

Title: High Hedgerow Complaints – Fees

Portfolio Holder: Cllr J Osborn

Reporting Officer: David Hubbard – Development Control Service Manager

Key Decision: No

Purpose

In response to the decision of the Cabinet at its meeting of 31st August that a further report be brought back to Cabinet at this meeting to get definitive guidance on multiple complaints about the same high hedgerow and in respect of the possibility of agreeing means tested concessions

Background

The report considered at meeting of 31st August set out the concerns of the Bradford on Avon Area Seminar about the level of fees set by the council for complaints about high hedgerows. In particular the seminar expressed concern that where several householders wished to complain about the same length of high hedge which they all adjoin, each householder would be required to pay the full fee.

The earlier report set out:

- Key elements of the relevant legislation - Part 8 of the Anti-social Behaviour Act 2003
- Guidance from the Office of the Deputy Prime Minister regarding costs for high hedgerow complaints.
- The fee of £345 set by the council and how this fee was reached
- The benchmarking of this fee against those set by other councils
- Guidance from the Office of the Deputy Prime Minister in respect of multiple complainants about one hedge in a single ownership.
- The financial, legal and human rights implications of the report.

Cabinet resolved –

- That a further report be brought back to the Cabinet meeting in October to get definitive guidance on multiple applications and regarding the possibility of any means tested concessions.
- To agree the current fee level of £345
- That a comprehensive review is undertaken based on the experience of the first 10 completed cases.

Main Issues

Multiple complainants, one hedge, one owner

Underlying the concerns of Bradford on Avon Area Seminar is a case where several householders border the same high hedge. The supporting guidance document has identified this scenario as one of four uncommon cases. It advises as follows:

'Multiple complainants, one hedge, one owner: For example where there has been infill development, a hedge that bounds a large garden could affect several smaller neighbouring properties.

Councils must consider separately and individually the impact of the hedge on each property that is affected. Separate complaints should, therefore, be submitted by the owner or occupier of each of the affected properties, together with the requisite fee. If they are submitted at the same time, Councils are advised to link the complaints as they are processed so that the relationship between them and the practical implications for the hedge owner can be considered.'

The guidance also refers to other scenarios where, in each case, there is a single complainant but variations of the numbers of owners and hedgerows. In all of these circumstances, it concludes that just a single fee should be paid.

The principle from this advice, clearly, is that each individual property affected by high hedgerows should be assessed on the merits of that case and that separate complaints (each paying the requisite fee) should be made for each affected property.

In response to this request advice has been sought from the trees and hedgerow team at Office of the Deputy Prime Minister. They have confirmed that the intention of the guidance is definitively that each complaint about the effects of a high hedgerow should be assessed individually. The key initial factor will be impact of the hedge on the individual property. In a group of houses adjoining the same hedge this will vary depending for example on the distance between the hedge and dwelling, the orientation of the hedge and dwelling to each other and the positioning of openings in relation to the hedge. Further factors are then taken into account. These will include best arboricultural practice (which includes the need to ensure that the hedge is not cut back to the extent that its survival is threatened), historic, wildlife and landscape value. The final decision will balance all of these factors.

The Council's Tree and Landscape Officer has recently attended a conference at which there were presentations about high hedgerow legislation. The interpretation of the guidance on fees for multiple complainants about one hedge with one owner set out above was confirmed at that conference.

The potential high hedgerow complaint which has led to the concerns expressed by the Bradford on Avon Area Seminar, illustrates why the ODPM's advice is that a separate fee should be required from each householder making a complaint. The case concerns a high evergreen hedgerow on the boundary between Belcombe Court and six properties in Meadowfield at Bradford on Avon. The plots in Meadowfield are of irregular shapes and the orientation of dwellings

relative to the hedge and the distance of those dwellings from the hedge varies. For example the closest dwelling measures from a plan at 4 metres from the hedge and the dwelling furthest away measures at 40 metres from the hedge. The impact of the hedge on each of these properties will need to be assessed separately and a decision reached on what remedial action should be taken. This will be a complex process and will need to reach a balanced judgement as outlined above the length of hedge adjoining each complainants property.

Concessionary fees

This council has set a fee of £345, which was agreed with the portfolio holder on 1 June 2005.

In reaching this fee, the following was taken into account:

- The need to cover the costs of this new service
- The aim to be reasonable so as not to deter the making of justifiable complaints
- The aim of deterring frivolous or vexatious complaints
- Testing by benchmarking against other councils

This figure is based on the hourly cost of the Tree and Landscape Officer and the time it is estimated that it will take for a high hedgerow complaint to be taken through its various stages.

The intention is that the Council will recover its costs in processing the complaint. The Management Accountant has advised that there is no other financial support that the Council has received to meet the cost of this new service.

This figure is very much an estimate at this stage, based on the time taken for other tree and landscape work. The cost is open to future variations, for example taking on board any changes in the costs of running the service. At the meeting in August Cabinet agreed that a comprehensive review is undertaken based on the experience of the first 10 completed cases.

The Office of the Deputy Prime Minister's guidance on the high hedges legislation comments:

Should they wish to do so, councils may provide this service for free, or charge different amounts for different groups of people. In certain circumstances, councils may wish to offer the service at a reduced fee, or for free, e.g. to the disabled, the unemployed, those on low incomes or benefits, while making a charge to others based on the full cost of providing the service.

66 (22%) of the 301 English councils whose fees for high hedgerow complaints are listed on the 'Hedgeline' website offer a concession to complainants on means tested benefits. Four extend this to all old age pensioners.

Of those 10% offer a discount of less than 50%, half offer a 50% reduction and the remaining 40% offer a concession of more than 50%. Two councils waive the fee altogether. Three councils make the fee partially or totally refundable if the complaint is upheld.

The council offers concessions in respect of a small number of services for which the public make a payment. These average out at about 58% of the full cost.

In setting the fee of £345, the intention was to recover the cost of the service. Any shortfall arising from concessionary lower fees would need to be met from elsewhere. West Wiltshire currently has no concessions and does not make the fee refundable if a complaint is upheld.

It is considered that a concessionary fee of £175 (just over 50%) would be in line with the level of concessions offered by other councils in England and by this council in respect of other services.

It is also considered that the concessionary fee should be subject to the same review process agreed in respect of this fee after the first ten cases. It is not anticipated that a great many of the first ten cases will attract the concessionary fee and that therefore on this basis any shortfall could be met from elsewhere within the planning budgets.

Financial implications

The current proposals are calculated to recover the Council's costs in administering this new service.

Any reduction or removal of fees or refunding of fees will need to be met from elsewhere within the Council's budget.

At this stage, it is difficult to estimate the number of formal high hedges complaints which we may receive and consequently it is difficult to calculate the costs to the Council of introducing a new fees regime.

It is known that there are up to 30 cases that had been brought to the Council's attention prior to the high hedges legislation. It is anticipated that there will be several complaints made in the near future but that the numbers of complaints will then fall away. Also, it is clearly intended that the presence of legislation and the sanctions open to councils will be sufficient to make owners of high hedges take steps to bring those hedges under control without affected neighbours having to resort to a formal complaint.

Legal implications

The Council has a legal duty to consider high hedgerow complaints.

Options

In respect of multiple complainants about one hedge with one owner, it seems clear that Cabinet has one option which is to agree that all complainants in such cases pay the full requisite fee in line with the confirmation of the guidance which has been received from the ODPM.

In respect of concessionary fees, Cabinet has three options:

- No concessionary fees for high hedges complaints
- Setting a concessionary fee for people on means tested benefits
- To agree a concessionary fee for people on means tested benefit but subject to annual review and a comprehensive review of high hedgerow complaints fees based on the experience of the first 10 completed cases, likely to take place in time for the financial year 2007/08

Recommendation:

Cabinet is asked:

- 1 To agree that in cases where there are multiple complainants about one hedge with one owner all complainants pay the requisite fee in line with the confirmation of the guidance from the ODPM.
- 2 To agree a concessionary fee of £175 for people on means tested benefit subject to annual review and a comprehensive review of high hedgerow complaints fees based on the experience of the first 10 completed cases, likely to take place in time for the financial year 2007/08.

Human Rights

Article 8 of the Human Rights act 1988 states:

‘Everyone has the right to respect for his private and family life, his home and his correspondence.’

This prevents interference by a public authority in the exercise of this right such as is in accordance with the law and is necessary in a democratic society in specified interests including the protection of the rights and freedoms of others.

Background Papers

Part 8 of the Anti- social Behaviour Act 2003
High Hedges Complaints: Prevention and Cure
www.hedgeline.org

Plain English