

LONDON BOROUGH OF BRENT

Executive - 20 June 2005

Report from the Director of Environment

For action

Wards affected:
ALL

Report Title: **Anti-social Behaviour Act 2003 (High Hedges legislation) Setting of Fee**

Forward Plan Ref: ES04/05-330

1.0 Summary

- 1.1 This report seeks agreement to a Fee for dealing with complaints about high hedges under Part 8 of the Anti-social Behaviour Act 2003. This is a new duty placed on the Council.

2.0 Recommendations

- 2.1 That the Executive agree a Fee of £320 for processing complaints about high hedges made under Section 8 of the Anti-social Behaviour Act 2003

3.0 Detail

- 3.1 Part 8 of the Anti-Social Behaviour Act 2003 came into effect on 1 June 2005. This part of the Act allows residents who consider that a hedge detracts from the reasonable enjoyment of their house or garden because it is too tall to complain to the Council. A Fee can be charged for this service. A hedge is defined for the purposes of the Act as 2 or more evergreen or semi-evergreen trees or shrubs growing more than two metres tall.
- 3.2 The Council must be satisfied that the complaint is valid under the terms of the Act and that the complainant has taken all reasonable steps to resolve the problem by discussion with the owner of the hedge. A valid complaint is primarily about loss of daylight, sunlight

and outlook or view.

- 3.3 If a complaint is valid the Council will serve a Remedial Notice on the owner of the hedge requiring them to reduce its height to two metres. If the owner does not comply with the Notice the Council is authorised to enter the land and carry out the works specified in the Remedial Notice and to recover the costs involved. The Council may also prosecute a person who fails to comply with a Remedial Notice.
- 3.4 The complainant has a right of Appeal if the Council do not accept their complaint as valid under the Act. The owner of the hedge has a right of Appeal against a Remedial Notice. Appeals are dealt with by the Planning Inspectorate by the written representations procedure
- 3.5 The Act does not provide for the Fee to be paid in stages or for an additional Fee should the complainant appeal against the Council's decision that their complaint is not valid under the Act. The Act does not make specific provision for the Council to recover the cost of unsuccessful appeals. . Therefore the Fee proposed makes assumptions about the cost of typical complaints, which includes some appeals by both parties involved in a high hedge case.
- 3.6 This new duty under the act will be carried out by the Planning Service who, through the Landscape Design Team, already deal with applications and other matters relating to trees on private land under the Planning Acts. There is currently no additional funding for this work and it is difficult to accurately predict the workload.
- 3.7 It is estimated a typical complaint will take an average of 10 hours of staff time at £32 per hour. It is recommended that the Fee be set at £320 which will allow full recovery of estimated costs of an average complaint about a high hedge and the anticipated Remedial Notices and appeals. Early indications from other Local Authorities indicate that a Fee at this level is at the lower end of proposed Fees.
- 3.8 A lower level of Fee which did not recover the estimated costs of the work would seriously impact on the work programme of the Council's Landscape Team and in particular its tree protection work or would require growth.
- 3.9 Should the Fee prove to be inadequate to cover costs then a further report will be made to the Executive seeking approval for a higher rate.

4.0 Financial Implications

- 4.1 Should the number of complaints be higher than anticipated with most resulting in appeals then the proposed fee may not be sufficient to cover costs. Should this be the case then the shortfall would have to be met in the short term from the Planning Service revenue budget.

5.0 Legal Implications

- 5.1 The Government has not set a maximum Fee for high hedges complaints and have determined that local authorities should have complete discretion to charge whatever fee (if any) they deem necessary for processing such complaints. An unreasonable fee bearing no resemblance to the costs involved by the Council in processing such complaints may lead to legal challenge.

6.0 Staffing Implications

- 6.1 The Planning Service is currently advertising to fill a vacant Tree Protection Officer post and it is anticipated that this post will deal with many of the enquiries / complaints relating to high hedges. Staffing levels will need to be reviewed in the light of the new workload generated by the Act.

7.0 Diversity Implications

- 7.1 It is not anticipated that a Fee would disadvantage or impact on any specific group.

8.0 Environmental Implications

- 8.1 The legislation is designed to address environmental harm in the form of unneighbourly impact, caused by high hedges.

Background Papers

Anti-social Behaviour Act 2003

High Hedges (Appeals) (England) Regulations 2005

Advice from ODPM by letter dated 22 March 2005

File L14, High Hedges.

Contact Officers

Any person wishing to inspect the above papers should contact Chris Barrons, Planning Service Brent House, 349 High Road, Wembley HA9 6BZ. Telephone 020 8937 5112.

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