



SCOTHEDGE RESPONSE TO CONSULTATION

HIGH HEDGES AND OTHER NUISANCE VEGETATION

In support of the consultation questionnaire SCOTHEDGE provides two documents:

A GROWING PROBLEM AND SURVEY 2009

"A Growing Problem" gives a comprehensive overview of the issue and is a substantial and topical reference manual accumulated from the experience and records of Scothedge and their English parent Hedgeline. Since 1998 these bodies have supported and campaigned on behalf of all U.K. victims of high hedge misuse and shared the effort to gain legislation prior to devolution. Scothedge currently has a case load of over 300 members which after demographic adjustment against England & Wales is comparable to Hedgeline's 4000 members UK wide. The Scothedge membership database is available for audit subject to confidentiality constraints.

"Survey 2009" is the analysis of a statistically significant 100 cases in Scotland and is assembled from signed responses to a questionnaire sent to around 150 Scothedge members immediately prior to the Government's consultation. The publicity surrounding the consultation and the growing public anticipation that Parliament is finally prepared to legislate has resulted in the increased Scothedge membership which we see today.

The membership of 300 are all serious cases where dispute has resulted because there is no statutory means for arbitration and because the complainant has no fair and unbiased access to resolution. The growing of vegetation to any height is not illegal in Scotland, there is no right to light or view and no institution has the authority to protect a complainant from careless, selfish or malicious deployment of high hedges or any other vegetation which damages their living space grown within a private property. None of these cases could benefit from a voluntary method of resolution based on mediation because currently the owners of problem vegetation can stand on their rights and refuse complainants any consideration. Cases soluble by voluntary means are not disputes in this context.

With this documentation Scothedge presents the Scottish Government with evidential quality information of specific relevance to this issue. It includes the hindsight gained from the existing 2005 implementation of the Westminster

2003 amendment to their Antisocial Behaviour Bill. It also offers what Scothedge believes to be a workable, cost effective and proportionate method of resolving this long standing and distressing problem.

The Questionnaire

Q1 TICK BOX 1 The Government must intervene to end the impunity which allows the owners of vegetation to unreasonably devalue the homes and gardens of those outside their titles. Only the Government, as Scotland's legislator, can do this. Legislation should create a legally empowered authority to inspect a resident's complaint and if confirmed offer a last resort remedial order.

Q2 TICK BOX 4 Legislation is required since the issue arises solely because the law is deficient. Any suggested alternatives which imply the possibility of a fair outcome where one party is empowered to refuse resolution will enable no resolution, regardless of fairness, and will simply perpetuate vindictiveness with impunity.

Q2a TICK BOX 1 There is no alternative to item 4. The other suggested options are based upon the premise that there is negotiation equality between the vested interests. There is no such equality. The complainant has no rights to require the reduction of hedge or tree height. The vegetation owner has no legal responsibility to respond.

Q2b Refer to Scothedge "A Growing Problem" and Survey 2009. Complainants cannot be helped by Local Authorities or the Law since there is no crime being committed when trees and hedges cause problems by virtue of their height. Local Authorities tell complainants that they must await new legislation. Mediation has no power to enforce fair response. The law has changed in England and Wales and the Northern Ireland Government is backing arbitration as they draw up a consultancy stage. The issue arises because vegetation owners cannot be called to account and therefore can behave without concern. Scothedge has discouraged illegal action by deeply frustrated and damaged members, advising them to await democratic legislation by the Scottish Parliament. This should now be put in place without any further delay.

Q2c TICK BOXES 1, 2 & 3. It is clear from all the foregoing answers that any measure short of legislation is to be opposed since the victims of vegetation tyranny can only be protected by having statutory rights which they do not currently possess.

Q3 "Reasonable Enjoyment of a Property" has the merit of precedence being established by the Westminster legislation. It is up to the legislators to determine the legally appropriate legal context for legislation under Scottish Law but the Westminster precedent may be convenient. The argument that a

nuisance vegetation dispute degrades the enjoyment of a home and garden is correct.

Q4 TICK BOX 1.

Q4a Despite well known flaws, the underlying process of third party inspection with the power to enforce remedial orders is straightforward and clear in its process. It works demonstrably well in England. There is no need to attempt to invent a new process which may not perform to plan. Far better improve the Westminster process by the provision of better guidelines and implementation practices.

Q4b On the basis that the Westminster legislation only needs improvement to provide the solution, there are no reasonable alternatives.

Q4c TICK BOXES 2-5. On the basis that the Westminster legislation has a track record, none of the alternative delivery systems appear relevant.

Q5 TICK BOX 3. As explained in our paper "A Growing Problem" it is the problem rather than any specific definition of a hedge which requires confirmation or rejection by the inspection process. It should be left to the adjudicator to decide whether a problem qualifies for statutory resolution.

Q6 TICK BOX 2. To attempt to define a "hedge" in this manner creates many anomalies and prevents resolution of many real problems caused by high hedges and other nuisance vegetation. The problem should be assessed based on guidelines which would allow a more realistic judgement of individual situations.

Q7 The costs to complainants presently arise from:

- Labour costs trimming overhangs and roots.
- Engaging tree consultants to assess problems and to support claims.
- Added costs of garden maintenance, gutter clearance and house lighting.
- Legal costs when engaging lawyers to argue their case for hedge and tree trimming.
- Loss in value of property.
- Delays in property sale because of dispute.

Survey 2009 found that these costs averaged £310 but their variability hides the fact that in cases where complainants have sought professional advice or abated major overhangs hiring contractors, costs of £1000-£4000 are not uncommon, solely because the vegetation owner will not take responsibility for their plant. Property devaluations may be much higher and amount to tens of thousands of pounds. The suggestion that this shows a willingness to pay should be treated with caution. Rather it shows how desperate victims are in

the face of denial of a fair and reasonable outcome. Most however cannot afford such expense.

In England the Local Authorities are free to charge an uncapped fee for the inspection service. This has created a postcode lottery and enabled Local Authorities to price the service beyond the means of financially weak complainants leaving the process only available to those who can afford it.

Additionally the service is usually called in by the complainant whose fee is not reimbursed should inspection establish the complaint to be justified. This is tantamount to being required to pay for justice. Furthermore there have been cases where the vegetation owner has simply forced the complainant into inspection using the fee as a further vindictive method of penalising the sufferer.

In England, under what proved to be a false expectation that there would be some 40,000 inspections, it was decided to require every Local Authority to provide inspectors and an implementation service, but this resulted in major duplication of services and costs. The Welsh chose to deploy a single inspector at the disposal of L.A.s. and whilst this was more economic, it presented other problems, largely arising from assessments being made by one individual whose opinions and prejudices could not be challenged and debated.

In Scotland, fair and cost efficient implementation would best be achieved by the establishment of a central team incorporating a legislation specialist, an arboriculturalist and a floating representative of the complainant's local council.

Given that the average calls for inspection over a four year period in England was some 400 per year and falling and considering the demographic difference in Scotland, a central team of this sort is worth consideration.

Q8 TICK BOX 1. Although flawed in its design and implementation, the English legislation has substantially succeeded within its limitations. Undoubtedly the major success has been the voluntary capitulation of the party in a dispute who foresees failure at inspection. This is considered to have been the major reason for the reduction of the estimated 40,000 cases to 400 actual cases per year.

Q9 In the Scothedge decade of working with complainants, the absence of complainant rights has evolved as the real reason why serious and unfair disputes arise and become interminable. This view is clearly supported in the two documents provided by Scothedge who at the time of submission represent over 300 complainants from Kirkwall to Gretna and from Sannox to Dundee. These are comprehensive documents which should be of value to the Community Safety team working with the Minister Fergus Ewing.

Commentary

The majority of neighbours live in harmony with each other and will collaborate over the management of their vegetation either by direct agreement or with the aid of specialist advisors or mediation services. Such behaviour is part and parcel of residential life.

The raison d'être for the call for legislation is the legal freedom to grow High Hedges and Other Nuisance Vegetation to any height regardless of any devaluation of nearby homes and gardens. This freedom is unchallengeable and places the owners of such vegetation as the judge and jury when major problems face a nearby resident. This locks the door to any negotiation should the vegetation owner not offer a key. **This unfortunate inequality is deeply damaging to happy sharing of the residential lands otherwise regulated by community planning laws. The symptom may be antisocial behaviour but the cause is legal imbalance, which provides the opportunity for abusive behaviour or vindictive action.**

Accepting that this right protects the vegetation owner against unsustainable complaint there is no adjudication to qualify the complaint so the owner is seen to be imposing a decision from a position of authority rather than mutual goodwill. How much worse it is when a clearly serious complaint can be rejected under the protection of the law or where the legal deficiency enables some other motive to secure malicious or retaliatory use of vegetation to harm a neighbour intentionally.

Neighbourly friendship is not universal and can and does break down very quickly, especially when a reasonable challenge over problem vegetation is rejected from a position of absolute power immune from reasonable and equitable negotiation. The instant this breakdown takes place the request for sensible outcome becomes a dispute between antagonists because there is only one party, the vegetation owner, who can offer a solution as an act of generosity as the empowered overlord. The overlord has the power of veto as a means to avoid any responsibility to deal with the complaint or even to discuss it.

This is this situation which requires legislation so that the unaccountable right can be removed through the availability of independent inspection in cases where mutual respect between the parties and equality of authority is unavailable. The understanding that absolute power corrupts is relevant and the reasonable complainant is abandoned and trapped within a disastrous rejection of reason. This may last for as long as the parties remain in the location with horrific implications to the viability of the affected home and garden and the well being of its inhabitants. These implications are comprehensively presented within "A Growing Problem" and "Survey 2009".

Scotthedge, as a branch of Hedgeline the U.K. representative of "High Hedge" complainants, understands very well the Westminster 2003 amendment to the

Antisocial Behaviour Bill. This was used to rescue a whole series of Private Member's Bills from undemocratic destruction by wrecking amendments sustained by Christopher Chope MP over a five year period. The ASBB provided an escape route supported by the then Labour Executive and the House of Lords. The Final back bencher proposals by Stephen Pound became law as an enabling Bill, to be used for defining advisory guidelines which in our view were flawed through an inadequate understanding of the problem. This slewed the estimations of implementation and administration costs due to the expectation of some 40,000 cases claimed by the Stephen Pound himself. Such was the fear that the Local Authorities would be overwhelmed by complainants, that despite the earmarking of central funds, the L.A.s were permitted to charge any fee which they regarded appropriate. The access to the inspection process initially became a postcode lottery and led to the criticism that the fee was used to inhibit access by Authorities unsympathetic or frightened of the responsibility. Since implementation in 2005, fees have dropped as the fear of L.A. overload fell away. In some cases the fee has been withdrawn altogether.

In the event, the anticipated workload dropped to an apparent 400 cases yearly averaged over the first four years of implementation in a pattern of exponential decay. The reasons for this were complex and as yet not formally analysed but Hedgeline research suggests that capitulation of the party envisaging the inspection going against them was a very significant influence. In South Tyneside this is known to account for around 80% of the withdrawals before inspection. This is immensely significant since it supports the explanation that the very presence of legislation has provided the all important understanding that failure to behave reasonably will incur loss of casting vote by the hedge owner, and confirmation that either a complaint was unsustainable or justified. The other inhibitions to access to the process have been excessive fees for the 'service' and over restrictive definitions of qualifying problems. Perhaps mesmerised by the Leylandii icon, inadequate account was taken of the fact that the hedge description in the act was obstructive and subjective in that most major vegetation can impose serious problems but perhaps take longer to grow to become a problem. TPOs however rightly fell subservient to the High Hedge provisions.

Finally, the transportation into the Antisocial Behaviour Bill, fully justifiable by the reactions of people trapped within a massively unjust and interminable dispute, hid the reality that it was the unavailability of accountability, which established the antisocial option for nasty response and the belief that vegetation aggression was acceptable and indeed an option.

It is Scothedge's view that the Westminster Bill is in need of improvement but that it creates a very good basis for the definition of a Bill worthy of the Scottish Parliament with its better legislative processes unimpaired by the Westminster archaic traditions. It appears to us that embarking upon an entirely new solution would be tantamount to re-inventing the wheel with the risks that the new idea may not work as envisaged. We therefore support

improvement of the Westminster 2003 enabling Bill and the creation of implementation procedures, which correct the now well known deficiencies well understood in England and Wales.

We have provided our documents, which we hope will encourage a 'better Scottish Bill' within the context of the comprehensive High Hedges and Other Nuisance Vegetation Consultation. We have always opposed the taking of illegal action by our membership and extolled the proper legislative option via the Scottish Legislature.

We advocate a swift enabling bill, to confirm that this issue is to be addressed, followed by the effort to establish the appropriate guidelines and the implementation service, as followed by the Westminster administration from 2003 to 2005. This clear advance warning provides the incentive for capitulation to reduce the cases awaiting inspection at the moment of implementation.

In conclusion since England legislated in 2003 a Scottish Leylandii hedge will have grown by 6 metres or some 20 feet. Over the decade of our campaign we have witnessed the most appalling aggression and inconsideration(38% hostile) following reasonable complaint simply because the law tells the problem provider that he or she is doing no wrong. Delays in legislation have been no less inconsiderate and unfair and destructive of the trust between a people and their legislature. It is our experience that cross party support for legislation is strong and that the required enabling legislation should be achieved in this session of the Parliament.

We are appreciative of the efforts of the Minister and his Community Safety Unit team and their commitment to finding a solution to this serious issue and pledge our experience in contribution to the eventual legislation.

Yours respectfully,

Dr. Colin Watson and the Scothedge team on behalf of over 310 Scottish members seeking protection from the serious impact of High Hedge and Other Nuisance Vegetation denied by Scottish Law.