

## REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 24 AUGUST 2017

### SCOTTISH GOVERNMENT PLANNING AND ENVIRONMENTAL APPEALS PLANNING APPEAL DECISION – APPLICATION FOR HIGH HEDGE NOTICE AT 26 GORDON CRESCENT, PORTSOY

#### 1 Recommendation

The Committee is recommended to:

- 1.1 **Note the request and scrutinise the comments expressed by the Banff & Buchan Area Committee regarding the outcome of this High Hedge appeal and the potential implications for similar types of applications lodged in the future. The Scottish Government Planning and Environmental Appeals Division (DPEA) appeal decision and the Planning Service summary of the appeal decision are set out in Appendices 1a and 1b.**

#### 2 Background/Discussion

- 2.1 At the Banff & Buchan Area Committee of 20 June 2017, the Committee noted the decision of the Scottish Government Planning and Environmental Appeals Division (DPEA) to quash the decision by Aberdeenshire Council to refuse the application for a High Hedge Notice APP/2016/3236. The decision of the Reporter was noted, however, the Area Committee agreed to refer this issue to the Infrastructure Services Committee to scrutinise any implications for the Council in terms of the handling of future High Hedge applications.
- 2.2 The High Hedges legislation came into force in 2013 with the passing of the High Hedges (Scotland) Act 2013. The legislation was introduced to provide a solution to the problem of high hedges if they interfere with people's right to 'reasonable enjoyment' of their homes and if neighbours have not been able to resolve the issue amicably. The legislative process allows homeowners and occupiers the right to apply to the Local Authority for a High Hedge Notice and gives the Local Authority the power to make and enforce decisions relating to high hedges. Prior to applying for a High Hedge Notice the interested parties are required to follow a process of resolution and mediation with the High Hedge notice submission to the Local Authority constituting the final stage when all other measures have been exhausted.
- 2.3 Under the legislation, Local Authorities were asked to decide how they wished to implement the legislation and the process to be followed. While the High Hedges legislation and the application process is separate from Planning legislation, Aberdeenshire Council made the decision that, on the basis that the process required the submission of an application, the Development Management Section of the Planning Service would administer the High Hedges applications. This approach was agreed on the understanding that the Natural Environment Section of the Planning Service, and Landscape Services, would provide input and assist the Development Management Section with the assessment element of the process. As the High Hedge application is determined under different legislation to Planning legislation, the

applications do not follow the same determination process as that of planning applications and there is no requirement for this type of application to be referred to Local Members or Committee for determination.

- 2.4 In accordance with the High Hedges legislation, the Local Authority accept a High Hedge application when it is considered that the hedge qualifies as a high hedge, evidence is provided of the previous attempts to resolve the issue, and a fee of £450 is paid. A high hedge is defined as being: *formed wholly or mainly by a row of two or more trees or shrubs; rises to a height of more than 2 metres above ground level; and forms a barrier to light*. It is only during the determination of an application that the Local Authority makes an assessment as to whether the applicant's reasonable enjoyment of their home is being negatively affected by the height of a high hedge. As with planning applications, a Local Authority can find that a hedge is having a negative effect on the applicant's enjoyment of their home, after properly and reasonably considering any other relevant factors, but may decide that no action should be taken in relation to the high hedge, as the impact is not viewed to be significant. The Scottish Government's guidance is clear that there is a degree of objectivity in the decision-making process for these applications, and that the level of enjoyment the Local Authority considers reasonable may be different from what the applicant considers reasonable. In all cases it is necessary to determine whether or not there is an adverse effect sufficient to justify issuing a High Hedge Notice requiring remedial action to be undertaken.
- 2.5 It remains the remit of the Local Authority to make a decision on the impact of any high hedge, and this can, as has been the case for the Reporter in the Portsoy case, lead to a difference of opinion as to how much impact the hedge has on the applicant in terms of the enjoyment of their property. This is no different to any planning application where an impact on amenity is largely a judgement and subjective view based on the circumstances of the case following assessment, or indeed any appeal decision where the Reporter may not agree with the Council's interpretation or assessment of a proposal. The decision by the Planning Service on a High Hedge application is not based on any planning policy contained within the Development Plan. The decision rather involves an assessment of light and amenity impact in line with guidance provided by the Scottish Government under High Hedge legislation taking into account the specific circumstances of each case.
- 2.6 To date, Aberdeenshire Council have received a total of eight High Hedge applications. Two of the applications were returned on the basis that they were not deemed to constitute a high hedge as defined under the legislation. Two other High Hedge applications which have been determined were the subject of a DPEA appeal which were subsequently dismissed. This High Hedge appeal represents the only appeal decision which the Council has received which upholds the appellant's stance.
- 2.7 The Appeal Decision Summary Report attached as **Appendix 1b** highlights the pertinent points associated with this particular appeal decision. It is noted that the Reporter agreed with the methodology adopted by the Council in assessing the application. The Reporter, however, disagreed with the Council's conclusion in relation to the level of impact upon the appellant's amenity. In issuing the decision, the Reporter has served notice that the owner of the hedge is required to take action to reduce the height of the hedge within a six month period and to ensure thereafter that this lower height

is maintained in perpetuity. This decision does raise implications for the Council in terms of enforcement measures in the event that the owner does not comply with the terms of the Appeal Decision Notice.

- 2.8 In light of this appeal decision, the Planning Service are in the process of reviewing their current High Hedges application process. This will specifically consider the assessment element and potential enforcement implications, in liaison with relevant consultees to look at any lessons that need to be learned and establish whether any adjustments and additional training for staff dealing with High Hedge applications is necessary. An internal working group, comprising representative of Development Management, Natural Environment, and Landscape Services, has been established and this review is now underway. The Planning Service monitors all its processes and procedures on a regular basis and subsequently carry out reviews of such to ensure they are all fit for purpose. Reviews of this nature are considered to fall under operational matters within the Service.
- 2.9 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this Report and their comments have been incorporated within the Report. They are satisfied that the Report complies with the Scheme of Governance and relevant legislation.

### **3 Scheme of Governance**

- 3.1 The Committee is able to consider this item in terms of Section B.1.2 of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to a request by the Banff & Buchan Area Committee to the Infrastructure Services Committee to consider this matter.

### **4 Equalities, Staffing and Financial Implications**

- 4.1 An Equality Impact Assessment is not required because the report is to inform the Committee on performance and there will be no differential impact, as a result of the report, on people with protected characteristics.
- 4.2 There are no specific staffing or financial implications arising from this Report other than the potential for resources towards any future enforcement activity should this be necessary.

**Stephen Archer**  
**Director of Infrastructure Services**

Bulletin Prepared by Chris Ormiston, Team Manager  
Date: 8 August 2017

Planning and Environmental Appeals Division

## Appeal Decision Notice

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## High Hedges (Scotland) Act 2013 Appeal under section 12(1)

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- High hedge appeal reference: HHA-110-3
- Location of the hedge: 26 Gordon Crescent, Portsoy AB45 2QA
- Owner of the hedge: Mrs Alice Rowan
- Appellant's address: 24 Gordon Crescent, Portsoy AB45 2QA
- Application for a high hedge notice APP/2016/3236 dated 21 September 2016
- Appeal by Mr Ian Dawson against the decision by Aberdeenshire Council that there is no adverse effect from the high hedge and that no action should be taken in relation to it
- Date of site visit by Reporter: 12 May 2017

Date of appeal decision: 23 May 2017

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### Decision

I quash the decision by Aberdeenshire Council that there is no adverse effect from the high hedge and that no action should be taken in relation to it, and I issue a high hedge notice attached as an annex to this decision. The high hedge notice takes effect on the date specified therein.

In considering this appeal I have taken account of the Building Research Establishment's (BRE) "Hedge Height and Light Loss" (2004) guidelines and the High Hedge (Scotland) Act 2013 Guidance to Local Authorities.

### Reasoning

1. The determining issues in this case are: (1) whether or not the hedge unsatisfactorily affects the level of sunlight and daylight reaching the appellant's garden to cause an detrimental impact on his amenity and the reasonable enjoyment of his property and; (2) whether there is an adverse effect sufficient to justify issuing a High Hedge Notice.

2. The appeal site is the centre of a terrace of 4 two storey houses on the north-west side of Gordon Crescent, set behind a small front garden with a longer garden to the rear. This is defined by fences and a decorative block wall enclosing the paved and gravelled garden with a shed, greenhouse, summerhouse, drying and sitting out areas and beds. The subject hedge comprises two rows of 4 Cypress Leylandii trees planted close together



with a young beech tree to the north west of and adjacent to the common boundary, although this does not feature in the application. The nearest houses to the rear of the appeal site are at 22 and 24 Park Drive, the occupiers of which have submitted statements in support of the application and they attended the site inspection. Prior to submitting the application, the appellant made several attempts by letter to mediate with the hedge owner without success, but these were considered by the council to be sufficient for the application to be considered.

### *1<sup>st</sup> Issue*

3. The Leylandii hedge occupies the rear area of the owner's wild garden and extends over the boundaries on 3 sides. From measurements taken at the site inspection it rises to between 7.5 – 8.5 metres in height and extends to about 7.0 metres in length. The multi-stem trees are clustered in a tight group sufficient to form a barrier to light at low levels as well as where the canopies coalesce above.

4. A 'high hedge' as defined in the High Hedges (Scotland) Act 2013 (HHA) is a hedge which: (a) is formed wholly or mainly by a row of 2 or more trees or shrubs; (b) rises to a height of more than 2 metres above ground level and; (c) forms a barrier to light. There is no dispute that the trees in question meet all these criteria and can thereby be defined as a high hedge within the meaning of section 1 of the HHA.

5. By being planted in two close rows the trees form a dense almost square clump tight to the boundaries of the appeal site and the houses to the rear. As a result, the resultant hedge dominates the adjacent gardens and forms a significant barrier to light which detracts from the neighbours' amenity spaces. The orientation of the houses is such that, in summer, these 8.0 metre high trees cast heavy shadows over the back end of the appellant's narrow garden and greenhouse from about 1500 hours and through the evenings, which detract from the enjoyment of his property.

6. The overgrown state of the hedge owner's front garden and her unkempt rear garden both suggest that no maintenance has been carried out to any of the trees, bushes and grass on the property and this is very apparent in the high hedge which, with the beech tree and undergrowth, have been left free to grow untrimmed for many years, and could continue to grow at a rate of up to 0.9 metres a year to a height in excess of 15 metres. As a result, these trees, even at a height of about 8.0 metres, are not acceptable within such small gardens on a modest housing estate and should be kept trimmed and secure to minimise any adverse effect on nearby properties.

7. I therefore conclude that the hedge unsatisfactorily affects the level of sunlight and daylight reaching the appellant's garden and causes a detrimental impact on his amenity and the reasonable enjoyment of his property.

### *2<sup>nd</sup> Issue*

8. From my conclusions on the first issue, I consider that the hedge has an adverse effect on the appellant's amenities and the reasonable enjoyment of his property sufficient to justify issuing a High Hedge Notice.

9. In the Report of Handling, the council claim that the trees are only 7.0 metres high when site dimensions revealed that they are over 8.0 metres high in places which should allow the necessary lowering of the crowns to meet the council's BRE calculated action height of 5.79 metres to be carried out.

10. The relative thickness of the combined canopies is such that a reduction to that level would not unduly endanger the trees particularly as they retain a reasonable level of new growth at lower levels which, coupled with the closeness of the trunks would still retain a barrier to light above 2.0 metres. In addition, although the trees appear healthy with little die back at lower levels, their general condition is poor with damaged and broken branches which should also be cut back and made safe. The preventive action required would then be to maintain the full length of the hedge at the action height of 5.79 metres and regularly check for and remove any storm damaged branches in the future.

#### *Other matters*

11. Submissions by neighbours at Nos. 22 and 24 Park Drive state that the high hedge overshadows their shorter gardens to the north-west particularly during the mornings and, when the sun is low, the shadows can affect the rear windows of No.22 while the owner of No.24 also claims that her TV reception is affected. In addition, the storm damaged condition of the trees has led to branches breaking off and falling into these gardens putting the occupiers safety at risk. Evidence of this damage was clearly seen during the site inspection, with broken branches hanging down over the boundary fence of No. 22 Park Drive and close to the boundary fence of No.24.

12. The proximity and condition of the high hedge formed by these trees result in a un-neighbourly, dominant and unsatisfactory feature which seriously detracts from adjoining private gardens to the detriment of the amenities that the occupiers should reasonably expect to enjoy. These submissions support the claims of the applicant that a high hedge notice should be issued to minimise the impact of the hedge by trimming and maintaining it at the action height level, while also monitoring and correcting any storm damage to its branches.

#### *Conclusions*

13. My overall conclusions are that the 8 Leylandii trees in two close rows amount to a high hedge in the meaning of the HHA, and that they have a detrimental impact on the level of sunlight and daylight reaching the appellant's garden causing an unacceptable impact on his amenity and the reasonable enjoyment of his property. I shall therefore issue a High Hedge Notice, annexed to this decision, for the hedge to be trimmed and maintained at a height of 5.79 metres.

*John H Martin*

Reporter



## High Hedge Notice

### HIGH HEDGES (SCOTLAND) ACT 2013

This is a high hedge notice issued under section 16(1)(a)(i) of the High Hedges (Scotland) Act 2013 following the decision of the Scottish Ministers under section 14(1)(b) of the Act to quash the decision of Aberdeenshire Council dated 21 February 2017 not to issue a high hedge notice.

1. Description of the high hedge which is the subject of this notice: The subject hedge comprises two rows of 4 Cypress Leylandii trees planted close together and ranging from 7.7 - 8.5 metres in height and about 7.0 metres long.
2. The land on which the high hedge is situated (this is the “neighbouring land” within the meaning of section 34 of the Act): 26 Gordon Crescent, Portsoy AB45 2QA
3. The domestic property adversely affected by the high hedge: 24 Gordon Crescent, Portsoy AB45 2QA
4. Initial action to be taken by the owner of the neighbouring land:
  - (i) reduce the height of the Leylandii hedge along its full length to 5.79 metres measured from ground level on the hedge owner’s side of the boundary, and;
  - (ii) remove all broken and damaged branches from the trees in the high hedge.
5. Compliance period: the period within which the initial action must be taken is 6 months from the date this notice comes into effect, avoiding the remaining bird nesting months of June, July and August 2017.
6. Preventative action to be taken by the owner of the neighbouring land:
  - (i) to maintain the full length of the high hedge at the action height of 5.79 metres above ground level on the hedge owner’s side of the boundary and;
  - (ii) to regularly monitor the trees for and remove any storm damaged branches.
7. Date on which this notice comes into effect: 21 June 2017
8. In the event of a failure to comply with this notice, Aberdeenshire Council is entitled to authorise a person to take action under section 22 of the Act, and may recover the expenses of that action.



9. It is an offence under section 24 of the Act intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.

*John H Martin*

Reporter

**Notes**

1. This notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.
2. This notice has been copied to Aberdeenshire Council, every owner/occupier of the domestic property referred to in the notice, and every owner/occupier of the neighbouring land.



**APPENDIX 1B**  
**Planning Service Summary**

<b>APPEAL DECISION</b>
DPEA
<b>Appeal Reference</b>
HHA-110-3
<b>Planning Reference</b>
BB/APP/2016/3236
<b>Planning Proposal</b>
Application for a high hedge notice at 26 Gordon Crescent, Portsoy
<b>Summary of Decision</b>
<p>The Scottish Government Planning and Environmental Appeals Division quashed the decision by Aberdeenshire Council that there is no adverse effect from the high hedge and that no action should be taken in relation to it, and issue a high hedge notice.</p> <p>The determining issues in the case were-</p> <ol style="list-style-type: none"> <li>1- Whether or not the hedge unsatisfactorily affects the level of light reaching the appellant's garden to cause a detrimental impact on amenity and the reasonable enjoyment of the property; and</li> <li>2- Whether or not there is an adverse effect sufficient to justify issuing a high hedge notice.</li> </ol> <p>It was found that the hedge unsatisfactorily affects the level of light reaching the appellant's garden and causes a detrimental impact on amenity and the reasonable enjoyment of the property. This is due to the height of the unkempt hedge and its potential for growth within a garden of a modest size.</p> <p>It was also found that the hedge has an adverse effect on the appellant's amenities and the reasonable enjoyment of the property.</p> <p>The reporter agreed with the council's BRE calculation action height of 5.79m for the hedge to be reduced to, and maintained, through the issued High Hedge Notice.</p> <p>The notice requires initial action to be taken by the owner of the neighbouring land:</p> <ol style="list-style-type: none"> <li>1- Reduce the height of the leylandii hedge along its full length to 5.79m; and</li> <li>2- Remove all broken and damaged branches from the trees in the high hedge.</li> </ol>

Preventative action is also required:

- 1- To maintain the full length of the high hedge at the action height of 5.79m; and
- 2- To regularly monitor the trees for and remove any storm damaged branches.

The high hedge notice comes into effect 21 June 2017.

**Policy Issues**

None.

**Additional Points**

In the event of a failure to comply with the High Hedge Notice, Aberdeenshire Council is entitled to authorise a person to take action under Section 22 of the Act, and may recover the expenses of that action.

**Actions**

None.

**Note Decision**

High Hedge Notice Issued.

**Other**

None.

**APPENDIX 2**  
**DRAFT Extract of Minute**  
**Banff and Buchan Area Committee, 20/06/2017**

**9. PLANNING APPEAL DECISIONS**

**A. REFERENCE NO APP/2016/3236 – APPLICATION FOR A HIGH HEDGE NOTICE AT 26 GORDON CRESCENT, PORTSOY**

The Committee **noted** the decision of the Scottish Government Planning and Environmental Appeals Division to quash the decision by Aberdeenshire Council to refuse the application for a High Hedge Notice.

The Committee **noted** the decision of the Reporter, but expressed concern at the differing views between Council and Reporter and agreed to refer this issue to the Infrastructure Services Committee to scrutinise because of the potential for similar types of applications to be lodged in future.