

Decision Maker: Renewal and Recreation Portfolio Holder for Pre-decision Scrutiny by the Renewal and Recreation PDS Committee

Date: 11th June 2013

Decision Type: Non-Urgent Executive Non-Key

Title: HIGH HEDGES - REVIEW OF PROGRESS, FEE SETTING

Contact Officer: Jim Kehoe, Chief Planner
Tel: 020 8313 4441 E-mail: jim.kehoe@bromley.gov.uk

Chief Officer: Marc Hume, Director of Renewal & Recreation

Ward: All

1. Reason for report

The requirements of the Anti-Social Behaviour Act dealing with problem high hedges came into effect on 1st June 2005. It is several years since these issues have been reported to committee and this report reviews the numbers of complaints, problems raised and the level of fees.

2. **RECOMMENDATION(S)**

The Portfolio Holder agree to introduce the proposed fees for High Hedges Complaints with effect from 1st August 2013 as set out in Appendix One; thereafter the Chief Officer be authorised to alter fees periodically, to take account of the cost of service provision.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: None
 2. On-going costs: Potential additional income of £500 p.a. to offset current costs incurred
 3. Budget head/performance centre: Renewal
 4. Total current budget for this head: £1,126,580
 5. Source of funding: Existing Revenue Budget for 2013/2014
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Staff

1. Number of staff (current and additional): 20.56 ftes
 2. If from existing staff resources, number of staff hours: 5 working days.
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): about 20 persons per year.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1. Problem high hedges are currently dealt with as part of the work of the Tree Officer within the Planning Division. As a brief reminder for members High Hedges legislation is included in the Anti-Social Behaviour Act (2003) Part 8 and associated regulations and the section dealing with them became effective on 1st June 2005. Under the legislation where a high hedge is a problem and owners have shown themselves to be reluctant to resolve the problem, neighbours are able to bring their complaints to the Council, although this should be a last resort. The criteria for complaints are:

- The hedge is a line of 2 or more evergreen or semi evergreen trees or shrubs
- It is over 2 metres in height
- It acts as a barrier to light or access
- Because of its height it adversely affects the complainants' reasonable enjoyment of their domestic property

3.2. The Council should independently decide whether the height of the hedge is adversely affecting the complainants' reasonable enjoyment of their property. If it is the Council can issue a remedial notice which requires the owner to reduce the height of the hedge to a specified level and the height at which it should be maintained. Failure to comply with a remedial notice is an offence.

3.3. The administrative elements of the work are met from existing staff resources but because of the volumes of existing tree work a consultant is appointed to visit both parties and assess the hedge and problems raised, prepare a report and make recommendations to the Council about the merits of serving a remedial notice. The Council then serves the remedial notice, if recommended and deals with subsequent appeals and enforcement. This process has worked relatively smoothly and the Council is able to maintain an independent role in what are essentially neighbour disputes.

3.4. The legislation (Part 8 section 68 of the 2003 Act) enables the Council to charge a fee to investigate complaints. This was initially set by Bromley Council at £320 and increased to £400 after 12 months. The proportion paid to the consultant was increased in 2010. However there has been no increase in fees for 6 years.

3.5. Since 2005 the Council has dealt with 47 complaints. There were 10 complaints in 2005, but the numbers per year have decreased to only 4 or 5 cases. However there are on-going issues in respect of maintenance requirements in a few cases where owners have shown themselves to be reluctant to comply with the required maintenance of the hedge.

3.6. After investigation of the complaints, 29 Remedial Notices have been served. With the exception of one case all the notices have been complied with. The one case of non-compliance with the requirements resulted in a prosecution. The hedge owner failed to carry out any of the specified work and was fined £600 plus costs. The magistrates specified a further time period for compliance. However the owner still did not reduce the hedges and was prosecuted a second time. He was fined a further £800 plus costs. The Council subsequently instructed a contractor to carry out the work and the costs have been placed as a charge on the property.

3.7. Of the 17 cases where no action has been taken 6 cases were fully investigated and it was determined that they were not affecting the reasonable enjoyment of the complainants property. For the remaining 11 cases fees were returned either because the complaint did not concern a hedge (2), there were multiple complainants and further advice about procedures was given (2) and in 7 cases the hedge was cut before a full investigation was undertaken.

3.8. There have been 10 appeals and unlike planning applications there is a right of appeal for both parties, that is the hedge owner and the complainant. In all cases the decision of the Council has been upheld, although several remedial notices have been amended in terms of the extent of work to be carried out.

3.9. Concern has been raised in respect of fees charged for those cases identified by central government as 'unusual cases' -

- Multiple complainants single hedge one owner – for example where several smaller properties adjoin a large garden. Government advice is clear that the Council has to consider the concerns of each complainant separately. Therefore each complainant has to pay the full fee. Only two cases initially involved multiple complainants – in one case the complaint was only pursued by one party and in the second case none of the parties followed up with a complaint.
- One complainant single hedge multiple owners – the reverse of the above where one hedge is within multiple ownership but affects only one party. Each hedge owner is party to the complaint but as there is only one complainant only one fee is charged. There have been two such cases.
- One complainant multiple hedges one owner – for example hedges in both front and back gardens. Again because there is only one complainant only one fee is charged. There has only been one of this type of case and this is the one that resulted in a prosecution
- One complainant multiple hedges multiple owners – for example a garden with hedges on three sides. Each hedge owner is party to the complaint but as there is only one complainant only one fee is charged. There has been only one type of this case and the case is currently on-going.

These 'unusual cases' do not take any significant more time to investigate and determine than standard cases and do not warrant a higher level of fees. In respect of multiple complainants, single owner and one hedge government advice is that the cases could be linked together if several complainants approached the Council at the same time. There may be some small savings in investigative costs which could mean that there could be a reduced fee for linked cases. However no such case has arisen and there is no evidence on which to assess a reasonable fee. If such a case does arise in the future the charging of a fee could be at the discretion of the Chief Officer, based on the costs incurred by the Council.

Currently the responsibility for dealing with High Hedges cases is that of the Director of Environmental Services. As stated above the work is carried out by the Tree Officer in the Planning Division of Renewal and Recreation. The two departments were one when the legislation came into force and the responsibilities were not transferred when the two departments were created. The responsibility may be passed to the Director of Renewal and Recreation in the future.

4. POLICY IMPLICATIONS

None

5. FINANCIAL IMPLICATIONS

At a rate of 5 applications per year, a £100 increase in fees from £400 to £500 will create a total additional income of £500 per annum, enabling the Council to recover a higher proportion of its costs than at present. The proposed and comparative costs of nearby Boroughs is shown at Appendix One.

6. LEGAL IMPLICATIONS

None

7. PERSONNEL IMPLICATIONS

None

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	High Hedges Complaints: Prevention and Cure ODPM. May 2005