

NORTHERN IRELAND VALUATION TRIBUNAL

**THE HIGH HEDGES ACT (NORTHERN IRELAND) 2011 AND THE VALUATION
TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)**

CASE REFERENCE NUMBER: NIVT 17/24

ARTHUR DOUGLAS CHARLWOOD - APPELLANT

AND

ANTRIM & NEWTOWNABBEY BOROUGH COUNCIL - RESPONDENT

Northern Ireland Valuation Tribunal

Chair: Mr James Leonard, President

Member: Mr Richard McLaughlin MRICS

Hearing: 11 June 2025, Belfast

DECISION

The decision of the tribunal, for the reasons provided below, is that the appellant's appeal advanced upon certain stated grounds against a Remedial Notice dated 28 August 2024 is upheld to the extent indicated and the Remedial Notice is accordingly amended as provided for in this decision, for the reasons stated by the tribunal.

REASONS

Introduction

1. This is a reference under the High Hedges Act (Northern Ireland) 2011 ("the 2011 Act"). The statutory regime is prescribed by the 2011 Act and by the regulations made thereunder and this regime provides for a site visit by the Valuation Member of the tribunal and, thereafter, for a consideration of the appeal by a tribunal constituted of a Legal Member and the Valuation Member. There is no oral hearing in these cases; any evidence is derived from the Valuation Member's site visit and inspection of the locus and, further, from any documentary evidence (including electronic) received by the tribunal. All evidence thus available to the tribunal, from whatever source, was fully considered by the tribunal before reaching a determination, together with any submissions of the parties.

The Background and the Complaint

2. This appeal arises from a complaint about what is stated to be a high hedge ("the hedge") situated upon property located at 423 Antrim Road, Newtownabbey, County

Antrim BT36 5EE (“the subject property”). The appellant, Mr Charlwood, is the owner of the subject property. A neighbour of the appellant, Mrs Thompson (“the complainant”), resides at a property located at number 4 Moss Grove Park, Newtownabbey County Antrim BT36 5GS. The complainant, after various dealings with the appellant required to be made under the statutory regime before a complaint may be accepted, evidence of which dealings the tribunal has noted and accepted as being valid, made a complaint, using the applicable form, under the 2011 Act to the respondent to this appeal, this respondent being Antrim & Newtownabbey Borough Council (“the Council”). The Council, having received the complaint, issued a questionnaire to the hedge-owner, Mr Charlwood and gathered further evidence and conducted a technical assessment of the site in accordance with appropriate principles of technical assessment and under the High Hedges Act (Northern Ireland) 2011 Guidance for Councils. To very briefly address one issue raised by Mr Charlwood’s representative (more of which below), from the documentary evidence the tribunal is entirely satisfied that the technical assessment was carried out by the Council in accordance with all proper procedures. There was one technical error made by the Council, which will be addressed below.

3. The Council, further, sought the opinion of an expert arboriculturalist (Dr Blackstock) and issued a resultant letter and a Remedial Notice both dated 28 August 2024 (“the Remedial Notice”). The documentation from the Council sets out the grounds of complaint by the complainant, the resident of 4 Moss Grove Park, Newtownabbey. The tribunal’s scrutiny is confined to the complaint and to the resultant action taken by the Council in response to this specific complaint, including the Remedial Notice.
4. The tribunal has accordingly noted the substance of the complaint to the Council by the complainant. The essence of this complaint has been recorded by the Council as: “....*Trees in question blocking almost all natural light and sunlight into our garden (even in summer). Rooms at rear of our home have very limited daylight reaching them due to sheer height of trees and in-fact [sic] they cover the whole length of our small garden*”. Accordingly, the complainant has, in the essential aspects, alleged that the hedge is adversely affecting the enjoyment of this domestic property by acting as a barrier to light.
5. In this appeal, the tribunal was provided with all relevant documentation from the Council and the appellant’s side. All of this documentation was carefully considered by the tribunal in reaching a determination of the appeal. The tribunal inspected the maps and photographic evidence and other material available, more of which below. The resultant formal Remedial Notice emerging from the complaint and from any further investigations made by and on behalf of the Council, was issued and dated 28 August 2024, against which Remedial Notice the appellant, Mr Charlwood, now seeks to appeal to the tribunal.

The Council’s Action

6. Upon receiving the complaint, the Council arranged to gather relevant evidence and to visit the site. Measurements were taken by the attending Council official, and the tribunal has inspected the calculations made and mapping and photographs. The Council also commissioned a report from Dr Philip Blackstock Dip. I.M., M.Sc., D. Phil., who conducted a site survey on 10 July 2024. The report of Dr Blackstock

(“the Blackstock Report”) is dated 2 August 2024. It is entitled, “RECOMMENDATIONS ON LIKELY SURVIVAL OF CONIFERS AT LANDS ADJACENT TO 4 MOSSGROVE PARK, NEWTOWNABBEY, JULY 2024”. The Blackstock report seeks to address the issue of tree/hedge survivability. It does go into some technical detail. It is necessary to extract certain elements that are directly pertinent to the tribunal’s decision in this appeal. The Blackstock report accordingly records the following:

“ The Leyland cypress trees had recently been topped and were about 8.5 m [sic] (presumably Dr Blackstock is here intending to refer to “metres”) tall. Their lower canopy was about 2.0 m above ground level. They were forming a wide screen, extending into the garden at 4 Moss Grove Park by up to about 1.0 m and were in total, about 5.0 m wide. There were two or three dead stems evident within the hedge, otherwise it appeared to be healthy.....In the absence of scientific results from well-designed experiments on the survivability of conifers to topping, a number of estimates have been adopted. These appear to range from 30% (for example paragraph 7.5 of BS3998:2010 Tree Work Recommendations or as posted on the Royal Horticultural Society website) up to about 50%, depending on species and vitality (paragraph 35 of “High Hedges” published by the Planning Inspectorate in England). A canvas of experienced contractors with many years’ experience specialising in trimming and reducing cypress hedges supports the Authors [sic] professional experience that a reduction in the live crown of a cypress hedge of 50% is usually survivable. Hedge survivability is reduced with the increasing age of the conifer, and with certain cultivars or species not normally used as hedging. In this instance with evidence of recent past crown reduction and the presence of dead stems, a reduction in the live crown of these trees should not exceed 30%”.

The Blackstock report thereafter proceeds with a recommendation made by Dr Blackstock as follows:

“Recommendations. It is recommended that the cypress trees growing to the south-west of 4 Moss Grove Park and reported on here, may be reduced in height to 5.5 m closest to the property at 4 Moss Grove Park and to 8.0m at the south-western edge of canopy, furthest away. Such an approach will maximise the benefit to the gardens of 4 Moss Grove Park, while minimising the impact to the owners of this hedge. This will also ensure that the additional hedge trimming does not affect is [sic] likely survival”.

7. Turning then to the Council, the Council in this matter does not appear to have prepared a formal report (at least one that has been presented to the tribunal) but rather to have encapsulated any of the relevant matters into a letter sent to the appellant Mr Charlwood of 28 August 2024 (and also a corresponding letter to the complainant). This letter sets forth, in turn: the statutory background to the matter and details of the complaint; the evidence gathering role of the Council; the statement obtained from the hedge owner; the site visit conducted on 10 July 2024 together with Dr Blackstock; and a reference is then made to the Blackstock report. The case for the complainant and the case for the hedge owner (the appellant) are mentioned, followed by the appraisal of the evidence under the respective titles of “light obstruction”, “visual amenity”, “plant growth litter” (discounted as being an

issue), “privacy”, “health of the hedge”, “cost of remedial action”, then followed by a conclusion which is stated as follows:

“It is recommended that the Cypress trees growing to the south-west of 4 Moss Grove Park should be reduced in height to 5.5 metres closest to the property 4 Moss Grove Park and to 8 metres at the south-western edge of canopy, furthest away. Such an approach will maximise the benefit of the gardens of 4 Moss Grove Park, while minimising the impact to the owners of the hedge”.

It will be noted that this conclusion of the Council is directly taken verbatim from the corresponding paragraph in Dr Blackstock’s report. The Council’s letter continues by making reference to the content of the Remedial Notice and sets out the right of appeal to the Valuation Tribunal, which right indeed has been exercised by Mr Charlwood in this case. Accordingly, in the part of the report entitled “Formal Decision”, there is set out a summary of the findings by the Council and a summary of the requirements of the Remedial Notice and the timescale for any remedial action necessitated and, identification of who is required to take such action.

8. Examining the formal Remedial Notice, this Notice is dated 28 August 2024. It specifies, in reference to the applicable legislation (the 2011 Act), the hedge to which the Notice relates. This hedge is thus identified in the Notice as being:

“... The row of Leyland cypress trees planted on ground to the rear of 423 Antrim Road, Newtownabbey, County Antrim BT36 5EE as per photo and map (Reference 743472) attached”

9. The Remedial Notice specifies, firstly, the initial action that should be taken, which is stated as follows:

“It is recommended that the Cypress trees growing to the south-west of 4 Moss Grove Park may be reduced in height to 5.5 m closest to the property at 4 Moss Grove Park and to 8.0 m at the south-western edge of the canopy furthest away.”

10. Secondly, “preventative action” is further specified as follows:

“Maintain the Cypress trees so that at no time their top height exceeds [sic] 6 metres (when measured on the edge of their live crowns growing to the south-west of 4 Moss Grove Park, Newtownabbey, County Antrim BT36 5ES) and 9 metres when measured on the edge of their crowns furthest away from 4 Moss Grove Park, Newtownabbey, County Antrim BT36 5ES.”

11. There is also an informative section in the Remedial Notice designed to assist the hedge owner in taking the appropriate action and, accordingly, informative recommendations are set out towards the conclusion of the Notice. It is further specified that the Notice takes effect on 28 September 2024 (with a compliance time

stated of 3 months thereafter) and, finally, the consequences of any failure to comply with the Notice are set forth in accordance with the applicable statutory provisions.

The Appeal

12. In exercise of the statutory entitlement to appeal available under the 2011 Act and relevant regulations, the appellant appealed the Remedial Notice to the Valuation Tribunal, that being done by Appeal Notice (Form 8) submitted 7 October 2024. The appellant engaged M Large Tree Services Ltd (Mr Stephen Warren, BSc (Hons)) to conduct a survey and to prepare a report in consequence of the Remedial Notice with also some submissions made for the purposes of the appeal. This report of Mr Warren is hereinafter referred to as the “Large report”. The tribunal shall comment in some further detail below concerning some matters arising from the appellant's grounds of appeal but, first, the tribunal wishes to comment upon observations made in the Large report, following Mr Warren’s survey conducted on 12 September 2024. The Large report includes the following points:
13. It is asserted in the Large report that the Council provided no evidence regarding their estimate of the “Action Hedge Height” (which statutory concept the tribunal shall hereafter abbreviate to “AHH”), but this AHH has been calculated in the Large report at 2 m. The observation is that the trees are approximately 8.5 m high at present and that the reduction to 2 m would certainly be fatal for the trees. It is observed that Remedial Notices cannot order the removal of a hedge or any action that would result in the death and destruction of the hedge. It is further observed that the Council have acknowledged this by commissioning the Blackstock report and it is mentioned that Dr Blackstock had recommended a reduction in height to 5.5 m for one of the trees and 8 m for the other. The Large report then proceeds to set out several grounds upon which the appeal is based, including the lack of a calculated AHH, the practicality of any reduction, the notice to cut the hedge at two different heights, and the effect of reduction to the specified height.
14. Dealing with the first matter, AHH, the Large report raises the issue of whether or not proper procedure has been followed and asserts that the Council should provide evidence for or calculations of the AHH. The Large Report then sets out a calculation of the AHH with the conclusion that this is calculated, overall, at 2 m.
15. The Large report then proceeds to query whether adequate mediation prior to the complaint to the Council being made was properly engaged. It is queried whether that might negate the legal standing of the case.
16. The Large report then turns to the practicality of reduction and states that although the Council have asked for a reduction to 8 m, they specify that this is to allow for regrowth and to ensure that the trees do not exceed 8.5 m in height. The observation is made that the trees currently do not exceed the prescribed height (8.5 m), and trimming was thus not currently necessary. It is asserted that the trees were reduced to approximately 8 m in the summer of 2023 and the suggestion is made that, in an attempt to resolve the matter as far as is reasonably practicable, a further 50 cm is removed from the stems and allowing for regrowth this would ensure a height of 8 m is not exceeded, which went beyond the requirements requested by the Council.

17. The Large report next proceeds to mention the issue of different heights within the same hedge. The comment is made that it is unusual for a notice of reduction to specify two different heights within the same hedge and if the hedge was a single entity the required height ought to be uniform. If, however, the trees could be individually assessed, that might undermine the definition of them as a hedge. It is made clear that the Large report does not question that the trees constitute a hedge under the legislation, but would highlight that if one tree is reduced to 8 m and the other to 5.5, the hedge would remain at 8 m. It is asserted that this would make the proposal to reduce the second tree to 5.5 m moot. The argument is that if the height of the hedge was acceptable at 8 m (or 8.5 m allowing for regrowth) there seems no reason to reduce either tree to 5.5 m.
18. Dealing then with the consequences of the proposed reduction, the Large report opinion expressed is that the reduction of the tree closest to 4 Mossgrove Park to 5.5 m was likely to result in the death of the tree. Dr Blackstock had stated that “a reduction of the live crown of these trees should not exceed 30%” but this did not equate to a reduction of 30% in height. The author of the Large report agreed that a reduction of 30% was survivable but this was a reduction to the total crown of a tree, not the overall height. If the tree had a full, well-balanced crown, with branching from its base it could withstand a reduction in height of 30%. The observation is made that what appears to have been judged is a theoretical crown based on the current height of the tree. It is stated that the specified tree had seven stems, five of which were already dead as a result of hard pruning back and competition for a light with adjacent trees. The remaining branches grew towards the south-west and into the garden of 423 Antrim Road. This had effectively removed approximately 60% of the theoretical crown and branching began at approximately 2 m, further reducing the theoretical crown from the base of the tree. It was the conclusion of the author of the Large report that to reduce the height of this tree from 8.5 m to 5.5 m (35%) would cause the death of this tree.
19. The appellant, Mr Charlwood, has set forth in a document what were asserted to be errors in the documentation, including errors in the spelling of Mr Charlwood’s name, incorrectly stating that 4 Mossgrove Park was a detached house whereas it is a semi-detached house, that the tall row of Leyland Cypresses with scattered sycamores was in reality two Cypresses and one sycamore, which sycamore was behind the garage and not the garden, stating that there were two or three dead stems evident within the hedge, whereas the photograph supplied by the complainant clearly shows at least five dead stems. It is further observed that the Remedial Notice is in effect confusing, as it states that the trees may be reduced in height to 5.5 m closest to the property and to 8 m at the south-west edge of the canopy furthest away. However, did this mean one tree at 5.5 m and the other at 8 m, or both at 5.5 m at the boundary fence and 8 m at the garden of number 423?
20. The appellant also states that the first tree has two stems left which start branching at 2+ metres. One of the stem’s branches is no greater than 1 inch in diameter up to approximately 4 to 5 m. Pruning this stem to 5.5 m would undoubtedly kill the stem and the tree. Cypress trees have a drooping format, and the branches would at best be level and lower probably than the point at which they leave the main trunk, thereby making the second option impossible.

The Statutory Provisions

21. The statutory provisions concerning the high hedge regime are to be found in the 2011 Act. It is perhaps worth setting out the relevant procedure for progressing these matters. The procedure essentially is as follows (for ease of description “B” being the owner or occupier of the land upon which the high hedge is situated and the party complaining being “A”):
 1. A first approaches B concerning the high hedge asserted to be adversely affecting reasonable enjoyment of A’s domestic property and A endeavours to negotiate a resolution of the problem with B.
 2. If A is unsuccessful, A then lodges a complaint with the appropriate Council (section 3) and pays the appropriate fee (section 4). Each Council may determine an applicable fee (if any), up to a statutory maximum. Provisions enable the Council, once the Remedial Notice takes effect and after any appeals, to refund the fee (if any) to A, and the Council may then levy a fee on B.
 3. The Council then determines the appropriate action, if any, under the 2011 Act (sections 5 & 6).
 4. The Council’s action may result in the issue of a “Remedial Notice” (section 5) which may require initial action to be taken before the end of a “compliance period” (such as reduction in hedge height by a specified amount, but not to a height of less than two metres) and any further preventative action following the end of a compliance period and any consequences of non-compliance. The Remedial Notice shall specify an “operative date”.
 5. The Remedial Notice may be relaxed or withdrawn by the Council (section 6).
 6. If B fails to take the action specified in the Remedial Notice, B may be subject to proceedings (section 10).
 7. Either A or B can appeal against the Council’s decision to the Valuation Tribunal (section 7).
 8. The tribunal shall arrange for the tribunal’s Valuation Member to conduct a site visit. A two-Member tribunal panel consisting of the Legal Chairman and Valuation Member shall then determine the appeal by quashing or varying the Remedial Notice, by issuing a Remedial Notice where none has been issued, or by dismissal of any appeal. There are no oral hearings.
 9. If any action such as is specified in the Remedial Notice is not taken within the compliance period, the Council can itself take appropriate action and can recover any expense reasonably incurred from B (section 12).

10. Any Remedial Notice, and any fees payable or expenses recoverable under the Act, may be registered as a statutory charge (section 15).
22. A number of statutory provisions now need to be set out, as the wording is material to the issues in this case. In respect of the technical definition of what constitutes a "high hedge" for the purposes of the 2011 Act, it is provided as follows: –

High hedge

- 2.— (1) In this Act "high hedge" means so much of a barrier to light as—
- (a) is formed wholly or predominantly by a line of two or more evergreens; and
 - (b) rises to a height of more than two metres above ground level.
- (2) For the purposes of subsection (1) a line of evergreens is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.
- (3) In this section "evergreen" means an evergreen tree or shrub or a semi-evergreen tree or shrub.
- (4) But nothing in this Act applies to trees which are growing on land of 0.2 hectares or more in area which is forest or woodland.

In respect of Remedial Notices, it is provided as follows: –

Remedial notices

- 5.— (1) For the purposes of this Act a Remedial Notice is a notice—
- (a) issued by the council in respect of a complaint to which this Act applies; and
 - (b) stating the matters mentioned in subsection (2).
- (2) Those matters are—
- (a) that a complaint has been made to the council under this Act about a high hedge specified in the notice which is situated on land so specified;
 - (b) that the council has decided that the height of that hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property specified in the notice;
 - (c) the initial action that must be taken in relation to that hedge before the end of the compliance period;
 - (d) any preventative action that the council considers must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land; and
 - (e) the consequences under sections 10 and 12 of a failure to comply with the notice.
- (3) The action specified in a Remedial Notice is not to require or involve—
- (a) a reduction in the height of the hedge to less than two metres above ground level; or
 - (b) the removal of the hedge.

- (4) A Remedial Notice shall take effect on its operative date.
- (5) “The operative date” of a Remedial Notice is such date (falling at least 28 days after that on which the notice is issued) as is specified in the notice as the date on which it is to take effect.
- (6) “The compliance period” in the case of a Remedial Notice is such reasonable period as is specified in the notice for the purposes of subsection (2)(c) as the period within which the action so specified is to be taken; and that period shall begin with the operative date of the notice.
- (7) Subsections (4) to (6) have effect in relation to a Remedial Notice subject to—
- (a) the exercise of any power of the council under section 6; and
 - (b) the operation of sections 7 to 8 in relation to the notice.
- (8) While a Remedial Notice has effect, the notice—
- (a) shall be a statutory charge; and
 - (b) shall be binding on every person who is for the time being an owner or occupier of the land specified in the notice as the land where the hedge in question is situated.
- (9) In this Act—
- “Initial action” means remedial action or preventative action, or both;
- “Remedial action” means action to remedy the adverse effect of the height of the hedge on the complainant’s reasonable enjoyment of the domestic property in respect of which the complaint was made; and
- “Preventative action” means action to prevent the recurrence of the adverse effect.

Under section 7 of the 2011 Act appeals against Remedial Notices and other decisions of Councils may be made in the prescribed manner to the tribunal and in this instance the appeal by the appellant (as hedge owner) is against the issue of a Remedial Notice, requiring the appellant to undertake specified works and actions.

The Tribunal’s Consideration of the Evidence and Submissions

23. The tribunal has carefully noted the written evidence adduced and arguments advanced. This has included the complainant’s complaint, copies of correspondence between the relevant parties, the Remedial Notice and letter from the Council to the appellant (and the complainant), together with the report concerning the matter prepared for the Council by Dr Blackstock and the Large report prepared for this appeal on behalf of the appellant. The tribunal’s Valuation Member, in accordance with the applicable procedure, attended the site on 20 February 2025 and conducted a site survey and inspection and made a comprehensive report to the tribunal. Any information and evidence gained as a result of that latter survey and inspection was considered by the tribunal, together with all of the other evidence available, in reaching a determination of the appeal.

The Technical Evidence concerning the issue of Height Reduction

24. The issue of AHH in the case may be dealt with briefly by stating as follows. The Valuation Member observed an error in the Council's technical calculations, as they had included the garage area in the calculations, whereas that ought to have been properly excluded. However, notwithstanding that, the Valuation Member's calculations resulted in an applicable AHH of 2 m. This indeed corresponds with the 2 m assessment of AHH both by the Council and also that which has been set out in the Large report. Accordingly, that is not in issue for the reason that everyone is in accord about this 2 m figure. The primary issue in this case is what might be termed "survivability" and any expert evidence bearing upon the appropriate height to which the hedge might be reduced in order to provide the maximum benefit arising from the complaint to the complainant, balanced with an appropriate determination of the height to which the hedge should be cut in order to ensure a fair and reasonable prospect that the hedge will survive any reduction. As has often been stated, it is not permissible for the tribunal to order any height reduction which would cause the destruction of the hedge. This is a particularly sensitive and difficult area when it comes to determination of height reductions for Leyland Cypress trees. Accordingly, the tribunal was entitled to carefully examine the expert evidence emanating from Dr Blackstock, on the one hand, and that from Mr Warren in the Large report on the other, which latter seeks to challenge some of the assertions made by and conclusions of Dr Blackstock.
25. Dealing firstly with some of the rather more peripheral issues, the tribunal's conclusions in respect of some of the arguments advanced are as follows. The proper preliminary procedures were indeed engaged with by the complainant and the resultant complaint was thus properly received and processed by the Council in accordance with the statutory provisions. There exist a number of typographical errors, including the unfortunate misspelling of Mr Charlwood's name and the tribunal would encourage the Council, for future cases, to take greater care to ensure that simple typographical errors do not enter the documentation. Furthermore, some of the terminology used by the Council is deficient, examples of this being the use of the plural "hedges" in the Council's documentation, whereas we are tasked with dealing with only one hedge. Such loose terminology only serves to cause confusion. Another point emerging from the Remedial Notice is that these formal Remedial Notices are matters encompassing a formal order or mandatory direction issuing from the Council, under the law: they are not "recommendations". These, specifically at the material part, serve to impose a formal statutory obligation - to the effect that certain action shall or must be taken by the hedge owner, in accordance with the Remedial Notice. The consequences of default are significant, under the law. It is hoped that these points will be borne in mind regarding any future action by the Council.
26. Dealing then with the content of Dr Blackstock's report, firstly, the tribunal had difficulty with certain aspects of the report from a number of perspectives. The tribunal reminds itself that Dr Blackstock had stated that the Leyland Cypress trees had recently been topped and were about 8.5 mm [sic] (presumably "metres") tall and that the canopy (commenced) at about 2.0 m above ground level. He observed that there were "two or three" dead stems evident (this number is challenged in the Large report who state that there are more – and the photographic evidence is noted) otherwise it appeared to be healthy. The tribunal has difficulty with the "two or three" dead stems, as it should be a simple task for an expert to observe and count a precise number of dead stems, if anything might turn on the point. Dr Blackstock

then proceeds to quote from technical assessments (in similar terms to that which the tribunal has noted from Dr Blackstock in other cases and with which the tribunal is accordingly familiar) noting that hedge survivability is reduced with the increasing age of the conifer and with certain cultivars or species and that in this instance, with evidence of recent past crown reduction and the presence of dead stems, a reduction in the live crown of these trees should not exceed 30%.

27. The tribunal then examined Dr Blackstock's recommendation (again which was challenged in the M Large report, more of which below) which was that it was:

"... recommended that the cypress trees growing upon the south-west of 4 Mossgrove Park and reported on here, may be reduced in height to 5.5 m closest to the property at 4 Mossgrove Park and to 8.0m at the south-western edge of canopy, furthest away. Such an approach will maximise the benefit to the gardens of 4 Mossgrove Park, while minimising the impact to the owners of this hedge. This will also ensure that the additional hedge trimming does not affect is [sic] likely survival".

These recommendations have been imported directly by the Council into the Remedial Notice. However, as has been observed by the appellant, a couple of issues emerge from the foregoing. Firstly the recommendation is deficient in that it does not adequately deal with the ambiguity arising from the terminology used - as to whether this recommendation is that both evergreen trees be reduced to a height of 5.5 m closest to Mossgrove Park, thereafter being permitted to grow to 8 m or whether, alternatively, one of the evergreens should be reduced to 5.5 m and the other permitted to grow to 8m. In a context like this with the recommendation being directly imported into the Remedial Notice, there should be no potential for confusion or ambiguity whatsoever: the matter should be entirely clear, if necessary, with additional reference to clarification photographic evidence or maps or identification or explanatory drawings.

28. The tribunal is entirely sympathetic to the appellant when he appears to be quite understandably confused concerning this recommendation by Dr Blackstock. Nonetheless that appears to have been accepted, without seeking any further clarification, by the Council. Furthermore, having expressly accepted the proposition that the reduction in the live crown of these trees should not exceed 30% and having stated that the foliage does not commence until at least 2 m above ground level, the tribunal simply does not comprehend how Dr Blackstock is then able to recommend a height of 5.5 m. His report is entirely silent upon the distinction between tree height and the height of the live crown, where clearly on his own assessment there is a distinction of at least 2 m between the two. In no way has Dr Blackstock attempted to assess the height of the live crown in this specific context and to factor that into his subsequent recommendation of 5.5 m, at least as far as the tribunal can observe from carefully reading his report.
29. Upon the tribunal's own assessment, taking a hypothetical total tree height of, say, 8.5 m and deducting from this an assessed 2 m below the commencement of the crown, that reduces the relevant figure to 6.5 m. If one then takes 30% of 6.5 m (the possible height of the crown), that 30% is a figure of 1.95 m. Taking that reduction of 1.95 m from the hypothetical crown height of 6.5 m means that the crown, after

reduction, ought to be 4.55 m in order to ensure survivability (this being on Dr Blackstock's own assessment). Adding in then the 2 m below the crown, the total tree height after 30% crown reduction ought to be 6.55 m.

30. It is somewhat inexplicable to the tribunal, accordingly, based upon Dr Blackstock's survivability assessment, as to how he has been able to come up with a figure of 5.5 m as representing the appropriate tree height, after (any survivable) reduction. Nowhere in his report has Dr Blackstock endeavoured to explain this. Accordingly, the tribunal is compelled to attach a reduced weight to Dr Blackstock's conclusion, as it is effectively unsupported by any compelling or persuasive argument. This is regrettable; it is equally regrettable that the Council sought to import this, verbatim, into their Remedial Notice. Accordingly, the tribunal is left with ambiguity and an effectively unsupported recommendation emerging from the Blackstock report, which report has been fundamental to the compilation of Council's Remedial Notice.
31. Of course, the Large report has, quite properly, taken these points and has sought to challenge the Blackstock report in that regard. The tribunal finds the general content of the Large report much more persuasive than that of Dr Blackstock. This causes considerable difficulties, accordingly, for the Council in endeavouring to persuade the tribunal that the Remedial Notice ought to be deemed subsisting and valid.
32. Some of the arguments advanced on behalf of the appellant set out in the Large report are not sustained by the tribunal (for example the challenge to the initial complaints process, the typographical errors issue and the misspelling of the appellant's name) but on this central and fundamental issue the tribunal is persuaded by the arguments advanced and well-articulated by Mr Warren in the Large report.

The Tribunal's Determination

33. The tribunal's conclusion from all of this is that the Remedial Notice is fundamentally flawed: the appellant's challenge to this must succeed. The tribunal then carefully considered how the appeal ought to be resolved. Firstly, it must be said that there is nothing inherently wrong (and this has been the subject of a number of previous decisions of the Valuation Tribunal) with the concept of a hedge being ordered to be cut, as it were, in a "sloping" manner in order to ameliorate the effect of loss of light closer to a complainant's property, but to maintain the integrity of at least part of the hedge at a higher level. However, this would normally be in respect of a considerable number of evergreen trees forming perhaps a lengthy hedge often leading in a direction away from any complainant's property. That of itself is not a significant issue. The central issue in this case, however, is the height to which any Remedial Notice ought to have ordered the hedge to be reduced to and maintained.
34. The tribunal has noted the Large report's argument that it would be illogical to reduce one of two Cypress trees to 5.5 m but then to order that the other tree be maintained at 8 m if this is indeed a composite "hedge" under the legislation (and it is not sought in the Large report to challenge that this is indeed a "hedge", for statutory purposes). It is argued that both Cypress trees ought to be maintained at 8 m and indeed a compromise was suggested that a further 50 mm might to be taken off. The tribunal's Valuation Member in his assessment measured the current height at 10 m,

representing a significant growth in height since the earlier assessments had been made.

35. Considering everything, including the fact that the recommended height of 5.5 m is not sustainable, for the reasons mentioned above and, further, taking into account based upon the available evidence that a height reduction in respect of both of the Cypress trees to no less than 6.55 m (considering the expert opinion concerning a 30% crown reduction) ought to ensure the survivability of both trees, the tribunal's considered determination, taking all matters into account, is that both Cypress trees ought to be reduced to a height of 7 m. The tribunal shall make a consequent order in that regard. This determination rests both in the unsustainability of the 5.5 m and also upon there being no compelling explanation as to why a reduction to less than 8m was not determined in this case by Dr Blackstock (and thence the Council) as so as to ameliorate, insofar as possible, the effect of light loss by tree height reduction to the benefit of the complainant, whilst maintaining the best prospects of tree survivability in this case.
36. The Remedial Notice is therefore to be amended accordingly, as stated below. The amendments to the Remedial Notice are in substitution for those pertinent parts of the Remedial Notice as issued by the Council. The statutory basis for this is that the tribunal is permitted by the 2011 Act, section 8 (2) (a), to vary the requirements of a Remedial Notice, which it shall do in this case.

Concluding Remarks

37. Before concluding, the tribunal would wish to make some comments upon certain, perhaps somewhat troubling, aspects of this case. It is hoped that these comments will be taken on board and maintained to the fore in the conduct of any future such matters by the Council and any experts instructed on behalf of the Council.

37.1 Firstly and obviously, it is trite to say that care must be taken to avoid typographical errors or errors in the spelling of names.

37.2 Secondly it would be helpful if a report was produced in addition to any correspondence directed to the parties, in other words a "freestanding" report by the Council and the contents of that could then be imported into the correspondence with the parties and any Remedial Notice.

37.3 Thirdly, one would expect that any Council, instructing an expert, would not accept without further enquiry or without seeking clarification, any conclusions which might seem to be a proper subject for clarification or query, as has indeed happened in this case. It cannot be a matter of "cutting and pasting" any expert's recommendations into a Remedial Notice without apparent examination and thought. The tribunal would expect any Council to form its own concluded view on things, in the light of any expert recommendations, but also by a proper interrogation of all of the information available to the Council.

37.4 Fourthly, in the compilation of any expert report and in anything emanating from the Council, it would be extremely helpful if all of the pertinent facts were clearly stated, to avoid room for ambiguity or confusion. For example, if the “hedge” consists of only two evergreen trees, that should be clearly stated, as opposed to using a generic term such as “hedge” without being more specific and the precise location of any evergreen trees which form the “hedge” in such a case (as where there are perhaps a small number of evergreen trees) should be specified and clearly identified in such a manner that all relevant evidence and information is made available to the parties and thence to the tribunal.

37.5 Fifthly, any expert instructed ought properly to set out all of the available evidence including mapping and photographic evidence in clear and unambiguous terms, to identify as necessary any evergreen trees (especially so if these are small in number or if there are unusual features) and, most importantly, ought clearly to explain the thinking behind any recommendations. If action is to be recommended derived from generally accepted survivability principles, the exact rationale behind any recommended height reduction ought to be clearly explained by reference to total tree height, crown height (as relevant) and the survivability issue. Clearly, that was not done in this case and indeed it has caused considerable difficulty.

37.6 Sixthly, the “preventative action” specified suggests the “maintenance” of the Cypress trees so that at no time does their top height exceed 6 metres (when measured on the edge of their live crowns growing to the south-west of 4 Moss Grove Park and 9 metres when measured on the edge of their crowns furthest away from 4 Moss Grove Park. This appears to permit maintenance by the hedge owner at 6 metres/9 metres, respectively. However, that seems to contradict the specification that Remedial Notice heights ought to be 5.5 metres and 8 metres respectively (“..... *the cypress trees growing upon the south-west of 4 Moss Grove Park and reported on here, may be reduced in height to 5.5 m closest to the property at 4 Moss Grove Park and to 8.0 m at the south-western edge of canopy*”). The tribunal does not comprehend how these two are reconcilable, in practice, and indeed these appear to depart from Dr Blackstock’s recommendation. This “maintenance” would effectively leave a hedge at 9 m in height.

38. It was perhaps inevitable in this case that the challenge made to the Remedial Notice by the Large report would take all or a number of the foregoing points, in this case successfully, resulting in the tribunal not upholding the Remedial Notice.
39. To conclude, the Council in this instance are advised by the tribunal to ensure that any Council personnel dealing with High Hedge matters are appropriately briefed concerning the points raised by the tribunal in this case, which are also of more general applicability to future cases.
40. As the tribunal is permitted by the 2011 Act, section 8 (2) (a), to vary the requirements of a Remedial Notice under these circumstances, the tribunal Orders as follows in respect of the Remedial Notice (which is otherwise valid and subsisting, save as herein varied):

The date of the Remedial Notice shall be 24 June 2025

3. INITIAL ACTION.

The Tribunal requires the following steps to be taken in relation to the hedge specified in paragraph 2 of the Remedial Notice before the end of the period specified in paragraph 4 below:

The hedge shall be reduced in height to no greater than 7 metres measured from ground level to the top height of the crown in any part of the hedge.

PREVENTATIVE ACTION.

Following the end of the period specified in paragraph 4 below, the tribunal requires the following steps to be taken in relation to the hedge:

Maintain the hedge so that at no time does the top height of the hedge exceed 7 metres (measured as foregoing).

INFORMATIVE

The following is recommended:

It is recommended that the hedge is cut back as appropriate and necessary to a height of 6.55 metres. This shall leave room for the hedge to re-grow between trimmings and still not exceed the specified height of 7 metres.

4. TIME FOR COMPLIANCE

The action specified in paragraph 3 above is to be complied with in full within three months of the date specified in paragraph 5 of this Notice

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 24 June 2025.

Date of amended Remedial Notice: 24 June 2025.

41. With these stated amendments made to the original Remedial Notice and deemed incorporated therein as a consequence of the Order of the tribunal in this decision, this disposes of the appeal and the tribunal Orders accordingly.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 24 June 2025