



**Northern Ireland
Assembly**

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

High Hedges Bill

30 September 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

High Hedges Bill

30 September 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Trevor Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mr Donal McLaughlin)	
Ms Claire O'Neill)	Northern Ireland Local Government Association
Ms Nora Winder)	

The Chairperson:

I welcome Donal McLaughlin, who is the environmental health manager in Lisburn City Council; Claire O'Neill, who is the principal environmental health officer in Belfast City Council; and Nora Winder, who is the acting chief executive of the Northern Ireland Local Government Association (NILGA). You are welcome today's Committee meeting. You may begin with a

five- or 10-minute presentation, and that will be followed by Committee members' questions. Nora, you are very welcome back. Before we continue, I invite members to make declarations of interest.

Mr Weir:

I declare an interest as a member of NILGA.

Mr B Wilson:

I declare an interest as a local councillor.

Mr Beggs:

I am a local councillor.

Mr T Clarke:

I am a local councillor.

The Chairperson:

You are on the gravy train.

Ms Nora Winder (Northern Ireland Local Government Association):

Thank you for inviting us to the Committee meeting. Before I begin, may I apologise on behalf of our president, Councillor Evelyne Robinson, and the chairperson of our health and environment committee, Councillor Jenny Palmer, both of whom, owing to prior engagements, are unable to attend the meeting.

The local government sector broadly welcomes the legislation to deal with the issues that are raised in council, as you were discussing earlier. NILGA has been working closely with the Department of the Environment (DOE) on the development of policy and guidance on high hedges. A joint DOE/local government event was held in Cookstown on 23 February 2010 to discuss the initial departmental consultation. There have been subsequent officer meetings to explore key issues and proposed guidance documents. The work is ongoing. It was hoped that a meeting would be held to address fees and charges prior to this Committee meeting. However,

owing to other work commitments, that has not been possible. We are seeking an early date for that meeting and will report back to the Committee on progress made.

Although NILGA is aware that a number of issues of concern to local government have been resolved through the process, as I have outlined, a number of issues remain. We wish to focus on those issues today.

You will be aware that I am not an expert in this area, but we have two experts with us today: Claire O'Neill, the principal environmental health officer in public health and housing in Belfast City Council; and Donal McLaughlin, the environmental health manager in Lisburn City Council. Claire will take you through the key issues.

Ms Claire O'Neill (Northern Ireland Local Government Association):

Our first concern relates to clause 2 and the limitations of the remit of the proposed legislation. It is clear that the legislation as it stands will not deal with all complaints. It is not designed to cover problematic root systems, deciduous hedges or single trees, and it may be that a complaint is not resolved owing to an inability to cut far enough. There is still no legislative cover for single trees that are a barrier to light, and that can be a problem in urban areas. It will be necessary for the Department to have discussions with the Forest Service to ensure that it is aware of the new legislation and is sensitive to its requirements.

There are also concerns about fees and charging. The most serious local government concern is the proposed innovative approach to charging. At first sight, it looks as if the complainant is being charged, and that runs contrary to existing local government practices and the wider polluter-pays principle. Although NILGA is supportive of the need to cover costs and recognises the proposed system as a means of attempting to do that, we are concerned that the system is an awkward fit with other council functions, even though it is a means of ensuring that all ratepayers do not shoulder the cost of an individual's problem. We are also of the view that it is highly unlikely that the fee will cover the costs involved.

NILGA has ensured that local government is working closely with the Department to develop guidance and to ensure that the fees set are as realistic and consistent as possible. We seek to

avoid a scenario in which the complainant ends up paying more than the hedge owner in the event of a justified complaint. It is the view of local government practitioners that there is a potential for the development of prescribed fees regulations, such as those developed recently by the housing unit in the Department for Social Development (DSD) under the Private Tenancies (Northern Ireland) Order 2006. Early discussions have taken place with the Department in that regard, and we encourage the Committee to investigate the possibility of prescribed fees regulations. Local government is keen to liaise with the Department to inform the setting of a maximum fee, and NILGA will be arranging a meeting in the near future to discuss fees and charges specifically. There is a chief environmental health officers' group, which represents all 26 councils. Its purpose is to provide consistency across all council areas.

On clause 3, it is NILGA's view that the Department should set a maximum fee, with council discretion regarding ...

[The next 10 minutes of proceedings were not recorded due to technical difficulties.]

Mr Weir:

... Given the number of problems that a single tree may cause, will the volume of complaints be as manageable? What are your views on the scope of the problem?

Mr Donal McLaughlin (Northern Ireland Local Government Association):

Many of the complaints about deciduous trees at this time of the year concern leaf litter. The tree may not belong to a property, yet the owner of that property may have to live with a lot of slippery leaf litter. It may be a dangerous situation. There are very many of those complaints, and we hear a lot about such situations. At this stage, we can do nothing about it. As you say, the cost of investigating, especially to investigate the integrity of the tree, will be very expensive.

Mr Weir:

If you could supply some information, it would be useful. The broad idea is that the polluter pays and that the costs follow the event. However, you have given us a separate example within government of a methodology that could be used.

You spoke of the experience in England. If it is ready, we may receive some report of the

process. I wonder, perhaps through NILGA, if I were to ask Ms “Winter”, as she is called on her nameplate, whether she can find out any information and supply it to us from the experience of English councils, as to what problems they have faced. It is said that a wise person learns from his mistakes, but an even wiser person learns from someone else’s mistakes. If we can get this right, it will be helpful.

You have highlighted that there is a major problem with in tracing the person responsible for vacant land. Presumably, where you have genuinely vacant land and vacant properties, there is a boundary hedge. In those circumstances, presumably the prospect of someone cutting the hedge voluntarily is very limited. That land may be very heavily overgrown in many cases. Are you concerned that, unless there is some provision that allows a council to recover costs for rectifying the problem from the person who has created it, we will be left with a situation in which we will have to have an astronomical fee structure initially or, alternatively, councils will habitually be left with a large bill to pick up. The only way in which to square that circle is to be able to pass at least some of that cost on to the person or persons who have arguably been responsible for the case in the first place.

Ms C O’Neill:

We said that, if the council has the vires to go in and remove the hedge completely, there will not be an ongoing maintenance issue, which is not provided for in legislation at the moment. Where councils are able to put a statutory charge on the land, if the land is ever sold again, they have a prospect of getting back costs incurred. Those are the only two ways of doing that.

Mr Weir:

You referred to the 2006 Order. The opportunity at least to allow costs to follow the event, as one would say in court, seems to be a reasonably sensible approach.

There would, however, be a major problem if the land of a little old lady, or a big young lady, were polluted by way of a large hedge. What might be said is that the person who is already suffering as a result is the only person who is picking up a tab, while the person who has created the problem seems to be getting off, apart from having to take remedial action. The person who has created the problem is not in any way financially sanctioned by that side of the reading.

Clearly, there is potential for unfairness there.

Ms C O'Neill:

That is why, if there were a cost on the service of notice of any further specialist fees or anything else, that would be left to the hedge owner.

Mr Weir:

That would allow for some recovery of costs.

Ms C O'Neill:

That would negate, and lower, the cost of complaining, because the complainant knows that costs will be recouped later.

Mr Weir:

Should there be, for example, as a part of that, a slight variation to the system? Might we call it a deposit rather than a fee? A complainant may submit that money and, in the event that a person is successful with the claim and a particular order is made against the other landowner, the deposit is returned. If the case were dismissed or thrown out some other way, the deposit would not be returned. It is a question of expression, apart from anything else.

Mr Kinahan:

I welcome the advice on the civil costs. It is good to hear that.

I have raised the matter of vacant properties with the Minister on other matters. We need to find a way forward for identifying the owners of vacant plots. It is behind a whole mass of problems for councils. I want to return to the single tree issue. My feeling is that this is becoming too complicated and that we need to have a good definition of a hedge. I want some advice from you on the tree side of things. There have been many instances in which houses have been built around trees that are protected for historical reasons, their age or because they look good. Subsequently, the tree is deemed to be dangerous. All trees are dangerous, depending on how they are graded. I would like some advice on how we would deal with the protection, because I am worried that we will have no trees or hedges, if we go down the road that we are

going. All of them will be at risk, so we will have to be careful and keep the legislation simplified. Can you train someone in councils to have the required knowledge on hedges and trees in time for the commencement of the legislation?

Mr D McLaughlin:

I think that our grounds maintenance people have the required expertise. As we develop over the next few years, it is hoped that, the next time around, we will be able to apply the same rules and regulations to Castlwellan Gold, one of our indigenous trees, as you referred to them. Trees that are protected under a tree preservation order and trees that are being screened for planning will be outside the remit.

Ms C O'Neill:

The safety issue is not covered in the legislation. Single trees will be considered only if they are a barrier to light. They have to act as a barrier to light to the complainant's property or have overhanging branches, and there is a full matrix [*Inaudible.*] for that.

The Chairperson:

To follow on from Mr Kinahan's point, I know what you said about vacant properties, but we need to look seriously at the power around whether to remove the tree. We will need to be careful about that element as well.

Mr Beggs:

Some people have suggested widening the scope of the Bill to deal with individual trees. Are you fearful that if that were done, the number of complaints would be astronomical, and our town and cities might end up with no trees?

Mr D McLaughlin:

I tend to agree with that; that could be the case. We have no idea how many complaints there will be.

Mr Beggs:

I am concerned about widening it to that extent. If my reading of the Bill is correct, it relates

solely to evergreen hedges. I planted a beech hedge around 10 years ago. It is green for most of the year, has brown leaves for almost the remainder of the year and, for a short period, is leafless. You can have a thick, effective hedge, and if it is appropriately located, it can be a successful hedge. However, it appears to me that a hedge such as that would not be governed by the legislation. We top and trim our hedge regularly, but if it were allowed to grow completely out of control, we could create the problem of affecting a neighbour's light. Do you agree that that type of hedge should be included in the Bill?

Mr D McLaughlin:

Beech and horse chestnut are mentioned in the Bill. They are excluded from the legislation, because there is also a semi-evergreen definition, which has not been clarified.

Mr Beggs:

Can we have clarification on whether that could be included in the Bill? Is clarity required on any other types of hedge? If a type of tree is being used as hedge and is causing a problem for neighbours, it would be unfortunate to miss it and not have it included in the Bill.

Mr D McLaughlin:

I am not an expert on evergreen trees, but horticulturists in the council have told me about thuyas, which will die if they are thinned out at all, yet they are like Castlewellan Gold or green leylandii. We need experts in instances to ensure that we are dealing with the right kind of hedging or trees.

Mr T Clarke:

I am not as green as some of these other guys, but there should be a definition of size; otherwise, the issue is very subjective. However, if the hedge that you are talking about is causing a nuisance, surely it should be included, whether or not it dies.

Mr Beggs:

It should not have been planted.

Mr T Clarke:

It should not have been planted in that location. It should have been planted away from houses.

Mr D McLaughlin:

It is included. What I am saying is that if we demand that it be brought down to 2 m, that will automatically kill the hedge. There is no way around that. That has to be borne in mind. By serving notice on it, we are condemning that tree or that hedge.

Mr T Clarke:

That is fair enough.

Mr D McLaughlin:

Yes.

Mr T Clarke:

Whoever planted that —

Mr D McLaughlin:

There is a liability on the council.

The Chairperson:

Obviously, that is a valid point, and you may be right, Mr Clarke. If it is regarded as a nuisance, it has to be removed. That is something that we need to look at in the Bill. What you are concerned about, however, is the cost of all that.

Mr D McLaughlin:

And the liability for damage.

The Chairperson:

Yes.

Mr T Clarke:

If you are outside the legislation, surely the liability should lie with the owner, as opposed to the authority that is enforcing the legislation.

Mr D McLaughlin:

We would like to think that, but —

Mr T Clarke:

Is that not clear in your reading of the Bill?

Mr D McLaughlin:

The English legislation talked about councils bringing in arboriculturists to protect themselves against any liability for hedges being killed by being brought down to a certain level. The expertise would say at the minute that a hedge of 40 ft should be reduced by one third in the first year, and then in stages. If it is brought down by any more than that, the hedge will be killed automatically without any further intervention.

Mr T Clarke:

The danger with that is that if with a 40 ft hedge, “Special Branch” will be out every other year.

Mr D McLaughlin:

Every other year, yes.

Mr T Clarke:

Therefore, that means that the people who initially pay a fee will have initiated a complaint that could take three or four years before they get the outcome that they require.

Mr D McLaughlin:

Yes.

Mr T Clarke:

That is not fair either.

The Chairperson:

We are not including “Special Branch” in the legislation, by the way.

Mr B Wilson:

I was extremely concerned that you were trying to incorporate the idea of a single tree into the legislation. Those are two totally different cases. I have been very supportive of high hedges legislation. In fact, to Rooker's consultation around five years ago, I got half a dozen people to put in objections.

We need this legislation, and it is disappointing that it has not yet come into effect. However, trying to incorporate single trees into it is totally unacceptable. Very often, a requirement of planning applications is that trees must be retained. The trees are often there from before the house is ever built. The character of many urban areas is defined by trees, and their absence would totally transform those areas. As for the idea that we suffer loss of life from a tree, most trees — for example, a 150-year-old oak — is in leaf for only half the year. Unfortunately, perhaps, for that half a year, light will be lost.

However, high hedges are an absolute curse for many in urban areas. As a councillor, I have been trying to do something about them for years. We should be getting on with doing that, and not bothering about single trees, because totally different legislation would be required.

The Chairperson:

That is an issue that we are only teasing out. We are not saying that we are going down that road at all. I know of examples in my constituency of single trees causing a nuisance. There is no doubt about that.

Mr T Clarke:

Your forest is OK, Danny. Do not worry: we are not saying that we are going to cut it down.

Mr Kinahan:

Should I declare an interest?

The Chairperson:

None of these people will be invited to the Edinburgh Festival. The standard of jokes is just not up to it.

Mr Weir:

Not even to the Fringe.

The Chairperson:

Perhaps we can look at the figures to see how many complaints are made about single trees and get the Assembly Research and Library Service to look at that. Thank you very much for your presentation.

Mr Kinahan:

I believe that the Assembly in its first mandate did a great deal of work on a Bill to protect single trees. We should keep that issue separate. I know that it is sitting on a shelf somewhere.

Mr D McLaughlin:

As regards our taking court action, we are limited by the Magistrate's Court in that we can recover costs up to £75 only. Perhaps you could look into what costs can be recovered through the courts.

The Chairperson:

OK. We will look at that.

Gentlemen, are you content for the issues that have been raised to be incorporated into the clause-by-clause summary paper?

Members indicated assent.