I am pleased to provide evidence on behalf of the City of Edinburgh Council.

I provide a brief background to the City’s experience with the High Hedges (Scotland) Act 2013 and then refer to the questions asked in the call for evidence document.

Background

The City of Edinburgh Council has received 30 High Hedge Notice applications since the introduction of the Act. Seven High Hedge Notices have been issued and 12 have been dismissed or refused. In 8 applications the vegetation was found not to be a hedge. Three applications are awaiting determination.

There have been 8 appeals against Council decisions; one appeal was upheld and 7 were dismissed.

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

Yes. The Act lays out clearly what constitutes a High Hedge. Unfortunately this definition is often misread, misinterpreted and misquoted resulting in confusion and uncertainty over whether the Act also applies to vegetation which is not a hedge. An example of this is the Scottish Government’s own guidance - ‘High Hedges (Scotland) Act 2013 - Revised Guidance to local authorities’.

Page 11 of the Guide states ‘Section 1 of the Act defines a ‘high hedge’ as being formed completely or mainly by a row of two or more trees or shrubs etc. On page 12 the Guide states ‘Two or more trees or shrubs do not have to form a precisely straight line to qualify as a hedge. As long as they are roughly in a line, they may be considered as a hedge under the Act.’ Both these points of guidance are incorrect. Both these quotes are examples of how the Act is misquoted and therefore misunderstood.

What Section 1 of the Act actually states is that a High Hedge is ‘a hedge .... which (a) is formed wholly or mainly by a row of 2 or more trees or shrubs etc.
Italics is used to emphasise the crucial use of the word ‘hedg(e)’ in the Act. This clearly means that the Act applies only to a hedges. The hedge then has to meet the various tests laid out in Section 1(a) to (c) of the Act.

The defining of a High Hedge whilst missing out the crucial use of the work hedge as used in the Act has, in this Council’s experience, has been a main cause of confusion and dissatisfaction over the Act. The definition of a High Hedge has even incorrectly quoted in DEPA Reporters’ decisions.

Section 1 of the Act could be reworded to emphasise that the vegetation has to be a hedge or that the test of whether or not the vegetation is a hedge has to be met before going on to consider the tests laid out in Section 1(a) to (c) of the Act.

The Guide to Local Authorities could also be amended to address this misinterpretation of the Act.

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

There have been 8 appeals against the Council’s determinations on High Hedge Notice applications. The Council’s experience is that the procedures laid out in the Act have worked satisfactorily.

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

The Council have taken enforcement action once and the procedures in the Act were found to have worked satisfactorily. However, the Council feels there is an anomaly in that there is no requirement to register a High Hedges Notice with the Registers of Scotland so that it appears as a burden on the land. This means that the presence of a Notice does not appear in title searches and may be unknown to prospective purchasers yet the Notice affects future owners who are bound by a previous High Hedge Notice and could face enforcement action.

Do you have any comments on fees and costs?

Having to pay to submit a High Hedge Notice application results in dissatisfaction with many applicants. However the Council consider it proper that, what is effectively a private service to potentially benefit a person in their enjoyment of their own private property, is not funded by the public purse. The fee can be a significant financial burden on an applicant and the Council applies some exemptions to the fee and also provides certain refunds. It is the Council’s experience that many applicants actually prefer paying a fee to having to make the attempts required to resolve the matter themselves. The fee also appears to deter some malicious, vexatious and unreasonable applications.
Overall, are there any aspects of this Act which has had a positive or negative impact on your life?

The Council consider the Act to be an important mechanism in allowing a person recourse where the reasonable enjoyment of their property is being prevented or seriously impaired by unreasonably high hedges. It is however the Council's experience that some householders have unrealistic expectations of what they are entitled to expect in terms of light etc. to their property and view the Act as a means of minimising shading or loss of sunlight.

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

The application and implementation of the Act is assisted by Guidance produced by the Scottish Government. In addition to the comments above regarding the definition of a High Hedge being misquoted, it would be of considerable benefit if the Guidance to Local Authorities consolidates the understanding of issues as they have been established by High Hedge appeal decisions. E.g.,

- the definition of a hedge (e.g. HHA-180-5, HHA-110-2). Under the Act the vegetation has to be a hedge as well as meeting the tests of whether it is a High Hedge,
- the status of the BRE Hedge Height and Light Loss,

clearer explanation of the Act’s definition of a High Hedge having to be a hedge.

David Leslie
Chief Planning Officer