

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

CASE REFERENCE NUMBER: 35/15

PEADAR BROWN – APPELLANT

AND

NEWRY, MOURNE AND DOWN DISTRICT COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Member: Mr Hugh McCormick MRICS

Belfast: 17 January 2017

DECISION

The unanimous decision of the tribunal, for the reasons noted below, is that the appellant's appeal against the decision of the Respondent not to issue a remedial notice is not made out and the tribunal orders that the appellant's appeal in this matter is dismissed and the tribunal orders accordingly.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (Northern Ireland) 2011 (the 2011 Act) against a decision of Newry, Mourne and Down District Council on 22 October 2015 not to issue a remedial notice in respect of a hedge situated at 19 Harmony Park, Drumaness, BT24 8QW.

The background and the complaint

2. This appeal arises from a complaint about what is stated to be a high hedge situated upon property at 19 Harmony Park, Drumaness, BT24 8QW (the subject property). The owner of the hedge is Mr Martyn Smyth (the owner). The appellant is Mr Peadar Brown, a neighbour of the owner who resides at 13 Harmony Park, Drumaness County Down.

3. The background is that the appellant, after various dealings with the owner, made a complaint to the Respondent to this appeal, Newry Mourne and Down District Council (the Council) under the 2011 Act. The complaint was dated 7 August 2015 and was made on the Council's high hedges complaint form.
4. The substance of the complaint to the council is

“For 2 years now we have been unable to grow vegetables in the childrens veg plot because of shade caused by these trees. Last year 2014 the branches protruded over the plot by 2-3 feet and this was why in Autumn of this year I cut them. The trees from roots to tip exceed 3 metres and as we are south facing cause untold shade. The branches this spring have caused a personal injury to my daughter while at the back of our garden and this has not affected his attitude to take responsibility for his trees either. He claimed to me last November where he wants them to grow to which when measured by me would exceed 5 metres.”
5. Upon receipt of the complaint the council investigated the matter and attended the site to conduct a survey. Measurements were taken. In consequence of this the council prepared a case report and on 22 October 2015 issued a formal decision notice to the appellant that the council had decided that the hedge in question is not acting as a significant barrier to light in accordance with the technical guidance. The notice advised the appellant of this right to appeal to this Tribunal.

The Appeal and complainant's submissions

6. In exercise of his statutory right to appeal, the appellant by appeal notice dated 4 November 2015 appealed the decision of the council. The grounds of appeal were as follows

“It has become clearly evident that on the day of the site visit for measurements and through discussion with the officer on this day and subsequent calls to the council since, that the incorrect measurements were taken of my garden. My complaint arises from barrier to light of my garden yet it seems lands adjacent to my home were taken into consideration. I want my garden as it appears on land registry and title deed maps that is owned by me measured and not what two individual gentlemen own but allow me to access to put into an equation.”

7. The complainant also made reference to the fact that he considered that the area of garden taken into account in assessing the issue in relation to loss of light was incorrect. This was referred to the tribunal after the Valuation Member had attended the site to survey it on 29 November 2016. The appellant stated in an email to the tribunal dated 30 November 2016 that “I brought to his attention that the complete field and not just that in lawn and partitioned by a fence with a gap to enter the remaining field was accessible and usable by me by the owner. Indeed the ground surrounding my neighbours garden due west and south of the tree line owned by a different gentleman has also been allowed usage by me to train my hunting dog and for my children to play in”.

The law

8. 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.

9. 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. The matter was based on the written representations of the appellant and the owner.

The evidence

10. The tribunal had before it the case file from the council and correspondence from the complainant and the owner all of which submissions were taken into account.

The technical evidence and the tribunal's decision

11. The council had taken measurements and made calculations in accordance with the High Hedges Act (NI) Technical Guidance (the Technical Guidance) issued by the then Department of Environment to establish the action hedge height. The Valuation Member of the tribunal conducted a site inspection and survey of the hedge on 29 November 2016 and on 22 December 2016.
12. The legislation in the 2011 Act states that a complaint may be made by an owner or occupier of a domestic property (section 1(1)). It is clear that the complainant has made reference to his property as being 13 Harmony Park, Drumaness. In his email the complainant makes reference to being able to use other property in the surrounding area. However this of itself is not sufficient to confirm that the complainant is an owner or occupier of such land. It should be remembered that in calculating the action hedge height in respect of the garden, the larger the garden included in the calculation the higher the action hedge height would be. In any event as will become clearer from the reasons recited in this decision it is of academic importance in relation to the instant issue.

13. In making its calculations the council had regard to the technical guidance to enable it to establish if the hedge was such that the height of the hedge is adversely affecting the complainant's reasonable enjoyment of the domestic property referred to in the application to the council. In calculating the action hedge height, reference is made to two calculations – the loss of light to garden and loss of light to windows. Each of these will be considered in turn.
14. In respect of the first calculation – the loss of light to the garden, the Valuation Member calculated the area of garden as 389.71m² as opposed to 327.1m² as per the council calculations. This resulted in an action hedge height of 10.59 metres. In respect of the second calculation in relation to the loss of light to windows the calculations of the Valuation Member were largely similar to those of the council in that the Valuation Member calculated the action hedge height to be 8.0 metres as opposed to 8.1 metres by the council.
15. In accordance with the technical guidance the lesser of the action hedge heights is taken to be the action hedge height. Therefore in this case the action hedge height is found by the Valuation Member to be 8.0 metres.
16. Therefore in this case the action hedge height results from the distance of the hedge from the windows of the complainant rather than the area of the garden.
17. The tribunal concludes that the action height of the high hedge in this case is 8.0 metres. As the high hedge in question is 4.0 metres in height the tribunal finds in favour of the council in its decision not to issue a remedial notice in respect of the hedge in question. Therefore in this case there is no reason for the appeal to be granted and the decision of the council is upheld.

Mr Charles O'Neill – Chair

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 16 February 2017