

Report of Reading Borough Council

Part 8 of Anti-Social Behaviour Act 2003

Investigation of High Hedges Complaint at: The Fishery, The Warren, Caversham, Reading, RG4 7TQ

Complainant: Mr C Nightingale, Kingfishers Reach, The Warren, Caversham, Reading, RG4 7TQ

Case Reference: 191184/HHC

Purpose of Report

This report is provided to inform the complainant, hedge owner and any other interested parties of the findings of the investigation of the complaint by Mr C Nightingale, Kingfishers Reach, The Warren, Caversham, Reading, RG4 7TQ regarding a problem hedge at The Fishery, The Warren, Caversham, Reading, RG4 7TQ

Background

A complaint regarding a problem high hedge was submitted to the Council on 18 July 2019 by Mr C Nightingale, Kingfishers Reach, The Warren, Caversham, Reading, RG4 7TQ.

Following an assessment of the validity of the complaint, the Council investigated the complaint and the findings of this investigation are set out below.

The Hedge and its Surroundings

The hedge is located along the entire south-west boundary of the complainant's garden. It is made up of predominantly Laurel, but with the inclusion of Photinia (in a separate row) in the section between the house and a single conifer approximately one third of the way down the hedge. In the portion of the hedge closest to the house there is a small group of four trees including one evergreen (Holm oak) and three deciduous trees (Lime, Hop Hornbeam and Norway maple). Only the Holm oak will be relevant to this complaint, as the only evergreen. These can all be seen in the photographs within Appendix 1.

The Laurel has not recently been maintained and as such varies in height along the length of the hedge from 3-4m. The single conifer is 1-1.5m taller than the hedge and the Holm Oak is approximately 5.5m high.

Both gardens are of a similar length, however, the hedge owner's garden (The Fishery) extends in width to the west where the length also increases, at a further distance from the complainant's garden.

The area is well treed with the properties situated at the western extremes of the Borough, forming part of the buffer between the countryside to the west and more urban character in other directions. The gardens are at the same level and both slope gently down to the River Thames on the southern side.

The complainant's garden also contains one large Copper beech on the north-east boundary which is subject to Tree Preservation Order 130/09.

The hedge owner's property is Grade II listed.

Relevant Policies or Legislation

The large Copper beech tree on the south-east boundary on the complainant's garden is subject to Tree Preservation Order 130/09. This does not form part of the 'High hedge' but is mentioned briefly below.

The River Thames is a 'treed corridor' as defined in the Council's adopted Tree Strategy hence tree retention and planting along this (within the gardens along The Warren) is a priority.

The hedge owner has drawn the Council's attention to covenants that exist on the land. Having looked through the documents provided, it appears that there is one section that may be relevant (if it relates to the specific land on which the hedge is growing). This states:

'None of the trees standing at any time upon the said land hereby conveyed shall be cut down, destroyed, topped or lopped or trimmed (except to the extent strictly necessary of the tree in question shall be seriously diseased or dangerous and trimming which does not materially affect the appearance thereof) except with the prior written consent of the Existing Trustees or their successors in title in respect of the Retained Property such consent not to be unreasonable withheld'.

The land registry title and covenants are complicated on this site, more so with Kingfishers Reach having originally been part of The Fishery. The hedge owner should ensure that any additional permissions are obtained prior to carrying out the work required by the Council's decision, given that a High Hedge Remedial Notice does not override the requirements of a covenant. The works to 'trees' only includes the conifer (previously pruned) and the Holm oak and are not considered to be works for which approval could reasonably be withheld.

Case for the Complainant

The property is less than 1m from the boundary on which the hedge and a small group of young trees sit. As a result the kitchen gets little light and the branches overhang the roof. Although responsible for the fence, previous occupiers of The Fishery put up a hedge which has pushed over the fence and which has been allowed to grow by the current owner to 15 feet, severely reducing the property's access to light after approximately 3.30pm.

The garden is long and narrow and is in the shade after approximately 3.30pm due to the Laurel hedge's height.

The hedge was cut back by the hedge owner's late husband in 2018 and it was agreed at that time to discuss the height in 2019. Unfortunately, no resolution has been achieved with the hedge owner.

Case for the Owner/Occupier of the Land where the Hedge is Situated

No particular comments have been made by the hedge owner in response to the complaint other than making reference to a covenant which prevents the reduction of the hedge.

Main Considerations

The Council's role in these cases is to seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general, and thereby to formulate a proportionate response to the complaint.

The main considerations in this case are whether the problems complained of are sufficiently serious to justify action being taken in relation to the hedge, bearing in mind the effect such action would have on the property where the hedge is situated and on the wider area.

Appraisal of the Evidence

Light obstruction

The Council followed the method in the BRE guidelines on 'Hedge height and light loss' for calculating what height a hedge should be in order not to cause an unreasonable obstruction of light to windows and gardens. The calculation sheet is given in Appendix 2.

The results showed that the hedge in question is lower than the recommended height in relation to its impact on the garden, the Action Hedge Height being 4.9m, with the exception of the conifer which should be reduced to this height.

However, the results showed that the 5m long portion of the hedge specified in the Remedial Notice (closest to the house) and the Holm oak within that are having an impact on the complainant's property; an average hedge height of 3.5m being used for the hedge, i.e. higher than the Action Hedge Height of 3.3m (depending on the current height in that location) and the Holm Oak being approximately 2.2m higher than the Action Hedge Height; its current height being 5.5m.

This was appreciated by observations during the site visit of the morning of 18 September 2019. However, it was also noted during our visit that the protected Copper beech tree on the opposite boundary (within the complainant's garden) resulted in a substantial portion of the garden being in shade as can be seen in the photographs in Appendix 1. In addition, whilst not directly affecting the kitchen window, light into the other rear windows would be affected slightly by the rear canopy on the house.

Visual amenity

The hedge forms a useful screen between the properties which are extremely close to each other due to Kingfishers Reach originally being an addition to The Fishery. The result of this proximity is that the boundary hedge is then very close to the complainant's property resulting in light loss.

Given the length and substantial size of the hedge owner's garden, the hedge would not otherwise be problematic and would complement the verdant character of the area.

Privacy

There is no difference in the level between the land where the hedge is situated and the complainant's property. The minor reduction of the height of the hedge closest to the properties and the reduction of the one, young Holm oak within this,

along with the reduction of the single conifer, is not considered to impact the level of privacy for either property, particularly as the 3 deciduous trees will still remain unless the owner chooses to remove them.

Health of the hedge

The hedge, and trees within it, are vigorous and healthy. It is not considered that cutting the hedge down to the height recommended by the BRE guidelines on 'Hedge height and light loss' will have a detrimental impact on its health, particularly given the species. In relation to the Holm oak, it is expected that the owner would in any case wish to contain the size of this tree given its extreme proximity to the house and potential size; felling may be a reasonable option for these reasons, but cannot be required in the Remedial Notice.

Conclusion

The hedge, including the Holm oak, is causing obstruction of daylight and sunlight to the complainant's bungalow for a portion of its length and the single conifer within the hedge is causing a minor obstruction to light into the garden, albeit the current height is not significantly different to the Action Hedge Height. Due to the proximity of the boundary, hence hedge, the nearest portion dominates the complainant's property, affecting living conditions and visual amenity.

In relation to the garden, evidence suggests that the height of the hedge would not need to be reduced as it is currently lower than the Action Hedge Height of 4.9m, excluding the conifer which would need to be reduced to address concerns.

In relation to the property, evidence suggests that the hedge would need to be reduced by 0-1m in the specified 5 metre section closest to the property and the Holm oak within that reduced by 2.2m in order that no part within that section exceeds 3.3m in order to remedy the problems identified.

Such a height would be sufficient to safeguard the privacy of the either party and would not, in the Council's view, adversely affect the enjoyment of that property or the general character and amenity of the neighbourhood. On balance, the Council believe that the harm caused by the hedge outweighs other factors and that remedial action is justified.

Formal Decision

For the reasons given above the Council have decided that the height of the hedge in question is adversely affecting the complainant's reasonable enjoyment of their property (house and garden) and hereby issue the enclosed remedial notice specifying the action that must be taken in relation to the hedge to remedy its adverse effect and to prevent its recurrence.

Summary of Requirements of Remedial Notice

The remedial notice specifies that the single conifer within the hedge should be reduced to a height of no more than 4.5 metres above ground level and that the specified 5 metre section of hedge closest to the house be reduced to a height of no more than 3.0 metres within 3 months of the date of the notice - that is by 30 March 2020. Reduction to this height allows the hedge to grow between annual or more frequent trimming and still not cause significant problems.

After the above date, the hedge should be trimmed regularly to ensure that it never exceeds a height of 4.9 metres above ground level along the majority of its length and that the specified 5 metre section closest to the house never exceeds a height of 3.3 metres. The requirement to maintain the hedge at, or below, this height lasts until the hedge is removed or dies.

Person Responsible for Taking Remedial Action

Under the Act, the owner or occupier of The Fishery, The Warren, Caversham, Reading, RG4 7TQ is obliged to carry out the works specified in the remedial notice, within any timescale set there. Failure to do so may result in prosecution and a fine.

The remedial notice does not give the complainant any right to intervene and take the necessary action themselves.

Right of Appeal

The complainant and everyone who is an owner or occupier of the land where the hedge is situated, that is Mr Nightingale at Kingfishers Reach and Mrs Cantle (and other occupiers) at The Fishery, can appeal to the Planning Inspectorate against the issue of the remedial notice. Further information is in the leaflet *High hedges: appealing against the Council's decision*, available at www.gov.uk. An appeal must be submitted to the Planning Inspectorate, on their official form, within 28 days from the date of this letter. The form is available on the Planning Inspectorate website at www.planning-inspectorate.gov.uk or from:

The High Hedges Appeals Team
Room 4/04 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Email: environment.appeals@planninginspectorate.gov.uk

Appeal forms can be found at: <https://www.gov.uk/government/collections/high-hedges>

An appeal can be made on any one or more of the following grounds:

- that the action specified in the remedial notice falls short of what is needed to remedy the adverse effect of the hedge or to prevent it recurring;
- that, contrary to the decision of the Council, the hedge in question is not adversely affecting the complainant's reasonable enjoyment of their property;
- that the action specified in the remedial notice exceeds what is reasonably necessary or appropriate to remedy the adverse effect of the hedge or to prevent it recurring;
- that not enough time has been allowed to carry out the works set out in the notice.

The remedial notice will be suspended while any appeal is being determined.

If you would like further information about our decision, please contact Sarah Hanson, Natural Environment Officer, Planning, Floor 1 North, Bridge Street, Reading, RG1 2LU, quoting the reference number given above.

I am sending this letter to the complainant and the owner and occupier of the land where the hedge is situated.

REMEDIAL NOTICE

To be sent to the complainant and every owner and occupier of the land where the hedge is situated

IMPORTANT - THIS NOTICE AFFECTS THE PROPERTY AT: The Fishery, The Warren, Caversham, Reading, RG4 7TQ

ANTI-SOCIAL BEHAVIOUR ACT 2003

REMEDIAL NOTICE

ISSUED BY: Reading Borough Council

1. THE NOTICE

This Notice is issued by the Council under section 69 of the Anti-social Behaviour Act 2003 pursuant to a complaint about a high hedge situated at The Fishery, The Warren, Caversham, Reading, RG4 7TQ. The Council has decided that the hedge in question is adversely affecting the reasonable enjoyment of the property at Kingfishers Reach, The Warren, Caversham, Reading, RG4 7TQ and that action should be taken in relation to the hedge with a view to remedying the adverse effect and preventing its recurrence.

2. THE HEDGE TO WHICH THE NOTICE RELATES

The single conifer within the hedge in the rear garden at The Fishery, The Warren, Caversham, Reading, RG4 7TQ and marked red on the attached plan.

AND

The portion of hedge in the rear garden at The Fishery, The Warren, Caversham, Reading, RG4 7TQ and marked red on the attached plan, including the Holm oak within this. The portion is 5 metres in length, measured from the end of the hedge that is closest to the house at this address. This portion is marked red on the attached plan.

3. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE

Initial Action

The Council requires the following steps to be taken in relation to the hedge before the end of the period specified in paragraph 4 below:

- (i) *reduce the conifer within the hedge to a height not exceeding 4.5 metres above ground level and reduce the specified 5 metre length of hedge (including the Holm oak) to a height not exceeding 3.0 metres above ground level.*

Preventative Action

Following the end of the period specified in paragraph 4 below, the Council requires the following steps to be taken in relation to the hedge:

- (i) *maintain the majority of the hedge (including the single conifer) so that at no time does it exceed a height of 4.9 metre above ground level and maintain the specified 5 metre length of hedge so that at no time does it exceed a height of 3.3 metres above ground level.*

Informative

It is recommended that the hedge is cut back annually to a height of 4.5 metres for the majority of its length and to a height of 3.0 metres for the specified 5 metre section. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of 4.9 and 3.3 metres.

All works to trees (the conifer and Holm oak) should be carried out in accordance with good arboricultural practice/BS 3998: 'Recommendations for Tree Work'.

It is recommended that skilled contractors are employed to carry out this specialist work. For a list of approved contractors to carry out works on trees and hedges, see the Arboricultural Association's website at www.trees.org.uk.

In taking the action specified in this 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.

4. TIME FOR COMPLIANCE

The initial action specified in paragraph 3 above to be complied with in full within 3 months of the date specified in paragraph 5 of this Notice, i.e. by 30 March 2020.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 30 December 2019

6. FAILURE TO COMPLY WITH THE NOTICE

Failure by any person who, at the relevant time, is an owner or occupier of the land where the portion of hedge specified in paragraph 2 above is situated:

- a. to take action in accordance with the initial action specified in paragraph 3 above within the period specified in paragraph 4; or
- b. to take action in accordance with the preventative action specified in paragraph 3 above by any time stated there;

may result in prosecution in the Magistrates Court with a fine of up to £1,000. The Council also has power, in these circumstances, to enter the land where the hedge is situated and carry out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Dated: 2 December 2019

Signed: 

Sarah Hanson, Natural Environment Officer, on behalf of Reading Borough Council

REMEDIAL NOTICE: SPECIFYING THE ACTION

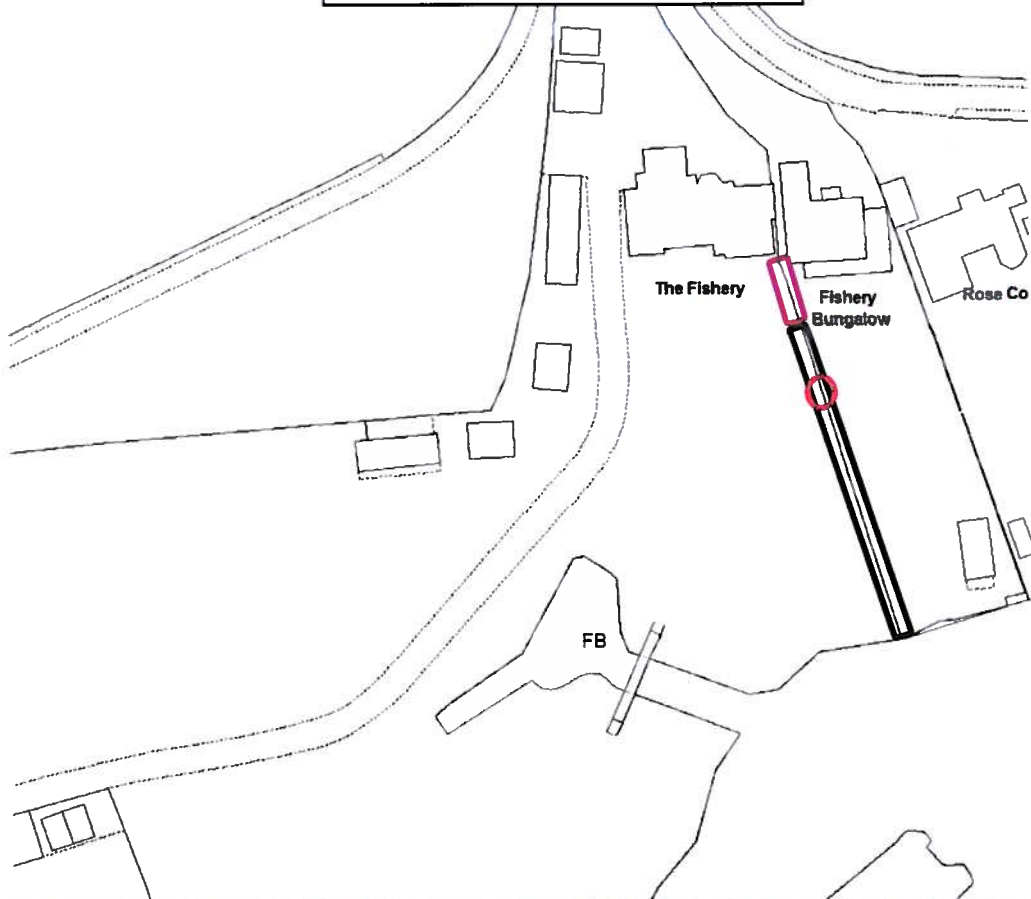
Initial Action

- (i) *reduce the conifer within the hedge to a height not exceeding 4.5m metres above ground level and reduce the specified 5 metre length of hedge (including the Holm oak) to a height not exceeding 3.0 metres above ground level.*

Preventative Action

- (i) *maintain the majority of the hedge (including the single conifer) so that at no time does it exceed a height of 4.9 metre above ground level and maintain the specified 5 metre length of hedge so that at no time does it exceed a height of 3.3 metres above ground level.*

REMEDIAL NOTICE - PLAN (nts)



APPENDIX 1

PHOTOGRAPHS

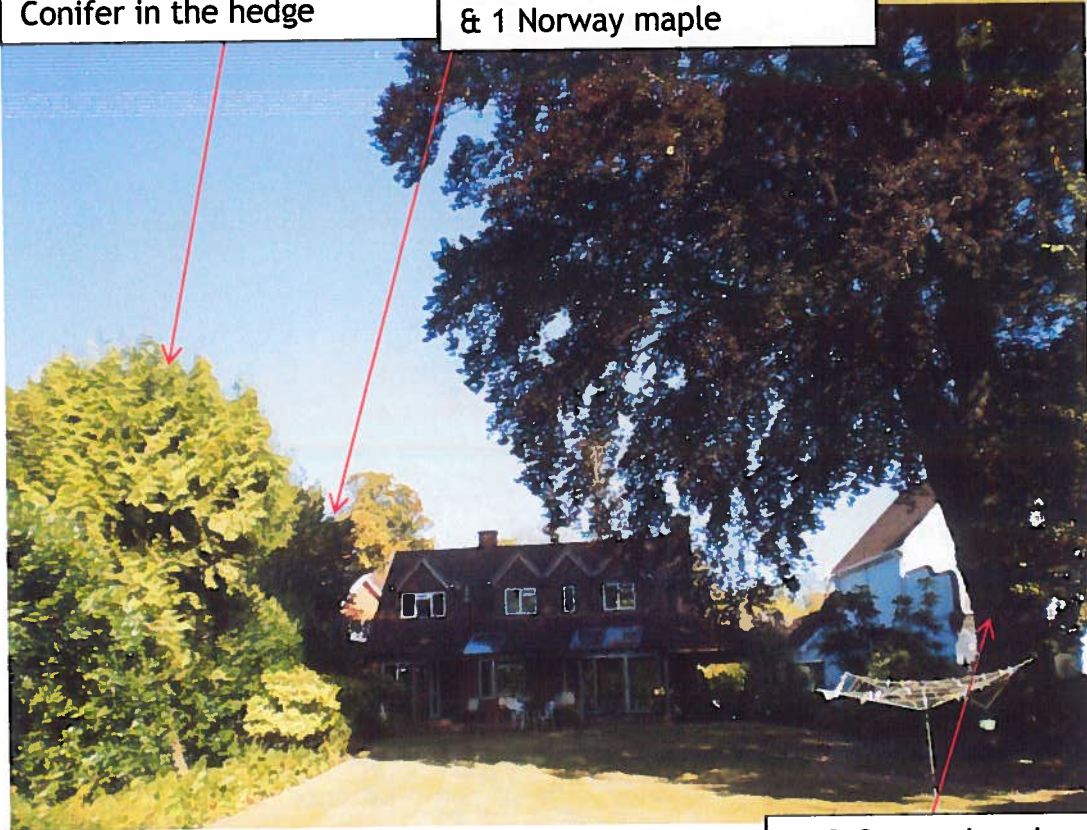


Hedge: Located on west-south-west side of complainants garden - predominantly Laurel with one small group of trees close to house and one conifer within the hedge



Conifer in the hedge

Group of trees: 1 Holm Oak, 1 Lime, 1 Hornbeam & 1 Norway maple

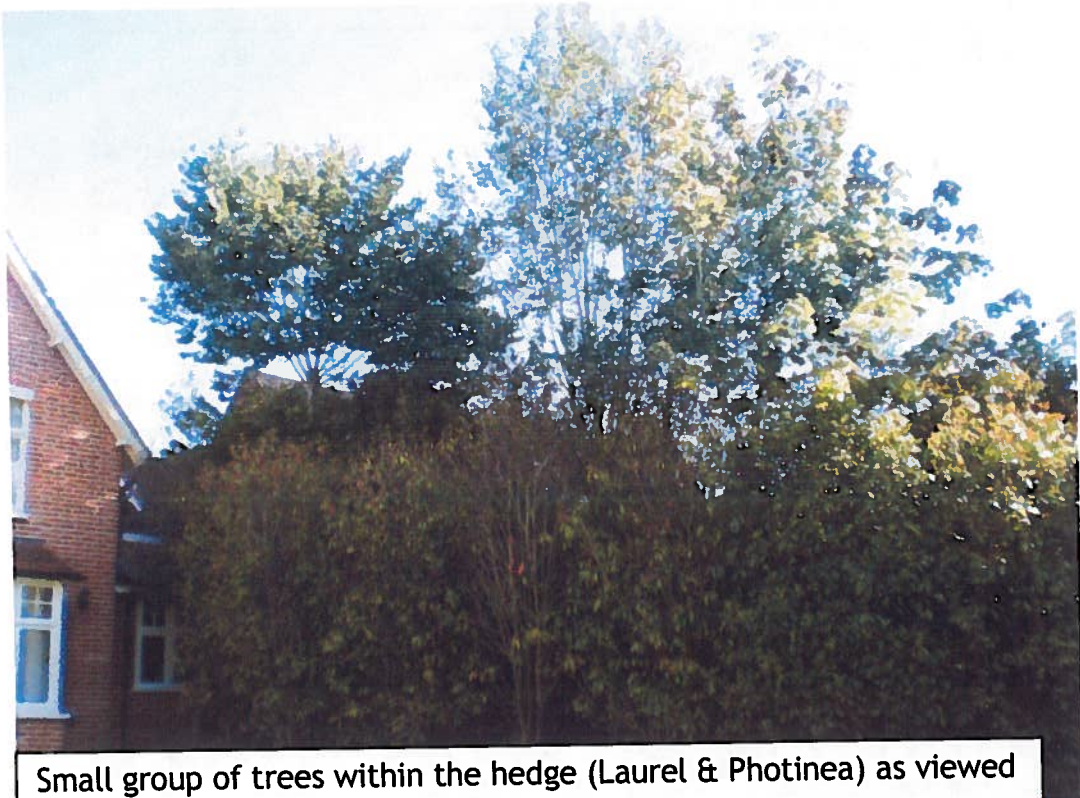


TPO Copper beech

Complainant's garden (looking south) showing hedge on the right (south-west) and TPO Copper beech on the left (north-east) along with shade cast by the tree



Holm oak within the small group of trees



Small group of trees within the hedge (Laurel & Photinea) as viewed from hedge owner's property





Conifer within the hedge and southern portion of the hedge consisting of only Laurel; as viewed looking south (photo above) and north (photo below)





Hedge as viewed looking north east from the end of the hedge owner's garden

High Hedge complaint ref 191184 relating to The Fishery, The Warren, Reading

APPENDIX 2

BRE CALCULATION (LIGHT)

A SPREADSHEET TO CALCULATE ACTION HEDGE HEIGHT

Only enter data in the green boxes

Measure distances in metres

Quantities you
measure/ look up

Calculated values

	Quantities you measure/ look up	Calculated values
GARDEN <i>If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -</i>		
Area of garden (see section 4.2 & 7.ii.a)	A	
Effective hedge length (see Figure 3) <i>Or, if the garden is rectangular and the hedge grows along the whole length of the boundary on which it is situated, enter -</i>	B	
Depth of garden	19.5 C	
Effective garden depth		$(A \div B) \text{ or } C$ 19.5 C'
Orientation Compass direction of hedge from garden (S, NW etc)		
	SW	
Factor from Table 1 (section 4.2)		0.25 D
Uncorrected action hedge height		$(C' \times D)$ 4.88 E
Hedge set back from boundary (section 4.3.1) If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge.		
	F	
Slopes (section 4.3.2) Distance between hedge and reference point for slope calculation		
		$(C' \div 3)$ 6.50 G
If garden slopes, enter height that a point in the garden G metres away from hedge boundary is above the base of hedge (negative number if hedge is higher).		
	H	
Corrected action hedge height for garden		$(E + F + H)$ 4.88 J
WINDOWS Measurements Closest distance from hedge to centre of window (section 5)		
	2.3 K	
If hedge opposite window, or south of a window that faces within 30 deg S of E or W (see sections 5.2-3), write 2 here If hedge at right angles to window, write 1 here If hedge at 45 degrees to window, write 1.5 here	1 L	
Uncorrected action hedge height for windows		$(K \div L) + 1$ 3.30 M
Amendments Enter height of floor above ground (if first or above)		
	N	
If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher)	P	
Corrected action hedge height for windows		$(M + N + P)$ 3.30 Q
OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater)		3.30

