

HIGH HEDGES (SCOTLAND) ACT 2013

MORAY COUNCIL GUIDANCE – PRE-APPLICATION ADVICE/APPLYING FOR A HIGH HEDGE NOTICE

Background

The High Hedges Act 2013 came into force on the 1 April 2014. The Act aims to provide a solution to the problem of high hedges, where neighbours have been unable to resolve the issue amicably.

The Scottish Government has also issued guidance to all Local Authorities to assist with implementation of the Bill and legislation - [Statutory Guidance](#)

The Act gives home owners and occupiers a right to apply to the relevant Council for a high hedge notice but neighbours must attempt to resolve the dispute themselves first with recourse to the Council being a last resort.

This guide will explain the process and give you guidance on all reasonable steps that must be taken prior to resorting to a formal application under the Act.

Potential applicants may wish to make contact with ourselves to discuss a possible application. Should you wish to receive informal advice please contact Stuart Dale (Planning, Enforcement Officer) on 01343 563280.

What is a High hedge?

The Act defines a high hedge as one that is:

- **formed wholly or mainly by a row of two or more trees or shrubs;**
- **rises to a height of more than 2 metres above ground level (measured from the ground where the hedge is growing) and**
- **forms a barrier to light (unless gaps significantly mitigate its overall effect as a barrier at heights of more than 2 metres above ground level)**

It is not necessary for the whole of a hedge to fall within the definition. If parts of a hedge qualify then the hedge will be eligible for an application for a high hedge notice.

Pre-application Procedures

What Must be Done before Making an Application

Before making an application an applicant must have made all reasonable efforts to resolve the issue with their neighbour themselves. This must include the following steps:

- Discuss the issue with the neighbour/owner of the hedge to try and reach an amicable solution. Keep a written record or log of all conversations with the owner of the hedge (including dates and times). Copies of all written correspondence/replies (including recorded delivery slips) relating to the dispute should also be collated.
- If the dispute is long standing it is important that a fresh attempt/approach is made to the owner now the Act has come into force (after the 1 April 2014). The hedge owner where known must be made aware that the High Hedges Act has come into force and that the Act provides the provision for a High Hedge Notice to be applied for, rights of appeal and the potential for direct action to be taken (including the full recovery of costs). Evidence of the steps that have been taken in relation to this fresh approach must be documented and should accompany the application.

Other steps that can be taken before making an application - mediation

A potential option for resolving high hedge disputes prior to contacting the local authority is mediation. This can be carried out in many ways such as using a member of the local community as a mediator using a professional mediator. Should you contact the local authority prior to making an application, the officer dealing with your enquiry will not take on the role of mediator between yourself and the hedge owner.

Mediation can be an effective way of resolving disputes amicably but this is not a requirement prior to an application being made but is worthy of consideration as it may save time and money as well as resolving the issue without having to enter into a statutory process.

If a hedge owner refuses to enter into mediation this could be used as evidence of a reasonable attempt being made to resolve the dispute.

Making an application to the local authority for a high hedge notice should be a last resort.

Making an Application for a High Hedge Notice

The relevant High Hedge Application Form should be completed and a copy can be downloaded at www.moray.gov.uk. The application must be accompanied by a fee of £401 and will not be accepted until this has been paid.

Please send completed forms, fee and accompanying plans/documentation/photos to:

Post:
Development Services
The Moray Council
PO Box 6760
Elgin Moray IV30 9BX

Via email to:
development.control@moray.gov.uk

An application should only be made once all pre-application procedures have been completed and where you consider that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of your domestic property.

Does the Application fall within the Scope of the Act?

An application will not be registered until:

- all parts of the application form have been completed;
- a plan (showing the location of the high hedge, boundaries of gardens and location of buildings) preferably to scale;
- the fee has been paid;
- the supporting documentary/evidence has been submitted.

We will then check to make sure that the application falls within the scope of the Act by checking the following:

- we are the correct council to deal with the application;
- the applicant is the owner or occupier of the domestic property specified in the application;
- the hedge specified in the application is on land owned and occupied by another person (site visit may be required);
- the hedge specified in the application falls within the definition of a high hedge (site visit may be required)

If any of the above criteria are not complied with the application will be returned and the fee refunded.

Is the Application Eligible?

An application for a high hedge notice can be submitted by an owner or occupier of a **domestic** property (including flats even if where it forms part of a tenement that contains a mix of domestic and commercial uses) where that person:

“considers that the height of a high hedge situated on 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”.

Dismissal of an Application

An application will be dismissed if you have not taken all reasonable steps to resolve the situation or if the application is considered to be frivolous or vexatious. For example, this could be if repeat applications were made for a high hedge notice without any significant change in circumstances that would affect our decision.

Withdrawal of an Application

An application can be withdrawn at any time prior to the Council making a decision on a high hedge notice. It is extremely likely that once an application is submitted that there will be an increased likelihood of separate discussions and negotiation taking place between the relevant parties involved in the dispute to resolve the matter whilst we are still considering the formal application submitted. Should a satisfactory outcome for all parties be agreed the application submitted should be withdrawn as soon as is reasonably practical.

If any circumstances change during the application consideration process we should be notified of these as soon as possible.

The Assessment Process – Should a High hedge Notice be issued?

If the application is deemed to be eligible the Council will acknowledge any application that is submitted and provide the contact details of the officer who will deal with your case and will explain the procedure that will be followed.

Comments will be sought from the owner and occupier of the land where the hedge is situated and these will be sent to the applicant for comment.

As part of the assessment process a site visit will be undertaken and any representations received will be taken into account as part of the determination process.

We will decide “whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have”.

A decision has to be taken “whether action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner(s) in relation to the high hedge. Each case will be assessed on its merits taking into account all relevant factors. It is likely that in the majority of cases the severity of the impact of the hedge on the applicant’s property will have to be balanced against its amenity value to the hedge owner.

All relevant parties will be notified of the decision and the reasons for the decision as soon as is reasonably practicable.

Issuing a High Hedge Notice

A high hedge notice will specify the ‘initial action’ and any ‘preventative action’ required by the hedge owner. The notice will detail what action is required to be done to alleviate the problem and provide a timescale for compliance. This will more than likely be to reduce the height of the hedge in question.

Powers available to deal with Non-compliance of a High Hedge Notice

If a notice is not complied with following the instigation of informal action the Council can, if required, enter the land and carry out the works to comply with the notice and recover any expenses incurred.

Rights of Appeal

An appeal can be made in the following cases:

Against a High Hedge Notice

- you are the owner or occupier of the domestic property (as stated in the high hedge notice) and think the required works do not go far enough;
- you are the owner or occupier of the land where the hedge is located (as stated in the notice) and think that no notice should have been issued, or the required works go too far or insufficient time has been given to complete the works

If no High Hedge Notice is issued

- you applied for a high hedge notice and think the council is wrong not to issue a notice on the grounds that it is not adversely affecting you or think that the council have agreed that the hedge does have an adverse effect and a notice should have been issued.

If a High Hedge Notice is withdrawn

- you are the owner or occupier of the domestic property stated in the high hedge notice and you did not agree to the notice being withdrawn and the council have not issued a new high hedge notice.

If a High Hedge Notice is varied

- you are the owner or occupier of the domestic property stated in the notice and you do not agree to the changes in the notice, or think that the works to the hedge as required in the revised notice do not go far enough, or have some other substantive complaint about the high hedge notice.
- you are the owner or occupier of the land as stated in the notice and did not agree to the changes in the notice, and think the works required to the hedge after having being revised go too far or have some other substantive complaint about the high hedge notice.

The Act provides that appeals may be submitted to the Scottish Ministers. This means that a Reporter from the Directorate for Planning & Environmental Appeals (DPEA) will be appointed to deal with any appeals received. A High Hedge Notice is suspended while an appeal is being determined.

Please note the following:

There is no right of appeal against our decision to dismiss an application for a high hedge notice, either because reasonable steps have not been taken to resolve matters or because the application is considered frivolous or vexatious.

How to appeal

The appeal must be made by completing a high hedges appeal form, obtainable from the DPEA website, by phoning 01324 696400 or by writing to DPEA, Unit 4, Callendar Business Park, Falkirk, FK1 1XR. The appeal form must be accompanied by a copy of the council's decision and, where they have issued one, a copy of the high hedge notice.

The appeal must be made within 28 days beginning with the date when the council notified parties of its decision.