Since the introduction of the Act in 2014, the Council has received five applications to serve a High Hedge Notice. Of these, two were returned to the applicants as not meeting the tests set in the Act of being a high hedge, and the remaining three were accepted as applications.

In two of the cases, high hedge notices were then served requiring the owners to take specified action to remedy the effect on the applicants’ reasonable enjoyment of their domestic property. In the third case, the Council disagreed that the hedge caused the adverse effect claimed and no notice was therefore served.

Two of the decisions were then appealed to the Scottish Government; in one of the cases by both the hedge owner and the applicant. In both cases the Reporter upheld the Council’s decisions (in one case to serve a notice and in the other, not to).

Numbers of pre-application enquiries by phone or email have not been formally recorded but have been of significant numbers. Most responses take the form of directing enquirers to the High Hedge Guidance page on the Council’s website which covers the tests in the Act of what constitutes a high hedge and what evidence must support a formal application, including evidence of previous steps taken toward a resolution before the application to the Council was made.

Both notices served have been complied and the Council has not therefore been required to take any direct action or employ other enforcement action.

(i) Has the definition of a high hedge as set out in the Act proved helpful?

The basic definition (ie. that a hedge has to be: “formed wholly or mainly by a row of two or more trees or shrubs”; “must rise to a height of more than 2 metres above ground level” and “must form a barrier to light”) is quite clear. Page 11 of the accompanying guidance states that “the Act concerns hedges and is not designed to impact on woodlands or forests which as a general rule are not planted as hedges”. Could the definition in the Act itself give more clarity on whether trees not initially planted or maintained as a hedge but which may have grown to take the form of a hedge (eg. Overgrown, self-seeded garden areas) fall within the scope of the Act as this seems to be a fairly common complaint?
(ii) Do you have experience of the appeals procedure set out in the Act?

Yes. In the cases experienced, the Reporters’ decision has been in line with the Council’s conclusions on whether any remedial action was required, although with some differences in how the conclusions have been reached. Many Councils process high hedges cases through their Planning teams and initial cases seemed to show inconsistency between what would normally be material considerations in planning cases and high hedges cases. Consistency has emerged through subsequent Appeal decisions that a key consideration on how cases should be considered is what constitutes ‘reasonable enjoyment’. For example, in high hedge cases, a property may have been built or bought to benefit from a coastal view; it would therefore be ‘reasonable’ to expect that view to be maintained and this should be taken into account. In planning cases, it is long established that loss of a specific view is not a material consideration. This required an adjustment by LAs but has been consistently applied in appeal decisions.

(iii) Do you have any comments on the enforcement procedures under a high hedge notice?

No. The powers in the Act appear sufficient but North Ayrshire Council (NAC) has not been required to put these into action.

(iv) Do you have any comments on fees and costs?

NAC set the application fee based on the expectation that the workload and therefore costs involved would be roughly commensurate with a planning application for a single house and this has been true in the limited applications received.

(v) Overall, are there any aspects of the Act which have had a positive or negative impact on your life?

None.

(vi) Are there any other issues relating to the Act which you wish to bring to the attention of the Committee?

The operation of the Act has been fairly straightforward in the Council’s opinion. The initial surge of interest, enquiries and applications which has now levelled off seems to indicate that the Act has been effective in resolving some long term disputes.

In terms of updates, the definition of a High Hedge could perhaps be strengthened to make it clearer that the Act only applies to a hedge row and not to woodlands, self-
seeded tree areas etc. and to confirm that this determination is a matter for the Local Authority only to make.

In some cases, the canopy width of mature hedges may have as significant an effect in terms of shading as the height of the trees. Although common law would allow people to reduce trees which overhang their boundaries, would there be scope to introduce canopy width reduction as a required action in high hedge notices?

Neil McAteer
Planning Services
North Ayrshire Council