



**The Highland
Council**
**Comhairle na
Gàidhealtachd**

**High Hedge Notice Applications
Pre-Application Guidance**
Iarrtasan Brath Callaid Àird
Stiùireadh Ro-iarrtais

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About this Guidance

This guidance constitutes statutory guidance adopted by The Highland Council on 14 May 2014 under Section 31(2) of the High Hedges (Scotland) Act 2013 and has been revised to reflect changes made at Planning, Development and Infrastructure Committee on **03 June 2015**. It is applicable throughout the Highlands and relevant to all applications for High Hedge Notices.

Introduction

The High Hedges (Scotland) Act 2013, which came into force on 1 April 2014, provides a means of resolving high hedge disputes. However, it is intended to be a last resort for the minority of cases where such disputes cannot be resolved the parties themselves.

The Act emphasises this by requiring that potential applicants “must take all reasonable steps to resolve the matters in relation to the high hedge” before making an application for a high hedge notice. These steps are known as 'pre-application requirements' and if they are not carried out by an applicant, their application will be dismissed¹.

Local authorities are able to issue their own guidance on pre-application requirements under the Act in order to guide prospective applicants and ensure that where an informal solution is possible, it can be secured. This guidance constitutes statutory guidance prepared and adopted by the Council under Section 31(2).

What is a high hedge?

The Act defines² a high hedge as:

- i. a hedge that is formed wholly or mainly by a row of two or more trees or shrubs; and
- ii. rises to a height of more than 2 metres above ground level; and
- iii. forms a barrier to light (unless gaps significantly mitigate its overall effect as a barrier at heights of more than 2 metres above ground level).

It is not necessary for the whole of a hedge to fall within the definition. If parts of a hedge qualify, then the hedge will be eligible for an application for a high hedge notice.

It is also important to note that in order for trees or shrubs to be considered as a high hedge, they **must** first be a hedge. A hedge is defined by the Oxford English Dictionary as:

“A row of bushes or low trees (e.g. a hawthorn, or privet) planted closely to form a boundary between pieces of land or at the sides of a road”³.

The Scottish Government has made it clear that Act concerns is not designed to impact on woodlands and forests which, as a general rule, are not planted as hedges. For example, well-spaced tree lines are not generally considered as a hedge, even if canopies coalesce.

However, in some cases woodland and forest edges may take the form and have the effect of a high hedge and the Council will decide whether or not a high hedge is present depending on the facts and circumstances of the case.

Important: If a hedge does not fall within the definition of a high hedge in the Act, then you cannot make an application for a high hedge notice. If you lodge an application regardless, it will be returned to you and any fee paid will be refunded. There is no right of appeal against the Council’s decision to return an application relating to trees or woodland edges etc. that fail to comply with the basic definition of a high hedge.

¹ Page 8, High Hedges (Scotland) Act 2013 - Guidance to Local Authorities, Scottish Government (2014)

² <http://www.legislation.gov.uk/asp/2013/6/section/1>

³ “hedge, n.” - OED Online. Oxford University Press

Looking for advice on what is a high hedge?

In order to help determine whether the hedge or trees in question form a high hedge, the Council offers a pre-application service. This will involve an assessment of the hedge in question following a site visit. Where it is considered that the hedge in question is a high hedge, the advice provided will also include information on the steps necessary to ensure that any further application will be accepted by the Council. It is not intended to provide advice on the likely success, or otherwise, of any potential application. Should you wish such advice, you will need to complete an application form. There is a fee for this service, however, it is deductible from the high hedge application fee.

Any application for a high hedge notice following our pre-application advice will still be required to meet the steps outlined below.

What must be done before making an application?

First and foremost, a potential applicant must take all reasonable steps to resolve the issue with their neighbour themselves before an application is made.

The Act requires that any application that the Council receives where there is no evidence of this having been attempted, or where attempts have been made but fall short of what is required by guidance, must be dismissed⁴.

The steps people should take before approaching the Council will vary from case to case depending on the circumstances. However, it is not sufficient for people to simply claim that their neighbour is unapproachable.

The Highland Council requires, as an absolute minimum, all of the following steps to be undertaken by an applicant prior to the submission of a High Hedge notice application:

- i. Contact must have been made with the owner of the hedge **on at least two separate occasions**, raising concerns about the hedge and proposing measures to mitigate any adverse effects. Contact may be verbal and/or in writing, but must be clearly evidenced, and the period between the two occasions must be sufficient for the owner to consider the points raised, respond and carry out all necessary work (if they decide to do so);
- ii. Where mediation services are available locally and are free of charge, **mediation must have been sought** and the results of any mediation included with the application (this may involve copies of letters, minutes or meetings or reports). Where mediation is not available in your area or a fee is charged for mediation and the fee is cost-prohibitive, a statement should be made to that effect; and
- iii. Notwithstanding any previous contact, you must send a letter to the owner of the hedge **at least 14 days before** you submit your application advising them of your intention to make an application*.

*We have provided a template for a "14-day Letter" in Appendix A for you to use if you wish, but you are free to use your own letter if you prefer. Whichever you use, you must keep a copy of the letter and submit it with your application.

⁴ <http://www.legislation.gov.uk/asp/2013/6/section/5>

Important Points to Remember:

- Depending on the time of year, it may be necessary for remedial work to wait until the next dormant season and this must be considered when setting time limits in discussion with the hedge owner.
- All information supplied in support of your application will, subject to Data Protection laws, be published on our website and copies provided to the owner(s) of the hedge.

Discussions with the owner of the hedge

Usually the first step that an applicant will make is to discuss the issue with their neighbour in an attempt to resolve the problem amicably. Clear and detailed records should be kept of all attempts to resolve the issue and should be included with an application.

An applicant may use several different methods to keep track of attempts, for example a diary of conversations held or a series of receipts of postage (the most robust method would be 'signed for' or recorded delivery). The attempts must show a reasonable effort has been made in a reasonable timescale before applying for a notice, but a set frame of what is reasonable cannot be defined.

For some people, their hedge problems will be long-standing and date back to well before the Act came into operation. During this time they may have made several attempts to settle the matter through negotiation and been repeatedly rebuffed.

Nevertheless, it is reasonable to expect that a fresh approach should be made to the owner of the hedge, now that the Act is in place, before a formal application is made to the Council. At the very least, they must send out a fresh '14-day letter' advising the hedge owner of their intention to submit an application for a High Hedge Notice.

We recommend that prospective applicants read the UK Government's 'Over the Garden Hedge' guidance which, while relating to high hedge processes and legislation in England and Wales, nonetheless contains useful advice for homeowners trying to resolve high hedge issues. This can be downloaded from our website⁵.

Mediation

Another potential option for resolving high hedge disputes without recourse to Council intervention is mediation. Mediation can be carried out in many different ways, from a member of the local community playing the part of the mediator to a professional mediator fulfilling the role.

The Scottish Mediation Network provides low-cost access to mediators in many parts of the country who can provide a mediation service which may help to deal with the issue. Occasionally there may be free mediation services available in some areas.

It is important to note that while the legislation does not require mediation for a case to be considered, it can be an effective way to resolve disputes and, where available locally, the Council would expect to see it having been actively considered.

⁵ www.highland.gov.uk/planningenforcement

If a hedge owner refuses to participate in a mediation process this refusal could be used as evidence of a reasonable attempt by the applicant to resolve the matter. The same may be true of mediation that has failed to achieve a mutually acceptable outcome.

Scottish Mediation Network - <http://www.scottishmediation.org.uk>

SACRO - <http://www.sacro.org.uk/services/mediation/community-mediation-service>

Outlining steps you've taken

If you've tried to resolve the situation yourself, but your neighbour has failed to respond or has not agreed to the remedial action that you feel is necessary, and you are confident that you have complied with all pre-application requirements and that the trees or shrubs in question fall within the definition of a high hedge, you can make an application to the Council for a High Hedge Notice.

In your application you must outline the steps you've taken in order to try to resolve the situation. The more information you're able to give the better. To assist in this process, we have provided below three examples of the type of pre-application steps we would expect to see documented.

Example 1

- 12 March 2014 - Phoned neighbour, Mr MacDonald of 12 High Street, to ask if we could discuss hedge. Met on 19 March but we couldn't agree a solution;
- 15 April - Mediators approached and visited;
- 29 April - Met neighbours Mr MacDonald and mediators. But still couldn't find an solution we were both happy with;
- 14 May - Wrote to inform Mr MacDonald would be applying to the Council for a High Hedge Notice after 14 days of the letter. Mr MacDonald acknowledged the letter, but conformed he won't undertake work I proposed.

Example 2

- 12 March 2014 - Wrote to neighbour, Mr MacDonald of 12 High Street, using recorded delivery to ask if we could discuss hedge. 2 weeks later still no reply;
- 9 April - Wrote to ask if he would speak to mediator. 2 weeks later still no reply;
- 7 May - Wrote to inform Mr MacDonald would be applying to the Council for a High Hedge Notice after 14 days of the letter. Still no reply.

Example 3

- 12 March 2014 - Saw neighbour, Mr MacDonald of 12 High Street, in their garden and asked if we could discuss hedge. Mr MacDonald came round on 19 March. Saw the effect of the hedge for himself. Sympathetic but unwilling to reduce the hedge as much as we wanted;
- Mr MacDonald willing to try mediation but discovered that neighbour mediation not available in our area. We live too far from the nearest service;

- 23 April - Saw Mr MacDonald again and told them that if we couldn't agree a solution, we would apply to the Council for a High Hedge Notice. Left it for a couple of weeks then confirmed in writing that we would be going ahead with the application after 14 days of the letter. No reply to that letter.

As well as itemising all of the steps you've carried out, you **must** include copies of all letters, correspondence, mediation reports etc. relating to those steps. Even where you've itemised steps, applications submitted without supporting evidence may be dismissed by the Council.

Please note that it is very important that all information provided in relation to pre-application requirements that you have carried out is accurate. If you provide information that later turns out to be false or misleading, your application may be dismissed by the Council or any high hedge notice issued maybe challengeable in court.

What happens if my application is dismissed?

Where an application is dismissed because it fails to comply with all applicable pre-application requirements⁶, you will receive confirmation of the dismissal in writing from us.

You have no right of appeal against dismissal and proportion of the application fee will be withheld by the Council to cover the assessment of the application to that stage. Please consult our fees guidance.

If you are in any doubt as to whether or not steps you have undertaken will meet all of the pre-application requirements, please contact us before you submit an application.

How much does an application cost?

Application Fees

There is a fee for submitting an application for a High Hedge Notice. Your application will not be progressed until the fee has been paid. If the fee is not paid within 28 days, the application will be returned to you.

Application fees are fixed by the Council under Section 4 of the Act and our current scale of fees are published on our [High Hedge disputes webpage](#).

Fee Refund Scenario	Refund Amount
Invalid application returned to applicant or application withdrawn by applicant prior to the assessment of pre-	100%

⁶ <http://www.legislation.gov.uk/asp/2013/6/section/5>

application requirements required by Section 5.	
Application dismissed by the Council under Section 5 for failure to comply with re-application requirements.	50%
Application withdrawn by applicant after the assessment of pre-application requirements required by Section 5.	0%

Please note that we no longer accept cheques. You can, however, pay your application fee over the phone using a credit/debit card by calling our Service Centre on 01349 886608 or at your local Service Point. You can also pay online: <http://www.highland.gov.uk/yourcouncil/finance/onlinepayments>

Important: Please ensure that you note down the payment reference and include this in Section 7 of your completed application form.

Supplementary Fees

In certain circumstances, specialist surveys made be required as part of the appraisal of an application for a high hedge notice. Normally, such surveys relate to protected or European protected species (EPS), but may on occasion relate to the historic environment or natural heritage matters.

As is the case for a planning application, such surveys must be provided and funded by the applicant. Where additional surveys are required, an applicant will be advised and they may opt to commission a survey themselves or ask the Council to commission the necessary work on their behalf.

In either case, the applicant is responsible for paying all costs associated with the survey. Where they commission a survey themselves, they must ensure that the surveyor has all necessary qualifications, licences and experience. The scope of the survey must also first be agreed by the Council.

Supplementary Fees	Amount
Specialist surveys required in the assessment of an application (e.g. European Protected Species)	At cost, payable by applicant

Where an applicant fails to pay the costs of a survey commission on their behalf by the Council, or do not commission their own survey when requested to do so, the application will be sisted until such time as payment is made or a survey carried out and submitted.

Where an application is sisted for a period exceeding 3 months with no progress being made, and there is no seasonal justification for delays, the Council may withdraw the application and return it to the applicant. There will be no fee refund in such cases as work will have been carried out by the Council on assessment and administration.

Making an application

If you have read all of the relevant guidance and are certain that you are eligible to apply for a High Hedge Notice or wish to submit a pre-application request, completed forms should be sent, along with all supporting information, to:

ePlanning Centre
The Highland Council
Glenurquhart Road
INVERNESS
IV3 5NX

Important: You are strongly encouraged to pay the application fee prior to submitting your application to avoid unnecessary delays. You can do this by calling us on 01349 886608, at a Service Point or online.

Further guidance

For further guidance or to obtain an application form, please contact us:

Web: www.highland.gov.uk/planningenforcement **Phone:** 01349 886608

We would draw your attention in particular to the Scottish Government's statutory [High Hedge Guidance to Local Authorities](#) (2014), as well as the UK Government's [Over the Garden Hedge](#) (2005) and [Hedge Height and Light Loss](#) (Rev. 2005) guidance which, while relating to high hedge processes and legislation in England and Wales, nonetheless contains good advice for high hedge issues in Scotland.

Appendix A: Sample 14-Day Letter to Hedge Owner

[hedge owner]
[number & street]
[town]
[county]
[postcode]

[date]

Dear [hedge owner],

[ENTER HEDGE DESCRIPTION]
[ENTER ADDRESS]

I refer to the above high hedge located at your property. As you will recall, I have previously raised my concerns with you about the hedge and associated loss of light. I have also suggested steps which would resolve the impact of the hedge on the enjoyment of my property.

To recap, those steps are:

- [insert description of steps proposed to resolve the high edge issue]

Unfortunately, we have been unable to come to a mutually acceptable solution and, accordingly, I must advise that I now intend to apply to The Highland Council for a High Hedge Notice. I will submit my application 14 days after the date on this letter. This provides you with two weeks within which to reconsider my proposed solution, commit to undertaking the suggested steps and negate the need for an application to the Council.

Please note that should you continue to disagree with my proposed solution and the Council serves a High Hedge Notice (and any appeal you may make is dismissed), you will be legally bound to undertake the work they require of you. If you fail to comply with a High Hedge Notice, the Council can undertake the work themselves and claim back full costs from you.

Should you wish to reconsider my proposed solution, please do not hesitate to contact me on [enter phone] within 14 days of the date on this letter.

Yours sincerely,

[Your name]

If you would like more information on High Hedge Notice Applications, please contact us in one of the following ways:

Planning Enforcement
Infrastructure, Environment and Economy Service
The Highland Council
Glenurquhart Road
Inverness, IV3 5NX

Phone / Fòn: 01349 886608

Web / Lion: www.highland.gov.uk/planningenforcement

If you need this document in **LARGE PRINT**, on audio tape, in Braille or in another format or language, please contact us.

