Local Government and Communities Committee

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

Submission from South Ayrshire Council

Having considered a report on the above matter at its meeting on 14 March 2017, the Council’s Leadership Panel agreed to submit the following response to the Local Government and Communities Committee’s call for evidence on the effectiveness of the High Hedges (Scotland) Act 2013:

1. From 1 April 2014 to date, South Ayrshire Council has received only 2 High Hedge Notice Applications (HHNAs), both being submitted within the past 12 months. The first application was withdrawn prior to the conclusion of the assessment of the merits of serving a High Hedge Notice (HHN), after the hedge owner took action to reduce the height of the “hedge” to a level acceptable to the applicant. The second application is currently undergoing assessment.

2. The relatively low number of applications received could be due to a number of factors, such as the size of the fee acting as a deterrent; the “reasonable steps” required prior to application submission; the resolution of hedge problems by negotiation; over stringent interpretation of the Act at pre-application advice stage; or a combination of the above.

3. During the same time period, however, the Planning Service received 77 high hedge enquiries, 30 of which resulted in pre-application inspections being carried out by officers from the Planning and Neighbourhood Services. At the conclusion of the pre-application inspections, an informal view was given to the complainant as to whether the subject vegetation was a qualifying hedge under the Act.

4. It is difficult to draw any meaningful conclusions about the effectiveness of the Act from the above statistics, since the Council is unaware of the number of high hedge disputes/problems that existed prior to the Act coming into force, only those that were brought to its attention subsequently. Similarly, the Council does not, and cannot, know the number and proportion of high hedge disputes that been resolved satisfactorily as a result of the provisions of the Act.

5. The definition of a high hedge given in the Act and supplemented by the Guidance has proved helpful to Council officers in striking a view as to whether problem vegetation represents a qualifying hedge. At the same time, it has also proven to be misleading to complainants/potential applicants, many of whom believe the figure of 2 metres above ground level quoted in the definition represents a statutory upper limit to the height of hedges and therefore if a hedge exceeds 2 metres in height, the Council will, automatically (without assessment of the impact on the reasonable enjoyment of their property) serve a HHN requiring the hedge to be reduced to 2 metres in height. Likewise, complainants often assume if a hedge is a barrier to light, the Council will automatically serve a HHN in respect of it. The existing definition also leads some complainants to believe any 2 trees or
shrubs must constitute a hedge, even if they are a significant distance apart. Finally, the definition does not make it clear whether the word “light” relates to daylight or sunlight or both, which can be significant in assessing the impact of a high hedge on the reasonable enjoyment of the applicant’s property. These aspects of the definition in the Act would benefit from clarification, whether by amending the definition or supplementing it in the Guidance.

6. In terms of the appeal process, it has become apparent the lack of a right of appeal for complainants against the decision of a local authority that problem vegetation does not constitute a high hedge under the Act is a significant omission. If a local authority takes that view, the complainant has no further means of resolving the dispute under the Act. In the interests of fairness, it is considered the Act should be amended to include such a right of appeal. Reporters seem to take differing interpretations as to what contributes to the reasonable enjoyment of domestic property e.g. right to a view, ability to grow plants in part of the garden area. Further guidance on this matter would be beneficial; in particular, given the “forms a barrier to light” criterion in the definition of a High Hedge, whether impact on reasonable enjoyment should stem from loss of light.

7. In implementing the Act to date, officers have experienced practical difficulties in assessing applications, specifically in terms of measuring objectively the impact of high hedges on light. The technical references provided in the Guidance imply a scientific analysis, but there is no advice as to what text is appropriate for what situation. Also, the texts are highly complex and difficult to use, in practical circumstances, being mainly calibrated for the London area. Training or a workshop on how the Government expects Local Authorities to assess high hedges and implement the Act, in general, would be welcome.

8. Generally, from officer observation and experience of implementing the Act to date, complainants/applicants tend to be over 55 years of age and there seems to be a broad, but as yet unquantified, correlation between the greatest concentration of enquiries by ward (Wards 1, 2 and 5) and the lowest incidence of income deprivation in the populations of those wards, based on statistics from the Scottish Index of Multiple Deprivation.

I appreciate, and apologise for the fact, this response has been submitted beyond the deadline set in the Call for Evidence – the delay being attributable to other competing work priorities – but, nonetheless, hope the Committee will be able to take cognisance of it and find it helpful in its consideration of the effectiveness of the Act.

Yours sincerely

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