

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: NIVT 18/19

DAVID COCHRANE – APPELLANT

AND

BELFAST CITY COUNCIL – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Member: Mr Brian Reid FRICS

Date of hearing: 13 November 2020, Belfast

DECISION

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 30 August 2019 is partially upheld and that the remedial notice attached to this decision issue as corrected and varied by the terms contained therein.

REASONS

Introduction

1. This is an appeal under section 7 of the High Hedges Act (NI) 2011 (the 2011 Act) against a remedial notice issued by Belfast City Council (the Respondent) on 30 August 2019.

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 428 Castlereagh Road, Belfast BT5 5FS, (the subject property). The owner of the hedge is Mr David Cochrane. The Respondent on foot of a complaint by a neighbour (the Complainant) made on the Respondent’s high hedges complaint form, investigated the matter and accepted the matter as a high hedges complaint.
3. In this decision it is not necessary to rehearse the detail of the efforts by the Complainant 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

4. Upon receipt of the complaint the Respondent investigated the matter and attended the site to conduct a site survey.
5. The Respondent took 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. Measurements were taken and an initial assessment was made both in relation to the loss of light to the garden and loss of light to the window. The Respondent found the height of the hedge to be 8.25 metres.

Loss of light to garden		Loss of light to window	
Area of garden	74m ²	Closest distance hedge to centre of window	10.8m
Effective hedge length	4.8m	Factor for hedge location reference the window	2
Effective garden depth	10.8m	Allowance for slope	Nil
Orientation	SW	Height of floor above ground	3.3m
Allowance for slope	Nil		
Action hedge height (garden)	2.70m	Action hedge height (window)	9.70m

6. In accordance with the Technical Guidance the Council took into account the lower of the action hedge heights (for garden and window respectively) and this resulted in an action hedge height of 2.7 metres. Reference to these calculations will be made later in this decision.
7. On foot of its calculations the Respondent found that the action hedge height to be 2.7 metres and the Respondent found that the height of the hedge in question was adversely affecting the complainant's reasonable enjoyment of their property and issued a remedial notice dated 30 August 2019. The remedial notice required that either the initial action to reduce the hedge to a height of not more than 3 metres with

a further reduction of 0.3 metres should be complied with in full by 30 September 2019 or if carrying out a two phased approach, phase one to reduce the hedge to a height of not more than 4.5 metres to be completed by 30 September 2019 and phase two to reduce the hedge to a height not more than 3.0 metres with a further reduction of 0.30 metres to be complied with in full by 30 September 2020.

The appeal and the submissions

8. The Appellant issued a notice of appeal to the Valuation Tribunal dated 25 September 2019. The grounds of appeal set out in the notice of appeal are as follows:
 - a. Cutting down to 2.7 metres will kill the trees and so is not legal as per the High Hedges Act NI 2011 point 5:3;
 - b. There is no hedge if trees are cut to 2.7 metres;
 - c. Three independent arboriculturists have told the Appellant and will witness that trees will die @ 2.7 metres;
 - d. The sun rises in the east and rises above no 145 and sets in the west giving plenty of light in their garden.
 - e. These trees are over 30 years old and do not form a hedge.
 - f. Cutting these trees down to 2.7 metres will adversely affect the Appellant's enjoyment and will have a huge environmental impact on his property.

The law

9. 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.

10. 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.

11. As is prescribed in the legislation the matter was based on written representations by the Appellant and the Respondent. The matter was listed for hearing on 13 November 2020.

The Respondent’s calculations

12. The representative of the Respondent attended the subject property and carried out calculations in accordance with the Technical Guidance as outlined above. These calculations formed the basis on which a remedial notice was issued.

13. The Appellant made written submissions to the tribunal under cover of his letter dated 27 November 2019 in which (among other things) he contested the Respondent’s calculations.

14. The Appellant stated that the area of the garden should have included the area of the shed in the garden and that the Respondent’s calculations did not reflect this. The Respondent in its letter dated 6 January 2020 admitted this and revised its calculations. The Respondent therefore revised its calculations as follows:

Loss of light to garden		Loss of light to window	
Area of garden	86.7m ²	Closest distance hedge to centre of window	10.8m
Effective hedge length	4.8m	Factor for hedge location reference the window	2
Effective garden depth	18.06m	Allowance for slope	Nil
Orientation	SW	Height of floor above ground	3.3m
Allowance for slope	Nil		
Action hedge height (garden)	4.52m	Action hedge height (window)	9.70m

15. In the light of this, the Respondent now admits that the action hedge height based on its revised calculations would be 4.52 metres.

The Valuation Member’s measurements

16. The Valuation Member of the tribunal attended the property on 26 October 2020 and made the following observations in respect of calculating the action hedge height. He noted the height of the hedge to be 9.77 metres.

Loss of light to garden		Loss of light to window	
Area of garden	88.74m ²	Closest distance hedge to glazed door	11.4m
Effective hedge length	5.2m	Factor for hedge location reference the window	2
Effective garden depth	17.06m	Allowance for slope	-0.47m
Orientation	SW	Height of floor above ground	0
Allowance for slope	-0.47m		
Action hedge height (garden)	3.79m	Action hedge height (window)	6.23m

17. The Valuation Member noted that the site is on a slope and that this has to be taken into account. This has not been taken into account by the Respondent. The Valuation Member found the slope to be 0.47 and that the hedge was higher than the garden. Furthermore, the Valuation Member noted that in respect of the action hedge height in relation to windows there is a ground floor door on the rear elevation of the two-storey return. This is the door to the kitchen. As per the Technical Guidance “glazed doors can be taken into account as windows if they form a major source of light to the room.” Therefore, he considered that this should be taken into account when

measuring the loss of light to the windows of the Complainant's property as it is a glazed door and forms a major source of light to the room.

The Appellant's submissions

18. The Appellant made various submissions to the tribunal in his letter dated 27 November 2019 and 4 February 2020 respectively. In summary and cumulatively these submissions are as outlined below.
19. The Appellant states that the height of the window and the distance to the effective hedge demonstrates that the tree/hedge is far enough away from the window and does not negatively impact on light. Therefore, as the corrected hedge height for windows would be 9.70 metres, this is well above the actual height of the tree/hedge and is irrelevant.
20. The Appellant further argued that the decision to cut the trees to 2.7 metres, whether in a staged process over one year or not, will kill the trees. At this height they would no longer be a hedge, there would be little or no green foliage or branches and all that would be seen would be brown wood.
21. The Appellant enclosed a letter from Robert Weir, Business Manager of Cambium Tree Care dated 22 November 2019 in which Mr Weir states "The Leylandii at the rear, which are between 8 and 9 metres tall, should, at the most, be reduced by 1/3 as per the British Standard for tree work BS 3998: 2010. To reduce these trees any further, notably to 2.7 m would certainly cause them to die." The Appellant also states that he has spoken to several (unnamed) senior arboriculturists this is their recommendation.
22. The Appellant stated that cutting these trees anywhere below a third of their height would adversely affect his enjoyment and he would suffer a huge negative environmental impact on his property.
23. The Appellant referred to the fact that the calculation of the council is wrong as it excluded the shed. The Appellant made his calculations as follows:

Loss of light to garden	
Area of garden	74m
Effective hedge length	1.6m
Effective garden depth	46.25m
Orientation	SW
Allowance for slope	
Action hedge height (garden)	11.60m

24. The Appellant was keen to point out that he considered that the effective hedge length was 1.6 metres whereas the Respondent measures this to be 4.8 metres. Accounting for this he indicated that the action hedge height was 11.60 metres and therefore no action in relation to the trees/hedge is needed.

The Respondent's submissions

25. The Respondent stated in its submissions that it measured the action hedge height in relation to the garden and the windows respectively and took the lower of these as the action hedge height.

26. In relation to the impact of the reduction of the hedge to 2.7 metres the Respondent stated that it acknowledged that this is a significant reduction of the hedge but that if the work is undertaken by a suitably qualified arborist and a phased approach is applied this will reduce any impact to the hedge.

27. In relation to the British standard on tree work recommendations BS3998:2010 the Respondent states that this sets out broad principles which can be applied to different situations for many types of tree which would mean that any deviation from the principles should be justifiable. There are commonly applied pruning options in arboriculture which deviate from the standards, particularly where the objective is to manage light and shade. It is the opinion of the Respondent that due to the impact and loss of light caused by the hedge to neighbouring property that deviation from the recommendations in this instance is justified.

28. In relation to the Appellant's arguments that he would suffer a huge negative environmental impact on this property if he were to take the action required the

Respondent states that hedges do form a natural habitat for nesting birds and wildlife and create a natural barrier between the gardens of the Appellant and the Complainant. However, the Respondent submitted that there is nothing in the legislation that would mean that either of these reasons would form an adequate defence against any claim that a hedge should not be trimmed lopped or removed. The Respondent did indicate that to ensure there is minimal impact on nesting birds the Respondent had advised that the works should be undertaken outside the nesting period between the months of April to August.

29. The Respondent corrected their figures and submitted a revised action hedge height. It also submitted in relation to the Appellant's view that the effective hedge length being 1.6 metres and the Respondent stated that it had checked its measurements and that the effective hedge length was 4.8 metres.

The tribunal's consideration of the matter

30. As is prescribed in the legislation the matter was based on written representations. The matter was listed for hearing on 13 November 2020.
31. The Valuation Member conducted a site visit attending both the property of the Appellant and the Complainant.
32. The Appellant in his submissions to this tribunal has pointed out that he considers that the relevant trees are over 30 years old and do not form a hedge. The Valuation Tribunal Member when he conducted his site visit found that the trees formed a hedge. Under the High Hedges Act (NI) 2011, section 2, a 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. In this case the tribunal is satisfied that there is a hedge which is formed by a line of two or more evergreens. Therefore, it is a hedge for the purposes of the legislation.
33. The Appellant disputes the calculations made by the Respondent. His calculations are as set out above in this decision.
34. The Respondent found that the action hedge height in respect of the garden was 4.52 metres and the action hedge height in respect of the loss of light to the windows was 9.70 metres as per the Technical Guidance. The Respondent found the revised action hedge height in respect of the hedge in question to be 4.52 metres.

35. The Appellant states that he considers that the action hedge height in respect of the garden is 11.6 metres.
36. In respect of the measurements undertaken by the Respondent, the Tribunal notes that it had initially made an error in the calculation of the area of the garden in that it had not included in its calculation the area of the shed in the garden. This meant that it had initially calculated the area of the garden as 74m², whereas the revised area as established by the council was 86.7m². It should also be noted that the Respondent did not allow for the fact that the garden sloped.
37. In relation to the calculation for the loss of light to the windows the Respondent considered that this should be measured from a first floor window, whereas the Valuation Member considered that this should be from the kitchen door which is a glazed door.
38. The Appellant in his calculations states that the effective hedge length is 1.6 metres. However the Valuation Tribunal member has measured the effective hedge length as 5.2 metres.
39. As per its amended calculation, the action hedge height (corrected) for windows as set out by the Respondent is 9.7 metres and the actual height of the hedge is 8.25 metres.
40. The Appellant states that the action hedge height is 11.6 metres. Therefore, he would argue that no action is needed in respect of the hedge. However, in measuring the action hedge height of a hedge cognisance has to be taken of the loss of light to the garden and also loss of light to the windows. The lower of these forms the action hedge height. In this case the action hedge height is found by the tribunal to be 3.79 metres. This is well below the actual height of the hedge (9.77 metres).
41. In respect of the Appellant's submission that the reduction of the hedge to 2.7 metres (as per the Respondent's initial calculations) will result in the killing of the trees and that the trees/hedge would no longer be a hedge, the Tribunal finds that the action hedge height of the hedge is 3.79 metres which is higher than the calculation of 2.7 metres. The Tribunal also notes the evidence of the representative of the Respondent that if the work is undertaken by a suitably qualified arborist and a phased approach is applied this will reduce any impact on the hedge.
42. The Appellant further refers to a very short report by Robert Weir, who is described as Business Manager with Cambium Tree Care. Mr Weir indicates in his report that

the Leylandii at the rear should be reduced by 1/3 as per the British standard for tree work BS 3998:2010. He considers that to reduce the trees any further notably to 2.7 metres would certainly cause them to die. As against this the representative of the Respondent states that this standard is a well-known industry standard and in general it sets out broad principles which can be applied to different situations for many types of tree which would mean that any deviation from the principles should be justifiable. He further states that there are commonly applied pruning options in arboriculture which deviate from the standards, particularly where the objective is to manage light and shade. Therefore in the light of this the tribunal is satisfied that it is appropriate that the height of the hedge should be reduced by the height required in this decision.

43. In relation to the Appellant's submission that cutting the trees anywhere below one third would adversely affect his enjoyment and he would suffer a huge negative environmental impact on his property. The tribunal agrees that hedges can form a natural habitat for nesting birds and wildlife and that the Appellant should make sure that any work undertaken should be done outside of the nesting period.

Conclusion

44. The tribunal has considered the detailed submissions made by both the Appellant and the Respondent in relation to this matter and has carefully considered all the evidence before it. The tribunal finds that the corrected action hedge height in respect of the hedge amounts to 3.79 metres which is the lower of the action hedge height for the garden (3.79 metres) and that for the window/door (6.23 metres). As the hedge is now 9.77 metres in height action must be taken in relation to the hedge. In view of the calculations made by the Valuation Tribunal member, the tribunal in accordance with section 8 allows the appeal in part and varies the contents of the remedial notice issued by the council on 30 August 2019. The remedial notice requires the Appellant to reduce the hedge in phase one to a height of not more than 4.5 metres by 1 February 2021 and in phase two to a height not more than 3.8 metres with a further reduction of 0.3 metres to be complied with in full by 1 February 2022. The remedial notice as varied is appended to this decision.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 8 December 2020

REMEDIAL NOTICE

The Northern Ireland Valuation Tribunal The High Hedges Act (Northern Ireland) 2011

To: Mr David Cochrane
Of 50 Larne Road
Ballynure
BT39 9UB

IMPORTANT – THIS NOTICE AFFECTS THE PROPERTY AT 428 CASTLEREAGH ROAD, BELFAST, BT5 5FS

HIGH HEDGES ACT (NORTHERN IRELAND) 2011 – REMEDIAL NOTICE

1. THE TRIBUNAL’S DECISION

A decision of the Northern Ireland Valuation Tribunal (‘the Tribunal’) made upon appeal under the High Hedges Act (Northern Ireland) 2011 (‘the Act’) and issued on 8 December 2020 as a consequence of which decision of the Tribunal this Remedial Notice is issued under section 8(2)(b) and section 8(4)(b) of the Act.

2. THE COUNCIL’S REMEDIAL NOTICE

A Remedial Notice (‘the Council’s Remedial Notice’) made by Belfast City Council (‘the Council’) dated 30 August 2019 pursuant to a complaint about a high hedge situated at 428 Castlereagh Road, Belfast, BT5 5FS, against which David Cochrane made an appeal to the Tribunal.

3. THE TRIBUNAL’S REMEDIAL NOTICE

This Remedial Notice is issued in place of the Council’s Remedial Notice by the Tribunal under section 8(2)(b) and section 8(4)(b) of the Act.

4. THE HEDGE TO WHICH THIS REMEDIAL NOTICE RELATES

The hedge (the hedge) to which this complaint relates to is the whole hedge in the rear garden at 428 Castlereagh Road, Belfast BT5 5FS marked red on the plan attached. The hedge is formed of 7 no Leyland Cypress trees x Cupressocyparis leylandii and 1 No pittosporum tenuifolium.

5. WHAT ACTION MUST BE TAKEN IN RELATION TO THE HEDGE

Initial action

The Tribunal orders that the following initial action shall be taken in relation to the hedge before the end of the period specified in paragraph 7 below.

Phase 1 - The hedge be reduced to a height of no more than 4.5 metres before 1 February 2021 and phase 2 – the hedge be reduced to a height of no more than 3.8 metres with a further reduction of 0.30 metres before 1 February 2022.

Preventative action

Following the end of the period specified in paragraph 7 below the hedge is to be maintained so that at no time does it exceed the height of 3.8 metres above ground level.

Informative

It is recommended that the hedge as set out above should be reduced in the stages as stated above.

It is recommended that skilled contractors are employed to carry out this specialist work. For a list of approved contractors to carry out works on trees and hedges see the Arboricultural Association's website at www.trees.org.uk.

In taking the action specified in this Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife (NI) Order 1995 as amended by the Wildlife and Natural Environment (Northern Ireland) Act 2011. This includes birds and bats that nest or roost in trees.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 8 December 2020.

7. TIME FOR COMPLIANCE

Phase 1 of the action required under this notice is to be complied with in full by 1 February 2021

Phase 2 of the action required under this notice is to be complied with in full by 1 February 2022.

8. FAILURE TO COMPLY WITH THIS NOTICE

Failure by any person who, at the relevant time, is an owner or occupier of the land where the hedge specified in paragraph 4 above is situated;

(a) to take the initial action in accordance with the steps specified in paragraph 5 above within the period specified in paragraph 7 or (b) to take the action specified in the Preventative action specified in paragraph 5 by any time stated there may result in prosecution in the Magistrates Court with a level 3 fine (currently up to £1,000). The Council also has power, in these circumstances, to enter the land where the hedge is situated and carry out the specified works. The Council may use these powers whether or not a prosecution is brought. The costs of such works will be recovered from the owner or occupier of the land.

Dated this 8 December 2020

Mr Charles O'Neill
Northern Ireland Valuation Tribunal