



Northern Ireland  
Assembly

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**COMMITTEE FOR THE  
ENVIRONMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Draft High Hedges Bill**

15 April 2010

**NORTHERN IRELAND ASSEMBLY**

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ENVIRONMENT**

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**Draft High Hedges Bill**

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**Members present for all or part of the proceedings:**

Mr Cathal Boylan (Chairperson)

Mr Roy Beggs

Mr Alastair Ross

Mr Peter Weir

**Witnesses:**

Mr William Caldwell )

Ms Jennifer Stewart )

Mr Anthony Courtney )

Department of the Environment

**The Chairperson (Mr Boylan):**

I welcome William Caldwell, Jennifer Stewart and Anthony Courtney to the meeting.

**Mr Beggs:**

I declare an interest as a member of Carrickfergus Borough Council, which the legislation would impact on eventually.

**Mr Weir:**

Ditto for North Down Borough Council.

**The Chairperson:**

I invite the officials to brief the Committee for five or 10 minutes, after which members may want to ask questions.

**Mr William Caldwell (Department of the Environment):**

Congratulations on your new appointment, Chairman, and congratulations to any new members on the Committee.

My name is William Caldwell, and my colleagues Jennifer Stewart and Anthony Courtney and I work in the Department of the Environment's planning and environmental group. Our responsibility is the processing and taking forward of all the operational aspects related to the draft high hedges Bill. We would like to give members a general synopsis of how the public consultation on the draft Bill went. If members are content, I will summarise how that transpired.

The public consultation began in December 2009 and ended 1 March 2010. It received over 100 responses, which were generally supportive of the content of the draft Bill. Of the people who responded, around 60% were private individuals, who were generally supportive of the draft Bill. Around 20% were local government representatives, from local authorities, councils and so on, and 18% were from non-governmental organisations, with some from non-departmental public bodies.

The main issues raised during the consultation were around the fees charged for making complaints about high hedges; guidance that the Department might issue; and terms and definitions used in the draft Bill. A small number of people suggested that the draft Bill should be extended to deal with other problems such as single trees, roots of trees, dangerous trees, falling leaves and branches and so on. However, the draft Bill is specifically and narrowly focused to deal with high hedges relating to problems between neighbours; it does not extend to encompass a wider variety of issues such as those that I have mentioned. It emerged from the consultation exercise in 2005 that high hedges and resulting problems between neighbours was the major issue to be addressed.

A view was expressed that the fee for a high hedge complaint should not be paid by the person making the complaint but by the owner of the land on which the high hedge is situated. The Department's response is that it is reasonable for the person who suffers the detriment and makes

the complaint to pay a fee for a service that the council provides by way of looking at the problem, coming out to investigate it and, hopefully, providing a solution. The cost is not something that should be spread across ratepayers generally because it is a particular person who benefits, as opposed to a wide range of ratepayers. The person who owns the land and the hedge will face a financial cost in reducing the height of the hedge, if that is the outcome of the council investigation. Essentially, the fee that is paid for a complaint is a fee for a service provided by the council to address a particular problem.

On the issue of guidance, it was asked how councils can have the knowledge and expertise to deal with high hedge complaints. The Department gave an assurance that it will be working closely with councils and NILGA to develop guidance so that, between now and the time when the draft Bill comes into operation, guidance will be provided for complainants and councils and on the appeals function and any other aspect that emerges as a result of discussions.

Points were raised about terms that are used in the draft Bill, such as “reasonable enjoyment”. What does it mean for a person to have “reasonable enjoyment” of their property? Some of the terms can only be defined more clearly through guidance. Some subjective judgement must be made by council officials when they go out and look at each particular situation. They will decide what is reasonable and whether a high hedge is depriving a neighbour of the “reasonable enjoyment” of his property.

The draft Bill states that a person who feels that he is suffering detriment as a result of a high hedge must provide evidence that he has tried to speak to his neighbour or made some attempt to arrive at a solution. That brings about the question of what evidence a person needs to produce to show that he has made such attempts. Our response to that is that if they first try to discuss the matter with their neighbour, they should keep a record of those meetings and what was said. If they involve a third party in a mediation role, a record should be kept of who that person was and what was said. To deal with the complaint, the council will want to have that evidence. It can then accept that an attempt has been made to discuss the issue with the neighbour but that it has become impossible and the complainant faces a dead end situation. There must be evidence of the complainant’s having made some attempt. It cannot be the case that an individual can ignore the person next door, complain about the hedge but make no attempt to resolve the issue.

Councils expressed concern about a high hedge growing on land of which the ownership is

unclear. They wanted to know how to deal with a situation in which they cannot find an owner of land to discuss a high hedge growing on it. We investigated and found that Land and Property Services (LPS) would be able to trace the owner of land in most cases. In the event of a default situation in which no owner is identified, vacant land would eventually revert to the Crown and become government property. We hope that that will not be a major issue.

Officials considered all the points that were raised in the public consultation, which ran from December to March, and recommended changes to the Minister. One of those changes related to situations in which domestic property borders forest land. If anyone construes that the first line of trees in a forest could be viewed as a hedge, there would obviously be implications if, in any circumstances, that first line of trees were reduced to any extent. That is because in Northern Ireland and the UK generally, given the strong winds that can arise from time to time, any reduction of that first line of trees could have dramatic implications for the rest of the stand of trees. Wind can sweep through a forest and knock down a whole raft of trees. In essence, the possibility of a line of trees that border the forest being construed as a hedge has been taken out of the draft Bill.

A hedge was defined as a row of trees acting as a barrier to light, and the words “or access” were included in the draft Bill. However, there was some confusion about the meaning of the term “or access”. There was a lot of internal debate, and the view was taken that the words “or access” did not add a great deal to the draft Bill and, indeed, caused a little bit of confusion. People wondered what “or access” meant; did it mean access through the hedge to someone’s garden, for example? It did not mean that, nor was it intended to mean that. The general view was that that phrase did not really add anything and that nothing would be lost by removing it. Therefore, it was decided to remove the term “or access” to avoid confusion.

Councils had concerns about default situations in which they issue a remedial notice but the person involved does not act on the terms of that notice by reducing the hedge. A council may take the view that, if a person will not take the necessary action, they will go in and reduce the hedge. However, what happens if the council does that and, by some unhappy circumstance, the hedge dies? Will the council potentially be subject to civil action from the owner of the hedge? A change was made to the draft Bill to protect councils from any civil action being taken against them when they have acted in a default situation.

It became apparent during the consultation exercise that the draft Bill set up a mechanism through which persons appointed by the Department would provide an appeal function. That is relevant in cases in which someone feels that the remedial notice is too stringent or when a person who feels that they are suffering detriment queries why a remedial notice has not been issued. There are mechanisms for those people to appeal.

The draft Bill states that the Department will appoint persons to act as an appeals body. It became apparent during the consultation exercise that a body with the capacity and expertise to take on the appeals function exists, and the draft Bill has been amended to apply the appeal function to the existing valuation tribunal, which is under the auspices of the Department of Finance and Personnel. That Department has given an assurance that it is content that that body has the capacity, expertise and willingness to undertake the appeals function. It is more cost-effective to use an existing tribunal than to go through the mechanics, expense and so on of setting up and appointing new people to act as an appeals body. Another advantage is that it provides independence from the Department of the Environment, which is the Department that is taking forward the legislation. There are many advantages in it.

To summarise, over 100 responses to the public consultation were received, and they were generally supportive. Some changes have been made to the draft Bill to take account of the points that have been raised. I am happy to answer members' questions.

**The Chairperson:**

Thank you for your presentation.

Some social housing backs on to private ground. People will look at the draft Bill and will think of the likes of leylandii and other quick-growth plants that have caused major problems in neighbourhoods. I know of areas where there are one or more problematic trees that back on to social housing developments, in which, for example, people on benefits and the elderly live. Will you clarify who will bear the cost of the fees incurred in taking care of such a situation?

**Mr Caldwell:**

The person who makes the complaint is the party who feels that he or she is suffering detriment by virtue of the high hedge. Therefore, in the example that you have given, the person who lives in social housing should try to discuss the situation with the owner of the hedge. He or she

should tell the hedge owner that the hedge is causing him or her some grief, because, for instance, it is too high and is affecting his or her domestic property. The person who lives in social housing should then ask whether the hedge could be reduced to a more reasonable height. As I said earlier, records of those discussions should be kept. I am hopeful that the fact that this legislation is coming forward will mean that a lot of people will not want to get involved in a formal process. They will want to speak civilly with their neighbour and get things sorted out amicably.

In your example, the onus would be on the person in social housing to discuss the situation with the owner of the private land on which the hedge is planted. In the event of there being no accommodation between those two parties, the person in social housing, having kept a record of the evidence, would have to make a complaint to the local council. He or she would have to pay a fee, but councils can use their discretion as to whether they charge a fee in all circumstances. A council might take the view that it would not be right for individuals such as pensioners, low-income groups or disadvantaged people to have to pay a fee. In those circumstances, councils can reduce the fee or waive it. Councils have the discretion to take a view in each circumstance.

**The Chairperson:**

You said that single trees are not included. There has been a lot of talk about including single trees throughout the process, but that has been ruled out.

The process by which Land and Property Services identifies the owner of a piece of land is a long one. Is there anything that we can do to fast-track that process? Any dealings that I have had with LPS have taken a long time. Will the draft Bill be able to address that, or is the time frame down to LPS?

**Mr Caldwell:**

I am not sure how big an issue unidentified land is. In most instances, the problems will be between neighbours. There may be some problems with unidentified land, but it should not be a major issue. We will be looking at and discussing with LPS how the mechanism would work and finding out a little more about it. I am not sure that the draft Bill will be able to make any inroads with issues that concern a different Department or another piece of legislation.

**Mr Weir:**

Thank you for the presentation. I agree that the Bill is a useful tool. However, there are some details that we must get right. I agree with the idea of providing a degree of protection for councils when they take the required action. However, if there were a situation in which a council sent someone to do something and that person acted in a negligent fashion, what would happen? I presume that the council would still be responsible.

**Mr Caldwell:**

You are right; the council would be required to act with due diligence and take professional advice. In the absence of doing so, the council would not be protected. Councils must make sure that everything that they do is done in a professional manner.

**Mr Weir:**

The main concerns that exist are about fee setting; I am not sure that that has been got right. I understand the idea of providing a degree of discretion. However, I can see problems arising in situations in which councils have complete discretion, because there will be some council areas where everybody pays a fee and neighbouring areas where, for example, pensioners are exempt. We will end up with a hotchpotch situation.

It seems from the proposals that the levels of fees are completely at the discretion of councils. That could easily lead to a situation in which one council could charge £30 to lodge a complaint and a neighbouring one could charge £300. While allowing for a degree of discretion, is there any indication of the levels of fees, to give some guidance as to what a reasonable figure for a fee would be?

**Mr Caldwell:**

We looked at the levels of fees in England and Wales where similar legislation has been in operation since 2005. Those fees vary considerably. In his statement to the Assembly, the Minister said that he was minded to include a power in the draft legislation to impose a cap on fees.

**Mr Weir:**

I can see the sense in that. The Department and the Assembly could run into great difficulty if they received complaints that the fee in Strabane is £150 but only £45 in Omagh. People from



some areas would be asking why they were paying much more to put in a complaint than people in neighbouring areas.

**Mr Ross:**

You said that the levels of fees in England and Wales vary considerably. What would be the upper end of the scale?

**Mr Caldwell:**

In one instance, a fee of £600 was charged. That was probably one of the things that influenced the Minister to say that he may introduce a cap. In Northern Ireland, the fees ought to be considerably less, and the scale will be less. I do not know the particular circumstances of the £600 fee; it may have been for a large estate.

**Mr Weir:**

There could be a person who is potentially transgressing by having a high hedge that boundaries a few properties. In that situation, half a dozen neighbours may want to complain. Would that entail half a dozen separate complaints, or could those neighbours enter a joint complaint and share the cost among them?

**Mr Caldwell:**

As I understand it, each individual who has a complaint would need to make a separate complaint, because each person could be suffering a different degree of detriment. Therefore, the council would have to judge each case and each complaint on its merits.

**Mr Weir:**

I understand that there is a need to have some form of charge for someone who is putting in a complaint. Logically, there is a need to get a certain amount of money up front. One concern will be that we are likely to get into a scenario where relations have broken down between neighbours. That is the premise of the draft Bill. We are also aware of situations in which those relations break down, leading to vexatious complaints. It is right that someone entering a complaint of that nature should have to pay for it. Similarly, if somebody puts in a complaint and is then told that no action is to be taken or that something could have been agreed, again, it is right that the complainant should pay.

The concern would be around circumstances in which someone complains because they feel that they have been wronged. They are effectively paying for that wrong to be righted. The general rule of thumb with any court case is that costs follow the event. To some extent, the council is acting as arbiter but also as judge between two neighbours. To boil it down, and I know that you do not want to use these terms, but the question is who is right and who is wrong; who needs to take action and who does not.

Would a sensible approach to fees be to make the provision that costs follow the event? If there is a situation in which somebody is in breach of what is considered to be a reasonable situation with regard to their hedge and they are compelled to take action, the complainant who is having the situation remedied should not have a financial burden placed on them to action that. The person who has to take remedial action should also have to cover the cost of the complaint itself. Is there not a sense that, as with any other civil tort, cost should follow the event?

**Mr Caldwell:**

I see your point, but the *raison d'être* behind the draft Bill is that there is not a right and a wrong. There is no criminal offence being created by virtue of growing a hedge to any height.

**Mr Weir:**

I understand that, but right and wrong do not have to necessarily mean criminal. If someone took a civil action against their neighbour and was successful, nine times out of 10 the person who is on the losing side of that court case picks up the tab; the costs follow the event. There may be no inference of any criminal act whatsoever. I am not sure why this situation should be any different.

It is true that there is a fundamental difference between rights and wrongs, but what if someone knows that the legislation is there and has refused to take any degree of remedial action? They may refuse anything by way of neighbourhood discussion and allow their hedge to grow, and the council may rule that part of it needs to be cut back or changed. Take the example of a pensioner putting in such a complaint: they should not be left with a £150 bill, for example, for complaining when their neighbour is in the wrong. That seems to be a matter of natural justice.

**Mr Caldwell:**

It is a view, but the draft Bill takes the view that there is an even playing field. If it is the case

that someone has a hedge that makes someone else feel that they are in detriment, the individual must first discuss the matter with his neighbour. The council might then get involved and say that a judgement has to be made as to whether it is reasonable that the height of the hedge be reduced, perhaps not all the way to two metres but by a certain amount. The person who has to reduce the height of the hedge will have to bear the cost of doing it. The complainant will get the benefit of the reduction. It is not a —

**Mr Weir:**

The way that this is being proposed does not necessarily create a level playing field. Clearly, if no action needs to be taken, the worst that the hedge owner suffers is a degree of inconvenience, but the complainant, whose complaint is not seen to be justified, has to pick up the tab. In that circumstance it is fair. However, when it is deemed that action needs to be taken, the hedge owner has the cost of cutting the thing, but the complainant, who has been vindicated, has to pick up the tab for it. It is not a —

**Mr Caldwell:**

But the complainant gets the benefit of the reduction.

**Mr Weir:**

If the complainant's neighbour had been perfectly neighbourly and done what he should have done, there would have been no need to complain in the first place. The complainant is being penalised because the neighbour is not prepared to take action. If Mr Bloggs down the road is a responsible neighbour and cuts his hedge, his neighbour is not suffering just to get to the same position.

**Mr Caldwell:**

That is the way in which the draft Bill is constructed. It mirrors the —

**Mr Weir:**

It may not necessarily be the way that it will end up.

**Mr Caldwell:**

It may not be; that is the democratic process. However, that is the way that the equivalent legislation works in England and Wales at the moment.

**The Chairperson:**

We were in the courtroom there for a moment. *[Laughter.]*

**Mr Weir:**

Do not worry. Unlike others, I will not be putting in a fee.

**Mr Beggs:**

I have some sympathy with Peter's latter points. I can see instances in which it would be a subjective judgement as to whether a hedge is too high, and perhaps somebody should have to put a fee in. However, I know of one leylandii hedge in my constituency that is 25 feet high but only six feet from someone's back door. That is clearly unreasonable. In my opinion it affects the light in the house, etc. If a neighbour is unreasonable and does not agree, through the mediation process, to cut it down, the penalty should be that the full costs be borne by that person. Perhaps, in more subjective situations, it would be reasonable to bear the risk and have to pay a fee in order to realise the benefit. That would probably stop spurious applications, which take up the council's time and increase its costs. We have to be appreciative of that.

It might be useful for the Committee to do some research into the range of fees that are paid, both at the upper and lower limits, and how social housing authorities get involved on behalf of tenants with limited means.

The Court Service proposes to use the Northern Ireland Valuation Tribunal as an appeals mechanism. I cannot remember having any involvement with it, and I am not aware of that particular tribunal, although I have heard of it. However, in other tribunals that I have engaged with — industrial employment tribunals, etc — significant legal costs can start to kick in at that level. Will this tribunal be such a body where there will be solicitors and barristers appearing? Will there be the potential for someone to access legal aid, with a council having correspondently to instruct solicitors and barristers? That could mean that, instead of the case costing hundreds of pounds in officers' time, it could potentially cost tens of thousands of pounds in barristers' time. Could this body open up that route that could lead to ridiculous fees for the legal profession?

**Mr Caldwell:**

There may well be a flurry of appeals if and when this legislation becomes operational. I expect that, as time goes by, the number of appeals will diminish rapidly. I do not envisage a situation

akin to fair employment or industrial tribunals, where barristers are involved. The Valuation Tribunal has people with surveying expertise. In instances where an appeal is made, the issue will be fairly straightforward.

**Mr Beggs:**

I do not envisage it either, but I recently had the experience of an anti-social behaviour order case — as a witness, I might add. *[Laughter.]* It struck me that there was strong evidence that the person in the dock was unreasonable. The legal expenses associated with the case were considerable, and the sitting had to be put off for several months and re-run because the defendant dismissed his barrister. He did not care about the expense because everything was paid for by legal aid. What you envisage may not come to pass, but I want clarity as to whether huge amounts of legal aid will kick in here because there will have to be a corresponding amount of expenditure of taxpayers' money by local councils.

**Mr Weir:**

We have all been involved in planning appeals, which are slightly different. However, the same thing can happen if someone has a complaint against a developer. Someone who has vast wealth and wants to defend his position can get in the top people — barristers and experts — and there may not be a level playing field. If Sir Tufton Bufton is threatened with having his trees cut down, he may get a QC to represent him in the appeal. This is related to Roy's point. If we are researching the cost, we might look at that. I understand that there have been some problems in England with high hedges. I suppose that the Department is introducing this in a particular way to try to learn from some of the mistakes made there. As part of the research, can we find out precisely how the appeals mechanism works in England: if there is an appeals mechanism, how it works and so on?

**Mr Caldwell:**

There is indeed an appeals mechanism in England and Wales; it is through the Planning Inspectorate.

**Mr Beggs:**

My point is that, if there is an appeals mechanism, we must ensure that it will not cost ridiculous amounts. We want appropriate decision-making and independence without undue cost. That is in the interests of everyone but the barristers and solicitors.

The second issue that I want to put to you is this: it is not envisaged that this will encompass single trees. Coincidentally, last night I was in a constituent's house where the roots of a sizeable single tree had spread under the patio, which was starting to come up. How are instances like that to be dealt with if they are not to be included in this type of legislation?

**Mr Caldwell:**

As far as I know, that would involve taking a civil action against the person on whose ground the tree is planted. I do not claim to be an expert on how that mechanism works. It cannot possibly be appropriate to this draft Bill, which is narrowly focused to deal with the main issue, identified in the earlier scoping exercise, which is that of high hedges. The mechanism whereby a hedge can be reduced to two metres cannot be applied to single trees. The notion of reducing a tree to two metres is ludicrous. The mechanism does not fit single trees.

**Mr Ross:**

With respect to fees, I agree that, where an individual has been approached and the mediation process has been gone through yet he still refuses to take the action, it is perfectly justifiable that the costs be passed on to him.

I know that if an individual wants to make a complaint about a hedge, he or she must go through the mediation process or try to approach their neighbour about the problem before any action can be taken. However, some elderly individuals who have had run-ins with their neighbours in the past might not feel comfortable about doing that. Is it up to the discretion of local councils to decide whether or not they will help in the mediation process? Or is it the case that if individuals do not make an effort to try to talk to their neighbour, they can forget about it? I am thinking about elderly individuals, in particular, who may be nervous about approaching their neighbours.

**Mr Caldwell:**

The legislation, as currently designed, requires individuals to make some attempt to discuss the problem with the person who owns the offending hedge. I suppose that elderly people or those who are a little bit shy about approaching a neighbour can ask a local advisor to help them.

**Mr Beggs:**

Perhaps a local councillor or MLA?

**Mr Caldwell:**

They cannot ask councillors, who are meant to be independent. It would not be right for a councillor to be seen to be associating with one particular party when the council must then make a judgement between the two parties and decide on a remedial notice. However, there are other organisations, such as voluntary bodies and various advisors.

**Mr Beggs:**

Presumably, a councillor could get involved, but he would have to exclude himself from the council's decision, because he would have an interest in it.

**Mr Caldwell:**

He or she would have to.

**Mr Ross:**

If an individual phoned the council to try to complain, but he or she had not been through the mediation process, would the council be able to provide some sort of departmental guidance or the addresses of certain bodies that could help in the mediation process?

**Mr Caldwell:**

I think so, yes.

**The Chairperson:**

There are two trees in my back garden; I had better go home and get the tape measure out. *[Laughter.]* I will check my neighbour's patio, too.

Thank you for your presentation. In light of some of the questions that you were asked today, you should bring a crystal ball with you the next time. I do not think that you could have envisaged all of this. No doubt that you will be before the Committee again over the coming months.