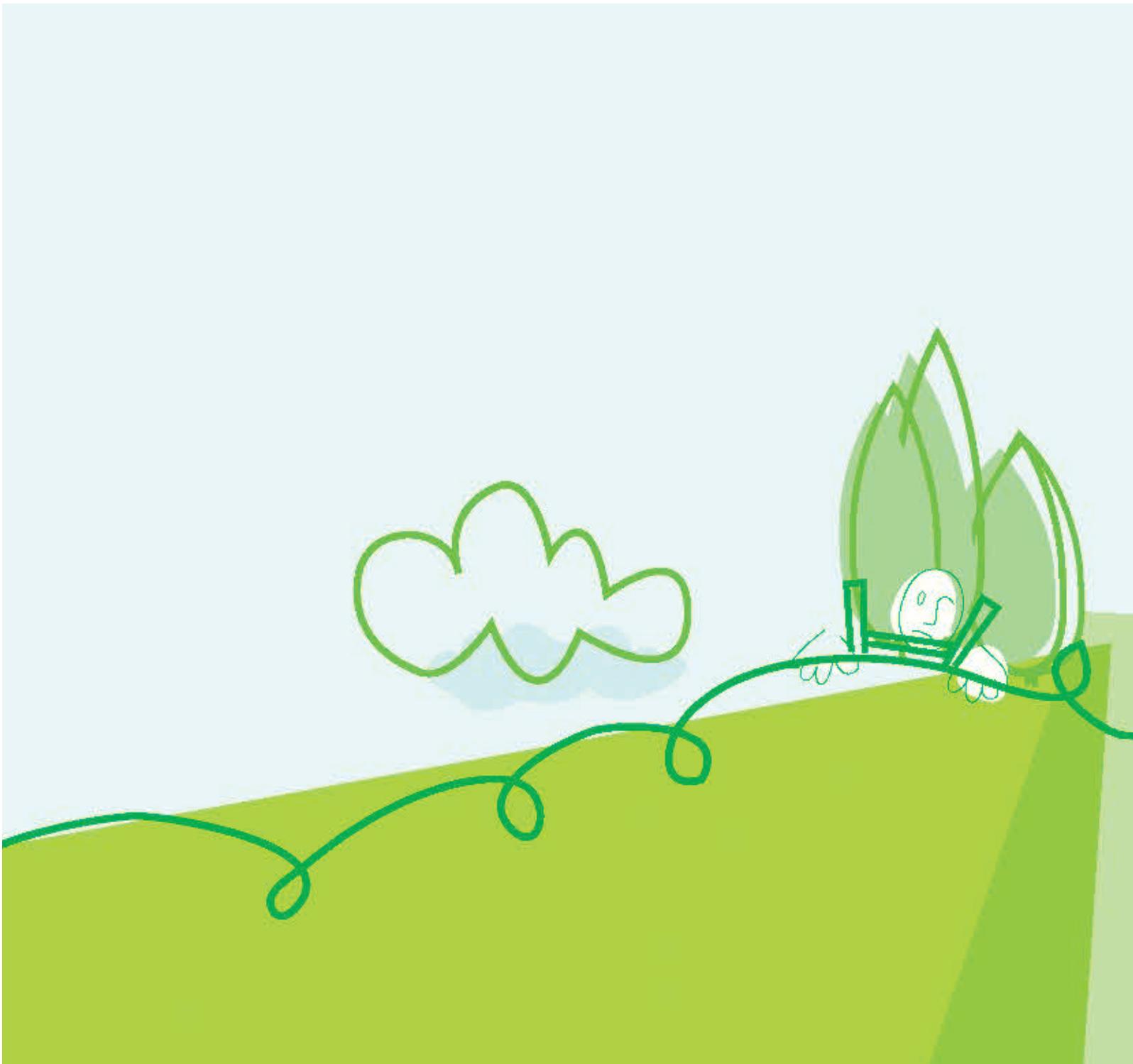




Office of the
Deputy Prime Minister

Creating sustainable communities

High Hedges Complaints: Prevention and Cure





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Deputy Prime Minister

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High Hedges Complaints: Prevention and Cure

May 2005

Office of the Deputy Prime Minister: London

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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 ODP 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

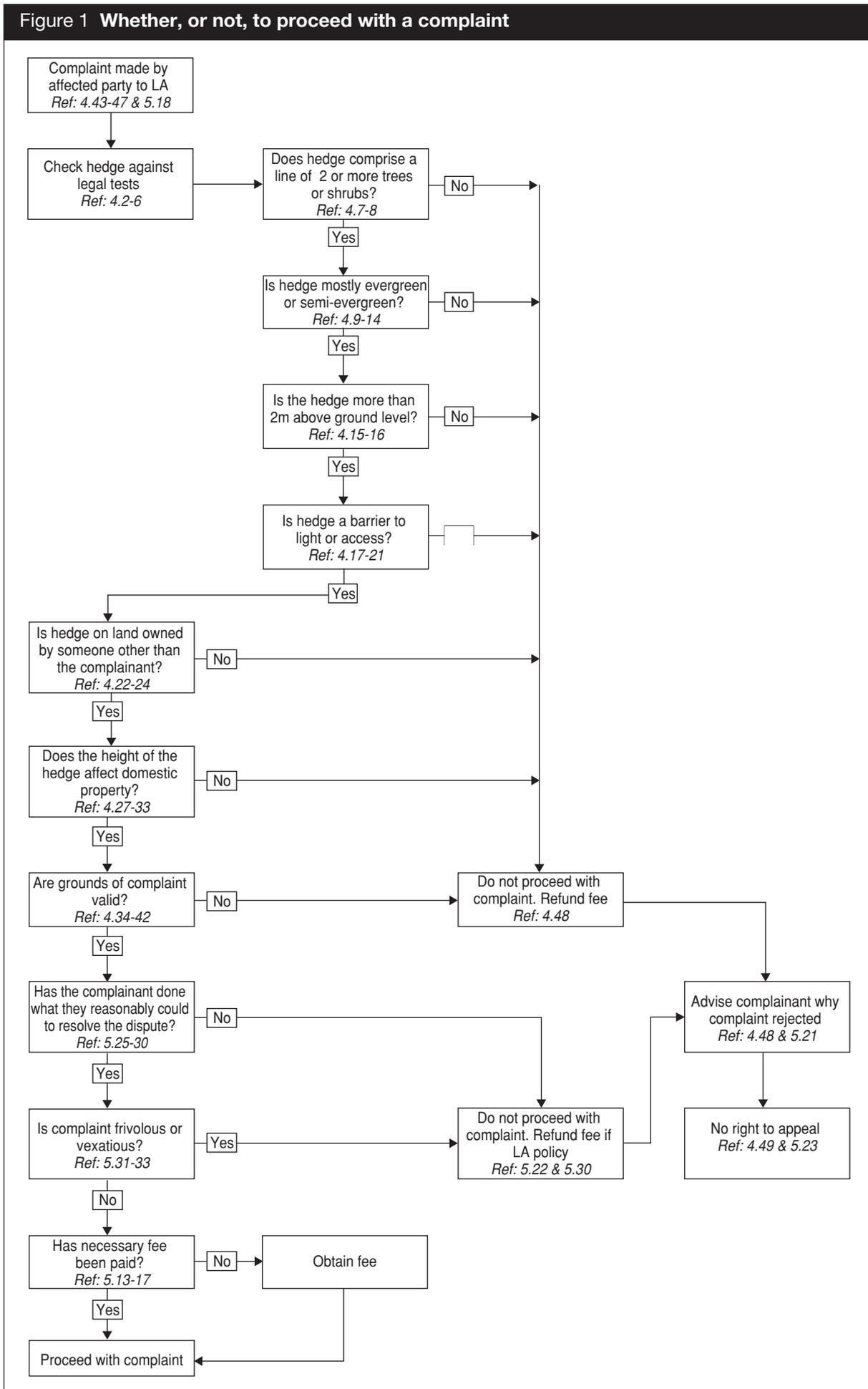
- 4.1 Under the terms of the Act, Councils can only consider a complaint if it satisfies the following criteria:
- it must relate to a high hedge as defined in the Act;
 - the hedge must be on land that is owned by someone other than the complainant;
 - it must be affecting a domestic property;
 - the 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).

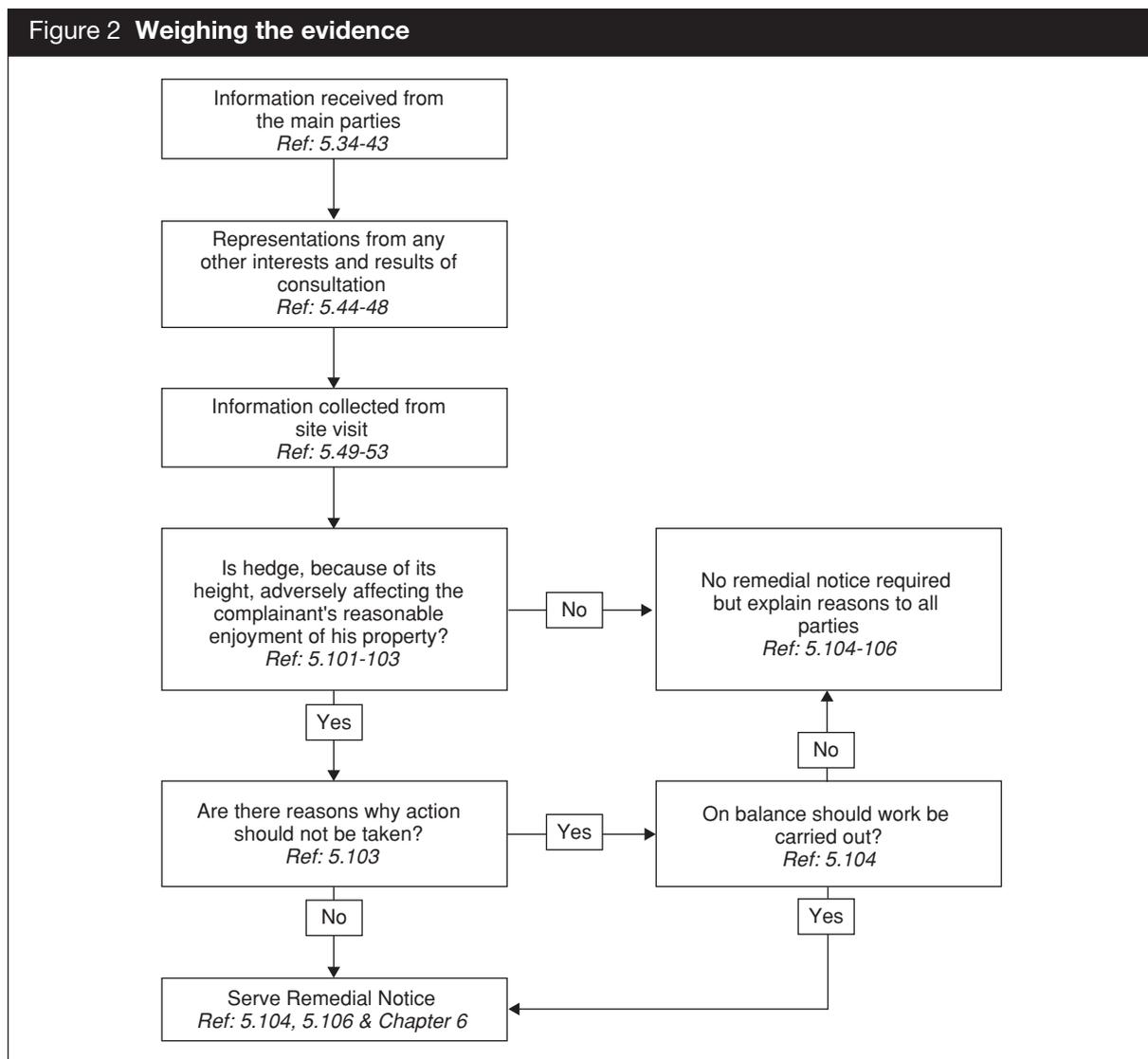
²⁸ *Tree Preservation Orders: a Guide to the Law and Good Practice*, DETR, 2000 is available on the ODPM website at www.odpm.gov.uk/treesandhedges.

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).

Chapter 6: Remedial notices

Remedial notices – contents – finding a suitable management solution – excluded works – specifying the works – good practice advice – duration of notice

- 6.1 Remedial notices define how the hedge should be managed in order to give effect to the Council’s decision and so restore a suitable balance between the amenity enjoyed by the complainant and the hedge owner, having regard also to the needs of the wider community. They run with the land in question and are binding on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the notice is issued, but also their successors. Remedial notices are not, therefore, served on or addressed to a particular person.
- 6.2 In these circumstances, a remedial notice should normally be a separate document, issued with the Council’s letter notifying the main parties of their decision on the complaint. Remedial notices must be delivered by one of the methods described in paragraph 5.126. They cannot be sent electronically.

Contents of the Notice

- 6.3 The Act⁴⁴ requires that a remedial notice include the following information:
- it must describe the hedge it relates to and where it is situated;
 - state that a complaint has been made to the Council about the hedge and that the Council have decided that the height of the hedge is adversely affecting the complainant’s reasonable enjoyment of their property;
 - it must specify the property affected by the hedge;
 - explain what action must be taken in relation to the hedge in order to remedy the adverse effect and, if necessary, to prevent it recurring (“initial action”) and by when (“the compliance period”);
 - what further action, if any, is required to prevent longer-term recurrence of the adverse effect (“preventative action”);
 - what date the notice takes effect (“the operative date”); and
 - the consequences of failure to comply with the requirements of the notice.
- 6.4 A sample remedial notice is in the Appendix.

Description of the hedge

- 6.5 The hedge should be described in sufficient detail so that there is no doubt what the notice relates to.
- 6.6 It will not normally be enough to give the address of the property where it is located. While it might be the only hedge on the site when the remedial notice is issued, this could change. The position of the hedge within the property should, therefore, be specified or should be shown on a plan attached to the notice.

⁴⁴ Section 69(2).

- 6.7 A general description of species in the hedge should also be included. This will help to differentiate it from any new hedge that might be planted as a replacement for the original one. It should be enough to identify the predominant species. It will not normally be necessary – or advisable – to specify the precise number of trees or shrubs that are contained in the hedge, or to list exact botanical species.

Affected property

- 6.8 The full address of the property that is affected by the hedge is likely to be the best means of identifying it.

Initial action

- 6.9 The initial action covers the one-off works that must be carried out to the hedge to alleviate the problems it is causing. It can include:
- action to remedy the adverse effect (“remedial action”); or
 - action to prevent the problems recurring (“preventative action”); or
 - a mixture of both.
- 6.10 This enables Councils to specify that the hedge be cut below what is necessary to remedy its adverse effect, if this will help to prevent problems recurring. Further advice on what, in practical terms, such action might involve is given in the section on *Remedial Works* below.

Preventative action

- 6.11 Preventative action covers continuing works to ensure that the hedge does not cause problems again in the future. The initial action specified in the notice – the one-off works to the hedge – is likely to provide only short-term relief from its adverse effects. If the remedial notice is to deliver a lasting solution, it will normally need to include longer-term action – eg annual pruning – to prevent the problems caused by the hedge recurring.

Operative date

- 6.12 The operative date is when the remedial notice formally takes effect and marks the start of the compliance period. It must be set at least 28 days after the date on which the remedial notice is issued by the Council. This is to allow people time to lodge an appeal. The notice is suspended while any appeal is considered.

Compliance period

- 6.13 The remedial notice must set a time limit for carrying out the initial action. This should start from the date when the notice takes effect (“the operative date”). Even though there may be pressure from the complainant for early action, the compliance period needs to reflect what can reasonably be achieved. The owner or occupier of the land where the hedge is situated can appeal if they do not think they have been given enough time to comply with the requirements of the notice.
- 6.14 In setting the compliance period, Councils should take account of the extent of the work involved and whether specialist equipment or professional help will be needed. If a drastic reduction of the hedge is required, it might be preferable to carry this out in stages, perhaps

over a period of years. The Act⁴⁵, however, makes no provision for a timetable to be set for each stage of the works: only for a compliance period within which the initial works must be completed. In these circumstances, Councils might wish to set a long compliance period and use any accompanying good practice advice (see below) to encourage the hedge owner to discuss and agree with the Council a suitable timetable for the staging of works.

- 6.15 Councils should also bear in mind that it is against the law to kill, injure or disturb nesting wild birds⁴⁶. The compliance period might, therefore, need to be set to avoid cutting the hedge between March and August.
- 6.16 Any continuing preventative action, such as regular trimming to keep the hedge at its reduced size, would probably be open-ended.

Failure to comply

- 6.17 As remedial notices are not addressed to a particular person, they should include a clear statement that the owner or occupier of the land where the hedge is situated – or their successor – is responsible for implementing the requirements of the notice, and for meeting the cost of such works.
- 6.18 So that there is no doubt on the matter, the letter informing the main parties of the decision on the complaint might also usefully explain that the notice does not give the complainant any rights to step in and take the necessary action themselves.
- 6.19 Under the Act⁴⁷, both the owner and occupier of the land where the hedge is situated could be prosecuted for failure to comply with the requirements of a remedial notice, subject to certain defences. In practice, whether the owner or occupier (assuming they are different people) would normally be expected to carry out the works specified in the remedial notice, will depend on who is legally responsible for managing the hedge according to the contractual arrangements between them. However, general provisions in the Public Health Act 1936 (relating to the power of the courts to require an occupier to permit work to be done by an owner) apply so as to give the owner the right to comply with a remedial notice. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge.
- 6.20 The notice should make clear that failure to comply with its requirements could lead to a prosecution and a fine, and that the Council could also enter the land, carry out any works required and recover expenses reasonably incurred. Enforcing remedial notices is discussed in more detail in Chapter 9.

Correcting errors

- 6.21 If the Council make a mistake in the notice, they should withdraw it and issue a new one – using their powers under section 70 of the Act – as soon as the error comes to their attention (see Chapter 7: *Correcting Errors*). This will usually require consequential changes to the operative date and, possibly, to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.
- 6.22 Once an appeal has been made against a remedial notice, the notice is held in abeyance until the appeal has been decided. If an error or omission comes to light while an appeal is being considered, it should be drawn to the attention of the Inspector appointed to determine the

⁴⁵ Section 69.

⁴⁶ See the Wildlife and Countryside Act 1981.

⁴⁷ Section 75(1).

appeal. He has powers under the Act⁴⁸ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

Remedial Works

- 6.23 Under the Act⁴⁹, the action specified in a remedial notice cannot involve:
- the reduction of a hedge to less than 2 metres above ground level; or
 - the removal of a hedge.
- 6.24 Removal includes action that would result in the death or destruction of the hedge. This will depend on the species of the shrubs or trees in the hedge, their age and health. For example, healthy Leyland cypress hedges will usually respond well to a reduction of up to one-third of their height. On the other hand, taking too much from the top of such a hedge might result in the death of older or less vigorous trees. Care also needs to be taken with conifers not to cut back into older leafless branches, as new growth will not appear from bare wood. Councils are, therefore, advised to obtain arboricultural input when framing the requirements of a remedial notice.
- 6.25 Councils should also ensure that the works specified in a remedial notice:
- relate to the hedge itself. Works other than to the hedge (eg to any bank it might be growing on) are not allowed;
 - are directly related to the adverse effect found to be caused by the hedge; and
 - do not exceed what is necessary to remedy the adverse effect of the hedge, or to prevent it recurring.
- 6.26 Within these constraints, Councils have flexibility to tailor the management solution to the particular problem. The Act does not necessarily require hedges to be reduced to a height of 2 metres. Nor will it always be necessary to reduce a hedge to a single height along the whole of its length. Different heights might be applied to different sections of the hedge. Other remedies, such as crown lifting or thinning, or retaining selected trees in an otherwise reduced hedge, may also be considered.
- 6.27 In determining the extent of any works to be specified in the remedial notice, Councils might wish to adopt a three stage approach.

Step 1: taking care of the problem

- 6.28 First, decide what action is necessary to remedy the adverse effect of the height of the hedge on the complainant's reasonable enjoyment of their property. This is called "remedial action" in the Act⁵⁰.
- 6.29 As noted in Chapter 5: *Making the decision*, determining "reasonable enjoyment" means striking a balance between any harm caused by the hedge and its possible amenity value to the hedge owner and the wider community, to produce a proportionate response to the complaint.

⁴⁸ Section 73(3).

⁴⁹ Section 69(3).

⁵⁰ Section 69(9).

The same principles apply when determining what remedial action might be appropriate in a particular case.

- 6.30 Nevertheless, Councils might find it helpful to start by looking at just one side of the hedge and developing some initial ideas on what would provide relief for the complainant. They should then stand back to consider the impact of their proposal on other parties and in its local setting, making adjustments – as necessary – to strike a balance between the different needs.
- 6.31 In doing so, Councils might ask themselves:
- what works are needed to provide relief for the complainant from the adverse impact found to be caused by the excessive height of the hedge. Points to consider include:
 - the severity of the problems it is causing;
 - whether this is simply a matter of reducing the height of the hedge or whether other remedies would be more effective. These might include reducing the height of selected trees forming the hedge, to open up gaps. Alternatively, the lower branches of the hedge might be removed (known as crown lifting) or the branches might be thinned out. In some cases, an appropriate remedy might well include reducing the width of the hedge as well as its height;
 - whether action needs to be taken along the whole length of the hedge or whether works to a section of it would provide the necessary relief. In particular, it might be necessary to require action in relation to only part of a long hedge that borders other properties besides that of the complainant;
 - whether there are likely to be any side effects from the proposed works on the growth of the hedge, which have the potential to harm the complainant’s amenity and so might require additional action. For example, reducing the height of some species might result in them putting on more lateral growth – bushing out. Action might be needed to keep this under control;
 - what would be the impact of such works on other parties to the complaint and on the surrounding area. Points to take into account, where relevant to the case, include:
 - issues or concerns raised, in the course of consideration of the complaint, by the owner or occupier of the land where the hedge is situated. As a general rule, the likely cost of remedial action or the means of the owner or occupier of the site where the hedge is growing would not be relevant considerations;
 - representations submitted by other residents;
 - the setting of the hedge, especially its contribution to the character and amenity of the area;
 - other legal restrictions that might be relevant;
 - what adjustments, if any, need to be made to the proposed works in order to mitigate these impacts. This might suggest a change of approach. For example, selected trees forming the hedge that have particular amenity value might be retained.
- 6.32 General factors such as the impact of the works on the appearance of the hedge should be considered only insofar as they may be relevant to the particular case. For example, such matters might be material where it is important to preserve the contribution that the hedge makes to the wider amenity of the area or to retain its function as a screen or shelter. Otherwise, they might more appropriately be dealt with through good practice advice.

Step 2: allowing for re-growth

- 6.33 Having established what action is required to remedy the adverse effect of the hedge, Councils should then consider whether anything more needs to be done to prevent the problems recurring. This is called “preventative action” in the Act. Councils should think about what preventative action might be needed both in the short term (to allow for any re-growth) and over a longer period (to provide for ongoing maintenance).
- 6.34 In deciding what – if any – action is needed to avoid the problems caused by the hedge coming back again in the short term, Councils might ask:
- whether the remedial action on its own is enough to forestall further problems over, say, a period of around 12 months – before any longer-term maintenance requirement kicks in;
 - if not, how should the remedial action be adjusted to cater for this.
- 6.35 This is likely to be particularly relevant where the hedge comprises fast-growing varieties. If, in these cases, the height of the hedge was reduced to the level necessary to remedy the adverse effect, it might soon grow back and cause problems again. In such circumstances, Councils might require that the hedge be further reduced – to create a buffer zone or growing margin, which allows the hedge to grow between annual (or more frequent) trimming and still not cause significant problems.
- 6.36 A suitable margin would normally be equivalent to a year’s growth for the species concerned.
- 6.37 For example, the Council might consider that the problems caused by the hedge would be remedied if it were no more than 3 metres tall. They might, however, require the hedge to be reduced initially to a height of 2 metres so that it has room to grow. This combination of remedial and preventative action is called “initial action” in the Act.
- 6.38 In the above example, the Council would also need to consider requiring ongoing maintenance to ensure that the hedge is never again allowed to grow above 3 metres.
- 6.39 The Council cannot require a hedge to be reduced to below 2 metres in height. If the buffer zone or growing margin would take it below this limit, the Council might use good practice advice to suggest where the initial cut should be made or to recommend a more frequent trimming regime to achieve the same effect.

Step 3: ongoing maintenance

- 6.40 Thirdly, Councils should determine whether long-term maintenance of the hedge is needed in order to stave off future problems. They might ask:
- what will be the effect on the future growth of the hedge of the initial action proposed to remedy its adverse impact (see Steps 1 and 2 above);
 - is this likely to lead to a recurrence of the problems found to be caused by the hedge;
 - if so, what action would ensure that the hedge is preserved in its revised state over the longer term and so help to avoid further problems;
 - is this reasonable in the particular circumstances of the case.
- 6.41 The management regime imposed will depend on the nature of the remedial or initial action. However, it will most often take the form of continuing maintenance of the hedge at its new height or shape, by regular trimming.

Uncommon cases

Multiple complainants, single hedge one owner

- 6.42 Where Councils are dealing with more than one complaint in respect of a single long hedge, they must consider each case on its particular merits. And they must issue a separate remedial notice in respect of each complaint.
- 6.43 By following the process set out above, this could produce several different solutions in respect of one length of hedge. Thus it is possible that separate remedial notices could be issued requiring one section of the hedge to be reduced to a certain height while another portion should be cut lower, with the rest of the hedge left intact.
- 6.44 Under the terms of the Act, it is not open to the Council to amend the remedial action required in one case to take account of the impact of the hedge on another property that is the subject of a separate complaint, even though this might produce a more workable solution. They cannot, therefore, resolve these different outcomes through the terms of the remedial notices.
- 6.45 Instead, such matters must be left to good practice advice. Where cases are linked in this way, therefore, Councils are advised to highlight the apparent inconsistencies to the owner or occupier of the land where the hedge is situated and suggest ways in which the various requirements might be met.

One complainant, single hedge, multiple owners

- 6.46 In such cases, the Council would issue a single remedial notice. A notice may not necessarily require that the hedge be reduced to, and maintained at, a single height along the whole of its length. It could specify different heights for different sections, or include other hedge management solutions. In such circumstances, it is important that it is clear to each hedge owner what they need to do in order to comply with the requirements of the notice. Councils might explain the practical consequences in a covering letter or any good practice advice.

One complainant, multiple hedges, one owner

- 6.47 Even though they are owned by one person, a separate remedial notice must be issued in respect of each hedge or part of hedge that meets the legal definition of a high hedge and is affecting the complainant's property.
- 6.48 As noted in paragraph 5.19, the Council should consider the effect of each hedge individually as well as their cumulative impact. This might suggest that no remedial action should be taken in relation to one or more of the hedges. Alternatively, it might point towards different action to be taken in respect of different hedges. In addition, the cumulative impact of the hedges might justify more extensive remedial works than would be suggested if each hedge was assessed separately and individually.

One complainant, multiple hedges, multiple owners

- 6.49 Similar considerations apply to those discussed in the above example. Care should be taken to ensure that hedge owners receive the correct remedial notice and that they are clear about what action they need to take to meet the requirements of the notice.

Specifying the action

- 6.50 Both the initial action and preventative action need to be carefully specified in the remedial notice so that it is clear what must be done to comply with the notice and when enforcement action could be taken. This might best be achieved by concentrating on the end result rather than the method to be used. Vague forms of words should be avoided.

- 6.51 Examples of how different management solutions might be specified are in the Appendix.
- 6.52 Councils cannot attach conditions to remedial notices, such as requiring works to be carried out in accordance with good arboricultural practice or with relevant British Standards.

Good practice advice

- 6.53 Councils should, however, consider attaching to remedial notices practical advice on how the hedge might be cut safely and maintained so that it remains attractive. This would be for information only and would not be enforceable. The paragraphs below suggest other possible items for inclusion in any advice note.

Good arboricultural practice

- 6.54 Councils might recommend that all works are carried out in accordance with BS 3998: *Recommendations for Tree Work*. Reference might be made to publications that offer advice on specific management and pruning techniques for particular species of tree or shrub.

Safety

- 6.55 Councils should encourage safe working on and around trees. The Arboriculture and Forestry Advisory Group set up by the Health and Safety Commission has published a number of tree safety guides which are available at www.hse.gov.uk/pubns/forindex.htm. *Tree work accidents: an analysis of fatal and serious injuries* illustrates what can happen if safety procedures are not followed or work is undertaken by unskilled people. If Councils consider that specialist equipment or professional help is likely to be needed, particularly where work at height or with chainsaws is involved, good practice advice might encourage hedge owners to use qualified/skilled contractors. It might also usefully refer to the Arboricultural Association's list of approved contractors which is available on their website at www.trees.org.uk.

Birds and other wildlife

- 6.56 As well as setting the compliance period to avoid the hedge having to be cut during the bird nesting season, good practice advice might encourage the hedge owner to take special care not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that are nesting or roosting in trees.

Removal/replacement hedge

- 6.57 Where drastic action is called for which might leave an unsightly feature, good practice advice might suggest that the owner consider removing the hedge. It might be accompanied by a leaflet (such as *The right hedge for you*) to help them choose a suitable replacement hedge. Councils cannot, however, require a replacement hedge to be planted.
- 6.58 If removal of the hedge is suggested, Councils should – where appropriate – warn that prior permission might be required under other legislation. In particular, the Council's consent will be needed to fell any trees in the hedge that are protected by a tree preservation order. If the hedge is located in a conservation area or is caught by the Hedgerows Regulations 1997⁵¹, the Council would normally need to be notified of the proposed removal so that they can consider

⁵¹ Statutory Instrument 1997 No. 1160. The Hedgerows Regulations do not apply to residential hedges. However, hedges on agricultural land that are affecting neighbouring domestic property might be caught and so require prior notification to the Council before being removed. Further information is available through the farmland conservation pages of the Defra website at www.defra.gov.uk.

whether to protect the hedge – either by making a tree preservation order or by issuing a hedgerow retention notice. In other cases, a felling licence might need to be obtained from the Forestry Commission⁵².

Duration of Remedial Notice

- 6.59 The remedial notice remains in force until it is formally withdrawn. It would have no practical effect, however, if the hedge was removed or there was some other change in circumstances which took it outside the scope of the Act. For example, if the property affected by the hedge ceased to be used for domestic purposes.
- 6.60 Were the original hedge, specified in the remedial notice, to be replaced by another evergreen hedge which, in time, grew to such a height that it adversely affected a neighbouring property, a fresh complaint would have to be made.

Land charge

- 6.61 As long as the remedial notice is in force, it must be registered as a local land charge. In this way, prospective buyers of the property should be alerted to any commitment that they would be taking on.
- 6.62 If the Council is notified that the hedge has been removed, or that a change of circumstances means the Act no longer applies and so the remedial notice is unenforceable, they should withdraw the notice and delete the relevant entry from the local land charges register after following the procedure recommended in Chapter 7: *Case Beyond the Scope of the Act*.

⁵² Further information, including the leaflet *Tree Felling – Getting Permission*, is available in the grants and licences pages of the Forestry Commission's website at www.forestry.gov.uk/england.

Chapter 7: Withdrawing and relaxing remedial notices

Revising remedial notices – correcting errors – extending the compliance period – implementing the preferred solution of the main parties – change in circumstances – case no longer covered by the Act – works that go further than the original notice requires

- 7.1 The Act⁵³ gives Councils powers to withdraw a remedial notice that they have issued, or to waive or relax some of its requirements. Apart from the need to notify the complainant – or their successors – and the owner and occupier of the land where the hedge is situated of what they have done, the Act does not set out the procedure that Councils must follow before taking such a step.
- 7.2 The procedure is likely to vary according to the circumstances.

Correcting Errors

- 7.3 As indicated in paragraph 6.21, if the Council make a mistake in the remedial notice, they should withdraw it and issue a new one as soon as the error comes to their attention. This can be done before or after the remedial notice comes into effect, but is best done before the original 28 day appeal period expires.
- 7.4 Any alteration of the contents of the notice will usually require consequential changes to the operative date and to the compliance period. The appeal period would also re-start, from the date that the new notice is issued.

Procedure

- 7.5 Given the importance of acting quickly, the Council would not normally consult the main parties to the original complaint before making the necessary changes to the remedial notice. But they should write to them, enclosing the revised remedial notice and explaining how this differs from the original and the reasons for the changes. It is good practice to send a copy of this letter to any other interested parties who were informed of the Council's earlier decision (see paragraph 5.109).
- 7.6 Councils are encouraged to issue the replacement remedial notice at the same time as they notify the main parties of the withdrawal of the original notice. If they cannot be done together, the letter informing the main parties that the original notice has been withdrawn should make clear that a replacement notice will be issued shortly.

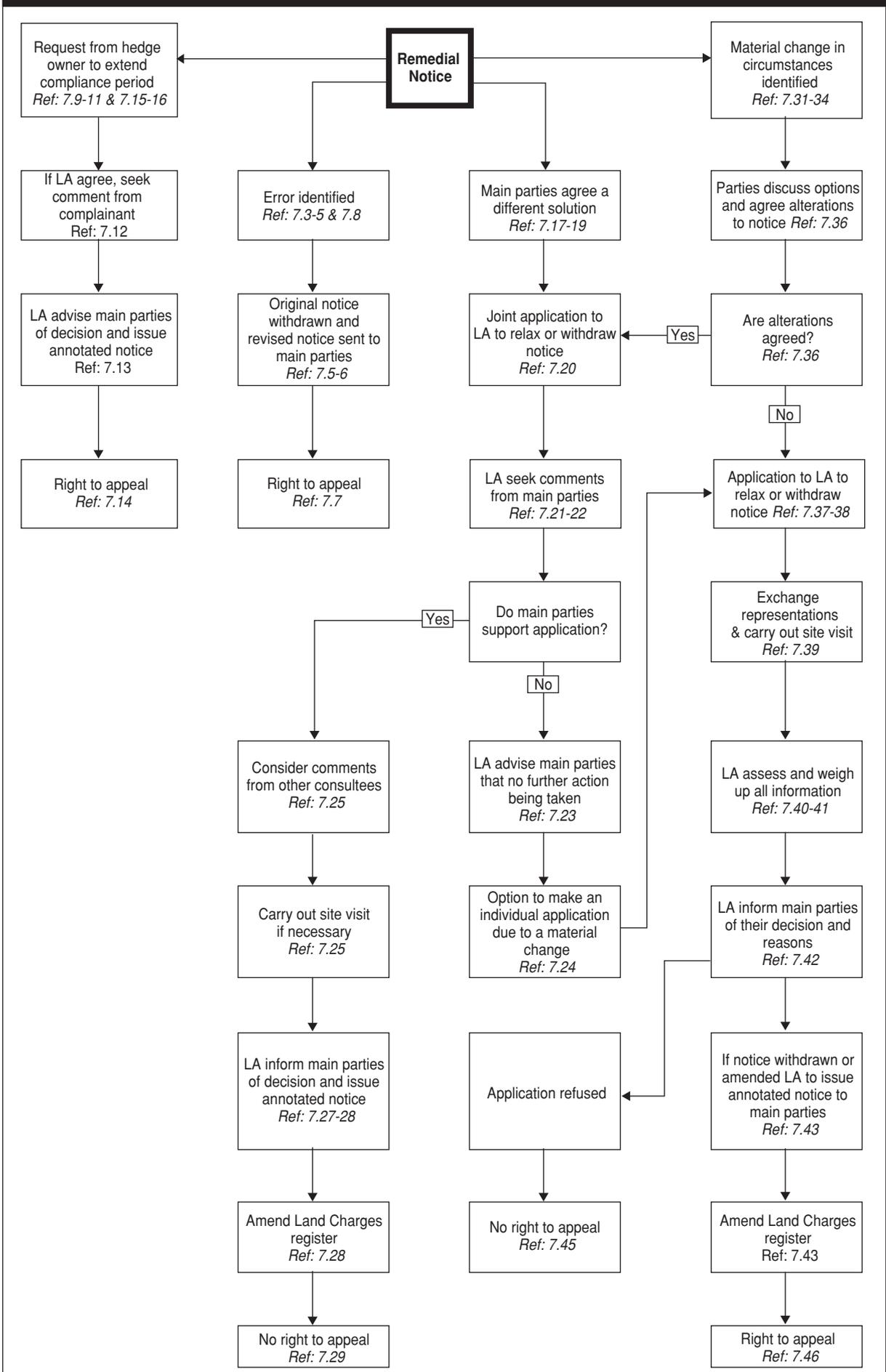
Appeal rights

- 7.7 Councils should also inform the main parties of the effect of this action on their appeal rights. They will have 28 days from the date that the new remedial notice is issued in which to appeal against the revised remedial notice as a whole – not just against the alterations. This applies whether or not they appealed against the original remedial notice, and even if the requirements of the notice are unaffected by the changes.
- 7.8 If an error comes to light after an appeal has been lodged against the original remedial notice, the matter should be drawn to the attention of the Inspector appointed to determine the appeal. He has powers under the Act⁵⁴ to correct any defect, error or misdescription in the remedial notice provided this will not cause injustice to any of the main parties to the complaint.

⁵³ Section 70.

⁵⁴ Section 73(3).

Figure 3 Request to withdraw or relax a remedial notice



Extending the Compliance Period

- 7.9 Councils should not normally entertain requests to extend the compliance period in order to give the owner or occupier of the land where the hedge is situated extra time to carry out remedial works to the hedge.
- 7.10 This should not usually be necessary. Councils are advised that, in setting the time allowed for completion of the initial one-off works to the hedge, they should take account of what can reasonably be achieved (see paragraph 6.13). In addition, if they think they have not been given enough time to comply with the requirements of the notice, the owner or occupier of the land where the hedge is situated can appeal (see paragraph 8.8).
- 7.11 There may, however, be exceptional circumstances which have prevented the owner or occupier of the land where the hedge is situated from complying with the requirements of the remedial notice. For example, extended and enforced absence, say, on business or in hospital could mean that the remedial notice was received late in the compliance period or that the time available has been significantly shortened. A key consideration will be not just the amount of time available but whether it is practicable to carry out the required works within it.

Procedure

- 7.12 If the Council consider that the circumstances justify altering the remedial notice to extend the compliance period – and if time allows – it is good practice to inform the complainant of their intentions and to invite comments within a set period. Any comments received should be taken into account before the Council makes its final decision.
- 7.13 The Council must notify the main parties of any decision to relax the requirements of the remedial notice by extending the compliance period. It is good practice to send a suitably annotated version of the remedial notice. The Council might, however, want to make clear – in a covering letter – when the extended period expires and spell out the consequences of failure to comply with the requirements of the notice.

Appeal rights

- 7.14 In theory, a complainant could appeal against the decision to relax the requirements of a remedial notice by extending the compliance period, on the grounds that there has been no material change in circumstances since the notice was issued. In practice, this is unlikely to arise as an appeal would prolong matters further and so would be unlikely to benefit the complainant.

Compliance period expired

- 7.15 Once it has expired, the compliance period cannot be extended by relaxing the requirements of a remedial notice. The notice would have to be withdrawn and a new one issued, which would trigger fresh appeal rights. Councils would need strong justification before contemplating such a significant step. In particular, they are advised not to proceed without securing the written agreement of the main parties.
- 7.16 Expiry of the compliance period will not, however, generally lead to automatic and immediate prosecution of the hedge owner for breaching the requirements of the remedial notice. Chapter 9: *Informal action* gives advice on action – falling short of prosecution – that Councils might take to ensure works specified in a remedial notice are carried out. This includes allowing more time and/or issuing a formal warning.

Main Parties Agree a Different Solution

- 7.17 It is possible that the complainant – or their successors – and the owner or occupier of the land where the hedge is situated might agree different one-off works (“remedial or initial action”) or different longer-term maintenance (“preventative action”) to that specified in the remedial notice.
- 7.18 If this goes further than the requirements of the notice (eg keeping the hedge trimmed to a lower height than that specified), there is no need to formalise the arrangement. It is open, at any time, to the owner or occupier of the site with the hedge to do more than the notice requires – unless other legal restrictions apply.
- 7.19 If the agreed solution is less exacting than the remedial notice requires (eg allowing a higher screen), an application should be submitted to the Council for the notice to be withdrawn or its requirements relaxed.

Procedure

- 7.20 The aim of the Act is to take the heat out of hedge disputes and to encourage communication and negotiation between the people concerned. It should not normally work, therefore, so as to frustrate implementation of an agreed solution.
- 7.21 If the Council receive a joint application requesting that a remedial notice be withdrawn or certain of its requirements relaxed or waived, they should write to the main parties inviting their comments within a reasonable period.
- 7.22 Depending on the circumstances of the case, the Council might also need to seek arboricultural, horticultural, ecological, landscape or conservation advice or consult specialist bodies (see paragraph 5.48).
- 7.23 If any of the main parties indicate at any time that they no longer wish to proceed with the application or they object to it, it should automatically fall. In these circumstances, the Council should inform all the main parties of the position and state that they will be taking no further action.
- 7.24 If one person still wants to go ahead and believes they can make a case for withdrawal of the remedial notice, or the waiver or relaxation of certain of its requirements, on the grounds that there has been a material change of circumstances since the Council last looked at the matter, they should make a new, separate application. This should be dealt with under the procedure described in the section below on *Material Change in Circumstances*.
- 7.25 If objections or representations are received from other consultees, the Council must consider these before withdrawing the remedial notice, or relaxing or waiving any of its requirements. This might necessitate a visit to the site and its surroundings.
- 7.26 As noted above, the wishes of the people involved in the dispute should normally prevail. Where the main parties to the complaint are happy to proceed, therefore, objections or representations from other consultees would need to be significant. For example, that the hedge is located in a sensitive area and that the changes sought would have a major impact on local amenity.
- 7.27 In any event, the Council should notify the main parties, plus anyone who submitted representations, of their decision on the application.
- 7.28 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Council should send to the main parties a suitably annotated/endorsed

version of the remedial notice. The annotations should include specifying a date when the changes to the notice come into operation. The Council should also ensure that the record held by the local land charges register is amended (see paragraph 6.61).

Appeal rights

7.29 Given that the Council would simply be implementing the parties' wishes, there are no rights of appeal against the Council's decision in these cases.

Material Change in Circumstances

7.30 Over time, circumstances might change to the extent that keeping to the requirements of the remedial notice adversely affects the reasonable enjoyment of their property by the complainant – or their successors – or the owner or occupier of the land where the hedge is situated. This relates primarily to any requirements in respect of longer-term maintenance of the hedge (preventative action).

7.31 It is most unlikely that circumstances will have changed to such a degree that any relaxation or waiver of the initial one-off works (remedial or initial action) would be justified.

Material change

7.32 A material change in circumstances is something that significantly affects the Council's decision on the original complaint. If the circumstances had been known to the Council at the time, it might have caused them to reach a different conclusion.

7.33 Examples of what might constitute a material change in circumstances include:

- development on either the affected property or the land where the hedge is situated which means that the hedge is no longer an adequate screen or does not sufficiently safeguard privacy. This might be small-scale development within permitted development rights. Or it could involve new higher density housing, or other buildings, on the site;
- change of use or increased activity on either the affected property or the land where the hedge is situated which the hedge does not adequately screen out. In the case of the complainant's property, part of it would still have to be used for domestic purposes, otherwise the Act would no longer apply. For example, someone might live in and work from the property.

7.34 A change in ownership of either the affected property or the land where the hedge is situated is unlikely to represent a material change in circumstances for these purposes. This is unrelated to the effect that the hedge has on anyone's reasonable enjoyment of their property.

Procedure

7.35 If the Council are approached by someone who wishes to apply for a remedial notice to be withdrawn, or for certain of its requirements to be waived or relaxed, they are advised to follow a similar process to that used when dealing with the original complaint – as set out in Chapter 5.

Resolving the dispute amicably

7.36 This includes encouraging the applicant to try to reach agreement with the other main parties on the alterations sought to the notice. If they can agree a way forward, a joint application

should be submitted under the simplified procedure set out in the section above on *Main Parties Agree a Different Solution*.

Application

- 7.37 If the other main parties do not agree to the alterations, a formal application should be made to the Council for the remedial notice to be amended or withdrawn. This should include the following information:
- the applicant's name, address and other contact details;
 - the name and address of whichever of the complainant – or their successors – or the owner or occupier of the land where the hedge is situated is not the applicant;
 - a copy of the original remedial notice;
 - whether the applicant seeks withdrawal of the notice or for certain requirements to be waived or relaxed. It will help the Council if the applicant explains what requirements they wish to see altered;
 - details of the steps taken to settle the matter by negotiation, with copies of relevant correspondence or other papers;
 - reasons in support of the application. This should include:
 - what has changed since the original complaint was considered to justify re-opening the matter;
 - details of how maintaining the hedge in accordance with the terms of the notice is adversely affecting the applicant's reasonable enjoyment of their property. It will help the Council if this does not just list the problems caused by the hedge but explains their severity and their impact, in factual terms.
- 7.38 The applicant should send a copy of their application to the other main parties involved in the original complaint – or their successors – at the same time as they submit it to the Council.

Exchanging representations and site visit

- 7.39 On receipt of an application, the Council should follow the steps outlined in Chapter 5: *Gathering the Evidence* for exchanging representations between the main parties and consulting other relevant interests. A visit to the site is also likely to be necessary. All relevant papers should be seen by the main parties so that the process is open and transparent.

Deciding the application

- 7.40 As described in Chapter 5, in reaching their decision, the Council should consider all relevant factors and assess each application on its particular merits. It will normally come down to a question of balance between the various arguments for and against continuing with the current management regime for the hedge.
- 7.41 In carrying out this balancing act, Councils should ask themselves:
- does maintaining the hedge in its current state adversely affect the reasonable enjoyment of their property by either the complainant – or their successors – or by the owner or occupier of the land where the hedge is situated;

- how severe is the impact of the hedge and is this sufficient to justify withdrawing the original notice or waiving or relaxing some of its requirements;
- what, if any, adjustments need to be made to the original remedial notice to remedy these problems and to prevent them from recurring;
- are there any reasons why such alterations should be moderated or the current requirements retained, having regard in particular to all representations received and to the impact on the character and amenity of the area.

7.42 The Council must notify the main parties of their decision and the reasons for it. 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.

7.43 Where they decide to withdraw the remedial notice, or to relax or waive any of its requirements, the Council should send to the main parties a suitably annotated/endorsed version of the remedial notice. They should also ensure that the record on the local land charges register is amended (see paragraph 6.61).

7.44 The decision letter should specify a date when the changes to the notice come into operation. This should be set at least 28 days after the date of the Council's decision to allow time for the main parties to appeal against the decision. The decision in question will be held in abeyance while any appeal is determined and the requirements of the original notice will continue to apply.

Appeal rights

7.45 There is no specific right of appeal under the Act if the Council rejects an application for a remedial notice to be withdrawn or for some of its requirements to be waived or relaxed, and decides in favour of retaining the current arrangements. If someone believes 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.

7.46 Any of the main parties may appeal against the Council's decision to withdraw a remedial notice, or to waive or relax any of its requirements. Chapter 8: *Grounds of Appeal* explains the grounds on which such an appeal can be made.

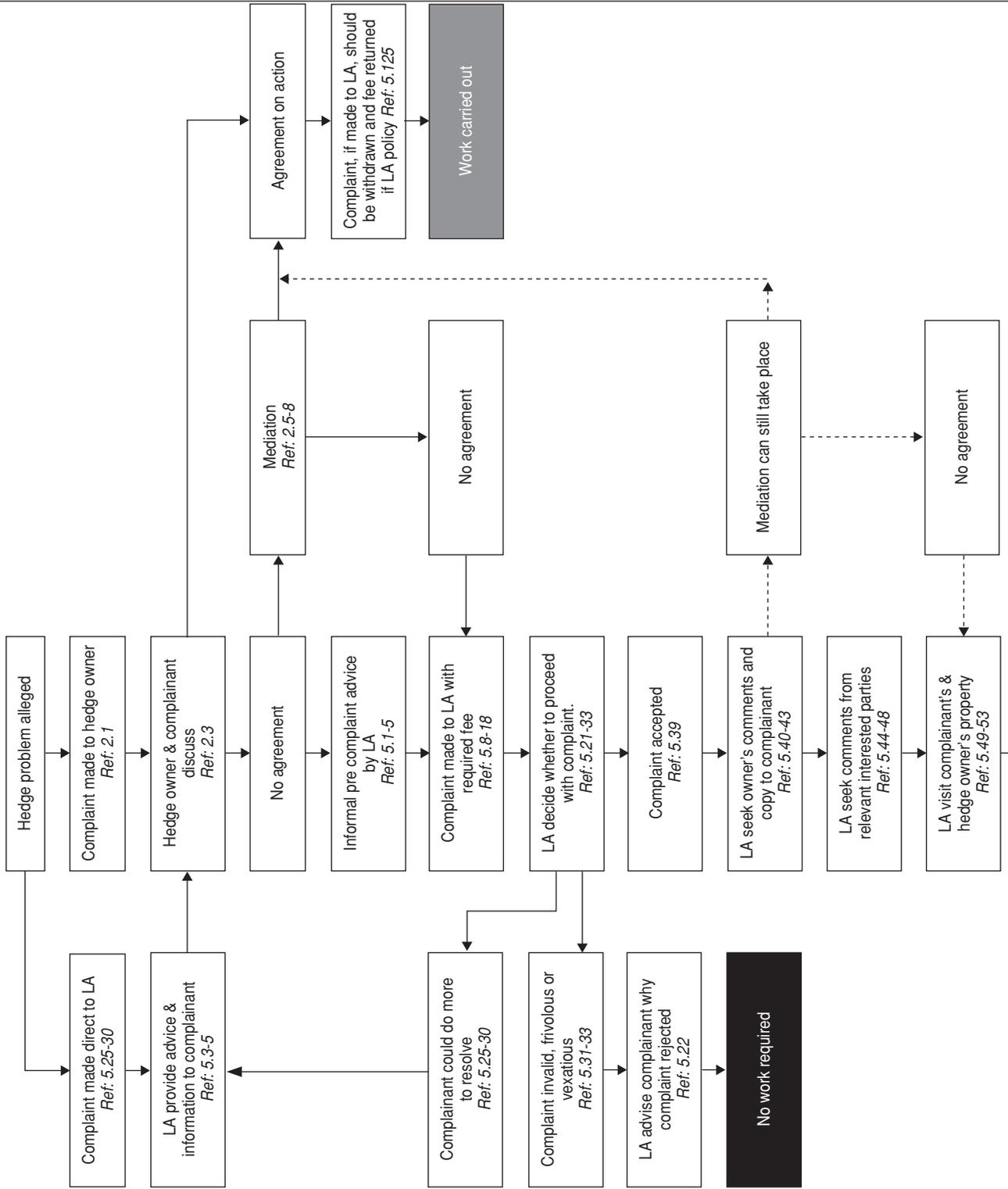
Case Beyond the Scope of the Act

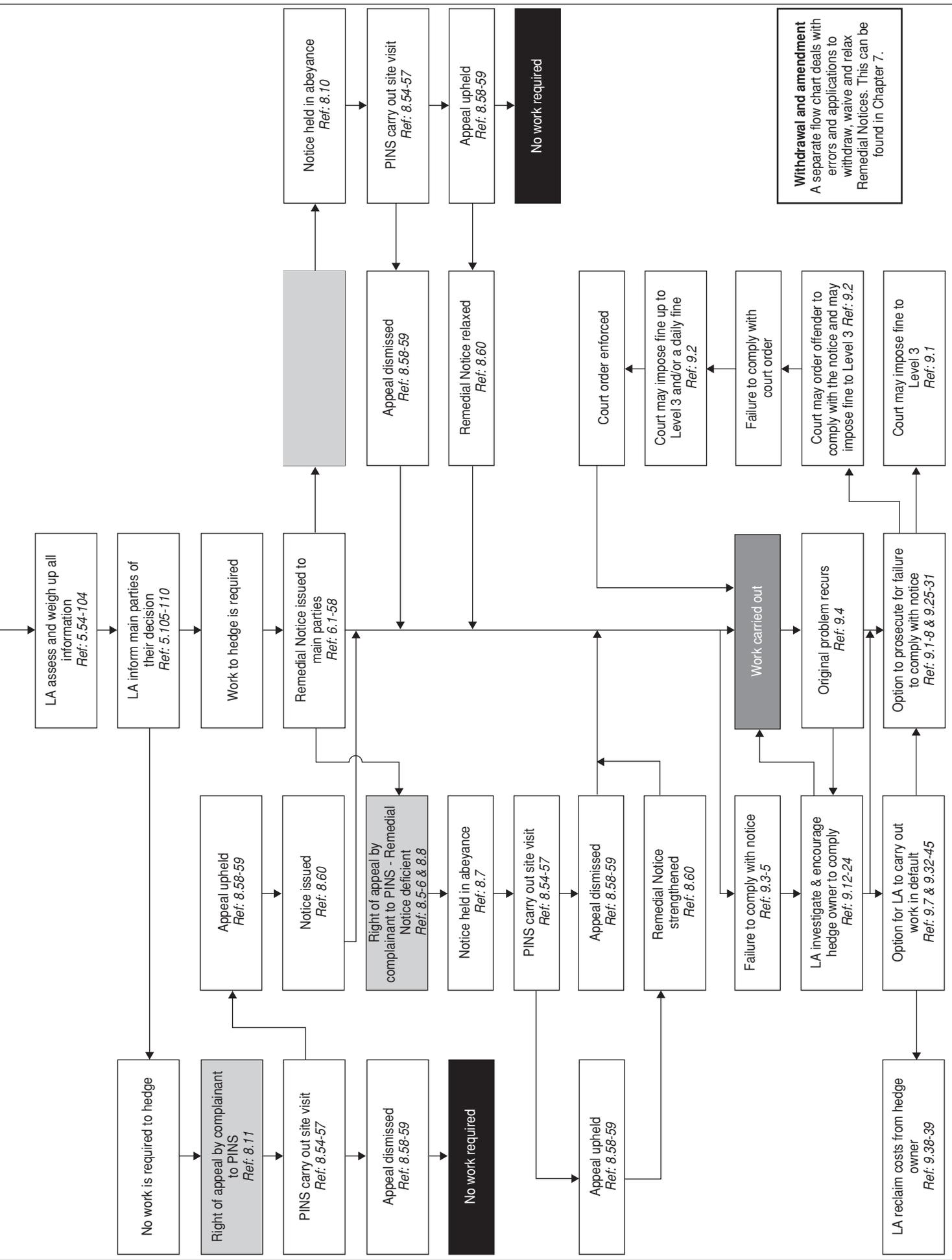
7.47 Changes might arise that take the case outside the scope of the Act, with the result that the remedial notice can no longer be enforced. For example, if the hedge is removed or the affected property is no longer classed as domestic use. Although the remedial notice would have no practical effect, it remains a local land charge until the Council removes it.

7.48 If Councils are asked formally to withdraw a remedial notice for these reasons, it is good practice to notify the main parties of their intention to withdraw the notice, and to invite comments within a set period. This will help provide assurance that the hedge has been removed or other change has taken place.

7.49 Provided that any comments received do not identify a problem, the Council should send to the main parties a copy of the remedial notice, endorsed to verify its withdrawal. They should also confirm that the relevant record on the local land charges register has been deleted.

Figure 4 Overview of process. Charts on specific elements can be found with the relevant text





Withdrawal and amendment
 A separate flow chart deals with errors and applications to withdraw, waive or relax Remedial Notices. This can be found in Chapter 7.

Exceeding the Requirements of a Remedial Notice

- 7.50 As noted in paragraph 7.18, if the owner or occupier of the site with the hedge wishes to carry out works that go further than the remedial notice requires, it is open to them do so at any time – unless other legal restrictions apply.
- 7.51 On the other hand, if the owner or occupier of the affected property – the complainant or their successors – wants to see a more drastic management regime implemented, they should in the first place seek to negotiate a solution with the owner or occupier of the land where the hedge is situated.
- 7.52 Where such negotiations fail, the owner or occupier of the affected property would need to make a fresh complaint to the Council following the procedure set out in Chapter 5 – provided that the hedge continues to meet the definition of a high hedge (see Chapter 4: *High Hedges*) and the affected property remains in domestic use.
- 7.53 This would include payment of a fee and provision of evidence that reasonable steps had been taken to resolve the matter without involving the Council. As with any application to relax the requirements of a remedial notice, the complainant would need to show there had been some change in circumstances since the Council last considered the case that justifies re-opening the matter. Without this, the Council could reject the complaint as frivolous or vexatious. They would also take account of the time that has elapsed since the original remedial notice was issued.

Chapter 8: Appeals

Council decisions that can be appealed against – grounds of appeal – appeal form – time limit for submitting appeals – parties to an appeal – gathering relevant information – site visit – deciding the appeal

- 8.1 Although the right of appeal is to the Secretary of State, all his appeals functions are carried out by the Planning Inspectorate (PINS). They handle all matters related to appeals, from submission to appeal decision.
- 8.2 A separate leaflet *High hedges: appealing against the Council's decision* is available for potential appellants.

Rights of Appeal

- 8.3 Under the Act⁵⁵, the complainant and the owner and occupier of the land where the hedge is situated can appeal against:
- the issue of a remedial notice;
 - the withdrawal of a remedial notice;
 - the waiver or relaxation of its requirements.
- 8.4 In addition, the complainant can appeal against:
- a decision by the Council that the height of the hedge is not adversely affecting their reasonable enjoyment of their property;
 - a decision not to require remedial action even though the height of the hedge is causing problems⁵⁶.

Grounds of Appeal

Issue of a remedial notice: complainant

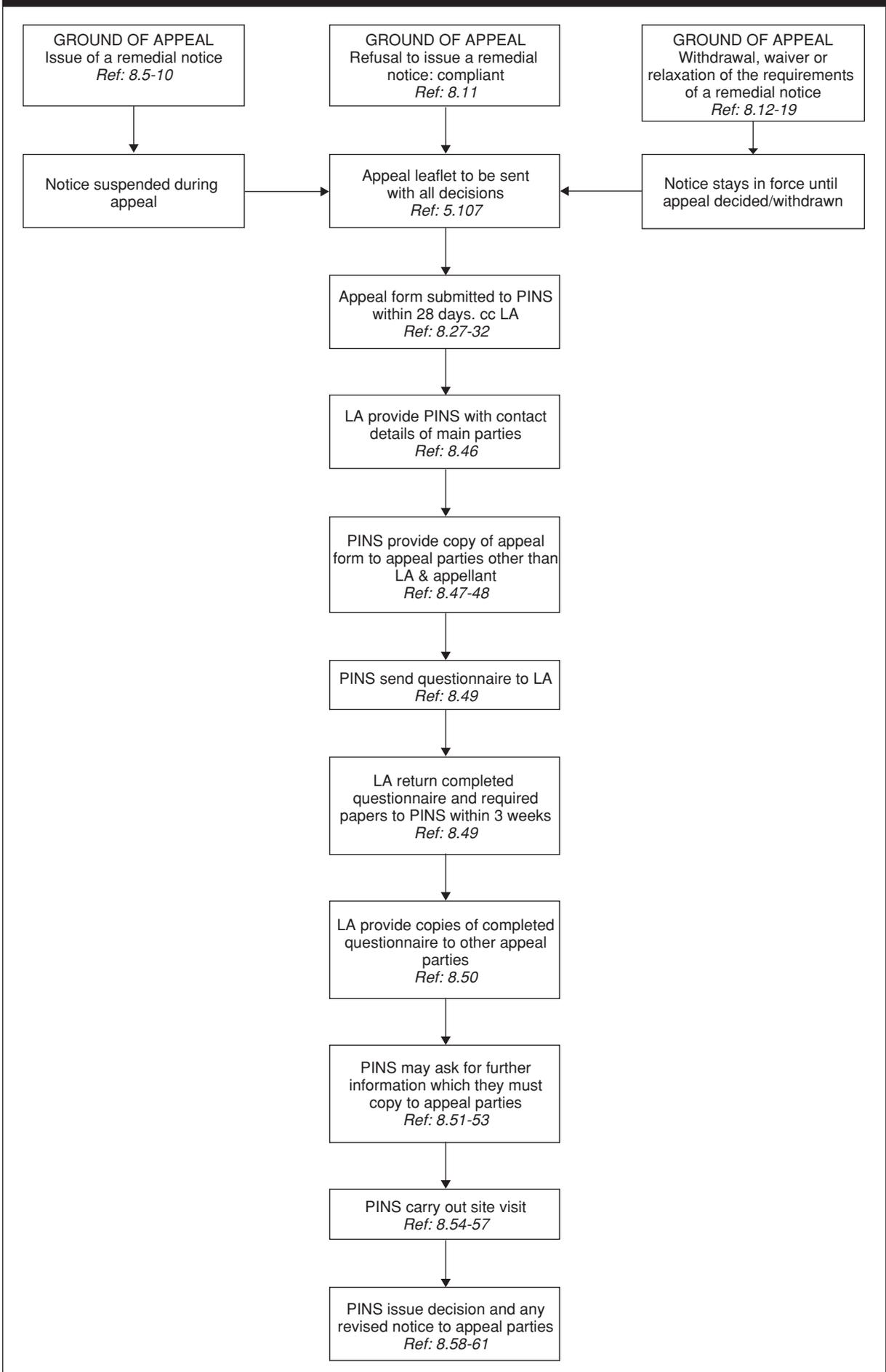
- 8.5 The Appeal Regulations⁵⁷ specify that appeals relating to the issue of a remedial notice can be made by the complainant on the grounds that the remedial action or preventative action specified in the remedial notice (or both) fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring. The appeal may, therefore, be against the initial action (ie one-off works) and/or against the preventative action (ie longer-term management) specified in the notice.
- 8.6 Reasons for appealing on such grounds might include:
- that, in determining a suitable management solution, the Council have attached insufficient weight to the problems that the complainant experiences with the hedge;
 - that the Council have overestimated the contribution that the hedge makes to the amenity of the neighbourhood;

⁵⁵ Section 71(1).

⁵⁶ Section 71(3).

⁵⁷ Regulation 3(b) of the Appeals Regulations.

Figure 5 Appeal process



- that more extensive works can be carried out without affecting the amenity of the people occupying the property where the hedge is situated;
- that more extensive works can feasibly be undertaken, without being detrimental to the health of the hedge;
- that alternative works would be more effective in remedying the problems caused by the hedge or in preventing them recurring.

8.7 The remedial notice is suspended while the appeal is being determined.

8.8 Complainants cannot appeal on the grounds that too much time has been allowed to carry out the works specified in the remedial notice. An appeal is likely to prolong the timetable and so is unlikely to be of any advantage to the complainant.

Issue of a remedial notice: owner or occupier of the land with the hedge

8.9 Appeals against the issue of a remedial notice can be made by the owner or occupier of the land where the hedge is situated on the following grounds⁵⁸:

- a. that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property. Reasons for appealing on such grounds might include the following:
 - that the Council have overestimated the problems experienced by the complainant;
 - that the Council have attached insufficient weight to the contribution that the hedge makes to the amenity of their property or to the neighbourhood.
- b. that the remedial action or preventative action specified in the remedial notice (or both) exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring. Reasons for appealing on such grounds might include the following:
 - that the works to the hedge specified in the remedial notice would adversely affect the amenity of their property or of the neighbourhood;
 - that the works could lead to the death of the hedge;
 - that alternative works provide a more effective remedy.
- c. that not enough time has been allowed to carry out the works set out in the notice.

8.10 The remedial notice is suspended while the appeal is being determined.

Refusal to issue a remedial notice: complainant

8.11 The complainant can, in addition, appeal against a Council's decision that the height of the hedge is not adversely affecting their reasonable enjoyment of their property; or not to require remedial action. Such an appeal can be made on the following grounds⁵⁹:

- a. that, contrary to the decision of the Council, the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property; and/or
- b. that the adverse effect warrants action being taken in relation to the hedge.

⁵⁸ Regulations 3(a), (c) and (d).

⁵⁹ Regulation 5.

Withdrawal of a remedial notice

- 8.12 There would be no advantage to the owner or occupier of the land where the hedge is situated in appealing against the withdrawal of a remedial notice. The grounds of appeal in the Appeal Regulations⁶⁰ envisage, therefore, that only complainants – or their successors – would wish to exercise the right of appeal against a decision to withdraw such a notice.
- 8.13 Before a complainant – or their successors – can appeal against the withdrawal of a remedial notice, the following conditions must be met:
- a. that the complainant – or their successors – did not agree to the withdrawal of the remedial notice; and
 - b. that the Council have not issued a new remedial notice relating to the same hedge.
- 8.14 These conditions effectively rule out appeals against:
- a Council decision to withdraw a remedial notice where they immediately replace it with a new one (eg to correct an error or omission). In such cases, an aggrieved complainant or owner or occupier of the land where the hedge is situated would exercise their right of appeal against the issue of a new remedial notice (see Chapter 7: *Correcting Errors*);
 - a Council decision to withdraw a remedial notice where they are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).
- 8.15 Provided the two conditions described above are met, the complainant – or their successors – may appeal against a decision to withdraw a remedial notice on the grounds that there has been no material change in circumstances since the original notice was issued that would justify its withdrawal.
- 8.16 The decision to withdraw a remedial notice is suspended while the appeal is being determined. The original notice, therefore, remains in force until the appeal is decided or is withdrawn.

Waiver or relaxation of the requirements of a remedial notice

- 8.17 The Appeal Regulations specify that an appeal can be made in relation to a decision to waive or relax the requirements of a remedial notice only if the person wishing to appeal did not agree to the change⁶¹. This rules out appeals in cases where the Council are simply implementing changes that have been requested and agreed by the main parties (see Chapter 7: *Main Parties Agree a Different Solution*).
- 8.18 Provided this condition is met, the complainant – or their successors – and the owner or occupier of the land where the hedge is situated may appeal against a decision to waive or relax the requirements of a remedial notice on the following grounds:
- a. that there has been no material change in circumstances since the notice was issued that would justify waiving or relaxing its requirements;
 - b. that the revised requirements fall short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
 - c. that, conversely, the revised requirements exceed what is necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring.
- 8.19 The decision to waive or relax the requirements of a remedial notice is suspended while the appeal is being determined. The requirements of the original notice, therefore, remain in force until the appeal is decided or is withdrawn.

⁶⁰ Regulation 4(1).

⁶¹ Regulation 4(2).

Before Making an Appeal

- 8.20 There is no charge for appeals. Nevertheless, appeals are expensive to administer and time consuming for all those involved and so should not be made lightly.
- 8.21 Communication between the people involved in the dispute is to be encouraged at all stages of the process, including during the period for making an appeal. In particular, if the people concerned agree a different solution to that specified in the remedial notice, they should consider submitting a joint application to the Council to waive or relax the requirements of the notice, under the simplified procedure set out in Chapter 7: *Main Parties Agree a Different Solution*, rather than go through the appeals process.
- 8.22 In addition, complainants – or their successors – and the owner or occupier of the land where the hedge is situated should use the appeal period to seek additional information from the Council if they are uncertain of the reasons for the Council’s decision.
- 8.23 Potential appellants should note that the Secretary of State or the Inspector dealing with the appeal will have regard to this guidance, especially the advice in Chapter 5 on *Assessing and Weighing the Evidence* and on *Deciding the Complaint*.
- 8.24 In addition, they should bear in mind that the other party to the complaint or the decision in question could also appeal. In these circumstances, the cases will be considered together and it is possible that one party could find they are worse off as a result of the appeal decision.
- 8.25 For example, the complainant might appeal against a remedial notice because they consider its requirements are not tough enough. At the same time, the owner or occupier of the land with the hedge might appeal to have the remedial notice removed. It is possible that the Secretary of State or the Inspector could decide to dismiss the complainant’s appeal but allow that from the owner or occupier of the site in question, and quash the remedial notice. Alternatively, they could decide to allow the complainant’s appeal and dismiss that from the owner or occupier of the site in question, and make the requirements of the remedial notice more onerous.
- 8.26 It is important, therefore, that potential appellants carefully assess the merits of their case and the prospects of success of any appeal.

Submitting an Appeal

Appeal form

- 8.27 Appeals should be submitted on the official form provided by the Planning Inspectorate⁶². The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
 Planning Inspectorate
 Regus House
 Room 2/15
 1 Friary
 Temple Quay
 Bristol BS1 6EA
 Telephone: 0117 344 5687.

- 8.28 The appeal form should be completed accurately, including the full grounds of appeal, and should be accompanied by all the relevant documents. These will normally include a copy of

⁶² Regulation 7(1).

the Council's decision letter and any remedial notice in question. Appellants should not merely list the grounds of appeal that are relevant to their case. They should explain why they disagree with the reasons given by the Council in support of their decision. Where the appeal is against the issue of a remedial notice, appellants should make clear what action specified in the notice (remedial action or preventative action, or both) is the subject of the appeal.

- 8.29 The completed appeal form and enclosures should be sent or emailed to the Planning Inspectorate. See Chapter 5: *Delivering Documents* for more information about how to deliver documents.
- 8.30 The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question⁶³.

Time limits

- 8.31 The completed appeals form and other documents must be received by the Planning Inspectorate within 28 days, starting from:
- the date the remedial notice is issued;
 - the date of the Council's notification to the main parties that it has decided to take no action in relation to the hedge; or
 - the date that the Council notifies the main parties it has decided to withdraw a remedial notice or to waive or relax its requirements⁶⁴.
- 8.32 Although there is discretion to allow extra time⁶⁵, this is normally exercised only in exceptional circumstances. For example, where appeal rights were not properly explained in the Council's decision letter or where personal circumstances (such as enforced absence) meant that the appellant received the decision late in the appeal period or after it had run out.

The Parties to an Appeal and their Role

- 8.33 The parties to an appeal relating to a high hedge are⁶⁶:
- the appellant;
 - the Council; and
 - every person, other than the appellant, who is:
 - a complainant – or has succeeded them as owner or occupier of the domestic property that is affected by the high hedge; or
 - an owner or occupier of the land where the hedge is situated.
- 8.34 References to the appeal parties in the rest of this Chapter include all the above. All play an equal part in the process and see all relevant papers. All must be notified of the appeal decision.

⁶³ Regulation 7(2).

⁶⁴ Section 71(4)(a) and (5).

⁶⁵ Section 71(4)(b).

⁶⁶ See regulation 2.

- 8.35 Other people or organisations who made representations to the Council about the decision that is the subject of the appeal have no direct role in the appeals process. Their original representations will be supplied to the Planning Inspectorate and taken into account in deciding the appeal.

Uncommon cases

- 8.36 As noted above, appeals against a remedial notice – or against a Council decision to withdraw such a notice, or to waive or relax its requirements – may be brought by both the complainant and the owner or occupier of the land where the hedge is situated. There could, therefore, be multiple appeals against a single notice or decision of the Council. In these circumstances, the Planning Inspectorate will consider the appeals together and will issue a single decision notice informing all the appeal parties of the outcome.
- 8.37 Where a Council issue more than one remedial notice in response to a complaint, as a general rule each notice may be appealed individually. In these and other cases that involve multiple hedges or hedge owners, the Planning Inspectorate will normally adopt a similar approach to that used by Councils in dealing with the original complaints, as set out below.

Multiple complainants, single hedge, one owner

- 8.38 The Council would have issued separate remedial notices in respect of each complaint. While the owner or occupier of the land where the hedge is situated has a right of appeal against all or any of the notices, the complainant can appeal only against the notice relating to the section of hedge that affects their property.
- 8.39 Appeals against a particular remedial notice will need to be considered on their individual merits and separate decisions will be issued in respect of each remedial notice. But the cases will be linked as they are processed so that the relationship between them, and the practical implications for the hedge owner, can be considered.

One complainant, single hedge, multiple owners

- 8.40 Both the complainant and every owner and occupier of the land where the hedge is situated have a right of appeal against the single remedial notice issued by the Council. All such appeals will be considered together and a single decision notice issued.

One complainant, multiple hedges, one owner

- 8.41 Both the complainant and the owner or occupier of the land where the hedge is situated can appeal against all or any remedial notices issued in response to the original complaint. The complainant may also appeal against a Council decision not to require remedial action in relation to any hedge.
- 8.42 As the Council did beforehand, the Planning Inspectorate will need to look at the effect of each hedge that is the subject of an appeal individually as well as considering their cumulative impact. The Planning Inspectorate will, therefore, consider the cases together and issue a single decision notice.

One complainant, multiple hedges, multiple owners

- 8.43 In these circumstances, the complainant has the right of appeal against all or any remedial notices issued by the Council, as well as any decision not to require remedial action in relation

to any hedge affecting their property. The owner or occupier of the land where the hedge is situated can appeal only against any remedial notice issued in respect of their hedge.

- 8.44 As in the previous example, the effect of each hedge that is the subject of an appeal will need to be considered individually as well as looking at their cumulative impact. As a result, the appeals will need to be considered together and a single decision notice issued – even though different people might be involved in the appeals in question.

Appeals Procedure

- 8.45 All appeals will be decided on the basis of written submissions, chiefly those made during consideration of the original complaint or request, plus a visit to the site by the Inspector appointed to determine the case.

Preliminary information

- 8.46 On receipt of their copy of the appeal form and accompanying documents, the Council must provide the Planning Inspectorate with the names and addresses of everyone – other than the appellant – who is a party to the appeal (see paragraph 8.33)⁶⁷. The information should be readily available on the Council's case file and so should be supplied promptly, normally within a few days of receiving the appeal form.
- 8.47 When the Planning Inspectorate have received a properly completed appeals form and all accompanying documents, and the preliminary information set out above, they will notify the appeal parties – other than the appellant and the Council – of the appeal and send them a copy of the completed form⁶⁸.
- 8.48 The Inspectorate will also provide the name and contact details of the officer who will be handling the case⁶⁹.

Questionnaire

- 8.49 The Planning Inspectorate obtain background papers relevant to the appeal by issuing a questionnaire, to be completed by the Council⁷⁰. The Council normally have 3 weeks to return the completed questionnaire and to provide these papers⁷¹. Relevant papers include:
- the complaint, or the request to withdraw a remedial notice, or to waive or relax its requirements, together with supporting information;
 - the hedge owner's representations and supporting information;
 - any representations received from people other than the main parties (eg neighbours, local amenity societies);
 - comments from any organisations that the local authority consulted;
 - any report prepared by the case officer;

⁶⁷ Regulation 8.

⁶⁸ Regulation 9(1)(b).

⁶⁹ Regulation 9(1)(a).

⁷⁰ Regulation 9(1)(c).

⁷¹ Regulation 10(1).

- relevant extracts from any policies or other documents referred to in the officer's report;
- minutes of any committee meeting where the decision in question was discussed;
- the Council's decision letter;
- any remedial notice issued, or amended to waive or relax its requirements.

8.50 The Council must send a copy of the completed questionnaire to all the other appeal parties. They are not required to provide them with copies of all the background papers, most of which they will have seen previously. The Council should, however, be prepared to supply copies of selected documents on request.

Additional information

8.51 The Planning Inspectorate have discretion to ask for further information that they consider is relevant to the appeal⁷². They will exercise this discretion, in particular, if it is apparent that representations submitted at the complaint stage (including those from other interested people or organisations) have not been disclosed to the main parties, or if they believe that the appeal raises new points, or includes fresh information, not previously been considered by the Council. In these circumstances, the Planning Inspectorate will copy relevant papers to all the appeal parties and invite their comments. These must be submitted within the deadline set by the Planning Inspectorate, who will send a copy of these comments to all the other appeal parties.

8.52 It is important to keep to the timetable set by the Planning Inspectorate. If they do not receive comments by the date set, they might not accept them⁷³. This means that they would not be taken into account by the Inspector.

8.53 The Inspector who determines the appeal may also request additional information from the appeal parties. For example, as a consequence of something noted during the site visit.

Site visit

8.54 When the written evidence has been gathered, the Planning Inspectorate arrange for an Inspector to visit the site of the hedge. The Inspector, who is impartial, is responsible for determining the appeal.

8.55 No discussion of the merits of the appeal is allowed at a site visit. It will, however, normally be necessary for someone to attend so that the Inspector can gain access to the site of the hedge and to the affected property. For example, the Inspector may need to go through someone's home in order to reach a hedge that is situated in a back garden. In these circumstances, the Inspector would generally be accompanied at all times by all the appeal parties. This would include the complainant (or their successors) and the occupier of the land where the hedge is situated, or their representatives, as well as the Council. This provides assurance that the site visit has been conducted in a fair and impartial manner and that no inappropriate discussion has taken place.

8.56 As on-site discussion is not allowed, it is not necessary for the Council to be represented by the officer who dealt with the original decision. Site visits will not normally be delayed, therefore, because the officer concerned would be unavailable on the date suggested.

⁷² Regulation 11.

⁷³ Regulation 12.

- 8.57 The Inspector has the same rights to enter the land where the hedge is situated as the Council officer who dealt with the original complaint⁷⁴. The Inspector is also subject to the same obligations in respect of prior notice (see Chapter 9: *Entry to Land*).

Appeal Decision

- 8.58 In determining appeals, the appointed Inspector may allow or dismiss an appeal, either in total or in part⁷⁵.
- 8.59 The Act⁷⁶ requires the Inspector to notify the Council, the complainant (or their successors) and the owner and occupier of the land where the hedge is situated of their decision as soon as is reasonably practicable. He must also notify the appeal parties, in writing, of the reasons for his decision⁷⁷.
- 8.60 The Inspector will also copy to all the appeal parties, with the decision letter, any new or revised remedial notice, as follows:
- if he allows an appeal against a Council decision **not** to issue a remedial notice in response to the original complaint, the Inspector will issue a new notice⁷⁸;
 - if he decides to allow an appeal relating to a remedial notice, he will vary the requirements in the notice to reflect his decision⁷⁹;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the notice to correct any defect, error or misdescription in the original, provided this will not cause injustice⁸⁰;
 - whatever the decision on an appeal relating to a remedial notice, the Inspector will revise the date when it comes into effect (“the operative date” – see paragraph 6.12). This will be either the date of the Inspector’s decision or such later date as he may set. The compliance period (see paragraph 6.13) will start again from the revised operative date.
- 8.61 The Inspector’s decision is binding on the complainant (or their successors) and on the owner or occupier of the site where the hedge is located, even if they did not bring an appeal.

Withdrawal of Appeal

- 8.62 The appellant may withdraw their appeal at any time. In these circumstances, the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements, would take effect from the date that the appeal is withdrawn.

Review of Appeal Decision

- 8.63 There is no separate right of appeal against an appeal decision. The only recourse is by applying to the High Court to challenge the decision by judicial review. Such a review is designed to ensure that the powers laid down in the Act and the Appeal Regulations have been

⁷⁴ Section 74(2).

⁷⁵ Section 73(1).

⁷⁶ Section 73(4).

⁷⁷ Regulation 13.

⁷⁸ Section 73(2)(c).

⁷⁹ Section 73(2)(a) and (b).

⁸⁰ Section 73(3).

exercised properly and in accordance with good administration. It can be used, therefore, only to challenge the way the decision was made. It does not consider the merits of the appeal decision.

- 8.64 Permission is needed to bring an application for judicial review. This will only be granted where an applicant is able to satisfy the court that they have both sufficient interest in the matter and an arguable case. Anyone considering applying for judicial review would be well advised to seek specialist legal help. Community Legal Service (CLS) can help people to find the right legal advice⁸¹. An adviser can tell them whether they have a good case and can help with practical matters such as filling in court forms and preparing for hearings.

⁸¹ Search www.clsdirect.org.uk or telephone 0845 345 4 345.

Chapter 9: Enforcement

Offences and fines – person who enforcement action should be directed at – defences against prosecution – recording investigations – informal action – mounting a prosecution – Council intervention to carry out the required works – powers to enter the land where the hedge is situated

Offences

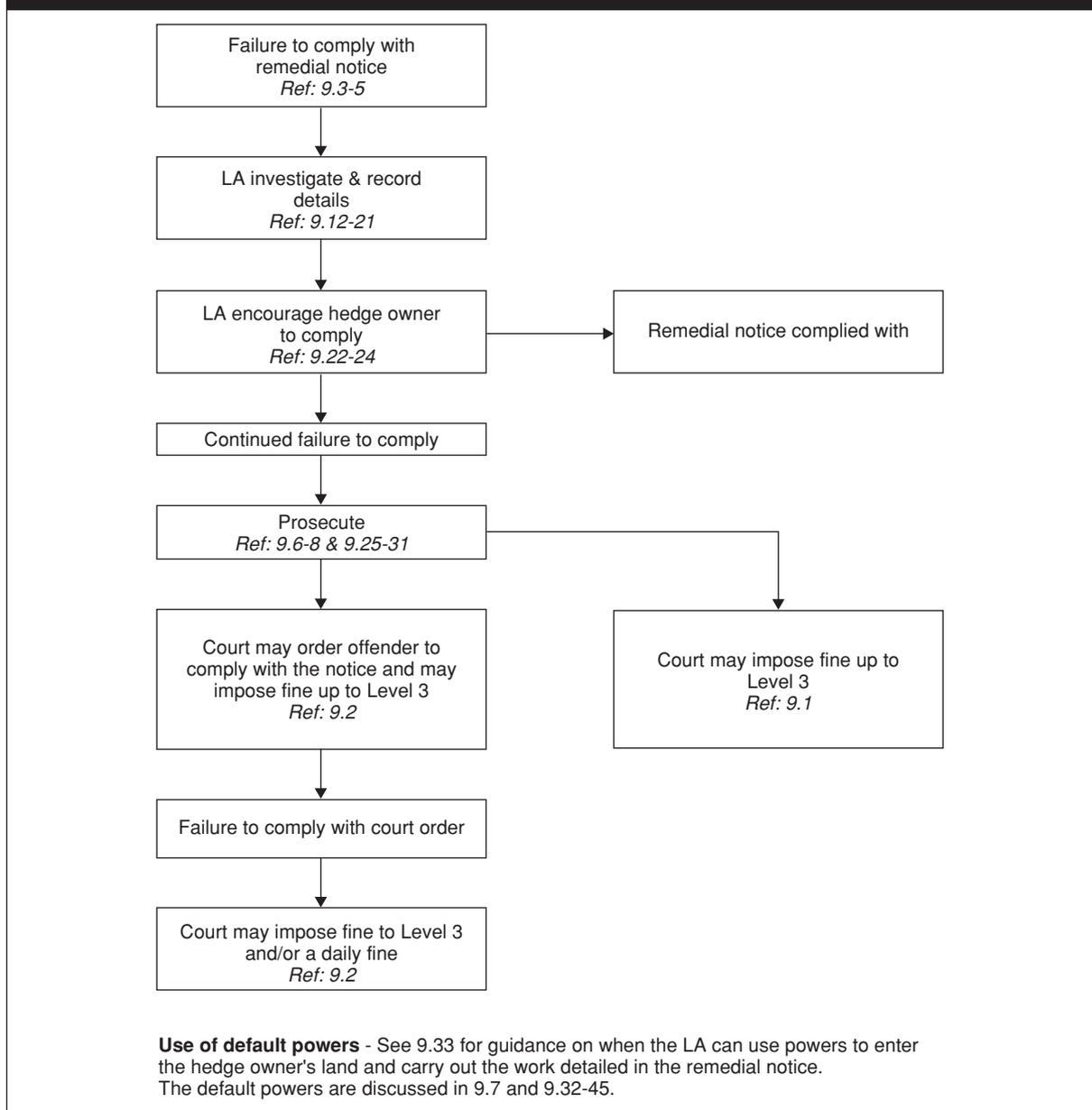
- 9.1 Failure to comply with the requirements of a remedial notice is an offence punishable, on conviction in the magistrates' court, to a level 3 fine (up to £1,000)⁸².
- 9.2 The court might then – in addition to, or in place of, a fine – issue an order for the offender to carry out the required work within a set period of time. Failure to comply with the court order would be another offence, liable to a level 3 fine. From this point, the court would also be able to set a daily fine of up to one twentieth of a level 3 fine for every day that the work remained outstanding⁸³.
- 9.3 This means that offences are committed:
- where someone does not complete the initial one-off action specified in the remedial notice within the time specified; and
 - where any continuing maintenance works are not carried out in accordance with the requirements set out in the notice.
- 9.4 A separate action may be brought against each contravention of a remedial notice. For example, someone could be prosecuted for failure to carry out the initial action specified in the remedial notice. They might then cut the hedge but subsequently fail to maintain it as required. This would be a separate offence for which they could also be prosecuted. Equally, if they then trimmed the hedge but did not do so again, as specified in the remedial notice, a new offence would be committed.
- 9.5 Where the requirements of a remedial notice are breached, whoever is the owner or occupier of the land where the hedge is situated at the time when the offence takes place could be liable to prosecution. This includes not only the owner and occupiers of the site who originally received copies of the remedial notice but also their successors (but see the section below on *Defences*).
- 9.6 Where there is both an owner and an occupier (eg landlord and tenant), Councils should initially direct enforcement action at the person who has legal responsibility for managing the hedge. However, general provisions in the Public Health Act 1936 (relating to the power of the courts to require an occupier to permit work to be done by an owner) apply so as to give the owner the right to comply with a remedial notice. They can do this even though, under the terms of their contract, the occupier might have sole responsibility for maintaining the hedge. Ultimately, therefore, the landowner is responsible for ensuring the requirements of a remedial notice are implemented.
- 9.7 If, after reasonable enquiry, the Council are unable to trace the owner or occupier of the land where the hedge is situated, they effectively have no-one who can be charged with an offence, or against whom enforcement action can be taken⁸⁴. In these circumstances, Councils might

⁸² Section 75(1) and (2).

⁸³ Section 75(7) to (10).

⁸⁴ Ownerless property, under common law, passes to the Crown. The Treasury Solicitor, on behalf of the Crown, administers the estates of people who die intestate or without known kin and collects the assets of dissolved companies and failed trusts. Further information is on their website at www.bonavacantia.gov.uk. As a general rule, the Treasury Solicitor does not undertake any management responsibilities in respect of properties that it holds.

Figure 6 Options for enforcement



wish to consider using their power to enter the land and carry out the works specified in the remedial notice, in default of the owner or occupier (see the section below on *Council intervention*).

- 9.8 Where offences are committed by bodies corporate, proceedings can, in certain circumstances, be taken against individual officers as well as the body corporate.

Defences

- 9.9 A person will be able to defend themselves against prosecution under the Act if they can show that⁸⁵:

- they did all that could be expected of them to meet the requirements of a remedial notice. This is relevant where there is both an owner and an occupier of the land in question and a prosecution is brought against the person who does not have control of the hedge; and/or

⁸⁵ Section 75(3) to (5).

- they were not aware of the existence of the remedial notice at the time that the offence took place.

This last defence can be used only where the person was not sent a copy of the original remedial notice and could not be expected to know about it. Someone would normally be expected to know about the remedial notice if they own the site and the notice is registered as a local land charge.

- 9.10 These defences provide important safeguards against wrongful prosecution. But if allegations of any contravention of the Act are fully investigated before the case is brought to court and if any prosecution is focused on the person who has responsibility for the hedge, it should not be necessary for people to have to resort to them.
- 9.11 Other mitigating factors or explanation put forward by the person allegedly responsible for the offence (eg lack of financial or physical resources to carry out the works to the hedge, existence of restrictive covenant) would need to be taken into account in determining whether prosecution would be appropriate. Ultimately, it is for the person accused of the offence to prove their case to the court. As noted in paragraph 5.100, it is possible that, where a covenant gives rise to a clear nuisance, the courts might attach little weight to it.

Enforcement Procedures

- 9.12 It is for each Council to determine their policy and approach to enforcing remedial notices, depending on available resources. Most enforcement activity is, however, likely to be reactive – mainly responding to neighbours’ complaints of alleged failure to comply with the requirements of a remedial notice.
- 9.13 Enforcement action is nearly always labour-intensive. Even if Councils adopt a reactive approach, it would still be necessary to consider establishing a set of priorities to help them manage these cases effectively. The degree of harm caused by the alleged failure might be one criterion that could be used. For example, failing to carry out the initial one-off works, necessary to remedy the adverse effect of the hedge, within the time allowed might be considered more serious than allowing the hedge to grow just above the specified height between annual trims.
- 9.14 The general steps to be taken in evaluating and determining enforcement action should be:
- acknowledge the complaint of the alleged failure to comply with the requirements of a remedial notice;
 - investigate the current facts and the case history;
 - prepare a situation report, including any legal advice on issues raised by the investigation;
 - submit to the relevant decision-maker within the Council a considered recommendation on the enforcement action to be taken;
 - record and implement this decision;
 - report the outcome to the person who brought the matter to the Council’s attention;
 - monitor the practical effect of implementing the decision;
 - review the need for possible further enforcement action.

Documenting the Case

- 9.15 Throughout the enforcement process it is essential to maintain a complete, accurate and up to date record of all investigation carried out and assessment of the results. This is important even in those cases where the initial decision is not to take formal enforcement action. If it is necessary to return to the case in the future, officers dealing with it will be able quickly to establish the relevant facts and history.
- 9.16 The case record should contain the following information:
- the alleged contravention of a remedial notice, as notified to the Council;
 - the date of this first notification;
 - the identity of the person making the claim;
 - the address of the land where the hedge is situated;
 - the identity of the owner and any separate occupier of the land in question;
 - brief description of the hedge, including any relevant photographs (see paragraph 9.20);
 - the alleged contravention, as established by the Council's officers following initial investigations;
 - summary of the factual evidence;
 - summary of the case history;
 - summary of recommendations on enforcement action;
 - details of implementation of the Council's decision. These will vary according to the circumstances but – where they fall short of prosecution – might include:
 - date that the owner and occupier of the land where the hedge is situated are notified of the Council's decision;
 - summary of required steps;
 - time limit set for compliance;
 - result of the action taken by the Council;
 - legal action;
 - exercise of default powers;
 - recovery of costs;
 - summary of any subsequent monitoring of the situation.

Investigations

- 9.17 On receiving a complaint that the actions required under a remedial notice have not been carried out, the Council should investigate the allegations. They may wish to visit the site to collect and verify information.

- 9.18 If the results of these initial investigations suggest that an offence has occurred, the Council should contact the owner and occupier of the land where the hedge is situated, inform them of the alleged breach and seek their comments.
- 9.19 Under the Police and Criminal Evidence Act 1984, any officers – not just the police – who are responsible for investigating offences or charging offenders must have regard to the code of practice issued under the Act⁸⁶. The code sets out when it is necessary to caution people suspected of committing an offence, and how a caution should be given. The Council's legal department should be able to advise officers how the code should be applied in practice to possible offences under this Act.
- 9.20 A complete documentary record of all investigations is essential (see the section above on *Documenting the Case*). Wherever possible, it should include photographic records which are signed and dated by the person taking the photographs. All photographic records should be accompanied by a location plan showing where each photograph was taken from.
- 9.21 It is good practice for Councils to inform the person who made the complaint what, if any, action they are taking to enforce the requirements of the remedial notice and the reasons for their decision.

Enforcement Action

- 9.22 What enforcement action, or combination of actions, Councils pursue will depend on the particular circumstances of the case. The main aim of any enforcement action should be to put right the harm that has been caused. This means identifying the measures most likely to ensure that the owner or occupier of the land in question carries out the required works to the hedge.

Informal action

- 9.23 In some cases, Councils might wish to hold an informal interview with the person to encourage them to comply with the remedial notice; or send them a formal warning letter of the consequences of their continuing failure to act.
- 9.24 Where investigations show that the owner or occupier was unaware of the existence of a remedial notice, the Council should provide them with a copy and should normally give them more time to comply.

Prosecutions

- 9.25 The decision to prosecute an individual is a serious step. And each case must be considered on its facts and merits.
- 9.26 The Code for Crown Prosecutors (issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985)⁸⁷ sets out a two stage test for use in deciding whether to mount a prosecution. The first stage involves consideration of the evidence, involving an evaluation of the strengths and weaknesses of the cases of both the prosecution and defence, to determine whether there is a realistic prospect of conviction. If this test is satisfied, the next stage is to look at whether a prosecution would be in the public interest. The Code identifies some common public interest factors both in favour of, and against, prosecution.

⁸⁶ Police and Criminal Evidence Act 1984: Code C '*Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers*', available on the Home Office website at www.homeoffice.gov.uk.

⁸⁷ '*The Code for Crown Prosecutors*', available on the Crown Prosecution Service website at www.cps.gov.uk. See Section 5, The Full Code Test.

- 9.27 Several of these principles might, depending on the circumstances of the particular case, be relevant to high hedges cases. For example:
- among the public interest factors in favour of prosecution:
 - the defendant’s previous convictions or cautions are relevant to the present offence;
 - there are grounds for believing that the offence is likely to be continued or repeated, eg by a history of recurring conduct;
 - a prosecution would have a significant positive impact on maintaining community confidence;
 - among the public interest factors militating against prosecution:
 - the offence was committed as a result of a genuine mistake or misunderstanding;
 - the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
 - the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated;
 - the defendant has put right the loss or harm that was caused.
- 9.28 Although the Code was written for Crown Prosecutors, Councils might wish to consider applying the same principles and approach to any potential prosecution under the Act.
- 9.29 If the Council consider that prosecution is the most appropriate way to secure compliance with a remedial notice, they will need evidence to show “beyond reasonable doubt” – the criminal standard of proof – that a requirement in the notice has been, or is being, contravened and so an offence has occurred (see the sections above on *Offences* and *Defences*).
- 9.30 The magistrates’ courts are likely to have little practical experience of such cases and so it will be helpful for the Council’s prosecutor to explain fully to the court the context in which the alleged offence has occurred.
- 9.31 Depending on the circumstances, the following approach might help the court to appreciate the strength of the prosecution’s case:
- explain that the provisions of section 77 of the Act make it an offence to contravene the requirements of a remedial notice;
 - describe the nature of the particular offence, in factual terms;
 - outline the actions taken by the Council to secure compliance with the remedial notice.

Council intervention

- 9.32 Councils have the power to enter the land where the hedge is situated and carry out the works specified in the remedial notice, if the owner or occupier of the land fails to comply with its requirements⁸⁸. Unlike the owner or occupier of the site with the hedge, the Council cannot exceed the requirements set out in the remedial notice.

⁸⁸ Section 77(1) and (2).

- 9.33 It is for Councils to consider whether they use these powers to carry out the works specified in the remedial notice; if so, when they employ them; and whether this is done instead of, or alongside, a prosecution. There is no requirement or obligation on Councils to intervene. As a result, there should not be a general expectation that Councils will step in, nor that they will do so immediately after a breach of a remedial notice occurs.
- 9.34 Where the Council decide to intervene, their action should be planned, organised and implemented with the utmost care. The owner or occupier of the land where the hedge is situated might strongly resent, and possibly try to prevent, the Council carrying out the necessary works. Anyone who wilfully obstructs an officer, or other person authorised by the Council, from entering the site in question and taking the necessary action is guilty of an offence⁸⁹. On conviction in the magistrates' court, they could be liable to a level 3 fine (up to £1,000).
- 9.35 Among the practical matters that Councils would need to consider when preparing to intervene are:
- what exactly needs to be done in order to enforce the requirements of the remedial notice;
 - what equipment will be needed;
 - the physical characteristics and constraints of the site;
 - the risks to operatives carrying out the work and how to ensure compliance with relevant health and safety regulations;
 - whether a breach of the peace is expected and whether the co-operation of the local police should be sought;
 - how long the work is likely to take and what is the best time of day to do it;
 - who has the necessary skills – the Council's own staff or a private contractor.
- 9.36 Councils are required to give 7 days' notice of their intention to go in and do the necessary work⁹⁰. If they anticipate that the owner or occupier of the land where the hedge is situated might attempt to obstruct them, it is good practice for the Council to warn those concerned that they could face criminal prosecution.
- 9.37 Where necessary, the Council may also use a vehicle to enter the land⁹¹. Otherwise, the general powers relating to *Entry to Land* (see below) apply.
- 9.38 The costs of this work can be recovered from the owner or occupier of the land⁹². This includes the cost of dealing with any waste removed from the site at the owner or occupier's request. Otherwise, waste may be left on the site, though Council operatives should ensure it is suitably stacked so that it does not present a hazard.
- 9.39 Any unpaid expenses would (until recovered) be registered as a charge on the property. This means that the Council should get their money back when the property is sold, if not before.

⁸⁹ Section 77(9).

⁹⁰ Section 77(5).

⁹¹ Section 77(7).

⁹² Section 77(3) and (4).

Entry to Land

- 9.40 Councils may authorise their officers to enter the land where the hedge is situated in order to obtain information that will help them decide⁹³:
- whether the complaint is one that can be considered under the legislation;
 - whether to issue or withdraw a remedial notice;
 - whether to waive or relax the requirements of a remedial notice; or
 - whether a notice has been breached.
- 9.41 At least 24 hours' notice of the intended entry must be given to all occupiers of the land⁹⁴. The Council might, in particular, need to gain quick access in order to establish whether or not the requirements of a remedial notice had been met. These might relate not only to the works that must be carried out to the hedge but also the timescale within which action must be taken. Timing of a site visit could, therefore, be critical.
- 9.42 Council officers entering land under these powers would be able to take with them other people, equipment or materials as necessary⁹⁵. They might, for example, need someone else to help them measure a hedge. In extreme cases, they might need to be accompanied by the Police. Council officers would also be able to take samples of a hedge to assist, for instance, in species identification.
- 9.43 Besides giving prior notice of their intentions, there would be other conditions that officers would have to meet when exercising these powers⁹⁶. In particular, they would – if asked – have to produce evidence of their authority to enter the land in question. If the land was unoccupied, they must leave it as effectively secured as they found it.
- 9.44 Intentionally obstructing any person exercising these powers is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale (up to £1,000)⁹⁷.
- 9.45 Where a person exercising their rights of entry under these provisions causes damage, the owner or occupier of the property would be able to make a claim through the civil courts. The fact that they were operating under statutory powers would not be sufficient to defend Councils against liability for such damage. They would need to demonstrate that the damage was reasonable in the exercise of their statutory functions.

⁹³ Section 74(1).

⁹⁴ Section 74(3).

⁹⁵ Section 74(5).

⁹⁶ Section 74(4) and (6).

⁹⁷ Section 74(7).

Appendix: Sample forms and letters

This Appendix offers examples of forms and letters for use in dealing with complaints about high hedges. Councils are not required to follow them. Where they do, it must be stressed that Councils should adapt the wording to the individual circumstances of the particular case.

In addition, these letters will need to be adapted if sent by email. Rather than sending copies of leaflets Councils might refer to relevant web addresses. The following are all available on the ODPM website at www.odpm.gov.uk/treesandhedges:

Over the garden hedge

High hedges: complaining to the Council

High hedges: appealing against the Council's decision

The complaint form, and accompanying guidance notes on its completion, should be available on the Council's website.

FIRST CONTACT

To be sent to the enquirer/potential complainant

COMPLAINT ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under Part 8 of the Anti-social Behaviour Act 2003.

The Council can only intervene once you have tried and exhausted all other avenues for resolving your hedge dispute. I am enclosing a copy of the leaflet *Over the garden hedge* which sets out some steps that you should consider trying.

The Council's role is to act as an independent and impartial adjudicator in those cases which people cannot settle for themselves. We cannot, therefore, negotiate or mediate between you and your neighbour. [But I am sending details of the local community mediation service who might be able to help.]

If you cannot agree a solution with your neighbour, let me know and I will send further information about the procedure for making a formal complaint. You should, however, bear in mind that the Council can reject a complaint if we think someone has not done everything they reasonably could to negotiate a solution to their hedge problems. So if you don't follow the advice in the leaflet, you will need to explain why not.

COMPLAINT FORM: COVER LETTER

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE

Thank you for your [letter/email/telephone call] of [date] indicating that you wish to make a formal complaint about your neighbour's hedge, under Part 8 of the Anti-social Behaviour Act 2003. You said that you had discussed the problem with your neighbour but had been unable to agree a solution.

I enclose our complaints form together with some guidance notes to help you complete it. Before filling it in, I recommend that you read the enclosed leaflet *High hedges: complaining to the Council*. It explains what complaints we can consider and how we will deal with them.

The leaflet also sets out what we expect you to have done to try to settle your hedge dispute. If you have not exhausted all the avenues mentioned, you should consider giving them a try. If you don't, you will need to explain why not. Otherwise, we might not proceed with your complaint.

The complaint form constitutes your statement of case as to why you consider the hedge is adversely affecting the reasonable enjoyment of your domestic property. It will be an important document in the Council's consideration of the complaint, as well as in any subsequent appeal against our decision. In setting out your grounds of complaint, therefore, you should describe fully the problems caused by the hedge, their severity and the impact on you. Please also send us any supporting information that you want us to take into account.

Please return the completed form to me at the above address. You must also send a copy to the owner and occupier of the land where the hedge is situated. [These are the people listed in sections 5.4 and 5.5 of the form.]

When we receive your formal complaint, we will run some checks to make sure that it meets the requirements set out in Part 8 of the Anti-social Behaviour Act 2003 and that we can, therefore, deal with it.

If we cannot proceed with the complaint, we will tell you why not. Otherwise, we will acknowledge that we have received it and explain what happens next.

Complaint form: high hedges

Use this form to submit a complaint to the Council about a high hedge, under Part 8 of the Anti-social Behaviour Act 2003. It should be completed by the person making the complaint or their representative.

Before completing this form, please read the guidance notes sent with it and the leaflet *High hedges: complaining to the Council*. Please use BLOCK CAPITALS and black ink.

YOU MUST PAY A FEE WHEN YOU SEND IN THIS FORM. The current fee is £x.

The Council will rely on the information you provide so please make sure it is clear and accurate.

1. Attempts to resolve the complaint

Please describe what you have done to try to settle this matter. Give dates and say what the result was. Please provide copies of any letters that you mention.

- 1.1 Approached neighbour/hedge owner and asked to discuss problem

- 1.2 Asked neighbour/hedge owner to try mediation

- 1.3 Informed neighbour/hedge owner of intention to complain to Council

If you have not tried all the above steps, the Council might not proceed with your complaint.

- 1.4 Anything else

2. Criteria for making a complaint

About the hedge

2.1 Is the hedge – or the portion that is causing problems – made up of a line of 2 or more trees or shrubs?

Yes No

2.2 Is it mostly evergreen or semi-evergreen?

Yes No

2.3 Is it more than 2 metres above ground level?

Yes No

2.4 Even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light or views?

Yes No

2.5 Is it growing on land owned by someone else?

Yes No

Who can complain

2.6 Is the complainant the owner or occupier (eg tenant) of the property affected by the hedge?

Yes No

Please delete whichever does not apply.

Owner / Occupier

2.7 Is the property residential?

Yes No

If you have answered 'No' to any of the questions in this section, the criteria have not been met and so the Council cannot consider your complaint.

3. Grounds of complaint

Please describe the problems actually experienced as a result of the hedge being too tall, and say how serious they are. It will save time and help your case if you stick to the facts and provide all relevant information to back up the points you are making.

To help the Council understand your situation, please provide a photo of the hedge and a plan or sketch of both the site where the hedge is growing and the property it is affecting, with the hedge clearly marked on it.

4. Previous complaints to the Council

4.1 Has a formal complaint been made to the Council before about this hedge?

Yes

No

4.2 If you have ticked 'Yes', do you know the date and/or reference number of the Council's decision letter?

Date

Ref number

4.3 What has changed since the Council last looked at this?

If nothing has altered, the Council might not proceed with your complaint.

5. Who's who/The parties

5.1 Complainant's contact details

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

Is the complainant content for us to contact them by email, at the address provided?

Yes No

5.2 Address of the property affected by the hedge and name of the person living there, if different to 5.1

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

5.3 Contact details of Agent or other person acting on behalf of the complainant (if any)

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

Is the Agent, or other person named above, content for us to contact them by email at the address provided?

Yes No

5.4 Address of the site where the hedge is growing and name of person living there, if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address or description of location	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

5.5 Name and address of the person who owns the property where the hedge is situated, if different to 5.4 and if known

	Title	Forename	Surname
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	<input type="text"/>		
	<input type="text"/>		
City/Town	<input type="text"/>		
County	<input type="text"/>	Postcode	<input type="text"/>
Daytime Telephone No.	<input type="text"/>		
Mobile Telephone No.	<input type="text"/>		
Fax No.	<input type="text"/>		
Email Address	<input type="text"/>		

6. Supporting documents

6.1 Have you enclosed the following:

	Tick box
A photo of the hedge	<input type="checkbox"/>
A location plan of the hedge and surrounding properties	<input type="checkbox"/>
Copies of correspondence with your neighbour about the hedge	<input type="checkbox"/>
Copies of any other documents that you mention <i>(please list these separately)</i>	<input type="checkbox"/>

7. Sending the complaint

7.1 I confirm that I have completed as much of this form as I can and that, to the best of my knowledge, the information provided is accurate.

Tick box

7.2 I enclose the fee of £x.

Tick box

Name Date

7.3 POST OR EMAIL THIS FORM AND ALL ENCLOSURES TO:

Council to insert name and address of contact. Include an email address.

7.4 Please also send a copy of this form to the people identified in Section 5 above.

Tick the box to show you have done this

You can also download this complaint form from our website at [\[insert\]](#)

GUIDANCE NOTES FOR COMPLETING THE COMPLAINT FORM

General notes

These guidance notes are to help you fill in the form to make a complaint about a neighbouring high hedge. You should also read the leaflet *High hedges: complaining to the Council*.

Consideration of your complaint will be delayed if you do not complete the form properly or do not provide the information requested.

If you are still unsure how to answer any of the questions, please contact [x department] on [y telephone number] or [z email address].

You can obtain translations and large print versions of this guidance and the form through the council.

Section 1: Attempts to resolve the complaint

Please keep the descriptions brief but say how you made the approach (eg face to face, phone, letter) and what the result was.

Example 1

- 12 March 2005 – phoned neighbour [Mr Bloggs of 12 High Street] to ask if we could discuss hedge. Met on 19 March but we couldn't agree a solution;
- 15 April – mediators visited;
- 29 April – met neighbours [Mr Bloggs] and mediators. But still couldn't find an answer we were both happy with;
- on 14 May – wrote to inform neighbours [Mr Bloggs] would be complaining to council.

Example 2

- 12 March 2005 – wrote to neighbours [Mr Bloggs of 12 High Street] to ask if we could discuss hedge. 2 weeks later still no reply;
- 9 April – wrote to ask if he would speak to mediator. 2 weeks later still no reply;
- 7 May – wrote to inform neighbours [Mr Bloggs] would be complaining to council.

Example 3

- 12 March 2005 – saw neighbours [Mr Bloggs of 12 High Street] in their garden and asked if we could discuss hedge. Neighbours [Mr Bloggs] came round on 19 March. Saw the effect of the hedge for themselves. Sympathetic but unwilling to reduce the hedge as much as we wanted;
- Neighbours [Mr Bloggs] willing to try mediation but discovered that neighbour mediation not available in our area. We live too far from the nearest service;
- 23 April – saw neighbours [Mr Bloggs] again and told them that, if we couldn't agree a solution, we would make a formal complaint to Council. Left it for a couple of weeks then confirmed in writing that we would be going ahead with the complaint.

It is not necessary to send copies of all correspondence with your neighbour about the hedge – especially if the dispute is a long-running one. You need only provide evidence of your latest attempts to settle it.

Section 2: Criteria for making a complaint

Who can complain

Q2.6 You must be the owner **or** occupier of the property affected by a high hedge in order to make a formal complaint to the Council.

If you do not own the property (eg because you are a tenant or a leaseholder), you can still make a complaint. But you should let the owner (eg landlord or management company) know what you are doing.

Q2.7 The property does not have to be wholly residential but must include separate living accommodation otherwise we cannot consider the complaint.

Section 3: Grounds of complaint

It will help if you provide as much information as you can but keep it factual. Remember that a copy of this form will be sent to the person who owns the property where the hedge is growing, and to the person who lives there if they are different people.

Concentrate on the hedge and the disadvantages you experience because of its height.

We cannot consider problems that are not connected with the height of the hedge. For example, if the roots of the hedge are pushing up a path.

Nor can we consider things that are not directly about the hedge in question. For example, that other people keep their hedges trimmed to a lower height; or that the worry is making you ill.

Please also provide a photo of the hedge and a plan showing the location of the hedge and surrounding properties.

When drawing your plan, please look at the example below and make sure that you:

- Mark and name surrounding roads.
- Sketch in buildings, including adjoining properties. Add house numbers or names.
- Mark clearly the position of the hedge and how far it extends.

If you are complaining about the hedge blocking light, please also show on your plan:

- Which way is north.
- The position of windows that are affected by the hedge (eg whether they are located on the front, side or rear of the house).
- Relevant measurements (eg size of garden, distance between the hedge and any windows affected).

All measurements must be in metres (m).

[Insert example of typical plan]

Please include copies of any professional reports that you may have had prepared and of any other documents that you want the Council to take into account.

Section 4: Previous complaints to the council

We only need to know about formal complaints, made under the high hedges Part of the Anti-social Behaviour Act 2003. You don't need to tell us about telephone calls or other informal contact with the Council about your hedge problems.

Section 5: Who's who/The parties

We need all these names and addresses because there are some documents that we are required, by law, to send to the owner **and** occupier of the land on which the hedge grows. These include our decision on the complaint.

Q5.1 Even if someone else is submitting the complaint on your behalf, it is important that we have your contact details.

Tick the 'Yes' box if you prefer to be contacted by e-mail. We cannot send documents to you electronically unless you agree.

Q5.2 You need to complete this section only if the complainant does not live in the property affected by the hedge. We need this information because we will have to get in touch with the occupier to arrange to visit the property so that we can see for ourselves the effect of the hedge.

Q5.3 Complete this section if you are a professional adviser, relative, friend or other representative.

You will be our main contact on all matters relating to this complaint. We will direct all queries and correspondence to you. Please bear this in mind.

If you tick the 'Yes' box, we will conduct all business relating to this complaint by e-mail. But we cannot send documents to you electronically unless you agree.

Q5.4 This will normally be the person you have talked to when you tried to agree a solution to your hedge problems.

If the site where the hedge is growing does not have a postal address, use the box to describe as clearly as possible where it is, eg 'Land to rear of 12 to 18 High Street' or 'Park adjoining Tower Road'.

We need this information because we will have to contact these people for their comments, and to arrange to visit the site where the hedge is growing.

Q5.5 If you are in any doubt about who owns the property where the hedge is situated, you can check with the Land Registry. The relevant form (313) is on their website (www.landregistry.gov.uk) or can be obtained from the Local Office. The current fee for this service is [£4], if you know the full postal address of the property.

Alternatively, Land Register Online (at www.landregisteronline.gov.uk) provides easy access to details of registered properties in England. Copies of title plans and registers held in electronic format can be downloaded in PDF format for [£2] each. The register includes ownership details.

Section 6: Supporting documents

Please make sure you have ticked all the relevant boxes.

If you have ticked the last box, please list these documents by date and title (eg January 2005 – surveyor’s report). This will help us to check that we have got everything.

If you are submitting this form by email but will be posting supporting documents to us separately, put a reference number or title on them (eg hedge complaint, Joe Bloggs, 12 High Street) so that we can match them up with your complaint.

Section 7: Sending the complaint

If you have to pay a fee, you should make out your cheque to [\[insert name\]](#) Council.

COMPLAINT REJECTION: INVALID COMPLAINT

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I refer to your complaint of [date] about the high hedge situated at [address].

I am sorry to tell you that, under the terms of Part 8 of the Anti-social Behaviour Act 2003, the Council is unable to deal with your complaint and so will be taking no further action on it.

The reasons for our decision are as follows:

[EXPLAIN WHY THE REQUIREMENTS OF THE ACT ARE NOT MET – FOR EXAMPLE:

- *your complaint is about a single tree. Under the Act, we can deal only with complaints about hedges that are made up of a line of 2 or more trees or shrubs;*
- *your complaint is about [species of tree or shrub] which are deciduous. Under the Act, we can deal only with complaints about hedges that are predominantly evergreen or semi-evergreen;*
- *your grounds of complaint are about the effect of the roots of the hedge. The Act states specifically that the Council cannot deal with such matters. We can only consider complaints related to the height of the hedge.]*

I am returning the fee that accompanied your complaint.

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

There is no specific right of appeal if you disagree with our decision. But if you consider the Council has not applied the legislation properly or has treated you unfairly, you should write to the Council's complaints officer [name and contact details]. Alternatively, you may apply to the High Court to challenge the decision by judicial review. If you are considering applying for judicial review, you are advised to seek specialist legal help. Community Legal Service (CLS) [insert local contact details] can help you to find the right legal advice.

COMPLAINT REJECTION: INSUFFICIENT EFFORTS TO RESOLVE BY NEGOTIATION

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE, *you have not taken all reasonable steps to resolve the matter for yourselves.*]

In particular, the Council consider that you should [SET OUT WHAT STEPS THEY SHOULD TAKE TO TRY TO SETTLE THE DISPUTE – FOR EXAMPLE:

- *make a fresh approach to your neighbour as it is over [x] months since you last raised the issue with them;*
- *write to your neighbour if you are nervous about speaking to them. It is not enough to say that they are unapproachable;*
- *ask your neighbour to consider talking to independent mediators.]*

Further advice on settling your hedge dispute is in the enclosed leaflet *Over the garden hedge*. [I am also sending details of the local Community Mediation Service who can help you and your neighbour find a way forward.]

[INSERT COUNCIL POLICY ON FEES. FOR EXAMPLE, *it is the Council's policy not to refund fees in these circumstances. OR If these further steps lead to an agreed solution with your neighbour, you should write to us to reclaim your fee.*]

If, despite taking these further steps, you still cannot agree a solution with your neighbour, let me know. I will then advise you whether we can re-activate this complaint or whether you will need to submit a fresh one [with the relevant fee].

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

There is no specific right of appeal if you disagree with our decision. But if you consider the Council has not applied the legislation properly or has treated you unfairly, you should write to the Council's complaints officer [name and contact details]. Alternatively, you may apply to the High Court to challenge the decision by judicial review. If you are considering applying for judicial review, you are advised to seek specialist legal help. Community Legal Service (CLS) [insert local contact details] can help you to find the right legal advice.

COMPLAINT REJECTION: FRIVOLOUS OR VEXATIOUS

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I refer to your complaint of [date] about the high hedge situated at [address].

We have considered your complaint but have decided that we cannot take any further action on it for the following reasons:

[SET OUT REASONS – FOR EXAMPLE, *the complaint is considered frivolous/vexatious.*]

[EXPLAIN REASONS – FOR EXAMPLE, *you previously complained about the hedge on [date] and were notified on [date] that the Council had decided that the hedge was not adversely affecting your reasonable enjoyment of your property. [This decision was upheld following an appeal to the Planning Inspectorate.] Your latest complaint indicates there has, subsequently, been no significant change in circumstances which would affect the Council's earlier decision.*]

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

There is no specific right of appeal if you disagree with our decision. But if you consider the Council has not applied the legislation properly or has treated you unfairly, you should write to the Council's complaints officer [name and contact details]. Alternatively, you may apply to the High Court to challenge the decision by judicial review. If you are considering applying for judicial review, you are advised to seek specialist legal help. Community Legal Service (CLS) [insert local contact details] can help you to find the right legal advice.

ACKNOWLEDGEMENT OF COMPLAINT

To be sent to the complainant

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I acknowledge receipt of your complaint about a neighbouring high hedge, made under Part 8 of the Anti-social Behaviour Act 2003. We received your complaint and fee of £[amount] on [date].

Your complaint has been given the reference number: [insert].

It is being dealt with by [name, address and other contact details of the case officer].

Please contact this officer, quoting the reference number given above, if you have any questions about your complaint or our procedures. In particular, please let us know immediately of any relevant change in your circumstances. For example, if you cease to own or occupy the property affected by the hedge. Or if your neighbour agrees to reduce the hedge to a height that solves the problem.

We are satisfied, from the information you have provided, that your complaint meets the requirements set out in Part 8 of the Anti-social Behaviour Act 2003 and so is one that we can deal with.

We will be writing to the owner and occupier of the land where the hedge is situated to notify them that the Council are considering a complaint about their hedge. We will also invite them to comment on the points you have raised in your complaint and to provide any further information that they want us to take into account.

[SET OUT ANY ARRANGEMENTS FOR CONSULTING OTHER INTERESTED PARTIES. FOR EXAMPLE:

We will also be seeking the views of the occupiers of the properties at [addresses]. As the hedge in question also neighbours these properties, they could potentially be affected by the Council's decision on your complaint.

OR

As the trees in the hedge are protected under the Town and Country Planning Act 1990, it is the Council's policy to write to the Parish Council and local residents asking for their comments on your complaint.]

We will send you copies of all the comments that we receive so that you know what information and views we will be considering as we make a decision on your complaint.

When we have gathered all the written information and evidence, we will be in touch again to arrange a suitable date for an officer of the Council to visit the site. The purpose of the visit is to enable the officer to see the hedge and surroundings at first hand, to help us assess the comments that you and others have provided. The officer is not there to negotiate or mediate between you and your neighbour.

You will probably need to attend the visit as the officer will need to gain entry to your property. But please bear in mind that, although the Council officer might wish to ask questions to clarify factual points, they will not be able to discuss the merits of the case with either party. We will also be contacting the owner or occupier of the land where the hedge is situated so that the officer can view both sides of the hedge.

Under the Act, the Council is required to decide two things:

- whether the hedge, because of its height, is adversely affecting your reasonable enjoyment of your property; and
- if so, what action (if any) should be taken to remedy the situation or prevent it from recurring.

In reaching their decision, the Council will take account of all relevant factors and will seek to strike a balance between the competing interests of you and your neighbour, as well as the interests of the wider community.

We aim to issue a decision on your complaint within [number] weeks from the date of the site visit. We will send a copy of our decision, and the reasons for it, to you, [your agent,] the owner and occupier of the land where the hedge is situated [and anyone else who sends us comments on your complaint].

NOTIFICATION OF COMPLAINT: OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED

To be sent to the occupier of the property where the hedge is situated

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

We have received the enclosed complaint, made under Part 8 of the Anti-social Behaviour Act 2003, that a hedge on your property is adversely affecting your neighbour at [address]. I understand your neighbour has discussed this with you previously but you have been unable to agree a solution.

I also enclose a copy of the leaflet *High hedges: complaining to the Council* which explains how the Council deals with such complaints.

The complaint has been given the reference number: [insert].

It is being dealt with by [name, address and other contact details of the case officer].

Please contact this officer, quoting the reference number given above, if you have any questions about the complaint or our procedures. In particular, please let us know immediately of any change in your circumstances. For example, if you cease to [own or] occupy the property where the hedge is situated. Or if you agree to reduce the hedge to a height that solves the problem.

To help us consider this complaint further, please complete the enclosed questionnaire and return it to me by [date]. You are also invited to send us any comments you might have on the points raised in the complaint and to provide any further information that you want us to take into account. This should reach us no later than [date].

You should send a copy of the questionnaire and other papers to the person who has made the complaint [and to the owner of your property], at the same time as you submit them to the Council. You might wish to bear this in mind in framing your comments. The complainant's name and address are on the complaints form. Please send us confirmation that you have done this.

[SET OUT ANY ARRANGEMENTS FOR CONSULTING OTHER INTERESTED PARTIES. FOR EXAMPLE:

We will also be seeking the views of the occupiers of the properties at [addresses]. As the hedge in question also neighbours these properties, they could potentially be affected by the Council's decision on your complaint.

OR

As the trees in the hedge are protected under the Town and Country Planning Act 1990, it is the Council's policy to write to the Parish Council and local residents asking for their comments on your complaint.

We will send you copies of all the comments that we receive so that you know what information and views we will be considering as we make a decision on the complaint.]

When we have gathered all the written information and evidence, we will be in touch again to arrange a suitable date for an officer of the Council to visit the site. The purpose of the visit is to enable the officer to see the hedge and surroundings at first hand, to help us assess the comments that you and [your neighbour/others] have provided. The officer is not there to negotiate or mediate between you and your neighbour.

You will probably need to attend the visit as the officer will need to gain entry to your property. But please bear in mind that, although the Council officer might wish to ask questions to clarify factual points, they will not be able to discuss the merits of the case with either party. We will also be contacting the complainant so that the officer can view both sides of the hedge.

Under the Act, the Council is required to decide two things:

- whether the hedge, because of its height, is adversely affecting the complainant's reasonable enjoyment of their property; and
- if so, what action (if any) should be taken to remedy the situation or prevent it from recurring.

In reaching their decision, the Council will take account of all relevant factors and will seek to strike a balance between the competing interests of you and your neighbour, as well as the interests of the wider community.

We aim to issue a decision on the complaint within [number] weeks from the date of the site visit. We will send a copy of our decision, and the reasons for it, to you, [the owner of your property,] the complainant [and anyone else who sends us comments on the complaint].

QUESTIONNAIRE: TO BE COMPLETED BY THE OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

1. Your name and contact details

Name:

Telephone No. (daytime):

Email address:

Do you prefer to be contacted by email?

2. Contact details for the owner of the property (if different)

Name:

Address:

Telephone No. (daytime):

Email address:

3. Legal restrictions

As far as you know:

- Was the hedge planted under a condition attached to a planning permission?
- Does a condition attached to a planning permission specify that the hedge must be retained?
 - If you have answered YES to either of the above questions, what year was the permission given?
 - Please supply a copy.
- Is there a legal covenant that stipulates the size or type of hedge that can be grown (this will usually be spelt out in the deeds to the property)?
 - If you have answered YES, what are the terms of the covenant?
 - What year was it introduced?
 - Please supply a copy.
- Is the property a listed building?
- Is it located within a conservation area?
- Are any trees in the hedge protected by a tree preservation order?
- Have you seen any birds or bats nesting or roosting in the hedge?

4. Representations

Please delete as appropriate

I shall/shall not be sending comments on the complaint, or other information that I want the Council to take into account.

NOTIFICATION OF COMPLAINT: OWNER OF THE LAND WHERE THE HEDGE IS SITUATED (if different to the occupier)

To be sent to the owner of the property where the hedge is situated. This letter should be issued as soon as the relevant contact details are provided to the Council – either on the complaint form or the occupier's questionnaire.

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I enclose a copy of a letter sent to [name and address of the occupier of the land where the hedge is situated] notifying them that the Council has received a complaint about a hedge on the property.

I understand that you own the land in question and so have an interest in this matter.

To help us consider this complaint further, you are invited to send us any comments you might have on the points raised in the complaint and to provide any further information that you want us to take into account. This should reach us no later than [date]. [Please also let us have answers to any items of the questionnaire that the occupier of the property has been unable to deal with.]

You should send a copy of these papers to the person who has made the complaint and to the occupier of your property, at the same time as you submit them to the Council. You might wish to bear this in mind in framing your comments. The complainant's name and address is on the complaints form. Please send us confirmation that you have done this.

We will send you a copy of our decision, and the reasons for it, in due course.

DECISION LETTER: NO REMEDIAL ACTION (illustrates short decision letter for use where case report is appended to the decision)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I refer to the complaint, made under Part 8 of the Anti-social Behaviour Act 2003, about the high hedge situated at [site address/description]. The complaint alleged that the hedge is adversely affecting the enjoyment of the domestic property at [address]. In particular, it was alleged that the hedge [summarise main grounds of complaint].

The Council have taken into account:

- representations and other information submitted by the complainant and by the [owner/occupier] of the land where the hedge is situated;
- [representations received from [number] other interested parties;]
- the contribution that the hedge makes to the character and amenity of the area. [We have paid special attention to the fact that the hedge is situated in a conservation area/the trees in the hedge are protected by a tree preservation order.]

An officer of the Council visited the site on [date].

Main Considerations and Conclusion

I enclose a copy of the case report which summarises the representations and other information before the Council and explains how we have assessed and weighed the various issues raised by the complaint.

The Council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

As the report indicates, the main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is situated and on the wider area. [DEAL CONCISELY WITH THE MAIN ISSUES. THESE WILL NORMALLY RELATE TO THE DEGREE OF HARM CAUSED BY THE HEDGE AND WHETHER THIS IS OUTWEIGHED BY ITS AMENITY VALUE TO BOTH THE HEDGE OWNER AND THE WIDER COMMUNITY. FOR EXAMPLE:

The report notes that the hedge is obstructing light to some windows in the complainant's property. The impact, at present, is not severe and would be remedied by the hedge being lightly trimmed. Other problems identified, such as litter from the hedge, are considered to be inconvenient and of little significance. On the other hand, the hedges defining the separation between the dwellings in this street are a characteristic feature of the conservation area. If the size of the hedge were to be reduced, it would have an adverse effect on the appearance of the neighbourhood and on the amenity of other residents. On balance, the Council believe that the harm caused by the hedge is outweighed by other factors and that no remedial action is justified.]

Formal Decision

For the reasons given [above/in the case report], the Council have decided that [the height of the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property/no action should be taken in relation to the hedge to remedy its adverse effect or to prevent its recurrence].

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

Right of Appeal

The complainant, [name], can appeal to the Planning Inspectorate against the Council's decision. Further information is in the leaflet *High hedges: appealing against the Council's decision*, a copy of which is enclosed. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
Planning Inspectorate
Regus House
Room 2/15
1 Friary
Temple Quay
Bristol BS1 6EA
Telephone: 0117 344 5687.

The complainant can appeal on either of the following grounds:

- that, contrary to the decision of the Council, the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property; and/or
- that the adverse effect warrants action being taken in relation to the hedge.

Advice

[OFFER PRACTICAL ADVICE ON HOW THE HEDGE MIGHT BE MANAGED SO THAT IT DOES NOT CAUSE PROBLEMS IN THE FUTURE. FOR EXAMPLE:

It is recommended that the hedge is trimmed annually to maintain it at, or around, its current height of [4] metres, in order to preserve the contribution it makes to the character of the conservation area and prevent any adverse effect on the reasonable enjoyment of the complainant's property.]

I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated. [Copies also go to other interested parties who commented on the complaint].

DECISION LETTER: REMEDIAL ACTION (illustrates longer decision letter for use where there is no separate case report)

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

COMPLAINT ABOUT A HIGH HEDGE SITUATED AT [ADDRESS]

REFERENCE NUMBER [XXX]

I refer to the complaint, made under Part 8 of the Anti-social Behaviour Act 2003, about the high hedge situated at [site address/description]. The complaint alleged that the hedge is adversely affecting the enjoyment of the domestic property at [address].

The Council gathered evidence and information in relation to the complaint by inviting the [owner/occupier] of the land where the hedge is situated to submit a statement [and by consulting selected organisations that appeared to the Council to have an interest in the matter]. In addition, an officer of the Council visited the site on [date].

This letter summarises the evidence and information gathered by the Council and explains how we have assessed and weighed the various issues raised by the complaint.

The Hedge and its Surroundings

[BRIEF DESCRIPTION OF THE HEDGE AND ITS SETTING. INCLUDE THE HEIGHT AND LENGTH OF THE HEDGE AND GENERAL SPECIES CONTENT; ASSESSMENT OF ITS GROWTH HABIT AND CONDITION (EG GAPS); EVIDENCE (IF ANY) OF PAST MANAGEMENT; ITS POSITION IN RELATION TO THE COMPLAINANT'S PROPERTY, WITH RELEVANT MEASUREMENTS, AND IN RELATION TO OTHER FEATURES ON THE LAND WHERE IT IS GROWING (EG THE HEDGE OWNER'S HOUSE). OTHER RELEVANT FACTORS MIGHT INCLUDE ORIENTATION, SIZE OF GARDENS, ANY DIFFERENCES IN LEVELS BETWEEN THE TWO PROPERTIES, OTHER TREES AND VEGETATION. IN ADDITION, DESCRIBE THE GENERAL CHARACTER OF THE AREA AND ANY SPECIAL FEATURES (EG CONSERVATION AREA).]

Relevant Policies or Legislation

[DRAW ATTENTION TO ANY POLICIES, OR LEGAL RESTRICTIONS, THAT APPLY AND COULD BE MATERIAL TO THE COUNCIL'S CONSIDERATION OF THE COMPLAINT. THESE PROVIDE EVIDENCE OF THE COMMUNITY/PUBLIC INTEREST IN THE MATTER. THEY MIGHT INCLUDE LOCAL LANDSCAPE CHARACTER ASSESSMENTS, PLANNING POLICIES, EXISTENCE OF A TREE PRESERVATION ORDER OR A PLANNING CONDITION.]

Case for the Complainant

[SUMMARISE THE MATERIAL POINTS FROM THE COMPLAINT FORM AND OTHER INFORMATION SUBMITTED. FOR EXAMPLE:

The hedge is too large in view of its proximity to the small bungalow at [address] and the limited extent of the rear gardens. The dense shade it casts makes it necessary to use artificial lights within the bungalow during the daytime throughout the year. The hedge also blocks out the sky and creates a depressing living environment. In the garden, it suppresses plant growth. It also sheds copious amounts of needles throughout the year which create hazardous conditions if not cleared continually.]

Case for the Owner/Occupier of the Land where the Hedge is Situated

[SUMMARISE THE MATERIAL POINTS FROM THE STATEMENT AND OTHER INFORMATION SUBMITTED.
FOR EXAMPLE:

If the hedge were reduced to the height that the complainant wants, it would affect the privacy enjoyed by the occupiers of [address] and would probably kill the hedge. It helps to stop noise and smoke from the complainant's barbecue parties. An offer was made to the complainant allowing them to trim the hedge at their expense. The cost involved in reducing the size of the hedge is beyond the means of the occupiers of [address].]

Case for Other Interested Parties/Results of Consultation

[STATE THE NATURE OF ANY REPRESENTATIONS RECEIVED AND SUMMARISE THE MATERIAL POINTS.
FOR EXAMPLE:

The Council received a petition signed by 10 residents of [name of street/address]. They supported the complainant's case but, as their properties do not neighbour the land where the hedge is situated, none experience problems with it.]

Main Considerations

[SET OUT THE ROLE OF THE COUNCIL AND THE MAIN ISSUES TO BE CONSIDERED. FOR EXAMPLE:

The Council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

The main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is situated and on the wider area.]

Appraisal of the Evidence

[DRAWING ON THE ADVICE IN CHAPTER 5: *ASSESSING AND WEIGHING THE EVIDENCE*, ASSESS THE HARM CAUSED BY THE HEDGE WITH SPECIFIC REFERENCE TO THE MATERIAL POINTS IN THE COMPLAINANT'S CASE. WEIGH AGAINST THIS THE AMENITY VALUE OF THE HEDGE TO THE HEDGE OWNER AND THE WIDER COMMUNITY, WITH SPECIFIC REFERENCE TO THE MATERIAL POINTS IDENTIFIED IN THE EARLIER SECTIONS.
FOR EXAMPLE:

Light obstruction

The Council followed the method in the BRE guidelines on 'Hedge height and light loss' for calculating what height a hedge should be in order not to cause an unreasonable obstruction of light to windows and gardens. The results showed that the hedge in question is 3 metres taller than the recommended height. This indicates it is having a significant impact on the complainant's property. This was reinforced by observations during the site visit. This was made at 11:00 am. At that time, the rear windows of the bungalow and a substantial portion of the garden were in dense shade cast by the hedge.

Visual amenity

The complainant's property is in a terrace of small bungalows with very limited rear gardens. There are few trees in the area. The hedge is out of keeping with this setting. Through its size and proximity to the complainant's bungalow and garden, the hedge dominates the scene and has a severe effect on the complainant's living conditions.

Plant growth, litter

Although many plants in the complainant's garden were straggly and in poor condition, it was impossible to assess whether this was due to the height of the hedge. The roots of it and other vegetation could dry out the soil. Under the high hedges legislation, the Council cannot take into account the effects of the roots of a hedge. In addition, the problem might be remedied by using alternative plants that are more suited to the prevailing conditions. During the site visit, there was little tree debris noted in the complainant's garden. Most came from other vegetation and the volume was sufficient to fill a single bag. This might be an inconvenience but, on its own, has no appreciable effect on the complainant's enjoyment of their property.

Privacy

There is no difference in level between the land where the hedge is situated and the complainant's property. Although reduction of the height of the hedge would mean less privacy for the property with the hedge than they now enjoy, a height of 2 metres would be enough to prevent overlooking and so provide a reasonable degree of privacy.

Noise, smoke

Although the perception might be that the hedge blocks noise and smoke, in practice it is ineffective as a barrier against such nuisances. Both noise and smoke will pass through or round a hedge. These are not, therefore good reasons for growing a large hedge.

Cost of remedial action

The Council note that cutting down the hedge is considered unaffordable. This is not, however, material to the question that the Council must determine – ie whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property – and so has not been taken into account. Such expenses must be expected and accepted as part of the general maintenance of the property, with its trees, in the same way as maintenance of doors and windows and household wear and tear.

Health of the hedge

The hedge is vigorous and healthy. However, cutting the hedge down to the height recommended by the BRE guidelines on 'Hedge height and light loss' would involve a reduction of more than one-third of its current height. This could result in the destruction of the hedge and might restrict any action to be taken in relation to the hedge.]

Conclusion

[SUMMARISE THE MATERIAL POINTS EMERGING FROM THE APPRAISAL. FOR EXAMPLE:

The hedge is causing significant obstruction of daylight and sunlight to the complainant's bungalow. It is out of keeping with its setting and dominates the complainant's property, severely affecting living conditions and visual amenity. Other problems identified, such as litter from the hedge, are considered to be inconvenient and of little significance. Evidence suggests that the height of the hedge would need to be reduced by 4 metres in order to remedy the problems identified. The resulting height would be sufficient to safeguard the privacy of the occupiers of [address] and would not, in the Council's view, adversely affect the enjoyment of that property or the general character and amenity of the neighbourhood. On balance, the Council believe that the harm caused by the hedge outweighs other factors and that remedial action is justified.

Such action would, however, involve a reduction of more than one-third of its current height, affecting the ability of the hedge to regenerate and possibly leading to its destruction. For this reason, the Council considers the reduction of the hedge should be carried out in stages over a period of years/less drastic reduction of the hedge is justified.]

Formal Decision

For the reasons given [above/in the case report], the Council have decided that the height of the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property and hereby issue the enclosed remedial notice specifying the action that must be taken in relation to the hedge to remedy its adverse effect [and to prevent its recurrence].

Summary of Requirements of Remedial Notice

[SUMMARISE, IN PLAIN LANGUAGE, THE MAIN REQUIREMENTS OF THE REMEDIAL NOTICE SO THAT IT IS CLEAR WHAT ACTION NEEDS TO BE TAKEN. FOR EXAMPLE:

The remedial notice specifies that the hedge should be reduced [in stages] to a height of no more than [3] metres above ground level within [2] years of the date of the notice – that is by [date]. Reduction to this height allows the hedge to grow between annual or more frequent trimming and still not cause significant problems.

After the above date, the hedge should be trimmed regularly to ensure that it never exceeds a height of [4] metres above ground level. The requirement to maintain the hedge at, or below, this height lasts until the hedge is removed or dies.]

Person Responsible for Taking Remedial Action

Under the Act, the owner or occupier of [address of the land where the hedge is situated] is obliged to carry out the works specified in the remedial notice, within any timescale set there. Failure to do so, may result in prosecution and a fine.

The remedial notice does not give the complainant any right to intervene and take the necessary action themselves.

Right of Appeal

The complainant and everyone who is an owner or occupier of the land where the hedge is situated, that is [names], can appeal to the Planning Inspectorate against the issue of the remedial notice. Further information is in the leaflet *High hedges: appealing against the Council's decision*, a copy of which is enclosed. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

High Hedges Appeals Team
Planning Inspectorate
Regus House
Room 2/15
1 Friary
Temple Quay
Bristol BS1 6EA
Telephone: 0117 344 5687.

An appeal can be made on any one or more of the following grounds:

- that the action specified in the remedial notice falls short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
- that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property;

- that the action specified in the remedial notice exceeds what is reasonably necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring;
- that not enough time has been allowed to carry out the works set out in the notice.

The remedial notice will be suspended while any appeal is being determined.

If you would like further information about our decision, please contact [name and contact details of case officer], quoting the reference number given above.

I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated. [Copies also go to other interested parties who commented on the complaint].

REMEDIAL NOTICE

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

IMPORTANT – THIS NOTICE AFFECTS THE PROPERTY AT [ADDRESS OF THE LAND WHERE THE HEDGE IS SITUATED]

ANTI-SOCIAL BEHAVIOUR ACT 2003

REMEDIAL NOTICE

ISSUED BY: [Council name]

1. THE NOTICE

This Notice is issued by the Council under section 69 of the Anti-social Behaviour Act 2003 pursuant to a complaint about a high hedge situated at [address]. The Council has decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at [complainant's address] and that action should be taken in relation to the hedge with a view to remedying the adverse effect [and preventing its recurrence].

2. THE HEDGE TO WHICH THE NOTICE RELATES

[THIS WILL NORMALLY BE THE HEDGE, OR PART OF IT, THAT MEETS THE LEGAL DEFINITION AND IS THE SUBJECT OF THE COMPLAINT.]

The hedge [in the rear garden] at [address] and marked red on the attached plan. [COMPLAINT RELATES TO WHOLE HEDGE]

OR

The portion of hedge [in the rear garden] at [address] marked red on the attached plan. The portion is [10] metres in length, measured from the end of the hedge that is closest to the house at this address. This point is marked X on the plan. [COMPLAINT RELATES TO PART OF A LONGER HEDGE, THE REST OF WHICH IS NOT A HIGH HEDGE]

AND

The [portion of] hedge is formed predominantly of [name eg cypress] trees [and shrubs].

3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE

Initial Action

The Council requires the following steps to be taken in relation to the hedge before the end of the period specified in paragraph 4 below: [SPECIFY THE ACTION NECESSARY TO REMEDY THE PROBLEMS CAUSED BY THE HEDGE, PLUS A GROWING MARGIN TO FORESTALL FURTHER PROBLEMS IN THE SHORT TERM. FOR EXAMPLE:

(i) reduce the hedge to a height not exceeding [3] metres above ground level.]

Preventative Action

Following the end of the period specified in paragraph 4 below, the Council requires the following steps to be taken in relation to the hedge: [SPECIFY THE LONG-TERM MANAGEMENT OF THE HEDGE NECESSARY TO PREVENT PROBLEMS RECURRING. FOR EXAMPLE:

(i) maintain the hedge so that at no time does it exceed a height of [4] metres above ground level.]

Informative

[OFFER PRACTICAL ADVICE ON IMPLEMENTING THE REQUIREMENTS IN THE NOTICE. FOR EXAMPLE:

It is recommended that the hedge is cut back annually to a height of [3] metres. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of [4] metres.

As set out above, the hedge should be reduced in stages. Please contact the Council to discuss and agree a suitable timetable for these works.

All works should be carried out in accordance with good arboricultural practice/BS 3998: 'Recommendations for Tree Work'.

It is recommended that skilled contractors are employed to carry out this specialist work. For a list of approved contractors to carry out works on trees and hedges, see the Arboricultural Association's website at www.trees.org.uk.

In taking the action specified in this Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that nest or roost in trees.]

4. TIME FOR COMPLIANCE

The initial action [steps (x) to (y)] specified in paragraph 3 above to be complied with in full within [8] months of the date specified in paragraph 5 of this Notice.

[NOTE: SPECIFY A "PERIOD" OF TIME; UNDER THE ACT, THE NOTICE CANNOT FIX A DATE FOR COMPLETION.]

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [SPECIFY DATE, NOT LESS THAN 28 DAYS AFTER THE DATE OF ISSUE].

6. FAILURE TO COMPLY WITH THE NOTICE

Failure by any person who, at the relevant time, is an owner or occupier of the land where the [portion of] hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with steps [(x) to (y) – the initial action] specified in paragraph 3 above within the period specified in paragraph 4; or
- b. to take action in accordance with steps [(c) to (d) – preventative action] specified in paragraph 3 above by any time stated there;

may result in prosecution in the Magistrates Court with a fine of up to £1,000. The Council also has power, in these circumstances, to enter the land where the hedge is situated and carry

out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Dated:

Signed: [Council's authorised officer] on behalf of

[Council's name and address]

REMEDIAL NOTICE: SPECIFYING THE ACTION

Initial Action

Reduction to a single height along the whole of its length

- (i) reduce the hedge to a height not exceeding [3] metres above ground level.

Reduction to a single height in stages

- (i) reduce the hedge to a height not exceeding [6] metres above ground level;
- (ii) [9] months after the completion of step (i), further reduce the hedge to a height not exceeding [4.5] metres above ground level.

Reduction to a single height along part of its length

THE FOLLOWING EXAMPLE MIGHT APPLY WHERE ONLY THE SECTION OF THE HEDGE NEAREST THE WINDOWS OF THE COMPLAINANT'S PROPERTY IS TO BE REDUCED.

- (i) reduce the hedge to a height not exceeding [3] metres above ground level for a length of [8] metres, [measured from/centred on] the point where the hedge is closest to the windows of the house at [complainant's address]. This point is marked X on the attached plan.

THE FOLLOWING MIGHT APPLY WHERE ONLY A SECTION OF A LONGER HEDGE AFFECTS THE COMPLAINANT'S PROPERTY.

- (i) reduce the section of hedge that adjoins the (complainant's) property at [address] to a height not exceeding [3] metres above ground level;

OR

- (i) reduce to a height not exceeding [3] metres above ground level the section of hedge measuring 20 metres in length from the point where the boundaries of the properties at [addresses – complainant's and site of the hedge] meet. This point is marked X on the plan.

Lift the crowns of trees in the hedge

- (i) lift the crowns of the trees/shrubs in the hedge to a height of [4] metres above ground level.

Retain selected trees in the hedge

- (i) reduce the hedge, other than the trees identified below, to a height not exceeding [3] metres above ground level;
- (ii) no action is to be taken in relation to 1 x [rowan] tree and 1 x [oak] tree circled black on the attached plan.

Preventative Action

Maintain at a single height along the whole of its length

THE FOLLOWING FORMULA LEAVES THE DETAILS OF THE MANAGEMENT REGIME FOR THE OWNER OR OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED TO DECIDE. THEY MIGHT COMPLY WITH THE TERMS

OF THE NOTICE BY ANNUAL PRUNING TO A HEIGHT THAT ALLOWS THE HEDGE TO RE-GROW BETWEEN CUTS. ALTERNATIVELY, THEY MIGHT CARRY OUT MORE FREQUENT LIGHT TRIMMING TO ACHIEVE THE SAME EFFECT.

- (i) maintain the hedge so that at no time does it exceed a height of [4] metres.

THE EXAMPLE BELOW WOULD REQUIRE THE OWNER OR OCCUPIER OF THE LAND WHERE THE HEDGE IS SITUATED TO CARRY OUT ANNUAL PRUNING TO A HEIGHT THAT ALLOWS THE HEDGE TO RE-GROW BETWEEN CUTS. THE MARGIN ALLOWED FOR RE-GROWTH WOULD VARY ACCORDING TO THE SPECIES OF TREES/SHRUBS IN THE HEDGE.

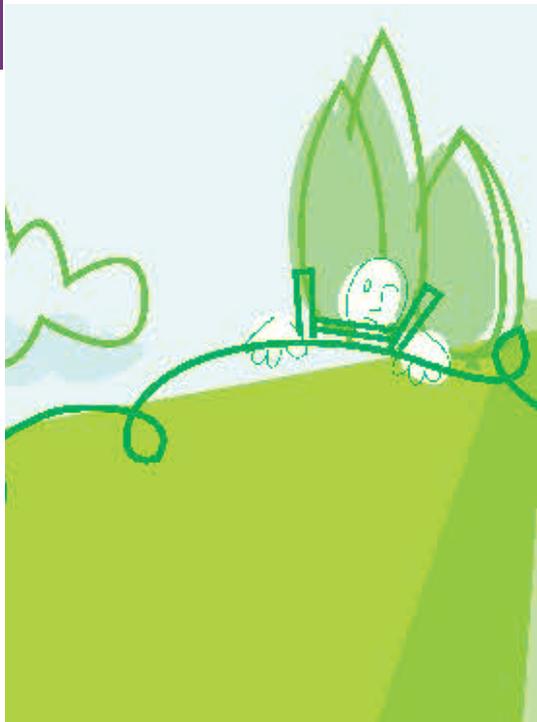
- (i) at any time that the hedge reaches a height of [4] metres above ground level, reduce it to a height not exceeding [3] metres above ground level.

Maintain at a single height along part of its length

- (i) maintain the section of hedge to which the initial action specified above relates so that at no time does it exceed a height of [4] metres above ground level.

Maintain hedge at a reduced height whilst retaining selected trees

- (i) maintain the hedge so that – other than the trees identified above – at no time does it exceed a height of [4] metres above ground level.



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