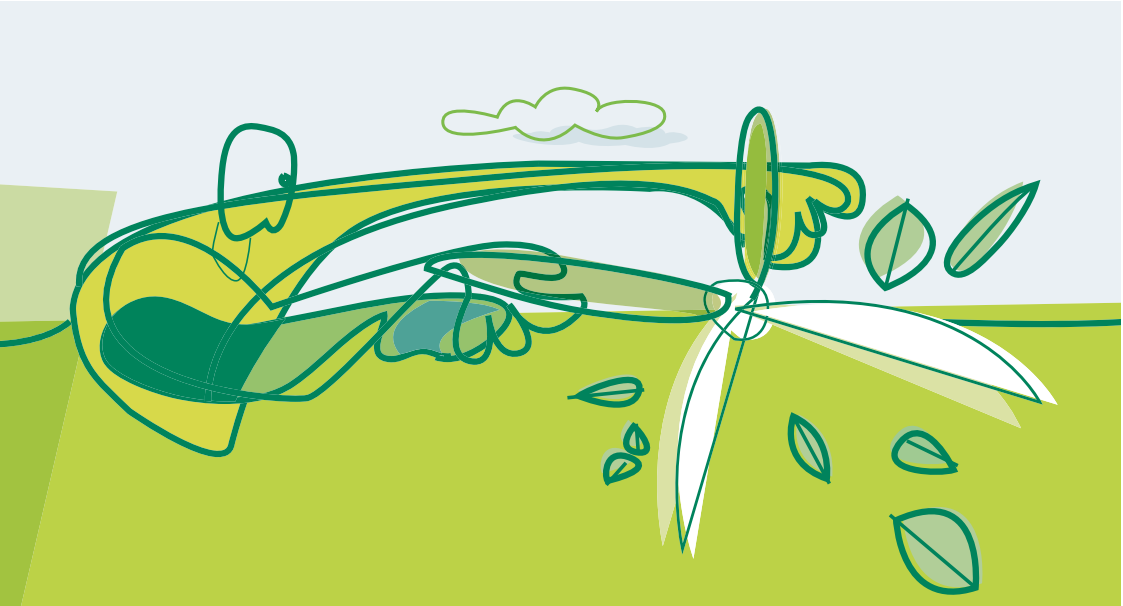
Office of the
Deputy Prime Minister

Creating sustainable communities

High hedges: appealing against the Council's decision

This is one of a series of leaflets about how to settle a hedge dispute. The others set out the steps to take to agree a solution with neighbours and, if that fails, how to make a complaint to your Council under Part 8 of the Anti-social Behaviour Act 2003. If you disagree with your local Council's decision on a complaint about a high hedge, or in connection with any remedial notice they have issued, you may be able to ask the independent Planning Inspectorate (PINS) to review the case. This is known as an appeal. This leaflet explains when you can appeal and how the Planning Inspectorate will deal with your case. You should read it carefully before deciding whether to appeal. The information it contains relates to England only. Please note that it is a simple guide and not a statement of the law.



1 Can I appeal

Whether or not you can appeal to the Planning Inspectorate depends on the nature of the decision made by the Council, who you are and your reasons (or grounds) for disagreeing with the decision in question.

Remedial notice issued

You can appeal against the Council's decision to issue a remedial notice, requiring the size of a high hedge to be reduced, if –

You are the person who complained to the Council about the hedge; and

- You think the required works aren't enough to protect your amenity.

You own or occupy the land where the hedge is situated; and

- You think that no notice should have been issued; or
- You think that the required works go too far; or
- You think that the Council have not given you enough time to carry them out.

Please note that the remedial notice will be put on hold while your appeal is being determined.

NO remedial notice issued

You can appeal against the Council's decision NOT to issue a remedial notice if –

You are the person who complained to the Council about the hedge; and

- You think that the Council have got it wrong and the hedge is adversely affecting your reasonable enjoyment of your property; or
- You think that the Council, having agreed the hedge is causing problems, should have issued a remedial notice to reduce the size of the hedge.

Remedial notice withdrawn

You can appeal against the Council's decision to withdraw a remedial notice if –

You are the person who complained to the Council about the hedge or their successor (ie. you now live in the property that was affected by the high hedge); and

- You did not agree to the notice being withdrawn; and
- The Council have not issued a new remedial notice in respect of the same hedge; and
- You think nothing has altered that would mean there is no longer any need to reduce the hedge or keep it to a certain size.

Please note that the Council's decision will be put on hold while your appeal is being determined, so the original remedial notice remains in force.

Remedial notice revised

You can appeal against the Council's decision to set aside or relax some of the requirements in the remedial notice if –

You are the person who complained to the Council about the hedge or their successor (ie. you now live in the property that was affected by the high hedge); and

- You did not agree the changes to the notice; and
- You think nothing has altered that would mean there is no longer any need to reduce the hedge or keep it to the size set out in the original remedial notice; or
- You think the works to the hedge, as revised, aren't enough to protect your amenity.

You own or occupy the land where the hedge is situated; and

- You did not agree the changes to the notice; and

- You think the works to the hedge, even though they have been revised, still go too far.

Please note that the Council's decision will be put on hold while your appeal is being determined, so the requirements in the original remedial notice still apply.

2 Whether or not to appeal

Appeals are expensive to administer and time-consuming for everyone so should not be made lightly. You should read the whole of this leaflet before making up your mind so that you understand what's involved.

In particular, bear in mind that –

- If you're going to appeal, it's not enough to say that you don't accept the Council's decision. You need to explain why you disagree. Ask the Council for clarification if you don't understand the reasoning behind their decision.
- The Inspector dealing with your appeal will have regard to the advice in ***High Hedges Complaints: Prevention and Cure***. This is the same guidance that Councils use when deciding a complaint about a high hedge, or to withdraw or revise a remedial notice.
- It's possible that you could end up worse off. This could happen if your neighbour also appeals against the same Council decision – but for the opposite reasons. If this happens, the Inspector who determines the appeal might reject your arguments but accept those of your neighbour.

So it is important to think carefully about the strength of your case before you appeal.

Depending on how well you get on with your neighbour, you might discuss your concerns about the Council's decision with them to see if there's a better solution. If you agree a different way forward, you could make a joint application to the Council to withdraw or revise the remedial notice.

3 How to appeal

Appeal form

Your appeal must be made on the form provided by the Planning Inspectorate. You can obtain the form from their website www.planning-inspectorate.gov.uk /pins/appeals, or by telephoning or writing to them (see Section 7 below for their contact details).

What it costs

There is no charge for making an appeal but you will have to pay your own costs, including those of any professional adviser who helps you (eg. a solicitor).

Deadline

The completed appeal form, and supporting documents, must be received by the Planning Inspectorate within 28 days starting from –

- The date that the remedial notice was issued; or
- The date of the Council's letter informing you that they had decided –
  - NOT to issue a remedial notice;
  - To withdraw a remedial notice; or
  - To set aside or relax some of the requirements in a remedial notice.

Withdrawing an appeal

You can withdraw your appeal at any time by writing to the Planning Inspectorate. This means that you can carry on any discussion with your neighbour, even after you have submitted your appeal.
If you agree a different solution, you can then withdraw the appeal (see Section 2 above).

4 What happens to your appeal

Written procedure

All appeals will be dealt with through a written procedure. This requires the Council to send to the Planning Inspectorate all relevant papers from their case file. These include copies of the original complaint or request to the Council, all the information and comments they received on it, and any reports prepared by officers dealing with the matter, together with the Council's decision letter. The Inspectorate might ask for further information, if they think it is necessary. In all cases, the Inspector appointed to determine the appeal will visit the site before making a decision.

The procedure is explained in more detail in *A Guide for Appellants (High Hedges)*, which is available on the Planning Inspectorate website. A copy will be sent to you with the appeal form.

Who is involved

The following people will be involved in the procedure, whether or not they made the appeal. They are known as "the parties" and are –

- The Council;
- The person who complained to the Council about the hedge or their successor (ie. the person now living in the property that was affected by the high hedge); and
- The owner and occupier of the land where the hedge is situated.

All the parties play an equal part in the appeal procedure and see all relevant papers. The Inspector cannot consider any document that has not been seen by everyone else involved in the appeal.

Other people who might have made comments to the Council on the case – such as other neighbours or local amenity societies – have no direct role

in the appeal. However, the Council will forward their comments so that the Inspector can take them into account when making the decision.

Site visit

Normally, the Inspector should be accompanied throughout the visit by all the parties. This is necessary so that the Inspector can easily gain entry both to the site of the hedge and to the property affected by it. It also helps to ensure that everyone is satisfied the Inspector has carried out the visit fairly and properly. Even if you don't get on with your neighbour, you should be prepared to let them onto your property while the Inspector is there.

No discussion about the main issues of the appeal is allowed during the visit. But the Inspector might ask general questions to clarify factual information.

5 Deciding the appeal

As noted in Section 2 above, the Inspector will have regard to the advice in *High Hedges Complaints: Prevention and Cure*. The Inspector will weigh up all the information gathered from the paperwork and at the site visit before reaching a fair and balanced decision.

The Inspector will notify all parties of their decision, including the reasons for it, as soon as possible after the site visit.

The Inspector may allow or dismiss an appeal, either in total or just part of it. Depending on the circumstances of the appeal, the end result could be that –

- The remedial notice is cancelled;
- The works to the hedge set out in the remedial notice are changed in some way;
- A new remedial notice is issued. This can happen only in cases where the Council decided not to issue one in the first place; or

- The works to the hedge set out in the original remedial notice stay as they were.

Whatever the appeal decision, the Inspector might amend the date when the remedial notice comes into force. This is known as "the operative date". The time allowed for carrying out the works to the hedge set out in the notice would start again from this date.

All parties must abide by the Inspector's decision, even if they did not make the appeal in the first place.

Even if the Inspector revises a remedial notice or issues a new one, the Council remains responsible for making sure that the owner or occupier of the land where the hedge is sited complies with the terms of the notice.

6 After the appeal decision

There is no separate right of appeal against the Inspector's decision. The only way to challenge it is by making an application to the High Court for a judicial review. Such a review is about whether the Inspector has applied the law properly. It's not about the strength of your arguments or the merits of the appeal decision.

Before taking such a step, you should obtain legal advice on the procedures involved and the likely costs if your challenge is unsuccessful.

7 Contact details

If you want general information about the appeals procedure, contact the Planning Inspectorate's Customer Support Unit at –

The Planning Inspectorate
Customer Support Unit
Room 3/01 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Telephone: 0117 372 6372
Fax: 0117 372 8782
Email: enquiries@planning - inspectorate.gov.uk

If you have an appeal under consideration and want to check progress, you should contact the person whose name and telephone number will be shown on letters you receive from the Planning Inspectorate.

8 Further information

The Planning Inspectorate

The Planning Inspectorate is an Executive Agency of the Office of the Deputy Prime Minister. They deal with appeals, development plans and other casework under planning, housing, environment and allied legislation. Inspectors who judge the appeals have a variety of backgrounds. These include town planning, surveying, engineering, architecture and the law.

You can find out more about what the Planning Inspectorate do, and download forms, publications and Frequently Asked Questions from their website at www.planning-inspectorate.gov.uk/pins.

The Law

Anti-social Behaviour Act 2003 – sections 71 to 73 deal with appeals. The Act is available on www.opsi.gov.uk/acts.htm.

High Hedges (Appeals) (England) Regulations 2005 (SI 2005 No. 711) – govern the procedures for dealing with high hedges appeals. The Regulations are available on www.opsi.gov.uk/stat.htm.

High Hedge Complaints

You can find out more about how complaints about high hedges are dealt with in the following publications. All are available at www.odpm.gov.uk/treesandhedges or from ODPM publications (tel: 0870 1226 236).

High hedges: complaining to the Council – a leaflet explaining the procedure for making a complaint to the Council when all other means of settling your hedge dispute have been exhausted.

High Hedges Complaints: Prevention and Cure – a detailed guide on administering high hedge complaints. A printed copy costs £12.

Further copies can be obtained
from ODPM Publications.
Tel: 0870 1226 236

For further information
visit www.odpm.gov.uk

Published by the Office of the
Deputy Prime Minister

Printed in the UK, October 2005, on material
comprising 75% post-consumer waste and
25% ECF pulp

Product code 05 SCDD 03390