High Hedges

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Responsibility of	**Subject Lead for High Hedges**
Second edition – Reviewed Annex A-D changed; new Annex E guide included.	

Key legislation and policy

Legislation	• Anti-social Behaviour Act 2003 • High Hedges (Appeals) (Wales) Regulations 2004 ("the Appeal Regulations") and the High Hedges (Fees) (Wales) Regulations 2004
National policy and guidance	• Planning Policy Wales (PPW) (Does not apply) • PEDW 'A Guide for Appellants (High Hedges)' • WG: 'High Hedges Complaints System Guidance', November 2005 (HHG) • WG Clarification of Guidance Relating to Remedial Works June 2006 (CGRRW) NB: Planning Directorate have confirmed HHG and CGRRW are still applicable. They are not available online but are available to the public on request, as confirmed here. These documents are appended to the PDF version of this ITM Chapter.
Other guidance	• ODPM: 'Hedge height and light loss' (HH&LL) (Applies) • ODPM: 'High Hedges Complaints: Prevention and Cure', 2005 (P&C), and in 2008, (Applies to England only) • DCLG: 'Matters relating to High Hedges' (supplement to P&C NB: Although these documents have been prepared by ODPM and DCLG they are relevant to Welsh casework – see below.

An Outline of the Process

1. A person who believes that they are affected by a HH can ask the Council to consider their complaint. The Council will first determine whether the hedge is a HH within the meaning of the legislation[1] 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. The Council 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 would not be reasonable to issue a RN.

2. 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 an RN lists more than one property in the notice, then this must be an error as different complainant properties would have differing calculations to arrive at an AHH. 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. For ease, this chapter assumes that there is only one complainant and one owner.

3. Both the hedge owner and the complainant have the right to lodge an appeal on a number of grounds[2]; the most common ones of which are set out below.

    The hedge owner can appeal on the basis that:

    - a RN should not have been issued (Regulation 3 appeal);
    - a RN is unnecessarily onerous (Regulation 3 appeal); • insufficient time has been allowed for the works specified in the RN (Regulation 3 appeal).

    The complainant can appeal on the basis of:

    - the RN that has been issued does not go far enough (Regulation 3 appeal);
    - the withdrawal of a RN (Regulation 4 appeal);

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[1] 1 See s65-67 of the Anti-social Behaviour Act 2003.

[2] 2 See Regulations 3-5 of the High Hedges (Appeals) (Wales) Regulations 2004

- the waiver or relaxation of a RN's requirements (Regulation 4 appeal);
- a Council's decision not to issue a RN (Regulation 5 appeal).

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

4. Regulation 3, 4 and 5 appeals are dealt with on a 'de novo' basis – all the original issues should be considered as well as taking into account any new evidence or changes in circumstances.
5. Regulation 5 appeals are determined on a similar basis as Reg 3 appeals. Reg 5 requires in Wales that the Inspector assesses whether the HH is adversely affecting the Complainant's reasonable enjoyment and whether action should be taken in respect of it. In these circumstances the Inspector can issue a RN where one had not been previously served. The regulation in England is different as this is considered as a review of the Council's decision. In Wales you should consider the appeal 'de novo'.

The Inspector's Powers

6. Once PEDW 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. Where an appeal is allowed to any extent, the Inspector 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, as considered appropriate. Whatever the decision on an appeal relating to a RN, the Inspector can revise the notice to correct any defect, error or misdescription, providing this will not cause injustice.

7. However, it is important to note that where only one party appeals the decision should 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 in favour of the hedge owner. The requirements of an RN could be varied, but the Inspector would need to be satisfied that the extent of variation would not result in the appellant being worse off. 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

8. 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. Leyland 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/semievergreen 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. 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.

9. 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 Hedge Height and Light Loss (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.

10. 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 Case Officer to consult the parties before the decision is issued. As with planning appeals, there should be no surprises in the decision.

Changes made so that the hedge is no longer a high hedge

11. 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 Case Officer will ask the Council to verify the situation. If they confirm that the hedge is no longer a HH the Case Officer will write to the appeal parties to explain the situation, and ask if they wish to reconsider their position.

12. 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.

13. In these particular cases where it appears that the hedge is no longer within the scope of the Act, 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 s66 of the Anti-social Behaviour Act 2003 he/she can take no further action on the appeal.

14. The Case Officer 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.

15. If works to the hedge have been carried out such that it is no longer a HH (e.g. 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 Remedial Notice issued

16. 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

17. The Act is solely concerned with the effect of a hedge on a domestic property and its associated garden, i.e. the associated garden or yard must be legally linked to the property. 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 Case Officer to clarify the position with the parties.

18. 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.

19. 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 which is the subject of a complaint borders others' property. If an Inspector considers that neighbours who may be affected have not been canvassed by either the Council or PEDW, he/she should raise it with the Case Officer immediately.

20. The hedge need not be on domestic property to be caught by the Act. It could be on land in public ownership e.g. 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.

21. At appeal stage Inspectors can only consider the hedge, or portion of the hedge that was 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

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 as a whole, they form a barrier to light. Groups large enough to form a copse or small wood are not caught by the Act.

23. If multiple lines 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 as a whole, they form a barrier to light e.g. 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 letter 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 (s68(3)). There are generally four main issues that arise:

a) the obstruction of light to gardens and/or windows - HH&LL provides a methodology for assessing the 'action hedge height' (AHH) for light loss – see below;
b) privacy;
c) hedge health; and
d) visual amenity to gardens or windows.

HH&LL provides the methodology for assessing the 'action hedge height' (AHH) for light loss to gardens or windows. Privacy and visual amenity are subjective issues. The WG Clarification letter provides guidance on Section 69(3) preventing local authorities from ordering works that would result in the death or destruction of the hedge which would amount to the same as removing it and which is not permitted under 2003 Act.

Gardens

26. Light loss to gardens relates to direct sunlight and indirect daylight. In addition to the HH&LL methodology for calculating the AHH, there may be other considerations 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 includes a patio, the 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.

27. 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

28. 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.

29. 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 as 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. Where a house has a conservatory, the opening between it and the house is taken as the window position for calculating the AHH – not the front side of the conservatory.

Privacy

30. Privacy is often the main ground of appeal for a hedge owner. HHG 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.

31. 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 a Hedge

32. The Act (s69 (3)) states that action specified in a RN cannot ‘require or involve…the removal of the hedge’. HHG and CGRRW states that this ‘includes action that would result in the death or destruction of the hedge’. HHG 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’. However, this is not an absolute rule and each case must be treated on its merits, depending on height, health and the variety of trees that make up the hedge.

33. 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.

34. It is common for hedge owners to suggest in their grounds of appeal 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 always possible to be certain whether particular action will result in the death of a hedge. Inspectors have to make a judgement, 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.

35. 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.

36. Councils 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 of specimens will survive so that what remains still forms a hedge, then the hedge has not been removed for the purposes of the Act.

Visual Amenity

37. 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 e.g. 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 BREderived AHH. However, HHG advises that loss of a specific view should not generally be given great weight.

38. 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.

39. 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.

Other Issues

40. Complaints about a HH causing harm to a property can only be based on the height of the hedge. The following are regularly raised but should not usually be given any weight

    - Root damage is specifically excluded from the Act.
    - 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.

41. Hedge Width: Issues associated with the width of the hedge may also arise. Common law allows a neighbour to remedy a nuisance caused by overhanging branches by cutting back to the boundary and it is assumed that a neighbour should be able to undertake this work up to a height of 2.5m without too much inconvenience. Where the height of the hedge is so high that the Complainant could not be reasonably expected to trim the branches, the width of the hedge could be considered, providing the height of the hedge has an adverse effect on the complainant's enjoyment of their property. In such cases, it may be appropriate to include works to reduce the width of the hedge as well as its height in the management solution for the hedge.

42. 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.

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

Public Amenity

44. Councils should consider the effect of the hedge on the amenity of the area as a whole. Where neither party has raised public amenity as an issue, the Inspector does not need to consider the contribution the hedge makes to the character and appearance of the area.

Planning conditions and covenants

45. 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. 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. Any possible conflict between a RN and a covenant is a matter for the parties outside of the HH process and is not a matter for the Inspector.

Protected Trees

46. 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 tree protection legislation. Therefore, a RN that includes protected trees effectively gives consent for the works to them.

BRE Guidance – Hedge Height and Light Loss (HH&LL)

47. HH&LL methodology 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. The remedial works can make provision 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.

48. 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. Where only light restriction to windows has been raised by the parties, there is no need to consider the AHH for the garden – and vice versa.

Calculating action hedge heights (AHH) – gardens

49. 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 e.g. 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 use part of the garden for storing materials or compost that part should 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.

50. Effective Depth: 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. Various examples of the hedge lengths that should be used in the calculations are given in HH&LL, but the following examples/scenarios are common:

    - For a rectangular garden with a hedge along the rear 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.

51. Only hedges that are on or parallel to the shared boundary can be included in the calculations. Other scenarios:

    - 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.

52. 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 i.e. 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 the action hedge heights (AHH) – windows

53. 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. A lower AHH may be justified where a property incorporates solar energy features; HH&LL includes advice on the calculation of AHH for passive solar dwellings and on the setting of AHH for solar thermal installations.

Using the action hedge height

54. 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 e.g. 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.)

55. Where an Inspector has undertaken AHH calculations, the basis of those calculations should be set out in the decision, so that the parties are clear how the AHH was derived. Once the AHH has been determined (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 appearance 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 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.

56. 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 to reduce different sections of it to different heights, or to require alternative remedies e.g. crown lifting, thinning.

The Remedial Notice

57. RNs can only be sent at appeal stage in the following circumstances [Anti-social Behaviour Act S73(2)]:

a) if an Inspector decides to allow an appeal against a Council's decision not to issue a RN[3];
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.

58. 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 B [scenario a)] and Annex D [scenario b) and c]. In addition, an Inspector can only quash a RN if he/she decides to allow an appeal.

59. Any new or varied notice should be appended to the Inspector's decision[3]. The 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.
60. The RN should go on to describe the initial action (i.e. 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 sample RN at the Appendix to HHG. The hedge should be described in the same way in the initial action and the preventative action paragraphs e.g. a hedge should not be

[3] *Decision templates can be found at Annex B (regulation 5 appeals) and Annex D (regulation 3 & 4 appeals).*

[3] referred to as 'the hedge' in the initial action paragraph and 'Leylandii' in the preventative action paragraph.

61. 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.

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

63. 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 in the past. The position must be stated in the decision letter.

Errors in Council Remedial Notices

64. 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 (e.g. 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 Case Officer if in any doubt about the appropriate course of action.

65. If an Inspector considers that a correction may cause injustice to a party or 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 Case Officer 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

66. 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. 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.

67. Sometimes staged cuts will be appropriate e.g. such as reducing a hedge from 10m to 8m and then 6m. 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 individual dates for staged cuts cannot be enforced. It is only the final outcome required by the initial action that can be enforced if the works are not completed by the end of the compliance period.

The operative date

68. Whatever an Inspector's decision on an appeal relating to a RN issued by a Council, he/she must revise the 'operative date' i.e. the date that the RN takes effect, as the original date will be in the past. The new operative date should either be set as the date of the decision or such later date as the Inspector may set to avoid seasonal factors, such as the nesting season. 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.

69. The Wildlife and Countryside Act 1981 makes it illegal to disturb nesting birds or to damage or destroy their nests, so when amending the operative date consideration should be given to avoid requiring the works to take place during the bird nesting season i.e. between March and August. In these circumstances an Inspector may decide to stipulate an operative date that avoids the compliance period falling within nesting season. 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 ……'.

70. Only where the Inspector is convinced that nesting birds are not present in the hedge should works be allowed to proceed during the nesting season.

The compliance period

71. The compliance period should be expressed as a period of time, not specific dates. For example: 28 days or three months. It should not be expressed, for example, as September to December 2016. This is because the Act states that the compliance period runs from the operative date. Thus, the compliance period is always expressed as a number of weeks/months from the operative date.

72. 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.

73. If an Inspector dismisses an appeal he/she cannot vary the compliance period, only revise the date the RN takes effect. Where this is the case, the revised operative date should take into account the timing of the compliance period and any seasonal considerations

Accompanying plan

74. There is no requirement to attach a plan to a RN. However, as referred to in paragraph 21 above, Councils routinely attach an accompanying plan to show the location and extent of the hedge subject to the RN. Where Inspectors are varying or correcting a RN to which a plan had been attached, the Councils plan should be retained in the varied or corrected notice unless the plan needs to be revised to reflect the Inspectors decision. If the plan needs to be revised, the Inspector should prepare and attach a new plan which takes account of the variation or correction. Inspectors should also prepare and attach a plan to any RN they issue. The RN templates at Annexes B and D include a plan page into which such a plan can be inserted.

Annex A - Decision Template: Regulation 5 appeal against Council decision not to issue an RN

https://documents.hf.wales.gov.uk/id:A37515574/document/versions/published

Annex B - Remedial Notice issued by Inspector

https://documents.hf.wales.gov.uk/id:A56942703/document/versions/published

Annex C - Decision Template: Regulation 3 appeals against a Council issued RN & Regulation 4 appeals against withdrawal etc,.

https://documents.hf.wales.gov.uk/id:A37515567/document/versions/published

Annex D - Remedial Notice corrected or varied by Inspector

https://documents.hf.wales.gov.uk/id:A56942698/document/versions/published

The templates can be found in the Decision & Report Templates eClip:
https://documents.hf.wales.gov.uk/documents/fA2794730



Decision & Report Templates.obr

Annex E - Guidance on high hedge casework and frequent matters arising

When the file arrives:

- Check the remedial notice is complete with all relevant requirements entered i.e. it cites which property the RN (Remedial Notice) is issued against, which complainant property is cited, there is an initial action and a preventative action, time-period for compliance, when the notice takes effect and the date of issue.
- If there are two addresses cited for the Complainant properties on one RN, then this must be an error (usually not correctable).
- If the preventative action is the same as the initial action, then this is an error (although correctable if clear from the submissions and that it would not cause injustice to any party).
- If there is a date inserted for the compliance period, then this must be incorrect. It must be a period and not a date (although correctable if clear from submissions and that it would not cause injustice).
- Ensure you are clear who has appealed the hedge owner/complainant or both.
- Ensure the documentation is on file – the RN and plan should be a separate document from the decision letter. The decision letter is intended to explain the reasons and methodology for action. Ensure you have this report, the spreadsheet calculation and the relevant plan of those calculations. There could be an arboriculture report to explain why the action hedge height cannot be achieved because the extent of the cut may harm the high hedge, and a more moderate cut should prevail. This report should explain the finding of the extent of the initial cut and or subsequent cut measured from the base of the hedge to that cut height in metres.

Arranging and undertaking the site visit

- When arranging a site inspection allow sufficient time to undertake as the visit can be much longer than a planning appeal visit. This is because there may be a need to take measurements if these are disputed, and you will need to visit the hedge owner's side initially before viewing the site from the complainant's property.
- Ask the Council to bring measuring equipment, poles, tape measures, or calibrated clinometer/laser gun, and take a compass.
- If the appeal is against the Council not issuing an RN, the Inspector will need to establish the existing height of the hedge, and the extent of any suggested cut put forward by the parties.
- There can be resistance from one or other party not to allow the opposing party on their property. Establish this point at the outset and if no cooperation is possible say that you will conduct the visit with the Council representatives only on either property, and that any disputed measurement cannot be corroborated and record this point in your decision.
- You have right of entry under Section 74 of the Act since notice has been given by PEDW of the impending visit. You are entitled to take measurements with the Council and take samples of the hedge species if needed.
- If asked to view the light conditions within a room, ensure that no discussion takes place and that you are not alone with the appellant/complainant and possibly have the Council there too.

Matters arising from the site visit

- If the high hedge has been removed entirely then you will need to decide whether to write to the parties to establish whether the RN should be withdrawn and the appeal withdrawn.
- If there is more than one high hedge, then there is the possibility of having more than one RN to consider. A decision must be reached on each RN and if one hedge the subject of an RN has been removed then no further action can be taken against it since there is no high hedge.
- If partial works have been done to affect the line of trees comprising the high hedge, then you should evaluate whether there are two hedges or more where two separate or more RNs should have been issued. In this scenario it would be advisable to write to the Council and seek its view. The same applies to evaluating gaps in hedgerows where the line of the high hedge no longer forms a barrier to light or access. This is explained in paragraphs 4.2-4.20 of HHG.
- If the hedge has been cut between the issuing of the RN and the site visit and is still considered to be a high hedge but is below the action hedge height of the RN, the hedge has not reached an actionable height to warrant action, since it is not causing a significant loss of light. There may be circumstances where the objective test is outweighed by subjective issues if these are themselves considered severe or significant and overriding to warrant the RN, or to issue an RN in Regulation 5 appeals.
- If the high hedge has been cut to the height of the RN initial action you might want to consider whether the preventative action is appropriate and revise the RN this way. This is possibly the case where the action hedge height is calculated at a level close to the 2m threshold (for a high hedge to exist) and you consider it sensible to do so (the prevention of a recurring problem).
- In these scenarios if the health of the hedge is in doubt because of the works that has been done to it you may consider seeking advice from the arboriculture advisers to revise their reports if the RN seeks a different height solution to that of the objective action hedge height calculation. If the suggested action could cause the death and destruction of the hedge because there would be little growth remaining the WG Clarification letter CGRRW guards against this approach and recognising that this may not be a full remedy to the problem identified.
- Once the objective tests have been completed then it would be a matter to consider all the subjective issues raised by the parties. This could include the health, constitution and vitality of the hedge and the extent of cut it could bare taking account of the amount of green foliage there is, including other effects such as visual amenity, privacy, overbearingness and shadowing.

Decision making

- Section 73(1) Inspector may allow or dismiss the appeal in whole or in part.
- Section 73(2) Where the Inspector allows may (a) quash the RN, (b) vary the RN requirements (if varying the RN then the appeal is allowed), if no RN the Inspector has the power to issue one (Regulation 5 appeals).
- Section 73(3) provides the power to correct any defect, error or misdescription in the RN if there is no injustice to any party.
- Sections 69(5) and 73(5) the operative date of the RN is suspended until the determination of the appeal and must be changed even where the decision is to dismiss, this is because the operative date (the date when the notice takes effect) would have passed and the

compliance period runs from the revised operative date. In Regulation 5 appeals where there is no RN issued, and you are dismissing there is no operative date to change.

- Bear in mind if there is only one appellant for example a complainant appeal and the situation arising from the outcome puts the appellant in a worse position before the appeal began then this issue should be recorded in the decision – the only course would be to dismiss the appeal.

Annex F: High Hedges Complaints System Guidance (Welsh Assembly Government, November 2005)



high hedge comlpaints system wa

Annex G: Letter RE Clarification of Guidance Relating to Remedial Works (Welsh Assembly Government, 01 June 2006)



High Hedges Clarification Letter.pdf