Local Government and Communities Committee

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

Submission from Perth and Kinross Council

Perth & Kinross Council welcomes the opportunity to submit comments on the effectiveness of the High Hedges (Scotland) Act 2013. The Council considers that the Act has been useful in remedying the ill effects of poorly managed hedges. However, from the experiences of assessing applications and providing pre-application advice, the Council considers that the Act and the accompanying guidance would benefit from some fine-tuning.

Definition of a high hedge as set out in the Act

The Council considers that the definition of a high hedge must be clarified and improved.

- The inclusion of “2 or more trees or shrubs” in the definition is leading some members of the public (and, dare we say it, some local authorities and some reporters) to believe that a high hedge notice can also be served on trees and shrubs; this should not be the case.
- We have received many pre-application enquiries about vegetation that the enquirer describes as “trees.”
- We have received applications that relate to trees, overgrown garden borders, shelterbelts and woodlands. We have dismissed these applications as they are outwith the scope of the Act as they do not relate to hedges.
- It should be made clear that the Act applies solely to hedges and that it does not apply to a group of trees, a line of trees, a shelterbelt, a woodland, etc.
- The inclusion of “a row” in the current definition also causes concern as two rows of shrubs could be closely planted with the intention of forming a dense hedge.

As such, the Council suggests that part (a) of the definition be deleted and the definition read as follows:

(1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—
    (b) rises to a height of more than 2 metres above ground level, and
    (c) forms a barrier to light.

Also, a section should also be added to the Act that states that the Act does not apply to trees or woodlands.
For clarity, the guidance should explain that, to fall under the scope of the Act, the vegetation must have at least some of the hallmarks of a hedge, such as,

- having a planting arrangement contingent with the form of a hedge
- having being planted with the primary intention of forming a hedge
- be maintained as a hedge
- have the appearance of a hedge to a layman
- and/or form a boundary between two areas of land.
- a hedge species composition typically used for forming a hedge – species composition be a consideration when assessing an application; certain plant species are typically used to form viable hedges, and certain species are not.

The appeals procedure as set out in the Act

We fully assess all applications for a high hedge that we receive. This includes applications where we reach the decision to not serve a high hedge notice because the application does not relate to a hedge. If the applicant appeals our decision, the Planning and Environmental Appeals Division (DPEA) of the Scottish Government have no remit to consider the appeal. Out of fairness to the applicant, the Council suggests that the Act is updated to allow such appeals to be determined by the DPEA.

We have had appeal cases where there has been disagreement over the remedial action leading to the death of the hedge. There should be greater clarity (probably in the guidance) over what should take precedence: the reasonable enjoyment of a domestic property or the health of a hedge.

Under section 12 of the Act, an appeal must be made before the end of the period of 28 days beginning with the date of the notification given by the authority. For comparison, under section 130 of the Town and Country Planning (Scotland) Act 1997 (as amended), an appeal against a planning enforcement notice can be made at any time before the date specified in the notice as the date on which it is to take effect – this date is specified by the planning authority and can take account of the time required to deliver the notice. The DPEA have previously required us to reword and re-serve high hedge notices because the notice gave more than 28 days to appeal. We suggest that, out of fairness to appellants, the time given to appeal should be increased to take into account bank holidays and weekends, and any delays in the postal system.

Enforcement Procedures

Although we have not yet needed to take direct action, we consider the powers to take direct action as set out in the Act are adequate.
Fees and Costs

The Council considers that there should be a national standard fee for applications. This fee should be set at a reasonable level. Compared to other Councils, we believe that our fee of £270 is relatively low. Our fee does not appear to have led to a high level of applications or frivolous applications. However, the fee should not be set at a significantly higher level as this may dissuade applications.

If a high hedge notice is served, the hedge owner should become liable for all or part of the fee and a refund issued to the applicant. This may act as an impetus for the hedge owner to take action on the hedge before an application is submitted.

Unlike some other local authorities, we do not refund the fee to applicants in cases where we determine that the application does not relate to a hedge. We consider this entirely reasonable: the time and costs involved in processing an application, carrying out a site visit and assessing an application are the same as for applications that do relate to a hedge. We suggest that the Act is amended to clarify that the fee is not refundable in such cases.

Other issues and comments

There should be greater clarity on the “reasonable enjoyment of a domestic property.” From our own applications and from those received by other authorities, we are aware of many alleged impacts of high hedges on domestic properties, including loss of a view, leaves blocking guttering and plants unable to grow in gardens. A wide range of impacts has been deemed to be justification to serve a notice. Updated guidance would be beneficial to applicants, owners, local authorities and reporters. It would also be helpful to have clarity on which rooms in a house should be able to receive light and not be impacted by a high hedge.

The Act should require the applicant to provide proof of delivery, through either recorded post or a reply to a letter or email, of a letter informing the hedge owner of their intention to apply for a high hedge notice.

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