

ABERDEEN CITY COUNCIL

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COMMITTEE	Development Management Sub-Committee	
DATE	8 <sup>th</sup> November 2012	
LEAD HEAD OF SERVICE Margaret Bochel		DIRECTOR Gordon McIntosh
TITLE OF REPORT	Response to call for evidence on High Hedges (Scotland) Bill	
REPORT NUMBER	EPI/12/250	

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1. PURPOSE OF REPORT

Providing a formal response to the Scottish Parliament for their call for evidence on the High Hedges (Scotland) Bill.

2. RECOMMENDATION

It is recommended that members approve the response as set out in the appendix to this report as the Council's formal response to the call for evidence.

3. FINANCIAL IMPLICATIONS

The Council will have powers to set the amount it can charge to deal with an application / complaint of a high hedge.

4. OTHER IMPLICATIONS

Enactment of the Bill in Aberdeen is likely to become a function of the Planning and Sustainable Development Service.

Regardless of the number and level of complaints / applications that might be received there is a resource issue in the first instance because of the need to prepare guidance notes. This can be covered by existing resources. Continuing resources will be required depending on the level or number of complaints / applications. Charges can be set to help offset this cost.

5. BACKGROUND/MAIN ISSUES

The purpose of the High Hedges (Scotland) Bill is to provide a solution to the problem of high hedges. The problem of a high hedge is considered where it is having an adverse effect on the reasonable enjoyment of a domestic property and where this causes a dispute between neighbours. There is currently no legislation in Scotland governing the height of a hedge. The Bill seeks to define a high hedge, provide an effective means of resolving disputes amicably between neighbours and enable local authorities to issue

high hedge notices. The notice would be issued to the owner of the high hedge requiring them to take action to remedy the problem. The Bill also seeks to provide for an appeals procedure to the issuing of a notice, give local authorities the power to undertake the works specified in a notice if it is not complied with and for local authorities to recover the costs for the works from the hedge owner.

The proposed system of dealing with disputes arising with high hedges in Scotland is to mirror the system currently in use in England, Wales and Northern Ireland. There is a requirement for complainants / applicants to have taken steps to resolve the matter with the owner of the high hedge prior to the submission of an application to the local authority. Evidence of this will be required to be submitted with the application before the local authority will deal with it.

If an individual wishes to make a formal approach to a local authority to investigate a complaint about a high hedge they will be required to submit a fee set by the local authority, with supporting evidence. The local authority can dismiss the application if they consider that it is 'frivolous or vexatious'. The officer charged with dealing with the complaint within the local authority will then have to consider all of the facts, including taking measurements and speaking with the hedge owner and the applicant before making an assessment and coming to a decision. The decision process will follow a 28 day period of consultation with the hedge owner and copies of any representations will be passed to the applicant.

Once a decision has been made the local authority will then issue a notice to the hedge owner who is required to carry out works to comply with the notice. At this stage both the applicant and the hedge owner have the opportunity to appeal against the decision. An appeal can not be made by the applicant if the application is dismissed in the first instance for being 'frivolous or vexatious'.

The owner of the hedge that is the subject of the high hedge notice is required to carry out the works specified at their own expense. The notice will advise the hedge owner of the local authority's power to enforce the decision and recover from the hedge owner the costs of doing so, if the hedge owner fails to comply with the requirements of the notice.

The high hedge notice is binding not only on whoever is the owner of the land on which the hedge is situated at the time of the notice is issued but also on successive owners.

## 6. IMPACT

The High Hedge (Scotland) Bill contributes to the following single outcome agreement outcomes; national outcome 11 – We have strong resilient and supportive communities where people take responsibility for their own actions and how they affect others and national outcome 12 – We value and enjoy our built and natural environment and enhance it for future generations.

The Bill will contribute towards the E, P & I Service business plan through priority number 3 - Protect and enhance our high quality natural and built environment.

## 7. BACKGROUND PAPERS

High Hedges (Scotland) Bill 2 October 2012

[http://scottish.parliament.uk/S4\\_Bills/High%20Hedges%20Bill%20\(Scotland\)%20Bill/b16s4-introd.pdf](http://scottish.parliament.uk/S4_Bills/High%20Hedges%20Bill%20(Scotland)%20Bill/b16s4-introd.pdf)

High Hedges (Scotland) Bill, Policy Memorandum, 2 October 2012

[http://scottish.parliament.uk/S4\\_Bills/High%20Hedges%20Bill%20\(Scotland\)%20Bill/b16s4-introd-pm.pdf](http://scottish.parliament.uk/S4_Bills/High%20Hedges%20Bill%20(Scotland)%20Bill/b16s4-introd-pm.pdf)

Aberdeen City Council response to call for evidence on High Hedges (Scotland) Bill

## 8. REPORT AUTHOR DETAILS

Duncan McGregor

Arboricultural Planner

[dmcgregor@aberdeencity.gov.uk](mailto:dmcgregor@aberdeencity.gov.uk) / (01224) 522440

Aberdeen City Council

High Hedges (Scotland) Bill

Response to call for evidence

**1. Do you agree with the definition of a high hedge as set out in the Bill? If not, please provide details;**

Response: - Yes, the Council agrees with the definition of a high hedge. The definition as detailed within the Bill is specific enough that it leaves no room for doubt. The definition is clear for the purpose of the Bill. Part of the definition is that the hedge 'forms a barrier to light' but should the definition also include the other general nuisance caused by a high hedge. For example, the effect of visual domination caused by the sheer scale of the hedge maybe enough to prevent the reasonable enjoyment of a private garden.

**2. Do you consider that other forms of vegetation should be covered by the provisions of the Bill? If so, please specify why?**

Response: - No. To include other types of vegetation further confuses the issue. There is also a risk that if this legislation included individual trees for example, then it could be used to require inappropriate works to trees covered by a Tree Preservation Order.

**3. Do you have any comments on the proposed approach to dispute resolution as set out in the Bill?**

Response: - In preparing guidance the Scottish Minsters (reference section 31 sub-section (1) for the Bill) should make clear the due process an applicant has to have gone through before an application is made to the local authority. The use of examples must be considered as part of the guidance as to when is an appropriate time to contact the Council. The form of the dispute resolution should be detailed as part of any application to the Council and must include a level of detail that demonstrates applicants has taken any necessary steps to resolve the matter before approaching the Council. Any guidance note also needs to make it clear as to the role of the Council in resolving the dispute. This is to ensure that both the applicant and the hedge owner are clear as to the level of and reasons for the involvement of the Council.

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

Response: - It is right that if the decision notice is not complied with then local authority has the right to carry out the works and recover the costs. It is also

right that in issuing a 'notice of liability for expenses' this is a burden on the land. This is more likely to ensure that if the Local Authority does have to carry out the required works then they can be sure of recovering the costs. It is hoped that this will be a sufficient deterrent to avoid high hedge disputes going this far.

**5. Do you have any comments on the proposed fees and costs?**

Response: - The Council agrees with the Bill that each individual Local Authority has the right to set their own fees. There is no doubt that dealing with a high hedge application will require additional resources and therefore it is right that local authorities can determine the level of fee required to carry out this duty. The effectiveness of individual local authorities to determine high hedge applications will vary between local authority areas and this will be reflected by the level of fee charged.

**6. Are there any aspects of the systems used in other jurisdictions which should be included within this Bill?**

Response: - In determining an application the guidance note to be prepared by the Ministers should include details of a formula or mechanism for helping to work out the final height of the hedge such as they have in England, Wales and Northern Ireland. The high hedges and light loss guidance prepared by the Department for Communities and Local Government introduces a formula for determining the height hedge should be to prevent the blocking of light. Details of a similar formula / mechanism in Scotland can then be used as part of the reasons for the decision. By having a standard formula or mechanism that can be used by all local authorities in Scotland will ensure a fair and transparent system across the country. This would also allow for a fair and transparent appeals process.

**7. Are there any aspects of this Bill which would impact positively or negatively on equality of opportunity?**

Response: - No

**8. Any other issues relating to the Bill which you wish to bring to the attention of the Committee?**

Response: - No