

## WEST DUNBARTONSHIRE COUNCIL

### Report by the Executive Director of Infrastructure and Regeneration

Planning Committee: 26 March 2014

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**Subject: Implementation of High Hedges (Scotland) Act 2013**

#### **1. Purpose**

- 1.1** To inform the Committee of the implications of the High Hedges (Scotland) Act 2013, to seek delegated authority to the Planning and Building Standards Manager to consider and determine applications and exercise enforcement powers under the Act, and to approve the fee charged for the submission of such applications.

#### **2. Recommendations**

- 2.1** That the Committee notes the impending implementation of the High Hedges (Scotland) Act 2013, and agrees that:
- (a) the proposed change to the scheme of delegation is appropriate for referral to Council;
  - (b) the fee for a high hedge application shall be £384 and shall thereafter rise in line with any future increases in planning application fees;
  - (c) the Planning and Building Standards Manager is authorised to prepare guidance notes and application forms for high hedges applications.

#### **3. Background**

- 3.1** The High Hedges (Scotland) Act 2013 received Royal Assent on 2 May 2013, but a date of commencement was not announced until 28 February 2014. The Scottish Government has now announced that the Act will come into effect on 1 April 2014, and has issued guidance to local authorities on the administration of the Act.
- 3.2** The Act defines a “high hedge” as any row of two or more trees or shrubs which rise to a height of more than 2m above ground level and which form a barrier to light. Where the owner or occupier of a domestic property considers that a high hedge on neighbouring land is having an adverse effect upon the reasonable enjoyment of their domestic property they may apply to the Council for a High Hedge Notice. The fee for such applications is at the Council’s discretion, but is intended to cover the cost of dealing with such applications.
- 3.3** Applications to the Council under the High Hedges Act are intended to be a last resort, and the legislation specifies that applications will not be entertained unless the applicant demonstrates that they have already taken “all reasonable steps” to resolve the dispute with the hedge owner. It will not

be sufficient for applicants to simply claim that their neighbour is unapproachable. The Council may also decline to determine an application if it is considered to be frivolous or vexatious, such as repeated unsuccessful applications relating to the same hedge.

- 3.4** In dealing with applications, the Council is required to notify interested parties and to allow 28 days for representations. The Council must consider all relevant circumstances of the case including loss of light to neighbours, representations from the owner and the effect of the hedge on the amenity of the area. It should be noted that consideration of the impact upon the amenity of neighbours is limited to impacts arising from the loss of light caused by the hedge, such as effect on enjoyment of property. It does not cover other impacts unrelated to loss of light, such as leaf fall or maintenance costs. The Act also does not relate to disputes about overhanging branches, which are a private legal matter between owners.
- 3.5** Where it is considered expedient, the Council may issue a High Hedge Notice requiring the owner of the hedge to carry out works to the hedge. The hedge owner has a right of appeal to the Scottish Ministers against the issuing of a High Hedge Notice, whilst the applicant has a right to appeal against a decision by the Council not to issue such a notice. In the event of non-compliance with a High Hedge Notice the Council has the power to undertake the necessary work and to recover the costs from the hedge owner.
- 3.6** The High Hedges Act confers its powers upon the “local authority” rather than to a specific statutory function thereof (such as the “planning authority”), but it is understood that most local authorities are likely to allocate these responsibilities to their planning services. It is intended that responsibility within this Council would lie with the Development Management team within Planning and Building Standards Service. The fact that the Act refers to the local authority rather than the planning authority gives rise to an anomalous situation within that part of West Dunbartonshire which lies within the Loch Lomond and the Trossachs National Park, as the Council’s planning service currently has no remit over that area but will become responsible for administering the high hedges legislation within it. However, the legislation requires that the National Park Authority be consulted on any high hedge applications within their area.

## **4. Main Issues**

### Delegated Powers

- 4.1** Whilst applications under the High Hedges (Scotland) Act 2013 are by their very nature likely to involve disputes between neighbours, it is very unlikely that such applications will raise issues of wider local interest or of strategic significance. It is therefore recommended that delegated powers be granted to the Planning and Building Standards Manager to determine all application submitted under the High Hedges (Scotland) Act 2013, subject to the same limitations as apply for other types of non-local application covered in the existing Scheme of Delegation.

**4.2** As high hedges applications are a new provision it is necessary to amend the Council's recently approved scheme of delegation to allow officers to determine them, which would require to be approved by the Full Council. The suggested amendments are shown in Appendix 1. As the proposed changes do not relate to applications covered by Section 43A of the Town and Country Planning (Scotland) Act 1997 it would not be necessary to obtain approval of these amendments from the Scottish Ministers.

#### Application Fees

**4.3** The Act gives local authorities discretion to charge a fee for administering high hedge applications, but it does not specify the level of the fee. Instead, it requires that fees should aim to cover the reasonable costs that are incurred in considering the application. Overall, the legislation was intended to be cost-neutral for local authorities and not to be either a source of excess revenue or an additional financial burden. In practice the Council is free to set lower fees should it wish to do so, but this would result in a financial shortfall at a time when the Council is under severe budgetary pressure. It is therefore recommended that application fees should be set a level which corresponds with estimated costs.

**4.4** It is difficult to estimate in advance how much a typical high hedge application is likely to cost to administer, but as such applications will only arise in situations where there is an ongoing neighbour dispute and all parties will have a right of appeal, it is reasonable to assume that most applications will attract objections and will result in an appeal against the decision. Similar legislation has been in force elsewhere in the UK for several years, and there is considerable variation in the level of fees charged by different authorities. It is understood that over £300 is typical in England and Wales (with some authorities charging significantly more), and that most authorities in Northern Ireland charge £380. Within Scotland, few local authorities have published their fees to date, but a survey of anticipated fee levels was carried out by the Heads of Planning Scotland group. Of the authorities responding, expected fee levels ranged from £192 to £560, with the average being approximately £408.

**4.5** It is therefore considered that a reasonable fee would be double that of a householder planning application (i.e. a fee of £384 at current rates). This would be a level which would be likely to cover costs and which would be consistent with the approach proposed by a number of other planning authorities. Linking the fee to that of a householder planning application would allow it to rise in line with future increases in planning fees set by the Scottish Government.

**4.6** The legislation also contains a provision which allows local authorities to refund fees (or partial fees) at their discretion, in circumstances decided upon and published by the authority. The Scottish Government has not provided any guidance on how this should be applied, but it is understood that it was envisaged that a refund might be offered if the matter was resolved prior to determination (e.g. by the owner voluntarily trimming the hedge). In other parts of the UK it is common for part of the fee to be refunded to applicants if

their application is “upheld” (i.e. a High Hedge Notice is issued). However in Scotland the new powers are intended to be cost neutral, and if a refund is offered in some cases this would mean that the basic fee level would have to be raised to offset the cost of refunds. It is understood that few if any other Scottish local authorities are proposing to refund fees. It is therefore recommended that no arrangement for refunding fees be put in place at this time. The matter could be reviewed in the future if practical experience of the new legislation suggested that changes were desirable.

#### Next Steps

- 4.7** It will be necessary to provide guidance on the new legislation for both the public and members of staff, along with an application form, both of which would be made available on the Council’s website. This had not been prepared at the time of writing, and it is recommended that the production of these documents should be delegated to the Planning and Building Standards Manager.

### **5. People Implications**

- 5.1** High hedges applications will form an addition to the workload of the Planning and Building Standards section. It is anticipated that once the legislation comes into effect, there will be a modest number of applications reflecting an existing pent-up demand for resolution of longstanding hedge disputes, but that once this initial rush passes the number of high hedge applications is unlikely to exceed one or two per year. Such a level of additional workload could be absorbed without any need for additional staffing.

### **6. Financial Implications**

- 6.1** It is unlikely that the number of applications will be significant and it is anticipated that the proposed fee would be sufficient to cover the cost of providing the service.

### **7. Risk Analysis**

- 7.1** No risks have been identified.

### **8. Equalities Impact Assessment (EIA)**

- 8.1** No equalities impact assessment is required.

### **9. Consultation**

- 9.1** The Scottish Government carried out a consultation on the issue in 2009, and the High Hedges (Scotland) Act 2013 was informed by the responses to that consultation.

### **10. Strategic Assessment**

**10.1** The high hedges legislation is intended to provide a means of resolving hedge disputes which impact upon the amenity of residents. This would contribute towards the following Council strategic priority:

- Improve the well-being of communities and protect the welfare of vulnerable people.

**Richard Cairns**

Executive Director of Infrastructure and Regeneration

Date: 11 March 2014

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**Appendices:** 1. Planning Authority Scheme of Delegation showing proposed amendments

**Background Papers:** None

**Wards Affected:** All Wards