

NUISANCE HIGH HEDGES LEGISLATION

Answers to frequently asked questions



Hedges can be a real bonus to any property, creating shelter and privacy, lending a green backcloth to gardens, and screening commercial premises, with added benefits of scent, colour and wildlife habitat value. However, inappropriate and / or badly maintained hedges can lead to disputes with neighbours over their maintenance and height.

Part 8 of the Anti-social Behaviour Act 2003, gives local authorities like Leeds City Council powers to deal with complaints about high hedges. This guidance note sets out answers to some frequently asked questions. It is a simple guide and not a comprehensive statement of the law.

Thinking of Complaining?

1. Can we go straight to the Council with our hedge problem?

No. Involving the Council should be a last resort if you really can't agree a solution. The Council can refuse to intervene if they think you haven't done everything you reasonably could to settle your dispute.

2. What will the Council expect us to have done to sort this out between ourselves?

This will depend on how well you get on with your neighbours. But, before you contact the Council, you should have tried the following:

- Have a quiet word with your neighbour about your concerns.
- Follow this up by sitting down with them so that you can get a better understanding of each other's concerns and try to figure out the answer.
- If this doesn't work, invite them to talk to independent mediators who can help you find a way forward.
- If your neighbour won't talk to you or you are nervous about speaking to them, send a polite letter. It won't be enough to say your neighbour is not approachable.

Further information on settling your hedge differences is in the separate leaflet 'Over the garden hedge'. Keep a record of what you've done – e.g. copies of letters or a diary. If nothing works, you should let your neighbours know that you will be making a formal complaint to the Council.

3. My hedge dispute has been running for years.

Am I expected to go through all this again?

The Council will expect evidence of a recent attempt to settle your dispute with your neighbour. If you rely on an approach you made more than, say, 4 months ago, they could ask you to try again. You never know, your neighbour could have had a change of heart. They might not welcome the Council getting involved and could be ready to compromise.

4. What sorts of complaint can the Council look at?

If you've been through all the steps set out above **AND** can answer 'yes' to **ALL** the points listed below, the Council should be able to look at your complaint:

About the hedge

- Is it growing on land owned by someone else?
- Is the hedge – or the portion that is causing problems – made up of a line of 2 or more trees or shrubs?
- Is it mostly evergreen or semi-evergreen?
- Is it more than 2 metres tall?
- Even though there might be gaps in the foliage or between the trees or shrubs, is the hedge still capable of obstructing light or views?

Who can complain

- Are you the owner or occupier (e.g. tenant) of the property affected by the hedge?
- Is the property residential?

Grounds of complaint

- Does the hedge detract from the reasonable enjoyment of your home or garden because it is too tall?

5. The hedge has got some gaps in it that allow light through. Does this mean that I can't complain to the Council about it?

Not necessarily. It depends on the extent of the gaps. This may not be easy to judge. There are no rules that say if the trees or shrubs are more than a set distance apart, then you can't complain. But, where individual trees or shrubs are so widely spaced that you can see what lies behind them, then it might not meet the criteria for making a complaint.

6. Can I complain to the Council about individual trees?

No. Follow the steps in the Government leaflet 'Over the garden hedge' to try to settle your dispute.

7. Does the hedge have to be on the boundary line or in next door's garden?

No, it doesn't matter where the hedge is growing, provided it isn't on your own land. Though the farther away it is from your house or garden, the less troublesome it is likely to be.

8. What is a "semi-evergreen tree or shrub?"

It's something that keeps some live or green leaves all year round. Depending on where you live, this could include privet. The further north you are, the more likely that a privet hedge will lose its leaves over the winter. It doesn't include beech or hornbeam hedges. The leaves that they keep in the winter are dead and brown.

9. Where is the 2 metres measured from?

It's measured from ground level. This is usually at the base of the trunk or main stem of the trees or shrubs in the hedge. Unless it has been planted on a bank or in a raised bed, when the measurement would be taken from the natural ground level.

10. Does that mean all hedges will have to be cut down to 2 metres in height?

No, the remedial notice that the Council can serve would address the particular problem – there is no recommended target blanket reduction. You do not have to get permission to grow a hedge above 2 metres. When a hedge grows over 2 metres Leeds City Council will not automatically take action, unless a **justifiable** complaint is made about its impact. It has to weigh up all the issues and consider each case on its merits

11. What sort of problems can I complain about?

You can complain about problems that you experience in your house and garden because the hedge is too tall. You must also be able to explain why these bother you. Because each case is different, it's impossible to produce a list of potential grievances that you can choose from. You need to think about the disadvantages that you actually face, whether these are to do with the height of the hedge and how serious they are.

The Council won't be able to consider things that are not really about the hedge in question or its impact on your house and garden. For example, that other people keep their hedges trimmed to a lower height, or that the worry is making you ill.

12. I'm worried that the hedge will cause subsidence in my home.

Can I complain about this?

No. This isn't to do with the height of the hedge but its roots taking moisture. The Act specifically says that Councils can't deal with problems caused by roots.

What will it cost

13. Do I have to pay the Council to consider my complaint? If so, how much?

Yes. The City Council will charge a fee, to cover part of the cost of the service. See our current guidance note on fees and discounts, available from the Development Enquiry Centre.

14. Will I get my money back if the Council uphold my complaint?

No.

15. Can the Council help me get it back from my neighbours?

No, the Council can't get involved in helping you recover the fee that you have paid and certainly can't force your neighbours to reimburse you.

16. What if my neighbour cuts the hedge down after I've lodged my complaint?

The Council will have discretion to refund the fee in whole or in part in certain circumstances. See our current guidance note on fees and discounts.

What do I do next

17. Who do I approach about this?

You should contact the Sustainable Development Unit; our details are given at the end of this guidance note.

18. How do I make a complaint?

The Council will send you a form to fill in. This is your main chance to set out your case so it is important that you provide full information on the form. In particular, think carefully about your grounds of complaint. Explain as clearly as you can the problems that you actually experience in your house and garden because the hedge is too tall, and why these are serious. Stick to the facts and provide all relevant information to back up the points you are making. If you're having trouble filling in the form, your local Citizens Advice Bureau may be able to help.

Alternatively, a relative or friend could complete it on your behalf. The completed form can be sent by post or email to the Council. You should send a copy to your neighbours so they know what you've done. If you don't send it to them, the Council will. So bear this in mind when you complete the form.

19. What happens if the Council owns the hedge?

You should still send your complaint to the Council. They will make sure that it is dealt with by different people from those who look after the land where the hedge is. If you don't agree with the Council's decision on your complaint, you can appeal to the Planning Inspectorate.

What will happen to my complaint

20. What will the Council do with my complaint?

Once the Council are satisfied that your complaint meets the legal tests, they will invite your neighbour to set out their case. When they've got both sides of the story, an officer of the Council will pay a visit, to see the hedge and surroundings for themselves. They will also obtain any other facts about the site that they need to help them decide your complaint. They might, for instance, need to measure the size of your garden or how far the hedge is from windows in your house.

Once they've got all this information together, the Council will weigh it all up. They will decide whether the hedge adversely affects the reasonable enjoyment of your home and garden and what – if anything – should be done about it.

If they decide action is necessary, they will issue a formal notice to your neighbour which sets out what they must do to the hedge and when they must do it by. This is known as a remedial notice. It can also require your neighbour to keep the hedge trimmed to its new size.

21. This appears overly complicated. Surely all it needs is for the Council to get evidence to show the hedge is a nuisance and order the offender to cut it down?

That's not the way the law works. There is no offence for having a tall hedge. So it's not up to the Council to prove the hedge is a nuisance. Their job, in the words of the Act, is to decide whether the hedge is adversely affecting your reasonable enjoyment of your property and, if so, what action – if any – should be taken to remedy the situation or to prevent it happening again.

High hedges: complaining to the Council

The use of the word 'reasonable' is important. It means that the Council cannot just take into account your concerns. They must also consider your neighbour's point of view and also think about the consequences for the wider neighbourhood. For example, the hedge might help to make the area an attractive and pleasant place to live. The Council have to weigh up all relevant information before reaching a fair and balanced decision. Collecting written evidence from you and your neighbour, and visiting the site, will make sure that the Council have the information they need to make the right decision.

22. How do I know whether it's going to do me any good to complain to the Council?

You can't be certain what the result will be. That's why it is important to think carefully about your reasons for complaining to the Council before you return your form. You might find it worthwhile looking at the detailed guide '*High hedges: prevention and cure*'. It gives advice on the sort of things that Councils will take into account in considering how serious the problems you're complaining about are. This might help you to test out the strength of your arguments. As a general rule, your case will be weaker if the trouble with the hedge affects you for only a short time, or is just inconvenient.

23. How long will I have to wait for the Council to decide my complaint?

There is no set deadline for the Council to decide your complaint. Remember it will take time for them to get a statement from your neighbour, and to arrange to visit the site. So you shouldn't expect to get an answer for at least 12 weeks. If you are worried because you haven't heard anything, you could contact the Council to check progress.

What will happen to the hedge

24. If the Council uphold my complaint, will the hedge have to be removed? *That would solve the problem once and for all!*

No, the Act specifically says that the Council can't order that the hedge be removed entirely. Nor can they require it to be cut down below 2 metres.

25. Will the hedge have to be cut down to 2 metres then?

Not necessarily. There is nothing in the Act that says all hedges must be cut down to 2 metres. As a general rule, the Council can only order your neighbour to reduce the hedge to a height that will remedy the problems – or prevent them happening again – and no more. 2 metres will not, therefore, be the right answer in every case.

26. How long will the Council give my neighbour to cut the hedge?

This will vary but it could well be months rather than weeks. The Council must be realistic about how long it will take your neighbour to carry out the works. They might also allow extra time so that the hedge does not have to be cut when birds might be nesting in it. Your neighbour can appeal if they think the Council have not allowed enough time.

27. What is there to make sure my neighbour keeps the hedge at its new height? Do I have to complain again, and pay another fee?

As well as reducing the height of the hedge, the Council will order your neighbour to take action to prevent the problems with the hedge happening again. This could include keeping the hedge within its new height for as long as it is there. The remedial notice issued by the Council will set out any such maintenance requirement. So you wouldn't have to make another formal complaint and go through this process again to get something done.

28. Does the Council's remedial notice allow me to cut my neighbour's hedge if I think they're dragging their heels?

No, it doesn't give you any right to cut the hedge. If you do anything more than trim branches that hang over your side, your neighbour could take you to court for damaging their property. If any trees in the hedge are protected, you might not be able to do even this without getting separate permission from the Council.

29. What happens if my neighbour doesn't cut the hedge when they're meant to?

Failure to carry out the works ordered by the Council is an offence. Your neighbour could be prosecuted and, if found guilty in the magistrates court, could be fined up to £1,000.

30. Will the Council cut the hedge instead?

In extreme circumstances, the Council can go onto your neighbour's property and cut the hedge if they don't do it themselves and recharge the owner. But normally this will be pursued through the courts.

What if I disagree with the Council

31. Is there anything I can do if I don't like the Council's decision?

If you disagree with the Council's decision, you can appeal to the independent Planning Inspectorate. They must receive your appeal within 28 days of the date of the Council's decision letter.

There is a separate leaflet '*High hedges: appealing against the Council's decision*' that explains how you can appeal and how your appeal will be handled. You should be aware that your neighbour can also appeal if they are unhappy with the Council's decision.

If you think the Council have not handled your complaint properly, you can complain to the council's complaints officer. If you're still not satisfied, you can take your case to the Local Government Ombudsman.

Useful contacts

Citizens Advice Bureaux – offer free, confidential, impartial and independent advice. You can find your local office in Yellow Pages

Community Legal Service (CLS)

– helps people to find the right legal advice. There is CLS information in local libraries

Hedgeline – help those affected by problem hedges, drawing on the experience of their members. See their website at www.hedgeline.org or tel: 0870 2400 627

Leeds Community Mediation Scheme – offers a mediation service in Leeds, both parties have to agree to the process

Further information

‘Anti-Social Behaviour Act 2003: Part 8’ – the law governing complaints about high hedges.

‘High hedges: appealing against the Council’s decision’ – a leaflet explaining how to appeal if you disagree with the Council’s decision on a hedge complaint.

‘Over the garden hedge’ – a leaflet on how to settle your hedge differences without involving the Council.

‘The right hedge for you’ – a leaflet to help you choose the most suitable hedge for you and your garden.

‘Hedge height and light loss’ – a booklet to help you assess whether an evergreen hedge is blocking too much daylight and sunlight to neighbouring properties.

‘Protected Trees: A Guide to Tree Preservation Procedures’ – a leaflet answering some of the most common questions about tree preservation procedures. Text of the Act is available on www.hms.o.gov.uk/acts. All the other documents are available at www.odpm.gov.uk/treesandhedges or from ODPM Publications (tel: 0870 1226 236)



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