Local Government and Communities Committee

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

Submission from Pamala and James McDougall

Preamble

As founder members of Scothedge, a campaigning group set up in 2000 to highlight the plight of hedge victims and to seek redress in law, we have been involved in presenting the problems to the Public Petitions Committee of the Scottish Parliament and assisting various politicians, latterly Mark McDonald MSP, with his Private Member’s Bill, in shaping the law.

None of us envisaged the loopholes within the law at the time, and although many nuisance high hedge victims have benefitted from the law, we now we have the chance to plug those loopholes with this Review and we are very grateful, especially to the committee, for this opportunity.

1. Has the definition of a High Hedge as set out in the Act proved helpful? If not please provide details.

Only partially helpful as our neighbour had alternative leylandii trees which formed a high hedge removed, which has left unsightly gaps with little, and in some places no extra light. (see photographs). The height of the leylandii remains the same to this day, and the spirit of the law was violated. From the date of the application for a High Hedge Notice, 17th June 2014, to the letter advising us that the Council had decided not to issue a High Hedge Notice on 10th November 2014, was almost 5 months which we consider to be excessive and proved to have a devastating effect. We twice asked for updates on progress without satisfaction as we were told they were ‘too busy’. Had the report by the Council been written and issued ‘in a timely way’ after we had paid the fee and the first site visit completed, we are convinced that a High Hedge Notice would have been issued. We saw no need for a second site visit as our complaint was concerning the situation when we applied for and paid for a High Hedge Notice.

2. Do you have any experience of the appeals procedure as set out in the Act?

We would have appealed against the decision but at the time we were elderly, and both ill, no doubt exacerbated by the stressful situation of the culmination of 20 years attempting to find a solution by attempting to communicate with our neighbour which was rejected, including mediation which was also rejected. In fact we were shocked and dismayed at this result and feel the Council acted in an uncaring and
irresponsible way, especially the length of time taken between our application and resultant report which clearly affected the decision taken.

3. Do you have any comments on the fees and costs?

Compared to planning costs the fees are unfairly high e.g. the planning fee set by Angus Council for an extension to a house is £202. To have lived without redress for over 20 years and then to seek legal redress after the Act was introduced with the costs prohibitive to many hedge victims was, to say the very least, disappointing. In contact with many other hedge victims as founders of Scothedge, we know that many who would seek legal redress cannot afford to pay the fees. This is an injustice. Because Councils are allowed to set their own fees it is noticeable that fees across Scotland vary widely and is unfair, from £192 to £500. Fees should be re-assessed, should be consistent throughout Scotland and with a sliding scale of fees taking account of the ability to pay and making allowances for those on benefits, pensioners and the low paid.

4. Overall, are there any aspects of this Act which has had a positive or negative impact on your life?

The lack of professionalism from Angus Council in dealing with the ACT has affected our lives in a negative way due to the low priority given to the High Hedges Act and length of time taken to assess and make a decision on our application for a High Hedge Notice. This led to a different decision by the Council to our application. Had the decision been given after the first site visit after we had made the application, paid the fee and met all the criteria, there was no doubt a High Hedge Notice would have been served and could have made a very positive impact on our lives.

To sum up –

1. A definite time limit should be set from the application of a High Hedge Notice to the decision by the Council. The phrase used in the Guidelines 'in a timely way' is being used by Councils to extend the time unreasonably.

2. Fees to apply for a High Hedge Notice should be set, not by the different local authorities, but be universal, set lower so that they are not prohibitive and a sliding scale applied. Justice is not being served by making the fees impossible for some to make application for a High Hedge Notice. The hedge grower should pay all costs if an application is successful.

3. The right to light in house and garden has been denied us for 20 years due to selfish neighbours with no redress in law. With the High Hedges (Scotland) Act 2013 we expected, along with many others, to correct this anomaly. This
Review is an opportunity to address the loopholes in the law and correct them.

4. The law agrees that we have a right to ‘reasonable enjoyment’ of our property which, under present law is denied us.

5. We now find ourselves in a position of considering another application for a High Hedge Notice with another fee along with the lengthy information, maps and measurements required for the application due to a loophole in the law, and the Council’s procrastination and failure to comprehending and interpreting the law as it stood.

Pamala and James McDougall

Enclosures – photographs.