

Bolsover District Council

High Hedges Committee

8th January 2020

High Hedges Report relating to 14 Fairfield Road, Bolsover seeking the High Hedges Committee's approval to issue a Remedial Notice to reduce the current height of the existing domestic hedges.

Report of the Principal Planning Enforcement Officer

This report is public

Purpose of the Report

- To assist the High Hedges Committee to decide on whether the high hedges located within the grounds of 14 Fairfield Road, Bolsover is adversely affecting the reasonable enjoyment of the property at 12 Fairfield Road, Bolsover; and,
- To decide whether a Remedial Notice should be issued to require works to reduce and maintain the hedge height at a lower level.

1. Report Details

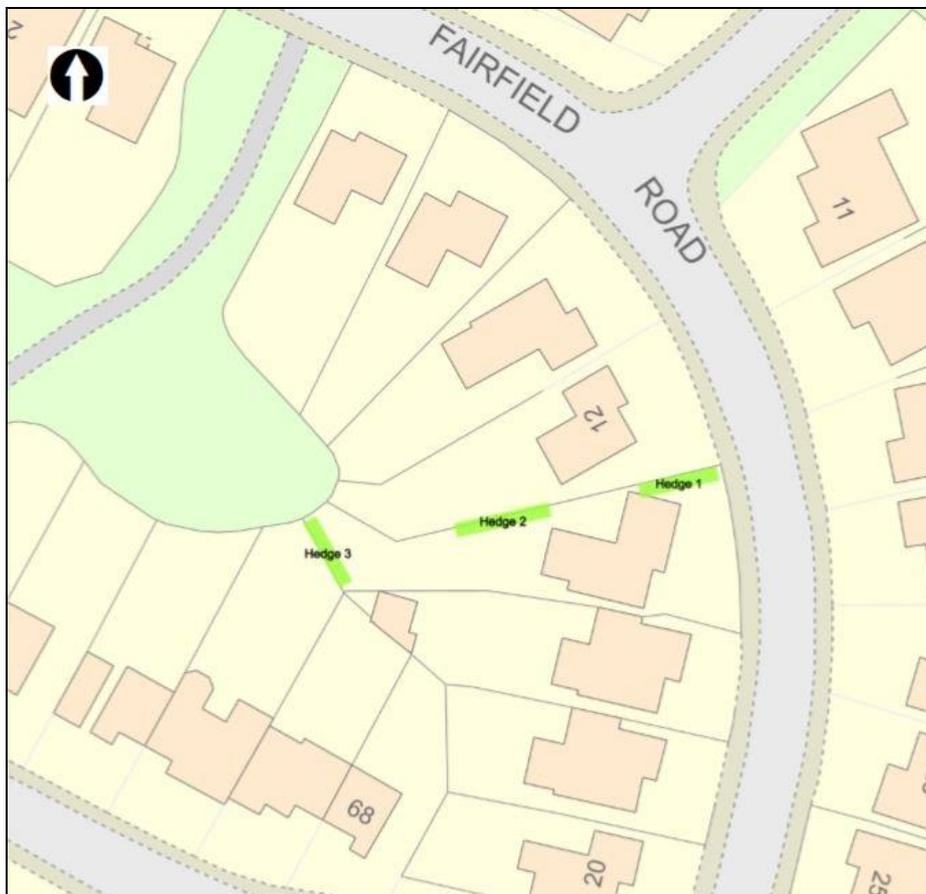
DESCRIPTION OF THE HEDGE AND ITS SURROUNDINGS

- 1.1 Number 12 Fairfield Road (the affected property) is a two storey detached house. It shares its boundaries with number 14 (to the south and south west) and number 10 (to the north). The front garden comprises a lawn and a driveway. A narrow path adjacent to number 10 Fairfield Road forms the access to the rear garden which is accessed by a flight of steps down to a small side elevation yard with a timber shed. The yard area gains access to the wider rear garden where there is a conservatory, decking area and garden / lawn that extends to 18metres (m) reducing in depth from 9m (decking area) to a depth of 5.50m. The garden is orientated from front to rear in a SW direction with a slight decline along its length of approx. 1.0m. There is a further small garden area containing a timber shed and 1.7m high boundary fence between the southern boundary of the affected property and 14 Fairfield Road.
- 1.2 The high hedges are all located within the boundary of 14 Fairfield Road (hedge owner). They are located along the boundary with the affected property as well as the rear garden of 64 Ridgedale Road.
- 1.3 In December 2019 three distinct areas could be identified as potentially affecting light onto the garden and into the windows of the affected property:
 - i. Hedge One: located on the front southern garden boundary and consisting of 14 separate stands of Leyland Cypress (*Leylandii*) measuring between 3.5m and 7.0m high and covering the entire distance of the boundary (7.5m) between the

affected property and the hedge owner's. They are located along the southern boundary adjacent to and at right angles to the affected property. It should be noted that hedge one is formed at right angles to a healthy hedge measuring 7.0m high that fronts the length of Fairfield Road. Due to its location and orientation in relation to the affected property, the hedge has not been included in this report but it has been reported to Derbyshire County Council Highways due to its depth which overhangs onto the public footpath.

- ii. Hedge two: located along the southern boundary (adjacent and at right angles to the affected property) albeit on the rear garden and comprising a dense / compact area of 6 *Leylandii* stands with a maximum height of 7.0m (although the majority had recently been cut to 3.3m) that extend along the boundary for 9.5m. These stands are located within 250mm of the boundary which is further delineated with a 1.2m high timber fence. Although there is evidence of a gap above 2m (above ground level) between the dense area and an outlier *Leylandii* stand, the Council considers this small gap does not significantly affect its overall effect as a barrier to light.
- iii. Hedge three: located on the extreme SW boundary of number 14 Fairfield Road where the garden adjoins 64 Ridgedale Road and comprises 5 *Leylandii* stands with a maximum height of 12m (measured from the garden of number 14) that extend for 7m along the entire boundary, some 4.0m beyond the boundary of the affected property. Due to the orientation of the garden the entire effective length of the hedge affects the complainant's garden.

1.4 Hedge Location Plan:



- 1.5 The entire length of the boundary between number 12 and number 10 Fairfield Road contains a 2.0m high cultivated *Leylandii* hedge. This hedge does not adversely affect light nor does it affect amenity, as such it does not form any part of this report.

BACKGROUND

- 1.6 The law giving Councils powers to deal with complaints about high hedges is contained in Part 8 of the Anti-social Behaviour Act 2003 and the High Hedges (Appeals) (England) Regulations 2005.
- 1.7 The provisions apply to complaints made by owners or occupiers of domestic properties adversely affected by evergreen hedges over 2.0m in height. The Council may, if they consider it justified, issue a Remedial Notice requiring the owner or occupier of the land where the hedge is situated to remedy the problem and prevent it recurring.
- 1.8 The Council can tailor the management solution to the particular problem, but cannot require removal of a hedge or its reduction in height to less than 2.0m. There are rights of appeal against the issue of a Remedial Notice.

THE COMPLAINT

- 1.9 The complainant's principal concerns are that the hedges have been allowed to grow to a size such that they:
- a. reduce daylight/sunlight inside the home to the front and rear;
 - b. reduce direct sunlight reaching onto the garden in the summer and winter restricting the enjoyment of the gardens;
 - c. cast shade across the entire depth of the garden from the south and south west to the rear and from the south to the front to the extent that it is not conducive to the health of the lawn; and,
 - d. are so high, dense, extensive and overbearing along the boundaries that they are visually dominant and overbearing.
- 1.10 The complainant has continued to work with his neighbour over the years and throughout 2019 to overcome the height of the hedge and has expressly applied patience throughout the ecology season in 2019 giving time for the hedge owner to take action. The complainant has asked that the hedge be reduced to maximum of 2.0m high.

OBSERVATIONS OF THE HEDGE OWNER

- 1.11 The hedge owner was formally invited to submit comments with regards why the hedge needs to be so high on 11th October 2019. At the time of writing this report, no formal representations have been received.
- 1.12 The hedge owner informally contacted the Council (by telephone) to explain that the complainant has been allowed to cut the hedge that overhangs the affected garden.
- 1.13 The hedge has been allowed to grow to an increased height to improve privacy.
- 1.14 The hedge owner has carried out work to reduce the depth and height of some of the hedges from 7.0m to 3.2m with the ultimate aim of reducing the southern

boundary hedge to 3.0m. This has been done to improve the situation for the affected garden as well as to retain some privacy for himself.

- 1.15 The hedge owner as expressed regret that he has let the hedge grow to their current heights.
- 1.16 An update report will be provided for the committee to advise on the situation at that time.

OBSERVATIONS OF OTHER ADJOINING LAND OWNERS

- 1.17 The owner of the land at 64 Ridgedale Road was notified and provided informal comments. He explained that in his opinion the height of the hedges and their north easterly orientation did not affect light to his garden or property. However, the overbearing nature of the hedges was having some impact on the health of his lawn at this boundary and he would like to see their height reduced.

ASSESSMENT.

- 1.18 The Council has followed the method set out in the Building Research Establishment (BRE) guidelines on 'Hedge height and light loss' for calculating what height a hedge should be for it not to cause an unreasonable obstruction of light to windows and gardens. The assessment has been carried out separately for each of the three locations (Appendix 2).
- 1.19 Hedge one: The overall action hedge height is 2.68m. The length of the boundary hedge that needs cutting down to ensure light is cast onto the effected property is calculated by using the current max height of the hedge $7.0\text{m} - 1\text{m} \times 2 = 12.0\text{m}$.
- 1.20 Hedge two: The overall action hedge height is 2.81m. The length of the boundary hedge that needs cutting down to ensure light is cast onto the effected property is calculated by using the current max height of the hedge $7.0\text{m} - 1\text{m} \times 2 = 12.0\text{m}$.
- 1.21 Hedge three: The overall action hedge height is 10.45m. The length of the boundary hedge that needs cutting down to ensure light is cast onto the effected property is calculated by using the current max height of the hedge $12.0\text{m} - 1\text{m} \times 2$ which equates to 22.0m.

LOSS OF DAYLIGHT /SUNLIGHT AND OVERSHADDOWING

- 1.22 Hedge one, two and three, all currently being higher than the action hedge height, are likely to result in an unreasonable loss of light to the garden.
- 1.23 Hedge one and two (both currently being higher than the action hedge height) are likely to result in an unreasonable loss of light into the affected property.
- 1.24 All three hedges need reducing from their current heights to the action hedge height along their entire effective lengths.
- 1.25 The action hedge height is guidance ONLY and concerns daylight/sunlight issues. It is not in itself decisive in determining if a hedge should be reduced in height. In deciding upon a "reasonable" height for the hedge there are additional factors to consider including those of privacy and amenity. There is no objective method for

assessing the impact of a hedge on amenity, it is a matter of judgement based on the circumstances of the particular case.

PRIVACY AND AMENITY.

- 1.26 The Council's Supplementary Planning Document (SPD) 'Successful Places; A Guide to Sustainable Housing Layout and Design' provides best practice advice on privacy and visual amenity. Irrespective that the guidance relates to new developments rather than existing developed sites the guidance has nevertheless been considered.

PRIVACY

- 1.27 The SPD considers minimum separation distances and angles between facing windows. Although one side elevation window is located in the upper floor of the hedge owner's property, none exist in the affected property. With this in mind there is no overlooking from the complainant's side onto the hedge owners property. The current height of the hedges are therefore not required to improve privacy.
- 1.28 The levels across the depths of both gardens (12 and 14 Fairfield Road) are similar along 60% of their entire length. The last 10m of the hedge owner's garden (furthest away from the dwelling) declines steeply such that there is a 1.7m difference in the height between the two gardens at their individual rear boundaries. The level of the garden of the affected property being higher where there is a 1.7m high timber fence that restricts overlooking.
- 1.29 The BRE guidance confirms that on a level site, a hedge with a height of 2.0m will usually provide privacy from a neighbouring garden. Furthermore the SPD accepts that some loss of privacy across adjoining gardens should be expected. With this in mind the Council considers that reducing the height of the boundary hedge (hedge two) to 2.0m is unlikely to result in overlooking between the adjoining gardens, and in instances of overlooking from elevated parts of the garden this is also considered reasonable.

AMENITY

- 1.30 Hedge one and hedge two are void of any foliage. This has been caused due to an attempt to reduce the height and depth of the hedge to improve daylight/sunlight onto the affected garden and property. The work to the hedge has been carried out by the hedge owner and (with permission of the hedge owner) the complainant rather than a qualified arborist and consequently has damaged the hedge to the extent that it has very poor amenity value.
- 1.31 The harmful effects of hedge three relates to its excessive height. Firstly it restricts daylight/sunlight onto the affected garden and secondly it is easily seen from the public realm and can be described as being overbearing, dominating and oppressive.
- 1.32 From the hedge owner's garden all three hedge locations were no doubt once a defining feature of the property boundary which gave a sense of enclosure and defensible space, as well as having contributed to the formal landscaping of the garden. Hedge one and hedge two have been allowed to grow to extensive heights such that attempts to reduce its impact by unqualified operatives has damaged the

hedges to the extent that they are considered to be oppressive with little amenity value.

- 1.33 Fairfield Road comprises a mixture of modern detached and semi-detached brick built homes including two storey houses, dormers and bungalows, which are located on relatively well sized plots adjacent to the public realm. The road is characterised by large garden frontages that contain a mixture of 1.0m high boundary fences or open plan gardens, some with small ornamental hedges / borders. There are numerous mature ornamental trees along the length of Fairfield Road that also facilitate a sense of place. Only two gardens have hedge boundary enclosures in excess of 2.0m. The hedge at 14 Fairfield Road and a hedge at number 1 Spital Green.
- 1.34 With regards planting, the SPD advises that the eventual size of planting should be considered to ensure that its impact is not detrimental to adjacent land uses. Whilst the hedge at 1 Spital Green (2.8m high) is cultivated and healthy it does not affect the street scene. However, by virtue of the oppressive heights and the poor amenity value (which the Council applies great weight to) of the hedges at 14 Fairfield Road, the Council considers these do adversely impact upon local amenity.

2 Conclusions and Reasons for Recommendation

- 2.1 The Council acknowledges that the hedge has been present along the boundaries of 14 Fairfield Road for many years. During this time the hedge owner has allowed the hedge to grow and the complainant has been aware of its increasing height as well as attempting to mutually resolve the issue with the hedge owner.
- 2.2 Using the BRE guidelines the Council has established an action hedge height that is required to enable an appropriate amount of light to cast onto the affected garden and property. Consideration also needs to be given to setting a growing margin i.e. a hedge reduction level and a maximum height within which the hedge can grow before further remedial works would be required. Without this “growing margin” any growth would have to be trimmed on an almost daily basis.
- 2.3 Recommended hedge height:

Hedge	Action Hedge Height	Growing Margin	Recommended hedge height
One	2.68m	600mm	2.20m
Two	2.81m	600mm	2.20m
Three	10.45m	1000mm	9.50m

- 2.4 The hedge owner is willing to reduce the current hedge height of hedge one and hedge two to 3.0m, work that will be done prior to the ecology season starting 1st March 2020. There have been no discussions regarding hedge three.
- 2.5 To determine an appropriate growing margin rather than using a calculated recommended hedge height the Council’s Street Scene Coordinator (SSC) has been consulted. The SSC explained there are no obvious safety issues with any of

the hedges, however the extensive unqualified work that has been carried out on hedge one and hedge two has resulted in them being unlikely to increase in height and it would be some time before low level foliage would recover, if at all. The SSC made no recommendations for reducing the height of these hedges or the height of hedge 3.

- 2.6 The Council has concluded that the hedges, at their present height do have an adverse effect upon the complainant's reasonable enjoyment of his property. The complainant has provided evidence of previous attempts made, without success, to resolve the matter without the Council's involvement. In such circumstances the service of a Remedial Notice would be appropriate.
- 2.7 The Notice must also make requirements for the ongoing trimming of the hedge to ensure it never exceeds a recommended height, which should help to avoid problems arising about the hedge height in the future.
- 2.8 To strike a balance between the competing interests of the hedge owner, the growing margin, the SSC comments and the existing height of nearby cultivated hedges, the Council considers the current hedge heights should be reduced as follows:
- i. Hedge one has an adverse effect upon daylight/sunlight to the main windows and to the garden of the affected property. This issue could be overcome by reducing the height of the entire length of southern boundary (allowing for a growing margin) to 2.20m high from the base of the *Leylandii*, which would be appropriate and would help to ensure no future significant problems arise;
 - ii. Hedge two has an adverse effect upon daylight/sunlight to the windows and garden of the affected property. This issue could be overcome by reducing the height (allowing for a growing margin) to 2.20m high from the base of the *Leylandii* across the entire southern boundary, which would be appropriate and would help to ensure no future significant problems arise; and,
 - iii. Hedge three has an adverse effect upon daylight/sunlight to the garden of the affected property. This issue could be overcome by reducing the height of the entire south west boundary (allowing for a growing margin) to 9.50m high from the base of the *Leylandii*, which would be appropriate and would help to ensure no future significant problems arise.
 - iv. To maintain the hedges within the above margins, it is estimated that the hedges would require trimming once a year.
- 2.9 The Remedial Notice and dates for action would need to allow for the works to be made outside of any bird nesting season in order to reduce the impacts on wildlife.

3 Consultation and Equality Impact

- 3.1 The owner of the hedge as well as one other adjoining land owner (the only one considered to be affected) have been notified together with two ward members and the Town Council.
- 3.2 The Council's Street Scene Coordinator has been consulted.

4 **Alternative Options and Reasons for Rejection**

- 4.1 The options are for the Committee to determine as set out in the recommendations at paragraph 6.1.

5 **Implications**

5.1 **Finance and Risk Implications**

- 5.1.1 Financial: Fee paid (Non-refundable)

- 5.1.2 There is a right of appeal by the hedge owner upon the issue of a Remedial Notice.

5.2 **Legal Implications including Data Protection**

- 5.2.1 **Hedge height and light loss (ODPM 2005);** This national guidance note provides an objective method for assessing whether high hedges block too much daylight/sunlight and sunlight to adjoining properties and provides guidance on hedge heights to alleviate these problems. It introduces the concept of "action hedge height" above which a hedge is likely to block too much light. It provides a methodology to calculate this height both for a garden and for windows to main rooms in a dwelling. Conservatories and greenhouses are taken within the calculations for the garden. A conservatory, within this guidance, would not be regarded as a main room of the dwelling. In the Anti-Social Behaviour Act 2003, "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.'

- 5.2.2 **High Hedges Complaints: Prevention and Cure (ODPM 2005):** This guide sets out the Government's policy advice on administering complaints about high hedges. It states that in reaching their decision, the Council should consider all relevant factors and assess each case on its particular merits. They should seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general to produce a proportionate response to the complaint. It will normally be a question of weighing up the harm caused by the hedge on the one hand against its amenity value to the hedge owner and the wider community on the other. It advises that privacy, obstruction to light (gardens and windows) and visual amenity are all relevant considerations. A hedge of more than 2.0 metre in height might be justified in special cases, such as where one property can be seen into more than another. On the matter of visual amenity, Government's advice is that there is no objective method and that this is a matter of judgement for the decision maker. In order to avoid future problems, the guidance advises that a growing margin be specified within which the hedge can be allowed to grow between trimmings.

5.3 **Human Resources Implications**

- 5.3.1 None

6 Recommendations

- 6.1 That the Committee determine whether the hedges are, because of their height, adversely affecting the complainant's reasonable enjoyment of his property, and if so, should a Remedial Notice be issued to require the following:
- i. Reduce the height of hedge one and hedge two to a height of no more than 2.2m above ground level (prior to the end of February 2020);
 - ii. Reduce the height of hedge three to 9.5m (prior to the end of October 2020)
 - iii. After that date, trim the hedges regularly to ensure they never exceeds the above heights above ground level.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	Bolsover South
<p>Links to Corporate Plan priorities or Policy Framework</p>	<ul style="list-style-type: none"> • Providing our customers with excellent customer service: <ul style="list-style-type: none"> - Increasing customer confidence and satisfaction with our services. • Supporting our communities to be healthier, safer, cleaner and greener: <ul style="list-style-type: none"> - Working with partners to reduce crime and anti-social behaviour; - Ensuring a high standard of environmental maintenance and cleanliness; - Developing attractive neighbourhoods.

8 Document Information

Appendix No	Title
1 2	Location Map / Location of Hedges Spreadsheet Hedge One daylight sunlight/calculation Spreadsheet Hedge Two daylight sunlight/calculation Spreadsheet Hedge Three daylight sunlight/calculation
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
None	
Report Author	Contact Number
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