In relation to your request that individuals respond on their findings to how the High Hedges legislation is working I would like to detail my own experience below.

To set the scene:

My neighbour has 5 trees (4 of which are evergreen) each now 10 – 20m tall. The neighbours have a small city garden that has fallen into a poor state of repair since it has never been maintained in the 14 years since we took residence in our own home.

All efforts to communicate with the neighbours have gone by with no acknowledgement. The neighbours appear to have little regard for the impact this issue has on their own home so any hope to resolve the impact on neighbours such as ourselves seems to be lost.

Unfortunately the lack of maintenance is having a big impact on our lives. The trees have fully merged and subsequently due to the proximity of them we now have minimal natural light into the rear of our house. The trees have become a ‘wall of green’ with minimal light penetration through them and we are surrounded. This means that we now need artificial lighting morning, noon and night in our home.
despite having open planned our living space to try to maximise available light. Our
garden now has a jungle feel to it as we are so overshadowed by the neighbours
trees and we can get no enjoyment from this space anymore. We have 2 young
children and our sons should be able to enjoy this precious space. Our party wall is
also collapsing due to the strain by one of the trees.

When engaging the local authority over the issue they’ve returned a statement that
legally in their opinion the ‘trees’ do not form a ‘hedge’ and therefore the issue is, in
the authorities view, a private dispute. Apparently according to the council my
neighbours behaviour is nothing unlawful and falls outside of any remit the council
say they have with the legislation.

The grounds the council claim for no action with the act are that my case falls
outside of what can be categorised as a ‘hedge’. To be a ‘hedge’ the council state
the following criteria must apply which and is not so in my case;

- the trees must have been planted with the original intent of being a hedge
- the trees must be planted 40 – 80 cm away from each other
- the trees must have been maintained as a hedge

Further to the above the council have stated that it is because of the above criteria
my situation is helpless and no matter how severe the impact my neighbours trees
they have no jurisdiction to act;

‘whilst your neighbours trees have a similar effect as a high hedge they do not form
what can be constituted as a hedge. We have sought our legal teams advice in
relation to this matter and they have confirmed that we must first be able to assess
the trees/shrubs in question to be a hedge. If they are not a hedge, irrespective of
their impact, we cannot class the trees/shrubs in question as a high hedge and
therefore we cannot apply the Act.’

I wish to highlight that nothing that I see within the act itself that states that my
scenario which is a collection of five trees cannot constitute a hedge. None of the
criteria being applied by the council as to key components required to constitute a
‘hedge’ is mentioned in the act. I contest that to describe my neighbours evergreens
as a collection of trees per the act should require the council to show that the trees
are indeed ‘well spaced’. With this in mind I find it incredulous that the council state
‘irrespective of impact’ the trees will never constitute a hedge so the acts ‘wall of
green’ should be a straight forward ‘hedge’ assessment appears trumped as
irrelevant.

The council informed me that the criteria above is from the Royal Horticultural
Societies guidance whom they consider a ‘suitable authority’ on the issue. When I
presented the RHS with the local authorities opinion though I received the following
response;

‘You mentioned that the authorities have used our web pages as a guide to what
constitutes a hedge. Our web pages promote ‘good practice’ where trees are
planted close together to make a hedge. It is important to space trees closely so
they compete with each other and thus stunt their growth. To plant trees
Further apart is poor practice as they will grow much larger when there is not competition between the trees. Poor practice is not uncommon. Because of this it would be rather perverse to exclude widely planted trees (that form a barrier as defined under the regulations) as such trees are especially likely to make an overbearing ‘high hedge’.

So if the council’s view is that the RHS guidance is to be used it appears they themselves are not using criteria the RHS themselves would apply. The RHS have correctly exposed that under the council’s interpretation that only good planting practice fall within the act. Is it the intent of the act that it is to enable councils to create criteria that mean poor practice and wilful neighbourly neglect is not to be resolved?

Following extensive and exhausting efforts trying to resolve a horrible position I wish to raise the following points;

1. how have we arrived at a scenario where someone has all the impact of a high hedge but the act still doesn’t help? Why are the council able to site the original planting intent as being so important but the end outcome of the trees irrelevant? Can a collection of ‘trees’ become a ‘hedge’ it seems clear from the act this is a yes but is point blank refused by the local authority. If a wall of green at 2m tall is to be resolved via the act why not a wall of green that goes to around 10m?

2. How are the council able to make up their own rules on what constitutes a hedge and what does not? Why are we being penalised due to a lack of maintenance when surely these factors should be in the favour of the impacted neighbours and not those being negligent? To whom are the council accountable too once their decision has been made whilst I have tried communicating with those officiating the act it is very clear they do not want to be involved in individual cases such as mine? Are the council’s decision making approved by those that wrote and officiate the act?

3. Personally I feel very sorely let down that a scenario such as mine is not currently being aided by the act as I do not believe it is irrelevant how bad my situation can become to have gone well beyond reasonable. I also believe that my neighbour should not legally be allowed to block out all my natural light.

4. the council site that the RHS are a ‘suitable authority’ on what constitutes a hedge however even when the RHS themselves highlight that they are at odds with the council’s view the council still refuse to site where their criteria is referenced as being a requirement to be categorised as a ‘hedge’.

5. the local council have stated that even if the impact of the trees result in having 100% light loss (since it is irrelevant what impact I have per the councils it not a ‘hedge’ assessment) the act in my case will never apply. How are multiple evergreen trees in such a scenario still described as ‘well
spaced’? I have highlighted to the council well spaced is not a fixed planting distance as they prescribe and should factor foliage, height, proximity etc. How is well spaced viewed monitored if even if I lose 100% of my light the neighbour still only has a collection of trees rather than a ‘hedge’?

6. it seems impossible to get impartial advise on whether the councils grounds for refusal are correct or not by those officiating the act. Nobody appears to be overseeing precisely how the council are applying the act and whether this is being done consistently between different councils. This dialogue is hugely welcomed but should be permanently open otherwise how will the situation people like myself find themselves in ever move forward?

7. I’m very interested to know how will the outcomes from the review are to be communicated and if someone would independently review the ‘on the ground’ struggles that people are having. I’d open my door to assessment.

8. Can we have a Scottish expert on the subject that can officiate and review cases that local authorities are dismissing?

9. why are costs for raising the act borne by the person already suffering? It would serve a purpose that neighbours are highlighted that successful application of a high hedge would result in the transfer of these costs from the victim to the perpetrator.

10. to remove any doubt about fairness of applying the act those enforcing the act should have no future financial impact of the decision they are making. A few specialist decision makers around Scotland rather than a devolved council responsibility would not only ensure a more consistent premise is applied but would ensure that decisions are made fully independent of any future financial reprisals.

11. currently light loss resulting from a high hedge is in no way factored by the local authority into assessing what constitutes a high and overbearing hedge. I would like to see the LA’s adopting a proactive view of the light loss issue. Is the approach here by the LA justified in the eyes of the legislation? Should the assessment as to what constitutes a high hedge not factor what the light loss is when determining if the trees constitute a ‘hedge’ or not especially since such calculations do exist.

12. my findings are that the local council become entrenched in their decision and there is a we won’t back down and we don’t have to justify our criteria to you. Even following telling the council that the RHS wished to be provided with guidance on how the council had reached assessment on what constitutes a ‘hedge’ this request has been ignored by the council. How is this behaviour viewed of those officiating the act?

13. there is no visibility that the councils are pro-actively handling scenarios such
as mine. The whole thing lends itself to a suspicion that the council may have alternative reasons not to want to help resolve disputes. To avoid such a hypothesis I believe that there should be full separation of the financial and judicial aspects of this act.

14. it would help enormously if the act specifically stated what constituted a hedge and to include wording that the local authorities have no jurisdiction to invent new criteria beyond what the acts defines as a hedge.

15. it would be a very good idea and far more transparent if the cases that the councils pass / fail are available for all to see with clear guidance on why particular cases that have failed did so

How can it be hoped to have a fair verdict going forward from a council who now refuse to even have dialogue on the above issues?

I welcome any independent assessment or advice on the situation I find myself in. I see my own case as a fairly severe form of a high hedge yet it seems that the authorities are able to dismiss claims through criteria not even sited within the act.

To site that the criteria of a 'hedge' has come from the RHS documentation needs to be backed up by the authorities as it seems that the authorities may be misconstruing the intent of the RHS documents. Why scenarios that can lead to the most overbearing high hedge scenario are by definition ignored by the council’s criteria needs a very full and detailed explanation. In the meantime the living conditions my family and I have to endure are hugely impacted with what at times seems like a fighting battle with the authorities. We always recognised resolution on the issue was going to be difficult with the neighbour we never expected such an impasse with the council.

For the above reasons I put it to the panel that the act is not fully resolving ‘high hedge’ issues.

I’d also like to add that the photo that has been used to call the legislation fails to meet the council’s definition of a hedge. This is a classic example of discrepancy between what I believe the act aims to achieve and the application that the council are following in its enactment.

Yours truly,

Sam Andrew