

**THE HIGHLAND COUNCIL**  
**PLANNING, DEVELOPMENT & INFRASTRUCTURE**  
**COMMITTEE**

Agenda Item	14
Report No	PDI 35/15

**3 JUNE 2015**

**HIGH HEDGES (SCOTLAND) ACT 2013**

**Report by Director of Development and Infrastructure**

**Summary**

On 1 April 2014, the High Hedges (Scotland) Act 2013 came into force, and introduced new powers for Councils in Scotland to take action against high hedges which form a barrier to light and adversely affect the enjoyment of residential properties.

At its meeting in May 2014 the Planning, Development & Infrastructure Committee agreed the guidance and fees associated with high hedge notice applications subject to a review being undertaken within 12 months of implementation with any proposed changes reported back to the Committee.

**1. Background**

- 1.1 The High Hedges (Scotland) Act 2013 ("the Act") came into force on 1 April 2014. The Act introduces powers for Councils in Scotland to take action against high hedges which form a barrier to light and, in doing so, adversely affect the enjoyment of a residential property.
- 1.2 All high hedge applications are dealt with by the HQ Planning Enforcement Team. They also deal with enforcement of any high hedge notices served by the Council. This has enabled a specialism to be developed as well as providing for close working with the Council's Forestry Officers.
- 1.3 Since coming into force, the Council has received eight high hedge notice applications. Of these, three were not high hedges as defined by the Act and therefore not progressed. Four have been processed, and have resulted in notices being served. The eighth is currently under consideration. There has been one appeal so far, by an applicant against our decision; this was dismissed. All cases have required input from the Council's Forestry Officers.
- 1.4 The Service has received several enquiries relating to high hedge notice applications that have not progressed to an application. There have also been two cases where complaints were raised regarding the cost of a high hedge notice application.

## **2. Review of High Hedge Guidance**

- 2.1 In considering the outcomes achieved to date, as well as the issues raised by complainants, overall there is little within the current guidance that requires to be changed. The guidance is well understood and the procedures working well.
- 2.2 The definition of what constitutes a high hedge, as set out with the Act, has been a key issue. As it is not clearly defined or readily understood by potential applicants, the uncertainty that arises has had a direct effect on the number of invalid applications received.
- 2.3 To try and address this, the Service has, more recently, been providing informal advice on whether a hedge is likely to qualify as a high hedge when/if a prospective applicant makes an initial enquiry. To provide certainty, a site visit has been required.
- 2.4 While doing this may lower the level of unsuccessful applications, there are two shortcomings of this approach: not all applicants will make an initial enquiry leading to an inconsistent level of service, and this requires a resource that is not covered by any fee.
- 2.5 A recent survey of local authorities, undertaken by South Ayrshire Council, identified that the majority of those that responded do not undertake pre-application site inspections for every high hedge pre-application enquiry received. Currently no Scottish authority charges for pre-application advice for high hedge applications.
- 2.6 While the Service could continue to offer this advice informally, doing so on a more formal basis is likely to result in a more consistent approach. The inclusion of a site inspection in each case would improve the quality of service, however, there would be a cost associated with this.
- 2.7 It is recommended that the guidance be revised to introduce the opportunity for obtaining formal pre-application advice from the Council on whether a hedge is considered a high hedge, and that this will be informed by a site inspection, subject to the introduction of an appropriate fee as set out below.
- 2.8 The guidance will include the caveat that any such pre-application advice will be restricted to consideration of whether the hedge is a high hedge as defined by the Act, and the steps necessary to complete a valid application. The purpose of any pre-application advice would not be to provide advice on whether an application would lead to the service of a notice, since this would be subject to further more detailed analysis as part of that application.

## **3. Review of Fees**

- 3.1 There is a clear expectation from the Scottish Government that fees should both discourage submission of spurious or vexatious applications and, perhaps more importantly, cover the costs incurred by a Council in processing the application, including dealing with any appeal.

3.2 A small number of complaints have been received relating to the £450 fee that the Council set last year. The fee was set on the basis of an estimate of time involved following benchmarking with other rural authorities.

3.3 Having now had the benefit of over 12 months operation, it is clear that the fee level does not cover costs. The processing cost of the average case has been estimated to equate to 30 working hours. In staffing time alone, the cost to the Service is therefore £550. In addition to this there will be additional travel costs, and associated on-costs, which could result in an overall cost as much as £650 per case.

3.4 Two recent surveys identified, across the 26 Scottish authorities that responded, the following:

Average Fee:	£394
Highest Fee:	£500
Lowest Fee:	£202
Most Common Fee:	£401

3.5 The majority of authorities (14) have their fees aligned to the standard planning application fee (for a single house), which is currently £401 (albeit that 5 of the authorities have not yet updated this to reflect the November 2014 increase). Of the authorities within the Service's benchmarking group (Argyll and Bute, Scottish Borders, Dumfries and Galloway, and Aberdeenshire), three have set fees of £450. Scottish Borders Council has a fee of £400.

3.6 The research carried out by South Ayrshire Council identified that, with the exception of all but the highest (Glasgow and South Ayrshire: £500 and £495 respectively), the scale of fee had little correlation to the number of applications received i.e. a lower fee did not necessarily result in a greater number of applications being received.

3.7 It is considered that the Council has settled on an appropriate fee, similar to that of its benchmarking partners, which goes some way to covering the costs of processing, while maintaining the ability for most to engage in the process.

3.8 Having taken into account the benefits to customer experience, and to the Council in a reduced rate of returned applications, a staged payment for applicants taking advantage of formal pre-application enquiry advice offered is regarded as an improvement to the current process. A revised scale of fees could be as follows:

Fee - £450

Fee for Pre-Application - £80

Fee following Pre-Application - £370

3.9 It is recognised that the staged payment will not cover costs for each individual stage, in particular the £80 fee suggested is unlikely to cover travel and administration costs alone in many cases. However, it is considered that this change in process will be an improvement to customer experience that will recover some of the cost of the resource required to be input. For those that progress to an

application, the existing fee will be recovered overall, as set out in **Appendix A**. The proposed fee is in line with that for a single house in our pre-application advice service.

#### **4. Implications**

##### 4.1 Resource

The cost in delivering the service is not fully recovered but met by existing resources.

##### 4.2 Equality

Consideration has been given to implications of the fees set on potential applicants, particularly those on low incomes. However, the fee level set by the Council is consistent with many other authorities and manages to cover the majority of the expenditure in line with advice from Scottish Government. Introduction of a formal pre-application stage provides an opportunity for a staged payment while ensuring that there is no loss in time/effort by a potential applicant and that some of the Council's cost is recovered.

##### 4.2 Legal, Climate Change/Carbon Clever; Risk, Gaelic and Rural implications

There are no legal, climate change/Carbon Clever, risk, Gaelic or rural implications arising from this report.

#### **Recommendation**

The Committee is asked to:

- agree to the revision to the guidance to include a pre-application stage that will determine whether a hedge is a high hedge and offer advice on making a valid application; and
- agree that the fee remain at £450 but that a staged payment be introduced as set out in **Appendix A**.

Signature:                      Stuart Black  
Designation:                    Director of Development & Infrastructure  
Author:                            David Mudie  
Designation:                    Team Leader - Development Management  
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## APPENDIX A - FEES FOR HIGH HEDGE APPLICATIONS

Application Type	Fee Per Application
High Hedge Application	£450
Pre-Application	£80
High Hedge Application following Pre-Application	£370

Fee Refund Scenario	Refund Amount
Invalid application returned to applicant <u>or</u> application withdrawn by applicant <b>prior to</b> the assessment of pre-application requirements required by Section 5.	100%
Application dismissed by the Council under Section 5 for failure to comply with re-application requirements.	50%
Application withdrawn by applicant <b>after</b> the assessment of pre-application requirements required by Section 5.	0%

Supplementary Fees	Amount
Specialist surveys required in the assessment of an application (e.g. European Protected Species)	At cost, payable by applicant