Local Government and Communities Committee

Post-Legislative Scrutiny of the High Hedges (Scotland) Act 2013

Submission from John Kinloch

It is helpful to have a statutory definition where none existed before. But that definition is itself being exploited by some hedge-owners. A typical example is featured in Michael Alexander’s article in the “Dundee Courier” of 21/2/17 where the hedge-owner removed alternate trees from the line thus creating “a row of 20ft-high trees”. I have a very similar personal experience: the trees are bare-stemmed for the first 4 ft, then thickening out into a 16 ft unattractive loose hedge of no value other than perhaps as a source of irritation.

In the case quoted in the “Courier” (and in my own case) the definition is being used to avoid what would otherwise be a reasonable demand from the local authority to reduce the overall height and impact of the hedge. This removal of alternate trees is being done not for any conservation or amenity reasons but to thwart the purpose of the legislation. The motives are best described as malicious or spiteful.

The situation is exacerbated in that the gaps created by removing alternate trees will soon close up again. In a few years time, the line of trees will again meet the terms of the definition of a hedge. But by then the overall height of the hedge will have grown substantially so that the problem first complained of has also become that much more oppressive.

Appeals Procedure: no relevant experience.

Enforcement Procedures: no relevant experience and no wish to comment.

Fees and Costs. All applicants must first have tried, and failed, to reach a solution. That will certainly have taken time and effort, if not actual cost. So in fairness a successful applicant ought to be able to reclaim the cost of the charges which he has had to pay to the local authority. Otherwise, it is quite conceivable that the costs to the hedge-owner may be considerably less than the costs to the successful applicant. Money is probably not the prime mover, but it is an issue of fairness.

The impact of the Act has been less beneficial than first expected on account of the defensive tactics which it has spawned. The hedge which is an issue for me has been so maltreated as to be deformed. Michael Alexander’s article referred to above is evidence that there are those who think they have found a way of getting around the law without regard for others.

It would be helpful for the public to have access to case studies so as to build up an understanding of how the Act is working in practice across the country. It would help those considering making application under the Act whether such application would have a reasonable prospect of success.
I urge the committee to consider what changes in statute or regulation or guideline can best and soonest be introduced which will prevent the aims of the Act from being thwarted as at present and thereby improve the lot of those affected.

John Kinloch