

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
HIGH HEDGES ACT (NORTHERN IRELAND) 2011
CASE REFERENCE NUMBER: 59/12

KENNETH MULLAN – APPELLANT
AND
CASTLEREAGH BOROUGH COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mrs Barbara Jemphrey

Member: Tim Hopkins FRICS FCI Arb

Belfast, 30th May 2013

DECISION

The unanimous decision of the Tribunal is that the Remedial Notice issued by Castlereagh Borough Council on 2nd October 2012 is upheld and the appellant's appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Section 7 of the High Hedges (Northern Ireland) Act 2011 (the Act).
- 1.2 The appellant by Notice of Appeal received in the tribunal office on the 29th October 2012 appealed against the decision of Castlereagh Borough Council (the Council) dated 2nd October 2012.
- 1.3 The appeal is in respect of the issue of a Remedial Notice concerning a hedge situated at 236 Saintfield Road Belfast BT8 6HH.

2 **The Law**

The statutory provisions are set out in the 2011 Act. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

3. **The Evidence**

The case was dealt with on the basis of written representations. The tribunal had before it the following documents:-

- a. The Remedial Notice Dated 2nd October 2012
- b. The appellant's Notice of Appeal received in the tribunal office on the 29th October 2012 (and attachment)
- c. Extensive correspondence between the parties
- d. Correspondence between the tribunal office and the appellant.

Each party has been supplied with copies of all evidence before the tribunal.

4. **Facts**

The Remedial Notice issued by the Council on 2nd October 2012 determined that the hedge adjacent to the northern boundary of 236 Saintfield Road, Belfast adversely affected the reasonable enjoyment of property at 234 Saintfield Road, Belfast. The Remedial Notice required the occupier of 236 Saintfield Road to reduce the hedge height to a height not exceeding 2 metres above ground level. At that time the hedge to which the Remedial Notice referred was a single hedge running along the entire length of the northern boundary between 234 and 236 Saintfield Road.

5. **Issues raised by the Appellant**

By a letter dated 29th October 2012 accompanying the Form 8 Notice of Appeal against a Remedial Notice, the appellant raised the following issues:-

- i) The initial action specified in the Remedial Notice exceeds what is necessary or appropriate to remedy any adverse affect.
- ii) The period specified in the Remedial Notice for taking the initial action, so specified, is not what should reasonably be allowed.

In support of these grounds, the appellant made the following detailed submissions:-

- a) The decision making process, giving rise to the Remedial Notice, was flawed and was contrary to the process for arriving at a decision recommended and set out in the High Hedges Act (Northern Ireland) 2011 – Guidance for Councils document.

- b) The initial action specified in the Remedial Notice will have an irrevocable detrimental effect on the health of the trees making up the hedge.
- c) The period specified in the Remedial Notice for taking the initial action is wholly unreasonable.
- d) The calculations undertaken by the Council are inaccurate and inconsistent with the technical guidance provided for in the High Hedges Act (Northern Ireland) 2011 – Technical guidance document.
- e) There are additional factors that the Council has failed to take into account in arriving at its decision.

The tribunal considered each of the Appellant's submissions and comments as follows.

5.1 The initial action specified in the Remedial Notice will have an irrevocable detrimental effect on the trees making up the hedge.

The appellant alleges that the Council failed to take into consideration the variety and age of the trees making up the hedge and the detrimental effect the requirements of the Remedial Notice would have on their health.

The appellant submitted a report prepared by Dr Phillip Blackstock in December 2012, relating to recommendations on likely survival of a high hedge at 236 Saintfield Road, Belfast.

The report is fairly brief, however, the conclusion reached by Dr Blackstock stated:-

"Because of the recent loss of height and, particularly, the live crown from one side of these trees it is considered that any further reduction in height of the row of Lawson Cyprus trees extending from the front garden of 236 Saintfield Road would jeopardise their health and vitality. As these trees do not appear, now, to be causing a nuisance to neighbouring properties it is recommended that no further pruning be undertaken in this instance.

[...]

It is recommended that the belt of Lawson Cyprus and Cherry Laurel growing to the rear of the boundary at 236 Saintfield Road, Belfast is reduced in height between 4.0m (when measured on the edge of their live crowns closest to the rear of the adjoining garden) and 7.0m (when measured on the edge of their crowns within the rear garden of 236 Saintfield Road). This compromise will ensure the likely survival of these trees. It will also maximise the benefit to the owners of the adjoining garden, while minimizing the impact to the owners of the trees"

The tribunal acknowledges the professional opinion of Dr Phillip Blackstock in his report of November 2012 that compliance with the Remedial Notice will compromise the likely survival of the trees.

The view of the tribunal is that the Act is silent on the issue of survival of a hedge following remedial action.

5.2 The period specified in the Remedial Notice is not appropriate.

The Remedial Notice required the initial action to be taken within 3 months of the date of the Notice.

The appellant suggests that such a drastic reduction in the hedge height would be injurious to the health of the hedge and requests that if work is to be undertaken it should be undertaken in stages perhaps over a period of years.

The view of the tribunal is that based on the evidence before it the time scale specified in the Remedial Notice is appropriate.

5.3 The decision making process was flawed.

The appellant states that the guidance note for councils indicates that the councils should:-

“Keep a clear record of how it reaches its decision, to inform the decision letter and for use in any subsequent appeal. It might wish to prepare a report, in a standard format, which could be appended to the decision letter. This would help to provide assurance to the main parties that their representations and other information provided has been fully considered and demonstrate how they have been assessed.”

The appellant alleges that the Council has failed to adhere to the guidance note and has not provided a report showing how it arrived at its decision.

By letter dated 15th November 2012 the Council set out in detail all the processes and factors taken into account by the Council in reaching its decision.

5.4 Inaccuracies in the calculations

The appellant alleges that the Council was wrong to calculate the action head height based on one calculation along the entire boundary. The appellant suggests that the Council should have made a number of different calculations reflecting how the existing hedge affected the front garden, the rear garden and the windows of the main dwelling to the front, side and rear.

At the date of the Council's inspection there was one hedge along the northern boundary of numbers 234 and 236 Saintfield Road. The tribunal is satisfied that the method used by the Council to calculate the action hedge height and treating the hedge as a single entity was the correct methodology at that time. These calculations have been considered by the tribunal and have found them to be correct; there is no reason to suggest that the action hedge height of 2.5m is incorrect requiring adjustment under this appeal.

5.5 Additional factors

The appellant alleges that the council failed to take into consideration his offer to undertake remedial works prior to its inspection. He further alleges that the remedial notice does not take into consideration special care that should be given not to disturb wild animals including birds and bats, that may roost in the trees and that the recommendations will have a detrimental effect on wildlife, driving any existing wildlife from this habitat.

As part of the tribunal's consideration of this appeal a site inspection was carried out on 29th April 2013. The inspection revealed that the appellant had undertaken some remedial works. The works included removing a section of hedging adjacent to the rear elevation of 234 Saintfield Road, Belfast and reducing the original hedge height by approximately 30%.

These remedial works have had the effect of creating two independent hedges to the northern boundary of 236 Saintfield Road, Belfast.

Hedge One - northern boundary of 236 Saintfield Road, Belfast and adjacent to front garden and gable of 234 Saintfield Road, Belfast.

Hedge Two - northern boundary of 236 Saintfield Road, Belfast and adjacent to rear garden area of 234 Saintfield Road, Belfast.

These works whilst not being fully compliant with the Remedial Notice have significantly improved the level of natural light available to the rear of the property at 234 Saintfield Road and in particular to the back windows of that property.

6. **Conclusion**

The view of the tribunal is that the hedge is continuing to have an adverse affect on the reasonable enjoyment of the property at 234 Saintfield Road and further remedial work should be undertaken.

Taking all matters into account the conclusion of the tribunal is that the appeal should be dismissed.

Barbara Jemphrey
Chairman

Date Decision recorded in Register and Issued to Parties: *27 June 2013*