



Appeals under section 71 of the Anti-social Behaviour Act 2003

A Guide for Appellants (High Hedges)

This guidance sets out the procedures for appeals made to the Welsh Ministers under section 71(1) and 71(3) of the Anti-social Behaviour Act 2003 against remedial notices and other decisions of local authorities.

This guidance relates only to appeals in Wales.

Only the courts can give an authoritative interpretation on any point of law, so this guidance has no legal force.

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1. Introduction

Part 8 of the Anti-social Behaviour Act 2003 (the Act) gives Councils powers to deal with complaints about high hedges, to make decisions, and issue remedial orders. Section 71 gives people who are unhappy with a council's decision a right of appeal to the Welsh Ministers. The Act is available at larger public libraries. You can also find it on the Internet at:

<http://www.legislation.gov.uk/ukpga/2003/38/contents>

In Wales these appeals are dealt with by Planning and Environment Decisions Wales (PEDW) - see section 15: *PEDW - who we are and what we do*).

This guidance is issued by PEDW and explains how and when an appeal must be made, and how we will deal with it.

The Welsh Assembly Government has also issued a comprehensive guide, '*High Hedges complaints system*' which is available at larger libraries or can be viewed via the internet on the Welsh Assembly Government web site.

You should be aware that the Inspector dealing with your appeal will have regard to the advice in the High Hedges Complaints System Guidance. This is the same guidance that Councils use when deciding a complaint about a high hedge, or when deciding to withdraw or revise a remedial notice.

The regulations that govern appeals procedures are contained in *The High Hedges (Appeals) (Wales) Regulations 2004 (SI 2004 No. 3240 (W.282))*. The regulations may be viewed on the internet at: <http://www.legislation.gov.uk/wsi/2004/3240/contents/made>.

2. Do I have the right to make an appeal?

An appeal to the Welsh Ministers in respect of a high hedge can only be made against a decision or remedial notice issued by a Council in response to a formal complaint about that high hedge.

You may appeal if you are the person who complained to the Council in the first place, or you are the owner or occupier of the land where the hedge is situated.

You may also appeal if you have succeeded one of these people. For instance ownership of the hedge may change if the property is sold, or if you have moved into a property previously occupied by the person who made the original complaint to the Council. Where this happens the appeal may proceed in the name of the new owner. We will ensure that any new party has access to the appeal papers and is given an opportunity to comment should they wish to do so.

Grounds of appeal

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

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

- you think the required works don't go far enough.

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 works required go too far; or
- you think that the Council has not given you enough time to complete the required works.

You can appeal against a 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 in deciding that the hedge is not adversely affecting you; or
- you think that the council, having agreed that the hedge is causing problems, should have issued a remedial notice to reduce the size of the hedge.

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

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

- you did not agree to the notice being withdrawn **and** the Council has not issued a new remedial notice; and
- you think there has been no material change in circumstances since the notice was originally issued.

You can appeal against a 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 and you did not agree to the changes to the notice; and

- you think there has been no material change in circumstances since the notice was originally issued; or
- you think the works to the hedge as required in the revised notice don't go far enough.

If you own or occupy the land where the hedge is situated and you didn't agree to the changes to the notice; and

- you think the works required to the hedge go too far.

Whilst your appeal is being determined the relevant decision or remedial notice issued by the Council will be suspended.

There is **no** right of appeal against a Council's decision to reject a complaint about a high hedge or to reject an application to withdraw or revise a remedial notice. If your complaint or application is rejected in this manner and you think that the Council did not apply the law properly or did not make the decision in the right way, you can refer the matter to the Council's own complaints officer or to the Public Services Ombudsman for Wales. Alternatively, you may apply to the High Court to challenge the decision by judicial review (*see section 14 of this guidance*).

3. How and when do I appeal?

Your appeal must be made on a High Hedges appeal form obtained from PEDW. You may obtain the form from our web site: <http://gov.wales/high-hedges-appeal-form>.

You may also obtain a form by telephoning or writing to us (*see section 15 of this guidance*). If you visit the PEDW website, you may download the appeal form and return it to us electronically by e-mail to: PEDW.casework@gov.wales or you can print it out and post it.

Where possible we would prefer appeals to be made electronically, but do not worry if you cannot do that. Whether an appeal is sent electronically or on paper will have no bearing on its chances of success.

When submitting the appeal electronically you do not need to complete it with an electronic signature. If you submit the form electronically but post supporting documents, please include your name and address on the papers so that we can link the form with your other documents. If you submit an appeal electronically please do not send an additional paper copy.

When submitting your appeal to us you **must** attach a copy of the Council's decision and, where they have issued one, the remedial notice. You **must** also copy the form together with supporting documents to the Council against whose decision you are appealing. You should keep an additional copy of your appeal form and supporting documents for your own reference.

When completing the appeal form you must explain fully why you disagree with the Council's decision. To do this, you need to go through their reasons for the decision, which you can find in their letter, and explain why you disagree. This is very important because your appeal form will be treated as your statement of case and you will not be able to add to your reasons later. The only exception to this is where we or the Inspector decide that the documents on file are incomplete and request further information. Any information so requested must be received within the deadline we set and will be copied to all the other parties.

Apart from the Council's decision and the remedial notice, you do not need to submit the documents already held by the Council because they will be forwarded to us at a later stage (*see section 7 of this guidance*). However, if you want to make a point that would be best illustrated by a plan or photograph, you should send copies with the appeal form.

The completed appeal form and any supporting documents must be received by PEDW within 28 days of

- the date the remedial notice is issued; or
- the date of the Council's notification to the parties that it has decided to take no action in respect of the hedge; or
- the date that the Council notifies the parties it has decided to withdraw a remedial notice or to waive or relax its requirements.

If you do not understand the reasoning behind the Council's decision you should ask them for clarification before deciding whether or not to appeal it.

4. Who is involved?

The parties to an appeal relating to a high hedge are:

- the appellant;
- the Council; and
- every person, other than the appellant who is:
 - a complainant or
 - the owner or occupier of the land where the hedge is situated.

There is no provision in the regulations for anyone else to become involved after an appeal has been formally lodged. Other organisations or people who made representations to the Council about the decision have no direct role in the appeals process. However, the Council will forward their comments to us and the Inspector will take them into account when making the decision.

You should bear in mind that your neighbour could also appeal against the same decision - but for opposing reasons. For example, the person who made the complaint to the Council might appeal against a remedial notice because they think it's not tough enough. On the other hand, the hedge owner might appeal against the same notice because they think the hedge should not be reduced at all. It is important for you and the other main party to the dispute to continue to communicate after the appeal has been lodged. This is because you may reach agreement on an alternative solution to that specified in the Council's remedial notice. If you do so, you may submit a joint application to the Council to waive or relax the requirements of the notice and then withdraw the appeal.

5. How much will it cost?

There is no charge for making an appeal but you will have to pay your own costs. This means that if you employ a professional adviser (e.g. a solicitor) to help you make your appeal, you will have to pay for their services. Although there is no charge for submitting appeals, they are expensive to administer and time-consuming for everyone and so should not be made lightly.

6. How will my appeal be decided?

High Hedges appeals dealt with by PEDW in Wales follow two types of procedure:

- Written representations; and
- Hearing.

You should think carefully about the most suitable type of procedure for your appeal. Although the deadlines for the receipt of evidence are very similar, the appeal events themselves differ greatly. This means that an appeal being decided through the hearing procedure will normally involve more time and expense in its preparation.

You will need to express your preferred choice of procedure on the appeal form, however, the final decision will rest with PEDW.

When you are deciding what procedure to use, you should take into account the following points:

- The result of the appeal will always depend on its merits
- The written procedure is normally quicker and cheaper

If everyone agrees, and the appeal is suitable, the Inspector will decide it on the basis of written exchanges. If you, the Council or we do not agree to the written procedure, we will arrange a hearing. **Whichever procedure is decided, the Inspector will normally undertake a site visit before deciding the appeal.** To get a decision as quickly as possible the written procedure is best. Most people only ask for a hearing if they think it is absolutely necessary.

7. What happens when my appeal is received?

When we receive your appeal we will check that you have completed the form correctly, you have supplied the documents required to enable us to proceed with it, and that it has been received within the statutory deadline. We will write to you to acknowledge receipt of your appeal. On receipt of their copy of the appeal form, the Council is required to send to us the name and address of all persons, other than you, who are parties to the appeal. These other parties include everyone who has a right of appeal against the Council's decision. They do not include other people who might have made comments to the Council on the case - such as other neighbours or local amenity societies. The council will also advise us whether it wishes for the appeal to be determined by exchange of written representations or following the holding of a hearing. This information provided by the council is known as 'Preliminary information'. The timetable for the appeal cannot be started until it is received.

8. What happens if more than one party appeals against the same Council decision?

If we receive two or more appeals against a single remedial notice or decision we will link the appeals to ensure that the same Inspector deals with all of them. Where this is the case the Inspector may consider the evidence brought forward and issue a joint decision or, if appropriate, individual decisions and remedial notices may be issued.

9. What happens if I decide to withdraw my appeal?

You can withdraw your appeal at any time. If you decide to withdraw your appeal you must confirm this in writing to us. We will then write to the other parties to the appeal and let them know that we will take no further action on the appeal. In these circumstances the original decision issued by the Council will stand and any remedial notice, or any waiver or relaxation of its requirements will take effect from the date the appeal is withdrawn (or any later date specified in the notice).

10. Procedures

(a) Written Representations

Start date

When we have received a properly completed appeal form, all the relevant documents, and the preliminary information as set out previously we will notify you and the parties of the formal start date for the appeal. This date is the point from which all other procedural steps are calculated.

We will notify you and the parties of the reference number allocated to the appeal and the procedure to be followed. You will also be provided with the contact details of the officer who will be handling the case and to whom all correspondence should be sent.

What YOU must do:

Within **2 weeks** from the start date, you should receive a completed questionnaire directly from the council. If you have not received a copy, you should contact the Council directly and ask for a copy.

Within **6 weeks** of the start date, you must ensure that we receive:

- any further representations, that add to the completed appeal form and background documents that you have already supplied.

As soon as practicable after this deadline we will send a copy of your representations to the other main parties, and send you a copy of the other main party statements and of any further representations received from interested persons.

Within **9 weeks** of the start date, you must ensure that we receive:

- any final comments you wish to make on the representations submitted by the other main parties to the appeal, and on any further representations sent in by interested persons.

What THE COUNCIL must do

Within **2 weeks** of the start date, the Council must:

- notify interested persons of the appeal (that is, everyone - other than the main parties - who made representations to the Council about the decision that is the subject of the appeal). It must include the following:
- the name of the appellant and the address of the site where the hedge is located;
- details of the appeal and the grounds on which it has been made;
- confirmation of the procedure to be used to determine the appeal (written representations or hearing);
- a statement that all representations submitted in connection with the original Council decision will be forwarded to PEDW and copies sent to the other main parties to the appeal;
- a statement that such representations will be taken into account in determining the appeal unless the person who made them notifies PEDW within six [6] weeks of the start date that they wish to withdraw them;
- an invitation to submit additional representations for receipt by PEDW not later than six [6] weeks after the start date, who will send copies to the main parties to the appeal;

- contact details for PEDW, including any appeal reference to be quoted in correspondence;
- submit the completed questionnaire, together with background papers relevant to the appeal, for receipt by us within 2 weeks and send copies to you and the other main parties;
- indicate whether they intend to submit any further statement to explain the reasons for their decision.

Within **6 weeks** of the start date, the Council must ensure we receive:

- any further statement, that adds to the questionnaire and background papers. We will send copies to you and the other main parties as soon as practicable.

Within **9 weeks** of the start date, the Council must ensure that we receive:

- any final comments on the representations submitted by you and the other main parties and on any further representations sent in by interested persons.

What everyone else who is a party to the appeal (besides the appellant and the Council) must do

Within **6 weeks** of the start date, other main parties to the appeal (that is, everyone - other than you - who is a complainant or the owner or occupier of the land where the hedge is situated) must ensure that we receive:

- any representations that add to the documents already supplied by you and the Council. We will send a copy as soon as practicable after the deadline to you and the other parties.

Within **9 weeks** of the start date, the parties must ensure that we receive:

- any final comments on the representations submitted by the other parties to the appeal, and on any further representations made by interested persons.

The role of interested persons

Anyone who made representations about the complaint which is the subject of the appeal will be notified of the appeal by the Council. Their original comments will automatically be forwarded to us by the council and we will copy them to you and the other parties as soon as practicable after the deadline.

They should notify us if they do not want their original comments to be taken into account in determining the appeal. Alternatively, they may submit further representations about the appeal to us. We must receive their comments within **6 weeks** of the start date.

We will send a copy of these further representations to you and the other parties and must receive comments within **9 weeks** of the start date.

Site Visit

After the exchange of written representations, we will arrange for an Inspector to visit the site of the hedge. The Inspector, who is impartial, is responsible for determining the appeal.

No discussion of the merits of the appeal is allowed at a site visit. It will, however, normally be necessary for you and the other parties to attend so that the Inspector can gain access to the site of the hedge and to the affected property. For example, where there is no side/rear access the Inspector may need to go through someone's home in order to reach a hedge that is situated in a back garden.

In these circumstances, the Inspector would generally be accompanied by all parties to the appeal. This would include the complainant and the owner or occupier of the land where the hedge is situated as well as the council.

The Inspector has the same rights to enter the land where the hedge is situated as the council officer who dealt with the original complaint. The Inspector is also subject to the same obligations in respect of prior notice. As on-site discussion is not allowed, it is not necessary for the council to be represented by the officer who dealt with the original decision. Site visits therefore need not be delayed because of the unavailability of this individual.

(b). The Hearing Procedure

In some cases, we may arrange for an Inspector to hold a hearing into the appeal. Any hearings will be conducted in accordance with the High Hedges (Appeals) (Wales) Regulations 2004.

The council will normally arrange the hearing venue. Everyone involved in the original decision will have the opportunity to participate.

It is important that the Inspector is fully appraised of the relevant issues and arguments before the hearing opens so that the Inspector can properly lead the discussion. The procedures, therefore, require the main parties to submit statements, background documents and other comments within the time limits specified before the hearing.

Start date

When we have received a properly completed appeal form, all the relevant documents, and the preliminary information as set out previously we will notify you and the parties of the formal start date for the appeal. This date is the point from which all other procedural steps are calculated. We will notify you and the parties of the reference number allocated to the appeal and the procedure to be followed. You will also be provided with the contact details of the officer who will be handling the case and to whom all correspondence should be sent.

What YOU must do:

Within **2 weeks** from the start date, you should receive a completed questionnaire directly from the council. If you have not received a copy, you should contact the council directly and ask for a copy.

Within **6 weeks** of the start date, you must ensure that we receive:

- any further representations, that add to the completed appeal form and background documents that you have already supplied.

As soon as practicable after this deadline we will send a copy of your representations to the other main parties, and send you a copy of the other main party statements and of any further representations received from interested

persons.

Within **9 weeks** of the start date, you must ensure that we receive:

- any final comments you wish to make on the representations submitted by the other main parties to the appeal, and on any further representations sent in by interested persons.

What THE COUNCIL must do

- notify interested persons of the appeal (that is, everyone - other than the main parties - who made representations to the Council about the decision that is the subject of the appeal). It must include the following:
 - the name of the appellant and the address of the site where the hedge is located;
 - details of the appeal and the grounds on which it has been made;
 - confirmation of the procedure to be used to determine the appeal (written representations or hearing);
 - a statement that all representations submitted in connection with the original Council decision will be forwarded to PEDW and copies sent to the other main parties to the appeal;
 - a statement that such representations will be taken into account in determining the appeal unless the person who made them notifies PEDW within six [6] weeks of the start date that they wish to withdraw them;
 - an invitation to submit additional representations for receipt by PEDW not later than six [6] weeks after the start date, who will send copies to the main parties to the appeal;
 - contact details for PEDW, including any appeal reference to be quoted in correspondence;
 - submit the completed questionnaire, together with background papers relevant to the appeal, for receipt by us within 2 weeks and send copies to you and the other main parties;
 - indicate whether they intend to submit any further statement to explain the reasons for their decision.

Within **6 weeks** of the start date, the Council must ensure we receive:

- any further statement, that adds to the questionnaire and background papers. We will send copies to you and the other main parties as soon as practicable.

Within **9 weeks** of the start date, the Council must ensure that we receive:

- any final comments on the representations submitted by you and the other main parties and on any further representations sent in by interested persons.

What everyone else who is a party to the appeal (besides the appellant and the Council) must do

Within **6 weeks** of the start date, other main parties to the appeal (that is, everyone - other than you - who is a complainant or the owner or occupier of the land where the hedge is situated) must ensure that we receive:

- any representations that add to the documents already supplied by you and the council. We will send a copy as soon as practicable after the deadline to you and the other parties.

Within **9 weeks** of the start date, the parties must ensure that we receive:

- any final comments on the representations submitted by the other parties to the appeal, and on any further representations made by interested persons.

The role of interested persons

Anyone who made representations about the complaint, which is the subject of the appeal will be notified of the appeal by the council. Their original comments will automatically be forwarded to us by the council and we will copy them to you and the other parties as soon as practicable after the deadline.

They should notify us if they do not want their original comments to be taken into account in determining the appeal. Alternatively, they may submit further representations about the appeal to us. We must receive their comments within **6 weeks** of the start date.

We will send a copy of these further representations to you and the other parties and must receive comments within **9 weeks** of the start date.

What happens at the Hearing

We will give you and the other parties at least **4 weeks'** notice of the date, time and venue fixed for the hearing. The council is responsible for notifying interested persons of the arrangements for the hearing. You and the other parties are entitled to attend and participate in the hearing, either personally or through a representative. The hearing can, however, proceed in the absence of one or more of the main parties. Other interested persons may also attend. Their participation in the discussion will be at the Inspector's discretion.

The procedure to be followed at a hearing will be determined by the appointed Inspector. Normally however the Inspector will begin by summarising his/her understanding of the case and outlining what they considers to be the main issues.

Discussion should stick to the point and should proceed in an orderly manner. Repetitious debate may be ruled out and, if anyone behaves in a disruptive manner, the hearing may be adjourned for a cooling-off period. It may appear to the Inspector during the hearing that some matters might be more satisfactorily resolved if the hearing was adjourned to the site, and discussions continued there. Everyone at the hearing will have the opportunity to attend the site visit.

Site visit

The Inspector will want to visit the site of the hedge at some point during his/her deliberations, usually immediately after the hearing has closed. Discussion may continue at the site at the Inspector's discretion. The Inspector should not be accompanied at any stage of his/her visit by one of the parties to the appeal without the others also having the opportunity of being present. This includes the complainant and the owner or occupier of the land where the hedge is situated as well as the council.

11. Who will be notified of the decision?

We will notify the Council, the complainant and the owner/occupier of the land where the hedge is situated of the Inspector's decision as soon as possible. In the future we may also post the decision/remedial notice on our web site.

12. The decision

In determining the appeal the Inspector may allow it, either in total or in part, or dismiss it. Where the decision is to allow the appeal the Inspector may quash the original remedial notice issued by the Council. Alternatively, the Inspector may vary the requirements of the remedial notice, or in a case where the Council has not issued a remedial notice, issue a remedial notice on behalf of that Council. The Inspector may also correct any defect or error in the original notice. If the Inspector's decision relates to an existing remedial notice the Inspector may revise the original operative date (the date when it comes into effect).

The Inspector's decision is legally binding on the land in question and on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the decision/notice is issued, but also their successors. 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 situated complies with the terms of the notice.

13. How do I complain if I am not happy about the way my appeal has been handled?

If you have any complaints about the decision or the way we have handled your appeal please write to:

The Complaints Officer
Planning and Environment Decisions Wales
2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
phone: 0300 060 4400
e-mail: PEDW.complaints@gov.wales

The Complaints officer will reply to you, or they will ask someone else within PEDW to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and you can expect a full reply within 3 weeks. However, PEDW cannot reconsider your appeal if the decision has already been issued unless the decision is overturned in the High Court (see *section 14 below*).

14. How can I challenge the decision?

There is no separate right of appeal against a decision issued by an Inspector appointed by the Welsh Ministers. The only way to have an appeal decision quashed and reconsidered is by applying to the High Court for a judicial review. Such a review is designed to ensure HH guidance for appellants PEDW 04.2022

that the powers laid down in the Act and the Regulations have been exercised properly. It follows that judicial review can only be used to challenge the way in which the Inspector has interpreted the law in making the decision. It is not about the strength of your arguments and the merits of the appeal decision.

Permission is needed to bring an application for judicial review. This will only be granted where the applicant is able to satisfy the court that he/she has both sufficient interest in the matter and a reasonable case to put forward. Anyone who is considering an application to the court is strongly advised to seek legal advice

15. Planning and Environment Decisions Wales (PEDW) - who we are and what we do

Planning and Environment Decisions Wales, or PEDW, is an independent body set up by Welsh Government to manage casework relating to the development and use of land in Wales. Its procedure team deals with all appeals made under section 71 of the Anti-social Behaviour Act 2003. The team is based at:

2nd Floor West
Crown buildings
Cathays Park
Cardiff
CF10 3NQ

phone: 0300 060 4400
e-mail: PEDW.casework@gov.wales

The team is responsible for the administration of cases and for ensuring that appeals are processed in a timely manner. They will also answer general queries on appeal procedures and on the progress of specific cases.

You will find more detailed information about PEDW on the Welsh Government's website at <https://gov.wales/planning-and-environment-decisions-wales>.

16. How we use your personal information

If you participate in a High Hedge appeal, then the type of personal information contained in your representations will normally include your name, contact details and any other personal information you choose to provide.

We use the information provided to process the appeal, and this includes making your written representations available to the appellant, the local planning authority and other relevant parties.

We publish the Inspector's decision on the Planning Casework Portal. In some cases, we also publish appeal documents and representations, including names and addresses. Phone numbers, fax numbers and e-mail addresses are removed before publication.

The guidance in this leaflet explains the appeal process in more detail and you are advised to read this leaflet before providing any representations. For further details please see our privacy statement:

<https://gov.wales/welsh-government-privacy-notice>

If you have any queries about our use of your personal information please contact us at the address below.

FURTHER INFORMATION

Further information about our privacy policy is on the Planning Casework Portal at <https://planningcasework.service.gov.wales> or on request. If you have any queries about our policy, or wish to request your personal data, then please contact us through the address below:

Contacting us

Planning and Environment Decisions Wales
2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
phone: 0300 060 4400
e-mail: PEDW.complaints@gov.wales