

**22/01255/HHCOMP**     **Application for High Hedge Notice at Kilmorack**  
**28th September 2022**   **Broomhill Road Keith Moray**  
   **for Mr Colin Crocket**

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**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 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.

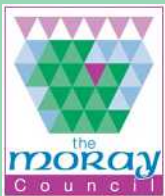
**Recommendation**

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 Portion 2 of the hedge, shown in red in Appendix 2 to the height of 2m and Portion 3 of the hedge also shown in red in Appendix 2 to the height of 3.5m and that these works are to be carried out within twelve weeks of the Notice taking effect.
2. In addition, the Notice should stipulate that Portion 2 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 2.5m and Portion 3 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 4m.
3. The initial reduction in height of the hedge must be conducted out with the bird nesting season which occurs within March, April, May, June, July and August. 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:**

**22/1255/HHCOMP**

**Site Address:**

**Kilmorack**

**Broomhill Road**

**Keith**

**Applicant Name:**

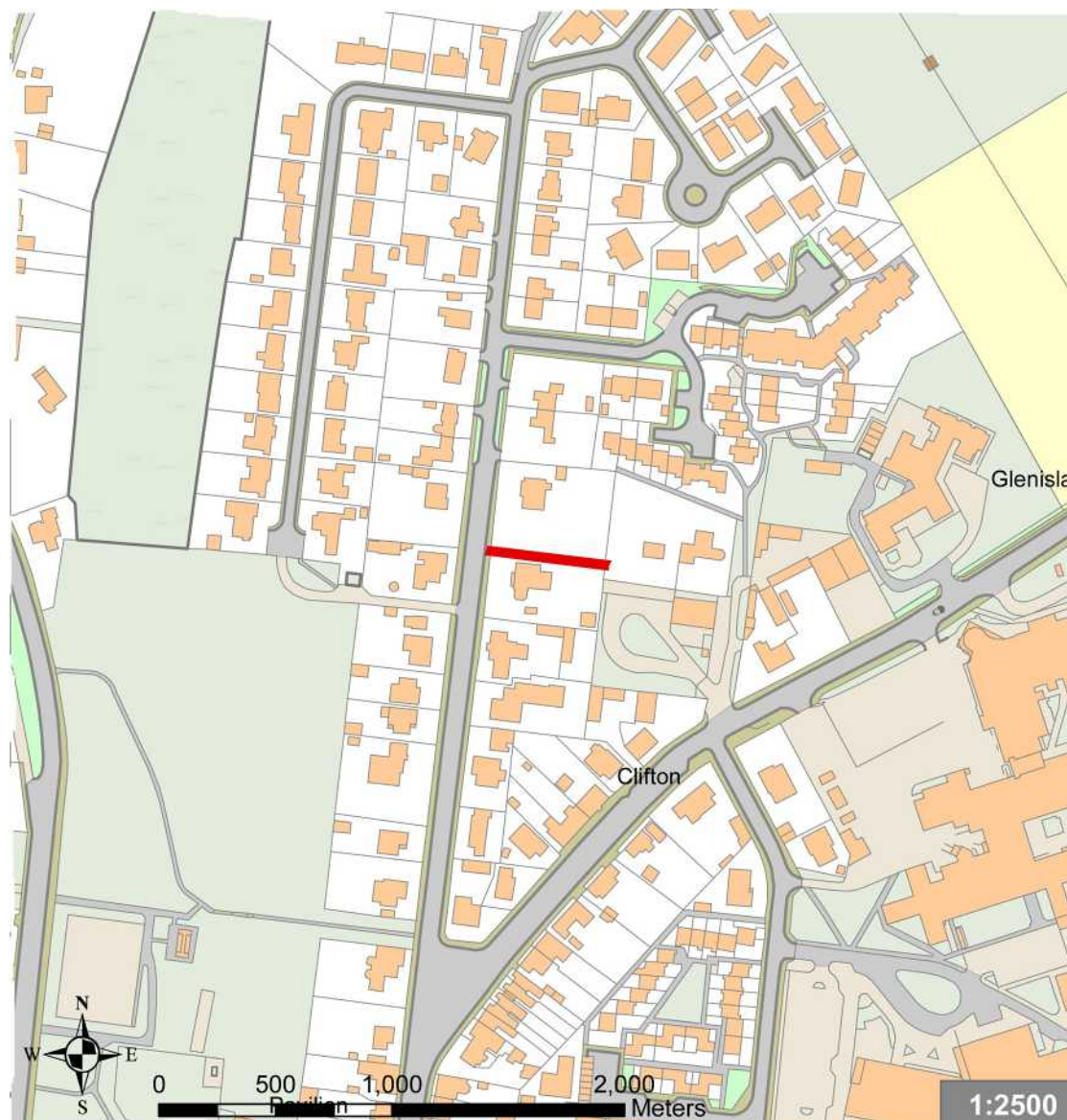
**Mr Colin Crocket**

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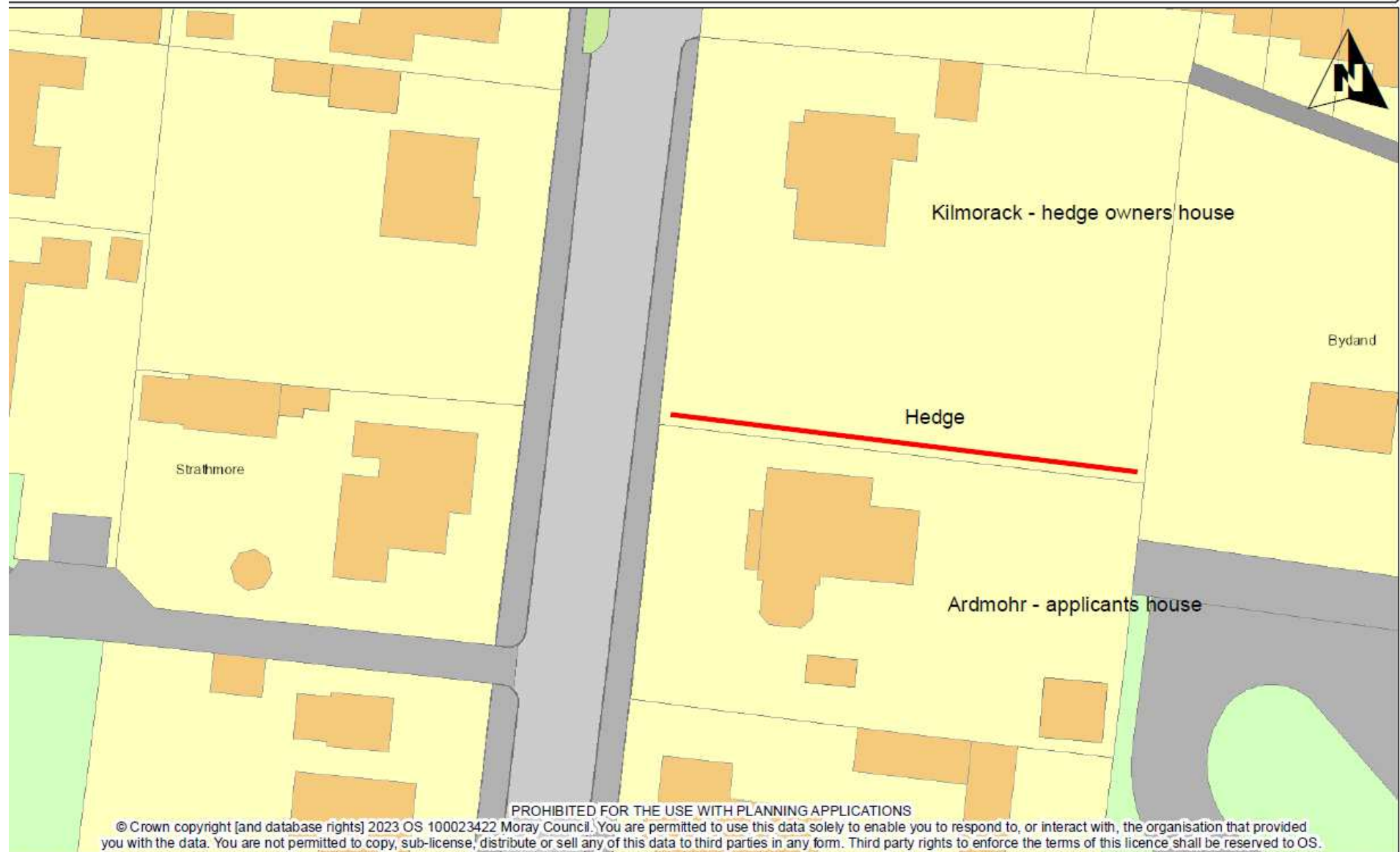
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## Location Plan



## Site Location Plan

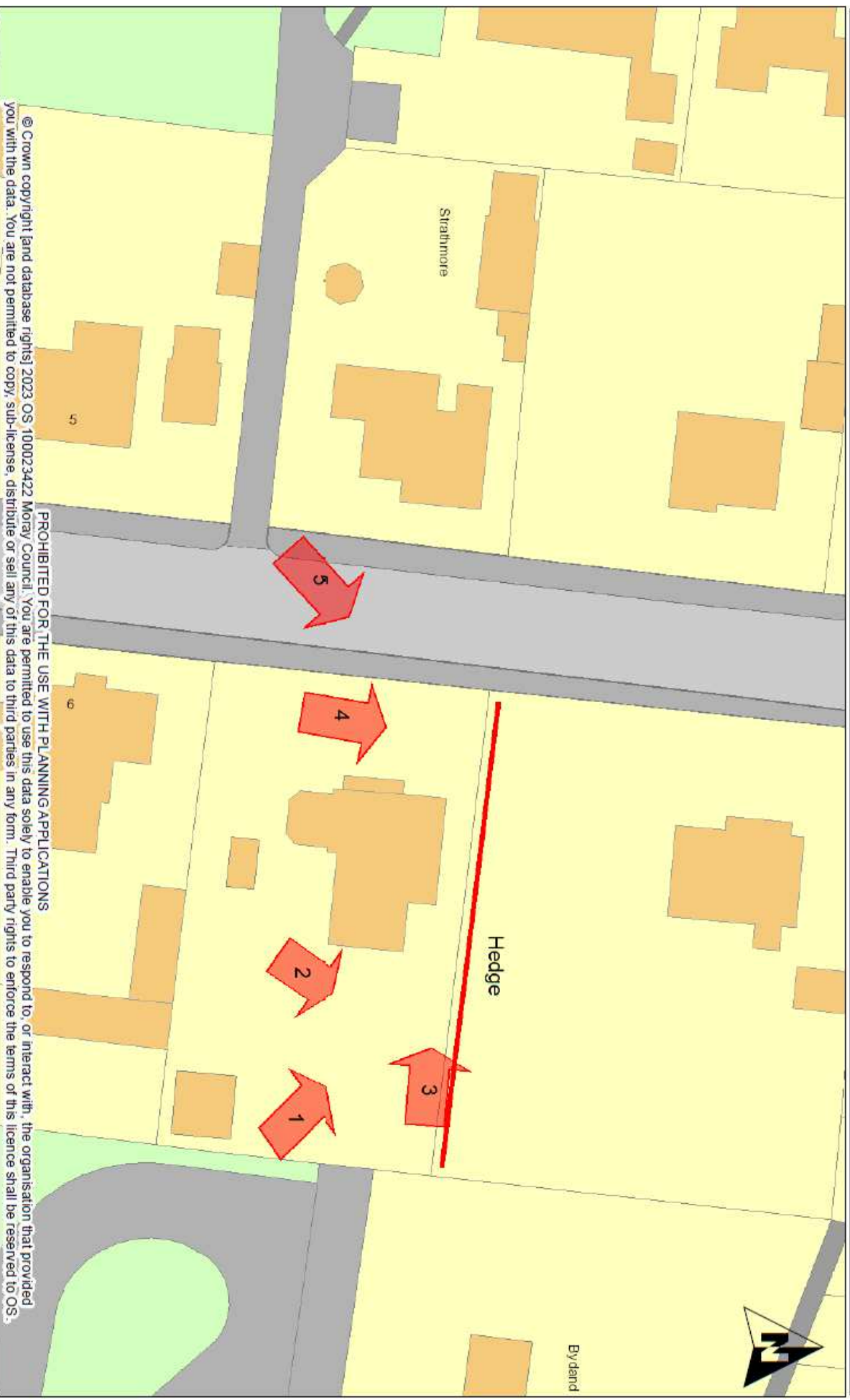


Map Description: Site Location Plan

Scale: 1:500 @ A4



## Photo Location Plan



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Map Description: Photo Location Plan

Scale: 1:500 @ A4



**Photo 1**



**Photo 2**



**Photo 3**



**Photo 4**



**Photo 5**



## PLANNING APPLICATION: 22/01255/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*

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### 1. INTRODUCTION

- This report relates to an application for a High Hedge Notice which has been submitted by the owners of the house at Ardmohr, Broomhill Road, Keith, AB55 5EX. The hedge which is the subject of this application is located within the grounds of the neighbouring house at Kilmorack, Broomhill Road, Keith.
- 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 north of their house reduced in height.
- The Council note that there has been previous dialogue between the applicant and the owner of the hedge going back to August 2022 in an attempt to reach agreement over a reduction in the hedge height, however, to date no agreement has been reached.

### 2. THE SITE

- The hedge lies along the southern boundary of Kilmorack, Broomhill Road, 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 Leylandii interspersed with different species of trees, including beech, sycamore and holly, the position of which is shown on the Committee location plan.
- The applicant's house, which is also detached, lies approx. 3m to the south of the hedge, with the side elevation of the house facing towards the hedge. There is a stone wall which lies between the properties under the hedge, which varies in height between 1.9m to the west and 1.5m to the east of the applicants garden ground. The ground levels are approx. 1m higher on the hedge owner's side of the shared boundary wall, as such at the point the tree trunks meet the ground is approx. 1m higher than the base of the wall of the applicant's house. The applicants have windows within their main rooms (kitchen and bedrooms) of the house facing directly onto the hedge from the side of their house and facing to the front and rear of the house.

- 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 varies in height along its length, with the portion which lies adjacent to the applicants house and rear garden measuring approx. 9m in height, before dropping down in height towards the front (west) of the house.
- 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.

## **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 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.”*

### 3. CONSULTATIONS

Advice was sought from an ecologist/licenced bat worker to establish the likely impact of any proposed hedge reduction works on protected species, such as nesting birds, bats and red squirrels.

The ecologist identified the hedge as being *Cuprocyparis leylandii* interspersed with Beech (*Fagus sylvatica*), Sycamore (*Acer psuedoplatanus*) and small Holly (*Ilex sp.*) and The survey confirmed 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 outwith the bird breeding season.

### 4. SUBMISSIONS

Correspondence has been submitted accompanying the application which includes letter exchanges between the applicants and the owners 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:** The owners confirmed that they employed the services of a tree surgeon who in their view confirmed that the line of trees did not comprise a hedge. They consider the trees and shrubbery the applicant has taken issue with are not applicable to this act.

**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.

## **Concerns regarding the safety of trees and structural impact of roots**

**The Applicant:** Concerns raised regarding tree branches scraping against the applicants house, danger of the trees falling on the house and potential for structural damage to the shared boundary wall and house.

**Hedge owner's response:** The owners have confirmed that they do not wish the trees to become a safety hazard and have employed the services of a tree surgeon to ensure this is the case and would welcome any future inspection of the trees. The tree surgeon also confirmed that in their opinion that the tree roots pose no threat to the structural integrity of the boundary wall or beyond.

**Comment (PO):** The Act aims to address the impact on amenity as a result of light loss/overshadowing and does not allow for the consideration of potential damage as a result of roots causing structural damage or trees/hedging falling on neighbouring property.

## **Overshadowing of garden/house and reasonable expectations**

**The Applicant:** There is little/no light coming in through the 3 windows that are on the gable wall – the kitchen, upstairs bathroom and upstairs bedroom are all in shade due to the hedge and the lights have to be on, even during the day at times – we are getting no solar warmth from the sun at all. This is causing an adverse effect on our enjoyment of these rooms as the hedge is a barrier to the natural light that these rooms should enjoy. The rooms are darker than they should be due to the hedge depriving us of natural light. The tall beech tree and other trees, at the start of the hedge layout cast darkness on the two front rooms of my house – the downstairs lounge and upstairs bedroom. Areas of the garden are also lacking of light due to the high hedge. Due to lack of sun/light and natural ventilation the gable of the house is dark and cold, causing damp and moss build up – all due to the hedge being a barrier to the natural light that we are deprived of.

**Hedge owner's response:** The applicant describes mature trees standing individually. We question whether this is within the scope of the application. All of the trees along the boundary wall existed prior to 2019 when the applicant purchased Ardmohr. We do not consider the trees to be a barrier to natural light of the neighbouring property. The natural environment is important to us both, we consider ourselves inheritors of the trees, and hope to pass them along. We value the privacy and security that these trees provide.

**Comment (PO):** As discussed within the observations section of this report, the large beech trees to the west of the hedge and large sycamore to the east of the hedge are not considered to fall within the scope of the Act. Despite the trees/hedge being present when the applicants moved into their house, this does not preclude the applicants from making a high hedge application. 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.

## **5. OBSERVATIONS**

- 5.1 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**

- 5.2 The applicant's property is located to the south 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.
- 5.3 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. In this case the leylandii hedge is interspersed with some different species of trees, some of which are deciduous, however, the majority of the hedge is made up of evergreen leylandii trees, as such the use of the Hedge Height and Light Loss guidance is considered to be appropriate.
- 5.4 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.
- 5.5 The guidelines also outline that where the hedge lies on higher ground than the base of the wall in which the window is located, then the difference in height must be subtracted from the action hedge height (page 16).
- 5.6 Taking into account the position of the applicant's house relative to the hedge and the way in which the action hedge height is calculated, in this case, it is considered to be appropriate to separate the hedge into three distinct portions along its length. The first portion adjacent to the applicant's front garden, the second adjacent to the applicant's house and the third portion adjacent to the applicants rear garden.
- 5.7 The calculations used to inform the action hedge height for each portion are shown in Appendix 1 along with an associated dimension plan. In summary, it is concluded that no action requires to be taken to reduce the height of the hedge which lies adjacent to the applicant's front garden. The action hedge height of the second portion of hedge adjacent to the applicant's house is 2m and the action hedge height of the third portion of hedge adjacent to the applicant's rear garden area is 4m, see Appendix 2.

- 5.8 The hedge is currently approx. 9m to tip and results in a significant impact on the light levels within the applicant's garden and house. Due to the height and position of the hedge relative to the affected property the hedge creates an unacceptable and overpowering sense of enclosure, and causes a reduction of 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.
- 5.9 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 Hedge Height and Light Loss guidance (page 14) provides guidance in terms of what length of hedge from the rear face and windows of the affected house should be reduced in height. In these circumstances where the hedge is at right angles to rear/east facing 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 9m and therefore the length of hedge which should be reduced in height from the rear face of the applicant's house is 16m. Taking into account the length of hedge which lies directly adjacent to the applicant's house and this additional 16m from the rear face of the applicant's house, the hedge should be reduced in height as detailed in Appendix 2.
- 5.10 Whilst the action hedge heights calculated represent the limit to which action can reasonably be taken to reduce the hedge height under the terms of the Act, it is recognised that given the characteristics of the hedge, where there are some gaps and bare trunks at lower levels in places, it is possible that much of the hedge will die as a result of the recommended height reduction. The Act does not restrict hedge height reduction in these circumstances, unless the loss of the hedge would result in significant privacy impact on the hedge owner. In this case there is considered to be sufficient window to window separation between the properties and existing other intervening vegetation to ensure acceptable levels of privacy are maintained between the properties, even if the hedge reduction works resulted in the death of the whole hedge. It should be noted that whilst there is a limit to which action can reasonably be taken to reduce the hedge height under the terms of the Act, there is nothing to restrict the owners of the hedge from removing the hedge in its entirety, should they feel the appearance of the reduced hedge is unsightly.
- 5.11 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 (1<sup>st</sup> March to 31<sup>st</sup> August).

The High Hedge Notice has to contain specific recommendations for the owner to carry out and in this case it is recommended that portion two of the hedge, shown in red in Appendix 2 should initially be reduced to the height of 2m which is the maximum height of hedge reduction permitted under the terms of the Act and thereafter maintained at a height not exceeding 2.5m. Portion 3 of the hedge also shown in red in Appendix 2 should initially be reduced to the height of 3.5m, to then allow for growth to 4m which is the action hedge height. These works are to be carried out within twelve weeks of the Notice taking effect.

In addition, the Notice should stipulate that portion two of the hedge should be maintained on an annual basis to ensure that its height does not exceed 2.5m and portion 3 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 4m.

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Planning Officer

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Development Management & Building Standards Manager**



## **22/01255/HHCOMP – APPENDIX 1 – Calculations**

For all calculations below, the base of the hedge lies approx. 1m higher than the base of the wall of the applicant's house, this must be taken into account in all calculations as detailed on page 16 of the Hedge Height and Light Loss (2005) guidelines. i.e. "If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height."

### **Hedge portion one (hedge adjacent to applicants front garden) – action hedge height**

Calculated in accordance with page 14 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge at right angles to windows

Distance from centre of the window to the hedge = 4m

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

Action hedge height =  $4\text{m} + 1\text{m} = 5\text{m}$

Adjustment for difference in ground level =  $5\text{m} - 1\text{m} = 4\text{m}$

### **Hedge portion one action hedge height = 4m**

This portion of hedge is between 2m and 3m high when measured from where the trunks meet the ground. Given the action hedge height of 4m for this portion, no action is recommended in relation to hedge portion one.

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### **Hedge portion two (hedge adjacent to applicants house) – action hedge height**

Calculated in accordance with page 13 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge opposite a window

Horizontal distance between the outside window wall and the boundary on which the hedge stands = 3m

Action hedge height = half the horizontal distance + 1m

Action hedge height =  $(3\text{m} \div 2 = 1.5\text{m})$ ,  $1.5\text{m} + 1\text{m} = 2.5\text{m}$

Adjustment for difference in ground level =  $2.5\text{m} - 1\text{m} = 1.5\text{m}$

Whilst this calculation concludes an action hedge height of 1.5m, action via the high hedge regulations cannot recommend that hedges be reduced lower than 2m, as this would take the hedge out with the definition of a high hedge, which must be a minimum of 2m in height. As such it is recommended that this action hedge height is adjusted upwards to 2m to remain within the scope of the Act.

### **Hedge portion two action hedge height = 2m**

This portion of hedge is around 9m in height when measured from where the trunks meet the ground. Given the action hedge height of 2m for this portion, a reduction in hedge height is recommended in relation to hedge portion two.

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### **Hedge portion three (hedge adjacent to applicants rear garden) – action hedge height**

Calculated in accordance with page 14 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge at right angles to windows

Distance from centre of the window to the hedge = 4m

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

Action hedge height = 4m+1m = 5m

Adjustment for difference in ground level = 5m-1m = 4m

### **Hedge portion three action hedge height = 4m**

This portion of hedge is around 9m in height when measured from where the trunks meet the ground. Given the action hedge height of 4m for this portion, a reduction in hedge height is recommended in relation to hedge portion three.

### **Hedge length**

As hedge portion 3 extends along the whole length of the rear garden, the length of the hedge to be reduced in height also needs to be calculated as per the guidance on page 14 of the Hedge Height and Light Loss (2005) guidelines.

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

The hedge height = 9m

Hedge length = (9m – 1m) x 2 =16m

From the rear face of the applicant's house (measurement to be taken from the section of house where the rear facing window closest to the hedge is located)

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### **Action hedge height – Garden**

In accordance with the Hedge Height and Light Loss (2005) guidelines (page 7), both the action hedge height for loss of light to gardens and windows must be calculated and the lower of these figures used. As per the calculation below, the action hedge height of the garden is 13.33m. As this is higher than the window calculations above, this can be discounted from any recommendations in relation to the hedge.

## Action hedge height – Garden

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

Firstly the effective depth of the garden must be measured (for a rectangular garden the effective depth is the distance between the hedge and the opposite end of the garden), then multiply the effective depth by a factor (which will vary with the orientation of the hedge and is provided within the hedge height and light loss guidelines) to get the basic action hedge height and make any correction for difference in ground level.

Effective depth – rectangular garden = 20.5m

Orientation factor – North = 0.65

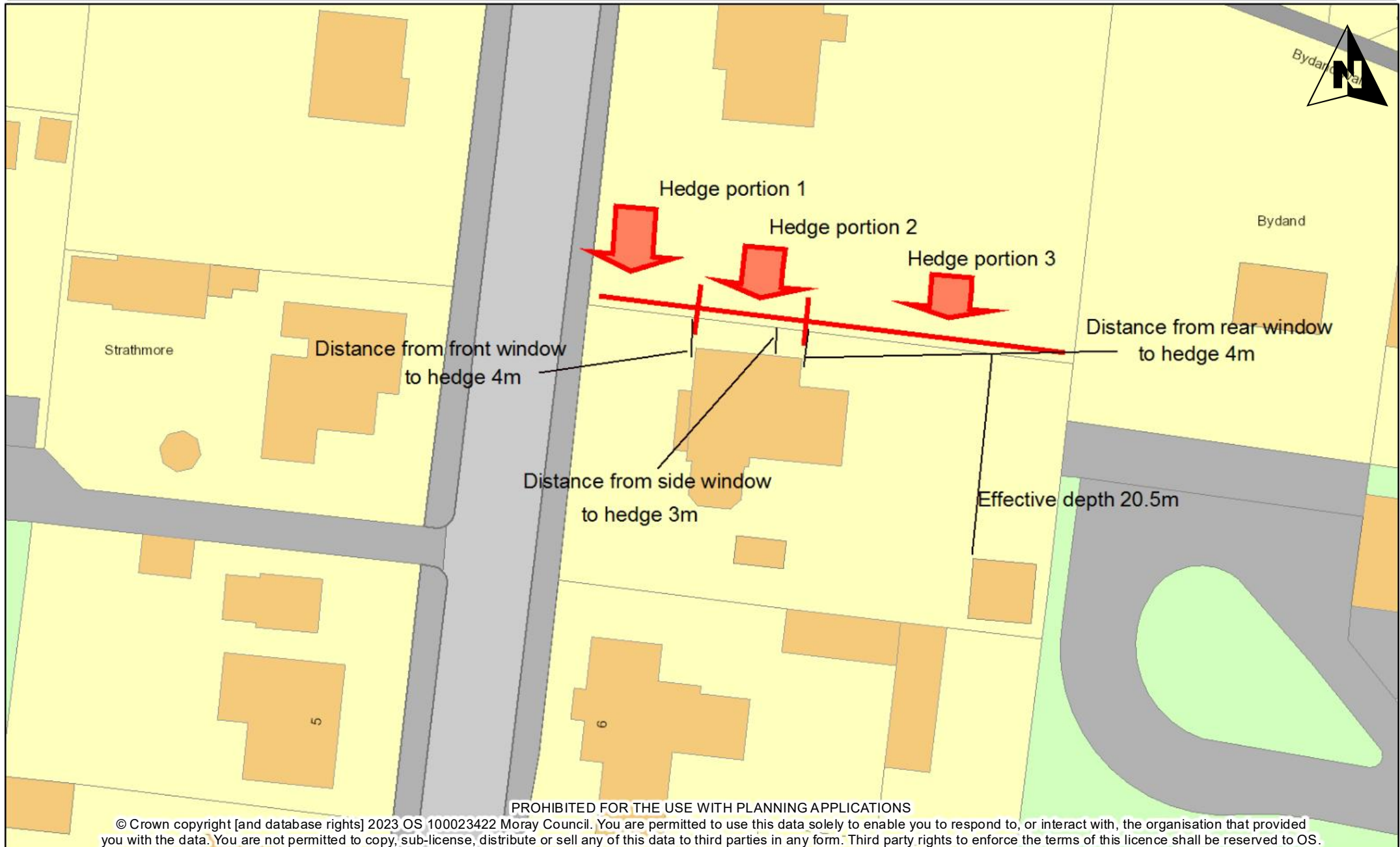
Garden action hedge height –  $20.5 \times 0.65 = 13.33\text{m}$

Adjustment for difference in ground level –  $13.33\text{m} - 1\text{m} = 12.33\text{m}$

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## Appendix 1 - Dimension plan

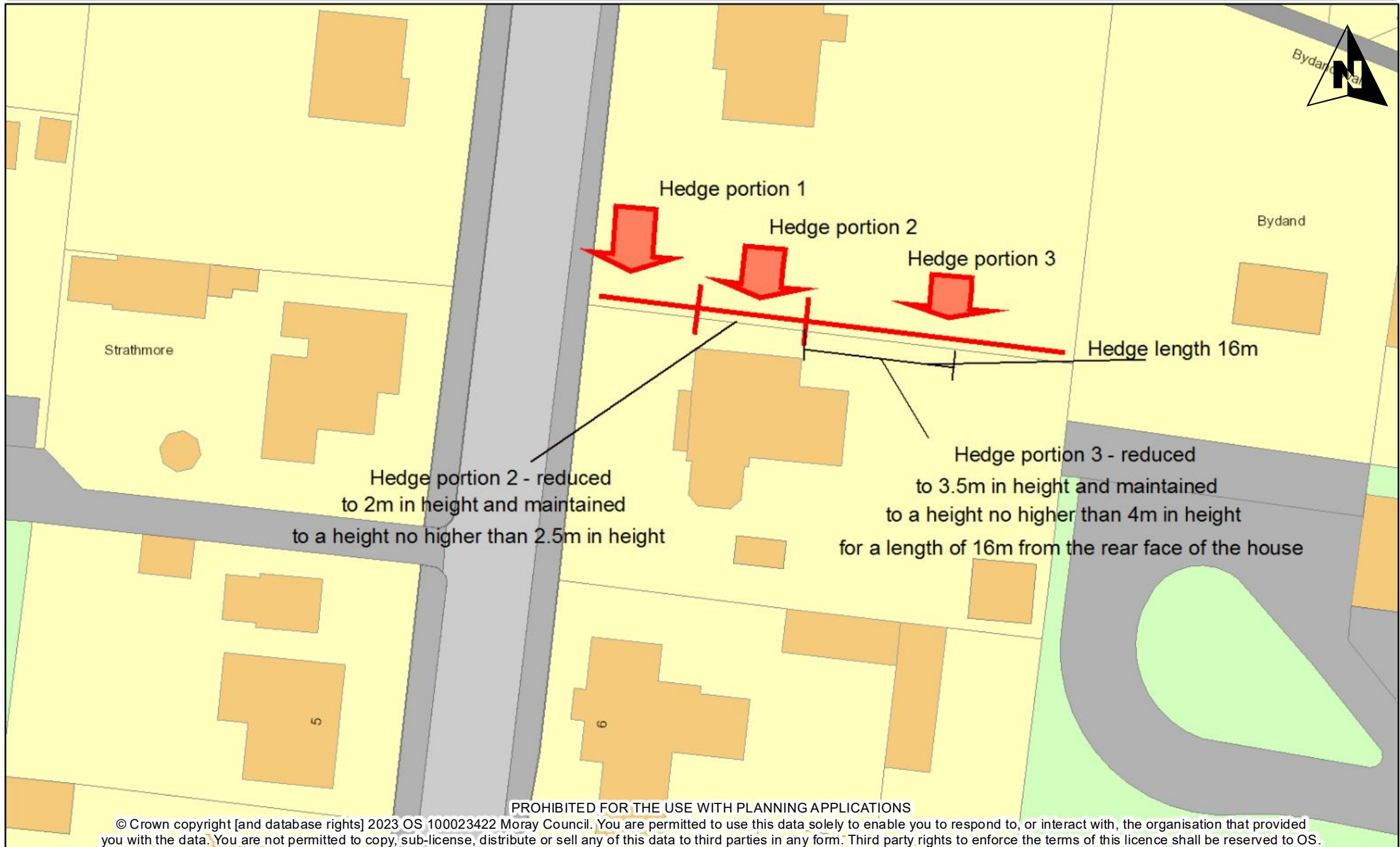


**Map Description:** Appendix 1 - Dimension plan

Scale: 1:500 @ A4



## Appendix 2 - Hedge reduction plan



**Map Description:** Appendix 2 - Hedge reduction plan

Scale: 1:500 @ A4

