

Report to Cabinet

04 June 2020

By the Cabinet Member for Planning and Development

KEY DECISION



**Horsham
District
Council**

Not Exempt

Proposed increase in fee for High Hedge complaints.

Executive Summary

The **Anti-social Behaviour Act 2003** was introduced on the 2 December 2003.

Part 8 of the Act makes provision for local councils to determine complaints about high hedges submitted by the owners/occupiers of domestic properties adversely affected by evergreen hedges over 2 metres high. If it is considered by the council that the hedge in question is overly high for its context, and causing a statutory nuisance, then councils can order the owner of a high hedge to take action to put right the problem and stop it from happening again.

S.68(1)(b) of the Act allows councils to charge a fee for High Hedge complaints, the intention of which was to cover the costs of administration and determination of each case. Horsham District Council's present fee is £300.

Following an internal examination of the resources required to administer and determine High Hedge cases, it has been found that the existing fee fails to cover the costs involved, representing only around 45% of the internal costs incurred.

A benchmarking exercise examining the fees charged by 20 other local authorities in Surrey, Sussex and Kent has revealed that 16 of these councils have increased their fees since the introduction of the legislation, fees now ranging between £350 and £800.

It is accordingly recommended that the fee in question should be raised to cover the costs of administration and determination as the Act originally intended, in line with the level of resource needed to achieve this, and that the fee is reviewed each year and linked to inflation.

Recommendations

Cabinet is recommended to:

- 1) Approve an increase in the fee for the determination of High Hedge complaints to £645.
- 2) To increase the fee each year in line with CPI inflation.

Reasons for Recommendations

- 1) To cover the costs of administration and determination of High Hedge complaints as intended under the legislation;
- 2) To ensure that the charge for High Hedge complaints keeps up with inflation.

Background Papers:

1. Costings analysis – appendix A.
Analysis of resource needed to deal with complaints (*April 2020*).

Wards affected: All.

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Background Information

1 Introduction and Background

- 1.1 The law giving local councils powers to deal with complaints about High Hedges is contained in Part 8 of the Anti-social Behaviour Act 2003 and the High Hedges (Appeals) (England) Regulations 2005. S68(1)(b) of the Act allows councils to charge a fee for High hedge complaints, "*as the authority may determine*".
- 1.2 Subsequent to an initial guideline issued following the introduction of the Act, suggesting a fee of "*between £280 and £320*", the Government have not issued any further guidelines on fees for the service. The fee of £300 adopted by the Council in 2003 remains in force. As this has been found to be insufficient to cover the costs of administration and determination of a High Hedge case, the Council is effectively subsidising a service that will benefit an individual (in this case, the complainant) rather than the community in general.
- 1.3 It is considered that an increase in the fee will bring the Council into line with the fees being charged by the great majority of other local councils in SE England, and will filter out frivolous or vexatious complaints, without putting off those with a genuine and serious grievance. It will also encourage people to try to settle these disputes amicably, making sure that our involvement really is a last resort, as required under S. 68(2) of the Act.
- 1.4 S.68(7)(1) of the Act states that a fee determined under S.68(1)(b) "*must not exceed the amount prescribed in regulations made in relation to complaints relating to hedges in England, by the Secretary of State*". However, to date the Secretary of State has not used his powers to prescribe, through regulations, a maximum fee. Determination of the level of the fee remains the discretion of each local authority.

2 Relevant Council policy

- 2.1 Para. 5.3.4 of the 2019-2023 Corporate Plan sets out the principle that the Council will "*Continue to manage our finances prudently and identify new sources of revenue to balance our budgets as funding from central government reduces*". At the same time, para. 3.1.2 sets out our commitment to "*Address anti-social behaviour within our communities....*"

3 Details

- 3.1 From the Costings Analysis (Appendix A, below) it can be seen that the administration and determination of High Hedge complaints requires the average provision of 2 hours of input from the Specialist Support Officer and 12 hours from the Arboricultural Officer. At present hourly rates, this equates to a cost to the Council of £645 per case.
- 3.2 The process for administering each complaint has been streamlined to be as effective as possible.

- 3.3 These figures do not include the costs incurred when an appeal is made against the Council's adjudgement in a case. The law permits either the complainant or the hedgeowner, or both, to appeal against a decision each party sees as unreasonable. The nature of a High Hedge complaint (where neighbour relations have broken down), and the absence of any fee to the aggrieved party for an appeal to the Planning Inspectorate, results in a very high appeal rate, presently running at 46% of all of the decisions made by the Council since the introduction of the Act (13 appeals out of 28 complaints). As can be seen at Appendix A, the resource required to deal with an appeal can result in an additional £103 of internal expenditure per case.
- 3.4 It is not, however, considered reasonable to include the cost of any possible appeal onto the initial fee for a High Hedges case.
- 3.5 It should be noted that the figures do not include the cost of dealing with ongoing actions that arise from any requirement on landowners to reduce hedge height. If owners delay re-trimming of hedges to ensure the hedge does not exceed the agreed height, it may be necessary for the Council to serve a notice under S.68 (3)(b) of the Act to complete this work. Whilst this does incur a cost to the Council, it would not be appropriate to incorporate this into the general charge, as it is not applicable to all cases and it is therefore not justifiable to incorporate this into the overall fee.
- 3.6 From the Benchmarking Analysis a small minority of councils have retained their fees at their original rate (4 of the 20 examined). Sixteen have increased their fees in recent years. The average fee of those that have increased their fees is £532. The highest, Mole Valley District Council, is set at £800.
- 3.7 Given the lack of recent formal guidance as to how much to charge for a High Hedge complaint, it has long been held good practice to ensure that the costs involved are covered by the fee, at least until the appeal stage or beyond. It was not intended that the right to charge a fee was designed to become a money-making exercise for councils, though at the same time, as a High Hedge complaint is by nature a civil matter between private property owners, nor was it intended that the taxpayer should subsidise the complaint.
- 3.8 Under the Regulatory Impact Assessment, carried out in 2005 under the Explanatory Memorandum to the High Hedge (Appeals) (England) Regulations 2005, the principle of the Act allowing Councils to charge a fee was upheld, and, moreover, para. 12 of the 'Analysis of Consultation Responses' (contributed to by Horsham District Council) set out the directive that "*we will not, therefore, be prescribing a maximum fee*".
- 3.9 It is accordingly considered both good practice and reasonable to increase the fee for High Hedge complaints to a figure that covers the Council's costs, at least in the initial administration and determination of cases. The revised charge is proposed at £645 per case. It is recognised that when compared with other neighbouring authorities that have put up fees, this is at the higher end of the scale. However, this is considered reflective of the fact that this is the most up to date review and it is therefore indicative of current costs.

- 3.10 It is customary and in line with the Constitution for the Council to consider an increase in fees for any service on an annual basis, where such a fee is not limited by statute. The fee charged for the High Hedge complaints service is not limited so, and it is considered therefore to be reasonable and good practice for the fee to be reviewed each year and linked to inflation, and revisited periodically in full to check that the assumptions on the average hours remain valid (see appendix A).

4 Next Steps

- 4.1 Following Cabinet, the fee for High Hedge complaints shall be increased, and this publicised on the complaint form and on the Council's website.

5 Views of the Policy Development Advisory Group

- 5.1 *[Awaiting results from PDAG].*

6. Consultation

- 6.1 The Act does not require that the Council should carry out any public consultation on this matter, and this is not considered necessary as the justification to increase fees is to ensure that the Council can continue to cover its costs.
- 6.2 Internal consultation has been undertaken with the Head of Finance, Head of Legal and the Monitoring Officer. Their comments have been incorporated into this report.

7 Other Courses of Action Considered but Rejected

- 7.1 The option of not increasing the fee for High Hedge complaints will result in the community at large having to subsidise what are private disputes between neighbours. This is seen as contrary to the spirit and thrust of the Act.

8 Resource Consequences

- 8.1 Implementation of this proposal incurs extremely limited internal costs, these being limited to the staff time it will take to alter the advertisement of our fees for High Hedge complaints on our website. There will however be a wider financial benefit to the Council in implementing this change, as each case that currently comes forward is currently being subsidised to the tune of £345.

9 Legal Consequences

- 9.1 The Act allows Councils to charge a fee under S.68(1)(b). At present there is no legal restriction on a maximum fee. The Council has the discretion to set the fee and is free to charge for this service as it thinks fit.

10 Risk Assessment

- 10.1 It is not considered that the proposed action carries any element of risk to the Council.

11 Other Considerations

Equalities Implications

- 11.1 There is a risk that increasing the fee for this service may deter those on low incomes from making a complaint and therefore not receive redress to a justified complaint.
- 11.2 It should however be noted that the determination of High Hedge complaints is by nature a civil matter between private property owners, where this has not been possible to resolve on an informal or more amicable basis. As has already been stated in this report it is not the intention of the High Hedge regulations that the taxpayer should subsidise these complaints. This would be the case if variable charging were implemented. This would also add to the costs of the complaint process, as it would be necessary to implement additional checks to ensure that discount claims were not being made fraudulently. It should also be noted that as complaints arise from private landowners, there is a relatively low probability of these individuals falling into a low income category in any event.
- 11.3 Taking these matters into account it is not considered that it would be appropriate to implement variable charging at this stage. However this matter should be kept under review and should significant difficulties be identified, (such as a large volume of queries which do not subsequently translate into full cases, or direct complaints in relation to this issue), the case for variable fees should be reconsidered.

Appendix A

Analysis of resource needed at administrative and officer level to deal with complaints (April 2020).

Stage of Process	Total hours: support officer	Total hours: Arboricultural Officer	Notes
Pre complaint advice and assistance	0.6		High hedge forms are notoriously complex which generates phone queries
Registration of complaint	0.75	0.15	Arboricultural Officer determines whether case is acceptable. Legal requirement to cc both parties into letters
Assessment of complaint	0.15	3.8	Complex to arrange site visit as both owners must agree. Average travel times used as distance to site varies depending on location of complaint.
Decision report	0.55	7.7	Formal paperwork legally required to be in hardcopy
Post decision queries		0.6	
Total hours	2.05	12.25	
Hourly rate	£28.00	£48.00	
Total Cost	£57.40	£588.00	
Grand Total	£645.40		

Appeal Process	Total hours: support officer	Total hours: Arboricultural Officer	Notes
Internal registration	0.1		
Reply to PINS re questionnaire	1.0		
Appeal site visit, with travel		1.5	Based on average travel distance
Total hours	1.1	12.25	
Hourly rate	£28.00	£48.00	
Total Cost	£30.80	£72.00	
Grand Total	£102.80		