



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

14th Meeting, 2017 (Session 5)

Wednesday 10 May 2017

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Strategic Housing Investment Plans:** The Committee will take evidence from—

Kevin Stewart, Minister for Local Government and Housing, Caroline Dicks, Head of Affordable Housing, and Lisa Bullen, Planning Team Leader, Scottish Government.
2. **Post-legislative scrutiny of the High Hedges (Scotland) Act 2013:** The Committee will take evidence from—

Kevin Wright, Environmental Planner, Aberdeen City Council;

Alastair Hamilton, Service Manager, Fife Council;

Paul Kettles, Planning Enforcement Officer (North), Perth and Kinross Council.
3. **Consideration of evidence (in private):** The Committee will consider the evidence heard at agenda items 1 and 2.
4. **Building regulations in Scotland (in private):** The Committee will consider the evidence heard at its previous meeting.
5. **Work programme (in private):** The Committee will consider its work programme.

LGC/S5/17/14/A

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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGC/S5/17/14/1

PRIVATE PAPER

LGC/S5/17/14/2
(P)

Agenda item 2

Note by the Clerk

LGC/S5/17/14/3

PRIVATE PAPER

LGC/S5/17/14/4
(P)

Agenda item 5

PRIVATE PAPER

LGC/S5/17/14/5
(P)

Local Government and Communities Committee

14th Meeting 2017 (Session 5), Wednesday 10 May 2017

Strategic Housing Investment Plans (SHIPs) – Note by the Clerk

Purpose

1. This paper provides background information on the Committee's evidence session with the Minister for Local Government and Housing on strategic housing investment plans (SHIPs).

Background

2. During its scrutiny of the Scottish Government's Draft Budget in December 2016, the Minister was asked by the Committee to provide some summary information on SHIPs. In response, the Minister confirmed that he would be willing to provide this, but was unable to comment on timings at that stage.
3. The Scottish Parliament Information Centre (SPICe) have produced a briefing paper on SHIPs and their purpose and this paper is attached at **Annexe A**.

Local Government and Communities Committee Consideration

4. At its meeting on 8 February 2017, the Committee agreed to invite the Minister to give evidence on his analysis of the SHIPs. Prior to the evidence session with the Minister, the Committee received an informal briefing from Scottish Government officials on SHIPs. The Minister also wrote to the Committee on 18 April 2017 with the summary information requested by the Committee at the December 2016 meeting. This correspondence is attached at **Annexe B**.

Next Steps

5. Following the evidence session, the Committee will have an opportunity to reflect upon the evidence received and consider what, if any actions, it wishes to take.



Local Government and Communities Committee

Strategic Housing Investment Plans

Background

Strategic Housing Investment Plans (SHIPs) are prepared by local authorities. Their purpose is to set out strategic investment priorities for affordable housing over a 5 year period to achieve the outcomes set out in the local housing strategy.

SHIPs are the key documents for identifying strategic housing projects to assist the achievement of the Scottish Government's five year 50,000 affordable home completion target.¹ They inform Scottish Government investment decisions in the Affordable Housing Supply Programme (ASHP).

In 2017-18, the AHSP budget is £590.6m. Of this the majority, 71% (£422.6m) is available for locally developed programmes. The rest of the AHSP budget is managed centrally by the Scottish Government. Each local authority is provided with a three-year Resource Planning Assumption (RPA) on which SHIPs are based.

Before considering the detail of the SHIPs the next section considers the wider planning framework in which they sit.

Local Housing Strategies

The Housing (Scotland) Act 2001(s89) requires each local authority to prepare a local housing strategy for their area.

The LHS is a strategic document for housing of all tenures and housing related services including homelessness, housing support and fuel poverty. In August 2014, the Scottish Government issued [Local Housing Strategy \(LHS\) guidance for local authorities](#).

Local authorities prepare their LHS every five years although Scottish Government guidance suggests it would be good practice for local authorities to continue to undertake an annual update of the LHS.

¹ The target covers the period April 2016 to end of March 2021. Of the 50,000 affordable home targets 35,000 are for social rent

The Housing (Scotland) Act 2001 requires local authorities to consult on their proposed local housing strategy. The Scottish Government guidance strongly advocates a co-production approach to public services wherever relevant. Co-production is a more inclusive process than standard consultation, involving people at a much earlier stage in the development of the strategy.

The LHS should set the desired outcomes over the five year period and the actions needed to achieve those outcomes. It should also set out the local authority's view of the type and level of housing to be delivered over the period of the plan in its housing supply target (HST). The target should be broadly consistent with the target set out in the development plan. The housing needs and demands analysis (HNDA) (see below) provides the evidence on which an HST is based. However, the HNDA and target are not the same.

The HNDA gives a statistical estimate of how much additional housing is required, whereas the HST gives an estimate of how much additional housing can be actually be delivered by authorities taking into account policy and practical considerations.

Housing Needs and Demands Assessments (HNDAs)

Local authorities undertake HNDAs to inform their LHS and development planning process.²

The Scottish Government provides guidance for local authorities on how to assess housing need and demand to make sure that there is a consistent approach across Scotland. The HNDA toolkit, as well as guidance and other related information, is available at the Scottish Government's [Centre for Housing Market Analysis](#).

Where groups of planning authorities have been designated by Ministers as a Strategic Development Planning Authority³ (SDPA) then the constituent councils (both housing and planning services) should work together with the SDPA team to prepare an HNDA and to agree the subsequent HST(s).

The core outputs of an HNDA are expected to be:⁴

- the key housing market drivers, past, present and future
- an estimate of additional homes required over the period of the HNDA by tenure

² The 2001 Act requires that the LHA is supported by an assessment of housing provision and related services that it must be submitted to Scottish Ministers, and that local authorities must keep their LHS under review.

³ Under the Town and Country Planning (Scotland) Act 1997.

⁴ Scottish Government (2014) *HNDA Manager's Guide 2014*: <http://www.gov.scot/Topics/Built-Environment/Housing/supply-demand/chma/hnda/ManagerGuide2014>

- the current and future requirement for Specialist Provision, including sites for Gypsy/ Travellers and
- existing housing stock profile and pressures.

Each local authority submits their HNDA to the Scottish Government who assess whether it is “robust and credible.” Once it is considered robust and credible there is no requirement to revisit the assessment within the 5 year period.

Scottish Government Affordable Housing Programme

The Scottish Government aims to fund at least 50,000 affordable housing completions through its Affordable Housing Supply Programme (AHSP) over the five year period 1 April 2016 to 31 March 2021. The AHSP funds a variety of schemes to help the supply of “affordable housing,” that is, housing for:

- social rent provided by registered social landlords (RSLs) and councils
- mid-market rent (housing with higher rents than social rented housing, but lower than the equivalent market rent)
- low-cost home ownership. The AHSP also funds the Home Owners’ Support Fund aimed at helping those struggling to pay their mortgage

In 2017-18, the AHSP budget is £590.6m. Of this is around 71% (£422.6m) is allocated in grant subsidy to 32 councils in the form of Resource Planning Assumptions (see **Appendix 1** for local authority allocations).

The remainder of the budget, around £168m is held by the Scottish Government for its centrally managed programmes. These, include for example, the Open Market Shared Equity Scheme and the Rural and Islands Housing Fund.

SHIPs- Detail

Scottish Government guidance⁵ on SHIPs sets out the core content expected in SHIPs. They should:

- set out investment priorities for affordable housing
- demonstrate how these will be delivered
- identify the resources required to deliver these priorities
- enable the involvement of key partners

The SHIPs should include short statements about the following:

⁵ Scottish Government (2016) Guidance on the Preparation of Strategic Housing Investment Plans (SHIPs) MHDGN 2016/03 <https://beta.gov.scot/publications/strategic-housing-investment-plans-guidance/>

- that the priorities listed are consistent with the LHS and any subsequent updates
- a summary of the methodology used to prioritise the projects
- that beyond securing funding, any other development constraints will have been resolved by the estimated site start date
- the level of consultation undertaken with RSLs and other stakeholders in developing the SHIP
- that the projects will maximise the opportunities for energy efficiency and reduction of fuel poverty
- details of how the process for identifying and funding adaptations is being progressed through Health and Social Care Partnerships
- a summary table showing the total investment noted and planned in the SHIP from all sources broken down by year and programme/mechanism

Most of the housing delivered through locally-led programmes is for social rent, mid-market rent or low cost home ownership. The majority is for new build but it could also involve the rehabilitation of properties or off-the shelf purchases.

SHIP Review Process

The Scottish Government reviews the SHIPs submitted to them. The [guidance](#) states that,

“In reviewing the plans we will take account of the following areas:

- the extent to which the SHIP delivers LHS Outcomes
- the extent to which the SHIP is feasible to deliver
- the Local Authority’s contribution to the delivery of the programme, both in terms of its facilitation role and in terms of maximisation of resources
- evidence that the Local Authority is supporting the efficient delivery of the SHIP
- evidence that stakeholders have been involved in developing the SHIP and in the implementation of proposals; and
- the extent to which the SHIP takes account of equality issues”

The Scottish Government provides feedback to local authorities on their SHIP.

Strategic Local Planning Agreements

SHIPs are used by the Scottish Government to draft Strategic Local Planning Agreements (SLPAs) for discussion with all local delivery partners and for final agreement with local authorities. The City of Edinburgh and Glasgow City Councils, through the Transfer of Management of development funding (TMDF) arrangements, manage the housing supply budget for their areas. They draft their own SLPAs for agreement with the Scottish Government.

Once agreed, SLPAs form the basis of individual RSL and local authority programme agreements. They set out the programme of housing projects that will be funded over the next 3 years and will be reviewed and updated annually to ensure delivery remains on track.

The Scottish Government has responsibility for monitoring and management of the SLPAs and for project appraisal, approval, payment of grant, programme monitoring and management and post completion processes.⁶ TMDF authorities are responsible for project appraisal, approval, payment of grant, programme monitoring and management and post completion processes in their relevant local authority area.

Kate Berry
Senior Researcher
SPICe
3 May 2016

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.
The Scottish Parliament, Edinburgh, EH99 1SP www.scottish.parliament.uk

⁶ Further information on the AHSP processes are available in Scottish Government Housing Supply Division Guidance Note HSGN 2014/05 <http://www.gov.scot/Resource/0045/00454435.pdf>

Appendix 1: Local Authority Resource Planning Assumptions 2017-18

Council	2017-18 (£m)
Aberdeen City	12.279
Aberdeenshire	19.393
Angus	5.754
Argyll & Bute	11.606
Clackmannanshire	3.888
Dumfries & Galloway	13.828
Dundee City	11.459
East Ayrshire	8.003
East Dunbartonshire	5.247
East Lothian	6.894
East Renfrewshire	4.001
Edinburgh City	29.115
Eilean Siar	5.771
Falkirk	7.657
Fife	21.889
GHA	16.114
Glasgow City	66.974
Highland	28.761
Inverclyde	7.531
Midlothian	5.831
Moray	6.908
North Ayrshire	10.160
North Lanarkshire	24.487
Orkney Islands	3.594
Perth & Kinross	11.681
Renfrewshire	11.521
Scottish Borders	10.088
Shetland Islands	3.287
South Ayrshire	8.047
South Lanarkshire	18.074
Stirling	6.102
West Dunbartonshire	7.650
West Lothian	8.963
Total	422.557

Source: Scottish Government website: <https://beta.gov.scot/publications/resource-planning-assumptions-to-councils-2017-2018/>

ANNEXE B

Correspondence from the Minister for Local Government and Housing to the Convener of 18 April 2017

Dear Bob

At the Local Government and Communities Committee on 21 December 2016, you requested a summary of the Strategic Housing Investment Plans (SHIPs) submitted to Scottish Government in November 2016.

As I am sure you are aware, the core purpose of the SHIP is to set out strategic investment priorities for affordable housing over a five year period to achieve the outcomes set out in the councils Local Housing Strategy. As I mentioned at the Committee, each local authority receives an indicative figure to inform their investment planning. This Resource Planning Assumption (RPA) provides the flexibility for councils to apply the available Scottish Government funding to its strategic priorities within its geographic area and to use this to inform its SHIP.

A national summary of the content of the current SHIPs (2017-2022) is attached below.

The committee will want to be aware that the period of this analysis does not directly compare with the period of the 50k affordable homes target.

I hope that this information is helpful.

Kind regards

KEVIN STEWART

STRATEGIC HOUSING INVESTMENT PLANS 2017 – 22

Background

- Strategic Housing Investment Plans (SHIPs) are part of the Local Housing Strategy (LHS) process and set out the key development priorities in each local authority to inform Scottish Government housing investment decisions.
- It is expected that SHIPs will be directly informed by the LHS and be developed in consultation with key stakeholders.
- The SHIP provides a 5 year forward look and covers the period 2017 – 22. The final year of the SHIP therefore falls outwith the timescale of the 50,000 target.
- Information provided in earlier years (e.g. years 1-3) will be more certain than project details in years 4-5.
- The Scottish Government does not approve or agree SHIPs but does provide feedback to Local Authorities in support of continuous improvement.
- SHIPs will be submitted on an annual basis with the next submission due by end of October 2017

Analysis

- For the period 2017-2022 completions are currently estimated at 45,916 .
- The completions figure (45,916) does not include completions from national programmes (such as Open Market Shared Equity, MMR / LAR).
- Of all projects identified in the SHIPs approximately 80% of units are social rented housing.
- Of all projects identified in the SHIPs approximately 13% are identified as specialist provision.

SHIP NATIONAL OVERVIEW,**Completions and Site Starts**

	Pre 17/18	2017/18	2018/19	2019/20	2020/21	2021/22	Total
Site Starts	4,821	12,181	10,539	7,432	7,242	6,205	48,420
Completions	NA	7,002	11,390	11,655	7,008	8,859	45,916

Unit Information By Tenure 2017-2022*

	All 2017-2022	All 2017-2022 %
Social Rent	46,471	80.0 %
Mid Market Rent	9,640	16.5 %
All LCHO	2,282	3.9 %
Total	58,393	100 %

* Information is by project and may include units completed outwith the SHIP (2017-2022) period.

Units by Type from SHIPs 2017-22

Type	%
Rehab	2%
Off the Shelf	2%
New Build	96%

Type	%
General	87%
Specialist	13%

Local Government and Communities Committee

14th Meeting 2017 (Session 5), Wednesday 10 May 2017

Post-Legislative Scrutiny of the High Hedges (Scotland) Act – Note by the Clerk

Purpose

1. This paper provides background information on the Committee's evidence session with local authorities as part of its post-legislative scrutiny of the High Hedges (Scotland) Act 2013.

Background

2. At its meeting on 1 February 2017, the Committee agreed its approach to the work it wished to undertake as part of post-legislative scrutiny of the High Hedges (Scotland) Act 2017.
3. On 6 February 2017, the Committee launched a call for written views from all interested individuals and organisations on how they feel the Act is working. The call for views ran until 20 March 2017 and the Committee received 62 submissions in total. The written submissions can be viewed at the following link:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103555.aspx>

4. A summary of the written submissions received was also produced and can be found at the following link:

http://www.parliament.scot/S5_Local_Gov/Inquiries/20170330_HHA_SummaryOfEvidence.pdf

Local Government and Communities Committee Consideration

5. At its meeting on 19 April 2017, the Committee held a roundtable evidence session with a number of individuals who had responded to the Committee's call for views.
6. The Official Report (substantially verbatim transcript) of that meeting can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10899&mode=pdf>

7. At its meeting on 10 May 2017, the Committee will take evidence from representatives from Aberdeen City Council, Fife Council and Perth and Kinross Council.
8. Written submissions from each local authority attending on 10 May 2017 are attached at **Annexe A**.

Next Steps

9. Following the evidence session on 10 May 2017, the Committee will consider the evidence it received during the session and then take evidence from Mark McDonald MSP, the Member who introduced the High Hedges (Scotland) Bill in 2012, on 17 May 2017 and then from the Minister for Local Government and Housing on 24 May 2017.

Annexe A

Written Submission from Aberdeen City Council**1. Has the definition of a high hedge as set out in the Act proved helpful? If not, please provide details?**

Answer – We consider the definition of a *high hedge* as set out in the Act to be useful. However the Act or guidance would benefit from clarifying at what stage these definitions should be applied. It is our understanding that the definitions used to describe a *high hedge* should only be applied when the trees and/or shrubs in question have in the first instance been defined as a hedge.

If the trees and/or shrubs in question cannot be defined as a hedge in the first instance the trees and/or shrubs are considered to fall out with the scope of the Act. In the case where the trees and/or shrubs cannot be defined in the first instance as a hedge it is not relevant whether the trees and/or shrubs meet the definition of a *high hedge*.

There would appear to be confusion over the above points whereby applicants consider that as long as the trees and/or shrubs in question meet the definition of a *high hedge* the Act should apply irrespective of whether the trees and/or shrubs actually constitute a hedge in the first instance.

It would be useful to bring clarity to the above points, both for potential applicants and for local authorities who administer the application process. It is considered that future clarification should clearly state that the Act only applies to hedges and that any group of trees and/or shrubs need to firstly be considered to constitute a hedge. Future clarification should avoid expanding the remit of the Act and care should be taken to ensure the Act can only be applied to hedges and cannot be applied to groups of trees and/or shrubs that can have a similar impact to a *high hedge* but do not form a hedge.

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

Answer – Yes. Our experience of the appeals process has been very positive and we do not consider that any changes to the process are currently required. We would encourage the retention of the ability of both parties to appeal as currently stated in section 12 (1) and 12 (2) of the Act.

We would also encourage the retention of there being *no right of appeal* against the local authority's decision to dismiss an application because reasonable steps have not been taken to resolve matters or because the application is frivolous or vexatious.

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

Answer – We have not yet had call to use the enforcement procedures; Section 22-24. However the procedures appear to be robust and sufficient to allow action to be taken in the event of non-compliance and to recover expenses.

4. Do you have any comments on fees and costs?

Answer – No comments.

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

Answer – Not applicable.

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

Answer – In relation to bullet point 1; in order to assist officers in determining whether a collection of trees and/or shrubs constitute a hedge we utilise a number of tests. These tests have proven useful to officers and allow similar parameters to be used across multiple sites. They are also useful to assist in explaining how the council determine what constitutes a hedge prior to considering if a hedge meets the definition of a high hedge.

Our tests refer to the original intention of the planting, the spacing between individual trees and shrubs and past and present management. These tests are further explained below;

Original intention - This test seeks to clarify the original intention behind the planting of the trees and shrubs. A row of semi mature or mature, well-spaced, trees can have a similar effect as a high hedge. However if the original intention was to plant a row of well-spaced trees or a number of individual trees rather than to establish a hedge it is unlikely that the trees will fall under the scope of the Act irrespective of them having a similar effect.

Spacing - The spacing between individual trees and shrubs can assist in identifying if the trees and shrubs were originally planted as a hedge. Individual trees and shrubs within a hedge are commonly planted relatively close. The Royal Horticultural Society advises spacing plants 30-60 cm apart in order to form a hedge. Where a wider hedge is required the plants may be planted up to 90cm apart in two staggered rows. Trees and shrubs planted at significantly wider spacing's than those outlined above are unlikely to have originally been planted as a hedge. As such it is unlikely that the trees and shrubs will fall under the scope of the act.

Management - The past and current management of trees and shrubs can give a clear indication as to whether trees and shrubs constitute a hedge. Hedges are generally maintained by regularly trimming the sides and top of the vegetation. Formal hedges are commonly trimmed on an annual basis whilst informal hedges and hedges planted for wildlife are likely to be trimmed less regularly or on a cyclical basis whereby the sides and the top of the hedge are cut in different years. Even neglected hedges are likely to show some signs of past maintenance. Rows of well-

spaced trees can also be regularly managed. This is commonly achieved by pollarding the trees or reducing the tree crown. Pollarding and crown reduction are recognised techniques for managing trees and often result in a substantial reduction in the crown of the tree. Pollarding and crown reduction are not considered to be a method utilised to maintain hedges. As such a row of, well-spaced, pollarded trees or trees that have had a crown reduction undertaken are unlikely to be considered as a hedge. As such it is unlikely that trees that have been managed in this way will fall under the remit of the act.

The reference to the oxford English dictionary definition of a hedge contained within the original guidance to local authorities and removed from the revised guidance was unhelpful and limiting in context. However the statement above this definition was very useful, its removal from the guidance has allowed for challenges by applicants relating to the need for trees and/or shrubs to be a hedge before being considered as a high hedge. We would encourage the inclusion of the original statement;

“For trees or shrubs to be considered as a high hedge, they must first be a hedge.”

A future revision may wish to refer to the need for the trees and/or shrubs to constitute what is commonly considered to be a hedge.

Kevin Wright BSc (Hons), MCIEEM
Environmental Planner
Aberdeen City Council

Written Submission from Fife Council

General Comments:

To date Fife Council has processed 23 High Hedge applications. These have been resolved in a number of ways with some cases addressed by both parties after the formal submission, such as the complete removal of the hedge or lowering it to a mutually acceptable height. Some have also been rejected as not coming within the definition of a hedge in the legislation.

Of the 23 High Hedge Applications submitted to Fife Council:

8 cases have been determined with mitigation work/lowering of the hedge required to be done by the hedge owner. 5 cases are pending at various stages in the process. 3 cases have been refused i.e. where the harm from the hedge had not been demonstrated.

The remaining cases were either returned to the applicant, invalid or closed for other reasons.

Imposing mitigation works in compliance with the guidance can be prolonged depending on the implications/presence of wildlife and the season within which the original High Hedge application is made. Indeed this can also be used as a delaying tactic by the hedge owner.

Long term monitoring can be problematic and inevitably requires to be left to the neighbours as it is not possible to resource repeated visits to ensure the hedge is maintained at the agreed level. This leads to the situation that if the party originally submitting the high hedge notice moves the new owner may not be as concerned as to the height of the hedge and therefore it regrows above the mitigation height. Again this reflects the resolution of issues by mutual agreement promoted by the legislation. There is no clear departmental jurisdiction for the legislation; not all local authorities have High Hedges within the planning service or department, should consideration be given to where the legislation should sit for it to be as effective as possible?

Response to specific questions posed by the Committee:

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

The definition is useful in so much as it assists in determining the instances when the Act is relevant to a particular complaint and the issue is within the jurisdiction of the local authority to act. It is hard to see how it could be more specific given the nature of the issue. However the mechanisms which can be employed to overcome the definition such as the removal of every other plant or tree so it is no longer legally a hedge does create a situation where the legislation can be brought into disrepute.

The application and interpretation of the legislation becomes more problematic where gardens are not conventional shapes and the ground is predominantly level. The impact of the hedge can be complex to determine where the hedge is not in a straight line and the ground slopes considerably or there are substantial variations in levels along its length.

A longer period of review is perhaps required to build the necessary legal case law as the number of applications received by local authorities under the HH Act seems to be quite low.

The application of the BRE guidelines on assessing the impact of the overshadowing element of the hedge seems to have become the established benchmark guidance in relation to these potential impacts.

The issuing of guidance on a national basis and examples and citing of typical issues would be welcomed.

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

Fife Council has now had a number of HH appeal decisions issued. The main area which has caused most difficulty is that while the right to a view is not a material planning consideration this consideration has been given more weight in relation to the high hedge determinations from the DPEA, particularly where it is considered that the affected property has been designed originally to take advantage of a view which is now obscured by a hedge.

It remains to be seen as to whether this would provide sufficient reason of its own to be used in the application of the legislation but the referencing of this in recent DPEA decisions would seem to indicate that even where overshadowing is not an issue there could be an argument that the obscuring of a view would be a reason to pursue an application under the HH Act.

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

The main issue with the enforcement process is that it may be difficult to quantify in terms of costs where the enforcement of the HH Act is addressed through direct action this can create budgetary issues particularly where this relates to large trees or a very tall or substantial/ long hedge.

This area is being looked at within the planning review however it is an area which should be incorporated into the High Hedge legislation review to enable the cost of direct enforcement action to be recovered as quickly and efficiently as possible to prevent unrecoverable unbudgeted expense to the local authority.

The accurate measuring of high hedges is difficult, laser measures are not accurate due to the filigree nature of hedges and trees towards the top and therefore where height becomes an estimate this creates problems when trying then to apply

formulae to measure overshadowing and daylight such as those set out in the BRE guidelines.

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

The legislation promotes the resolution of the issue through the mutual agreement of both parties and only where this is not achievable should recourse be had to the Local Authority to address the matter under the HH Act. As this more often than not includes solicitors acting for neighbours the financial benefits to the individuals of resorting to the process through the Local Authority as quickly as possible rather than through solicitors needs to be reviewed.

A true fee level for the local authority would be substantial particularly if this is set on a full cost recovery basis.

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

N/A to Fife Council

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

Additional guidance as to what is considered reasonable efforts on the part of the hedge owner and affected party to demonstrate that they have attempted to resolve the position amicably would be useful. At present this is different from authority to authority.

As there have only been 23 cases processed in Fife which of itself seems to be one of the largest numbers received by authorities, and of these only 8 have been resolved it is perhaps questionable as to how effective the legislation is in terms of what is within the scope of the High Hedge Act. For those individuals however where their issue has been resolved then they will obviously consider that the legislation has been beneficial and effective.

I hope that the observations above are of assistance in the committee's deliberations on this issue and Fife Council would welcome the opportunity to comment further.

Yours sincerely

Alastair Hamilton
Service Manager
Development Management

Written 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 re-word 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.

Paul Kettles
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Perth and Kinross Council