Local Government and Communities Committee
Post-Legislative Scrutiny of the High Hedges (Scotland) Act 2013
Submission from Glasgow City Council

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

Glasgow has only received a small number of applications. Only one decision has been made, which was not to serve a Notice (two applications have yet to be decided). The refusal led to an appeal which subsequently was dismissed by the Reporter.

The “hedge” in question consisted of a line of 13 mature and semi mature deciduous trees, all in excess of two metres in height. The Council agreed that technically, this constituted a hedge in relation to the definition provided by the Act (otherwise an application would not have been accepted); however, there was some doubt expressed by the Council’s landscaping officer that the trees did not fall within the definition of a hedge as it was clear that the trees were not planted with the intention of being a hedge for the purpose of forming a boundary between two gardens in order to separate neighbouring properties.

Although it was decided to proceed with the application, the appeal decision did not offer any specific guidance in relation to issues of intended purpose of planting. It would therefore be helpful if there could be clarification of the definition of a hedge and in doing so would be sensible to emphasise that a hedge needs to have been intended as a boundary treatment hedge, rather than a collection of trees which, in the balance of probability, were not planted with that intention.

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

Yes, with the comments above. Strictly in terms of the process, this was generally satisfactory.

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

Glasgow has adopted a formal system of offering free “pre Application Advice” whereby any request for potential action in relation to the Act is logged and results in a site visit and assessment of the potential for a notice to be served. This provides an opportunity to offer a potential applicant advice in relation to the Act, ensuring that the definition of a hedge is met and other pre-requirements are met, in particular that reasonable attempts have been made to settle the matter with the neighbour before an application is submitted.

Glasgow City Council has received an average of about 25 requests per year for this service since the Act came into being. The system is beneficial in terms of offering clarification of the provisions of the Act and a basic assessment of the relevant impacts which would be considered in detail were an application submitted. This is
provided on the assurance that it is not decisive as there may be a requirement for more detailed assessment of sunlight and daylight impact, taking into account seasonal changes.

The pre-assessment service has been well received by the majority of people who have requested it.

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

There has been some criticism of the fact that Glasgow charges £500 for an application and of the average cost of an application throughout the Country as a whole. Glasgow set this figure on the basis of analysis of costs through the "Costing the Planning Service" exercise carried out under the banner of Heads of Planning Scotland for the Executive Committee and facilitated by Improvement Services. The application involves the same amount of processing, consideration as a planning application but with the higher potential for appeal related work given the rights of appeal both to the applicant and the recipient.

Seeking compliance with the Notice will also have added costs, either on an informal basis through visiting and communicating with the owner; or in potentially taking direct action, following procurement procedures and paying for the works to be carried out. Thereafter additional costs may be incurred through recovering any debt in relation to the works which would be charged to the land owner.

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

No.

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

From our experience of investigating situations of concern through the Council’s free pre-assessment service, the majority of cases do not meet the pre-application requirements in order to proceed with an application: either by a person’s concern not meeting the definition of a high hedge or by their not being able to evidence that there has been a reasonable degree of communication with the neighbour (in order to address the matter without recourse to the application process).

The process is therefore beneficial in terms of focusing minds and encouraging dialogue before the situation proceeds to a formal application. It is also often the case that people misinterpret the legislation as there being a problem where any hedge is over 2 metres in height (as per the height stated in the definition of a high hedge). In such situations basic assessment of the relevant considerations is given, explaining the scope of the Act and what would be reasonable action in relation to its provisions. In this context the £500 fee focuses minds and arguably helps prevent frivolous or vexatious applications from being submitted (a point which may be included in relation to Question 4).
Although Glasgow City Council has not had any case where it has had to seek compliance with an effective high hedges notice, it can be envisaged that there will be similar difficulties as with seeking compliance with effective Planning Enforcement Notices (S.127 of the Town and Country Planning (Scotland) Act 1997). Direct action will be expected by applicants in situations where the Council cannot resolve the matter informally and given the high cost of an application in the public’s perspective it is understandable why this would be expected. Budgetary constraints may make this difficult to fund, therefore it is important that additional powers are given to Councils which hopefully would prevent failure to comply with an effective Notice and therefore avoid the need for direct action. These additional powers could include:

- A Fixed Penalty Notice similar to those available for failing to comply with planning and listed building enforcement notices may be appropriate for serving prior to considering direct action. This could be waived if the work is carried out within a specific period.

- Recovery of costs associated with taking enforcement action, i.e. unpaid Fixed Penalty Notices or the cost of direct action. Introducing charging orders similar to those available in building standards legislation could help to ensure that planning authorities can recover these costs from the person responsible.

Tony Trotter  
Principal Planner  
Glasgow City Council.