

City of Westminster

Decision-maker: General Purposes Committee	Date: 25 October 2004	Title of Report: Anti-Social Behaviour Act 2003 Part 8 (High Hedges) – Delegated Authority
Classification: For General Release		Report of Director of Planning and City Development
Wards Involved:	All	
Policy Context:	Development of effective service delivery in the City Council in response to new legislative powers	
Financial Summary:	Additional resources to implement this new legislation are currently being sought	
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1. Summary

- 1.1 This report sets out proposals for responsibility and authority for the operation and enforcement of the provisions of Part 8 of the Anti Social Behaviour Act 2003, which relates to high hedges.

2. Recommendation

- 2.1 That the Council be recommended that the operation of Part 8 of the Anti-Social Behaviour Act 2003 shall be the responsibility of the Planning and City Development Committee and that its terms of reference be amended accordingly.
- 2.2 That authority be delegated to the Director of Planning and City Development to implement Part 8 of the Anti-Social Behaviour Act 2003, including the power to authorise officers to enter land in pursuance of sections 74 and 77 of the Anti-Social Behaviour Act 2003.
- 2.3 That a further report be submitted to the Planning and City Development Committee recommending the referral of complaints to the Planning Applications Sub Committees at the discretion of the Director of Planning and City Development in consultation with the Director of Environment and Leisure (Aboriginal Officers) and to amend the terms of reference accordingly.

3. Background Information

- 3.1 The Anti-Social Behaviour Act 2003 was given Royal Assent in November 2003. Provision is made to give powers to local authorities to deal with complaints relating to high hedges in England and Wales.
- 3.2 Regulations required to implement the Act are currently being finalised by the Office of the Deputy Prime Minister, and it is intended that Part 8 of the Act will be in operation by the end of 2004, or the start of 2005.
- 3.3 Complaints to the local authority about a neighbour's hedge can only be made as a last resort. If a hedge dispute cannot be settled amicably, then a complaint can be made to local authority.
- 3.4 If the local authority decide that action should be taken to remedy the complaint, they issue a formal notice – a “remedial notice” - setting out what must be done and by when. Both hedge owners and complainants have a right of appeal to the Planning Inspectorate against the local authority's decision. Failure to comply with the requirements of a remedial notice is a criminal offence, and it is open to the Council to prosecute.
- 3.5 The local authority is provided with powers to enter land to obtain information regarding remedial notices. In the event of non-compliance with a remedial notice, the local authority may also go onto land and carry out the work specified in the remedial notice and recover costs from the hedge owner, although there is no requirement or obligation on the local authority to intervene in this way.

4. Procedural Implications

- 4.1 The Act is clearly not part of planning legislation, but in determining complaints about high hedges, the key assessment relates to whether the height of the hedge is adversely affecting the complainant's reasonable enjoyment of their property. Issues such as loss of light and sense of enclosure will need to be balanced with the positive benefits of a hedge such as privacy and screening. Knowledge of the growth habits and response of particular species to pruning will also be required in making recommendations in remedial notices. This assessment of problem hedges, and the legislative framework of notices, appeals, enforcement and prosecution have clear parallels with development control functions.
- 4.2 As such, it is considered that the Act can be operated most efficiently within the planning framework. Assessment of the merits of each complaint can be carried out by arboricultural staff within Environment and Leisure Department in conjunction with planning officers, where matters of residential amenity and daylight and sunlight are at issue. Development Planning Services and the Arboricultural Section of the Environment and Leisure Department already operate to a service level agreement on matters of protected trees. Preparation and service of remedial notices can be carried out by Legal Services.

5. Financial Implications

- 5.1 The local authority is able to charge a fee, to be paid by a complainant, for determining a complaint made under this Act. Local authorities will have discretion to set their own fee at or below a maximum level. The maximum fee has yet to be determined by regulations, but it is quite possible that it will not be sufficient to allow local authorities to recover the full costs incurred.
- 5.2 Even if local authorities were able to charge a fee equivalent to the cost of investigation and service of a remedial notice, it should be noted that compliance with a remedial notice is not a once only operation. Failure by a hedge owner to maintain a hedge at the required height may require ongoing enforcement for the life of the hedge, without the payment of any further fee. In the event of the need for enforcement and prosecution there will also be cost implications for legal input.
- 5.3 In light of this, the Director of Planning and City Development will seek to minimise the costs the Council by charging the maximum fee to complainants, once this amount has been determined by regulations set by Central Government.

6. Legal Implications

- 6.1 The new procedure for taking action under Part 8 is very similar to the existing regime for planning enforcement.

Legal input will be needed for:

- (i) drafting and service of notices and
 - (ii) dealing with and defending appeals to the Planning Inspectorate which will be similar to the procedure for dealing with planning appeals.
- 6.2 New legislation must be passed and brought into effect in a way that is compatible with the Human Rights Act 1988. Provided complaints are investigated properly before action is taken etc. this should not be incompatible with the provisions of the Human Rights Act.

7. Staffing Implications

- 7.1 Extra staff resources are likely to be required to operate this new legislation. A growth bid of one third a full-time equivalent post has been made to provide staff resources for the anticipated additional work, for a period of three years, although the budget provision for the next financial year has yet to be determined.

8. IT or Property Implications

- 8.1 There are no IT or property implications.

9. Health and Safety Issues

9.1 Health and safety is covered by existing departmental procedures.

10. Human Rights Act 1988

10.1 See comments in Legal Implications above.

11. Ward Member Comments

11.1 The issues referred to in this report affect all wards, and no individual ward members have been consulted.

12. Conclusions and Reasons for the proposed decision

12.1 This report seeks the ratification of the General Purposes Committee and Council that implementation of part 8 of the Anti-Social Behaviour Act 2003 shall be the responsibility of the Planning and City Development Committee, and shall be operated under the delegated authority of the Director of Planning and City Development. The assessment of complaints relating to high hedges is most appropriately dealt with by Development Planning Services in conjunction with the Arboricultural Section in the Environment and Leisure Department.

<p>If you have any queries about this report, please contact Barbara Milne, Senior Arboricultural Officer 020 7641 2922</p>

BACKGROUND PAPERS

Anti-social Behaviour Act 2003, Part 8.

High Hedges consultation – Implementing Part 8 of the Anti-Social Behaviour Act