

Local Government and Communities Committee

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

Submission from Angus Council

This submission addresses the questions outlined in the call for evidence from the perspective of officers of Angus Council who have experience of implementing the High Hedges (Scotland) Act 2013. It does not represent the corporate view of Angus Council but aims to relate the experiences of officers of the Council in relation to the operation of the Act to date and possible opportunities for further improvement of its implementation.

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

The legislation is considered to be clear to an extent in terms of what is considered to be a high hedge. Where it has not been helpful is in relation to:

What constitutes a hedge. This has led to the Council, reporters and the public largely falling back to the definition of a hedge as defined by the Collins and Oxford dictionaries.

There is still a question of whether the high hedge definitions provided applies to 'high trees'. The Revised Guidance to Local Authorities (2016) does not fully represent the meaning as described in the Act as it omits to indicate that it must be a hedge. The narrow definition contained in the Act does not seem to expressly exclude them and the difference of interpretation between the Act and guidance could lead to some believing that the "high hedge" legislation is in fact "high tree" legislation.

Whilst it is acknowledged that further clarification has been included in the revised guidance to local authorities in relation to 'Woodland' it is considered that this aspect has still not been sufficiently clarified.

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

This Council has had experience of the full appeals procedure on one occasion. To date the Council's decision has been upheld and the process has largely mirrored the experience of planning appeals.

The appeals procedure has been useful in the respect that we have used decisions issued by reporters to help guide our practice. However this also highlights a weakness in so far as it demonstrates that many elements of the Act and guidance are open to differing interpretations e.g. the definition of woodland.

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

There is a sense that this can be quite a burdensome process. It can require a lengthy process of negotiation with the hedge owner sometimes much to the annoyance of the applicant. The guidance advises that each local authority must decide its own policy and approach to enforcing high hedge notices. This as with fees can lead to the perception on the part of applicants/hedge owners of an inconsistent approach and being treated differently in different local authority areas. On the part of the Council, there is the fear that it would be difficult to recover the costs as this element is reliant on the individual process of each Council.

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

Angus Council is as far as we are aware charges one of the lowest fees for an application for high hedges (£275). It was acknowledged in setting the fee that it would not cover all the costs incurred by the Council in determining an application; however, the fee level set was considered reasonably affordable. There is the perception on the part of applicants that they are the aggrieved party and should not have to bear the cost and we have some sympathy with this view. There is a disparity between authorities and we have responded to requests for information in respect of the fee that we charge.

We have also responded to question by prospective applicants regarding exemptions and reductions in fees. Angus Council does not offer exemptions given that our fee is set at such a low level initially. However, this aspect has been commented upon by some prospective applicants who are aware that exemptions and reductions are available in other local authority areas. This has led to a perception of unfairness and the question of how the operation of the Act can differ between local authority areas.

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

Not relevant to local authority response.

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

Reasonable enjoyment of property only really becomes a consideration in the determination of an application and not in what is considered when determining what is a high hedge.

The question of reasonable enjoyment is quite subjective and hard to quantify. This is a key consideration of any High Hedge application yet the guidance does not provide any substantive guidance of the factors to be considered. The Council's decision on this aspect may not meet the applicant's or hedge owners view of what this test relates to and thus could be the catalyst for an appeal or feeling that they have been unfairly treated.

There is no specific Scottish guidance relating to the impact of high hedges on daylight/sunlight. The Building Research Establishment (BRE) Hedge Height and Light Loss (March 2004) guidelines which were created to help local authorities in England and Wales make decisions are useful; but, have limitations in respect of the situation in Scotland. The BRE guidelines relate to evergreen hedges and as the guidelines note, have not been designed to be applied to groups of trees which can be the case in Scotland. This leaves assessments made based on this guidance open to challenge and as possible grounds for an appeal. Therefore, there would seem to be a need for guidance which reflects the circumstances that would be encountered in respect of the operation of the High Hedges (Scotland) Act.

The Council has adopted a cautious approach to the consideration of high hedge applications due to the numbers received, circumstances encountered and evolving landscape in terms of appeal decisions issued. Firming up definitions and additional supporting guidance could help to reduce the determination periods for applications.

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