

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Strategic Planning and Infrastructure
DATE	3 rd June 2014
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Tree Preservation Orders & High Hedge Notices – Delegated Powers
REPORT NUMBER:	EPI/14/122
CHECKLIST RECEIVED	Yes

1. PURPOSE OF REPORT

Due specifically to the requirements of new legislation (The High Hedges (Scotland) Act 2013) this report outlines a request for the committee to approve that the Scheme of Delegation be updated in line with the recommendations detailed below in relation to Tree Preservation Orders & High Hedge Notices.

2. RECOMMENDATION(S)

That the committee approve that the Scheme of Delegation be updated by adding that the Head of Planning and Sustainable Development is authorised to;

- 1) refuse applications for works to trees covered by Tree Preservation Orders.
- 2) determine applications for the serving of a High Hedge notice; vary and revoke a High Hedge Notice and take enforcement action to ensure compliance with a High Hedge notice.

3. FINANCIAL IMPLICATIONS

There are no financial implications.

4. OTHER IMPLICATIONS

There are no other implications

5. BACKGROUND/MAIN ISSUES

Tree Preservation Orders

Owners of trees covered by Tree Preservation Orders (TPOs) are required to apply to the council for consent prior to undertaking any work on those trees. On receipt of an application the Council can choose to refuse the application or grant consent. Currently the Head of Planning and Sustainable Development has delegated power to grant applications to fell, lop or top trees protected by Tree Preservation Orders.

In order to refuse an application a report is required to be submitted to the Planning Development Management Committee.

Currently officers aim to administer decisions within 2-4 weeks. Where the decision to grant consent is taken the above timescale is generally achieved. However the time taken to refuse an application is substantially longer due to the requirement to report to committee.

Applications are only considered for refusal when the proposed works are inappropriate. For example where the works proposed are likely to be harmful to an otherwise healthy tree or the request is to fell an otherwise healthy tree for unsuitable reasons, i.e. leaves blocking gutters, lack of light or poor television/satellite reception.

In order to improve customer service and shorten the timescale for issuing a refusal letter it is requested that the committee approve that the Scheme of Delegation be updated by adding that the Head of Planning and Sustainable Development is authorised to refuse applications for works to trees covered by Tree Preservation Orders. This would allow for discussions to take place at an earlier stage regarding what works may be appropriate. Currently officers can only advise applicants that their application will be recommended for refusal; this does not tend to focus the applicant on the merits of alternative solutions which may be less detrimental and therefore acceptable. Applicants are more likely to wait for the outcome of committee before engaging in discussing alternative solutions. The ability to undertake these discussions sooner are more likely to result in a positive outcome rather than undertaking the discussion after the applicant has had to wait up to six weeks for a decision. In addition the time expended on preparing the report for committee could be used to deal with other applications.

It is not proposed to change the existing arrangements whereby, when new TPO's are proposed, provisional orders are reported to committee for approval prior to confirming the order.

High Hedge notice

The High Hedges Act 2013 came into force on 1st April 2014. The Act aims to provide a solution to the problem of high hedges (over 2 meters in height) which are deemed to have an adverse impact on the reasonable enjoyment of residential properties where the hedge forms a barrier to light.

Where an attempt to resolve a dispute between neighbours over the height of a hedge has failed the party affected by the hedge can apply to the council for a High Hedge notice to be served on the owner of the hedge that would require the hedge to be reduced to a specified height.

On receipt of an application the Council can choose to;

- dismiss the application if it is considered frivolous or vexatious;
- conclude that the hedge is a high hedge but due to other factors choose not to serve a high hedge notice; such as when reasonable justification for the height of the hedge is provided by the owner; or
- conclude that the hedge is a high hedge and serve a high hedge notice requiring action/s to be taken.

Once a notice has been served the council can choose to vary and revoke a notice and take enforcement action to ensure compliance with a high hedge notice as appropriate and/or necessary.

The processing of high hedge notice applications and the future management of served notices have strong parallels with the processing of minor planning applications. Delegated powers are already in place to allow the determination of minor applications without reporting to committee. In order to ensure an efficient and timeous service to applicants it would seem appropriate to deal with high hedge notice applications in the same manner as minor planning applications. It is therefore requested that the Head of Planning and Sustainable Development is authorised to determine applications for the serving of a high edge notice; vary and revoke a high hedge Notice and take enforcement action to ensure compliance with a high hedge notice.

6. IMPACT

The implementation of the High Hedges (Scotland) Act 2013 will assist the Council in delivering a number of Single Outcome Agreements.

- (15) Our public services are high quality, continually improving, efficient and responsive to local people's needs.

This report is likely to be of limited interest to the public.

The Equality and Human Rights Impact Assessment (EHRIA) identified a neutral impact on people with protected characteristics. Paragraph 9 of the EHRIA states;

The result of the impact assessment identified a neutral impact on people with protected characteristics.

7. MANAGEMENT OF RISK

The proposal is considered to result in increased efficiency and decrease the time applicants are required to wait for an outcome.

The risk of inaction if the recommendations are not accepted is that excessive officer and committee time will be expended on generally straightforward and routine procedures.

The risk of action if the recommendations are accepted is likely to result in an opportunity risk for the customer/citizen as it will likely lead to improved customer service. However the more streamlined the decision process is the greater the possibility for some parties to the decision to feel aggrieved if the decision goes against them. A structured appeal process exists for appealing against the outcome of a High Hedge notice application. There is no appeal procedure for the refusal of work to trees covered by a TPO regardless of whether the decision is taken by committee or delegated. However the council complaints procedure would be applicable in such circumstances.

8. BACKGROUND PAPERS

- Scottish Planning Series, Planning Circular 1 2011, Tree Preservation Orders
- High Hedges (Scotland) Act 2013
- High Hedges (Scotland) Act 2013 Guidance to Local Authorities
- EHRIA

9. REPORT AUTHOR DETAILS

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