Local Government and Communities Committee

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

Submission from Dr Donald and Mrs Anne Brown

The High Hedges (Scotland) Act 2013 is a well-intentioned piece of legislation which tries to deal with this. However it has too many loose definitions and statements open to interpretation which should have been obvious to those who initially drafted and those who scrutinised it.

This has allowed different interpretations of the act by different Local Authorities across the country as well as inconsistency in the decisions reached by Reporters during appeals. It has also allowed landowners to deliberately subvert the intentions of the act by altering the “hedge” during the action.

Background

In 2014 and after many years of trying to seek an amicable resolution we raised a High Hedges action against our neighbouring landowner involving a stand of mainly Sitka Spruce trees, some up to 100 foot high along our south west boundary.

The initial success of our action, courtesy of Moray Council, was appealed against by the landowner who thinned out but did not reduce the height of the trees prior to the site visit by the Reporter.

I raised this latter issue with the Reporter prior to her visit but it has never been addressed other than by her reversing the decision of Moray Council as she decided that the stand of trees no longer constituted a hedge.

It astonished us that a law officer would regard the landowner’s action as acceptable and penalise us by reversing the order and rendering our time and financial input wasted.

The result is that the “hedge” will continue to grow ever taller whilst infilling the gaps created by the thinning and we are faced with the possibility of having to fund and raise another action in a few years.

Issues

1. Definition of “Hedge”
a. The term “Hedge” is unsuitable as it allows some officials to see sculpted privet or Leylandii as the only growth that can obstruct light whereas a mixed stand of trees, bushes or shrubs, like a vampire, casts no shadow.

b. The quibble from some LAs that a “hedge” was not planted or maintained as a “hedge” or is of mixed species or has “wrong” spacing are spurious & ingenuous.

c. Perhaps it could be defined as “Any growth of hedge plants, shrubs or trees or a mixture of these over 2 metres in height which results in sufficient shadow to cause loss of heat, light and enjoyment to affected property”.

d. The Act needs to focus more on the effects rather than the definition of the cause.

2. The Initial application is at the mercy of local council officials’ interpretations of the act or possibly for other reasons thereby introducing variation across the country.

a. See 1 above, often used as a reason for refusing the action – “Not a hedge”.

b. Do some Council officials lack enthusiasm for getting involved in a confusing, complex and potentially costly process, reinforced if their decision is overturned on appeal?

c. It is unjust that there is no appeal if an initial application is rejected by an LA.

3. So much of the initial and appeal assessment is subjective and depends on the interpretation of the wording of the act, assessing the amount of shadow cast, amenity lost etc. We think that we are entitled to a view if we bought our house for its view before the “hedge” blocked the light.

4. Appeals: An application can fail at the final appeal stage.

a. Again over the definition of a “Hedge”.

b. Over the interpretation of the wording of other parts of the act.

c. If owner of the “Hedge” alters the height or density during the process or (as in my case) prior to the appeal site visit.

   i. Why is “tampering with the evidence” permissible?

   ii. Why is there no sanction against the landowner or recompense to the applicant if an appeal is lost based on tampering?

5. An action or appeal should be based on the case as put forward at the outset and not on the situation after the landowner has cynically altered the “Hedge” in question,
doing enough to change the case but not resolving the problem raised in the action thereby undermining the whole process.

6. **Enforcement:** As we lost our action on appeal, we have no experience of enforcement.

7. **Costs:**
   
   a. The LA fee was reasonable but the total cost to us was around £1500 including legal & LA fees, too much for many to contemplate and a loss to us given the result.
   
   b. As these cases only arise after years of attempts to find a resolution, landowners should face costs if they lose as they have ample opportunity to avoid or settle the action
   
   c. There is wide variation in fees from one authority to another – why?

8. **Effects on us:** We had hoped, after some years that the Act would bring a resolution to our problem. Like many, we were to be disappointed.

   We were relieved when the Council made an order on the “hedge” but shocked when the Reporter allowed the appeal based on the altered “hedge”. Such gross injustice and waste of our time, effort and money still rankles.

   During high winds we live with the fear that further trees will be blown down, causing disruption, damaging our property and harming ourselves and others.

   I am also left with the feeling that having money & property results in better legal protection than those less fortunate receive, a situation that sits badly with The Scottish Government’s claim to be “building a fairer Scotland”.

9. **Other Issues:** Perhaps understandably, no account is taken of danger to life or property in the Act. We raised this issue with the landowner and included it in our submission but it was denied & ignored respectively. Shortly after submitting our application at least twenty of the trees adjacent to and beyond our boundary blew down as I predicted, blocking our access road and damaged our property. Fortunately no-one was injured.

   Finally, I would like to see a review of all past decisions taken by Local Authorities to refuse applications and a review of all appeals that reversed the LA’s order especially where the landowner altered the “hedge”.

   There needs to be an oversight of LA actions and Reporters decisions, everything else we do in the public sector is audited and scrutinised, why not this?
Previously unsuccessful applicants should not have to fund further actions under any revised Act.

**Summary**

1. Redefine a “Hedge” but focus on effects rather than the cause
2. Ensure consistency at LA level
3. Allow appeals against LA decisions not to accept applications
4. Cases must be judged on the state of the “hedge” at the time of the application
5. Landowners should be informed of 4 above and warned not to alter the “hedge” once an action is initiated
6. Landowners should have to pay at least all costs if they alter the “hedge” at any point during the process
7. Landowners should have to pay some of the costs if they lose
8. Ensure a consistent appeals process
9. Review previous application outcomes and amend where appropriate
10. Publish an annual online report on actions and outcomes under the Act

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