

## **APPEAL TO SCOTTISH MINISTERS: NOTES FOR APPELLANTS SUBMITTING A HIGH HEDGE APPEAL (FORM HHA)**

**These notes relate to appeals to the Scottish Ministers under Section 12 of the High Hedges (Scotland) Act 2013 in respect of decisions made by the relevant local authority on applications for high hedge notices.**

### **Who can apply for a High Hedge Notice?**

An owner or occupier of a domestic property (the applicant), may apply to the relevant local authority for a High Hedge Notice where they consider that the height of a high hedge situated on neighbouring land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

### **Local Authority decision**

The local authority must decide if the height of the hedge adversely affects the enjoyment of the domestic property and, if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge. The local authority must either notify parties that:

- there is no adverse effect or that no action should be taken in relation to the hedge, or
- where the local authority decides that action should be taken, it must issue a high hedge notice confirming what action is required.

### **Who can appeal?**

#### **1. Where the local authority decide not to issue a High Hedge Notice**

The applicant (the person who applied for the High Hedge Notice) may appeal to the Scottish Ministers against either:

- the decision by the local authority that there is no adverse effect, or
- the decision by the local authority that no action should be taken in relation to the high hedge.

#### **2. Where the local authority issue a High Hedge Notice**

The owner and/or occupier of the domestic property identified in the High Hedge Notice may appeal against:

- the action and/or the period of compliance required by the local authority in the notice.

- if the local authority vary the notice, the action and/or the period of compliance required by the variation.
- the local authority's subsequent decision to withdraw the notice

The owner and/or occupier of the land on which the hedge is situated may appeal against:

- the action and/or the period of compliance required by the local authority in the notice.
- if the local authority vary the notice, the action and/or the period of compliance required by the variation.

### **What cannot be appealed to Scottish Ministers?**

**An appeal cannot be lodged with Scottish Ministers against the decision by a local authority that the hedge is not a high hedge within the meaning of the High Hedges (Scotland) Act 2013. In addition to this, there is no right of appeal against the non-determination of an application for a High Hedge Notice.**

### **Deadline for making an appeal**

An appeal must be lodged with Scottish Ministers within 28 days of the date of the notification of the local authority's decision as set out in the "Local Authority decision" section above

The Scottish Ministers have no scope to accept and consider an appeal made after the deadline. To avoid any risk of your appeal being turned away due to being out of time, we strongly advise that you make your appeal in plenty of time before the end of the 28 day period.

**Please note that whilst a High Hedge Notice will state the date that the notice is to take effect, this date has no bearing on the period allowed for the lodging of a high hedge appeal.**

### **Effect of an appeal**

When an appeal is lodged against a High Hedge Notice issued by the local authority, the notice has no effect from the date the appeal is lodged to either the date the final decision is made or the date the appeal is withdrawn.

### **How do I make an appeal?**

You can obtain the relevant appeal form (Form HHA) by:

- **using the Scottish Government website**

Appeal forms and guidance notes are available from the DPEA pages of the Scottish Government website (<http://www.gov.scot/Topics/Built-Environment/planning/Appeals/whatwedo/otherappeals/HighHedgeAppeals>)

The forms can either be completed electronically or printed and filled in by hand. They can be e-mailed to DPEA – contact us if you have any questions about sending attachments with your e-mail. Alternatively, all of this paperwork can be

sent by post. The DPEA address and other contact information are given at the end of this guide.

- **or contacting DPEA for paper copies**

You can telephone, e-mail or write to DPEA to request paper copies of the appeal form and relevant guidance notes, which will be sent out to you – normally on the day of your request. You can then complete the form and return it to DPEA along with copies of any supporting documents.

## **COMPLETING THE APPEAL FORM**

The notes below are intended to help you complete the HHA appeal form.

### **Page 1**

<b>Appellant(s)</b>	This section should be fully completed with the name, address and contact details of the appellant.
<b>Agent</b>	This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect or friend).  If an appeal is being submitted by an agent, all correspondence will be sent to the agent unless you request otherwise.
<b>E-mail communications</b>	We seek to use electronic communications wherever possible.
<b>Local authority</b>	This will be the name of the local authority who dealt with the High Hedge application.
<b>Local authority reference number</b>	Each High Hedge application will have a reference number issued by the local authority. This will feature on correspondence from the authority.
<b>Address of hedge</b>	To help us identify the location of the hedge you should provide the postal address of the land on which the hedge is situated, including post code.
<b>Property affected by hedge</b>	To help us identify the location of the property affected by the hedge you should provide the postal address of the property, including post code.
<b>Height of hedge (in metres)</b>	Please provide the height of the hedge.
<b>Length of hedge (in metres)</b>	Please provide the length of the hedge.
<b>Date of application to local authority</b>	If you applied for a High Hedge Notice, please provide the date on which the local authority received your application.
<b>Date of local authority decision</b>	If you applied for a High Hedge Notice and the local authority has made a decision on your application, you should provide the date stated on the decision notice.
<b>Notice Details</b>	If a High Hedge Notice was issued, please provide the date the notice was issued, the date it was served (the date you received the notice) and the date the notice takes effect.

**Details of appeal - Reason for appeal**

There are 4 options in this section and you should select one of them.

- The first option is where you wish to appeal against a High Hedge Notice issued by the local authority.
- The second option is where you wish to appeal against the decision by the local authority not to issue a High Hedge Notice.
- The third option is where you wish to appeal against the decision by a local authority to vary a High Hedge Notice.
- Finally, the fourth option is where you wish to appeal against the decision by a local authority to withdraw a High Hedge Notice.

**Details of appeal - Interest in land**

There are 4 options in this section and you should select one of them, to confirm your interest in the land

- The first option is where you are the owner of the neighbouring land where the high hedge is situated.
- The second option is where you are the occupier of the neighbouring land where the hedge is situated.
- The third option is where you are the owner who applied for the High Hedge Notice.
- The fourth option is where you are the occupier who applied for the High Hedge Notice.

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**REASONS FOR APPEAL**

Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence upon which you intend to rely in your appeal must accompany this form. All matters which you intend to raise in the appeal must be set out in your appeal or in the accompanying documents.

For example, if, in its response to your appeal, the local authority raises matters which had not previously featured in its decision on your application, you would have the opportunity to comment and submit additional documents on those matters.

Other interested parties i.e. every owner and occupier of the domestic property identified in the High Hedge Notice or every owner and occupier of the land on which the hedge is situated will be advised of your appeal to Scottish Ministers. If they provide further comments in respect of your appeal, you will be entitled to respond to those comments before a final decision is made.

Nevertheless, depending on the terms of the local authority's (and any other party's) response to your appeal and the possible need for any further procedure (see below), the point

at which you lodge your appeal might be your only opportunity to state your case, and so you must be content that you have raised all relevant issues.

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**APPEAL  
PROCEDURE**

The appeal process will be managed by the person appointed by Scottish Ministers to consider and decide your appeal. If, having received your appeal, the local authority's response and any other correspondence received from any other parties as well as carrying out a site inspection, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

However, the appointed person may consider it necessary to obtain some further information before reaching a final decision. There are several methods available to the appointed person to obtain this information:

Further written submissions

Parties will be invited to provide information in writing – and each of these parties will then be entitled to respond to the written submissions provided by others.

Hearing session

This involves a discussion between the parties. This will be led by the appointed person. Formal cross-examination of hearing participants is not allowed.

Inquiry session

Where a more formal inquiry structure is needed. Cross-examination of witnesses is likely to occur in inquiry sessions.

If the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed, you, the local authority and the other party to this appeal will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.

While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and the local authority are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.

	Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.
<b>Site inspection</b>	This section of the form seeks your assistance and opinion in relation to the accessibility of the site to assist our preparations for the appointed person to inspect the site before reaching a decision.
<b>Bio-security</b>	Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be aware of before they carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide on a separate sheet.

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<b>OTHER APPEALS</b>	If you have any other high hedge appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide the details on this part of the form.
<b>CHECKLIST</b>	The appeal form is structured to guide you in making a full and valid appeal.  The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.
<b>DECLARATION</b>	To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date – your e-mail address will act as an electronic signature.

#### **What next?**

Once you are happy with the terms of your appeal, you should send the form and all supporting information to the Directorate for Planning and Environmental Appeals, either by e-mail, post or fax. The contact details are at the end of the form.

#### **How will your appeal be dealt with?**

##### **Who will decide the appeal?**

The vast majority of appeals are considered and decided by Scottish Government reporters. The reporter is appointed by Scottish Ministers to make the decision on their behalf.

In some cases, the appeal may not be delegated to reporters for decision; but instead will be 'recalled' by Scottish Ministers who will then make the final decision themselves. In those cases, the appeal will still be examined by a reporter, who will

then write a report and make a recommendation for Ministers to consider before they make their decision. Ministers do not have to agree with the reporter's recommendation.

### **What matters will be considered in an appeal?**

The reporter appointed to decide the appeal will take into consideration the submissions made by all parties involved in the appeal and also the findings from any site inspection carried out by the reporter. All parties involved in the appeal will be invited to the site inspection.

### **Timescales for making submissions on an appeal**

The reporter appointed to consider the appeal will manage the whole process and consider what action is needed to gather enough information to make a decision. The person making the appeal, and the other parties involved will state their full case at the outset. It is important that appellants raise all relevant issues when they make their appeals, because there might not be another opportunity later. Once an appeal is made, the local authority and the other main party must provide its full response within 21 days. Parties will then be given a further 14 days to respond to other parties submissions. If any other party submits representations in relation to the appeal, the main parties will be given 14 days to comment on these submissions.

Once these submissions have been made, the reporter appointed to consider an appeal will carry out a site inspection and make a decision as soon as he/she is able to do so. DPEA will give parties involved in the appeal a minimum of 14 days' notice of the site inspection arrangements. Parties involved in the appeal will be invited to attend the site visit.

However, it is sometimes necessary to obtain some further information on a particular matter before the appeal can be decided. Where this happens, the reporter may choose to carry out one or more of these further procedures:

- Further written submissions
- Hearing session
- Inquiry session

The reporter will choose the most effective and efficient method for obtaining the information needed. Either a hearing or an inquiry session will involve people presenting their case in person in front of the reporter. Hearing sessions take the form of structured meetings, while inquiry sessions are normally more formal events similar in nature to cases in the law courts. It is anticipated that hearing or inquiry sessions will rarely be required to consider high hedge appeals. The reporter will always ensure that everyone is aware of what is expected of them.

### **Keeping track of progress**

DPEA publishes all information and correspondence relating to live appeals on the internet: at [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk). This allows you access to everything held on the Scottish Government's file which will be taken into account before a decision is made on an appeal, including any plans, grounds of appeal, submissions by the

other main parties and any other correspondence. The search facility enables you to easily find the appeal file you are interested in.

The website is updated in real time, and so will always allow you to keep track of what stage of the process an appeal is at and what is going to happen next; and also to view the decision on the appeal once it has been made.

For compliance with the *Data Protection Act 1998*, personal information such as people's telephone numbers, e-mail addresses and signatures are removed from documents before they are published on the website.

### **Can I withdraw my appeal?**

If you have made an appeal, you can ask to withdraw it at any time before the decision is issued. You would need to confirm your wish to withdraw in writing to DPEA.

### **How much does it cost to make an appeal?**

There is no fee for high hedge appeals.

However, everybody who participates in the appeal process is expected to cover their own expenses. The appeal procedures support you being able to make your case to the reporter by yourself. If you employ a professional agent though, such as a planning consultant, architect or lawyer, you will have to cover their fees at your own cost.

### **How will I find out the decision?**

After the appeal processes are complete, the reporter will prepare and issue a decision notice. This will spell out the terms of the decision and also the reasons for it. The notice will be sent to the main parties. Everyone who has participated in the appeal will be told about the decision. The decision notice will also be published on the online case file at [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk).

### **What will the decision mean?**

The reporter will either 'allow' or 'dismiss' the appeal. In some cases the reporter will issue a new High Hedge Notice. In these cases the new notice will accompany the reporter's decision.

### **Where can I find out more?**

#### **Planning and Environmental Appeals (DPEA)**

<http://www.gov.scot/topics/planning/appeals>

#### **Online planning appeal case files**

<http://www.dpea.scotland.gov.uk>

#### **High Hedges (Scotland) Act 2013, Scottish Government Guidance to Local Authorities**

[www.gov.scot/Publications/2016/05/9087](http://www.gov.scot/Publications/2016/05/9087)



## **High Hedges (Scotland) Act 2013**

[http://www.legislation.gov.uk/asp/2013/6/pdfs/asp\\_20130006\\_en.pdf](http://www.legislation.gov.uk/asp/2013/6/pdfs/asp_20130006_en.pdf)

### **Your Local Authority**

Your local authority should be the starting point for general high hedge enquiries. It can:

- advise how to apply for a High Hedge Notice
- answer questions about how it deals with applications for a High Hedge Notice

Contact your local authority for more details. Contact information is available at:

<http://www.gov.scot/Topics/Built-Environment/planning/Local-Planning>

### **Further information and contact details**

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) as below. Written queries can be sent to us at either the e-mail or the postal address.

E mail – [DPEA@gov.scot](mailto:DPEA@gov.scot)

Telephone – 0300 244 6668

Address - Planning and Environmental Appeals (DPEA)

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Scottish Government  
Planning and Environmental Appeals  
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