

To: Planning and Property Policy Board

On: 23 August 2016

Report by: Director of Development and Housing Services

Heading: REVIEW OF FEES FOR HIGH HEDGE APPLICATIONS

1. Summary

- 1.1 The High Hedges (Scotland) Act 2013 introduced a mechanism for residents, who considered that their amenity was being unacceptably affected by hedges located on a neighbour's property, to make application to the Local Authority for a "High Hedge Notice."
 - 1.2 If successful, the owner of the hedge would be required to remedy the problem or the Council could intervene, carry out the works, and seek to recover the costs.
 - 1.3 The Act requires that Council's set a fee for such applications which reflects the costs involved. The Council at its meeting on 28 April 2016 considered whether a charge for such applications acted as a barrier to low and fixed income applicants and agreed that a report be presented to this Board reviewing the fee and the assessment process.
 - 1.4 At the same meeting, Council also agreed that the report should also consider offering a free pre-application advice service.
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2 Recommendations

- 2.1 That the Board;
 - (i) Approve the High Hedge Guidance and the Fee Structure attached as Appendix 1 to this report.
 - (ii) Note that officers will continue, on a non-chargeable basis, to inspect alleged 'nuisance' trees on site in advance of a formal application and

offer general advice on the circumstances where the High Hedges (Scotland) Act 2013 may offer a route for independent adjudication/arbitration.

3 Background

- 3.1. The High Hedges (Scotland) Act 2013 is a legislative mechanism intended to provide an arbitration remedy for residents who consider that the reasonable enjoyment of a domestic property is being unacceptably affected by a high hedge which forms a barrier to light.
 - 3.2. A 'high hedge' is defined as a hedge formed wholly or mainly by a row of two or more trees or shrubs; which rises to a height of more than two metres above ground level; and, which forms a barrier to light.
 - 3.3. The legislation does not fall within a Local Authority's Planning functions as set out within the terms of the Town and Country Planning (Scotland) Act and associated Statutory Instruments. However, prior to its introduction there was no legislation in Scotland governing the height of a hedge and affected parties often had to resort to lengthy and expensive Court action.
 - 3.4. As such in order to provide a mediation process, the role has been placed with Local Authorities with the proviso that the legislation is a 'route of last resort' and the primary responsibility for resolving disputes concerning high hedges lies with the affected party and the hedge owner.
 - 3.5. The legislation is intended to address only the effect that a hedge, which forms a barrier to light, has on the enjoyment of domestic property that an occupant could reasonably expect to have. The legislation does not extend to any form of nuisance or personal dislike generated by a hedge (or trees forming a hedge).
 - 3.6. A High Hedge Notice is not concerned with the impact of roots or branches interfering with structures or foundations; inhibiting neighbouring plant growth; nuisance or annoyance caused by leaf drop or sap or aphid drop. Crucially, the legislation is not a general power to require property owners to keep their hedges neat, tidy or well-maintained or from becoming unsightly. Similarly, it is not intended to apply to woodland edges or amenity areas not planted as hedges.
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4 High Hedge Notice Process

- 4.1 Renfrewshire Council's current guidance states that on receipt of an enquiry, officers will visit the site and will offer general advice as to whether or not a hedge, is likely to fall within the scope of the Act and the statutory definition of a 'high hedge'. At this stage Officers cannot pre-judge or anticipate the outcome of a subsequent formal application; nor can Officers indicate whether a potential applicant has a definite prospect of success. In

the circumstances it would not be appropriate in the exercise of its duties for the Council to offer a pre-application assessment, whether for free or on a chargeable basis, without risk of indicating prejudice.

- 4.2 Appendix 2 indicates that one Local Authority is known to offer a 'pre-application advice' service and this is charged at a rate of £80. That authority makes clear, however, that this service is only intended to advise on whether an application could be accepted, not whether a notice is likely to be served. This is not dissimilar to the approach that Renfrewshire Council already adopts, in that advice is given, on a non-chargeable basis, but is limited to whether an application could be accepted i.e. does the offending hedge fall within the statutory definition and have the necessary pre-application requirements been satisfied.
- 4.3 It should be borne in mind that the Council, through its officers, is fulfilling the role of an adjudicator and must act in an impartial, independent and objective manner in all of its dealings on the matter. It should avoid 'siding' with a prospective applicant as a site visit to the other party's property may not have taken place and detailed calculations may not yet have been carried out. Similarly, there may be no evidence to satisfy the statutory test that the affected party has used all (or for that matter any) reasonable endeavours to resolve the matter with the hedge owner.
- 4.4 Whatever the outcome of an application, both the hedge owner and the affected party have the right to challenge the Council's decision to the Planning and Environmental Appeals Division of the Scottish Government. The Council should therefore avoid any possibility of bias, or the perception of acting in the interests of only one side to a dispute, before an application has been formally made.
- 4.5 There is no evidence to support the introduction of a 'free pre-application advice' service which would offer more than is currently provided; and crucially which would avoid the perception of bias being introduced into the early stages of the formal process. Whilst it may be convenient to draw parallels between offering pre-application advice on householder planning proposals and pre-application advice on high hedge issues there is a fundamental difference between the two. The circumstances surrounding a high hedge issue is already in dispute and has reached an impasse resulting in deadlock between the neighbouring parties.

5 High Hedge Notice Fee

- 5.1 Each Local Authority is required to set a fee for dealing with a High Hedge application. There is no upper limit on the fees to be charged but the fees should represent the reasonable costs the Local Authority incurs in processing the application. A survey of other Local Authorities in Scotland (see Appendix 2) indicates that the fees vary from £192 (lowest) to £500 (highest) with the fee for Renfrewshire set at £401 which is representative of the average charged.

- 5.2 Local Authorities may also vary or refund fees in certain circumstances including where the applicant is in receipt of a low income, if the application is dismissed or if the application relates to multiple hedges. Renfrewshire Council already operates a variation in relation to the latter two categories similar to a small number of other authorities.
- 5.3 In order to ensure that Renfrewshire residents who are on low or fixed incomes are not unreasonably denied access to the High Hedge legislation, it is considered appropriate to apply a concessionary rate of 25% of the normal fee to those applicants who can demonstrate they are in receipt of a means tested benefit, such as guaranteed pension credit, income support, jobseekers allowance, income- related employment and support allowance, council tax reduction, housing benefit and working tax credits.
- 5.4 It is considered prudent, however, to retain a fee element, albeit at a concessionary rate, to discourage the potential for vexatious or frivolous applications much in the same manner as those which attract the full fee.
- 5.5 To date, the number of applications relating to high hedges has been low and the introduction of concessionary rates are not considered likely to have a disproportionate impact on the finite resources which are also focussed on delivering performance in terms of the Council's statutory functions as the Local Planning Authority, particularly processing planning applications. The matter will be kept under review and any material change in circumstances will be reported back to this Board.
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Implications of the Report

1. **Financial** – It is anticipated that the introduction of concessionary fees will result in the Council not being able to recover the full costs associated with processing high hedge applications. However, the numbers are expected to be small and the impact is not considered to be significant but should be kept under review.
2. **HR & Organisational Development** – None.
3. **Community Planning** – None.
4. **Legal** – None.
5. **Property/Assets** - None.
6. **Information Technology** - None.
7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from

the recommendations contained in the report because the High Hedges legislation including the fee provisions were subject to an Equality Impact Assessment.

- 8. **Health & Safety** – None.
- 9. **Procurement** – None.
- 10. **Risk** – None.
- 11. **Privacy Impact** – None.

List of Background Papers

- (a) Background Paper 1 – Minute of Council meeting of 28 April, 2016.

The foregoing background papers will be retained within Development & Housing Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is David Bryce, Development Standards Manager, Tel. 0141 618 7892; email david.bryce@renfrewshire.gov.uk

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DEVELOPMENT AND HOUSING SERVICES

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HIGH HEDGES FEE GUIDANCE

How much does it cost?

There is a fee of £401¹ to process your application.

This fee is required to be paid by each affected property making a High Hedge Notice Application. There is no facility available for applicants to make a joint application with neighbours and to split the fee if they are severally affected by the same hedge or by multiple hedges.

Can I get a refund after I have submitted my application?

If at the initial inspection of the application the Council decides that the application is not an eligible application* a full refund will be given.

A full refund will also be given if the application is withdrawn before the processing of the application commences**

If processing of the application has commenced, no refunds will be given. It will be a matter entirely for the Council to determine whether processing has commenced.

If the Council considers that an application should be dismissed, a 50% refund will be issued***

It is recommended that you read the notes for guidance on High Hedges prior to submitting an application.

* An eligible application will be one where the applicant considers that the height of a

high hedge adversely affects the reasonable enjoyment of the applicant's domestic property **and** falls within the statutory meaning of a "high hedge".

**Processing of the application will include, but not necessarily be limited to, the period when the Planning Authority has commenced registration of the application, or has issued notification of the application to the hedge owner/owners or has conducted an initial site inspection.

***Applications may be dismissed under Section 5 of the High Hedges (Scotland) Act if the Council consider that the applicant has not complied with the pre-application requirements to take all reasonable steps to resolve the matters in relation to the high hedge with their neighbours prior to submitting the application, or if the application is considered to be frivolous or vexatious.

What about Multiple Hedges and Uncommon Cases?

There may be situations where your property or a neighbour's property is affected by the same hedge or by a number of other hedges. In such circumstances the following fees will apply.

A single hedge, in one ownership, which is asserted to affect several neighbouring properties: All parties asserting that their properties are affected will each require to pay the fee of £382 as the effect of the hedge will be assessed in relation to each individual house claiming to be adversely affected. Affected parties

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HIGH HEDGES FEE GUIDANCE

may make multiple applications for the same hedge/hedges so long as each application is accompanied by the appropriate fee; or they make a single application, but if they do so, it must be accompanied by multiple fees (equal to one fee for each affected property).

The effect on each property will be individually assessed and if action is required, Notices would require to be issued in respect of each affected property and would be capable of being the subject of individual appeals if the applicants wished.

A single hedge, in multiple ownership, which is asserted to affect only one property: Only one fee requires to be paid by the affected property owner as the effect of all the hedges on that single property will be assessed.

Multiple hedges, in single ownership, which are asserted to affect only one property: Only one fee requires to be paid by the affected property owner as the effect of each hedge will be considered individually as well as the cumulative impact on the affected property.

Multiple hedges, in multiple ownership, which are asserted to affect a single property: Only one fee requires to be paid by the affected property owner as the effect of each hedge will be considered as well as the cumulative impact on the affected property.

I am on a low or fixed income – do I qualify for a reduced fee?

To ensure that access to a remedy is not unreasonably denied to persons on low or fixed incomes only 25% of the fee will be charged for

- Renfrewshire residents who are in receipt and can provide evidence of a means tested benefit, such as guaranteed pension credit, income support, jobseekers allowance, income-related employment and support allowance, council tax reduction, housing benefit and working tax credits.
- In all circumstances it will be the decision of the Head of Planning & Housing to determine if a reduced fee is applicable..

Any Questions?

Further information and advice can be obtained by visiting www.renfrewshire.gov.uk or phoning 0300 300 0144 or emailing dc@renfrewshire.gov.uk

Application forms and Notes of Guidance can also be downloaded from the Council's website or via the above contact details.

COUNCIL AREA	FEE	CONCESSION GENERAL	REFUNDS
Shetland Islands	n/a	n/a	
Stirling	192	n/a	
Inverclyde	192	n/a	
Perth and Kinross	270	n/a	
Angus	275	n/a	
Midlothian	300	n/a	
City of Edinburgh	350	Hardship - at discretion of Head of Service	Dismissed applications - 100% refund
City of Aberdeen	382	n/a	
North Ayrshire	382	n/a	
Moray	382	n/a	
Orkney Islands	382	n/a	
West Dunbartonshire	384	n/a	
Fife	385	n/a	
City of Dundee	400	n/a	Dismissed applications - 50% refund
East Ayrshire	400	n/a	
Scottish Borders	400	n/a	
South Lanarkshire	401	n/a	
West Lothian	401	n/a	
Renfrewshire	401	n/a	Dismissed applications - 50% refund
Falkirk	401	n/a	
East Dunbartonshire	401	n/a	
East Lothian	401	n/a	Dismissed application - fee returned minus
Clackmannanshire	401	n/a	
Na h-Eileanan Siar (Western Isles)	401	n/a	Dismissed application - 50% refund
East Renfrewshire	440	n/a	Dismissed applications - 75% of fee returned
North Lanarkshire	450	n/a	
Aberdeenshire	450		
Highland	450	n/a	Dismissed applications - 50% refund Pre-application enquiry - £80
Dumfries and Galloway	450	n/a	
Argyll and Bute	450	n/a	
South Ayrshire	495	Fee of £100 for applicants in receipt of a means tested benefit	
City of Glasgow	500	n/a	

Source: Local authority websites – June, 2016