to be resolved amicably.
- 2.4 The Act gives home owners and occupiers a right to apply to a local authority for a high hedge notice, subject to the payment of a fee to be set by the local authority. Where it is considered a high hedge is affecting the reasonable enjoyment of the property, the Act empowers local authorities to make and enforce decisions in relation to high hedges.
- 2.5 The Act also requires a local authority to dismiss an application if it concludes the applicant has not taken all reasonable steps to resolve the matter before applying, or where the application is frivolous or vexatious. There is no immunity from action with the passage of time as there is in planning enforcement action.
- 2.6 Where a council, having taken all the circumstances into account, finds that the height of a hedge is having an adverse effect it may issue a high hedge notice. A high hedge notice may require a hedge owner to take action to remedy the problem and prevent it recurring.

- 2.7 The Act makes provision for both the applicant and the hedge owner to appeal to Scottish Ministers against a decision by the Council, on the basis that; the hedge has no adverse effect, that no action should be taken, or that a high hedge notice be issued. It provides that an appeal may be dismissed and the decision of a local authority upheld, or that an appeal is upheld and the high hedge notice can be issued, varied or quashed.
- 2.8 The Act also provides local authorities with the power to undertake the work specified in a high hedge notice, if the notice is not complied with by the hedge owner, within the time specified. Local authorities can then recover the costs of any such enforcement from the hedge owner.

## Main report

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- 3.1 The High Hedges Scotland Act 2013 has now been in force for one year and within that time the Planning Authority has received 12 applications. Details of the action taken in relation to these applications can be found in Appendix 1.
- 3.2 There are a number of operational issues that have arisen over the course of the year that require further consideration or guidance to applicants in respect of High Hedge applications.

### **Fees**

- 3.3 An application for a high hedge notice must be accompanied by the appropriate fee. The Act gives local authorities the discretion to decide what level of fee to charge for administering a high hedge application.
- 3.4 The Act was intended to be cost neutral to the Local Authority and therefore the fee for an application should cover the Planning Authority's costs in administering, investigating and assessing the matter.
- 3.5 A survey of all Scottish local authority fees for High Hedge applications has shown that the fee range varies widely from as little as £192 in Stirling to £500 in Glasgow. A full list is provided in Appendix 2. The other two major cities; Aberdeen and Dundee, charge £450 and £400 respectively. The majority of authorities charge in the region of £400.
- 3.6 The Council currently charges £300 per standard high hedge application. There are concessions for registered disabled persons or hardship (see Appendix 3).
- 3.7 This £300 fee was based on an initial assessment of the likely time that it would take an officer to assess a High Hedge application. Now that the legislation has been put into practice a more accurate breakdown of the time taken by both support staff and professional officers in assessing the applications can be made. On this basis it is recommended that, in accordance with Scottish Government's requirement that the service should be cost neutral, the fee for a High Hedge application should be raised to £350.

- 3.8 At present, where the high hedge affects a number of properties, joint applications are being submitted and the £300 fee split between the applicants. However, in assessing the application the Planning Authority must do an individual assessment for each property affected by the hedge i.e. the equivalent of multiple applications.
- 3.9 Research into how other local authorities deal with this situation has shown that there is a range of options. One authority requires each individual household to submit a separate application, even though it may relate to one continuous hedge, whereas other authorities continue to just have one standard fee.
- 3.10 In order to keep the process simple for applicants but to cover the administration, investigation and assessment costs of applications where there are multiple applicants, an additional £100 fee (over and above the £350 standard fee) for each additional property to be assessed is proposed.

### **Refund of fees**

- 3.11 The Act gives local authorities the discretion to refund fees in certain circumstances. These circumstances, and the extent of the refund, shall be determined by the local authority and the details published.
- 3.12 To date this information has only been publicly available through the report to Planning Committee from March 2014. The report does not state explicitly when a refund will be made.
- 3.13 Having assessed the circumstances for when a refund of the fee may be applicable for other local authorities, there is again a range of different approaches (see Appendix 2).
- 3.14 It is generally accepted that once an application is received by a local authority, there are administrative processes and initial checks that must take place in order to determine whether the application is valid, and therefore the application assessment has already commenced.
- 3.15 At this early stage of assessment the authority may establish from the submitted application that
- the application is incomplete,
  - or, the application does not relate to a high hedge and therefore cannot be considered under the High Hedge legislation.
- 3.16 Alternatively the applicant may withdraw the application soon after submission as the parties involved may come to an amicable solution. If any of the above is applicable the application should be returned to the applicant with a full refund. It may also be clear at this initial stage of assessment that;
- the applicant has failed to take all reasonable steps to resolve the matters in relation to the high hedge,
  - or, the application is frivolous or vexatious.

Under these circumstances the Council must dismiss the application, and given that the application will not have undergone an assessment it is considered reasonable that a full refund should be made.

- 3.17 On the basis of the above it is recommended that the following refund structure should apply:

Fee Refund Scenario	Refund Amount
From the information submitted, where it is clear that the application is incomplete, does not relate to a hedge, or the application is withdrawn by the applicant <b>prior to</b> the application being registered.	100%
From the information submitted, the application is dismissed by the Council under Section 5 for failure to comply with pre-application requirements.	100%
Application withdrawn by applicant <b>within 28 days</b> of the application being registered.	50%
Application withdrawn by applicant <b>after 28 days</b> from the date of registration.	0%
Where a High Hedge Notice is served on a Council owned hedge.	100%

- 3.18 In addition, it is suggested that where the local authority is the owner of the hedge and a resolution cannot be achieved, and where after a formal application has been made, it is found that action is justified to reduce the height of the hedge, the fee should be refunded to the applicant.

- 3.19 If approved, the above information will be published on the Council website.

### **Operational Issues**

- 3.20 The Council receives numerous enquiries regarding High Hedge issues. As an authority, the Council does not provide pre-application advice, as this would require a full assessment to be carried out, including a site visit by two officers, which would be the equivalent of assessing an application.
- 3.21 However, it is acknowledged that there could be additional guidance provided for applicants to increase their understanding of when the legislation is applicable, how an application will be assessed, and what is required to ensure an application is valid.
- 3.22 This additional guidance is attached in Appendix 4 and will be published online in due course.

## **Evidence of Resolution**

- 3.23 An application for a high hedge notice should be considered a last resort and only used when all other attempts to resolve the issue between the parties have been fully exhausted.
- 3.24 The Act does not explicitly state what is required in order to demonstrate that parties have sought a resolution. Some authorities have published what they will accept by way of evidence. This is good practice and assists applicants when preparing to submit an application.
- 3.25 It is therefore suggested that the Council should publish guidance advising what evidence will be required to demonstrate that the applicant has sought resolution prior to submitting an application.
- 3.26 Records should be kept of all attempts to resolve the issue and these should be submitted with any application to the Council. Records can include a diary detailing conversations, mediation, and letters sent (which should include proof of postage).
- 3.27 The Council considers it reasonable for the applicant to provide proof of at least two attempts at resolution within the previous six month period before an application will be accepted, one such attempt having been made at least 28 days prior to the date of the application. The applicant must advise the hedge owner of their intention to make an application for a High Hedge Notice. This advice is included in the revised guidance (see App 4).
- 3.28 However, it should be noted that submitting an application for a high hedge notice does not guarantee that a notice will be served.

## **Data Protection**

- 3.29 The Act does not make specific reference to Data Protection with regards to High Hedge applications. The Guidance to Local Authorities 2014 makes reference to appeals to the DPEA, and advises that all forms, correspondence and supporting information will be made available on their website.
- 3.30 Where information will be held electronically by the Planning Authority it is proposed that the guidance for Data Protection relating to Enforcement information will be followed.
- 3.31 In accordance with Section 147 of the Town and Country Planning (Scotland) Act 1997, a planning authority should have a register of enforcement notices available for public inspection. It would therefore be good practice to make the report of handling and the High Hedge Notice publicly available in those cases where the authority has determined to serve a High Hedge Notice. Other associated documents which are likely to contain personal and sensitive information would not be made publicly available. This advice is included in the revised guidance (see App 4).

## Measures of success

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- 4.1 The cost of this service being met by the fees paid by applicants, as envisaged by the Scottish Government.

## Financial impact

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- 5.1 The legislation makes provision for the payment of a fee to cover the local authority's costs and for that authority to recover the costs of any direct action to achieve compliance with a notice. The impact of the legislation should therefore be cost neutral.

## Risk, policy, compliance and governance impact

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- 6.1 The recommendations in this report are consistent with Scottish Government guidance. No risk, policy, compliance or governance impacts are identified.

## Equalities impact

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- 7.1 There is no direct equalities impact arising from this report.

## Sustainability impact

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- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered. Relevant Council sustainable development policies have also been taken into account. Implementation of the legislation will have no adverse impacts on carbon emissions, the city's resilience to climate change impacts, achieving a sustainable Edinburgh or in respect of social justice, economic wellbeing or good environmental stewardship.

## Consultation and engagement

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- 9.1 Consultation and community engagement has not been carried out in respect of this report. The recommendations are consistent with Scottish Government legislation and guidance.

## Background reading/external references

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Background information can be found on the Scottish Government web-site at the following link:

[High Hedges \(Scotland\) Act 2013](#)

[Guidance to Local Authorities](#)

Also of relevance is the guidance on assessing a High Hedge as a barrier to light.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9408/hedgeheight.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9408/hedgeheight.pdf)

The previous report to the Planning Committee can be viewed by following this link:

[http://www.edinburgh.gov.uk/download/meetings/id/42686/item\\_31\\_-\\_high\\_hedges\\_scotland\\_act\\_2013\\_-\\_implementation\\_of\\_provisions](http://www.edinburgh.gov.uk/download/meetings/id/42686/item_31_-_high_hedges_scotland_act_2013_-_implementation_of_provisions)

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## Links

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<b>Coalition pledges</b>	None applicable
<b>Council outcomes</b>	CO 19 Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm
<b>Single Outcome Agreement</b>	SO4 Edinburgh’s communities are safer and have improved physical and social fabric.
<b>Appendices</b> *	<ol style="list-style-type: none"><li>1. CEC High Hedge Applications</li><li>2. High Hedge Application Fees For Other Scottish Councils</li><li>3. Proposed CEC Fees For High Hedge Applications – May 2015</li><li>4. Guidance For Applicants re High Hedge Applications</li></ol>

**APPENDIX 1****CITY OF EDINBURGH COUNCIL HIGH HEDGE APPLICATIONS**

<b>Ref</b>	<b>Details</b>	<b>Action</b>	<b>Current Status</b>
HH01	Hedge	Hedge to be reduced in height to 7m and maintained no higher than 7.5m	Notice served and complied with.
HH02	Beech and cherry trees	Not considered to be a hedge.	No further action.
HH03	4 conifers, only 2 of which form a hedge	Hedge to be reduced to 4m and 2m, and maintained at 5m and 3m respectively.	Notice served. Not complied with. Direct Action taken.
HH04	Beech hedge	Not considered to cause a loss of amenity. No Notice served.	Appealed by the applicant. DPEA upheld appeal, but did not serve a High Hedge Notice.
HH05	Hedge (multiple applicants - 6)	Insufficient evidence submitted to demonstrate that all reasonable steps towards resolution have been made.	Application dismissed.
HH06	Hedge (multiple applicants – 7)	Hedge to be reduced in height dependant on location due to uneven ground levels.	Notice served April 2015 and comes into force on 22 May 2015.
HH07	Beech hedge/trees (multiple applicants – 4, multiple hedge owners 3)		Assessment underway.
HH08	Mixed hedge		Assessment underway.
HH09	Leylandii hedge	Insufficient evidence submitted to demonstrate that all reasonable steps towards resolution have been made.	Application dismissed.
HH10	5 trees of which only 2 holly trees form a hedge	Insufficient evidence submitted to demonstrate that all reasonable steps towards resolution have been made.	Application dismissed.
HH11	Leylandii or similar hedge	Application refused.	No further action.
HH12	Leylandii or similar hedge	Withdrawn by applicant after 4 days.	No further action.

## APPENDIX 2

### HIGH HEDGE APPLICATION FEES FOR OTHER SCOTTISH COUNCILS

Council	Fee	Refunding Fees
Aberdeen City	£382	If an application is considered frivolous, where there has been unsatisfactory effort to resolve the matter prior to applying for the serving of a notice, and when the trees/shrubs are not considered to constitute a hedge.
Aberdeenshire	£450	
Angus	£275	No refunds
Argyll & Bute	£450	When, from the information submitted, it is clear that either: (a) the trees/shrubs do not constitute a high hedge or (b) the applicant has failed to take reasonable steps to resolve the dispute before making an application
Comhairle nan	£401	Invalid application returned to applicant or application withdrawn by applicant prior to the assessment of pre-application requirements required by Section 5 - refund 100%  Application dismissed by the Comhairle under Section 5 for failure to comply with re-application requirements - refund 50%  No refund for application withdrawn by applicant after the assessment of pre-application requirements required by Section 5
Clackmannanshire	£401	
Dumfries and Galloway	£450	
Dundee	£400	If an application is dismissed because the applicant cannot demonstrate that they have taken all reasonable steps to resolve the dispute, or the Council considers that the application is frivolous or vexatious, or if the application is withdrawn within 28 days of submission, the Council will refund half the fee (£200).
East Ayrshire	£400	No refunds
East Dunbartonshire	£401	Return half fee if the application fails to meet the high hedge criterion in terms of Section 1 of the High Hedges (Scotland) Act 2013.

<b>Council</b>	<b>Fee</b>	<b>Refunding Fees</b>
East Lothian	£401	If is the application does not constitute a valid application e.g. have not been through the mediation process.
East Renfrewshire	£420	No refunds
Falkirk	£401	If the application is dismissed or if it's considered frivolous.
Fife	£382	No refunds, single fee payable by all applicants.
Glasgow	£500	No refund once app is made valid and is being progressed.
Highland	£450	If application is invalid or withdrawn before the assessment begins – 100% refund.  If the application is withdrawn after our assessment begins, there will be no refund.  If it's dismissed – 50% refund.
Inverclyde	£192	Failed application.
Midlothian	£300	It is intended that the High Hedge applications are to be cost neutral. Therefore we monitor the staffing hours involved with validating, assessing and report writing during the application process. If the cost of staff time is less than the fee of £300 then we refund the difference.
Moray	£382	When criteria not met.
North Ayrshire	£382	We do undertake an initial pre-application site visit simply to advise enquirers whether we would consider the trees to be a high hedge in terms of the tests in section 1 of the Act (a row of trees, over 2m high, barrier to light), so the aim is to only take in applications (and fees) which will be processed to a decision one way or the other.
North Lanarkshire	£450	Partial refunds in limited cases.
Orkney	£401	No refunds
Perth & Kinross	£270	No refunds
Renfrewshire	£382	If the application is not eligible and the assessment has not commenced – 100%. 50% if dismissed by Council
Scottish Borders	£400	Assessment commenced once application registered therefore no refunds
Shetland Islands	No Info	

<b>Council</b>	<b>Fee</b>	<b>Refunding Fees</b>
South Ayrshire	£495	No provision for refunds of waived fees. However SAC is currently reviewing fees.
South Lanarkshire	£401	Where the hedge does not fall within the legal definition of a 'high hedge' – 100% refund.
Stirling	£192	No refund the fee once assessment has commenced.
West Dumbartonshire	£384	No discounts or refunds
West Lothian	£382	No refunds

### **APPENDIX 3**

#### **PROPOSED CITY OF EDINBURGH COUNCIL FEES FOR HIGH HEDGE APPLICATIONS – MAY 2015**

<b>Application Type</b>	<b>Fee Per Application</b>
High Hedge Application	£350
Where multiple applicants	£350 plus £100 per each additional applicant
Where the hedge is in multiple ownership of more than 6 owners	£450
Application by a registered disabled person	No fee
In case of hardship at discretion of Head of Service	No fee
<b>Fee Refund Scenario</b>	<b>Refund Amount</b>
From the information submitted, where it is clear that the application is incomplete, does not relate to a hedge, or the application is withdrawn by the applicant <b>prior to</b> the application being registered.	100%
From the information submitted, the application is <b>dismissed</b> by the Council under Section 5 for failure to comply with pre-application requirements.	100%
Application withdrawn by applicant <b>within 28 days</b> of the application being registered.	50%
Application withdrawn by applicant <b>after 28 days</b> from the date of registration.	0%
Where a High Hedge Notice is served on a Council owned hedge.	100%
<b>Supplementary Fees Amount</b>	
Specialist surveys required in the assessment of an application (e.g. European Protected Species)	At cost, payable by applicant

## **APPENDIX 4**

### **GUIDANCE FOR APPLICANTS RE HIGH HEDGE APPLICATIONS**

#### **Frequently Asked Questions**

The High Hedges (Scotland) Act 2013 came into force on 1 April 2014 and is intended to provide a solution to the problem of high hedges which harm the enjoyment of a neighbour's residential property, normally as a result of a loss of light.

If you are affected by a high hedge in this way and have tried to resolve the issue with your neighbour without success, you can make an application to refer the issue to the Council.

Before making an application it may be useful to read the following guidance.

#### **What is a "high hedge"?**

This Act applies in relation to any hedge which:

- a. is formed wholly or mainly by a row of 2 or more trees or shrubs,
- b. rises to a height of more than 2 metres above ground level, and
- c. forms a barrier to light.

A hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

In applying the Act in relation to a high hedge, no account is to be taken of the roots of a high hedge.

#### **Are all trees covered by the Act?**

No. Single trees will not be covered, and it will be for the investigating officer to decide whether trees planted closely together form a hedge, or not.

#### **I've heard that only hedges made up of certain types of trees will be covered, is this true?**

No. All types of hedge, whether they are made up of evergreen, semi-evergreen or deciduous trees or shrubs, are covered by the Act. However, the hedge must be over 2 metres tall when measured from ground level before it can begin to be considered to be a high hedge.

#### **I live in a property which suffers from lack of light due to a high hedge, but the hedge is not on land immediately adjoining my property. Can I still make an application?**

Yes. The hedge does not have to be on land immediately neighbouring the property of the person making the application. It just needs to be a significant barrier to light, but bear in mind that the further from the boundary the hedge is positioned the less likely it is to be considered a problematic high hedge.

#### **I have tried to reach an agreement with my neighbour, but haven't been able to. What do I do next?**

An application for a high hedge notice should be considered as a last resort and only used when all other attempts to resolve the issue between the parties have been fully exhausted.

If you are finding it difficult to speak to your neighbour regarding the hedge you could invite them to talk to independent mediators who may be able to help you find a way forward. Details of mediation services can be found on the [Citizens Advice Scotland](http://www.citizensadvice.scot.nhs.uk) web site or at [www.sacro.org.uk](http://www.sacro.org.uk)

Records should be kept of all attempts to resolve the issue and these should be submitted with any application to the Council. Records can include a diary detailing conversations, mediation, and copies of letters sent by you to your neighbour (which should include proof of postage).

The Council considers it reasonable for the applicant to provide proof of at least 2 attempts at resolution within the previous 6 month period before an application is made. One such attempt should be a letter from the complainant sent at least 28 days prior to the date of the application, advising the hedge owner of their intention to make an application for a High Hedge Notice. This is in order to allow the hedge owner the opportunity to take action prior to an application being submitted.

### **Do I need to do anything before I make an application to the Council?**

Yes. Before making an application, you must be able to demonstrate to the Council that you have tried to reach a solution with the hedge owner following the guidance above regarding recording evidence.

If you've been unable to reach an agreement with your neighbour regarding the hedge, at that point you will be able to submit a High Hedge application to the Council. A fee will be payable by you. This is in order to ensure that the Council can cover the costs of investigating the complaint. A list of High Hedge Application fees is provided on the Council web-pages.

Involving the Council should be a last resort if you really can't agree a solution. The Council can refuse to intervene if they think you haven't done everything you reasonably could to settle your dispute.

### **How do I lodge my High Hedge application?**

When you are ready to lodge your High Hedge application please complete the High Hedge application forms and submit it with the relevant fee to the Council. This is your opportunity to set out your case so it is important that you provide full information on the form. Explain as clearly as you can the problems that you experience in your house and garden because the hedge is too tall.

Please bear in mind that this information will be shared with the hedge owner, but personal details such as email addresses and signatures will be removed in accordance with the Data Protection Act.

### **The Council has said that the hedge is not a high hedge, but I disagree. What can I do next?**

If the Council do not consider the hedge shown in your application to be a high hedge it cannot accept your application, as the vegetation is outwith the scope of the Act. The Council will therefore return your application and the application fee. There is no right of appeal against this decision.

### **What happens after I've paid the fee and the application is registered?**

The Council will notify the hedge owner that an application has been made. The information contained within the application will be sent to everyone with an interest in the hedge and they will have 28 days to set out their case.

After the 28 day period an officer from the Council will go out to the property to assess the hedge, and its impact on your property.

Once the officer has all the necessary information to assess the application they will decide whether the height of the hedge adversely affects the reasonable enjoyment of your home and garden and what, if any, action should be taken. Both parties will be notified of the decision.

**The Council has determined that the hedge is having an adverse impact on the reasonable enjoyment of my property. What happens next?**

If the Council decides that action is necessary a formal High Hedge Notice will be served on the hedge owner and they will be given a deadline by which to meet the terms of the notice. If they fail to take the remedial action on the hedge in that time, the Council will arrange for the work to be carried out. The Council has the power to recover the cost of any work carried out from the hedge owner.

**I am the hedge owner. The Council has said my hedge needs to be reduced in height but I disagree - can I appeal?**

Yes. Both sides have a right of appeal to Scottish Government ministers. Both parties can only appeal once.

**Will the Hedge have to be cut down to 2m?**

Not necessarily. The Act does not require all hedges to be reduced to 2m in height. An assessment will be made taking into consideration any unreasonable loss of daylight and/or enjoyment of the property or garden and this will determine by how much the hedge will need to be reduced.

**What is there to make sure my neighbour keeps the hedge at its new height?**

As well as reducing the height of the hedge, the High Hedge Notice can ensure your neighbour maintains the hedge at a reduced height. So you shouldn't need to go through this process again.

**How long will I have to wait for the Council to determine my application?**

There is no set deadline for the Council to determine the application. Please bear in mind that it will take time to get a statement from the hedge owner, to arrange a site visit, and to weigh up all the information provided. This could take at least 12 weeks.