Dear Mr Doris

I see from the BBC website today that your committee is to investigate the operation of the High Hedges legislation.

I made application under the legislation for a reduction in the height of my neighbour's hedge. The Guidance Notes that are recommended as applying also to Scotland are based on the legislation in England ('Hedge height and light loss', ODPM 2005). They are helpful, in providing evidence that there is a case to answer, and give guidelines on how to calculate whether the particular high hedge does result in loss of light. So, these guidelines are useful in establishing the existence of a problem - in that sense they are NECESSARY, but not SUFFICIENT to guarantee a result.

In my example, there was a clear case from applying the Guidelines that the high hedge is causing a problem. In particular, the Guidelines provide several methods for estimating whether or not there is a problem (e.g. shading a garden, or light blocked from a window) and emphasise that if ANY of the conditions are met, then there is a case to answer. However, the local authority can exercise discretion in the application of the guidelines. In my case, the Planning Officer reckoned that, despite a clear breach of the guidelines, the amount of light lost was not sufficient to justify them taking action in reducing the hedge height, largely because in the most affected room there is another window to provide light.

I did appeal against the decision, but the Reporter upheld the local authority's decision to take no action.

So - it would be helpful in the guidance notes provided to potential applicants to make it clear that the published Guidelines ('Hedge height and light loss', ODPM 2005) may be used to identify the existence of a problem, but ARE NOT sufficient to warrant local authority action, even when there is a clear case on paper. Rather than the local authority providing 'objective opinion' as laid out in the guidelines to Local Authorities, from my perspective the local authority decision was based on the subjective opinion of the Planning Officer, albeit upheld by the appeal process. Incidentally, the Planning Officer did not apply the calculations laid out in Hedge height and light loss', ODPM 2005 correctly, but did not dispute my calculations....I suspect that there have been so few applications (at least in Midlothian) that the documentation is still not well understood.
On a more general note (and I have no wish to impute such motives to the Midlothian officials in my case) there is a clear conflict of interest between the local authority in its role as ruling on High Hedges applications, and its role in enforcing the same, with the concomitant cost implications.

I would also be interested to know if there have been any successful applications in Scotland under the legislation; there appear to have been none in Midlothian.

I wish your committee well in its investigations.

Yours sincerely

Dr J N Cape