

Ashfield District Council

High hedges: complaining to the Council



This leaflet explains the legislation and the Council's protocol for dealing with complaints.

INTRODUCTION

The Council is committed to the wellbeing of our community. We recognise the upset, inconvenience and adverse impact on amenity that can come from a high hedge. High hedge legislation has been introduced by the Government under Part 8, Chapter 38 of the Anti-Social Behaviour Act 2003 to tackle this problem.

This document is not intended to detail the legislation but to answer the majority of queries and explain the procedure for making a complaint.

1. Can we come straight to you with our hedge problem?

No. Involving the Council should be a last resort if you really can't agree a solution with your neighbour. We can refuse to intervene if we consider that you haven't done everything you reasonably could to settle your dispute.

2. What will the Council expect us to have done to sort this out between ourselves?

This will depend on how well you get on with your neighbours. But before you contact us, you should have tried the following:

- Have a quiet word with your neighbour about your concerns.
- Follow this up by sitting down with them so that you can get a better understanding of each other's concerns and try to figure out the answer.
- If this doesn't work, invite them to talk to independent mediators who can help you find a way forward. If your neighbour won't talk to you or you are nervous about speaking to them, send a polite letter. It won't be enough to say your neighbour is not approachable.

Further information on settling your hedge differences is in the separate leaflet "Over the garden hedge" available from the Council. Keep a record of what you've done – e.g. copies of letters or a diary. If nothing works, you should let your neighbours know that you will be making a formal complaint to the Council.

3. My hedge dispute has been running for years. Am I expected to go through all this again?

We will expect evidence of a recent attempt to settle your dispute with your neighbour. If you rely on an approach you made more than, say, 3 months ago, you will be asked to try again. You never know, your neighbour could have had a change of heart. They might not welcome the Council getting involved and could be ready to compromise.

4. What sorts of complaint can the Council look at?

If you've been through all the steps set out above AND can then answer 'yes' to the points listed below, we will be able to look at your complaint:

About the hedge

- Is it growing on land owned by someone else?
- Is the hedge – or the portion that is causing problems – made up of a line of 2 or more trees or shrubs?
- Is it mostly evergreen or semi-evergreen?
- Is it more than 2 metres tall?
- Even though there might be gaps in the foliage or between the trees or shrubs, is the hedge still capable of obstructing light or views?

Who can complain?

- Are you the owner or occupier (eg. tenant) of the property affected by the hedge?
- Is your property residential?

Grounds of complaint.

Does the hedge detract from the reasonable enjoyment of your home or garden because it is too tall?

5. The hedge has got some gaps in it that allow light through. Does this mean that I can't complain to you about it?

Not necessarily. It depends on the extent of the gaps. This may not be easy to judge. There are no rules that say if the trees or shrubs are more than a set distance apart, then you can't complain. Where individual trees or shrubs are so widely spaced that you can see what lies behind them, then it might not meet the criteria for making a complaint.

6. Can I complain to you about individual trees?

No. Follow the steps in the leaflet 'Over the garden hedge' (available from the Council) to try to settle your dispute.

7. Does the hedge have to be on the boundary line or in next door's garden?

No, it doesn't matter where the hedge is growing, provided it isn't on your own land. Though the farther away it is from your house or garden, the less troublesome it is likely to be.

8. What's a semi-evergreen tree or shrub?

It's something that keeps some live or green leaves all year round. Depending on where you live, this could include privet. It doesn't include beech or hornbeam hedges. The eaves that they keep in the winter are dead and brown.

9. Where is the 2 metres measured from?

It's measured from ground level. This is usually at the base of the trunk or main stem of the trees or shrubs in the hedge. Unless it has been planted on a bank or in a raised bed, when the measurement would be taken from the natural ground level.

10. What sort of problems can I complain about?

You can complain about problems that you experience in your house and garden because the hedge is too tall. You must also be able to explain why these bother you. Because each case is different, it's impossible to produce a list of potential grievances that you can choose from. You need to think about the disadvantages that you actually face, whether these are to do with the height of the hedge and how serious they are. We won't be able to consider things that are not really about the hedge in question or its impact on your house and garden. For example, that other people keep their hedges trimmed to a lower height, or that the worry is making you ill.

11. I'm worried that the hedge will cause subsidence in my home. Can I complain about this?

No. This isn't to do with the height of the hedge but its roots taking moisture from soils that shrink. The Act specifically says that Councils cannot deal with problems caused by roots.

12. What will it cost?

i). Do I have to pay you to consider my complaint? If so, how much?

Yes, the Government has determined that a fee be paid to us for this service. The fee is currently £350.

ii) Are there any reductions of this fee available?

Yes. To be eligible you must receive at least one of the following:

| GROUP | PROOF REQUIRED |
|---|---|
| Income based Job Seekers Allowance | A letter from DSS or Benefit Office (Not an ES40) |
| Income Support | A letter from DSS or Order Book |
| Family Credit | Book of Orders |
| Housing Benefit or Council Tax Benefit | Ashfield District Council Rent/Council Tax payment card or notification of benefit letter |
| Disability Working Allowance | Order book or notification of payment to account |
| On or awaiting a Government Training Scheme | A letter from your Managing Agency, TEC Office or Careers Office |
| In Full Time Education | Student Union Card or a letter from your tutor |
| Dependent Partner | Any proof available |

iii) Will I get my money back if you uphold my complaint?

No. There is no provision to return fees.

iv). Can you help me get it back from my neighbours?

No, we can't get involved in helping you recover the fee that you have paid and certainly can't force your neighbours to reimburse you.

13. What do I do?

i). How do I make a complaint?

Call in at our offices, telephone or e.mail us and we will give or send you a form to fill in.

You should telephone 01623 457355 or e.mail us at Planning.Admin@ashfield.gov.uk.

Alternatively you can download the form from our website

www.ashfielddc.gov.uk/planning/permission/onlineforms.shtml. This is your main chance to set out your case so it is important that you provide full information on the form. In particular, think carefully about your grounds of complaint. Explain as clearly as you can the problems that you actually experience in your house and garden because the hedge is too tall, and why these are

serious. Stick to the facts and provide all relevant information to back up the points you are making. If you're having trouble filling in the form, contact us on the number on the complaint form or your local Citizens Advice Bureau may be able to help. Alternatively, a relative or friend could complete it on your behalf. The completed form can be sent by post or email to us. You should send a copy to your neighbours so they know what you've done. If you don't send it to them, the Council will.

So bear this in mind when you complete the form. Remember to enclose the right fee with the form.

We can't consider your complaint without it.

ii) *What happens if the hedge is owned by the Council?*

You should still send your complaint to us. They will make sure that it is dealt with by different people from those who look after the land where the hedge is. If you don't agree with our decision on your complaint, you can appeal to the Planning Inspectorate.

What will happen to my complaint?

i) *What will you do with my complaint?*

Once we are satisfied that your complaint meets the legal tests, we will invite your neighbour to set out their case. When we've got both sides of the story, an officer of the Council will pay a visit, to see the hedge and surroundings. We will also obtain any other facts about the site that they need to help them decide your complaint. We might, for instance, need to measure the size of your garden or how far the hedge is from windows in your house. Once we've got all this information together, we will weigh it all up. We will decide whether the hedge adversely affects the reasonable enjoyment of your home and garden and what – if anything – should be done about it. If we decide action is necessary, we will issue a formal notice to your neighbour that sets out what they must do to the hedge and then they must do it by. This is known as a Remedial Notice. It can also require your neighbour to keep the hedge trimmed to its new size.

ii) *This appears overly complicated. Surely all it needs is for you to go and get evidence to show the hedge is a nuisance and then order the offender to cut it down?*

That's not the way the law works. There is no offence for having a tall hedge. So it's not up to us to prove the hedge is a nuisance. Our job, in the words of the Act, is to decide whether the hedge is adversely affecting your reasonable enjoyment of your property and, if so, what action – if any – should be taken to remedy the situation or to prevent it happening again. The use of the word 'Reasonable' is important. It means that we cannot just take into account your concerns. We must also consider your neighbour's point of view and think about the consequences for the neighbourhood.

For example,

The hedge might help to make the area an attractive and pleasant place to live. We have to weigh up all relevant information before reaching a fair and balanced decision.

Collecting written evidence from you and your neighbour, and visiting the site, will make sure that we have the information we need to make the right decision.

iii) *How do I know whether it's going to do me any good to complain to you?*

You can't be certain what the result will be. That's why it is important to think carefully about your reasons for complaining to us before you return your form. You might find it worthwhile looking at the detailed guide 'High hedges: prevention and cure'. It gives advice on the sort of things that

Councils will take into account in considering how serious the problems you're complaining about are. This might help you to test out the strength of your arguments. As a general rule, your case will be weaker if the trouble with the hedge affects you for only a short time, or is just inconvenient.

iv) How long will I have to wait for you to decide my complaint?

There is no set deadline for Councils to decide your complaint. Remember it will take time for us to get a statement from your neighbour, and to arrange to visit the site. If you are worried because you haven't heard anything, you could contact us to check progress.

The following procedure will be followed:

- i) Upon being informed of your complaint we will send to you the necessary forms within 2 working days.
- ii) Upon receipt of the complaint form and the relevant fee and we are satisfied that your complaint meets the legal test you will be notified in writing.
- iii) Within 5 working days of 2 above the person(s) about whom you are complaining will be invited to set out their case within 4 weeks.
- iv) Within 3 weeks of receiving all relevant information the site will be visited and assessment made of the problem.
- v) Within 12 weeks of receiving a valid complaint you will be informed of the action the Council will take or a reason for not taking action.
- vi) Where a notice is served you will be informed within 2 working days of the Notice and its requirements.

What will happen to the hedge?

14. If you uphold my complaint, will the hedge have to be removed? That would solve the problem once and for all.

No, the Act specifically says that we can't order that the hedge be removed entirely. Nor can we require it to be cut down below 2 metres.

15. Will the hedge have to be cut down to 2 metres then?

Not necessarily. There is nothing in the Act that says all hedges must be cut down to 2 metres. As a general rule, we can only order your neighbour to reduce the hedge to a height that will remedy the problems – or prevent them happening again – and no more. 2 metres will not, therefore, be the right answer in every case.

16. How long will you give my neighbour to cut the hedge?

This will vary but it could well be months rather than weeks. We must be realistic about how long it will take your neighbour to carry out the works. We might also allow extra time so that the hedge does not have to be cut when birds might be nesting in it. Your neighbour can appeal if they think we have not allowed enough time.

17. What is there to make sure my neighbour keeps the hedge at its new height? Do I have to complain again, and pay a fee?

As well as reducing the height of the hedge, we can order your neighbour to take action to prevent the problems with the hedge happening again. This could include keeping the hedge within its new height for as long as it is there. The remedial notice issued by the Council will set out any such maintenance requirement. So you wouldn't have to make another formal complaint and go through this process again to get something done.

18. *Does your remedial notice allow me to cut my neighbour's hedge if I think they're dragging their heels?*

No, it doesn't give you any right to cut the hedge. If you do anything more than trim branches that hang over your side, your neighbour could take you to court for damaging their property. If any trees in the hedge are protected, you might not be able to do even this without getting separate permission from us.

19. *What happens if my neighbour doesn't cut the hedge when they're meant to?*

Failure to carry out the works ordered by the Council is an offence. Your neighbour could be prosecuted and, if found guilty in the magistrates court, could be fined up to £1,000.

20. *Will you cut the hedge instead?*

The Council can go onto your neighbour's property and cut the hedge if they don't do it themselves but there is no legal obligation to do so.

21. *Is there anything I can do if I don't like your decision?*

If you disagree with our decision, you can appeal to the independent Planning Inspectorate. They must receive your appeal within 28 days of the date of our decision letter. There is a separate leaflet 'High hedges: appealing against the Council's decision' that explains how you can appeal and how your appeal will be handled. You should be aware that your neighbour can also appeal if they are unhappy with our decision. If you think we have not handled your complaint properly, you can complain to the Local Government Ombudsman.

Appendix 1

Useful contacts

Arboricultural Association – for a list of approved contractors to carry out work on trees and hedges, search www.trees.org.uk or tel: 01794 368717

Citizens Advice Bureaux – offer free, confidential, impartial and independent advice. Mansfield office tel: 01623 627163 or Sutton-in-Ashfield office tel: 01623 556686

Community Legal Service (CLS) helps people to find the right legal advice. There are CLS Information Points in local libraries. Or else search www.clsdirect.org.uk or tel 0845 345 4 345 for your nearest Community Legal Service provider.

Gardening Which? helps its members with their gardening problems tel: 0845 9037000.

Hedgeline – help those affected by problem hedges, drawing on the experience of their members. See their website at www.hedgeline.org or tel: 0870 2400 627

Mediation UK – to find your nearest community mediation service search www.mediationuk.org.uk or tel: 0117 904 6661

Royal Horticultural Society – helps its members with their specific gardening problems tel:01483 479700. General advice on planting and looking after hedges is available at www.rhs.org.uk/advice

Tree Helpline – for impartial advice on anything to do with trees, hedges and shrubs tel: 09065 161147 (calls are charged at £1.50 a minute)

Further information

Details of the following are available on www.odpm.gov.uk/treesandhedges -

‘Anti-social Behaviour Act 2003: Part 8’ – the law governing complaints about high hedges.

‘High hedges complaints: prevention and cure’ – a detailed guide on administering high hedge complaints.

‘High hedges: appealing against the Council’s decision’ – a leaflet explaining how to appeal if you disagree with the Council’s decision on a hedge complaint.

‘Over the garden hedge’ – a leaflet on how to settle your hedge differences without involving the Council.

‘The right hedge for you’ – a leaflet to help you choose the most suitable hedge for you and your garden.

‘Hedge height and light loss’ – a booklet to help you assess whether an evergreen hedge is blocking too much daylight and sunlight to neighbouring properties. A printed copy costs £6.50.

‘Protected Trees: A Guide to Tree Preservation Procedures’ – a leaflet answering some of the most common questions about tree preservation procedures.