Dear Convener,

Response to the Committee’s consultation on the High Hedges (Scotland) Act 2013

I was first contacted in August 2012 by residents in Stonehaven, who were concerned about the barrier to natural light formed by trees planted in the grounds of a neighbouring care home, which is operated by Care UK but on land belonging to NHS Grampian, and which is adjacent to a community hospital. These trees overlook the gardens in the area, blocking off all sunlight for much of the year, and they also overshadow the houses with the result that many rooms are sunk in a deep gloom for much of the year.

I wrote on a number of occasions on behalf of local residents both to NHS Grampian and Care UK, first of all to establish who was responsible for maintenance of the grounds in question. I established that the two organisations shared responsibility for grounds maintenance and this was part of the reason that the area had become so overgrown - neither NHS Grampian nor Care UK had taken responsibility for its maintenance.

When no progress was made after two years of effort towards the removal or even the trimming of trees in the hedge in question, the residents asked me to make enquiries with Aberdeenshire Council regarding how they would be implementing the High Hedges (Scotland) Act 2013, with a view to using it in their own case.

At this point (October 2014) Care UK’s land management company, CBRE, became involved in the case, and it appeared that we might be able to find a resolution without resorting to the legislation. Unfortunately, the proposals they made to the residents were unacceptable; first CBRE said that they would fell the trees if the residents met the costs, but then quoted a fee of fifty thousand pounds for the work – despite one of the residents having obtained a quote of five thousand pounds for the same work. CBRE then offered to “top” the trees which make up the hedge, and said that they would share the costs of this work 50/50 with those affected. The residents were willing to accept this offer, but when no progress had been made on this proposal by February 2015, residents decided to go ahead with a High Hedge application to Aberdeenshire Council.

As there was no provision for a High Hedge application to be made by a group of residents, or by a community, the application was made by the residents of the property most affected by the hedge, Mr and Mrs Manson. However, all those affected contributed to meet the £450 fee which is charged by Aberdeenshire Council to process these applications. This application was supported in writing by a
number of Mr and Mrs Manson’s neighbours, and I also submitted my own supporting letter.

Aberdeenshire Council found in favour of the residents, however in the High Hedge Notice issued to Care UK they required the landowner only to remove the trees located “within the first row” of the hedge. Although this would have led to some improvement with regards to the rear rooms and gardens of the houses, the second row of trees would still remain and would still form a barrier to light.

In view of this, Mr and Mrs Manson, with the support of most of their neighbours, decided to appeal against Aberdeenshire Council’s original decision, stating that it did not go far enough to resolve the problem caused by the high hedge. Not only did the Scottish Government reporter fail to uphold the residents’ concerns regarding the second row of the hedge, he also overturned the initial High Hedge notice issued by Aberdeenshire Council regarding the first row of the hedge, which meant that Care UK was not obliged to take any action and the residents were left in the dark.

On the basis of this experience of the Act, I have responded to each of your consultation questions as shown below.

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

   The Scottish Government Reporter’s reasoning in this case exposes the complete inadequacy of the definitions used in the Act. While the Act defines a high hedge to comprise either trees or shrubs rising more than 2 metres above ground level, which seems entirely clear, the Reporter chose to take issue with the council’s approach in this case because there is no definition in the Act of a hedge. The Scottish Government guidance clearly states that “in some cases woodland and forest edges that border a property may take the form and have the effect of a high hedge,” which ought to have allowed a High Hedge Notice in this case to apply. The Reporter however says: “I consider this paragraph to be advisory in character,” which is clearly correct, but then avers “It does not justify applying the legislation to trees which cannot properly be called a hedge, because they are something else,” which begs the question of why he thought it was included in the guidance in the first place.

   The Reporter may or may not be entitled to dismiss the discretion afforded under Scottish Government guidance, to treat a woodland edge as a high hedge if its effect is the same, but the only way to deliver the discretion which was intended by Parliament to allow the Act to deal with a case such as this one is to give statutory force to the guidance that “woodland and forest edges that border a property may take the form and have the effect of a high hedge,” and also to provide a definition of a hedge which clearly encompasses woodland and forest edges which form a barrier to light for neighbouring properties. The law needs to be amended through secondary legislation to ensure that future judgements cannot be made which obstruct the intention of Parliament in passing this Act, as happened in this case.
2. **Do you have any experience of the appeals procedure as set out in the Act?**

I wrote in support of the appeal submitted by Mr and Mrs Manson, and everyone involved was disappointed and frankly shocked that the Scottish Government Reporter not only failed to accept that action needed to be taken with regards to the second row of trees, but also overturned the findings of Aberdeenshire Council assessors with regards to the initial High Hedge Notice and the removal of the first row of the hedge. As there is no appeal against the Reporter’s findings, and as in this case his findings prevented the council from requiring action in line with the Act, it is essential that the law is amended to achieve its original intention.

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

This case was brought to my attention nearly five years ago, I raised my concerns about the failure to manage the high hedge in question with the then Cabinet Secretary for Health in October 2012, and it is two years since residents began the formal process of invoking the High Hedge Act to resolve a problem which had defied resolution by any other means. The Siberian spruce which is the main species in this woodland border grows at a rate of 3 feet a year, so the problem and the deep gloom over the area gets worse with every passing year. The inability of the council to take effective action in this case demonstrates that the Act is not fit for purpose. If the residents cannot be protected, when their neighbours who are responsible for depriving them of natural light are a commercial business operator and a public sector landowner, it is hard to see how anyone will obtain any protection whatsoever from this Act.

4. **Do you have any comments on fees or costs?**

Aberdeenshire Council is able to charge £450 to process an application for a High Hedge Notice, which is too expensive for an individual householder, especially given that there can be no guarantee of a successful outcome. Those with limited disposable income would be unable to afford such an outlay, which means that they would be unable to turn to this legislation if required. The Act would therefore appear to fail even a basic equalities test, given the ability of councils to charge such high fees. At the very least, there ought to be some means of cost recovery for applicants where the application is shown to be well-founded.

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

From my frequent communication with the residents it is clear that the high hedge at the rear of their properties has affected their quality of life, and they were hopeful that the High Hedge legislation would be the answer to their
problems. I know it was an enormous disappointment to them that the legislation, in fact, failed to help them in any way, given that they are presumably the very people it was intended to help.

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

It is clear from my experiences supporting the residents that the legislation has failed to achieve its goal. This was the first High Hedge application in the Aberdeenshire area, and while council officials interpreted the legislation correctly – albeit not going far enough in my view and the view of those living in the area – it is equally clear that the Scottish Government Reporter interpreted the legislation in a completely different way. This can only lead to one conclusion, which is that the legislation is not fit for purpose and needs to be revised accordingly to ensure that future applications are treated in the same way by local authorities and Scottish Government reporters, and that they produce results which remove or reduce the impact of high hedges in one property on the quality of life of those in neighbouring properties, rather than (as in this case) simply leading to extra costs for those neighbours with no positive outcome.

Please let me know if any further information on this submission would be helpful.

Yours sincerely

Lewis Macdonald MSP
North East Scotland