The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 5 December 2012

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
28th Meeting 2012, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Stuart McMillan (West Scotland) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*Margaret Mitchell (Central Scotland) (Con)
*John Pentland (Motherwell and Wishaw) (Lab)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Maggie Keegan (Scottish Wildlife Trust)
Mark McDonald (North East Scotland) (SNP)
Pamala McDougall (Scothedge)
Derek Park (Scothedge)
Aedán Smith (RSPB Scotland)
Angus Yarwood (Woodland Trust Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 5 December 2012

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Kevin Stewart): Good morning. I welcome everyone to the Local Government and Regeneration Committee's 28th meeting in 2012. As usual, I ask everyone to ensure that they have switched off mobile phones and other electronic equipment.

Agenda item 1 is a decision on taking business in private. We are asked to consider whether to take agenda item 3, which concerns our approach to a forthcoming inquiry, in private. Are we agreed?

Members *indicated agreement.*

High Hedges (Scotland) Bill: Stage 1

10:00

The Convener: Agenda item 2 is oral evidence on the High Hedges (Scotland) Bill.

Before I welcome the witnesses, I welcome the member in charge of the bill, Mark McDonald. As it is the committee's function to scrutinise the bill, we have agreed that committee members will put their questions to the witnesses first. Once those are complete, Mark will be invited to put to the witnesses any questions that he may have.

I welcome Pamala McDougall and Derek Park of Scothedge; Dr Maggie Keegan, who is head of policy with the Scottish Wildlife Trust; Aedán Smith, who is head of planning and development with RSPB Scotland; and Angus Yarwood, who is Government affairs manager with the Woodland Trust.

I ask the witnesses to make some brief opening remarks, if they want to, before we move to questions. We will start with Scothedge.

Pamala McDougall (Scothedge): I thank Mark McDonald, his team and the MSPs across the parties who have supported us.

As you know, Scotland is the only country in the United Kingdom without legislation on high hedges. I am convinced—so is Scothedge—that deciduous and single trees should be included in the bill. Other than that, we are really happy with it.

We have total respect for the other organisations that are represented at the meeting. They are all paid professionals—as are the committee members—and we are the amateurs. However, we are no less passionate and knowledgeable after the past 13 years of campaigning. We hope to convince you of that.

Dr Maggie Keegan (Scottish Wildlife Trust): I am head of policy at the Scottish Wildlife Trust, which owns or manages more than 120 reserves in Scotland. More than 20 of those are in urban areas and contain woodlands.

In the written evidence that I submitted, I highlighted some of the concerns that we have about what would happen if the bill was broadened out to include deciduous trees. We come from a biodiversity point of view and are concerned that, when considering legislation, we must always look at the unintended consequences.

I hope to make those points more clearly during the course of the meeting.

Aedán Smith (RSPB Scotland): Good morning and thank you for the invitation to come and speak

to the committee. Most members will be familiar with our organisation and its aims. Our main interest in the bill is to ensure that birds and wildlife are considered as it progresses. I am happy to take any questions that the committee may have on the written evidence that we have submitted.

Angus Yarwood (Woodland Trust Scotland): Thank you for inviting us. The Woodland Trust Scotland is part of the UK Woodland Trust and our key objectives are creating new woodlands, protecting veteran and ancient trees and inspiring people to enjoy woodlands and trees in their own right.

Our interest is in trying to avoid, as an unintended consequence of the bill—Maggie Keegan pointed that out—the capture of important individual trees, such as heritage trees or veteran trees. I have particular concerns about the interaction of tree preservation orders with the bill.

Biodiversity and the enjoyment of trees are our interests in the matter.

The Convener: What are the witnesses' views of the statutory definition of a hedge as set out in section 1 of the bill?

Derek Park (Scothedge): Good morning. As Pamala McDougall said, our concern about the statutory definition in the bill is that it does not cover every possible case. For example, deciduous trees and single trees are excluded from the definition. There seems to be a certain amount of misunderstanding within the Convention of Scottish Local Authorities and perhaps among the wider public that the inclusion of deciduous trees and single trees would add wildly to the scope of the bill.

The Convener: Let me stop you there, Mr Park. You say in your submission that COSLA is against widening the scope of the bill, but our clerks have spoken to COSLA, which says that it has said no such thing. I think that you need to check that part of your submission with COSLA. My understanding is that COSLA has no objection to the widening of the bill.

Derek Park: We saw in a policy memo that there was concern that the inclusion of such trees would add significantly to the scope and complexity of the bill. If COSLA now says that that is not the case, that is wonderful and we welcome it. That is good news for us.

People need to understand that, just by passing the bill, 95 per cent—or 92 per cent, to be accurate—of the cases will resolve themselves. That is based on evidence that we took out of the policy memo about cases in England.

If you will indulge me, I have provided a graphic of a football pitch to illustrate that. The total football pitch area represents what we consider would be the total number of cases in Scotland. That is based on the data available for the six local authorities in England that are mentioned in the policy memorandum. Given the population figures for those six typical English boroughs, our projection for the Scottish situation is that there would be possibly 5,000 cases in Scotland.

The yellow area—covering most of the penalty box—is all that will remain of the evergreen cases if we simply pass the bill. Cases will dissolve because people will start to do the right thing. If you introduce a 30mph limit, most people will obey the 30mph limit—you do not need a policeman with a speed gun at the entrance to every village.

The red area—a much smaller part of the penalty box—shows the difference that will be made by including evergreen species. That is based on the data that we in Scothedge have obtained from our members and it is also based on the data from the 2009 consultation.

In our view, that is why a wider definition would not add significantly to the complexity of the bill. We cover that at great length in our submission. Do you want me to go any further with that, or does that answer your questions?

The Convener: I think that the submission covers much of what you have just said. Perhaps we can move on to Dr Keegan.

Dr Keegan: The definition refers to "evergreen or semi-evergreen trees". Obviously, "evergreen trees" covers native Scottish trees such as juniper, holly and yew. In considering the biodiversity value, given that native trees have evolved along with invertebrates and other wildlife in Scotland since the last glaciations, native trees have much more biodiversity value than do non-native tree species.

If we have any thought about the bill, it is that it would probably be better for the definition to refer to "non-native evergreen or semi-evergreen trees", because that would not capture native species and non-native conifers. The definition needs to capture leylandii and other trees such as western red cedar that have little biodiversity value. Obviously, those trees are quite fast growing, whereas some of our native trees are not so fast growing. I will leave it at that for now.

Aedán Smith: I broadly agree with Dr Keegan. The current definition has the merit of simplicity, which has obvious benefits in terms of administration and management if the implementation of the bill is progressed. As Dr Keegan said, the current definition is likely to mean that hedges and trees that, broadly speaking, are of higher biodiversity value—those tend to be native species—will not be captured by the bill.

Our primary concern is that there should not be an adverse impact on wildlife or biodiversity, and the current simple definition means that adverse implications for wildlife are less likely. There might be other ways of doing that, but broadening the definition would mean that the bill would have to be a bit more complicated because it would have to contain additional safeguards to ensure that our birds and wildlife were not impacted.

For that reason, we support the simple, clear definition that is in the bill. That does not mean that we are necessarily absolutely opposed to the definition being broadened, but additional safeguards would have to be introduced to ensure that there would be no additional adverse risks to wildlife.

Angus Yarwood: We also support the addition of the phrase "non-native" to the definition for reasons of biodiversity and heritage value. For example, in Fife there was a recent case of a 300-year-old sycamore tree that had a tree preservation order placed on it. The local authority was asked to consider felling the tree because of concerns for a local house. We are interested in that kind of tree that has cultural and historical value. Although we acknowledge that the bill contains proposals to cover that under the discussion and assessment of each case that the tree officer would have to consider, we think that including non-native semi-evergreen and evergreen trees would clarify the situation for tree officers. At the moment they are under a huge amount of resource pressure to deal with their caseloads. My experience of working with them and talking to them is that giving them clarity and a framework within which to work makes their job a lot easier. We found that with tree preservation orders, which were discussed in the Parliament in February. That was also a consideration for the Rural Affairs and Environment Committee.

We want things to be kept simple and straightforward, and to make sure that the tree officers are clear about what they are doing every day.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I speak about my personal circumstances, not because I have a personal concern but because it illustrates a general point. I live in a rural location that is surrounded on three sides by commercial, non-native conifers that are so densely grown that I cannot receive any terrestrial television signal and my light is significantly obstructed. Of course, I knew what I was buying because it was all there when I bought the house. Should commercial forestry of that nature be caught by the definition that is used in the bill? I am not directing that question at anyone in particular.

Dr Keegan: That could have implications for the Climate Change (Scotland) Act 2009. I did put something in my submission about woodlands in and around towns.

We have seen an instance in which a developer put houses close to a woodland, which was there first. Doing that put the onus on the land manager of the woodland to take responsibility and chop down trees. One of our concerns is that if the definition is broadened out, that would be an unintended consequence.

Angus Yarwood: As Stewart Stevenson will know, woodlands and forests are covered by the Forestry Act 1967. As he pointed out, if someone buys a property where there are already trees, they are aware of that at the beginning.

We manage a mixture of urban and rural sites, as we have quite a lot of property around Livingston and Glenrothes, and our experience is that the only way to solve such issues is through dialogue with our neighbours. I appreciate that the bill has come up because dialogue is difficult to achieve, but if a wood or a forest is involved, that must be covered by forestry legislation. Whether that legislation is fit for purpose is a separate discussion. Certainly, I would not want woods or forests to be included in the definition that we are discussing, which needs to be restricted to hedges and boundaries where houses are close to each other. In essence, the nature of the problem is that people are living close to a boundary that is causing a problem. If someone lives in a rural area and has a forest next to their property, they have chosen to live in that place.

10:15

Stewart Stevenson: You have clearly laid out that you would exclude commercial forestry that is covered by relevant forestry legislation. However, there are other commercial wood-growing activities—for example, coppicing—that are not covered by forestry legislation. Where would you place those if they were otherwise to fall in the definitions? Would you exclude anything that has commercial value, or would you draw the line elsewhere? Or is that something that we should explore with a range of other people?

Angus Yarwood: It is not something that I have a particular view on. As far as I can see, if someone has a piece of land that is commercially forested, it is not captured by Scothedge's concerns; it is similar to someone having a piece of farmland next to where they live. My understanding is that the bill is looking at neighbour disputes about hedges or trees that cause a problem on boundaries. We are concerned with wooded land that is covered by forestry legislation; if anyone wanted to change its

use, they would have to go to the Forestry Commission for a felling licence and so on.

Stewart Stevenson: Sure. It might be worth saying that the committee seeks to understand the policy intention and whether the bill will deliver it. There may be a mismatch in that regard, which is partly why we ask the questions that we do.

Derek Park: The same thing applies to planning regulations. Some written submissions referred to developers using regulations to get more properties on to a plot. We are talking about a relatively low number of specifically domestic cases.

To answer the question about tree officers, we have used the data in the policy memorandum to work out that we expect an average local authority—there are 32 in Scotland—to have about two or three formal complaints a year over the seven years that it will probably take. Okay, there will probably be front loading, but there will be on average only two or three cases a year.

There are roughly 1.5 million ground-floor properties in Scotland, if we take out flats or apartments. If one in three of those has a hedge, that amounts to about 500,000 properties. We think there will be about 5,000 cases. Even if we included deciduous or single trees, we are talking about less than 0.5 per cent of the total Scottish domestic hedge stock. We are not talking about a huge undertaking involving tree officers going out with theodolites measuring the height of trees and chopping them down or about busybodies going round assessing whether a tree is 6ft or 6ft 1in; we are talking about a complaints-based system in which the people who complain will often be old, bullied, infirm, disabled, low-income people whose lives are, frankly, being made an absolute misery by vegetation.

Aedán Smith: Stewart Stevenson's woodland example highlights some of the potential administrative difficulties in trying to judge when trees or hedges are causing a problem. We can envisage that it might be difficult to work out to what extent a piece of woodland is causing a problem. It could be quite an administrative challenge to work that out. One of the challenges in progressing the bill is to ensure that it will be workable.

The biodiversity value of a commercial forest is likely to be relatively low, although it might still have some value. However, woodland surrounding houses may be of a different type with a much higher biodiversity value. We would be concerned if the scope of the bill was such that it would make it easier for works to happen that would affect such biodiversity.

Stewart Stevenson: As dense as the forest is, it has five badger setts in 76 acres as well as foxes, pheasants, a barn owl, buzzards and weasels—there is a lot there, even though it is dense. The presence of the badgers means that it might not be possible to cut it down anyway, as legislation would protect those five setts.

Pamala McDougall: We are not talking about chopping down and removing trees at all in the bill; we are talking about reducing them to a sensible height. I do not think that there would be fewer birds in my garden if the 50 to 60-foot leylandii were cut down to a decent 2m. We have all kinds of birds in our garden, and they roost and nest in 2m-high hedges just as well as they do in the huge ones. So, it is a bit of a red herring, although I appreciate Mr Stevenson's point about badgers and what have you. We have them in Angus, too, but they do not nest in our trees.

Dr Keegan: If someone had a 200-year-old deciduous tree in their garden, it would be quite hard to bring that down to 3m in height. Unless they are coppiced right at the beginning, most trees will not take pollarding, so that would be quite difficult. The other thing to remember is that older trees have biodiversity value in that they may provide roost sites for European protected species such as bats. A highly trained tree preservation officer would have to inspect a tree to see whether there was a bat roost present and, if there was, alternative nesting sites would have to be provided. In the case of a wind farm development, if trees are going to be taken down a bat survey must be carried out. I used to undertake bat surveys, and I know that it is quite difficult to assess whether a tree has the potential to be a bat roost.

Stuart McMillan (West Scotland) (SNP): There is much agreement on both sides of the debate about one of the fundamental aspects of the bill—certainly in what has been discussed over the past 20 minutes or so—in terms of the definition. There have been different definitions in legislation that has been passed elsewhere in these islands. This bill is based on legislation that was passed at Westminster, but the legislation that was passed in the Isle of Man contains a different definition. Which of the definitions is better or preferred from your organisation's perspective? Why should that definition be introduced here? What benefits or failings do you think that it would have if it were introduced in Scotland?

The Convener: Can we hear from someone from Scothedge first?

Derek Park: You are absolutely right. England and Wales have a definition although, as we say in our paper, it was a pretty second-rate job of producing a definition. That happened for various political reasons that I will not go into. Northern Ireland has something pretty similar. Our preferred definition is the one that is used in the Isle of Man,

because it is a wide definition. The wording is about something that stops people having reasonable enjoyment of a property. That gets the case in play. If someone considers that trees, shrubs, hedges or whatever are affecting their right to reasonable enjoyment of a property, they can raise a case. They will probably have to pay a fee—it will cost them some money; it will not be a frivolous or vexatious claim—but at least the process can then start to happen fairly for everybody. Everyone's concerns can be taken into account, including those of tree preservation officers and all the other people who might want to be involved from the local authority. We prefer the Isle of Man definition because it allows all the cases to be made. People can make a complaint and their case can be considered. If we do not do that, the danger is that people will just switch species. Believe me; our experience is that some pretty unscrupulous people are growing these hedges.

I will return to the point about native species. If that condition is put in place, the people will go down to Dobbies and buy the native plants, which will already be 20 feet high. People will be just as bad and cause just as much distress with native species—probably within a few months—as they have done with the dreaded leylandii.

We would prefer a wide definition and a tight process after that definition. Please do not exclude people from the start just because of some vagary about species.

Dr Keegan: It must be awful to live next door to someone who has such intentions.

Pamala McDougall: It certainly is.

Dr Keegan: We appreciate the misery that fast-growing hedges or whatever can cause, but if we broaden the scope there will be implications. We could put people off planting trees in gardens because of the likelihood that they would need to keep them within the specified heights. The future biodiversity value of urban sites could be decreased.

As I mentioned in our written evidence, we have had conflicts with neighbours in Cumbernauld, where a development went up after a woodland was established. Neighbours who adjoin our woodland now want some of our woodland cut down. If a big buffer zone had been created by the developer that might not have happened. One of the unintended consequences is that that could happen more often.

The issue is about having the right tree in the right place and there is Forestry Commission guidance on having smaller trees. If local authorities had that guidance to give to people and developers and if urban woodland and development was designed more about what will happen in 20 years' time, we would have fewer of these conflicts.

The Convener: In a former life I came across a similar situation. It was a case in which somebody bought a house next to a playground and then campaigned to get rid of the playground. Should there be something in the bill so that existing woodland is taken into account when a developer builds next to an existing tree line?

Dr Keegan: That would help. I am not a reserve manager, but I spoke to all the reserve managers when putting together the evidence. We have worked with developers on master plans, and then, further down the line, we have ended up with slightly different developments with less of a buffer zone than before.

In Cumbernauld glen, the development went up at the same time as the woodland was planted. We did not manage the woodland at that time. Larch was planted right smack next door to the houses, so 30 years down the line the houses would be shaded. We took over management of the woodland and the neighbours complained about the woodland. As it happened, the trees were larch, which has less biodiversity value, so we were quite happy to take out that line of trees. We then got a woods in and around town grant and planted native species further away from the houses and put in a shrub line.

That conflict would have been avoided if the developers had had guidance on what would happen in the future. They had put in the tree line to act as a buffer against a nearby road, to abate noise and things like that.

The Convener: Would Mr Smith or Mr Yarwood like to comment on the different definitions in legislation?

Aedán Smith: Sure. As I indicated earlier, there are advantages in the detail of the definition being quite tight. That could help to produce quite simple legislation that, because of its simplicity, would make an adverse impact on biodiversity less likely. There are two ways of looking at it. Either we go for a tight definition, which would prevent any adverse impact on biodiversity, or we go for a broader definition, with a more complicated and rigorous way of assessing individual cases. The disadvantage of the latter approach is that it will add additional burdens to the end of the process, when individual assessments are happening. For that reason, we have been relatively supportive of the current tight definition in the bill.

10:30

Angus Yarwood: I echo that. If there is to be a broader definition, we would want to go back and look at the other sections in the bill, particularly

with regard to tree preservation orders and the importance of heritage trees and the proper assessment of biodiversity value. We would want to ensure that tree officers have a basis in law rather than just guidance, so that they can explain why they are keeping certain trees, and that, although they might have an application to deal with a particular hedge, those native species have a biodiversity value that is enshrined in legislation.

We are open to that discussion, and—as Dr Keegan said—we are sympathetic to the situation. My family has experienced such a problem in the past, so I am very aware of the issues. However, I think that the current narrow definition will allow the bill to work quite nicely as it stands.

Stuart McMillan: Dr Keegan said something a moment ago about the need to have the right tree in the right place. There are examples of deciduous trees and forestry species in urban areas where they should not be. Given what goes on under the ground, they can create even more damage. That is an interesting point, and we certainly need to consider it.

Many folk will plant seedlings that they have purchased through mail order or that they have been given as a gift. They might not have a clue what they have got until they plant the seeds and things happen. I was told of an example from the west of Scotland last year, in which a 60ft Populus robusta was cut down and had to be taken out through the close of a particular area. Not everyone fully understands what they have planted, so the point about people knowing what they have is extremely important, and we need to understand that.

Dr Keegan: You certainly would not want a giant redwood in your garden, because they grow to 100m or whatever. Perhaps there could be guidance in nurseries to show people what a tree will look like in 20 or 30 years' time.

In London, people are advocating planting street trees. We should not forget that trees have a value other than just being nice to look at. They sequester carbon and slow water run-off, so they have ecosystem service values. In London, there is guidance on where to plant trees—it would be quite useful if we had that sort of thing here, even if it was only in nurseries.

The Convener: Such guidance will not come in under this bill, so I will skip that issue.

Pamala McDougall: We are getting away from what the bill intends.

The Convener: That is why I am steering the discussion away. If you have no comments on that, I will move to Margaret Mitchell.

Pamala McDougall: I agree that education plays a huge part, but the garden centres are not interested; they are interested only in selling trees. I just wanted to make that point about education and guidance—

The Convener: The bill will not do anything—

Pamala McDougall: Nor does it cover anything underground, so I think that it is out of our—

The Convener: That is why we are moving on.

Margaret Mitchell (Central Scotland) (Con): Good morning. It is obvious that the definition is key. If I understand Dr Keegan correctly, the Scottish Wildlife Trust's position is that you do not want the definition extended—you have ruled that out—and that in fact you would like it to be narrowed a bit. Others are perhaps more open-minded on that, as long as there are certain safeguards.

Dr Keegan, if you are in favour of even a narrow definition, you appear to have accepted the proposition in section 2(2), which states that a notice can be applied for

"where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have."

You have accepted that there are certain scenarios in that regard.

Knowing, as we do, that there could be loopholes and that deciduous trees could be planted that were not covered by that narrow definition, would it not be a way forward to look at it not so much from the perspective of the Isle of Man definition and its ethos, but with a view to protecting the historical, cultural and, according to RSPB Scotland, biodiversity benefits so that a commonsense approach could be taken without adversely affecting what everyone wants to achieve from the bill?

Dr Keegan: Yes, I can see that, but it would require quite a lot of expertise, and the issue is the capacity in local authorities and who the work would fall to. A well-trained expert is needed to assess the biodiversity value of an old tree. An old oak tree has a high biodiversity value by definition, but in other cases someone needs to have a good look to see whether a tree has a squirrel drey or whether it is a bat roost site, and I would question whether local authorities have the capacity to do that. Would it fall to tree preservation officers or to biodiversity officers? They are already quite hard pressed in their roles. If they have to carry out that work as well, will that affect biodiversity in other areas?

Margaret Mitchell: That is an important point and it is key to what we are discussing. Before anyone else gives me their opinion, I want to hear more about that. Is there not a huge problem with

enforcement? The Woodland Trust is concerned about tree preservation orders, but in my experience they are not worth the paper that they are written on. People just cut trees down, breaching tree preservation orders, and say, "Oops!" There is a huge issue about the lack of enforcement in local authorities, and that also impinges on the planning regulations issues that you talked about. Where builders have only guidance, is that strong enough? It seems to me that it is being breached as well. It would be helpful to hear some opinions on that.

The Convener: Dr Keegan, do you want to continue?

Dr Keegan: I should let somebody else have a go.

The Convener: Mr Yarwood, do you want to give us the Woodland Trust's point of view?

Angus Yarwood: Margaret Mitchell is quite right that tree preservation orders are not applied uniformly throughout Scotland for various reasons. Recently, we did some research on their use in the past 10 years or so, and their numbers have dropped off significantly. One local authority in Scotland is not even able to lay its hands on the legal documents, although most other authorities are much better prepared.

There is a big issue about enforcement and you are right to say that, in certain cases, the penalties are not high enough. The same is true of building regulations—if trees are cut down, the penalties are not high enough. However, that is a separate issue from the bill. The Parliament considered the issue when tree preservation orders were introduced in February 2011, but there are still problems with their enforcement.

Given the way in which local authorities deal with tree preservation orders and the difficulties that tree officers find in dealing with them, I think that a narrow definition in the bill will help them to deal with the problems that exist with high hedges. If the definition was broader, we would get into problems with how trees were assessed and the workload that that would place on those officers. There would also be all the difficulties that Dr Keegan described with assessing the trees.

Yesterday, I spoke to a colleague who is a site manager in Scotland but who worked in England when the legislation was introduced there. His experience is that, in bringing established trees or evergreen hedges down to an acceptable level, the local authority runs the risk of killing the trees or hedges. It will then be liable for that, because it is not in a position to be able to kill the trees; it can only help to control the problem. His argument is that, in the case of very tall leylandii or other non-native species, local authorities will not take any action because they run the risk of killing them. There are so many complications with opening up the definition. Keeping it clearly defined will help the people on the ground to deliver what the bill seeks to achieve.

Margaret Mitchell: Is there not a competing interest—the reasonable enjoyment of property, which is the very essence of the bill? Having a narrow definition might solve your problem with TPOs—I can see why you are worried about that issue—but do you not need to look at the bigger picture and hope that, when a particular situation comes before a local authority, it will look at it on a commonsense basis and determine where the greater need lies?

Angus Yarwood: Yes—that is the decision that local authorities have to make. It is worth talking about all the options, as that is why we are here. It is a question of judgment. As I have said, we come to the issue from a tree enjoyment and biodiversity perspective. As I mention in my submission, trees have other important benefits, particularly in urban areas. Planning policy in Scotland embraces place making and the greening of urban areas for lots of reasons to do with people's enjoyment of where they live, the health benefits, the removal of pollutants from the air, the provision of wind breaks and the reduction of energy transfer from properties into the environment. All of that helps with the climate change targets. There are numerous complications, which is what makes the issue difficult.

The Convener: Ms McDougall wishes to comment.

Pamala McDougall: I wonder whether the health deficits for the people who have to live on the other side of such hedges have been considered. People's physical, mental and psychological health is affected, as is evident from some of the telephone calls that I have had over the past 13 years.

We love trees, too. We agree with everything that Mr Yarwood has said about trees and biodiversity, but there are priorities to be considered. I am sorry but, as much as I love trees, I think that when it comes to weighing people's quality of life against the value of a tree, there are definite priorities to consider.

The Convener: In relation to Margaret Mitchell's question about trees that are covered by tree preservation orders, do you believe that, if such trees are causing grief to someone, they should be levelled?

Pamala McDougall: We are reasonably happy with what Mark McDonald's bill says about tree preservation orders because they usually relate to single trees as opposed to huge hedges. We do not have a problem with that.

Derek Park: It is just another factor that goes into the mix and must be considered.

Pamala McDougall: The photo that I am holding up shows a single deciduous tree that is covered in ivy. It acts completely as a leaf-bearing tree.

The Convener: Margaret, do you want to follow up on that?

Margaret Mitchell: No, thank you.

Anne McTaggart (Glasgow) (Lab): I return to the issue of fees, which was partially discussed earlier.

The financial memorandum includes an example of the projected costs that are associated with making decisions on applications for the imposition of high hedge notices. The bill does not specify an upper limit or cap on the fees that local authorities may charge. An indicative figure of between £325 and £500 has been suggested. Do you have any concerns or evidence to show that that may be prohibitive for some people who have been involved in disputes?

The Convener: Well done, Anne. I know how difficult that was for you, given the state of your voice.

Pamala McDougall: I have taken great interest in the fees side of things, because I hear many members of Scothedge talking about their fear that they will not be able to complain about high hedges.

We have definite proposals. We have looked at what has been done at Westminster and in other parts of the UK. Our first choice, for the sake of justice, is that the innocent party should incur no costs and the loser should pay the full costs. If deposits are required to prevent malicious or vexatious complaints, the complainer should have to pay a fee, but it should be returned if the complaint is upheld.

In Scotland, justice can be accessed through, for example, the small claims court. The fee for that is £65 for claims up to a value of £5,000. That is the fee to access the system. We fully recognise that there are other costs on top of that, but the fee to access the system is only £65. We do not think that hedge victims should be treated less favourably than any other victims. Although fees in England vary quite a lot, the average fee is roughly £350. In Wales, as the committee knows, there is an upper limit of £320, whereas in Northern Ireland it is £360. A wide variety of fees are applied.

Like COSLA, we would like the bill to be cost neutral, and we believe that it can be. In fact, we have been told in the documents that we have been given that savings might accrue as a result of statutory procedures.

We think that it should be a statutory requirement that fees be reduced on a concessionary basis. That is not in the bill. Local authorities have been given the power to decide. Some councils charge on a sliding scale or make concessions. In some cases, proof of mediation is required. Practice varies widely.

First and foremost, we do not think that justice would be served if a claimant who has lived in an awful condition for years had to pay hundreds of pounds. Most of these people—who are victims—could not afford it.

10:45

The Convener: Do any of the other organisations wish to comment?

Dr Keegan: That point was well made.

My only thought on having fees is this. If the bill was broadened, we would have to train people to assess biodiversity value. Will the fees provide the resources that local authorities will need to sort out such problems? I can see why a fee is needed, although I will not say who should pay it.

John Pentland (Motherwell and Wishaw) (Lab): I am reminded of the fact that one of the first surgery inquiries that I received as the newly elected MSP for Motherwell and Wishaw was on high hedges. Pamala McDougall highlighted the issue of quality of life, which was of great concern to my constituent. Following on from that inquiry, I wrote to Roseanna Cunningham to ask her when a bill would be introduced to tackle the issue, and I was informed that a bill was pending. I am not sure whether it was my question that led to the bill's introduction, but I will take the credit for it, along with my constituent.

My question is about appeals. As you are probably aware, the bill provides for an appeals mechanism. An applicant for a high hedge notice can appeal to the council, as can someone who has been served with such a notice. However, when an application for a high hedge notice has simply been dismissed, there is no room for an appeal. Do you have any concerns about that?

The Convener: Mr Park, do you want to answer first on the issue of appeals?

Derek Park: Yes. We have confidence that local authorities, along with the experts, will use all their powers to make correct decisions. If an appeal is dismissed, it is dismissed. That must be the end of the matter, as is the case in all law, unless it would be possible to go to the European Court of Human Rights or something—I am not sure about that. That would be the end of it as far as we are

concerned. I do not think that that holds any fears for us.

It is possible that there might be frivolous or vexatious claims. We are not holding a candle for every person who might want to use the process. There must be some sanction—that is fine.

The Convener: It appears that none of the other organisations wishes to comment. Do you have a further question, Mr Pentland?

John Pentland: No, convener.

John Wilson (Central Scotland) (SNP): I declare that I am a member of the Scottish Wildlife Trust, the RSPB and the Woodland Trust. I also have in my garden a leylandii hedge that may be more than 2m high, but I do not think that it impinges on the garden or property of any of my neighbours.

My questions are mainly for Scothedge. Your submission uses some fairly strong language. You say that a small number of people

"are happy to abuse and victimise their neighbours".

You say that

"the law uniquely allows"

trees and hedges

"to be used as weapons for that purpose."

Quality of life has been referred to. Members of Scothedge make complaints against their neighbours for having high hedges or trees that block out light or impinge on other aspects of their enjoyment of life, but the people who have such hedges or trees say that removing them would affect their enjoyment of their environment and would take away something that they are content to live with. How do you balance that? The neighbour of a complainant might say that they enjoy their high hedge or tree, that they have watched it grow and develop for 50 years and that they enjoy watching the wildlife that it attracts. They might feel that it is beneficial for their mental health and wellbeing, and that it is wrong to be asked to remove it by a neighbour who might have just moved in or who might not have lived there for as long.

Earlier, we heard the example of people who bought houses on a new estate in Cumbernauld glen, which was built in the past five or 10 years, and who wanted woodland to be cut down. What would you say to individuals in those circumstances?

Derek Park: You asked a lot of questions, so please bear with me.

I had better declare an interest, too. As I told Aedán Smith earlier, I am a fellow of the RSPB.

We are looking at specific circumstances. You mentioned the language in our written submission. It is strong because we are passionate and we strongly believe in what we are trying to do. The statement about weapons might be a bit strong, but I will give some examples of what we are talking about. The classic example is the brick wall. You are not allowed to build a 30-foot brick wall to upset your neighbour, but you are allowed to grow a 30-foot tree. At the moment, there is no recourse.

Another common example is that someone may apply for an extension to a house that would have a detrimental impact on a neighbour by, for example, blocking out light or a view—it would usually be a two-storey extension that would do that. We know of cases—mine is one of them—in which planning permission was refused on the grounds that it would block out light and the view, with the result that an extension could not go ahead. In my case, my neighbour is now happily cultivating dual rows of leylandii and silver birch trees in the knowledge that, whatever happens, he will be able to punish me, even though it was not me who objected to his planning application—I inherited the situation from a previous owner.

A fairly recent case, on which I will not give too much detail because it involves violence and vindictiveness, relates to a property that is designed to be eco-friendly. There was a dispute with the neighbour, although I will not tell the committee why. The neighbour has now taken the opportunity to grow deciduous trees in the knowledge that that will take the sunlight off the eco-house, with the result that it will be rendered useless. That is a new type of case that we are starting to see. Those are examples of how people can be vindictive.

You asked what we should do about the guy who says that he enjoys his tree. We just have to be proportionate. Trees are rarely grown high to the south of a property, because people always want to have access to light to the south, but they will quite happily grow them on the north side of their property and not care that the neighbour suffers, because they are okay. People often plant trees to block the views of other people in a development, but they maintain their open aspect and view.

We get a lot of backland development cases in which plots of land in big houses are sold off and little houses are put in. The owners of the big property then think that they can grow massive great trees around the border of their property and cut out all the small properties that belong to their neighbours. However, although a big tree at the far end of a huge garden might not be an issue, a big tree on the boundary of a small property that

does not have a lot of garden can be close to the building itself.

The issue is proportionality. A balance must be struck. We cover that at some length in our publication "A Growing Problem". For whoever makes the judgment, a key issue to consider is proportionality and whether the benefit that a tree has for neighbour A is wildly out of proportion to the detriment to neighbour B. If we have a good, robust and rigid process, we will be able to make those judgments.

The Convener: Will you clarify a point that you made, Mr Park? You said early on in that reply to Mr Wilson that a planning authority took into consideration lack of light and lack of view or the removal of a view. It is my understanding that planning authorities do not take view into consideration.

Derek Park: That is not what I was told in my case. However, as I said, it was not to do with me, as I bought the house from somebody else. I accept that perhaps planning authorities do not take view into account. That is why we need to go back to the definition of reasonable enjoyment of a property.

Dr Keegan: We have a case that relates to view. We have Southwick coastal reserve, which is a site of special scientific interest—a nationally designated site. One of the neighbours said that some trees blocked his view of the Solway Firth. We worked as we could and took out some of the hedge-like aspen trees, but we have native oak trees that have been there for a couple of hundred years and are part of the definition of the SSSI, so we do not want to take them out. I wonder what would happen under the bill if it mentioned views.

John Wilson: That is the issue that I am trying to get to. Areas move on. Major housing developments are taking place throughout central Scotland. The Cumbernauld glen example is a good example of a developer coming along and building houses that encroach. In some areas, communities feel that they are being encroached upon because of the developments that are taking place.

Existing communities have built up trees, shrubs and hedges for the community. When a development comes along, how do we measure the value of those trees to the individuals who have lived in the area and grown them? If somebody who moves in says, "My view is being obstructed. I don't like the trees, so I want them to be removed," and starts taking out notices under the bill, would that be seen as frivolous and vexatious?

Angus Yarwood: There are a couple of points in that. There are plenty of examples of developers having developed on the land around historic houses as it has been sold off.

Aedán Smith is a planner, so he might be able to answer the question about views.

We must remember that, as the football pitch diagram that Mr Park held up earlier indicates, we are all of the view that we can deal with the majority of the hedge problems that are being discussed. The Woodland Trust is focusing narrowly on deciduous trees.

11:00

John Wilson: You might be agreed on the hedges issues, but the Scothedge submission refers to inappropriate tree growth, trees blocking light and the leaf litter that trees cause. It is much wider than just hedges.

Angus Yarwood: Yes. I just wanted to point out that deciduous trees are a narrow issue. I agree with what has been said about properties being built near trees that are already there. There are lots of examples of developments being built close to fairly young trees—we have talked about oak, but there are other examples—that, over many years, will grow to a bigger size. You must appreciate the process that native and deciduous trees go through of maturing into large trees and then falling back as they die over the years. Those dimensions are often not included in planning considerations.

Pamala McDougall: I think that Mr Wilson mentioned cutting trees down. I hope that he does not mean cutting them out. Did he mean bringing them down? It is slightly ambiguous.

John Wilson: No. Dr Keegan indicated earlier that, if we cut some trees too far, we kill them off. There is the potential for losing a tree by cutting it too far. There are issues with what type of tree we are talking about and how far someone wants to cut it back. The bill has a 2m maximum height but to take some older trees down to 2m would destroy them and the wildlife that uses them.

Pamala McDougall: The tree officers have a lot of expertise in the matter and we have a lot of trust in them.

John Wilson: I refer you to Margaret Mitchell's earlier comment that TPOs are sometimes completely ignored. People cut down trees and then say, "Oops!"

Pamala McDougall: We are not concerned about the TPOs.

Aedán Smith: If it is helpful, I can confirm how the planning system deals with views and impact on light because, for my sins, I am a former local authority development control officer. The effect on light on private property would be a planning

matter. The effect on a private view would not be a planning matter, but the effect on a public view would be.

The Convener: Thank you for that clarification, Mr Smith.

Derek Park: I will go back briefly to the point about the danger of killing a tree. It would not be good to put into the bill, as was put into the legislation down south, a measure that said that the deal is off if there is any risk—I think that that is what Angus Yarwood said—of the tree being killed. That would be particularly unfair in Scotland, because we have waited for legislation on high hedges since the Scottish Parliament was set up and the problem has grown for another 13 years.

Such a measure would, in a way, reward the worst cases. The fact that people have failed to do the decent thing and control their shrubs, trees or hedges should not mean that they have a way out because there is a risk of killing the tree. Even some tree surgeons down south are loth to get involved, because the local authority is trying to get them to carry the risk.

John Wilson: Are you content that, if there was any risk of a tree being killed off by the actions proposed under a high hedge notice, it should not be touched?

Derek Park: No—quite the opposite. We would say that that was not of any relevance. If a tree is judged to cause concern and nuisance, the remedial work should be done and, if it kills the tree, I am afraid that it kills the tree. People are more important. That will happen. I am sure that, occasionally, a qualified tree surgeon will work on a tree and the consequence will be disease, which will kill it.

John Wilson: Thank you for that clarification.

I want to move on to the timing of any remedial action. Submissions from the RSPB and others indicate that the timing of action to chop down trees or hedges might have an adverse impact on wildlife that uses those trees or hedges. Would Scothedge be content with the idea that any remedial action should be taken outwith the breeding season of any wildlife that uses that habitat?

Derek Park: Absolutely. We would have no problem at all with that.

The Convener: Thank you. Do other members have questions?

Stuart McMillan: How would the bill deal with a situation in which there was a tree or a hedge in the garden of a house that was in local authority area X but which was adversely affecting a neighbour in local authority area Y?

The Convener: Do witnesses have opinions on that? That is probably a complicated question for everyone bar the former development control officer.

Derek Park: Our answer is that we would rely on you experts to solve that problem for us.

On a serious note, I do not think that such a situation should preclude action being taken.

Aedán Smith: If a planning application had been submitted, there would be a requirement to consult the neighbours, regardless of whether they lived across a local authority boundary. The planning application would go to the authority in which the development was to take place. I guess that the bill would work in a similar way, and that the authority in which the tree or the hedge that was being dealt with was situated would be the lead authority on the matter, but there would need to be scope for cross-border co-operation.

The Convener: Thank you very much. I bet that you did not expect all these planning questions, Mr Smith.

Mark McDonald (North East Scotland) (SNP): I am having flashbacks to days on the resources management committee of Aberdeen City Council—although the convener will be pleased to learn that they are happy ones.

I have two questions, the first of which is about the situation in the Isle of Man, which Stuart McMillan raised. My understanding is that the Isle of Man Government is seeing difficulties arising with enforcement of the legislation, in relation to deciduous trees and shrubs. If the bill were broadened, would that give rise to complexity and enforcement difficulties? How do you see that playing out?

Angus Yarwood: I am trying to think of points to make that would be additional to those that I have already made. I can see why the Isle of Man might be getting into that position, particularly if it is having to weigh up all the different benefits of the trees. I do not know what the guidance is like for tree officers on the Isle of Man, so it is difficult for me to comment. I do not know into how much depth the guidance goes. I am thinking about the issue from the other side of the fence, as it were. Perhaps the guidance could be tightened up so that it is clear and easy to follow. Maybe there are ways round that. It is hard to say without having looked at the situation there.

Aedán Smith: I am conscious from my experience of working in development control that definitions are often extremely challenging. Although it was not a major part of my work, I know that working on tree preservation orders could involve getting into debates about issues

such as "When is a tree a tree?" which can be quite difficult.

As we have discussed, it is important that we get definitions right. I think that the relatively simple and clear definitions in the bill are quite useful. As I have said, I think that if the bill were to be broadened, it would be more onerous and it would require a fair bit more work to assess each case.

Dr Keegan: I imagine that there would be difficulties around biodiversity value. If there was a scoring system for trees, an expert would have to be brought in to decide, and there could be disputes. I have seen cases in which there has been a nest in a tree and then suddenly it is not there any more. There may be unintended consequences.

Derek Park: The Isle of Man case—for those who are not familiar with it—was complicated because it involved a layered set of hedges and ground-elevation changes. The judgment hinged on light, and on the gradient across the hedges. The hedges near the affected property were short so that the sun could get in, and those further back were higher to give the hedge grower privacy. There is no problem with that, but the complainer appealed, because in his view all the hedges should have come down to 2m. That is the point that was raised earlier: no one is saying that everything should be down to 2m. An appropriate judgment might involve a height of 3.5m or whatever, but in that case the judgment was appealed because the complainer was under the impression that the height of all the hedges should have come down to 2m. The appeal was thrown out and the gradient was established, which we agreed with. That case was complicated, but not because it involved deciduous species. That was by the by: they were just trees and the issue had nothing to do with the species. It was all about the arrangement, the gradient and the different ground levels. I do not think, therefore, that the Isle of Man case has much relevance.

Pamala McDougall: I support everything that Mr Park said. New bills bring up strange and difficult cases, and that was one of them, but it is only one.

Mark McDonald: I have a couple of questions on fees. First, Dr Keegan, Mr Smith and Mr Yarwood spoke about the biodiversity assessment and further assessments that would be required if deciduous trees were to be included. They might like to comment on whether that would have an impact in terms of costs to the authority, and subsequently, because the fees that would be levied would be much higher than might be the case under the current definition.

Dr Keegan: There would be an impact if an authority were to use someone who did not know a lot about biodiversity, because that person would need a lot of training. As I said, I used to do bat survey work when I was a consultant, which is quite a specialist job and not something that you can learn in a couple of hours. If the person was not trained in that, the authority would have to get in and pay a bat specialist to carry out the survey.

Aedán Smith: I point out that in our submission we suggest that biodiversity should be considered in the current proposals. However, given that the current proposals contain a tight definition that would cover only species that are generally of lower biodiversity value, an additional assessment of the biodiversity value would be needed if the definition was broadened out. That might result in more work.

Angus Yarwood: The number of biodiversity officers and tree officers in local authorities has been hard hit in the past five or six years. Fife has one part-time tree officer, and I think that I am right in saying that Edinburgh has gone from four or five members of staff in its tree officer group to two or two and a half. That is quite common throughout Scotland because of the economic climate. If authorities have to upskill staff and provide extra training for biodiversity or tree survey work, there will undoubtedly be an impact.

Derek Park: We have all said with regard to the bill that we are where we are, but I am backtracking a bit on some of the earlier proposals. In Wales, there is a central tree officer—or whatever you want to call the person—to provide a core of expertise that covers the whole of Wales. We have advocated that in the past as a possibility for Scotland so that we could pool the expertise and make it available to all the local authorities.

11:15

Mark McDonald: My second question is directed at Scothedge. If I apply for Mr Stevenson to deal with his high hedge, which is affecting enjoyment of my property, and the authority finds in my favour, my fee will be reimbursed and the costs recovered from Mr Stevenson. How would you recover the cost? What is the potential cost benefit to a local authority of pursuing Mr Stevenson for the fee, given the cost of pursuing him?

Pamala McDougall: The recovery of fees, if that is what you are talking about, would surely be as you propose in the bill. I do not see any difference in the recovery of moneys from the loser—

Mark McDonald: I am sorry. I will try to explain better. There is a mechanism in the bill to recover

costs when the authority undertakes work. However, if that does not happen, I am thinking about proportionality, given the cost to the authority of pursuing Mr Stevenson for the fee, compared with the money that it would get back from him.

Derek Park: If the costs were prohibitive there would be no point in pursuing him. However, the key point is that the complainer whose complaint has been upheld should not suffer. We have never looked to punish people; we have never gone out to put people in the wrong or get back at them. That is not what we are after. We are looking to protect the interests of the people who suffer; we are not looking to punish the people whom we think cause the suffering.

Mark McDonald: Thank you.

The Convener: If committee members have brief questions, I will let them back in.

John Wilson: Mr Park mentioned the Isle of Man case in which the issue was whether a height of 2m or 3.5m was regarded as a barrier to light for the neighbour. The bill is specific, in that it says in section 1(1)(b) that it will apply to a hedge that

"rises to a height of more than 2 metres above ground level".

Would you be content if a council officer came along and said that they did not accept that 2m was too high and the hedge could be 3m or 3.5m high, rather than taking a blanket approach and enforcing a height of 2m?

Derek Park: We should be careful not to confuse the trigger height for initiating the process with the findings of the process. I absolutely accept that 3m might be appropriate in some circumstances. In my case, about 4m would do me, to be perfectly honest—just not 5.5m or 7m, which is the height of the trees now.

John Wilson: Thank you for that clarification.

Margaret Mitchell: What are the panel's thoughts on the justification for not including a single tree in the scope of the bill?

Pamala McDougall: The picture that I brought demonstrates the issue. It is of a neighbour's tree. A single tree can keep out as much light as a row of two or three trees in a hedge can do. That is the point.

Margaret Mitchell: I agree.

Derek Park: We have come across cases of single trees being very close to a neighbouring property, because a driveway is narrow, for example. It would be a shame not to sweep up such situations in the bill.

Dr Keegan: Again, it is about having the appropriate tree in the appropriate place.

Aedán Smith: I talked about the benefits of keeping the definition narrow and tight. In principle I have no opposition to extending the scope of the bill, provided that those safeguards are in place.

Angus Yarwood: Different people have different views about whether a tree is a problem or a pleasure. There are issues to do with age and whether a problem has arisen after the tree has been established or because the tree is young and is growing quickly. The historic and cultural value of the tree is an issue.

The Convener: No one else has caught my eye. I thank you all for your evidence.

11:20

Meeting continued in private until 11:45.

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