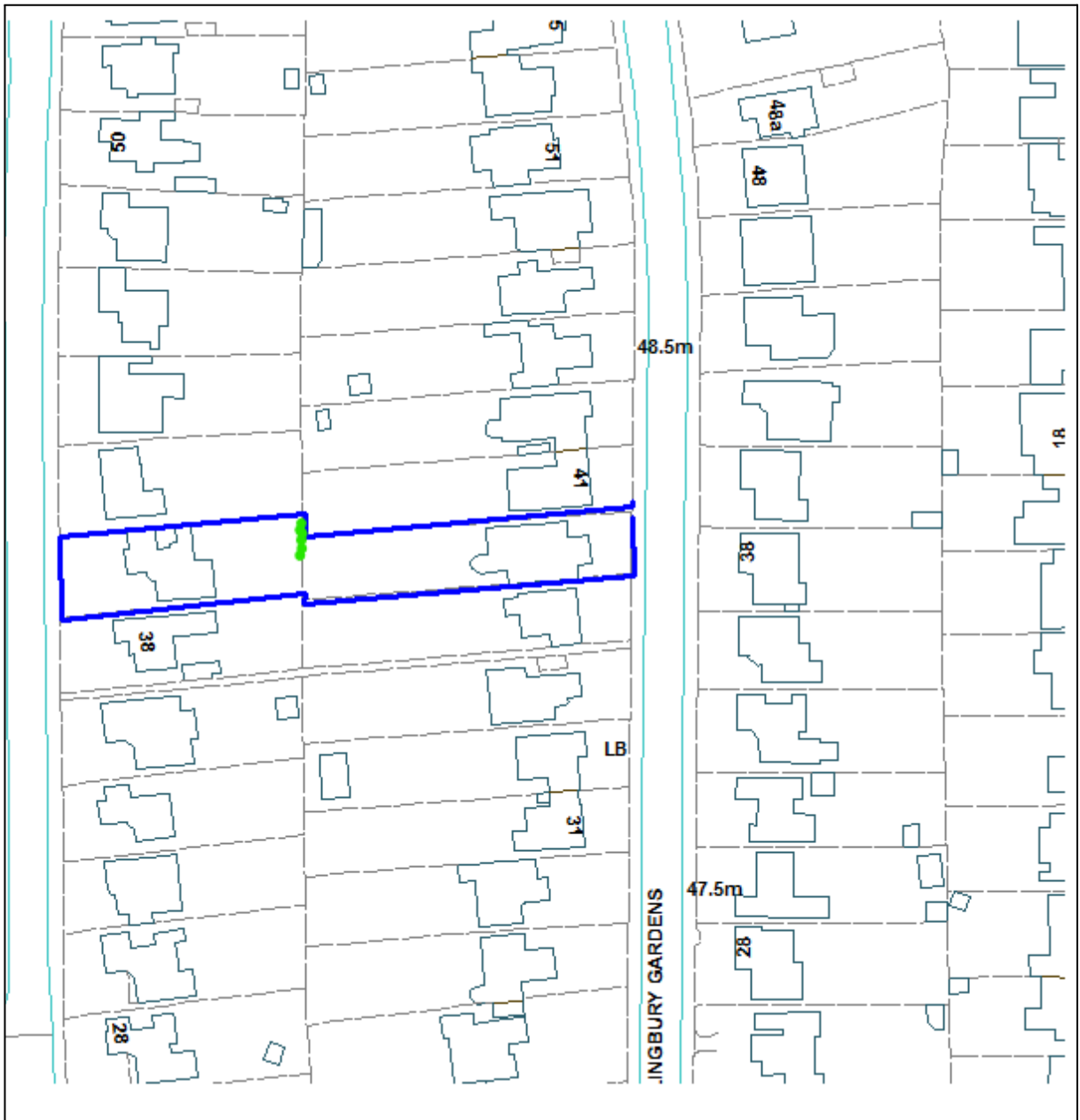


Application Number:	AWEN/0019/20	Recommendation - Confirm the issuing of the Remedial Notice
Site:	39 Hollingbury Gardens Worthing	
Proposal:	Confirmation of Issuing Remedial Notice	
Case Officer:	Jeremy Sergeant	



Not to Scale

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Proposal, Site and Surroundings

This report refers to a High Hedges complaint regarding a medium sized Leylandii hedge running along the western boundary from the centre to the northwest corner of the rear garden of 39 Hollingbury Gardens.

The complaint has been made by the occupiers of 40 Cissbury Gardens, a road which runs parallel to the west of Hollingbury Gardens. 40 Cissbury Gardens is set on slightly lower ground than the garden of 39 Hollingbury Gardens as it is set further down the incline of the area than the Western boundary of the rear garden of 39 Hollingbury Gardens. Photos of the trees are included at the end of this report.

Relevant Planning History

The original High Hedges complaint in respect of this matter was received in early 2020. The Council considered the matter and in April 2020 informed both the complainant and owner of the trees of its decision that the hedge should be reduced to a uniform height of 8 metres, and maintained at no more than 9 metres in height.

The complainant did not agree with this conclusion and accordingly submitted an appeal to the Planning Inspectorate. The Planning Inspectorate informed the Council that an appeal had been received in August 2020 indicating that the complainants had submitted the required information for the appeal to be considered.

Due to the pandemic, the determination of the appeal was delayed considerably to the extent that an appeal site visit by the Inspector was not arranged until the beginning of 2022. However, just before the site visit was due to take place in March 2022, the Inspector advised the complainant and the Council that the appeal was invalid as a formal decision, by way of a Remedial Notice, had not been issued by the Council. Since no formal decision had been issued by the Council, therefore, the complainant had no right to appeal and accordingly the matter had been closed by the Inspectorate. A Remedial Notice dated 22nd March 2022 was then issued by the Council, but given the background and delay to the case thus far, and further to advice received from the Council's Legal Officers, it was considered that the Remedial Notice should be withdrawn and reconsidered afresh, following a further site visit. Furthermore, it was considered appropriate to bring the matter to the Planning Committee for consideration which would give both the hedge owner and complainants the opportunity to address the Committee if they so wished.

Relevant Planning Policies and Guidance

Worthing Core Strategy (2011).

National Planning Policy Framework (NPPF).

Submission Draft Worthing Local Plan (as Modified)

Office of the Deputy Prime Minister: High Hedges Complaints: Prevention and Cure 2005

Relevant Legislation

The Committee should consider the matter in accordance with:
Part 8 Anti-Social Behaviour Act 2003 (“2003 Act”)

Section 68 2003 Act states:

(3) if the authority decide -

- (a) Whether the height of the high hedge specified in the complainant is adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified; and
- (b) If so, what action (if any) should be taken in relation to that hedge in pursuance of a remedial notice under section 69 with a view to remedying the adverse effect or preventing its recurrence

(4) if the authority decide under subsection (3) that action should be taken as mentioned in paragraph (b) of that subsection, they must as soon as reasonably practicable -

- (a) Issue a remedial notice under section 69

High hedge is defined under section 66 2003 Act:

(1) ..'high hedge' means so much of a barrier to light or access as -

- (a) is formed wholly or predominantly by a line of two or more evergreens; and
- (b) rises to a height of more than two metres above ground level

Representations

In their original submission, the complainants stated that:

- The hedge casts a shadow/shade across much of their garden and left side of their property.
- The hedge encourages flying insects that bite in the shade.
- The impact upon use of the garden adversely affects health and wellbeing
- The garden is colder in the morning and cannot be enjoyed before working hours.

The complainants have confirmed that their objections remain.

The property owners have included a report from a Tree Surgeon which notes that excessive cutting can cause the death or destruction of a hedge.

Planning Assessment

The subject hedge consists of 6 Leylandii trees with live foliage from 1.4 metres, on mostly slender stems, with one larger tree (the fourth from the southern end). The overall height of the hedge is approximately 11 metres and runs for approximately 5.3 metres along the western boundary of the adjoining property from the Northwest corner. Although the shade created by the hedge does not have a significant effect on the property of 40 Cissbury Gardens, therefore meaning that such issues of loss

of light and privacy are not directly relevant to the consideration of the complaint, it is considered that the height of the hedge is imposing and has an adverse effect on the relatively small garden area. The hedge provides moderate privacy as the lower sections of foliage are sparse above the boundary fence to approximately 6 metres.

As stated above, in its original assessment, your officers considered that the hedge should be reduced to a uniform height of 8 metres and subsequently maintained at a height of no more than 9 metres. Having reassessed the matter fully, however, account has been taken of the level between the base of the rear wall of the building and the base of the Hedge, which was omitted from the previous calculation of Building Research Establishment Hedge Height and light loss, as specified in government guidance relating to hedge height and light loss.

Accordingly, as the property of 40 Cissbury Gardens is lower down than the hedge itself as a result of the intervening incline this has been taken into account with the new assessment calculation. Based on the British Standard Lighting for Buildings: Codes of Practice for Daylight (BS 8206), the Building Research Establishment Hedge Height and light loss, which gives the height as being of not more than 7 metres. As a result, therefore, it is considered that the height and subsequently maintained height of the hedge should be metres lower than previously specified, namely a reduction to a uniform height of 6.5 metres and subsequent height of no more than 7 metres.

Although visible from both roads in places, the back garden location of the hedge means it has very limited visual amenity value. Both Hollingbury Gardens and Cissbury Gardens have trees in the street itself and accordingly it has not considered a reduction in the height of the hedge will have a material impact upon the wide character of the area.

The previous Remedial Notice allowed for a period of 8 months to complete the works in order to allow for the nesting season which is generally from March to September. Works to hedges and trees can still be undertaken during the nesting season, however, with the emphasis that the hedge is checked for nests before commencing. In this instance, therefore, it is considered that a shorter period of time can be given to complete the works on the strict proviso that the hedge is checked for nesting birds prior to any works carried out and if their presence is independently verified then an amended timescale for works can be agreed with the Local Planning Authority. This will provide the balance between ensuring that the works are undertaken without unnecessary delay if possible.

Conclusion

The High Hedges complaint concerning the hedge on the property of 39 Hollingbury Gardens has been made under Part 8 of the Anti-Social Behaviour Act 2003 and referencing the guidelines given in the ODPM booklet High Hedges Complaints: Prevention and Cure, it is considered that given the considerable incline between the properties and between the Hedge and 40 Cissbury Gardens, the hedge should be reduced in height to 6.5 metres and future growth only allowed up to 7 metres.

Recommendation

It is recommended that a Remedial Notice is issued, the following steps to be taken in relation to the hedge before the end of May 2023 unless specialist advice is received demonstrating the presence of nesting birds within the hedge, in which case the works shall be carried out in accordance with a timescale to be agreed in writing with the Local Planning Authority.

Initial Action to be carried out by 31/05/23 (subject to the Provisions of the Wildlife and Countryside Act in relation to Nesting Birds as set out above)

1. Reduce the entire hedge to a uniform height not exceeding 6.5 metres above ground level.

Preventative Action

2. Maintain the hedge so that at no time does it exceed a height of 7 metres above ground level.

Informative

It is recommended that the hedge is cut back annually to a height of 6.75 metres. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of 7 metres.

All works should be carried out in accordance with good arboricultural practice/BS 3998: 'Recommendations for Tree Work'.

In taking the action specified in this Remedial Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981. This includes birds and bats that nest or roost in trees. Should a delay be necessary due to nesting birds etc. the Council will require a report from an appropriate specialist to be provided by the Hedge Owners.



Hedge measured at 8 metres on device - est 11 metre tall



Hedge From 40 Cissbury Gardens.