Local Government and Communities Committee

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

Submission from Roger and Catharine Niven

We wish to submit evidence on the working of the above Act, based on our own experience with our neighbour, the owner of the hedge, and The Highland Council. We would have no problem with our response being made public.

- Has the definition of a high hedge as set out in the Act proved helpful? If not, please provide details.

The definition in the Act implies that action will be taken on vegetation that fits the description of a High Hedge. However, in practice, the guidelines used to interpret the Act are contrary to the spirit of the Act. In our view, they have been used by our local authority, The Highland Council, to save their having to take action. The phrase causing the problem is: ‘A row of bushes or young trees …. planted closely to form a boundary….’ The Highland Council refused to consider our application under the Act on the grounds that the hedge does not form the boundary between our property and our neighbour’s. The hedge is planted parallel to the boundary, but between one and two metres away from the fence, which technically delineates the boundary between our land and his. In practice, almost all urban hedges are planted inside a fence or wall.

We followed the requirements of the application process to the letter, and we have a letter from the previous owner of the adjacent property, clearly stating that he planted the vegetation as a hedge.

In our view, if an appellant can prove, as we can, that the vegetation was planted as a hedge, then no further test should be required.

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

No, because the Council refused to consider our application. They offered us only a judicial review and a refund of our fees. We felt we had to pursue this response and, in doing so, incurred substantial solicitor’s fees. We were advised that a judicial review would be extremely expensive and unlikely to succeed. The right of appeal should be extended to cover the failure of a local authority to consider an application.

- Do you have any comments on the enforcement procedures under a high hedge notice?

We have no experience of this but we would expect our Council to be reluctant to be active in enforcement because it frequently pleads lack of resources and appears to take the line of least resistance.
- Do you have any comments on fees and costs?

The fees applied by The Highland Council are too high, at £450 and may deter applications.

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

The hedge is causing us unhappiness because our house is completely overshadowed, even in the height of summer, and because we cannot enjoy our garden at any time because of this high hedge. It is also costing us hundreds of pounds annually to clear the roof of our house of moss generated by the shade of the hedge. Overall, this situation is continuing to cause us considerable stress and a feeling of helplessness. We had waited for the Act and watched its slow progress through the Scottish Parliament in eager anticipation that it would resolve our problem. We are extremely disappointed that it has failed to do so and we have high hopes that this consultation will give us a positive result and a sense that justice can be done.

It is hard to fully describe the effect that this hedge is having on our lives, and we would actively encourage a site visit by the Committee so that members can fully appreciate the impact of the hedge and our disappointment that the legislation has so far drastically failed us.

Roger and Catharine Niven