Local Government and Communities Committee

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

Submission from Joan and Clayton McCormick

Background

A 33 metre length of high hedge 8 metres high which had been in dispute for about ten years which destroys our enjoyment of our properties by destroying our views that we could reasonably expect to enjoy as stated in the High Hedge Bill.

Application for a high hedge notice 14/00386/HH dated 18th June 2014; and Application for an appeal of decision ref: HHH-310-1. Carried out 26th November 2014.

The following comments are made on behalf of all the residents of [redacted]. That is 6 occupants and everything written here is with the agreement of all.

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

The definition of a high hedge seems simple enough, two or more trees that are more than two metres which form a barrier to light.

It is in the interpretation the problem lies. To form a barrier to light would suggest you cannot see daylight through the trees meaning they are so close together they form a hedge-like appearance. That is therefore a high hedge. Many councils including our North Ayrshire only used the issue of light impact when considering our application.

However, 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, in our case this was not taken into account though specified in the Bill. While light can be measured and is one issue, enjoyment is pleasure which may be more difficult to measure.

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

Yes. HHA-310-1. Location of hedge at [redacted]

We made our appeal after North Ayrshire Council found there was no adverse effect from the high hedge affecting our 6 properties. A reporter was appointed and attended in November 2014 to see both properties and the hedge in question. He quashed the council findings as they had only used the light test of adverse effect which did not apply in our case. The reporter said the proper test should have been
whether the height of the hedge had an adverse effect on the applicant’s enjoyment of [ ] which could reasonably expect to have.

He recognised that before the hedges were grown, all our flats had full views of the Clyde Estuary, Arran and sunsets and that the flats were probably built to enjoy that view. Therefore he found that the blockage to the view created by the hedge has an adverse effect on the enjoyment of the resident applicants of [ ] which they could reasonably expect to have, and why therefore the council decision was quashed.

However, though the reporter found in our favour in that we met all the criteria under the Act, he still did not order a High Hedge Order. This was because the reporter viewed that the owner received an amenity from the trees and that cutting them to give us back our expectation of enjoyment would cause a ‘perceived overlooking’ of one bedroom, one hall window and one bathroom window on their first floor from 8 windows of the second floor block of flats. (Most windows do not face our flats but towards the Arran views which we do not access to because of his hedge). In reality this means 6 living room windows are ‘perceived’ overlooking one bedroom window. How is this a balanced decision especially when seven years earlier both second and third floor flats were perceived to overlook this room, when the hedge was still a hedge and not a high hedge? Our contention is that over the ten years it took to bring this Act into law was the time it took for the hedge to grow to give the owner the amenity he claims to benefit from, but at our expense of enjoying the Arran view. The judgment therefore differed in criteria regarding the owner and the residents of 38 - 48 Overton Crescent.

On contacting our council to see where we go from here I was told that unless anything had materially changed I could not reapply with further submissions or I would be accused of making vexatious complaints, and told I could not reapply for at least 4 years. When I wrote to question the result of the appeal, I was informed the decision was final.

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

I have no experience of the enforcement procedures but have read newspaper articles on how high hedge growers avoided an Enforcement Notice by cutting every second tree to create a gap. In my opinion that is evasion of the law and should not be allowed once a decision has been made.

- Do you have any comments on fees and costs?

I think the fees are overpriced and why are they varied across the board? We paid almost £400. £150 would be fairer. Importantly too, I had to apply in my name as an individual owner and not as a group of six owners which is how we wanted to be dealt with. All the residents, all having issue with the hedge, consider this a collective problem needing to be dealt with as such. The hedge has negatively affected all residents to varying degrees.
• Overall, are there any aspects of this Act which has had a positive or negative impact on your life?

Absolutely. All press coverage before and in the run up to the act coming into law suggested that taking ten years would ensure there would be no loopholes. The expectation was that the law would be clear to enforce that all hedges be maintained at two metres and therefore be a straightforward procedure.

While reasonable people keep their hedges about the two metre mark obviously respecting the law, in our case, less reasonable growers benefitted from the ten year delay to enact the law to continue growing their fast growing hedges to then claim an amenity from them. Certainly now that the Scottish Government has been made aware of these problems and anomalies, they need to be rectified.

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

In my application a full list of previous years of correspondence regarding the hedge was submitted; correspondence to the grower by ourselves and our MSP. Given how little progress this achieved, we had then waited until the Act became law, optimistic that our application to the Council would resolve the problem.

It was then a devastating blow to realise that councils were left to take their own interpretation of the Act. Our North Ayrshire Council Planning Department applied the High Hedge Act only by using the test of adverse effect of light. While fortunately the appeal quashed the Planning Department criteria of loss of light as not applicable, we are still left with nowhere to resolve our complaint. The final decision in favour of a grower claiming an amenity of a hedge, at the expense of neighbours' pre-existing enjoyment of their domestic property is at odds with the intension of the Act. Reading other submissions it is clear that the Appeals Reporters are differing in their decisions. Unfortunately though, no matter how arbitrary these outcomes are, decisions are final. I understand the Act was supposed to allow people avoid costly and time-consuming legal procedures. However, the current arbitrary interpretations of the Act has left us with no further way to find a solution. Following a final decision, any appeals process should be open to pursue if evident issues have not been considered.

The hedge grower wrote in his submission that he intended to cut the hedge every two years. In fact since then he left this for three years, only doing so when I wrote to ask him to cut the hedge from 8 metres to 6 in order to avoid us being able to make another submission to the Council. In fact he had the hedge lowered to less than what we agreed to leave the hedge higher than it was 2014. This on-going requests from us to the hedge owner to consider his neighbours is unsatisfactory. The solution is to ensure in Scottish law that the legal height of all hedges is 2 metres, with no room for interpretations.

After the final decision I sent a request for clarification and also asked to be included in any peer review follow up. I received a reply answering some points but confirming the decision was final. On the peer review notification we heard nothing. I asked my MSP to find out if a peer review was coming out but again heard nothing.
Also I would like to know if the reporters’ findings after their final, binding decisions on appeals are being audited. This should help ensure fair balanced decision, such as in our case, to reconsider our loss of expectation of enjoyment of our property versus an amenity of the hedge grower. This should then allow for another layer of appeal where an application can have the reporters finding audited.

Everyone who has made a submission should be informed when these submissions have been considered and any amendments or improve.

As all applicants give their contact details we would expect it a simple task to send a text letter or email to all applicants affected and hedge growers to draw their attention to your notice on your web site and twitter and press release. It leaves one wondering if you really want to hear from applicants. In this very High Hedge Submission everyone who has used the appeals process should have been contacted to let them know this was being reviewed. A notice on the government web page and twitter did not come to our attention. It was brought to our attention by someone who knew we had an interest.