

HIGH HEDGES

WHAT IS A HIGH HEDGE?

The High Hedges (Scotland) Act 2013 defines a high hedge as a row of 2 or more trees or shrubs which:

rise to a height of at least 2 metres above ground level; and
form a barrier to light.

The height of the hedge is measured from the ground where the hedge is growing and at the base of the trunk. The definition also applies to part of a hedge, even if there are other parts of it which are less than 2 metres high and do not obstruct light. It is also not necessary for trees or shrubs to be planted precisely in a straight line; as long as they are roughly in line they may be considered to be a hedge.

The hedge may be within business premises, on parkland or, indeed, cross several land ownerships.

Finally, the Act is not intended to impact on woodlands and forests, or indeed trees that were not planted with the intention of forming a hedge. For example, well spaced tree lines are not considered to be a hedge, even if their branches meet.

WHAT CAN I DO IF I AM UNHAPPY WITH THE IMPACT OF A HIGH HEDGE?

If a hedge fails to meet the definition of a High Hedge, then the High Hedges (Scotland) Act does not apply and the Council is unable to intervene.

In the case of a High Hedge, if you are the owner or occupier of a house or flat and you consider that a high hedge interferes with the reasonable enjoyment of your house, flat or garden ground, then before approaching the Council you must firstly take "all reasonable steps to resolve matters". This requires you to approach the owner of the hedge and request that your concerns be addressed. You must also have records to show that you have attempted to resolve the matter amicably. This may be done by providing a diary of all discussions and/or by providing copies of any letters that you have written, including receipts of postage. The Council will expect that you give the owner a reasonable time to respond to your requests; this must be at least 4 weeks.

It is fully recognised that some disputes may be long running and that there may be none of the evidence required. In all cases, however, it is expected that there be evidence of approach after the introduction of the Act on 1 April 2014.

Another approach you may wish to consider is using the Community Mediation Service, which is free. Initial contact may be made to the Problem Solving Unit on 0800 01 317 01. Even if an owner of a High Hedge is unwilling to participate in this voluntary process, this may be used as an example of providing evidence of an attempt to resolve matters.

All of the above assume that you are able to identify the owner of the hedge. There may be circumstances where the hedge is on a vacant, derelict or unoccupied site. If this is the case you are still expected to attempt to identify the owner. The Registers of Scotland hold registers of land, Companies House may assist if the land is owned by a business, and in exceptional circumstances if the land is ownerless it may have been passed under common law to the Queen's and Lord Treasurer's Remembrancer.

Making an application for a High Hedge Notice should be the last resort. Without evidence of unsuccessful attempts to identify ownership or of attempted negotiation or mediation, the Council will reject your application. Similarly, any application that is submitted and considered to be vexatious or frivolous will be rejected. An example of this is the repeated submission of applications that have been previously refused and where there are no significant changes in circumstances.

HOW DO I SUBMIT A HIGH HEDGE APPLICATION?

If the hedge meets the definition of a High Hedge, you have evidence of a failed and recent attempt to resolve your complaint, and your application is neither vexatious nor frivolous, then you may submit a High Hedge application to the Council.

The application itself must be submitted on the Council's application form and be accompanied by:

- Details of your attempt to resolve matters.
- A photograph(s) of the hedge.
- A site plan that identifies the position of your hedge relative to your property.
- A fee of £202

A copy of the application form is available from the Development Management team; contact 01475 712421, in person at the Municipal Buildings, Clyde Square, Greenock or online at <http://www.inverclyde.gov.uk/planning-and-the-environment/planning/trees/high-hedges>

WHAT WILL THE COUNCIL CONSIDER?

Firstly, the Council will have to examine if your application is valid. The hedge must fall within the definition of a High Hedge, and the application will be checked to ensure that you have provided evidence of taking reasonable steps to resolve matters with the owner. The Council is also required to assess if the complaint is vexatious or frivolous. If the application fails any of these tests then your application will be dismissed and all paperwork returned along with the fee. There is no right of appeal against this decision.

If this stage is passed, your application form will be checked along with the details submitted. If further information is required you will be informed within 10 working days. Once the application is valid, the Council will provide you with a contact officer and then provide every owner or occupier of the land on which the hedge is sited with a copy of the application. It is also open for the Council to invite comment from other neighbours that it may see as being potentially impacted. Those notified will be allowed 28 days to respond to the points raised in the application and provide any additional information for the Council to consider. Any correspondence received will be copied to you.

After the end of the 28 day period the Council is able to make a decision as to whether the height of the hedge adversely affects the reasonable enjoyment of your property. The first step will be a site visit by the case officer to see the surroundings at first hand. The purpose of the visit is not to facilitate mediation or negotiation or to discuss the merits of the application.

In reaching a decision the Council will consider all relevant factors and assess each on its particular merits. This means that in addition to your concerns the Council must also take account of the opinions of the hedge owner and any wider considerations; the Council will not look solely at your concerns. The Council will also look at each case on its particular merits, for example in some cases the Council will have to consider if the hedge has some historical importance, the contribution it makes to the established streetscape and amenity of the wider area, the wind shelter provided and any impact on any protected birds, animals or plants. Consequently a problem that leads to the issue of a High Hedge Notice in one application might not necessarily produce the same outcome in another case. Mostly, however, the assessment will be a question of balancing the severity of the impact of the hedge on the applicant's property against the amenity value of the hedge to the owner. This will involve an assessment of the impact of obstruction to skylight and sunlight within the applicant's house, the impact of shadow in garden ground and consideration of the impact of a reduction in height on the privacy of the owner of the High Hedge.

CAN I WITHDRAW MY APPLICATION ONCE IT IS SUBMITTED?

Yes, an application may be withdrawn at any time before the Council reaches a decision. Discussions between neighbours to resolve the matters can continue while the Council considers the application and if a way forward is reached, then withdrawal is encouraged. Unfortunately, there is a cost to the Council of processing an application, even if it is withdrawn, so the application fee will not be refunded.

WHEN WILL THE COUNCIL MAKE A DECISION?

The Council aims to issue a decision within two months of receipt. A decision to issue a High Hedge Notice will be in three parts; a Report of Handling and a Decision Letter and a High Hedge Notice. If the Council decides not to issue a Notice, only a Report of Handling and a Decision Letter will be issued. Copies will be issued to the applicant, every owner and occupier of the land on which the hedge is sited, and any other persons who submitted representations on the application.

The Report of Handling will provide a description of the location and hedge, detail any Council policies that may apply to the hedge, summarise the cases submitted by the applicant and the owner and/or the occupier of the land on which the hedge is sited, consider any other representations submitted, appraise all the evidence and make a recommendation. The Decision Letter will confirm whether or not a High Hedge Notice has been issued, while the High Hedge Notice will specify “initial action” to be taken by the owner to resolve the problem and “preventative action” required to prevent recurrence of the problem.

IF A NOTICE IS ISSUED, WHEN WILL WORKS BE DONE TO THE HEDGE?

The High Hedge Notice will set a time limit for carrying out the “initial action”. While it is appreciated that most applicants will want the work done immediately, the Council must be reasonable and take account of the practicalities, the extent of the works, breeding birds and any other legal requirements.

The “preventative works” relate to on-going maintenance to ensure that the problem does not occur. Once again, this will be set out in the High Hedge Notice.

CAN THE DECISION BE APPEALED?

Yes. If a High Hedge Notice is issued, the applicant may appeal if they think the required works do not go far enough, while the owner or occupier of the land on which the High Hedge is located may appeal if they consider that the Notice should not have been issued, or it requires too much, or if the time given to implement the works is insufficient.

If the Council decides not to issue a Notice, then the applicant may appeal on the basis that a Notice should have been issued.

Any appeal must be submitted to the Scottish Government’s Directorate for Planning and Environmental Appeals and lodged within 28 days of the decision. Contact details are provided in the correspondence issued with the decision. The effect of any appeal is to put the decision on hold until such time as the appeal is considered and an appeal decision issued.

HOW LONG IS A HIGH HEDGE NOTICE IN FORCE?

A High Hedge Notice remains in force until it is either withdrawn by the Council, has no practical effect (possibly due to the hedge dying or being removed), or there is a change in circumstances (if the hedge is on land that ceases to be in residential use, then the Notice has no effect).

The Council may also vary a High Hedge Notice by setting aside, adding to or changing some of its requirements. For this to happen the Council must be approached by any interested party, after which the Council will consider any change in circumstances that may apply. The process, both in terms of notifying interested parties and reaching a decision is similar to that for a High Hedge Notice, and any decision by the Council to withdraw or vary a Notice may be appealed to the Scottish Government's Directorate for Planning and Environmental Appeals.

WHAT HAPPENS IF A HIGH HEDGE NOTICE IS NOT COMPLIED WITH?

Failure to comply will in the first instance result in the Council issuing a formal warning of the consequences of failing to comply. The Council recognises that if ownership changes, for example, it is possible that the new owner may not be aware of the High Hedge Notice. It is always the Council's preference to resolve matters by negotiation, however where a High Hedge Notice is not complied with the Council has powers to take direct action and recover the cost of the works from the owner.

SERVICE STANDARDS

PROCEDURE FOR MAKING A SUGGESTION OR COMPLAINT

The Council hopes the public will be satisfied with the High Hedges service. However, if you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

We will consider all complaints made about the way a High Hedges enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Development Management Team Leader (telephone 01475 712416). If he is unable to help, you will be given the name of a more senior officer who will investigate the matter.

If you remain dissatisfied, the Council has a complaints procedure that you may follow. Details may be obtained directly from Municipal Buildings, Greenock or online at <http://www.inverclyde.gov.uk/contact-us/>

If, having followed the Council's complaints procedure you remain unhappy then you may take your complaint to the Scottish Public Services Ombudsman. Please note that the Ombudsman does not normally entertain complaints that have not been the subject of the Council's own complaints procedure in the first instance. The Ombudsman may be contacted at:

Freepost SPSO. Freephone 0800 377 7330 or online at www.spsso.org.uk/contact-us

Generally you must contact the Ombudsman within 12 months.

SERVICE STANDARDS

- 1 By publishing this guidance, the Council aims to ensure that the High Hedges service is responsive to the reasonable needs of customers. The Council will monitor the way it operates to ensure the standards and targets are met.
- 2 If preliminary checking of an application suggests that the High Hedges Act applies, the application will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within 10 working days. The acknowledgement will include a reference number and contact details for the investigating officer. If the application fails to meet the definition of a High Hedge or if there is insufficient evidence to show that attempt has been made to resolve the dispute, then it will be returned within 10 working days, with an explanation for rejection.
- 3 The Council aims to determine all applications for a High Hedge Notice within 2 months of receipt. If this is not possible the applicant will be informed and advised of the projected timescales.
- 4 We will monitor all complaints and suggestions made and use them to review and improve the service we provide.