

HIGH HEDGES POLICY AND GUIDANCE FROM **BOLTON METRO**

ONE - INTRODUCTION

You do not need permission to plant a hedge, as the usual planning rules that restrict the height of boundary walls and fences erected around gardens do not apply to hedges. And, until now, there has been no legal restriction on how high a hedge can grow to.

A natural hedge can be an attractive feature in any garden. They are relatively inexpensive to create and have many positive benefits. A properly maintained hedge can help provide screening for both privacy and security. They can also create a habitat for wildlife, as well as marking the legal boundary between two adjoining properties.

A neglected hedge can, however, cause problems to a neighbouring property, especially if its height is allowed to grow unchecked. The commonest concerns are the loss of light to windows and gardens of houses that are situated close to the boundary where the hedge is growing.

Following calls from the general public for help to control the nuisance that overgrown hedges can cause, the Government has introduced legislation under Part 8 of the Anti-Social Behaviour Act 2003, to tackle the problems specifically caused by high hedges.

TWO - PURPOSE OF THE GUIDE

This document seeks to explain how the Council will undertake its responsibilities under Part 8 of the Anti-Social Behaviour Act 2003. It explains what the legal framework is and the definitions referred to in the Act. It also explains the relevant policy guidelines and procedures the Council will adopt when dealing with any formal complaint it receives about problems associated with high hedges.

The document also includes advice on how neighbours might try to settle the problem amicably, through negotiation or mediation. The Act requires that evidence be submitted as part of the complaint procedures, to show that all 'reasonable steps' have been taken to try and resolve the matter directly between the parties concerned, before making a formal complaint.

When using this guide, it should be noted that the information contained in the document cannot be relied on as a definitive statement of the law. Anyone unsure of his or her legal rights or obligations should always consult a solicitor for advice.

This policy and guidance was approved by the Executive Member Environment and Housing Strategy on May 25th 2005

THREE - BOLTON COUNCIL POLICY STATEMENT

Bolton Council will adopt the following Policy when dealing with a valid complaint made about problems associated with a high hedge, as defined under The Anti-Social Behaviour Act 2003:

The Council will serve a Remedial Notice in connection with a valid complaint received, where it can be demonstrated, that the height of the hedge causes significant harm to the amenity of a neighbouring property and/or surrounding area by virtue of overshadowing, visual intrusion or oppressive impact within its setting.

In assessing any complaint the Council will take due account of and balance all relevant information and evidence received and made available, including:

- *The hedge height and loss of light to homes and gardens guidance, including the advice contained in the British Research Establishment Study "Review of hedge height and light loss."*
- *All relevant and up to date government guidance;*
- *The comments and views of relevant specialist advisers including Tree and Woodland Officer;*
- *The requirements of other relevant legislation including the Wildlife and Countryside Act 1981;*
- *The information obtained from an inspection of the site where the hedge is positioned including: the characteristics of the site and its surroundings including its setting, existing landscape features, the orientation and topography of the site and surroundings, the scale and character of existing buildings and their relationship to one another and the hedge in question;*
- *The written views and comments and issues raised by the complainant, the hedge owner and occupier (if different) where these are relevant in the context of Part 8 of the Anti-Social Behaviour Act 2003.*

FOUR - POLICY EXPLANATION

The introduction of a hedge within a garden or along a residential boundary can enhance the appearance of the property and its surroundings and afford residents a measure of privacy. However the height and position of an evergreen or semi-evergreen hedge has the potential of creating an overbearing impact on its surroundings and adjoining properties, in a similar way that a building or extension has. In consequence, there is a need to balance the sometime conflicting objectives of privacy with amenity issues such as obstruction of sunlight and daylight to homes and gardens.

In determining formal complaints, the Council will assess the impact of a hedge against the approach recommended by the Building Research Establishment [BRE]. The BRE report enables an assessment to be made of the light loss to homes and gardens resulting from the size and positioning of an overgrown hedge. The BRE report enables particular site characteristics such as garden size, height of hedge, position and length of the hedge, orientation, proximity to windows, uneven ground and any gaps in the hedge to be taken into account.

The treatment of hedges such as pruning, can have an adverse impact on their appearance and long-term health, unless carried out correctly. The Council's Tree and Woodland Officers specialists will therefore be asked for their advice, where relevant, before a decision is taken.

There are other requirements under the law that may need to be considered and these will be referred to in any decision taken by the Council. These include special controls relating to hedges containing trees that are within a Tree Preservation Order, the existing legal right for owners to cut back branches overhanging into their garden and the right to remove an obstruction to a public highway caused by an overgrown hedge.

The service of any Remedial Notice will make reference to the relevant legal requirements of the Wildlife and Countryside Act 1981. This Act places certain restrictions on the manner that a hedge is treated where there are known to be present protected animals, birds or plants.

FIVE - THE HIGH HEDGES LAW

• What is a high hedge?

The law governing the procedures for dealing with complaints about problem hedges is contained in Part 8 of the Anti-Social Behaviour Act 2003. A 'high hedge', is defined as being:

"so much of a barrier to light or access as is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level".

For the purposes of the law, a line of evergreens or semi-evergreens is not to be regarded as forming a barrier to light or access if 'gaps' significantly affect its overall effect at heights of more than 2 metres above ground level.

When considering whether a particular hedge can be the subject of a complaint under the Act, the following series of questions need to be addressed:

- ◆ is the hedge comprised wholly or predominantly of evergreen or semi-evergreen trees or shrubs ?
- ◆ are there two or more trees or shrubs in it and are these roughly in line ?
- ◆ is it over 2 metres in height ?
- ◆ does the hedge act, to some degree, as a barrier to light or access – even though it might have gaps in it ?

If the answer to all these questions is yes, then it is a 'high hedge' for the purposes of the Act. It is not necessary for the whole of the hedge to fall within the definition. If some parts of it qualify, they can be considered as individual hedges under the Act. The following additional information might help when people are considering the answers to the questions set out above.

• What represents an evergreen or semi-evergreen tree or shrub?

The Act applies not only to the most common evergreen species of plants such as conifers, but also includes other evergreen trees or shrubs, such as holly and laurel. However, it does not include evergreen climbing plants, such as ivy. The term 'semi-evergreen' is not defined in the Act but normally it will be taken to mean that the hedge retains some live foliage throughout the year. Hedges formed predominantly of beech or hornbeam are therefore specifically excluded from the definition.

• What comprises of a line of two or more trees or shrubs?

A complaint cannot be made under the Act about single trees or shrubs, whatever their size. If there are two or more evergreen or semi-evergreen trees or shrubs in the hedge, they do not have to form a straight line. As long as they are roughly in line, they may be caught within the definition of forming a hedge. It is unlikely, therefore, that the definition will catch groups of trees, copses or small woodlands.

• How do you measure 'more than 2 metres above ground level?'

The 2 metre height should be measured from the ground where the hedge is growing. For these purposes, ground level means the natural level of the ground where the hedge is situated. Measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge.

An exception might be where the hedge has been planted in a bed or other container that is raised above the ground. In such a case, the measurement should be from the natural ground area rather than at the base of the hedge. On the other hand, it makes no difference if the property affected is on a

lower, or higher, level than the land where the hedge is situated. The 2 metres should still be measured from the ground where the hedge is growing.

- **What forms a barrier to light or access?**

This particular reference in the Act relates to the effect the hedge has on a neighbouring property. It must to some extent act as a barrier to light or access. This means not just a bar to physical access but also access to a view or outlook. Equally, it is not necessary for the hedge to be on a boundary for it to be a barrier to access.

The Act contains additional provisions to enable gaps to be taken into account in determining whether a hedge forms a barrier to light or access. Specifically, it provides that a hedge is not to be regarded as forming a barrier to light or access, if gaps significantly affect its overall effect at heights of more than 2 metres above ground level.

This simply means that any gaps that occur above the 2 metre height mark can be taken into account in determining whether a hedge acts as a barrier to light or access. Gaps that occur in the hedge at a height of less than 2 metres do not count, as what happens below this height is outside the scope of the Act.

SIX - SOLVING THE PROBLEM

When growing hedges people are often seeking to create privacy for their own house and garden. They often choose fast-growing species of plants (such as Leylandii) to provide a quick and effective screen. However, if not kept under control through regular maintenance, such hedges might soon overwhelm their neighbours, causing problems such as overshadowing of adjoining homes and gardens.

It is often daunting to tackle neighbours about a problem, and best not done in the heat of the moment. Advice on how to deal with neighbours in a way that is more likely to lead to an agreed solution can be found in a leaflet entitled '*Over the garden hedge*', which has been produced by the Government and is available from the Council or on the ODPM website.

- **Settling problems amicably.**

Many overgrown hedges are the result of mismanagement and neglect. If a neighbouring hedge troubles you, the best way to deal with the issue is to discuss it amicably and to try and agree a solution with the owner of the hedge. The new law actually requires people to have taken reasonable steps to try to settle their hedge dispute for themselves before making a formal complaint to the Council.

- **Settling problems through mediation**

In situations where people do not get on, or if the dispute over the hedge is long-running, mediation might be the answer. There are several organisations that can provide advice on the most suitable means for resolving neighbour disputes and offer people practical help in putting together their side of the case.

- Community Mediation, which is normally provided free of charge, is particularly effective in this type of dispute. It involves an independent and impartial person (the mediator) helping those in dispute to work together to reach a settlement. The mediator's job is not to make a decision. Instead, they help the parties to understand each other's point of view – dealing with how people feel about the situation as well as the facts – without apportioning blame. From there, the parties can move forward to think about how they could put matters right and to agree a plan of action. If mediation is to work, people must go into it willingly. Bolton's Mediation service is based at 2-16 Mayor Street, Bolton, BL1 5HT. Tel.:- 01204 335258
- The Community Legal Service is a public organisation that helps people to find the right legal information easily. They maintain the 'Legal Service Directory', which lists lawyers and advice centres that meet certain quality standards. The entry for each organisation in the directory provides information on whether services are free or whether there is a charge. Contact by www.clsdirect.org.uk
- The Citizens Advice Bureau gives free, confidential, impartial and independent advice on a range of subjects. The Bolton Bureau is at 26 – 28 Mawdsley Street. Tele:- 0870 1264038 . There is also a bureau at Farnworth and Kearsley, 55, Market Street, Farnworth Tel.:- 01204 571991

SEVEN - MAKING A COMPLAINT

Where people cannot agree a solution to the hedge problem, they may ask the Council to review their complaint. This procedure forms part of the new 'high hedges' law.

- **Who can make a complaint?**

A person can only bring a complaint under the Act if a domestic property is affected. The Act defines domestic property as 'a dwelling or any associated garden or yard'. The garden or yard does not have to be attached to the dwelling, as long as it is linked 'legally', rather than physically, with a domestic property.

Where a property contains a mix of both domestic and commercial use, e.g. a public house, the Act would only apply to protect the living quarters from the effects of a neighbouring high hedge.

A complaint cannot not be brought under the Act if a hedge was affecting a garage, barn, summerhouse, shed or other outbuilding used for storage purposes.

- **Can I complain if I do not own the affected property?**

The owner, occupier or tenant of an 'affected property' can bring a complaint under the Act. Where there is an owner, occupier or tenant (e.g. landlord and tenant), each is entitled to make a formal complaint to the Council. A person does not have to live at the address for a set period before they can make a complaint. In addition, even if the high hedge was there when they moved in, they are still entitled to complain under the Act.

There are special provisions for the owner of an empty domestic property to bring a complaint under the Act. They might, for example, have moved out but be unable to sell the house because of the high hedge.

- **Location of the hedge**

The Act says that a high hedge has to be on 'neighbouring land' and in theory, the hedge could be located several gardens away from an affected property. However, in practice, the farther away a hedge is, the less its impact it will have. As long as the hedge affects someone else's home or garden to some degree, they will be able to complain to the Council. The offending hedge does not have to be growing in a domestic garden. It could, for instance, be on parkland that backs onto a garden or yard. It is the effect of the hedge on a domestic property that is important, not the land on where it is located.

- **Grounds of complaint that can be considered.**

The Act says someone can complain if the height of the hedge is adversely affecting reasonable enjoyment of a domestic property. Anyone making a complaint to the council must, therefore, show that:

- the problems with the hedge are related to its height; and
- it is adversely affecting the reasonable enjoyment of their own property.

This would include obstruction of daylight and sunlight, jointly or as separate issues, as well as a potential loss of view or outlook. In addition, someone could bring a complaint under the Act if the neighbouring hedge dominated their own garden, making it feel claustrophobic. Impact on the growing of plants can also be considered, provided that the damage was attributable to the height of the hedge. For example, a tall hedge might prevent natural light from reaching into the garden area where plants

where growing. In addition, the hedge might also be so high and overgrown that its foliage overhangs the adjoining garden, thereby shielding plants from rain.

- **Grounds of complaint that cannot be considered**

The Act specifically excludes complaints about the effects of the roots of a high hedge on neighbouring land. The Council will, therefore, not, deal with such matters as:

- ✘ root-related property damage, including subsidence;
- ✘ roots taking moisture and nutrients from the soil, so creating adverse difficult growing conditions for plants;
- ✘ roots blocking drains or damaging pipes.

As with overhanging branches, people have a legal right to cut back to the boundary any roots from a hedge that is encroaching on their property, subject to notifying them of the works to be undertaken. (The Community Legal Service may be of assistance in these circumstances).

EIGHT - REGISTERING A COMPLAINT

When the Council is approached by someone wishing to make a formal complaint about a 'high hedge', the Council will provide the person with:

- ✓ a copy of a complaints form for completion;
- ✓ details of the relevant fees to be paid for the complaint to be registered; and
- ✓ an explanatory leaflet outlining the procedures to be followed.

• Information you will need to submit

As a minimum, the person making a complaint will need to supply the following information for it to be formally registered with the Council:

- ✓ their name, address and other contact details;
- ✓ confirmation that the address relates to a domestic property;
- ✓ the name and address of the owner/occupier of the land where the hedge is situated;
- ✓ a location plan showing the hedge, the garden and any windows that might be affected, preferably to a recognised metric scale;
- ✓ photos of the hedge with a figure for scale;
- ✓ its approximate overall height;
- ✓ confirmation that the hedge comprises predominantly evergreen or semi-evergreen species;
- ✓ details of the steps taken to settle the dispute by negotiation or mediation, with copies of relevant correspondence or other papers;
- ✓ details of how the height of the hedge is adversely affecting the complainant's amenity. For example, *'the hedge blocks light to our main living room, which means that we need to keep electric lights on all day during the winter'*.

The person making the complaint, should also send a copy of the formal complaint to the owner/occupier of the land where the hedge is situated, at the same time as they submit the forms to the Council. The Council will require 3 copies of the complaints form.

NOTE The Council will require evidence to show that the owner/occupier of the land in question has been forewarned by the complainant, that failure to negotiate a solution would lead to the matter being referred to the Council, so the submission of a formal complaint will not come as a surprise to them.

• Refusing to deal with a complaint

Under the provisions of the Act, the Council has the right to decide not to proceed with a complaint if it considers:

- ◆ that the complainant has not taken all reasonable steps to resolve the matters without involving the council;
- ◆ that the complaint falls outside of the scope of the Act;
- ◆ that the complaint is frivolous or vexatious; or
- ◆ the complaint is withdrawn.

If a complaint is rejected, the Council will inform the complainant, as soon as they can, explaining the reasons for the decision. There is no specific right of appeal against the Council's decision not to proceed and deal with a high hedge complaint. However, if the complainant considers that the Council has not dealt properly with their case, they can register a complaint through the Council's own complaints procedures, or alternatively to the Local Government Ombudsman if they consider that the Council has not followed the correct procedures and has acted unreasonably.

NINE - PROCEDURE

The following section offers advice on how the Council will gather the necessary information to assess the complaint that has been made. The issues raised in the complaint will have a direct bearing on the information that will need to be collected.

The Council will need to gather as much relevant information about the hedge as reasonably possible, its effect on the complainant and the views of the person occupying the land where the hedge is growing. The following procedures will therefore be followed;

- **Dealing with a valid complaint**

- ✓ the complainant must serve an exact copy of the complaints form on the owner/occupier of the high hedge at the same time as the complaint form is sent to the Council, together with the correct fee payable;
- ✓ the Council will acknowledge receipt of the complaints form, confirm whether additional information/fee is required and contact both the complainant and the owner/occupier of the land where the hedge is located to notify them that it is considering a complaint made about a high hedge;
- ✓ the Council will invite the owner/occupier of the land to comment on the points raised by the complainant and to provide any additional information that they wish the Council to consider;
- ✓ the owner/occupier must forward a copy of any representations made to the complaint, to the complainant at the same time as it is sent to the Council;
- ✓ any further representations made should be copied between the two parties and the council, in order that everyone has access to the same information;
- ✓ the Council will set an appropriate period of time by which all representations must be received. (In most cases this is likely to be 28 days)

- **Consultation and notification**

The Council will not normally carry out any further neighbour consultation beyond the parties involved in the case.

The Council will seek specialist advice about appropriate remedial action that may be required to overcome the problems being caused and will also take into account, expert advice from those who specialize in arboriculture, horticulture, ecology or landscape design, as part of 'weighing the evidence' about the impact the high hedge might be having on a neighbouring property or surrounding area.

- **Visiting the site**

Council officers assigned to deal with the complaint may need to gain access onto private land to view the impact the height of the hedge is having on the affected property. If a site visit is required, then the Council will notify both parties that are the subject of the complaint, in order to arrange a suitable time and date for a site inspection to be made. If access is denied, then the Act gives the Council powers of entry to the site in order to carry out the necessary assessment of the hedge. Council Officers making the site visit will not be able to take account of any additional representations made at that time as all such representations must be in writing and copied to the owner/occupier of the land affected.

- **Assessing impact**

The Council will take account of all relevant factors including the points raised by both parties during the exchange of representations, and any other considerations that appear to the Council to be material, (for example, a legal restriction contained within a deed of covenant that might specifically apply to the hedge in question).

The Council will take the following list of potential factors into account. The list is not exhaustive and should only be used as guidance, as other issues might arise that are not covered here. Equally, not all these factors will be relevant in every case.

Privacy

A hedge can help prevent undue overlooking between adjoining properties. However, it does not necessarily have to be very high to achieve these aims.

Noise, smell, smoke

Protection from, noisy neighbours or from the smell and smoke of bonfires or barbecues may be cited as a benefit of a high hedge. However, hedges are largely ineffective in preventing such pollutants, from passing over or through them into adjoining gardens.

Impact on the growing of plants

A high hedge might lead to poor plant growing conditions, thus affecting a complainant's amenity to enjoy their garden. However, the Act specifically excludes complaints about the effects that the roots of a high hedge and so this cannot be taken into account. But the problems might be attributable to the overall height and shape of the hedge creating adverse growing conditions for plants due to extensive areas of shade, although this may be difficult to prove without expert horticultural advice first being obtained.

Overhanging branches

The Act deals only with complaints that relate to the height of the hedge. As people in neighbouring properties have a legal right to cut overhanging branches back to the boundary, problems with the width of the hedge will normally not be considered. However, an exception might be where the hedge is so high that someone could not reasonably be expected to exercise their rights to trim branches that overhang their property and as a result, they are unable to solve the adverse effects of the hedge.

Problems caused by a hedge blocking a path or other means of access might be resolved by trimming branches to just above head height, without the need for the Council to intervene under the Act. On the other hand, a large overhang that restricted the useable area of the garden could be considered as a problem. The overall proportion of the garden affected will need be taken into account.

Obstruction of daylight and sunlight

On sunny days, a high hedge will inevitably cast a shadow over an adjoining property. A high hedge might also cut out natural light to windows of the neighbouring property, depending on its siting and orientation in relation to the affected windows.

The loss of light to a window in a house is considered to be material, only if it affects the main habitable rooms of a domestic property, such as living rooms, dining rooms, kitchens and bedrooms. Toilets, bathrooms, storerooms and general circulation areas (hall, stairs and landing) are considered to be less important and such windows need not be analysed. Where a conservatory is affected, then only the opening between it and the original main living room of the house will be taken into account.

The Building Research Establishment (BRE) has produced a report entitled 'Hedge height and light loss' on behalf of the government. This report gives guidance on how to evaluate obstruction of daylight

and sunlight on affected properties. The Council will take this report into account when making an assessment of impact of a high hedge on light loss to homes and gardens.

Blocking of views

Whilst a tall hedge can block out an eyesore or someone's cherished view, the value that is placed on an individual outlook is very personal and subjective. Nobody has a legally defined right to a particular view or outlook. Nevertheless, factors that might be taken into account when assessing the impact of a high hedge may include the extent of the view affected and whether it is near or distant. The Act specifies that a hedge cannot be reduced to below 2 metres in height and in many situations a 2 metre high hedge could restrict views from a garden or downstairs room in any event.

Oppressive/disproportionate

A large hedge might be out of proportion for its setting, dominating a neighbouring property and affecting its overall amenity. It can lead to feelings of confinement and oppression. Factors that might be taken into account include the height and length of the hedge, the area that it covers compared with that of the garden. However, just because trees in the hedge might be taller than neighbouring buildings does not necessarily mean that they will have a significant effect on someone's amenity. (See section 5).

Protected trees

Trees in a hedge might be protected by a Tree Preservation Order or they might be subject to special controls that apply in conservation areas. These normally require separate permission from the Council before carrying out works to the trees, or to give prior notice of intentions to prune. When determining a complaint under the Act, the Council will take into account the contribution that the trees in the hedge make to local amenity and the impact of possible works to the hedge. In some situations, occupiers may also need to obtain a felling licence from the Forestry Commission if they wish to remove the trees concerned.

Any remedial works that may be required to the high hedge under the Act, following consideration of a complaint, would automatically override the requirements of a tree preservation order and the controls relating to trees in conservation areas.

Other legal restrictions

Some properties have legal covenants that stipulate the size or type of hedge than can be grown. These are normally enforceable through the civil courts but could be material to a complaint. They might, for example, require that a hedge is kept tall in order to provide a screen or shelter. How long ago the restriction was introduced, its original purpose and whether circumstances remain the same or have changed significantly might be relevant in considering the continuing relevance of any covenant.

In addition, some hedges must be retained under the terms of a condition attached to a planning permission. This would also need to be taken into account. Similarly, the age of the original planning permission and the extent to which circumstances on the ground have altered since the original condition was imposed would be material considerations.

Whether any protected birds, animals or plants are present in the hedge and how any works to the hedge might affect them would also be relevant considerations under the Wildlife and Countryside Act 1981.

Effect of gaps

The extent of any gaps and their position in the hedge is material when assessing the impact of a high hedge. In some cases, the depth of the hedge might mean that gaps have little appreciable effect. In others, especially where the canopy is raised, the impact could be significant. (See Section 5)

- *Factors unrelated to the impact of the hedge*

According to the Act, the following points are unlikely to be relevant to the main factors to be determined by the Council, as to whether or not the high hedge is adversely affecting the complainant's reasonable enjoyment of their property:

- ✘ fears that the hedge will break or fall;
- ✘ that the problems with the hedge have caused worry, concern or depression, leading to health problems;
- ✘ that other hedges in the area are maintained at a lower height;
- ✘ that the hedge was there before the affected property was built or before the complainant moved into it;
- ✘ that cutting down the hedge is too costly and beyond the means of the person who owns or occupies the site where it is growing.

TEN - MAKING A DECISION

It is important to note that the Act sets no timetable for the Council to reach a decision on a 'high hedge' complaint. The absence of statutory time limits is intended to provide flexibility so that other means of resolving the dispute can be pursued even after a complaint has been lodged with the Council.

In reaching a decision, the Council will take all relevant factors into account and assess each case on its particular merits. It will normally come down to a question of balance between the various issues raised during the course of the complaint. The Council will therefore need to decide:

- whether the height of the hedge is adversely affecting the complainant's reasonable enjoyment of his property, having regard to the grounds cited in the complaint;
- if the height of the hedge is adversely affecting the complainants property, how severe is the impact and is this sufficient to justify action being taken to remedy the situation;
- if so, are there any reasons why such action should not be taken, or should be moderated, having regard in particular to all representations received and to the amenity of the area.

After considering all the evidence, the Council will make a decision and determine what action should be taken (if any) to rectify the problem and if appropriate, prevent it from recurring. This decision will be communicated in writing to both the complainant and owner and/ or occupier of the affected property. It is expected that most decisions will be made within 3 months of submission.

Even if the Council find that a hedge is adversely affecting the complainant's property, it is still open to the Council to decide that no action should be taken in relation to controlling the overall height of the hedge, providing that it can be shown that any remedial action required would be so minimal as not to have a significant effect on solving the problem.

For example, the height of the hedge may only be slightly above the 2 metre minimum height specified in the Act. So requiring the height of the hedge to be reduced by a small amount would not make such a significant difference as to recommend remedial action being taken, at that point in time.

However, if the Council conclude that the height of the hedge is having an adverse impact on the amenity of any neighbouring properties, then the Council is required to serve a '**Remedial Notice**' to solve the problem and prevent it from recurring.

ELEVEN - SERVING A REMEDIAL NOTICE

- **Content and implications of a Remedial Notice**

Remedial notices served by the Council are statutory enforcement documents and are legally binding on whoever owns or occupies the property where the high hedge is situated. This includes not only whoever owns or occupies the land at the time the notice is issued, but also their successors.

The Act requires that a remedial notice must include the following information:

- describe the hedge it relates to;
- state that a complaint has been made to the Council about the hedge and specify the property affected by the hedge (“the complaint”);
- state that the Council has investigated the complaint and has decided that the height of the hedge is adversely affecting the complainant’s reasonable enjoyment of their property;
- explain what action must be taken in relation to the hedge in order to remedy the adverse effect (“initial action”) and by when (“the compliance period”);
- what further action, if any, is required to prevent longer-term recurrence of the adverse effect (“preventative action”);
- what date the notice takes effect (“the operative date”); and
- the consequences of failure to comply with the requirements of the notice.

Where the Council is dealing with more than one complaint in respect of a single long hedge, it will consider each case on its particular merits and issue a separate remedial notice in respect of each complaint. Thus it is possible that separate remedial notices could be issued requiring one section of the hedge to be reduced to a certain height while another portion should be cut lower, with the rest of the hedge being left intact.

A remedial notice remains in force for as long as the hedge remains on the site. The notice will be registered as a local land charge and in this way prospective buyers of the property will be alerted to the commitment that they would be taking on.

If the hedge is removed, the remedial notice automatically lapses. Were it to be replaced by another evergreen hedge, which in time, grew to such a height that it adversely affected a neighbouring property, then a fresh complaint would have to be made.

NOTE; failure to comply with the requirements of a remedial notice is an offence punishable, on conviction in the ‘Magistrates Court’, to a level 3 fine (up to £1,000 at May 2005).

The Council will adopt a standard procedure for dealing with complaints to ensure consistency and to tailor any necessary remedial works to the particular circumstances involved and will ensure that any works specified in a remedial notice:

- does not exceed what is necessary to remedy the adverse effect of the hedge, or to prevent it recurring; and
- are directly related to the adverse effect found to be caused by the hedge.

In determining the extent of any works to be specified in the remedial notice, the Council will take the following steps:

Step1: Assessing what remedial action is required.

Having decided that a high hedge has an adverse effect on the complainant's reasonable enjoyment of their property the Council will then determine how to remedy it. Determining 'reasonable enjoyment' means looking at all relevant factors in order to strike a balance between the different needs of the property owners. In doing so the Council will assess:

- what works are needed to provide relief for the complainant from the height of the hedge and the severity of the problems this is causing;
- whether this is simply a matter of reducing the height of the hedge or whether other remedies would be more effective, such as reducing the height of selected trees to open up gaps, or the lower branches of the hedge might be removed (known as crown lifting) or the branches might be thinned out. In some cases, an appropriate remedy might well include reducing the width of the hedge as well as its height to improve its overall shape;
- whether action needs to be taken along the whole length of a long hedge or whether works to a portion of it would provide the necessary relief.
- whether there are likely to be any side effects from the proposed works on the growth of the hedge, which have the potential to harm the complainant's amenity and so might require additional action. For example, reducing the height of some species might result in them putting on more lateral growth (known as bushing out). Specific action might be needed to keep this under control;
- the setting of the hedge and the contribution it makes to local amenity, such as in a conservation area. For example, selected trees which form part of the hedge could have particular amenity value and therefore might be retained.

General factors to be taken into account will be the overall impact of the proposed remedial works on the appearance of the hedge, or on the health of any trees to be pruned. Consideration will also be given to environmental concerns, including any implications on the requirements the Wildlife and Countryside Act 1981 to protect certain wildlife habitats from destruction e.g. controlling work on the hedge to certain times of the year in order to prevent disturbance to nesting wild birds.

Step 2: Allowing for re-growth

Having established what action is required to remedy the adverse effect of the hedge, the Council will then consider whether anything more needs to be done to prevent the problem from recurring. Preventative action might also be needed both in the short term (to allow for any re-growth) and over a longer period (to provide for ongoing maintenance).

In deciding what, (if any) action is needed to avoid the problems caused by the hedge returning in the short term, the Council will need to assess:

- whether the remedial action on its own is enough to forestall further problems over a period of around 12 months, before any longer-term maintenance requirement is required; or
- if not, how should the remedial action be adjusted to cater for this.

This is likely to be particularly relevant where the hedge comprises fast-growing varieties such as 'Leylandii' conifers. If, in these cases, the height of the hedge was reduced to the level necessary to remedy the adverse effect, it might soon grow back and cause problems again. In such circumstances, the council might require that the hedge be further reduced in height in order to create a 'buffer zone', which allows the hedge to grow between annual (or more frequent) trimming and still not cause significant problems.

A suitable 'buffer zone' margin would normally be equivalent to a year's growth for the species concerned. For example, the council might consider that the problems caused by the hedge would be

remedied if it were no more than 3 metres tall. They might, however, require the hedge to be reduced initially to a height of 2 metres so that it has room to grow once it has been cut. This combination of both remedial and preventative action is called '**initial action**' in the Act. In the above example, the Council would also need to consider requiring ongoing maintenance to ensure that the hedge is never again allowed to grow above 3 metres. This is known as '**preventive action**' in the Act.

Note: The Council cannot require a hedge to be reduced to below 2 metres in height, even if the required 'buffer zone' would take it below this limit.

Step 3: Ongoing maintenance

The council will need to determine whether long-term maintenance of the hedge is needed in order to prevent future problems from occurring. This will entail an assessment of:

- what will be the effect on the future growth of the hedge of the 'initial action' proposed to remedy its adverse impact (see Steps 1 and 2 above);
- is this likely to lead to a recurrence of the problems found to be caused by the hedge;
- if so, what action would ensure that the hedge is preserved in its altered state over the longer term and so help to avoid further problems;
- is this reasonable in the particular circumstances of the case.

The on going maintenance regime that is imposed, will ultimately depend on the nature of the remedial or initial action taken. However, it will most often take the form of continuing maintenance of the hedge at its new height or shape, by regular trimming.

TWELVE - RIGHT OF APPEAL

a) Rights of Appeal

Under the Act, both the complainant and the owner and occupier of the land where the hedge is situated can appeal to the Secretary of State within 28 days of:

- the issue of a remedial notice;
- the withdrawal of a remedial notice;
- the waiver or relaxation of its requirements.

In addition, a complainant can also appeal against:

- a decision by the council that the height of the hedge is not adversely affecting their reasonable enjoyment of their property;
- a decision by the council not to require remedial action, even though they consider the height of the hedge is causing problems.

The Planning Inspectorate has been appointed to deal with appeals on behalf of the Secretary of State. There is no charge for making an appeal.

Potential appellants should note that the Inspector dealing with the appeal could find in favour of either side, irrespective of the decision taken by the Council. So it is possible that that one party could find that they are worse off as a result of deciding to appeal. It is therefore important, that appellants carefully assess the merits of their case and the prospects of success, before making an appeal.

NOTE; A remedial notice or, its withdrawal, waiver or relaxation, is automatically suspended whilst an appeal is determined.

THIRTEEN - ENFORCEMENT

On receiving a written complaint that the actions required under a remedial notice have not been carried out, the Council will investigate the allegations made. If the results of these initial investigations suggest that an offence has occurred, the Council will contact the owner and occupier of the land where the hedge is situated, to inform them of the alleged breach and seek their comments before taking any formal action.

The Council has been given powers under the Act to enter any land where the hedge is situated, in order to investigate a complaint, pursue relevant enforcement action and if necessary, carry out the works specified in the remedial notice if it is clear that no action has, or is intended to be taken to comply with the notice.

FOURTEEN - CALCULATING IMPACT OF HIGH HEDGES ON LIGHT LOSS TO HOMES AND GARDENS

Certain types of hedges, especially those that form a very tall and dense evergreen barrier alongside property boundaries, can often result in substantial loss of sunlight and daylight reaching into neighbouring gardens and the windows of adjoining houses. The aim of this section is therefore to provide an objective method for assessing whether the height and location of a particular hedge is causing problems to a neighbouring property.

The methodology and formula used for calculation in this section is based on a study undertaken by the British Research Establishment (BRE), entitled a 'Review of hedge height and light loss'. This study was commissioned by the Office of the Deputy Prime Minister and was published by the Government in March 2004. Further details and information on the BRE study can be found at www.odpm.gov.uk

The methodology introduces the concept of an 'action hedge height' level and a 'buffer zone' area. A specified method of calculation is used to assess these levels and will depend on a number of factors relevant to any particular case. For example, one such factor may be the siting of the hedge (i.e. its orientation) to the affected property. However, a simple calculation technique cannot cover every situation, and the guidance considers other factors, which may also be taken into account when assessing impact.

PART A - THE 'ACTION HEDGE HEIGHT' LEVEL

- **What is the 'action hedge height' level?**

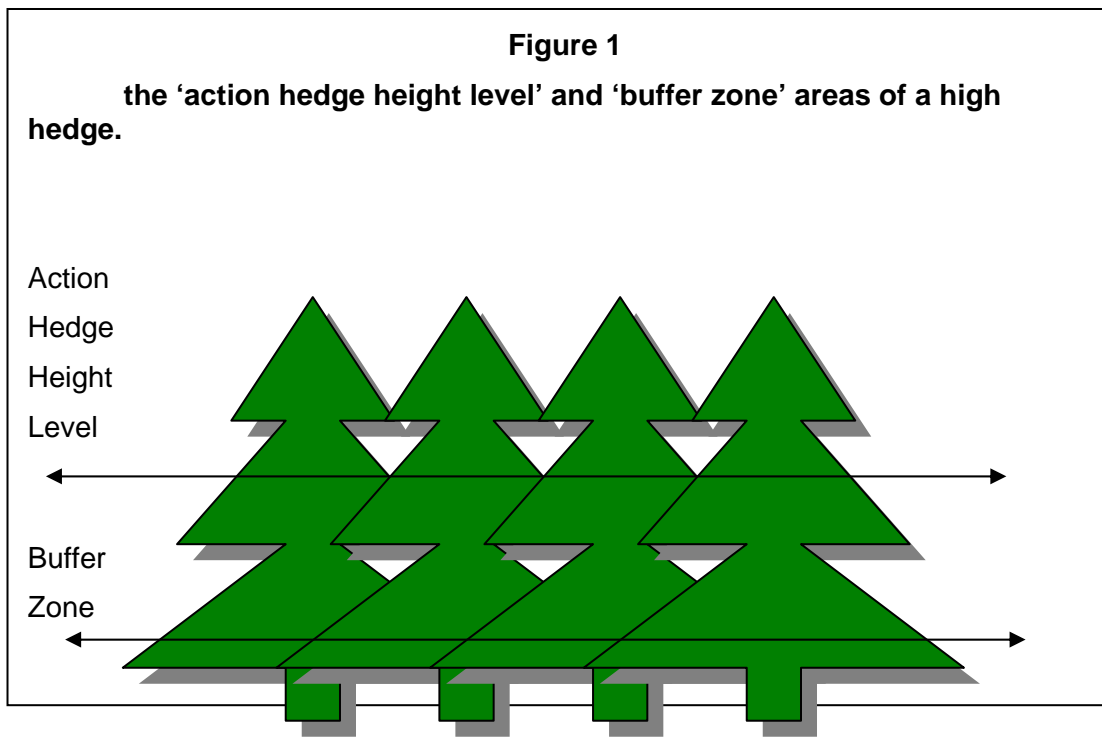
The 'action hedge height' level is the height of a hedge above which its impact is considered to be likely to cause a significant loss of light to a neighbouring property (See Figure.1). Where the height of a hedge is found to be above the 'action hedge height' level, then the Council may require a reduction in the overall height of the hedge by serving a 'Remedial Notice' on the owner of the hedge under the Anti-Social Behaviour Act 2003.

- **What is a 'buffer zone'?**

In practice the Council may require that the overall height of the hedge should be reduced well below the 'action hedge height' level, in order to allow space for the hedge to grow back naturally to this height between annual (or more frequent) trimming. For most hedge types, between 600mm and one metre below the action hedge height would give a suitable margin for future growth within this area called the 'buffer zone' (See Figure.1).

If the overall height of the hedge already falls below the 'buffer zone', it is unlikely to be causing any significant overshadowing and no further action will need to be taken. However, as this situation may change as the hedge grows, a further assessment of the hedge may be required in the future.

It should be noted that the minimum 'action hedge height' or 'buffer zone' level cannot fall below 2 metres.



- **How do you calculate the action hedge height level?**

The actual action hedge height level is calculated using a number of measurements and factors unique to any particular location. These are explained further in Parts 2 and 3.

- First calculate the hedge height for loss of light to the nearby garden(s) (See Part 2).
- Then calculate the hedge height for loss of daylight to the house window(s) (See Part 3).
- Take the lower of these 2 heights.
- If this height is less than 2 metres, round it up to 2 metres.
- The resulting number is the **action hedge height level**.

PART B - ASSESSING LOSS OF LIGHT TO GARDENS

- **Assessing impact of loss of light to garden areas**

A hedge will always create an area of shade next to it. However, the extent and impact of the area of shade on an adjoining garden will depend on the height and orientation of the hedge (i.e. whether it faces north or south in relation to the garden affected). The impact on the amenity of the garden will also depend on its size, relative to the area of shade being created.

These following guidelines apply to any type of garden, even small back yards without a lawn. They are intended to protect light to the garden area as whole rather than particular features within it. The procedure for calculating the 'action hedge height' level for impact on gardens is as follows:

- First you must calculate the 'effective depth' of the garden;
- Multiply the 'effective depth' by a given 'orientation factor' to get the basic 'action hedge height' level;
- Make a further correction if the hedge is set back from the boundary;
- Correct for site slope (if any).

- **Finding the 'effective depth' of the garden.**

In order to find the 'action hedge height' level, you must first calculate the 'effective depth' of the garden that is being affected by the hedge. The following equation can be used:

$$\text{Effective depth} = \frac{\text{Area of garden}}{\text{Effective length of hedge}}$$

The 'area of garden' in the equation, includes outhouses, greenhouses, sheds, patio and yard areas, and pathways within the garden itself. However it does not include any part of the house, garages, or narrow access ways (less than 3m wide) e.g. pathways and driveways to the side of a house. For gardens that are not rectangular in shape, the 'area of garden' to be calculated should be that which has a direct view of most of the hedge (See Fig.2).

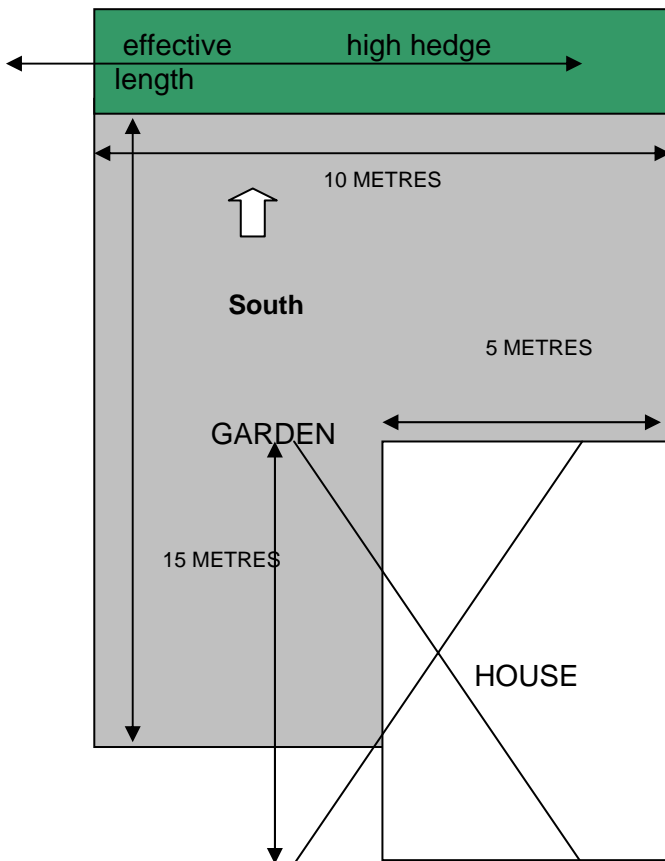


Figure 2
calculating 'effective depth'.

Only the shaded area of the plot is included in the calculation of the effective depth.

In this example, the area of the garden (shaded area) is $10 \times 15 - 10 \times 5 = 100 \text{ m}^2$.

The effective depth of the garden is this area divided by the effective length* of the hedge, which is 10 metres. So $100 \div 10 = 10$

The 'effective depth' of the garden is
10 metres.

Nb. *The effective length of the hedge is that part of the hedge which runs parallel to the garden boundary. This length can be less, but not more, than the overall width of the garden boundary.

- **Using the Orientation Factor.**

The orientation shown in Table 1 refers to the direction faced when looking from the affected garden towards the high hedge.

Table 1

<u>Orientation of high hedge</u>	<u>Factor</u>
North	0.65
North - East	0.55
East	0.4
South - East	0.3
South	0.25
South - West	0.25
West	0.35
North - West	0.5

Once the 'effective depth' of the garden has been calculated, then simply multiply it by the relevant 'orientation factor' shown in Table 1 in order to get the basic 'action hedge height' level. Using the example shown in **Fig.1**, the resultant basic 'action hedge height' for this particular site would be:-

Effective depth of garden is 10 metres x orientation factor 'South' 0.25 = 2.5 metres

Therefore, the 'action hedge height' level would be 2.5 metres from ground level.

- **What if the high hedge is set back from the garden boundary ?**

Sometimes a hedge may not be immediately adjacent to the boundary of an affected garden, but some distance away from it. For example, there may be a driveway between the hedge and the boundary. Or the hedge might be at the far side of the hedge owner's garden. In these situations, a correction to the calculation will need to be made.

Providing that the hedge is set more than 1 metre from the boundary, then the shortest distance between the boundary and the nearest part of the hedge should be added to the action basic action hedge height level. For example, if the hedge in Fig.2 was set back a further 2 metres from the boundary with the affected property, then the following calculation should be made;

Effective depth of garden is 10 metres x Orientation factor 'South' 0.25 + 2 metre set back = 4.5 metres. So the 'action hedge height' level would be 4.5 metres from ground level if the hedge was set back 2 metres from the boundary.

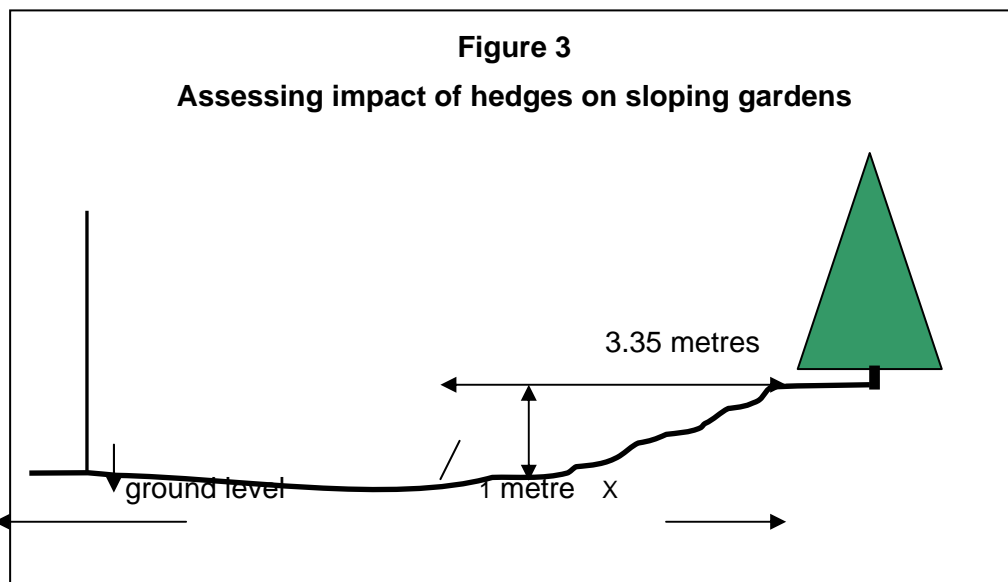
- **What if the garden is sloping or has various levels?**

Where the base of the hedge is above or below the level of the affected garden, or the garden is sloping or terraced, the basic action hedge height needs to be corrected. This applies only if the level of the affected garden changes, as you walk away from the hedge at right angles to it (see Fig.3). Where the slope is along the line of the hedge, so that the hedge runs up or down the slope, no correction need be made.

The procedure is as follows:

- First calculate the effective depth of the garden in metres;
- Then divide by 3 to obtain a measurement for Reference Point X;
- Measure Point X at right angles from the boundary nearest to the base of the hedge;
- Estimate the vertical height difference between point X and the base of the hedge opposite it.
- If the base of the hedge is higher, subtract this height difference from the action hedge height. If the base of the hedge is lower than the point in the garden, add this height difference to the action hedge height.

Again, using the example in Fig.1, we have calculated that the effective garden depth is 10 metres and the basic action hedge height level is 2.5 metres. Now we need to correct for the influence of any difference in ground levels on the affected garden. (See Figure.3)



The effective depth of garden is 10 metres \div 3 = 3.35 (to nearest 0.05m). Point X is measured at 3.35 metres at right angles to the hedge. Point X is estimated to be 1 metre lower than the base of the hedge.

So the basic 'action hedge height' level would be 2.5 metres – 1 metre = 1.5 metre, when assessed from a sloping ground level. As this height is less than 2 metres, the minimum 'action hedge height' level would be rounded up to 2 metres.

PART C - ASSESSING LOSS OF LIGHT TO WINDOWS

• Assessing impact of loss of daylight to windows

High hedges can obstruct daylight to windows. Even if a window faces north, significant loss of diffused sky light can still occur. The extent of the loss of light will depend on the distance from the hedge to the window as well as the height of the hedge.

The guidelines given here are intended for use for the main rooms of a house. These include living rooms, dining rooms, kitchens and bedrooms. Glazed doors can be counted as windows if they form a major source of light to the room. Loss of light to toilets, bathrooms, storerooms and circulation areas (hall, stairs and landing) is considered to be less important and the impact on these windows will therefore not be assessed.

Where a conservatory is affected, then only the opening between it and the original main living room of the house will be taken into account and not the front or side elevations of the conservatory.

These guidelines do not apply to outbuildings such as sheds, greenhouses, summer-houses, garages or workshops. Windows to these structures will not be taken into account.

- **Where a hedge is sited directly opposite a window**

Where the line of the hedge is located parallel to the window wall (Fig.4) measure the horizontal distance between the outside window wall and the boundary on which the hedge stands, divide by 2 and add 1 metre. This gives the basic action hedge height level. (If the hedge is set back further than 1 metre from the boundary, follow the guidance in 'special cases' at the end of this section).

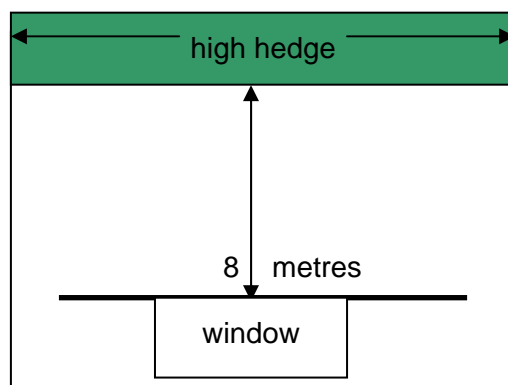


Figure 4 shows the hedge is located eight metres away from the main window.

The basic 'action hedge height' level would be $8 \text{ metres} \div 2 + 1 \text{ metre} = 5 \text{ metres}$.

- **Where a hedge is sited to one side and at right angles to a window**

This is normally where the hedge forms the common boundary between two adjoining houses (Fig.5). Measure the horizontal distance between the centre of the affected window and the boundary on which the hedge stands and add one metre to get the basic action hedge height.

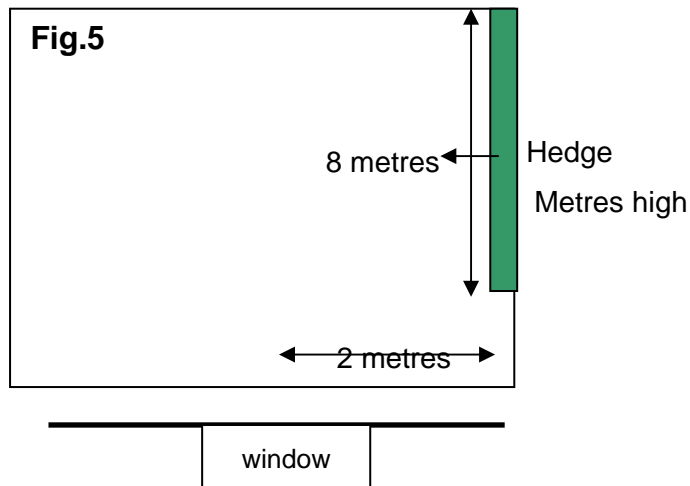


Figure 5 shows the hedge is located two metres to the right of the centre of the window. It is 4 metres in height and 8 metres in length.

The basic 'action hedge height' level would be 2 metres + 1 metre = 3 metres.

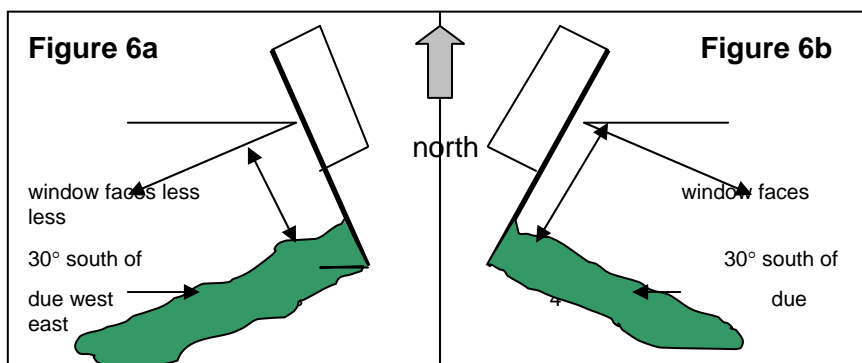
As most of the light loss to the window shown in the example (Fig. 5) will be caused by the section of the hedge closest to it, then only this part of the hedge may need to be reduced in height to overcome the problem. To calculate the length of hedge that needs reducing in height, measure the existing height of the hedge, subtract 1 metre and then double this number. So, if the hedge is currently 4 metres high and 8 metres long;

The length of the high hedge required to be reduced to the 'action hedge height' level of 3 metres would be 4 metres – 1 metre x 2 = 6 metres.

- **Where a hedge is sited at an angle to a window.**

In certain cases, a hedge can block significant amounts of sunlight as well as daylight, particularly in the winter. Problems can occur if the window faces less than 30° south of due east or west and the hedge is located to the south of the window. (See Figs.6a & 6b).

In these cases the basic action hedge height level is found by taking the horizontal distance between the centre of the window and the boundary on which the hedge stands, dividing this by two and then adding one metre to get the action hedge height.



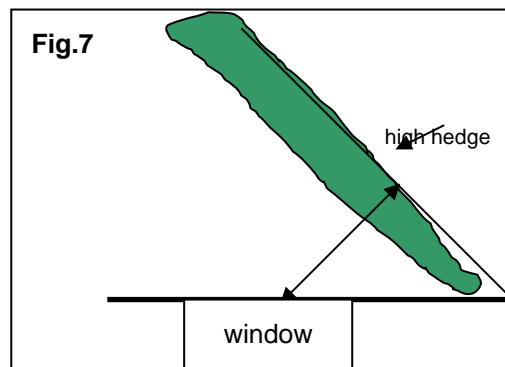
The hedge in both figures 6a and 6b are located 4 metres south of the centre of the window. In this location, the hedge could block substantial amount of winter sunlight.

The action hedge height level would be $4 \text{ metres} \div 2 + 1 \text{ metre} = 3 \text{ metres}$.

The length of hedge along the boundary that needs trimming to achieve this height can be calculated in the example shown in Figure 5.

- **Where a hedge is sited at 45° to a window.**

This can sometimes happen if the hedge is situated on a corner plot (Fig.7). Take the closest distance from the boundary on which the hedge stands to the centre of the window. Multiply this distance by two, divide it by three and add one metre.



For example in figure 7, when measured at 45° the distance from the hedge to the centre of the facing window is 6 metres.

The action hedge height level would be $6 \text{ metres} \times 2 \div 3 + 1 \text{ metre} = 5 \text{ metres}$.

The actual length of hedge along the boundary that needs trimming to achieve this height can be calculated in the example shown in Figure 5.

- **Special cases for windows.**

The guidelines outlined above refer to ground floor windows, which are the most likely to be affected by high hedges. However, there may be cases where the impact needs to be assessed on other windows due to special site characteristics.

Windows affected at first floor level. If the lowest affected window is at first floor level or above, add the height above ground of the floor level of the affected room to the calculated 'action hedge height' level. For example, a flat above a shop might have a floor level three metres above ground. The 'action hedge height', as calculated in the examples shown above would then be increased by 3 metres.

Windows affected in more than one wall. Sometimes the same hedge may obstruct main windows in more than one wall. This can happen if there is a rear extension to a house, for example. In this case the 'action hedge height', is calculated separately for each window wall, and the lowest value taken.

Varying land levels. If the land slopes or is stepped from the window wall to the hedge, the 'action hedge height' level needs to be modified to take account of this. If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height. If the base of the hedge is lower, add the height difference to the calculated action hedge height.

Where a hedge is set back from the boundary. If the hedge is set back from the adjoining boundary by at least one metre, the distance from the window should be measured to the hedge itself, not the boundary. From the affected window, look towards the hedge and estimate which part of it appears highest (i.e. the outside or centre section of the hedge). Then measure the distance from the window to that part of the hedge. The distance is always measured at right angles from the centre of the window to the line of the hedge and the action hedge height calculated as shown in the illustrated examples above (see figures 4 – 7).

PART D - OTHER RELEVANT FACTORS TO CONSIDER

As the Introduction note explained, a methodology based on simple calculations cannot cover every situation and there are circumstances, which may mean a different 'action hedge height level' is chosen.

These may include some of the following cases:

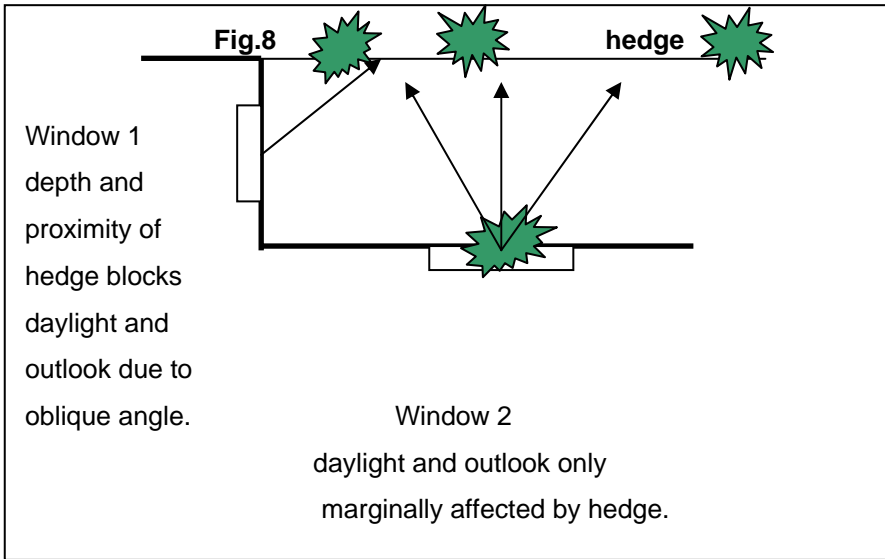
- Where hedges cover more than one side of the garden, normally different action hedge heights will be calculated for each side individually. However, to allow for the cumulative impact of the hedges a lower 'action hedge height' level will be chosen in some circumstances. One way of doing this would be to trim all the hedges to the lower of the two (or three) calculated action hedge heights.
- If there is a building located behind and close to the hedge, the hedge itself might not be blocking any extra light at this particular point to either the neighbouring garden or to any facing windows.
- If a hedge opposite a window only covers a part of the field of view or if there are substantial 'gaps' in the hedge the 'action hedge height' level may be raised above the measurement calculated by first considering its overall effective height.

• Assessing Gaps

For a hedge opposite a window, a rule of thumb measurement is that x% gaps will lower the effective height of the hedge above the window by x%.

For example, suppose the centre of the window is 1.5m above ground and opposite a hedge 5.5m high. The height of the hedge above the window is 4m. If the hedge had 25% gaps, it would have a similar effect to that of a hedge $4 \times 25\% = 1\text{m}$ lower. In other words a 4.5m high hedge.

This rule of thumb only works well where the hedge is opposite the window and not too close to it. Figure 8 shows how gaps in a hedge viewed from an oblique angle tend to disappear and have little effect on light. So for a window with a hedge to one side, the effect of gaps in the hedge is much less.



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