

Cunninghame House,  
Irvine.

2 November 2017

## Planning Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 8 NOVEMBER 2017** at **2.00 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

**1. Declarations of Interest**

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

**2. Minutes (Page 4)**

The accuracy of the Minutes of meetings of the Committee held on 20 September 2017 and will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

**3. Isle of Arran**

Submit report on the following application:

**17/00887/PP: Katlin, Lamblash (Page 12)**

Erection of extensions and formation of terrace to detached dwelling house (copy enclosed).

**4. Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Former Grounds Maintenance Depot, 12 Lanfine Terrace, Girdle Toll, Irvine KA11 1RJ (Page 17)**

Submit report by the Executive Director (Economy and Communities) seeking authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the property for vehicle valeting and repair (copy enclosed).

**5. Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 84 Main Street, Largs, KA30 8AN (Page 22)**

Submit report by the Executive Director (Economy and Communities) seeking authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of unauthorised development comprising the installation of Piaggio Ape vehicle on the roof of the building (copy enclosed).

**6. Update on Scottish Government post-legislative scrutiny of the High Hedges (Scotland) Act 201 (Page 27)**

Submit report by the Executive Director (Economy and Communities) on the recommendations made by the Local Government and Communities Committee on the operation of the above Act since its introduction (copy enclosed).

**7. Urgent Items**

Any other items which the Chair considers to be urgent.

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**Planning Committee**

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Sederunt: Tom Marshall (Chair)  
Timothy Billings (Vice-Chair)  
Robert Barr  
Ian Clarkson  
Robert Foster  
Christina Larsen  
Shaun Macaulay  
Ellen McMaster  
Ronnie McNicol  
Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

Planning Committee  
20 September 2017

**Irvine, 20 September 2017** - At a meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m.

**Present**

Tom Marshall, Timothy Billings, Robert Barr, Ian Clarkson, Robert Foster, Christina Larsen, Shaun Macaulay, Ellen McMaster, Ronnie McNicol and Donald Reid.

**Also Present**

Alan Hill.

**In Attendance**

J. Miller, Senior Manager (Planning), J. Law, Solicitor (Contracts and Licensing) (Legal Services) and A. Little, Committee Services Officer (Chief Executive's).

**Also In Attendance**

John Riddell, Objector.

**Chair**

Councillor Marshall in the Chair.

**1. Declarations of Interest**

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Barr, as a member of Hunterston SSG, declared an interest in Agenda Item 4.2 - Hunterston A Power Station and took no part in its determination.

**2. Minutes**

The Minutes of meetings of the Committee held on 23 August 2017 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. Irvine**

**17/00827/PP: Gailes Farm, Irvine**

Dawn Developments Ltd, 220 West George Street, Glasgow have applied for planning permission for the erection of replacement dwellinghouse following fire and the erection of 10 dwellinghouses with associated access, parking and green space at Gailes Farm, Irvine. The expiry date for representations is 22 September 2017 and to date no representations have been received.

The Committee agreed to grant the application subject to, no representations being received by 22 September 2017, and to the following conditions:-

1. That prior to the commencement of the development, a detailed schedule and samples of the proposed external finishes to be used, including any additional materials not illustrated on the plans hereby approved, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. In addition, in the event of additional external finishes being proposed, amended elevation drawings shall be submitted for the written approval of North Ayrshire Council as Planning Authority.
2. That, notwithstanding the plans hereby approved, finalised details of the access road and parking arrangements, taking into account the principles of Designing Streets, shall be submitted for the written approval of North Ayrshire Council as Planning Authority.
3. That, prior to the commencement of the development, a revised scheme of landscaping, taking into account the advice of the Scottish Wildlife Trust's consultation response dated 24th August 2017, inclusive of details of future aftercare and maintenance, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the development shall be implemented in accordance with the scheme of landscaping as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.
4. That all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless North Ayrshire Council as Planning Authority gives written consent to any variation.
5. That prior to the commencement of the development, hereby approved, the applicant shall undertake a desk study of the application site, (including the review of any previous site investigations) to assess the likelihood of contamination and assist in the design of an appropriate site investigation and subsequent suitable quantitative risk assessment as advocated in BS10175: 2011. Remediation proposals shall also be presented in relation to any significant findings. All documentation shall be verified by a suitably qualified Environmental Consultant and submitted to North Ayrshire Council as Planning Authority. Any required remediation measures shall be undertaken, prior to the commencement of the development to the satisfaction of North Ayrshire Council as Planning Authority. Thereafter the presence of any significant unsuspected contamination, which becomes evident during the development of the site, shall be reported to North Ayrshire Council and treated in accordance with an agreed remediation scheme.

On completion of the proposed works written verification, detailing what was done by way of any remediation, shall also be submitted to the North Ayrshire Council as Planning Authority.

6. That the precise siting, design and type of the sewage treatment plant and associated soakaway serving the development shall be agreed in writing with North Ayrshire Council as Planning Authority prior to its installation. For the avoidance of doubt, the plant shall provide for the biological treatment of waste water prior to its discharge to the soakaway.
7. That, prior to the commencement of the development, the recommendations contained in the noise report with respect to noise mitigation shall be implemented, and a follow-up report detailing the precise measures to be carried out to mitigate the development against the effects of intrusive noise from the railway and pumping station shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the detailed measures identified in the follow-up report shall be undertaken as part of the development in accordance with such details as may be approved, all to the satisfaction of North Ayrshire Council as Planning Authority.
8. That the following external noise targets shall be achieved at the curtilage of the proposed residential properties:
  - a. During daytime hours between 0700 and 2300hrs, the combined noise level (LAeq 16 hour) from transportation (rail and road traffic) shall not exceed 50 dB. As a minimum, if this external target cannot be achieved, the dwellinghouses shall be designed and constructed in such a way that an internal level of 35 dB can be achieved (inclusive of window open for ventilation);
  - b. During night time hours between 2300 and 0700hrs, the combined noise level (LAeq 8 hour) from transportation (rail and road traffic) shall not exceed 40dB. As a minimum, if this external target cannot be achieved, the dwellinghouses shall be designed and constructed in such a way that an internal level of 30 dB can be achieved (inclusive of window open for ventilation); and
  - c. The rated noise level (as defined in BS 4142) from plant associated with the operation of the existing pumping station to the south of the site and from the proposed sewerage treatment plant within the site shall not exceed the background noise level by 5dB or more.

#### **4. North Coast and Cumbraes**

##### **4.1 17/00584/PPM: Site to East of Castlepark Gardens, Fairlie**

Dawn Homes Ltd, 220 West George Street, Glasgow have applied for planning permission for a residential development comprising 95 dwelling houses, formation of open space and associated infrastructure works at the site to the east of Castlepark Gardens, Fairlie. 43 letters of objection were received and were summarised in the report. The Committee was advised that a further five letters of objection had been received and the terms of these objections had already been considered within the report.

Mr Riddell, a local resident of Fairlie, addressed the Committee in support of the objections. He referred to Phase 1 of the development granted in 2015, which included 22 planning conditions, including condition 13 which required a temporary footpath via Castlepark Gardens to be in place prior to the occupation of any of the houses in Phase 1. The path has still not been put in place and there is no direct access to Fairlie for the residents of the development. Mr Riddell considered that the application should be deferred until the path has been put in place or if the Committee grants the application the pathway should be completed within 2 months of the consent being granted.

The Senior Manager (Planning) then outlined the terms of the planning report and Members had the opportunity to ask further questions and received clarification on the following:-

- temporary gated access from the development to the school that had been provided;
- three houses at the edge of the development that were not within the original development brief;
- that Historic Environment Scotland is satisfied that the location of the three houses near to the Castle do not impact the setting of the castle site;
- a site visit by Members that had taken place;
- the 3m pathway into the site that would be for pedestrians, cyclists and emergency vehicles only;
- a cut off drain that will be installed to the west of the site;
- an offer from Dawn Homes to put the pathway in place within one year; and
- that a proportion of the housing will be under £200,000.

The Committee agreed to grant the application subject to the following conditions:-

1. No development shall take place within the development site as outlined in red on the approved plan until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved by North Ayrshire Council as Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council as Planning Authority.
2. That, prior to the commencement of the development, the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority:
  - i) Details of a scheme to intercept surface water runoff from the higher ground to the east and routing into the drainage system;
  - ii) Details of a cut off drain along the western boundary of the application site;

- iii) Details of proposed watercourse crossings which ensure that crossings have a better or neutral effect on flood risk and do not result in the elevation of land within the functional floodplain;
- iv) Details of proposed landscaping and safety of the SuDs pond as well as a programme for its completion/operation;
- v) Maintenance of existing water channels which enter and are contained within the site; and
- vi) The proposed programme for the installation of those flooding measures contained within this condition, and those approved with the application, as well as details of maintenance and factoring.

Such details as may be approved shall be completed in compliance with the proposed programme of implementation, agreed under (vi) above, and maintained permanently thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

3. That no development shall take place until there has been submitted to and approved by North Ayrshire Council as Planning Authority a scheme of hard and soft landscaping. The submitted scheme should include:
  - i) details of proposed hard surfacing, including paths, roads, shared spaces, driveways and boundary treatments;
  - ii) details of species and planting densities;
  - iii) details of potential biodiversity, including habitat, improvements;
  - iv) a programme of proposed implementation of the scheme; and,
  - v) proposed maintenance programmes and factoring.

The soft landscaping details, which may be approved, shall be carried out in the first planting season and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless North Ayrshire Council as Planning Authority gives written consent to any variation.

4. That, prior to the commencement of the development, hereby approved, full details of proposed tree protection measures for the development shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The details shall comply with the principles and practices contained in "BS 5837:2012 - Trees in relation to design, demolition and construction - Recommendations." Detailed plans indicating tree protection fencing to be erected, an Arboricultural Impact Assessment and an Arboricultural Method Statement shall be submitted for written approval. For the avoidance of doubt:
  - i) that there shall be no treeworks undertaken within the Tree Preservation Order area, unless otherwise agreed in writing;



- ii) all tree protection measures to be erected shall be maintained in a satisfactory condition for the duration of all engineering and construction operations, until the completion of the development.

The development shall be implemented only in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.

5. That prior to the commencement of plots 45, 46 and 64, 65 and 67, as approved in drawing AL(0)100 I, the applicant shall provide a revised Tree Survey for the written approval of North Ayrshire Council as Planning Authority. The details shall comply with the principles and practices contained in "BS 5837:2012 - Trees in relation to design, demolition and construction - Recommendations" and shall assess the existing and future health of those trees within the eastern boundary as well as any recommendations for trimming or felling diseased trees.
6. That prior to the commencement of development details of the proposed programme for the installation of the proposed shared use link for pedestrians and cyclists to Castlepark Gardens and the emergency access, located in the south of the site, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The links should be completed in compliance with the approved programme to the satisfaction of North Ayrshire Council as Planning Authority, unless North Ayrshire Council as Planning Authority gives written consent to any variation. For the avoidance of doubt the proposed shared use path to Castlepark Gardens should be completed prior to the completion of plots 34, 35 and 36, as outlined within approved plan AL(0)100 Revision I, or no later than 12 months from the date of the planning consent, whichever is sooner. The proposed emergency access shall be completed prior to the completion of plots 68, 69, 70, as outlined within approved plan AL(0)100 Revision I.
7. That prior to the commencement of development on plots 23 to 26 (inclusive), 33, 34, 35, 37, 68 to 72 (inclusive), 73, 78 and 79 to 95 (inclusive), as illustrated in approved plan AL(0)100 Revision I, details of proposed finished ground levels and finished floor levels, retaining walls, any raised terracing, garden slopes, boundary treatments shall be submitted on plans and section drawings for the written approval of North Ayrshire Council as Planning Authority. Such details as may be approved shall be completed to the satisfaction of North Ayrshire Council as Planning Authority, unless otherwise agreed in writing.
8. That prior to the commencement of development details of proposed habitats and species measures recommended in the Ecological Assessment 2017 by Nigel Rudd, accompanying the planning application, shall be submitted to and approved by North Ayrshire Council as Planning Authority. Thereafter the developer shall ensure that the measures are fully implemented during construction of each phase, to the satisfaction of North Ayrshire Council as Planning Authority.

9. The prior to the commencement of the development details of the proposed equipped play area, which shall include the provision of at least 5 different types of play equipment, seating and unequipped play areas shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The details shall include the proposed location of the play area, site levels, programme of installation, any means of enclosure, including gated points of access/exit, surface finish, litter bin provision, maintenance and management arrangements. Unless otherwise agreed in writing the approved play area facilities should be installed and operational no later than, or prior to, the occupation of plots 45, 94 or 95 as outlined within approved plan AL(O)100 I. The approved play area should be completed to the satisfaction of North Ayrshire Council as Planning Authority and maintained in perpetuity.
10. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.

#### **4.2 17/00740/PP: Hunterston A Power Station, West Kilbride**

Magnox Limited, Oldbury Technical Centre, Oldbury Site, Oldbury Naite, Thornbury, South Gloucestershire have applied for planning permission for the proposed replacement weather envelope cladding to reactor buildings and associated works (revised design to cladding approved under planning permission ref. N/01/00286/PP) at Hunterston A Power Station, West Kilbride. Two letters of objection were received and were detailed in the report. A further objection had been received and the terms of the objections had already been considered within the report.

The Committee agreed (a) to grant the application subject to the following conditions:-

1. That prior to the commencement of the installation of the cladding works, hereby approved, full details/samples of the propose cladding, including colour, shall be submitted for the written approval of North Ayrshire Council as Planning Authority.

and (b) that the submitted details/samples of the propose cladding, including colour, should be submitted to the Committee for approval.

**5. Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of Manor Park Hotel and North West of Home Farm, Knock Castle Estate, Skelmorlie (Page 58)**

Submitted report by the Executive Director (Economy and Communities) seeking authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of hardstanding and outbuilding from field to South of Manor Park Hotel and North West of Home Farm, Knock Castle Estate, Skelmorlie.

Works comprising the laying of hardstanding and the erection of an outbuilding have been undertaken in a field to the south of the Manor Park Hotel and to the north west of Home Farm, Knock Castle Estate, Skelmorlie. No planning permission has been granted for the works and they are therefore unauthorised. Other works including the formation of an access and erection of boundary fences have also been undertaken on site. However, these works either constitute permitted development or are otherwise acceptable and as such it is not recommended to take action against these works.

The owner of the land has been advised that the works are unauthorised. They stated that the works were in preparation to develop the site for either stables or for a house. The owner has also been advised that any such development proposals are unlikely to be looked upon favourably given the location of the site in the countryside and Special Landscape Area. They have been requested to remove the hardstanding and outbuilding but have not done so. In the interest of the visual amenity, the rural character of the area and the Special Landscape Area, the Committee agreed to approve the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the removal of the outbuilding and hardstanding.

The Committee agreed to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring the removal of hardstanding and the outbuilding from the field to the south of Manor Park Hotel and north west of Home Farm, Knock Castle Estate, Skelmorlie.

The meeting ended at 3.15 p.m.

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**NORTH AYRSHIRE COUNCIL**

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**Agenda Item 3.1**

Planning Committee

**8 November 2017**

Locality

**Arran**

Reference

**17/00887/PP**

Application

**27th September 2017**

Registered

Decision Due

**27th November 2017**

Ward

**Ardrossan and Arran**

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<b>Recommendation</b>	<b>Grant as per Appendix 1</b>
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**Location**Katlin  
Lamlash  
Brodict  
Isle Of Arran  
KA27 8JT**Applicant**

Mr Geoffrey Dallamore

**Proposal**Erection of extensions and formation of terrace to detached dwelling house

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**1. Description**

This application seeks Planning Permission for extensions and the formation of a raised terrace to a detached bungalow at Katlin, Lamlash. The south east elevation of the house faces onto the garden, with views to the coast and contains the windows of the main living areas, whereas the main entrance is located on the north west elevation, which is therefore the 'principal' elevation for the purposes of planning. The proposed 61m<sup>2</sup> extension would protrude 6.7m at its furthest extent from the north west elevation of the house and a raised sun terrace would protrude 4.1m from the south east facing elevation.

The extension would have a 'L' shaped footprint and would provide a relocated kitchen and a bedroom and a porch and canopy roof over the main entrance door. There would be a kitchen window and double doors on that elevation. It would have a pitched roof in two sections and would be finished externally in render and flat roof tiles to match the existing house. The proposed sun terrace would be 1.25m above the garden level at its highest point, and would be enclosed by a 1m high glazed handrail. The lower walls would also be finished in a render to match the existing house.

The house shares a driveway with the detached house at Rozelle, to the east, and is accessed from Blairbeg Lane to the rear. The proposed extension would be erected 1m from a detached garage in the north west of the garden. The south east garden extends to some 320m<sup>2</sup> and is enclosed by hedges. There are detached houses to all sides.

The application site is within the settlement of Lamlash, as identified in the Adopted North Ayrshire Council Local Development Plan ("the LDP").

## **2. Consultations and Representations**

The statutory neighbour notification procedures were undertaken and there was not a requirement to advertise the application. There were not any objections and there were not a requirement to undertake any consultations.

## **3. Analysis**

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning applications be determined in accordance with the Local Development Plan, unless other material considerations indicate otherwise. As the proposal relates to the extension of an existing dwellinghouse, in terms of the adopted Local Development Plan (LDP), it is acceptable in principle. The details require to be assessed against the criteria of the General Policy in the LDP. The relevant criteria are (a) Siting, Design and External Appearance and (b) Amenity.

The proposed internal alterations would not affect the external appearance of the building and would not therefore constitute development requiring planning permission in terms of Section 26 of the Town and Country Planning (Scotland) Act 1997, as amended. The proposed works to amend the fenestration would be permitted development under Class 2B of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.

In terms of criterion (a), the scale, pitched roof design and external finishing materials of the extensions would relate well to the existing house and would retain sufficient amenity space within its curtilage. It would be consistent with the surrounding properties and is considered to be an appropriate extension of the property which complies with criterion (a).

With regards to (b), there would neither be any overshadowing, nor any significant adverse effects on the residential amenity of the neighbouring properties. One ground floor window on the gable of Kinneil to the south west would be 11.5m from the proposed raised terrace. The window serves a stairwell rather than a habitable room, as confirmed by the applicants' agent, and would already be overlooked from the garden of Katlin. Therefore this proposal would not introduce any significant level of overlook when compared to the existing circumstances. The proposal satisfies criterion (b).

The proposed development accords with the relevant provisions of the LDP, and there are no other material considerations to be taken into account. It is therefore recommended that planning permission should be approved.

#### **4. Full Recommendation**

Approve without conditions.



KAREN YEOMANS  
Executive Director (Economy and Communities)

Cunninghame House, Irvine  
20 October 2017

For further information please contact Neil McAteer, Planning Officer , on 01294 324316

## **APPENDIX 1**

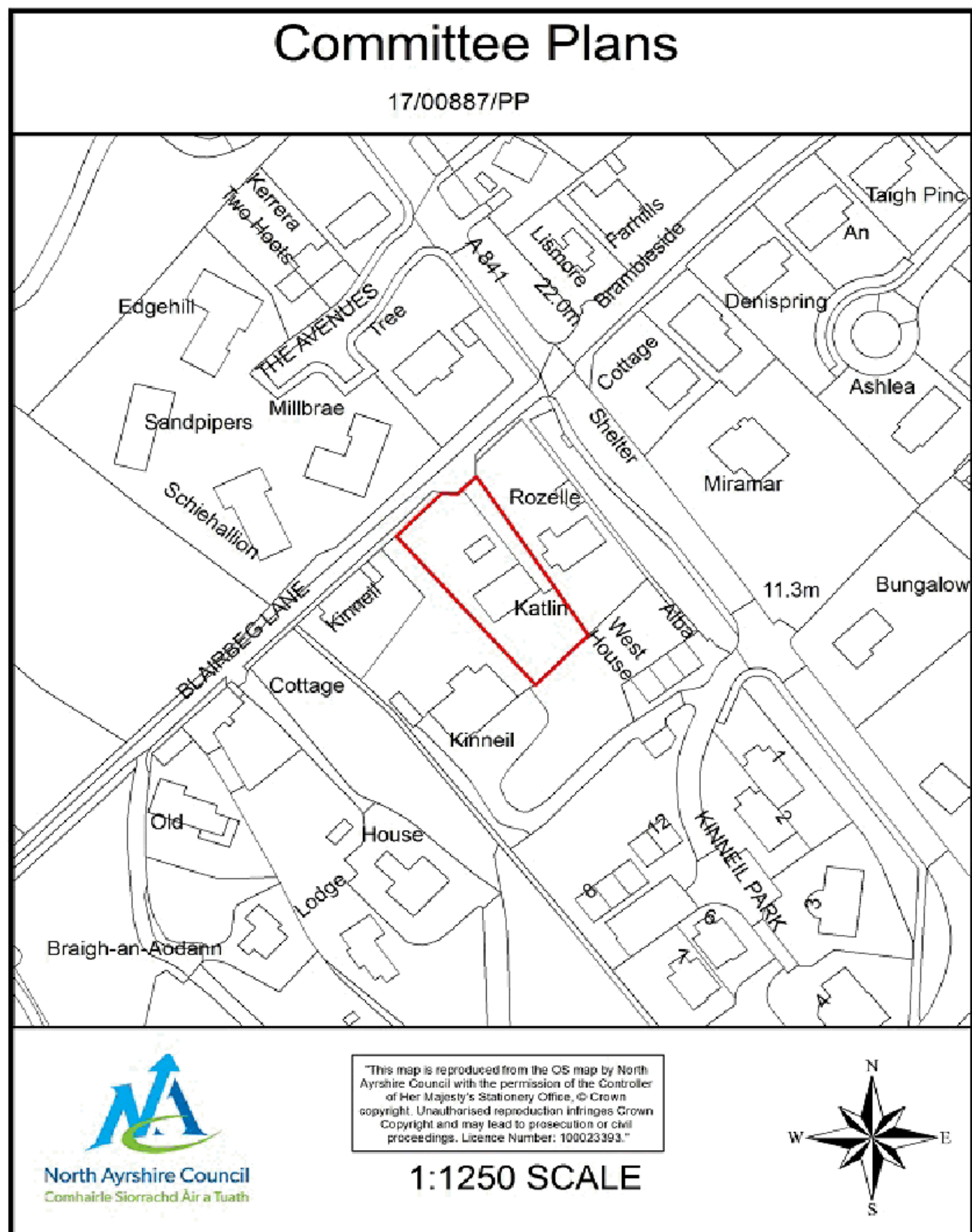
### **RECOMMENDATION FOR PLANNING APPLICATION REF NO 17/00887/PP**

Grant (No conditions).

Reason(s) for approval:

1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

## Appendix: Location Plan





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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 4**

**8 November 2017**

#### **Planning Committee**

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**Title:** **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Former Grounds Maintenance Depot, 12 Lanfine Terrace, Girdle Toll, Irvine KA11 1RJ**

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**Purpose:** To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the property for vehicle valeting and repair.

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**Recommendation:** Agree that authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the property for vehicle valeting and repair.

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#### **1. Executive Summary**

- 1.1 Development comprising the material change of use of the property from a Class 6 (storage) Use to a mixed use comprising vehicle valeting and repair has been undertaken at the former Grounds Maintenance depot, 12 Lanfine Terrace, Girdle Toll, Irvine KA11 1RJ. The valeting use commenced sometime around January 2016 and the repair use commenced sometime in the summer of 2017. Planning permission has not been sought or granted for the development.
- 1.2 The former Grounds Maintenance depot is sited on the eastern side of Lanfine Terrace, at its southern end. It forms the southern most unit of a terrace of domestic garages. On the western side of Lanfine Terrace is the Lanfine Community Centre with open space to the north. To the east and south are residential properties. The area is predominantly residential in character and is identified in the Adopted North Ayrshire Local Development Plan (LDP) as part of the settlement of Irvine.
- 1.3 The use of the property is considered to have an adverse impact on the area by way of its impact on amenity due to potential disturbance from emissions, noise and vehicular traffic movements.

- 1.4 Given the above and in particular the impact on the amenity of the local area, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require cessation of the use of the property for the purposes of vehicle valeting and repair. The Enforcement Notice would take effect not less than 35 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 8 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

## **2. Background**

- 2.1 The owner of the property has been advised that the use is unauthorised. The owner has been advised that a vehicle valeting use could be acceptable and was advised to apply for planning permission to allow that use to be fully assessed. When first investigated in early 2016, only vehicle valeting was in use. It was not considered that there were significant impacts on residential amenity to warrant formal enforcement action at that time. Since the introduction of vehicle repair in the summer of 2017, Planning Officers have received complaints regarding the impact of the use in terms of noise and disturbance from vehicle movements and emission of fumes and water from the site.
- 2.2 The owner does not consider that a material change of use has occurred. The owner considers that the Council sold them a workshop that would allow industrial processes such as car repair on the site. As such the owner has declined to apply for planning permission. The sales particulars issued by the Estates Section of the Council did describe the property as a depot/workshop. However, this description does not confer a lawful use. The lawful use is established by any enacted planning permission or the use of the site for the preceding 10 consecutive years. The property, prior to sale by the Council, was used by Ground Maintenance to store their equipment for grass cutting or other landscaping works required by the Council. Any cleaning or repairing of that equipment was incidental to the use for storage. It should also be noted that the sales particulars advise that all descriptions are given without responsibility and it is for the intending purchaser to satisfy them of the correctness of the particulars.

- 2.3 The Council's LDP policies require development to be assessed in terms of its impact on amenity. The General Policy of the LDP states that development should have regard to the character of the area in which it is located. Regard should be given to the impact on amenity of factors including; levels and effects of noise and vibration; smell or fumes; levels and effect of emissions including smoke, soot, ash, dust and grit or any other environmental pollution; and disturbance by reason of vehicular or pedestrian traffic.
- 2.4 The area is predominantly residential in character. It is considered that vehicle valeting and an industrial use such as vehicle repair is out of keeping with the character of the area. Such uses have the potential to impact on amenity through noise, fumes or water run off from the valeting of vehicles. Such uses also have the potential to cause disturbance from the vehicle movements associated with the use. The use is unrestricted and could operate at any time on any day of the week. The development is therefore contrary to criterion (a) of the General Policy of the LDP. In the absence of an application for planning permission it is not considered possible to fully assess the effects of the use on amenity or how they could potentially be mitigated by conditions. It is also not considered appropriate to attempt to control the use through the issue of an enforcement notice permitting the use subject to restrictions.
- 2.5 The development, comprising a material change of use, has been undertaken within the last 10 years without the necessary planning permission. The development is out of keeping with the character of the area and has the potential to harm amenity. It is contrary to criterion (b) of the General Policy of the LDP

### **3. Proposals**

- 3.1 In the interest of the character and amenity of the area it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-
- i) Cessation of the use of the property for the purposes of vehicle valeting and vehicle repair.

#### 4. Implications

<b>Financial:</b>	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
<b>Human Resources:</b>	N/A
<b>Legal:</b>	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
<b>Equality:</b>	N/A
<b>Environmental &amp; Sustainability:</b>	N/A
<b>Key Priorities:</b>	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
<b>Community Benefits:</b>	N/A

#### 5. Consultation

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision.



KAREN YEOMANS  
Executive Director (Economy and Communities)

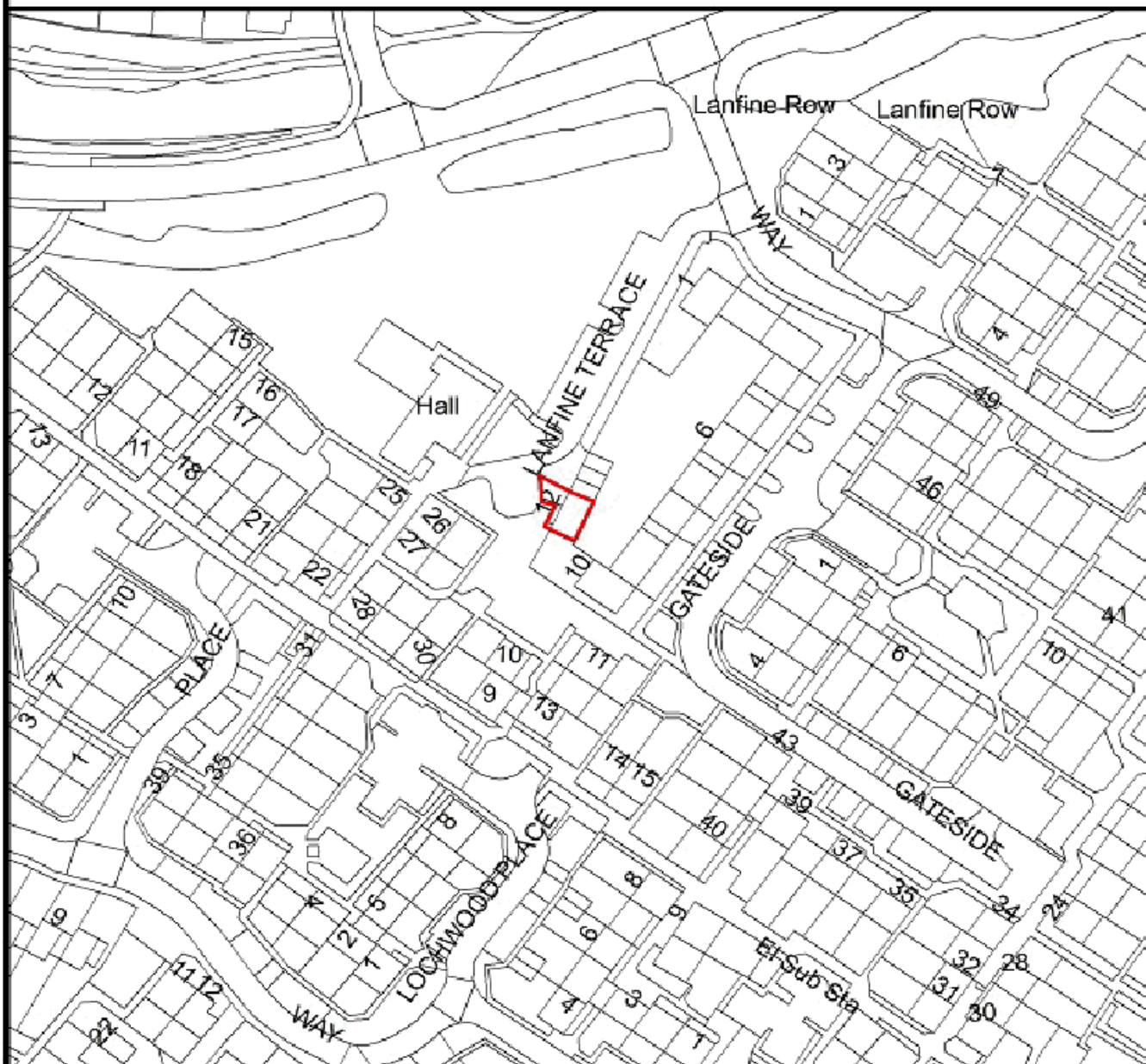
Reference : 17/00076/COUB

For further information please contact Iain Davies on 01294 324 320

#### Background Papers

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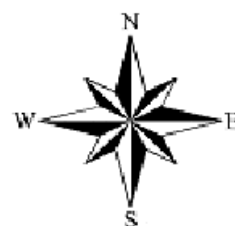
**Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Former Grounds Maintenance Depot, 12 Lanfine Terrace, Girdle Toll, Irvine, KA11 1RJ**



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

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**1:1250 SCALE**



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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 5**

**8 November 2017**

#### **Planning Committee**

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**Title:** **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 84 Main Street, Largs, KA30 8AN**

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**Purpose:** To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of unauthorised development comprising the installation of Piaggio Ape vehicle on the roof of the building.

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**Recommendation:** Agree that authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of unauthorised development comprising the installation of Piaggio Ape vehicle on the roof of the building be granted.

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#### **1. Executive Summary**

- 1.1 Development comprising the installation of a Piaggio Ape three wheeled vehicle on the roof of the building has been carried out at 84 Main Street, Largs. The development was undertaken sometime around 3rd July 2017. Planning permission has not been sought or granted for the development.
- 1.2 84 Main Street, Largs is a single storey building situated on the southern side of Main Street, the A78. It is sited on the east side of its junction with Crawford Street. It is within an area identified as Largs Town Centre by the Adopted North Ayrshire Local Plan (LDP). There are single storey commercial properties to the east including the entrance to Largs Train Station. The station itself sits to the south of the site. To the north is a taxi rank and bus stop, with Main Street and other commercial properties beyond. To the west, across Crawford Street, are more commercial properties and the open space of Hyndman Green. The building is currently vacant but appears to have a lawful use as a shop. The last tenant appears to have been an electronic cigarette shop.

- 1.3 The Piaggio Ape had previously been installed on the roof of 116 Main Street, Largs. The vehicle in that location was considered to constitute an advertisement as it was a device employed wholly or partly for the purposes of advertising the Italian delicatessen which occupies the property. An application for advertisement consent to site the vehicle on the roof of 116 Main Street was refused (16/00679/ADC) following objection from Transport Scotland, who considered it to be to the detriment of the safety of users of the A78. The Planning Committee subsequently agreed the issue of an Advertisement Enforcement Notice requiring the removal of the vehicle from the roof of 116 Main Street. The Advertisement Enforcement Notice was issued and took effect in May 2017. The vehicle was removed from the roof of 116 Main Street sometime before 3rd July 2017.
- 1.4 The Piaggio Ape, on the roof of 84 Main Street, Largs is considered to constitute development requiring planning permission, because the siting of it on the roof constitutes operational development comprising other operations on land, as defined by Section 26 of the Town and Country Planning (Scotland) Act 1997 (as amended). The siting of the Piaggio Ape on the roof of 84 Main Street, Largs has altered the physical characteristics of the site. The development is considered to have an adverse impact on the local area by way of its siting, design and appearance. It is not considered to be an advertisement as it is not employed for the purposes of advertising.
- 1.5 Given the above and in particular the visual impact on the local area, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require removal of Piaggio Ape from the roof of the building. The Enforcement Notice would take effect not less than 35 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 28 days of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

## **2. Background**

- 2.1 The owner of the land has been advised that the works are unauthorised, but do not consider that the siting of the vehicle on the roof constitutes development. The owner states that the vehicle is only being stored temporarily on the roof and has not been physically fixed to it. The Council has advised that it considers it to be development as it has a degree of permanence. The owner was originally requested to remove the development by 11th August 2017 which the owner has failed to do. As at the date of the Planning Committee, the development will have been in situ for over 4 months with no prospect of it being removed.

2.2 The Council's LDP policies require development to be assessed in terms of its siting, design and appearance. The General Policy of the LDP states that siting of development should have regard to the relationship of the development to existing buildings and the visual effect of the development on the surrounding area. Design should have regard to existing townscape and consideration should be given to size, scale, form, massing, height and density. External appearance should have regard to the locality in terms of style, material and colours. It is considered that the development has an incongruous relationship with the existing building and a negative visual impact on the area. The development is out of keeping with the existing townscape, sited on top of the flat roof of a single storey building. The development is therefore contrary to criterion (a) of the General Policy of the LDP.

2.4 The development has been undertaken within the last 4 years without the necessary planning permission. The development harms visual amenity. It is contrary to criterion (a) of the General Policy of the LDP

### 3. Proposals

3.1 In the interest of visual amenity it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-

- i) Removal of the Piaggio Ape from the roof of the property.

### 4. Implications

<b>Financial:</b>	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
<b>Human Resources:</b>	N/A
<b>Legal:</b>	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
<b>Equality:</b>	N/A
<b>Environmental &amp; Sustainability:</b>	N/A
<b>Key Priorities:</b>	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
<b>Community Benefits:</b>	N/A



## **5. Consultation**

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision.



KAREN YEOMANS  
Executive Director (Economy and Communities)

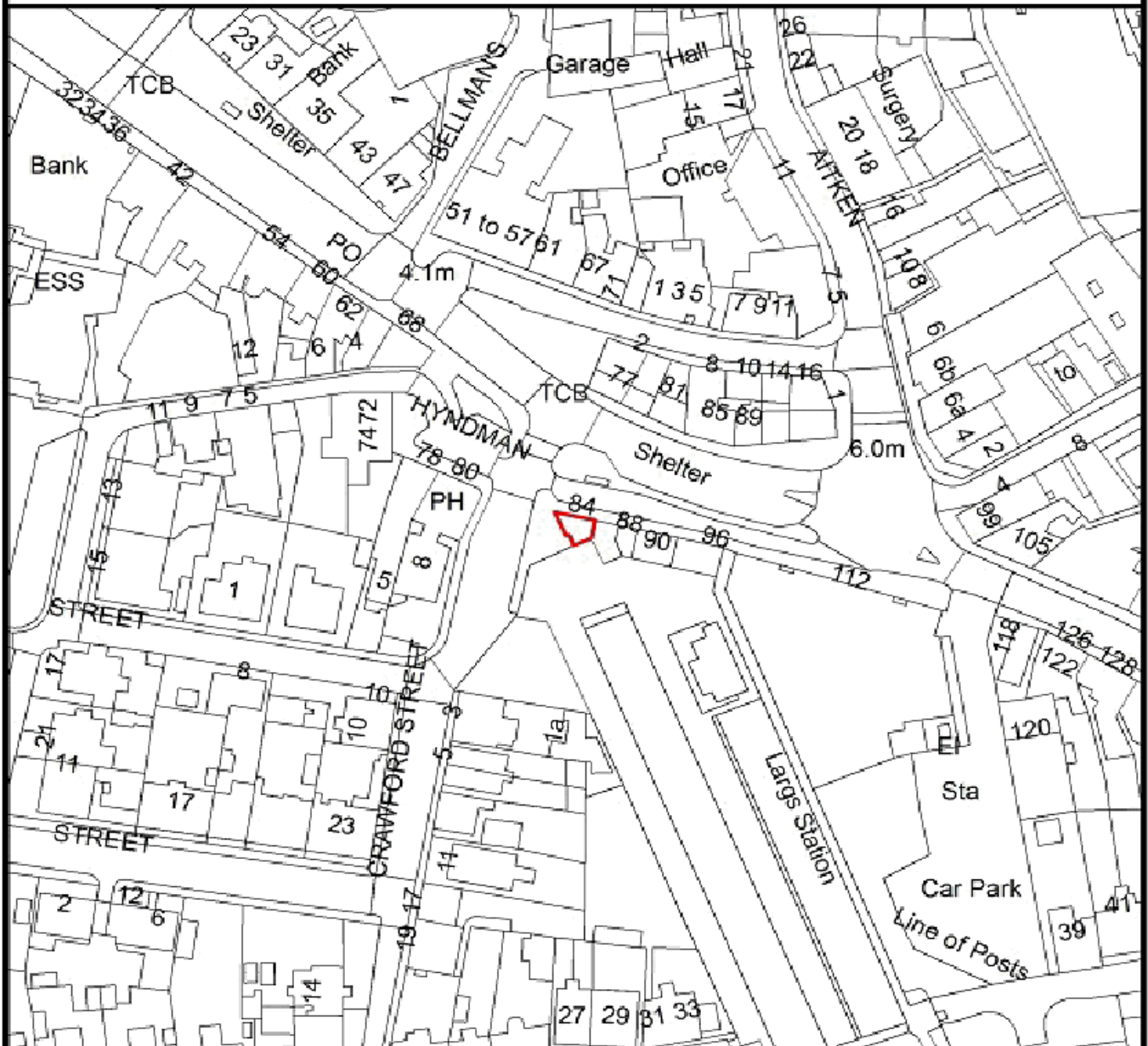
Reference : 17/00092/ALTS

For further information please contact Iain Davies on 01294 324 320

## **Background Papers**

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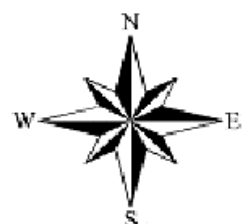
**Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 84 Main Street, Largs KA30 8AN**



**North Ayrshire Council**  
Comhairle Siorrachd Àir a Tuath

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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 6**

**8 November 2017**

#### **Planning Committee**

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**Title:** **Update on Scottish Government post-legislative scrutiny of the High Hedges (Scotland) Act 2013**

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**Purpose:** To provide a summary of the recommendations made by the Local Government and Communities Committee on the operation of the above Act since its introduction.

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**Recommendation:** That the Committee notes the recommendations made in the report.

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#### **1. Executive Summary**

- 1.1 The High Hedges (Scotland) Act 2013 aims to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property by allowing Local Authorities to serve a High Hedge Notice, on application, specifying any remedial action required. The Act required the parliament to review its operation within five years of introduction and the Local Government and Communities Committee has now produced its report and recommendations.

#### **2. Background**

- 2.1 The High Hedges (Scotland) Act 2013 ("the Act") allows an occupant of a domestic property to apply to the local authority (LA) to serve a notice on the owner of a hedge which adversely affects the reasonable enjoyment of the property. Applications should only be made as a last resort when all other attempts to resolve the dispute have failed and applicants are therefore required to show evidence of the previous steps taken as part of the application.

- 2.2 The LA should dismiss any application which does not relate to a hedge, as defined in the Act, or is deemed to be vexatious or frivolous. If the LA is satisfied that the application relates to a hedge, it should then assess the cases made by both sides regarding the effects of the hedge and may then serve a formal Notice on the hedge owner specifying the initial action required to remedy the ill effects (usually height reduction) and any ongoing action required to ensure the effects do not recur (usually annual maintenance to the initial height). Both parties would then have the right of appeal to the Department of Planning and Environmental Appeals (DPEA) against the serving or non-serving of a notice, or its contents.
- 2.3 Since the Act was introduced in 2014, the determination of such applications within North Ayrshire Council has been delegated to the Senior Manager Planning Services. In an effort to manage the numbers of non-compliant applications, a pre-application check procedure has been adopted whereby Planning Officers can visit an affected site, without any discussion on the merits of a case for either of the parties, to advise on whether particular trees are considered to constitute a hedge in terms of the definition in the Act. A total of seven applications for notices have now been considered by the Council, two of which were dismissed as not meeting the tests of a hedge in the Act, one of which was refused (decision upheld on appeal to DPEA) and two notices served (one of which was appealed to DPEA and the decision upheld). Two further applications are currently under consideration. If a notice is not complied with, the Act gives the LA powers to enter a site to complete the required works and to recover the costs from the owner. It has not yet been necessary to use this power as the terms of all notices have been complied with.

### **3. Proposals**

- 3.1 The Local Government and Communities Committee (LGCC) issued a call for views on the operation of the Act between 6th February and 20th March 2017 and received 64 responses from individuals, LAs, MSPs and Ministers. North Ayrshire Council responded to this call on 15th March 2017 (see Appendix 1). LGCC subsequently also took evidence in person from witnesses during April and May 2017. Their concerns focused on five areas: Data collection and record keeping; Definition; Enforcement; Fees and costs; and Timing. A copy of the LGCC's report and recommendations was published on 10th September 2017 (see Appendix 2).
- 3.2 The LGCC's recommendations to the Scottish Government (SG) can be summarised as follows:

1. Data collection and record keeping: It is acknowledged that there is no requirement under the Act for data to be collected uniformly and reported back to SG. The committee recommends that there should be consistent data collection across all LAs in order to allow the effectiveness of the policy to be evaluated. SG should take steps to achieve this matter.
  2. Definition: There is a clear difference of opinion on what is covered under the Act. This difference and lack of clarity hinders the effective operation of the Act. The committee recommends that the Minister uses powers under section 35 of the Act to clarify what is and what is not a high hedge.
  3. Definition: The committee recommends that SG publishes revised guidance to clarify that applications should be considered in terms of the impact of the vegetation and not on whether the barrier was originally planted as a hedge.
  4. Fees and costs: The committee notes the disparity in application fees across Scotland but cautions against setting a national standard fee. It recommends that LAs should introduce concessionary rates for those having difficulty paying. The committee also recommends that application costs should be recoverable from the hedge owner and reimbursed to the applicant where an application has been successful.
  5. Enforcement: The committee believes it is imperative that LAs make full use of existing powers under the Act to ensure that owners comply with notices in a timely manner.
  6. Timing: The committee does not believe it would be practicable to set a statutory timescale for determination of applications but recommends that the SG should make it clear that where consideration exceeds three months, LAs should update interested parties on progress and expected timescales.
- 3.3 The LGCC concludes that the High Hedges (Scotland) Act 2013 has been beneficial for some of those affected by the issues but further work is required to ensure its effectiveness. The LGCC is concerned that the Act is not currently operating in the spirit intended and , despite having this Act, some people are still to enjoy their homes as a result of nuisance high hedges. The LGCC therefore encourages both the SG and LAs to consider and take on board the recommendations on how the provisions of the Act, in practice, can be made to work better to the benefit of all.
- 3.4 The Council's response to the initial call for views identified concerns over the clarity of the definitions in the Act, which have been addressed within the recommendations made by the LGCC.

3.5 It is therefore recommended that the Committee notes the recommendations.

#### 4. Implications

<b>Financial:</b>	None
<b>Human Resources:</b>	None
<b>Legal:</b>	None
<b>Equality:</b>	None
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	None
<b>Community Benefits:</b>	None

#### 5. Consultation

5.1 No consultations were undertaken in the preparation of this report.



KAREN YEOMANS  
Executive Director (Economy and Communities)

Reference :

For further information please contact Neil McAteer, Planning Officer on  
01294 324316

#### Background Papers

None

## Appendix 1

### **Scottish Government Call for evidence on the High Hedges (Scotland) Act 2013**

#### **Written response from North Ayrshire Council 15<sup>th</sup> March 2017**

Since the introduction of the Act in 2014, the Council has received five applications to serve a High Hedge Notice. Of these, two were returned to the applicants as not meeting the tests set in the Act of being a high hedge, and the remaining three were accepted as applications.

In two of the cases, high hedge notices were then served requiring the owners to take specified action to remedy the effect on the applicants' reasonable enjoyment of their domestic property. In the third case, the Council disagreed that the hedge caused the adverse effect claimed and no notice was therefore served.

Two of the decisions were then appealed to the Scottish Government; in one of the cases by both the hedge owner and the applicant. In both cases the Reporter upheld the Council's decisions (in one case to serve a notice and in the other, not to).

Numbers of pre-application enquiries by phone or email have not been formally recorded but have been of significant numbers. Most responses take the form of directing enquirers to the High Hedge Guidance page on the Council's website which covers the tests in the Act of what constitutes a high hedge and what evidence must support a formal application, including evidence of previous steps taken toward a resolution before the application to the Council was made.

Both notices served have been complied and the Council has not therefore been required to take any direct action or employ other enforcement action.

#### **(i) Has the definition of a high hedge as set out in the Act proved helpful?;**

The basic definition (ie. that a hedge has to be: "formed wholly or mainly by a row of two or more trees or shrubs"; "must rise to a height of more than 2 metres above ground level" and "must form a barrier to light") is quite clear. Page 11 of the accompanying guidance states that "the Act concerns hedges and is not designed to impact on woodlands or forests which as a general rule are not planted as hedges". Could the definition in the Act itself give more clarity on whether trees not initially planted or maintained as a hedge but which may have grown to take the form of a hedge (eg. Overgrown, self-seeded garden areas) fall within the scope of the Act as this seems to be a fairly common complaint?

#### **(ii) Do you have experience of the appeals procedure set out in the Act?;**

Yes. In the cases experienced, the Reporters' decision has been in line with the Council's conclusions on whether any remedial action was required, although with some differences in how the conclusions have been reached. Many Councils process high hedges cases through their Planning teams and initial cases seemed to show

inconsistency between what would normally be material considerations in planning cases and high hedges cases. Consistency has emerged through subsequent Appeal decisions that a key consideration on how cases should be considered is what constitutes 'reasonable enjoyment'. For example, in high hedge cases, a property may have been built or bought to benefit from a coastal view; it would therefore be 'reasonable' to expect that view to be maintained and this should be taken into account. In planning cases, it is long established that loss of a specific view is not a material consideration. This required an adjustment by LAs but has been consistently applied in appeal decisions.

**(iii) Do you have any comments on the enforcement procedures under a high hedge notice?;**

No. The powers in the Act appear sufficient but NAC has not been required to put these into action.

**(iv) Do you have any comments on fees and costs?;**

NAC set the application fee based on the expectation that the workload and therefore costs involved would be roughly commensurate with a planning application for a single house and this has been true in the limited applications received.

**(v) Overall, are there any aspects of the Act which have had a positive or negative impact on your life?;**

None.

**(vi) Are there any other issues relating to the Act which you wish to bring to the attention of the Committee?**

The operation of the Act has been fairly straightforward in the Council's opinion. The initial surge of interest, enquiries and applications which has now levelled off seems to indicate that the Act has been effective in resolving some long term disputes.

In terms of updates, the definition of a High Hedge could perhaps be strengthened to make it clearer that the Act only applies to a hedge row and not to woodlands, self-seeded tree areas etc. and to confirm that this determination is a matter for the Local Authority only to make.

In some cases, the canopy width of mature hedges may have as significant an effect in terms of shading as the height of the trees. Although common law would allow people to reduce trees which overhang their boundaries, would there be scope to introduce canopy width reduction as a required action in high hedge notices?





The Scottish Parliament  
Pàrlamaid na h-Alba

Published 10 September 2017

SP Paper 190

7th Report, 2017 (Session 5)

## **Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan**

# **Post-legislative scrutiny of the High Hedges (Scotland) Act 2013**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Local Government and Communities Committee

To consider and report on communities, housing, local government, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities, Social Security and Equalities.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/local-govt-committee.aspx>



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# Committee Membership



**Convener**  
**Bob Doris**  
Scottish National Party



**Deputy Convener**  
**Elaine Smith**  
Scottish Labour



**Kenneth Gibson**  
Scottish National Party



**Jenny Gilruth**  
Scottish National Party



**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Alexander Stewart**  
Scottish Conservative  
and Unionist Party



**Andy Wightman**  
Scottish Green Party

# Introduction

1. The Committee reports to the Parliament as follows—
2. The High Hedges (Scotland) Act 2013 <sup>1</sup> ("the Act") places a duty on the Parliament to make arrangements for a committee or sub-committee to report to the Scottish Parliament on the operation of the Act during the review period. That review period began on 1 April 2014, when section 2 (relating to applications for high hedge notices) came into force and ends 5 years after that date, or on such earlier date as either the committee or sub-committee may determine.
3. At its meeting on 1 February 2016, the Committee agreed to fulfil this requirement and undertake post-legislative scrutiny of the Act to consider whether the legislation has been working well in practice.

## Background to the Act

4. The principle aim of the Act is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property and give local authorities powers to settle disputes between neighbours related to high hedges.
5. Where a hedge has been defined as a high hedge under the Act, an owner or occupier of a domestic property can apply to their local authority for a high hedge notice. Under the Act, local authorities must act as an independent third party to consider the circumstances of each case to identify whether a high hedge is having a negative effect on neighbours' reasonable enjoyment of their house.
6. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it reoccurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers against decisions of an authority and any high hedge notice issued by it.
7. The Act allows local authorities to issue their own guidance on the Act, which can be more specific about how that authority will carry out their duties under the Act. However, section 31<sup>2</sup> states that local authorities must consider guidance produced by the Scottish Government<sup>3</sup> when issuing their own guidance on the Act.

## Evidence received

8. The Committee issued a call for views on 6 February 2017, which closed on 20 March 2017, and received 64 responses, mainly from individuals involved in disputes with their neighbours over high hedges. In order to consider the operation of all aspects of the Act effectively, we posed the following questions:
  - Has the definition of a high hedge as set out in the Act proved helpful? If not, please provide details;
  - Do you have any experience of the appeals procedure as set out in the Act?
  - Do you have any comments on the enforcement procedures under a high hedge notice?
  - Do you have any comments on fees and costs?
  - Overall, are there any aspects of this Act which has had a positive or negative impact on your life?
  - Any other issues relating to the Act which you wish to bring to the attention of the Committee?
9. The Committee then took evidence from a range of witnesses during April and May 2017, including individuals who had responded to the call for written views, local authorities, Mark McDonald MSP, the member who introduced the Bill, and finally from the Minister for Local Government and Communities. The Committee would like to thank all those who gave evidence. Further details on all the evidence gathered, including a summary of the written submissions, can be found on our [website](#).



## Issues explored

10. Concerns regarding the operation of the Act broadly covered the following areas:

- Data collection and record keeping;
- Definition;
- Enforcement;
- Fees and costs;
- Timing.

## Data collection and record keeping

11. There is no requirement under the Act to keep records of the number of applications, failed applications or appeals or to provide any reports to the Scottish Government in relation to high hedges. This means that procedures in individual local authorities differ and that it is a challenge to build up a full picture across Scotland of the level of activity/demand in relation to high hedge issues.
12. One further challenge we heard about relates to the circumstances whereby a local authority refuses an application on the grounds that it is a non-hedge, resulting in no record being kept of this application. Concerns were expressed regarding this lack of information on the number of failed high hedge applications across local authority areas as this makes it difficult to gauge the actual level of demand placed on local authorities. In addition, where disputes had been settled prior to any formal application having been made, again no records were kept. Witnesses argued that it was impossible to fully understand the scale of the impact of this legislation when the number of pre-applications or failed applications is unknown.
13. In contrast to Scotland, when high hedge legislation came into effect in England in 2005, local authorities were asked to keep records of the following to inform a review of the process to take place on a 5 yearly basis: <sup>4</sup>
- number of enquiries about the legislation;
  - number of formal complaints;
  - number determined;
  - number of remedial notices issued;
  - number of complaints regarding failure to comply;
  - number resolved informally;
  - number of prosecutions and outcome;
  - number of occasions that default powers were used to carry out works to a high hedge.

14. Pamala McDougall said that English legislation had had a deterrent effect, discouraging people from growing anti-social high hedges and her hopes were that the Act in Scotland would do the same. However she told us—

” I know from anecdotal evidence that it did but, as far as I know, there are no records to tell us how many situations it has dealt with. It would be interesting to get that information from another source. We could not find that out from the councils.

Source: Local Government and Communities Committee 19 April 2017, Pamala McDougall, contrib. 31<sup>5</sup>

15. Julie Robertson from the Scottish Government confirmed that data was not collected from local authorities and explained—

” We expect that some local authorities will keep a record of the number of applications that they process. However, we know that where an application is dismissed by a local authority, the local authority does not tend to record that information, because it does not see it as an application.

Local authorities will keep records of the applications that they accept, receive and process. The DPEA will keep records of the appeals, but the Scottish Government does not collect any data.

Source: Local Government and Communities Committee 24 May 2017, Julie Robertson, contrib. 51<sup>6</sup>

16. The Minister for Local Government and Housing indicated that he was less concerned by this issue and was also not convinced that the collection of data and reporting centrally on high hedges would be helpful. He told the Committee—

” I would have to be convinced that there was a real benefit in adding to the bureaucracy, which would inevitably add to the cost that falls on the people who apply for the notices.

Source: Local Government and Communities Committee 24 May 2017, Kevin Stewart, contrib. 66<sup>7</sup>

17. During the course of the evidence-taking, we agreed with witnesses that this lack of data was concerning and wrote to the Minister asking him to gather information on what data exists from local authorities in relation to pre applications, applications and appeals. He noted this request and, on the issue of having uniform data collection across all local authorities, informed the Committee again that this could involve additional costs for local authorities which could increase the cost of applications—

” As you are aware, the Act requires potential applicants to take “all reasonable steps” prior to an application being lodged. As such, information on applications will only provide us with a partial view of the situation across local authorities. Therefore any new uniform data collection system would be disproportionate to the information gathered and the costs attached to the collection of data could make the application process disproportionately expensive. For these reasons, I remain of the view that there is no benefit to be gained from collecting data uniformly from all 32 local authorities.<sup>8</sup>

18. In July 2017, the Scottish Government - following a further request by the Committee - provided additional [supplementary written evidence](#). We requested information on the:

- Number of pre applications, including situations where the authority has dismissed the application on non-hedge grounds;
  - Number of applications;
  - Number of appeals; and
  - Timescales for processing applications.
19. In total, 28 of Scotland's 32 local authorities completed the survey requested by the Committee. In relation to pre-application checks, 23 local authorities offer these whilst 5 do not (4 local authorities did not respond to this question), with the annual number of pre-application enquiries fairly consistent with the number of checks that take place across Scotland (around 80 or so in any year).
20. The data also shows that the number of applications had decreased across Scotland since 2014 (when there were 115 applications) to 2016 (when there were 55). Fife Council, Stirling Council and City of Edinburgh Council saw the most applications in 2014.
21. Local authorities did not hold substantive and reliable data on timescales, with some reporting a response taking 7.5 hours and some 17.5 weeks.

22. The Committee acknowledges that there is no requirement under the Act to instruct local authorities to uniformly collect data and report back to the Scottish Government.
23. Given that the Act made it a legal requirement that post-legislative scrutiny was undertaken by a parliamentary committee, it seems remiss that there is no provision to collect data and report to the Scottish Government on aspects of high hedge applications.
24. Without this data, it is extremely difficult to undertake effective post-legislative scrutiny to ascertain the extent to which the Act has been working in practice and, in particular, the extent to which the existence of the Act has prevented neighbourhood disputes over high hedges by discouraging neighbours to grow such hedges.
25. The Committee recommends that there should be consistent data collection across all local authorities in order to allow the effectiveness of the policy to be evaluated. The Scottish Government should take steps to achieve this.

## Definition

26. Section 1 of the Act, sets out the meaning of 'High Hedge' as follows—

” (1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—

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

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

(c) forms a barrier to light.

(2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.

(3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

27. A key issue for witnesses was the fact that the Act sets out what it means by a high hedge but does not actually define what a hedge is, which has led to different interpretations of the Act across Scotland. In addition, individuals told us that they felt that local authorities were not adhering to the spirit of the Act by adopting a rigid approach when considering high hedge applications. We were told of numerous examples where the local authority decided that tree lines and other nuisance vegetation did not constitute a hedge in the first instance and therefore could not be considered under this Act.

28. Original guidance on the Act, published in 2013, by the Scottish Government contained the Oxford English Dictionary definition of a hedge. However, following consultation and a number of complaints, this was removed from the revised guidance which was issued in 2016.

29. Local authorities took different views on this issue and asserted that they were following the spirit of the Act, which they firmly believed covered hedges and not tree belts and other vegetation. Kevin Wright from Aberdeen City Council explained that they have numerous applications which relate to non-hedges which consists of trees rather than hedges and told us—

” ...I want to take this opportunity to flag my concern about this potential review expanding the remit of the 2013 act.

Source: Local Government and Communities Committee 10 May 2017, Kevin Wright (Aberdeen City Council), contrib. 57<sup>9</sup>

30. Alastair Hamilton, of Fife Council, pointed out that local authorities must consider both the views of the hedge owners and the neighbours who apply for a high hedge notice and that the legislation has to be robust in order to justify affecting someone's property.

31. Subsection 1(1)(c) of the Act introduced the concept that blocking of natural daylight from a domestic property by high hedges close to an adjoining property needs to be addressed. Individuals argued that the Act should contain a definition of a hedge which related to loss of light. This would be a less subjective way of deciding whether a row of trees or shrubs or nuisance vegetation is a hedge in the first instance.

32. For example, Hugh Brown believed that "to decide that a high hedge is not a high hedge because there are other trees behind it making it part of a wood is absurd. A high hedge is a high hedge no matter what is behind it." <sup>10</sup> Kenneth Gray made the point <sup>11</sup> —

” The definition of a high hedge is too restrictive when the problem lies with closely-planted trees which spread sideways as well as upwards at a horribly quick rate. Too much sympathy and leeway seems to be given to the offending party who is generally basking in the sunshine denied to the complainer.

33. Dr Brown told us—

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

Source: Local Government and Communities Committee 19 April 2017, Dr Brown, contrib. 63<sup>12</sup>

34. However, local authority witnesses argued that the Act should be amended to clearly define what a hedge is, which would preclude woodland and tree belts from being covered under the Act. Kevin Wright, of Aberdeen City Council, on situations where the Council has deemed the vegetation not to be a hedge, explained how difficult it was for applicants to understand their decision saying—

” Perhaps the Act’s biggest failure is that there is no clarification in that respect.

Source: Local Government and Communities Committee 10 May 2017, Kevin Wright, contrib. 62<sup>13</sup>

## Non-hedges

35. Roger Niven told us that his application was turned down. Despite having confirmation from the previous owners that the trees were planted with the intention of forming a hedge, the local authority still deemed it not to be hedge. He said—

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

Source: Local Government and Communities Committee 19 April 2017, Roger Niven, contrib. 37<sup>14</sup>

36. Pat MacLaren, representing Scothedge, accused local authorities of circumventing the Act and bringing in their own criteria when considering applications. She said the reasons given for deciding that certain trees did not form a hedge were that they were not all planted at the same time, they are a landscape feature or tree belt, they are not managed as a hedge or the spacing between the trunks are not what would be expected of a hedge. She said—

- ” Aberdeen City Council has brought in its own criteria for deciding whether something is a hedge without referring back to the act, which is what it should always refer back to. It should refer back to the law, not to its own guidelines.

Source: Local Government and Communities Committee 19 April 2017, Pat MacLaren, contrib. 50<sup>15</sup>

37. Pat MacLaren later clarified in correspondence that only formal applications to a local authority will be shown in any statistics collated by councils on the number of applications or appeals. She said that cases which have been deemed 'not a hedge' will only appear in the statistics if, like hers, a person had made a formal application which was then rejected. <sup>16</sup>

38. Kevin Wright, from Aberdeen City Council, acknowledged that a non-hedge could still have the same negative impact as a high hedge but—

- ” As a local authority, we are asked to implement the legislation... When it comes to whether it is a hedge or trees that were not planted as a hedge, there is not flexibility in the legislation; we do not have the legal opportunity to exercise such flexibility.

Source: Local Government and Communities Committee 10 May 2017, Kevin Wright, contrib. 75<sup>17</sup>

39. Paul Kettles also agreed. He said—

- ” I know that we could debate the matter for a long time, but in the end my colleagues and I look at applications, and we consider that we are operating within the act and within the spirit of the act, because it is not a high trees act. If you want to bring in a high trees act, you should introduce such legislation.

Source: Local Government and Communities Committee 10 May 2017, Paul Kettles, contrib. 78<sup>18</sup>

40. Kevin Wright acknowledged that a row of trees could indeed fit the three criteria set out in the Act to define a high hedge however—

- ” Nobody here is saying that a row of trees cannot have the same effect as a hedge; a row of trees can certainly meet those three tests, but it is not a hedge. It would be extremely useful if the act and the guidance were to make it abundantly clear that whether there is a hedge is the first test, and also if further definition were perhaps to be provided in the guidance.

Source: Local Government and Communities Committee 10 May 2017, Kevin Wright, contrib. 68<sup>19</sup>

41. Local authority witnesses also made the point that if trees were to be included under the Act, then this would be at odds with local authority green space strategies. Alastair Hamilton said that it could have unforeseen consequences through the impact on tree cover and Paul Kettles believed that the phrase '2 or more trees' has led to this confusion and should be removed from the Act—

- ” ... this is not a high trees act—it is a high hedges act. Fundamentally, it must first be a hedge, and defining that is difficult... To me, therefore, it is relatively clear what a hedge is and what it is not, but the way in which the act has been narrated gives rise to some confusion.

Source: Local Government and Communities Committee 10 May 2017, Paul Kettles, contrib. 66<sup>20</sup>

42. He went on to warn—

” I live in big tree country, in Perth and Kinross. Perth and Kinross is a tourist destination, and one of the attractions is the tree cover. I am not saying that, if we opened the act up to cover trees, it would devastate trees in Perth and Kinross, but it would be opening a door to something at a time when we are seeking to preserve and protect trees. If we were to broaden the act to include trees, that could give rise to a significant loss of urban trees.

Source: Local Government and Communities Committee 10 May 2017, Paul Kettles, contrib. 111<sup>21</sup>

43. Mark McDonald MSP - member in charge of the then Bill - was asked his view on failed applications where a council decided it was a non-hedge and provided clarification on the question of intention versus effect. He said—

” The Act is looking at the effect, rather than the intention. When an individual plants leylandiis, for example, in their back garden, it may not be their intention to give effect to a hedge or a light barrier for their neighbour, but allowing the leylandiis to grow to a certain height and, therefore, a certain density gives that effect. It is about the effect, rather than the intention at the point at which planting takes place.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 19<sup>22</sup>

44. Where councils decline applications on the basis that it is a non-hedge, he said—

” ...I would hope that local authorities are not seeking to exclude applications on the basis of their own determinations, rather than the determinations that are set out for them in the 2013 act.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 25<sup>23</sup>

45. The Minister for Local Government and Housing took a different view as to what was covered under the Act. He thought it was quite clear that—

” The 2013 Act was not designed to deal with trees, woodlands and forests.

Source: Local Government and Communities Committee 24 May 2017, Kevin Stewart, contrib. 11<sup>24</sup>

46. He went on to say—

” That was the scope of the bill; it dealt with high hedges and not nuisance vegetation or anything else. The question about the scope of the bill is best asked of Mr McDonald, who introduced a bill to deal with nuisance high hedges and not other forms of plant life and vegetation.

Source: Local Government and Communities Committee 24 May 2017, Kevin Stewart, contrib. 18<sup>25</sup>

47. The Minister acknowledged the debate around the definition of a hedge and told the Committee that—



” The definition was felt to be adequate when the High Hedges (Scotland) Bill was passed, but if the committee feels that the balance of evidence that you are hearing supports a change to the definition, I am open to considering a change. However, definitions are always difficult...I think that the dictionary definition, which has been removed from the guidance, was a good one. I will be interested to hear what the committee has to say, and we will consider the issue in light of your findings.

Source: Local Government and Communities Committee 24 May 2017, Kevin Stewart, contrib. 9<sup>26</sup>

48. Mark McDonald MSP, who introduced this legislation, when asked about the lack of definition of a hedge, explained—

” The 2013 Act is designed to recognise that certain vegetation beyond a certain height—2m is what is specified in the Act—could have an effect that is essentially the same as the effect of what might be defined as a hedge in a dictionary. We deliberately stepped back from applying a dictionary definition of a hedge because that could have excluded some of the cases that we had seen that were entirely appropriate to catch under the bill as we were drafting it.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 13<sup>27</sup>

49. He did acknowledge that there may be merit in the Scottish Government considering whether to define a hedge within the Act however this—

” ...may kick open a rather large can of worms, in terms of the cases that may or may not be included or excluded as a consequence of what he suggests.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 23<sup>28</sup>

50. He explained that he tried not to be too prescriptive around defining high hedges in order to ensure the widest number of cases could be considered under the legislation and told us—

” However, it might be the case that, as a consequence of that, local authorities have chosen to use the broader flexibility that the act provides in the opposite direction, to enable them to rule things out. I freely admit that that might have been an unintended consequence.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 34<sup>29</sup>

### **Lack of appeal in non-hedge cases**

51. Where the local authority has issued a high hedge notice, a person that made the application can appeal, under section 12 of the Act, where they feel the notice does not stipulate adequate height reduction of the hedge. The owner of the hedge can also appeal when they think that no notice should have been served or that the work set out in the notice goes too far or there is not enough time set to carry out the work.
52. There is no right of appeal against a local authority's decision to dismiss an application for a high hedge notice. The applicant cannot appeal at this pre-application stage on a non-hedge decision.



53. A number of witnesses argued that there should be a right of appeal in these cases. Paul Bruce told us when his application was rejected—

” We believe that the council's definition of a high hedge has not been accurate as we have shown above that it has failed to help our situation. Furthermore we have been told that we are unable to lodge an appeal as our vegetation has not been found to be a hedge.<sup>30</sup>

54. When asked if there should be provision to appeal in non-hedge cases, Paul Cackette of the Scottish Government said he saw no reason why that should not be the case however he cautioned—

” ... were a change to the legislation along those lines to be suggested, because that is a matter of fact and not at the discretion of the local authority, if a reporter were to decide that something was a hedge, we would need to know what should be done next. Should they refer the matter back to the local authority to start over again? Should the DPEA [Planning and Appeals Division] take over the function of the local authority in exercising discretion about what to do? Should it take on the dispute resolution process at that stage?

You would need to think through reasonably carefully what the implications of such a change would be, not least because if the DPEA were to take on those functions, the appeal route would be closed off.

Source: Local Government and Communities Committee 24 May 2017, Paul Cackette, contrib. 107<sup>31</sup>

## Alternate tree removal

55. We heard of instances where owners of high hedges appeared to deliberately circumvent a high hedge notice by removing half the number of trees, thus making it no longer a hedge. Pamala McDougall representing Scothedge stated—

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

Source: Local Government and Communities Committee 19 April 2017, Pamala McDougall, contrib. 66<sup>32</sup>

56. Dr Brown, whose high hedge application was initially successful, told us however that the owner subsequently removed half of the trees and successfully appealed the decision. He said that the trees are still growing together and argued that costs should be refunded in such cases—

” It is ridiculous—it is robbery in two ways. Not only do I not get my daylight; I also lose everything that I have paid out in my attempt to get the trees reduced in height. Some kind of punishment for landowners who subvert the intentions of the Act should be enforced.

Source: Local Government and Communities Committee 19 April 2017, Dr Brown, contrib. 109<sup>33</sup>

57. Donald Shearer, among others, argued that in these circumstances—

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

Source: Local Government and Communities Committee 19 April 2017, Donald Shearer, contrib. 83<sup>34</sup>

58. Kevin Wright of Aberdeen City Council told us that, in such circumstances, the council would seek legal advice and pointed out that—

” If somebody removes every second tree, as unfair as that approach is, then, by the definition that we currently have, it is no longer a hedge but a row of trees. If they remove every second tree, the canopies will not coalesce, therefore it is not a hedge. If it is not a hedge, we cannot use the legislation.

Source: Local Government and Communities Committee 10 May 2017, Kevin Wright, contrib. 80<sup>35</sup>

59. Mark McDonald MSP suggested that in these circumstances—

” ...there would be the potential to look at the historical position on what was there, and to decide whether there is the likelihood that the situation would continue to be exacerbated by the individuals.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 73<sup>36</sup>

60. Paul Cackette from the Scottish Government said he understood the frustration that this would cause and told us—

” In those circumstances, although the councils would make the point that, technically, it was no longer a high hedge, the suggestion would be that there was still an underlying issue to be addressed. The role of pre-application mediation is therefore vital...If the hedge is altered by the time that the notice is served, there is a difficulty... If a hedge is different—because somebody has cut down part of it or because, after the passage of time, it looks different, and the impact is different—the reporter will normally seek to identify what it was like when the notice was served...In most cases, they make a judgement on the basis of what the hedge was like at the time when the notice was served.

Source: Local Government and Communities Committee 24 May 2017, Paul Cackette (Scottish Government), contrib. 39<sup>37</sup>

61. He went on to say—

” I imagine that, if there is a belief that steps have been taken to circumvent the process but longer-term steps could be taken that would ensure that the hedge owner could not let the hedge grow and start becoming a problem again, the notice could contain such longer-term steps.

Source: Local Government and Communities Committee 24 May 2017, Paul Cackette, contrib. 41<sup>38</sup>

## Reasonable Enjoyment

62. The subjective nature of what exactly is meant by ‘reasonable enjoyment’ as set out in the Act was also raised in evidence both by individuals and local authorities. Ann

Forbes recommended that guidance should be produced for local authorities on what constitutes 'reasonable enjoyment'.

63. Sarah Chadfield stated—

” Is the act about shadow length etc., or are 'amenity' and 'reasonable enjoyment' looser terms? To my mind, I have lost 'reasonable enjoyment' in that I now sit and look at 4 metres of hedge rather than the open panorama I had previously. I am unable to make an informed decision as to whether this hedge should be subject to a high hedge order because I have no specific information to go on. It is 'high' and I have lost my 'reasonable enjoyment', but apparently not necessarily so in the subjective eyes of the planners.<sup>39</sup>

64. Perth and Kinross Council called for greater clarity on what is meant by 'reasonable enjoyment of a domestic property' and Angus Council said—

” 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.<sup>40</sup>

65. Vreni Fry, owner of two spruce trees, said it would be useful if all emotive language, such as 'reasonable enjoyment' were removed from the Act. Julian A Morris said—

” This is an odd variation of the wording of legislation in all other parts of the UK. In short, without the Act, there can be no expectation of relief from neighbouring vegetation. This amounts to a classic Catch 22 situation. From whence comes the expectation but from the Act itself? It leaves no objective basis for defining expectation.<sup>41</sup>

66. When asked what was meant originally meant by the the phrase 'reasonable enjoyment', Mark McDonald MSP replied—

” That is about whether the barrier to light that is created affects an individual's ability to enjoy their property—their ability to use their garden or to receive natural light into certain rooms in their house, for example. Those are the kind of considerations that we were thinking about in relation to “reasonable enjoyment”.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 86<sup>42</sup>

67. The Committee notes that there is a clear difference of opinion on what is covered under the Act and this difference of opinion and lack of clarity is hindering the effective operation of the Act.

68. We are concerned that the flexibility around interpretation originally envisaged by the member who introduced the bill is not being used in practice and that some local authorities are dismissing applications on non-hedge grounds despite the obvious detrimental impact on individuals' 'reasonable enjoyment' of their property.

69. We recommend that the Minister considers using the powers under Section 35 to clarify what is and what is not a high hedge.

70. We were disturbed to hear of instances where alternative trees are being removed in order to circumvent the Act (and its definition of what constitutes a hedge) and believe that local authorities must take into consideration the original state of the hedge and the likelihood that the trees would cause further problems in future when considering these applications and subsequent appeals.

71. We recommend that the Scottish Government publishes revised guidance setting out clearly that applications should be considered in terms of the impact of the vegetation rather than whether or not the barrier was originally planted as a hedge. In addition, the revised guidance should encourage local authorities to be flexible when considering high hedge applications, while still adhering to their green space strategies.

## Fees and costs

72. Section 4 of the Act states that the fees set by local authorities should not exceed the amount it would cost the local authority to deal with the application and it allows local authorities to refund fees where it considers it appropriate to do so. Local authorities must publish information on the circumstances in which they will refund fees.

73. The differing costs and the lack of explanation for this across council areas was raised by many respondents to the call for views. The cost for a high hedge application ranges from around £200 to £500. Denis Parry told us—

” As regards fees and cost there is a wide disparity amongst Local Authorities as to what they consider appropriate. <sup>43</sup>

74. South Lanarkshire Council and Perth and Kinross Council said that the fee charged should be set nationally and should not be determined individually by each local authority.

75. Royal Town Planning Institute Scotland (RTPI) highlighted the current financial constraints in the planning service and said that the fees charged are unlikely to be at a level that would compensate for planners being diverted from their primary duties.

76. Paul Kettles of Perth and Kinross Council said that a standard fee would be a good idea. However, Mark McDonald MSP disagreed, noting—

” I ensured that local authorities had the opportunity to set their fees because I did not believe that a simple centralised fees system was the right way to go. I chose not to put a cap in, because the evidence from Wales was that, if fees are capped, everybody goes to the cap and charges the maximum amount.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 57<sup>44</sup>

## Means tested and cost recovery

77. Duncan McAllister was concerned about the general cost, stating that "the proposed fee is extortionate and should not exist" and Kenneth Gray made the point that the fees could make applying prohibitive—

” Our local council requires an up-front fee of £495 before proceeding with a High Hedge Notice application. This is a considerable amount of money to spend with no guarantee of success. It must deter many put-upon people from proceeding, and begs the question of what is the point of legislation which makes it so difficult and pedantic to fulfil its purpose. <sup>45</sup>

78. Vreni Fry believed the fees to be reasonable saying "It does encourage people to think twice before submitting an application". <sup>46</sup>

79. A number of witnesses argued that successful applicants should be able to recover the cost. For example, East Ayrshire Council suggested—

” Where it subsequently turns out that the hedge is causing a nuisance and gets a notice served it may be worthwhile exploring a mechanism where the recipient of the notice is required to refund any fees paid by the applicant as part of the enforcement process. <sup>47</sup>

80. Sandra Dobson agreed with this and also suggested waiving of fees for those unable to pay—

” Where an application is successful it would be reasonable if the fee charged was repaid to the appellant and recharged to the hedge owner. Not everyone has the money to pay the fee. Some system should be in place where those unable to pay are able to have the fee waived. That would give them the ability to access legislation that better off people can afford. <sup>48</sup>

81. Paul Kettles agreed—

” If a local authority serves a high hedge notice on a hedge owner and they have the opportunity to address the issue but do not do so, we should seek to get perhaps half the fee back, or set up some other arrangement whereby the applicant is refunded, either in part or in total.

Source: Local Government and Communities Committee 10 May 2017, Paul Kettles, contrib. 87<sup>49</sup>

82. Mark McDonald MSP told us that nothing in the Act precludes local authorities from introducing different schemes for the payment of fees—

” Nothing in the act prevents or precludes local authorities from introducing a scheme for the type of individuals to whom Mr Gibson refers—people on low incomes or people who are retired and do not have the means to pay a lump sum up front—that allows them either to pay the fee in instalments over a year or to pay a reduced fee that is based on their income. Authorities have the ability to do that; nothing in the legislation prohibits or excludes them from doing it.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 65<sup>50</sup>

## Who should pay

83. Many respondents including Alasdair Moodie, Nancy Clunie and Pamela Baillie, suggested that the fees associated with applying for a high hedge notice should be paid by the hedge owner, not the complainant. James Barr's comments were typical—

” There should be no cost to the complainer where a Council upholds their cause for complaint. All costs should be borne by the hedge owner.<sup>51</sup>

84. Mark McDonald MSP explained his reasoning behind the fee setting provisions—

” My thinking was about the legislation's aim, which is to help to resolve neighbourhood disputes. If an application was made and an order was granted, and the owner of the hedge complied but was then told, “Thanks for complying with that order, but you now have to pay your neighbour £500”—or whatever the sum is—that might not be the best means to ensure that neighbourhood disputes are completely resolved.

If that individual said that they were not going to pay, the local authority might have to expend disproportionate sums of money to recoup a few hundred pounds.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 63<sup>52</sup>

85. The Committee notes the disparity in fees across Scotland. However, we would caution against setting a standard fee which would not take into account the varying costs to administer high hedge applications across each local authority.
86. We believe that local authorities should introduce concessionary rates for those who are in difficulty paying. We also consider the cost of the application should be recoverable from the hedge owner where an application has been successful, such that the local authority can reimburse the applicant.

## Enforcement

87. Where the owner or occupier of the land on which the hedge is growing on fails to carry out the work stated in the high hedge notice, section 22 gives local authorities the power to take action and enter the land to carry out the work and recover any expenses incurred.
88. The Guidance issued to local authorities suggests that prior to enforcement, a local authority—



” ...might want to encourage the hedge owner or occupier to meet the conditions of the high hedge notice by sending them a letter formally warning them of what will happen if they do not take the necessary action. If investigations show that the owner or occupier was not aware there was a high hedge notice, the local authority should provide them with a copy and should normally give them more time to meet the requirements in it.<sup>3</sup>

89. Witnesses suggested that local authorities were reluctant to use the enforcement powers set out in the Act given the financial implications. John Bolbot argued that the law could not be effective unless local authorities were to use this power. He said—

” Any kind of legislation that is as toothless as that is never going to work.

Source: Local Government and Communities Committee 19 April 2017, John Bolbot, contrib. 52<sup>53</sup>

90. Some witnesses suggested that fixed penalty notices should be issued in cases of non-compliance, however Mark McDonald MSP argued that this could extend the process and would not provide more of a deterrent than the powers already in the Act to allow local authorities to do the work and recover the cost—

” Obviously, a fixed penalty notice would have a date by which the individual must pay: if they chose not to pay it, the local authority would then have to chase them for it. There could be a more protracted process before the local authority eventually undertook the work. My instinct was that the best way to ensure compliance was to say that if people do not comply with notices, the authority will do the work and the person will pay the local authority for that, which might cost more than it would have cost to do it themselves. My view has not shifted.

Source: Local Government and Communities Committee 17 May 2017, Mark McDonald, contrib. 94<sup>54</sup>

## Timing

91. The lengthy nature of the application process and, where successful, the subsequent enforcement procedures was raised by witnesses. Pamala McDougall suggested that there should be a specified time limit set by which time a decision on the application is required.
92. Kevin Wright of Aberdeen City Council agreed that the overall process can be long however he suggested that given the openness of the process and the numerous steps which must be gone through, it would be difficult to set a deadline for processing applications in less than three months.
93. Alastair Hamilton of Fife Council also made the point that would be difficult to prescribe a precise period of time by which applications must be processed as wildlife considerations must be taken into account—

- ” There are close periods for breeding seasons during which it may not be acceptable to cut or alter a hedge—when there are nesting birds, for example. There are also issues, depending on the scale of the works, about how long that might take to factor in.

Source: Local Government and Communities Committee 10 May 2017, Alastair Hamilton, contrib. 95<sup>55</sup>

94. Paul Kettles told us that in his experience the average time taken to process an application and come to a decision was six to eight weeks. However, he also made the point that it would be unreasonable to set a time-frame to include enforcement given wildlife considerations.
95. Mark McDonald MSP said there might be merit in looking at timescales and the Minister said that he would be willing to look at this issue, however said that how local authorities conduct their business is a matter for them.

96. The Committee believes that it is imperative that local authorities fully use the powers they have under the Act to ensure owners of high hedges comply in a timely fashion with the conditions of any high hedge notice issued, subject to any wildlife considerations.

97. The Committee does not believe it is practicable to set a statutory timescale by which applications should be processed however, we recommend that the Scottish Government makes it clear in its guidance that councils should ensure that all applications are processed in a timely manner and, where the process exceeds three months, that councils should update interested parties on progress to date and indicative timescales of when the process will be completed.



## Overall conclusion

98. The Committee believes that the High Hedges (Scotland) Act 2013 has been beneficial for some of those affected by high hedges however further work is needed to ensure its effectiveness.

99. The Committee is concerned that the Act is not currently operating in the spirit that was intended and that, despite having this Act, some people are still unable to enjoy their homes as a result of nuisance high hedges.

100. Consequently, we encourage the Scottish Government and local authorities to consider and take on board our recommendations on how the provisions of the Act - in practice - can be made to work better to the benefit of all.

## **Annexe A - Written and Oral Evidence**

The written and oral evidence received, correspondence and links to the Official Reports of our meetings when we considered the High Hedges (Scotland) Act 2013 are all available [online](#).

- [1] High Hedges (Scotland) Act 2013, asp 6. (n.d.) Retrieved from <http://www.legislation.gov.uk/asp/2013/6/contents> [accessed 20 April 2017]
- [2] Section 31. (n.d.) Retrieved from <http://www.legislation.gov.uk/asp/2013/6/section/31>
- [3] Scottish Government. (2016). High Hedges (Scotland) Act 2013 - Revised Guidance to local authorities. Retrieved from <http://www.gov.scot/Resource/0050/00500572.pdf> [accessed 2017 April 20]
- [4] Department for Communities and Local Government. (2008, July). Matters Relating to High Hedges. Notes to local authorities. Retrieved from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7736/highhedgesnotes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7736/highhedgesnotes.pdf) [accessed 6 June 2017]
- [5] Local Government and Communities Committee 19 April 2017, Pamala McDougall, contrib. 31, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10899&c=1992305>
- [6] Local Government and Communities Committee 24 May 2017, Julie Robertson, contrib. 51, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10971&c=2003356>
- [7] Local Government and Communities Committee 24 May 2017, Kevin Stewart, contrib. 66, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10971&c=2003371>
- [8] Supplementary written evidence. Scottish Government.. (2017, May 30). Retrieved from [http://www.scottish.parliament.uk/S5\\_Local\\_Gov/General%20Documents/20170530\\_MinisterLGHToConvener.pdf](http://www.scottish.parliament.uk/S5_Local_Gov/General%20Documents/20170530_MinisterLGHToConvener.pdf) [accessed 5 June 2017]
- [9] Local Government and Communities Committee 10 May 2017, Kevin Wright (Aberdeen City Council), contrib. 57, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10944&c=1999624>
- [10] Brown, H. (n.d.) Hugh Brown. Written submission. Retrieved from [http://www.scottish.parliament.uk/S5\\_Local\\_Gov/Inquiries/20170318\\_HHA\\_HBrown.pdf](http://www.scottish.parliament.uk/S5_Local_Gov/Inquiries/20170318_HHA_HBrown.pdf) [accessed 9 June 2017]
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