

HIGH HEDGES

The Planning Inspectorate provides advice to Inspectors to assist them in carrying out their role consistently and effectively. The Inspectors' Handbook provides advice on procedural and policy matters drawing on relevant Court judgements and the practical experience of Inspectors. Although prepared for Inspectors, this Handbook chapter is publicly available.

The Planning Inspectorate continually updates the Handbook to reflect policy changes, Court decisions and practical experience. In the unlikely event that conflict arises between national policy and guidance, and a part of the Handbook, that particular part will not be given any weight.

The Planning Inspectorate is also working with Communities and Local Government on a new streamlined format for the Handbook to reflect the Killian Pretty recommendation that planning needs to be more user-friendly.

Relevant Guidance

Anti-social Behaviour Act 2003 (Part 8 - High Hedges)

The High Hedge (Appeals) (England) Regulations 2005

High Hedge Complaints: Prevention & Cure (ODPM, May 2005)
(As amended by CLG advice to Local Authorities [20/4/06 and 13/6/08])

Baroness Andrews' letter (20 April 2008)

Matters relating to High Hedges: Notes to Local Authorities (CLG, July 2008) and [CLG covering letter of 13/6/08](#)

Hedge height and light loss (ODPM 2004, revised October 2005)

[High hedges FAQs \(CLG website\)](#)

High Hedges Advice Note 2 (as amended)

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In this chapter all bracketed paragraph references are to 'Prevention and Cure' and all references to trees include shrubs. The following abbreviations are used throughout:

AHH = action hedge height
BRE = Building Research Establishment
HH = high hedge
HH&LL = Hedge Height and Light Loss
P&C = Prevention and Cure
RN = remedial notice

Introduction

1. The right to make high hedge (HH) complaints and appeals was introduced by Part 8, sections 65 to 97 of the Anti-social Behaviour Act 2003. This part of the Act was brought into force in 2005, along with 'The High Hedges (Appeals)(England) Regulations 2005. ODPM (now CLG) published 'High Hedges Complaints: Prevention and Cure' (P&C), which provides guidance on the complaint and appeal processes. In relation to light loss issues, ODPM published 'Hedge height and light loss' (HH&LL), which sets out the Building Research Establishment (BRE) methodology for calculating in a range of scenarios the height above which a hedge is likely to cause a significant loss of light to a nearby property.

An outline of the process

2. A person who believes that they are affected by a HH can complain to the Council. The Council will first determine whether the hedge is a HH within the meaning of the legislation and then satisfy itself that sufficient effort has been made by the complainant to resolve the problem by negotiation or mediation with the hedge owner beforehand. Assuming the complaint is valid the Council will give the main parties (5.36-5.38) the opportunity to state their case, before carrying out a site visit, and issuing a decision and usually a report. It can either:
 - uphold the complaint and issue a Remedial Notice (RN) to require works to the hedge;
 - decide the hedge is not having an adverse effect and so not issue a RN; or
 - decide that although the hedge is causing an adverse effect it is not sufficient to justify the issue of a RN, and/or that to do so may cause the death or destruction of the hedge.

3. Where a hedge runs along the boundary of several properties each owner/occupier can complain. In these circumstances the Council must issue individual decision letters and RNs. If there are several complainants there could be several appeals relating to the same hedge. In such cases the appeals will be linked, but different decisions could be reached on each one, depending on the circumstances of the case. There can also be multiple owners (5.19-5.20, 6.42-6.49 and 8.36-8.44). For ease, this chapter assumes that there is only one complainant and one owner.
4. Either party then has the right to lodge an appeal on a number of grounds, the most common ones of which are set out here.

The complainant can appeal on the basis of:

- a Council's decision not to issue a RN;
- the RN that has been issued does not go far enough;
- the withdrawal of a RN;
- the waiver or relaxation of a RN's requirements.

The hedge-owner can appeal on the basis that:

- a RN should not have been issued;
- a RN is unnecessarily onerous;
- insufficient time has been allowed for the works specified in the RN.

Often, both parties will appeal where a RN has been issued.

Inspectors' Powers

5. Once PINS has received all of the Council's case papers, an Inspector will be appointed to carry out a site visit and then issue a decision. He/she can quash a RN; vary one to make it more onerous or to relax any of its provisions; or issue one where none had been issued before (see paragraphs 59-60).
6. However it is important to note that, where only one party appeals, the decision must not leave that appellant worse off than if they had not appealed. For example if only the complainant appeals, on the basis that the RN did not go far enough, an Inspector cannot quash or relax the RN. If the Inspector decides that a more onerous RN is not warranted, the appeal can only be dismissed. Where both parties appeal then the Inspector has discretion to deal with the appeals as he/she sees fit but can only quash or vary a RN where he/she is allowing an appeal.

Location and composition of the hedge

Is it a 'high hedge' (4.2-4.21)

7. The first consideration is whether the hedge falls within the ambit of the legislation. This should have been established beyond doubt by the Council, but Inspectors may have to satisfy themselves that a hedge qualifies as a HH. This is determined by the number and species of trees comprising the hedge, its height, and its density:

a) a hedge can be a mix of tree species, including some deciduous, but the predominant type must be evergreen or semi-evergreen. Leylandii cypress is probably the most common conifer, but it could be any species of evergreen or semi-evergreen tree or shrub. Thus laurel, holly and bay are included. Semi-evergreens are those which retain some foliage, such as privet (which can be evergreen in the south, but lose its leaves in the north). In such cases it could be a matter of fact and degree whether a tree is semi-evergreen or not. The Inspector should have evidence from the parties on this if it is in dispute.

It should be remembered that some conifers, such as larch or swamp cypress are deciduous and so fall outside the ambit of the Act, as do beech and hornbeam as any foliage they retain in the winter is dead, unless any of these form part of a predominantly evergreen/semi-evergreen hedge. Climbing plants such as ivy and grasses such as bamboo fall outside the Act, regardless of whether they form part of a predominantly evergreen/semi-evergreen hedge.

b) the hedge must be more than 2m high. The 2m is measured from ground level on the side where the hedge is planted. Ground level is the natural level at the base of the hedge, unless the hedge has been planted on a mound or in containers, in which case the natural level of the surrounding ground should be used. The relevant measurements should have been taken by the Council, but it is possible for these measurements to be disputed on appeal, in which case the Inspector will need to satisfy him/herself of the correct measurements on site.

c) the hedge must be made up of a line of 2 or more trees.

d) the hedge must be a barrier to light or access above 2m. If a hedge contains gaps it will be a matter of judgement whether the gaps are sufficient so that a barrier is not maintained. CLG advice is that it is *less likely* to be a HH if no branches are touching and it is possible to clearly see through the gaps. Where there are gaps the hedge may be

considered to be a number of shorter hedges, each one of which could come within the scope of the Act.

8. In cases where the make-up of the hedge is disputed it is important for the Inspector to deal with this as a first step as it could affect the HH&LL calculations or even bring the validity of the appeal into question. If an Inspector considers that only a small part of a much longer hedge which is the subject of an appeal is covered by the Act the appeal should still be determined, but only the impact of that part of the hedge that is within the parameters of the legislation can be considered.
9. Inspectors should not usually raise issues that have not been mentioned by the parties. However if, for instance, at a site visit an Inspector becomes firmly convinced that the hedge is not a HH, and this has not been raised by the parties, he/she should ask the Environment Team to canvas it with the parties before the decision is issued. As with planning appeals, there should be no surprises in the decision.

Changes made so hedge is no longer a high hedge

10. It is not uncommon, following the issue of a RN by a Council, for a hedge owner to carry out works to a hedge such that it no longer meets the legal definition of a HH. (This will often include the removal of trees.) If this appears to be the case on receipt of a HH appeal, the Environment Team will ask the Council to verify the situation. If they confirm that the hedge is no longer a HH the Environment Team will write to the appeal parties to explain the situation, and ask if they wish to reconsider their position.
11. This may result in the Council withdrawing the RN, in which case no further action will be taken on the appeal, or the appellant withdrawing their appeal. However if the changed status is not confirmed at that stage, or if the appeal stands because the RN/appeal has not been withdrawn, the appeal must proceed to a decision and a site visit will be arranged.
12. An Inspector's decision can only be based on the physical features of the hedge as he/she observes them at the time of the visit. If his/her observations at that time lead him/her to conclude that the hedge is no longer a HH, his/her decision should contain those observations and that finding, but cannot require any action to be taken in relation to the remaining trees or shrubs. The Inspector cannot deal with the grounds of appeal or the merits of the case. The decision should indicate that the Inspector is unable to consider the effect of the hedge on the reasonable enjoyment of the complainant's property and/or whether the requirements of the RN are appropriate and reasonable. The decision should include wording to the effect that as the Inspector considers that the hedge is no longer a HH as defined in Section 66 of the Anti-social

Behaviour Act 2003 he/she can take no further action on the appeal.

13. The Environment Team will send a covering letter to the Council with the decision (copied to the other parties) suggesting that they may wish to consider withdrawing the RN, and drawing their attention to paragraphs 7.47 to 7.49 of Prevention & Cure.
14. If works to the hedge have been carried out such that it is no longer a HH (eg reduced to under 2m), but could, if allowed to grow, become one again in the future, the decision should note that the hedge is no longer a HH, and, if there are no other reasons for quashing any RN, it should remain in force so that the preventative action will bite if the hedge becomes a HH again.

Hedge still a high hedge but changes made since RN issued

15. Where a hedge is still a HH but the initial action specified in a RN has been undertaken prior to the site visit it may be difficult for an Inspector to judge whether, at the time the Council was considering the complaint, the hedge was adversely affecting the complainant's reasonable enjoyment of their property. In these circumstances, an Inspector need only decide whether or not the preventative action specified in the RN is appropriate. If an Inspector does not consider that it is appropriate he/she may vary the RN if in so doing he/she is allowing or allowing in part the appeal. If the appellant would be put in a worse position than before they appealed the Inspector should record his/her observations in the decision but cannot vary the RN and can only dismiss the appeal.

Location of the hedge (4.22-24)

16. The Act is solely concerned with the effect of a hedge on a domestic property and its associated garden. According to P&C (4.33) the associated garden or yard must be legally linked to the property. So for example, land that is in other ownership but has been, over time, incorporated into a garden cannot be considered unless there is clear evidence that the land has been legally acquired by adverse possession. Similarly a portion of a neighbour's garden that is used by verbal agreement cannot be considered. If it appears to an Inspector that part of a complainant's garden may not be owned by them, the Inspector should ask the Environment Team to clarify the position with them.
17. A hedge which a complainant considers is causing an adverse effect does not have to be on the boundary of the complainant's property or even on their immediate neighbour's land. However the effect is likely to be lessened the further away the hedge is from the complainant's boundary.
18. A hedge can extend along the boundaries of a number of properties. Although the location of the hedge is not restricted by

the Act, there is an issue of natural justice if a hedge the subject of a complaint borders others' property. Councils should canvas other neighbours at complaint stage whom they consider could be affected by any action that they may specify. If an Inspector considers that neighbours who may be affected have not been canvassed by either the Council or PINS, he/she should raise it with the Environment Team immediately.

19. The hedge need not be on domestic property to be caught by the Act. It could be on land in public ownership eg a park, or on commercial land, or on Crown land. However, the complainant's property must be a domestic property, which is either occupied as a dwelling or is intended to be so occupied. Equally, a complaint can only be made about the effect of a hedge on a dwelling or its garden. Where a property contains both commercial and domestic uses a complaint can only be considered in respect of the domestic use. A complaint cannot be made about a hedge that is alleged to affect a shed, storage building or any ancillary building that is not used as living accommodation (4.27-4.33).
20. At appeal stage Inspectors can only consider the hedge, or portions of the hedge that were the subject of the complaint. Occasionally the hedge as described in a RN, or drawn on the accompanying plan or described by the Council in their report where no RN was issued, appears different to that observed on site. If an Inspector considers that a Council was wrong not to include particular trees/portions of the hedge in their decision/RN, he/she can consider those as long as they fall within the definition of a HH and were included in the complaint. An example of this is a Council mistakenly (or intentionally) deciding that a deciduous tree within or at one end of a predominantly evergreen hedge cannot be considered part of a HH and that any remedial action imposed would not apply to it.
21. Otherwise, Inspectors should only consider hedges/portions of a hedge that were not included in a Council's RN/decision if they are raised by the appellant/s at appeal stage and were included in the complaint.

Groups or lines of trees

22. A high hedge does not have to be a single line of trees; however a group of trees would not usually form a hedge unless they are planted in such a formation that en-masse they form a barrier to light. Groups large enough to form a copse or small wood are not caught by the Act.
23. If more than one line of trees have been planted parallel to each other they can be treated as one hedge if they are planted in such a formation that en-masse they form a barrier to light eg such as where rows of trees are staggered.

24. If several hedges were the subject of one complaint they can all be considered under one appeal, and a single decision issued, but separate RNs must be issued in respect of each hedge.

The Main Issues

25. The primary test according to the Act in deciding whether to issue, vary or quash a RN is whether a HH is affecting a complainant's reasonable enjoyment of their property. What constitutes 'reasonable enjoyment' should be assessed against a general standard of 'reasonableness', taking into account all the circumstances of the case. It should not be judged solely on the basis of the complainant's interpretation.
26. There are generally four main issues that arise: the obstruction of light to gardens and/or windows; privacy; hedge health; and visual amenity. HH&LL provides a methodology for assessing the 'action hedge height' (AHH) for light loss to gardens or windows. Privacy and visual amenity are more subjective issues. It should be borne in mind that the issues to consider can only be those raised by the parties and Inspectors cannot raise additional issues.

Gardens (5.80-5.83)

27. Light loss to gardens relates to direct sunlight and indirect daylight. HH&LL provides an objective methodology for calculating AHH but there may be other important considerations (5.67 – 5.68) which lead to an Inspector deciding that it would be appropriate to moderate the AHH. For example, a hedge might completely overshadow a small side garden to a property that has extensive and sunny gardens to front and back. Consequently, an Inspector may conclude that there is a less adverse effect on the complainant's reasonable enjoyment of their property and that although a height reduction is required, the hedge can be retained at a higher height than that indicated by the BRE-derived AHH. Alternatively, a garden might be long and narrow with a hedge only bordering the half near the house. This can result in a high AHH figure but if the other half of the garden is unusable and the house half includes eg a patio (as is typical for many gardens), an Inspector may decide that the BRE-derived AHH may not mitigate the adverse impact on the reasonable enjoyment of the garden and that a lower height is justified.
28. A common argument from hedge owners is that a hedge on a northern boundary of a complainant's property has little impact and that the house itself casts most shadow. While this may be true in some cases, care needs to be taken to identify concerns relating to direct sunlight and the collective effect of sunlight and indirect daylight. The daylight needs of a north facing garden, where there is limited direct sunlight, are correspondingly greater than other orientations and a tall hedge could have a serious impact.

Windows (5.74-5.79)

29. The BRE methodology addresses the obstruction of light to main rooms such as living and dining rooms, kitchens and bedrooms. Other issues that may be raised include that a room is dual aspect or that a house has been designed to harness passive solar energy. The BRE calculations only provide an AHH in respect of light obstruction, and if an Inspector is going to depart from them he/she must explain clearly their reasoning for doing so.
30. The BRE methodology does not apply to non-main rooms such as halls, bathrooms, utilities etc but the effect of the hedge on those rooms may still be a consideration. Sometimes these areas can provide light to other parts of the house. If all the rooms on one side of the house are always dark because of a hedge, even if they are not main rooms the cumulative effect on the main rooms could be harmful. Conservatories are not treated as main rooms and are specifically excluded from the BRE calculations, but there can be dispute as to what constitutes a conservatory. A room with three solid walls and only the front and roof glazed could be considered to be a garden room or a living room.

Privacy (5.57-5.58)

31. Privacy is often the main ground of appeal for a hedge owner. P&C states that a hedge height of 2m usually provides privacy from ground floor windows and 3.5 – 4m from upstairs windows, but this depends on the relative ground levels, the size of the building and its distance from and alignment to the hedge.
32. Privacy can be an emotive issue and it must be balanced with the need to ameliorate any possible adverse effects of the hedge. There is no right to absolute privacy, especially in urban or suburban situations.

Health of the hedge

33. The Act [S69 (3)] states that action specified in a RN cannot 'require or involve...the removal of the hedge'. P&C states that this 'includes action that would result in the death or destruction of the hedge'. P&C suggests that 'healthy Leyland cypress hedges will usually respond well to a reduction of up to one-third of their height'. This has often been incorrectly referred to as the 'one-third rule'. Baroness Andrews, on behalf of CLG, wrote to all Councils in April 2006 to explain that this was not an absolute rule and that each case must be treated on its merits, depending on height, health and the variety of trees that make up the hedge.
34. As a rule of thumb a healthy hedge should withstand a reduction of 50% and have a good chance of regenerating. The younger the hedge the more tolerant it will be to such a reduction. This will also

depend on the height, health, past management and the variety of trees that make up the hedge.

35. It is common for hedge owners to suggest in their GOA that the reduction required by the RN will kill the hedge. Arboricultural advice is often provided for the hedge owner which advises that a reduction to X metres (usually that required by the RN) will be fatal, albeit the Council's own tree expert has sanctioned a cut to that height. It is not possible to be certain whether particular action will result in the death of a hedge. Inspectors have to make a judgment, based on the evidence before them, and adopting a precautionary approach. For most coniferous species it can be safely assumed that cutting a tree down below the crown height, so that there is little or no growth left on the stump, will kill it, and that the more crown is left the better the chances of survival. This is true for most conifers like cypress, pine, fir, spruce and cedar which grow only from the apical tips. However a few species such as yew and coast redwood can regrow from the trunk and would therefore probably survive such pruning. Broadleaved evergreens or semi-evergreens like laurel, holly and privet can also normally regrow even if all green foliage is removed. A good arboriculturist will take a precautionary view and will advise that reducing to a height of X metres '...will be likely to...' or '...will increase the chances of...' killing or ensuring the continued growth of the hedge.
36. For example a 12m high hedge has a crown height of 2m. The AHH is 3m. The hedge-owner's arboriculturist suggests that a reduction to 3m would be likely to kill the hedge and that trimming to 10m would be acceptable. Common sense suggests that a cut to 3m, leaving only 1m of growth, would indeed be very likely to kill the trees. The Council issue a RN requiring a cut to 4m as a compromise. On appeal, further advice from the hedge-owner's arboriculturist suggests the 4m cut will also be fatal. Were the Inspector to be convinced by the hedge owner's arboricultural evidence he/she could decide that a reduction between 4m and 10m would be appropriate. Whatever the conclusion, it is important to demonstrate that it has been reached by rational means and based on a thorough review of all the evidence.
37. CLG legal advice is that a Council should not specify work that they could **reasonably foresee** would lead to the death or destruction of the hedge. Each hedge should be considered as a unit, so if there is a risk that individual unhealthy specimens could die, as long as it is considered that the majority will survive so that what remains is still a hedge, then the hedge has not been removed for the purposes of the Act.

Visual Amenity (5.84-5.87)

38. Visual amenity is largely a subjective matter but it can be an issue for both complainant and hedge owner. For a complainant the effect of the hedge could be the blocking of outlook from windows,

or a perception from inside the house or garden of overbearing and over-dominant trees eg if an area is generally open with wide-ranging views across upland moors a high hedge may be viewed as incongruous and intrusive. The oppressive effect of a hedge could, in some instances, lead an Inspector to specify a lower height than the BRE-derived AHH. However, P&C advises that loss of a specific view should not generally be given great weight (5.87).

39. The hedge owner may be using the hedge to screen an unsightly building or view. Severe pruning of a row of attractive specimen trees could also affect their visual amenity value and the outlook of the hedge owner. These issues will have to be weighed against the complainant's issues.

40. If an Inspector considers that visual amenity issues are sufficient to justify moderation of the BRE-derived AHH, the reasoning leading to this conclusion must be very carefully set out in the decision.

Public amenity

41. Councils should consider the effect of the hedge on the amenity of the area as a whole. This might involve seeking the opinion of the parish council or specialist organisations. It should be clear from the file papers whether this consultation has taken place.

Other Issues

42. Complaints about harm caused to a property can only be based on the height of the hedge. Root damage is specifically excluded from the Act (4.38). Other issues that are regularly raised such as: leaf litter blocking gutters; difficulty growing plants; fear of falling branches; general nuisance; and depression caused by pursuing the complaint and worrying about the hedge, should not usually be given any weight. Only if any of these can be directly linked to height, such as very tall branches which are beyond reach and so cannot be pruned with reasonable ease, can they be given some weight.

43. The fact that the complainant's house itself may cast most shadow, or that the complainant blocked his own light by building an extension are largely irrelevant. The issue is the effect of the hedge on the garden and house as it stands at the time of the Inspector's site visit. Similarly arguments that the hedge has been there for years or that controlling it is too expensive for the owner are irrelevant.

44. Hedges do not generally provide protection from noise, smell or smoke, but they can provide a psychological barrier. Thus a hedge that plays a role in protecting privacy could ameliorate these problems (5.62 & see paras 28-29 above).

45. A hedge can be effective in providing shelter from the wind for a distance of up to 10 times its height (5.59). Thus a 2m hedge can provide shelter for a 16-20m garden.

Planning conditions and covenants

46. A RN will not override the requirements of a planning condition or a covenant but the existence of either is not a barrier to the issue of a RN (5.95 & 5.98). A separate application would have to be made to vary a condition which prevented the execution of action required by a RN. Covenants are also dealt with under separate legislation.

Protected trees

47. In contrast, works to protected trees required by a RN will be exempt from the need for consent under a Tree Preservation Order (TPO) or to give the Council notice in respect of trees in a conservation area. Any protected trees in the hedge will need to be considered by the decision maker in the same way as if an application or notification had been made under the relevant legislation (5.92-5.94 & see IH Chapter CT14: Tree Preservation Orders). So a RN that includes protected trees effectively gives consent for the works to them.

BRE Guidance – Hedge Height and Light Loss

48. HH&LL is a very useful guide but only deals with lighting issues and so the methodology cannot be applied to other issues. It provides a way of calculating the height above which a hedge is likely to cause significant loss of light to a neighbouring house or garden. The AHH can be calculated with reference to house windows or a garden, depending on the grounds of complaint. It should be stipulated in the RN that the hedge is initially reduced below the AHH (or other height if justified) to allow for regrowth (a growing margin), so the AHH becomes the maximum height to which the hedge should be allowed to grow. Where the AHH is 2m an Inspector cannot require the hedge to be reduced below 2m, but should include a note in the RN informative recommending that the hedge is reduced below 2m annually to allow for regrowth.

49. Where the grounds of complaint include light restriction to windows and garden both calculations must be carried out. The lower of the two results will form the AHH and the basis for determining the height to which the hedge should be cut.

Calculating action hedge heights – gardens

50. The underlying principle is to calculate a figure based on the amount of garden that is affected by the hedge. Many houses have small patches of ground that are unlikely to be affected by the hedge because of their location eg between a garage and house,

where they are effectively just access ways. It could be unfair to include these portions because the complainant cannot escape the effect of the hedge by using this part of the garden instead. If they have chosen to store builders sand or compost on a part of the garden that part should still be included in the calculations. The methodology is not designed to ensure adequate light is provided to chosen parts of a garden, nor specific uses, but to the garden as a whole. The effect on different parts can be considered when balancing the results.

51. The key figure required for the calculation is the 'effective depth of the garden'. This is multiplied by a factor for orientation (dependent on whether the hedge is to the west or south etc of a complainant's garden) to reach the AHH. This can be further refined to deal with cases where the hedge is on a slope or is set back from the boundary.
52. For a rectangular garden with a hedge along one boundary the 'effective depth' is the distance from that boundary to the opposite end of the garden. So, for a hedge along the bottom of a garden with a house that fills the width of the plot, the 'effective depth' is the distance from that boundary to the house. For a hedge along the side of the garden it is from that boundary to the opposite side of the garden. For any other shape of garden the 'effective depth' is calculated by dividing the area of the garden by the length of the hedge.
53. Various examples of the hedge lengths that should be used in the calculations are given in HH&LL. Only hedges that are on or parallel to the shared boundary can be included in the calculations. A distant, but parallel, hedge can be dealt with by using the set back calculation. For a hedge at right angles to a boundary the calculations can only be applied to the portion of the hedge abutting the boundary. For a hedge that runs down a shared boundary and then turns at right angles away from it, only the portion on the shared boundary can be used in the calculations. For a hedge that has no physical relationship to a boundary the HH&LL calculations cannot be applied, although a judgement may still be required on the effect on light loss. Therefore, such hedges could be included in a RN.
54. The advice in HH&LL has been amended to include advice on where a hedge grows only along part of a boundary. In such cases, whatever the shape of the garden, the formula for non-rectangular gardens should be used ie the area of the garden divided by the length of the hedge. Because the hedge does not cover the full length of the boundary the AHH will be higher than if it did. The logic is that the part of the garden unaffected by the hedge will offset the restricted light to the rest.

Calculating action hedge heights - windows

55. The calculations only apply to windows to main rooms. Where a hedge is opposite the affected window the distance between the window and the hedge is halved and 1m added to reach an AHH. Different allowances are made for windows at different angles to a hedge. For first floor windows the height above ground of the first floor level (not the window level) should be added to the AHH to reach a corrected AHH. In addition amendments can also be made where the house is at a different level from the base of the hedge. The advice also covers the effect on windows of hedges with gaps and where a hedge only blocks part of a window.

Using the action hedge height

56. In the majority of cases AHH calculations will have been made by the Council. The calculations are often challenged on the basis that certain factors have not been included, wrongly included, or misapplied. If there is a dispute about the measurements inspectors must **always** take measurements on site and agree them verbally with the parties. If the measurements have not been challenged, but on site they appear to be wrong an Inspector can re-measure them, but is not obliged to do so. Some arguments can be disregarded as their resolution will not affect the decision eg if it is clear to the Inspector that action needs to be taken and the AHH is 4m, a dispute about whether the trees are 10m or 12m high is immaterial unless the health of the hedge leads an Inspector to consider the proportion of healthy to dead vegetation. (The only exception to this would be where a hedge is growing at right angles to the window wall, where the current height of the hedge determines the length of hedge to be cut.)

57. Once an Inspector has determined the AHH (which only applies to matters relating to light) he/she must consider whether that height is appropriate depending on the other issues raised by the parties and his/her own observations at the site visit. The conclusion will need to be balanced on the basis of the written evidence provided by the parties against the Inspector's own assessment of the effects of the hedge, which parts of the garden are most affected, privacy for the neighbour, and the look of the hedge itself. The following examples might be helpful in demonstrating how to apply the AHH:

- a) A 5m hedge overshadows a narrow side garden and the facing windows in the house. The AHH for the garden specified by the Council is 2.5m and is lower than that for the windows. The hedge owner has appealed in relation to privacy issues. The complainant's house is at right angles to and set lower than the hedge owner's bungalow, and the complainant's upstairs windows look directly into the neighbour's garden and house. The side garden is clearly little used as there is a large sunny south facing rear garden. The main downstairs room is dual aspect with plenty of light

from the front. For these reasons the AHH can be moderated. The AHH for the upstairs windows is 4.3m, so the RN is revised to require an initial cut to 4m and retention at 4.5m. At 4m, views from the upstairs windows will just be restricted and privacy retained, but the hedge brought under control.

- b) A hedge clearly overshadows a small garden. When the complaint is lodged the hedge is 5m. By the time of the Council's visit it has been reduced to 3m. The AHH is 3m so the Council do not issue a RN and the complainant appeals. By the time the Inspector visits it has grown to about 3.3m. The complainant says the neighbour has cut the hedge to avoid the issue of a RN, and will just let it grow again. A RN cannot be issued for preventative reasons only. As the Inspector considers the hedge as observed has an adverse effect on the garden he/she issues a RN specifying an initial cut to 2.5m and retention at 3m.
- c) A bungalow is situated sideways on its plot, facing a 5.5m high hedge at the bottom of a neighbour's garden. The bungalow garden is quite large, but part of it has been paved. The Council AHH is 4m, based on a light loss issue. The complainant appeals on the grounds that the hedge is overbearing to anyone using the patio in front of the bungalow or the lawn and that it appears dominant from inside the bungalow. There are no privacy issues for the owner, who has let the hedge become straggly and unkempt. The Inspector issues a RN requiring retention at 3m because of the visual impact of the hedge which is a more significant issue than the light loss issue which resulted in the Council's 4m AHH.

58.A hedge does not necessarily need to be reduced to a common height along its whole length. In some circumstances it may be appropriate to require works only to a section of the hedge or that reduce different sections of it to different heights, or to require alternative remedies eg crown lifting, thinning (6.26 and 6.28-6.32).

The Remedial Notice (6.1 on)

59.RNs can only be sent at appeal stage in the following circumstances [AsBA S73(2)]:

- a) if an Inspector decides to allow an appeal against a Council's decision not to issue a RN;
- b) if an Inspector decides to allow an appeal (either in whole or in part) and needs to vary a RN issued by a Council;

c) if an Inspector needs to correct any defect, error or misdescription in a RN issued by a Council.

60. An Inspector can only issue a RN on behalf of a Council in scenario a). In scenarios b) and c) an Inspector cannot issue a RN; instead he/she will need to send a varied or corrected RN to the parties. This will supersede the Council's RN. Accordingly, the wording on any RN must correctly reflect the scenario. Template RNs are at Annex A [scenario a)] and Annex B [scenario b) and c)]. In addition, an Inspector can only quash a RN if he/she decides to allow an appeal.

61. A new or varied notice should set out the address of the property on which the hedge is located, its location and length and if necessary its constituent species. Any specimens within the hedge which are exempt from remedial action should be clearly identified.

62. The RN should go on to describe the initial action (ie the first or a series of staged cuts), and then the preventative action (if required). The purpose of the preventative action is to ensure that the hedge is maintained so that it does not exceed a specified height. Suggested wording is set out in the templates. The hedge should be described in the same way in the initial action and the preventative action paragraphs eg a hedge should not be referred to as 'the hedge' in the initial action paragraph and 'Leylandii' in the preventative action paragraph.

63. Where a hedge could give rise to complaints in the future, but at the time of your site visit has not reached actionable height, you have no powers to issue a RN. The Act does not make provision for a purely preventative RN. A RN can only be issued where you consider that the height of a hedge is adversely affecting the complainant's reasonable enjoyment of their property at the time of your site visit. A RN may only include action to prevent the recurrence of the adverse effect ('preventative action') if an initial action to remedy the adverse effect ('remedial action') has been specified in the RN.

64. Finally the RN must include a period for compliance, which has to be a specified number of weeks/months from the date the notice takes effect.

65. Where a RN has been issued by the Council but is not being varied on appeal, the Inspector will still need to change the date on which the RN takes effect (the operative date), as the original date will be long past. The position must be stated in the decision letter.

Errors in Council remedial notices

66. Regardless of whether an Inspector allows or dismisses an appeal, he/she may revise a RN in order to correct errors, defects or misdescriptions in the original RN provided he/she is satisfied that

the correction will not cause injustice to any of the parties. This can include anything from correcting minor discrepancies (eg typing mistakes) to more extensive corrections to get the notice into proper order. Inspectors should not, however, correct notices which are so fundamentally defective that correction would result in a substantially different notice. This will be an individual judgement based on the merits and circumstances of the particular case and inspectors should seek advice from the Environment Team if in any doubt about the appropriate course of action.

67. If an Inspector considers that a correction may cause injustice to a party/parties, he/she cannot send a corrected RN but should draw attention to the error, defect or misdescription in the decision. Where the decision contains such observations, the Environment Team will send a covering letter to the Council suggesting that they may wish to consider withdrawing the RN. An Inspector cannot include such a recommendation in their decision.

The actions required by the remedial notice

68. The initial action can be to simply reduce the hedge to a certain height along its whole length. But it could just apply to part of the hedge or even particular trees in the hedge (6.31). The initial or remedial cut should be below the calculated or moderated AHH (the maximum height for the hedge) to allow the hedge to grow before the next seasonal cut is due. The preventative action height should not exceed the intended maximum height of the hedge. For Leylandii the preventative action height should be at least half a metre higher than the initial cut hedge height, but this can be varied depending on the species.

69. Sometimes staged cuts will be appropriate eg such as reducing a hedge from 10m to 8m to 6m to 5m. A RN can specify that a hedge is reduced in stages and suggest a timetable for the reduction. However, the compliance period can only be a single period, within which the final stage must be completed, and the separate dates for staged cuts cannot be enforced.

The operative date

70. Whatever an Inspector's decision on an appeal relating to a RN issued by a Council, he/she must revise the 'operative date' ie the date that the RN takes effect, as the original date will be long past. The new operative date can be either the date of the decision or such later date as the Inspector may set. Either way, the position must be explained in the decision and the revised date specified where it is different from the date of the decision, and the revised date must be set out in any varied RN. An Inspector should not send out a revised RN simply to change the operative date.

71. The Wildlife and Countryside Act 1981 makes it illegal to disturb nesting birds so when amending the operative date, consideration

should be given to avoid requiring the works to take place during the bird nesting season ie between March and August. In these circumstances an Inspector may decide to stipulate an operative date that avoids this period. In such instances, similar wording to the following could be included in the decision:

'I have taken the potential impact on birds and/or other wildlife into account in my formal decision by ensuring that the notice does not come into effect until after the nesting season. The compliance period of 'X' months remains the same';

'I dismiss the appeal and hereby specify that the operative date of the remedial notice shall be';

If, based on the evidence, an Inspector considers that there are no nesting birds in the hedge, then the work can be required during the bird nesting period.

The compliance period

72. A precise compliance period eg September to December 2008, should not be specified as the Act states that the compliance period runs from the operative date. Thus the compliance period is always expressed as a number of months from the operative date.

73. If an Inspector dismisses an appeal he/she cannot vary the compliance period, only revise the date the RN takes effect. The compliance period should be long enough to allow the owner the opportunity to arrange for contractors and get competitive quotes, and then to carry out the work. The best time for pruning most coniferous hedge species is April to September. This is not appropriate in the bird nesting season and so may have to be delayed until August or September. Pruning may be carried out over the autumn and winter but severe reduction should be avoided during periods of extreme cold if possible.

TEMPLATE REMEDIAL NOTICE ISSUED BY INSPECTOR

IMPORTANT – this Notice affects the property at < >.

ANTI-SOCIAL BEHAVIOUR ACT 2003

PART 8: HIGH HEDGES

REMEDIAL NOTICE

ISSUED BY <name, qualifications>

Appointed by the Secretary of State for Communities and Local Government under Section 72(3) of the above Act.

1. THE NOTICE

This Notice is issued under Section 73 of the Anti-social Behaviour Act 2003 pursuant to a complaint about a high hedge situated at < >. In accordance with the authority conferred on me, I have decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at < > 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

The hedge <insert description/location> and marked red on the attached plan.

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

3.1 Initial Action

The following steps must be taken in relation to the hedge before the end of the period specified in paragraph 4 below:

< >

3.2 Preventative Action

Following the end of the period specified in paragraph 4 below, the following steps must be taken in relation to the hedge:

< >

4. TIME FOR COMPLIANCE

The initial action specified in paragraph 3.1 to be complied with in full within < > months of the date specified in paragraph 5 of this Notice.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on <date>/<the date my decision is issued>.

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 hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the Initial Action specified in paragraph 3.1 within the period specified in paragraph 4; or
- b. to take action in accordance with the Preventative Action specified in paragraph 3.2 by any time stated there,

may result in prosecution in the Magistrates Court with a fine of up to £1,000. <Insert name of 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.

Signed:

Dated:

Informative

It is recommended that < >.

<All works should be carried out in accordance with good arboricultural practice, advice on which can be found in 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 or contact 01794 368717.>

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

**TEMPLATE: COUNCIL REMEDIAL NOTICE
VARIED/CORRECTED BY INSPECTOR**

IMPORTANT – this Notice affects the property at < >.

ANTI-SOCIAL BEHAVIOUR ACT 2003

PART 8: HIGH HEDGES

REMEDIAL NOTICE

VARIED/CORRECTED BY *(delete as appropriate)* <name, letters>
**Appointed by the Secretary of State for Communities and Local
Government under Section 72(3) of the above Act.**

1. This notice is sent under Section 73 of the Anti-social Behaviour Act 2003 and corrects/varies *(delete as appropriate)*, and supersedes, the remedial notice dated < > issued by <Council> under Section 69 of the 2003 Act pursuant to a complaint about the high hedge specified in this notice.

The notice is sent because it has been decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at <complainant's address> and that the action specified in this notice should be taken to remedy the adverse effect <and to prevent its recurrence>.

2. **THE HEDGE TO WHICH THE NOTICE RELATES**

The hedge <insert description/location> and marked red on the attached plan.

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

- 3.1 **Initial Action**

I require the following steps to be taken in relation to the hedge before the end of the period specified in paragraph 4 below:

< >

- 3.2 **Preventative Action**

Following the end of the period specified in paragraph 4 below, I require the following steps to be taken in relation to the hedge:

< >

4. TIME FOR COMPLIANCE

The initial action specified in paragraph 3.1 to be complied with in full within < > months of the date specified in paragraph 5 of this Notice.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on <date>/<the date my decision is issued>.

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 hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the Initial Action specified in paragraph 3.1 within the period specified in paragraph 4; or
- b. to take action in accordance with the Preventative Action specified in paragraph 3.2 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.

Signed:

Dated:

Informative

It is recommended that < >.

<All works should be carried out in accordance with good arboricultural practice, advice on which can be found in 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 or contact 01794 368717.>

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