

PERTH AND KINROSS COUNCIL**Enterprise and Infrastructure Committee****2 April 2014****High Hedges (Scotland) Act 2013****Executive Director (Environment)**

This report seeks approval for responsibility for carrying out the statutory functions empowered by the High Hedges (Scotland) Act 2013 to be delegated to the Executive Director (Environment) and for the Council's Scheme of Administration to be amended accordingly. It also requests that the proposed high hedge application fee being set at £450, together with approval of the circumstances under which a refund would be payable.

1. BACKGROUND/MAIN ISSUES

- 1.1 The High Hedges (Scotland) Act 2013 which will become effective on 1 April 2014, has been introduced by the Scottish Government in order to control inadequately managed hedges that block light to domestic properties and where they consequently have an adverse effect on the reasonable enjoyment of domestic properties.
- 1.2 The legislation can be invoked if an individual considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.
- 1.3 If the person feels that there is a problem then they can submit an application to the Council accompanied by the appropriate fee.
- 1.4 The Council, after providing a copy of the application to the owner and occupier and allowing them the opportunity to make representations, may issue a High Hedge Notice (HHN) on the respective hedge owner. This will normally require reduction in the height of the hedge and, if appropriate, specified preventative measures, as well as informing them of their right of appeal to the Scottish Ministers.
- 1.5 The High Hedges (Scotland) Act 2013 is now accompanied by supporting guidance for local authorities, which has recently been published by the Scottish Government. Guidance in the form of Frequently Asked Questions will also be published on the Council website.
- 1.6 The processing of 'high hedge' applications has strong parallels with both the planning application and planning enforcement systems. It is therefore considered that the function should be exercised by the Development Management section of the Planning & Regeneration Service.

1.7 The main guiding principles of the Act are that:

- a. The Act defines a high hedge which, 'is formed wholly or mainly by a row of 2 or more trees or shrubs, rises to a height of more than 2 metres above ground level, and forms a barrier to light'.
- b. Before submitting an application, an applicant should have taken reasonable steps to resolve the matters relating to the high hedge. Provided this has been done, those affected by a high hedge will have the ability to submit an application to the Council for an HHN to be served.
- c. Following submission of a valid application, notification to all relevant parties of the application will follow, enabling submission and consideration of letters of representations, from neighbouring parties. Where the application is within a National Park boundary, the respective National Park Authority must be notified of the application. The application may also be subject to consultation with other agencies and internal consultees.
- d. The Council must dismiss an application where all reasonable steps have not been taken, or where it considers the application is frivolous or vexatious.
- e. The Council, in determining an application to issue an HHN, must have regard to the effect of the high hedge on the amenity of the area, and whether the hedge is of cultural or historical significance.
- f. Any HHN must state what actions are required, and the timescale for carrying out initial works, any preventative future action required, and details of the appeals process.
- g. The legislation provides the mechanism for individual(s) submitting the application or the recipient(s) of a Notice to appeal the Notice or the Council's decision, to the Scottish Ministers. The submission of a valid appeal will have the effect of suspending the Notice until determination.
- h. The HHN is binding on the owner served with the Notice, and on any subsequent owners, unless it is withdrawn or varied by the Council.
- i. In the circumstances that an HHN has not been complied with, (or if following determination of an appeal, the Scottish Ministers have issued a High Hedge Notice and it has not been complied with) the Act makes provision for the Council to take direct action to carry out the required work. The Council will thereafter seek to recover these costs from the current or future owner. The Council is entitled to register a notice of liability for expenses in the Land Register of Scotland declaring the amount payable and whether interest is payable.

- j. It is an offence to intentionally obstruct a person authorised to enter land from doing anything which is authorised by virtue of the act.

- 1.8 Whilst there is uncertainty as to the anticipated annual volume of HHN applications likely to be received, there will certainly be resource implications. In order to offset the costs to the Council, a realistic application fee should be set. No national fee level has been set by the legislation and it is therefore for each planning authority to set what it considers to be an appropriate fee level. Benchmarking has taken place with other Scottish local authorities to establish this, and most are proposing fees of between £400 and £500. The Heads of Planning Society are currently exploring the imposition of a standard charge across Scotland.

2. PROPOSALS

- 2.1 The statutory and administrative functions required by the High Hedges (Scotland) Act 2013 would be best exercised by the Development Management section of the Planning and Regeneration Service.
- 2.2 Taking into consideration officer time in processing the high hedge applications, neighbour notifications, site inspections, consultations, service of notices, appeal submissions, and the associated administration costs, it is proposed that the sum of £450 fairly reflects the reasonable costs likely to be incurred by the Council.
- 2.3 The Act allows the Council to refund a fee in whole or part in such circumstances as it may determine is appropriate. Given the purpose of the fee is to cover processing costs. It is considered that a refund should only be made when an application is withdrawn or returned prior to it being made valid.

3. CONCLUSION AND RECOMMENDATION

- 3.1 It is recommended that the Enterprise and Infrastructure Committee:-
 - (i) Notes the terms of the Act together with the statutory obligations and powers conferred on the Council.
 - (ii) Agrees that responsibility for carrying out the statutory functions empowered by the High Hedges (Scotland) Act 2013 be delegated to the Executive Director (Environment) and that the Council's Scheme of Administration be amended accordingly.
 - (iii) Agrees to the proposed high hedge application fee being set at £450 and the circumstances under which a refund would be payable.

Author

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Approved

Name	Designation	Date
Jim Valentine	Executive Director (Environment)	21 March 2014

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	Yes
Workforce	Yes
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	None
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	Yes

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The proposals relate to the delivery of the Perth and Kinross Community Plan/ Single Outcome Agreement in terms of the following priorities:

- (iii) Promoting a prosperous, inclusive and sustainable economy
- (v) Creating a safe and sustainable place for future generations

Corporate Plan

- 1.2 The proposals relate to the achievement of the Council's Corporate Plan Priorities:

- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (v) Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

- 2.1 The administration of the legislation will incur additional planning enforcement officer and administration staff costs. However it is hoped that these costs would be covered by the additional fee income received.

Workforce

- 2.2 The function of processing applications for high hedge notices is to be administered by Planning Enforcement Officers (2), within Development Management, Planning & Regeneration. The duties arising from the High Hedges legislation forming additional duties to the planning enforcement functions provided.

Asset Management (land, property, IT)

- 2.3 None

3. Assessments

Equality Impact Assessment

- 3.1 The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
- (i) Assessed as **not relevant** for the purposes of EqIA

Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. The proposals have been considered under the Act and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.3 None

Legal and Governance

- 3.4 Legal Services has suggested some changes to the report which have been fully incorporated in the finalised version.
- 3.5 The Scottish Government have issued guidance to accompany the principal Act and this has been taken account of in the preparation of this report.

- 3.6 The administration of the statutory powers granted under the High Hedges (Scotland) Act 2013, may have ramifications for proprietors in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). The Act has however been passed as Human Rights compliant by the Scottish Parliament and the obligations incumbent upon the Council constitute a justified and proportionate control of the use of new powers and obligations imposed upon the Council in terms of the Act. The Act contains the necessary balance of owner/occupier freedom to enjoy their property and the freedom of others to enjoy neighbouring/properties/houses and their life and privacy without undue interference.

Risk

- 3.7 None

4. Consultation

Internal

- 4.1 The Head of Legal Services and the Head of Environmental and Consumer Services have been consulted in the development of the report.

External

- 4.2 None.

5. Communication

- 5.1 Information relating to High Hedges, and the High Hedge application and appeals process, will be advertised on the Council's website, and may be published and made available within Perth and Kinross Council offices. The information will include contact details for making enquiries and submitting a High Hedges Application.

2. BACKGROUND PAPERS

The High Hedges (Scotland) Act 2013

3. APPENDICES

None

