Local Government and Communities Committee

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

Submission from Aberdeen City Council

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

**Answer** – We consider the definition of a *high hedge* as set out in the Act to be useful. However the Act or guidance would benefit from clarifying at what stage these definitions should be applied. It is our understanding that the definitions used to describe a *high hedge* should only be applied when the trees and/or shrubs in question have in the first instance been defined as a hedge.

If the trees and/or shrubs in question cannot be defined as a hedge in the first instance the trees and/or shrubs are considered to fall out with the scope of the Act. In the case where the trees and/or shrubs cannot be defined in the first instance as a hedge it is not relevant whether the trees and/or shrubs meet the definition of a *high hedge*.

There would appear to be confusion over the above points whereby applicants consider that as long as the trees and/or shrubs in question meet the definition of a *high hedge* the Act should apply irrespective of whether the trees and/or shrubs actually constitute a hedge in the first instance.

It would be useful to bring clarity to the above points, both for potential applicants and for local authorities who administer the application process. It is considered that future clarification should clearly state that the Act only applies to hedges and that any group of trees and/or shrubs need to firstly be considered to constitute a hedge. Future clarification should avoid expanding the remit of the Act and care should be taken to ensure the Act can only be applied to hedges and cannot be applied to groups of trees and/or shrubs that can have a similar impact to a *high hedge* but do not form a hedge.

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

**Answer** – Yes. Our experience of the appeals process has been very positive and we do not consider that any changes to the process are currently required. We would encourage the retention of the ability of both parties to appeal as currently stated in section 12 (1) and 12 (2) of the Act.

We would also encourage the retention of there being *no right of appeal* against the local authority’s decision to dismiss an application because reasonable steps have not been taken to resolve matters or because the application is frivolous or vexatious.

3. Do you have any comments on the enforcement procedures under a high hedge notice?
Answer – We have not yet had call to use the enforcement procedures; Section 22-24. However the procedures appear to be robust and sufficient to allow action to be taken in the event of non-compliance and to recover expenses.

4. Do you have any comments on fees and costs?

Answer – No comments.

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

Answer – Not applicable.

6. Any other issues relating to the Act which you wish to bring to the attention of the Committee?

Answer – In relation to bullet point 1; in order to assist officers in determining whether a collection of trees and/or shrubs constitute a hedge we utilise a number of tests. These tests have proven useful to officers and allow similar parameters to be used across multiple sites. They are also useful to assist in explaining how the council determine what constitutes a hedge prior to considering if a hedge meets the definition of a high hedge.

Our tests refer to the original intention of the planting, the spacing between individual trees and shrubs and past and present management. These tests are further explained below;

Original intention - This test seeks to clarify the original intention behind the planting of the trees and shrubs. A row of semi mature or mature, well-spaced, trees can have a similar effect as a high hedge. However if the original intention was to plant a row of well-spaced trees or a number of individual trees rather than to establish a hedge it is unlikely that the trees will fall under the scope of the Act irrespective of them having a similar effect.

Spacing - The spacing between individual trees and shrubs can assist in identifying if the trees and shrubs were originally planted as a hedge. Individual trees and shrubs within a hedge are commonly planted relatively close. The Royal Horticultural Society advises spacing plants 30-60 cm apart in order to form a hedge. Where a wider hedge is required the plants may be planted up to 90cm apart in two staggered rows. Trees and shrubs planted at significantly wider spacing’s than those outlined above are unlikely to have originally been planted as a hedge. As such it is unlikely that the trees and shrubs will fall under the scope of the act.

Management - The past and current management of trees and shrubs can give a clear indication as to whether trees and shrubs constitute a hedge. Hedges are generally maintained by regularly trimming the sides and top of the vegetation. Formal hedges are commonly trimmed on an annual basis whilst informal hedges and hedges planted for wildlife are likely to be trimmed less regularly or on a cyclical basis whereby the sides and the top of the hedge are cut in different years. Even
neglected hedges are likely to show some signs of past maintenance. Rows of well-spaced trees can also be regularly managed. This is commonly achieved by pollarding the trees or reducing the tree crown. Pollarding and crown reduction are recognised techniques for managing trees and often result in a substantial reduction in the crown of the tree. Pollarding and crown reduction are not considered to be a method utilised to maintain hedges. As such a row of, well-spaced, pollarded trees or trees that have had a crown reduction undertaken are unlikely to be considered as a hedge. As such it is unlikely that trees that have been managed in this way will fall under the remit of the act.

The reference to the oxford English dictionary definition of a hedge contained within the original guidance to local authorities and removed from the revised guidance was unhelpful and limiting in context. However the statement above this definition was very useful, its removal from the guidance has allowed for challenges by applicants relating to the need for trees and/or shrubs to be a hedge before being considered as a high hedge. We would encourage the inclusion of the original statement;

“For trees or shrubs to be considered as a high hedge, they must first be a hedge.”

A future revision may wish to refer to the need for the trees and/or shrubs to constitute what is commonly considered to be a hedge.

Kevin Wright BSc (Hons), MCIEEM
Environmental Planner
Aberdeen City Council