Local Government and Communities Committee

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

Submission from Alasdair Moodie

Dear Committee

I applied for a High Hedge Notice (HHN) on 22\textsuperscript{nd} December 2016. After the refusal from Highland Council dated 7\textsuperscript{th} February 2017 that referred to a 2014 Report by their Forestry Officer who said that in his opinion the high and coalesced trees behind my next door neighbour did not form a hedge, I decided to rely on Clause 12(1) of the HHA and appeal to the Scottish Ministers via DPEA, assuming that the HC exclusion of appeal only applied to their refusal. Many individuals throughout Scotland had been waiting patiently for many years for politicians to come up with legislation to force their neighbouring high hedge owners to negotiate/discuss the issues that have to be resolved. The HHA we thought was well written, but we didn’t realise that by issuing lengthy Guidance Notes to Local Authorities (LA), the Scottish Government were enabling LA to make widely differing interpretations using imported subjective third party opinions to allow them to subvert the Government intentions to resolve simple, and also the most contentious cases. An unequal playing field over why some LA have issued HHNs, whereas other LA have refused to, in what look to be similar circumstances is surely something the committee ought to correct. When it is obvious that high tree owners in Scotland have allowed these to grow in close proximity to their border, forming dense vegetation resulting in much light reduction, this has to be regarded as a high hedge, and therefore a hedge. The Scottish Government, must have assumed the LA would be helpful in independently administrating their statutory authority, and must be surprised to find that the LA are behaving just the opposite, and seem happy to allow owners of high trees (that most people would call high hedges) to continue their anti-social behaviour. Please consider making changes to the HHA to correct the imbalance, urgently.

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

I consider the Meaning of a ‘High Hedge’ is clear, except that LA staff that don’t want to get involved or consider their judgement is superior to the legislation drafters, have manipulated ‘Meaning’ to read the wrong meaning. To stop this please consider the following alteration in ‘Meaning of a High Hedge’

(1) This Act applies in relation to vegetation (referred to in this Act as a “high hedge”) which—

(a) is formed wholly or mainly by 2 or more trees or shrubs that have been allowed to grow in close proximity to a mutual border,
(b) rises to a height of more than 2 metres above ground level, and
(c) forms a barrier to light.

(2) For the purposes of subsection (1)(c) vegetation is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

(3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge

The HC rejection letter said the obvious high hedge is not a hedge, so cannot be a ‘hedge which’, but their assertion that the trees have no “clearly ordered linear fashion” is also their version of the truth, because the aerial photo clearly shows they do follow the line of the border. Also the trees do actually “coalesce and form the solid wall type feature that is normally associated with a hedge”, above 2 meters - again see the pictures. Remember the HHA is written only for high hedges above 2 meters, and this is where HC have shown tunnel vision concentrating on what was planted decades ago, instead of what is plain for all to see today. It makes me think that HC, having already come to a faulty decision with my neighbour’s case, have not got the vision to correct matters when considering my case, because they didn’t even come to view the hedge from my garden. Their decision was made after referring to their Forestry Officer’s report indicating the hedge looked like a wood behind my neighbour. A wood! No HHN for my neighbour, because the hedge behind him is a wood, and not a hedge, and so it cannot be a high hedge. Surely decision makers should know what a wood is or isn’t, and how the thin line of trees over 2 meters is more likely to look like a hedge, than a wood that envisages a big area of widely spaced trees, not the thin line of trees along a border, whether set back from it, or on it.

I quote from the HC letter of 7th February 2017:-

The reason(s) for this determination are as follows:

i. The trees, while closely planted, do not form any clearly recognisable linear feature that could be reasonably described as a hedge. AND The trees have not been planted in any clearly ordered linear fashion that would allow them to coalesce and form the solid wall type feature that is normally associated with a hedge.

The Highland Council’s Forestry Officer has stated that “The planting/natural regeneration pattern is that of groups of trees, individuals and gaps rather than a linear, closely spaced feature which one would expect of a hedge... I do not regard the tree feature to be a hedge”. The Forestry Officers whole response is appended to this letter.
The HC decision is a complete misinterpretation of the HHA, that was written specifically for trees that have, either deliberately or by neglect, become and look like high hedges that essentially form a barrier to light. How the trees were planted is only relevant to the decision process if gaps genuinely allow light to pass through unhindered. To wriggle out of issuing a HHN by declaring that the high hedge is not a hedge was wrong, and they compounded their wrongness by their decision to deny an appeal. The hands of the Scottish Ministers were stymied by this clever but wrong decision making the statute powerless to act to right a genuine case for grievance against an antisocial neighbour.

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

The DPEA letter rejecting my appeal said that they were denied jurisdiction as Section 12(1) does not apply, so I did not find out that my belief the trees having become a high hedge defined by the HHA, logically must be a hedge. Surely the Scottish Ministers must have authority that exceeds Council officials that make wrong decisions, and make a fool of the skills of those that wrote the statute?

DPEA said on 7th March 2017

“I refer to the appeal received by this office on 5 March 2017, against the decision by Highland Council, not to issue a high hedge notice. For the reasons set out in this letter we do not consider that we have jurisdiction to deal with this appeal. Section 12(1) of the Act confers a right of appeal to the Scottish Ministers against a decision by the council, as local authority (a) under section 6(5)(b) that there is no adverse effect, or (b) under section 6(5)(b) that no action should be taken in relation to the high hedge [our emphasis].

Section 6(5) provides that the council must decide (a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and (b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge.

In this case the council took the view that the trees which are the subject of your application are not a ‘high hedge’ within the meaning of the High Hedges (Scotland) Act 2013. We accept that the decision notice states that the council has determined that no action should be taken in respect of the application, however, on reading the
appeal documents as a whole it is clear that this is because of the conclusion they reached about whether the trees constituted a high hedge. Section 6(5)(b) only comes into play once a council has decided that the height of a high hedge has an adverse effect on the enjoyment of a domestic property. The council must then decide whether or not any remedial action should be taken. We do not consider that the council’s decision in this case is one which falls within the scope of section 6(5)(b)."

Change the Appeals qualification to ensure that if a LA refuses to issue a HHN for any other reason than Section 5(1)(a)(b), then they must give leave for independent adjudication by a reporter. This should stop any suspicion of inappropriate behaviour or just plain miscarriage of justice.

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

If LA don’t want the hassle of monitoring enforcement procedures then whoever is responsible for this behaviour need to be reminded of their position as servants of the people. If this has become inappropriate, then the DPEA may have to take direct authority. Personally, my Application and Appeal did not get this far.

Do you have any comments on fees and costs?

I do believe that if the Council issues a HHN then the High Hedge owner should have to pay for this fee, and any extra costs incurred by the Council. The Applicant can have the fee refunded either way. This ensures that people on low incomes still can be an applicant, and might make the hedge owner more conducive to negotiate. Why LAs charge widely differing fees is a mystery.

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

I have had to wait 16 years to get to the place of final rejection of my appeal. My neighbour on the other hand can be in his garden enjoying unrestricted sunshine and daylight that God intended for both of us. I can understand that there are people who will resort to forceful destruction of the offending trees if there is no resort to a sensible legal remedy. Even this option is not open to me, except by using common law to sue my neighbour with all the consequences to bear if my lawyer doesn't win in the courts. Meantime until the Scottish Government can come up with a fool proof wording for the HHA, I will have to continue to suffer light deprivation, expensively serious debris dumps, no savings through installation of PV solar cells, costly damp conditions affecting the structure and garden of my house.

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

The inconsistency of LA and the DPEA is highlighted when you compare the photographic evidence for the following cases that were given HHNs:-

DPEA Case HHA-350-6 Hedge at Houston, and
DPEA Case HHA-350-1 Hedge at Bridge of Weir

And then compare with my photographs on the following two pages and my Appeal presentation at

DPEA Case HHA-270-6 at Inverness

Please make the legislation work, as intended by Parliament, and HM the Queen, so that all the negative affects can be addressed as soon as possible.

Yours faithfully

Alasdair Moodie