

Appeals under section 71 of the Anti-social Behaviour Act 2003

A Guide for Appellants (High Hedges)

This guidance sets out the procedures for appeals made to the Secretary of State under section 71(1) and 71(3) of the Anti-social Behaviour Act 2003 against remedial notices and other decisions of local authorities.

This guidance relates only to appeals in England.

Only the courts can give an authoritative interpretation on any point of law, so this guidance has no legal force.

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1. Introduction

Part 8 of the Anti-social Behaviour Act 2003 (the Act) gives local authorities (this may be a district council or a unitary authority but we will call them "Councils") powers to deal with complaints about high hedges, to make decisions and issue remedial orders. Section 71 gives people who are unhappy with a council's decision a right of appeal to the Secretary of State. The Act is available at larger public libraries. You can also find it on the Internet at: <http://www.legislation.hmso.gov.uk/acts/acts2003/20030038.htm>

The Secretary of State has delegated his appeal functions to the Planning Inspectorate (known as "PINS" - see section 15: *The Planning Inspectorate - who we are and what we do*).

This guidance is issued by PINS and explains how and when an appeal must be made, and how we will deal with it.

ODPM (now CLG – Communities and Local Government) has also issued a series of leaflets about how to settle your hedge differences with neighbours and how to make a complaint to your Council. The most comprehensive guidance, '*High Hedges complaints: Prevention and Cure*' is available at larger libraries or from CLG publications (tel: 0870 1226 236). You may also access the guidance and leaflets via the internet on the CLG web site at: <http://www.communities.gov.uk/planningandbuilding/planning/treeshighhedges/highhedges/>

You should be aware that the Inspector dealing with your appeal will have regard to the advice in '*High Hedges Complaints: Prevention and Cure*'. This is the same guidance that Councils use when deciding a complaint about a high hedge, or when deciding to withdraw or revise a remedial notice.

The regulations that govern appeals procedures are contained in *The High Hedges (Appeals) (England) Regulations 2005 (SI 2005 No. 711)*. The regulations may be viewed on the PINS web site at: http://www.planning-inspectorate.gov.uk/pins/environment/high_hedges/stat_instrument.htm

2. Do I have the right to make an appeal?

An appeal to the Secretary of State in respect of a high hedge can only be made against a decision or remedial notice issued by a Council in response to a formal complaint about that high hedge.

You may appeal if you are the person who complained to the Council in the first place, or you are the owner or occupier of the land where the hedge is situated.

You may also appeal if you have succeeded one of these people. For instance ownership of the hedge may change if the property is sold, or if you have moved into a property previously occupied by the person who made the original complaint to the Council. Where this happens the appeal may proceed in the name of the new owner. We will ensure that any new party has access to the appeal papers and is given an opportunity to comment should they wish to do so.

Grounds of appeal

You can appeal against a Council's decision to issue a remedial notice, requiring the size of a hedge to be reduced, if

You are the person who complained to the Council about the hedge; and

- you think the required works don't go far enough.

You own or occupy the land where the hedge is situated; and

- you think that no notice should have been issued; or
- you think that the works required go too far; or
- you think that the Council has not given you enough time to complete the required works.

You can appeal against a Council's decision not to issue a remedial notice if

You are the person who complained to the Council about the hedge; and

- you think that the local authority have got it wrong in deciding that the hedge is not adversely affecting you; or
- you think that the council, having agreed that the hedge is causing problems, should have issued a remedial notice to reduce the size of the hedge.

You can appeal against a Council's decision to withdraw a remedial notice if

You are the person who complained to the Council about the hedge; and

- you did not agree to the notice being withdrawn **and** the Council has not issued a new remedial notice; and
- you think there has been no material change in circumstances since the notice was originally issued.

You can appeal against a Council's decision to set aside or relax some of the requirements in the remedial notice if

You are the person who complained to the Council about the hedge and you did not agree to the changes to the notice; and

- you think there has been no material change in circumstances since the notice was originally issued; or
- you think the works to the hedge as required in the revised notice don't go far enough.

If you own or occupy the land where the hedge is situated and you didn't agree to the changes to the notice; and

- you think the works required to the hedge go too far.

Whilst your appeal is being determined the relevant decision or remedial notice issued by the Council will be suspended.

There is **no** right of appeal against a Council's decision to reject a complaint about a high hedge or to reject an application to withdraw or revise a remedial notice. If your complaint or application is rejected in this manner and you think that the Council did not apply the law properly or did not make the decision in the right way, you can refer the matter to the Council's own complaints officer or to the Local Government Ombudsman. Alternatively, you may apply to the High Court to challenge the decision by judicial review (*see section 14 of this guidance*).

3. How and when do I appeal?

Your appeal must be made on a High Hedges appeal form obtained from PINS. You may obtain the form from our web site at:

http://www.planning-inspectorate.gov.uk/pins/environment/high_hedges/index.htm You may also obtain a form by telephoning or writing to us (*see section 15 of this guidance*). If you visit the PINS web site, you may download the appeal form and return it to us electronically by e-mail to: environment.appeals@pins.gsi.gov.uk or you can print it out and post it.

Where possible we would prefer appeals to be made electronically, but do not worry if you cannot do that. Whether an appeal is sent electronically or on paper will have no bearing on its chances of success.

When submitting the appeal electronically you do not need to complete it with an electronic signature. If you submit the form electronically but post supporting documents, please include your name and address on the papers so that we can link the form with your other documents. If you submit an appeal electronically please do not send an additional paper copy.

When submitting your appeal to us you **must** attach a copy of the Council's decision and, where they have issued one, the remedial notice. You **must** also copy the form together with supporting documents to the Council against whose decision you are appealing. You should keep an additional copy of your appeal form and supporting documents for your own reference.

When completing the appeal form you must explain fully why you disagree with the Council's decision. To do this, you need to go through their reasons for the decision, which you can find in their letter, and explain why you disagree. This is very important because your appeal form will be treated as your statement of case and you will not be able to add to your reasons later. The only exception to this is where we or the Inspector decide that the documents on file are incomplete and request further information. Any information so requested must be received within the deadline we set and will be copied to all the other parties.

Apart from the Council's decision and the remedial notice you do not need to submit the documents already held by the Council because they will be forwarded to us at a later stage (*see section 7 of this guidance*). However, if you want to make a point that would be best illustrated by a plan or photograph, you should send copies with the appeal form.

The completed appeal form and any supporting documents must be received by PINS within 28 days of

- the date the remedial notice is issued; or
- the date of the Council's notification to the parties that it has decided to take no action in respect of the hedge; or
- the date that the Council notifies the parties it has decided to withdraw a remedial notice or to waive or relax its requirements.

If you do not understand the reasoning behind the Council's decision you should ask them for clarification before deciding whether or not to appeal it.

4. Who is involved?

The parties to an appeal relating to a high hedge are:

- the appellant;
- the Council; and
- every person, other than the appellant who is:
 - a complainant or
 - the owner or occupier of the land where the hedge is situated.

There is no provision in the regulations for anyone else to become involved after an appeal has been formally lodged. Other organisations or people who made representations to the Council about the decision have no direct role in the appeals process. However, the Council will forward their comments to us and the Inspector will take them into account when making the decision.

You should bear in mind that your neighbour could also appeal against the same decision - but for opposing reasons. For example, the person who made the complaint to the Council might appeal against a remedial notice because they think it's not tough enough. On the other hand, the hedge owner might appeal against the same notice because they think the hedge should not be reduced at all. It is important for you and the other main party to the dispute to continue to communicate after the appeal has been lodged. This is because you may reach agreement on an alternative solution to that specified in the Council's remedial notice. If you do so, you may submit a joint application to the Council to waive or relax the requirements of the notice and then withdraw the appeal.

5. How much will it cost?

There is no charge for making an appeal but you will have to pay your own costs. This means that if you employ a professional adviser (e.g. a solicitor) to help you make your appeal, you will have to pay for their services. Although there is no charge for submitting appeals, they are expensive to administer and time-consuming for everyone and so should not be made lightly.

6. How will my appeal be decided?

All appeals will be decided on the basis of written representations, chiefly those made at the time the Council considered the original complaint. In all cases the appointed Inspector will conduct an accompanied site visit before setting down his/her reasoned decision in writing.

7. What happens when you receive my appeal?

When we receive your appeal we will check that you have completed the form correctly, you have supplied the documents required to enable us to proceed with it, and that it has been received within the statutory deadline (*see section 2 of this guidance*). We will write to you to acknowledge receipt of your appeal and will give you the name and contact details of the case officer dealing with your appeal.

On receipt of their copy of the appeal form the Council is required to send to us the contact details of any other party to the original complaint. These other parties include everyone who has rights of appeal against the Council's decision – (*see section 2 of this guidance*). They do not include other people who might have made comments to the Council on the case - such as

other neighbours or local amenity societies.

On receipt of their details we will notify the other parties that you have appealed against the Council's decision and send them a copy of your appeal form.

We will then send a questionnaire to the Council which they must complete and return, together with the relevant documents from their complaints file. These will include copies of the original complaint or request to the Council, all the information and comments they received on it, any reports prepared by officers dealing with the matter and their decision letter. The Council has a period of not less than 3 weeks from the date they receive the questionnaire to complete it and return it to us.. These background papers form the evidence on which the Inspector will base his/her decision.

The Council must send a copy of the questionnaire to you and the other parties to the appeal. Although not required to provide you or the other main parties with the background papers the Council should make copies of documents available on request.

If we, or the Inspector, decide additional information is required we will write to you, the Council, or any other party to the appeal to request it (*see section 3 of this guidance*).

Even after you have made your appeal you should continue to discuss the problems caused by the hedge with the other parties. Negotiations may lead you to a mutually acceptable solution and you could agree to renegotiate an existing remedial notice and withdraw the appeal.

8. What happens if more than one party appeals against the same decision?

If we receive two or more appeals against a single remedial notice or decision we will link the appeals to ensure that the same Inspector deals with all of them. Where this is the case the Inspector may consider the evidence brought forward and issue a joint decision or, if appropriate, individual decisions and remedial notices may be issued.

9. What happens if I decide to withdraw my appeal?

You can withdraw your appeal at any time (*see section 4 of this guidance*). If you decide to withdraw your appeal you must confirm this in writing to us. We will then write to the other parties to the appeal and let them know that we will take no further action on the appeal. In these circumstances the original decision issued by the Council will stand and any remedial notice, or any waiver or relaxation of its requirements will take effect from the date the appeal is withdrawn (or any later date specified in the notice).

10. Who will attend the site visit?

After we have received all the documents we require, we will pass the appeal file to the Inspector who will visit the site. The Inspector is authorised under section 74 of the Act (which deals with powers of entry) to enter the land where the hedge is situated and to take with him/her any persons as may be necessary for the purpose of determining the appeal. It will normally be necessary for the main parties to attend so that the Inspector can easily gain access to the site of the hedge and to the affected property and to ensure that everyone is satisfied that the Inspector has carried out the visit fairly and properly. This would include the complainant and the owner or occupier of the land where the hedge is situated, as well as a representative from the Council. No discussion of the merits of the appeal is allowed at a site visit and, because of this, the Council representative will not necessarily be the case officer who dealt with the original complaint. The Inspector may take samples of any tree or shrub considered to be part of a high hedge.

The Act places an obligation on us to give the occupier of the land where the high hedge is situated at least 24 hours' notice of the intended visit. In practice we aim to notify the main parties at least 2 weeks in advance of the scheduled date.

If necessary, the Inspector may request further information after the site inspection has taken place.

11. Who will be notified of the decision?

We will notify the Council, the complainant and the owner/occupier of the land where the hedge is situated of the Inspector's decision as soon as possible. In the future we may also post the decision/remedial notice on our web site.

12. The decision

In determining the appeal the Inspector may allow it, either in total or in part, or dismiss it. Where the decision is to allow the appeal the Inspector may quash the original remedial notice issued by the Council. Alternatively, the Inspector may vary the requirements of the remedial notice, or in a case where the Council has not issued a remedial notice, issue a remedial notice on behalf of that Council. The Inspector may also correct any defect or error in the original notice. If the Inspector's decision relates to an existing remedial notice the Inspector may revise the original operative date (the date when it comes into effect).

The Inspector's decision is legally binding on the land in question and on whoever owns or occupies it. This includes not only whoever owns or occupies the land at the time the decision/notice is issued, but also their successors. If the Inspector revises a remedial notice or issues a new one, the Council remains responsible for making sure that the owner or occupier of the land where the hedge is situated complies with the terms of the notice.

13. How do I complain if I am not happy about the way PINS have handled my appeal?

If you have any complaints about the decision or the way we have handled your appeal please write to:

The Planning Inspectorate
Quality Assurance Unit
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay,
Bristol
BS1 6PN

phone: 0117-372 8252
fax: 0117-372 8139

e-mail: complaints@pins.gsi.gov.uk

The Quality Assurance Unit will reply to you, or they will ask someone else within PINS to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and you can expect a full reply within 3 weeks. However, PINS cannot reconsider your appeal if the decision has already been issued unless the decision is overturned in the High Court (see *section 14 below*).

14. How can I challenge the decision?

There is no separate right of appeal against a decision issued by an Inspector appointed by the Secretary of State. The only way to have an appeal decision quashed and reconsidered is by applying to the High Court for a judicial review. Such a review is designed to ensure that the powers laid down in the Act and the Regulations have been exercised properly. It follows that judicial review can only be used to challenge the way in which the Inspector has interpreted the law in making the decision. It is not about the strength of your arguments and the merits of the appeal decision.

Permission is needed to bring an application for judicial review. This will only be granted where the applicant is able to satisfy the court that he/she has both sufficient interest in the matter and a reasonable case to put forward. Anyone who is considering an application to the court is strongly advised to seek legal advice. Community Legal Service (CLS) can help you to find the

right legal advice. You can search their website at www.clsdirect.org.uk or telephone them on 0845 345 4 345.

15. The Planning Inspectorate - who we are and what we do

The Planning Inspectorate is an executive agency of the Office of the Deputy Prime Minister. Its High Hedges Appeal Team deals with all appeals made under section 71 of the Anti-social Behaviour Act 2003. The team is based at:

The High Hedges Appeals Team
Room 4/04 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0117 372 8812

e-mail: environment.appeals@pins.gsi.gov.uk

The team is responsible for the administration of cases and for ensuring that appeals are processed in a timely manner. The High Hedges staff will also answer general queries on appeal procedures and on the progress of specific cases.

You will find more detailed information about the Planning Inspectorate on the Inspectorate's web site at <http://www.planning-inspectorate.gov.uk> and in the Inspectorate's Annual Report and Accounts which can be found on the website or bought from Government bookshops.

16. Data Protection and Privacy in the Planning Inspectorate

Under the Data Protection Act 1998 PINS has a legal duty to inform you about and protect any information it collects from you. When considering an appeal, we receive a variety of personal information. This information comes from a number of sources including the appeal form and any documentation of support or objection.

In accordance with current statutory obligations most of the documentation received by us will be made accessible to the public. Nevertheless, PINS recognises the importance of the privacy of individuals. This section sets out what information it collects and how it will be used.

Data Protection

PINS has put procedures in place to ensure that it complies with the Data Protection Act 1998 when handling your personal information.

In particular PINS will:

- only use your personal information for the purpose of dealing with and considering the relevant appeal;
- only hold your personal information for as long as is reasonably necessary. For decided appeals this is usually 12 months unless a decision is judicially reviewed in which case it is 3 years.

PINS will retain a copy of the Inspector's decision indefinitely. It may be that personal information could form part of the Inspector's decision.

What information does PINS hold?

When dealing with a high hedges appeal PINS could receive personal information about you from a number of parties, including yourself, the Council or other parties interested in the appeal. The information PINS receives is varied but may include your name, address and occupation, and information relating to your opinions or intentions in respect of an appeal.

What steps should you take?

- Only provide personal information if you are happy for it to be placed in the public domain.
- Do not include personal information about another third party (including family members) unless you have told the individual concerned and they are happy for you to send it.
- Tell PINS as soon as possible if any of the personal information you have provided has changed.

The Data Controller

The data controller (the organisation responsible for dealing with personal information) is the Office of the Deputy Prime Minister.

Your rights to see personal information

If you ask for it, we have to provide you with a readable copy of the personal data that PINS keeps about you within 40 days. There is a statutory charge of £10. Evidence of proof of your identity will be required before information is released. It is both in our interest and yours to hold accurate data. If the data we hold is inaccurate in any way, then without charge and where appropriate, you may have the data:

- erased
- rectified or amended
- completed.

For any enquiry or concern about PINS privacy policy, or to request access to your personal data contact our Data Manager:

Data Manager
The Planning Inspectorate
Room 5/04 Kite Wing
Temple Quay House
2, The Square
Bristol BS1 6PN

Telephone: 0117 372 8922
E-mail: enquiries@pins.gsi.gov.uk

Related information about our privacy policy is available on the PINS web site at http://www.planning-inspectorate.gov.uk/pins/terms_conditions/privacy/index.htm

Complaints about access to personal information

PINS aims to ensure that it resolves any matters satisfactorily, however if you are not satisfied with its response you may contact:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Switchboard: 01625 545 700
Fax: 01625 524 510
DX: 20819 Wilmslow
Web site: <http://www.dataprotection.gov.uk/>
E-mail: mail@dataprotection.gov.uk