

CHAPTER 9

Appeals against local planning authority decisions

RIGHT OF APPEAL

9.1 Regulation 9 provides that a person to whom a hedgerow retention notice has been given may appeal to the Secretary of State.

9.2 Appeals against hedgerow replacement notices, served by the local planning authority under regulation 8(1), are dealt with in Chapter 12.

HOW TO APPEAL

9.3 The Secretary of State has delegated the power to decide appeals under these Regulations to the Planning Inspectorate (see Annex A for their address in England and Wales). The Inspectorate, therefore, handles appeals from receipt through to decision.

9.4 An appeal must be made in writing to the Inspectorate within 28 days from the date that the hedgerow retention notice is given to the person, though a longer period may be allowed. The notice of appeal submitted by the appellant must state the grounds for the appeal and a copy of it must be sent to the local planning authority. An appeal may be made on any reasonable grounds. These are not specified in the Regulations. Appellants should also indicate if they wish the appeal to be dealt with at a hearing or public local inquiry (see paragraph 9.8).

9.5 In determining when the 28 day appeal period expires, where the hedgerow retention notice was sent by post, it is assumed – unless the contrary is proved – that it will have been served at the time at which it would be delivered in the ordinary course of post.

9.6 There is no fee for lodging an appeal, but they are costly and time-consuming for all concerned. The parties are advised, therefore, not to rule out further discussion after an appeal has been made. Difficulties or misunderstandings can sometimes be resolved even at this stage, leading to eventual withdrawal of the appeal.

PROCEDURES

9.7 In acknowledging receipt of the appeal, the Planning Inspectorate will provide the name and telephone number of the case officer, who will be the normal point of contact. There are no statutory time limits for dealing with appeals under the Hedgerows Regulations. However, the Inspectorate will aim to deal with them as speedily as possible and to provide the parties with a provisional timetable, including reasonable targets for receipt of representations. All parties are requested to submit their statements or representations within these targets. Delays are counter-productive to all concerned.

9.8 Either party may have the appeal dealt with at a hearing or public local inquiry if they wish, but in practice most cases can be dealt with satisfactorily by an exchange of written representations and a site visit.

WRITTEN REPRESENTATIONS

9.9 The written method of dealing with appeals should be a quicker, simpler and cheaper alternative to the hearing or public inquiry method. On receipt of a notice of appeal, the Planning Inspectorate will ask the local planning authority to provide a statement and relevant background information. The authority will also be asked to provide a location plan to the nearest 'A' road, for the benefit of the Inspector who will carry out the site visit.

THE LOCAL PLANNING AUTHORITY STATEMENT

9.10 The local planning authority are not required to submit their statement in any particular form. They must judge for themselves what sort of submission they wish to put forward. However, they are advised to focus on the particular issues raised by the appeal. Background documents to the local planning authority's decision may often be sufficient to support their case. Additional information should be presented as concisely as possible.

9.11 Relevant background documents include:

- a copy of the hedgerow removal notice, including a plan of the site showing the hedgerow which is the subject of the appeal;
- a copy of the local planning authority officer's evaluation of the hedgerow, appraisal of any reasons given for its removal and recommendation (where applicable);
- a copy of the hedgerow retention notice;
- copies of any comments from the parish or community council.

9.12 A copy of the local planning authority's statement is sent to the appellant. This is intended to give them an opportunity to comment on any new issues arising. There is no obligation on the appellant to submit additional comments and few (if any) new points should arise at this stage. The sooner the appellant notifies the Inspectorate that they have no additional comments, the sooner the final decision on the appeal is likely to be made.

9.13 Similarly, the local planning authority should not normally need to reply to any further representations from the appellant. Repeated exchanges of representations are discouraged. Whether intended to reinforce points by repetition, to have the last word, or to save the best argument to the end, such tactics confer no advantage and only prolong the appeal process.

SITE VISIT

9.14 After the exchange of written representations, the Planning Inspectorate arrange for an Inspector

to visit the appeal site. The Inspector, who is impartial, is responsible for determining the case.

9.15 Unaccompanied site visits may be arranged with the consent of both parties, provided that the Inspector can gain access to the site and has sufficient information to assess all aspects of the case.

9.16 However, it is normal practice for the Inspector to be accompanied by representatives of both parties to the appeal. The presence of the appellant may be useful to gain access to the site, identify the hedgerow which is the subject of the appeal or clarify the proposed removal. Where the appellant is a utility operator, the owner of the land may also need to be present. No discussion of the merits of the appeal is allowed. The Inspector will restrict any questions to matters of fact.

9.17 Under regulation 12, the Inspector has the same rights to enter land as the local planning authority officer who carries out the site survey. The Inspector is also subject to the same obligations in respect of prior notice (see paragraph 6.17 above).

HEARINGS AND PUBLIC LOCAL INQUIRIES

9.18 If either party exercises their right to a hearing or a local inquiry, the Planning Inspectorate will arrange for an Inspector to hear and determine the case. The parties will be advised, in advance, of the procedure to be followed at hearings, based on the code of practice in Department of the Environment Circular 15/96. Inquiries are conducted in accordance with the spirit of the Town and Country Planning (Inquiries Procedure) Rules 1992.

THE DECISION

9.19 Under regulation 9(3), the Secretary of State – and thus the Inspector – may allow or dismiss the appeal, either in whole or in part. The Inspector must give any directions necessary to give effect to the decision, including directions for quashing or modifying any notice. This will be in the form of a reasoned decision letter.

9.20 Decision letters are sent to the appellant and copied to the local planning authority.

COSTS

9.21 The parties must meet their own expenses if an appeal is dealt with by written representations. In the case of appeals dealt with by hearing or inquiry, application for an award of costs may be made by one party on the grounds of the other party's 'unreasonable behaviour', which causes unnecessary expense. An application should be made to the Inspector at the hearing or inquiry. The advice in Department of the Environment Circular 8/93 (Welsh Office Circular 29/93), on costs in planning appeals, will also be applied to appeals under these Regulations.

9.22 An application for costs may be submitted to the Planning Inspectorate if a hearing or inquiry is cancelled as a result of one party's withdrawal.

CHAPTER 10

Penalties

OFFENCES

10.1 A person is guilty of an offence if he:

- intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow, in contravention of regulation 5(1); or
- intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow which is the subject of a hedgerow retention notice, in contravention of regulation 5(9).

10.2 Anyone found guilty of such an offence is liable on summary conviction to a fine up to the statutory maximum (£5,000 at May 1997). The offence is also triable on indictment so that, in serious cases, a person may be committed for trial to the Crown Court and be liable on conviction to an unlimited fine.

10.3 A person is also guilty of an offence if he fails to plant a hedge to fill a former opening, for which a new one has been substituted, in contravention of regulation 6(2). The penalty for this offence is a fine not exceeding level 3 on the standard scale (£1,000 at May 1997).

10.4 In determining the amount of any fine to be imposed on a person convicted of any of these offences, the Court is expressly required to have regard to any financial benefit which has accrued, or appears likely to accrue, to him in consequence of the offence.

10.5 It is also an offence wilfully to obstruct a person who is acting in the exercise of a right of entry to land, under regulations 12 or 13. The penalty for this offence is a fine not exceeding level 3 on the standard scale (£1,000 at May 1997).

PROSECUTIONS

10.6 The local planning authority may be advised that hedgerow removal has taken place, or is about to take place in contravention of the Regulations, from a variety of sources such as members of the public, tree wardens or local councillors. On receiving any such news, the local planning authority will wish to investigate the matter. The authority should first check its records, to ensure that a hedgerow removal notice has not been submitted. They may also wish to visit the site, to verify information and to assemble any evidence that the requirements of the Regulations have in fact been contravened. Any person who has notified the local planning authority of a contravention should usually be kept informed of the outcome of the investigation.

10.7 In order to bring a successful prosecution, the local planning authority should have sufficient evidence to show beyond reasonable doubt that:

- work has been carried out which has led to the removal or destruction of a hedgerow to which the Regulations apply;
- that the defendant carried out the works of removal himself, or caused or permitted another person to carry them out. For example, the works may have been undertaken by contractors on the defendant's orders;
- the works were carried out in contravention of regulation 5(1) or (9). For example, without notifying the local planning authority beforehand, or more than two years after the service of the hedgerow removal notice, or despite the hedgerow being subject to a hedgerow retention notice.

A separate action may be brought for each hedgerow removed or destroyed in contravention of the Regulations.

10.8 The defendant may wish to claim that the Regulations have not been contravened on the grounds that the work was permitted by virtue of one of the exemptions in regulation 6, or that the hedgerow is not one to which the Regulations apply. If so, the burden of proof is placed on the defendant to show, on the balance of probabilities, that the work fell within the terms of the exemption, or that the hedgerow itself was not one to which the Regulations apply, for example being less than 20 metres.

ENTRY TO LAND

10.9 Under regulation 12, a person duly authorised by the local planning authority has rights to enter any land to ascertain whether an offence has been committed. Prior notice is not required.

10.10 Under regulation 13, a magistrate can issue a warrant enabling a person duly authorised by the local planning authority to enter land if it is shown to his satisfaction, on sworn information in writing, that:

- there are reasonable grounds for entering the land, for any of the purposes mentioned in regulation 12(1); and
- admission to the land has been refused, or no reply is received to a request for admission within a reasonable period, or a refusal is apprehended; or
- the case is one of urgency.

10.11 A warrant authorises entry once at a reasonable hour (unless the case is one of urgency). The inspection must be completed within one calendar month of the issue of the warrant.

10.12 The site visit and survey may involve more than a visual inspection. Under regulation 14, any person exercising a right of entry may take with him other persons as may be necessary, and may take away hedgerow and soil samples.

CHAPTER 11

Hedgerow replacement

POWER TO ISSUE A HEDGEROW REPLACEMENT NOTICE

11.1 Under regulation 8, where it appears to the local planning authority that a hedgerow has been removed in contravention of regulation 5(1) or (9), the authority may (whether or not criminal proceedings are instituted) give a notice to the owner or to certain tenants (described in paragraph 5.14 above), or where the hedgerow has been removed by or on behalf of a relevant utility operator, to that operator requiring him to plant another hedgerow.

11.2 The power applies whether the hedgerow that has been illegally removed was important or not. However, any hedgerow which is planted in compliance with a hedgerow replacement notice, by virtue of regulation 8(4), is to be treated for a period of 30 years after the planting is substantially complete as if it were an important hedgerow. The effect, therefore, is that the replacement hedgerow is automatically regarded as important and must be retained – unless a hedgerow removal notice is given and the local planning authority consider the circumstances justify its removal. Only after the expiry of the 30 year period will a hedgerow removal notice be assessed against the criteria in Schedule 1 to the Regulations, in the normal way.

DECIDING WHETHER TO ISSUE A HEDGEROW REPLACEMENT NOTICE

11.3 The local planning authority's power to give a hedgerow replacement notice is discretionary. In the first instance, the authority might attempt to persuade the owner, tenant or utility operator to plant a substitute voluntarily. The local planning authority will, however, wish to bear in mind that such a hedgerow will not enjoy the protection afforded by regulation 8(4). If its removal is subsequently notified to the authority under regulation 5(1)(a), therefore, they will be unable to secure its retention.

11.4 When considering whether they are minded to give a hedgerow replacement notice, the authority will wish to take into account the benefits of replanting including the deterrent effect.

11.5 Before issuing a hedgerow replacement notice, the local planning authority should advise the owner, tenant or utility operator that they are considering requiring them to plant another hedgerow and give an explanation why they consider this necessary. The owner, tenant or utility operator should be invited to make representations within 14 days of the date of the letter.

11.6 In deciding whether to issue a hedgerow replacement notice, the local planning authority should consider whether it would be reasonable to do so, bearing in mind the particular circumstances of the case and any representations received from the owner, tenant or utility operator.

CONTENTS OF THE NOTICE

11.7 A hedgerow replacement notice should explain to the owner, tenant or utility operator why the local planning authority have issued the notice and what they must do to comply with it.

11.8 Under regulation 8, the notice must:

- require the owner, tenant or utility operator to plant shrubs or trees and shrubs;
- specify the species of the shrubs or trees and shrubs to be planted;
- specify the position in which they are to be planted;
- specify the period within which the planting is to be carried out. This period may be extended by the local planning authority, who should advise the owner, tenant or utility operator

accordingly. Such an extension cannot, of course, be granted after the expiry of the original period specified.

11.9 A hedgerow replacement notice takes effect as soon as it is given to the owner, tenant or utility operator.

11.10 It is also an implicit requirement that the notice should state what contravention of the Regulations appears to the local planning authority to have taken place and to have given rise to the notice.

11.11 The local planning authority are also advised to include in, or attach to, the notice:

- an explanation of the owner, tenant or utility operator's rights of appeal to the Secretary of State against the notice. Information should be provided on how, where and within what period an appeal may be made;
- an explanation of what may happen if the owner or utility operator fails to comply with the notice;
- details of where advice on hedgerow planting and management may be obtained.

11.12 Regulation 16(2) applies certain provisions of section 329 of the Town and Country Planning Act 1990 to notices under the Hedgerows Regulations. They set out how the local planning authority should serve a hedgerow replacement notice. The methods to be used are:

- by delivering the documents into the hands of the owner or tenant or to the registered or principal office of the utility operator;
- by leaving them at the usual or last known place of abode of the owner or tenant;
- by pre-paid registered letter or recorded delivery to that address or to the registered or principal office of the utility operator.

FAILURE TO COMPLY WITH A NOTICE

11.13 Failure to comply with a hedgerow replacement notice is not an offence. If the shrubs, or trees and shrubs, have not been planted within the

specified period (which may be extended by the local planning authority), the authority may enter the land, plant the shrubs or trees and shrubs, and recover from the owner any reasonable expenses incurred.

11.14 The local planning authority are advised to remind the owner, tenant or the utility operator, before the period for planting runs out, that the authority will exercise their default powers if the terms of the notice are not observed.

CHAPTER 12

Appeals against hedgerow replacement notices

RIGHT OF APPEAL

12.1 Regulation 9 provides that a person to whom a notice under regulation 8(1) (hedgerow replacement notice) has been given may appeal to the Secretary of State.

12.2 An appeal against a hedgerow replacement notice may be made on any reasonable grounds. These are not specified in the Regulations but may deal not only with the planting requirements but also with the alleged contravention of the Regulations.

HOW TO APPEAL

12.3 An appeal must be made in writing to the Planning Inspectorate (see Annex A for their address in England and Wales) within 28 days from the date that the hedgerow replacement notice is given to the person, though a longer period may be allowed.

12.4 In determining when the 28 day appeal period expires, where the notice is sent by post, it is assumed – unless the contrary is proved – that it will have been served at the time at which the notice would be delivered in the ordinary course of post.

12.5 The notice of appeal submitted by the appellant must state the grounds for the appeal and a copy of it must be sent to the local planning authority. The appellant should also indicate if they wish the appeal to be dealt with at a hearing or public local inquiry (see paragraph 12.6). There is no fee for considering appeals.

PROCEDURES

12.6 Appeals against hedgerow replacement notices are handled in much the same way as appeals against hedgerow retention notices (see Chapter 9). They are administered by the Planning Inspectorate. Both parties have the right to a hearing or public inquiry, but it will usually be appropriate for the appeal to be dealt with by exchange of written representations.

12.7 When an appeal has been lodged, the local planning authority provide their written statement, which should respond to each ground of appeal pleaded by the appellant. When all the written statements have been made, a site visit is arranged. The Inspectorate issue the decision on the Secretary of State's behalf. If the appeal is allowed, the notice may be quashed or modified.

COSTS

12.8 The parties must meet their own expenses if an appeal is dealt with by written representations. In the case of appeals dealt with by hearing or inquiry, application for an award of costs may be made by one party on the grounds of the other party's 'unreasonable behaviour', which causes unnecessary expense. An application should be made to the Inspector at the hearing or inquiry. The advice in Department of the Environment Circular 8/93 (Welsh Office Circular 29/93), on costs in planning appeals, also applies to appeals under these Regulations.

12.9 An application for costs may be submitted to the Planning Inspectorate if a hearing or inquiry is cancelled as a result of one party's withdrawal.

CHAPTER 13

Injunctions

POWER TO APPLY FOR AN INJUNCTION

13.1 Regulation 11 enables the local planning authority, where they consider it necessary or expedient, to apply to the High Court or county court for an injunction to restrain an actual or apprehended offence.

DECIDING WHETHER TO APPLY

13.2 The local planning authority may apply for an injunction whether or not they have used, or propose to use, any of their other powers under the Regulations.

13.3 Whether to apply for an injunction is for the local planning authority to decide. However, they are advised to consider whether or not their existing remedies offer an adequate solution to the problems that they face. In addition, they should assess the seriousness of the offence (whether actual or apprehended) and the particular circumstances of the person or persons against whom the proceedings are contemplated.

13.4 The local planning authority should bear in mind that, if an interlocutory injunction is granted, the Court may expect them to give an *undertaking in damages* to the persons named in the Court's order (which means that the authority may have to pay damages if they lose at the trial).

13.5 The local planning authority may apply for an injunction against a person whose identity is not known but they will have to describe the defendant sufficiently to enable service to be effected on him. The local planning authority must also provide the Court with affidavit evidence of their inability to identify the person within the time reasonably available, and the steps they have taken in attempting to do so.

WHETHER THE COURT WILL GRANT AN INJUNCTION

13.6 The decision whether to grant an injunction is entirely a matter for the Court.

13.7 Although not directly applicable to the Hedgerows Regulations, nevertheless Department of the Environment Circular 21/91 (Welsh Office Circular 76/91) contains general advice which suggests that the Court is unlikely to grant an injunction against a named person unless:

- the local planning authority appear to have taken into account the relevant considerations in deciding that it is necessary or expedient to apply for an injunction;
- the local planning authority have clear evidence that an offence under the Regulations has already occurred, or is likely to occur;
- injunctive relief is an appropriate remedy in the circumstances of the case.

13.8 Even where these criteria are satisfied, the Court may decide that the circumstances of the case do not justify granting an injunction.

CHAPTER 14

Public registers

14.1 Under regulation 10, the local planning authority are required to keep available, for public inspection at all reasonable times and free of charge, a record containing a copy of:

- every hedgerow removal notice received by them;
- every notice given by them, under regulation 5(1)(b)(i), stating that a hedgerow may be removed;
- every hedgerow retention notice issued by them;
- every appeal determination notified to them under regulation 9(3).

14.2 The register provides a means of publicising proposals with a view to stimulating consultation. The authority should, therefore, arrange for hedgerow removal notices to be placed on record immediately on receipt.

14.3 So that the register provides full information on what has happened to each hedgerow removal notice, authorities are advised to annotate the notice, or provide an additional sheet, to show where the 42 day period (or such longer period as may have been agreed) has expired without the local planning authority giving either written notice that the work set out in the hedgerow removal notice may be carried out or issuing a hedgerow retention notice.

ANNEX A

Useful contacts

Association of County Archivists
Northamptonshire Record Office
Wootton Hall Park
Northampton NN4 9BQ

Association of Local Government
Archaeological Officers
c/o Peak National Park
Baslow Road
Bakewell
Derbyshire DE45 1AE
Tel: 01629 816206

British Trust for Conservation Volunteers
36 St Mary's Street
Wallingford
Oxfordshire OX10 0EU
Tel: 01491 839766

Cadw: Welsh Historic Monuments
Crown Building
Cathays Park
Cardiff CF1 3NQ
Tel: 01222 825111

Council for the Protection of Rural England
Warwick House
25 Buckingham Palace Road
London SW1W 0PP
Tel: 0171 976 6433

Countryside Commission
John Dower House
Crescent Place
Cheltenham
Gloucestershire GL50 3RA
Tel: 01242 521381

Countryside Council for Wales
Plan Penrhos
Ffordd Penrhos
Bangor
Gwynedd LL57 2LQ
Tel: 01248 385500

Department of the Environment,
Transport and the Regions
Eland House
Bressenden Place
London SW1E 5DU
Tel: 0171 890 5616

English Heritage
Fortress House
23 Saville Row
London W1X 1AB
Tel: 0171 973 3000

English Nature
Northminster House
Peterborough PE1 1UA
Tel: 01733 455000

The Forestry Authority (England)
England National Office
Great Eastern House
Tenison Road
Cambridge CB1 2DW
Tel: 01233 314546

The Forestry Authority (Wales)
Welsh National Office
North Road
Aberystwyth
Ceredigion SY23 2EF
Tel: 01970 625866

Ministry of Agriculture,
Fisheries and Food
Nobel House
17 Smith Square
London SW1P 3JR
Tel: 0171 238 5667

The Planning Inspectorate (England)
Room 1413
Tollgate House
Houlton Street
Bristol BS2 9DJ
Tel: 0117 987 8235

The Planning Inspectorate (Wales)
The Welsh Office
Cathays Park
Cardiff CF1 3NQ
Tel: 01222 823 856

Royal Commission on the Ancient
and Historical Monuments of Wales
Crown Building
Plas Crug
Aberystwyth
Ceredigion SY23 1NJ
Tel: 01970 621233

The Royal Commission
on Historical Manuscripts
Quality House
Quality Court
Chancery Lane
London WC2A 1HP
Tel: 0171 242 1198

The Royal Commission
on Historical Monuments
National Monuments Records Centre
Kemble Drive
Swindon SN2 2GZ
Tel: 01793 414700

The Royal Society for
the Protection of Birds
The Lodge
Sandy
Bedfordshire SG19 2DL
Tel: 01767 680551

Society of Archivists
Information House
20-24 Old Street
London EC1V 9AP
Tel: 0171 253 5087/4488

Welsh Office
Cathays Park
Cardiff CF1 3NQ
Tel: 01222 825 324

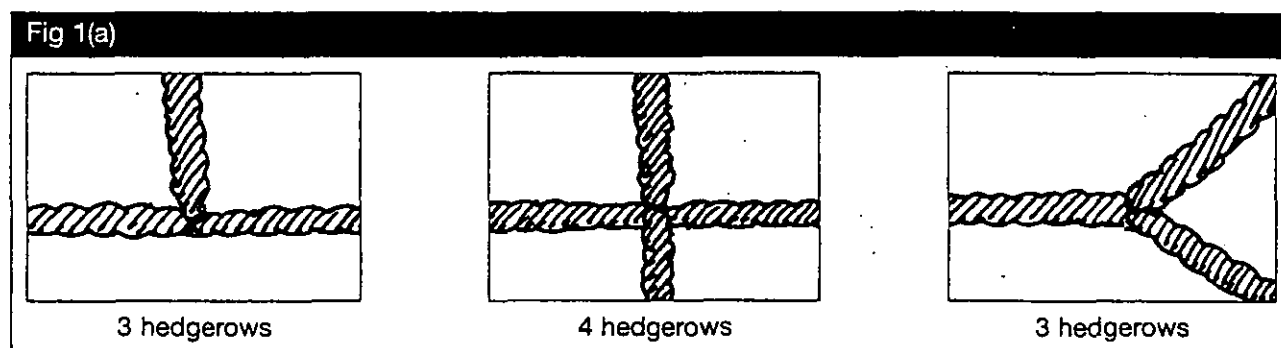
The Wildlife Trusts
UK National Office
The Green
Witham Park
Waterside South
Lincoln LN5 7JR
Tel: 01522 544400

ANNEX B

Hedgerow measurement

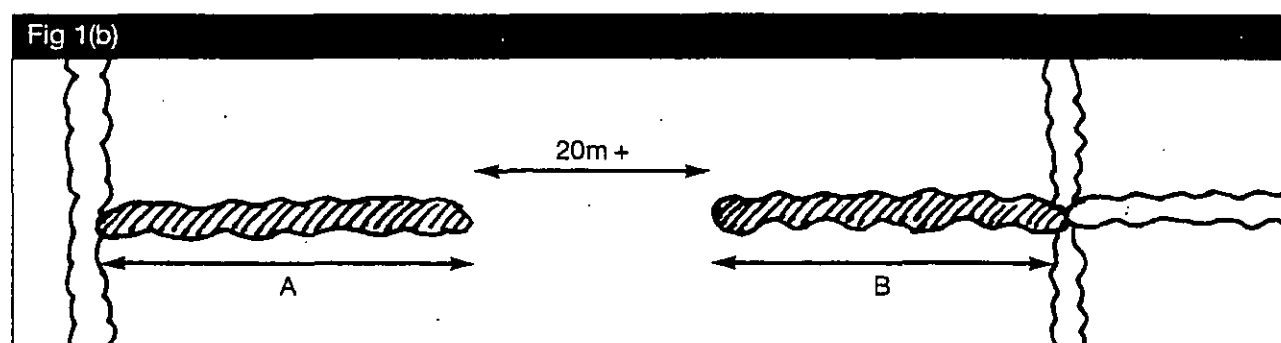
1. For the purposes of measurement, the ends of any hedgerow are:

(a) points of hedgerow junction or intersection;



Any of the junctions shown mark the end of the converging lines of hedge.

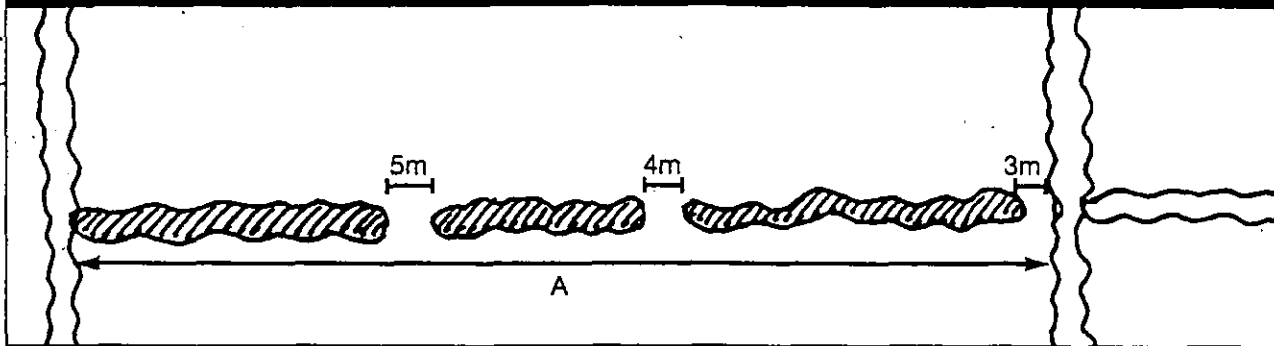
(b) free-standing ends – ie. where there is a gap of more than 20 metres between the end of the hedgerow and the nearest line of hedge.



Hedgerows A and B are two separate hedgerows and their respective lengths should be measured as indicated.

2. A short gap in a line of hedgerow is not considered to be the end of that hedgerow. That is to say, any gap, or gaps, of less than 20 metres in a line of hedge should be included in any measurement of the length of that hedgerow, even when the gap occurs at the end of the hedge line ie. at a hedgerow junction. For these purposes, a gap is any opening in the hedgerow, whether or not it is filled – for example, by a gate.

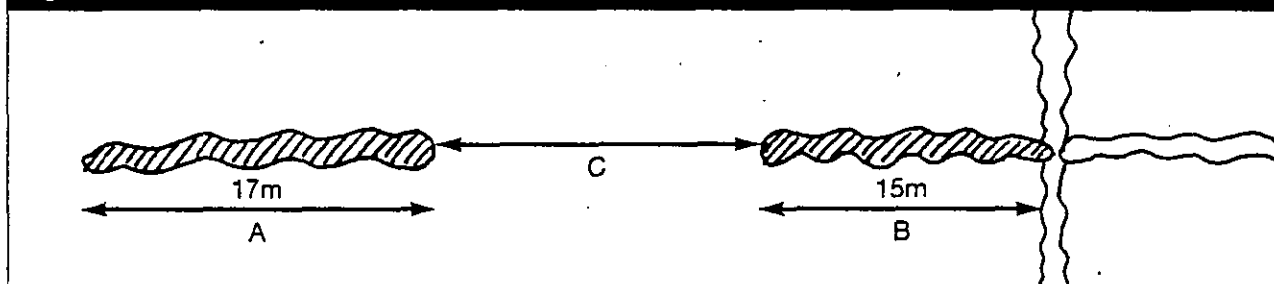
Fig 2



Small breaks in the line of a hedgerow are regarded as gaps in a single hedgerow. Although there is a gap at one end, for the purposes of measurement, Hedgerow A is considered to extend right up to the adjacent hedgerow and would be measured as shown.

3. Changes in the structure (height, width) of a hedgerow or in the species of which the hedgerow is composed are not treated as being the end-point, other than where those changes correspond with a hedgerow junction or intersection.
4. Notification will not be required where the hedgerow, as measured, is less than 20 metres long and one or both of its ends are free-standing (as defined in paragraph 1(b)).

Fig 3



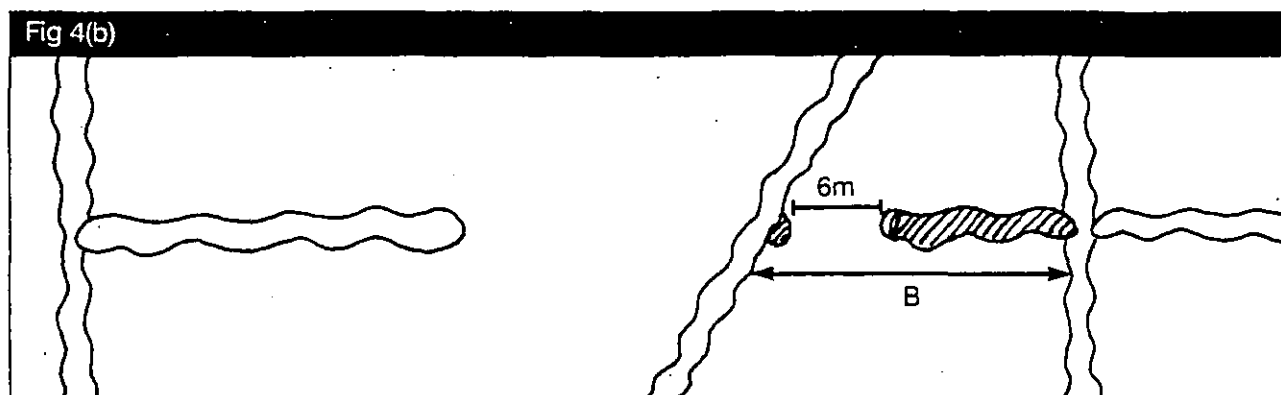
Hedgerow A and Hedgerow B may each be removed without notification: both are less than 20 metres long and have one (Hedgerow B) or two (Hedgerow A) free-standing ends. However, if the distance or gap between them (marked as C) was less than 20 metres, they would be regarded as parts of a single hedgerow and any removal would be subject to notification (see paragraph 2 and Fig 2 above).

5. Hedgerows which form part of a continuous network are recognised as having particular value. Therefore, if both ends of the hedgerow are hedgerow junctions or hedgerow intersections notification is always required, irrespective of the length of the hedgerow.

Fig 4(a)



Hedgerow A is less than 20 metres long but both ends of the hedgerow are hedgerow junctions. Since it does not have a free-standing end, notification would be required before Hedgerow A was removed.



Hedgerow B is less than 20 metres long and only one end of the hedgerow is physically connected to another hedgerow, to form a junction. However, as the gap at the other end of the hedgerow is less than 20 metres, that end of the hedgerow is regarded as extending right up to the adjacent hedgerow and does not, therefore, have a free-standing end. Hedgerow B should be measured as shown and would require notification before any removal.