



Your Ref:

Our Ref:

28th July 2010

Date:

Environmental Health Department

Being dealt with by:

Email:


Sean McCann
Assistant Clerk Environment Committee
Environment Committee Office
Room 247
Parliament Buildings
Stormont
BT4 3XX

Dear Sir

HIGH HEDGES BILL

Please find attached an extract from the Environmental Health Department's Report to the Environmental Services Committee (February 2010) of Omagh District Council and relevant appendix in relation to the public consultation on a draft high hedges bill.

Yours faithfully



DAVID GILLIS
Senior Environmental Health Officer

Encs.

6.0 RESPONSE TO THE PUBLIC CONSULTATION ON A DRAFT HIGH HEDGES BILL

There is currently no legislation in Northern Ireland governing the height or maintenance of a hedge. Disputes between neighbours regarding high hedges have often arisen and can remain unresolved for years. Problems of this type are often referred to Environmental Health Departments but as there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge there is often little that can be done if the owner of the hedge is reluctant to address the issue. The only legal redress available at present for a householder is by pursuing a civil action which can be costly and prohibitive.

The Environmental Health Department (EHD) largely welcomes the introduction of a High Hedges Bill by the Department of the Environment as it offers a more effective mechanism to deal with this sometimes difficult issue. Disputes of this type may have increased due to greater urban density and also due to the availability of low-cost and often very fast-growing hedges which need to be regularly trimmed to prevent them becoming a problem.

Under the proposed legislation a person who after having taken reasonable steps to resolve a high hedge problem, can refer the matter to their local council. Such a hedge should meet the following criteria before a complaint is made:

- Be formed wholly/predominantly by evergreen/semi-evergreen trees
- Consist of a line of two or more trees
- Measure more than 2m from ground level (on hedge owners side)
- Act as a barrier to light
- Affect residential property and
- Be growing on land owned by someone other than the person making the complaint.

The role of the council will be to act as an independent and impartial third party when investigating complaints subject to the above criteria. It is not intended that the council will negotiate or mediate between the individuals involved, but adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property.

Where it is deemed that this is the case, the council will have power to serve a legal notice requiring the hedge owner to take remedial action to remedy the problem and prevent it recurring. Failure to comply with such notice may result in formal action being instigated to ensure compliance.

The EHD however has a number of concerns regarding some of the specific points raised in the consultation document and proposed High Hedges Bill. Appendix 4 outlines the areas which the EHD would seek further clarification.

RECOMMENDATION: The Environmental Health Department is of the view that the proposed legislation offers opportunity for the local council to deal more effectively with this issue and that Members agree to a response being forwarded to the Department of the

Environment based on the issues highlighted in Appendix 4, prior to the end of the consultation period.

PUBLIC CONSULTATION ON A DRAFT HIGH HEDGES BILL

The following matters of concern are raised by the Environmental Health Department in response to the current consultation document on a proposed High Hedges Bill.

Issues of concern

- In the first instance making the complainant pay is contrary to normal Environmental Health principles. Consideration should be given to the return of the application fee but obviously no local authority wants the financial burden to fall on them; the offender should be liable.
- The Department will need to provide guidance to District Councils in relation to those circumstances that would constitute a complainant "*taking all reasonable steps to resolve the matter complained of*". For example, it is not clear if written statements would be required where prior communication had been oral.
- The EHD would seek clarification on how to deal with complaints relating to land which is vacant or where there is no identifiable occupier. We are concerned that there is an assumption by the Department that a District Council would automatically act in default.
- The Department needs to clarify whether or not a mediation service would be available. Despite such a service being available in England and Wales concerns have been raised by its users regarding its availability and cost.
- Resources would be required to educate and advise the public with regard to the new legislation and on how to plant and maintain hedges in order to avoid a problem.
- The EHD would welcome a prescribed application form which would clearly indicate to the complainant what information is required and would capture any previous communication and/or mediation. A standard form would also ensure consistency of approach from Councils across the province.
- We would welcome clarification on liability regarding hedges on land where there is no known owner.
- We would be concerned about the potential for hedge owners cutting hedges during the nesting season and would appreciate guidance in relation to this matter.
- The EHD would be concerned about the liability implication in the situation where it ordered a hedge owner to reduce the height of a hedge and it subsequently died. It would be helpful if the legislation could limit such claims, provided a District Council had acted in good faith and had taken appropriate professional advice regarding the proposed remedy.
- Those from lower socio-economic groups may find the cost of employing a specialist tree surgeon prohibitively expensive if a notice is served on them.
- The EHD would welcome clarification in relation to Powers of Entry and the requirement to give the occupier of land 24 hours notice and would suggest that this should also apply to the owner of the land. In addition we believe that it should be possible to waive this stipulation if entry was by invitation.

- We would welcome confirmation that the registered charge placed on a property following works in default will include the cost of registering a charge on the property.
- The EHD would be concerned about carrying out works in default on premises with no known owners as there would be little prospect of recovering costs.
- We would have concerns regarding potential conflict between the suggested legislative provisions and existing planning provisions. Two instances come to mind, tree preservation orders and conservation areas. Guidance may be necessary.
- Similarly Guidance may be necessary for those cases that involve property built adjacent to a forest or mature woodland. Guidance on the definition of a high hedge may be necessary to exclude planted forests.