Local Government and Communities Committee

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

Submission from Fife Council

General Comments:

To date Fife Council has processed 23 High Hedge applications. These have been resolved in a number of ways with some cases addressed by both parties after the formal submission, such as the complete removal of the hedge or lowering it to a mutually acceptable height. Some have also been rejected as not coming within the definition of a hedge in the legislation.

Of the 23 High Hedge Applications submitted to Fife Council:

8 cases have been determined with mitigation work/lowering of the hedge required to be done by the hedge owner. 5 cases are pending at various stages in the process. 3 cases have been refused ie where the harm from the hedge had not been demonstrated.

The remaining cases were either returned to the applicant, invalid or closed for other reasons.

Imposing mitigation works in compliance with the guidance can be prolonged depending on the implications/presence of wildlife and the season within which the original High Hedge application is made. Indeed this can also be used as a delaying tactic by the hedge owner.

Long term monitoring can be problematic and inevitably requires to be left to the neighbours as it is not possible to resource repeated visits to ensure the hedge is maintained at the agreed level. This leads to the situation that if the party originally submitting the high hedge notice moves the new owner may not be as concerned as to the height of the hedge and therefore it regrows above the mitigation height. Again this reflects the resolution of issues by mutual agreement promoted by the legislation. There is no clear departmental jurisdiction for the legislation; not all local authorities have High Hedges within the planning service or department, should consideration be given to where the legislation should sit for it to be as effective as possible?

Response to specific questions posed by the Committee:

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

The definition is useful in so much as it assists in determining the instances when the Act is relevant to a particular complaint and the issue is within the jurisdiction of the local authority to act. It is hard to see how it could be more specific given the nature
of the issue. However the mechanisms which can be employed to overcome the definition such as the removal of every other plant or tree so it is no longer legally a hedge does create a situation where the legislation can be brought into disrepute.

The application and interpretation of the legislation becomes more problematic where gardens are not conventional shapes and the ground is predominantly level. The impact of the hedge can be complex to determine where the hedge is not in a straight line and the ground slopes considerably or there are substantial variations in levels along its length.

A longer period of review is perhaps required to build the necessary legal case law as the number of applications received by local authorities under the HH Act seems to be quite low.

The application of the BRE guidelines on assessing the impact of the overshadowing element of the hedge seems to have become the established benchmark guidance in relation to these potential impacts.

The issuing of guidance on a national basis and examples and citing of typical issues would be welcomed.

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

Fife Council has now had a number of HH appeal decisions issued. The main area which has caused most difficulty is that while the right to a view is not a material planning consideration this consideration has been given more weight in relation to the high hedge determinations from the DPEA, particularly where it is considered that the affected property has been designed originally to take advantage of a view which is now obscured by a hedge.

It remains to be seen as to whether this would provide sufficient reason of its own to be used in the application of the legislation but the referencing of this in recent DPEA decisions would seem to indicate that even where overshadowing is not an issue there could be an argument that the obscuring of a view would be a reason to pursue an application under the HH Act.

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

The main issue with the enforcement process is that it may be difficult to quantify in terms of costs where the enforcement of the HH Act is addressed through direct action this can create budgetary issues particularly where this relates to large trees or a very tall or substantial/long hedge.

This area is being looked at within the planning review however it is an area which should be incorporated into the High Hedge legislation review to enable the cost of direct enforcement action to be recovered as quickly and efficiently as possible to prevent unrecoverable unbudgeted expense to the local authority.
The accurate measuring of high hedges is difficult, laser measures are not accurate due to the filigree nature of hedges and trees towards the top and therefore where height becomes an estimate this creates problems when trying then to apply formulae to measure overshadowing and daylight such as those set out in the BRE guidelines.

- **Do you have any comments on fees and costs?**

The legislation promotes the resolution of the issue through the mutual agreement of both parties and only where this is not achievable should recourse be had to the Local Authority to address the matter under the HH Act. As this more often than not includes solicitors acting for neighbours the financial benefits to the individuals of resorting to the process through the Local Authority as quickly as possible rather than through solicitors needs to be reviewed.

A true fee level for the local authority would be substantial particularly if this is set on a full cost recovery basis.

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

N/A to Fife Council

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

Additional guidance as to what is considered reasonable efforts on the part of the hedge owner and affected party to demonstrate that they have attempted to resolve the position amicably would be useful. At present this is different from authority to authority.

As there have only been 23 cases processed in Fife which of itself seems to be one of the largest numbers received by authorities, and of these only 8 have been resolved it is perhaps questionable as to how effective the legislation is in terms of what is within the scope of the High Hedge Act. For those individuals however where their issue has been resolved then they will obviously consider that the legislation has been beneficial and effective.

I hope that the observations above are of assistance in the committee’s deliberations on this issue and Fife Council would welcome the opportunity to comment further.

Yours sincerely

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