Local Government and Communities Committee

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

Submission from West Dunbartonshire Council

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

The Act defines a high hedge as:

- being formed completely or mainly by a row of two or more trees or shrubs;
- rising to a height of more than 2 metres above ground level; and
- forming a barrier to light (unless gaps in the hedge significantly reduce its overall effect as a barrier to light at heights of more than 2 metres above ground level).

It has been straightforward to determine what constituted a high hedge in terms of enquiries and high hedge applications which West Dunbartonshire Council have received to date. However, it is not difficult to conceive of situations where this would be less clear, particularly in relation to tree belts or linear groupings of trees.

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

No. Only three high hedge applications have been submitted since the legislation came into force in 2013. The first two decisions were not appealed, and the third application has not yet been determined.

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

The enforcement procedures as set out in the Act provide local authorities with the necessary powers to enter land to carry out works where required, apply to courts for a warrant where entry is refused and make it a criminal offence to deliberately prevent an officer or other person authorised to enter land and carry out the works.

However, it is unclear whether such offences would be taken up by Procurator Fiscals as being “in the public interest”. Experience in other enforcement areas suggests that this is not always the case and this somewhat weakens the powers given by the Act.

The Act also gives local authorities powers to recover costs and where necessary register a notice of liability for expenses in the Registers of Scotland. This mechanism is welcomed but has yet to be tested by West Dunbartonshire.
Where Councils have to take direct action this only adds to the pressures on local authorities to find money in tight budgets and recover costs which may not be paid back for several years.

Also, there is a real risk that there will be reoccurrence of enforcement and cost recovery issues where hedges regrow above the height specified in the notices.

- **Do you have any comments on fees and costs?**

The Act was also intended to be “cost neutral” and gave local authorities the right to set their own fee rather than a standard Scotland-wide fee. Whilst this allowed local circumstances to be taken into account in setting fees, it inevitably resulted in significant variation between authorities, especially as it was difficult to predict the likely costs of administering the powers.

West Dunbartonshire Council currently charge a flat rate of £404 (i.e. double the fee of a householder planning application). This reflected an expectation that high hedges would be more costly to administer than the average householder application, and also the fact that planning fees do not currently deliver full cost recovery.

High hedges applications have been found to be administratively more costly than householder planning applications. For example, an application will typically require more paperwork/correspondence (with many documents being required to be copied to both owner and applicant). Such applications are by their nature contentious and adversarial, and therefore they generate more telephone calls, emails and meetings than would normally be expected of householder planning applications. In addition, it has been found necessary to carry out more than one site visit to assess daylight and overshadowing at different times involving two members of staff where entry is potentially problematic or challenged. Finally, the costs of administering an application needs to also reflect the relatively high probability of an appeal against the decision by one or both of the parties involves, and the high potential for enforcement costs.

While we are unable to provide definitive costings for the small number of applications received, the current fee level in our view is considered to be somewhat below the level necessary to cover the Council’s costs.

On the other hand, the level of the fee has been the subject of criticism from potential applicants, who consider that it is unfair to charge them to address a perceived nuisance for which they are not themselves responsible. Additionally, where a high hedge goes over several properties each property has to make a separate application and pay a separate fee. Some potential applicants have indicated that the fee has dissuaded them from making an application. However, if fees were lowered high hedges applications would require to be subsidised from other local authority funding sources, which are already under pressure. Also it may involve resources having to be diverted away from processing planning applications. There is also a danger that if the fee is reduced significantly this would encourage applications for relatively trivial hedge disputes which the legislation was not intended to address and this would take up valuable staffing resources.
It is therefore considered that local authorities should continue to be allowed to set the fees as appropriate to contribute to their costs.

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

See responses above.

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

Overall, West Dunbartonshire has found the process to be time-consuming and unlikely to achieve a speedy resolution to the problems residents may face. The enforcement powers are similar to those for planning enforcement matters and similarly are subject to due process and rights of appeal which do not lend themselves to quick outcomes.

There is a gulf between neighbours trying to resolve matters themselves and the formal process which is the high hedges application. There is perhaps a need for a formal mediation process prior to an application being submitted, administered by mediation services already offered by local authorities. This would require additional funding and training support by the Scottish Government but may help those who cannot afford to pay for a high hedges application.

It is unfair that the neighbour affected by the hedge pays the application fee in situations where the hedge is causing a nuisance; it is recommended that the Committee revisits this part of the Act so that the hedge owner is required to reimburse some or all of the application fee if a High Hedge Notice is served.

As it stands, it is clear that high hedge applications are not a straightforward mechanism and should only be sought when all else fails.

Most local authorities have chosen to administer high hedges applications through its Planning Service and this is accepted the correct way for consideration.