Scothedge Position Paper

1. Scothedge today met with Mark MacDonald MSP and officials to discuss the upcoming 'High Hedges Bill'.

2. Mark said that the bill was likely to be published and start its passage through Parliament in mid-September this year. This was welcomed by Scothedge.

3. Mark also said that it was anticipated that under the legislation Local Authorities were likely to charge a fee in the region of £200-300 for each case they were asked to consider. Scothedge expressed concern that this fee may prove too expensive for many sufferers but it was pointed out that detailed discussions with local authorities might reveal their willingness to offer discounts and special rates to those in genuine need.

4. Scothedge however remain disappointed that the bill scope is likely to deny a solution to those cases which result from inappropriate use of deciduous trees or single trees. The Scothedge position has long been that whilst deciduous trees are less of a problem than evergreen or semi-evergreen trees, they still constitute a significant problem which causes considerable distress to many people.

5. Scothedge remains of the opinion, based on the experience and evidence of its members, that there is no difference between the negative effects of a deciduous hedge compared to one formed from evergreens. Scothedge believes that media sensationalism using headlines such as 'Leylandii Wars' has led to the perception, even amongst politicians and professionals, that the problem is uniquely one of evergreen hedges. The Scothedge publication ‘A Growing Problem’ fully examines and explains this situation, with verifiable case studies, and Scothedge feels that those who seek to influence this debate should at the very least have studied this evidence.

6. Scothedge pressed Mark and the officials for a clear explanation as to why they remain reticent on the question of deciduous trees and the answer appears to lie in concerns raised by local authority tree officers, under the umbrella of COSLA. Scothedge requested sight of the minutes of the relevant meetings and said that they intended to approach the local authority representatives directly. Scothedge wishes to understand COSLA’s concerns about the inclusion of deciduous and single trees and offer suggestions which might ease these concerns. It was agreed that the relevant minutes would be released to Scothedge.

7. These concerns seem to be as follows:
   - Inclusion of deciduous trees and single trees in the legislation would escalate the number of cases to a point where action required of local authorities would be prohibitively expensive for them.

Scothedge response:
8. The public consultation responses and Scothedge's own data, clearly show that growers of deciduous and single trees are responsible for a significant proportion of the problems in Scotland, but that these cases are in the minority compared to the evergreen cases. There is simply no evidence which justifies omission of a remedy for these cases on the grounds that there would be an overwhelming increase in the number of cases requiring intervention by local authorities. Scothedge continues to be frustrated by the paradoxical assertion by officials that whilst on one hand deciduous and single tree cases are a significantly lesser problem, dealing with them would overwhelm any remedial system!

9. It is widely accepted (based on experience in England and Wales) that the mere presence of legislation would cause many inconsiderate growers to capitulate. It is estimated that somewhere in the region of 95% of cases would simply evaporate once a legislative solution was available. The reality is that the remaining number of the already smaller volume of deciduous cases would probably place no significant burden on local authorities.

10. Scothedge suspects that COSLA members are concerned about their own liability for deciduous and single trees on public land, but Scothedge can find no evidence of any significant number of such cases. The public should not be denied access to the proposed remedy because of COSLA’s perception and one possible suggestion is an exemption for COSLA members from any liability whilst allowing cases resulting from action by private individuals to be addressed. It could however be argued that if COSLA members are aware of any genuine problems then they perhaps should be prepared to address them and hence that any exemption should be time limited.

11. The effects caused by improper use of deciduous trees are less significant and somehow more difficult to define, quantify and address than those caused by evergreen species.

Scothedge response:

12. In over ten years of campaigning and case study, Scothedge has seen no difference in the overall effects of a poorly maintained hedge specifically because of the species employed. Scothedge is advised is that there is absolutely no difference in the legal position of species of plants unless such a difference were to be specifically created in the proposed legislation. Scothedge believes that the creation of any such distinction would foster confusion and offer opportunity for wasteful and costly legal dubiety and should be avoided.

13. Scothedge rejects suggestions that legal enforcement of any remedial action should be in any way dependant on the species involved. The more severe effects of evergreens were often the result of their rapid growth but over time deciduous species have caught up and proved equally problematic. Scothedge also rejects any notion that deciduous trees should be exempt from the legislation on the grounds of their increased vulnerability to justifiable control measures. (See 4 below)
14. Scothedge is not 'anti tree' and has never favoured attempts to define good and bad species, preferring to lay the blame on the action of growers rather than on the plants. Distinguishing between good and bad species also exposes the legislation and its administrators to ridicule if growers are able to perpetuate the distress caused to neighbours by merely switching to mature specimens of 'good' plants after any remedial order.

15. Scothedge believes that any species which is vulnerable to reasonable control measures is by definition inappropriate for hedging etc. and the default position should be removal rather than protection. There is no justification in denying remedial action in cases where such action might result in the tree or hedge being killed. The Westminster law remains flawed by this provision which allows lawyers etc. to play on 'the risk of killing plants subjected to remedial work' and tree surgeons being unwilling carry out work because they cannot absolutely guarantee the survival of such plants. Another unacceptable effect of this provision is that it offers increased protection to the worst cases (whether an inappropriate deciduous tree or a thirty foot leylandi) which because of years of neglect have become bigger plants and more likely to be vulnerable to appropriate and justifiable control measures. The authorities can easily avoid protracted challenges on the grounds of 'remedial action may kill the plants' by making sure that no such provision is included in the legislation.

16. Over time Scothedge has offered many suggestions and procedures which would help authorities assess the detrimental effects of improperly managed vegetation, including the publication 'A Growing Problem' and the issue of draft guidelines. Scothedge accepts that at the end of any legal process a decision has to be made which is bound to have a degree of subjectivity and that there is always a possibility that cases seen as 'worthy' end up being rejected by that process. As the final arbiters, local authorities will have a high degree of control over which cases proceed to the enforcement phase and hence there seems little justification in denying access at the beginning of the process to the relatively low number of people who suffer the effects of single or deciduous trees. Attempt to deny access to the process, purely based on the species of plant seem somewhat superfluous and arbitrary.

17. Scothedge has suggested that any remedial process should consist of several phases, each one of which would see cases being resolved as all parties involved became increasingly aware of their position. This would not only encourage growers to take appropriate action but would also discourage those inclined to create spurious and vexatious cases; the latter being further discouraged by any 'up front' fees. Early phases should include issue of guidelines and mediation with local authority arbitration and enforcement needed only in the most contentious cases.

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