

HIGH HEDGES: FEES AND APPEALS PROCESS

BACKGROUND

Legislation addressing the issues of high hedges in England and Wales falls under Part 8 of the Anti-social Behaviour Act 2003¹ (the Act). This Act allows the owner or occupier of a domestic property to complain to the local authority that their 'reasonable enjoyment' of that property is being 'adversely affected' by the height of a high hedge on an adjoining property.

A high hedge is defined in Part 8 of the Anti-social Behaviour Act 2003 as "so much of a barrier to light or access as is formed wholly or predominantly by the line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level"

Following a complaint, the local authority must decide whether the hedge in question is a "high hedge" as per the above definition, and if so, whether its height is adversely affecting the complainant's 'reasonable enjoyment' of their property. Should the complainant want an investigation to be carried out by the local authority, they must pay a usually non-refundable fee. The amount is left to the discretion of the council who is free to charge for this service; councils can offer different rates for different groups.

The complainant must produce evidence that they have tried to resolve the problem informally and amicably with their neighbour. Based on this, the local authority decides what path to take and can serve a 'remedial notice' which states what the hedge owner must do to remedy the problem. The authority can reject the complaint if it feels it is frivolous or vexatious.

To date there is no evidence of the effectiveness of this legislation, but according to the Scottish Parliament, a formal evaluation is to be carried out by the UK Government this year.

FEES

England

Enquiries suggest that there are no limits set on the amount a council can charge. It is up to the council to decide what an appropriate fee is, and in fact, it can decide not to charge any fee. Some councils have been giving discounts to those on low incomes, while others have not.

DEFRA will review the charges as part of the review of the Anti-social Behaviour Act 2003.

¹ [Anti-social Behaviour Act 2003](#)

Information supplied by the UK Parliament Research (*Dealing with Nuisance trees and Hedges*²), suggests that fees in England can range from £300 to £650, according to Baroness Andrews (p.5). With no specification in the regulations to a maximum amount a council can charge, fees tend to vary greatly between councils, and in general appear higher than those in Wales. For example:

In the information supplied, Sarah Hinchcliffe; a spokeswoman for Hedgeline, voiced her objection to the high fees charged by councils to make a complaint. This includes the £550 fee which Cotswold District Council is planning on introducing.

In relation to concessions, a spokeswoman for the Cotswold District Council stated that people with low incomes and those on benefits would pay only £100 to have their complaints investigated.

According to information on the Hedgeline³ website:

- Sevenoaks District Council charges £650 (the highest fee);
- Seven councils do not charge complaint fees;
- Kirklees Metropolitan Council charges £100 which is refundable if the complaint is upheld;
- Councils not in the list have yet to give Hedgeline any details despite two requests;
- 3 of the councils charge nothing for those eligible for concessions. Only four councils offer concessions to pensioners;
- Most councils have no concessions whatsoever;
- The Government did not set maximum/minimum complaint fees or recommend any fee levels;
- Many victims are being deterred by high fees from making complaints; and
- The average fee is just under £345 in England and £320 in Wales

For a detailed list of Councils and their fees, see Hedgeline's [Tables showing figures so far known – English Councils then Welsh Councils](#)

Wales

In 2004, Wales introduced regulations under the 'High Hedges (Fees) (Wales) Legislation 2004, stating that the maximum amount that any local authority can charge for a complaint to be made is £320.⁴

Information received from the Welsh Assembly suggests that a reduced fee of £160 is charged to those in receipt of Housing Benefit or Council Tax benefits.

Scotland

A High Hedges Bill has not taken effect in Scotland. Scot Barry put forward proposals for a Bill in 2006, but subsequently lost his seat in the 2007 elections. Proposals were dropped until a '[Consultation on High Hedges and other nuisance vegetation](#)' began in 2009. One of the options in the consultation was to replicate

² [UK Parliament Research Paper \(2010\): Dealing with Nuisance Trees and Hedges by Edward White](#)

³ Hedgeline, an organisation that campaigned for high hedge legislation, has prepared the following web page which they say lists the fees charged by those local authorities that have made announcements: <http://freespace.virgin.net/clare.h/JHdgFees.htm>

⁴ [High Hedges \(Fees\) \(Wales\) Legislation 2004](#)

legislation in England and Wales⁵, giving the councils the power to decide on a fee for complaints, but as yet, no decision has been made as the consultation has only recently come to an end.

APPEALS

Section 71 of the Anti-social Behaviour Act 2003 (the Act), sets out the various rights of appeal complainants and hedge owners can make to the 'First Secretary of State' (who has delegated all appeal functions to the Planning Inspectorate 'PINS'), against a local authority's decision.

The regulations for England (The High Hedges (Appeals) (England) Regulations 2005⁶) came into force 1 June 2005. The regulations for Wales (The High Hedges (Appeals) (Wales) Regulations 2004⁷) came into force on the 31 December 2004. The legislation between England and Wales varies slightly, with the main differences being that:

- In Wales, an appeal must be made to the National Assembly, where the 2005 High Hedges (Appeals) (Wales) Regulations corresponds with Section 71 of the Act, giving the National Assembly the power to make regulations in relation to appeals; and
- All appeals in England and Wales require site visits, however in Wales the Planning Inspectorate may also arrange for a hearing, where all parties who were involved in the original decision are invited to participate⁸.

A number of documents offering guidance on making an appeal have been issued, for example:

- ['A Guide for Appellants \(High Hedges\)'](#) produced by PINS in 2005
- The Welsh Assembly issued similar guidance in 2005- [High Hedges Complaints System: Guidance](#)
- ['High Hedges Complaints – Prevention and Cure'](#), produced by Communities and Local Government (CLG). According to PINS, the CLG guidance is used by councils when making a decision.

When sending out the final decision on the original complaint to all the parties, the Council must enclose copies of the explanatory leaflet - ['High Hedges: appealing against the Council's decision'](#), to ensure all parties are aware of their rights to appeal.

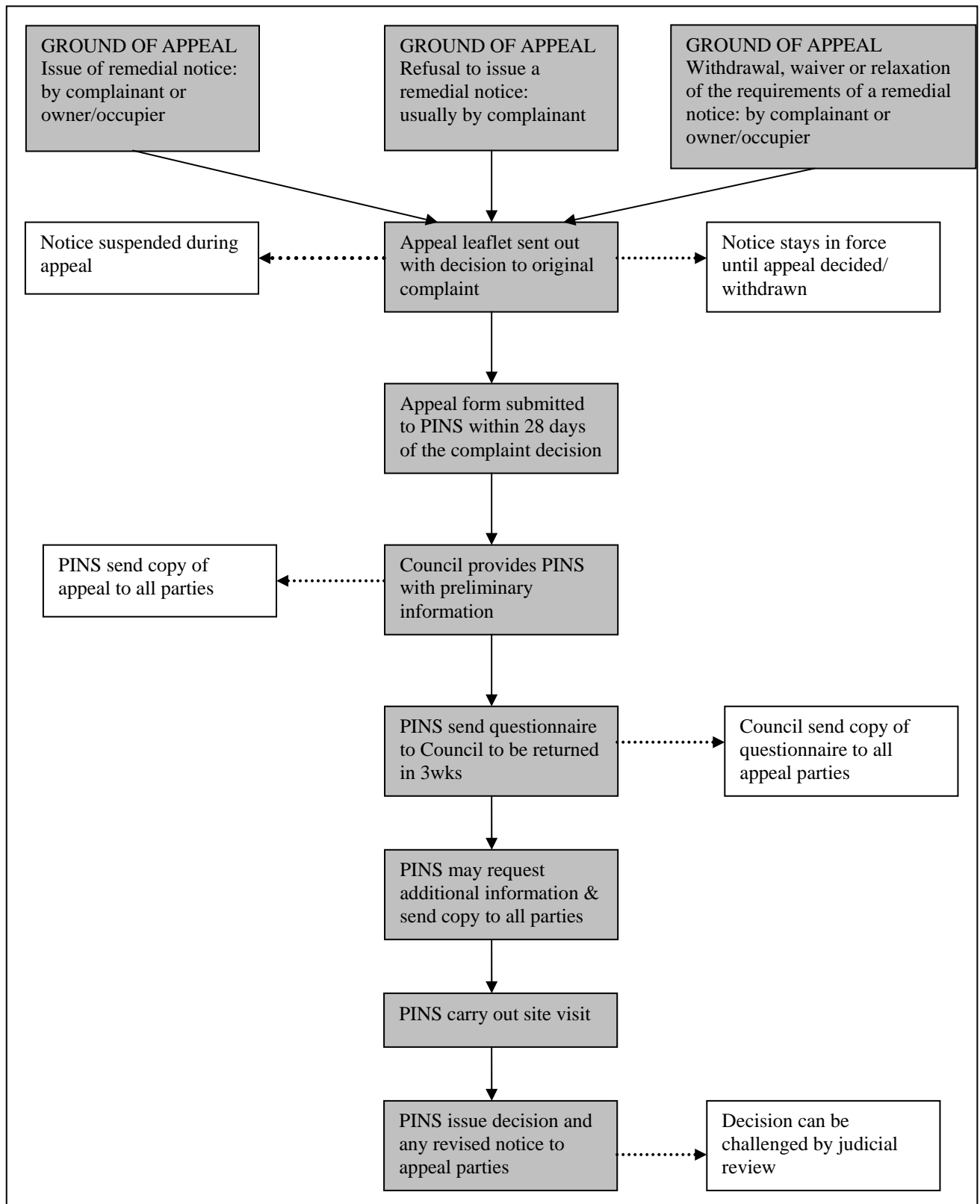
⁵ [Consultation on High Hedges and other nuisance vegetation](#) (p.26)

⁶ [High Hedges \(Appeals\) \(England\) Regulations 2005](#)

⁷ [High Hedges \(Appeals\) \(Wales\) Regulations 2004](#)

⁸ Welsh Assembly - [High Hedges Complaints System: Guidance](#)

The Process



Source: [High Hedges Complaints: Prevention and Cure](#) (Chapter 8 Figure 5)

Grounds of Appeal

The Act gives the complainant and the owner and occupier of the land where the hedge is located, the right to appeal against:

a) The issue of a remedial notice:

- the complainant may appeal against the actions stated in the remedial notice, based on the grounds that the actions are not satisfactory to address the problem or prevent it happening again.
- the complainant may complain against the refusal to issue a remedial notice on the grounds that the Council underestimated the problem.
- the owner/occupier may make an appeal if they feel that: the Council over estimated the problems; the actions specified in the notice exceed what is necessary or appropriate to remedy the problem (i.e. causing death of the hedge); or that not enough time has been allowed to carry out the stated actions.

b) The withdrawal of a remedial notice:

Provided the complainant did not agree to the withdrawal of a notice, or the Council has not issued a new notice on the same hedge (e.g. to correct an error):

- The complainant may appeal on the grounds that there has been no change in circumstances since the original notice was issued.

The decision to withdraw the notice is suspended while the appeal is being determined, and the original notice remains in effect until a decision is made.

c) The waiver or relaxation of its requirements:

- The complainant may issue an appeal if they feel the new relaxed actions do not address the scale of the problem.
- An appeal may be submitted on the grounds that there have been no changes in the circumstances to warrant relaxing the notice's requirements.
- The owner/occupier may feel that the requirements exceed what is needed to rectify the problem or prevent it recurring.

Submission of an appeal:⁹

- Appeals should be submitted using the official [form](#) provided by the Planning Inspectorate.
- The appeal form must include the full grounds of appeal (explaining why they disagree with the reasons given by the Council, or any remedial actions specified in the notice), and should be accompanied by all relevant

⁹ [High Hedges Complaints – Prevention and Cure by CLG](#)

documents including: a copy of the Council's decision letter and any remedial notice in question.

- The completed appeal form and relevant documents should be sent or emailed to the Planning Inspectorate.
- The appellant must also send a copy of the completed appeals form and all enclosures to the Council who made the decision in question.

Time Limits

The completed appeals form and other documents must be received by the Planning Inspectorate (PINS) 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 requirements.

The parties to an appeal are:

- The appellant;
- The Council;
- A complainant – or anyone who 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.

All parties play an equal part in the process, see all relevant papers and must be notified of the appeal decision.

Preliminary Information

On their receipt of the appeal form and documents, the Council must provide PINS with the contact details of all the appeal party (except the appellant).

Once PINS have received the completed appeals form, accompanying documents and the preliminary information stated above, they notify the appeal parties of the appeal and send them a copy of the completed form, along with the name and contact details of the officer handling the case.

Questionnaire

PINS issue a questionnaire to the Council to obtain background papers to the appeal. The Council has 3 weeks to return the completed questionnaire along with the relevant papers, which may include:

The Council's decision letter; comments from any organisation that the local authority consulted; the hedge owner's representations and supporting information, and any other information provided by neighbours etc (see ['High Hedges Complaints – Prevention and Cure'](#) for a full list)

Additional Information

PINS may request further information that they consider relevant to the appeal:

- Such as representations submitted at the complaint stage that have evidently not been disclosed to the main parties.
- If they feel that the appeal raises new points, or includes fresh information which has not been considered by the Council.

PINS will copy relevant papers to all the appeal parties for comment to be returned within the deadline set by PINS

Site Visit

Once all the necessary written evidence has been collected, the Planning Inspectorate arrange for an impartial Planning Inspector to visit the site of the hedge. The Inspector's visit is crucial for determining the appeal. In most cases, the Inspector is accompanied by the appeal parties (the complainant, the occupier of the hedge site, and the Council), to ensure the visit is conducted in a fair and impartial manner.

The Decision

The appointed Inspector may allow or dismiss an appeal, in total or in part.

The Planning Inspectorate/Inspector is required to notify the Council, the complainant and the owner/occupier of the site of the hedge of the decision as soon as possible. The Inspector must supply all the parties with the reasons for the decision. (For further information see ['High Hedges Complaints – Prevention and Cure'](#))

Withdrawal and Review of an Appeal

The appellant has the right to withdraw their appeal at any stage. In this case the original decision by the Council will stand. The remedial notice, or any waiver or relaxation of its requirements takes effect from the date that the appeal is withdrawn.

There is no separate right of appeal against an appeal decision. An application must be sent to the High Court to challenge the decision by judicial review. The review can only be used to challenge the way the decision was made, i.e. to ensure that the powers offered in the Act and the Appeal Regulations have been used properly.

The applicant must suffice the court that they have an arguable case, in order to obtain permission to bring the application for judicial review.