

WARD 04_17

21/00279/HHCOMP
25th March 2021

**Application for High Hedge Notice at 12 Charlotte Street
Fochabers Moray IV32 7EE
for Ms Sarah Johnson**

Comments:

- A SITE VISIT HAS BEEN CARRIED OUT.
- The application is being reported to Committee because it relates to an application for a High Hedge Notice.
- The neighbouring houses at “Allt na Coille” and 51 South Street, Fochabers, were notified of the application and comments were received from one of the parties. These properties were notified on the basis that they also could be affected by the hedge.

Procedure:

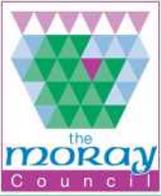
- If Members are minded to agree to serve a High Hedge Notice (and subject to the outcome of any potential appeal) and the owner of the hedge does not comply with its requirements, the Council may undertake direct action and recover costs from the hedge owner. There is currently no budget for this work.

Recommendation

Within Section 8 of The Act provision is given for local authorities to decide that initial and preventative action is to be taken through the service of a high hedge notice.

It is recommended that given the application relates to a high hedge, and that the high hedge is having an adverse impact on the reasonable enjoyment of the applicant's property, a High Hedge Notice should be issued by the Council.

1. The High Hedge Notice should instruct the hedge owner to reduce the height of the hedge (as shown in red in Appendix 1 and comprising 8 Western Red Cedar trees) to 6.5m above ground level adjacent to the trunks, and that these works be carried out within eight weeks of the Notice taking effect.
2. In addition, the Notice should stipulate that the hedge should be maintained on an annual basis to ensure that its height does not exceed 7.25m.
3. The initial reduction in height of tree tops must be conducted out with the bird nesting season which occurs within April, May, June and July. This exclusion period may be relaxed if a detailed nesting survey of the affected area confirming that nests are not present/in use is submitted to and agreed by the Moray Council prior to any lopping or pollarding being carried out.



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:
21/00279/HHCOMP

Site Address:
12 Charlotte Street
Fochabers

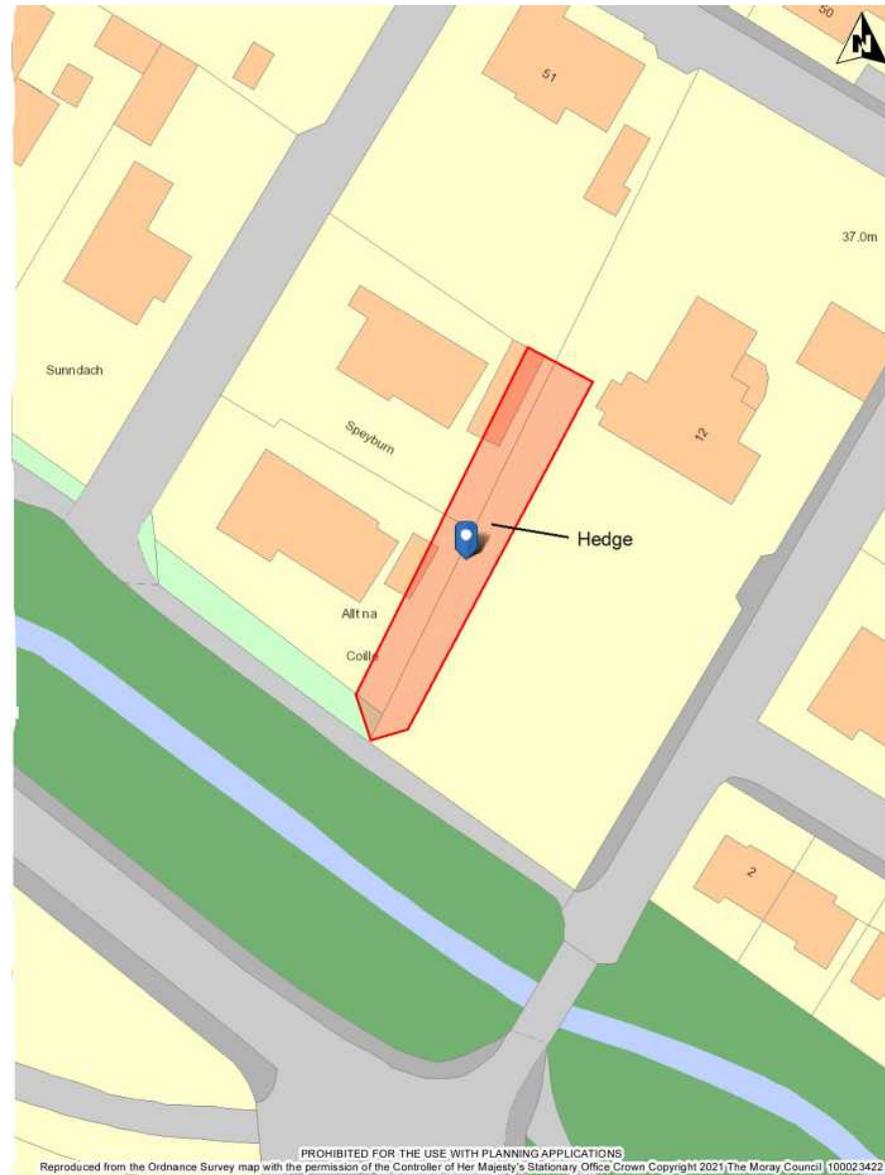
Applicant Name:
Ms Sarah Johnson

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Location Plan



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Map Description: Hedge Location

Scale: 1:500 @ A4



Site location plan

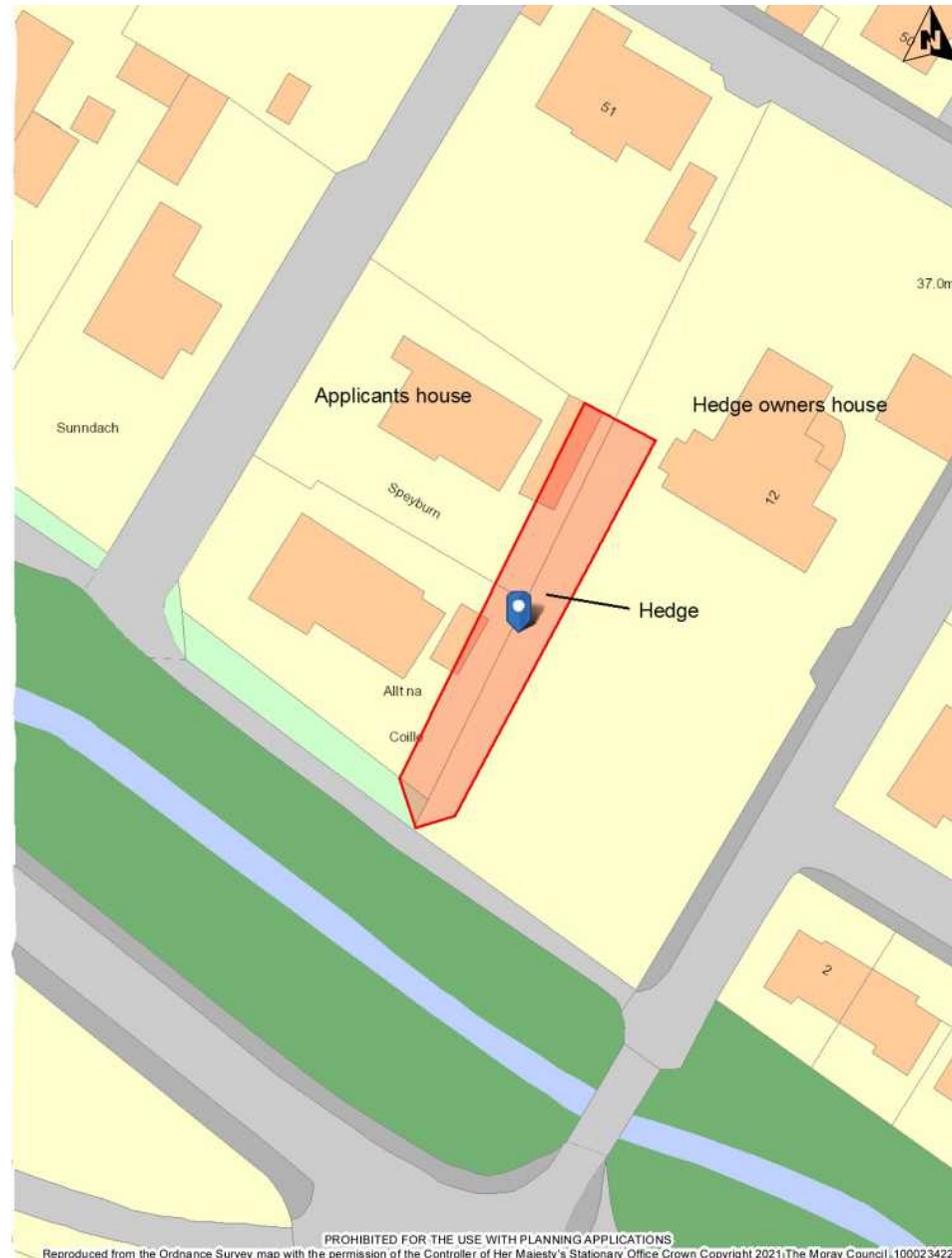


Photo location plan



Photo 1



Photo 2



Photo 3



Photo 4



**APPLICATION FOR HIGH HEDGE NOTICE :
21/00279/HHCOMP**

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

INTRODUCTION

This report relates to an application for a High Hedge Notice which has been submitted by the owners of the house at Speyburn, George Street, Fochabers, IV32 7EG. The hedge which is the subject of this application is located within the grounds of the neighbouring house at 12 Charlotte Street, Fochabers.

The applicant has responded 'yes' to all the criteria listed in Section 3 (Part B) of the High Hedge application form i.e. hedge is made up of a row of two or more trees, exceeds 2 metres in height, forms a barrier to light, is growing on land owned by someone else, is affecting domestic property and the applicant has attempted to resolve the issue with the hedge owner.

The applicant seeks to have all of the hedge identified by them within the area marked on their submitted plan to the east of their house reduced in height to 2m.

The Council note that there has been previous dialogue between the applicant and the owner of the hedge going back to August 2020 in an attempt to reach agreement over a reduction in the hedge height, however, to date no agreement has been reached.

THE SITE

The hedge lies along the western boundary of 12 Charlotte Street, which is a detached traditional house set within extensive garden grounds containing a multitude of mature trees, bushes and hedging. The hedge as identified by the applicant is made up of 8 Western Red Cedar (*Thuja plicata*) trees, the position of which is shown in Appendix 1. The applicant's house, a detached bungalow lies approx. 4.2m to the east of the hedge, with the side elevation of the house facing towards the hedge. There is a separation distance of approx. 7m between the side of the applicant's house and the shared boundary with the hedge owner's property, however, the hedge overhangs this shared boundary by approx. 2.7m. The applicant has a detached single garage with shallow pitched roof which is located between the applicant's house and the hedge and measures 2.8m to ridge. The ground between the applicant's house and the hedge is generally flat.

The site has been inspected as part of the assessment of this application. The location of the hedge is shown outlined in red together with the applicant and hedge owner's houses on the Committee location plan.

The hedge measures approx. 15m in height to tip along its length, with the top 4m of the hedge having an element of separation between the tops of the trees that form the hedge.

Given that the hedge has the potential to affect neighbouring properties, neighbours were notified of the application and comments from one party were received who were supportive of the hedge being reduced in height or removed completely due to the impact that it has on their house.

The applicant lets out the property "Speyburn" which is the subject of this application and the current tenants of the property who have lived there on a long term let basis have also submitted comments in support of the reduction of the height of the hedge.

Legislative Framework High Hedges (Scotland) Act 2013

Within the narrative of Section 1 of Act, the meaning of a high hedge is defined as a hedge that is:

- formed wholly or mainly by a row of 2 or more trees or shrubs,
- rises to a height of more than 2 metres above ground level, and
- 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).

Scottish Government Guidance High Hedges (Scotland) Act 2013 Revised Guidance to Local Authorities 2019

In addition to the Act, Scottish Government Guidance on High Hedges to local authorities states that;

"Although the Act uses the term 'neighbouring land' to describe where the hedge is growing, the hedge doesn't have to be next door to the applicant's property. This means that a hedge on 'neighbouring land' could be several gardens down the road or across the street, as long as the applicant can show that it has a negative effect on their enjoyment of their house.

An application cannot be made under the Act against single trees or shrubs, whatever their size. Two or more trees or shrubs do not have to form a precisely straight line to qualify as a hedge. As long as they are roughly in line, they may be considered as a hedge under the Act.

The Act applies to hedges that, despite any gaps above the 2-metre mark, act as a barrier to light.

An example of a method of measuring light levels is the Hedge Height and Light Loss (Revised edition 2005) guidelines which were developed by the Building Research Establishment (BRE). These guidelines were created to help local authorities in England and Wales make decisions under the Anti-Social Behaviour Act 2003. However, the method set out in the 2004 guidelines was designed to apply only to evergreen hedges, but the High Hedges (Scotland) Act 2013 covers all types of hedges and so that method cannot be applied in all cases. Whichever method the local authority decide to use to help them make their final decision as to whether a hedge is a barrier to light, they must consider the circumstances of each case."

CONSULTATIONS

Advice was sought from an ecologist/licenced bat worker following concerns raised by the owner of the hedge that it is utilised by nesting birds, bats and red squirrels.

The ecologist identified the hedge as being Western Red Cedar and outlined that there were no squirrel dreys present in the hedge and bat roost potential was low and that any reduction in the hedge height would be unlikely to result in any impact on roosting bats or breeding squirrels. There is however, the potential to impact on nesting birds and therefore, any reduction in height should be done out with the bird breeding season.

SUBMISSIONS

Correspondence has been submitted accompanying the application which includes a number of letter exchanges between the applicant and the owner of the hedge, prior to formal submission of the application. The Act allows for the owner of the hedge to comment on the original application submissions and then for the applicant to respond to the owners comments.

These submissions are summarised below into key points:

Definition of a High Hedge

The Applicant: The applicant has responded 'yes' to all the criteria listed in Section 3 (Part B) of the High Hedge application form i.e. hedge is made up of a row of two or more trees, exceeds 2 metres in height, forms a barrier to light, is growing on land owned by someone else, is affecting domestic property and the applicant has attempted to resolve the issue with the hedge owner.

Hedge owner's response: These are mature trees which are spaced 3m apart and are "notable trees". The trees also sit behind a privet hedge which runs along the true boundary between the properties and the trees are therefore not a hedge running along a boundary between the properties.

Comment (PO): Section 1 of the Act defines a 'high hedge' as:

- being formed completely or mainly by a row of two or more trees or shrubs;
- rising to a height of more than 2 metres above ground level; and
- forming a barrier to light (unless gaps in the hedge significantly reduce its overall effect as a barrier to light at heights of more than 2 metres above ground level).

As per the above definition, the hedge in question is considered to meet these 3 points and is considered to be a high hedge under the terms of the Act for the purposes of this application.

The trees which form the hedge are not recorded as "notable trees", nor are they covered by a tree preservation order.

Sufficient attempt to resolve issue prior to making application

The Applicant: Negotiations were instigated by the applicant in May 2020 and since then letters have been exchanged, however, to date no solution has been agreed.

Hedge owner's response: For a number of reasons it is felt there has not been a meaningful attempt to reach an amicable resolution to the issue and that this high hedge application is of a vexatious nature and instead a mediated solution should be found to the matter.

Comment (PO): The 2019 Scottish Government High Hedge Guidance advises of what can be considered to be reasonable steps prior to applying for a high hedge notice and outlines the following,

“A definition of ‘reasonable steps’ to try to settle the matter without referring the case to the local authority would be two formal approaches to the neighbour within a six-month period before applying for a high hedge notice.”

Given the length of time and number of exchanges between the applicant and the owner, the applicant is considered to have made sufficient attempt to settle the problem amicably and it is reasonable for the Council now to take a role in terms of the legislation.

Since the owner of the hedge mentioned that their preference would be for a mediated solution to be found to the issue, the prospect of using mediation to resolve the matter was raised with both parties. Initially both parties were open to this prospect, before taking this option forward the Planning Service approached both to establish the likelihood of success of taking forward mediation in this case and to agree a baseline case to pass onto a professional mediation service. In response to this request the applicant and the hedge owner outlined their positions once again and it was clear there was still a significant gulf between what each party hoped would be the result of the mediation process. With this in mind the applicant and the hedge owner were informed that mediation in this instance was highly unlikely to be successful and as such the Planning Service had decided not to pursue this as an option and instead proceed with the determination of this high hedge application and report the proposal to the next available meeting of the Planning and Regulatory Services Committee. No further comments have been received from either party following on from this decision.

Overshadowing of garden/house and reasonable expectations

The Applicant: The hedge completely occludes light from the applicant's house during late autumn through to early spring and forms a barrier to light at all times of the year.

Hedge owner's response: The loss of light is not solely due to the height of the trees and is in fact due to the height and position of the winter sun. Even with the trees trimmed to a height of 2m there would still be an obstruction of light due to mature trees which sit beyond the owner's boundary. Speyburn is within direct sunlight for the majority of the day between the months of April and November, with photographic evidence provided of this and site visit encouraged to show how much light is actually being blocked.

Comment (PO): The degree to which the hedge affects the applicant's house and garden is discussed in the observations section of this report, where it is concluded using the

relevant government guidance and calculations that the hedge does form an unacceptable barrier to light.

OBSERVATIONS

In this case the hedge is formed wholly or mainly by a row of 2 or more trees, rises to a height of more than 2 metres above ground level, and forms a barrier to light, and as such falls within the definition of a high hedge and is considered to fall within the terms of the Act.

Assessment of Barrier to Light

The applicant's property is located to the west of the high hedge. It is evident from photographs submitted with the application and observations during the site visit(s) that the hedge is currently obstructing light to the property.

Revised guidance issued by the Scottish Government (SG) to local authorities in 2019 does not specify parameters for light levels and advises that local authorities are free to use any methods that exist if they deem the method reasonable and suitable. An example of such a method is the Hedge Height and Light Loss (March 2005) guidelines developed by the Building Research Establishment (BRE). These guidelines state that these are only applicable to evergreen hedges. As the hedge in question is evergreen this guidance has been utilised in this case.

The guidelines identify a number of measurements and calculations which need to be taken to provide a final 'action hedge height', these include the orientation, hedge length, separation of the applicant's property from the hedge and any changes in ground levels. The action hedge height is the maximum height that the hedge in question can be without resulting in adverse overshadowing of the neighbouring house and garden. To calculate the action hedge height, the loss of light to the applicant's garden and windows in their house must be calculated separately and the lower of these two heights taken as the action hedge height.

In this case the loss of light calculations in relation to the applicant's garden ground concluded an action hedge height of 8m and in relation to the loss of light to windows (bedrooms) in the applicant's house resulted in an action hedge height of 7.25m high. These calculations are shown in Appendix 2 along with a dimension plan which includes the calculations.

The hedge is currently approx. 15m to tip and therefore results in a significant impact on the light levels within the applicant's garden and house. In addition due to the height and position of the hedge and orientation of the affected property it is considered that the hedge creates an unacceptable and overpowering sense of enclosure, not only restricting direct sunlight during the morning but also reducing the general daylight gained from the skyline.

On this basis it is considered that the hedge has a significant adverse effect on the reasonable enjoyment of the property, which is the test set out in section 6(5)(a) of the Act.

Given that it has been established that action should be taken to lower the hedge, it is also important to consider what length of hedge should be reduced in height. The applicant has asked for the length of the hedge as highlighted in red in Appendix 1 to be reduced in height. The portion of the hedge which directly bounds the applicant's garden and house has the greatest potential to impact on the applicant's property and will need to be reduced to reflect the action hedge height. In addition to this the Hedge Height and Light Loss guidance also provides guidance in terms of what length of hedge from the front face/windows of the affected house should be reduced in height. In these circumstances where the hedge is at right angles to affected windows, the hedge length is calculated by taking the current height of the hedge, subtracting 1m and then doubling this number. The hedge height is 15m and therefore the length of hedge which should be reduced in height from the front face of the applicant's house is 28m. Taking into account the length of hedge which lies directly adjacent to the applicant's house and garden and this additional 28m from the front face of the applicant's house, the hedge should be reduced in height along the length as identified in red in Appendix 1. The reduction in height of the hedge as identified will also impact on the neighbour to the south of the applicant's house "Allt na Coille"; as previously outlined in this report, the owners/occupants of this house have submitted comments in support of the reduction/removal of the hedge.

The Act also requires that where a reduction in hedge height is proposed, consideration be given to the amenity of the property of the owner of the hedge. In this case, whilst it is recommended that the hedge be reduced in height, the reduction recommended will not have any adverse impact on the amenity/privacy levels of the hedge owner's property. If in the worst case scenario, the hedge was to die as a result of the reduction in height, taking into account the presence of the existing privet hedge and detached garage between the properties, the complete loss of the hedge would still not result in an unacceptable amenity impact.

With regard to impact on the character of the area, the hedge does not lie within a conservation area nor is it covered by a tree preservation order. In this instance given the adverse impact of the hedge the recommended reduction in hedge height is considered to be appropriate under the terms of the high hedge legislation.

RECOMMENDATION

Within Section 8 of the Act provision is given for local authorities to decide whether or not initial and preventative action is to be taken through the service of a High Hedge Notice.

It is recommended that given the application relates to a high hedge and that following assessment, taking into account the submissions from both parties the high hedge (as detailed) is having an adverse impact on the reasonable enjoyment of the applicant's property, a High Hedge Notice should be issued.

To ensure there would be minimal impact on nesting birds the works require to be carried out with the nesting period (April to July).

The High Hedge Notice has to contain specific recommendations for the owner to carry out and in this case it is recommended that the hedge, shown in red in Appendix 1 and comprising 8 Western Red Cedar trees should initially be reduced to the height of 6.5m, to then allow for growth to 7.25m which is the action hedge height. These works are to be carried out within eight weeks of the Notice taking effect.

In addition, the Notice should stipulate that the hedge should be maintained on an annual basis to ensure that its height does not exceed 7.25m.

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Development Management & Building Standards Manager**

Appendix 1



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Map Description: Hedge Location

Scale: 1:500 @ A4



Appendix 2



Map Description: Measurements

Scale: 1:500 @ A4



Appendix 2

Action hedge height – Garden

Calculated in accordance with page 8 of Hedge Height and Light Loss (2005) guidelines

Effective depth – rectangular garden = 26.7m

Orientation factor – South East = 0.3

Garden action hedge height – $26.7 \times 0.3 = 8.01\text{m}$

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Front window action hedge height

Calculated in accordance with page 14 of Hedge Height and Light Loss (2005) guidelines

Hedge at right angles to windows

Distance from centre of the window to the hedge = 6.25m

Action hedge height = distance from centre of window to hedge + 1m

Front window action hedge height = $6.25 + 1 = 7.25$

The centre of the rear window closest to the hedge also measures 6.25m from the hedge and as such the calculations for this window are the same as the front window.

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Hedge length

The portion of the hedge which directly bounds the applicant's garden and house has the greatest potential to impact on the applicant's house and will need to be reduced to reflect the action hedge height. In addition to this, page 14 of the Hedge Height and Light Loss (2005) guidelines provided guidance in terms of what length of hedge from the front face/windows of the affected house should be reduced in height.

This hedge length is calculated by taking the current height of the hedge, subtracting 1m and then doubling this number.

The hedge height = 15m

Hedge length = $15\text{m} - 1\text{m} = 14\text{m}$

$14\text{m} \times 2 = 28\text{m}$ from the front face of the applicant's house

Taking both the portion of hedge which runs directly adjacent to the applicant's house and the 28m section of hedge to the front of the house, this results in the need to reduce the whole hedge as identified on Appendix 1 to the action hedge height.