

Agenda Item

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| Meeting: | Development Control Committee |
| Date: | Wednesday 11 January 2006 |
| Subject: | Cost of Fees for High Hedge Formal Complaints |
| Responsible Officer: | Andy Parsons, Group Manager Planning & Development |
| Contact Officer: | Glen More, Enforcement Manager |
| Portfolio Holder: | Councillor Keith Burchell, Planning, Development and Housing |
| Key Decision: | No |
| Status: | Part 1 |

Section 1: Summary

This report seeks agreement to introduce a charge to facilitate the processing of complaints under the new High Hedges legislation.

Decision Required

Recommended (for decision by the Development Control Committee)

- 1 The Committee agree the introduction of a charging structure, as set out in this report, for the processing of complaints about high hedges under Part 8 of the Anti-Social Behaviour Act, 2003 legislation.
- 2 The Committee agree that such complaints may be determined under the Delegated powers of the Group Manager Planning & Development, or his nominated deputy.

Reason for report

The new legislation came into effect on 1st June, 2005 (Part 8 of the Anti-Social Behaviour Act, 2003) which gives local authorities powers to deal with complaints about high hedges.

Responsibility for dealing with this legislation has recently been passed to the Planning Enforcement Team. A formal complaint needs to be accompanied by whatever fee has been set by the Council.

Whilst there are well established procedures for assessing the financial burdens imposed on Council's by new initiatives, and for providing appropriate resources through the revenue support grant, the Government have also taken a view of what proportion of the cost to Councils the complainant should pay. Accordingly, the Act allows Council's to charge a fee for determining a complaint about a high hedge. Furthermore, the Government advise that should they wish, Council's may charge different amounts to different groups of people, as Council's might wish to offer the service at a reduced fee, or for free, to those with disabilities, the elderly and those receiving benefits, while making a charge to others based on the cost of providing the service.

Taking account of this advice, it is proposed that the fee be placed at £200 plus an additional £100 for administration. This brings the charge in line with the approximate average fee charged by other councils (£300). It is proposed that the £200 fee should not be charged to the elderly and those claiming benefits. The £100 administration fee will always be charged. It is a requirement that the fee is payable on submission of an application, the application will not be valid until the correct fee has been paid.

If the Council are able to resolve the matter without the issue of a decision notice, the fee of £200 will be returned to the applicant (where such a fee has been paid). The administration fee of £100 will be retained. If the Council issue a decision notice the Council will retain all fees.

It is proposed that if a notice requiring work to be carried out is issued as a result of the complaint, it will not be necessary to retake a fee if the same complainant wishes to make a complaint that the same neighbour is not complying with the decision notice, at a future time.

Benefits

To enhance the environment of the Borough.

Cost of Proposals

Contained within current service budget and resources.

Risks

If the Council does not set a fee it is open to the accusation that such investigations are not in line with other Council charging policies.

Implications if recommendations rejected

There will be an additional burden on the budget of the Department, which in turn will impact on performance and service delivery.

Section 2: Report

2.1 Brief History

New legislation came into effect on 1st June, 2005 (Part 8 of the Anti-Social Behaviour Act, 2003) which gives local authorities powers to deal with complaints about high hedges. Responsibility for dealing with this legislation has recently been passed to the Planning Enforcement team.

The Anti-Social Behaviour Act 2003 allows the Council to charge a fee to the complainant when they submit their formal hedge complaint. According to the ODPM's 'Frequently Asked Questions on High Hedges', this is because the Government followed well-established procedures for assessing the financial burdens imposed on Councils by new initiatives such as the Anti-Social Behaviour Act 2003. In following these procedures, the Government has taken the view that a portion of the costs to councils should be met through fees to be paid by complainants. Several reasons have been put forward as to why this is thought fair and reasonable by the ODPM:

- 1) Most people who responded to questions about fees in the 1999 consultation *High hedges - possible solutions* thought it was fair that the complainant should pay something for the Council to intervene in their hedge dispute.
- 2) Payment of a fee will encourage people to try to settle these disputes amicably, making sure that involvement of the Council really is a last resort.
- 3) A fee also helps to deter frivolous or vexatious complaints.
- 4) It is common practice for Councils to charge a fee for a service which is likely to benefit an individual (in this case, the complainant) rather than the community in general.

Importantly, the Government does not make a decision as to what is to be charged for the high hedge complaints. Instead it is up to each Council to make a decision. Councils are therefore free to choose whether they pass on to complainants, through the fee, the full costs

of providing this service, or whether they fund a portion either from central Government grant or through council tax.

It is beneficial for discounts to be given to the elderly, disabled people and those receiving benefits since they should be able to make formal complaints if they feel it is necessary.

It is beneficial for the fee be made returnable if it is not necessary to issue a remedial notice since this means the amount charged is proportionate to work undertaken. Similarly, this is the reason it is proposed for it to be unnecessary to retake a fee if the same complainant wishes to make a complaint about the same hedge, if a notice has been issued.

2.2 Options Considered

The ODPM indicate that most people who responded to questions about fees in the 1999 consultation *High hedges - possible solutions* thought it was fair that the complainant should pay something for the Council to intervene in their hedge dispute.

Research by Harrow Council has found complaint charges either proposed or applied at a selection of other councils to be as follows:

| Council | High Hedge Formal Complaint Fee |
|-----------------|---------------------------------|
| Enfield | £200 |
| Gloucester | £300 |
| Richmond | £300 |
| Westminster | £340 |
| Birmingham | £350 |
| Charnwood | £350 |
| Three Rivers DC | £395 |
| Hertsmere | £400 |
| New Forest | £450 |
| Hillingdon | £500 |
| Stockport | £500 |

In addition, a number of councils are applying exemptions or discounts for the elderly, disabled people and those claiming benefits.

| Option Considered: | Comment: |
|--------------------|---|
| Fee below £100 | This would not deter frivolous or vexatious complaints. This would be out of step with other Councils. |

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| Fee of £200 | This would not deter sufficient frivolous or vexatious complaints. This would be out of step with many other Council's charges. |
| Fee of £400 or more | This would not be affordable by many people who feel it is necessary to make a high hedge complaint. This would be out of step with many other Council's charges. |
| Standard fee without deductions in certain circumstances. | This would mean making formal complaints would not be affordable by many people who feel it is necessary to make a high hedge complaint. This would be out of step with many other Council's decisions. |

2.2 Proposed Charging Structure

It is proposed that the fee be placed at £300, to include £100 for administration. This would bring the charge in line with the approximate average fee charged by other councils (£300). It is proposed that the £200 fee should not be charged to the elderly (elderly people will be determined as those in receipt of a state pension), disabled people (disabled status will be determined in the same manner as is used to determine the right to free planning or certificate of lawfulness applications) and those claiming benefits. The £100 administration fee will always be charged. It is requirement that the fee is payable on formal submission of a complaint application; the application will not be considered to be valid until the correct fee had been paid.

If the Council are able to resolve the matter without the issue of a decision notice, the fee of £200 will be returned to the applicant (where such a fee has been paid). The administration fee of £100 would be retained. If the Council issue a decision notice the Council would retain all fees.

It is proposed that if a notice requiring work to be carried out is issued as a result of the complaint, it will not be necessary to retake a fee if the same complainant wishes to make a complaint that the same neighbour is not complying with the previously issued decision notice.

2.3 Consultation

None undertaken.

2.4 Financial Implications

All costs must be met from existing departmental budgets. This will generate a small amount of income for the Council.

2.5 Legal Implications

Contained within report.

2.6 Equalities Impact

The proposed charging structure would reflect the diverse elements within the borough.

Section 3: Supporting Information / Background Documents

Background Documents: Section 8, Anti-Social Behaviour Act 2003.

High Hedge Complaints, Prevention and Cure (ODPM).