Key legal issues

Trespass

There is no right in law to gain access to a neighbour's land for the purpose of carrying out works to a tree or hedge, or otherwise. Such access will be a trespass and subject to potential civil procedures.

Access may be available under the *Access to Neighbouring Land Act 1992* for the 'treatment, cutting back, felling or removal or replacement of any hedge, tree, shrub or any other growing thing which is so comprised and which is or is in danger of becoming, damaged, diseased, dangerous, insecurely rooted or dead'. Although the Act is not clear, it is to be expected that this provision will only apply to planting that belongs to the applicant and not to planting on the neighbour's land. However, this may not be case if access is required to make safe any planting that imposes an immediate danger.

The *Access to Neighbouring Land Act* is only available after obtaining an Access Order from the Court. The provisions of Access to Neighbouring Land Act are dealt with in the section relating to this legislation.

Overhanging trees

It is an established common law principle that there is a right to cut off any part of a tree that overhangs the boundary of your land. It is important that any cut back only takes place up to the boundary line and not beyond.

Any wood that is removed remains the property of the owner of the tree and must be offered back to them.

For a problem hedge, cutting back the hedge to the boundary line may provide some relief but this is unlikely to have much impact on the overall height.

Root coverage

If a hedge or a tree has roots which extend onto neighbouring land and cause damage to structures on that land, then the owner of the tree is likely to be liable in common law. This was established in the case of *Delaware Mansions Ltd v Lord Mayor & Citizens of Westminster* [2001] in which the City Council were responsible for damage caused to a mansion block by trees located on the pavement.

It is necessary however for the owner of the tree to have been notified that damage is occurring and then fail to take action for them to be liable.

Right to light to buildings

A right to light is an easement and the most common method of acquiring a right to light is by 20 years use, under the *Prescription Act* 1832. If light has been enjoyed for an uninterrupted period of 20 years then this is all that will be required. It is only possible to acquire an easement of light to a defined aperture such as a window.

If the light is interrupted for a period of one year then this will extinguish the right of light to the extent of the obstruction and the 20 year period will recommence.

Rights of light practitioners adopt guidelines, based on case law, that a room within a property entitled to a right of light will have an adequate level of light if it can receive light from more than 0.2% of the sky over more than 50% of the room area at a working plane height of 850mm above floor level. This is a simple guideline to assist assessment and calculation of compensation but the courts have made clear that they do not accept a firm standard and reserve the right to determine in any particular case whether a rights of light injury is caused to a property. In particular, there are recent cases that show a trend to require a higher standard of light for residential properties.

In reality, the law relating to rights of light is of little assistance to neighbouring owners affected by a high hedge. This is for a number of reasons.

An obstruction to light must effectively block access of light from the sky. The hedge must therefore be sufficiently dense to be opaque and gaps in the hedge that allow sufficient light to pass through the window may mean it is adequately lit by rights of light standards.

As it is only possible to have a right to light to that level of light that has been enjoyed for 20 years, in reality a steadily growing hedge would mean that the neighbouring building will only ever have had 20 years light over the hedge as it was one year before any point in time. Therefore, if a hedge is sufficiently dense to cause a right to light injury then it will only be possible to require that the hedge be cut down to the height that it was one year before the commencement of legal action.

There may be an exception if a new dense mature hedge was planted which would have the same effective impact as the immediate erection of the fence.

There are other methods of acquiring a right to light, particularly under the doctrine of lost modern grant. This will not be extinguished by one year's interruption but it is less likely to apply to the usual residential cases in which high hedges are a problem.

Light to land

There is no right to light to open land. As a result, there is no legal remedy in common law as a result of a hedge or a building casting a garden or other amenity area into shadow.

The construction of buildings is controlled, in many areas, by town planning standards relating to daylight but that does not apply to hedges.