



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

Guidance note:	<b>High Hedge Notice appeals</b>
Relating to:	This note relates to appeals submitted under sections 12(1) and 12(2) of the High Hedges (Scotland) Act 2013.
Background/ legislative and policy framework:	<p><b>Background</b></p> <p>The High Hedges (Scotland) Act 2013 [<a href="http://www.legislation.gov.uk/asp/2013/6/contents">http://www.legislation.gov.uk/asp/2013/6/contents</a>] came into force on 1 April 2014. It defines a “high hedge”<sup>1</sup> as being formed wholly or mainly by a row of two or more trees or shrubs, rising to a height of more than two metres above ground level and forming a barrier to light.</p> <p>The owner/occupant of a domestic property may apply to the relevant local authority for a high hedge notice, where he/she considers that the height of a high hedge situated on land owned/occupied by another person adversely affects the enjoyment of his/her property which an occupant of that property could reasonably be expected to have.<sup>2</sup></p> <p>The authority may dismiss the application for the reasons set out in section 5. There is no right of appeal in such cases.</p> <p>Otherwise the authority must consider the application as set out in section 6. It must decide whether the height of the high hedge affects the enjoyment of the domestic property which an occupant of that property could reasonably be expected to have.<sup>3</sup> If so it must then decide whether any action should be taken to remedy the adverse effect or prevent the recurrence of the adverse effect (or both), by the owner of the hedge.<sup>4</sup></p> <p>If the latter, the authority must serve a notice specifying the initial action to be taken, the compliance period, and whether any preventative action should be taken to prevent the recurrence of the adverse effect.<sup>5</sup></p> <p>In making its decision under section 6(5)(b), the authority must have regard to all the circumstances of the case, including the effect of the high hedge on the amenity of the area, and whether it is of cultural or historical significance.<sup>6</sup></p> <p>Section 8 sets out what the high hedge notice must consist of.</p> <p>Section 10 allows the authority to withdraw or vary a high hedge notice.</p>

<sup>1</sup> Section 1

<sup>2</sup> Section 2

<sup>3</sup> Section 6(5)(a)

<sup>4</sup> Section 6(5)(b)

<sup>5</sup> Section 6(6)

<sup>6</sup> Section 6(7)

	<p>Section 11 states that, where a high hedge notice relates to a hedge which includes a tree which is subject to a TPO, the TPO has no effect in relation to the initial or preventative action.</p> <p><b>Appeals</b></p> <p>Under section 12(1) the applicant for a high hedge notice may appeal against the decision of the local authority under section 6(5)(a) that there is no adverse effect;<sup>7</sup> or under section 6(5)(b) that no action should be taken in relation to the high hedge.<sup>8</sup></p> <p>Section 12 (2) applies where a high hedge notice has been served. In that case both the person on whom the notice has been served and the applicant for the notice<sup>9</sup> may appeal against the issuing of the notice<sup>10</sup>, or its withdrawal or variation.<sup>11</sup></p> <p>An appeal must be lodged within 28 days from either the date of notification by the authority that no action is to be taken or the date of notification of the high hedge notice.<sup>12</sup></p>
DPEA practice:	<p>High Hedge Notice appeals will be received by the administration team, added to the case handling system and checked for validity. The case officer will request the planning authority's response to the appeal (and other parties' comments, as appropriate) and the Head of Administration will allocate the case to a reporter for consideration.</p> <p>Our target for dealing with these appeals is as for others determined by site visits only; i.e. 12 weeks.</p>
Process:	<p>In the case of appeals under section 12(1) the reporter may confirm the decision of the authority made under sections 6(5)(a) or 6(5)(b). Alternatively, the reporter may quash that decision, with or without issuing a high hedge notice.<sup>13</sup> An example of a case where a reporter may quash the authority's decision but not issue a notice could be where he/she decides that, at the time that the applicant applied for a high hedge notice, it was of a height that had an adverse effect on the reasonable enjoyment of that person's property, but subsequent action by the owner of the hedge has removed that adverse effect (in effect, the initial action that would have been required by a high hedge notice has been taken.)</p> <p>In the case of appeals under section 12(2), three courses of action are open to the reporter:<sup>14</sup></p> <ol style="list-style-type: none"> <li>1. to confirm the decision of the authority, which may have been either to issue a high hedge notice, vary it, or withdraw it. In the first two instances, the high hedge notice will then come into effect on the date of the reporter's decision.</li> </ol>

<sup>7</sup> Section 12(1)(a)

<sup>8</sup> Section 12(1)(b)

<sup>9</sup> Section 12(3)

<sup>10</sup> Section 12(2)(a)

<sup>11</sup> Section 12(2)(b)

<sup>12</sup> Section 12(4)

<sup>13</sup> Section 14(1)

<sup>14</sup> Section 14(2)

2. to quash the authority's decision to issue a high hedge notice, vary it, or withdraw it. In the latter two instances, the original high hedge notice served by the authority will remain in effect from the date of the reporter's decision.
3. to confirm the authority's decision to issue or vary a high hedge notice, but to vary the terms of that notice. In this case the reporter will issue a revised high hedge notice, which will come into effect at least 28 days after the date of the reporter's decision.

Where a high hedge notice is issued by the DPEA, it will give a copy of the notice to the relevant local authority; every owner/occupier of the domestic property identified in the notice; and every owner/occupier of the neighbouring land (which is the land on which the high hedge is situated).<sup>15</sup> The notice as issued or varied will be treated as if it were issued or varied by the relevant local authority.<sup>16</sup>

In determining appeals relating to High Hedge Notices, reporters will have regard to the High Hedges (Scotland) Act 2013 - Revised Guidance to Local Authorities 2016, issued by the Scottish Government in May 2016. [[www.gov.scot/Publications/2016/05/9087](http://www.gov.scot/Publications/2016/05/9087)].

In order to be a high hedge for the purposes of the Act, the hedge in question must be a barrier to light. To determine the effect of a hedge on light levels, many authorities are using the Hedge Height and Light Loss Guidelines prepared by the Building Research Establishment and issued by the Office of the Deputy Prime Minister in England in March 2004 [<https://www.gov.uk/government/publications/hedge-height-and-light-loss>]. As the Scottish Government guidance points out, this applies only to evergreen hedges and local authorities are free to use any methods that exist if they are deemed suitable and reasonable.

The key test, however, is whether the high hedge has an adverse effect on the reasonable enjoyment of the property affected, and this can go beyond the issue of loss of light alone (e.g. the height of the hedge might affect long-established views from a house which can now be taken as part of the reasonable enjoyment of the property; or it might affect how the garden can be used). There may be cases where a new house has been built very recently close to a long-established high hedge and, in such circumstances, it may be necessary to consider the level of enjoyment that the owner/occupant of that house could be reasonably expected to have given their awareness of the pre-existing hedge.

It is also necessary to consider the benefits of the hedge to its owner as well as to the wider area, in terms of amenity, cultural or historic significance, and balance these against any adverse effect on the domestic property affected by the hedge.

In deciding to confirm or issue a high hedge notice, consideration may need to be given to what effect the initial action required will have on nesting birds or protected species (bats). The reporter may need to seek

<sup>15</sup> Section 34

<sup>16</sup> Section 14(3)

further information from the relevant authority on this issue. This can be done through the case officer without the need for a Procedure Notice.

Particular consideration will need to be given to the timing of any initial action specified in the high hedge notice, in order to avoid the bird nesting season. Advice from RSPB is that trimming of garden hedges should be avoided between March and August, as this is the main breeding season for nesting birds. If the time for compliance would otherwise fall within that period it should be extended to at least 30 September to allow the hedge owner to carry out the work outwith the nesting season (although this would not preclude them from carrying it out earlier if they satisfy themselves that there are no active nests that would be affected.) In cases where it is necessary to vary a high hedge notice solely to change the time when the initial action should be taken, a revised notice should still be issued.

*Where a local authority decides not to issue a high hedge notice*

There is no right of appeal against a decision by a local authority that a hedge which is the subject of an application is not a "high hedge" within the meaning of the Act and, therefore, that no action should be taken in relation to the application. This is because section 12 only allows for an appeal to be made where there is a decision by a local authority under section 6(5): whether the height of the high hedge adversely affects the enjoyment of the domestic property which the occupant could reasonable expect to have and, if so, whether any action should be taken.

Where an appeal is made against a decision by a local authority (a) that the height of the hedge does not have an adverse effect or that no action should be taken in relation to the high hedge, or (b) to issue, withdraw or vary a high hedge notice then whether something is a "high hedge" is part of the factual context and the reporter must reach a view on this where this is in dispute.

*Notices which specify preventative action but no initial action*

If the local authority is satisfied that the hedge which is the subject of an application is a "high hedge" and concludes that the high hedge has an adverse effect on the enjoyment of the domestic property which the occupant could reasonable expect to have then it can decide (a) that no action should be taken, perhaps because of competing issues such as the privacy of the owner or the cultural value of the hedge; or (b) that initial action should be taken within the period for compliance. If the council decides that initial action should be taken it can also decide that preventative action should be taken after the end of the compliance period in order to prevent the recurrence of the adverse effect.

If the council decides that no initial action should be taken then it cannot specify any preventative action. If a notice specifies preventative action but no initial action the reporter would need to decide whether the high hedge was having an adverse effect on the enjoyment of the domestic

property etc. and, if so, whether initial action should be taken. If the reporter concludes that initial action should be taken then the notice should be varied to specify that initial action and any preventative action that the reporter considers appropriate.

A high hedge notice may specify that initial action is required only in relation to part of a hedge. If so, then the notice cannot specify preventative action in relation to those parts of the hedge which are not the subject of the initial action. In a case such as this the reporter would have to decide whether the initial action specified by the council was sufficient or whether the notice should be varied to require more extensive initial action. If the reporter agrees that the initial action specified in the notice is appropriate then the notice would need to be varied to restrict the preventative action to the part of the hedge subject to initial action (assuming the reporter considered such preventative action to be appropriate).

*Where there is a dispute about what constitutes the high hedge*

If a high hedge notice is served and there is a dispute between the parties about the extent of the hedge, for example, is a row of conifers with some trees at the end a single hedge? Are two parallel rows of shrubs one hedge or two? Is a hedge with gaps one hedge or two or more hedges? It is open to the reporter to decide what the high hedge comprises. In the first example, the reporter could decide that the high hedge comprised the conifers but that the adjacent trees did not form part of the hedge.

If, however, it is common ground that there is more than one hedge and the decision by the local authority is that hedge A is not a high hedge but that hedge B is, then there would be no right of appeal in relation to the decision that hedge A is not a high hedge.

*Applications and notices concerning more than one high hedge*

If an application relates to more than one high hedge then it would be good practice for the local authority to reach a decision on each hedge and, if it took the view that action was required, to serve a separate notice in relation to each hedge. However, a composite notice is not invalid. The reporter will, however, require to reach a view on whether each hedge is a high hedge (where this is in dispute), whether each hedge has an adverse impact on enjoyment of the neighbouring property etc and, if so, what initial action and preventative action is required in relation to each hedge. This may involve a number of variations to the composite notice issued by the council.

*Action taken by an owner in response to a high hedge notice*

If, after service of a high hedge notice, the owner takes action to reduce the height of the hedge the issue before the reporter is whether the height of the hedge at the time the notice was served had an adverse impact on

	<p>the enjoyment of the neighbouring property etc. If so, the reporter will need to decide whether any initial action is still required in relation to the hedge. If no further initial action is required then the notice should be upheld (subject to any variation that the reporter considers may be required in relation to preventative action). If the reporter considers that further initial action is required then the notice should be varied accordingly. If the reporter concludes that at the time the notice was served the high hedge did not have an adverse effect on the enjoyment of the neighbouring property, (or, that it did have an adverse effect on the enjoyment of the neighbouring property but that no initial action was required at that time) then the notice should be quashed.</p>
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