

PRACTICE NOTE 11

HIGH HEDGES – Guidance for the Complainant

The High Hedges (Guernsey) Law, 2016 – Your Neighbour’s Hedge Your Questions Answered

Introduction

Most hedges provide a suitable garden boundary but some can cause problems for neighbours when they are unsuitable for the particular location, are not properly maintained or are allowed to grow too tall. Some hedge species grow at a rapid rate and so can have adverse effects for those living in their shadow. Sometimes the person planting the hedge is unaware of the size it may reach when mature.

The High Hedges (Guernsey) Law, 2016 (“the Law”), which comes into effect on Monday 2nd October 2017, provides a remedy where neighbours disagree on what should be done about a high hedge. A high hedge is a hedge formed predominantly of one or more evergreens¹ of more than 2 metres in height which form a barrier to light.

If your neighbour’s hedge is blocking your light, then it is important you discuss this with them to try to reach a compromise. However, if you cannot agree, after taking all reasonable steps to do so, on what should be done, then you can ask the Development & Planning Authority (“the Authority”) to decide whether any action should be taken in relation to the hedge. As part of its decision the Authority will have to decide whether your neighbour’s hedge is a type of hedge which is covered by the Law. The Law is intended to provide a last resort, when all other reasonable attempts to resolve the problem by discussion and other means have failed.

If the Authority considers that your complaint about the hedge is justified then it will issue a Notice setting out the actions which your neighbour needs to take either to remove the problem caused by the high hedge or to ensure a problem does not occur in the future.

This guidance is issued under section 31 of the Law. It is a summary of the Authority's interpretation of the legal provisions for guidance purposes and is not intended to be exhaustive or a substitute for the full text of the legislation.

¹ An evergreen is an evergreen or semi-evergreen tree or shrub.

Some Basic Terminology in this Guidance

If you are the person bringing a high hedge complaint, you are referred to as “the Complainant” and the complaint is referred to as a High Hedge Complaint. Your neighbour is referred to as the Complainant’s neighbour as they are “the owner or occupier of the neighbouring land” which is generally where the high hedge is situated.

What is a High Hedge?

The Law is specific about this and applies only to a high hedge which:-

- is formed wholly or predominantly by one or more evergreens
- rises to a height of more than 2 metres above ground level, and
- forms a barrier to light.

What is an Evergreen?

An evergreen is an evergreen or semi-evergreen tree or shrub.

Evergreens are those whose leaves remain alive or have green leaves all year round. Some common examples of evergreen species are Leyland cypress, Holm oak or Bay.

Semi-evergreens are those which either shed their foliage for a very short time in late winter, rejuvenating quickly and those that lose most, but not all, of their foliage for a fraction of the year. Examples of semi-evergreen trees are Lucombe oak (*Quercus x hispanica*) which is a variable hybrid resulting from crosses of Cork oak and Turkey oak and Turner’s oak (*Quercus x turneri*) which is a cross between Evergreen oak and English oak. An example of a semi-evergreen shrub is Privet (*Ligustrum ovalifolium* and varieties of *L. vulgare*).

What is not an Evergreen?

Species which are not evergreen and are, therefore, not covered by the Law are:

- all deciduous species, which lose their leaves in winter;
- Beech or Hornbeam; which might retain some foliage for most of the year but leaves are brown and dead in winter;
- bamboo; which is a grass; and
- ivy; which is a climber.

How will the 2 metres be measured?

The 2 metres height will be measured from natural ground level, usually at the base of the trunk or main stem of the trees or shrubs forming the high hedge.

What is a barrier to light?

If the hedge has gaps at more than 2 metres above ground level which significantly reduce its overall effect as a barrier it cannot be regarded as a barrier to light for the purposes of the Law. An example would be that the hedge has been cut into pyramid shapes which allows light through to the neighbouring land.

Who can make a High Hedge Complaint, and How?

If you are the owner or occupier of a domestic² or residential³ property and you believe that your neighbour's hedge is preventing the reasonable enjoyment (domestic property) or use (residential property) of your land you can make a complaint. You can also make a complaint even if the property you own is unoccupied if you believe that the reasonable enjoyment or use of a prospective occupier will be adversely affected by the high hedge.

A High Hedge Complaint can be made to the Authority using the High Hedge Complaint form which is on the States of Guernsey Website at www.gov.gg or is available from the Authority's offices. You will need to provide location plans and photographs to identify the high hedge in question and help describe its effect on the reasonable enjoyment or use of your property together with the relevant fee.

What must the Complainant do before making a High Hedge Complaint?

The Law requires that before making a High Hedge Complaint, you must take all reasonable steps to resolve the issues in relation to the High Hedge and the High Hedge Complaint cannot be registered or fully considered until this is done. In deciding whether you have taken all such reasonable steps, you must consider this guidance.

You will need to describe in your complaint what you have done to try to resolve the matter, and provide copies of all of the relevant documents to evidence this. For example, before making a High Hedge Complaint, you should normally have taken all of the following steps:

- approached your neighbour either face to face or by telephone and discussed the problem with them;
- if that has not reached a satisfactory outcome then you must send your neighbour a letter or email setting out the issue and asking them to take action to resolve the problem;
- if you are still dissatisfied then you should inform them of your intention to complain to the Authority and ask them again to take action to resolve the problem before you make a complaint;
- if you decide to make a High Hedge Complaint, you must supply them with a copy of your completed Complaint Form and supporting evidence and ask them to reconsider their position one final time.

If you have taken all these steps but you have not been able to resolve your complaint, then you can submit a High Hedge Complaint to the Authority.

² Domestic property is a private dwelling.

³ Residential property includes care home or visitor accommodation.

What is not a High Hedge Complaint?

The following are not valid grounds for complaint under the Law:

- problems that are not directly connected to the height of the hedge and its action as a barrier to light, such as poor television reception, concerns about appearance, or that worry is making you ill
- the effect of a high hedge on a private view
- the effects of tree or hedge roots

A Complainant can only make a High Hedges Complaint about hedges on land belonging to a neighbour. It does not apply to party hedges which are jointly owned by neighbours. Where a hedge is party-owned, it will be necessary to reach agreement if either thinks that it is too high.

What fee is charged for a High Hedge Complaint?

A fee is charged by the Authority to deal with a High Hedge Complaint and must be submitted with the High Hedge Complaint Form. The fee is £350 for each individual complaint.

Where two or more complaints are submitted together by two or more complainants occupying separate properties but in relation to the same high hedge, the fee is £150 per complaint subject to a minimum total fee of £350 shared equally between all the Complainants.

The same fee applies to an appeal to the Planning Tribunal against the decision of the Authority in respect of a High Hedge Complaint.

In exceptional circumstances, where there would be undue financial hardship to the Complainant or an appellant, there is provision for the Authority, and the Chairman of the Planning Panel on appeal, to reduce or waive the fee.

What Procedure is followed by the Authority when dealing with Complaints?

Where the Authority decides to proceed with your High Hedge Complaint, it will give your neighbour and every other owner and occupier of the land, a copy of your High Hedge Complaint and allow them up to 28 days to make written representations on it to the Authority. A copy of any representations made by them will then be given to you.

At the end of the 28 day period, the Authority must decide whether your High Hedge Complaint is justified and, if so, what if any action should be taken to remedy the adverse effect of the high hedge or prevent its recurrence.

When making its decision, the Authority must have regard to all the relevant circumstances, including any written representations made, the extent to which the hedge contributes to the privacy and enjoyment of your neighbour's land or the amenity of the area, and, where relevant, the location of the hedge within a Conservation Area and the existence of any Tree Protection Order in relation to the hedge.

In considering a complaint, the Authority will have regard to guidance entitled “Hedge Height and Light Loss” to the extent that it is consistent with the provisions of the High Hedges (Guernsey) Law, 2016 and other relevant Guernsey legislation, practices and procedures. Whilst the guidance provides useful practical guidance, it includes references to UK bodies and to UK legislation in relation to high hedges which does not apply in Guernsey⁴. The Authority may also consult with relevant experts such as the States Arboricultural Officer.

What Decisions Can the Authority Make?

Complaint not proceeded with

It is possible that after considering your High Hedge Complaint, the Authority may decide not to proceed with your complaint as:

- the Authority decides that your Complaint is frivolous or vexatious
- the Authority decides that you have not taken all reasonable steps to resolve the issue.

If the Authority decides not to proceed with your complaint, it must notify you with reasons. There is no right of appeal against these decisions but you can look at the Authority’s guidance on the necessary steps you must still take to resolve the issue before making a further complaint.

No Action

The Authority may decide to proceed with your Complaint but then decide having considered it further that –

- your complaint is not justified; or
- that your complaint is justified but no action should be taken.

In either of these cases, the Authority must notify you and your neighbour of its decision and the reasons for it. You have a right of appeal against such decisions to take no action.

The Issue of a High Hedge Notice

Where the Authority decides that the allegation contained in the complaint is justified and that action should be taken, it must issue a High Hedge Notice as soon as practicable after making that decision.

The High Hedge Notice will specify:

- the high hedge that is subject to the Notice and the property that is adversely affected;
- the date on which the Notice takes effect;
- any initial action to be taken by your neighbour and the period for this;
- any preventative action your neighbour needs to take to prevent recurrence;
- possible consequences for your neighbour of failing to comply with the High Hedge Notice and rights of appeal.

⁴ Contains public sector information licensed under the Open Government Licence v3.0.
<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

A High Hedge Notice cannot require the reduction in the height of the hedge to less than 2 metres above ground level or the removal of the hedge, or anything to be done sooner than 28 days from when the Notice is issued.

The Notice, and the actions it requires to be taken in respect of the high hedge, runs with the land on which the High Hedge is situated. This means it is not something which applies solely to the recipient of the Notice but applies to all current and future owners or occupiers of that land.

The Authority has powers to withdraw or amend a Notice after issue.

How are High Hedge Notices recorded?

The Authority must establish and maintain a Register of High Hedge Notices (“the Register”). The Register must record brief particulars of certain matters including of the Notice, the initial and preventative action required to be taken, any enforcement action taken by the Authority and include a copy of any appeal decision.

The Register is kept electronically on the States website and is available for inspection by the public free of charge.

Copies of any details on the Register will be provided on payment of a fee to any person on written request.

Who can Appeal against a decision regarding a High Hedge, and how?

There are certain rights of appeal provided for both the recipient of the Notice and the Complainant under the Law:

- The Complainant has a right to appeal if the Authority decides that the complaint is not justified or that no action need be taken in relation to the high hedge.
- Both the Complainant and the recipient have a right to appeal against the issuing of a Notice and, in certain circumstances, the withdrawal or amendment of a Notice.

Appeals must be made to the independent Planning Tribunal within 28 days of the Authority’s decision. An appeal can only be made on certain grounds that are specified in the Law. If these grounds are not established by an appellant then the appeal must be dismissed. The Notice being appealed has no effect until the appeal has been determined or is withdrawn.

There is no right of appeal where the Authority decides not to proceed with a complaint because the Complainant has failed to take all reasonable steps to resolve the subject matter of the complaint or where it decides a complaint is frivolous or vexatious. If this occurs then please see "What must the Complainant do before making a High Hedge Complaint".

Detailed guidance on High Hedge Appeals has been issued by the Planning Panel and can be found at www.gov.gg/planningpanel.

Can someone dealing with a High Hedge Complaint enter my property?

The Law provides qualified powers for a person authorised by the Authority or the Planning Tribunal on appeal to enter land to obtain information required to deal with the complaint, to decide whether a high hedge notice has been contravened or to determine an appeal. The consent of the occupier or a warrant is required to enter a dwelling or land within the curtilage of a dwelling which includes most gardens. The Law also allows samples of trees or shrubs that appear to form part of the high hedge to be taken.

What happens if a High Hedge Notice is contravened?

If the requirements of a High Hedge Notice are not complied with, without reasonable excuse, then the person who fails to comply with the Notice is guilty of a criminal offence and can be convicted and fined. They can be convicted again if the person continues to fail to comply.

The Court may also make an Order requiring that a person convicted complies with the Notice, and the person will be guilty of a further offence if they fail to comply with the order.

Where a person continues to fail to comply with a court order requiring them to comply with a Notice, they are guilty of a further offence and a fine can potentially be imposed for each day the offence continues.

The Law also provides that where the action required has not been taken in accordance with the Notice, a person authorised by the Authority may enter the land after giving at least seven days' notice and take the action but, again, the consent of the occupier or a warrant is required to enter a dwelling or land within the curtilage of a dwelling such as most gardens. The reasonable costs of the Authority for this action can then be recovered from the recipient of the Notice as a civil debt.

It is also an offence to provide false or misleading information or to obstruct the Authority in carrying out its functions under the Law for which a person may be convicted and fined.

This note is issued by the Development & Planning Authority to assist with the understanding of the provisions of the Law. It represents the Authority's interpretation of certain provisions of the legislation and is not intended to be exhaustive or a substitute for the full text of the legislation copies of which are available from the Greffe. Electronic copies are also available at www.guernseylegalresources.gg Substantive queries concerning the legislation should be addressed to the Authority by email at planning@gov.gg. The Authority does not accept any liability for loss or expense arising out of the provision of, or reliance on, any advice given. You are recommended to seek advice from an independent professional advisor where appropriate.