OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 19 April 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 19 April 2017

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
11th Meeting 2017, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

*Elaine Smith (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Graham Simpson (Central Scotland) (Con)
*Alexander Stewart (Mid Scotland and Fife) (Con)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Bolbot
Dr Donald Brown
Liz Grant
Pat MacLaren (Scothedge)
Pamala McDougall (Scothedge)
Catharine Niven
Roger Niven
Donald Shearer

CLERK TO THE COMMITTEE

Clare Hawthorne

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 19 April 2017

[The Convener opened the meeting at 11:05]

Interests

The Convener (Bob Doris): Good morning, everyone, and welcome to the 11th meeting of the Local Government and Communities Committee in 2017. I remind everyone present to turn off their mobile phones. As meeting papers are provided to the MSPs present in digital format, tablets might be used by members during the meeting, so when you see us on our phones or tablets we are not playing games, I promise you—we are looking at our committee papers.

No apologies have been received this morning. We therefore move immediately to agenda item 1, which is a declaration of interests. Before we do this part formally, I put on record my thanks to Ruth Maguire, our departing member of the committee. I thank her on behalf of all the MSPs present for all her hard work on the committee.

I am pleased to welcome Jenny Gilruth, who is joining us. I invite Jenny to declare any interests that may be relevant to the remit of the committee.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Thank you, convener. It is good to be here. I suppose that it is relevant to the committee that I am the parliamentary liaison officer to the Cabinet Secretary for Education and Skills.

The Convener: Thank you. It is good to have you on board.

High Hedges (Scotland) Act 2013

11:06

The Convener: Item 2 is post-legislative scrutiny of the High Hedges (Scotland) Act 2013. Today's evidence session will take place according to a round-table format to allow for a more free-flowing discussion of the issues. I welcome everyone. I will not introduce you all—I will allow you to introduce yourselves as we go round the table.

The committee is keen to find out how the legislation has or has not worked. Has it got better as time has gone on? What still needs to be addressed? I know that many people here today have their own stories to tell about their experience with local authorities, and we are keen to hear about that. There will be a degree of formality, which has to come with these proceedings, but we are keen to get a conversation among the witnesses.

We will do the introductions and get going. I am the MSP for Glasgow Maryhill and Springburn, and I am the convener of the Local Government and Communities Committee.

Pat MacLaren (Scothedge): I am here representing Scothedge, which is the body that was instituted to lobby for change, in the main to assist victims of unreasonable behaviour relating to trees and hedges. I have been working with other members of Scothedge for two or three years. During that period I have spent a considerable time liaising with the Scottish Government on the revision of the guidelines to support the act. I am delighted to be here, and I hope to give further input and evidence with respect to the act.

Pamala McDougall (Scothedge): Along with my husband, James, I was a founder member of Scothedge in 2000. We would briefly like to pay tribute to Hedgeline, which worked on behalf of the rest of the United Kingdom and supported us financially until we began campaigning wholly in Scotland to meet the specific needs in Scotland.

After 13 of years of campaigning through changes in Government, petitioning the Public Petitions Committee, banner waving, writing letters, listening to countless horror stories from hedge victims and finally seeing the High Hedges (Scotland) Act 2013 come to fruition, thanks to Mark McDonald's member's bill, I handed over the watching brief to Pat MacLaren and had a rest. Now, here we are again. Previously, our small campaigning group gained a lot of experience and statistics. We are proud to have produced the booklet that I am now holding. Some members

might have seen it—it is called "A Growing Problem".

The Convener: Thank you. Could you tell us more about the booklet later, perhaps? We will continue with the introductions just now. You are a superb campaigner, and you have taken the opportunity to say a bit more about your organisation, and credit to you, but we will continue with the introductions just now.

Elaine Smith (Central Scotland) (Lab): I am a Labour MSP for Central Scotland, and I am also the deputy convener of the committee.

Roger Niven: I am from Inverness, and my wife and I have been living at our current property for about 17 years. Throughout that time, we have had a problem with the high hedge of a neighbour. We have gone through the process without success.

Catharine Niven: For now, I am happy to go with what Roger has just said. We live in the same house and have the same problem.

Andy Wightman (Lothian) (Green): I am an MSP representing Lothian for the Scottish Green Party.

John Bolbot: I am from Alva in Clackmannanshire. I have an on-going high hedge problem, which I can talk about later.

Kenneth Gibson (Cunninghame North) (SNP): I am the Scottish National Party constituency MSP for Cunninghame North, and I am very much supportive of the legislation. I am very concerned that it has not delivered as well as I believe it should or could have done. I am therefore keen to hear from people directly about how we can improve the legislation to make it much more effective in the months and years ahead.

Liz Grant: I was an unsuccessful applicant in East Renfrewshire. I have what is apparently a non-hedge, but there is no right of appeal and I cannot go anywhere or do anything about it. That is why I am here.

Dr Donald Brown: I live in Kellas, near Dallas—in Moray, that is. I have been through this process only to lose on appeal, when my neighbour interfered with the evidence. Again, we can talk about that later.

Alexander Stewart (Mid Scotland and Fife) (Con): I am a Conservative member for Mid Scotland and Fife.

Donald Shearer: I have lived in the same house for 35 years, and I have had discussions with my neighbour throughout that time. I was present when the act was passed, and I was delighted that at last it would give me an opportunity to reduce the height of the hedge. There are 28 trees along my boundary but, unfortunately, they were considered not to be a hedge.

Jenny Gilruth: I am the MSP for Mid Fife and Glenrothes.

The Convener: Thank you, everyone, for those introductions. Kenneth Gibson will ask our opening question.

Kenneth Gibson: First, I thank everyone for the very high quality of the submissions. I realise that there is a lot of emotion and passion involved in this issue, which blights the lives of too many people, unfortunately, including a number of my constituents.

I will throw open two things. First, before the legislation was introduced here, Scothedge emphasised that, when legislation came in in England, the very fact that the legislation existed had a very significant impact on the reduction of hedge disputes. It was argued that they were reduced by up to 90 per cent, because many people who are guilty of growing huge hedges to the detriment of their neighbours took cognisance of the legislation and did not want to end up with court action. They therefore acted as one would expect people to do: responsibly. Has there been that impact here, regardless of the other concerns and issues that we will no doubt delve into?

Secondly, the first page of the Scothedge submission says:

> "It is still apparent that some Local Authorities are continuing to find ways of evading implementation fairly, in the spirit, and in the meaning of the Act itself."

I throw that open to our visitors.

The Convener: So the first part of the question is whether there have been fewer disputes in this area due to the legislation.

Kenneth Gibson: And whether disputes have effectively been resolved without people having to pursue an application because the act exists. It was suggested prior to enactment that that would happen because that is the experience in England. I am just looking for a yes or no to that.

I am more concerned about the local authorities allegedly evading the spirit and meaning of the act.

Pat MacLaren: Would you like me to answer that?

The Convener: It would be very helpful if you could answer the first part of Mr Gibson's question first, and then give a flavour of where the spirit of the act is not being upheld. I think that there are a number of stories that people around the table will want to tell about the practicalities of that.

Pat MacLaren: If there is a simple privet or leylandii hedge that is obviously a hedge, people are being advised by their councils that it is a high hedge, and they are reducing it. Sometimes the people who are affected are not even going through the process of applying for a high hedge notice.

It is the difficult scenarios that do not involve a simple hedge that are a problem. You might walk down the street and see a leylandii hedge and think, "That is a hedge," but if you live behind a row of deciduous and evergreen trees, some people—especially our councils—might think, "Well, that's not a hedge." That point has not been addressed and it is still a problem.

Donald Shearer: In Midlothian, three applications have been adjudicated by the council. All of them were two or three years ago, when the act first came in, and none of them was successful. The people paid their fee and got nothing for it. I think that other people considering making applications looked at that and said, "The council doesn't allow this, so we will not bother."

11:15

Pat MacLaren: The other side of that is that many people round this table who have non-hedges are not even registered as such with their council. They are not noted as not having a hedge; the council does not register that anywhere. In fact, as far as the councils are concerned, they do not exist because they do not have a hedge.

Glasgow City Council does a pre-application check. It has said that the hedges in question are not hedges, so it is obvious that the legislation is not addressing problems of that type.

The Convener: For the benefit of people who might be listening, could you explain what you mean by a pre-application check?

Pat MacLaren: That is an interesting issue. Some councils will come out to the person's house and look at the hedge before they submit an application. Highland Council charges for that; other councils do not. If the council tells them that the hedge is not a hedge and that they should not bother applying, that is not registered anywhere, which means that we do not have a record of how many potential applications there are in that category.

The Convener: That is helpful. Would anyone else like to comment?

Pamala McDougall: I would like to comment on the effect that the English legislation had. It certainly had a deterrent effect. When the High Hedges (Scotland) Act 2013 came into being, we hoped that it would have the same effect. I know from anecdotal evidence that it did but, as far as I know, there are no records to tell us how many situations it has dealt with. It would be interesting to get that information from another source. We could not find that out from the councils.

Kenneth Gibson: So the legislation has had some impact, but we do not know the scale of it. From now on, we must talk about the legislation's lack of impact on the more severe cases, which everyone round this table is affected by.

Pamala McDougall: Yes.

The Convener: I would like to move on. An issue that is raised in much of the evidence is that, although it seems to be fairly clear in the 2013 act how a hedge should be defined, that appears not to be the case at local authority level. I can see the witnesses reacting to that. Can we get some of those reactions on the record, please?

Kenneth Gibson: No one has responded to my question about the suggestion that is made at the start of the Scothedge submission that the councils are not following the spirit of the act—in other words, that they are dotting the i's and crossing the t's, rather than adopting a much more flexible approach, which is what we anticipated would happen when the act was passed.

The Convener: Mr Niven might be about to expand on that. Is it the case that local authorities are bending over backwards to define things as non-hedges instead of using the powers that they have?

Roger Niven: The property that we have a problem with changed hands a good few years ago, before we moved into our property. As we went through the process, we managed to find out who the previous owner of the property was. We wrote to them to tell them about our problem and to ask whether they planted the leylandii—it is mainly leylandii that we have behind us—as a hedge. I will read from the reply that we received. It says:

> "With reference to your question relating to the trees on the boundary ... I have discussed the matter with my wife, and we can confirm that when we planted the Leylandi they were planted as a hedge as at the time there was absolutely no screening to that part of our boundary. If we had intended the trees to be anything other than a hedge, we would not have planted Leylandi but some other species."

We went through the application process and our application was refused by the council, because it said, "You haven't got a hedge." It refunded our £450. We then went to a solicitor, who wrote to the council. After many weeks, we got a response. Our solicitor had enclosed the letter from the previous owner of the neighbour's property with his letter to the council. In its response, the council said:

> "Your letter refers to the trees being a hedge because they were intended to be planted as such by the previous owner of the land on which the trees were planted ... While noting the terms of the letter ... this does not alter the fact that the trees do not, in our opinion, meet the Dictionary definition of 'hedge' referred to in the Guidance."

For us, that sums up where the process is going well wrong. If someone says that they planted a hedge and that they would not have planted the vegetation in question unless it was going to be a hedge but the council can say that it is not a hedge, I am afraid that that means that the legislation is not working.

The Convener: Thank you. Do others want to share a similar experience?

Liz Grant: We are talking about local authorities fudging the issue. The committee has photographs of my hedge and I have brought some more that I can pass round to give people an idea. The photos are a large size because I do not know how good your eyes are.

The local authority came out to my property but did not tell me that it was coming out. I got a phone call from my daughter, who was 16 at the time, saying, "There are guys creeping around in the hedge. I think you should come and see," so, of course, I shot home from work wondering what was going on. It turned out to be the council officers. They came into the house, looked at the hedge and agreed that it was a blight on the property.

In the submission, the council had a copy of our title plan that showed where the trees were planted and, in its decision, it said:

> "The trees have been assessed by the Council as not being a hedge but instead a tree belt which forms one of the landscape features of the golf course. The trees would not appear to have been planted as a boundary treatment between the golf course and the site boundary and the planting is not in the form of a hedge."

That flies in the face of everything that you see in the photos. If somebody wants to plant a hedge, they plant a double-row, staggered plantation and then they will get a thick, impenetrable hedge. The former captain of the golf club has recently planted a hedge at the end of the street with beech saplings and it follows exactly the type of thing that we have in the photographs, but I am talking about Sitka spruce that are now 35m high. They are massive.

I do not know whether the council made a mistake in saying that the trees are not on the boundary because we have a private road in front of us but we own the road. We also own a bunker—a sort of sit-out area—on the opposite side of the road but we would not sit there because it is now just dark and full of flies. The houses were built on the golf course to take account of the views. My house used to be called Fairways but that is just a laugh now.

I do not feel that the act has worked for me.

The Convener: Thank you for putting that on the record. Do you contend that the act appears to make it clear that what you are describing is a hedge?

Liz Grant: Absolutely.

The Convener: The issue is the interpretation of the legislation rather than the legislation itself.

Liz Grant: I could not understand it. I am a lawyer. I looked at the situation and thought that there was no way the act did not apply. There are "2 or more trees", the hedge is in a row—there are two rows, in fact—and is on the boundary. I have printed off the boundary and had it scaled up. I have gone to a lot of expense getting someone who knows about light levels, of which I have no knowledge. However, it is not a hedge; it is "a landscape feature". If a council is allowed to call something like that a landscape feature, anything could be.

The Convener: That is very helpful. We need some more of those examples on the record.

Dr Brown: When I was thinking about making an application under the act, Moray Council officials came out to look at my situation. They were quite sympathetic. They did not quibble about the definition of a hedge. However, one of them said in passing that he was disappointed that other councils that he knew of were finding ways to avoid taking any action in such cases. That is a council official who, obviously, networks with other council officials and knows what is going on. He was sceptical about their intentions to address the problems that the act covers.

The Convener: Thank you. I will try to give preference to people who have not had the opportunity to speak yet.

Catharine Niven: I will make one other point on Highland Council's interpretation of the definition. It says that a hedge is two or more trees or bushes that form a boundary. There is a scruffy fence along the boundary between our property and our neighbour's. That forms the boundary. In practice, almost every urban hedge is inside someone's garden because that is the only place that people can plant them. The council, in our opinion, appears to be using that as a reason for taking no action, in that the trees are not actually on the boundary—there is a fence less than a metre away from them. The council says that forming a boundary is part of the issue.

The Convener: Is it your perception that some local authorities are looking for an excuse not to apply the legislation?

Catharine Niven: I am afraid that it is, yes.

Pat MacLaren: The local authorities are circumventing the act and they are bringing in their own criteria. The excuses that they use for these trees not being hedges are that they were not planted at the same time; the original intention was not that of planting a hedge; the trees are ornamental—part of a larger landscaping feature; the trees are a tree belt and a landscape feature of a golf course; and that the trees are not managed as a hedge. Another reason that was given for not calling trees a hedge was that the trees are individual specimens and the spacing between the trunks is not what you would expect of a hedge. Aberdeen City Council has brought in its own criteria for deciding whether something is a hedge without referring back to the act, which is what it should always refer back to. It should refer back to the law, not to its own guidelines.

The Convener: That is helpful. A couple of MSPs want to come in, but I want to give preference to those giving evidence over MSPs. Mr Bolbot is next.

John Bolbot: I have two points to add. First, most of the criteria for deciding whether a hedge is or is not a high hedge seem to be very subjective. What does it mean when you say that something was planted with an ornamental intention? Anything could have an ornamental intention—I could put a wheelbarrow in my garden and say that it is an ornament.

I do not think that we are going to get anywhere until we work out a more scientific or objective way of assessing whether something is a high hedge—perhaps there could be some kind of photographic method of looking at the percentage of light that was blocked in any particular given area of hedge, so you could just slide an imaginary rectangle along the hedge and say, "If the light is blocked by more than 20 or 30 per cent, that part of the hedge is high and has to be thinned out." Then nobody could argue, because you would have come up with a number and it would not be down to a councillor's decision or to whether the intention when it was planted was for it to be a hedge.

That point is to do with the definition of a high hedge. The other point is about the reluctance of local authorities to implement the act effectively—and I believe that they are not implementing it effectively at all. I suspect that it comes down to council funding. I do not think that any council has moved in and sliced down a high hedge in accordance with the act. That is allowed in the act, but I do not think that it has ever been done in Scotland—correct me if I am wrong. I do not think that the law has ever been effective in that way. Councils have never moved in to take punitive measures.

Any kind of legislation that is as toothless as that is never going to work. If I thought that I could get away with not paying a parking ticket merely by ignoring it, I might be tempted to do so, and so would everybody else, and our cities would be gridlocked. I think that the law has no teeth. I do not think that there is any sinister plot by the councils; I think that it is just that cutting down a high hedge is expensive—it could have 30-foot trees and need contractors to be employed. It is difficult and dangerous work. It can cost several thousand pounds. If the council implements the law and sends in contractors, it could have a £5,000 hole in its budget. It would then be very nervous about having to pursue the owner through the courts. The owner will say that he has no money or he is ill—all the excuses that people use to avoid paying fines.

The Convener: That is quite helpful. Maybe we will have to explore the fees and fine structures under the act to make it self-financing at a local authority level so that we can get at local authorities' real intention.

I will move the debate on a bit. A couple of members have indicated that they want to ask a few questions, so I will give them the opportunity to do so. I might roll them together. Andy Wightman and Alexander Stewart can go first, and then I will allow our witnesses to come back in.

11:30

Andy Wightman: That has been an extremely useful opening. The act does not seem to define what a hedge is. It states:

"This Act applies in relation to a hedge (referred to in this Act as a 'high hedge') which—"

and it then goes on to list three qualifications. First, therefore, it has to be a hedge. If it is not a hedge, one does not even get to the qualifications in paragraphs (a), (b) and (c) of section 1(1). The problem seems to be that the definition of a hedge is not contained in the act. Something has to be a hedge first, and then it has to meet the criteria.

The term "hedge" is not defined in guidance; I understand from some of your written evidence that there was a change in the guidance from using the "Oxford English Dictionary" definition to using another definition. Is that at the core of the problem? If the act actually defined a hedge—of course, it might not do so in a way that you liked—would there be less uncertainty as to what a hedge is and is not?

Pat MacLaren: Perhaps the act should say that a hedge is any green vegetation, or vegetation, that acts as a deterrent to someone's light.

The Convener: I want to clarify something. Scothedge helpfully provided an extract from the act, which states that a hedge

"(a) is formed wholly or mainly by a row of 2 or more trees or shrubs,

(b) rises to a height of more than 2 metres above ground level, and

(c) forms a barrier to light."

Whether that wording is legally watertight is another matter but, to the non-lawyers among us, that appears to be a definition.

Donald Shearer: I went to my library and printed the definition of "hedge" from the "Oxford English Dictionary"; it runs to 15 pages. The first item is the definition that was originally quoted in the guidance. It is simply:

"A row of bushes or low trees (e.g. hawthorn, or privet)".

However, the dictionary goes on to give other meanings. The third meaning, which is far more generic—and more appropriate in this case, I believe—is that it is

"Said of any line or array of objects forming a barrier, boundary, or partition."

That can include any two trees, whether they are in a line, an array or a group.

There is no need to change the definition in the act. We simply need to ensure that councils understand that the "Oxford English Dictionary" defines a hedge widely. I will read that definition just once more. It is

"Said of any line or array of objects forming a barrier, boundary, or partition."

The "Oxford English Dictionary" definition is hugely wide.

The Convener: Am I right in saying that we should not expect local authorities to quote a dictionary definition to find a way of not applying the law? They should quote what is in the bill and the guidance—they should be reminded of that fact.

My apologies—I should let Andy Wightman explore the issue further.

Andy Wightman: My observation from reading the act is that it does not seem to define a hedge. It states:

"This Act applies in relation to a hedge"—

that is undefined—

"which—".

It then goes on to specify the criteria that a hedge has to meet. First, it has to be a hedge; there is nothing in the legislation that says what a hedge is, so we go to a dictionary. The dictionary definition is wide, but it is not in the law, so that in itself is open to interpretation—

The Convener: Or we could go to ministerial guidance.

Andy Wightman: Exactly.

Liz Grant: We are perhaps overcomplicating the issue. The guidance on interpreting the act states:

"The Act defines a high hedge ... as ... a hedge that is".

It could instead simply say, "A high hedge is" or "A hedge is" and go on to describe what the act is intended to cover.

All the talk of "hedge" is what is confusing. In my view, Parliament intended to cover the three things that the act sets out, and that is it. In any event, when the guidance was changed, I do not think that the intention was to narrow the definition much further.

Dr Brown: It seems to me that the act was intended to alleviate the effect of people living in the shadow. Surely that should be the focus, not whatever causes that. Something that was not planted as a hedge might still not let light through. We are going down the wrong track. The question should be: does it affect the amount of light that reaches a property and does it affect the view? We should focus on that rather than on what plants cause the problem.

Alexander Stewart: We have touched on the difficulties of the definition, the guidance and the criteria, and it has been useful to hear what has been said. As Andy Wightman indicated, maybe an assumption was made when the act was drawn up, and that assumption is now being played out across local authorities. All the witnesses are now potentially victims of that process.

I will tease out a little the length of time that it has taken in your cases to progress matters and how local authorities tackle the issue. A valid point has been made about light and about how a local authority can interpret or misinterpret provisions to get out of the situation. I see that more people are getting out of the situation as opposed to developing and processing the act in a way that protects people and ensures that the high hedge or obstruction is removed.

What I have heard from the majority is that the approach is not working. Individuals find themselves in appalling situations—we have seen photographic evidence of that—and the provisions are being misinterpreted by local authorities throughout Scotland. Something requires to be done to give residents the opportunity to tackle the situation.

The whole assessment process needs to be managed and assessed. If it were managed and

assessed properly, that might alleviate some of the problems.

The Convener: That is helpful. I wonder whether there is wilful misinterpretation by local authorities.

Pamala McDougall: I will say something on a personal level about the time that was taken. After we put in our request for a high hedge notice, we did not hear anything, apart from an acknowledgement. Two months later, we phoned the council to ask how the request was progressing. The man said that the council was working on it, but people in the department were very busy. That was really a bit condescending, because the issue was big in our lives at the time.

The council eventually sent out an official. It was obvious that we were surrounded by leylandii on three sides. The man hummed and hawed and was non-committal. He went away, and we did not hear anything for another two months.

After four months, we asked the council what was happening. The next day, our neighbour had every alternate tree cut right down, so we are now left with a long row of leylandii cut down—I think that there are photographs to demonstrate that. We have been left with horrible leylandii that are just as high as before and the branches are now growing back.

The time from our application for a high hedge notice to the decision was five and a half months. In that time, half the trees were removed. When the council man came back out of the blue, he said that what was there was not a hedge any more. That was a serious blow.

The Convener: That is helpful. I would like more evidence to be put on the record. Mr Stewart made a point about the time for the process. Would anyone else like to say anything about the time that was taken?

Pamala McDougall: I am sorry, but I would like to add something. The guidelines say that the process should be carried out in "a timely manner". What is "a timely manner"? It should be specified that a person will get a decision in three months' time or whenever. It would have been really good to have known that.

The Convener: Mr Gibson wants to speak and I promise that I will bring him in—

Kenneth Gibson: I just want to follow up on what Pamala McDougall said about what constitutes "a timely manner". Local authorities are also helping people to flout the law—wilfully, in some ways—by accepting the chopping down of every second tree. It is clear that that is utterly against the spirit of the law. For local authorities to accept that as a reason not to ensure that the entire row of trees is cut down to 2m is completely unacceptable. Councils are not following the spirit of the law when they allow that to happen.

The Convener: Before we expand on that—[*Interruption*.] Believe it or not, there is a structure to the meeting. Before we expand on that point further, Mr Gibson, we should exhaust the "timely manner" issue.

Does anyone else wish to comment on the length of time that the process takes? You might have got an outcome that you did not like—no matter what the legislation says, people will sometimes get outcomes that they do not like—but we might think that there is a systemic issue with the legislation. Did anyone else experience significant delays? We can deal with that question before we explore the next issue.

Liz Grant: Although what I raised was deemed to be a non-hedge, the local authority copied our submission to all the neighbours on the street and gave them 28 days to respond. The authority then came back to us and said that what was there was not a hedge. I suppose that that was a kind of delaying tactic and a waste of public funds—if it is not a hedge, why bother?

The Convener: I say to Mr Stewart that we have tried but there is no great stampede from the witnesses to give examples of delays in the process, although we have heard one example. Does Pat MacLaren want to add anything?

Pat MacLaren: Sometimes the process is delayed by the volume of letters that need to go between the various parties, which take a bit of time. One example is the Carruth Road case, which was on the books for more than a year before it was sorted out. In the end, the outcome was positive and the trees had to be removed.

At the start, Pam McDougall suffered because councils did not know how to behave or how to deal with things. The removal of 50 per cent of the trees without taking the height down of the remaining trees was absolutely disgraceful.

There was a case in which the reporter from the planning and environmental appeals division used photographic evidence and then said, "This is how I want to deal with your trees now". If the reporter had used photographic evidence in the cases of Donald Brown, Pam McDougall and the Parrys and had said that the trees needed to come down in height as well, things might have been different. If councils had teeth and were prepared to require that, we would never get cases such as John Bolbot's case. Very quickly, the number of 50-odd cases would reduce, because people would stop behaving badly in that way, as would the councils.

The Convener: Are there other examples of that? I am thinking about cases in which, when the complaint is made, the breach of the legislation is

clear. Should the remedy be dictated by the local authority rather than by the resident trying to circumvent the legislation by pruning 50 per cent—or whatever it is—of the hedge or alleged non-hedge? Perhaps, when the offence is deemed to be evident, the local authority should have more power to dictate what the remedy is, rather than events unfolding as they did in Pamala McDougall's experience.

Pat MacLaren: If there was photographic evidence of what the hedge looked like prior to the application being submitted, there would be evidence that the neighbour was trying to circumvent the act by removing things.

The Convener: The evidence might be there, but the issue that we are exploring is whether the legislation gives the local authority the power to dictate the remedy.

Dr Brown: I was initially successful. There was no problem with my council—I do not often praise it, but I do so in this instance. It placed an order on the trees, and my neighbour appealed. Between the order being placed and the reporter's visit, my neighbour cut down half the trees. I am sure that, in legal circles, there is some buzz going around that that is a way to circumvent the act, because it is so common. The reporter arrived and looked at the trees—I would not quite say that she took one look at them—and said, "This is not a hedge now," so I lost the appeal. The trees were still as high and still as dangerous in a high wind—more than 20 of them blew down at one point, but that is another issue.

It is not just councils that are failing. The reporter came out and saw that somebody had tampered with the evidence—if I did that in a fraud case, I would be in court. I lost all that money on having made an application, and I am sure that other people have been in the same situation. If a reporter can say, "That is okay—it is legal for you to fiddle with the evidence," and then go away while I am left in limbo, it is not just councils that are failing. If people are digging out and taking such actions, that needs to be sorted out as well.

11:45

The Convener: If a home owner built an extension without planning permission, the council would not say that half the extension should be removed, would it? It would say that the entire extension had to be removed.

Dr Brown: That is right.

Kenneth Gibson: It might say that every second brick should be removed.

The Convener: Are there any more examples of what Donald Brown referred to?

Donald Shearer: In all such cases, taking out every other tree does not take the hedge away, according to the definition in the act. I would say that such things are still high hedges and that councils should still act on them.

Dr Brown: The trees are still going to grow together, too. That is what the trees near me are doing now—the lower branches are growing across. Will I have to take another action in five or 10 years and spend more money, if I am still here, to address the problem again?

The Convener: Those points are well made by our witnesses.

Elaine Smith: Given what we have heard in evidence, it is obviously timely that the committee is taking a look at the legislation. There could be confusion at times about particular trees and tree protection orders, but I was particularly struck by Mr and Mrs Niven's situation. When my former colleague Scott Barrie first pursued the matter back in 1999, I believe that the big issue, which was used as an example then, was leylandii hedges. Given that Mr Niven has a letter that says that the trees were planted as a hedge—specifically a leylandii hedge, I believe—I cannot for the life of me see why it is not deemed to be a hedge under the act.

That situation is the very essence of what the act was about and how clear cut it could be. I wanted to put that on the record. I have not been to the property and seen it, but from looking at the evidence and the pictures, and from listening to what Mr and Mrs Niven have said, it strikes me that their case is a very good example of what the act was meant to be about in the first place. There is no confusion around tree protection orders or how many trees make up a hedge or what exactly a hedge is. The Nivens' case seems to me to be an example of why it all started.

The Convener: Are there other examples? I know that there are, because I have read about them in the written evidence, but I would prefer that the witnesses, rather than an MSP, talk about them. Are there other ways in which the witnesses think that the act is deficient that they would like to put on the record?

Donald Shearer: I would like to put on the record that the trees do not have to be a formal hedge or to be in a specific type of row. My boundary with my two neighbours is 70m long and there are 28 trees along that boundary. They definitely were not planted as a hedge, but they definitely all shade my garden. They are all within 5m of the boundary. There are all kinds of trees, including chestnuts and copper beech, and there are two giant sequoia—there were three, but my neighbour took one of them out. They are going to be enormous; they were planted 30 years ago,

they grow 2 feet every year and will continue to do so for another 150 years.

If trees, planted in any pattern, are preventing reasonable enjoyment by a neighbour of their garden and house, that should surely not be allowed to continue.

The Convener: Thank you. John Bolbot—do you want to add something?

John Bolbot: Yes. My situation is much simpler than most of the other witnesses' situations, but in my opinion it cuts to the heart of the problem, which is—as I said before—that local authorities are reluctant to take action, and perhaps even try to avoid it. They fear that doing so will blow a hole in their budget, which they might not be able to recoup. That is the root of the problem.

The start of my submission sums it up:

"The High Hedges Act isn't working because it has no teeth."

Some time ago, I was successful in getting issued against my neighbour a high hedge notice that carried an eight-month compliance period. That period finished six weeks ago, but the hedge has still not been cut and is therefore six weeks illegal. I have been in contact, of course, with Clackmannanshire Council, but it just seems to be vacillating and pussyfooting around. It has written to my neighbour asking for a schedule for when he is prepared to comply, so the tail is wagging the dog now. What is the point of a compliance period if it only signals the beginning of persuasion?

The Convener: Politicians should never ask questions that they do not know the answers to, but I must ask you one. Does the council have the power, for example, to say to that person that because they have not complied with the order they are being given another four weeks but now also have, say, a £500 fine levied against them? Does such a power exist?

John Bolbot: I stated in my written submission:

"The High Hedges Act provides for a Council to send workmen to a non-complier's property to cut a hedge, subsequently recovering costs from him".

However, I think that Clackmannanshire Council is too frightened to do that.

The Convener: So, in theory, there is a power to recoup costs.

John Bolbot: Yes.

The Convener: But the council cannot put a shot across the bows by levying a modest fine.

John Bolbot: That is a huge weakness in the 2013 act. Correct me if I am wrong, but I do not think that any local authority has actually sent in contractors to cut a hedge and recover the costs of doing so. Until local authorities show non-compliers that that is what will happen and that they cannot refuse to comply with the law, people will just ignore notices.

It is interesting that Clackmannanshire Council has just sent me my council tax bill and a nice little pamphlet that tells me all the wonderful things that the council tax does for me. There is a section at the end of the pamphlet on what happens if I do not pay on time. It describes first the help that the council can give people if they have financial problems, but the bottom line—it is at the end—is that if I fail to make payments, my earnings or bank account can be arrested and my debt could increase due to legal fees. So, the council is prepared to put the boot in if I say that I am not paying my council tax because I choose not to; it makes it quite clear that I would not get away with that. Why cannot the council use that kind of muscle on a high hedge offender? Councils do not seem to want to do that.

The Convener: We intend to ask councils that question and will certainly put it to them. You referred to moneys: we want to talk about the fees that underpin the process, so this might be a timely opportunity to go on to that. I ask Pat MacLaren to comment.

Pat MacLaren: Before we move on to fees, I would like to talk about appeals. At the moment, all of us who have an issue with a non-hedge have no right of appeal. That means that if a council chooses not to allow someone's hedge to be a hedge, they have no right of appeal to anybody—the case is dismissed and we have no right to appeal to the DPEA. The case cannot be taken outside the local authority or be removed from the involvement of local personalities: people have nowhere to go. That is the case even when it is accepted that, under the terms of the 2013 act, a hedge is a high hedge, but in the council's view, it is not a high hedge.

The Convener: Again, I will ask a question that I do not know the answer to. If there is no appeals process, do local authorities have the power to reconsider, which is different from an appeals process? Sometimes an authority can look at the appeals process rather than the judgment itself, but reconsideration would just involve the council taking an overview of the evidence to see whether it has erred at some point, in that regard.

Pat MacLaren: If the council were to block an application in the first place, why would it then say that it had been wrong?

The Convener: I am asking you a question that I should, of course, ask the local authorities, because it is about whether they have the power to review decisions that have been made, irrespective of whether there is an appeals process. However, you have put on the record the

important point that there is not an appeals process. Do all our witnesses have a concern about that?

Witnesses *indicated agreement.*

Catharine Niven: A letter from our local authority said that the only recourse that we have is to judicial review, which we understand is enormously expensive and is therefore totally infeasible for us.

Pamala McDougall: May I speak about fees?

The Convener: I will check. I tried to move on to fees and I missed out the appeals process. Would anyone else like to comment on the appeals process before we move on to fees?

Liz Grant: Perhaps the reason why the committee is not getting a great deal of feedback generally on the issue is the fact that there is silence: as we have said before, we do not have a record of how many applications have been dismissed by local authorities because they involve non-hedges. Because it did not cost me anything to do it, I submitted an appeal to the DPEA against the refusal to deem the hedge a high hedge—I am getting into semantics here—because that was one way of publicising the matter and getting a "no remit" decision. If you look on the DPEA website, you will see countless "no remit" decisions. There is nothing else that people in my position and similar positions can do.

In my case, the local authority told the golf club:

"The application has ... been returned to the applicant and the Council has no intent of investigating this matter further."

The council's email went on to say:

"You are perhaps aware that there were discussions on the ... site visit ... I understand that by chance a member of your committee was present. My recollection from that discussion was that there was some understanding on the part of the Golf Club of the applicant's circumstance and that options still remain to explore some tree removal."

The council recommended

"a reopening of correspondence ... to explore works which would perhaps in part address her concerns."

The email is dated 18 December 2015 and I have heard nothing since.

The Convener: Okay. We will now move on to fees.

Pamala McDougall: I have from the beginning taken a great interest in the fees, and I have a list of every council that charges a fee. The highest fee is the £500 that is charged by Glasgow City Council and the lowest is the £182 that is charged by Inverclyde Council. There is quite a difference between the two.

In my Scothedge work, people phone me up and say that although they want to apply for a high hedge site visit, there is no way that they can afford £450. There is no sliding scale and there are no concessions, apart from in one council, which I will name: South Ayrshire Council. It has a good sliding scale for people who are on various benefits, which are all means tested. The fees are too expensive, and councils are using the fees to prohibit applications. I argue that there should be a sliding scale.

In any case, why should we have to pay for justice? Why are we having to pay out all this money—which we have all done—with no guarantee of success? At the end of the day, I am left with leylandii still growing closer together at the top and am having to consider whether to try another high hedge notice application.

Frankly, my heart goes out to the people who phone me through Scothedge, sometimes weeping on the telephone, asking, "How can you help me?" I cannot pay all the fees, obviously, and even citizens advice bureaux are reluctant to become involved, although they try their best. I think that all the witnesses here would agree that the fees are too high, that there should be a sliding scale and that we should be refunded the fee if our application is successful.

The Convener: Thank you. Would anyone else like to comment on the system of fees?

Dr Brown: In my submission to the committee, I comment that, if somebody transgresses by cutting down only every second tree, I should get all my money back. It is ridiculous—it is robbery in two ways. Not only do I not get my daylight; I also lose everything that I have paid out in my attempt to get the trees reduced in height. Some kind of punishment for landowners who subvert the intentions of the act should be enforced.

12:00

Donald Shearer: Midlothian Council was quite quick in dealing with my application. It took my £300, looked at the trees and said, "That's not a hedge." When I complained, it gave me £90 back—in other words, it took £210 from me for that quick look.

If someone is successful in their case, the hedge owner should pay the fee, because that would be an incentive for him never to enter such an argument in the first place. He would know that there would be a downside if he lost; at the moment, he does not know that.

Pat MacLaren: That was my point. Even the local authorities felt that the tree owner should pay the fee in the event that the high hedge notice application was successful. There was quite a

strong view in the submissions and among the local authorities that that should be the case.

Jenny Gilruth: We have heard about the varying approaches to interpretation of the law with regard to time taken and the appeals process, and that there is not a central log of appeals, that information is not recorded and that the fees vary.

Pamala McDougall spoke about local authorities and the idea of justice. Is there a cultural issue in our local authorities in relation to how the law is being implemented? Are they reluctant to engage with people on how they deal with high hedges? Do you think that they do not see it as an issue? Do you think that they believe that their job is to run our schools, for example, and that they are not particularly interested in high hedges? In your experience, do they just bat away the problems that we are discussing? Do we need to go back to the letter of the law and look again at how it is being implemented in the context of how the local authorities view their responsibilities? From hearing your experiences, it feels to me as if they are going to the nth degree to avoid enforcement.

Pamala McDougall: You mentioned local authorities engaging with us: they do not, but I wish that they would. They will not engage with us in the process—we all just get letters.

I am not quite sure whether there is a cultural issue. The people who have taken on the duty are in the planning departments. On the whole, the planners know nothing about high hedges, trees and so on. Maybe they have found out a bit about the subject since taking on the responsibility, but they are not experts. I am sure that they try to do their best, but they already have a workload and they do not want to take on an additional workload.

There are also the financial constraints on councils. Although we have sympathy with them to a degree, we have to live our lives. That is why we pay our taxes. It is not right for them to ask for £400 or so just to come and look at the trees that they then hum and haw about. I am sorry, but my view of my local council—Angus Council—is at rock bottom when it comes to this issue. It gives me no confidence whatever.

Pat MacLaren: High hedge notice applications go to the planning department because planners understand how tall a building is and what the light loss would be in a planning scenario. They are supposed to understand that, if two buildings are put close together, light will be lost. The tree officers are often attached to the planning department but, in general, they are the type of people who want to plant lots of trees to make things look beautiful. In other words, perhaps the wrong people are considering high hedge notice applications.

The English document on hedge height and light loss, which applies to evergreen trees, is referred to in the guidance on the 2013 act, but we need a Scottish version of that, because we take in deciduous trees, which are slightly different from evergreen trees such as leylandii. In addition, we are at a much more northerly latitude; we have shorter days than England has, so we are in a slightly different position in terms of the length of the days and the way in which the sun interacts with our gardens.

If we had our own version of that document as a go-to document, it would be easier for the local authority and tree officers to say that a certain percentage of sunlight and daylight had been lost to the garden. John Bolbot referred to that earlier. We need a go-to document that states when someone has lost their light.

The Convener: That is a good link because John Bolbot is next to comment.

John Bolbot: I do not think that it is a cultural issue. My experience—it is the only experience that I have had—is with Clackmannanshire Council, which did not have any problem with issuing me a high hedge notice although it had a problem with enforcing it. It seems to have panicked now: the guy has just dug his heels in and has not done anything, and the council does not really know what to do. I suspect that it is not because it does not realise that it could do something. Going back to what I said before, I think that the council is frightened of spending the money. It is a lot of money to spend, and the guy will probably refuse to pay the council. It might not want to get into all that legal shenanigans and end up out of pocket.

Jenny Gilruth: That was going to be my question. Do you think that there is reticence because the council is concerned that it could be taken to court? Is there a fear of that? Are councils looking for clearer guidance from the Government on enforcement?

John Bolbot: I have contacted Clackmannanshire Council recently because, as I said, the hedge has now been illegal for six weeks. The officer in charge of the case has said that he will contact the Scottish planning enforcement forum—whoever they are—to obtain information from other Scottish local authorities about their experience of dealing with non-compliance. The council has also written to ask the hedge owner for his schedule and his proposed plan to comply with the law, but I think that he has not replied.

Donald Shearer: I have a comment on the English guidance on acceptable light. I worked in Milton Keynes and, when I went out for a pub lunch, I used to sit in the shade because it was

always warm. When I go out to a pub in Scotland and it is sunny, I invariably choose a seat in the sun. The English guidance therefore needs some adjustment before it could be used.

The Convener: Okay. I will leave that hanging there. Pat MacLaren, can you help me out?

Pat MacLaren: I wanted to say one more thing in response to John Bolbot's point and Jenny Gilruth's questions. If we had a few cases in which the authorities took the trees down to the height that they should be and charged the tree owners for the cost, tree owners would quickly realise that they could not get away with it and would come to heel. The discussion that we are having today would then disappear.

The Convener: I am thinking about whether, as John Bolbot said, there is a disincentive for local authorities in the cost of seeking to manage the enforcement process. Given the money that local authorities make from other forms of enforcement, even if that is not a reason to do it, is there a possible valid business model in making the process self-financing? Are local authorities missing a trick? Do you have any thoughts on that?

We have spoken about the fees, but are local authorities perhaps missing a trick in how we deal with the situation? Do you have any suggestions? The local authorities will come before the committee on 10 May, and I am sure that our witnesses will follow that meeting with interest. What suggestions would you like us to make to the local authorities when they come to answer questions from MSPs on 10 May? Keep it civil, please.

John Bolbot: The only advice that I could give them is what Pamala McDougall—or was it Pat MacLaren?—said about what happens if a precedent is set and the law is never enforced. No local authority has cut trees and then taken the owner to court. If a precedent is set throughout Scotland that people can just ignore the high hedges legislation and nothing will be done—they will not be taken to court and they will not have to pay a fine; they can just ignore it and it will go away—the law will be rubbish and useless. As I said, it will be toothless. If parking fines were never enforced, no one would ever pay them again, and it is the same with the act.

The Convener: Parking is an area from which local authorities make a significant amount of cash from time to time. Perhaps parking attendants should be trained in how to spot a high hedge. I should point out that that is not a serious suggestion.

We are coming towards the end of the evidence session, so I throw the discussion open to all our witnesses and give you an opportunity to make any comments that you would like to make. They do not have to fit in with the line of questioning that we have pursued so far. What you say will inform our line of questioning when we speak to local authorities in a few weeks.

Roger Niven: Going back to the evidence that I gave at the start, if an applicant can prove that a hedge was planted as a hedge, no further test should be required. I also take everybody's points about the light issue—that is a big one.

I would also make the observation that local authorities seem to be able to interpret the act in many ways. The whole process needs to be tightened up.

The Convener: We need consistency across the country.

Roger Niven: Absolutely. In fact, is it a job for local authorities? Are planning officers the right people to do it? That would be a radical departure, however.

Catharine Niven: A postcode lottery is generally considered to be a bad thing, and it appears that we are suffering from a postcode lottery.

Pamala McDougall: I would not like us to finish the meeting without acknowledging the mental health problems that the issue has caused and the depression and anxiety in families and communities. I have spoken before about Scothedge members writing to, phoning and emailing me with huge problems. You know what? They are afraid of their neighbours. People sometimes would not allow their names to be on a list and some would not even join Scothedge because they were afraid of having their names on our list. I would like to highlight the anxiety, depression and mental health problems that I have come across so often.

The Convener: That is helpful, because committees can be understandably process driven and can look at the black and white of legislation rather than the wider human impact. Thank you for putting that on the record.

Kenneth Gibson: That is an important issue, because a lot of the people who are in this situation feel that their opinions and interests simply do not matter and they are not recognised by local authorities. They are law-abiding citizens who have kept their noses clean all their lives and paid their taxes and then, when they need the local authority—which they might never have been in contact with in 10, 20 or 30 years or whatever—they are let down. Other people are acting against their interests, but there is no equivalence in how that is dealt with—it is almost as if people are guilty until proven innocent rather than the other way round. In other words, all the weight of the

legislation, or certainly the way that it is interpreted, appears to favour the individual who is causing the problem.

Obviously, that can only cause upset. I know that that is a major concern among my constituents, although none of them is here. They just do not understand why this is happening to them. People from Glasgow who have saved up all their lives to buy a nice house with a view when they retire find that, a couple of years later, a huge hedge has erupted in front of them. They think, "Why has this happened to me? What have I done wrong?" We need to take the issue seriously and get a grip on it, and that is why I am delighted that the committee has brought forward the review of the legislation and is not waiting until 2019.

The Convener: Yes—the committee decided that we wanted to do it at an earlier opportunity.

I will take Donald Shearer in a second, but I want to say that I am very close to ending this evidence session. If there is something that the witnesses have not said yet, now is the time for them to say it. I see hands going up.

12:15

Donald Shearer: When councils evaluate the effect of or the reason for the application, the prime thing that they should look at is how much shade is on the applicant's garden, whether the hedge was planted in a straight line or whether trees were planted as a copse in order to form a screen. If someone has a big piece of ground and they want to screen it, they know that, if they put in a hedge, it will be reduced. However, if they plant trees in different places, they will still create a screen and it will not be reduced, so that is what they do.

Dr Brown: When committee members are considering the issue, I would like you to look at a route for those of us who feel that we have been dealt with poorly by having to settle with alternate trees being taken out or by losing on appeal. I should not have to go back and pay all the fees again merely to right something that should not have happened in the first place and to correct a misjudgment. I am sure that there are other people in similar situations, and they should not have to pay another £450 or £500 to start the whole process again, with all the stress that that causes. There should be a route for us to have an appeal or to have a judgment overturned. I know that it is difficult but, for the sake of justice, we need it.

Pat MacLaren: I feel that the guidelines give local authorities too much scope for localism. I have provided nine points on sections in the guidelines in which we allow local authorities to make up their own minds about how they deal with the issue.

Roger Niven: In addition to the frustration and the emotional cost of the situation, we have an on-going annual financial cost. We spend around £400 a year on taking moss off the roof as a direct result of the trees. I am sure that we are not alone in that.

Liz Grant: We are sitting here considering the ins and outs of the issue today, but those of us who live with such a situation have to look out of our windows—either all of them or isolated windows—and see it every day. We have to try to keep our minds off it, look the other way, install blinds or whatever, but it is very wearing. If people could approach the issue in the spirit of, "How would I feel if I had to put up with that?", it might help.

The Convener: That is a good note on which to end the evidence session. I thank all our witnesses for taking part in a very useful discussion on the scrutiny that our committee will undertake. As I mentioned, we will take further evidence on 10 May from local authorities. We will put to them some of the questions and points that you have raised and will keep you updated on the progress of our post-legislative scrutiny.

12:18

Meeting suspended.

12:25

On resuming—

Subordinate Legislation

Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Amendment Regulations 2017 (SSI 2017/78)

The Convener: Welcome back, everyone. Agenda item 3 is consideration of subordinate legislation. The committee will consider the negative instrument SSI 2017/78 as listed on the agenda. The instrument is laid under the negative procedure, which means that its provisions will come into force unless the Parliament votes on a motion to annul the instrument. I confirm that no motion to annul has been laid.

As members have no comments to make on the instrument, I invite the committee to agree that it does not wish to make any recommendations in relation to the instrument. Are we agreed?

Members *indicated agreement.*

The Convener: We now move into private session for agenda item 4.

12:25

Meeting continued in private until 12:43.

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