**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 38/24**

**CAROLINE McCOMB – APPELLANT**

**AND**

**ANTRIM AND NEWTOWNABBEY BOROUGH COUNCIL – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O'Neill**

**Member: Mr Chris Kenton FRICS**

**Date: 13 August 2026**

## DECISION

1. The unanimous decision of the tribunal, for the reasons noted below, is that the appellant's appeal against the issue of a remedial notice dated 25 October 2021 is dismissed.

## REASONS

### Introduction

2. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a remedial notice issued by Antrim and Newtownabbey Borough Council (the Respondent) on 25 October 2021 issued in respect of a hedge situated at 40 Collinbridge Road, Newtownabbey, County Antrim, BT36 7SN.

### The Background and the Complaint

3. This appeal arises from a complaint about what is stated to be a high hedge situated upon property at the above address. A complaint relating to the hedges was made by the Appellant to this appeal in relation to two hedges on the property of the hedge

owner Mairead McCloskey. The Respondent investigated the matter and accepted the matter as a high hedge complaint.

4. In this decision it is not necessary to rehearse the detail of the efforts made by the Appellant to seek to address the issues of concern with the hedge owner as the Respondent accepted that the Complainant had taken all reasonable steps to resolve the matters with the hedge owner before the formal complaint was made to the Respondent. Agreement was not reached between the parties, and the Complainant made the complaint to the Respondent.

**The Action of the Respondent**

5. Upon receipt of the complaint the Respondent investigated the matter and attended the site to conduct a site survey. The Respondent measured Hedge 1 at between 6-7 metres and Hedge 2 at 13 metres. Both were made of evergreen plants. Further to the inspection the Respondent found the hedges in question to be high hedges for the purposes of the High Hedges Act (NI) 2011 and issued a Remedial Notice to the landowner directing the following steps:

   Reduce the height of the Lawson Cypress trees located behind the boundary hedge to 5.3 metres.

   Reduce the height of the Australian laurel hedge growing on adjoining lands about 10 metres from the boundary hedge to 10.64 metres.

6. The notice then required the following preventative action to be taken following the end of the period specified in the notice in relation to the hedges:

   Maintain the Lawson Cypress trees located behind the boundary hedge so that at no time their top height exceeds 5.8 metres.

   Maintain the height of the Australian Laurel hedge growing on adjoining lands about 10 metres from the boundary hedge so that at no time their top height exceeds 11.1 metres.

7. Furthermore, the following was recommended in the Remedial Notice:

> The Australian Laurel hedge immediately behind the boundary hedge is cut back annually to a height of 5.3 metres. This allows room for the hedge to regrow between annual trimmings and still not exceed a height of 5.8 metres.
>
> The Lawson Cypress trees behind the boundary hedge are cut back annually to a height of 5.3 metres. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of 5.8 metres.
>
> The Australian laurel hedge growing on adjoining lands about 10 metres from the boundary hedge is cut back annually to a height of 10.64 metres. This allows room for the hedge to re-grow between annual trimmings and still not exceed a height of 11.1 metres.

**The Appeal and Submissions**

8. The Appellant issued a notice of appeal to the Valuation Tribunal dated 9 October 2024 received by the Valuation Tribunal on 17 October 2024. There was a small issue over payment of the requisite fee to institute an appeal under the 2011 Act which was resolved on 21 October 2024 enabling the appeal to be considered. An application to extend the time within which an appeal can be made was granted by the President of the Valuation Tribunal extending time to 21 October 2024. The tribunal will return to this order in due course.

9. The grounds of appeal set out in the notice of appeal to the tribunal were as follows:
    1. That the appellant did not receive a copy of the Remedial notice, but they did receive a copy of a more thorough letter explaining what was contained in the Remedial notice.
    2. The height of the Australian Laurel hedges in the explanation letter differed from that in the Remedial notice.
    3. The following year the landowner reduced some of the Australian Laurel boarding to four metres, but it was not cut straight, some were cut higher than

other. The hedge has not been reduced to the height the Appellant thought was in the Remedial notice

4. The Appellant only found out that the remedial notice stated to be 5.68 metres in height when the landowner had appealed to the tribunal and all the Australian hedges on the hill on the adjoining land were finally reduced after the tribunal upheld the Council decision.
5. The council in November stated that the Australian laurel hedges bordering their property were already reduced according to the Remedial Notice. The Remedial Notice increases the hedge height on the Australian laurels bordering their property.

10. The tribunal will return to these matters later in this decision.

**The Law**

11. The legislation relating to high hedges is set out in the 2011 Act which includes a definition of a high hedge as follows:

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.

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.

The Valuation Tribunal Rules (NI) 2007 (‘the Rules’), as amended by the Valuation Tribunal (Amendment) Rules (NI) 2012 provide rules for the determination of appeals under the 2011 Act. Rule 5B states that an appeal against the issue of a remedial notice may be made on one of the following grounds:

(a) That the height of the high hedge specified in the remedial notice is not adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified;

(b) That the initial action specified in the remedial notice is insufficient to remedy the adverse effect;

(c) That the initial action specified in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect;

(d) That the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed.

12. The Valuation Tribunal Rules (NI) 2007 (‘the Rules’), as amended by the Valuation Tribunal (Amendment) Rules (NI) 2012 provide rules for the determination of appeals under the 2011 Act. Rule 5B states that an appeal against the issue of a remedial notice may be made on one of the following grounds: (a) That the height of the high hedge specified in the remedial notice is not adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified; (b) That the initial action specified in the remedial notice is insufficient to remedy the adverse effect; (c) That the initial action specified in the remedial notice exceeds what is necessary or appropriate to remedy the adverse effect; (d) That the period specified in the remedial notice for taking the initial action so specified is not what should reasonably be allowed.

**The history of proceedings**

13. The landowner appealed the decision of the Respondent in relation to this matter and that appeal was heard by a differently constituted tribunal and a decision was issued by that Tribunal on 14 August 2023. The tribunal in that instance dismissed the appeal against the Remedial Notice by the landowner.

14. That was not the end of the matter in that the Appellant in this case lodged a notice of appeal against the decision of the Respondent received by the Valuation Tribunal on 17 October 2024. There was a small issue over payment of the requisite fee to institute an appeal under the 2011 Act which was resolved on 21 October 2024 enabling the appeal to be considered. An application to extend the time within which an appeal can be made was made and granted by the President of the Valuation Tribunal extending time to 21 October 2024.

**The tribunal's decision in relation to the appellant's submissions**

15. This case raises some interesting matters to be decided. The first issue to consider is whether this tribunal can hear a case in relation to issues that appear to have been already addressed by another tribunal. This involves consideration of the concept of issue estoppel.

16. This issue was recently considered by the UK Supreme Court in *Skatteforvaltningen (The Danish Customs and Tax Administration) (Appellant)* v *MCML Limited (previously known as ED&F Man Capital Markets Limited (Respondent)* [2026] UKSC 19 where judgment was given on 1 July 2026. That was an appeal concerning the doctrine of issue estoppel.

17. It was stated in that case *"Where an issue estoppel arises from the involvement of parties in earlier proceedings, it has a very powerful effect. Save only in limited and exceptional circumstances, it means that the person who lost out on that issue in those proceedings is prevented from raising it again and contesting the outcome on that issue in later proceedings between the same parties, even if it transpires that the outcome was wrong in law."*

18. That appeal was about the ambit of the doctrine of issue estoppel and the circumstances in which an issue estoppel will be found to have arisen with that effect. In that case reference was made to the case of *Virgin Atlantic Airways Limited (Respondent)* v *Zodiac Seats UK Limited (formerly known as Contour Aerospace Limited) (Appellant)* [2013] UKSC 46 in which Lord Sumption referred to the concept of res judicata:

*"Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is "cause of action estoppel". It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see Conquer v Boot [1928] 2 KB 336. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as "of a higher nature" and therefore as superseding the underlying cause of action: see King v Hoare (1844) 13 M & W 494, 504 (Parke B). At common law, it did not apply to foreign judgments, although every other principle of res judicata does. However, a corresponding rule has applied by statute to foreign judgments since 1982: see Civil Jurisdiction and Judgments Act 1982, section 34. Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: Duchess of Kingston's Case (1776) 20 St Tr 355. "Issue estoppel" was the expression devised to describe this principle by Higgins J in Hoysted v Federal Commissioner of Taxation (1921) 29 CLR 537, 561 and adopted by Diplock LJ in Thoday v Thoday [1964] P 181, 197-198. Fifth, there is*

*the principle first formulated by Wigram V-C in Henderson v Henderson (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."*

19. However, the difference in this case is that the current proceedings are not between the same parties as the earlier proceedings. The earlier proceedings were between the Council and the landowner. They are recorded in the decision of the tribunal dated 14 August 2023 (in which the Respondent is erroneously named as Belfast City Council where it is clearly Antrim and Newtownabbey Borough Council as it was that council which issued the Remedial Notice).

20. This issue relating to different proceedings occurred in *PricewaterhouseCoopers LLP* v *BTI 2014 LLC* [2021] EWCA Civ 9 in which it was held:

*Given the extent of common ground as to the law, it is possible to state the principles of law in relation to abuse of process which are applicable in a case such as the present relatively shortly. Where the parties to the second proceedings are not the same as those to the first proceedings (as in the present case), no question arises of the application of the doctrines of issue estoppel or res judicata, so that the parties are not bound in the second proceedings by the findings in the first. However, as the fourth theme or principle stated by Simon LJ in Michael Wilson & Partners at [48(4)] and the cases there cited recognise, there may still be an abuse of process where the parties to the second proceedings are not the same as those in the first.*

*The mere fact that the second proceedings involve the relitigation of issues decided in the first proceedings or a challenge to findings made by the judge in the first proceedings (and thus a collateral attack on the judgment in the first proceedings) does not without more amount to an abuse of process, as is made clear by the citation from the speech of Lord Hobhouse in the Arthur Hall case in [94] of the judgment of Simon LJ in Michael Wilson & Partners quoted at [63] above.*

*The circumstances in which such a collateral attack will be an abuse were clearly stated by Sir Andrew Morritt V-C in Secretary of State for Trade and Industry v Bairstow [2003] EWCA Civ 321; [2004] Ch 1 at [38(d)]: "If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge or jury in the earlier action if (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or Judgment Approved by the court for handing down. BTI v PWC (ii) to permit such relitigation would bring the administration of justice into disrepute."*

21. In this case the parties to the second proceedings are not the same as the parties to the first proceedings. Therefore, no issue of issue estoppel or res judicata applies. However, do the second proceedings amount to an abuse of process? The tribunal is of the view that it is not unfair to the Appellant in this case that the same issues should be relitigated. The second test is whether such proceedings will bring the administration of justice into disrepute. In this case it has not been suggested by the Appellant that their appeal is otherwise than to pursue an appeal which they are entitled to do under the 2011 Act. Therefore, it is not a case where it will bring the administration of justice into disrepute.

22. In relation to the issues raised by the Appellant in relation to this case the first issue is that they state that they did not receive a copy of the Remedial Notice. This is accepted by the tribunal. However, by their own admission, they received what they refer to as "a more thorough letter explaining what was contained in the Remedial Notice. The tribunal has been provided with a copy of the letter from the Respondent dated 25 October 2021 which is addressed to the Appellant. This detailed letter outlined the history of the case and gave information about the hedge and its surroundings. Indeed, the letter is actually more detailed than the Remedial notice and it does state that a Remedial notice has been issued and gives detail of its contents. In accordance with the 2011 Act the letter of explanation stated the following matters as required by the 2011 Act Section 5(2), namely:

(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;

were covered in the letter of explanation. Therefore, in this case the Appellant were on notice of the contents of the Remedial Notice and, importantly were on notice of the right of appeal as follows "The complainant and everyone who is an owner or occupier of the land where the hedge is situated that is Mairead McCloskey can appeal to the Northern Ireland Valuation Tribunal against the issue of the remedial notice".

23. In their second ground the Appellant state that the height of the Australian Lauren hedges in the Remedial notice was different to that in the explanation letter. However, the initial action and preventative action referred to in the Remedial Notice is the same as that contained in the letter of explanation. Therefore, this ground does not succeed.

24. In relation to the submission that the Appellant considered that the hedge had not been reduced to the height they thought was in the Remedial Notice, the Respondent indicated that it was the height in the Remedial Notice.

25. The Appellant state that they only found out that the Remedial Notice was stated to be 5.68 metres in height when the landowner had appealed to the tribunal and all the

Australian hedges on the hill on the adjoining land were finally reduced after the tribunal upheld the Council decision.

26. The Appellant further states that the council in November stated that the Australian laurel hedges bordering their property were already reduced according to the Remedial Notice. Furthermore, the Remedial Notice increases the hedge height on the Australian laurels bordering their property.

27. In relation to this matter the Appellant are asking this tribunal to consider the height of the hedges referred to in the Remedial Notice some five years after the issue of the Remedial Notice. This is an extensive time after the issue of the notice and is especially relevant when the decision of the Respondent to issue a Remedial Notice has already been considered by another tribunal on 14 August 2023. Therefore, in this case there are no grounds sufficiently made out to cause this tribunal to depart from the decision of the previous tribunal and this tribunal affirms the decision of the Respondent to issue the Remedial Notice on 25 October 2021. In accordance with the legislation the operative date of the Remedial Notice shall be the date of this decision, and the compliance period shall run from the date which is its operative date by virtue of section 8(5)(a) of the 2011 Act.

**Chairman: Mr Charles O'Neill**
**Northern Ireland Valuation Tribunal**
**Date decision recorded in register and issued to the parties: 18 November 2026**