Local Government and Communities Committee

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

Submission from Colin and Pat MacLaren

Has the definition of a High Hedge as set out on the Act provided helpful?

The definition as set out in the Act in Section 1, page 1 meaning of a “High Hedge” Points (1) (2) and (3) are quite clear, however there are councils who circumvent this by applying their own definition and criteria. By dismissing an application without registering, even if your trees fall squarely within the Act, you have no right of appeal, and no access to justice or the Law. This is a basic denial of my human rights and cuts across the spirit and intentions of the Act and the Scottish Parliament.

Detail of why I believe this to be the case.

Background

We moved into our new house in 2000 unaware that there had been a furor prior to the granting of planning permission of 3 new houses to the North of our neighbours where a single house had stood. It was evident that the trees running along our southern boundary had historically been pollarded but there had been a distinct lack of maintenance for some time. It became obvious very quickly that none of my neighbours were going to reduce the height of their trees so we did the only thing available to us and cut the overhanging branches back to the boundary. The overhang in places was 6m in what was now a 16m deep garden.

The neighbours applied for and got TPO status despite the Council stating that “the trees were of little merit and not in good health!”

Given that the trees now had TPO status we were not allowed to cut back to the boundary above 2m for some 13 years.

We awaited the introduction of the new legislation for 14 years as finally we thought we had some chance of improving our situation.

We first applied to the Council for a High Hedge Notice in October 2014. Our first application was dismissed on the basis that the Guideline definition at that time stated, “For trees and shrubs to be considered a hedge they first must be a hedge as defined by the Oxford English Dictionary”, and as such the Council never considered this was a low hedge first.
The Council wrote, “They did not dispute that the line of trees fell squarely within the Acts definition of a hedge, it was a barrier to light and above 2 metres.” The Council official also agreed that “it adversely affected the enjoyment which we could reasonably expect to have”. However their refusal letter stated, “the trees along our southern boundary were mixed age and mixed species. They considered the trees to have accumulated over time rather than having been planted at one period of time with the intention of being a hedge”. They also added that “this type of mixed and understory planting was to be considered commonplace in a peri-urban area within large gardens and landscaping schemes”.

By dismissing nor registering our application we had no right of appeal to the DPEA. During various subsequent letters by our MSP, the Council wrote that “our trees showed no evidence of being maintained as a hedge and did not accept they were a hedge”. He went on to say that “to be considered a hedge the spacing between the trees would be typically 30-50 cms”. The girth of some of the trunks of these trees is more than that. It would be impossible to have trees of some 25 metres high with 30cms spacing. The placing of the TPO on the trees did not allowed us to maintain our side as a hedge and the owners certainly had no intentions of such.

We reapplied to the Council in August 2016 as the revised guidelines now omitted the barrier that had dismissed our first application.

This was also dismissed in October 2016, however the TPO was removed.

The Council wrote, “I refer you to the High Hedges (Scotland) Act - Revised guidelines to local authorities pg. 12, Para 2 which clearly outlines that, the Act applies to hedges and that well-spaced tree lines are not generally considered as a hedge”.

This however does not recognize the further qualification that this paragraph goes on to say “it would not normally be expected that trees planted between properties would be classified as either a woodland or a forest so local authorities should consider whether the trees and shrubs were planted with the intention of forming a boundary between two gardens in order to separate two neighbouring properties.”

Which ours clearly does.

By taking their own interpretation of this paragraph the Council have totally ignored the Act and as such denied us yet again access to the law.

They did not accept as evidence that the title deeds of all the properties of the tree owners show back in the 1930’s that in order to gain title they had to build a stone wall and plant a hedge inside it.
We approached the Head of Legal Services in the Council to discuss how we felt our application fell squarely within the definition of the Act and that we were being denied access to the appeals procedure. He asked us to reapply. We did this in November 2016.

Ten weeks later they dismissed our 3rd application.

This time the Council wrote, “They and a number of other Local Authorities consider a number of criteria in assessing whether vegetation is a hedge. The following tests are used in determining this point;

1 The original intention at the time of planting
2 The spacing of trees and shrubs
3 The past and current management.

Surely some LA’s cannot be allowed to make up their own rules when the Act is quite clear?

I will now show examples of HHA cases, which reached the DPEA and clearly show that the Council are not following the legislation the way it is intended and in a manner other LA’s do.

HHA-320-2 Lanark Council: John Martin writes of a similar newer development to the North.

Para 7, “Although the trees may not have been planted as a hedge as defined in the Act, they are close enough together and to the boundary to give that effect.”

He continues Para 8, “As a result, I find that these mixed conifer and broadleaf trees are acting as a high hedge and in screening the applicants garden from sunlight from the South and it forms a barrier to light to the detriment of their reasonable enjoyment of their property”

This applicant is 8.5m from the boundary and their trees were 8-10m high. We are 16m from the boundary and our trees are 25m high, higher in places.

HHA-390-22 Stirling Council: reporter David Buylla wrote,

Para 8, “planted closely and well-spaced are clearly subjective and it is more helpful we suggest to consider the function that these trees were intended to perform when planted and whether there has been any change since then. In this regard the trees were planted to follow the boundary between two gardens and were intended to
provide a degree of screening between them. They continue to provide this function. We contend therefore they can reasonably be described as a hedge”.

This is clearly the same as our boundary treatment.

HHA-390-21 Stirling Council: John Martin wrote in his summation

“The appellants house lies within a residential area on generous south facing plots. Her house lies 22.5 m from the boundary of the more recent development to the North. The gardens to the north are only 13-15m from the trees.”

My neighbours are 60m from the boundary. I am 16m from the boundary, the same north/south direction.

HHA-390-21, John Martin continues, Para 6 “being on the southern side of the boundary, the over 16m high hedge clearly overshadows the applicants garden due to the distance from the hedge. With no other buildings or obstructions contributing to light loss, the gardens might have otherwise enjoyed much more daylight and sunlight from the south. Even though the submitted photos indicate some dappled sunshine penetrating the lower branches of the trees, some of the garden ground would be in shadow on most days particularly in winter months, whilst the applicant complains that her garden odes not dry out through lack of sunlight.”

This is clearly similar situation I find myself in.

HHA-350-3 Renfrewshire Council: Reporter Robert Seaton

Para 9, the reporter mentions that there are a number of gaps of 3m and two gaps of 6.3m.

Para 10, “Whether the trees form a hedge is a question of their proximity, relative position, context and form as trees. The row of trees is clearly one element of a boundary treatment.” He goes on “their trunks are relatively close to each other given their height. Their crowns generally run together, although as the council says there are gaps. They form a row even if there is not complete alignment. In view of this, I fins the trees does form a hedge”

This makes a mockery of the Council’s suggested spacing of 30-50 cms in their recent dismissal.

HHA-280-1 Inverclyde Council: Reporter Mike Croft

Para 2, “The appellant makes a number of procedural points. He says the trees that constitute what the Council regards as a high hedge are more than three feet apart
and do not fall within the scope of the Act. However, I accept the council’s response on this point: the Act does not specify any minimum separating distance for trees that constitute a high hedge and I agree with the council that the trees covered by this notice do constitute a high hedge which satisfies the definition in the Act”.

Again making a mockery of the Council suggested spacing of 30-50 cms.

Finally Case HHA-250-4 Fife Council: John Martin writes>

Para 7, “I acknowledge that the appellant has a right to privacy from overlooking which, as has been pointed out in submissions, is often secured by a 2m high fence or hedge so planting and encouraging a hedge to grow to 8-9 m in height far exceeds what would normally be expected.”

The trees in question in my garden could be 1/3 their current height and there would be no privacy issues at all. The top 2/3 of their trees serves no purpose other than cutting out light and sunlight.

Do you have any comments on the enforcement procedures under a High Hedge notice?

We are unable to comment as the Council have consistently refused to allow us access to the Appeals procedure.

Do you have any comments on fees and costs?

There is a wide variation in costs.

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

Having spent 14 years waiting for the Act to go through parliament it raised hope of help. However it has substantially failed us by the Council’s ability to refuse us access to justice via the appeals procedure. Seeing successful cases in other LA’s and the Council’s ability to act as Judge and Jury, which is just not right, causes further upset.

Any other issues relating to the Act which you may wish to bring to the attention of the committee?

I hope I have provided enough evidence for you to be interested in looking into my case further. I have some photographic evidence from the cases I have quoted here but not all the photos are available on the DPEA website.
I also know I am not the only one who has been treated in this manner. I have also ran out of space to include my own photographs here.

Colin and Pat MacLaren